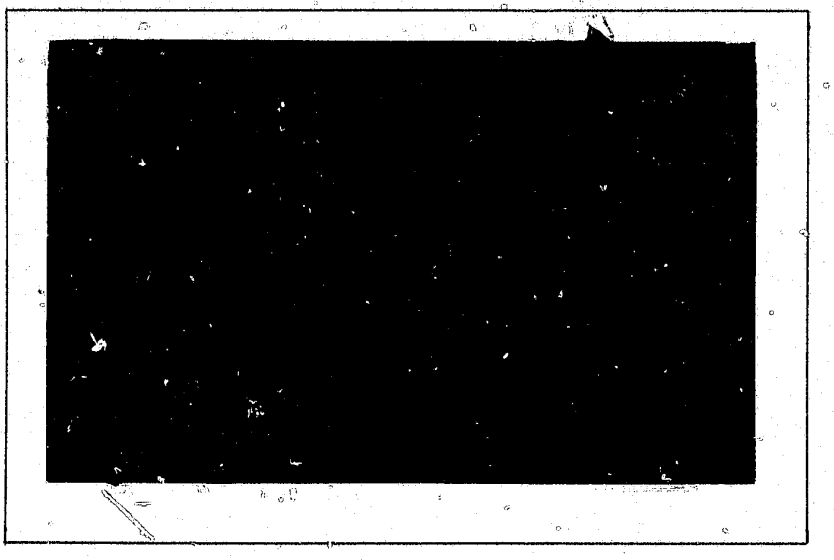
Boston University
School of Law



Center for Criminal Justice

POLICE POLICYMAKING

TO STRUCTURE DISCRETION:

THE BOSTON EXPERIENCE

FINAL REPORT

Prepared for
The National Institute of Law
Enforcement and Criminal Justice

by
The Boston University Center
for Criminal Justice

October, 1978

The research described in this report was prepared for the Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, under Grant 76NI-99-0129. Point of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the United States Department of Justice.

PROJECT STAFF

Sheldon Krantz
Project Director

Bernard Gilman
Principal Investigator

Charles G. Benda
Carol Rogoff Hallstrom
Eric J. Nadworny

ACKNOWLEDGEMENTS

Acknowledging all those who contributed to this study would require naming hundreds of individuals who provided us with information, assistance and advice. We would like to mention and thank specifically, however, the two Police Commissioners who served during the project, Robert di Grazia and Joseph Jordan; members of the Boston Police Department's Criminal Investigative Task Force, Captain Morris Allen, Deputy Superintendent John Barry, Deputy Superintendent Earl Bolt, Detective Lieutenant Frank Coleman, Deputy Superintendent Edward Connolly, Deputy Superintendent Anthony DiNatale, Captain William Hogan, Deputy Superintendent Anthony Leone, Detective Sergeant Frank Mulvey, the late Deputy Superintendent Joseph Rowan, Lieutenant Joseph Sheridan, and members of the Boston Police Department's Drug Control Unit Task Force, Sergeant John Burke, Sergeant James Chaisson, Lieutenant Henry Earl, Detective Alton Frost, Sergeant George Peters, Detective Joseph Smith, Detective Herbert Spellman, and Sergeant Arnold White; Gary Hayes and Robert Wasserman, who served as Administrative Assistants to the two Commissioners; Mr. Patrick Ryan and the Boston Training Academy staff, and the many supervisors and patrol officers and detectives with whom we rode and talked in Districts 1, 2, and 4; members of the Tactical Patrol Force and the Drug Control Unit. We would also like to extend our appreciation to those police departments we visited and to those which responded to our surveys.

Although our resources allowed us to have a limited number of meetings with our National Advisory Committee, the meetings we did have were invaluable to our Project staff. We would like, therefore, to thank the members: Professor Edward L. Barrett, Jr., Ms. Joyce Blalock, the late Chief Justice Franklin Flaschner, Mr. Thomas A. Hendrickson, Professor Herman Goldstein, The Honorable Ernest Hayeck, Chief James C. Parsons, and Professor Frank J. Remington for their assistance. Professor Goldstein deserves special thanks for the assistance he gave to our Project staff. We would also like to acknowledge the continuing help given to us by William Saulsbury, our Project Monitor of the National Institute of Law Enforcement and Criminal Justice.

In addition to our fulltime Project staff, other members of the Center for Criminal Justice, both past and present, made major contributions to the Project. They were Paul Froyd, Janis Hoffman, David Rossman, and Charles Smith.

Further, we are grateful for the diligent work of the following students, whose research efforts were of great assistance: Kevin Bagley, William Clarke, Peter Dunne, Susan Drogin, Mark Elgot, Randolph Gioia, Susan Gyss, Janet Golup, Deborah Huskins, Edward Keane, Roger Purdy, Deborah Roina, and Lisa Serkin.

Finally, we thank Joanne Nelson and Bernice Epstein who helped us with many office tasks.

Of course, we take full responsibility for all errors and omissions.

Errata The following lines should read -
Line 16: the two Commissioners; Patrol Officers Paul Johnston and Donald Carter;
Line 29: for the assistance he gave to our Project Staff, as does Professor Egon Bittner of Brandeis University.

TABLE OF CONTENTS

CONTENTS (CONT'D)

PART I

EXECUTIVE SUMMARY

CHAPTER I

EXECUTIVE SUMMARY

During the 1960's, the notion that police officers do simply what the law dictates was finally called into question. The existence of police discretion had been vaguely recognized for half a century, but not until recently has its extent and significance been openly discussed, and along with it, the issue of coping with discretion. In numerous articles, books, and reports, commentators on the police and on administrative law have written about administrative rulemaking and policy development as a means of "structuring" police discretion.

From April 1975 to August 1978, the Boston University Center for Criminal Justice, in conjunction with the Boston Police Department, studied the process of police policymaking. The project explored how a police agency might develop policies in accordance with its own needs and determine the effectiveness of the policies and the process for developing them. This is the final report on this effort.

The four major objectives of this study are described in the chapters that follow:

(1) To develop guidelines in sensitive areas affecting both the detective and the patrol function, including selective enforcement of the criminal law.

(2) To assess and document the project's guideline development process and to institutionalize policymaking within the Boston Police Department.

(3) To develop, after an examination of policymaking in other agencies, recommendations that could be applied nationwide.

(4) To evaluate the impact of criminal investigative guidelines in structuring police discretion in the Boston Police Department.

Summary of Project

This project was a collaborative effort in police policymaking; at the outset of the project, Center staff worked to form and strengthen ties with the Boston Police Department. There were meetings with strategically placed police personnel and with officers from a number of units. The Department assembled a Task Force of sworn Department personnel to work with staff members of the Center.

Three criminal investigative areas -- search warrants, motor vehicle searches, and searches incident to arrest -- were selected for guideline development in the first phase of the project. We began with legal and social science research in each of these areas and with a series of in-service Training Academy sessions with Task Force members and police officers so as to acquaint ourselves with the police perspective. We videotaped hypothetical but common situations encountered by police officers. In discussion sessions, officers responded to the videos and interpreted their responses in the three areas of guideline development. Field observations with officers, some of whom had attended the in-service training sessions, further helped staff attorneys develop guidelines that reflected police practice and were responsive to Department needs. Sets of draft guidelines were submitted to the Task Force for review and comment. Staff attorneys revised the guidelines and trained additional officers in a second series of in-service training sessions that were followed by more field observations. Finally, upon the approval of the Task Force and the Boston Police Commissioner, the Department printed and issued these as advisory guidelines to all officers

in November 1976.

Following the distribution of the first set of guidelines, three additional areas were selected for development of criminal investigative guidelines: stop and frisk, eyewitness identification, and arrest. Center staff worked closely with the Tactical Patrol Force, an active patrol unit, in an effort to develop guidelines on the decision to stop. By the same process of discussion, observation and Task Force review that was used in the first phase, the final set of guidelines was developed; it was issued by the Department in April 1978. At this time, the Task Force made recommendations to the Commissioner on several related issues: changes in the content of promotional examinations to encourage officers to study the material, and convening of a conference to familiarize judges and prosecutors with the criminal investigative guidelines.

All this was followed by an effort to evaluate the impact of the criminal investigative guidelines on the conduct of detectives and patrol officers. Center staff used court and police records, questionnaire responses to simulated videotaped street situations, field observations, and interviews with police officers to determine the effectiveness of the guidelines in structuring the street activities of officers.

This Project also attempted to develop policies on the selective enforcement of drug laws. With a second Task Force of officers from the Drug Control Unit, Center staff developed a plan of drug enforcement priorities. Staff prepared a report on the drug problem in Boston based on statistical data, and on interviews with police officers and drug treatment personnel. The Boston Police Department sent to the drug units of other police departments a questionnaire to determine their needs and priorities in the area of drug enforcement. After legal and social science

research and discussion with Drug Unit members, Center staff wrote a draft of a Drug Enforcement Priorities Plan. The Drug Unit Task Force reviewed the plan and in December 1977 the Plan was presented by the Task Force to the Police Commissioner for his consideration. The Plan has not been approved or implemented.

Lastly, to put the Boston experience in a national perspective, the Project attempted to determine the extent of policymaking in other police agencies. Under the auspices of the Boston Police Department, a survey questionnaire was sent to police departments across the country and Center staff visited three cities to obtain detailed information on existing policies and practices.

These are our major findings:

POLICYMAKING IN THE BOSTON POLICE DEPARTMENT

We doubt that policymaking of the type to which this project gave priority -- criminal investigative procedures -- is as important as commentators have suggested. Emphasis instead should probably be given to guidelines on police problemsolving and selective enforcement.

For some time, many commentators have suggested that administrative rulemaking by police could structure the discretion of police officers in ways that the exclusionary rule, court decisions, court rules, and statutes cannot. Based upon our study, it is not at all clear that this is so. Certainly policies and guidelines can serve as instructive materials to help interested officers (1) learn what is considered to be "good" or "professional" police work; (2) understand the dictates of confusing court decisions, statutes or court rules; and (3) learn what is or is not permissible in areas in which the courts have not yet spoken.

There are few incentives for police personnel to learn about and apply the Project's guidelines on criminal investigation. The best one that was

devised involved incorporating the materials into promotional and detective examinations. In the long run, extensive use of the guidelines as part of the recruit and in-service training process may hold forth some promise of encouraging their use.

There are few positive incentives within any police agency for doing "good police work." The fiscal constraints of the Department and the City limit the use of monetary rewards. At the present time, promotions are the usual way to reward officers for becoming familiar with material like that contained in the guidelines. But the number of opportunities for promotion are limited. As a consequence, this incentive does not reach all officers, and familiarity with the guidelines may develop slowly unless other incentives can be developed.

While the Boston Police Department has been receptive to the policies formulated by the project, it is unlikely to continue to develop such policies on its own, both because of resource limitations and because there are no political demands to engage in policymaking and no political costs in avoiding it. This is particularly true in such a sensitive area as selective enforcement.

This is not attributable to a lack of interest or support by Task Force members or others in the Department. Rather, it stems first of all from the Department's lack of needed resources to engage in this type of policymaking.

While this project had the open support of the police commissioner and his advisors in its early stages, the Department clearly lacked the expertise to develop these legal guidelines on its own. The Department's legal advisor, busy with other matters, particularly labor problems, had virtually no time to spend with the Task Force.

An urban department like Boston does not have the capability to engage on its own in ongoing and effective policymaking in significant areas of law enforcement that require extensive research and planning. Rather it has built-in constraints that inhibit institutionalization even of projects (such as this one) that its administrators and many of its personnel might define as successful. In such a context, it is much easier for the police, as individuals and as an organization, to operate in more traditional ways, concerned merely with the narrower kinds of police productivity.

One way to introduce policymaking is to create/draw on political costs and benefits to aid in the development of such policies, by the appeal either of political actors (e.g., the Mayor or City Council) or of community groups. There are no groups or organizations in Boston who generally make such an appeal. This is particularly true for selective enforcement policies.

The absence of mechanisms for determining compliance with rules and regulations increases the difficulty of monitoring the effectiveness of any policy, guideline or rule developed.

The Boston Police Department's system of informal control provides few mechanisms for determining or reviewing effectively and efficiently the street activity of officers. Consequently, except in cases in which violations are particularly serious, supervising officers have difficulty knowing to what degree policies are actually being followed. While the inclusion of guideline material on promotional examinations will provide an indication of patrol officer familiarity with these policies, it cannot tell supervisors whether officers actually apply them; and while institutionalization of any policymaking process itself might improve organizational operations, it is clear that accurate knowledge of the application of these policies would have to await the development of more effective

systems of supervision.

The limited success of policymaking in the Boston Police Department was heavily dependent on police commissioners who supported and enthusiastically pursued the development of departmental policies and to the presence of the external group that provided the legal expertise and direction that the Task Force and the Boston Police Department generally lack.

The initiation and continuation of this project in the Boston Police Department depended on Commissioners di Grazia and Jordan, both of whom supported its premises. A commissioner who was opposed or indifferent to policymaking could have stopped this project at any point. In addition, the attitude of these two commissioners also conveyed to the Task Force, as well as the patrol force generally, the importance that the policies would have in departmental operations. It is clear, however, that the participation of the Boston University Center for Criminal Justice staff was critical in providing information, focusing discussions, and giving direction to the efforts of the two task forces that operated in the Department.

Current patrol priorities of the Boston Police Department Command suggest the criminal investigative guidelines may well be underutilized.

The current administration has continued the policy of the preceding one of de-emphasizing the investigative function in favor of "putting more cars on the street." This has led to a computer-aided dispatch system, and to the use of response time and zero-car availability as measures of productivity. Because an officer may be questioned about a tardy response time, he becomes more concerned with meeting this expectation and less concerned about the substance and quality of his citizen encounter. The low priority given to careful investigations means that a patrol officer has little motivation for learning and using the criminal investigative guidelines. Overtime for court appearances is paid and the nature and extent

of the reward is unaffected by the quality of the case. Further, the process of plea negotiation and limited scrutiny of police activities within most lower criminal courts suggests that officers do not have to change the typical ways in which they now "handle things."

Given the nature of community politics in Boston, community involvement to develop policies is possible if policymaking is designed for the separate communities that comprise the city.

Boston consists of a number of geographically and ethnically distinct neighborhoods. The traditional organization and watchman-style features of the BPD have been extremely useful in establishing good community relations, particularly in a city marked by diverse and often conflicting groups. A centralized policymaking process that sought to involve the various communities might, in fact, create conflicts that the Boston style of policing has for many years avoided. Community involvement in developing policing policies is possible in Boston when conducted informally and is in keeping with the demands and characteristics of specific neighborhoods.

The rank and file within the Boston Police Department should continue to be involved in any future policymaking efforts. If possible, this should even include direct involvement or support of the Boston Police Patrolmen's Association.

During the existence of our project, we did not encounter much opposition from the Boston Police Patrolmen's Association. This was a significant factor in the support for our efforts throughout the department.

Given the strong influence of the BPPA in the city council and in the state legislature, this Association potentially could cause serious problems for any attempt at police policymaking that raised issues with which it fundamentally disagreed (e.g., police productivity, work conditions or overtime pay).

THE EVALUATION OF CRIMINAL INVESTIGATIVE GUIDELINES

The limited use of the exclusionary rule in Boston courts suggests that the rule does not effectively regulate police conduct. But we can present no evidence that the criminal investigative procedures issued as advisory guidelines in the Boston Police Department are an effective alternative to the exclusionary rule.

Administrative policymaking and criminal investigative procedures, by themselves, are not an effective alternative to the exclusionary rule. We have found no evidence that police administrative guidelines will ensure greater compliance with proper standards of police practice than do constitutional, legislative or judicial mandates. There are indications that officers interpret some guidelines so as to expand their authority. Guidelines may have little or no impact without the application of related internal or external incentives or sanctions. While it is possible as well as valuable to involve police personnel at all levels in identifying problem areas and in formulating appropriate guidelines or policies, this involvement will not necessarily be more effective in regulating street conduct than policies produced by other means.

It is possible to involve personnel of all ranks in identifying both the substantive areas in greatest need of policy development and in formulating the policies themselves. But police personnel differ among themselves over what they consider permissible conduct, and the views of senior officers may not coincide with the perceptions of line personnel. These differences in perspective must be recognized and dealt with to develop effective policies.

If guidelines on criminal investigation are developed with the active involvement of a broad cross-section of department personnel, they are

likely to reflect directly and accurately the particularized problems and needs of a given police agency and be acceptable to personnel with that agency. Guidelines will then reflect the practical concerns and expertise of the officers who will eventually use them.

However, the Project found that perceptions of acceptable police behavior vary according to officers' ranks. While the legal practices and procedures that the Criminal Investigative Task Force favored were sometimes more restrictive than either case law or model rules require, results of the evaluation suggest that line personnel favor less restrictive policies. Future policymaking projects must reconcile the broad experience of supervisory personnel with needs perceived by officers on the street.

A comparison of the number of search warrants obtained to the total number of detectives available to serve warrants indicates that the Boston police do not use search warrants very extensively; nevertheless, this department probably uses search warrants more, perhaps to a significant degree, than do other police departments.

The Boston police use search warrants mostly for vice and drug cases. This is consistent with police practice in other large cities and has two implications. First, it is unlikely that the total number of search warrants sought by its detective force can be increased much no matter how strong the preference is for searches with warrants. Training is likely to affect only officers who seek warrants infrequently. Second, when officers seek warrants, they will likely seek them for cases involving drugs, alcohol, or other violations of the vice laws. There is no reason to believe that search warrants will be used much in non-vice cases. More serious crimes are not solved in ways that are compatible with the use of search warrants.

Search warrants cannot serve as a mechanism for monitoring conduct

of police officers or increasing their accountability unless recordkeeping in the district courts of the Boston Police Department improves.

The absence of a centralized system to record warrant activity and the chaotic conditions of the search warrant files in some district courts make monitoring warrant activity difficult. Present reporting and filing practices shield officers from internal review and public scrutiny unless the officers' activities result in courtroom proceedings. Moreover, the local district court system has not functioned as an adversarial system and there is little reason to believe that judicial scrutiny of warrants will play a more prominent role in increasing accountability.

The Department should direct training on procedures of obtaining search warrants primarily at those detectives who have a record of low warrant use.

Data seem to indicate that training does not increase the warrant output of detectives who have experience at obtaining some warrants. Training does appear to improve the performance of officers who have not obtained may warrants in the past. The Boston Police Department should train those detectives who have had low warrant use and who are in assignments that provide opportunities to use warrants.

Local judges should be informed of criminal investigative guidelines by the Boston Police Department.

Information from the court system indicates that individual judges vary greatly in their willingness to suppress evidence. These individual differences may increase the cynicism among police officers toward the courts and may contribute to their sporadic use of the guidelines. Officers are more likely to accept and use criminal investigative guidelines if judges review police conduct in accordance with uniform standards. The Boston Police Department's criminal investigative procedures may improve the

performance of district and Superior Court judges by providing a common written standard for such review.

It is possible to measure quantitatively the ability of police policies to change behavior or structure discretion. It is not possible to conduct such an evaluation easily, inexpensively or informally.

The Project's evaluation encountered difficulties. Project work indicated that evaluations utilizing control and experimental groups are difficult to administer in police departments. Given the importance of measuring the impact of policies in structuring discretion, the development of research strategies more flexible than the traditional experimental or quasi-experimental designs is needed. However, there appears to be no alternative to observing the police in action. These observations are time-consuming, costly and a burden to the officers who are observed, but they are essential. It is inconceivable that field observations would not be integral to any new research techniques developed.

NATIONAL DEVELOPMENTS IN POLICE POLICYMAKING

Despite over 10 years of discussion on the advantages of police agencies engaging in policymaking to structure the discretion of their officers, very few police departments report having developed written policies for this purpose.

Our survey results indicate that police departments still appear much more willing to provide written policies on the technical and narrowly legal aspects of police work than policies on order maintenance or selective enforcement. It may be that the nature of police work in a democratic society is inherently so controversial that the police find it politically difficult to develop the latter types of written policies.

Police policymaking, as described in the literature, was not a primary concern in the departments we visited.

The policymaking literature focuses on administrative rulemaking as a method of standardizing police behavior and aiding police-citizen interaction. Yet in two of the departments visited, police personnel did not mention these issues at all. Rather, the primary concern in both departments was the relationship of the department to city government.

The potential for police policymaking appears to be a function of the size of the community in which the department is located.

Survey responses indicate that departments in small cities do not have the internal capabilities, and often not even the external contacts, to engage in policymaking. Consequently, they do not develop written policies as frequently as other departments. When they do develop policies, they often rely on officials in the criminal justice system, such as a district or county attorney, who is in regular contact with the department.

Based on our survey results, it appears that most efforts to develop written policies and upgrade police practices appear to have taken place in middle-size communities. This may be due to the fact that departments in such communities have neither the constraints found in smaller communities nor those found in much larger cities. The departments that have such written policies are located in relatively homogeneous and economically sound communities, which often demand professional government services of all sorts. Furthermore, the departments themselves are large enough to support a staff capable of developing written policies, but not large enough to generate any considerable internal opposition to such policies.

The political context of a police department has a significant impact on police policies and operations, although it is rarely mentioned in the policymaking literature.

The results of our study suggest that the ability of a police department to engage in policymaking is influenced by (1) the composition of the community in which it is located; (2) the power and status of the department relative to the city government; and (3) the fiscal constraints under which it and the city must operate.

Those engaged in future attempts at police policymaking must recognize that these are not minor external variables that must be taken into account merely to "fine-tune" policy efforts. Rather, these factors have a decisive impact on police policies and operations and the latter cannot be understood or altered without an analysis of these factors.

Despite much emphasis in the literature on the need for police agencies to adopt modern management techniques, most departments do not report using participatory management schemes or devices such as positive incentives to encourage compliance with written policies.

Direction of policymaking by a designated committee of sworn officers or by patrol officers is virtually non-existent, and even the participation of these groups in policymaking is limited. Smaller cities are more likely to utilize rank and file officers in policy formation, probably because these small departments have less internal specialization. In addition, several departments explicitly rejected the use of positive incentives. While our project did not explore the basis for such opposition, this attitude is a major obstacle to modernizing police management in the direction suggested by the police policymaking literature.

A strong impression left by our survey material and information we gathered in follow-up letters is that a major need of police departments is mechanisms for knowing and reviewing what officers are doing.

While most departments claim to have a structure of supervisory evaluation as an "incentive" for officers to familiarize themselves with written

policies, what this specifically involves is unclear. Few departments reported any mechanism to determine compliance with their policies or any attempt to discipline or commend officers with regard to these polcies.

The leadership style of the police executive is important in promoting policymaking and in defusing opposition.

In one city we visitied, the police chief was quite adept at assessing and utilizing for his own purposes the interests of community groups, the media, city government, and officers in the department. As a result of these skills, he was able to pursue managerial innovations that increased the status of the department and his own status within the department, within city government and even nationally.

In another site visit city, the police chief tried to exert strong leadership, but he often did so in a way that aroused the opposition of the police union and even at times the public. The promotion of many of his policies was probably hampered by his lack of skill in exploiting the political context of his department. The same appears to be true of Police Commissioner di Grazia's work in Boston. While di Grazia promoted several managerial innovations, he often aroused the opposition of rank and file and superior officers by his style of leadership.

[This page left intentionally blank]

PART II

POLICE POLICYMAKING AND DISCRETION:

A SURVEY OF THE LITERATURE

CHAPTER II

POLICE POLICYMAKING AND DISCRETION: A SURVEY OF THE LITERATURE

Introduction

The Boston University Center for Criminal Justice and the Boston Police Department engaged in a project to structure discretion in criminal investigations and drug enforcement. One of the major tasks was to understand the nature of the problem by drawing on the accumulated knowledge of other efforts and past writings in this field of knowledge.

Proposals that police departments act as administrative agencies to control the discretionary decision-making of their line officers have been put forth in recent years. The concern over police discretion arose initially as a part of the effort to define the role and function of the police in modern America. The early discussions generally argued that the concept of police as ministerial officers was inaccurate, that actually the police make extraordinarily difficult decisions about law and social policy, and that they are ill-equipped to do so. Once the scope of discretionary power was recognized, it became possible to consider the idea that police organizations themselves can exercise control over decision-making by their officers. Encouraged by the President's Crime Commission, by scholars and by the courts, some police departments attempted to develop and implement rules to structure and control discretion. The entire process has stretched over twenty years.

In this chapter, we will examine the major developments in the literature during that period and describe attempts to define and control abuses of discretion.

The Recognition of Police Discretion

An early and important effort to examine the role that police play in the criminal justice system was the American Bar Foundation's project (1957), which began in 1953, to find out what actually occurred in the administration of criminal justice. Data on the operation of the police and the courts were collected through field studies in several cities. Since much of the information concerned police practices--this being the least known and understood aspect of criminal justice administration--a number of articles appeared after 1960 examining various problems arising from police practices. One of the major issues discussed was that of police discretion. Prior to that time, the belief was that police officers exercised no discretion (Hall, 1960). The perception of their job, as others saw it, was to do what the law dictated. If they observed an offense, they made an arrest. If the law gave no guidance on a situation they confronted, they were not to get involved in that situation. No one believed that police officers make choices or that the quality of police performance is heavily dependent on the skills, understanding, intuitions, and even the caprice of individual officers and departments.

Early Discussions of the Problem of Police Discretion: 1960 to the President's Crime Commission

The early articles on police discretion were written in response to the American Bar Foundation study's identification of police practices.

They paid little attention to what would be the focus later, after the extent of discretionary power was accepted: namely, police policymaking and the policymaking process. The articles in the first half of the decade asked such questions as: What is "discretion"? What are the nature and sources of discretionary police practices? Can discretion be justified in the existing system of criminal justice? What dangers and problems are raised by the existence of police discretion? Can discretion by controlled or eliminated, and if so, how?

Some authors took the position that the existence of police discretion[1] in selectively not enforcing statutes was an arbitrary power, contrary to the rule of law (J. Goldstein, 1960; Remington and Rosenblum, 1960). These authors argued that the police's choosing which individuals to subject to arrest was not a proper exercise of their authority, since it undercut the legislature's power to decide what conduct was to be treated as criminal. Three such choices were identified in the article by J. Goldstein (1960): the lack of enforcement against drug informants; the lack of enforcement in assault cases when the victim refuses to sign a complaint; and the decision to harass rather than arrest in gambling cases. Goldstein's thesis was that the decision whether to arrest was being made by officers at the lowest level of the police organization, and that decisions not to invoke the criminal process were not subject to administrative, judicial, legislative, or community review. He wrote:

> Police decisions not to invoke the criminal process largely determine the outer limits of law enforcement...These police decisions, unlike their decisions to invoke the law, are

---

1. Notes and references for this chapter begin on page 56 .

> generally of extremely low visibility and consequently are seldom the subject of review. Yet an opportunity for review and appraisal of nonenforcement decisions is essential to the functioning of the rule of law in our system of criminal justice. (J. Goldstein, 1960:543).

Other commentators took a broader approach to the position that discretion could have in the administration of criminal justice. Breitel (1960:428, 430-31) stated this position clearly:

> The objection to discretion stems from a confusion, that the administration of criminal justice is only partially and slightly a field of law . . . . crime control, in at least some of its phases inevitably requires that discretion be exercised . . . . The discretion here justified is that which may ameliorate or avoid the effective application of the literal criminal rule . . . . discretion functions to provide the selectivity needed in criminal law enforcement.

Breitel (1960) and others who supported this general concept of discretion (Kadish, 1962; LaFave, 1962; H. Goldstein, 1963), were not as concerned with specific police practices as was J. Goldstein (1960). They probed the causes of police discretionary practices but felt that, in principle, discretion was an essential part of police work. These early articles suggested that 1) the police must interpret legislative intent, which is frequently ambiguous, 2) the police must deal with individual cases on an individual basis, and 3) lack of adequate resources make it impossible to enforce all statutes fully.

1. Interpreting legislative intent. Criminal laws are broad, general proscriptions of activity.[2] While they are commonly viewed as mandates to be enforced by the police, some argue that there are many situations in which full enforcement of the law may be undesirable.[3] For example, a friendly poker game may violate a law against gambling, but the public interest might not be served by arrest of the participants. Essentially, from this perspective, police discretion is the result. A violation of the law may be accidental, or so minimal that the officer

may choose not to make an arrest. Other factors such as age, status, or an individual's potential use as an informant may also result in a non-arrest decision. The police are acting as "sub-legislators" (Abernathy, 1962), and they may believe that the law or the public interest do not require an arrest in every situation. By exercising discretionary authority, the police are, according to this view, being consistent with the true intent of the law.

2. Dealing with individual cases. A closely related concept, suggested by Breitel (1960), is that the goal of the criminal justice system is "individualized justice."[4] Discretionary decisions must be made by the police because the facts in each case are not known in advance. The decision to arrest, therefore, may not be the best alternative available in all cases. For example, when an officer stops a car for violating the speed limit and it appears that the offense was "inadvertent," the driver may only be given a warning. Similarly, in the social gambling situation, mere arrest may destroy reputation, cause loss of a job, or visit grave injury upon a family. The police must in each case balance the effects on the individual with the goals of the system.

J. Goldstein and H. Goldstein (1960) agreed with the goal of individualized justice, but argued that it should result from equal application of standard criteria and not from the exercise of discretion.

3. Lack of adequate resources. A reason for the existence of police discretion was also found in the lack of adequate resources available to the police, with several authors suggesting that, because the police, with limited resources, cannot fully enforce every law,

they must set priorities in enforcement and deploy their resources in accordance with these priorities (Breitel, 1960; J. Goldstein, 1960; H. Goldstein, 1967b; LaFave, 1962).[5]

After arrest, an officer must spend time both in the police station for booking and to write a report, and eventually in court to testify. It was argued that, in trying to create a balance among law enforcement, order maintenance, and the public's desires and needs, the police have to give some criminal activities lower priority than others. Social gambling activities might be investigated, but arrests would probably not be made if the police were concentrating their efforts on gambling associated with organized crime.

Whatever an author's position on the advisability of police discretion in the criminal justice system, each expressed concern about the potential for abuse from uncontrolled discretion. The most commonly cited source of abuse was the fact that discretionary arrest decisions were made by line officers and were based solely upon their personal judgments (J. Goldstein, 1960). Personal prejudice could result in arbitrary law enforcement (Abernathy, 1962), and the arrest power could be used to harass individuals (Kadish, 1962). The lack of principles that might guide the officer's exercise of selective enforcement power (Remington and Rosenblum, 1960) was also seen as a contributing factor.

Abuses against legal due process and equal protection were discussed by some commentators (Breitel, 1960; Abernathy, 1962). Policies of harassment or of differential enforcement practices against blacks (J. Goldstein, 1960; Remington and Rosenblum, 1960; H. Goldstein, 1967a) or other groups (LaFave, 1965) might violate the equal protection

guarantees of the Constitution. Abritrary decision-making without appropriate review of control mechanisms ensured that due process violations would never be brought to light (Remington and Rosenblum, 1960). Furthermore, none of the parties involved in such a situation would have any incentive to make it visible.

After identifying the potential abuses of discretionary power, the authors sought to find the best means consistent with their position to control or eliminate discretion.

Proposed Methods for Dealing with Police Discretion: 1960-1967

There was little agreement among these early authors as to the best solution to the problems created by police discretion. Although many writers had traced the existence of police discretion to the characteristics of written legislation, only a few proposed that discretion might be addressed through better drafting or definition of legislation. J. Goldstein's position (1960, 586) was:

> The ultimate answer is that the police should not be delegated discretion not to invoke the criminal law. Legislatures, therefore, ought to reconsider what discretion, if any, the police must or should have in invoking the criminal process, and what devices, if any, should be designed to increase visibility and hence reviewability of these police decisions.

Breitel (1960), Remington and Rosenblum (1960), and LaFave (1962) all proposed a redrafting of criminal codes, to reflect more adequately "the ideals of the community" (Remington and Rosenblum, 1960), "within the bounds of full enforcement" (J. Goldstein, 1960). Generally, however, there was a belief that a clarification of legislative intent could not entirely eliminate the practice. A law that dealt with every situation that might conceivably arise would be too bulky and unworkable (LaFave, 1965).

The legislature is simply not equipped to promulgate laws in such detail, and recourse to it for redrafting existing criminal codes would be a long and tedious process (Kadish, 1962). And, regardless of legislative action, the police would still have to make decisions as to whether observed conduct constituted a violation of the criminal law and so justified arrest.

Several alternatives were suggested to control the identified abuses that result from police discretion. One answer was to create external administrative checks on police operations. Joseph Goldstein (1960) argued that legislatures should establish "Police Appraisal and Review Boards," staffed by top state criminal justice officials, to assist in reappraising the basic objectives of criminal law and in identifying obsolete laws. Such a board would

> Review, appraise and make recommendations concerning municipal police nonenforcement policies as well as follow-up and review the consequences of implemented proposals (J. Goldstein, 1960:589).

While Abernathy (1962) attacked Joseph Goldstein's suggestion of a formal review board, he agreed that elected officials should determine enforcement practices. Abernathy also felt that public opinion should be involved in enforcement decisions, along with the pressure of court sanctions. And Kadish (1962) suggested the development of "structures and arrangements" to minimize abusive judgments.

Breitel (1960) argued for state-wide centralized administration, checks and balances, and shared controls to help direct discretion. Remington and Rosenblum (1960), who had been involved in the American Bar Foundation project, favored institutional methods devised by the legislature, the judiciary and law enforcement agencies that would create a body of principles, and review police activities to make

discretion visible and to guard against abuse. Kadish (1962), however, did not feel that shared controls, or legislative and administrative formulations, would work.[7]

Another theme was the development of features of professionalism to guard against abuses of discretion. Various writers suggested an emphasis on selection and training, merit (Breitel, 1960), development of a departmental reputation for fairness (Abernathy, 1962); police evaluation of their own policies, mutual trust and understanding (Remington, 1965); and the use of discretion based on professional competence (H. Goldstein, 1963).

For the most part, however, the articles focused on controls external to the police organization. Legislative or public control, or judicial supervision through the exclusionary rule (Berger, 1974), was seen as necessary to deal with the abuses of police authority and purpose. The problems as identifed by these authors could not be solved by internal means. the solutions they suggested did not involve the police in the control process, apart from increased professionalism and better police administration.

The American Law Institute (1966) attempted to draft a Model Code of Pre-Arraignment Procedure for future legislative adoption. The Code was intended to cover most of the activities of the police during the investigation and arrest stages of criminal law enforcement. The goal of the drafters of this Code was

> to secure a higher level of compliance with legal rules among law enforcement officers. We have proceeded on the premise that laying down clear rules will in itself encourage the police to become increasingly concerned with protection of the rights of individuals under their control. (American Law Institute, 1966:xix).

The Model Code focused on constitutional standards of police behavior. If police officers acted within the limits provided by the Code, there would be no need for creation of rules by the judiciary. The Code was not developed as a complete and uniform set of standards, the drafters intended that each police department adapt it to its own jurisdiction by writing regulations. The Code provided for a delegation of this authority to the chief law enforcement officer of the state. The complexity of the police function was not treated in any detail by the drafters of the Model Code; instead, the intention was that the regulations would instruct officers in detail on the handling of suspected and arrested persons.

They did recognize that

> the police must necessarily operate with a considerable degree of discretion; and the reporters believe that an integral part of the task of legislation is to design provisions which will not only serve to detect and deter violations, but will also have the effect of encouraging officers to work toward higher standards themselves . . . . (American Law Institute, 1966:xx)

It was quite clear from the Code that this could not happen without legislative authority.

Summary of Discussion on Police Discretion, 1960-1967

The material on police discretionary activies justifiably focused on the most dangerous and least visible sources of abuse--the arrest power. There was basic agreement on the causes of and need for some sort of police discretion, and solutions which would reduce the prospects of unfettered police power. The primary thrust of these articles and studies appeared to be that discretion was inherent in the police function, and many of the proposals attempted to add external controls to limit police abuse of discretionary power. The articles concluded, however, without

a consideration of the effectiveness of their proposed changes, and the resulting impact on the police. The drafters of the American Law Institute Model Code, for example, recognized that legislative revisions could not limit discretion unless the police had the incentive to change as well. The viewpoint of the police was scarcely touched upon by the commentators, and thus the most valuable source of information was not included in the authors' proposals. Finally, there had not been much discussion of the full range of areas where discretion was exercised by the police (with the exception of LaFave, 1962). This, however, was considered in later writings.

Police Discretion after 1967: Internal Controls

Most of the articles before 1967 had focused on discretion as it affected the existing legal structure of the criminal justice system and had offered a variety of techniques for dealing with police discretion, usually in very vague or poorly developed terms. Few had considered police organizations themselves as appropriate sources of control for discretionary activities. Only Breitel (1960) had proposed specific internal administrative mechanisms to check police discretion. He had urged increased supervision of officers, internal review, and the imposition of sanctions. In 1967, a series of articles sharply focused discussion of "solutions" to police discretion around internal administrative changes--more specifically, police policymaking.

Two figures that played key roles in this shifting discussion of police discretion were Herman Goldstein and Frank Remington. Both had been involved in the American Bar Association on Standards Relating to the

Urban Police Function, and were also responsible for the materials in the Task Force Report: The Police (1967) of the President's Commission on Law Enforcement and Administration of Justice (the "Crime Commission"). They focused on police performance within the criminal justice system, and on the necessity for the exercise of discretion.[8]

H. Goldstein (1963) began with the proposition that police officers are not automatons, but reasonable men whose judgment is essential to effective law enforcement. The police should not be on the defensive with regard to the existence of discretion, he argued, but should act to structure and control its exercise. He later wrote:

> There is an obvious need for some procedure by which an individual police officer can be provided with more detailed guidance to help him decide upon the action he ought to take in dealing with the wide range of situations which he confronts and in exercising the broad authority with which he is invested (H. Goldstein, 1967b:1128)[9]

H. Goldstein (1967b) urged the police to formulate policies consistent with legislative intent and with review by courts and the legislature, and to initiate review and control of officers' activities to increase internal discipline (1967b). He offered the following benefits as justification for police formulation of polices (H. Goldstein, 1967b):

1. The maintenance of administrative flexibility.
2. A sound basis for the exercise of discretion.
3. Acknowledgement of the "risk factor" involved in policing.
4. A way to utilize police experience.
5. More effective administrative control over police behavior.
6. The improvement of recruit and in-service training programs.
7. A basis for professionalization of the police.

8. A method for involving the police in the improvement of the system of which they are a part.

There were many problems that would arise when the police began to engage in policymaking. The "primary requisite" of a system of policymaking would be a "stronger commitment on the part of police administrators to [the] goal of control of police conduct (H. Goldstein 1967a:171). Conflicting demands on the police executive, to maintain efficiency and motivation while punishing misconduct and exposing abuses, may make it hard to elicit conformity with established standards of conduct. H. Goldstein (1967a) was also concerned that external methods of control--civil actions, judicial review, or civilian review boards--would not be able to address the problems of conformity, and primary reliance would therefore continue to be placed upon internal systems of discipline. But the task of exposing and reviewing enforcement policies and practices could be adequately carried on only from outside a police department.

Many of these themes were repeated by Parnas (1967), a student of Herman Goldstein's, but the Task Force Report:Police by the President's Crime Commission made police policymaking more visible.[10] The President's Commission (1967) urged systematic, pro-active administrative policymaking, with participation by prosecutors, the legislatures and the courts. In its detailed examination and review of the police function, the Task Force Report suggested several arguments to support police policymaking. Successful judicial involvement with detailed law enforcement practices would depend on the courts' willingness to assume responsibility for review. The Task Force Report claimed that in practice the courts do not exercise the degree of scrutiny

necessary to engage in this task, or to become involved in policymaking. Experience has shown that legislatures can never deal in detail with the wide variety of possible social policies. Furthermore, the Report suggested that police departments are also in the best position to re-evaluate and revise promulgated policies when they become inadequate.

Kenneth Culp Davis (1969) pursued a similar theme, urging the clarification of rules and regulations, the development of "open plans and policy statements," and reliance on precedents. Davis has consistently held that there is no legal objection to the police's engaging in rule-making.

In both books (Discretionary Justice, 1969; Police Discretion, 1975) and articles (1974), Davis has consistently sought to convince the public and the legislatures not only that police departments are administrative agencies and therefore able to engage in rulemaking, but that police rulemaking is legally permissible without legislative delegation of power. Discretionary Justice (1969) compares police functions with the functions of federal administrative agencies. Policymaking, such as that engaged in by administrative agencies, should be adopted by the police agency to reduce unnecessary discretionary power. Davis believes that the function of the police is to promote equal justice. Discretionary Justice (1969), however, was not a response to specific abuses of police power. Rather, it provided an impetus for further discussion of the case for administrative policymaking by law enforcement agencies.[11]

In Police Discretion, Davis (1975) justified rulemaking with this argument: in this century the lines between the three branches of government have become somewhat blurred and administrative agencies do have some responsibility for important policy decisions, especially in economic regulation. The Supreme Court has upheld the power of administrative agencies to make certain types of policy decisions. Davis argues that present-day police departments resemble administrative agencies. Law enforcement, he claims, requires the ability to make decisions constantly without the continuous supervision of the legislature, in much the same way as does economic regulation. In addition, Davis (1975) and others maintain that police departments have expertise in the area of day-to-day enforcement that legislatures simply do not have. Resembling administrative agencies as they supposedly do, police departments should likewise be able to make rules and priorities which facilitate their function (Davis, 1969:222).

Policymaking is normally a legislative activity. If an administrative agency is to engage in policymaking, a statute is usually required to delegate this power to the agency. But, when power has not been explicitly delegated, can an agency still engage in rulemaking? Davis (1975:63) believes that the police are permitted to issue "interpretive" rules without specific legislative authorization: "any officer who has discretionary power necessarily also has the power to state publicly the manner in which he will exercise it, and any such public statement can be adopted through a rulemaking procedure . . . ." Police administrators have the authority to establish by order the manner in which officers are to perform their duties. Logically, because those

duties involve discretion, the order could also structure how it is exercised. Such rulemaking, the argument concludes, would not involve the delegation of power, and would be legal.[12]

Among the benefits Daivs foresaw from administrative policymaking were two: that input from top-ranking, experienced officers, from specialists in various fields and from the public would improve the quality of law enforcement in a community; and that careful consideration of policy questions could eliminate unfairness and injustice resulting from inconsistent practices and improper criteria (Davis, 1975:113-120). All that was required was a method of developing those policies.

Further Developments and the Discussion of Process: 1970's

The writers considered here presented, for the most part, variations on the themes developed by H. Goldstein (1963; 1967a; 1967b) and Davis (1969; 1975). One issue they began to address was the process by which policies on discretion should be formulated, and in particular what groups should be involved in the process of policymaking. Caplan (1971) argued for police rulemaking "based on street situations" and with "public scrutiny," while Igleburger and Schubert (1972) favored police-citizen task forces on policy but with police administrators shaping the final policies with appropriate judicial and administrative scrutiny. McGowan (1972) also thought that the police should develop their own rules, with the help of lawyers, and that the police alone should enforce those internal policies, with court review "in the last instance," all this increasing the visibility of actions and promoting discipline and public scrutiny. Schiller (1972) argued for an "enforcement board" headed by the police chief to formulate and implement policies,

not necessarily with civilian input. Keller (1976) urged policymaking by a standing committee and explicitly rejected public announcement of the process or the policies.

A few writers have actively developed the theme of external control of police discretion, in ways often implicitly critical of proposals for internal police policymaking. Hahn (1971) pointed out that the strong personal cohesion that exists among police officers would be a major obstacle to the imposition of effective restrictions on police conduct and discretion. The professionalization of police departments and the centralization of authority would undermine the professional stature of individual police officers and would result in opposition to administratively promulgated policies restricting their personal discretion. Hahn warned that, because an officer's behavior is usually based on that of fellow officers rather than on department rules, department superiors are relatively ineffective agents for curbing police discretion. There is thus a need for external involvement in the policymaking process, to ensure that incidents of abuse are being properly identified and controlled.

Berger (1971) stressed the need to control the police as an institution, rather than to control the police as individuals. He emphasized policy-making by elected officials, neighborhood groups, civilian police commissioners, and state and federal agencies, supplemented by a more extensive incident-reporting system. Berger thought this could be done despite the possible resistance of civil service and police labor unions.

Flynn (1974), examining police in Wisconsin, discussed the fact that municipal officials have failed to exercise supervision over the police. He pointed out that mayors and city councils often deny their power over the police,

probably because of the political ramifications of the exercise of this power. Flynn (1974) continually cites the importance of public (i.e., external) review of police policies, pointing out that if they are solely a matter of operational command decisions, new chiefs could easily reverse the policies of their predecessors. He argues that

> Police agencies must have clearly delineated powers, outlining which political influences are legitimate and which are illegitimate. In addition, effective grieveance procedures for police and public must be developed. (Flynn, 1974:1165)

The Contemporary Studies Project, (1973) while generally supporting the views of Davis and the analogy of the police as an administrative agency, presented suggestions which were both much more detailed and more closely based on actual police practices than those of any of the other writers. This project was based on an empirical study of police operations in three Iowa cities. It cited several obstacles to police policymaking: the absence of delegated authority, the lack of useful records of police practices, and the absence of effective internal sanctions.[13]

The Contemporary Studies Project argued that the "obvious first step" in controlling discretion was "to make an officer's action known to someone other than himself" by instituting the systematic recording of each situation an officer encounters. The records could be used as indicators of performance in considering officers for promotion, thereby increasing the likelihood of compliance.

Based on these records, the Project argued, a rulemaking body could formulate rules for police operation. However, it disagreed with many of the suggestions for rulemaking bodies made by other commentators. It claimed that state legislatures would draw overly broad rules and be too "political"; that local governments would also be too "political" and

would create inconsistencies among jurisdictions; and that police agencies would not have enough resources to do the job and would probably develop self-serving rules. Instead of all these, the Project proposed the State Crime Commission as the rulemaking body, the commission being somewhat removed from politics, aware of police responses, and able to insure statewide consistency. The Project further argued that all interested parties should participate so that the policies won't "reflect the interest and desires of the group devising them." (Contemporary Studies Project, 1973:965) Thus, while starting from Davis' (1969;1975) perspective, the Project explicitly rejected the concept of internal policymaking by the police themselves.[14]

Another strong advocate of police policymaking was the American Bar Association's Project on Standards for Criminal Justice. In its report of Standards Relating to the Urban Police Function (1973; hereafter UPF), it examined the police's role and objectives, and recommended standards for improvement in the quality of police service. Many of the principals involved in this project, which began in 1969 and was approved by the American Bar Association in 1973, had also been involved with the American Bar Foundation Survey and/or the President's Crime Commission. The Project thus drew upon the accumulated past efforts of the President's Crime Commission, the American Law Institute Model Code of Pre-Arraignment Procedures, and the American Bar Foundation Survey of the Administration of Criminal Justice. One of the more important sections called for recognition and adoption of police administrative policymaking.

The UPF emphasized strongly the full range of areas in which the police make discretionary decisions. Police must choose among various methods available to them not only in selective enforcement of laws, but also in investigative practices and other non-arrest areas,

Administrative rulemaking, the report urged, is a most appropriate device to systematize this decisionmaking (American Bar Association, 1973: 131). Rulemaking and policymaking would have the effect of making discretionary issues more visible to the public, and would also be more considerate of individual rights than "invisible" decisionmaking. Policies could be scrutinized by municipal government and by the courts, and this would foster a meaningful dialogue between the police organization and the reviewing agencies. The police would have an opportunity to articulate their experience and expertise through rulemaking, which could be drawn upon by the courts when the practice at issue was examined.

The UPF suggested that legislative reform, along the lines of the American Law Institute Model Code, was also needed, and that state legislatures should specifically confer rulemaking power on police administrators. Police needed to be subject to administrative controls in the absence of legislative code revision, and it urged the police to begin a process of rulemaking. Efforts by departments to fulfill the recommendations by the UPF are discussed in a later section of this paper.

The Role of the Courts in Promoting Policymaking

The judiciary also played a role in promoting policymaking by the police. Increased judical activism in the area of Fourth, Fifth, and Sixth Amendment rights during the 1960's brought a wide range of police practices before the courts. Judges were called upon to determine the legality of investigative and arrest activities, and, in some cases, were led to set both precise requirements to make police behavior conform to standards implicit in the Constitution.[15]

For example, in deciding Miranda v. Arizona (1964), the Supreme Court held that an accused individual has certain constitutional protections

which the police have to observe before interrogating him: the Fifth Amendment right to remain silent and the Sixth Amendment right to counsel. The decision was part of the trend of Supreme Court opinions to expand the coverage of such constitutional provisions regarding search and seizure and the rights to counsel, to remain silent and to be confronted with witnesses to a wider range of police activities than had ever before been examined. Most of the cases had identified unlawful (extra-legal) police practices, and had relied on an exclusionary rule to prevent their repetition. However, Miranda went further than any previous decision in that the Court required that specified affirmative warnings were to be given a suspect in custody before he could be interrogated. These warnings were needed to safeguard individual rights, said the Court, because Congress and the state legislatures had not acted to provide that protection. While the legislatures were free to create rules in this area, the rules would always be subject to judicial review. Miranda and similar decisions were based on such concepts as "reasonableness", "suggestiveness", and "probable cause". The courts were taking the initiative in defining standards for police conduct in general but the policy statements contained in the decision were essentially reactions to the behavior presented to them in each particular case. The judges could not find guidance in police regulations defining standard of conduct for officers, because none existed, as Amsterdam (1970:810) noted,

> In the area of controls upon the police, a vast abnegation of responsibility at the level of each of the ordinary sources of legal rulemaking (legislative enactments, administrative rules, or local common-law traditions) has forced the Court to construct all the law regulating the everyday functioning of the police.

The opinions in a number of appellate court decisions in the late 1960's began to suggest that departmental regulations covering the area

under consideration would result in greater flexibility for police conduct.

> ...regulations, such as those of local police departments which eliminate the risks of abuse and unintentional suggestion at lineup proceedings and the impediments to meaningful confrontation at trial may also remove the basis for regarding the stage as "critical" (United States v. Wade, 388 U.S. 218, 239 (1967))

Judge Carl McGowan (1972) of the Federal Court of Appeals in the District of Columbia urged police to make policies that would safeguard law enforcement and individual interest consistent with constitutional requirements.

> Any well-run department will presumably prepare - and enforce - careful regulations in this regard for the guidance of its personnel... (Clemmons v. United States, 408 F.2d, 1230, 1237 (D.C. Cir. 1968))

In United States v. Perry (449 F.2d. 1026 (D.C. Cir. 1971)), a District of Columbia Police Department rule had limited detention of suspects for an on-scene identification to sixty minutes. The rule was challenged; the court not only approved the rule but also praised the Department for establishing it. The court indicated that the Department had shown good reasons for promulgating the rule and that, so long as it was reasonable, the court would not try to substitute its own rule.

The benefits to the police from formulating their own policies and rules have also been stressed by courts and judges.[16] Policies would permit the judge to assess police conduct before regulations were put in practice rather than to apply a vague constitutional standard after an incident. If the regulation is held to satisfy the Constitution, it could validate a full range of police activity rather than only the single incident before the judge. Furthermore, waiting for judicial responses to law enforcement issues is not a sound way to solve police problems. Negative regulation of police practices reduces the police to passive recipients; it would be better for them to be involved in a positive process of formulating

their own guidelines. McGowan (1972) called for creative and probing thought from the police to institute imaginative approaches to law enforcement problems. By engaging in rulemaking, the police would help themselves as well as the courts.

Similarly, a Wisconsin court has said,[17]

> This court's decision has been made more difficult by the fact that the court could not measure the actions in the present case against any promulgated guidelines of the department. The treatment of an arrestee falls within the discretionary powers of a police officer, and it is an area where there is a potential for abuse.

Judicial support for police rulemaking would be a powerful stimulant to efforts in the field. It is difficult to determine whether such support has in fact had this effect. However, it is certain that, as police departments begin to promulgate rules for discretionary practices, the courts will have the issue presented to them in a more direct fashion. Their reaction will be very important for future developments in policymaking.[18]

Criticisms of Policymaking

The literature in support of the concept of police policymaking has not been without its critics. These writers have attacked policymaking on sociological, philosophical, and legal grounds. The philosophical objections stem from the fact that concept is considered anathema to the existing system of criminal justice (J. Goldstein, 1960), while sociological criticism has been based on a consideration of how police agencies and city governments actually operate (Reiss, 1973). Most criticism, however, has come from writers trained as attorneys and has been based on legal considerations and conducted in legal publications;[19] the legal arguments raised against policymaking have been more detailed than other criticisms.

Recently, Allen (1976) summarized the legal arguments against substantive policymaking, some of which had been advanced by earlier critics

of police discretion. By "substantive" policymaking, Allen meant primarily police decisions that change or evade the literal application of the law, such as selective enforcement and diversion decisions.[20]

Four legal objections to policymaking have been raised: the existence of full-enforcement statutes, the doctrine of separation of powers, the rejection of desuetude by the courts, and the limitations on delegated powers. Proponents of policymaking have recongnized these problems and anticipated criticism, but their concern has been with the need for policymaking and not with the obstacles encountered in implementing a policymaking process.

Full enforcement statutes exist in each state[21] (LaFave, 1965:76-78). Though they vary in form, they are usually worded so as to impose a duty on every police officer to apprehend every offender who has committed any offense in the presence of the officer. The statutory language would appear to leave no room for selective enforcement by police officers.[22]

There may be no way openly to reconcile the legal requirements of full enforcement with the practical need for enforcement priorities. But Davis (1975) argues that it does not follow that the "inability to enforce fully all the laws" is equivalent to "a consistent, legal practice of non-enforcement".

> Thus, even if the police are unable to enforce "all the criminal laws," that alone does not necessarily justify the deliberate nonenforcement of any particular statute, nor does it necessarily accord the police the power to nullify penal provisions by administrative rulemaking. (Davis, 1975:75)

Allen (1976: 88-95) presents arguments against several aspects of these claims. First, he maintains that the delegation of powers has not received the kind of "broad general approval" at the state level as it has at the federal level. This is particularly true, he claims, with regard to state criminal laws, where delegation is either entirely denied or extremely

limited. State courts have allowed the promulgation of rules with criminal sanctions by agencies only when there are statutes which declare the violations to be criminal, and usually when they occur in such areas as economic regulation or health and welfare regulation. Normally, these activities involve a certain technical expertise (such as classifying drugs by characteristics or setting standards for weights and measures) which the legislature does not possess, Allen (1976:94) maintains, and are used more to facilitate regulation than to prohibit specific activities.[23]

> The delegation of rulemaking authority to an agency thus will often be upheld where the subject matter requires a technical expertise. Delegation will also be upheld where another special attribute, the ability to spend vast amounts of time on relatively inconsequential matters, is required. Thus the mundane affairs of running sewers and airports can be delegated to an agency; legislative time is better spent on other matters.

In addition, however, courts are often reluctant to uphold even these grants of power unless the legislature provides reasonably precise standards on the utilization of the power. Allen (1976:95, 97-98) claims that

> The crucial error permeating this view of Davis is a failure to perceive, or at least to acknowledge, the different roles of the typical administrative agency and the police. Administrative agencies are regulatory bodies created to supervise relationships within their jurisdictions. The police, on the other hand, are not instructed to regulate; their purpose is to enforce prohibitions articulated by the legislature. We do not say to the police: 'Here is the problem. Deal with it.' We say 'Here is a detailed code. Enforce it.' In short, the police perform a very different function from that of a regulatory agency.... When the proper role of the police is kept in mind, the role of the legislature can be viewed in its proper perspective. It then becomes very reasonable indeed to expect, and even demand, that the legislature fulfill its responsibilities.[24]

Many of the proponents of police policymaking argue that in practice the separation doctrine has been modified by legal desuetude[25] as well as by the delegation of powers. According to Allen (1976:81-83), U.S. courts have consistently rejected the doctrine of desuetude out of a

respect for the doctrine of separation of powers, since the rejection of desuetude serves as a limitation on the executive power to abrogate the will of the legislature. Allen maintains that the power of the police to provide by rule for the non-enforcement of a criminal law, based on the claim of an inability to enforce the law would constitute the acceptance of the desuetude doctrine and would thus have to be rejected by the courts.

Another possible obstacle for a policymaking process is the concept of separation of powers. The constitution has given to each branch of government certain responsibilities, on which other branches are forbidden to encroach. The traditional allocation of power has given to the legislature the power to legislate decisions, to the courts the limited power to resolve the ambiguities of the legislative decision, and to the executive branch and its administrative agencies the power to execute policy. This is explicitly stated in the constitution of nearly every state government and judicially upheld in many instances.

> One aspect of this legislative function, vested exclusively in the legislature, is the power to amend and repeal criminal statutes. If the courts have been adamant that only the legislatures possess the power to enact laws in general, they have been doubly so with respect to criminal prohibitions.
>
> We have then, a model of government in which one branch is given exclusive power to declare and amend public policy regarding the prohibition and punishment of conduct through the criminal law. Police rulemaking affecting the scope of the criminal law is clearly inconsistent with this model, because such rulemaking has the effect of either amending or nullifying and thus in effect repealing a criminal prohibition. (Allen, 1976: 78-80; emphasis in original)

Allen (1976: 101) raises several other arguments against police policy-making. He maintains that, because the police are generally not elected, their policies would be "effectively insulated from popular review." In addition, there would be no guarantee that the policies developed by the police would even approximately reflect community values. Instead, Allen

(1976: 105) argues, they could reflect the personal and idiosyncratic values of the law enforcer. Rather than decriminalizing marijuana, for example, the police might "promulgate a rule that they will not enforce the assault statutes against anyone who attacks University of Chicago law professors who write monographs critical of the Chicago police." On what basis, Allen asks, could the courts reject such a policy?[26]

Furthermore, there may be resistance to policymaking within police departments, Allen (1976: 106) suggests. Top officials may like a wide array of broad laws on the books to draw on in particular situations, rather than imposing self-limitations on their authority. Line officers may see their job made more difficult by the creation of more technicalities. Finally, Allen argues that Davis offers no convincing evidence that rulemaking would actually alter police behavior.[27]

Albert J. Reiss (1973) criticized Davis's writings on administrative discretion and justice on sociological grounds. Reiss's major point was that Davis never offered a definition that would allow a researcher to recognize and measure discretion in the multitude of situations in which it might occur. This is particularly significant when one is discussing police actions that are not recorded and where inaction may be the more important form of discretionary activity. Reiss (1973) called for a model specifying where the discretionary process begins and ends, where the decision points are, and how the decisions are made.

Reiss (1973) questioned Davis's emphasis on formulating rules that attempt to promote individual justice and based on the outcome of individual cases or decisions, since this ignores the social dimension of discretionary activities. In many instances, Reiss points out, it is impossible to prove an injustice such as discrimination in a particular case while it can easily be established as a pattern in an examination

of a large number of cases. Typically, there is a close connection between individual justice and social justice.[28]

The inevitable clash over the legal obstacles in the path of substantive rulemaking by police organizations has not yet occurred. But efforts at police policymaking have been undertaken in various departments around the country and several of these projects are discussed in the next section. The reader should bear in mind the distinctions between substantive rulemaking -- which has been the focus of the criticism -- and procedural rulemaking: some departments have engaged in rulemaking only in procedural areas because of the lesser threat of legal and public opposition to such effort.

Police Policymaking in Action: Three Studies

Several attempts have been made, prior to the Boston Project, to have police departments formulate policies for their operations. The initiative was provided by the Police Foundation, which gave grants to a number of departments and agencies to develop policymaking. Projects were begun in Dayton, at Arizona State University College of Law, and subsequently in Cincinnati.

Dayton

The Dayton experiment has been characterized as a broadly-based effort using both citizens and line police officers, to engage a police agency in program evaluation, with the goal of improving the policies and procedures that have a direct bearing upon police services.[29] The primary objective of the project was not so much to produce written policies as to develop a review process focusing on the delivery of services to the community. In this process a task force with citizen and police members was created. Over a period of three months, the task force met approximately a dozen times, progressing through a general consideration of a problem area into an

evaluation of policy drafts generated from discussions. Drafts were also commented on by the two officer "policy bureau." At the end of the process, the policy draft was given to the chief. The chief was theoretically free to accept or reject the draft, but in practice he has consistently accepted what has been tendered. The policy was then promulgated and distributed to line officers. They were cautioned that they were to be held accountable to it in any disciplinary proceedings that might arise.

Among the policy issues addressed by the task forces were the most appropriate from of response to domestic distrubances, high speed chases, responses to receipt of information about bombs, and hair length. Although the written work project was occasionally long and difficult to comprehend, the project did manage to focus both citizen and police attention on practices not previously explored. One of the policies developed in Daytona, regarding the use of firearms, was challenged in court after an officer was disciplined for a violation of the policy. It was eventually upheld in the Ohio Supreme Court.[30]

Arizona State

The Arizona State Project, in contrast to Dayton, was not concerned with a process specifically tailored to a particular department; it was developed by professional lawyers and command personnel from twelve major police departments around the country rather than by joint task forces of line officers and citizens. The project emphasized the formulation of rules that not only communicated current legal restrictions but also particularized the ways in which officers were expected to exercise the authority legally conferred upon them. It also emphasized having such rules in the form of "general orders" or other "regulations" that tell officers how to proceed and that provide disciplinary sanctions for failure to conform. Adoption of rules of this type was seen as providing

major advantages to individual officers, to a department as a whole, and to the courts.

The rules as completed were much more lawyers' documents than they were policies understandable and applicable by working police officers. The Project was criticized principally because of its inability to draft rules in areas in which policy considerations predominate over legal consideration and its inability to deal with problems of implementation and review.[31] Nevertheless, the Project did advance and popularize the concept of rule-making within police agencies, and provided a useful base of experience for future efforts in the area.

Cincinnati

During the Arizona State University Model Rules Project (1972-1973), a number of police departments (San Diego, Phoenix and Dayton) adopted the Model Rules as standard operating procedures for their officers. Cincinnati, another department involved in the project, did not immediately adopt the rules. Instead, it attempted to devise an implementation process to increase the potential for acceptance of the rules both by the officers who would make use of them and by the other agencies in the criminal justice system. Copies of the Model Rules were sent to prosecutors for their opinions. Their support for the rules was also requested. The interest of the judiciary was then sought through the local bar association. The department used the County Police Chief's Association to contact other police agencies in order to interest them in also adopting the rules.

In the view of the department, the Model Rules Project was geared toward development of rules easily read and understood by a police officer on the street.[32] The rules would not be implemented until they met the twin requirements of clarity and operational practicality, nor without the support of those vitally necessary for successful implementation (i.e., prosecutors,

judges and attorneys); only such support would ensure the lasting vitality of the rules. The plan of the Cincinnati department thus went beyond what the other departments involved in the Arizona State University Project were doing. They apparently adopted the Model Rules through administrative action, without resolving some of the problems foreseen by Cincinnati.

The Cincinnati Police Department felt that a committee of lawyers, judges and police should consider a number of issues prior to implementation:

1. Training and the training process;
2. Whether rules should be adopted by police agencies or by courts;
3. Court use and interpretation of adopted rules;
4. Sanctions for deviation from rules;
5. Who would have responsibility for rule revisions; and
6. Who would oversee the operation of the rules.

Once these questions were resolved, the rules could be implemented, with suitable modifications reflecting local practices. In some areas, task forces which included street officers, would be used to develop policy. We do not know whether the attempt at implementation in Cincinnati was completed. Cincinnati was alone in its effort to develop a plan for the implementation of a rulemaking process. The Model Rules Project was unable to help Cincinnati in this effort.

Summary

Some general points will serve to summarize the literature on police policymaking.

First, there is a recognition that some statutory reform is needed to eliminate unnecessary discretion. Two primary types of such reform are suggested. The first is the replacement of "full enforcement" statutes with statutes that recognize--and authorize--the police's power of

discretion. The second is general statute rewriting to simplify and reduce ambiguity.

Second, there has been a recognition of the importance of molding law enforcement to individual communities, primarily through increased input into the process by public opinion. For example, Abernathy (1962: 484) suggested that public opinion should play a substantial role in determining which sections of the criminal code should be enforced and so proposed informal, but regular communication between the police and local officials instead of Joseph Goldstein's (1960) formal review boards. Remington (1965) agreed with Abernathy that the police should play a substantial role in implementing a law enforcement policy that suits a community.

Third, many writers have suggested professionalization as a solution to unnecessary police discretion. In 1967, H. Goldstein (1967a:171) proposed that

> The primary requisite is a stronger commitment on the part of the police administrators to this goal[Guidelines for review and control of police behavior]. An added requirement is the development of a form of self-discipline and personal commitment on the part of individual officers that subverts the predominant concern for the efficiency to an overriding concern for the fairness of his action.

Both the President's Crime Commission (1967) and the President's Commission on Campus Unrest (1970) suggest professionalization as a solution in addition to the proposed use of police guidelines.[33]

Fourth, many articles have suggested that judicial control could be useful in controlling discretion. Tieger (1971:743) suggested that courts should become more receptive to equal protection defenses as a response to selective enforcement by the police. He believes that this could be accomplished through relaxing the burden of proof of such defense for a defendant, and through shifting the burden to the state after a minimum showing to show the absence of invidiousness.

Although rulemaking (or policymaking) has gained some recognition in the field of law enforcement, the contrast among various authors and reports, all dealing with the subject of policymaking, reflects the fact that there are many differences still to be resolved. Perhaps these differences can be understood by recognizing that different writers have focused on different problems. Two major problems seem to predominate: the concern for individual rights and the concern for gaining and maintaining control over police conduct.[34]

Finally, the authors of the policymaking literature do not address how a police department might proceed to organize itself for policymaking and how it can initiate the process. The treatment of policymaking in most of the articles is rather abstract and formal. Few of the authors draw on any of the empirical information about the police.

However, from the description of past policymaking projects and from various critiques of them, it is possible to develop a list of the key elements that knowledgeable practitioners have deemed significant for a policymaking effort:

1. Policies beyond legal interpretations of criminal procedures (i.e., stop and frisk, arrest, eyewitness identification, etc.) and including order maintenance issues. All policies -- legal and non-legal -- should draw on actual police experience.

2. Opinions solicited from judges, prosecutors and defense attorneys as policies develop. Written policies should be open to public, judicial and legislative scrutiny. Policies should be reviewed externally.

3. A dialogue between police personnel and citizens, brought together through "task forces." In this way, police departments are

"opened up" and citizen involvement is encouraged.

4. The police agency should take the initiative in developing policies without prodding from external sources. The process should not be dependent on special grants or the idiosyncrasies of the chief.

5. Sworn and non-sworn personnel should develop policies while working as full-time employees of the police agency. This implies an adequate staff capability. Policy drafters need not be "professionals."

6. Citizen involvement, with assurances that participating citizens are (a) representative of their communities and (b) willing and able to represent community interests to the police agency.

7. A reliance on existing resources and expertise within the police agency; e.g. legal advisor or officer in planning and research division, etc.

8. All written policies should be distributed to and understood by police officers for whom they are intended.

9. The state legislature or other legal authorities should grant the police department the power to make rules in areas within constitutional bounds.

10. Policies should offer line officers some protection against civil suits.

11. Patrol officers should maintain written records on field practices for the development of future policies.

12. There should be an awareness of the need to improve the quality of police services as well as control the conduct of individual officers.

13. Policies should be related to concrete community issues.

To date, these requirements remain as ideals for the policymaking process. Few of the fledgling efforts at policymaking have effectively addressed them. The Boston Police Policymaking Project attempted to build on the work done in other projects, and -- as described in later sections

of this report -- attempted to incorporate into the process many of the elements listed.

NOTES

1. Discretion has been defined as "power to consider all circumstances and then determine what legal action is to be taken" (Breitel, 1960:427).

2. As Arnold (1935:153) has noted, the criminal law should be viewed "not as something to be enforced because it governs society, but as an arsenal of weapons with which to incarcerate certain dangerous individuals who are bothering society."

3. LaFave (1965:69) has stated that
...the concern and uncertainty about the "rule of law" or "principle of legality" (i.e., that there be fair notice of what conduct is to be treated as criminal) has tended to prevent explicit recognition of police discretion and has, to that extent, contributed to the lack of an adequate understanding of the function of police discretion in current criminal justice administration.

4. Breitel discusses the concept's application in the police context, although it has been more commonly used to describe the function of the judiciary.

5. Later, Davis (1975) would assert that the failure of the legislature to provide enough manpower and financial assistance to police agencies constitutes an implicit recognition of discretionary power.

6. Eventually, other problems were linked to the existence of police discretion: for example, that no one knew the effects of police discretion on crime rates, numbers of violators or arrests, although, in 1971, Caplan asserted that structuring discretion would help reduce crime rates. Other problems mentioned were police avoidance of work (J. Goldstein, 1960; Parnas, 1967); public criticism of police, loss of public respect and poor community relations (H. Goldstein 1967a; Schiller 1972; Caplan, 1971); the inability of the police to deal with social work activities as required in domestic disputes (Parnas, 1967); the high degree of isolation of the police from city government (American Bar Association, 1973), and the lack of an alternative to the exclusionary rule (Quinn, 1974).

7. These early articles also detail (until 1972) the inadequacies of existing mechanisms for reviewing police activity, such as civil suits, the exclusionary rule, the complaint process, and so on, due to the invisibility of police actions and the failure of courts to recognize the problems that discretion creates (J. Goldstein, 1960; Remington and Rosenblum 1960; LaFave, 1962; H. Goldstein, 1967b; Berger 1971-72).

8. The major works on discretion after 1967 saw the issues very differently than did those who were concerned about the effects of discretion outside the police organization. These articles appeared to introduce and focus discussion on administrative problems caused by unchecked discretion, such as "lack of control over officers" (H. Goldstein, 1967a), "informal patterns" of officers responses (Presidential Commission, 1967), lack of police "responsiveness and accountability" (Caplan, 1971), no direction for officers (American Bar Association, 1973) and lack of knowledge of what officers do (Schiller, 1972; Contemporary Studies Project, 1973). Earlier articles had treated the administrative

issues as related to legislative inadequacies, or in terms of deployment of personnel (Breitel, 1960) and budget limitation (Abernathy 1962).

9. The solution to this problem was also obvious to Remington (1965:365): "Flexibility in the use of law enforcement power requires that police themselves assume a major responsibility for setting their own standards of propriety without waiting for courts to do this for them. To accomplish this will require that police themselves engage in a continuing process of reevaluation of law enforcement policies and practices to insure that they are both effective and responsive to the requirements of a democratic society."

10. After 1967, the recitation of legal problems arising from police discretion continues but does not receive the major emphasis it did in earlier articles (Tieger, 1971; Igleburger and Schubert, 1972; Davis 1974). In addition, there is a tendency not to treat the legal problems in the abstract terms of "due process" and "arbitrary actions" but to link them to the issues of "inconsistency" and "individual definitions" of justice (Davis, 1969, Contemporary Studies Project, 1973), "idiosyncrasies" and "lack of accountability" (Cox, 1975) and "inconsistent and improper practices" (Keller, 1976).

11. Later writers did not abandon the notion of external control. Of these writers, Davis (1969) appears to place the most emphasis on checks and reviews by outside people and agencies, and on the enforcement of policies by judges. Davis (1974) also spoke of the need for tort liability for government units to deal with police abuse of discretion rather than reliance on suits against individual officers. Cox (1975) repeated some of these themes of Davis (1974), urging the supervision of public authorities by higher officials removal of governmental immunity, principles of compensation, standards defining public interference with private rights and other measures. The Contemporary Studies Project (1973) suggested that policies should be developed by a state-wide crime commission consisting of all interested groups so as not to reflect the interest and desires of a single group.

12. Agencies have been permitted to establish enforcement priorities when they had not been delegated such power. For example in Skidmore v. Swift, 323 U.S. 134 (1944), the Wage and Hour Administration's rules for enforcement were upheld even though it had been explicitly denied the power to make rules. The Supreme Court characterized the rules involved as a "body of expertise...to which courts...may properly resort for guidance."

13. The Project also points out that police chiefs often use informal controls to keep departments operating at a tolerable level because they do not want to antagonize the officers.

14. Interestingly, the conclusions of the Project closely paralleled those of Joseph Goldstein in 1960. He similarly stressed the low visibility of police actions, the poor records, and the lack of internal review. He also argued that the decision not to invoke a criminal law

should remain with the legislature, which should be guided by the study and recommendations of a "Policy Appraisal and Review Board," and that this power should not be given to police agencies themselves.

15. Remington (1965; 363-64) wrote:
"Courts have become increasingly involved in telling police what they can and cannot do because police have not adequately assumed responsibility for setting their own standards....Because of this default it is not surprising that courts have stepped in and done the job themselves".

16. These benefits were also seen by proponents of police policymaking: "There is a way to relieve some of the distress that inheres in the courts deciding cases on insufficient data about police practices and procedures and their underlying motivations. To the extent the judiciary appreciates police rulemaking as an aid in its own decision-making, it can inspire more activity by the police. By seeking out overall agency policy, instead of focusing only on the conduct of the officers involved in the case, it can serve as a healthy pressure on law enforcement officials to do more policymaking". (Caplan, 1971:506)

17. United States ex rel Guy v. McCauley, 385 F. Supp. 193 (D. Wis. 1974).

18. One of the important consequences of police rulemaking may be the deemphasis and ultimate abandoment of the Fourth Amendment exclusionary rule. As a mechanism to control unlawful police practices, administrative rulemaking has been said to offer substantial advantages over judicial scrutiny and suppression of illegally seized evidence, and has gained some support among commentators and judges as a substitute (Quinn, 1974; McGowan, 1972). The impact of the exclusionary rule in Boston is examined in Chapter XIV of this report.

19. Exceptions, of course, include the President's Commission (1967) and Standard Relating to the Urban Police Function (American Bar Association, 1973).

20. Allen believed that substantive rulemaking is lawless action and is unlikely to achieve its goal of control of police behavior (Allen, 1976: 98).

21. Interestingly, the history of full enforcement statutes reveals that they were originally enacted when police departments were in their infancy, to limit abuses by unorganized, untrained, and unsupervised officers (Keller, 1976: 30). Legislatures were then the only bodies in a position to control public officials. But some claim that the situation that existed previously no longer holds. Police forces today, they argue, are well-trained, well-controlled organizations, with effective supervision and discipline (President's Commission 1967:7-12). Thus, they suggest that the development of administrative controls has provided an alternative to direct legislative supervision. As several writers have noted, however, the development of administrative controls in police departments may still actually be very poor.

22. Davis (1975) has argued, in support of adminstrative policymaking by the police, that language of the statutes must be interpreted in light

of other legislative actions affecting full enforcement. Legislatures have softened the directive in response to existing department enforcement priorities, and also have appropriated to police departments only enough funds to ensure partial enforcement (Davis, 1975:81). Furthermore, there has been only a rare prosecution or action against a police officer for failure to enforce a law fully. All these facts appear to leave room for a department to establish enforcement priorities, as long as they are not in direct conflict with legislative goals of crime prevention and suppression.

23. Wright (1972) also believes the Davis rejected too quickly the possibility of using the delegation doctrine to subject agencies to the rule of law. Wright emphasizes the rule of the courts to force agencies to develop rules and agency accountability to these as well as the importance of the due process clause in all this. Wright also points out that if legislatures, as the representatives of the people, cannot determine a clear set of standards, then there is no reason to let experts determine the standards.

24. Allen takes a very narrow view of the police function. He fails to respond to the literature supporting the broad functions that exist in actual police work.

25. Desuetude is the doctrine that a long, continuous failure to enforce a statute in combination with an open and wide-spread violation of it by the populace is equivalent to the repeal of the statute. See Poe v. Ullman, 367 U.S. 497, 502 (1961).

26. Cf. Vorenberg (1976:674):
"In criminal justice, perhaps even more than in other areas where control of administrative agencies is involved, there has been almost sole reliance on judicial intervention to rememdy and prevent violations of personal rights. While courts have no choice but to take action when presented with clear violations, there are serious limitations in seeking to remedy officials' abuse of power on a case-by-case basis".

27. While Allen (1976:110-113) concentrated on developing lengthy objections to Davis and policymaking generally, he did offer some alternatives to policymaking. He suggested that beyond the elimination of vague and overly broad laws, the most effective way to reduce police discretion is by controlling the allocation of police resources. He argued for the creation of a visible and reviewable budgetary process to control the "discretion of deployment." He added, however, that the police may not legally do indirectly through resources allocation what they are prohibited from doing directly through substantive rulemaking: i.e., effectively repeal criminal statutes.

28. Reiss (1973) also presented several more philosophical criticisms. He pointed out that discretion is exercised simply in the selection of facts in a particular situation. In addition, injustice may arise from the existence of too many rules, for it becomes difficult or impossible to discriminate among them.

NOTES (CONT'D)

29. Unpublished Project Evaluation Report (December 11, 1973)

30. Unpublished Project Evaluation Report (No Date)
A major criticism of the Dayton Project was that it dealt with police problem areas where citizen concerns about safety and delivery of services to the community could be helpful to the department. Apparently, police practices that were subject to legal constraints (the focus of the Arizona State University Project, see below) were not considered by the Task Force. This was due in part to a desire to build support and understanding for the project before moving to more "substantive" areas of police activity. There would presumably have been more opposition to the Task Force within the department had these activities been addressed in the beginning.

31. Unpublished Report of the Project Monitor (January 2, 1974)

32. Unpublished Correspondence (April 27, 1973)

33. Hahn (1971:457) seemed however, to give a somewhat negative image to the impact of professionalization when he wrote: "[it] acts to undermine the professional stature of individual officers by limiting their personal discretion in handling the problems of 'clients' in the community. While these reform efforts probably have a temporary effect on the morale or activities of law enforcement officers, the eventual impact of this trend may be growing opposition and reduction in professional obligations...Unlike other professional groups which have developed an expanded range of responsibilities and personal relationship with the public, the particular brand of professionalism that has arisen in police departments emphasizes the centralization of authority and weakening of their relations with the community."

34. Cf. American Law Institute Model Code of Prearraignment Procedure (1966) and the Arizona State University Model Rules (1974) with the President's Commission Task Force Report: Police (1967) and the American Bar Association Urban Police Function (1973).

REFERENCES

Abernathy, M. Glenn
1962 "Police Discretion and Equal Protection." South Carolina Law Review 14:472-86.

Allen, Ronald
1976 "The Police and Substantive Rulemaking: Reconciling Principle and Expediency." Pennsylvania Law Review 12:62-118.

American Bar Association Project on Standards for Criminal Justice
1973 Standards Relating to the Urban Police Function. Chicago: American Bar Association.

American Bar Foundation
1957 "Survey of the Administration of Criminal Justice." Pilot Project Report. Mimeograph.

American Law Institute
1966 A Model Code of Pre-Arraignment Procedure. Philadelphia: American Law Institute.

Amsterdam, Anthony
1970 "The Supreme Court and the Rights of Suspects in Criminal Cases." New York University Law Review 45:785-815.

Arizona State University College of Law and Police Foundation
1974 Model Rules for Law Enforcement. Washington, D.C.: Police Foundation.

Arnold, Thurman
1935 The Symbols of Government. New Haven: Yale University Press.

Berger, Mark
1971 "Law Enforcement Control: Checks and Balances for the Police System." Connecticut Law Review 4:464-507.

Breitel, Charles D.
1960 "Controls in Criminal Law Enforcement." University of Chicago Law Review 27:427:435.

Caplan, Gerald M.
1971 "The Case for Rulemaking by Law Enforcement Agencies." Law and Contemporary Problems 36:500-514.

Contemporary Studies Project
1973 "Administrative Control of Police Discretion." Iowa Law Review 58:892-973.

Cox, Michael P.
1975 "Discretion - A Twentieth-Century Mutation." Oklahoma Law Reivew 28:311-332.

Davis, Kenneth Culp
1969 Discretionary Justice. Louisiana State University Press.

Davis, Kenneth Culp
1974 "An Approach to Legal Control of the Police," Texas Law Review 52:703-725.

Davis, Kenneth Culp
1975 Police Discretion. St. Paul, Minn.: West Publishing Company.

Flynn, Matthew
1974 "Police Accountability in Wisconsin." Wisconsin Law Review 1131-1166.

Goldstein, Herman
1963 "Police Discretion: The Ideal Versus the Real." Public Administration Review 23:140-148.

Goldstein, Herman
1967a "Administrative Problems in Controlling the Exercise of Police Authority." Journal of Criminal Law, Criminology and Police Science 58:160-172.

Goldstein, Herman
1967b "Police Policy Formulation: A Proposal for Improving Police Performance." Michigan Law Review 65:1123-1146.

Goldstein, Joseph
1960 "Police Discretion Not to Invoke the Criminal Process." Yale Law Journal 69:543-594.

Hall, Jerome
1960 General Principles of Criminal Law. (Second Edition) Indianapolis: Bobbs, Merrill.

Hahn, Harlan
1971 "A Profile of Urban Police." Law and Contemporary Politics 36:449-466.

Igleburger, Robert M. and Frank A. Schubert
1972 "Police Making for the Police." American Bar Association Journal 58:307-310.

Kadish, Sanford H.
1962 "Legal Norm and Discretion in the Police and Sentencing Processes," Harvard Law Review 75:904-931.

Keller, Paul N.
1976 Selective Law Enforcement. Monograph.

LaFave, Wayne R.
"The Police and Non-Enforcement of the Law," Wisconsin Law Review 104-137, 179-239.

LaFave, Wayne R.
1965 Arrest. The Decision to Take a Suspect into Custory. New York: Little, Brown.

McGowan, Carl
1972 "Rule-Making and the Police." Michigan Law Review 70:659-694.

Parnas, Raymond I.
1967 "The Police Response to the Domestic Disturbance." Wisconsin Law Review 914-960.

President's Commission on Campus Unrest
1970 The Report of the President's Commission on Campus Unrest. Washington, D.C.: Government Printing Office.

President's Commission on Law Enforcement and Administration of Justice
1967 Task Force Report: The Police, Washington, D.C.: Government Printing Office.

Quinn, John
1974 "The Effect of Police Rulemaking on the Scope of Fourth Amendment Rights." Journal of Urban Law 52:25-53.

Reiss, Albert J.
1970 "Research on Administrative Discretion and Justice." Journal of Legal Education 23:69-76.

Remington, Frank J.
1965 "The Role of Police in a Democratic Society." Journal of Criminal Law, Criminology and Police Science 56:361-365.

Remington, Frank J. and Victor J. Rosenblum
1960 "Criminal Law and the Legislative Process." University of Illinois Law Forum 481-499.

Schiller, Stephan A.
1972 "More Light on a Low Visibility Function: the Selective Enforcement of Laws." Police Law Quarterly I:6-11.

Tieger, Joseph H.
1971 "Police Discretion and Discriminatory Enforcement." Duke Law Journal 717-743.

Vorenberg
1976 "Narrowing the Discretion of Criminal Justice Officials." Duke Law Journal 651-696.

Wright, J. Skelley
1972 "Beyond Discretionary Justice." Yale Law Review 81:575-597.

PART III

POLICE POLICYMAKING PROJECT

CHAPTER III

INTRODUCTION TO POLICE POLICYMAKING PROJECT

During the 1960's, the notion that police officers do simply what the law dictates was finally called into question. The existence of police discretion had been vaguely recognized for half a century, but not until recently has the extent and significance of it been openly discussed and, along with it, the issue of coping with discretion. In a long series of articles, books, and reports, commentators on the police and on administrative law wrote about administrative rulemaking and policy development as means of "structuring" police discretion.

From April 1975 to August 1978, the Boston University Center for Criminal Justice studied the process of police policymaking in conjunction with the Boston Police Department. The project has explored how a police agency might develop policies and the process for developing them. This section (Chapters V to VII) documents the Project's guideline development process and efforts to institutionalize policymaking in the Boston Police Department. The description of the project is preceded by a brief history of the Boston Police Department in the next chapter.

CHAPTER IV

RECENT HISTORY OF THE BOSTON POLICE DEPARTMENT

Introduction

This chapter briefly surveys the history of the Boston Police Department since 1962. The purpose of this survey is to describe the particular organizational and political contexts in which this project operated. In addition, when we examine how these organizational and political factors facilitated or impeded our attempt at police policymaking, a better understanding of the policymaking process, both in the Boston Police Department and in police departments generally, will emerge.

Two major sources for the information in this chapter are written accounts of Boston police history (Albert, 1975; Reppetto, 1970) and interviews with Boston Police Department personnel.

City Control of the Boston Police Department

In 1962, as a result of publicly made charges of police officer involvement in betting operations, supervision of the Boston Police Department, which had been under state control since 1885, reverted to local control. For the first time in nearly 80 years, the City of Boston acquired the power to appoint the top police administrator, the Boston Police Commissioner, to complement its responsibility to finance police operations. In proportion to the population, the Boston Police Department was at that time one of the largest and most expensive in the country.[1] Several observers see the division, prior to 1962, between the Commonwealth's appointive power over the police commissioner and the City's responsibility for financing the police operations determined by the

1. Notes and references for this chapter begin on page 103.

TABLE IV - 1

RECENT BOSTON POLICE DEPARTMENT HISTORY

1962	City of Boston obtains administrative control of the Boston Police Department; Mayor Collins appoints McNamara Police Commissioner; International Association of Chiefs of Police issues report on the administration of the Boston Police Department
1965	Formation of the Boston Police Patrolmen's Association
1967	Kevin White elected Mayor of Boston; Mayor White fails to obtain the resignation of Police Commissioner McNamara;
1968	Boston Police Patrolmen's Association prevents passage of Mayor White's Model Cities Proposal in the City Council; Mayor White initiates management study of the Boston Police Department
1972	Mayor White appoints Robert di Grazia Police Commissioner
1974-75	Boston Police Department involved in Federal Court ordered busing for school desegregation
1975	Commissioner di Grazia appoints Task Force to rewrite Boston Police Department rules; Center for Criminal Justice begins Police Policymaking Project
1977	Commissioner di Grazia resigns; Mayor White appoints Joseph Jordan Police Commissioner

policies of the commissioner, as the main reason for the large size and cost of the Boston Police Department (Fosdick, 1920:130).

Whether or not this division of control was the primary cause of these features, the Boston city government did find, after 1962, that it could use its newly-won administrative supervision to address the fiscal issues raised by Boston Police Department operations.

John Collins, the Mayor of Boston at this time, sought for commissioner a person with law-enforcement experience who would keep a tight rein on the police budget and who would be a loyal member of Collins' administration with no political ambitions of his own. In particular, Collins wanted to avoid appointing someone from the ranks who would probably be a member of a faction and bring to the position of Commissioner the internal conflicts that characterized the Boston police. Collins found the kind of person he sought in a local FBI agent, Edmund McNamara. While the appointment of a loyal outsider with no political ambitions certainly solidified Collins' control over major policy decisions, especially those affecting the fiscal relations of the Boston Police Department to the city, the appointment did not necessarily extend the Commissioner's (or the Mayor's) internal control within the Department itself. Though it is probably true that an outsider is less likely than someone appointed from the ranks to be co-opted by the police bureaucracy, the absence of political and administrative "self-direction," which Collins sought, apparently precluded the new Commissioner's making the kind of dramatic and major effort at reorganization needed to increase central control over the Boston police force.

The Decentralized Nature of Boston Police Operations

The McNamara years were notable for their lack of activity. After a brief attempt at reform, McNamara settled into the role of caretaker and figurehead. The day-to-day operations of the Department were left to a small group of command staff members.[2] At this time there were three major bureaus within the Department: Field Operations, the Investigative Bureau, and Administrative Services. Each was headed by an officer with the rank of Superintendent and each wielded a great deal of power within his bureau.

This lack of direction by a single authority at the top accentuated the pre-existing decentralization of the Boston Police Department. In many ways, it was not one large police department but rather a loose federation of several small departments. Boston is often called a city of neighborhoods, and these neighborhoods have very distinct boundaries. The Police Department's neighborhood-based districts reflected this situation. Each district operated with a fair degree of autonomy and in many cases unstated enforcement policies were tailored to the police perception of the needs and priorities of the neighborhood.[3]

Many people both within and outside the Department believed that a strong sense of neighborhood identification was a distinct benefit for policing. The police district boundaries closely followed neighborhood lines, and citizens tended to regard their district station as their own police department. This sense of neighborhood identification was and remains an important asset of the Boston Police Department. However, not all neighborhoods perceive this decentralization as beneficial, for it apparently allowed the police to neglect law enforcement, in certain neighborhoods, particularly in black communities.[4]

There were no stated Department-wide policies to guide police action.

The district captain was the formal commanding officer of each station. He reported through the formal chain of command to headquarters. However, an informal and more influential communication link existed at the level of the Detective Sergeant. These officers assigned all follow-up investigations and decided which cases to pursue and which to drop. A number of people within the Department regarded them as the true power brokers. Each Detective Sergeant was intimately aware of the nature of his district and its policing problems. Moreover, each Detective Sergeant had a great deal to say about which problems would be addressed and which would not be.[5] Under this open and decentralized system, the potential for corruption was very high.[6]

The Changing Requirements for Policing

In the 1960's, as Boston and community needs changed, the Boston Police Department began to face serious challenges to its traditional methods of operating. Over the years, the neighborhoods had undergone important changes. A series of population shifts brought black and Spanish-speaking families into formerly all-white neighborhoods. It was a period of urban unrest and of self-assertion by minority groups; there was an increase in violent crime and civil disorder. Police-community relations were tense and the Department appeared unwilling or unable to respond in any but token fashion.[7]

During this period a number of police departments across the country underwent reorganizations that resulted in the centralization of police services. Many departments, notably Los Angeles, Detroit, and Chicago, eliminated neighborhood districts or precincts in favor of a more unified command structure. In many instances, this increased the remoteness of

the police department from the community and served to heighten tensions.

Paralleling this move toward centralization of command were a number of technological and mechanical improvements designed to increase effectiveness by reducing response time. Police agencies in Los Angeles, Detroit, and Washington installed computerized dispatching systems, purchased sophisticated radio equipment, and upgraded training facilities.

The Boston Police Department adopted none of these changes. No one in a command level position felt the need for change. Yet, in the late sixties and early seventies, many observers considered the Boston Police Department to be an anachronism, and more and more proposals for altering the organization of the BPD came up for debate.

Proposals for Reform of the BPD

In the late 1960's and early 1970's many proposed and actual changes were directed toward fiscal affairs. Collins, the mayor in 1962, was reportedly very concerned with economy and efficiency in the operation of the BPD, believing that a failure to hold down police costs would lead to the bankruptcy of the city. Collins' concern with business-like police administration found support in a study of Boston by the International Association of Chiefs of Police (IACP) published in 1962. Generally, the IACP (1962) report attacked the traditional, decentralized structure of the Boston Police Department and argued for various organizational changes to "upgrade" and "professionalize" the force through a more centralized administration. More specifically, it proposed:

1. Reducing the force by 600 men;
2. Reducing the number of stations to five and returning detectives to headquarters;
3. Centralizing control in the commissioner and increasing the

number of supervisors;

4. Eliminating "non-police" tasks; e.g. school crossing guards, ambulance service, voter listing;

5. Upgrading recruiting standards, testing and training; and

6. Hiring civilians for clerical duties.

Collins attempted to pursue those IACP recommendations that would decrease the cost of the BPD. He was most successful in reducing the size of the force (from 2742 on January 1, 1962, to 2494 on December 31, 1967) through attrition and minimal recruitment. Perhaps as a result, the cost of police service decreased in 1963 and did not rise significantly until 1966.

Collins did not pursue the recommendation for transferring non-police tasks from the BPD, again for reasons of cost. In some cases, unionized civilians working eight hours a day would have been more expensive than the non-unionized police who had to work a ten-hour day. In other cases, it was felt that civilians working in certain sections of the city would need a police escort for protection, thereby cancelling out any reduction in cost. Another argument used against such a shift of tasks was that, since the police were continuously on patrol anyway, they could readily perform the "non-police" tasks in the apparently large amount of time during which they were not performing "police" tasks. When it came to closing district stations, Collins was also not successful. He managed to close only three before he left office.[8]

Collins' efforts to reduce police expenditures soon began to encounter difficulties. Officers in the field felt the cutbacks in the form of fewer foot patrols, the increased use of one-man (rather than two-man) police cruisers, the loss of their occasional free weekends and the lack of pay

raises. Businessmen found that extra officers were often not available when needed, while citizens in general feared a rising crime rate. Boston's mayors found they could not ignore the public demands for increased police protection. In 1966, Collins, now running for the U.S. Senate nomination, authorized 114 new officers and allowed the BPD to pay overtime for foot patrol in high-crime areas. In the 1967 mayoral election, responding to the threat of "crime in the streets," Kevin White promised to reopen the three closed district stations. After his victory, he did reopen one of the three and opened a new "sub-station" in a converted gas station.

While Boston citizens may have wanted increased police protection, they didn't necessarily want increased police expenditures. The campaign promise of White's opponent Louise Day Hicks, to raise police salaries from $7,500 to $10,000 may have cost her the close election: she apparently lost the support of many small property-owners fearful of increased taxes, while she probably already had the support of the police. The political hazards of increasing city expenditures, despite the demands for increased protection, were not lost on city and police administrators. Increasingly, they stressed organizational changes that would "put more men on the street" while not requiring massive recruitment, and the use of quantitative measures of "productivity."

In 1968, Mayor White appointed a task force to conduct a management study of the BPD (Mayor's Police Task Force, 1969). Its report contained recommendations, similar to those of the IACP study of 1962, aimed at "Professionalizing" the personnel practices of the BPD for increased efficiency. It proposed:

1. Replacing station clerks and downtown traffic officers with civilians to get more officers into the field;

2. Assigning personnel according to need as determined by crime statistics and service calls (e.g., shifting officers from days to nights, quiet to active districts);

3. Rotating personnel among shifts and among commands;

4. Increasing supervision by promoting more sergeants and putting them in marked supervisory cars and by putting a deputy superintendent in charge of every two districts;

5. Recruiting and promoting younger and better-educated officers;

6. Sensitivity training for all officers to promote understanding of minority problems.

This report did not suggest the reduction of manpower levels or the closing of district stations, moves that citizens might interpret as reductions of police protection. Rather, it proposed changes likely to make more police officers available, particularly at high call times and locations, in a manner that would not significantly increase the number of sworn officers and that would augment control of police work by the top officials at headquarters.

Also in 1968, Mayor White presented his Model Cities Proposal (White, 1968); its section on police-community relations addressed more directly the changing social context of policing in Boston. The major recommendations in this area were:

1. The Model Cities staff would set standards for police operations in the Model Cities area;

2. The state legislature would be urged to pass emergency legislation giving the mayor the authority to appoint to permanent status specific numbers of qualified patrolmen, officers, and administrators.

3. A police advisory committee composed of area residents would be

established. The proposal specified that the committee would include some persons who "disagreed" with the police.

4. A community institute for police officers would be established. Area residents would teach courses and attendance would be mandatory.

5. Psychological testing would be required of all police officers to identify authoritarian personalities (defined as those who exhibited suspicion or sadism).

6. The community citizen security patrols would be funded and integrated into regular police work.

7. The city would seek a waiver of the requirement that those with criminal records were automatically disqualified as police officers so that selected men with records could become police officers.

By the late 1960's however, opposition to these proposals as well as those of the Mayor's Report of 1969 had begun to solidify. One major source of opposition was the growing patrolmen's union.

Police Unionization

Unionization of public employees expanded rapidly in the 1960's. While the unionization of police employees had been meager since the mass firing in the aftermath of the Boston Police Strike of 1919, police did participate in this general movement. Some factors behind the union movement were common to all public employees: low pay, the rapidly rising cost of living, poor personnel practices, a lack of grievance procedures and of protection from arbitrary transfers or investigations. Other factors affected the Police Department more specifically: the rising crime rate, and increases in confrontations and demonstrations, and in general hostility toward the police.

Fourteen Boston patrol officers formed the Boston Police Patrolmen's Association (BPPA) in 1965 to provide representation only for patrol officers. The founders excluded superior officers, claiming that sergeants, lieutenants and captains were really "managers" of patrol officers, and that the "system" they helped maintain worked against patrol officers' interests, and favored a small, self-perpetuating group of superior officers. There was the additional objection that captains served as members of departmental trial boards.

At its formation, the BPPA proclaimed that its major purpose was to protect patrolmen against charges of police brutality and to hear citizen complaints, but it quickly became immersed in "bread and butter" issues.[9]

It won union status in 1966, when it successfully lobbied the Massachusetts legislature to amend a 1965 law so as to extend the bargaining rights of public employees to police officers in the state. It encountered the rivalry of the Collective Bargaining Federation (a combination of the Massachusetts Police Association, the Superior Officers' Association, the Boston Police Relief Association and the Committee for the Protection of the Rights of Police Officers), an organization which claimed to represent all ranks and which the BPD management reportedly favored. In September 1967, however, patrolmen voted nearly two to one to certify the BPPA as their official representative.

After 1965, the concern of city and PPD administrators with saving money increasingly conflicted with the BPPA's concern with safeguarding the monetary position of patrol officers. In 1966, the BPPA had won the approval of the City Council for straight time pay for court appearances and time-and-a-half for work during civil disturbances. On the latter issue, the Association launched an unsuccessful $300,000 lawsuit against

the city when the Mayor refused to expend the funds after the council had over-ridden his veto.

The BPPA negotiated its first contract in 1968; it provided for weak management rights, strong union rights, and binding arbitration. It raised base salaries for patrol officers from approximately $7,300 to $8,320. The first contract also established time-and-a-half for court appearances and a four-hour minimum call-in pay. Just as significant for patrol officers, it provided time-and-a-half for all "out-of-turn work," work outside an officer's regular shift assignment. This helped to stabilize work hours in the BPD for the first time, as an officer could no longer be bounced from one shift to another without warning. Also in 1968, the BPD, after consultation with the Mayor, reduced work on city buses from two officers to one and from paid detail to regular detail. After the BPPA lost a grievance on this matter, the state authority that operated the buses began to hire its own police force. In 1968 the BPD proposed an expansion of the cadet program both numerically and into traffic-direction tasks which would have put more officers on the street; the BPPA lobbied successfully to have this proposal defeated in the city council and the state legislature.

Assignments again became a major issue during bargaining for the second contract, in 1969-1970. The discussion then centered around the assignment of officers to the two shifts, the differences in time required on the shifts, the exclusion of day officers from overtime for court appearances, and the like. The BPPA successfully lobbied in the state legislature for a local option bill granting police an eight-hour day.[10] The second contract with the BPD established a rate of $6.75/hour for paid details, with a minimum of four hours pay (the highest rate in the nation at that time), a guaranteed minimum of $22.50 for all court appearances, and the creation of a

larger number of specialist ratings carrying an additional $6 to $19 per week.

The BPPA also fought strongly against those reform proposals that threatened to decrease the number of police officers, introduce civilians into the Department, or increase the influence of citizen groups in determining or reviewing police practices. The Association successfully blocked the original Model Cities Proposal and raised equally strong opposition to the recommendations of the Mayor's Report.[11]

In the Mayor's Report, the BPPA objected to the required changes in "working conditions," the proposed replacement of 500 policemen with civilians or computers, the feared influx of minority recruits, and the use of cadets in the dangerous downtown sections. Nearly all the recommendations were abandoned as the Association fanned the fears of merchants and as the City Council failed to support the administration on the report. While the top command staff had had representation on the Mayor's Task Force, they claimed they had not really been consulted and that any advice they had given had been ignored.

Drug Enforcement in Boston's Recent History

Drug enforcement had relatively low priority within the Boston Police Dpeartment prior to 1970. Before 1960, the Vice Unit of the Department was nominally charged with enforcement of the drug laws, but in practice the unit devoted itself almost exclusively to investigating gaming, prostitution, and violations of the liquor laws.

By 1960, drug abuse began to draw the attention of the public, the media, and the Department. The Vice Unit became the Vice and Narcotics Unit; two officers were assigned to drug enforcement. As public opinion about

drug abuse heightened, more officers were made responsible for drug enforcement in the Vice and Narcotics Unit, so that in 1966 five men were assigned full time to enforcement of the drug laws. These five were divided into a day squad of two officers and a night squad of three. Most arrests during this period were of street dealers and users, representing the lowest level of drug distribution. The Drug Control Unit was formally created as an independent, centralized investigative unit in February, 1970.[12] Its charge was extremely broad. It was to be responsible

> for overall enforcement of the narcotic and harmful drug laws in every section of the city; for the dissemination of public information concerning drug abuse; and for providing instruction to school and college students on the dangers inherent in drug usage.[13]

When the Unit became operational in February 1970, it had a complement of one commanding officer, three sergeants, and 38 detectives, an increase of 37 over the component within the Vice Unit.

After its formation, efforts were made to establish some specific objectives and priorities for the Unit. In 1973, for example, a statement of objectives and priorities was written. The impetus for this project was the desire, because of the recognized budgetary constraints on the Boston Police Department, to receive a federal grant for equipment, training, additional personnel and other resources. The grant was approved, on the condition that the Department increase the total number of officers assigned to the Unit. Since the Department refused to add officers, the funds were never received, and the suggested objectives and priorities were never formally implemented.

The Drug Control Unit has now been in existence for over seven years. During this time, there have been two changes of the commanding officer, and the number of officers in the Unit has decreased from 42 at its highest

in 1970 to 13, the current number. The first Commander of the Unit has been characterized as a "street cop" who disliked routine, indoor administrative work. The Unit began under this individual with a complement of 42 detectives divided into three squads, each under the supervision of a sergeant. The next Commander has been characterized as the opposite of the first: a good administrator and office leader. In March 1976, the third change in command occurred. By August 1977, the total number of detectives in the DCU had dropped to thirteen.

Summary: 1960-1972

When one examines the Boston Police Department in the 1960's, one sees that several features dominate its operations. First, it was an extremely decentralized department. In the words of Reppetto (1970: 116),

> If one understands the [decentralization and neighborhood ties], the essence of the past Boston police system becomes clear.... The top command could not exercise tight control because there was no single standard upon which to base most department-wide policies.

The power of the Police Commissioner and of "Headquarters" was generally limited by the de facto influence of bureau chiefs, detective sergeants and neighborhood political leaders.

Second, Boston's mayors were particularly concerned with the high cost of police operations. Boston had one of the most expensive police forces in the country and this fact, coupled with the extreme decentralization which limited both the mayor's influence and the police commissioner's power over police operations, led the mayors to support proposals designed to put more officers on the street, increase centralized authority in the Department, and alleviate hostilities between the police and minority groups. By the end of the 1960's, however, such proposals had not been

successfully implemented. Writing in 1970, Reppetto (1970: 205) summarized the police reform efforts of the 1960's:

> Since 1962, Boston's efforts to improve what was admittedly a poorly managed police force have been beset by difficulties. The original drive for economy was swamped by a rising crime rate. The effort to improve protection by making the police into a more centralized crimefighting agency was out of keeping with the tradition of decentralization and laissez-faire administration designed to further neighborhood interests. The effort of the model cities program to bring the police closer to the black community clashed both with the merit doctrines of the professional school of policing and with the "closed shop" policies of the police union. Indeed, Boston seems at the moment to have most of the disadvantages and few of the positive benefits of several different philosophies of policing. The current organization is not economical or capable of rendering a high level of protection, but it cannot inundate itself with low-income blacks and Puerto Ricans or allow ghetto district antonomy.

The continuation, and partial success, of such efforts would have to await in part the appointment of a more independent and dynamic police commissioner. But by the time this had occurred, a new feature had become established within the Boston Police Department: the Boston Police Patrolmen's Association.

The BPPA fought long and hard for the benefits they negotiated from the City. In their first years they won substantial pay increases, overtime payments, more stable work assignments, substantial fringe benefits, and assurances of more equitable disciplinary proceedings. As their strength grew they became a force to be reckoned with. The growth of a strong and militant union presented new problems for a command staff that had become accustomed to relying upon the power of rank. The result was that many commanders treaded lightly in order to avoid confrontations. It can be argued that the union, by negotiating such guarantees as two-man cars, greatly limited management's deployment flexibility and actually played an active role in the management of the Department. Its actions also hampered efforts to improve the fiscal situation of the Department and the City of

Boston.

The di Grazia Years

When Kevin White was elected Mayor in 1967, the lack of a centralized police administration was one of the criticisms frequently levelled against the Police Commissioner. However, White faced a problem in replacing him in that Collins had appointed the Commissioner to a new five-year term in May 1967 and he could be removed only for cause. White decided to talk to the Commissioner in person about resigning so that White could put his own man in charge of the Department. But the news reached the press before White and the Commissioner could meet and the Commissioner declared that he would not resign under any circumstances.

White's publicly visible failure to replace the Police Commissioner further disrupted the external and internal control of the Police Department. The top command staff did not trust the Mayor or his staff, and relations between the City and the Department were cool for the next five years. In addition, this failure reduced the already minimal authority that the top police administrators had over the Department.[14]

Finally, in 1972, when Commissioner McNamara's term expired, Mayor White got his chance to appoint the Police Commissioner; he named Robert di Grazia because of his (in White's words) "record of rooting out corruption, insistence on the highest standards of professionalism, and reputation as a disciplined administrator" (Albert, 1975: 7).

Di Grazia was different from previous commissioners. He was an Italian in a predominately Irish police force. He was from California, a place where law enforcement is viewed very differently; his background in law enforcement was brief compared to that of most members of the Boston Police

Department; and he did not have any ties to Boston. Past commissioners had all had ties to Boston and some law enforcement experience with the FBI. Moreover, di Grazia was the first Police Commissioner appointed by Mayor White. At the time of his appointment, the BPPA and the Mayor had had a parting of the ways and the BPPA regarded di Grazia as White's agent.

The Question of Police Corruption

Di Grazia entered the department amid charges of corruption centering on the so-called Vitello list. The list had been seized during a gaming raid and specified amounts of money purportedly paid to the people listed. The list allegedly contained the names of 58 police officers, many of them high-ranking. The implication was that members of the force were on the payroll of certain underworld figures. The list and its implications hung over the Department for two years; it was a critical issue at the time of di Grazia's appointment.

In regard to the Vitello list, Commissioner di Grazia ordered the 58 patrol officers to complete a detailed financial questionnaire or be subject to discharge, suspension or reduction in rank. Eventually, 44 of the 58 completed the questionnaire while eleven left the Department and three, on the advice of the BPPA counsel, refused to respond. The BPPA opposed the order to supply the financial information and, when di Grazia ordered Departmental hearings for the three officers who refused, the Association demanded that di Grazia resign because of likely bias. Di Grazia refused and eventually suspended the officers for 30 days without pay, noting that they had not appealed his original order on financial disclosure but simply ignored it. The BPPA made appeals to the Massachusetts Civil Service Commission and the Boston Municipal Court, but it lost its case in

each of these settings.

Two months later, an officer who was accused of being involved in betting operations was called before a disciplinary hearing. Though he was found innocent, di Grazia transferred him to a new assignment, asserting that the inflexible system that assigned him to one division for 16 years had stifled his career development. Once again the BPPA claimed that an officer could not get a fair trial, given that the Police Commissioner sat as judge, prosecutor and jury, and that t re were no rules for accepting or judging evidence. A grievance on the transfer reached binding arbitration, but the arbitrator upheld di Grazia's explanation for the transfer.

To determine who were the honest and loyal members of the command staff, civilian administrators within the Department interviewed command staff personnel. The subsequent assignment of command personnel was based on the impressions gathered in these interviews as well as in discussions with the staff of the Mayor's office. After di Grazia arrived, honesty and loyalty became selection criteria, often at the expense of managerial ability. A focus of the di Grazia regime was the elimination of organized corruption. Not all corruption was eliminated but organized corruption became much less prevalent.[15]

The Issue of Police Efficiency

Another area that required di Grazia's attention was the availability of police resources to answer calls for service. When di Grazia started as Police Commissioner, the BPD averaged 600 unanswered service calls a day (out of an average of 2,619 calls per day) due to a shortage of on-duty patrolmen and patrol cars (Albert, 1975: 2). The establishment of the 911 emergency telephone number led to a 40 percent increase in service calls,

which further increased the burden. In addition, Boston typically had one in-service car for every 16 officers, compared to the national average of one to ten and the "big-city" average of one to eight.[16] In September 1973, di Grazia released the report of a study on manpower and automative resources that LEAA had funded and that a task force of police command staff, area and district commanders, and outside consultants had carried out. The plan proposed in the study and implemented by di Grazia increased the number of patrol sectors and in-service patrol cars, initiated a program of preventive auto maintenance, and encouraged officers to get out of their cars to "walk and talk" with the public.[17]

Di Grazia's Organizational Reforms

When he arrived at the BPD in 1972, di Grazia found extreme decentralization, formal authority rarely corresponding with actual power, lax leadership and discipline, widespread corruption, and lack of initiative on the part of the existing police administration. One of his major initial goals was to reorganize the hierarchical structure of the BPD so as to diminish the power of individual district captains and augment the responsiveness of patrolmen to the headquarters staff. He saw the structural changes as a prerequisite for increasing the efficiency and availability of police officers in Boston, by getting more officers visibly out on the street and by reducing response time. Such changes would be equally important in ridding the Department of corruption.

The major change made was the transfer of the power and responsibility held by captains and lieutenants to five superintendents at the headquarters level, each in charge of a newly-created bureau, and six deputy superintendents at the district level, each commanding a quasi-independent patrol

area and responsible to the Bureau of Field Services. Both superintendents and deputy superintendents were responsible to the Commissioner, each deputy superintendent chose and was responsible for two district captains in his area, and 331 detectives previously assigned to districts but under headquarters control were placed under the direct command of the new deputy superintendents. Di Grazia also established a new Bureau of Inspectional Services to provide him with "accurate and reliable information" on the BPD's performance, upgraded traffic control from a division to the bureau, and created the new offices of Labor Relations and of Fiscal Affairs.[18] In addition, four special divisions reported directly to the Police Commissioner: Staff, Planning and Research Section, Informational Services Office and the Special Investigations Unit (SIU).[19]

Di Grazia also gave division commanders the authority to choose their staffs, resulting in the transfer of 20 lieutenants and 46 sergeants. The Vice Squad was "revamped" and those not selected by superior officers to remain in it were reduced in rank and assigned to street duty. Furthermore, nine out of eleven formerly independent plainclothes detective sergeants were reduced to patrol sergeants, and the deputy superintendents selected new detective sergeants for their districts.

These changes, devised by the Police Commissioner and his civilian aides with little input from the command staff, represented the most significant and far-reaching of the di Grazia reforms. By stripping the detective sergeants of their power and replacing them with high level deputies directly accountable to the Police Commissioner, he sought to take direct control of the formerly independent districts.

In December 1973 there was another shake-up of the BPD as di Grazia demoted a superintendent and two deputy superintendents and promoted a captain and a sergeant to deputy superintendent. A Bureau of Field Services

evaluation of the detective function found the Department top-heavy with detectives and specialists and di Grazia reduced 35 detectives to the rank of patrol officer (Albert, 1975: 65).

In addition to these structural changes, di Grazia introduced certain changes in personnel practices. Before shaking up the command staff, he had all high-ranking police officers take a series of psychological and intelligence tests, the first ever used in the BPD. Di Grazia also instituted training and testing that would create"professional" police officers who were trained in management practices rather than simply in legal issues.

The aim of the internal organizational changes and the emphasis on efficiency, and the investigation on corruption was to enhance community confidence in the Boston Police Department. However this flurry of activity, in conjunction with the insular nature of the Department, created an instant barrier between the new Commissioner and the members of his Department. Many felt that a number of the high-ranking officers who had retired had been undeservedly maligned and were the victims of snap judgements. The message was clear that di Grazia would not blindly defend members of the Department who became embroiled in controversy. While the superior officers were particularly angry about the demotion of detective sergeants and detectives, in general their reaction to these changes was relatively mild, apparently due mainly to their small numbers, age, weak organization, and lack of trade-union militancy.[20]

The Use of Civilians

The command staff had never before dealt with such an activist police commissioner. Under the previous administration they had not been required to account for their command. Confused and threatened by this new

aggressive administration, many of them privately harbored reservations about the new Commissioner, but, concerned about protecting their positions, they grudgingly followed his policies. This attitude was further reinforced by di Grazia's introduction of a number of civilian assistants and administrators into the Department.

This small group of civilian advisors came into the Boston Police Department with di Grazia and believed they had a mandate for reform. They were suspicious of and impatient with many of the existing command personnel. None had experience as a sworn police officer. They were not from Boston and they did not know the Department or its personnel very well. They were unsure who could be trusted with sensitive information. Consequently, the circle of people involved in major decisions about Department reorganization was very small. Many of the existing command staff members were shut out of the process, and they resented it. To many, the presence of the civilian advisors signaled di Grazia's disdain for the existing command staff.

The Commissioner tried to make clear that the civilians were staff assistants who would provide support services. However, the distinction between staff and line functions was more easily stated than practiced. The civilian aides often became involved in Bureau of Field Service decisions by suggesting a course of action or attempting to resolve a conflict between police and community.

The civilians' presence in the Department as agents of the Police Commissioner created problems for commanders. Most commanders were unaccustomed to dealing with civilians and resented their presence in the Department.[21] At the same time, they recognized these aides as spokesmen for the Police Commissioner and usually felt compelled to follow their advice or suggestions. Many regarded the civilians as influential

and powerful; to the extent that they had access to and influence with the Police Commissioner, they were.[22]

The Participative Approach

In an environment often characterized by what was almost a siege mentality, di Grazia attempted to achieve many of his plans for reform and standardization of Department procedures by soliciting the ideas and opinions and drawing on the expertise of sworn personnel. This approach was entirely foreign to the BPD, but di Grazia believed that the entire Department would benefit if he could involve officers who were concerned with and knowledgeable about a range of issues in his reform efforts.[23] The participative approach would give the administration the opportunity to obtain information that would ensure that the courses of action pursued would be in line with the Department's needs and, in the process, minimize resistance to change.

Di Grazia's first attempt to utilize the task force model came in 1973. An outside consultant was hired to work with a group of district station clerks to update the records and incident-reporting systems. At that time, the basic report form was a small IBM-type card on which only limited information could be noted. This necessitated numerous supplemental reports and a series of special felony reports. All incidents were also recorded in a ledger at the district station. Not only did these procedures generate voluminous amounts of paperwork but information could not be efficiently computerized to provide crime analysis data. New report forms were occasionally added to meet new demands but there was no systematic examination of reporting needs and priorities.

The Commissioner made clear that he intended to give considerable

CONTINUED

1 OF 9

weight to task force recommendations on the reporting system. This display of administrative support encouraged the officers to take advantage of the opportunity to explain the existing system and its deficiencies and to suggest modifications based on their experience in the districts. A member of the consultant's staff worked full-time with the clerks, familiarizing himself with the reporting process, the Department, and the range of service demands. The task force reviewed all existing systems and identified current problems. Though time-consuming, this process appeared to yield substantial benefits. With the development of a comprehensive incident-report form, a myriad of special reports and forms was eliminated; another result, at least as important, was that task force members had tangible proof of their impact on devising a solution to the Department's reporting problems and, as a result, simplifying their jobs. They were eager to assist the administration in testing the new system and endorsing its implementation throughout the Department. The system is now fully operational and generally believed to conform to current Department needs.

This success was not to be repeated when the Commissioner attempted to apply the task force model to a revision of the Department's rules and regulations manual. The rules had not been revised since 1950. Changes were made periodically in the form of amendments, printed on small slips of paper to be pasted over the outdated rule in the rule book. With the scores of changes made over the years, it was not surprising that few members of the Department had a complete rule book and that there was frequent confusion as to what rule was currently in effect.

In 1975, the Governor's Committee on Criminal Justice made funds available to the Department to re-write the existing manual completely. Under the supervision of the Acting Director of Planning and Research, a

task force of ten sworn officers was to review drafts written by personnel from the Planning Division, before the new rules would be promulgated by the Commissioner and circulated throughout the Department.

From its inception this effort engendered oppositon from the BPPA. The BPPA leadership contended that the issues being addressed were properly the subjects of collective bargaining and should be negotiated between the Department and the BPPA rather than determined by a task force. Further, it was widely believed that acquiescence to rule content by the task force would later be used by the administration to counter union challenges of rule content or of the rules' invocation in disciplinary proceedings.

Furthermore, the task force was composed primarily of headquarters personnel, who were perceived as having vested interests in rule and regulation content. District personnel representation was minimal. Topics to be addressed were selected by the civilian head of Planning. The task force was not involved in the writing of the drafts and its limited review function signalled to many that the input of sworn personnel was not seriously sought.

Perhaps just as important in generating opposition was the project's location in the Planning and Research Division of the Department. The BPPA continually accused the Commissioner of placing agents from the Special Investigations Unit (SIU) throughout the Department. At the time of the formation of the rules and regulations task force, all Planning and Research staff specifically were accused of working for the SIU. Subsequently the association threatened to deny "member in good standing" status to any patrol officer who participated in the task force.[24] This threat had an immediate impact. All union members withdrew and patrol officer participation was effectively eliminated. The task force ceased to

function and the revision of the manual, originally scheduled to be completed by the end of 1975, has not yet been finished. The Department still operates under the amended 1950 rules, supplemented by those few which have been revised, and confusion still exists as to which rules are currently operative.

Participative management worked well in the effort to re-design the field reporting system but it failed entirely in the effort to re-write the police manual. In part, this discrepancy can be explained by the different types of issues being examined by the respective task forces. The paperwork simplification effort addressed a mechanical function that was not substantively controversial and therefore not inherently threatening. Moreover, a reformed reporting system would directly benefit almost every member of the force. But the content and traditional use of rules and regulations was highly controversial.

Other factors further distinguished the two efforts. In the case of the first task force, officers most familiar with the problem were invited to participate and to help develop the new system. This gave credibility to the Commissioner's stated intent of wanting to draw upon the expertise of experienced officers. In the other, the personnel selected and the role designed for them led to the fear that co-optation rather than collaboration was the objective. Furthermore, the organizational environment had changed substantially between the two efforts. Although publicly very popular, di Grazia had become highly controversial within the Department. BPPA challenges to his reform efforts and style became increasingly frequent and bitter. Frustration over a range of issues and instability resulting from the accelerated pace of organizational and philosophical changes in the Department resulted, by 1975, in a situation in which it

seemed that union and management could not agree on any issue.[25]

Later di Grazia Years

Di Grazia's ability to implement his reform agenda was seriously impaired within two years after his arrival in Boston. During his early administration he had openly confronted the problem of organized corruption in the Department, increased the number of response units by fielding new cars and reducing the number of detectives, standardized the reporting system and uniforms, re-drawn sector lines to equalize workloads, and instituted other organizational changes designed to consolidate his authority and control over the organization. According to people interviewed, his administration then intended to turn its attention to the development of internal controls. Through the formulation of articulated performance standards, budgeting, and the upgrading of supervisory personnel, di Grazia intended to establish accountability mechanisms to facilitate management's ability to know and review what officers were doing.

In 1974, however, the implementation of a federal court-ordered school desegregation plan required a near total diversion of Department resources. A commitment to keeping the schools open and maintaining public order necessitated not only a change in the Department's service orientation but resulted in a slowing down of major reforms within the Department. In the words of one high-ranking aide to the Commissioner, "two years were lost." Although some reform efforts continued, most energies were devoted to the development and implementation of neighborhood mobilization plans, and to Department coordination of activities with state and federal law enforcement officials. An early attempt was made to maintain the pre-busing level of services, but this proved impossible: officers throughout the Department

were physically and emotionally exhausted from attempting to regularly work two consecutive tours of duty daily; and money in the Department budget was taken from various programs and diverted to overtime payments. Regular in-service training, for example, was discontinued and has not yet been re-instituted.

The effect of the Department's involvement in busing was significant in at least two other respects: its impact on field supervision and accountability of Department personnel; and the emergence of the Commissioner as an independent, popular figure.

The paycheck of the average patrol officer increased significantly as a direct result of busing. Simply put, according to some, officers began to get greedy. Increasingly, they considered regular pay insufficient to justify taking normal job-related risks, and it has been said that it was not uncommon for an officer to feel that he only needed to "work" when he was getting compensated for overtime. A widespread belief that the barrel of dollars had no bottom reinforced this attitude; many were secure in the belief that additional compensation would always be routinely available.

Police officers, like those who supported busing, were seen as the "enemy" by anti-busing forces. This community response fostered new intimacy between those supervisors who were also working and receiving overtime and their subordinates. While beneficial in some respects, this closeness served to erode supervisory authority and undermine the possibility of a functional system of accountability. For example, field supervisors, themselves exhausted from long work hours, found it difficult to demand effective performance from officers assigned to them during a regular tour of duty. Moreover, as a result of the concern with simply having enough bodies available to escort the buses and patrol the schools, many minor

violations of Department rules and regulations were overlooked. In the opinion of some persons interviewed, this made supervisors less concerned with requiring compliance with more fundamental procedures and less sure of their ability to do so. The lines of authority were blurred; there was no model supervisory style. Supervisors tended to get things done by cultivating informal relationships and fostering personal commitments from patrol officers, rather than by communicating Department expectations and demanding responses appropriate to those expectations.

The emergence of Commissioner di Grazia as a prominent public personality is directly attributable to the role he assumed during Boston's busing controversy. Unlike other City leaders di Grazia was the only official prominently advocating adherence to the law. Some speculate that Mayor White, believing that if he himself were identified as "pro-busing" he might suffer severe political consequences, therefore actively encouraged di Grazia's public role. Others believe that White gratefully accepted di Grazia's initiative in assuming the role of champion of adherence to the court order. Whatever the explanation, the fact is that di Grazia's presence was dominant. He chose to command field personnel not simply from his office at headquarters but also at some of the most explosive or potentially explosive locations. He appeared willing to take risks and suffer the same abuse to which lower-ranking personnel were exposed. Not only was he continually visible via media news coverage of the city's response to busing, he regularly appeared on radio call-in talk shows and at community meetings, thereby creating the impression of being generally accessible to the public. These activities of di Grazia's were largely responsible for the public perception that the Department was capable of performing efficiently under extremely adverse conditions, and in the process di Grazia developed

a cadre of personal supporters.

As the Commissioner became more popular and community support increased, his relationship with the Mayor became increasingly strained. In appointing di Grazia, White had consciously selected a man capable of running the Police Department independently. He had gotten that and more. Di Grazia had become popular in his own right and, in the opinion of some, had thus become a political threat to the City administration. It is commonly believed, for example, that di Grazia saved the election for Kevin White in 1975, thereby creating an indebtedness on the part of White in a system in which indebtedness traditionally runs the other way.

Di Grazia had also reduced the level of organized corruption in the Department, fielded more units, and developed a police force which not only looked more professional but also behaved more professionally. And he had been White's choice. In an apparent attempt to re-assert some control over the Commissioner and the Department and to re-establish himself as the City's political leader, White, after his re-election made it appear that he would maintain di Grazia as a hold-over appointment rather than appoint him to a new five-year term. This threat to di Grazia's autonomy helped precipitate his resignation as Commissioner and his departure from Boston, but factors internal to the Department contributed to this decision.

Busing had sapped the energies of the Department. Its fiscal resources were drained and its personnel were physically and emotionally exhausted. It would have been difficult to regain the momentum for reform which existed prior to busing. A command staff chosen largely for its honesty rather than its managerial ability could not be expected to take the necessary initiatives or respond effectively to issues on the reform agenda left unaddressed. When in late 1976 the Mayor refused di Grazia's

request for a sizeable salary increase the Commissioner resigned.

In spite of talk of a national search for a new police executive, White looked to the Department for a candidate and quickly elevated Superintendent-in-Chief Joseph Jordan to Commissioner. Through this appointment the Mayor hoped to achieve several important political objectives. The speed with which he acted allowed him to regain center stage in the city's news media. By selecting Jordan he was able to exploit di Grazia's popularity, as it was di Grazia who had elevated Jordan to the position of Superintendent-in-Chief. It could therefore be said that Jordan was committed to the organizational style advocated by the previous administration. Moreover, Jordan seemed to be a "safe" appointment. He is the first Commissioner to have risen through the ranks; it was therefore anticipated that he would be more acceptable to the rank and file and that as a result hostility between management and labor would be reduced. He was a native Bostonian, and it was expected that his knowledge and appreciation of the city and its many discrete neighborhoods would make him acceptable to the city's heterogeneous population. And finally, his style is less flamboyant than his predecessor's and therefore more compatible with the Mayor's interests. As a thirty-year Department veteran, he gives one no reason to believe that he entertained ambitions beyond his appointment as Commissioner.

Jordan was appointed on a temporary basis in November 1976 and in July 1977 was appointed to a full five-year term. His administration has continued some innovative policing methods instituted by di Grazia. The team policing experiment in the city's Charlestown neighborhood appears to be flourishing, for example, and there is speculation that it will serve as a model for other parts of the city. The Department has

shown a willingness to work formally with community groups in the Back Bay and Fenway neighborhoods to devise policing stategies responsive to the concerns of residents of those areas. Yet there is a widespread belief among persons knowledgeable about the Department that actual or anticipated priorities, programs and organizational changes are no longer initiated within the Department and that the regime of the current Commissioner is more like those of di Grazia's predecessors. Specifically, decisionmaking in the Department is again largely decentralized and the City administration, entering an election year, is more prominently involved in establishing the Department's agenda.

Conclusions

When he arrived in Boston as the new Police Commissioner, di Grazia attempted to make several major changes in the way the Boston Police Department had traditionally operated. Commissioners prior to di Grazia had commanded a highly decentralized department in which each district operated with a significant degree of autonomy. There were few stated department-wide policies to guide field operations, and accountability was minimal.

First, di Grazia increased the emphasis on managerial responsibility and organizational accountability by consolidating the Commissioner's authority over the top command staff and by making the command staff responsible for the officers under them. His goals were to reduce corruption in the Department and to increase the number, visibility and responsiveness of the officers on the street, particularly by paring the number of detectives.

In taking these steps, di Grazia was operating under Chapter 322 of the Acts of 1962, which stated that

> the [Boston] police commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department and shall make all needful rules and regulations for the efficiency of said police... (Albert, 1975: 80).

These actions, however, unlike those of the previous Commissioner, directly challenged the informal alliances and relationships that had long been established in the BPD bureaucracy and also attacked the watchman-style operation of the Department.

As a result, the activities of the Mayor and the Police Commissioner to limit the fiscal costs of the BPD and to centralize authority within it incurred the opposition of both patrol and superior officers and created a complex situation of competition among the three interests. Albert (1975: 35) notes that

> One of the major accomplishments of police unionization in Boston was the erosion of the department's traditional quasi-military ethos... [attenuating] the traditional department solidarity and [replacing] it with a "management-labor" relationship between the patrolmen and their higher-ranking administrators.

The growth of the trade-union acitvity of patrol officers must have decreased the power and increased the isolation of the superior officers, as patrol officers began to bargain over benefits and privileges with BPD management rather than accept the informal reward systems that district commanders had maintained.[26]

Secondly, perhaps in an attempt to ameliorate the hostility between the superior officers and the patrol officers' union and to continue modernizing the management of the BPD, di Grazia introduced a participative management approach through the use of task forces. During his first two years as Commissioner, di Grazia attempted to apply variations of the participative model to a number of Department problems, ranging from reform of the field reporting system to revision of the p[illegible]e manual to design specifications

for automobiles to development of drug enforcement priorities. But, di Grazia's commitment notwithstanding, participative management attempts in the Boston Police Department were only partly successful.

The use of this management approach was not the only area in which di Grazia was unsuccessful. The protracted process of rewriting the police manual, begun under di Grazia, has not been completed, and the Department continues to operate under the amended 1950 rules supplemented by the few revised rules. This piecemeal approach to updating the manual has resulted in continuing confusion about which rules are operative as well as several substantive contradictions and ambiguities in rule content. Comprehension and compliance are hampered by the sheer length and complexity of the existing rule structure. Furthermore, reliance on the 1950 rules has created other problems. They are the product of another generation of police administrators and do not reflect the current goals, commitments or problems of the Department. The di Grazia administration tacitly acknowledged this by often choosing to communicate its expectations informally rather than through written directives, and by using informal mechanisms, such as personnel transfers, to achieve the results desired. This implied that the rules did not address current needs and that the rule format was not an effective way to control field behavior. It also communicated the message that compliance with rules would not be used by the administration as a measure of job performance.

Finally, di Grazia's efforts to eliminate corruption did not completely succeed either. When he left office in 1976 he released a report by the Special Investigative Unit that detailed the alleged involvement of a number of District 1 officers in vice activities. His successor had to deal with a major scandal concerning police practices just as di Grazia

had had to do when he took the post of police commissioner five years earlier.[27]

NOTES

1. In 1968, for example, Boston had 4.57 police employees per 1000 population at a per capita cost of over $44, while Cincinnati, a city of roughly comparable demographic features, had only 2.11 police employees per 1000 population and a per capita cost of $19. Despite these fiscal/manpower variations, Cincinnati's clearance rates for murders and auto thefts were both approximately double those of Boston and the Cincinnati force apprehended juveniles at over three times and arrested traffic violators at around twelve times the rates prevailing in Boston. See Reppetto (1970:80-91).

2. According to Albert, the commissioner made a minor attempt at reforming the Department, but he soon gave up because of the immensity of the task and relinquished much of his authority to his subordinates. They, in turn, ran the Boston Police Department as a virtually independent dominion amidst the other components of big-city government. See Albert (1975:6).

3. Boston maintained 16 districts in 1962, the boundaries of which coincided with distinct ethnic neighborhoods. "Traditionally, the stations possessed a high degree of autonomy" and remained "loosely coordinated" at headquarters (e.g., there was no single administrative officer in charge of the district stations); this was still true in the mid-1960's. The decentralization in the Boston Police Department was paralleled and perhaps reinforced by the decentralization of the local court system. Reppetto (1970:106).

4. Various statistics reveal the unequal distribution of police services. Reppetto's Table 3.4 presents data on crime and manpower in four of Boston's thirteen districts in 1967 and 1968, and indicates that the police force in Boston was not at that time distributed in accordance with crime trends. The ghetto district (District 9) was undermanned, while District 15, a small, low-population, working-class neighborhood, had three times as much manpower as its crime rate would seem to require. Furthermore, the rate for police apprehension of juveniles was highest not in the ghetto or working-class districts but in middle-class District 5 (see Table 3.5). See Reppetto (1970:97ff).

5. Reppetto (1970; 76) claims that, until the late 1960's detectives were often selected through political sponsorship, which often gave them a higher status than their nominal superiors, sergeants who were promoted

through civil service. See also Wilson, 1968:150-158. Shift Lieutenants in Boston, rather than engaging in field inspection, oversaw clerical work in the station.

6. As an example, it was reportedly common knowledge in those years that certain barrooms and liquor stores in South Boston were operating illegally "after hours" while in other neighborhoods book-making operations flourished openly.

7. The problems were complex. For example, the lack of minority representation on the force was a problem beyond the control of the Department in some respects. The state civil service system administered the entrance examination and the Department never pressured that agency to make a minority recruitment effort. Then, too, there was little creative thinking in the Department in response to these new problems. As an attempt to deal with the service problems created by changing neighborhoods, the Department stepped up its community relations efforts and created a special squad of black officers known as the "soul patrol."

8. One of these served the West End-Beacon Hill, part of which urban renewal had demolished for luxury apartments. Opposition to the closing came from district captains who would lose their offices as "little commissioners," patrol officers fearful of new assignments, businessmen and citizens fearful of less protection, and district courts, which faced similar pressure for consolidation. See Reppetto (1970:127-131).

9. Reppetto (1970:135) claims that the schedule adjustments and lack of pay increases resulting from Mayor Collins' stress on economy led directly to the formation of the Boston Police Patrolmen's Association in 1965.

10. The Association also used its reputation for influence in the Boston City Council to obtain a bargaining agreement from the Mayor to establish three eight-hour shifts with a $15/week shift differential for the night men. In addition, the BPPA obtained an agency shop and the ability to bargain with the Police Commissioner rather than the City over the implementation of shift changes. (Albert, 1975:31-32). Albert (1975:37) notes that, according to one knowledgeable analyst, the BPPA contract included some of the best fringe benefits of any police contract he had seen.

NOTES (CONT'D)

11. In regard to the Model Cities Proposal, the BPPA strongly opposed all of the recommendations; the top command, which had formally approved the program, stated that they had done so only at the mayor's insistence and that they too opposed it. The city council, after sending the police-community relations section to the BPPA for comment, substantially altered this section of the Model Cities Proposal "so that what emerged was unrecognizable." See Reppetto (1970: 147-148) and Albert (1975:43).

12. The traditional response of the Boston Police Department to a problem was to create a special unit to concentrate on enforcement in that area, instead of delegating enforcement to the district detective branch. For example, the department had created the Organized Crime Unit, the Auto Squad, the Juvenile Unit, the Internal Affairs Unit and other specialized units in response to the growing perception of violations in each of these areas. Therefore, it was quite logical that in 1970, when drug abuse came to the forefront of public attention, the Drug Control Unit be created.

13. General Order No. 366 (Feb. 11, 1970). The General Order also indicated that the Unit "shall be responsible...for the preparation of evidence and the prosecution of all narcotic and harmful drug cases; and for the safeguarding of all narcotic and harmful drugs taken as evidence until properly disposed of according to law."

14. Much of the increased independence accrued to the middle-level command staff but Albert (1975: 9) accepts the interpretation that part of the BPD leadership vacuum was filled by the BPPA, which thereafter became markedly more aggressive in its dealings with the Department and the City Council.

15. One superior officer recalled in an interview how throughout the 1960's corruption had existed among officers at all levels of the force and particularly in the Vice Squad. This issue had rarely been directly confronted, however, during the period before di Grazia came into the Department. Di Grazia's biggest contribution, in this officer's opinion, was that he did confront this issue and consequently "brought integrity to the Police Department."

16. Moreover, the state of the vehicle fleet was disgraceful. There were no uniform markings, seats were held up by milk crates, and maintenance was minimal at best. Di Grazia reassigned a large number of officers from desk jobs; he purchased new vehicles and improved the garage staff. As a result the Department was able to add an additional 100 response units. However, there was serious resentment among those who lost favored positions.

17. The BPPA filed a suit on the last feature, claiming that in reality it was the introduction of one-man patrol cars and thus violated a collective bargaining agreement. The judge dismissed the suit and agreed with the reasoning of the Police Commissioner on the issue. See Albert (1975:77-79).

18. According to Albert (1975: 24), "Initially, di Grazia had hoped that these two new offices would make great strides in improving communications with the different police unions. Unfortunately, they did not make these inroads."

19. The SIU handles the most sensitive investigations into police corruption and monitors the effectiveness of all individual district commanders. It concentrates on gaming, narcotics, prostitution and other areas commonly associated with police corruption. Members of the unit serve voluntarily, submit annual financial statements, and take polygraph tests (Albert, 1975: 59-60).

20. For example, after the first contract bargaining in 1968-69, the top-grade patrol officer's pay was higher than that of a starting sergeant. Subsequent negotiations between the BPD and the Superior Officers Federation established salary differentials between patrolmen's and superior officers' pay and linked wage increases and benefits of the latter group to those won by the BPPA (Albert, 1975: 30).

    The Superior Officers Federation did object to the polygraph tests and financial statements of the SIU, and to the promotion of certain individuals from below the rank of captain to the rank of superintendent; it also unsuccessfully sought an injunction to prevent the use of the psychological and personal questionnaires.

21. This opposition extended to civilians in clerical as well

as those in administrative positions. Here the issue was the displacement of police officers from attractive positions and the BPPA led the fight against di Grazia. In 1969, for example, Mayor White proposed the hiring of 50 civilian clerks for work at headquarters and in district stations. He felt that sworn personnel had not been trained for administrative and clerical jobs. In addition, however, the salaries of officers had priced them out of this job market, thus overcoming the financial obstacle that Mayor Collins had seen a few years earlier. The Mayor did obtain City Council approval for funding of this measure but the result was not to replace 50 officers in the stations but merely to add 50 clerks to work alongside them. A companion proposal to hire 50 civilians for downtown traffic direction was defeated (Albert, 1975: 45).

22. This can more readily be understood in the context of the rigid vertical structure of the Police Department and the way in which a civilian presence circumvents that structure. Moreover, in the early days of the di Grazia administration, a number of high-ranking commanders had retired or been demoted to their civil service rank and there was therefore little stability of command.

23. Di Grazia's civilian staff assistants had had considerable experience with the task force approach to law enforcement problem solving. Through their work for the Police Foundation, they had dealt with task forces in Kansas City and several other cities. The approach had worked well in those cities and its use in Boston seemed appropriate to them.

24. A member not in good standing is prohibited from participating in union elections and is deprived of all union benefits, such as the defense fund and assistance of counsel in departmental hearings and trial boards.

25. The Commissioner regularly attended in-service training classes at the Police Academy. He expressed his views on a number of issues and encouraged discussion on matters ranging from the air-conditioning of cruisers to methods of dealing with corruption. He had questionnaires developed and mailed to all members of the force to learn their opinions about uniform and cruiser specifications. The BPPA, claiming

that these were health and safety issues and should therefore be left to collective bargaining, advised its members not to answer the questionnaires. Many officers chose to respond, however, recognizing the potential for improved working conditions and feeling like pawns in the open hostility between the union and the administration.

26. Reppetto (1970: 201-202) notes that:

"If the city administration were determined to fight the police union, it would make sense for it to court the command group, who themselves dislike the union because it curtails their authority.... When it comes to a showdown between city hall and the police union, the union is able to invoke the issue of law and order versus political interference. But when the struggle is between the police command group and the union, the relative advantages are reversed because the police commissioner can claim the law and order issue as his own while his efforts to run the department can hardly be termed political interference."

27. In early November 1976, as di Grazia was ending his administration as Boston Police Commissioner, he released a report by the Special Investigation Unit that alleged widespread police corruption in one district of the city. In particular, the report claimed that the police made minimal attempts to curb crime, allowed violations of alcoholic beverage laws and ignored illegal sexual activities. Di Grazia, justifying the public release of the document, claimed the investigation was designed as a management tool to help develop professionalism and not for the purpose of criminal prosecution. (Boston Globe, Nov. 9 and 10, 1976).

REFERENCES

Albert, Rory Judd
1975 A Time for Reform: A Case Study of the Interaction Between the Commissioner of the Boston Police Department and the Boston Police Patrolmen's Association. Cambridge: Massachusetts Institute of Technology Operations Research Center Technical Report No. 11-75.

Fosdick, Raymond B.
1920 American Police Systems. New York: Century.

International Association of Chiefs of Police
1962 A Survey of the Police Department of Boston, Mass. Washington, D.C.: IACP.

Mayor's Police Task Force
1969 Boston 1969 -- The Force and the City: A Management Analysis of the Boston Police Department. Boston.

Repetto, Thomas Anthony
1970 Changing the System: Models of Municipal Police Organization. Unpublished dissertation. Cambridge: Harvard University.

White, Kevin
1968 Model Cities Proposal. Boston.

Wilson, James Q.
1968 Varieties of Police Behavior: The Management of Law and Order in Eight Communities. Cambridge: Harvard University Press.

CHAPTER V

THE POLICYMAKING PROCESS: CRIMINAL INVESTIATION GUIDELINES

Preliminary Steps

Before the Project began, the Director of the Center and an administrative assistant to the Commissioner agreed that the project would produce something of practical benefit to the Department, and that the Project would focus, initially, on the development of criminal investigative procedures, rather than policies on the selective enforcement of drug laws. In April 1975, the Commissioner appointed the Superintendent of Field Services to serve as Department liaison and to provide staff from his bureau to assist the Project. The proposal called for the creation of a Task Force representing several specialized units--vice, narcotics, organized crime, the legal advisor, and two district detective units. The nature of the liaison and the staff assistance to be provided by the Bureau of Field Services and the specific role of the Task Force, however, were left for later development.

Working first with a staff assistant to the Commissioner, Center staff held a series of introductory meetings with Department personnel. While the particulars discussed at these meetings varied, all of them had two common objectives: development of a process which would structure and define collaboration between the Department and the Center, and familiarization of Center staff with the organizational structure and personnel of the Boston Police Department.

Each meeting began with an overview of the objectives of the Project: to help the Department use its authority to develop rules on criminal investigative procedures; to implement and evaluate the impact of selected

rules; and to identify other sensitive areas in which appropriate policies structuring police decisionmaking could be developed. Project attorneys repeatedly emphasized that the Supreme Court--which many police officers believe has deprived them of essential flexibility--has in fact left considerable latitude to individual departments to define reasonable criminal investigative procedures. Staff further explained that the Court has often invited police agencies and state legislatures to develop alternative means for complying with existing constitutional requirements and to develop procedures in areas not yet fully regulated.[1] Center staff described how this project provided an opportunity for the Department to do these things. In an effort to encourage acceptance of the Project and willing participation by sworn personnel, Project staff may have over-emphasized the technical assistance aspect of the Project during the early meetings. Some officers understood and supported the research and evaluation components, but others perceived our role as simply to help the police develop procedures that would enable them to do what the courts say they cannot do.

In these early meetings, department officials raised some of their concerns, including access to warrants during odd hours; searching, impounding, and inventorying cars; searches incident to arrest; development of telephonic warrant procedures; limitations on oral testimony in support of affidavits; emergency searches; stop and frisk; pre-trial identification procedures; and selective enforcement. These concerns were noted and discussed, but the establishment of priorities among these problem areas was left until the Task Force was created.

Formation of the Task Force

The grant proposal stated that a Task Force of superior officers drawn

1. Notes and references for this chapter begin on page 124.

in part from two centralized investigative units and the detective units in the city's busier districts would participate directly in the development, review, and implementation of criminal investigative guidelines. The importance of selecting officers who had the respect of and credibility among the rank and file was emphasized repeatedly by Project staff, the Commissioner's civilian assistant, and the Department liaison.

The Drug Control Unit and the Intelligence Division[2] were the two centralized units selected to work with the Project during the first phase. Detective units in District 4 and District 2 were also selected. After the first two meetings of the Task Force, it was agreed that the Captain of the Department's Training Academy, who is responsible for police training in criminal procedure, would be added to the Task Force. Thus the Task Force was composed of ten sworn Department personnel who would eventually have responsibility for implementation of the work. The Task Force agreed to maintain contact with the Directors of Planning and Research and the Training Academy. The Department also detailed a patrol officer to work with the Project at the Center.

Reaction to the selection of Task Force members varied. Some members openly expressed the view that certain other members had been invited to join simply because of internal or external political factors. The consensus was, however, that several of the officers invited to participate had reputations for being unusually outspoken and were acknowledged by the force to have an understanding of the intricacies of police work from the perspective of line officers. This is significant in two respects. First, no one was ordered to serve as a member of this group: officers on the Task Force first became involved and later remained active because of their interest in the substantive areas addressed. Second, administration encouraged participation by individuals known to be candid in expressing views different

from those of the administration: this suggested the administration's commitment to the effort, and its recognition of the importance of both the substantive areas and the participatory process.

It should be noted, however, that another interpretation is possible. If the administration had no intention of using the results of the Task Force's work because the issues addressed did not correspond to emerging Department priorities, then soliciting the involvement of outspoken field supervisors could merely have been an attempt to appease them and their constituencies in the Department. But this did not appear to be the case, at least during the early stages of the project.

From the earliest meetings, the Task Force saw the role of the legal advisor as limited. The majority of the Task Force agreed that he should be kept informed of their activities but that he should not be a member of the group. This attitude appeared to result from that of the current legal advisor: he was not routinely available to officers requesting information on the legal issues relevant to a particular case, nor did he develop a mechanism for communicating important statutory or case law developments. Unlike his predecessor, the legal advisor prefers to negotiate and draft consultant and service contracts and engage in litigation on behalf of the Department. At preliminary meetings attended by staff attorneys and the legal advisor, the latter seemed reluctant to participate in the development of investigative materials. It was not clear whether this reluctance reflected his discomfort in working closely, over an extended period, with sworn personnel, or simply an unwillingness to modify his independently established priorities.

Early Work of the Task Force

The environment in the BPD at the inception of the Project compounded the usual difficulties in having "outsiders" working in a police agency. The insular nature of police departments has historically made it difficult for civilians to gain the access they need to department data and personnel. When access has been granted, many departments, including Boston's, have perceived themselves as the victims of academic research. Early Task Force meetings provided a forum in which to communicate to the police the fact that Center staff were intrigued by the opportunity to work with Department personnel in developing policies useful to police officers attempting to apply complex legal standards to commonly encountered field situations. Project staff successfully argued that Task Force members, by raising issues of concern to them as field supervisors, would structure research efforts.

Having negotiated administrative access to the Department, Project staff recognized the need to convince the officers on the Task Force that they were not acting on a hidden agenda as agents of the Commissioner but were intent on developing a collaborative, problem-solving process with line personnel.

Thus, the most significant accomplishment of early Task Force meetings was the emergence of confidence in the project and its staff. Although some members of the Task Force understood and supported the project from the outset, others were suspicious of both the project and the staff. Only after a number of meetings did the skeptics begin to believe that Center staff had expertise that could be useful in developing investigative policies needed by the Department, and that Center staff did not intend to develop and impose solutions to these problems unilaterally on behalf of the

administration.

Once confidence was established, attention of the Task Force and staff turned to other matters critical to a preliminary definition of the substantive work to be undertaken. The first question was the status of the policies to be developed. The initial proposal and work-plan uncritically assumed that policies developed by this project should conform to the traditional administrative model for controlling police behavior: Department rules and regulations. Representatives from the administration agreed; they expected that the policies would be incorporated into the revised police manual. However, discussion at Task Force meetings and interviews with others on the force and in the administration raised substantial uncertainty about the effectiveness of rules as a mechanism for enforcing Department policies. Project staff agreed to examine the advantages and disadvantages of promulgating policies in that form. (See Chapter VI).

To encourage officers to regard criminal investigative policies as relevant to their jobs and as a useful source of guidance, Task Force members and Project staff agreed that the negative and punitive connotations of rules should be avoided. Further, Project staff and the Department were committed to encouraging sworn personnel of all ranks to participate in the development of the policies in question, and this caused some concern about possible opposition from the Boston Police Patrolman's Association if the policies being developed were given the status of rules. Although the substantive issues addressed by this project differed significantly from those addressed by the task force mandated to re-write the police manual, it had to be remembered that the union's opposition to patrol officer participation in rulemaking had caused that effort to fail. Moreover, the criminal procedure area does not lend itself to uniform application of

static rules. The dictates of the Fourth Amendment, for example, invite varying interpretations in differing circumstances. Thus, the creation of a framework of guiding principles to assist the officer in making appropriate decisions seemed desirable.

The Task Force therefore decided that the policies should be advisory "guidelines" rather than "rules," that they should be affirmative and emphasize what police officers may do, and that they should contain examples of how the policies would apply to a variety of factual situations. To reinforce the positive character of its work, the task force decided to recommend that violations of the guidelines alone should not be used as a basis for suppressing evidence in court or for disciplining officers administratively; only if a violation of the guidelines was also a violation of constitutional requirements or was equally serious for some other reason should judicial or administrative action be taken.

With the resolution of this issue, an informal process for the development of guidelines was discussed and agreed upon: the choice of areas in which guidelines were to be written would be made jointly by the Task Force and Project staff, with priority consideration given to areas covered by the Arizona State University Model Rules for Law Enforcement (1974). Necessary legal and social research would be done by project staff, while unit commanders would help them collect information about their respective units.[4] Proposed guidelines would be drafted by project staff and submitted to the Task Force, which would solicit the opinions of others in the Department. Upon approval by the Task Force, guidelines would be submitted to the Commissioner for review and approval.

The Task Force decided that in a few selected areas implementation would be undertaken. This phase would include developing, with Training

Academy staff, new materials relating to the selected guidelines, and conducting training programs for the units involved in the Task Force.

The Task Force agreed that, if Project staff interviewed only its members, the information thus made available would not be sufficient to obtain a comprehensive picture of the practices, problems and needs of line officers in areas such as searches incident to arrest. A process had to be developed that would give Project staff opportunities to meet and interview a greater number of line officers than originally planned. It is always difficult for "outsiders" to engage in candid discussion with police officers about their activities and concerns. As explained earlier, it would be particularly difficult in the Boston Police Department at the time this project began. Yet the administration, Task Force and Project staff agreed that expanding the scope of participation in the guidelines development process was essential both to ensure that the policies would be substantively related to the concerns of police officers and to increase the likelihood of compliance with the guidelines once promulgated as Department policy.

The Task Force and Project staff agreed to attempt to integrate the social science inquiry into an existing Department program with which officers were familiar. With the cooperation of the Director of the Division of Training and Education, the in-service training program at the Police Academy was chosen. It was considered an appropriate vehicle through which project attorneys and staff could meet officers from the four units selected to be primarily involved during this phase of the Project. The Captain responsible for training in criminal procedure was respected throughout the Department; if Project staff were identified as resource personnel working with him, this association might offset the disadvantage of their being outsiders.

Task Force Review

Draft guidelines that incorporated the results of both legal and non-legal research were submitted to the Task Force for review and initial approval. In a series of meetings that extended through the life of the Project, the Task Force scrutinized each proposed guideline and the accompanying examples illustrating its application. Guidelines were revised where necessary to ensure that their substance appropriately addressed practical concerns, and that the language clearly conveyed the intended meaning.

Distribution of Guidelines

The original plan called for distributing the guidelines during regularly scheduled in-service training sessions but this had to be abandoned when the Department discontinued regular in-service training, allegedly because of fiscal considerations. To meet the need for a readily available dissemination mechanism, the existing process for the distribution of rules became the model for the distribution of the first set of guidelines (on search warrants, motor vehicle searches, and searches incident to arrest).

The normal distribution method for the rules calls for every district to obtain a copy for each officer assigned to it; the number of officers can be found on a computer print-out issued from headquarters. Each officer, on receiving the material, must sign his name on the print-out. This system is designed to provide security and a record of how many copies are distributed and to whom. The printouts are returned to a headquarters unit, which keeps them.

This method of distribution proved to be rather slow. When randomly selected officers chosen for training and testing sessions over the late

summer months of 1977 were asked whether they had received the guidelines, in some districts a substantial number of officers had still not received copies. In February 1978, we began in earnest to try to determine how many books had actually been distributed. A review of district print-outs and calls to the districts indicated that the majority of books had been distributed.

Before, during and after distribution, staff members and the Task Force repeatedly attempted to draw attention to the guidelines and to stress their value. During ride-alongs, training sessions, and other opportunities for discussion, suggestions were solicited about how officers might be encouraged to familiarize themselves with the material. Officers from the Tactical Patrol force, with whom Center staff were working on the stop and frisk study, suggested that the Pax Centurion, a widely-read newsletter published by the BPPA, would be a good vehicle for disseminating information about the guidelines. This suggestion was taken up with superior officers, the Task Force and administrative personnel. The commanding officer of the Training Academy agreed to write an article on the guidelines, which appeared in the April 1977 issue.

A review of the normal distribution process suggested several flaws. Not only was it very slow, but often officers tossed the materials distributed into lockers and ignored them. This happened when officers were given materials at the end of a tour of duty or when they went to the captain's office to pick up their checks; few officers would take their work home with them, and, by the time they returned after their days off, they would have forgotten the books or papers they had thrown into their lockers or under the car seat. The fear was that this would happen with the guidelines as well.

Perhaps the most prevalent criticism, however, concerned the lack of any demonstration of commitment to the materials by the administration. Some writers have suggested that an organization's expressed commitment to a program, and employee perception that the program furthers important organizational goals, may be significant factors in the program's acceptance and success.[5]

The method of distribution, lack of sanctions to spur compliance, and the absence of explicit managerial support for the material probably led many officers to regard the guidelines as just one more in the mass of handouts an officer receives. After considering these criticisms, staff and Task Force agreed to propose changes in the method for distributing the second set of guidelines. At the suggestion of a task force member, a proposal to the Commissioner was prepared that called for the materials to be handed out at roll call. This would insure that officers would have their books while on duty; they would then be more likely to peruse the books, and might even have occasion to apply the material. It was further proposed that the Commissioner make a videotape stressing the importance of the guidelines and exhorting officers to study and use them. This videotape would then be shown at roll calls at the time of distribution and would demonstrate administrative commitment.

The Commissioner and his staff agreed to this proposal. In addition, the Department issued a special order written by a Project staff attorney regarding the distribution.[6] The special order, to be posted and read at roll calls, explicitly states that the guidelines represent official Department policy, thereby clarifying their status, and explains that the Department is seeking to include the guidelines on future promotional examinations. In order to account for completion of the distribution,

the order also requires all officers to sign for their copies and requires the district commander to return the signed print-outs within three weeks.

Training sessions at the Academy offered further opportunity to encourage compliance while teaching officers how to use the materials. Academy staff have integrated the guidelines into the core curriculum for training the present recruit class of 120. The Department's personnel director projects that approximately one-fourth of the present force will reach retirement age, and presumably be replaced, within the next three years. Because of this unusually large anticipated turnover, the inclusion of the guidelines in the training process at this time is particularly opportune.

Additional Efforts of the Task Force

(1) Judicial and Prosecutorial Conference

To ensure that judges and prosecutors recognize the importance of the Department's guidelines, Center staff suggested in October 1977 that the Task Force consider recommending to the Commissioner that the Department organize a conference for District and Superior Court judges, members of the District Attorney's staff, and Boston Police Department personnel. The purpose of the conference would be to explain how the Criminal Investigative Procedures are being used by the Department, and how they can serve as standards of good police work. It was suggested that this conference could further promote good police practice. Judges would be encouraged to examine the guidelines for use in their deliberations. Judicial reference to the guidelines in defining reasonable police practices would provide an incentive for officers to read and use them. More important, the conference would foster the greater communication between the Department and the courts which the Task Force had always desired.

There was general agreement that the Task Force should recommend to the Commissioner that he initiate contact with judges and prosecutors on the use of guidelines. However, at the completion of the Project, the Department had not yet convened a meeting of judges or representatives from the District Attorney's office. Department personnel to whom the Commissioner delegated this responsibility continue to indicate an interest in proceeding but it is unclear whether any meeting will result.

(2) Citation Proposal

As part of the police policymaking project, the Center attempted to aid the Boston Police Department in developing selective enforcement policies. This effort took two forms. The first involved work in the sensitive area of drug use. This work is described in Chapter VII. The second, as an outgrowth of the work in the arrest area, was the development of a citation proposal. The proposal was designed to articulate and gain acceptance for the concept of alternatives to arrest in non-traffic misdemeanor cases, including some drug offenses. It was presented to the criminal investigative Task Force for discussion, and drew strong reactions from Task Force members, mostly negative. Their arguments included the following:

(1) The use of citations would give offenders a "second chance" to avoid prosecution by creating the possibility that a clerk's hearing would "wash out" the arrests made by officers. It was claimed that as things are now, officers can make offenders appear in court, with the power to swear out a complaint if they do not appear.

(2) In most situations, officers have to arrest to get an offender off the street and to keep him/her from doing further harm. Citations had been used unsuccessfully in the areas of jaywalking and dog violations.

(3) Use of citations would introduce more rather than less discretion into police work, thereby allowing more bias to enter. A citation system would have to be monitored and regulated to see that it was being applied equitably in different districts.

The Task Force agreed that the topic could be pursued by means of discussions with judges, perhaps initiated through the Research and Planning Division. The proposal has not been acted upon.

NOTES

1. See, e.g., United States v. Wade, 388 U.S. 218 (1967); Miranda v. Arizona 384 U.S. 436 (1966).

2. The Intelligence Division of the Boston Police Department includes vice control and organized crime.

3. Action in cases of such seriousness would, of course, be required even in the absence of guidelines.

4. See Chapter B-II and B-III for a detailed description of these efforts.

5. For example, one of Barnard's (1968) conditions for acceptance of an order is that the employee must recognize and believe that the order is consistent with the organization's purpose. Some officers interviewed expressed the belief that the problem of compliance with department policies arises from a common perception that the administration is not routinely concerned with investigative field activity.

6. Boston Police Department, Special Order - S.O. No. 78-40, "Criminal Investigative Procedure Manual Distribution," May 11, 1978.

REFERENCES

Arizona State University College of Law and Police Foundation
1974 Model Rules for Law Enforcement. Washington, D.C.: Police Foundation

Barnard, Chester
1968 Functions of the Executive. Cambridge: Harvard University Press.

CHAPTER VI

RULES AND INCENTIVES TO INCREASE ACCOUNTABILITY

Introduction

Binding rules, regulations and orders that rely on the threat of punishment to encourage compliance with their content are the usual form in which explicit instructions governing discretion are issued. But sworn personnel commonly perceive police department rules as addressing issues irrelevant to the complex problems of policing and as administrative tools frequently invoked for purposes unrelated to the violation of a particular directive. The Boston Police Department explicitly recognizes this in its Rules and Regulations Manual(Boston Police Department, 1974b:iv);

> It is a common notion among experienced police officers that rules and regulations, procedures, policies, and such are of little or no value to actual police operations and really exist so that the Department has a tool with which to punish police officers who "rock the boat." This is difficult to dispute because rules are so often misused in exactly that fashion.
>
> Traditionally, the most definitive and the most enforceable statements in a police manual have had practically nothing to do with the important parts of the job. We have always found it easy to tell how to dress, how long to wear your hair, when or when not to smoke, how to treat your superiors, and generally how to get along with the Department. We have not found it so easy to tell you what the Department expects of you when confronted with a situation that requires you to make a decision.

While acknowledging the accuracy of the perceptions of sworn personnel, however, the Boston Police Department, like most others, retains its rules on the assumption that the threat of internal disciplinary action is an effective means of providing control over police behavior.[1]

---

1. Notes and references for this chapter begin on page 139.

The Problem with Rules

Information obtained from interviews with administrative and sworn personnel, including officers assigned to units charged with determining the level of rule compliance and prosecuting alleged violations, suggest that in Boston rules are not currently an effective mechanism for implementing Department policies.[2]

Officers perceive, and administrative personnel acknowledge, a lack of uniformity in enforcement except for "serious" or highly publicized infractions. Supervisory personnel interviewed admitted that rules have never routinely been used as a standard of performance against which to evaluate an officer's behavior. They are most likely to be invoked when a supervisor chooses to "make an example" of an individual, often for conduct unrelated to the particular rule allegedly violated. They may not be invoked even when there is a fairly clear rule violation.[3]

The fact that supervisors choose to institute or not to institute disciplinary proceedings for internal or external political reasons indicates to patrol officers that the administration is not committed to rule compliance as a meaningful measure of job performance. As a result, according to field supervisors, the actual level of compliance with written rules is very low, in spite of the threat of disciplinary sanctions for detected violations.

Furthermore, the use of shifting assignments of patrol supervisors exacerbates problems associated with determining compliance and accountability. The declining number of sworn officers in the Department has led the administration to relax permanent assignments of supervising personnel to squads and platoons. In order to maintain sufficient strength in each district and sector, patrol officers sometimes and patrol supervisors frequently, are "lent" to other units. This flexibility allows a minimum number of officers to provide adequate police services throughout the city,

but, without a structured and continuing relationship between patrol officers and supervisors, the supervisor cannot adequately observe and evaluate his subordinates and determine the level of their compliance with Department rules.[4]

There are other mechanisms presumed to control police conduct which are initiated outside the Department. Interview data suggest, for example, that "civilians" are the source of most of the the complaints filed with the Internal Affairs Division. An officer assigned to that division suggested that many of these complaints are frivolous, brought only in the hope of stalling pending criminal actions against the complaintants, or enhancing their plea-bargaining positions. To the extent that other officers share this perception, cynicism about compliance with rules is increased as an officer sees disciplinary action not as a legitimate exercise of authority to control police behavior, but rather as a way for citizens to harass the police and delay justice.[5]

External review in its present form does not provide an effective remedy. Damages for tort suits in most jurisdictions are limited to property damages; juries are unsympathetic with the typical plaintiff; and prior reputation (which may include a criminal record) is admissible to impeach credibility, to mitigate damages to reputation (which in many jurisdictions is not available in the first place), and to show probable cause for the defendant officer's allegedly injurious acts. Most importantly, sovereign immunity prevails in most jurisdictions, leaving the plaintiff with a virtually judgment-proof police officer as the sole defendant. The Federal Civil Rights Act, 42 U.S.C. 1963, provides for punitive damages and damages for injury due to emotional distress

whenever anyone acting under color of state law deprives any person of any rights, privileges, or immunities secured by the Constitution and laws, but, because of jury antipathy and exclusion of governmental units from liability, few successful actions have been brought. Since 1950 only 36 suits have successfully claimed that police falsely imprisoned, used unnecessary force, or made illegal searches and seizures. A majority of these was based on allegations of brutality, while only a minority involved claims of illegal searches or seizures.[6]

The difficulty in detecting rule violations and applying sanctions in combination with conflicting organizational demands on officers, greatly diminshes the deterrence value generally ascribed to rules. Perhaps more significant, it results in officers' viewing the occasional invocation of disciplinary proceedings as arbitrary and capricious.[7]

The Use of Positive Incentives

The apparent limitations of rules as a mechanism to govern discretionary field behavior in traditionally organized police departments, and officers' negative perception of the traditional role and content of administratively promulgated rules, encouraged the Task Force and staff to examine closely the role of rules in the Boston Police Department and to consider developing other means of encouraging compliance.

The Task Force therefore decided that the written policies should be advisory "guidelines" rather than "rules," that they should be affirmative and emphasize what police officers may do, and that they should contain examples of how the policies would apply to a variety of factual situations. To reinforce the positive character of its work, the Task Force decided to recommend that a violation of the guidelines

should not be used as a basis for suppressing evidence in court or for disciplining officers administratively unless there was also a serious violation of constitutional requirements that made judicial or administrative action necessary.

It has often been suggested that a well-ordered system of specified positive reinforcements can be useful in inducing desired behavior. A positive incentive system, rather than using a "stick" to punish improper acts, offers "carrots" for desired behavior. Such a system relies on the assumption, as noted by Levine (1976:490), that people "are to a great extent self-interested and future-oriented so they will conduct themselves in a manner conducive to receiving rewards . . .." That is to say, if an officer is offered greater rewards for complying with explicit policies than he achieves with non-compliance, he will deliberately choose to act in accordance with the policies.[8]

Given strong enough incentives, officers will go to great lengths to observe formal requirements. The apparent immunity of Boston Police Department search warrants from judicial suppression suggests that the relatively burdensome task of obtaining a warrant will be performed and performed properly when it is worth the officer's effort to get inside the search site. So career opportunities can probably be structured to inspire similar formal compliance with the law. A final factor in favor of the use of affirmative incentives over negative sanctions is the protracted struggle of police administrators to "professionalize" police forces. As line officers come to see themselves less as foot soldiers and more as craftsmen, traditional authoritarian means of discipline become less appropriate. Like other police departments, the Boston Department is committed to the task of upgrading the quality of

police services through professionalization. As these efforts bear fruit, an emphasis on affirmative incentives will become increasingly urgent.

The Boston Police Department had, at least in part, already recognized some of the values of a positive reward system. A report published by the Planning and Research Division in 1974 noted the importance and effectiveness of rewarding desired behavior. But this report, noting that rewards of status, position and money are the most meaningful, concluded that "none of these is ours to confer." (See Boston Police Department, 1974a).

Task Force members agreed that money could serve as a most effective motivator for guideline study and use, but no funds were available for direct rewards. However, as increases in money and status in the BPD are available only through promotion, Center staff and the Task Force decided to investigate the possibility of using the promotion process to encourage guideline use.[9] As former Commissioner di Grazia has said, where promotion provides the only means of economic betterment, "the pressure to gain promotion to a higher rank can become intense . . . [and there is] likely to be considerable competition for the limited number of superior officer vacancies" (Shimberg and di Grazia, 1974). Because of the recent history of examinations in the Boston Police Department, changes in the examination process and content to include guideline materials seemed feasible to the Task Force.

Civil Service Examination

The Boston Police Department came to rely on the civil service process largely out of the wish to avoid favoritism, partisanship and corruption in public service. The development of testing criteria for assessing candidates enhances the appearance of impartial grading and selection for

promotion.[10] Moreover, objective written exams are generally easier for a bureaucratic organization to administer and evaluate than are more subjective techniques. The administrative process has therefore, led to a reliance on objective, easily defensible questions as a way to demonstrate impartiality and to ease administrative burdens.[11]

Maintaining a format of easy-to-grade questions while attempting to develop substantively difficult exams has often led to unfortunate results. Examinations focus on obscure detail, requiring memorization but not necessarily comprehension of selected materials. This flaw has subjected the civil service process to considerable criticism. Several superior officers in Boston express the opinion that exams tend to test knowledge of obscure and often ambiguous information, and thus lead to the promotion of skilled test-takers who may not have any qualifications to make them capable officers.

Former Commissioner di Grazia also criticized the trend toward reliance on objective exams and non-job-related material. As part of his reform efforts, he initiated a movement to reconsider the roles of superior officers in the Department. After conducting a study of tasks performed and reconsidering organizational goals, the Department promulgated a modified rule describing the sergeants' supervisory and managerial tasks; the rule, however, acknowledges the importance of their knowing the theory and application of law relevant to police work.

In line with this new view of the sergeants' job (and with concurrent increased emphasis on the management aspects of other superior officer positions), the Commissioner sought to alter promotional exam content. The Director of Personnel for the Department explained that the Commissioner expected patrol officers to know the law already, so that candidates

should be tested instead for their mastery of managerial skills.

In order to implement these changes, di Grazia sought authority to control the composition of the Department's exams. Normally, the Massachusetts Division of Personnel Administration creates and administers entrance and promotional exams for state civil service positions and for municipal positions as contracted. Di Grazia therefore approached the Division and the mayor's office with his proposal, received the appropriate delegation of authority, and hired consultants to prepare book-lists and exams.

In spite of the continued need for knowledge of the law, as demonstrated by the rule describing sergeants' duties, the exam showed a marked decrease in the proportion of questions devoted to substantive and procedural criminal law and a corresponding increase in material on management and supervision. Many younger, college-educated officers were prepared for study in organizational and managerial areas and sympathetic to the idea of a more efficient, modern bureaucratic organization. But the shift engendered considerable hostility within the Department. Many officers felt that the exams should continue to emphasize criminal law and procedure. Not only were they comfortable with tradition, but they believed that thorough knowledge of these areas was necessary if line supervisors were to perform their jobs effectively. Moreover, many officers suggested that it was foolhardy to assume that all patrol officers and supervisory candidates already had the requisite knowledge of law and procedure. Interviews with superior officers elicited numerous anecdotes about field supervisors ill-equipped to function as law enforcement personnel.[12]

In October 1977, the Task Force submitted a recommendation to Commissioner Jordan urging him to direct appropriate Department personnel to investigate the possibility of including the guidelines on future exams. The recommendation stressed the usefulness of guideline study especially to officers who were promoted, as well as to all officers exposed to the material. Noting the usefulness of this material to test capability in the subject areas covered, and the popularity of this proposal in the Department, the Task Force recommended meeting with the Commissioner to discuss the matter further. At subsequent meetings, both the Commissioner and the Director of Personnel committed themselves to proceeding on the proposal.

Center staff members have also suggested to officials in the Division of Personnel Administration that the guidelines be incorporated in police promotional exams. Considerable support was expressed in the Division. Not only were they receptive to using the guidelines for Boston exams, they suggested that the material eventually be incorporated in police exams.

While the project appears to have been successful in implementing this proposal, a number of factors limits the potential effectiveness of promotional exams as a significant incentive for officers to study the guidelines. In 1974, 634 officers took the sergeant's exam; only 206 passed the written part and of those only 100 were promoted. In 1977, only 66 promotions to sergeant resulted from an exam administered to over 400 officers.[13] The small number of promotions makes the likelihood of reward for time and energy expended small, and thereby decreases effectiveness of the reward.

Furthermore, a significant number of officers do not take the exam and so do not prepare for it. The 630 persons taking the exam in 1974 and the 440 in 1977 were out of a force of approximately 1800 patrol officers. Thus, about two-thirds of the force does not even take an exam, the opportunity for promotion apparently providing no incentive.

Moreover, the relation between guideline study and promotion is weakened by the fact that other factors play an independent role in the promotion process. The written exam grade now comprises only 50 percent of a candidate's overall promotional score. In Boston, 15 percent of the overall score is obtained through a formula giving credit for "training and experience" -- that is, schooling and years in service. Demonstrated ability to perform practical exercises provides the remainder of the score and questions on guideline material constitute only a fraction of the written exam.

Consideration of such facts has led several officers to doubt the effectiveness of the promotional exam approach. At least one Deputy Superintendent expressed the opinion that only the "students" in the force and those officers who are ambitious would study the guidelines. Most of these officers, he suggested, would read the guidelines anyway, regardless of exams.

Other Proposed Incentives

Staff and Task Force members therefore sought ways to reach a broader range of officers. One proposal involved creating different grades of patrol officer, somewhat like the California system. Under this proposal, officers would become eligible for advancement to a higher grade, with attendant increase in pay, status and responsibility,

in part by demonstrating a mastery of the guidelines. Commissioner Jordan made clear that the Department is not interested in implementing such an organizational change at this time.

Another idea suggested was the use of training and testing on guideline materials for selection and promotion of officers to the three investigative specialist positions in the department, the non-civil-service positions of motor vehicle specialist, juvenile specialist and detective. One plan proposed the use of promotional exams similar to civil service exams for these positions. These would be composed in part or in whole of questions derived from guideline material. Along with exam grades, training, experience, and superior officer recommendations would be considered in a weighted formula to select officers for promotion. Many of the arguments for civil service exams could apply here as well: for example, the examination process helps protect against favoritism, patronage and corruption, and establishes clear criteria for officer selection.

Some Task Force members were receptive to the use of testing programs to select officers for these positions but a significant number resisted the suggestion, claiming that a superior officer should be able to select those he feels to be most qualified to work with him. Close work with his officers can, according to this belief, enable the superior officer to select the best qualified person. Moreover, while minority groups might favor open exams, several officers predicted strong resistance from the union, from many district supervisors, and from many line officers. Even though there was a lack of consensus in the Task Force on this proposal, it was forwarded to the Commissioner

for consideration. No action has so far been taken.

An alternative proposal called for the training of specialists in guideline use. Because much of the work of these specialists involves criminal investigation and evidence gathering, it was felt that training in guideline application would be of particular value and interest to them. This proposal suggested a dual approach: in-service training for specialists already in the field and pre-promotion training for officers selected for promotion to the investigative positions. The responsibility to develop comprehensive training materials for this purpose was to be delegated to Training Academy personnel. On this proposal too no action has yet been taken.

Summary

To summarize, the nature of the police job diminishes the effectiveness of the threat of disciplinary action, while it provides frequent temptations to ignore Department rules. The effectiveness of negative sanctions as a deterrent depends upon a reasonable probability that they will be imposed. However, detection of inappropriate field behavior in traditionally organized police departments has proven extremely difficult, and is complicated by the fact that criminal procedure does not lend itself to the universal application of rigid rules. The continuing need for the exercise of discretion, even if that discretion is circumscribed, makes it difficult to determine whether an officer's conduct was an appropriate response to particular conditions. Further, the protections offered in administrative disciplinary proceedings tend to delay imposition of sanctions and decrease the likelihood that even detected violations will be punished. Threats of punishment that are

usually delayed and may never be carried out probably have little deterrent value.

However, as the 1974 study by the BPD noted, there are several problems with using reward systems in police departments. Two major, related problems identified were defining goals in a manner useable for a rewards system, and providing an efficient means of distributing rewards for the attainment of those goals. In Boston, according to the report, the process for recommending, reviewing, and awarding rewards has led to discrepancies between districts, resulting from superior officers using a number of widely varying and occasionally even contradictory criteria. This, the study suggests, has distorted sworn personnel's perceptions of the Department's goals and policies, and failed to make optimal use of the reward system. The report also notes that the traditional police department reward system suffers from an inability to promise highly effective incentives.

In short, many of the problems associated with the use of negative sanctions also hamper the application of positive incentives. Differences in attitudes of superiors may lead to rewards being given for internal or external political reasons, thus communicating to patrol officers a lack of administrative commitment to rule compliance. The shifting of patrol supervisors' assignments, noted above, also severely limits a supervisor's opportunity to observe and evaluate his subordinates and link incentives to specific performance of officers in their work. The major incentive that the Project developed for officers, use of guideline material on civil service examinations, is tenuously linked, at best, to job performance. While promotions may reward the study of the guidelines, it is unclear how they affect the application of these guidelines.

The difficulty of detecting compliance and universally applying rewards, in combination with possibly conflicting organizational demands confronting the officer, appear to diminish greatly the general incentive value ascribed to guidelines.[14] As with negative sanctions attached to rules, application is severely hampered by the lack of adequate mechanisms of accountability within the Boston Police Department. One superior officer, a well-respected member of the Task Force, noted that it made little difference what the material was called for there was hardly any accountability in the Department, even for compliance with rules and regulations.

While the use of positive incentives undoubtedly has advantages over the use of negative sanctions, it is clear that their successful implementation in the BPD will have to await the development of a more comprehensive mechanism of accountability. If this occurs, it is likely to provide Boston police administrators with a far greater array of positive incentives than this project was able to develop in the present environment.

NOTES

1. The following classification for written directives exists within the Boston Police Department. Its applicability to other departments is open to question.

   1. Rules and Regulations -- directives establishing and defining policies of the Department.

   2. Special Orders -- directives that apply to specific events or circumstances therefore limited in scope.

   3. Commissioner's Memoranda -- non-directive information.

   4. Training Bulletins -- non-directive information designed to clarify Department policies and procedures.

   The BPD has no general orders or standard operating procedure classification.

2. One former civilian administrator in the BPD noted that a system of informal control operates in Boston and other old-line police departments, most of them in the east. Little attention is paid to compliance with most of the formally articulated rules. Di Grazia informally set heavily community-oriented priorities -- and applied pressure on command staff for compliance in these areas. This implied that compliance was not expected in other areas. In the Boston Police Department, with its "informal" methods of control, differences between rules, regulations and guidelines are slight.

3. For example, a patrol officer who had captured a fleeing felon was formally commended by the Department even though it appeared that he had violated the rule on pursuit driving.

   One deputy, however, saw the threat of sanctions as important in encouraging study of the rules. He noted that section 5 of Rule 102 specifically holds officers responsible for a knowledge of the rules, and he suggested that avoiding disciplinary action was an important incentive to persuade officers to study those rules which might affect them. But even officers who studied the rules did not necessarily believe in complying with them.

4. In addition, superior officers are often reluctant to make use of formal disciplinary channels and to impose punishment for decisions made in circumstances requiring the exercise of judgment. Besides the psychological rewards a superior may receive from a positive relationship with his men, he must often rely on good rapport to control and direct officers on the street operating out of his presence. Initiation of disciplinary action not only draws attention to police misconduct, but also jeopardizes the superior officer's relationship with his subordinates.

NOTES (Cont'd)

5. Courts also have devised mechanisms for attempting to control police conduct. The exclusionary rule continues to be the one most heavily relied upon. However, this sanction is severely limited in its effectiveness. Very little police activity results in court action and of that even less involves evidence subject to exclusion. See Chapter XIV.

6. Prior to the Project there was no structured way of addressing the issues covered by the guidelines. Information was communicated informally, if at all. Court appearances were and continue to be the primary way that officers become familiar with the law. Even this may have minimal educational value because it is still common for a police officer assigned to the court and somewhat familiar with criminal and court procedure to arrange an officer's testimony or complete his paperwork. Only when an officer is embarrassed in court is he apt to be motivated to seek out relevant information.

7. To the extent that rules address such topics as care of uniforms, equipment maintenance, haircuts and the like, officers resent regulation and perceive them as "silly exercises," which has the effect of undermining the legitimacy of all rules in the eyes of the force. See Rubinstein (1973).

8. One theory of management suggests that if desired behavior is presented as a means of satisfying the officer's needs, the officer will behave as desired. Various wants or needs and related rewards may be considered. Beyond such needs as food, shelter and safety, for example, one might seek respect, self-esteem, intellectual stimulation and so on. At least one author has separated these into " extrinsic rewards," given by others, and "intrinsic rewards," which are internally realized from job performance. Douglas McGregor (1969) has developed a somewhat different motivational theory. According to this "Theory Y," employees motivate themselves, rather than remain passive until stimulated by the manager. The manager's job is to structure working conditions so that "people can achieve their own goals best by directing their own efforts toward organizational objectives." While this theory provides a slightly different perspective on managerial practices, many kinds of positive incentives can be used under either theory. See Herzberg (1968) and Lawler (1969).

9. It should not be thought that positive incentives play no role in the administration of the Boston Police Department. In fact, in the late 1960's the administration began to use mass promotions as a positive incentive to gain the cooperation and support of the various ranks of police, particularly of some of the younger, better educated, and more "professionally" oriented officers in the department.

It is also important to note that the BPPA opposed state legislation to establish a pay incentive for police officers studying in college programs. Reportedly they felt that many officers were too old to obtain substantial benefits from the bill, or they lacked high school diplomas. Instead the BPPA proposed the addition of increased pay based on length of service for those officers who did not take part in the educational incentive program. In the 1972 (third) contract, the City agreed to provide career incentive awards for length of service as well as for educational qualifications. (Reppetto, 1970:202-205; Albert, 1975:33-34.)

10. Civil service procedures solved some problems but created others. One issue that City and police administrators had to confront in the late 1960's was the underrepresentation of blacks in the BPD. They were able to address it, over the opposition of the BPPA and the Superior Officers' Federation, to some extent through the use of the power of promotion. In 1968, a black patrolman was elevated to Deputy Superintendent for Community Relations, a position outside the civil service. Also in 1968, as an "emergency" measure, a small unarmed force was created, ostensibly to patrol the hippies on Boston Common, but actually, according to Reppetto, to create positions free of civil service requirements. In 1969, the BPD provided a record number of officers to sergeant in order to get one more black sergeant. (He was 47th on a list of 50.) See Reppetto, (1970; 143-144; 205)

11. Until 1968, Boston recruits had to be city residents and 30 percent of the force lacked high school diplomas. They did not have to take any general aptitude or intelligence tests but rather were tested on the Bluebook, a state manual of laws, procedure, and first aid. In consideration for promotion seniority received a weight of 40 percent (compared to 20 percent in most cities) and much emphasis was given to memorizing the Bluebook. The emphasis on seniority, coupled with the large size of the Department and the age of the force, created a situation in which "promotion is not only remote but rather slow." Only 20 percent of the sworn personnel in Boston held a rating above patrolman, while the average age for captains was 52. Promotion beyond captain was based on selection by the Police Commissioner and Reppetto claims that "the general feeling of the department is, that the mayor's office has a voice in these decisions." (Reppetto, 1970: 71ff).

12. The "old" promotional exams included questions on Department rules and this was the primary motivation for officers to study and know their content. Rules are no longer on the exams and this may enhance the tendency of officers not to read or know departmental rules and regulations. One Deputy Superintendent felt that sworn personnel showed an unfortunate lack of knowledge of the areas of the law covered by the guidelines and of court procedure. Troubling to

him was the discovery that some officers were operating on the street, and even being promoted, in spite of an "inexcusable lack of knowledge of the laws pertaining to their jobs." He cited various disciplinary actions he knew about to demonstrate the problems caused by ignorance of relevant law.

13. Interview with Director of Personnel, Boston Police Department.

14. Members of the Task Force doubted that officers would devote much time to study of the guidelines because there was no threat of sanction, as there was with rules. Moreover, all the other matters demanding an officer's attention would detract from the guidelines' impact. Certain officers who were "very active and wanted to do the job right" would study such material, "but they would always be ahead of the game." Reaching the majority of officers would be more difficult. If the guidelines could not be made rules, one member suggested that in-service training could be used to familiarize Department personnel with the guidelines. He conceded, however, that this was not likely to be done as training currently receives low priority in BPD affairs.

REFERENCES

Albert, Rory Judd
1975 "A Time for Reform: A Case Study of the Interaction Between the Commissioner of the Boston Police Department and the Boston Police Patrolmen's Association." Technical Report No. 11-75. Massachusetts Institute of Technology Operations Research Center: Cambridge.

Boston Police Department
1974a "Rewards in the Boston Police Department." Boston: Planning and Research Division.

Boston Police Department
1974b Rules and Regulations Manual. Boston.

Herzberg, Frederick
1968 "One More Time: How Do You Motivate Employees?" Harvard Business Review 53-62.

Lawler, Edward
1969 "Job Design and Employee Motivation." Personnel Psychology 22:426-435.

Levine, James P.
1976 "Implementing Legal Policies Through Operant Conditioning." Pp. 478-501 in Cohn and Viano (eds.), Police Community Relations. Philadelphia: J. B. Lippincott.

McGregor, Douglas
1964 "The Human Side of Enterprise." Pp. 747-759 in Leavitt and Pondy (eds.), Readings in Managerial Psychology. Chicago: University of Chicago Press.

Reppetto, Thomas Anthony
1970 Changing the System: Models of Municipal Police Organization. Unpublished dissertation. Cambridge: Harvard Univeristy.

Rubinstein, Jonathan
1973 City Police. New York: Farrar, Straus and Giroux.

Shimberg, B. and di Grazia, R.
1974 "Promotion." Pp. 101-124 in Stahl and Strauenberg (eds.), Police Personnel Administration. North Scituate: Duxbury Press.

CHAPTER VII

THE POLICYMAKING PROCESS: DRUG ENFORCEMENT PRIORITIES

Introduction

Police agencies rarely have carefully conceived plans or policies for dealing with sensitive police problems, or even a process for arriving at uniform police policies. There are limited exceptions of course. In recent years, comprehensive strategies and procedures have been formulated in Boston's and other police departments for handling such matters as school busing, large demonstrations, riots and the holding of hostages. Most of these strategies, however, apply to situations in which large numbers of police personnel have to be deployed and controlled, often for long periods. Planning processes have also frequently been used for internal management purposes, such as analyzing paperwork flow or resource allocation. Comparable efforts have not often been made to formulate appropriate departmental responses to such difficult and sensitive police problems as drug trafficking and abuse. Police departments and units in them do set priorities on an ongoing basis. Detective units, for example, normally give priority to armed robbery or rape investigations over burglaries. But such judgments are typically made on an ad hoc basis, and rarely stem from any concerted effort to define substantive police problems, analyze current responses, examine alternative strategies, establish objectives and priorities, or propose methods for carrying them out.

As part of this project in police policymaking, we attempted to test the feasibility of undertaking a planning process in the selective enforcement area by helping the Boston Police Department develop policies in the sensitive area of drug abuse. This aspect of the project differed

from others in two significant ways. First, it involved planning and policymaking for and within a specialized unit (the Drug Control Unit) instead of broader policymaking for the Department as a whole. This effort was intended to test the feasibility and value both of policymaking for a specific unit and of fully involving personnel from such a unit in the process. Second, instead of focusing upon criminal investigative procedures like those developed in the Arizona State University Model Rules for Law Enforcement (1974), this plan concentrated on investigative strategies and priorities for a specific substantive area: drug offenses. The Center believed that policymaking to structure discretion in this area would be of equal importance to policymaking on criminal investigative procedures in general.

Process

The process of developing a plan of enforcement priorities for the Drug Control Unit by a Drug Task Force and the Center was first suggested in 1976 by the Commander of the Drug Control Unit (DCU), who was also a member of the Department's Task Force on Criminal Investigative Procedures. Funds were available to support an effort to formulate enforcement priorities in such an area as drug enforcement and the Commander requested that the enforcement priorities work be done with DCU. Both the Task Force and the Commissioner approved.

Preliminary planning meetings were held in March and April 1977, with the Commissioner, top command staff and the Commissioner's civilian advisors, to discuss planning strategies and to obtain approval of the planning effort.

Subsequently, a series of meetings was held by the DCU's new commander, the unit's four supervising sergeants, and the Director of the Center to agree on the type and scope of planning to be done. The

Drug Enforcement Plan was to be prepared by the Drug Control Unit; the Center's role was to assist DCU in preparing it. DCU officers were to provide information based on their experience and on Departmental statistics. The Center was to supervise the necessary legal and court data research, conduct interviews outside the Department, and obtain information concerning drug priorities in other police departments. The planning effort was guided by a Task Force, which consisted of the DCU commander, supervising sergeants, and a detective from each of the three working squads in DCU.

Primary attention for devising a workable plan of enforcement priorities was focused on four major areas:

1. The nature and scope of the drug problem in Boston.
2. Existing enforcement practices and problems within the Drug Control Unit.
3. Current and proposed enforcement practices and problems of other representative law enforcement agencies.
4. Possible alternative drug enforcement strategies for the Department.

As orginally envisioned, the Drug Plan was to be developed by the Drug Control Unit Task Force over a six-month period. The Task Force met approximately every two weeks to discuss the project. During this time, the following tasks were undertaken in each of the primary areas:

(a) Nature and scope of the drug problem

-- interviews with Task Force members and other officers within the Department;

-- review of Boston arrest statistics and statistical reports from such sources as the Commissioner of Corrections, Drug Enforcement Agency, National Institute on Drug Abuse, Public Health Service, the State Department of Mental Health, the City of Boston Drug Treatment Program and the Mayor's Coordinating Council on Drug Abuse;

-- interviews with persons outside the Boston Police Department with knowledge of the drug problem, including prosecutors,

officials from other police agencies, staff from drug treatment programs, and staff from the Organized Crime Control Council.

(b) Existing enforcement practices and problems of DCU

-- interviews with Task Force members, other officers within the Department, and prosecutors from the Suffolk County District Attorney's Office.

(c) Current and proposed enforcement practices by other representative law enforcement agencies

-- survey of 17 selected police agencies around the country;

-- literature search

(d) Alternative possible drug enforcement strategies for the Department

-- interviews with Task Force members, DCU detectives, and other knowledgeable persons both within and outside the Department;

-- literature search;

-- survey of selected police agencies around the country;

-- discussions by the Task Force.

Information gathering and analysis took place mainly between April and November, 1977. Some of the data were collected by Task Force members; most of the interviews, however, were conducted by law student interns at the Center for Criminal Justice; and statistical data were analyzed by Center staff.

Based upon this research, the Task Force and staff developed a Plan for submission through the chain of command to the Commissioner. This Plan and its various supporting documents are appended to this Report. In general, the Plan was supported by key departmental personnel[1] prior to its submission to the Commissioner in December, 1977. After a meeting devoted to the Plan that same month,[2] however, the Commissioner decided not to work for the Plan's implementation. In the section that follows an assessment will be

---

1. Notes and references for this chapter being on page 157.

made of the planning process, the Plan's findings and recommendations, the Commissioner's decision with reference to the Plan, and the implications of our efforts for future work of this type.

1. The Planning Process

The purpose of our planning process was to get operational personnel involved in proactive planning on how to respond to a specific criminal problem. The process was to be used to attempt to understand the nature and scope of the problem, how the department currently responds to it, and what the relationship was between various types of people who have drug enforcement or drug treatment responsibilities both within and outside of the Department. From this type of inquiry and from research on national developments, efforts were to be made to formulate an enforcement plan which confronted such issues as priority needs, effective allocation of resources, and enforcement strategies. The Task Force concept, which was utilized in other aspects of the overall project, was to be tested here as well. Aside from having the Task Force prepare the Report with Center staff assistance, Task Force members were to assume some of the research responsibilities. The planning process was conducted over roughly a six month period. The following observations can be made about it:

a) Without question, there was a need for a planning process. The Drug Control Unit, since its inception has been operating essentially without articulated goals and priorities. The relationship between DCU and the rest of the Department has also been somewhat unclear. Few district detectives and patrol officers, for example, know very much about drug enforcement strategies or even whether they should be handling "drug cases" or referring them all to DCU.

b) Involving DCU personnel in the planning process through the use of

a Task Force worked reasonably well. The officers involved took their responsibilities seriously and participated fairly actively in Task Force meetings. Detectives did not seem to have probelms with candidly expressing their opinions in the presence of their supervisors or the DCU Commander. Task Force members, with some exceptions, did have problems with undertaking research assignments, however. Some of the members were also cynical about anything resulting from the Task Force's effort based upon their insights of "where the Department is" at the present time (and justifiably so as it turned out). This did not seem to hamper their level of participation, though. On reflection there were problems with the makeup of the Task Force. Since it was composed entirely of DCU personnel, attention was inevitably skewed in favor of the Unit's concerns and resource needs. Many of the issues which were addressed needed the perspective of district detectives and patrol officers and even non-departmental personnel such as prosecutors, DEA agents, and treatment program staff. Simply having project staff talk to other personnel and staff was not an adequate substitute for having broader Task Force representation.

c) The data collected for planning purposes was of very uneven quality with large gaps in the information which was needed. In total project terms, too little staff and other resources were provided to this aspect of the project. Some of this could not have been anticipated in advance. It was not clear at the outset, for example, how weak many of the "hard data" sources were in defining the nature of the problem or how difficult and expensive it would be to engage in some of the interview and observation research. We learned enough, however, to make some important policy decisions and to determine that a planning process focused on responding to serious policy problems is both feasible and desirable. Examples of underlying research studies which were completed are appended to this Report.

d) Project Staff did not have the time or the resources to engage in planning on one of the most important aspects of the drug enforcement problem -- the decision not to intervene. The drug enforcement planning project was to operate in two major steps. Initially, project staff was going to work within DCU, helping it establish enforcement priorities of its own. Efforts were then going to be made, possibly with community input, to help formulate selective enforcement guidelines and enforcement strategies for lesser drug problems which were to be left with district personnel. Because so much time was spent working with DCU on its own internal concerns and needs, it was never possible to focus on selective enforcement issues at district levels. This was unfortunate since the need for such development is a significant one. What was anticipated but was not accomplished is described in the Drug Enforcment Plan in the Appendix. Thus, the only selective enforcement issues which were confronted directly were: (1) what areas of the drug problem should be given priority by DCU; and (2) which areas should be left essentially to the districts for enforcement (or should not be given much attention at all).

2. The Plan's Findings and Recommendations

After completing its planning process, the Task Force made several findings and recommendations. They can be summarized as follows:

(a) Historically, Boston has not given high priority to enforcement of drug laws as compared to many comparable cities. This could be explained in terms of difference in emphasis or nature of the drug problem or both.

(b) Individual officers within DCU have done some impressive work. There are major deficiencies within the Unit, however. DCU has no real intelligence gathering capability, no clear objectives or priorities, insufficient numbers of personnel and equipment to engage in major case investigations, and only limited coordination with other departmental units, DEA or

other state and local law enforcement agencies.

(c) Given the limited intelligence capability and reliable data, it was difficult for the Task Force to assess accurately drug abuse and trafficking patterns in Boston. Based upon the data that was available and the expertise of Task Force members, however, it was concluded that heroin, cocaine, PCP (Phencyclidin), and certain tranquilizers (particularly Valium) were the drugs most in need of enforcement priority. In reaching this conclusion, the Task Force gave the greatest weight to the following factors: (1) relative harm to users; (2) organized criminal element's involvement in sizable distributions; and (3) crime related to or stimulated by addiction and trafficking.

(d) After reaching this determination, the Task Force proposed that the Department establish the following objectives:

-- To increase the risks entailed in illegal trafficking in large quantities of dangerous drugs in the City of Boston, particularly large quantities of heroin, cocaine, PCP, and tranquilizers such as Valium;

-- To increase the risks entailed in serious violations of the drug laws by street-level dealers, users and persons subject to regulation under Chapter 94C of the Massachusetts statutes;

-- To expand Departmental involvement in referral of drug abusers to appropriate public and private treatment programs;

-- To keep the public better informed about drug enforcement problems and needs and to involve community groups in defining and reviewing drug enforcement priorities;

-- To formulate and apply criteria for measuring success or deficiencies in drug enforcement consistent with the drug enforcement priorities plan.

Even more specifically, the Task Force proposed that DCU leave the upper echelon in drug traffic to DEA and the Federal Organized Crime Strike Force because the Department would never have the resources to tackle this level effectively. DCU, instead, should focus on middle level dealers primarily. It further suggested that trafficking in large quantities of barbituates should mostly be left to the Drug Investigation Unit (DIU) of the State Police.

(e) The implications flowing from this were that DCU needed to strengthen its intelligence gathering capability (requiring additional personnel); to acquire new equipment; to establish new training programs on major case investigations, and to formulate new relationships with DEA, the Suffolk County District Attorney's Office and DIU.

(f) Further implications were that some drug enforcement responsibilities had to be delegated back to the Districts -- primarily violations by minor street-level dealers and users. The view was expressed in the Plan that this should be handled by periodic proactive enforcement efforts and responses to citizen complaints. In delegating these duties back to the Districts, the Task Force suggested that it would be necessary to formulate guidelines on selective enforcement policies, to establish recruit and in-service training programs, and to develop policies on referrals of drug abusers to appropriate treatment programs. It was also proposed that community groups be involved in defining and reviewing drug enforcement priorities. The Task Force further proposed that project staff begin work to help develop such guidelines with community input. (Because of time constraints, this was never possible, unfortunately).

On reflection, the problems with the Plan (except for its need to rely upon limited data) relate more to what was not done rather than to what was accomplished. As noted earlier, the heavy emphasis on DCU and its internal needs prevented project staff from focusing more broadly on departmental policy needs with reference to less serious drug abuse problems that come to the attention of the patrol force. A base for work of this type has theoretically been laid. Whether the department would be willing to undertake such an effort, given many of the sensitive issues which would have to be confronted, is less clear.

3. The Commissioner's Decision with Reference to the Plan

In the December, 1977 Meeting, the Commissioner decided not to implement the Plan as it related to providing greater resources to DCU. He did not oppose the principles which motivated the Task Force. Rather he opposed "beefing up" DCU because:

(a) he was not convinced that drug abuse represented a priority problem in Boston;

(b) with the City's ongoing fiscal problems it was hard "to beef up" any program now;

(c) to the extent extra resources are available, they should be devoted not to detective units but to patrol and to improving response time.

This position was not inconsistent with general developments within the Department during the diGrazia-Jordan era. Investigative services have consistently received low priorities during the past six years. As a result, few new detectives have been made, the average age of detectives is high, and with the possible exception of one District,[3] district detective units tend to operate under authorized strength and with limited vehicles and equipment. Thus, even if the Commissioner was more convinced that DCU should be expanded, he indicated he did not know where the additional detectives would come from. And he was unwilling to make new detectives at that time.[4] To the extent project staff felt that a carefully devised Plan could be used to change this trend, they learned otherwise. The Commissioner would not have rejected adding resources to DCU, as recommended by the Plan, if they were provided by LEAA or some other source. Time was not devoted to such an effort, however.

In retrospect, project staff should have recognized more than it did the limited likelihood of the Commissioner's support for the Plan. Possibly of greater importance, project staff and the Task Force should have recognized the potential value of beginning its work on patrol-related drug enforcement

issues. Given the composition of the Task Force, it was not feasible to stress such issues at the outset.

It is unfortunate that this effort increased the cynicism (if that is possible) of the officers who worked on the Task Force. Their view at the end was that "if things don't happen even with all this work, what's the use." This is unfortunate, to say the least, and should have been factored into the decisionmaking process more than it was. For this was more than an academic research exercise. It was a process of involving line personnel in an effort to attempt to impose some rationality into what is now a largely irrational, ad hoc, and reactive form of policing. Thus, although great care was taken to emphasize that "the Plan" may not be approved, hope naturally springs from group planning. In addition, the project already had a reputation for "making things happen" within the Department.

4. Implications for the Future

Project staff come away from this experience with the view that working with a Task Force on specific problem solving issues and on planning, priority setting (particularly in selective enforcement problem areas) was an important idea. In order to test that view more fully, however, far more careful groundwork and research would have to be done than we were able to do. In addition, a stronger commitment from the Chief Executive would have to be obtained for the effort to help ensure that it would be more than an idle exercise. As noted earlier, it is not at all clear that the Boston Police Department is presently prepared to engage in guidelines development in sensitive issues such as selective enforcement of the drug laws, or if they are, whether they would be willing to allow line officers and community groups to participate in such an effort. The Task Force supported this notion, and these issues were not the ones that caused the Commissioner problems

with the Plan.

New efforts should be made with this Department and others to move "policymaking" into these areas and to test its value here as opposed to its worth in criminal procedure.[5]

NOTES

1. This required that the plan initially be approved by the Superintendent in charge of the Department's centralized investigative units (drugs, vice, homicide, robbery, and organized crime); and the Superintendent in charge of the Bureau of Investigative Services before reaching the Commissioner. The Superintendent in charge of the Bureau of Field Operations also needed to be involved to the extent District patrol and detective units were affected.

2. Those attending the meeting were the Commissioner, Superintendents from the Bureau of Field Services and Investigative Services, the Commander of DCU, an Administrative Assistant to the Commissioner, and the Project Director.

3. The exception is District 1, which encompasses downtown Boston. After the release of a report suggesting possible corruption in this District, efforts were made to improve the quality of both the Patrol and Detective Units.

4. There was another possible consideration as well. The Department is under pressure to reduce "court time" -- time and a half payments for court appearances. The unit which proportionately has more court time than any other is DCU. Thus, beefing up DCU may have seemed inconsistent with these pressures. In fact, if DCU would be used primarily for intelligence gathering and bigger case development instead of making small cases, the result might well be a reduction in court time.

5. The Center will soon be working with the Department on a matter which may provide some new insights -- a planning process on police handling of juvenile problems with an internal Task Force and input from external groups. This pending undertaking should benefit greatly from our experience with the DCU planning component of this project.

REFERENCES

Arizona State University College of Law and Police Foundation
1974 Model Rules for Law Enforcement. Washington, D.C: Police Foundation.

CHAPTER VIII

CONCLUSIONS ON THE PROSPECTS FOR POLICYMAKING IN THE BOSTON POLICE DEPARTMENT

Although many courts and commentators assume that police rulemaking has a significant positive impact in structuring discretion, this assumption has not been tested in police agencies. Broadly stated, the purpose of this project was to study police needs in selected areas of criminal investigation and selective enforcement, to draft and implement policies in response to those needs, and to assess the impact of both the rulemaking process and the substance of the policies. The results of the project are intended to be useful to police agencies across the country, as well as to the Boston Police Department.

The previous chapters have described in some detail the organizational features of the Boston Police Department and changes in it from the early 1960's to the present. We also detailed the processes developed to involve sworn personnel in identifying criminal investigative policy needs and to formulate policies reflecting the practical concerns of personnel of various ranks within the agency. Chapter VI discussed some of the problems associated with using rules to govern discretionary field activity and efforts to develop positive incentives by changing civil service requirements.[1] Chapter VII described efforts to develop policies on the selective enforcement of drug laws.

Given the organizational constraints we encountered, and the limitations on the Department's ability to alter discretionary field activity by promulgation of these guidelines or any other articulated policies,

---

1. Notes and references for this chapter begin on page 170.

not all project objectives were accomplished. Nevertheless, the expressed interest of officers who perceive the potential relevance of the guidelines to their work is encouraging. Contact with the Boston Police Department suggests that most officers have a strong sense of responsibility and want to do their job in accordance with the law and with departmental policies. As a result of this Project, the Boston Police Department has for the first time provided its sworn personnel with clearly articulated policies on criminal investigation.

To evaluate the long-term possibilities for rulemaking in the BPD, however, requires an objective assessment of the features of and trends in both police and city administrations in Boston. This chapter draws on the information presented in the preceding chapters to formulate some conclusions on the policymaking process at the present time, and its prospects for the future.

Conclusions

We doubt that policymaking of the type to which this Project gave priority --criminal investigative procedures -- is as important as commentators have suggested. Emphasis instead should probably be given to guidelines on police problemsolving and selective enforcement.

For some time, many commentators have suggested that administrative rulemaking by police could structure the discretion of police officers in ways that the exclusionary rule, court decisions, court rules, and statutes cannot. Based upon our study, as noted below, it is not at all clear that this is so. It appears that policies and guidelines can serve as instructive materials to help interested officers (1) learn what is considered to be "good or professional police work"; (2) understand the dictates of confusing court decisions, statutes or court rules; and (3) learn what is or is not

permissible in areas in which the courts have not yet spoken. In this way guidelines or policies might have broader impact, if courts and prosecutors relied more heavily upon them in making decisions and if the police departments could find additional incentives to encourage officers to follow guidelines such as the ones we formulated.

Providing affirmative guidance to officers is not an unimportant task. We perceived great value in informing interested officers on what they can (as opposed to what they cannot) do during criminal investigation. From what we have observed during our field work and from our discussions with police personnel, however, it appears that guidelines structured according to narrow legal concepts such as "stop and frisk" and "warrantless searches" have limited utility because officers do not tend to think in these terms. It would apparently be more useful to develop guidelines to deal with typical and difficult police problems, and to relate legal concepts to these guidelines. In addition, guidelines on selective enforcement (under what circumstances and how certain laws should be enforced) appear to be needed in areas such as vice and drug enforcement.

While the Boston Police Department has been receptive to the policies formulated by the Project, it is unlikely to continue to develop such policies on its own, both because of resource limitations, and because there are no political demands to engage in policymaking and no political costs in avoiding it. This is particularly true in such a sensitive area as selective enforcement.

This is not attributable to a lack of interest or support by Task Force members or others in the Department. Rather, it stems first of all from the Department's lack of needed resources to engage in this type of

policymaking.

While this project had the open support of the police commissioner and his advisors in its early stages, the Department clearly lacked the expertise to develop these legal guidelines on its own. The Department's legal advisor, busy with other matters, particularly labor problems, had virtually no time to spend with the Task Force.

An urban department like Boston does not have the capability to engage on its own in ongoing and effective policymaking in significant areas of law enforcement that require extensive research and planning. Rather it has built-in constraints that inhibit institutionalization even of projects (such as this one) that its administrators and many of its personnel might define as successful. In such a context it is much easier for the police, as individuals and as an organization, to operate in more traditional ways, concerned merely with the narrower kinds of police productivity.

Further, and maybe of greater importance, the development of formalized policies geared to guiding the discretion of personnel at the street level, which would undoubtedly enhance the philosophy of policing in the Department, does not introduce immediate or even long-term political benefits to departmental leadership. In some instances, such as the formulation of policies on selective enforcement, policymaking may create potential risks and conflicts with both legislative bodies and various segments of the public. The concept of police "professionalism" has several components, some stressing organizational features, other stressing personnel features, still others stressing a "philosophy" of police work. City and police administrators, particularly in tight fiscal circumstances, tend to pursue only those components of police professionalism that appear to be politically acceptable (i.e., those that have implications for fiscal savings), while

ignoring other more controversial components of the professional model. Reform proposals that appear to increase costs, decrease availability of officers, or to be politically "unnecessary" are likely to be ignored.[2]

One way to introduce policymaking is to create/draw on political costs and benefits to aid in the development of such policies, by the appeal either of political actors (e.g., the Mayor or City Council) or of community groups. There are no groups or organizations in Boston who generally make such an appeal. This is particularly true for selective enforcement policies. Thus, a police commissioner must push developments in this area even though generally not a matter of personal conviction, and be willing to assume the risks of doing so. In a later section we will show that in some communities police executives have pursued this path.[3]

The absence of mechanisms for determining compliance with rules and regulations increases the difficulty of monitoring the effectiveness of any policy, guideline or rule developed.

The Boston Police Department's system of informal control provides few mechanisms for determining or reviewing effectively and efficiently the street activity of officers.[4] Consequently, except in cases in which violations are particularly serious, supervising officers have difficulty knowing to what degree policies are actually being followed. While the inclusion of guidelines material on promotional examinations will provide an indication of patrol officer familiarity with these policies, it cannot tell supervisors whether officers actually apply them; and while

institutionalization of any policymaking process itself might improve organizational operations, it is clear that accurate knowledge of the application of these policies would have to await the development of more effective systems of supervision.

The limited success of policymaking in the Boston Police Department was heavily dependent on police commissioners who supported and enthusiastically pursued the development of departmental policies, and on the presence of an external group that provided the legal expertise and direction that the Task Force, and the Boston Police Department generally, lack.

The initiation and continuation of this Project in the Boston Police Department depended on Commissioners di Grazia and Jordan both of whom supported its premises. A commissioner opposed or indifferent to policymaking could have stopped this Project at any point. In addition, the attitude of these two commissioners conveyed to the Task Force, as well as the patrol force generally, the importance that the policies would have in departmental operations. It is clear, however, that the participation of the Boston University Center for Criminal Justice staff was critical in providing information, focusing discussions, and giving direction to the efforts of the two task forces that operated in the department.

The internal conflicts that beset a police department must be understood to facilitate policymaking in any local jurisdiction.

The structural and personnel changes former Commissioner di Grazia introduced began to break up the power exerted by the police bureaucracy.

of superior officers. Some of these reform attempts included a push for increased centralization and accountability, and a shift in the emphasis of promotional exams from legal to managerial knowledge.

Such changes were particularly hard on some of the older, middle-level officers who had been trained in a very different organizational environment and could not readily adapt to some of the reform efforts of di Grazia (e.g., increased accountability and stress on managerial ability). Several of the features of the present Project, such as the use of advisory guidelines rather than mandatory rules and the proposal to return legal questions to promotional exams, found ready acceptance among the middle-level supervisors who comprised the Task Force. Conflicts such as these must be understood by anyone attempting to engage in applied research and development and to institute significant changes within a police agency.

Current patrol priorities of the Boston Police Department Command suggest the criminal investigative guidelines may well be under-utilized

The current administration has continued the policy of the preceding one of de-emphasizing the investigative function in favor of "putting more cars on the street." This has led to a computer-aided dispatch system, and to the use of response time and zero-car availability as measures of productivity. Because an officer may be questioned about a tardy response time, he becomes more concerned with meeting this expectation and less concerned about the substance and quality of his citizen encounter. The low priority given to careful investigations means that a patrol officer has little motivation for learning and using the criminal investigative guidelines. Overtime for court appearances is paid and the nature and extent of this reward is unaffected by the quality of the case. Further, the process of plea negotiation and limited scrutiny of police activities within most lower criminal courts suggests that there is no need for officers to change the

typical ways in which they now "handle things."

As noted earlier, there are few incentives for police personnel to learn about and apply the Projects' guidelines on criminal investigation. The best one devised was to incorporate the materials into promotional and detective examinations. In the long run, extensive use of the guidelines as part of the recruit and in-service training process may hold some promise of encouraging their use.

There are few positive incentives within any police agency for doing "good police work." The fiscal constraints of the Department and the City limit the use of monetary rewards. At the present time, promotions are the usual way to reward officers for becoming familiar with the guidelines. But there are few opportunities for promotion. As a consequence, this incentive does not reach all officers, and familiarity with the guidelines may develop slowly unless other incentives can be developed.

On the other hand, limited promotional opportunities may encourage those officers who do compete for the few available positions to learn the material quite thoroughly.

Current Department priorities also undercut opportunities for training. In-service training, by which many veteran officers could learn to use the guidelines, is virtually unavailable because on-duty officers cannot be spared and paying overtime for such training would be an unacceptable expense. It can be argued that devoting substantial resources to the training of experienced personnel may not be worth the cost. Some say that veteran officers, experienced and set in their ways, are likely to resist the alternative criminal investigative methods that the Project has presented. Sweeney (1977:102), commenting on change in police agencies, has noted,

> a significant effort to change the image of an organization may cause considerable discontent, particularly among the oldest and most loyal members.

On the other hand, not providing in-service training on new criminal investigative guidelines to existing personnel suggests that the Department is not really committed to their use.

In any event, within five years an overwhelming majority of Boston's police force will become eligible for retirement. The large influx of new personnel expected soon as a result of these retirements could provide a unique opportunity for both recruit and promotional training on guideline material. If the Boston Police Department adequately prepares for this change, it could implement these policies in a much more systematic way in the coming years than is possible now.

Given the nature of community politics in Boston, community involvement to develop policies is possible if policymaking is designed for the separate communities that comprise the city.

Boston consists of a number of geographically and ethnically distinct neighborhoods. The traditional organization and watchman-style features of the BPD have been extremely useful in establishing good community relations, particularly in a city marked by diverse and often conflicting groups. According to Reppetto (1970:117),

> The real task of the police was to maintain order and keep a balance between the diverse groups without stirring up additional antagonisms in the process...

A centralized policymaking process that sought to involve the various communities might, in fact, create conflicts that the Boston style of policing has for many years avoided.[5] The Department has made at least one effort to utilize such traditional features to their best advantage: a Team-Policing effort in one particular district. Here officers work in small groups with community associations and local juveniles to resolve community policing problems. This effort indicates that community involvement in developing policing policies is possible in Boston when conducted

informally and in keeping the demands and characteristics of specific neighborhoods.

The rank and file within the Boston Police Department should continue to be involved in any future policymaking efforts. If possible, this should even include the direct involvement or support of the Boston Police Patrolmen's Association.

During the existence of our Project, we did not encounter much opposition from the Boston Police Patrolmen's Association; this was a significant factor in the support for our efforts throughout the Department.

Given the strong influence of the BPPA in the City Council and in the state legislature, this Association could cause serious problems for any attempt at police policymaking that raised issues with which it fundamentally disagreed (e.g., police productivity, work conditions or overtime pay).

The BPPA has been very effective in blocking adoption of legislative proposals by the Department or City administrators that it opposed. The Association has not only prevented the enactment of specific programs (e.g., the model cities proposal) and budget requests; it has also obtained statutory changes that curtailed specific powers of the police commissioner (e.g., to order name plates for officers). An attempt to use community pressure to promote police policymaking, for example, might well fail in Boston unless it was supported, or at least not opposed, by the BPPA.

Aside from the influence of the BPPA, there are important values in involving the rank and file in policymaking. Since patrol officers must implement policies they should be involved in formulating them. If such involvement requires participation by the union, ways should be developed to allow this to occur without many of the troublesome aspects of management-union conflicts which have erupted in the past.

From management's perspective, the inclusion of the BPPA in policy-making entails risks. For example, the type of policies that the BPPA would accept might weaken managerial prerogatives and render more difficult the task of holding officers accountable for their actions. If administrators support policymaking as part of management rights, union opposition would likely increase; the union would see such policies as part of the same rules and regulations traditionally used in the police hierarchy. Given the history of conflict between the union and police administrators in Boston, it may be impossible to implement a form of policymaking acceptable to both sides. In spite of all these problems, if policymaking is to move into more important directions in the future, involving community groups as well as the Department, the issue of participation at various levels within the Department must be confronted.

NOTES

1. As was noted, a major reason for this was the belief that reliance on positive incentives rather than negative sanctions would prove, in the long run, to be a more effective and desirable means of encouraging compliance.

2. The Kansas City Police Department was able to conduct its Preventative Patrol Experiment, for example, because of the availability of outside funds that the Department could utilize with much flexibility, and the "sudden" availability of 300 new patrol officers following passage of a bond issue.

3. We will in the future, however, be exploring the potential for guidelines or policy development as it relates to "creative" police problem solving. In October 1978, the Center began working in Boston and one other city on police handling of juvenile problems. The current commissioner of the Boston Police Department, Joseph Jordan, has expressed support for the notion of proactive problem solving and the use of guidelines or policies as one aspect of such an effort.

4. This is probably true of most big-city police departments.

   It is important to stress again that in the traditional watchman style of Boston policing, such features should not be automatically judged as "backward" or "harmful." Rather, the Department's goals are different from but not necessarily superior or inferior to those of other departments. According to Reppetto (1970:117-119),

   > [Boston's] failures in crime control are not the fault of individual's but of a system that traditionally stressed other imperatives and therefore was not designed to facilitate law enforcement.... The Boston police are a multifaceted community service agency, one of whose tasks is crime control but whose primary mission is the maintenance of order in accordance with with community consensus.

REFERENCES

Reppetto, Thomas Anthony
1970 Changing the System: Models of Municipal Police Organization. Unpublished dissertation. Cambridge: Harvard University.

Sweeney, Thomas
1977 "Police Organization." Pp. 89-120 in B.L. Garmire (ed.), Local Government Police Management. Washington, D.C.: International City Management Association.

PART IV

THE EVALUATION OF CRIMINAL INVESTIGATIVE GUIDELINES

CHAPTER IX

THE EVALUATION OF CRIMINAL INVESTIGATIVE GUIDELINES

Introduction

The purpose of this project was not simply the development of policies; there was never any doubt that the Center for Criminal Justice -- or for that matter any other competent legal research organization -- could write policies for a police department. What has been and continues to be in doubt is whether any policy, however competently written, will change the conduct of police officers on the streets. One principal purpose of this project was to measure changes in police perceptions and practices as a result of new policy. This section reports on the effort to evaluate the impact of these policies.

Research and Evaluation in the Boston Context

One of the persistent themes of a decade of social programs has been the importance of evaluation. In a hundred different federally supported programs, from housing to education to drug control, many organizations have attempted to measure the effects of ameliorative efforts. But it is not easy (see, e.g., Glaser, 1973). The validity of research on policy changes implemented by public agencies is always threatened by a compromise between well-known scientific principles and unacknowledged practical considerations. This is well illustrated by research conducted in a police agency.

The purposes of policing are complex, conflicting, and obscure. With the exception of such simple objectives as more arrests or lower rates of reported crimes, people cannot agree about what is important or what constitutes good performance. While the researcher would like to analyze

"hard" data, randomly sample subjects from well-defined populations, establish equivalent control and experimental groups by randomization, and pre-test/post-test subjects at will, this is seldom possible. Rotating shifts, departmental policies, lack of appropriate records, and the recognition that sound research may impose hardships on the people who are the objects of study, all limit what can be done. As one observer notes (Kelling et al., 1974: iii),

> maintaining experimental conditions cannot be permitted to interfere with police responsibility for life and property... [Furthermore], evaluation of an experiment by outside investigators can be threatening to police administrators.... Police personnel are not oriented to research. Too often, police supervisors and officers are so busy with complex, everchanging, day-to-day problems that they do not devote time to aid in experimental efforts.

Furthermore, the phenomena that were to be observed -- stops, eye witness identifications and search warrants -- are infrequently occurring events and do not lend themselves to any but a massive research effort. Even under optimal conditions, collecting data would have consumed a great deal of time and would have been very expensive. The nature of the Boston policing style and the dwindling number of detectives added to the difficulties.[1]

Organizational featured shares with other police departments, as well as specific historical events, have contributed to a skepticism towards research in the Boston Police Department. As we have noted elsewhere, the Department can be described as "traditional." Police services are decentralized in closed, individual neighborhoods, reinforced by a parallel district court system, each neighborhood having its own court, with a judge and clerk appointed for life terms. The clerk can issue warrants for arrest, search

---

1. Notes and references for this chapter begin on page 180.

and seizure, and the court has jurisdiction over all crimes carrying less than a five-year prison sentence.

> The two judicial figures are usually local residents who, to say the least, are not totally unacquainted with politics. As a result, they tend to reflect the community norms... [and] the great bulk of ordinary police business is conducted over a period of years in the same court and with the same individuals. (Repetto, 1970:114-115).

Formerly, the police prosecuted their own cases in district courts without any help from the district attorney.

Although the Boston Police Department has moved in the direction of approximating a more professional department since these characteristics were attributed to it, undeniably certain features have not changed. For example, the Department's capacity to conduct research about itself -- above and beyond analyzing statistical information used to evaluate the performance of officers and required by the Federal Bureau of Investigation -- is limited. Social science research is not utilized as a way of routinely solving police problems. Like in many other police departments, the Research and Planning Division does little planning or research, while civilian advisors with specialized skills, especially those with research skills, have not been well received in the Department.

These problems are reflected in the nature of the Department's Records. At the outset of this project Center staff contemplated heavy reliance on such Department data as incident reports and booking sheets. But the staff found that those records did not contain adequate information about the nature, scope and outcome of investigative procedures. Unless significant changes were made in the reporting system of the Department, such data would not be available to the project. And, even if the reporting system were changed -- a very difficult change to make -- the data it produced would be limited to how often things happened, not the way in which they

happened. The Center considered designing a supplemental form on which officers would be asked to record in great detail their decisions and behavior after relevant incidents, but this idea was rejected for two reasons: there was little reason to believe that officers would have enough stake in the project to accept this extra burden, and the burden would have been considerable, as the form would have required a great deal of work.

It should be recalled that the Boston Police Department did participate as one of three cities in the study conducted by the President's Commission (1967) ten years ago, permitting extensive interviews and field observations. Although the data were aggregated across cities and none of the three cities was identified, some officers felt that the published results of the field observations were not complimentary to the Department.[2] Though the report may have offered a balanced view of police conduct, this seems irrelevant when one considers how data were collected. One of the researchers later reported (Black, 1970:736),

> The data were recorded in incident booklets, forms structurally similar to interview schedules. One booklet was used for each incident that the police were requested to handle or that they themselves noticed while on patrol. These booklets were not filled out in the presence of policemen. In fact, the officers were told that our research was not concerned with police behavior but with citizen behavior towards the police and the kinds of problems citizens make for the police. Thus, the study partially utilized systematic deception.

This practice of deception, together with the findings that could be construed as misconduct, left a bitter taste for many of the older members of the Boston Department that was still apparent to project staff ten years after the President's Commission conducted its research. This experience surely limited the possibility of research in Boston, unless that research could be shown to yield tangible benefits to the Department.[3] More concretely, extensive ride alongs and field observations in which observers systematically

recorded events related to criminal investigative guidelines did not seem like a real possibility. Furthermore, at the project's outset, the criminal investigative Task Force, unwilling to arouse apprehension among line officers, agreed by acclamation that Department disciplinary records should not be reviewed by the police project unless and until they proved to be utterly essential to the project's success.

Description of the Evaluation

The logic of social science research forces one to look for measurable consequences that can clarify policy and the policymaking process in a way beneficial to policymakers even if that research is flawed. The consequences of the criminal investigative policies are not self-evident. Internal agency development and adoption of these new policies does not guarantee that they will prove effective in accomplishing their intended goals. This is true no matter how desirable the policy change seems to the public or even to those who work in the Boston Police Department.

Without some effort to evaluate the policy's impact and the procedures designed to implement the policy change, the Boston Police Department (and the public) will not know whether (or why) the policy is succeeding or failing. A public agency is obligated to know and report this. The benefits of knowing precisely the impact of the criminal investigative guidelines had to be balanced against the cost of obtaining that information.[4] Nevertheless, the research that was possible, while flawed, is still valuable and necessary.

The chapters that follow define the specific tasks that were undertaken and completed. They are organized by guideline areas selected for evaluation: search warrants, stop and frisk, and eyewitness identification. The chapters indicate the guideline areas selected for evaluation, the officers or

units the Department involved in the evaluation, the evaluation objectives and strategies for each of the selected guidelines, and the findings. Conclusions on the impact of criminal investigative guidelines on the conduct of police officers are presented in Chapter XV.

These evaluation studies draw on two sources of information: statistical information gathered from the district courts and the Boston Police Department, and police officer's responses to questionnaires based on simulated, videotaped situations. The statistical data form the basis of the studies of search warrants and of the effects of training intended to increase the use of search warrants by detectives. Inferences about stops and frisks and the execution of search warrants are drawn primarily from videotape questionnaire data.

To conduct these latter two studies, guidelines had to be written that synthesized relevant decisional and statutory law, as well as what the police actually do. Guideline content presumably reflected this synthesis. To be useful, the content had to be presented in a manner that was comprehensive yet concise. Before guidelines were ready for use in the field, those whose task it was to train officers in their content and application had to have some assurance that the materials would be understood. And finally, after the guidelines were written, learned, and being applied in the field, inferences about the extent to which they did structure discretion had to be drawn. Therefore, the evaluation design attempted to do the following:

1. test the usefulness of training in conveying to detective and patrol officers the content and applicability of selected guidelines;
2. measure changes in behavior attributable to the adoption of selected guidelines.

One objective of this project was to determine whether police discretion can be effectively structured through administrative policymaking. To understand the relative effectiveness of this approach one must have some standard against which it can be compared. That is why a study of the exclusionary rule, the conventional means of regulating police conduct, is included. It is the yardstick against which the impact of administrative policymaking (guidelines and training) can be measured.

NOTES

1. For example, a reanalysis of the President's Commission Report reveals that officers of the Boston Police Department, ten years ago, were observed to patrol less aggressively than officers in the other police departments studies (Washington, D.C. and Chicago) See Frederick, (1977:265).

2. Among the findings of the study of Boston, Washington, and Chicago police officers that were likely to raise the ire of officers were these:

> "Over half of the persons of both races who appeared drunk in on view situations were treated with some form of beligerence by the officers."
>
> "In the predominantly negro precincts, over three quarters of the white policemen expressed prejudiced or highly prejudiced sentiments towards members of the negro race. Only one percent expressed positive attitudes towards negroes."

(President's Commission, 1967:40, 136).

3. This seems to be a fair appraisal, even though this project was conducted under a different police administration from the one that cooperated with the President's Commission. Looking back, it may be argued that the willingness of the Boston Police Department to go along with a limited research effort in 1977 is to be attributed more to the perception that legal advice would be helpful than to a belief that the research/evaluation component made sense. The affiliation of all Center staff members with Boston University Law School gave the non-lawyers on the staff instant identification as lawyers; the police were sometimes unwilling to believe that they were anything else.

4. It can also be argued that the requirements of evaluation as opposed to the requirements of pure research are not identical. To evaluate the effectiveness of a program imposes additional costs in time and effort both on the researchers and those being evaluated. While the <u>methods of research</u> in pure and applied settings may be identical, it is these practical considerations in the latter setting that set one research activity off from the other.

REFERENCES

Black, Donald J.
1970 "Production of Crime Rates." American Sociological Review 35:733-48.

Frederick, Robert James
1977 The Impact of Organizational, Individual, and Situational Factors on Police Behavior. Unpublished dissertation. Ann Arbor: University of Michigan.

Glaser, Daniel
1973 Routinizing Evaluation: Getting Feedback on the Effectiveness of Crime and Delinquency Programs. Washington, D. C.: U.S. Government Printing Office.

Kelling, George L., Tony Pate, Duane Dieckman and Charles E. Brown
1974 The Kansas City Preventative Patrol Experiment: A Summary Report. Washington, D.C.: Police Foundation.

President's Commission on Law Enforcement and Administration of Justice
1967 Studies in Crime and Law Enforcement In Major Metropolitan Areas, Field Survey III, Volume 2. Washington, D.C.: U.S. Government Printing Office.

Reppetto, Thomas Anthony
1970 Changing the System: Models of Municipal Police Organization. Unpublished dissertation. Cambridge: Harvard University.

CHAPTER X

THE USE OF SEARCH WARRANTS BY THE BOSTON POLICE

Introduction

One of the purposes of the evaluation was to measure the increase in the use of search warrants by detectives who underwent training in the districts where warrants have not been extensively used. Another purpose was to test the impact of the criminal investigative guidelines that detail proper procedures to be used when search warrants are executed. These guidelines concern announcing one's authority and purpose, the execution of no-knock entry, and the manner in which searches of premises are conducted. Both evaluation studies require an understanding of how search warrants relate to the investigation of crime. This chapter describes how search warrants have been used by the Boston police and by police in other cities. Chatpers XI and XII describe the two search warrant evaluations and report the results of these studies.

The Preference for Search Warrants

In colonial America, the use of writs of assistance and raids on warehouses and dwellings by the British were established practices. A very early statement from an English case indicates an interest in requiring a knock and announcement by officers prior to entry.

> [T]he law without a default in the owner abhors the destruction of breaking of any house by which great damage and inconvenience might ensue to the party, when no default is in him; for perhaps he did not know of the process, of which, if he had noticed, it is to be presumed that he would obey it . . ..there must be notification, demand and refusal before the parties may break in . . . (Semayne's Case 77 Eng. Rep. 194 (K.B. 1603)).

In practice, this has meant that persons executing a search warrant must knock and announce their authority and purpose, and allow a reasonable time for the occupants to allow their entry. Then, if entry must be gained by force, only necessary force may be used, to protect as much as possible the privacy of the dwelling. The Fourth Amendment adopted this belief in "the right of the people to be secure in their persons, houses, papers and effects . . .." The specter of government agents free to enter houses at will and without first announcing their purpose was an evil against which the Fourth Amendement protected. [1]

The criminal investigative guidelines adopt the law's frequently stated preference for search warrants by repeating that preference and by providing guidance on when and how to obtain warrants.

Warrants presumably are preferable to warrantless searches for several reasons. First, with warrants police intrusions into private areas are not performed at the discretion of a sole officer engaged in the lone enterprise of ferreting out crime, but are first subjected to scrutiny by an official representing a broader judicial view, who is expected to balance the right of individual privacy with the need for law enforcement. Even though a conscientious officer might attempt to balance these interests, because of his institutional role his judgment will often be biased in favor of a search. Second, warrant searches should better withstand challenges by motions to suppress than do warrantless searches.[2] Finally, search warrants are arguably preferable because the greater amount of investigation required to obtain a search warrant implies that the object of the search

---

1. Notes and references for this chapter begin on page 204.

is worth the extra effort because there is either a more serious offense or a more dangerous offender. Any mechanism that appears to channel attention toward serious crime should be encouraged.

Literature on Search Warrants

Very little has been written about how the police use search warrants or how frequently they obtain them. Two of a series of studies sponsored by the American Bar Foundation and published in the mid-sixties, dealt with these questions. One, Law Enforcement in the Metropolis, reported on the workings of the criminal justice system in Detroit in 1957. About search warrants the author (McIntyre, 1967:33) wrote,

> The search warrant is used only when the object of the search is a building -- usually a dwelling. Because it is the most formalized means of conducting a search, one would expect frequent resort to the search warrant as a means of searching premises; yet the contrary is true . . . Observations clearly show that premises are frequently searched by other methods, both lawful and unlawful.

The companion volume broader in scope than this study, came to the same conclusion after considering police practices in several cities (Tiffany, et al., 1967:101):

> Police policy and practice do not reflect the theoretical preference for the search warrant which courts express . . . three generalizations can be made: First, search warrants are used only where there is an overriding desire by police to conduct a search which courts will hold to be lawful. Second, the dominant use of search warrants is in detection and investigation of vice crimes. Thus in Detroit the greatest use of warrants is in gambling cases, and in Wichita and Milwaukee warrants are used in liquor, gambling and narcotics cases. Third, even in these situations search warrants are used only where premises are to be searched and usually then when the desire to search several rooms or floors, or several buildings simultaneously. A search of an individual or his immediate possessions is commonly accomplished by making an arrest and searching as an incident to that arrest, even when the police action is planned well in advance.

Extensive comparative data on the use of search warrants by big city police departments are not available.[3] The fragmentary evidence that does exist, much of it out of date, suggests that the Boston Police obtained more search warrants before and after Mapp v. Ohio (1960) than other big city police departments. Data collected by Ban (1973) on Boston and Cincinnati and by McIntyre (1967) on Detroit, show that between 1958 and 1963 Boston police used warrants much more frequently than officers in either of the other cities:

Year	Boston	Cincinnati	Detroit
1958	176	3	36
1959	186	0	24
1960	267	7	44
1961	668	28	49
1963	940	100	68

These numbers provide impressive evidence of the zeal of the Boston Police in obtaining warrants, especially when it is realized that during this period the Detroit Police Department employed about twice as many officers as Boston. And, while Boston had approximately twice as many officers as Cincinnati in the early 1960's, the Boston Police obtained nine times as many warrants as the Cincinnati department in 1963. The vice squad obtained most of the warrants in Boston.[4]

Data Sources

Information on search warrants obtained by the Boston Police Department is drawn primarily from two sources: data collected annually by the Massachusetts Department of Corrections from the District Courts, and data collected by Center staff directly from the three district courts in Suffolk County that have issued the greatest number of search warrants in recent years.

CONTINUED

2 OF 9

Statistical information collected by the Department of Corrections (1958-1976) reports the number of search warrants issued and served in all sections of the City of Boston by type of item sought.[5] Center staff collected more detailed information on approximately 500 search warrants and affidavits issued in 1976 in the Boston Municipal Court, Roxbury District Court and Dorchester District Court.[6] These courts serve police working in Downtown Boston, the South End, Dorchester, Roxbury and Mattapan. Data on the following variables were coded from these warrants:

-- rank unit of affiant officer
-- date of issuance, execution and return
-- item sought and seized
-- reference to an informant
-- number of persons arrested

Trends in the Use of Warrants

Data show that the use of search warrants as measured by the total number of warrants obtained by the Boston Police Department began to increase in 1960 only to decline after 1963, the year in which the largest number of search warrants (940) was obtained.[7] The totals rose again after 1967. (See Figure X-1 and Table X-1). This change might be linked to changes in the number of officers, especially detectives employed by the Boston Police Department, and to changes in their workload as measured by arrests. Assuming that each detective will maintain a constant output (or possibly increase it in response to an increase in the volume of reported but unsolved crimes) and that serving warrants is integral to the detective function, it is reasonable to expect that, other things being equal, the

FIGURE X-1

NUMBER OF SEARCH WARRANTS
AND NUMBER OF DETECTIVES: 1958-1976

TABLE X-1

NUMBER OF SEARCH WARRANTS, POLICE OFFICERS IN BOSTON: 1958-1976

Year	Total Number of Search Warrants	Number of Sworn Officers	
		Detectives	Patrol
1958	176	185	2279
1959	186	194	2265
1960	267	190	2203
1961	688	194	2196
1962	834	191	2059
1963	940	193	1991
1964	574	185	2010
1965	534	176	1946
1966	589	166	1969
1967	469	202	1916
1968	585	202	2015
1969	697	204	1949
1970	885	292	2091
1971	752	289	2033
1972	822	281	1987
1973	608	278	1900
1974	653	263	1881
1975	699	242	1750
1976	765	251	1640

Source: Annual Report, Boston Police, 1958-1976; Massachusetts Department of Corrections, Annual Reports 1955-1973.

number of search warrants sought will vary directly with the number of detectives and the opportunities (as measured by robbery, gambling, and narcotics arrests), to execute search warrants.

The number of patrol officers declined from 2300 to 2000 in 1962 and then held steady at that mark until 1971, when the size of the force began to decline again, reaching the figure of less than 1700 in 1976. The trend in the number of detectives has not paralleled the decline in the number of patrol officers. There still are currently more detectives in the Department than there were twenty years ago, in absolute and in relative terms. For example, between 1958 and 1976, the ratio of patrol officers to detectives was cut in half (12:1 vs. 7:1).[8] During this same period, two of the three workload measures increased (robbery and narcotics arrests) while the third (gambling arrests) shows no trend.[9]

There appears to be a correlation between changes in the number of detectives and the number of warrants issued in the Department between 1968 and 1974 (Figure X-1). The Drug Control Unit, with a complement of 42 detectives, was formed in 1970, and this specialized detective unit has been responsible for obtaining a disproportionately high percentage of all search warrants issued after 1970. Between 1974 and 1976 Boston was embroiled in a busing controversy, arising out of efforts to desegregate the school system, which placed significant manpower demands on the Boston Police Department. The resultant shuffling of personnel might mean that less attention was paid to the drug problem, as reflected in a drop in drug arrests and in search warrants obtained after 1972.

These figures in Table X-1 show what has already been suggested; namely, that at any one time the number of warrants obtained per detective

is slight. For example, in 1976, on the average, about three warrants per detective were obtained. Yet even this is misleading, because a small number of detectives accounts for most of the warrants obtained.

Types of Warrants

The kinds of cases for which search warrants have been used in the last decade are shown in Table X-2. There has been a dramatic increase in the use of warrants to investigate drug offenses. In 1965, only 16 percent of all warrants were used for drugs, while in 1970 drug warrants accounted for 67 percent of all criminal warrants. In 1976, almost half (47 percent) of the warrants sought were for drugs. As the number of drug warrants increased, the percentage of gaming warrants -- and perhaps alcohol warrants, which are included in the "other" category -- declined. While in the past search warrants were used almost exclusively against crimes of vice, they have now found their place in the enforcement of narcotic drug laws.

Aside from indicating the role of warrants in drug investigations, this information also confirms the continuing importance of search warrants in all vice cases (alcohol, pornography, prostitution). A detailed breakdown of search warrants issued in the three largest district courts, which accounted for 65 percent of all search warrants issued in the city's district courts in 1976, shows that 83 percent of all warrants were to investigate suspected violations of the narcotic drug laws or vice laws (Table X-3).[10]

TABLE X-2

NUMBER OF SEARCH WARRANTS ISSUED BY DISTRICT COURTS IN THE CITY OF BOSTON BY ITEM SOUGHT: 1965-1976

Item Sought	1965		1970		1976	
	Number	Percent	Number	Percent	Number	Percent
Stolen property	88	16.5	117	13.2	79	10.3
Gaming	170	31.8	91	10.3	142	18.6
Drugs	85	15.9	591	66.8	362	47.3
Weapons	47	8.8	42	4.7	17	2.2
Other	144	27.0	44	5.0	165	21.6
Total	534	100.0	885	100.0	765	100.0

Note: "Other" category includes warrants to search for alcohol and pornography.

Source: Massachusetts Department of Corrections and District Court Search Warrant Files, 1976.

TABLE X-3

NUMBER OF SEARCH WARRANTS ISSUED IN
THREE DISTRICT COURTS BY ITEM SOUGHT: 1976

Item Sought	Number	Percent
Drugs	241	48.1
Gambling	81	16.2
Alcohol	47	9.4
Stolen Property	46	9.2
Pornography	41	8.2
Weapons	20	3.9
Prostitution	4	0.8
Other	21	4.2
Total	501	100.0

Source: District Court Search Warrant Files, 1976

Users of Warrants

The largest "consumer" of warrants is the Drug Control Unit (42 percent), followed first by detectives assigned to the districts (30 percent) and then by detectives in the Vice Control Unit (15 percent). (See Table X-4.) Patrol officers accounted for almost 10 percent of all search warrants issued. This last figure is only an approximation; it was difficult to determine an individual officer's rank or unit on the basis of the information provided in the warrant or of personnel information provided by the Department.

A more detailed look at warrants (Table X-5) by officer's rank or unit shows the following:

-- While the Drug Control Unit confined itself almost exclusively to drugs, patrol officers and district detectives also obtained some search warrants to enforce narcotic drug laws.

-- District detectives and patrol officers obtained warrants for a variety of purposes, including crimes of vice. Detectives were active in the area of gambling, while patrol officers frequently sought warrants to recover stolen property or seize weapons.

-- Although about 25 percent of the City's detective force is assigned to specialized units other than vice or narcotics, these detectives sought less than 4 percent of all search warrants issued in 1976.

In 1976, the Boston Police Department had 249 detectives in field assignments (see Table X-6). Of this number, district detectives comprise 58 percent, DCU detectives 9 percent, vice detectives 7 percent, and all other specialized detective units 26 percent. As we saw, 47 percent of all warrants obtained in the City of Boston in 1976 sought drugs. Since most drug warrants are obtained by the Drug Control Unit, it seems reasonable to conclude that as many as one-half and certainly no less than one-third of all search warrants were sought by fewer than 10 percent of all detectives.[11]

TABLE X-4

NUMBER OF SEARCH WARRANTS ISSED IN THREE DISTRICT COURTS
BY AFFIANT OFFICER'S UNIT OR RANK: 1976

Affiant Officer's Unit or Rank	Number	Percent
Drug Control Unit	204	42.0
District Detectives	144	29.6
Vice Control Unit	75	15.4
Patrol Officers	49	9.9
Other	15	3.1
Total	487	100.0

Note: "Other" category includes all centralized detective units except drug control and vice units.

Source: District Court Search Warrant Files, 1976

TABLE X-5

NUMBER OF SEARCH WARRANTS SOUGHT BY ITEM SOUGHT
AND AFFIANT OFFICER'S UNIT OR RANK: 1976

Item Sought	Unit or Rank									
	Drug Control Unit		District Detective		Vice Control Unit		Patrol Officer		Other	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Drugs	193	96.5	29	20.4	2	2.7	8	16.3	1	12.5
Gambling	2	1.0	41	28.9	27	36.0	6	12.2	3	37.5
Alcohol	2	1.0	23	16.2	10	13.3	9	18.4	1	12.5
Stolen Property	1	0.5	23	16.2	0	0.0	12	24.3	2	25.0
Pornography	1	0.5	7	4.9	32	42.7	1	2.0	0	0.0
Weapons	1	0.5	7	4.9	1	1.3	9	18.4	1	12.5
Prostitution	0	0.0	2	1.4	1	1.3	0	0.0	0	0.0
Other	0	0.0	10	7.0	2	2.7	4	8.2	0	0.0
Total	200	100.0	142	100.0	75	100.0	49	100.0	8	100.0

Source: District Court Search Warrant Files, 1976

Successful Execution of Search Warrants

Certainly three measures of success, albeit crude and imperfect, from the point of view of the officer executing the warrant, are the serving of a warrant that was issued, the seizing of objects sought, and the arresting on the premises of persons named in the warrant.

According to information collected by the Department of Corrections, approximately 80 percent of all warrants issued are served, with warrants for pornography the most likely to be served and warrants for alcohol least likely. Only 47 percent of the warrants served for weapons report that the items sought are found. Warrants seeking other items are reported to be more successful in this respect: almost three-quarters of the warrants served indicate that something was found and seized (see Table X-7).

Much less frequently are persons arrested as the result of a search warrant's being served: less than half of all warrants served (46.5 percent) result in an arrest. Officers are not likely to arrest when looking for weapons or pornography. The 372 warrants served in 1976 produced 304 arrests, of which 142 were for drugs and 117 for gambling violations. Therefore, drug and gambling cases accounted for 85 percent of all reported arrests resulting from the execution of search warrants. With the exception of gambling cases, no more than three persons are ever reported arrested at one time. In the case of gambling, 71 of 117 reported arrests were the result of four raids, in which at least nine persons were arrested each time (see Table X-8).

TABLE X-6

NUMBER OF DETECTIVES BY UNIT: 1976

Assignment	Number	Percent
District	144	57.8
Drug Control Unit	23	9.3
Vice	17	6.8
Other	65	26.1
Total	249	100.0

Note: Totals reported on January 13, 1977. "Other" category includes organized crime, homicide, robbery suppression, rape investigation, intelligence and consumer fraud units. Total does not include thirty-five detectives assigned to administrative staff, special investigations, district attorney's office, or listed as medically incapacitated.

Source: Boston Police Department unpublished Personnel data, 1977.

TABLE X-7

NUMBER OF SEARCH WARRANTS RESULTING IN
ITEMS FOUND IN THREE DISTRICT COURTS: 1976

Item Sought	Number of Warrants Served	Warrants Resulting in Items Found	
		Number	Percent of Total
Stolen property	37	27	72.9
Gaming	58	44	75.9
Drugs	165	110	66.7
Weapons	17	8	47.1
Alcohol	30	25	83.3
Pornography	38	38	100.0
Prostitution	3	3	100.0
Other	19	14	73.7
Total	367	269	73.3

Source: District Court Search Warrant Files, 1976

Informants

A smaller number of warrants issued in one district court was examined in detail in order to describe the use of informants as sources of all or part of the statement of probable cause to search. Of 168 search warrants, 131 affidavits cited informants (see Table X-9), only nine of whom were identified by name in the affidavits.

Most search warrants obtained from this court sought drugs (105 of 168). Ninety-eight drug warrants were obtained on the basis of tips from unnamed informants. Six of the affidavits did not rely on informants; and one used a named informant, a special agent of the Drug Enforcement Administration. In all, 24 officers accounted for the 98 drug warrants that used unnamed informants.

We were able to identify 35 different informants.[12] Of those 35 informants, nine accounted for 58 warrants. These nine informants supplied information to a total of 16 affiant officers. Each of the nine informants supplied probable cause for at least four warrants; one did so for nine warrants. Each of these "prolific" nine informants was cited by two or three affiant officers.

Most gambling warrants were based on informants' tips: 16 out of 23, with none of the 16 informants identified by name. There were six different affiant officers, two of whom accounted for 12 warrants. The first of these 12 warrants was obtained in April, the last in December. The informant was the same for all these warrants. The other four warrants for gambling were obtained by four different affiant officers, each using a different informant.

TABLE X-8

NUMBER OF SEARCH WARRANTS RESULTING IN ARRESTS IN THREE DISTRICT COURTS: 1976

Item Sought	Warrants Served	Warrants Reporting at Least One Person Arrested	
		Number of Warrants	Percent of Total
Stolen Property	36	12	33.3
Gaming	59	39	66.1
Drugs	171	98	57.3
Weapons	17	2	11.8
Alcohol	29	8	27.6
Pornography	38	5	13.2
Prostitution	3	2	66.6
Other	19	7	36.8
Total	372	173	46.5

Source: District Court Search Warrant File, 1976

TABLE X-9

SEARCH WARRANTS BASED ON INFORMATION SUPPLIED BY INFORMANTS IN ONE DISTRICT COURT: 1976

Item Sought	Total	Informant	
		Number of Warrants	Percent of Total
Drugs	105	99	94.2
Gaming	23	16	69.5
Alcohol	21	4	19.1
Stolen Property	11	6	54.6
Weapons	4	3	75.0
Other	4	3	75.0
Total	168	131	78.0

Source: District Court Search Warrant File, 1976

Of 21 alcohol warrants obtained, only four were based on informants' tips. (Most were based on personal observation by officers.) The warrants were obtained by three teams of officers; four different informants were used, none of them named. Five warrants for stolen property were obtained without the use of informants; six were obtained on the basis of informants' tips. Of those six, four warrants named the informants; three of those named informants were victims of the thefts being investigated.

Summary

Search warrants have never been the heavy artillery in police departments' arsenal of weapons against serious crime. Although the courts consistently encourage police to use warrants by insisting that warrantless searches be scrutinized very carefully, the literature on search warrants shows that the police use them sparingly and selectively, and mostly against crimes of vice. Data in this chapter which describe the use of search warrants by the Boston Police Department over a twenty-year period (1955-1976) confirm these observations. This provides the context into which the Criminal Investigative Guidelines on search warrants fit, and the context in which the evaluation of the impact of these guidelines on detectives was conducted.

NOTES

1. There are, of course, exceptions to this requirement. Officers are not expected to stand by while the objects sought are destroyed or a suspect flees. In some cases, after announcement has been made, no wait for the occupants to allow entry is required. See Chapter XI.

2. But see Chapter XIV.

3. In a recent critique of research on the exclusionary rule, the author (Anonymous, 1974:759) summarizes more recent information on the use of search warrants.

> . . . Michael Murphy has indicated that warrants were seldom used in New York City prior to 1961 but that almost 18,000 were obtained between 1961 and 1965. On the other hand, Los Angeles police obtained only 207 warrants for the year 1968.

The Rand Study on the criminal investigation process surveyed more than 300 police departments. The survey instrument included questions about the use of warrants (e.g., how many were obtained in 1972). Very few departments were able to respond to these questions, with many respondents indicating that the courts, not their departments, maintained search warrant records and that this information could be retrieved only on a case-by-case basis. (Personal communication from Mr. Jan M. Chaiken of the Rand Corporation, October 7, 1977.)

4. According to Ban (1973: 36), who studied the use of search warrants by the Boston Police in the 1960's, "The nature of the law concerning search and seizure in vice cases is quite different from that in cases dealing with crimes against person or property and that difference makes the use of search warrants doubly necessary."

5. Data for the years 1958 to 1964 are taken from Ban (1973), who counted the number of criminal search warrant reports submitted to the Massachusetts Department of Corrections by the district courts. Before 1965, the Annual Reports published by the Department of Corrections could not be relied upon because they did not categorize utility warrants separately from criminal warrants but included them in an "other" category that counted miscellaneous criminal warrants (e.g., pornography). For the years 1965 to 1973, we have relied on the estimates of the Department of Corrections. Estimates for the most recent years (1974-1976) are based on unpublished Corrections Department data supplemented by our independent count of warrants on file in the larger district courts.

NOTES (Cont'd)

6. Center staff also collected data from case files for 200 search warrants issued in 1975 in the Boston Municipal and Roxbury Courts to determine the rate at which motions to suppress were sought. See Chapter XIV.

7. According to Ban (1973), this rise was a direct consequence of the application of the exclusionary rule to state cases by the 1960 Supreme Court ruling of Mapp v. Ohio. The Boston Police Department voluntarily complied with this ruling by obtaining more search warrants. Since 1963, the number of warrants has remained high relative to the pre-Mapp years. The decrease after 1963 and subsequent increase is not explained by court cases after Mapp. Since Mapp, there have been no court cases that can be considered as significant as Mapp as a spur to an increased reliance on warrants.

8. The number of detectives is misleading in that a number of these officers are assigned to headquarters or other administrative tasks and do not work out of districts or with special units, but one must assume that this has always been the case.

9. Data on arrests do not show consistent relationships when plotted against number of corresponding warrants issued. For example, since 1965, the number of warrants to recover stolen property or uncover weapons illegally held or used in the commission of crimes declined, even while the number of arrests and robberies in the cith of Boston increased. Activity in the area of illegal gambling shows the opposite trend: gambling warrants have increased in the last seven years as the number of arrests for illegal gambling have declined, if somewhat erratically. Of the three "vice" crimes for which data were coded, only narcotics warrants follow closely the path of narcotics arrests: both increased dramatically after 1968 and then began to decline in the early 1970s.

   The variety of patterns made by arrest and search warrant data may be attributed to the fact that search warrants are the prerogatives of detectives, while arrests are made by both detectives and patrol officers. That arrests and search warrants move in opposite directions should not be surprising. Search warrants might generate arrests for some kinds of crimes (drugs) but not others. In fact, arrests for robberies might come about in ways totally unrelated to the necessity or desirability of obtaining warrants.

10. Although a total of 506 warrants and affidavits was examined, some information on some variables is missing. Results are always reported on the maximum number of cases for which there are data. We should also note that comparisons of data collected in the three largest district courts with data for those same district courts submitted by the clerks of these courts to the Department of Corrections reveal some significant discrepancies. First, more warrants were reported to the Department of Corrections by two of the three district courts than we were able to count in these courts for the

same period. Second, the distribution of warrants by type of item sought does not in all cases correspond to the "official" tabulation. These differences are not easily explained. There may have been counting errors on the part of the clerks (or of Center staff), and perhaps not all the warrants that they had counted were on file at the time our search was conducted. We do not consider these errors serious enough to invalidate conclusions where city-wide data are reported.

11. Most warrants (83.2 percent) seeking drugs in the three district courts were obtained by the DCU.

12. The identities of informants were determined in the following manner: when an informant was cited in the affidavit, we made a note of it on the data collection sheet. When the informant was not named, the affiant officer usually mentioned prior arrests and convictions based on the informant's tips; in such cases, we noted the names of the prior arrestees on the data sheets. When two unnamed informants were thus credited with the same arrests or convictions, we concluded that the two were actually the same informant; in this way we identified the 35 informants, though not by name.

REFERENCES

Anonymous
1974 "On the Limitations of Empirical Evaluations of the Exclusionary Rule: A Critique of the Spiotto Research and United States v. Calandra." Northwestern Law Review. 69:740-98.

Ban, Michael
1973 Local Courts v. the Supreme Court: The Impact of Mapp v. Ohio. Unpublished dissertation. Cambridge: Harvard University.

McIntyre, D.M. (ed.)
1967 Law Enforcement in the Metropolis: A Working Paper on the Criminal Law System in Detroit. Chicago: American Bar Foundation.

Tiffany, L.P., D.M. McIntyre and D.L. Rotenberg
1967 Detection of Crime: Stopping and Questioning, Search and Seizure, Encouragement and Entrapment. Boston: Little, Brown.

CHAPTER XI

THE IMPACT OF GUIDELINES ON THE EXECUTION OF SEARCH WARRANTS

Introduction

The purpose of this study was to test the hypothesis that detectives with detailed knowledge of criminal investigative procedures will modify their conduct when they execute search warrants.

Each officer selected for training was to be observed at least once serving a warrant before training. This description of practice prior to training was to serve as baseline data. The training session consisted of viewing two hypothetical search situations portrayed in a videotype, responding to a questionnaire based on these tapes, taking part in a discussion of some basic criminal investigative principles, and, finally, taking a test intended to measure knowledge of these principles. After training, these same officers were to be observed again to determine the impact of training. Eight months later, at the end of the period of observation, officers were called in to witness the same videotapes again and answer the questionnaire keyed to those videos. For reasons described below, it was not possible to use a "control group," officers who would have been observed before and after the training session and who would have responded to the tapes but received no training. In fact, practical constraints made it impossible to conduct even the limited evaluation that was planned. Nevertheless, this study generated some useful insights.

Background to Search Warrant Guidelines

The Fourth Amendment requirement that a warrant "particularly describe the place to be searched, and the person or things to be seized" was a

response to the British practice of general warrants and writs of assistance. Such a writ gave power to its bearer to pursue and seize any persons or objects, without limitation, if related to any crime of the type mentioned in the writ (such as "smuggling"). The writs had been attacked by the colonists as "the worst instance of arbitrary power... that placed the liberty of every man in the hands of every petty officer" (Ban, 1973:17). The Fourth Amendment was meant to prevent the use of such arbitrary power by officers.

A valid search warrrant is sufficient to overcome an individual's Fourth Amendment privacy interest in his person or house. Officers who enter a home under the authority of a warrant are presumed to have a right to be on the premises. In conducting a search for the objects sought, officers will also see other objects. If probable cause to believe that the objects constitute evidence of a crime can be established, the objects may be seized even though they are not specified in the warrant. The Fourth Amendment is not offended by the seizure of objects unnamed when it would be inconvenient to have to obtain an additional warrant. The prohibition against general warrants is not involved; a search warrant is not transformed into a general warrant when probable cause to seize unnamed objects exists. However, when the objects are known to exist prior to the warrant's being obtained and they are not included in the warrant, the seizure of the objects violates the Fourth Amendment prohibitions.

Warrants can only be obtained if there is probable cause to believe that specific objects will be found in a described place. Conversely, when there is no probable cause to believe that objects will be found in a separate place adjacent to the described location, the search cannot be

extended to the adjacent area under the authority of the warrant.[1]

The privacy interests that are protected by the warrant requirement also control the areas within the described premises that may properly be searched for the objects sought. A warrant does not allow searches of all areas, only of those in which the objects sought may reasonably be hidden. A search warrant for stolen television sets, for example, may not be used as a pretext for a search of desk drawers, unless the desk is unusually large or the television sets are very small. When the objects sought are small and may be hidden anywhere, the scope of a search is necessarily broader. If the objects may be concealed on the person of one of those present at the search site, and those persons are described in the warrant, they may be searched.

When persons are present at the search site but have not been described in the warrant, there is no authority under the warrant to search them. The Fourth Amendment protection extends to persons as well as to places. The mere presence of a person at a search site is not enough to overcome the individual's privacy interests. But in one of two situations a search of unnamed persons may occur.

In the first situation, the presence of the person at a site where a probable cause already exists, coupled with facts observable by officers at the scene, may create probable cause to believe that the objects sought may be found on his or her person. In this situation, the officers have a strong interest in immediately conducting the search of the individual. They are legitimately confronting the individual without violating his or her privacy. They can leave to obtain a warrant only at the risk of losing the objects sought. Because probable cause exists, the balance of interests

---

1. Notes and references for this chapter begin on page 223.

favors the immediate search of the individual.

Even if probable cause does not exist to justify a search of the unnamed individual, other interests of the officers may overcome the individual's privacy interest. Officers have a legitimate interest in their personal safety. If they have reason to believe that an individual they are confronting is armed, they may validly search that person to discover the weapons. This interest in personal safety is a limited interest and cannot be used as a justification for a full search of the individual for objects other than those that may be used against the officers.

Different considerations govern a decision to extend a search to an area clearly outside the scope of the warrant. The Fourth Amendment interest in privacy is great here, and none of its protections is met if the search is extended. There has been no determination by an impartial party that probable cause exists for the search. And, while probable cause may in fact develop during the course of a vaild search, the interest in obtaining a warrant takes precedence over countervailing factors.

The search of unnamed persons and seizure of unnamed objects can be justified by the inconvenience of obtaining a new warrant during a search in progress. The same inconvenience does not normally exist when officers wish to search an area separate from the one described in the warrant. Also, methods less intrusive to the privacy interest than a search may validly be used while a new warrant is obtained. The premises may be secured and occupants "frozen" during this period because the interest in efficient enforcement of law and execution of legal process outweighs the temporary inconvenience to the persons whose movements into and out of the premises are restricted.

Study Design and Selection of Officers

The initial intention was to apply a standard study design. The design, while not truly experimental, would permit drawing some valid inferences about the impact of knowledge of written guidelines on police conduct. Schematically, it was to resemble the following:

Experimental	O_{t1}	$V_{t2} + T_{t2} + X_{t2}$	O_{t3}	$V_{t4} + X_{t4}$
Control	O_{t1}	$V_{t2} + X_{t2}$	O_{t3}	$V_{t4} + X_{t4}$

(O = field observation; T = training on guidelines; V = measure responses to questionnaire based on simulated situation; X = measure responses to questionnaire based on training).

An analysis of the number of detectives eligible to participate in this study as either "experimentals" or "controls" revealed the following:

-- After those detectives who had participated in previous in-service sessions, Phase I of this project, and those who were to participate in the other search warrant evaluation[2] were excluded, there were very few detectives eligible to participate.

-- The age of the detectives precluded the selection of some of them on very practical grounds: for 1976 the median age of Boston police detectives was 52, with 31 percent more than 55 years old and 67 percent appointed to the Department before 1955. We wanted to minimize the possibility of "subject mortality" due to retirement before the conclusion of the study.[3]

-- The decentralized structure of the detective force precluded selecting officers randomly because Project staff could not possibly observe the execution of search warrants in all parts of the city. We had to choose detectives working in one district.[4]

All this meant that there were no officers to serve as controls; hence there would be fewer search warrants to be observed and fewer officers from whom questionnaire data could be collected. Therefore, the study design became:

$$O_{t1} \qquad V_{t2} + T_{t2} + X_{t2} \qquad O_{t2} \qquad V_{t3} + X_{t3}$$

With the cooperation of the captain in District One, which serves the downtown area, all detectives serving under him were selected as subjects.

Efforts to Observe: Collection of Baseline Data

The plan called for project staff to observe the execution of all search warrants by District One dectectives for approximately one month beginning on April 1, 1977. At the end of that period, all the detectives would be scheduled to attend special in-service training sessions. A letter to the Lieutenant of detectives requested that project staff be permitted to observe every search warrant execution during this period and be permitted to read the underlying affidavit and warrant prior to the search.[5] The letter also asked the lieutenant to explain to the detectives under his command our purpose for being in the field with them. All this was agreed to.

Center staff were to be "on call" on a rotating basis, so that a staff member would be available at any time around the clock that a warrant might be executed. To focus observations on the issues covered by the Criminal Investigative Guidelines, an observation checklist was prepared. After observing each warrant execution, project staff were to prepare a brief report following the outline of this observation checklist. Unfortunately, in the one-month observation period, project staff observed only one search warrant of the eight executed.[6] The reasons for this failure to collect baseline data included:

-- Project staff members' failure to coordinate their schedules of availability.[7]

-- The failure of District One detectives to inform other detectives (including their supervisors) of their intention to execute a warrant. This failure was intentional to keep word of the warrant execution from leaking out in advance. The need to execute warrants

(especially gaming warrants) immediately, meant that there was not time to inform Project staff.

These difficulties made it impossible to collect baseline data before training. Most of these same problems also plagued the project's efforts to witness the execution of warrants after training. The absence of extensive observational data makes it hard to draw definitive conclusions about the conduct of detectives when they serve warrants or the impact of guidelines on that conduct. Project staff cannot claim that the very few warrants witnessed were representative of warrants executed by detectives in this or other districts.

Training

District detectives participated in an intensive three-hour in-service training session. The instructional goal was to increase the detectives' understanding of the legal issues involved in the execution of a search warrant from the moment of entering the search site to the termination of the search. More specifically, staff attorneys wanted the officers to know the following:

-- under what exceptional circumstances an officer executing a warrant does not need to announce his authority and purpose prior to entry;

-- that the search should be restricted to the areas specifically described in the warrant:

-- that the search should be restricted to spaces large enough to contain the objects described in the warrant;

-- that probable cause is required for seizure of any object found in a search;

-- under what circumstances persons discovered at a search site may be frisked or briefly detained;

-- that searches of any persons not named in the warrant require probable cause to believe that the objects sought will be found on their persons;

-- that if the search is to be extended beyond the clear scope of the warrant, an additional warrant should be obtained, and that the occupants may be restrained from frustrating the execution of the second warrant.

The training session continued with the detectives witnessing two videotaped, simulated executions of search warrants and then responding to a questionnaire based on the events portrayed. The procedures shown in the tape were carefully coordinated with the criminal investigative guideline principles, classroom instruction and test instruments. Summaries of the two episodes are appended to this chapter. (See Appendix XIII-1.)

The videotape intentionally showed detectives making mistakes that might lead to evidence seized during the search being suppressed at trial. At the conclusion of the training session, officers answered another questionnaire to test their knowledge of the learning objectives discussed during the session. (All test questions appear in Appendix XIII-2.)

Virtually the same points were covered in the two tests, the difference being that the second test was more abstract and made no reference to the concrete situations portrayed in the videos. The format of the tests was multiple choice, with some test questions having more than one correct answer. Tests were graded by assigning a point for each "correct" answer and subtracting points as penalties for extra wrong answers when only one or two answers were called for. Scores are reported as a percentage of the maximum points possible.

To encourage officers to participate in the training session and to minimize their fears that they were being "evaluated" by the Department, they were not required to identify themselves by name on their answer sheets.[8] Instead, pre-training and post-training questions were answered on opposite sides of the same answer sheets. Within each session, changes in test scores for each officer could be calculated, but this meant that

between sessions the same group of officers had to be treated as an "independent population" and there was no way of charting the change in the performance of individual officers.[9]

Given these limitations and the project staff's inability to observe the execution of more than a few warrants during the evaluation period, we must exercise caution in the interpretation of these test scores and response patterns. As we shall see, the pattern of response errors that persists over time is suggestive of actual behavior, but this does not mean that these responses necessarily correspond to actual practice or that actual practice suffers only from the sorts of errors portrayed in the video.

Results

Twenty-one detectives were shown the simulated search scenes and responded to the first set of questions. Nineteen of these officers could be recalled eight months later to view the same videos and re-take the same tests. An analysis of the training scores (Table XI-1) shows the following:

-- Post-training scores in the first session (June 1977) were significantly higher statistically ($p < .05$) than pre-training scores.[10] Sixteen officers increased their scores as a result of training, one officer achieved identical scores on both tests, and two officers' scores declined after training.

-- The re-test eight months later shows scores of the video-related test to be significantly higher statistically ($p < .05$) than scores achieved in the initial session.

-- Post-training scores of June 1977 were not significantly different from corresponding scores of February 1978 (60.8 v. 62.2). Post-training and first session pre-training scores of February 1978 were also equivalent (62.1 v. 62.2).

-- The test score variation, indicated by the standard deviations and range of test scores, was greater for the second testing session than the first. The average scores obscure the fact that, although seven officers achieved scores, of 75 percent of the maximum in re-testing (post-training test,

February 1978), five officers scored 40 percent or less. No officer scored less than 40 percent in the first administration of the post-training test in June 1977.

The results suggest several conclusions. First, detectives' knowledge of search warrant procedures increased between their first viewing of the videotapes and the completion of the training session. This is to be expected: the training session lasted more than three hours and during this time the instructors directly addressed all the issues depicted in the simulated search scenes. We would have been very surprised had the scores not increased. Second, the results of the re-testing indicate that the detectives retained their understanding of these procedures over the eight-month period. Video scores increased, but post-training scores did not exceed earlier results.[11] Clearly, some officers increased their understanding, but others lost what they had learned. A more detailed analysis of the pattern of answers suggests that some principles are not easily learned.

Understanding of Principles

To understand officer comprehension of the criminal investigative guidelines better, responses to questions were grouped by principle (learning of objectives). Twenty-five questions form eight principles. In this analysis pre-training responses to questions based on the videos were considered equivalent to responses to post-training questions. Responses to questions in 1977 (t_1) and 1978 (t_2) were treated as if two different groups of officers had answered them and results from the two sessions were pooled. Each question, considered separately under each principle, was judged to be "correct", "incorrect" or "confused" according to the following criteria:

TABLE XI-1

AVERAGE TEST SCORES ON PRE-TRAINING AND POST-TRAINING SEARCH WARRANT TESTS

Date	Test Scores			
	Pre-Training		Post-Training	
June 1977	Mean	46.6	Mean	60.8
	Standard Deviation	11.2	Standard Deviation	10.8
	Range	23.3-65.0	Range	42.5-75.0
February 1978	Mean	62.1	Mean	62.2
	Standard Deviation	16.0	Standard Deviation	20.9
	Range	36.6-86.7	Range	30.0-95.0

Note: Two officers did not respond to the video questionnaire in the June 1977 session. The mean score of the other 19 detectives was inserted in place of these two missing pre-training scores for the purpose of calculating t-tests.

Correct answer -- more than 50 percent of the responses indicated at least one answer designated as correct (+)

Incorrect answer -- more than 30 percent of the responses indicated one answer designated as incorrect (-)

Confusion -- less than 50 percent of the responses indicated at least one answer designated as correct and less than 50 percent of the responses indicate one answer designated as incorrect. Or two responses were evenly (1/2) divided between correct and incorrect answers (0).[12]

The number correct, incorrect and confused answers within each principle was then added up and the principles, in turn, were rank ordered according to these totals. Table XI-2 presents the results of this analysis.[13]

In several important areas officers believed that their powers under a warrant were much broader than the law allows. Two of the areas they found troublesome were searches of persons not named in the warrant and the scope of a search pursuant to a warrant. The common thread that ran through the responses to questions dealing with searches and frisks of unnamed persons is a belief that a warrant authorizes the search of anyone found on the premises. Such a belief is an overly broad extension of the warrant power, and it is significant that, in questions that concerned a frisk rather than a search, the officers continued to think in terms of search requirements.

In real-life situations, officers might not distinguish between frisks of persons not named in a warrant and searches. The guidelines make clear that mere presence at a search site does not supply probable cause to search the person. The training results, however, suggest that officers executing a search warrant exhibit a willingness to search everyone found on the premises, whether or not they believe that the person is armed or possesses the objects sought by the warrant. They were also ready to extend this broad power to search persons to the scope of the search for contraband.

TABLE XI-2

SEARCH WARRANT PRINCIPLES ORDERED BY DEGREE OF DIFFICULTY

Rank	Principle Number	Principle
1	5	Such persons may be frisked if there is reason to believe that they are armed.
2	4	Searches of persons not named in the warrant require probable cause to believe that the objects sought will be found on them.
3	3	Only areas large enough to contain the items sought should be searched pursuant to a warrant.
4	2	The search pursuant to a warrant should be restricted to areas specifically described in the warrant.
5	7	An additional warrant should be obtained if the search is to be extended beyond the clear scope of the search warrant.
6	1	An officer should knock and announce his authority when executing a search warrant, except to prevent the escape of a person or the destruction of items sought.
7	8	A search warrant that does not precisely describe the premises to be searched may still be executed if there are enough facts to remove the doubt that it is the correct site.
8	6	Objects not named in the warrant may be seized only if probable cause to seize exists.

The trainees' answers were inconsistent for scope-of-search questions. They seemed to indicate that they would act under narrower-than-required authority when a search had to be extended to areas in a dwelling that the warrant did not specifically describe. In one of the exercises, a search of one apartment in a duplex continued into the common basement. There were conflicting responses as to whether an object found in that area could properly be seized. The cautious approach of some officers was illustrated by their preference for obtaining additional warrants before searching sites adjacent to the areas described in the warrant. The common basement area was considered to be outside the scope of the warrant even though it was used by the occupant of the dwelling being searched.

The officers acted with broader powers when searching the described premises. When their suspicions were aroused, they were ready to search areas that could not have contained the objects sought by the warrant. Objects that the officers thought might be stolen property, even though not the subject of the warrant, might also be seized "by association." In one videotape, a search for three brown leather coats turned up four coats, three brown and one black. The officers were undecided whether to seize the three brown coats, or to seize all four coats, or to continue to search for other stolen goods.

The training responses indicate that officers are likely to broaden their authority to search when any suspicious activity is observed. From the point when entry is first gained through the process of searching, officers appeared determined to investigate, on the basis of those suspicions, anything that might result in the discovery of stolen goods or contraband. The results show that officers are concerned with the thoroughness of a search, and this thoroughness will be manifested in frisks or searches of

all persons on the premises, examination of objects that might turn out to be stolen, and searches even of areas that could not contain the objects sought by the warrant. Limits to the thoroughness of the search are imposed when the search is about to be extended beyond the premises described in the warrant. Officers feel that an additional warrant should be obtained before searching the other premises. To them searches of unnamed persons present at the search site do not require probable cause but they do believe probable cause is a requirement for deciding to obtain additional warrants to search adjoining premises.

The search warrant training exercise shows that the officers involved misunderstand the scope of a search with a search warrant. This may be traced to a lack of understanding of the authority a warrant gives them, but it may also be due to existing field practices, which training could not overcome. In general, though, the principles that one would expect to be hardest to comprehend -- searches and frisks of unnamed persons, and the permissible scope of a search -- did give the trainees the most trouble. Technical problems -- the need to knock and announce one's authority before entry, and an inaccurate description in the warrant -- posed little difficulty.

The rank ordering of principles for the search warrant training exercise corresponds generally to a rank ordering derived from expressions of judicial principles in Fourth Amendment areas. In the search warrant area, the courts have developed the principle that a warrant permits a search of only those areas specifically described and large enough to contain the objects sought. The scope of such a search may be extended only if probable cause exists for the additional intrusion. These principles gave the trainees the most difficulty in reaching the proper answers.

Conversely, areas that have not required serious or substantial judicial inquiry did not give the trainees much difficulty. They knew that probable cause was needed to seize objects not named in a warrant, and how to deal with an ambiguous warrant. The problems, as suggested by the rank ordering, arose when they had to apply these principles to the action shown on the videotapes.

NOTES

1. The search may, however, be extended under certain circumstances, for other reasons.

2. See Chapter B-II and Chapter XII.

3. And, realistically, it makes little sense to train the oldest, most experienced officers in the hopes of modifying their conduct.

4. Excluding the Vice Control Unit, the Drug Control Unit and detectives in other centralized units, there were only 131 detectives working in the districts on March 24, 1977.

5. The letter explained our purposes to the Lieutenant as follows:

> We anticipate that time spent in the field prior to training will help us focus the training on those issues that appear to be most troublesome. Following the training sessions, staff will resume field observations so that we can evaluate the usefulness of the guidelines (Letter of March 29, 1977).

6. A warrant for stolen property was observed; six gaming warrants and one warrant seeking marijuana were missed. Even if all the warrants had been observed, not all the detectives who were to receive training would have been observed.

7. At a later date (October 1977), the project hired a telephone answering service. Instead of calling the staff member, the detective in charge of serving the warrant would call the answering service. The service operator would then contact the staff member (by means of a paging device, if necessary), who would then proceed to the search site or the District Station.

8. Obviously, there would be no way of matching a test score with a field observation of an individual detective, even if many search warrants had been observed.

9. Pre-training and post-training instruments were assumed to be equally difficult because both incorporated the same objectives. The absence of a control group means that we cannot be certain of test equivalence. There is no reason to believe that officers found one format -- "abstract" questions or video-based questions -- more difficult to respond to than the other. Since the scores of the re-tests

were almost identical to those on the pre-training tests, it seems likely that the two tests were of equal difficulty.

10. All tests of significance are one tailed-tests. Observations within training sessions are paired. The observations between sessions (e.g. June 1977 and February 1978) are treated like responses from two independent populations.

11. We cannot rule out "regression to the mean", but if the first set of results was attributable to an atypical group's guessing, we would expect post-training scores to decrease the second time around. They did not. Also we cannot rule out the possibility that detectives discussed the videotapes, questions and answers among themselves between first testing (1977) and second testing (1978).

12. In order to clarify the rank ordering, the criterion for "confused" answers is not the converse of the criterion for the union of "correct" and "incorrect" answers,

13. The questions that comprise each principle, and the total scores that produced the rank ordering, are reported in Appendix XIII-3 at the end of this chapter.

REFERENCES

Ban, Michael
1973 The Local Courts v. the Supreme Court: The Impact of Mapp v. Ohio. Unpublished dissertation. Cambridge: Harvard University.

APPENDIX XI-1

Summary of Videotaped Edpisodes

Tape 1

The search warrant is for heroin to be found at 343 Bowdoin Street, Dorchester, a two-family house; 343 is on the right side of the building as viewed from 345, occupying left. The occupant of 343 is Ellen Jones, twice arrested and once convicted for possession of heroin with intent to distribute. Surveillance had indicated that the occupant of 345 is a male, whose identity is not known.

Rather than go past 343's windows, the officers go around past 345, through the very narrow space between 345 and building next door and over a table. Climbing the obstacle brings the second officer's eyes level with the bottom of a window in 345. The window shade is drawn, leaving two inches of light coming through. The officer peers in and sees the back of a man working quietly at a table, but pays no further attention before catching up with his partner.

The officers enter through the front door without waiting.

Ellen Jones, dressed in clothes that could not possibly hide a gun or knife, is searched carefully (by a female officer). The only discovery is two handrolled cigarettes that smell like marijuana. Search of house proceeds for a few minutes without success. A man lets himself in with a key, and the officer who saw him through the window indentifies him as the man next door. He identifies himself by name. Another officer believes he looks like Izzy Stron, a fellow who used to sell drugs on Warren Street in Roxbury. The man and woman reluctantly admit that they visit each other sometimes. They both say they live alone. The officers subject the man to a full search, finding several apparently unused, empty glassine envelopes in his pockets.

Two officers proceed to the basement with Ellen Jones' male friend. The basement is divided in half by a wall with an open doorway in it, each half containing a furnace, stairs leading to the first floor and padlocked storage area. The male explains that he and Jones share the basement. The officers' search of the basement includes both halves and turns up a revolver tucked out of sight above the beams on the man's side of the basement. The male friend volunteers the information that he has a key for the padlocked area on his side. Officers open his padlocked area, and a plastic bag containing drugs is found there.

Tape 2

The search warrant seeks three stolen brown leather jackets in 6 Carver Street, the home of (name of woman), who is described in the warrant as living alone. The affidavit supporting the warrant is based on information provided by an informant. The house is described in the warrant as a single family, two-storey, grey wood frame house.

When the three officers arrive, they remark that 6 Carver is a grey

stucco building; 12 Carver, next door, is a grey wood frame house. They further remark that the front door of 6 Carver has a "D" over the doorbell. An officer is sent around back, and the search proceeds.

The officer in charge knocks and says, "Boston Police. Open up. We have a search warrant." A woman in a state of deshabille peers through the blinds of a window by the door. The officers see her, and she leaves the window. The officer repeats, "Open up." He waits a second or two, then shoulders the door open.

The woman is stopped coming out of the kitchen, where the faucet is turned on and the water is running. An officer opens the closet door on the first floor and pulls out three leather garments, two of which are brown jackets, and one of which is a long black leather coat. The officer in charge sends two officers upstairs and the search proceeds on both floors.

On the first floor are stacked four large cardboard boxes labeled "Striderite Shoes." One of them is open, lying on its side, the open side facing the wall. When asked where she got them, the woman explains that she is storing them for her brother, whose shoe store is overstocked. Officers turn the open side around and see several shoe boxes on which are labeled the style, size and color. One of the closed cartons is opened, and similar information is called in to the district station. They had been reported stolen. The woman denies knowledge that they were stolen.

The officer who turned off the tap has found two torn empty glassine envelopes in the drain. Officers return from upstairs with a young boy and a brown leather jacket similar to the other two. The woman insists that all four leather garments belong to her. The officer who led the boy downstairs reports finding a shoe horn in the boy's pocket.

APPENDIX XI-2

TOTAL SCORES OF SEARCH WARRANT PRINCIPLES
RANK ORDERED BY DEGREE OF DIFFICULTY

Rank	Principle	Question Number	June 1977	February 1978	Total Score
1	5	12	-	0	$\frac{2(-) + 2(0)}{4}$
		13	0	-	
2	4	10	-	0	$\frac{1(-) + 2(0)}{4}$
		11	+	0	
3	3	7	0	-	$\frac{2(-) + 1(0)}{6}$
		8	-	+	
		9	+	+	
4	2	4	0	0	$\frac{3(0)}{6}$
		5	+	+	
		6	0	+	
5	7	20	+	+	$\frac{2(-) + 1(0)}{8}$
		21	-	+	
		22	+	+	
		23	-	0	
6	1	1	+	+	$\frac{2(-)}{6}$
		2	-	-	
		3	+	+	
7	8	24	+	+	$\frac{1(0)}{4}$
		25	+	0	
8	6	14	+	0	$\frac{3(0)}{12}$
		15	0	+	
		16	+	0	
		17	+	+	
		18	+	+	
		19	+	+	

Note: An "incorrect" answer (-) was considered a more serious error than a "confused" answer (0). For example, three incorrect or confused answers that comprise principle #3 with six questions were considered more erroneous than the three "confused" answers to the 12 questions of principle #6. The denominator -- total number of responses per principle -- was used to standardize responses and decide the rank ordering.

APPENDIX XI-3

SEARCH WARRANT EXECUTION QUESTIONNAIRE

I: An officer should knock and announce his authority when executing a search warrant, except to prevent the escape of a person or the destruction of items sought.

1. Officers arrive at a house with a search warrant for three stolen brown leather coats. One officer knocks and announces that he is a Boston Police Department officer with a search warrant. A partially dressed woman peers out a window and then disappears from view. The door is not immediately opened. The officer's announcement of authority and purpose (choose one)

   a. was foolish because it gave the occupant a chance to get dressed before the officers could get inside.
   b. was sufficient because it stated that he was a member of the Boston Police Department and intended to execute a search warrant.
   c. was insufficient because it failed to identify the objects the officers sought.
   d. should not have been performed, because it gave the occupant the opportunity to dispose of evidence.

2. The officers wait a second or two and then shoulder their way inside. The length of the delay

   a. was reasonable because the officers saw that the occupant knew of their presence and that she did not intend to let them in within a reasonable time.
   b. was unreasonable because the woman should have an opportunity to get dressed.
   c. was unreasonable because the woman could not possibly dispose of 3 jackets in that short time.
   d. was reasonable because the woman could flush evidence down the toilet if entry were delayed any further.

3. An officer should knock and announce his authority when executing a search warrant except: (Circle as many as are correct)

   a. when it is unlikely anyone is present on the premises.
   b. when a person sought might escape.
   c. when there is a real danger that the items sought will be concealed.
   d. when there is a real danger that the items sought will be destroyed.

II: The search pursuant to a warrant should be restricted to areas specifically described in the warrant.

4. Search warrant for heroin executed on one half of a duplex house. The search extends to the common basement, and on the neighbor's half of the basement a revolver is discovered and seized. The revolver is

   a. improperly seized because it is not within the premises described in the warrant.
   b. improperly seized because it was not specified in the warrant.
   c. improperly seized because it was abandoned property.
   d. improperly seized because it was found in an area used regularly by the man and the woman.

5. Search warrant for heroin, executed on one half of a duplex house. The search proceeds to the basement, with the officers accompanied by the neighbor from the adjacent home. In the basement is a locked area to which only the neighbor has the key. The area is unlocked and a bag of white powder is found and seized. The search was

   a. improper because the neighbor has exclusive access to the locked area.
   b. improper because it was not specified in the warrant.

c. proper because the neighbor opened it for the officers.
d. proper because the storage area is in an area connecting the man's and the woman's homes.

6. Officers executing search warrant for heroin may search a separable possession of a person not named or described in the warrant: (Circle as many answers as are correct)

a. only if they have searched all other possible hiding places at the site.
b. only if they recognize the person as an ex-convict.
c. as part of the general search of the premises.
d. none of the above.

III: Only areas large enough to contain the items sought should be searched pursuant to a warrant.

7. Search warrant for heroin. The occupant of the dwelling is also searched, and hand rolled cigarettes are found. The cigarettes.

a. were properly seized because the warrant authorized the search of anyone on the premises.
b. were properly seized because heroin and heroin paraphernalia can be hidden almost anywhere.
c. were improperly seized because there was no reason to suspect the woman was armed and dangerous.
d. were improperly seized because they were not specified in the warrant.

8. Search warrant for three stolen brown leather coats. When the officers announced their presence, a partially dressed woman had peered out a window, but did not immediately open the door. The officers shouldered their way in and one officer went into the kitchen, where the faucet was running, shut off the tap and searched the drain, finding two soggy glassine envelopes. The search of the drain was proper because

a. there was probable cause to believe the woman was trying to dispose of something down the sink.
b. the occupant has no constitutional right to privacy in her sewage (abandoned property).
c. other items that may have been taken from the store might fit down the sink.
d. none of the above.

9. The search of the premises described in the warrant should terminate (Circle as many as are correct)

a. after every room has been searched.
b. when it becomes apparent that the items sought will not be located.
c. after two hours.
d. after those areas that could conceal the items sought have been searched.

IV: Searches of persons not named in the warrant require probable cause to believe that the objects sought will be found on them.

10. Search warrant for heroin. During the search of the dwelling a neighbor enters the apartment. One officer recognizes him as a fellow who used to sell drugs. He is searched, and glassine envelopes are found on his person. The search of the neighbor

a. was proper because the warrant authorizes the search of anyone found on the premises.
b. was proper because there was probable cause to believe that the neighbor was carrying the items sought with the warrant.
c. was proper because there was reason to suspect that the neighbor was armed and dangerous.
d. was not proper.

11. Any person not named or described in a warrant, but who is present during the execution may be searched (Circle as many as are correct)

a. if he is at the site before the search begins.
b. if the items sought could be concealed on his person.
c. becuase search warrants always authorize the search of all persons present.
d. if there is probable cause to believe he is in possession of the items sought.

V: Such persons may be frisked if there is reason to believe that they are armed.

12. Search warrant for three stolen brown leather coats. During the search an officer goes to the second floor, and finds a small boy. He is searched and a shoehorn is discovered. The search of the boy

a. was proper because anyone found on the premises can be searched.
b. was proper because there was probable cause to believe that the boy might be carrying evidence of criminal activity.
c. was improper because the boy was not identified in the warrant.
d. was improper because there was no reason to suspect the boy was armed and dangerous.

13. A person not named or described in a search warrant but who is present at the site during the search: (Circle as many as are correct)

a. may be frisked even though not named or described in the warrant.
b. may be frisked because he is not named or described in the warrant.
c. may be frisked only is there is reason to believe the person is armed.
d. none of the above.

VI: Objects not named in the warrant may be seized only if probable cause to seize exists.

14. Search warrant for three stolen leather coats. A search of the first floor of the house uncovers three leather coats, two of which are brown and one which is black. After this discovery,

a. the search should end because the search party has discovered 3 items reasonably close in description to the 3 items specifically described in the warrant.
b. the search should continue until the officers discover another brown leather jacket of the same length as the leather jackets found in the closet.
c. the search should continue until the searching officers were satisfied that they had diligently looked everywhere within the described home where a jacket could be found.
d. the officers should have immediately tried them on for size.

15. Search warrant for three stolen brown leather coats. Two brown and one black leather coats are discovered on the first floor of the dwelling. The second floor is also searched, and a fourth leather coat, brown, is found.

a. all four garments may be seized because since the three are stolen, the fourth one probably is, too.
b. the search should continue to see if any other stolen goods are discovered.
c. all four garments may be seized because it is difficult to tell which of the three are those described in the warrant.
d. only the three shorter jackets may be seized.

16. Search warrant for three stolen brown leather coats. During the search two cartons of shoes are viewed in the living room. The cartons say "French Shriner" shoes on the outside, and the top carton is sealed. The shoes in the top carton may be seized.

a. only if they are listed in the search warrant.
b. if the style, color and size of the shoes match those that might be reported missing.
c. if the officers can establish probable cause to believe the shoes are stolen without opening the boxes to examine the contents.
d. if the shoes had the name French Shriner on them.

17. The lower carton of shoes was open, but with the open side facing the wall. An officer turned the carton so that the shoe boxes inside could be viewed. These shoe boxes may be seized

a. if the officer had probable cause to believe the shoes were seizable (stolen) goods before he took hold of the carton to examine the shoes.
b. because it is not improper to turn the carton in order to examine the contents to establish probable cause.
c. because French Shriner has been burglarized several times in the past six months.
d. only if the occupant of the dwelling consents.

18. During the execution of a search warrant, officers may seize items not named in the warrant (Circle as many as are correct)

a. only if the officers can establish probable cause before seizing items in plain view.
b. only if the items are similar to those named in the warrant.
c. only if they are found in an area adjacent to the site named in the warrant.
d. none of the above. You may never seize items not named in the warrant.

19. While executing a search warrant for a stolen television, an officer notices a watch that resembles the description of one reported stolen. The officer examines the watch, writes down the serial number and then goes to the kitchen phone to call in the number. The officer: (Circle as many answers as are correct)

a. seized the watch when he picked it up to examine it.
b. did not seize the watch until he phoned in the number.
c. may not seize the watch even if the serial number is from a watch reported stolen.
d. may seize the watch if the serial number is from a watch reported stolen.

VII: An additional warrant should be obtained if the search is to be extended beyond the clear scope of the search warrant.

20. Search warrant for heroin, executed on one half of a duplex house. During the search of the common basement, a revolver is discovered. The neighbor, who has been present during the search, is asked to open a locked area to which he alone has the key. A bag of white powder is discovered inside. The officers now wish to search the neighbor's home.

a. The officers should attempt to obtain a new search warrant for the neighbor's home.
b. The officers may immediately search the neighbor's home on the basis of the seized objects.
c. The officers cannot obtain a warrant for a search of the neighbor's home.
d. The officers may search the neighbor's home immediately because they have probable cause to believe evidence of a crime will be found there.

21. During a search of one unit in a duplex, the officers decide to obtain a search warrant for the other unit. Before the new warrant arrives, the officers

a. may arrest the occupant while obtaining the warrant.
b. may prevent the occupant from entering his own home alone until the new warrant arrives even if they do not arrest him.
c. may enter the home and secure it while awaiting arrival of the new warrant.
d. may restrain other persons from entering the home while awaiting arrival of the new warrant.

22. Officers may extend their search to areas adjacent to the site named in the warrant: (Circle as many answers as are correct)

a. if they have probable cause to believe that the items sought are hidden there.
b. if they have searched the entire area described in the warrant and found nothing.
c. if they obtain an additional warrant for that area.
d. only if a person named in the warrant resides in that area.

23. Officers execute a warrant for heroin at a house but find nothing. While the search is proceeding another person described in the warrant arrives in a car. The officers:

a. should search the car because the items sought could be concealed there.
b. should search the car because it is a separable possession of a suspect.
c. should not search the car until they get an additional warrant.
d. none of the above.

VIII: A search warrant that does not precisely describe the premises to be searched may still be executed if there are enough facts to remove the doubt that it is

the correct site.

24. Officers executing a warrant for 378 Bowdoin Street, a grey stucco house. When they arrive at 378 Bowdoin Street they discover that the house is a gray frame instead of grey stucco. They may proceed with the search

    a. because there are enough facts observable at the scene to indicate with reasonable certainty to a police officer which is the proper search site.
    b. because a gray frame and grey stucco are indistinguishable at night.
    c. because the officers that executed the warrant were positive that it was merely an oversight of the informant.
    d. none of the above.

25. Officers arrive at the search site and discover before executing a warrant that the warrant does not accurately describe the site. The officers should (Circle as many as are correct)

    a. not proceed, but return to the court for a correct search warrant.
    b. proceed with the search only if there are enough facts to remove any doubt it is the correct site.
    c. proceed with the search if they are convinced that the items sought are at the site.
    d. proceed with the search if executing the warrant will solve a serious crime.

CHAPTER XII

TRAINING TO INCREASE THE USE OF SEARCH WARRANTS BY DISTRICT DETECTIVES

Introduction

This study hypothesizes that differences in the rates at which search warrants are sought and executed may be explained, in part, by two factors: an uncertainty over their usefulness in relation to crimes commonly investigated by district detectives, and an unfamiliarity with the proper procedures required to obtain a warrant. Supporting this hypothesis is the fact, revealed by interviews conducted early in this project, that some officers will occasionally forego the opportunity to obtain a search warrant because they are intimidated by the unfamiliarity of the search warrant process.[1] If the promulgation of guidelines and training increases officers' familiarity with procedures to obtain warrants, they presumably would be encouraged to follow the method of gathering evidence which both they and the courts find preferable. An increase in the number of warrants would indicate an affirmative impact of the guidelines and provide evidence in support of the hypothesis.

To test this hypothesis Center staff trained seventeen detectives from six districts (the experimental group). Training included instruction on the applicability of search warrants to crimes commonly investigated by district detectives, such as receiving stolen goods and gaming and drug offenses, and on how to complete affidavits. A control group of detectives, matched with experimental officers as to age and experience, received no training. The expectation was that training would increase the number of search warrants sought and executed by the experimental group while the number for the control group would remain the same. The dependent variable

1. Notes and references for this chapter begin on page 256.

for this experiment is, therefore, the number of search warrants sought and executed.

Selection of Officers

Baseline data on the issuance of search warrants was obtained from all district courts for the two-year period prior to January 1977. These data were used to describe the use of search warrants by the Boston Police Department.[2] The name(s) of the officer(s) who had sought and executed the warrants were recorded, and in this way, the "warrant output" of all Boston Police Department detectives was calculated. From this list, an experimental group was chosen. There were five criteria for selection:

-- The officer was a district detective and not attached to a centralized unit.

-- The officer was not participating in the search warrant evaluation study described in Chapter XI.

-- The officer had not previously participated in the search warrant training that was part of the guideline development phase of this project. (See Chapter B-II).

-- The officer had obtained not more than two warrants in the period January 1975 to December 1976.

-- The officer was not older than the median age (52) of detectives in the Department.

Not all the criteria could be met. Applying them all would have made the pool of eligible officers (including a matched sample to serve as a control group) too small. Some officers in the experimental group could not be matched with a control. Of necessity, some district detectives who were selected for this study had previously participated in the guideline development phase of the project. Furthermore, some of these officers as their search warrant totals will indicate, can hardly be considered novices at obtaining and executing warrants.

Fourteen officers in four districts served as the control group. Each member was matched with an experimental officer in age, years of ex-

perience, and number of warrants sought.[3] The comparison with the control group strengthens the inference that any observed increase in the number of search warrants requested and executed by the experimental group can be attributed to the guidelines.

In the two-year period before training 17 officers in the experimental group had executed 62 warrants (3.6 per officer) while 14 control officers had executed only 39 (2.7 per officer). The difference is accounted for by the fact that the experimental group contains three more officers than the control group, and three more officers in the experimental group than in the control group obtained at least five or more warrants.[4] (See Table XII-1.)

While there appears to be no relationship between either age or years of experience and the average number of warrants obtained by either group, the control group was older and more experienced than the experimental group. In these respects the two groups clearly were not equal. See Table XII-2 and XII-3.

TABLE XII-1

NUMBER OF WARRANTS SOUGHT BY DETECTIVES IN EXPERIMENTAL AND CONTROL GROUPS

Number of Warrants	Number of Officers	
	Experimental Group	Control Group
0	5	5
1	4	2
2	1	3
3	0	1
4	2	1
5	1	0
6 or more	4	2
Total	17	14

Note: Includes warrants sought for the years 1975-1976.

TABLE XII-2

NUMBER OF WARRANTS SOUGHT BY DETECTIVES IN CONTROL AND EXPERIMENTAL GROUPS BY YEARS OF EXPERIENCE

Appointment Date	Experimental Group		Control Group	
	Number of Detectives	Number of warrants Per Detective	Number of Detectives	Number of warrants Per Detective
1950-1955	5	2.2	8	3.7
1956-1960	5	4.4	2	1.0
1961-1965	2	3.0	2	0.0
1966-1970	5	4.6	2	2.5

Note: Includes warrants sought for the years 1975-1976

TABLE XII-3

NUMBER OF WARRANTS SOUGHT BY DETECTIVES IN CONTROL AND EXPERIMENTAL GROUPS BY AGE

Birth Date	Experimental Group		Control Group	
	Number of Detectives	Number of Warrants Per Detective	Number of Detectives	Number of Warrants Per Detective
1925-1930	6	3.2	9	3.1
1931-1935	4	3.5	2	1.5
1936-1940	6	2.3	3	3.0
1941-1945	1	15.0	0	0.0

Note: Includes warrants sought for the years 1975-1976.

Table XII-4 shows the kinds of warrants officers in the experimental and control groups had sought compared to all district detectives. Detectives in the experimental group sought more warrants for drugs than officers in the control group (and the city as a whole). Both control and experimental officers sought more alcohol warrants than other district detectives. For all other search warrant categories, the groups would appear to be comparable to each other and to other district detectives in the city of Boston.

TABLE XII-4

WARRANTS SOUGHT BY DETECTIVES IN CONTROL AND EXPERIMENTAL GROUPS BY TYPE OF ITEM SOUGHT

Item Sought	All District Detectives 1976		Detectives in Experimental Group 1975-1976		Detectives in Control Group 1975-1976	
	Number	Percent	Number	Percent	Number	Percent
Drugs	29	20.4	13	27.7	2	5.5
Gambling	41	28.9	7	14.9	10	27.8
Alcohol	23	16.2	12	25.5	13	36.1
Stolen Property	23	16.2	7	14.9	7	19.5
Pornography	7	4.9	0	0.0	0	0.0
Weapons	7	4.9	8	17.0	2	5.5
Prostitution	2	1.4	0	0.0	1	2.8
Other	10	7.1	0	0.0	1	2.8
Totals	142	100.0	47	100.0	36	100.0

Note: Includes only those warrants for which information on items sought was available.

Training on the Preparation of Search Warrant Affidavits

The training sessions involved seventeen officers in the experimental group in two morning sessions in June 1977. Prior to each session, the participants were given a talk by a member of the Training Academy staff or a Deputy Superintendent, explaining the purpose of the training and the role of the Center in the project. The sessions were then run by a Center staff member.

Guidelines 203 and 204, Making Out an Affidavit for a Search Warrant, served as the basis for the training.[5] Participants were first given two factual situations[6] and asked to prepare affidavits for two search warrants based on the information given. To minimize their anxiety, detectives were not required to identify themselves by name on the written exercises. After they had prepared their affidavits, the guidelines were discussed in relation to the affidavits. Issues that would arise in subsequent problems (e.g., the practical procedures for obtaining a warrant) were also raised and discussed.

The training sessions were designed to cover four major sources of information that could be used to establish probable cause to search: observation by the officer; information from a reliable informant; information from a first-time informant; and information from a reliable informant who in turn had received it from another. The instructor explained the requirements for each source as they should appear in an affidavit. If the officer had personal knowledge of the events, that fact should be stated in the affidavit, along with his observations, and the experience that led him to believe that probable cause exists. If an informant were involved, the reliability of the informant and the reliability of the tip should be demonstrated. Various methods of demonstrating reliability were explained

and discussed during the training sessions.

After these discussions of issues, two additional problems were given to the participants and affidavits were drawn up for them. Participants were encouraged to raise questions when they disagreed with the sample affidavit and to discuss various ways they would handle the problem. Discussion at times was very free-wheeling, and the participants occasionally raised hypothetical situations involving probable cause. Discussion was at all times tied to the Criminal Investigative Procedures guidelines.

The officers' written responses were analyzed by noting the sources of information used to draw up the affidavits.[7] Four participants did not complete both problems, which left fourteen complete sets of affidavits. The sources of information used for problem 1 (given prior to the discussion of the issues and guidelines) and problem 2 (given after discussion) appear in Table XII-5.

The two most common sources of information used by the participants were informants and personal observation. Seven of fourteen officers used personal observation in both problems, and nine of fourteen demonstrated the reliability of their informants in both problems. Significantly, the number of participants who claimed personal knowledge of events or who stated conclusions and facts of criminal activity decreased after training, while the number of participants who stated personal observations rose. A likely explanation for this might be that the participants, after round-table discussions, thought that a recitation of the officer's observations was sufficient in itself, and that a statement that he had personal knowledge of or had concluded that criminal activity had occurred was not required.

TABLE XII-5

SOURCES OF INFORMATION USED BY DETECTIVES
IN PREPARATION OF AFFIDAVITS

Sources of Information	Number of Officers Selecting Sources of Information			
	Problem 1	Problem 2	Both Problems	Either Problem
1. Claimed that officer had personal knowledge of events	8	5	3	10
2. Stated officer's personal observations	8	12	7	13
3. Stated facts that led to the officer's conclusions	6	1	0	7
4. Stated officer's experience that led to belief of probable cause	0	2	0	2
5. Demonstrated reliability of informant	10	11	9	12
6. Demonstrated reliability of the tip	4	7	2	19

Note: Officers completed Problem 1 prior to training; officers completed Problem 2 after training. Fourteen officers completed both problems.

Before training, officers who showed that their informant was reliable did not also show that the tip was reliable. Only four participants demonstrated the reliability of the tip, while ten demonstrated the reliability of the informant. After training, however, the figures had increased to seven and eleven, respectively. This seems to indicate that, after training, the participants realized that the reliability of both the informant and the tip have to be demonstrated in an affidavit.

Results

Eight months after the completion of training, court dockets were monitored for changes in the number of warrants sought and executed by members of the experimental and control groups. At the completion of the experimental period, court data were supplemented with interviews with a few selected officers in the experimental group to determine what role, if any, the guidelines played in relation to their search warrant activity.

Data were analyzed several ways:

(1) The performance of all officers (N=14) in the experimental and control groups were compared before and after training

(2) The performance of officers in the experimental and control groups who obtained few or no warrants was compared before and after training.

(3) The performance of all experimental officers (N=17) before training was compared only with their own performance after training.

First Analysis

Data were analyzed by means of the signs test, a non-parametric test derived from the binomial distribution.[8] This test was used to demonstrate the equivalence of the control and experimental groups before training and

to test for differences after training. Differences between the number of warrants obtained for each pair of experimental and control group members were calculated and the signs of the differences recorded. If the groups were equivalent before training we would expect an equal number of plus and minus signs. This is the null hypothesis that P=.5, where P is the probability that a particular difference is positive. If there was no difference between a pair, it is dropped from the calculations.

Table XII-2 shows that before training five of nine differences between pairs are positive and four are negative. To reject the null hypothesis with P=.5 and a level of statistical significance p=.05, there must be eight or more positive signs. The null hypothesis therefore cannot be rejected and the experimental and control groups must be considered equivalent.

Data on the impact of training show that, with ten cases p=.05 and again assuming that P=.5, nine or more cases are required to reject the null hypothesis that training had no effect on the number of search warrants obtained. With eight positive signs (Table XII-6), the null hypothesis cannot be rejected. We must conclude that training did not significantly affect the number of warrants detectives sought and executed.

Second Analysis

However, the results are not negative if we consider only those ten officers who had obtained, before training, not more than two search warrants each. Five of these officers show positive signs when compared to the corresponding control group officers, three show no difference, and

one shows a negative sign. With the assumption of P=.5 and the .05 level of statistical significance, the null hypothesis can be rejected. For those officers with little previous warrant experience, training would appear to make a difference.[9]

Third Analysis

An alternative analysis considers only the experimental group so as to take advantage of the three additional officers it contains. Treating this study as a simple before-after design, with each officer serving as his own control, adds more cases (Table XII-7). These data again demostrate that, with 17 officers, the null hypothesis that training had no effect cannot be rejected. With 14 cases, at least 11 positive signs are required to reject at the .05 level of statistical significance with P=.5. Among these officers only nine positive values followed training.

If we examine the warrant activity of those ten officers who obtained the equivalent of one warrant or less a year before training, eight show positive signs, one negative, and one no change. Like the previous analysis, where considering only the less prolific officers led to a rejection of the null hypothesis, th. same conclusion is reached here; with nine cases, the null hypothesis can be rejected with eight positive values. The alternative analysis, with the experimental group serving as its own control, also shows that training had an effect on these officers who obtained few warrants before training.

TABLE XII-6

THE NUMBER OF SEARCH WARRANTS OBTAINED
BY THE CONTROL AND EXPERIMENTAL GROUPS
BEFORE AND AFTER TRAINING

Subject Pair	Two Years Before Training			Eight Months After Training		
	Experimental	Control	Difference	Experimental	Control	Difference
1	0.0	0.0	0.0	0.0	0.0	0.0
2	1.0	1.0	0.0	0.0	0.0	0.0
3	4.0	3.0	+1.0	0.0	0.0	0.0
4	0.0	1.0	-1.0	4.0	0.0	+4.0
5	1.0	2.0	-1.0	1.0	0.0	+1.0
6	0.0	0.0	0.0	2.0	0.0	+2.0
7	0.0	0.0	0.0	1.0	0.0	+1.0
8	5.0	2.0	+3.0	1.0	4.0	-3.0
9	6.0	5.5	+0.5	0.0	3.0	-3.0
10	1.0	2.0	-1.0	3.0	0.0	+3.0
11	15.0	13.0	+2.0	5.0	2.5	+2.5
12	2.0	3.0	-1.0	2.0	0.5	+1.5
13	0.0	0.0	0.0	0.0	0.0	0.0
14	1.0	0.0	+1.0	3.0	0.5	+2.5

Note: A search warrant obtained with another officer is counted as one-half a warrant.

TABLE XII-7

NUMBER OF WARRANTS OBTAINED PER YEAR
BY EXPERIMENTAL GROUP BEFORE AND AFTER TRAINING

Officer	Before Training	After Training	Difference
1	0.0	0.0	0.0
2	0.5	0.0	-0.5
3	2.0	0.0	-2.0
4	0.0	6.0	+6.0
5	0.5	1.5	+1.0
6	0.0	3.0	+3.0
7	0.0	1.5	+1.5
8	2.5	1.5	-4.0
9	3.0	0.5	-3.0
10	0.5	4.5	+4.0
11	7.5	7.5	0.0
12	1.0	3.0	+2.0
13	0.0	0.0	0.0
14	0.5	4.5	+4.0
15	2.0	6.0	+4.0
16	2.8	1.5	-1.3
17	4.5	10.5	+6.0

Note: Data are presented on a per annum basis for the periods before and after training. A warrant obtained with another officer is counted as one-half a warrant.

Discussion

Training does not appear to increase the number of search warrants detectives seek, especially if they have sought warrants in the past. However, there are indications, though they are not conclusive, that training does affect the warrant output of officers who had never sought a warrant (as measured here in a two-year period) or who had sought very few warrants. This suggests that this police department, should it decide to offer search warrant training, would be well advised to be selective about whom it trains. Apparently not all officers benefit from in-service training of this kind.

Regardless of who is selected for training, it must be realized that, when officers seek search warrants, they seek them to investigate vice crimes. Before training, 81 percent of the warrants detectives sought were to enforce vice crimes; after training, the figure was 83 percent. With or without training, these percentages are constant. Training did not have and is not likely to have an effect on the kinds of crimes for which detectives seek warrants.

Staff interviewed four district detectives who had no or few warrants prior to training but who obtained more warrants after training. Two of the detectives believed the training was helpful but neither of them related the warrants they obtained to the training they received.

Only one detective suggested that he personally had not previously prepared affidavits because he was intimidated by the process. He claimed to understand the concept of probable cause and differences that depend on the source of information but suggested he had difficulty coherently committing a fact situation to writing. His prior practice was to rely on another detective writing and submitting the affidavit. He contended that preparing the sample affidavits at training gave him confidence and that he has sub-

sequently prepared his own.

Another detective was clearly not enthusiastic about training ("I know all this crap"). He did suggest that following training he considered using warrants in non-drug/vice cases. Warrant use, according to this detective, was not encouraged outside of the D.C.U. and Vice and that, until training, he had not considered the potential benefits of proceeding with a search warrant in other types (e.g., stolen property) of cases.

Detectives reported to us that assistant district attorneys are now assigned to most district courts and they screen affidavits before submitting them to a clerk or judge. This is a recent development and one viewed positively by the detectives. They suggested that because the district attorneys will have to defend against motions to suppress, their interest and involvement in developing "good" affidavits will be substantial. There is no indication that detectives have come to rely on the assistant district attorneys to do their work but it is possible that police officers' willingness or ability to master affidavit preparation might diminish.

In district courts not yet staffed or adequately staffed with assistant district attorneys, clerks continue to serve not as "impartial magistrates" when presented with affidavits. The consensus was that they actively involve themselves in re-writing the affidavit rather than simply reviewing the materials' adequacy--a conflict the detectives recognized but one they viewed approvingly in spite of its potential impact on the adversary system.

APPENDIX XII-1

PROBLEM 1: EXCERPTS FROM OFFICER'S NOTEBOOK (PART 1)

January 17th. Bradlee's Department Store on Morrissey Boulevard was broken into. Loss was approximately $10,000.00 in color TV's, cameras, and automotive parts. Serial numbers of stolen TV's run RZ17864 - RZ17884, consecutively.

January 20th. Saw Bernard James, a local resident that I know (from our work as Boy Scout leaders), taking an RCA M-50 portable color TV from his car. As I approached him, I realized that the model and brand were the same as those TV's reported stolen. Asked where he purchased set; he said at Jordan Filene Second Hand Store on Mass. Ave. and Washington Street. Asked if I could look at serial number; he said "not now," that he was cold and in a hurry. He left.

January 21st. Called to Stop & Shop to pick up teenager (George Kiley) for shoplifting. In effort to talk his way out of being arrested, Kiley said he believes Jordan Filene's is dealing in stolen goods. Said when he was helping out there two days ago, that he saw brand new RCA M-50 portable color TV's being unloaded by John Potter (the store owner) from his van. Kiley also heard Potter telling his store manager about how he had gotten the sets for such a cheap price from someone who had to dump them fast because they were hot. 12:20 PM--went to locate Bernard James. Found him at his home on lunch hour and told him he might be in possession of stolen property. He said we could check the number. The number was RZ17876.

Using this information, prepare an affidavit for a search warrant, and assume today's date is January 21.

APPENDIX XII-2

PROBLEM 1: EXCERPTS FROM OFFICER'S NOTEBOOK (PART 2)

April 7th. My informant told me that Hamilton Powell is involved in book-making and numbers running out of the Sub & Pizza Shop that he manages for Sam Owens at 248 Newbury Street. Powell was just paroled 17 months ago from a sentence for the same activity.

April 8th. During 1-1/2 hours of observation (3:00-4:30 PM), I observed 25 people enter and leave Powell's sub shop, 10 of whom I did not see make any purchase of food. But they, as did 5 others, spoke with Powell at the far end of the counter before making exchanges behind the counter.

April 9th. My informant told me Powell also takes bets by the phone in the rear of the shop. He says the number is 738-6974. During our surveillance today I noticed that the phone number on the window of the sub shop is given as 244-6060.

April 10th. Check with phone company. There are four numbers into the sub shop: 738-6973, 4, 5; and 244-6060. During surveillance today Marilyn Stewart, known bag woman for Tony Johnson, enters shop and goes into rear room with Powell. When Stewart leaves she's carrying a large bulky manila envelope that appears to contain money. She leaves in dark blue '76 Lincoln, plate number 571329. Check with Registry shows that it's registered to Tony Johnson.

April 11th. 1:46 PM observed "Willie the Worm" enter shop with brown paper bag, hand the bag to Powell at far end of counter and leave. From 2:15 until 4:30 PM the shop became very busy, having 45-55 customers; and only 20

appeared to make any food purchase. Again, the others all made contact with Powell at far end of the counter to exchange things.

Using the above information, prepare an affidavit for a search warrant, and assume today's date is April 18.

APPENDIX XII-3

PROBLEM 2: EXCERPTS FROM OFFICER'S NOTEBOOK

May 3rd. Anonymous informant called; told me that while she was in the company of Warren Jones fifteen (15) minutes ago, he was selling heroin and cocaine in Kenmore Square. That he was still there when she left and was dressed in a dark blue one-piece jumpsuit and wearing a red baseball cap. My partner and I drove to Kenmore Square and observed Warren Jones sitting on steps of the Strawberries Record Store for 30 minutes; no contacts observed; ended surveillance.

May 4th. Checked on Warren Jones. He has fourteen prior arrests; five of last seven were for selling drugs; six convictions for petty larceny.

May 6th. 11:45 PM. While on duty, happened to see Warren Jones come out of apartment building at 467 Newbury Street. Observed him approach a 1975 Buick, Plate #EZ1269 and exchange items with the passenger in the automobile. Also observed Jones return to building and enter Apartment 1A (the door of which can be seen from the street). An hour later, located super of building and asked about occupants of Apartment 1A. He said Warren Jones lived there alone and couldn't understand why one man had so many friends visiting him at all hours of the day and night.

May 7th. 8:45 PM. Informant called and asked for me. She says Jones has been close to his apartment lately, and we could get him now because he received a large amount of heroin and cocaine; he doesn't want to leave the place for any length of time. She also says that the night before, while she was in the apartment, it looked as if Jones had enough heroin stashed there to supply the entire city; that she saw the supply because Jones is

always bragging and showing how he can hide his suitcase in the false bottom of his living room couch. Went to Newbury Street at 9:25 PM to observe activity at Jones' apartment; by 12:30 AM, 22 persons had entered and left Apartment 1A. I recognized 9 as known drug users. None stayed longer than four to six minutes in the apartment.

Using this information, prepare an affidavit for a search warrant, and assume today's date is May 8.

NOTES

1. See also McIntyre (1976: 33) for support of this hypothesis: "A number of police officers were questioned as to the reason for the lack of use of search warrants. The officers almost uniformly indicated that they had no knowledge of search warrants, rarely had occasion to obtain one, and were at somewhat of a loss to explain the lack of their use."

2. See Chapter X.

3. Three officers in the experimental group have no controls, but we shall see that the method of data analysis makes this irrelevant.

4. Note that the distribution of warrant activity in these two groups is bi-modal: officers either obtained very few warrants in the two-year period, or more than few.

5. See Chapter B-IV.

6. These are included at end of this chapter. See Appendices XII-1, XII-2, and XII-3.

7. On evaluating the quality of search warrants, see Burnett (1973).

8. See Siegel (1956).

9. These results would also be changed if there were reasons to believe that the probability of a particular difference were less than .50. In other words, we would not expect equal numbers of positive and negative signs. However, without concrete evidence to the contrary, P=.5 must be accepted as appropriate.

REFERENCES

Burnett, Arthur L.
1973 Evaluation of Affidavits and Issuance of Search Warrants: A Practical Guide for Federal Magistrates. Journal of Criminal Law and Criminology. 64:270-80.

McIntyre, D.M. (ed.)
1967 Law Enforcement in the Metropolis: A Working Paper on the Criminal Law System in Detroit. Chicago: American Bar Foundation.

Siegal, Sidney
1956 Non-Parametric Statistics for the Behavioral Sciences. New York: McGraw-Hill.

CHAPTER XIII

THE IMPACT OF STOP AND FRISK AND EYEWITNESS IDENTIFICATION GUIDELINES ON THE CONDUCT OF PATROL OFFICERS

Introduction

Field interrogation has been claimed to be an effective tool against "crime on the streets." It has been used to uncover criminal activity, locate criminals, and provide information for future criminal investigations. From the perspective of individuals who might be stopped, however, it has been viewed as a practice of questionable legality and a source of abuse. The purpose of this study was to test the hypothesis that patrol officers with detailed knowledge of stop and frisk and eyewitness identification guidelines will modify their conduct after receiving instruction on these topics. Both topics are of great practical significance to both police officers and the general public.

Stop and Frisk

An officer on the street is expected to maintain order, to keep "a clean beat," and to investigate activities suspected of being criminal that come to his attention. He has various tactics to carry out these activities, and one of the most useful is the field stop, which actually includes the practices of stopping, questioning, frisking and searching.

Field interrogation is often used as a device to investigate crime, by providing an opportunity to check suspicious-appearing persons and to obtain certain minimal information. However, the police must be concerned not only with criminal investigation but also with crime deterrence and maintenance of order. The practice of field interrogation also allows police officers to address these concerns:

1. Stops to prevent involvement in vice crimes. In some cities, officers stop and question persons found in an area known to be frequented by prostitutes, to ascertain whether they have any legitimate need for being there. Persons suspected of gambling or dealing in drugs may also be routinely stopped and searched.
2. Removal of weapons. In areas in which there is a high incidence of weapons assaults, officers have been involved in efforts to remove weapons from persons found there. The officers' primary purpose is to confiscate weapons, not to prosecute those possessing them.
3. Control of street gangs through stops and searches. Where gangs of youths present a serious order maintenance problem, field stops and searches to confiscate weapons and remove youths from the street are prevalent. Officers are also concerned that their authority and ability to deal with gangs may be challenged, and may make stops simply to assert their authority, even in the absence of immediate danger from gangs. In such situations, the threat of overreaction is very great, and has been seen as the cause of juvenile hostility, for example in San Diego (Boydstun, 1975).
4. Crowd control. In some cities, it is common for neighbors to congregate in groups on the street at night. When these gatherings are seen by the police as possible threats to order, they may question people and order them to move on, so as to break up the groups. Arrest is an alternative only when persons resist the police request; then they are charged with disorderly conduct.

In each of the situations described above, the field interrogation was not primarily designed to determine whether there are grounds for arrest and

prosecution, but to determine whether the persons were the sort against which the police want to act. In these preventive activities, in the absence of grounds to arrest, what the police do does not always entail investigation of suspected criminal activity.

Much of the resentment of police practices in black and other minority neighborhoods has been traced to the indiscriminate use of field interrogations for the purposes listed above. There may be other explanations for the practice of field interrogations, but it remains true that field interrogations have frequently been used with little or no definition of the limits of the power to stop and irrespective of any suspected criminal activity of the persons stopped.

Eyewitness Identification

In contrast to stop and frisk, the issue of establishing personal identity might appear to the officer to be one of the easiest to justify at trial. Commentators and jurists, however, while considering a pre-trial eyewitness identification a crucial factor in the fair and accurate determination of guilt or innocence, recognize that it is particularly likely to lead to unjust results. Different pre-trial identification procedures may be used for different purposes at different times during a criminal investigation. Immediately after the crime, a cruise might be used to find the perpetrator quickly. Early in the investigation, if there is no definite suspect, a mug book, composite, sketch, or photo array might be used to develop a suspect. If there is a definite suspect, an identification procedure may be used to confirm police suspicions and develop probable cause to arrest, or to set innocent suspects free. Identifications of a stopped suspect, informal identifications, and photo arrays are typical procedures used at

this point in the investigation, as the suspect may not be in custody. If the suspect is arrested and is in custody, an identification procedure may be used to confirm police suspicions and to develop evidence for trial. Bring-backs[1] or stationhouse identifications might be used shortly after the crime. Emergency identifications may be appropriate if the witness or suspect is hospitalized. Line-ups or photo arrays may be used to develop further evidence. Identifications obtained with such pre-trial procedures are often used as a supplement to or substitute for an in-court identification.

Research Design

Using training in selected stop and frisk and eyewitness identification guidelines, this study was designed to measure the impact of the training as seen in changes in police behavior related to street detentions of suspects. The evaluation focused on selected aspects of street behavior that were believed to be amenable to observation: frisks, interrogations, length of detention, and eyewitness identification of stopped suspects. For reasons to be discussed below, the Center designed an evaluation strategy with training at its core; and, because training assumed such a major role in both data collection for the project and its evaluation, measuring the impact of training on officers' understanding and use of the new guidelines became a second objective of the evaluation.

The nature of the basic study design is illustrated here:

Experimental Group	O_{t1}	$V_{t2} + T_{t2} + X_{t2}$	O_{t3}	$V_{t4} + X_{t4}$
Control Group	O_{t1}	$V_{t2} + X_{t2}$		

(O=field observation; T=training in guidelines; V=measure responses to

1. Notes and references for this chapter begin on page 277.

questionnaire based on simulated situation; X=measure responses to questionnaire based on training)

To evaluate the impact of selected guidelines on police behavior, it was necessary to know something about current practices prior to training as they pertain to frisks, length of detention, interrogation, and eyewitness identification of stopped suspects. It is these practices on which we focused training and in which we hoped to measure its effects. There was no pre-training observation period and only one observation of each participating officer after training. An earlier effort to develop stop and frisk guidelines, conducted with the Tactical Patrol Force before this study began, made clear it would be hard to see enough stops to stand as baseline data.[2] Selection of officers and districts, however, proceeded on the assumption that ride-alongs might yield useful information and at least would facilitate discussion of the training material. The control group was not observed.

The purpose of the second pre-test measurements was to determine officers' knowledge of procedures covered by the guidelines in which the experimental group was to be trained. At the completion of the training, the experimental group was re-tested to determine its knowledge of the guideline material transmitted during training. An unacceptable level of mastery by the experimental group as a whole would have necessitated additional training and further post-testing to assure an understanding of guideline materials.[3]

To sum up, field observations were a supplementary data source but changes in behavior had to be inferred mainly from responses to questionnaires and hypothetical situations, with the inferences supported, where possible, by staff observations. Comparing the responses of the experimental and control groups to themselves over time and to each other permits only speculation on changes in behavior that might be attributed to knowledge of the guidelines.

Selection of Officers

To select districts from which patrol officers could be chosen for participation in this study, Center staff constructed profiles for six districts based on incident reports for the street crimes of rape, robbery, larceny, assault, prostitution, malicious mischief, vandalism, narcotic violations, disorderly conduct and minor disturbances. These profiles were intended to indicate how frequently guidelines might be invoked in these districts. However, an analysis of incident reports provided no clear rationale for choosing one district over another, except to eliminate one district that had much lower totals in almost all crime categories.

Based on practical considerations, 24 patrol officers were selected from District 1, which serves Downtown Boston and the surrounding area, to be the "experimental" group. To prevent officers assigned to experimental and control groups from communicating with each other, all officers in the experimental group came from the same district.

A control group of 25 patrol officers was selected from other police districts in the city with comparable levels of reported criminal activity. These officers were matched as far as possible with the District 1 officers on the basis of experience (years of service on the force) and age, two variables that we assumed to be relevant to police decisionmaking. Table XIII-1 shows that control group officers tended to be older and more experienced than those in the experimental group.[4]

Training

Prior to formal contact with officers participating in the study, Center staff developed training materials and instruments to measure the impact of training and guidelines. Training materials included written handouts and situational videotapes produced by Project staff and the Boston Police

Table XIII-1

COMPARISON OF EXPERIMENTAL AND CONTROL GROUP OFFICERS ON YEARS OF EXPERIENCE AND AGE

Years of Experience	Age	Experimental Group		Control Group	
		Number	Percent	Number	Percent
1-5	25-40	11	44.0	8	33.4
6-10	25-45	8	32.0	11	45.8
11-15	41-46+	3	12.0	1	4.2
16-20	41-46+	2	8.0	2	8.3
20+	46+	1	4.0	2	8.3
Total		25	100.0	24	100.0

Department video unit. Training instructors standardized classroom procedures. All training materials and training evaluation instruments were coordinated to assure that the content of testing and training materials coincided. Situational videos and test instruments were pre-tested on a group of law students to assure their comprehensibility.

The Center had experimented with hypothetical videotaped situations in the first phase of the project as aids in the development of guidelines. These were incomplete episodes: at the point at which an officer had to make a crucial decision the action broke off. Because the episodes were fragmentary and required the officers to imagine how they might report, the officers tended to respond to actual situations they had encountered rather than to the hypotheticals constructed for the use of the project. Furthermore, interpreting responses to these open-ended situations was difficult.

The technique was therefore modified and the tapes portrayed complete episodes in which police employed common criminal investigative procedures, sometimes incorrectly. Each episode lasted about 5 minutes and was prefaced by a warning that the procedures portrayed might or might not be correct. Test instruments therefore had "right" and "wrong" answers. Summaries of the three videos appear at the end of this chapter.

The classroom procedure for the experimental group was to show the simulated situations, administer the pre-training questionnaire, discuss the material in relation to the instructional goals and objectives summarized in Tables XIII-2 and XIII-3 and then administer a post-training questionnaire. Each instructional objective was represented in at least one of the video scenarios and at least one question in the pre- and post-training tests covered the same material. The control group was given the same tests but received no training. A training session lasted about three hours.

Results

(1) A test of significance on the mean differences shows that control and experimental groups were not equivalent ($p < .05$). The experimental group scored significantly higher than the control group on the video-related test. See Table XIII-4.[5]

(2) Coefficients of variability - the standard deviation divided by the mean - indicate that, both before and after training, the scores of the experimental group display less variation than those of the control group. There was more consensus on right and wrong answers among experimental officers than control group officers.

(3) Test scores improved significantly for the experimental group but not for the control group after training.

(5) All officers in the experimental group had higher scores after training. Thirteen officers in the control group found the post-training test more difficult than the pre-training test. Even so, ten raised their scores and one achieved an identical score on both tests.

Understanding of Principles

To understand officer comprehension of the criminal investigative guidelines better, responses to questions were grouped into principles (learning objectives) for stop and frisk and principles for eyewitness identification. Thirty-three questions form six stop and frisk principles (and sub-principles); sixteen questions comprise five eyewitness identification principles.

In this analysis, no distinction was made between responses to questions based on the videos and responses to the post-training test. Responses of the experimental and control groups were pooled.

TABLE XIII-2

INSTRUCTIONAL MATERIALS FOR GUIDELINE 302:
EYEWITNESS IDENTIFICATION OF A STOPPED SUSPECT

Instructional Goal

To understand the circumstances under which a stopped suspect, in the absence of probable cause to arrest, may be detained for an eyewitness identification procedure.

Instructional Objectives

1. To know when one-on-one confrontations are permissible;

2. To know under what conditions you may exercise your authority to detain a stopped suspect to conduct an eyewitness identification;

3. To know what constitutes a detention of reasonable length;

4. To know the proper location for conducting the procedure under normal circumstances;

5. To know how to minimize suggestiveness during the eyewitness identification procedure;

6. To know that you must release the suspect if probable cause to arrest has not been developed.

TABLE XIII-3

INSTRUCTIONAL MATERIALS FOR STOP & FRISK GUIDELINES

Instructional Goal

To understand the circumstances under which a person may be stopped, questioned, or frisked.

Instructional Objectives

Stops --

1. To know the sources of your authority to stop persons;
2. To know that you may detain a suspect for a reasonable length of time without arresting him;
3. To know that the reasonableness of the length of the detention will be judged according to the purpose of the stop;
4. To know the kind of force you may use to hold a stopped suspect;
5. To know, as a general rule, that detained suspects should not be moved from the place of the stop;
6. To know when to release a stopped suspect.

Questioning --

7. To know what threshold inquiry questions are;
8. To know that a suspect need not be warned about the possible effects of his answering or refusing to answer threshold inquiries;
9. To know when refusal to identify oneself is an offense;
10. To know that direct accusatory questions about the suspect's involvement in the criminal activity being investigated may be asked as long as the suspect responds voluntarily;
11. To know what the options are if the suspect does not want to answer;
12. To know when to give a stopped suspect Miranda warnings.

Frisks --

13. To know the difference between a frisk and a search;
14. To know when you may frisk a stopped suspect;
15. To know what you may do with items the suspect is carrying.

TABLE XIII-4

COMPARISON OF PRE-TRAINING AND POST-TRAINING TEST SCORES OF PATROL OFFICERS ASSIGNED TO EXPERIMENTAL AND CONTROL GROUPS

Group	Test Scores		
		Pre-training	Post-training
Experimental	Mean	49.3	78.0
	Standard deviation	8.42	10.2
	Range	32.1 - 65.7	49.2 - 95.5
Control	Mean	43.8	42.8
	Standard deviation	11.3	12.9
	Range	21.5 - 68.9	13.6 - 67.1

Note: Pre-training scores of the experimental group are statistically different from corresponding scores of control group ($p < .05$). Experimental post-training scores are statistically different from that group's own pre-training test scores ($p < .05$).

Each question, considered separately under each principle, was judged to be "correct," "incorrect," or "confused" according to the following criteria:

> Correct answers -- more than 50 percent of the responses indicated at least one answer designated as correct (+)
>
> Incorrect answer -- more than 30 percent of the responses indicated one answer designated as incorrect (-)
>
> Confusion -- less that 50 percent of the responses indicated at least one answer designated as correct and less than 50 percent of the responses indicated one answer designated as incorrect. Or two responses were evenly (1/2) divided between correct and incorrect answers (0).[6]

The number of correct, incorrect and confused answers within each principle was then summed and principles, in turn, were rank ordered according to these totals; see Table XIII-5. Each lettered principle is identified in the questionnaire in the Appendix that appears at the end of this chapter.

The officers involved in the training exercise had their greatest difficulty with the limits of the stop and frisk power. The initiation and conduct of an investigative stop posed few problems (#I, IV, V). It was generally understood that a stop can occur on less than probable cause to arrest, that a suspect can be detained for a reasonable period of time, and that threshold questions -- to determine the identity and activity of a suspect -- may be asked to satisfy the officer's suspicions. However, two adjunctive powers that were not fully understood by the officers were the limits of the frisking power and the protections that must be afforded a suspect once threshold inquiry questions become more focused and accusatory.

From the perspective of training, the single most difficult principle concerned the giving of Miranda warnings in custodial interrogation situations. The training did not appear to convey to the officers that, once their threshold inquiry questioning begins to focus upon specific criminal

TABLE XIII-5

STOP AND FRISK PRINCIPLES RANK ORDERED
BY DEGREE OF DIFFICULTY

Rank	Principle Number	Principle
1	6A	A Miranda warning should be given before any questions that call for an incriminating answer are asked.
2	3A	A frisk of a stopped person is justified if there is reason to suspect that he or she is armed.
3	3B	A separable possession of a stopped suspect may be examined only if there is reason to believe it contains a weapon.
4	4B	Reasonableness will be judged according to the purpose of the stop.
5	2	Authority for the stop is derived from the Fourth Amendment and M.G.L. Ch. 41 598.
6	1	A person may be stopped and questioned as a crime's suspect on less than probable cause to arrest.
7*	4A	A stopped suspect may be detained for a reasonable period of time in order to dispel the officer's suspicions.
7*	4C	A stopped suspect may be restrained from leaving before the officer's suspicions are dispelled by the minimal amount of force necessary.
7*	5A	A stopped suspect may be asked threshold inquiry questions, concerning his or her identity and what he or she is doing.
7*	5B	A silence warning need not be given before threshold questions are asked.
7*	6B	If the suspect does not answer incriminating questions, the officers should ask other questions, or release the suspect.

* No incorrect answers on this principle

TABLE XIII-6

EYEWITNESS IDENTIFICATION PRINCIPLES RANK ORDERED
BY DEGREE OF DIFFICULTY

Rank	Principle Number	Principle
1	4	When conducting a one-on-one identification of a stopped suspect, the confrontation should occur at the scene of the stop.
2	1	A stopped suspect may be reasonably detained for up to twenty minutes to conduct an eyewitness identification.
3	2	A one-on-one identification is suggestive. Suggestions may be reduced by having the suspect stand among other people, or without visible restraint.
4	3	One-on-one identification procedures are justified when a witness has indicated an ability to identify the suspect, the witness is in danger of dying, or the identification will occur within two hours after the commission of the crime.
5*	5	If the witness cannot identify the stopped suspect, he should be released.

* No incorrect answers on this principle

activity of the suspect, and the suspect is isolated and asked questions that are accusing and may elicit answers that may incriminate him, Miranda warnings must be given to the suspect.

Officers also had difficulty differentiating the custodial/isolated interrogation situation, when Miranda warnings should be given, from the noncustodial interrogation situation, in which warnings need not be given.[7] When they dealt with a simulated street situation, many officers did not believe that warnings were needed. After training, officers tended to answer that Miranda warnings should be given any time an incriminating question is asked. The training appears to have shifted the officers from one extreme to the other: incorrect answers on the simulated videotaped street situation to correct answers on the more abstract post-training question.

Other principles that the training attempted to communicate were (1) a suspect may be frisked immediately if the officer suspects that the suspect is armed and dangerous; (2) a separable possession may be searched if the officer has reason to suspect that it contains an accessible weapon; and (3) a separable possession should be placed in a location where it is not accessible during the stop, and should not be searched to discover stolen goods.

After training, officers did not understand these principles. While many officers knew that a separable possession should be taken out of the suspect's reach if it was or held a potential weapon, some officers believed that the object should be searched for weapons at some time during the stop, while others thought that the object should be searched only incidentally to arrest. The same confusion existed prior to the training.

When they were presented with a stop to investigate a suspected breaking and entering, more than half the officers would have examined the

suspect's possessions if they thought they had been stolen or contained stolen property. The officers also believed that they would be justified in opening the suspect's possessions if he did not answer questions about its contents to establish probable cause to arrest. Throughout the training exercise, no more than fifty percent of the answers on this principle were ever correct. Training did not appear to communicate to the officers that only the interest in personal safety justifies the search of possessions. One explanation for this result is that training cannot totally overcome the officers' on-street experience.

A similar pattern appears in situations involving frisks of stopped suspects. The officers did not answer that a frisk was only justified by suspicious activity of the persons stopped, but that persons should be frisked whenever a suspected felony was being investigated. The results might again be attributed to officers' responding with the prevailing street practice of frisking all suspects.

In the eyewitness identification section, two problems, one technical and one procedural, can be observed (Table XIII-6). The first concerns the length of time that a stopped suspect may be detained in order to conduct an eyewitness identification. The officers were instructed that a detention of up to twenty minutes would generally be considered reasonable. Whether or not the results reflect the actual practice or "gut feeling" of the officers is not known, but, while one would expect such a specific "rule of thumb" to be easily learned, this exercise did not appear to have that effect. Instead, a clearly communicated statement was misinterpreted so as to expand officers' authority to detain suspects. This is even more surprising because, during the training session, many officers expressed surprise when told that physical restraint could be used to detain a

stopped suspect. They said that they thought any restraint would amount to arrest. It was their opinion that putting a person in the squad car, placing hands on him, or any other type of physical restraint was illegal without probable cause and would lead to exclusion of evidence obtained thereafter.

The second principle that the officers did not accept concerned an eyewitness identification of a stopped suspect. The officers consistently believed that a stopped suspect, who was not under arrest and for whom probable cause to arrest did not presently exist, could be transported from the site of the stop to another location in order for a witness to view him. This in fact may not be done unless the suspect is under arrest. The officers did not perceive that the witness should be brought to the stop site to view the suspect. Even after training, they persisted in the belief that a suspect could be moved if they wanted a witness to view him or her in another location. The distinction between transporting an arrested suspect and one who had merely been stopped was not apparent to the officers. Once again, their street experience may be too strong for training to overcome.[8]

It would seem that neither inconvenience to the suspect nor legal considerations was a prime concern of officers in stop situations. Once an individual has been put in an adversarial position by police officers, their major concern as reflected in the pattern of responses appeared to be that the suspicions that gave rise to the stop be confirmed. They would search possessions for stolen goods rather than for weapons and ask accusatory questions of suspects. A suspect would also be transported if there was a witness who could identify him or her. The training seemed unable to alter these notions.

Summary

As was the case with search warrant guidelines (Chapter XI), the rank ordering of stop and frisk/eyewitness identification principles, according to the difficulty experienced by officers in their application, corresponds generally to a rank ordering derived from expressions of judicial concern and controversy in Fourth Amendment areas. In the stop and frisk area, the frisk of persons has created the most concern, and has been limited to a protective search for weapons. Another area of concern has been the asking of incriminating questions of a suspect "in custody," before which Miranda warnings are to be given. These principles gave the trainees the most difficulty in reaching the proper answers.

Conversely, areas that have not required serious or substantial judicial inquiry did not give the trainees much difficulty. The stopping of a suspect on less than probable cause, detention for a reasonable time, the asking on less than probable cause, detention for a reasonable time, the asking of threshold inquiry questions without the necessity to give a silence warning, and the release of a suspect if incriminating questions were not answered were all very well understood. Similarly, the officers understood the justifications for a one-on-one identification and that the suspect should be released if no identification was made.

Many of the principles that gave officers difficulty can be traced to an inability to distinguish the precise boundary between permissible and impermissible actions. For example, though they understood that a suspect could be stopped for the purpose of conducting an eyewitness identification, the officers apparently did not understand that moving the suspect for an identification would constitute an arrest and thus should not occur in the absence of probable cause to arrest. Similarly, they were not able to

distinguish between threshold inquiry questions, which do not require warnings, and questions calling for incriminating answers, which do. They also missed the distinction between a protective frisk for the officer's safety and a search for stolen goods or contraband.

CONTINUED

3 OF 9

NOTES

1. A bringback occurs when a police officer arranges for a witness to attempt an identification of a suspect immediately after the suspect's arrest.

2. See Chapter B-III.

3. We recognized the value of re-testing the control group at this time, but recalling these officers from the field was not feasible.

4. District 1 had recently received an influx of officers, transferred from other districts following the release of the SIU Report (see Chapter IV). Many of them were younger than the average of the rest of the force. In addition, we experienced a good deal of difficulty in selecting a control group. Many of our "first choices" were not available to attend Training Academy sessions. Their replacements were not identical on the matched variables and this, too, contributed to disparities between the two groups.

5. All tests of significance are one-tailed. Observations within sessions are paired. Observations between sessions and comparisons between experimental and group officers are treated like responses from two independent populations.

6. In order to clarify the rank ordering, the criterion for "confused" answers is not the converse of the union of the criterion for "correct and incorrect" answers.

7. The guidelines state that there is a point, when questions calling for incriminating answers are asked, at which the officer must make sure that the answers are given voluntarily. During the training session several officers stated that Miranda warnings were called for at this point. The guidelines do not require full Miranda warnings but only suggest that the suspect be informed that he or she need not answer. These officers explained that, as a practical matter, Miranda warnings were necessary, because judges and defense attorneys expected Miranda warnings and judged the voluntariness of the statments by whether or not those warnings were given.

8. Many officers resisted the suggestion that the witness, rather than the suspect, should be transported for identification purposes. The officers argued that the bringback procedure, which they interpret as the suspect being returned to the scene of the crime, is the commonly, perhaps

exclusively, used type of procedure for stopped suspects. They insistently failed to see the inconsistency between this position and their earlier reluctance to accept use of restraint to detain stopped suspects. The main arguments presented to support this position were as follows:

"This is the way everybody does it."
"This is how we are told to do it."
"I have never seen anyone lose a case because of it."
"Your way is illegal."
"The witness's identification will be more reliable if he can view the person at the scene of the crime."

REFERENCES

Boydstun, John
1975 San Diego Field Interrogation: Final Report. Washington, D.C.: Police Foundation.

Appendix XIII-1

Summary of Videotaped Episodes

VIDEO ONE: A SHORT TRIP

Uniformed officers are in a parked cruiser discussing a number of B & E's and the captain's concern about intensive patrol in the area. They observe a man coming out of a building, lugging a heavy suitcase and carrying a briefcase. The officers comment that they do not recognize him. The man walks with bags to the front of the neighboring building, places them behind some bushes, and then glances up and down the street as if waiting for someone. The officers remain in their parked car. "Let's see what happens." There is a conversation describing and interpreting what they see.

A car pulls up. The man quickly gets suitcase, puts it in rear seat, gets into passenger seat, and the car drives toward the cruiser. Police remark that the passenger has ducked down in front seat. With lights flashing, police make the car pull over. Officer radio their actions.

Officers approach the car cautiously. Driver is asked to get out. He is spread-eagled and frisked. Passenger is also asked to get out. He is carrying the briefcase. He is frisked. The briefcase is taken from him and placed to the side.

The officer with the driver asks for license and registration. Driver asks why he was stopped. "What'd I do wrong?" "Just show me the license and registration." He does, and they check out. The officer then asks the driver to go over to the cruiser with him, where the calls NCIC for name and car. Nothing there.

Meanwhile, the officer with the passenger asks threshold inquiry questions. "Who are you?" "John Brown." "Got any identification on you?" "No." "Where do you live?" "Andover." "Address?" "300 Main Street." Officer then demands the man's wallet. Officer asks for an explanation of the man's activities in the neighborhood. "What are you doing in this area?" "Visiting friends." Officer slides back to identity questions: "Well, John, who are they? Where do they live?" "Hey, look, am I under arrest or what?" Officer does not answer. "What's in that bag?" pointing to the suitcase. "Stuff. You know, dirty clothes." "Mind if I take a look?" "Yeh, I mind. What's this all about?" "All right. What's in that suitcase? You don't live here, do you? You just ripped off some old lady who's out shopping, didn't you?"

At this point, the driver and the other officer are back by the car. The officer puts the driver in the rear sear of the cruiser. The passenger, standing against the car, says to the officer, "This is crap. I'm leaving." He starts to move for the briefcase. Officer pushes him against the car, and he is held there by the second officer. First officer starts to open the suitcase. The passenger protest. Suitcase is opened, and it contains watches, cameras, etc. Officers then decide to arrest both driver and passenger.

VIDEO TWO: LOUISBURG SQUARE

A man is picked up by a friend at Logan Airport. Carrying a suitcase, he is returning from a vacation to his home, a downtown apartment. As he approaches his apartment, he sees an unknown male at the door. Suspect (with or without something which could contain goods) rushes past the man. The man goes to apartment door and finds it unlocked. The apartment is in disarray, burglarized. The man rushes out of the building and catches a glimpse of the suspect getting into a vehicle.

Two uniformed officers in a cruiser receive a radio transmission that includes a general description of the suspect, partial plate number, and the time of the crime (about 30 minutes earlier). There is general conversation between the officers: a lot of B and E's in the area, not much to go on, keep a lookout for suspect, etc.

At a nearby bus terminal, they spot a male matching the vague description received earlier but there is no sign of the car. They decide to engage in threshold inquiry. One officer asks the other to call Operations to check if there is a witness at the scene who can identify the suspect. The officer returns and says yes. Officer places the mildly resistant suspect in back of cruiser and drives off.

Outside the apartment, the witness identifies the suspect.

VIDEO THREE: CHICO

A reliable informant approaches plainclothes officer and tells him that Chico is selling heroin. "Remember, you asked me to tell you when I knew he was dirty and in business?" "Yes." "Well, he's at (address) and is dealing heavy." "Thanks."

In the car, the officer turns to the other officer and says: "I've been after this guy for some time now. He beat me once before in court. He's a wise guy and a steady pusher."

The officers go to the address and see Chico talking with a known addict. They comment on it but see nothing change hands. The officers get out of the car and approach Chico, telling his companion to move on. "How's business?" "Don't know what you're talking about." "What are you doing in this area now?" "Just hanging out." "We'd like to talk with you about the trade." "Hey man, you looking to bust me? Is this an arrest?" "No, you're not under arrest. What would we do that for? But we would like to talk with you. What's your preference? Do we take a cruise in the car, or do we take you down to the station?" "Well, OK. I'll rap with you in the car, but I don't want to be gone long. I've got things to do."

In the car, sitting in the back seat, one officer says "What have you got on you?" "Nothing, man. I'm clean." "Look we know you're dealing now. And you haven't sold it all. Fork it over." "OK. I've just got a little bit, for myself, you know." He pulls out an envelope with two glassine bags in it. The officer indicates that Chico is under arrest.

Appendix XIII-2

SCORES OF STOP AND FRISK AND EYEWITNESS IDENTIFICATION PRINCIPLES RANK ORDERED BY DEGREE OF DIFFICULTY*

Stop and Frisk

Principle Number	Rank	Total Score
6A	1	$\frac{4(-) + 4(0)}{10}$
3A	2	$\frac{2(-) + 5(0)}{12}$
3B	3	$\frac{4(0)}{4}$
4B	4	$\frac{1(-) + 2(0)}{4}$
2	5	$\frac{2(0)}{4}$
1	6	$\frac{2(0)}{10}$
4A	7	all correct
4C	7	all correct
5A	7	all correct
5B	7	all correct
6B	7	all correct

Eyewitness Identification

Principle Number	Rank	Total Score
4	1	$\frac{6(-) + (0)}{12}$
1	2	$\frac{3(0)}{4}$
2	3	$\frac{1(0)}{4}$
3	4	$\frac{1(0)}{8}$
5	5	all correct

*Note: An "incorrect" answer (-) was considered a more serious error than a "confused" answer (0). The denominator - total number of responses per principle - was used to standardize responses and decide on the rank ordering.

APPENDIX XIII-3

STOP & FRISK QUESTIONNAIRE

I. A person may be stopped and questioned as a crime suspect on less than probable cause to arrest.

A reliable informant tells an officer that a person is "dealing heavy" at a certain address. The officer comments to his partner that the suspect "beat him once in court" and was a wiseguy and heavy pusher. The officers go to the address and see the suspect talking to a known addict. They approach the suspect to talk to him about "the trade." Then they ask him to talk to them in the cruiser. The suspect complies.

1. A stop occurs when (circle as many answers as are correct)

   a. the officers first address the suspect
   b. the officers surround the suspect
   c. the officers move the suspect to the car
   d. None of the above.

2. On the sidewalk, the officers have made a stop of the suspect (circle as many answers as are correct)

   a. because he is being questioned as a suspect
   b. because he believes he is not fee to leave
   c. because the officers would stop him from leaving
   d. None of the above.

3. You have the power to stop a person when you reasonably suspect he (circle as many answers as are correct)

   a. has committed a reported crime
   b. is at the time involved in criminal activity
   c. is about to be involved in criminal activity
   d. has a criminal record.

4. When the suspect was being questioned on the sidewalk, he asked the officers if he was under arrest. When the officer responded that he was not, he was (circle as many answers as are correct)

   a. correct because they had not handcuffed him
   b. incorrect because the suspect was not free to leave
   c. correct becasue the officers know they did not have probable cause
   d. correct because a brief detention on reasonable suspicion is not an arrest.

5. At the time of the stop, assume that the officers did NOT have probable cause to arrest the suspect. The officers (circle one)

   a. had the authority to stop the suspect
   b. did not have the authority to stop the suspect.

II. Authority for the stop is derived from the fourth Amendment and M.G.L. Ch. 41 §98.

6. You have the authority to stop and detain a suspect (circle as many answers as are correct)

   a. only when you arrest the suspect
   b. only when you have probable cause to arrest the suspect
   c. You don't have the authority to stop and detain a suspect.
   d. None of the above.

7. Your authority to stop a suspect derives from (circle as many answers as are correct)

   a. common sense
   b. M.G.L. Ch. 41 §98
   c. the Fourth Amendment of the United States Constitution
   d. the common law.

III A. A frisk of a stopped person is justified if there is reason to suspect that he is armed.

Officers are in a cruiser discussing the number of B & E's in the area. They observe a man comming out of a building lugging a heavy suitcase and carrying a briefcase. He places the bags behind some bushes and glances up and down the street. A car pulls up, the man places the suitcase in the back seat and the car pulls away with the passenger ducking down. The officers pull the car over and ask the driver and passenger to get out.

8. Immediately frisking the driver was justified (circle as many answers as are correct)

   a. because car stops are dangerous
   b. if the driver or the passenger made a suspicious maovment in the car
   c. because the purpose of the stop was to investigate a suspected felony
   d. None of the above. Frisking the driver was not justified.

9. Immediately frisking the passenger was justified (circle as many answers as are correct)

   a. because car stops are dangerous
   b. because the purpose of the stop was to investigate a suspected felony
   c. if the driver of the passenger made a suspicious movement into the car
   d. None of the above. Frisking the passenger was not justified.

10. You may frisk a stopped suspect (circle as many answers as are correct)

   a. only after you have asked threshold inquiry questions
   b. immediately if the suspected crime was committed with a weapon
   c. when you see a bulge that could contain a weapon
   d. if he is a known felon.

11. When you frisk a suspect, you may (circle as many answers as are correct)

   a. feel his clothing for hidden waspons
   b. reach into his pocket if you feel a container you believe holds drugs
   c. only run your hands over his clothing
   d. feel his clothing for evidence of the suspected crime.

12. The officers take the briefcase from the passenger and places it to one side. The officer was correct in taking the passenger's briefcase and putting it out of reach because (circle as many answers as are correct)

   a. the suspect was under arrest when he came out of the car
   b. the officer could reasonably believe it was a potential weapon
   c. it could have interfered with the frisk
   d. None of the above.

13. When you stop a suspect who is carrying an item that is not locked or sealed, you may (circle as many answers as are correct)

   a. take it and immediately look in it for weapons
   b. take it and place it out of the suspect's reach if it is a potential weapon
   c. look in it for weapons before releasing the suspect
   d. only search it incident to arrest.

III B. Separable possessions of a stopped suspect may only be examined if there is reason to believe it contains a weapon.

14. The officer could have looked into the briefcase (circle as many answers as are correct)

a. if he had reason to believe it contained an accessible weapon
b. if he had reason to believe it was stolen
c. if he had reason to believe it contained stolen property
d. None of the above.

15. The officers question the suspects but get no answers to questions about the contents of the suitcase. They then open the suitcase. The officer was justified in opening the suitcase (circle as many answers as are correct)

a. to recover stolen goods
b. to establish probable cause to arrest
c. because the passenger refused to cooperate
d. None of the above

IV A. A stopped suspect may be detained for a reasonable period of time in order to dispel the officer's suspicions

16. A stop of two B & E suspects. One suspect has no identification on him. Because the passenger failed to identify himself adequately, the officer could have (circle as many answers as are correct)

a. detained the passenger longer
b. taken the passenger's wallet and looked into it
c. searched the briefcase for identification papers
d. arrested him.

17. With reasonable suspicion short of probable cause to arrest, you may

a. not stop and detain a suspect because it constitutes an illegal arrest
b. stop and detain a suspect for more that five minutes
c. stop and detain a suspect for a reasonable length of time
d. stop and detain a suspect for up to two hours.

IV B. Reasonableness will be judged by the purpose of the stop.

18. A stop to investigate a B & E. The driver of the stopped car produces correct license and registration for the car. Once the driver had provided a correct license and registration, (circle as many answers as are correct)

a. the officer should have released the driver and the car
b. the officer should have taken the suitcase and let the driver and car leave
c. the officer did not have to release the driver, because he was also a B & E suspect
d. the officer should have run the NCIC check.

19. The reasonableness of the length of a detention of a stopped suspect will be judged by (circle as many answers as are correct)

a. your success in getting acceptable answers to your questions
b. whether the suspect is on foot or in a car
c. the purpose of the stop
d. None of the above. You may not stop and detain a suspect on less than probable cause.

IV C. A stopped suspect may be restrained from leaving before the officer's suspicions are dispelled, by the minimal amount of force necessary.

20. When the passenger tried to leave, the officer (circle as many answers as are correct)

a. should not have used physical force to restrain him
b. should have handcuffed him
c. was justified in physically restraining him
d. None of the above.

21. When you stop a suspect, if he tries to leave you may hold him by (circle as many answers as are correct)

a. threatening to use your gun
b. putting your hands on him
c. handcuffing him
d. None of the above. You must let him go.

V A. A stopped suspect may be asked threshold inquiry questions, concerning his identity and what he is doing.

22. A stop to investigate a B & E. When the officer asked the passenger to identify himself and account for his presence in the area, the officer was (circle as many answers as are correct)

a. asking threshold inquiry questions
b. accusing the passenger of a crime
c. engaged in a custodial interrogation
d. None of the above.

23. A stop to investigate heroin dealing. When the officer asked the suspect what he was doing in the area, he was (circle as many answers as are correct)

a. asking threshold inquiry questions
b. conducting an interrogation
c. conducting an investigation
d. placing him in custody.

24. Threshold inquiry questions concern (circle as many answers as are correct)

a. the suspect's identity
b. where the suspect is going and coming from
c. what the suspect is doing in the area
d. whether the suspect committed a certain crime of type of crime.

V B. A silence warning need not be given before threshold questions are asked.

25. A stop to investigate a B & E. Before the officer asked the passenger to identify himself and account for his presence in the area, the officer (circle as many answers as are correct)

a. should have given the passenger a Miranda warning
b. should have told the passenger that he did not have to answer
c. did not have to warn the passenger about the possible effects of his answering or refusing to answer
d. None of the above.

VI A. A Miranda warning should be given before any questions that call for an incriminating answer are asked.

27. A stop of a car to investigate a B & E. The passenger is asked what is in his suitcase. He is then asked whether the passenger had just "ripped off some old lady".

Before the officer confronted the passenger directly about his suspected criminal activity, the officer (circle as many answers as are correct)

a. should have given the passenger an opportunity to call his lawyer
b. should have told the passenger that he did not have to answer
c. did not have to warn the passenger about the possible effects of his answering or refusing to answer
d. None of the above.

28. A stop of a suspected heroin dealer. The suspect is placed in the cruiser and asked whether he had any heroin on him. The suspect's answers to the officer's questions in the car about his criminal activity might be suppressed at trial because (circle as many answers as are correct)

a. No Miranda warning was given
b. a suspect should never be questioned in a police car
c. accusatory questions were asked without a silence warning
d. None of the above.

29. The officers tell the suspect that they know he is dealing and to "fork over" what heroin he has. He gives them two glassine bags. He is then told that he is under arrest. The glassine bags will not be admitted as evidence because (circle as many answers as are correct)

a. The officers arrested the suspect illegally
b. no Miranda warning was given in a situation that was a custodial interrogation
c. The suspect did not enter the car voluntarily
d. The glassine bags will be admitted as evidence.

30. Before you ask a stopped suspect an incriminating question, for example, "How did you break into this car?" you should (circle as many answers as are correct)

a. give the suspect a Miranda warning
b. be sure the suspect responds voluntarily
c. have already frisked the suspect
d. have an impartial witness present.

31. A stopped suspect who is not under arrest should be given Miranda warnings (circle as many answers as are correct)

a. always
b. never
c. whenever you ask a question that calls for an incriminating answer
d. whenever you have isolated him and want to ask incriminating questions.

VI B. If the suspect does not answer incriminating questions, the officers should ask other questions, or release him.

32. A suspected heroin dealer is questioned in a police cruiser and asked whether he has any heroin on him. If he had refused to respond to the questions, the officers' options would include (circle as many answers as are correct)

a. letting him go
b. changing their line of questioning
c. repeating the question with a Miranda warning
d. None of the above.

33. If a suspect does not answer a question that calls for an incriminating answer, your options include (circle as many answers as are correct)

a. releasing him
b. commanding him to answer
c. asking a different type of question
d. telling him he must answer and that his refusal to answer could be used against him.

EYEWITNESS IDENTIFICATION QUESTIONNAIRE

I. A stopped suspect may be reasonably detained for up to twenty minutes to conduct an eyewitness identification.

1. A general description of a B & E suspect is radioed to a cruiser. A man matching the vague description is spotted. He is stopped while one officer calls to see if there is a witness who can identify the suspect. There is, so the officers bring the suspect along. From the time of the stop until the time the suspect is shown to the witness, holding the suspect up to _____ would be generally considered reasonable. (circle as many answers as are correct)

   a. 10 minutes
   b. 20 minutes
   c. 2 hours
   d. No detention would be considered reasonable.

2. As a "rule of thumb" you may reasonably detain a stopped suspect for the purpose of conducting an eyewitness identification for up to (circle as many answers as are correct)

   a. 10 minutes
   b. 20 minutes
   c. 2 hours
   d. It is never reasonable to detain a stopped suspect for the purpose of conducting an eyewitness identification.

II. A one-on-one eyewitness identification is suggestive. Suggestiveness may be reduced by having the suspect stand among other people, or without visible restraint.

3. A one-on-one eyewitness identification procedure (circle as many answers as are correct)

   a. is always improper during the morning watch
   b. is suggestive because the witness may assume you believe the suspect is guilty
   c. is not permitted by General Order 350
   d. is not a suggestive procedure.

4. A one-on-one confrontation is a suggestive identification procedure. To reduce the suggestiveness, you (circle as many answers as are correct)

   a. must have the consent of the suspect before you proceed
   b. may show the suspect without visible restraint, if conditions permit
   c. may have the suspect stand among other people
   d. None of the above.

III. One-on-one identification procedures are justified when a witness has indicated an ability to identify the suspect, the witness is in danger of dying, or the identification will occur within two hours after the commission of the crime.

5. A one-on-one confrontation is a suggestive identification procedure. However, there are circumstances when a witness indicates an ability to identify the perpetrator where conducting such a procedure is permissible. One-on-one eyewitness identification confrontations may be justified (circle as many answers as are correct)

   a. when the witness is in danger of dying
   b. at any time a witness claims he can identify the perpetrator
   c. when the procedure can occur within two hours after the commission of the crime
   d. None of the above.

6. Before the officers transported the B & E suspect, they attempted to determine whether a witness could identify the suspect. This decision can be justified because (circle as many answers as are correct)

   a. they believed the witness could identify or clear the suspect
   b. the procedure would occur within two hours after the commission of the crime
   c. there was reasonable suspicion to stop the suspect
   d. the officer's decision cannot be justified.

7. Conducting a one-on-one eyewitness identification procedure for a witness who has indicated an ability and willingness to identify the perpetrator is permissible (circle as many answers as are correct)

   a. when the suspect or witness is in danger of dying
   b. at any time you believe a witness can recognize the suspect
   c. shortly after the commission of the crime, generally within 2 hours
   d. A one-on-one eyewitness identification procedure may never be conducted because it is too suggestive.

8. You may exercise your authority to detain a stopped suspect in order to conduct an identification with an eyewitness who has indicated an ability to identify the criminal (circle as many answers as are correct)

   a. when the witness can be quickly brought to the scene of the stop
   b. when the suspect can be quickly brought to the location of the witness
   c. when the confrontation will take place shortly after commission of the crime
   d. You don't have authority to detain a stopped suspect in order to conduct an eyewitness identification.

IV. When conducting a one-on-one identification of a stopped suspect, the confrontation should occur at the scene of the stop.

9. Transporting the suspect to the location of the witness was correct procedure because (circle as many answers as are correct)

   a. the witness indicated an ability to identify the suspect
   b. the suspect gave his consent
   c. the suspect was picked up near the crime scene
   d. None of the above. The procedure was not correct.

10. Transporting the suspect to the location of the witness was not correct procedure because (circle as many answers as are correct)

   a. the suspect did not consent
   b. the suspect was not under arrest
   c. the patrol supervisor did not authorize it
   d. None of the above. The procedure was correct.

11. If the officers had not chosen to transport the suspect to the witness's location, they could have conducted the identification procedure at (circle as many answers as are correct)

   a. the stationhouse
   b. the location of the stop
   c. any convenient location
   d. None of the above.

12. You should not move a suspect you have detained from the location of the stop unless (circle as many answers as are correct)

   a. questioning elsewhere may be more productive
   b. you want a witness to view him in another location
   c. a dangerous crowd is gathering
   d. your patrol supervisor authorizes it.

13. You may conduct the identification procedure at any convenient location. (circle one)

   a. True
   b. False

14. The eyewitness identification obtained by the officers (circle as many answers as are correct)

    a. would not be admitted at trial because the confrontation occurred too long after the commission of the crime
    b. would not be admitted at trial because it was the product of a one-on-one confrontation
    c. would not be admitted at trial because the suspect was transported to the location of the witness
    d. would be admitted at trial.

V. If the witness cannot identify the stopped suspect, he should be released.

15. The B & E suspect was transported to the witness. If the witness was unable to identify the suspect, the officers should have (circle as many answers as are correct)

    a. arrested the suspect
    b. detained the suspect while they investigated further
    c. released the suspect
    d. called the suspect's attorney.

16. If you do not have probable cause to arrest the suspect following an eyewitness identification procedure, (circle as many answers as are correct)

    a. you should detain the suspect until you develop probable cause
    b. you should arrest the suspect anyway
    c. you should release the suspect
    d. you should allow the suspect to call his lawyer.

CHAPTER XIV

THE IMPACT OF THE EXCLUSIONARY RULE

Introduction

The courts have relied on the exclusionary rule as the primary deterrent against improper police activity. In Terry v. Ohio, the Supreme Court stated: "In our system evidentiary rulings provide the context in which the judicial process of inclusion and exclusion approves some conduct as comporting with constitutional guarantees and disapproves other actions by state agents"(392 U.S. 12 (1968)). In recent years, the exclusionary rule has become the subject of increasingly intense controversy.

For six decades, the Court has assumed, without any firm empirical basis, that the exclusionary rule effectively deters unconstitutional police practices.[1] Studies have indicated that this assumption may be unfounded. Whatever value this rule has in preserving the integrity of the judicial process, it has not been proved that it serves effectively the objective of deterring police violations. The salient weakness of the exclusionary rule as a deterrent device results from the fact that its penal effect is felt only when a case comes to court and there is an attempt to introduce illegally obtained evidence to secure a conviction. Since much police activity does not have a criminal trial as its goal, the sanction is often ineffective (President's Commission, 1967). Even those situations in which a matter reaches criminal court, there is virtually no communication between the courts, which define proper or improper conduct, and police agencies, which must translate decisions into action (LaFave and Remington, 1965). The process by which the appellate courts announce new guidelines for police

1. Notes and references for this chapter begin on page 310.

conduct, often long after the original transaction, is ill-suited to make everyday police practices conform to the latest nuances of constitutional law (Oaks, 1970; Spiotto, 1973; Katz, 1966; Nagel, 1965). The grounds for the exclusion of evidence by a trial judge are rarely explained to the police officers involved (who often perceive the process as simply one which obstructs their true goal of convicting criminals; see LaFave and Remington, 1965: 987, 1005) and even more rarely transmitted to a police administrator or his supervisory staff.

Recently, the exclusionary rule has come under attack for reasons in addition to the fact that it does not seem to deter police misconduct. For example, in his dissenting opinion in Bivens v. Six Unknown Named Federal Agents, Chief Justice Burger severely criticized the use of the rule in cases where a police officer did not act with evil intent:

> Although unfortunately ineffective, the exclusionary rule has increasingly been characterized by a single, monolithic, and drastic judicial response to all official violations of legal norms. Inadvertent errors of judgment that do not work any grave injustice will inevitably occur under the pressure of police work. These honest mistakes have been treated in the same way as deliberate and flagrant... violations of the Fourth Amendment.
>
> I submit that society has at least as much right to expect rationally graded responses from judges in place of the universal "capital punishment" we inflict on all evidence when police error is shown in its acquisition. Yet for over 55 years, and with increasing scope and intensity... our legal system has treated vastly dissimilar cases as if they were the same (413 U.S. 388, 1971: 395, 399).

At one point the Supreme Court appeared to be moving closer to making drastic changes in the exclusionary rule. In Stone v. Powell, the Court held that federal courts can no longer hear Fourth Amendment exclusionary rule claims pursuant to habeas corpus petitions when a defendant has been granted a "full and fair opportunity to raise the issues at trial and on

direct appeal." In United States v. Janis, the Court allowed evidence suppressed in a state criminal trial to be used in a federal civil tax proceeding. In both these opinions, dissatisfaction with the exclusionary rule was expressed by a majority of the justices. In Bivens, Chief Justice Burger had stated that there were dangers in making changes in the exclusionary rule until meaningful alternatives had been developed. In his concurrence in Stone, he declared that such alternatives were no longer a prerequisite to major changes.

Administrative rulemaking by police departments could provide a mechanism to replace the exclusionary rule, or at least to cut its use substantially. The argument is that it makes much more sense for the police administrator to make rules governing the police than it does for judges to make them. The administrator presumably is experienced in the field, and has the tools necessary to fashion comprehensive rules and constantly update and refine them, as situations change. He also has the power to punish violations directly, rather than indirectly through dismissal of the case against the criminal offender.

If police administrators would undertake to develop administrative rules to regulate the conduct of their officers, courts would be free to consider the "reasonableness" of the police rules rather than having to spend time inventing the rules themselves and imposing them on the police. The review of such administrative rules is a process to which courts are much more accustomed than they are to fashioning rules themselves. If, through the establishment and enforcement of sound administrative rules governing police discretion, police departments can convince the courts that they are capable of governing themselves, the strongest argument for the retention of the exclusionary rule may be destroyed. The courts may then find it

possible to cut back or even abolish the exclusionary rule itself.

Research on the Exclusionary Rule in Boston

Motions to suppress evidence can be considered an incentive for officers to follow proper search and seizure procedures. Unlike training, promotions, or commendations, motions to suppress are not "positive reinforcements" but punishments comparable to being reprimanded by a superior officer or demoted by the department. One might expect that officers confronted with many motions to suppress would tend, over the long run, to change the way they obtain evidence.

Previous studies have demonstrated the extent to which the application of the exclusionary rule is concentrated in a few crimes---narcotics, weapons, and gambling being among the most common in which physical evidence is vital to the prosecution (Oaks, 1970). This inquiry, therefore, limited the sample to drug and gambling offenses. Moreover, because of resource limitations and the structure of the Project's relationship with the Boston Police Department, attention was focused on Districts 2 and 4, and on Vice and Drug Control Units.

The Boston Police Department's computer provided a list of the arrested defendant's names, the arresting units, dates of arrest and arrest charges for all gambling and drug arrests made by the four units between July 1, 1974, and June 30, 1975. It was important to use recent dates to facilitate interviews of case participants to supplement information provided by case files. The period chosen was the most recent for which one could expect the cases to have gone through the district Courts and be either appealed or bound over to the Superior Court.

Arrests were matched with their case files lodged in the appropriate

district courts (for the most part, Boston Municipal Court, Roxbury or Dorchester District Court) and Superior Court (Suffolk).[2] This information was gathered:

1) date of arrest;
2) charge (e.g., possession of Class A substance);
3) unit (specialized or district);
4) officer;
5) judge;
6) whether motions to suppress were filed;
7) type of search in question (with or without a warrant);
8) ruling on the motion (whether evidence was admitted);
9) ultimate disposition of case (i.e., continued without a finding, filed guilty, not guilty, nolle prosse, dismissed, or admission to facts sufficient to support a finding of guilt);
10) appeal; and
11) result of appeal (i.e., pending, ruling on motion, or ultimate disposition).

These data facilitated several types of analysis. The percentage of successful and unsuccessful motions to suppress was tabulated with, in turn,

1) each Boston Police Department unit under study;

2) individual officers;

3) selected offenses;

4) the existence of search warrants; and

5) individual judges.

We hoped to learn whether any patterns could be discerned in each of these tabulations.

Findings

The project's staff sought out only those Superior Court case files for which the district court case files had indicated an appeal or bindover to the Superior Court.[3] Of the 962 arrests extracted by the Boston Police Department's computer, only 512 corresponding case files were found in the

district court clerks' offices and 116 in the Superior Court clerk's office. Thus only 53 percent of the arrests were accessible for analysis. The probable explanations of this are numerous. Vice and the Drug Control Unit operate throughout the city and may seek complaints in any of the eight district courts. The case files of some arrestees may have been pulled or never created on the initiative of police officers wishing to protect informants. For a few of the most serious offenses, district attorneys will seek indictments from a grand jury and never appear in the district court. For the purposes of this analysis, 512 is used as the base number of total cases.

Motions to suppress were raised in only 48 cases, or 9 percent, of the district court cases.[4] Of these 48, only 10 (20 percent) resulted in the suppression of evidence by a district court (see Table XIV-1).[5] In the Superior Court, 19 motions to suppress were raised and only 1 was granted. Because that one suppression occurred in a case in which no motion had been made in the District Court but one was raised on appeal in the Superior Court, it would be just as accurate to say that the 512 cases resulted in 11 suppressions. In any event, there appears to be only a 2 percent chance that a gambling or drug arrest will result in a suppression of evidence and consequent "loss" of the case.[6]

One judge, when informed that motions were raised in only 10 percent of the cases, termed the figure "shocking."[7] The reason for the low figure is not entirely clear. Interviewed judges and defense attorneys believe that, since some motions are purely oral and therefore do not appear in the files, this is only a small portion of the motions cases. The principle reason that so few cases involve motions is that defendants can get pretty much what they want by pleading guilty or admitting facts sufficient to

TABLE XIV-1

SUPPRESSION OF EVIDENCE: MOTIONS MADE AND MOTIONS GRANTED

Court	Number of Cases	Motions to Suppress		Motions to Suppress Granted		
		Number	Percent of Cases	Number	Percent of Cases	Percent of Motions
District Court	512	48	9.4	10	1.9	20.8
Superior Court	116	19	16.4	1	0.9	5.3

Source: Exclusionary Rule Data File, 1975

support a finding of guilt.[8]

Motions to Suppress and Search Warrants

Because search warrants involve rather extensive written documentation, judges and lawyers have been unable to resist the temptation to pore over the writing with a sharp eye to precision. As a result, the law governing search warrants is highly developed, and few lawyers concerned with mounting a competent defense will fail to raise pre-trial motions even if only in the faintest hope that something will be turned up by a close reading of the documents. If anything, written documentation tends to stimulate the defense lawyer, as it provides what seem to be good opportunities for trapping police officers in written inconsistencies.

In the sample of 512 arrests, only 12 used evidence obtained through search warrants. All 12 search warrant cases elicited a motion to suppress (compared to the 10 percent rate for all sample cases, although only 2 of those motions were granted). The 100 percent figure is explained in part by the smallness of the sub-sample of cases (12) and by the fact that these were all not only search warrant cases but drug cases as well.

Given the importance of the issue of search warrants to this project, it is helpful to introduce some additional information. Ban (1973) has presented data on motions to suppress evidence made in Boston district courts between 1961 and 1965; these motions were based on executed search warrants for vice crimes. He found that the number of motions made was exceedingly small, rarely surpassing 20 percent of the warrants issued (see Table XIV-2). But a higher percentage of these motions to suppress evidence were granted than we found for motions to suppress following arrests. Even though there was more pressure applied against vice detectives, who were

the object of more successful motions to suppress than other detectives, this pressure appears to be slight.[8] For example, of the 59 motions to suppress evidence obtained from vice raids conducted with search warrants in 1963, 25 were granted. This later figure represents only 5 percent of vice warrants executed that year.

To obtain more recent information on this subject, the project examined 200 search warrants issued in the Boston Municipal Court and the Roxbury District Court from January to June 1975. This revealed no drastic change from Ban's (1973) findings of ten years ago. Of the 200 search warrants issued, which resulted in 80 cases involving immediate arrests, only 14 were challenged by a motion to suppress. Thus only 18 percent of the cases involving an arrest entailed a motion to suppress.[10]

Our data also show that drug search warrant cases result in a relatively high rate of suppression motions. Eight (57 percent) of the 14 suppressions in the search warrant study sample were in drug cases. These motions arose out of the execution of 31 drug search warrants involving the immediate arrest of persons on the premises. This means that the rate of motions on such cases is roughly 26 percent, as compared to a rate of 18 percent of all successful search warrants challenged in this sample of warrants. Thus, where drug charges coincided with the use of search warrants, the rate of motions to suppress appears to increase. This is in keeping with Ban's (1973) earlier finding of more motions to suppress made in vice cases.

Motions to Suppress and Seriousness of Offense

The hypothesis here is that, the more serious the charge, the greater the vigor with which both defense and prosecution will conduct their cases.

TABLE XIV-2

SEARCH WARRANTS ISSUED AND MOTIONS TO SUPPRESS IN BOSTON DISTRICT COURTS: 1961-1965

Year	Number of Warrants	Motions to Suppress		Motions to Supress Granted		
		Number	Percent of Warrants	Number	Percent of Warrants	Percent of Motions
1961	554	4	0.7	1	0.2	25.0
1962	645	26	4.0	5	0.8	19.2
1963	543	59	10.9	25	4.6	42.4
1964	377	68	18.0	22	5.8	32.3
1965	309	36	11.6	10	3.2	27.8

As a consequence, the more serious the offense, the more motions to suppress the defendant will file because of his/her greater interest in avoiding conviction; at the same time, however, the success rate of motions to suppress will be lower, either because the investigation, search and arrest will have been conducted with a commensurate degree of care and vigor,[11] or simply because judges are reluctant to suppress evidence when charges are serious.

This hypothesis is partly borne out by the sample (see Table XIV-3). Possession of heroin with intent to distribute and possession of heroin were challenged by a motion to suppress in 14.1 and 12.9 percent, respectively, of the district court cases. The 14.1 percent figure for possession with intent to distribute is misleadingly low. A common practice in the prosecution of serious cases in the district court is simply to stage a preliminary hearing or "probable cause hearing". If the district court judge exercises his or her discretionary power to bind the defendant over for trial, the trial is then held in the Superior Court. In these instances, where the district court holds only a preliminary hearing, motions to suppress are usually not filed until the defendant is before the Superior Court. There were ten such cases among those in which the charge was possession of heroin with intent to distribute. Thus, it would be more accurate to say that 25 of the 106 heroin sale cases, or 23.6 percent, entailed a motion to suppress, while simple possession of heroin charges met with motions in only 12.9 percent of the cases, and marijuana possession charges in 5.3 percent of the cases.[12]

Just as it is largely accurate to say that the more serious the charge the greater the motions rate, so is it largely true to say that the suppression rate is inversely proportional to the seriousness of the charge. The

TABLE XIV-3

MOTIONS TO SUPPRESS BY SERIOUSNESS OF OFFENSE

Offenses	Number of Cases	Motions to Suppress				Motions to Suppress Granted					
		District Court		Superior Court		District Court			Superior Court		
		Number	Percent of Cases	Number	Percent of Cases	Number	Percent of Cases	Percent of Motions	Number	Percent of Cases	Percent of Motions
Possession of Heroin Intent to Distribute	106	15	14.1	12	11.3	2	1.8	13.3	0	0.0	0.0
Possession of Heroin	93	12	12.9	1	1.1	2	2.1	16.6	0	0.0	0.0
Possession of Marijuana Intent to Distribute	36	10	27.7	2	5.6	1	2.8	10.0	1	2.8	50.0
Possession of Marijuana	56	3	5.3	0	0.0	1	1.8	33.3	0	0.0	0.0
Totals	291	40	13.7	15	5.2	6	2.1	15.0	1	0.3	6.7

Source: Exclusionary Rule Data File, 1975

suppression rates for possession of heroin with intent to distribute, possession of heroin, and possession of marijuana were 13.3, 16.6 and 33.3 percent of the motions raised, respectively.

Again, it would appear that data bear out the hypothesis that where there is a greater interest in obtaining a conviction because the offense or the offender is more serious, evidence is less likely to be suppressed. While it would be reasonable to believe that officers conduct their investigations with greater care in these circumstances,[13] it is just as reasonable to suggest that judges simply are not willing to let serious offenders go if they can help it. This study provides insufficient data to determine which of these two explanations is more accurate. Interviews indicate that even judges who pay most careful attention to motions to suppress are more reluctant to grant them when the charges are serious.

Motions to Suppress: Boston Police Department Units

No pattern appears in the percentages of motions to suppress raised and of successful motions to suppress when apportioned to each of the four units: DCU, Vice, District 2 and District 4 (see Table XIV-4). A specialized (DCU) and a non-specialized unit (District 2) had the highest number of cases; a non-specialized (District 4) unit had the two highest percentages of cases in which a motion to suppress was raised in the district court (16 and 18 percent, respectively, compared to 8 and 9 percent for Vice and District 2, respectively).[14] All four units experienced the same miniscule percentage of successful motions to suppress out of all their cases.

Motions to Suppress: Individual Boston Police Department Officers

Data on motions to suppress against individual officers can identify

selected officers for more extensive study and contribute to an understanding of whether the individual behavior of selected officers has a bearing on rates of motions to suppress. It could also be used by an administrator seeking to encourage compliance with Department guidelines and legal requirements. Officers with significantly higher rates of motions or suppressions can in fact be found in the case file data (see Table XIV-5).

Selecting the data of three officers, we can see that Officer C, Officer A and Officer D had motions rates of 16, 22 and 45 percent respectively.[15] The lowest of these three motions rates is nearly twice as high as the overall percentage (16 percent compared with 9 percent). The fact that all three officers are members of the DCU helps explain these seemingly anomalous figures. The DCU's motions rate is 16 percent, the same as the lowest of the three officers' rates; however, it is only one-third that of the highest individual motions rate (45 percent). While the performances of these three officers may contribute disproportionately to the high overall rates for the DCU, it is also possible that the nature of DCU work inevitably entails more frequent challenges of officers' actions.

For example, DCU searches involve frequent use of search warrants, which provide a conspicuously detailed target for defense attorneys; they often involve no-knock entries, an area of the law difficult to apply in fact; and they frequently focus on drug dealers, persons with sufficient income to afford defense attorneys. Some special factors may also be at work. For example, interviews revealed that Officer A, with a motions rate of 22 percent, claims to be a student of the law who regularly encourages test cases in an effort to expand the police officer's powers. Fellow officers apparently agree with his evaluation to the extent that they regard him as a gambler, but a calculating one.

TABLE XIV-4

MOTIONS TO SUPPRESS BY TYPE OF UNIT

Unit	Total Cases	Motions to Suppress				Motions to Suppress Granted					
		District Court		Superior Court		District Court			Superior Court		
		Number	Percent of Cases	Number	Percent of Cases	Number	Percent of Cases	Percent of Motions	Number	Percent of Cases	Percent of Motions
DCU	177	28	15.8	17	9.6	3	1.7	10.7	1	0.6	5.8
Vice	77	6	7.8	0	0.0	3	3.8	59.0	0	0.0	0.0
District 2	203	18	8.8	1	0.5	6	2.8	33.3	0	0.0	0.0
District 4	45	8	17.8	1	2.2	0	0.0	0.0	0	0.0	0.0
Total	502	60	11.9	19	3.8	12	2.4	20.0	1	0.2	8.3

Source: Exclusionary Rule Data File, 1975

TABLE XIV-5

MOTIONS TO SUPPRESS BY INDIVIDUAL OFFICERS

Officer	Cases	Motions to Suppress				Motions to Suppress Granted					
		District Court		Superior Court		District Court			Superior Court		
		Number	Percent of Cases	Number	Percent of Cases	Number	Percent of Cases	Percent of Motions	Number	Percent of Cases	Percent of Motions
Officer A(DCU)	23	5	21.7	2	8.7	0	0.0	0.0	1	4.3	50.0
Officer B(Vice)	6	2	33.3	0	0.0	1	16.6	50.0	0	0.0	0.0
Officer C(DCU)	9	3	15.7	4	21.1	0	0.0	0.0	1	5.3	25.0
Officer D(DCU)	1	5	45.4	3	27.3	0	0.0	0.0	0	0.0	0.0
Officer E(D.2)	9	0	0.0	0	0.0	0	0.0	0.0	0	0.0	0.0
Officer F(D.2)	8	0	0.0	0	0.0	0	0.0	0.0	0	0.0	0.0
Officer G(D.2)	7	0	0.0	0	0.0	0	0.0	0.0	0	0.0	0.0
Officer H(D.2)	9	0	0.0	0	0.0	0	0.0	0.0	0	0.0	0.0
Total	92	15	16.3	9	9.8	1	1.1	6.6	2	2.2	2.2

Source: Exclusionary Rule Data File, 1975

The data also reveal that 5 officers of the 32 appearing in the sample account for 15 of the 43 motions to suppress. This means that 16 percent of the officers account for 35 percent of the motions. While it must be acknowledged that these same 5 officers account for 92, or 18 percent of the 512 cases, their aggregate rate of motions to suppress is nevertheless comparatively high at 16 percent. It is one and one half times greater than the overall motions rate of 10 percent (see Table XIV-2).

In sum, the data suggest that the rate for motions to suppress varies with the individual officer. This variation might indicate the degree of correctness with which officers perform. It might suggest that the exclusionary rule's deterrent effect varies with the subjective makeup of individual officers. In any event, individual officers suitable for further study concerning the relationship between the exclusionary rule and an officer's observance of the law can be identified.

Motions to Suppress and Judges

The clearest results were obtained with this variable. Figures bear out the widely-held belief that the identity of the judge is the most important factor in determining the probability of raising a successful motion to suppress. In the Roxbury District Court, vivid examples of this fact can be found (see Table XIV-6).

Twenty-one percent of Judge A's cases entailed a motion, more than twice the rate for all cases. Forty-five percent of the motions he heard were granted, compared to 29 percent for all judges. Judge A and Judge B, another Roxbury District Court Judge with a similar record, combined to account for 20, or 40 percent, of the 50 motions reaised in the district courts. In contrast, they heard only 27 percent of the sample cases.

TABLE XIV-6

MOTIONS TO SUPPRESS BY INDIVIDUAL DISTRICT COURT JUDGES

Judge	Number of Cases	Motions to Suppress		Motions to Suppress Granted		
		Number	Percent of Cases	Number	Percent of Cases	Percent of Motions
Judge A	52	11	21.1	5	9.6	45.4
Judge B	85	9	10.6	2	2.3	22.2
Judge C	43	1	2.3	0	0.0	0.0
Judge D	8	1	12.5	0	0.0	0.0
Judge E	11	3	27.2	0	0.0	0.0
Total	199	25	12.6	7	3.5	28.0

Source: Exclusionary Rule Data File, 1975

These figures would tend to support critics of the exclusionary rule who claim that judges, and not the facts, often explain the way a case is handled. Because some judges are inclined to believe police officers' testimony, while others are not, and because some judges feel protected by de novo review, while others do not, results will differ even in similar cases. Moreover, quite a few cases present novel questions of law for which there is little guidance; in the absence of objective standards, judges inevitably fall back on the individual aspects of their character and philosophy. The result can be as many different exclusionary rule standards as there are judges.

Conclusion

Analysis of the data suggest the following:

- -- Very few motions to suppress are raised, and very few of these are granted;
- -- There are no differences in patterns between specialized units (DCU and Vice) and non-specialized units (Districts 2 and 4);
- -- Specific officers can be identified who are more likely to perform improper searches;
- -- As the seriousness of the charge increases, the frequency of motions to suppress increases, and the frequency of suppressions decreases;
- -- The existence of a search warrant increases the likelihood both of a motion to suppress being filed and this motion being denied; and
- -- Individual judges can be identified who hear and grant disproportionate numbers of motions to suppress.

As the documentary evidence presented above shows, relatively few cases are challenged by motions to suppress. This does not mean that there is no need for obtaining officer compliance with law and good policy. The fact that few suppression hearings occur underscores the need for an effective means of obtaining compliance: even if the exclusionary rule is a potentially effective deterrent in theory, in practice it cannot be shown to be working.[16]

NOTES

1. The court first applied the exclusionary rule to Fourth Amendment violations in 1914 against federal officers, in Weeks v. United States, 232 U.S. 383 (1914). The rule was expanded through the Fourteenth Amendment to state officers in Mapp v. Ohio, 367 U.S. 643 (1961).

2. District courts are the entry level for virtually all criminal offenses tried in Massachusetts. Each district court has a statutorily defined territorial jurisdiction. See Mass. Gen. Laws c. 218 1. Of the 73 district courts serving Massachusetts, 8 are in Boston: Boston Municipal, Roxbury, Dorchester, East Boston, Charlestown, South Boston, West Roxbury and Brighton.

   The territorial responsibility of Boston Police Department District 2 coincides roughly with Roxbury District Court, while District 4's territory is largely in Boston Municipal Court jurisdiction. Most of the arrests by the two districts are brought to the two respective courts, although there is no requirement that they be brought in either of the two courts. The two specialized units (Vice and DCU) perform arrests throughout the city and will usually seek complaints in the court nearest the place of arrest. Nevertheless, a large portion of Vice and DCU activity is concentrated in the territorial jurisdictions of the Boston Municipal Court and Roxbury District Court, the two busiest criminal district courts in the state.

   In sum, searching the files of Roxbury, Dorchester, and Boston Municipal Courts should uncover case files for most, but not all, of the arrests provided by the Boston Police Department computer printout of fiscal year 1974 arrests.

   All Boston criminal appeals from the district courts are made to Suffolk Superior Court.

3. In 1975 Massachusetts criminal courts formed a two-tiered, trial de novo system. At the district court level, only a bench trial was available, but, except for defendants who plead guilty, a defendant had the absolute right of appeal to the Superior Court, where a jury trial was available. As entirely new trial may be held in the Superior Court as though the district court proceedings had never occurred. Only about 2 percent of all criminal cases in Massachusetts originated in the Superior Court. Judicial bindovers were a result of the differing jurisdiction of the district and Superior Courts.

NOTES (CONT'D)

4. Because the focus of the study is the court's opinion of the officer's action on the streets, a multiple-charge or multiple-defendant case is counted as a single case if it arose out of the same police officer street transaction, performed by the arresting officer. Similarly, if motions raised in a multiple-charge and multiple-defendant case are raised in response to a single transaction, the motions are counted as one.

5. The number of suppressions could be even lower than the stated figure of 10. Only six of the case files stated in a wholly unambiguous manner the fact that motions were raised and granted. While most case files containing motions explicitly stated whether the motion was granted or denied, several were silent concerning the result of the motion. Of these ambiguous cases, those which appeared to involve successful motions were counted as such. That is, 4 cases were included in the group of 10 because a motion was raised and the case was dismissed with no apparent explanation other than the motion.

6. All cases in which evidence was suppressed resulted in a dismissal or a finding of not guilty.

7. June 17, 1976 interview in Boston.

8. In Massachusetts practice, admission of "facts sufficient" by the defendant is the equivalent of a guilty plea. Admissions are used in the district court because statute precludes appeal where the defendant pleads guilty.

9. Ban (1973: 34-35) notes the effects of motions to suppress that fell on the vice squad:

"Yet, if the impact of motions to suppress in keeping the vice squad alert to the need to use search warrants is a bit problematic, their impact in teaching the intricacies of proper search and seizure procedure is much less so. In the area of vice crimes, the lower court judges and defense lawyers could play the role of teacher much more easily than in the area of crime against persons or property. In the latter area, there were 2,575 pupils to be taught and the overwhelming majority of them would appear only rarely and randomly. In the area of vice crimes, on the other hand, the 25 officers of the vice squad were continuously in court and so could be taught continuously and directly with excluded evidence the punishment for every unlearned lesson. Thus, not surprisingly, the men of the vice squad were relatively better acquainted with the law of search and seizure."

10. A common defense strategy is to decline to make a motion to suppress in the district court if a trial de novo appeal to the Superior Court is planned. Thus the defendant's strategy is not revealed until the critical Superior Court trial. But this does not account for the low rate of motions to suppress in this sample. Only 3 such cases were appealed. Assuming that a motion to suppress was saved until the Superior Court trial in each of the three cases, this would only raise the total motions to 17, or 21 percent of the sample. This low percentage may be a reflection of the defendant's ability to obtain a satisfactory settlement with a guilty plea.

11. Project staff exposure to Boston Police Department officers through ride-alongs and interviews suggests that it cannot be said with great confidence that serious charges always inspire careful investigations. In some instances, a serious offense or offender will spur officers on to overzealous and hence improper efforts to make their case.

12. The 27.7 percent motions to suppress figure for possession of marijuana with intent to distribute might be regarded as an anomaly. This probably results from the fact that the sample turned up a much smaller sub-sample of marijuana sale cases (36) than it did for the other three selected drug offenses (106, 93, 56).

13. It would be plausible to suggest that under thses circumstances an officer is more willing to perjure himself. If this were true, one would expect a greater number of defendants with the more serious charges to raise a motion to suppress because they know that the facts support them, while the officer can only lie. This, however, is not the case. The motions to suppress rate for all sample cases is 10 percent while that for possession of heroin is roughly the same: 13 percent.

14. In order to simplify discussion, the district court data will be used throughout this analysis unless otherwise indicated. This is justifiable because Superior Court data, when they are significant at all, are consistent with the district court data.

15. The number of motions associated with individual police officer activity may on first consideration not appear to be large enough to yield valid results. However, considering that the average American police officer makes 33 arrests a year, these figures probably can be

treated as sufficiently representative of an officer's annual activity.

16. We must be cautious about concluding from these very limited data that the exclusionary does not work. One critic of research on the exclusionary rule correctly notes (Anonymous, 1974: 747-748)

> ... research on the exclusionary rule is complicated by the inability to observe or measure compliance directly. Compliance with the rule usually amounts to a non-event that is not observable - it consists of not conducting illegal seraches. Though empiricism is theoretically neutral, the simple fact that some phenomena are more easily measured than others often means that direct observation aids only one side of the evaluation. Such is the case with the exclusionary rule.

REFERENCES

Anonymous
1974 "On the Limitations of Empirical Evaluations of the Exclusionary Rule: A Critique of the Spiotto Research and United States v. Calandra." Northwestern Law Review 69:740-98.

Ban, Michael
1973 Local Courts v. The Supreme Court: The Impact of Mapp v. Ohio. Unpublished dissertation. Cambridge: Harvard University.

Katz, Michael
1966 "The Supreme Court and the States: An Inquiry into Mapp v. Ohio in North Carolina." North Carolina Law Review 45:119-151.

LaFave, W. R., and F. J. Remington
1965 "Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions." Michigan Law Review 63:987-1012.

Nagel, Stuart S.
1965 "Testing the Effects of Excluding Illegally Seized Evidence." Wisconsin Law Review 283-310.

Oaks, Dallin H.
1970 "Studying the Exclusionary Rule in Search and Seizure." University of Chicago Law Review 37:665-757.

President's Commission on Law Enforcement and Administration of Justice.
1967 The Challenge of Crime in a Free Society. Washington D.C.:U.S. Government Printing Office.

Spiotto, James E.
1973 "The Search and Seizure Problem--Two Approaches: The Canadian Tort Remedy and the United States Exclusionary Rule." Journal of Police Science and Administration 1:36-49.

CHAPTER XV

CONCLUSIONS

We attempted to measure systematically the impact of guidelines on structuring discretion in selected areas of criminal investigative procedures. As far as we can determine, no one has undertaken anywhere else a similar evaluation effort on the impact of policymaking.

We identified and tested various strategies for evaluating the impact of guidelines on the conduct of patrol officers and detectives. We gathered questionnaire responses to situational videotapes before and after officers were trained in criminal investigative procedures. Project staff collected data on search warrants to serve as baseline measures for use in the evaluation of training on search warrants. We attempted to assess the impact of the use of the exclusionary rule in the Boston court system. These are our conclusions:

The limited use of the exclusionary rule in Boston courts suggests that the rule does not effectively regulate police conduct. But we can present no evidence that the criminal investigative procedures issued as advisory guidelines in the Boston Police Department are an effective alternative to the exclusionary rule.

In Boston, there is no evidence that the exclusionary rule is working to regulate police conduct: motions to suppress evidence and the granting of such motions are both rare. Certainly, the low suppression rate does not mean that police practices are always proper. Interviews and observations conducted very early in this project made it clear that police officers do experience difficulty in attempting to interpret the law to properly adhere to it. The results of the evaluation studies suggest that even

after training officers still do not interpret some laws correctly.

Administrative policymaking and criminal investigative procedures, by themselves, are not an effective alternative to the exclusionary rule. We have found no evidence that police administrative guidelines will ensure greater compliance with proper standards of police practice than do constitutional, legislative or judicial mandates. There are indications that officers interpret some guidelines so as to expand their authority. Guidelines may have little or no impact without the application of related internal or external incentives or sanctions. While it is possible as well as valuable to involve police personnel at all levels in identifying problem areas and in formulating appropriate guidelines or policies, this involvement will not necessarily be more effective in regulating street conduct than policies produced by other means.

It is possible to involve personnel of all ranks in identifying both the substantive areas in greatest need of policy development and in formulating the policies themselves. But police personnel differ among themselves over what they consider permissible conduct and the views of senior officers may not coincide with the perceptions of line personnel. These differences in perspective must be recognized and dealt with to develop effective policies.

If guidelines on criminal investigation are developed with the active involvement of a broad cross-section of department personnel they are more likely to reflect directly and accurately the particular problems and needs of a given police agency and be acceptable to personnel within that agency. Guidelines will then reflect the practical concerns and expertise of the officers who will eventually use them.

However, the Project found that perceptions of acceptable police behavior vary according to officers' ranks. While the legal practices and procedures that the Criminal Investigative Task Force favored were sometimes more restrictive than either case law or model rules require, results of the evaluation suggest that line personnel favor less restrictive policies. Future policymaking projects must reconcile the broad experience of supervisory personnel with needs perceived by officers on the street.

A comparison of the number of search warrants obtained to the total number of detectives available to serve warrants indicates that the Boston police do not use search warrants very extensively; nevertheless, this department probably uses search warrants more, perhaps to a significant degree, than do other police departments.

The Boston police use search warrants mostly for vice and drug cases. This is consistent with police practice in other large cities and has two implications. First, it is unlikely that the total number of search warrants sought by all detectives can be increased much no matter how strong the preference is for searches with warrants. Training is likely to affect only officers who seek warrants infrequently (see below). Second, when officers seek warrants they will likely seek them for cases involving drugs, alcohol, or other violations of the vice laws. There is no reason to believe that search warrants will be used much in non-vice cases. More serious crimes are not solved in ways that are compatible with the use of search warrants.

Search warrants cannot serve as a mechanism for monitoring the conduct of police officers or increasing their accountability unless recordkeeping in the district courts or the Boston Police Department improves.

The absence of a centralized system to record warrant activity and the chaotic conditions of the search warrrant files in some district courts make monitoring warrant activity difficult. Present reporting and filing practices shield officers from internal review and public scrutiny unless the officers' activities result in courtroom proceedings. Moreover, the local district court system has not functioned as an adversarial system and there is little reason to believe that judicial scrutiny of warrants will play a more prominent role in increasing accountability.

The Department should direct training on proper legal procedures for executing search warrants primarily at the Drug Control Unit and the Vice Control Unit.

Data indicate that the use of search warrants is concentrated in these centralized units. Other data indicate that these units encounter a disproportionate number of motions to suppress evidence. The Boston Police Department, with its limited resources and manpower, should train those detectives who are more likely to use warrants and to have their warrants challenged in court.

The Department should direct training on procedures for obtaining search warrants primarily at those detectives who have a record of low warrant use.

Data seem to indicate that training does not increase the warrant output of detectives who have experience at obtaining warrants. Training does appear to improve the performance of officers who have not obtained many warrants in the past. The Boston Police Department should train those detectives who have had low warrant use and who are in assignments that provide opportunities to use warrants.

In evaluating the performance of detectives, the Department should use their compliance with guidelines as one criterion, rather than only

counting the number of arrests they make or search warrants they serve or accepting the subjective judgment of superiors.

Traditional police department measures of productivity cannot serve as measures of compliance with criminal investigative guidelines. Knowing how many warrants detectives serve says nothing about how they serve them. Even knowing how many cases are the object of motions to suppress says little about the conduct of police officers. The evaluation by the Project produced very little information as to how closely police officers follow criminal investigative procedures. The Department should consider implementing internal evaluation procedures that encourage compliance with the criminal investigative guidelines.

Local judges should be informed of the criminal investigative guidelines adopted by the Boston Police Department.

Information from the court system indicates that individual judges vary greatly in their willingness to suppress evidence. These individual differences may increase the cynicism among police officers toward the courts and may contribute to their sporadic use of the guidelines. Officers are more likely to accept and use criminal investigative guidelines if judges review police conduct in accordance with uniform standards. The Boston Police Department's criminal investigative procedures may improve the performance of district and Superior Court judges by providing a common written standard for such review.

The use of videotaped situations is effective in stimulating discussion and gaining insight into police practices.

Given the infrequent and spontaneous occurrences of most stops and frisks as well as the frequent need to act quickly on search warrants, the use of videotapes is helpful in obtaining information on police reactions to different types of encounters. When it is difficult to observe of-

ficers' performance in the field, or when it is necessary to compare the reactions of several officers to the same situation, the video-based questionnaire can, in a cost-effective and relatively efficient manner, obtain this information. It should not, however, serve as the only mechanism for officer input, but should be supplemented with interviews and field observations.

It is possible to measure quantitatively the effect of police policies in changing behavior or structuring discretion; it is not possible to conduct such an evaluation easily, inexpensively or informally.

The Project's evaluation encountered several difficulties. First, recording responses in a way that guarded the officers' anonymity and alleviated their fear of the misuse of the responses by superior officers prevented any observation of the progress of individual officers between sessions. Second, we were unable to observe actual street performance of officers who had learned legal procedures in the classroom, and so could not determine how these procedures were applied in day-to-day activities. Third, in general, Project work indicated that evaluations utilizing control and experimental groups are difficult to administer in police departments. Given the importance of measuring the impact of policies in structuring discretion, the development of research strategies more flexible than the traditional experimental or quasi-experimental designs is needed. However, there appears to be no alternative to observing the police in action. These observations are time-consuming, costly and a burden to the officers who are observed, but they are essential. It is inconceivable that field observations would not be integral to any new research techniques developed.

The practical problems that confront criminal justice research conducted in applied settings are not well understood. Until these are made

explicit and directly related to types of agencies, programs studied and research methods employed, the application of more sophisticated methods intended to facilitate criminal justice evaluation research will meet with limited success.

The basic principles of evaluation research appear to be well understood and accepted. Many, if not most, of the research methods discussed in books and articles intended for criminal justice researchers are the same as those found in standard textbooks of basic and applied research in sociology, psychology, political science and economics. These methods include principles of sampling, experimental design, measurement, the application of statistical techniques, and methods of inference and proof. These form a core of research techniques and principles that all researchers, regardless of their purposes or professions learn and should be capable of applying to their problem of concern.

Even after these differences in purpose (applied vs. basic research) and setting are considered, it appears that evaluation research in criminal justice agencies (and perhaps all public agencies) has not been successful. Our evaluation in the Boston Police Department is no exception. Objective assessments of all such efforts often lead to the conclusion that the research was not valid only because the researchers committed methodological errors.

We experienced very real practical problems that stemmed from constraints imposed upon us by the agency in which we worked. These problems interfered with the application of basic research principles, to the detriment of a sound evaluatuion. Furthermore, we suggest that these problems may vary not randomly but systematically by size of agency, by scope of the evaluation effort, by program being studied or evaluated, and by criminal justice sector -- police, courts, or corrections. This reluctance to dwell on

practical problems is understandable: researchers do not wish to create the impression that the agency with which they worked did not cooperate fully or that the researchers were not clever enough to overcome the obstacles encountered. We suggest that studies be undertaken to identify organizational factors that systematically lead to bias in evaluation studies or prevent them from realizing their stated purpose.

PART V

RECENT NATIONAL DEVELOPMENTS IN POLICE POLICYMAKING

CHAPTER XVI

AN INTRODUCTION TO RECENT NATIONAL DEVELOPMENTS IN POLICE POLICYMAKING

A major objective of this Project was to examine police policy-making nationally to help us formulate national recommendations. This study provided a broader base of information from which to understand and evaluate the Project's experiences in the Boston Police Department.

We attempted to accomplish this objective in two ways. First, Project staff prepared a survey questionnaire to obtain information on type of police policies, processes of policy development and methods of checking and stimulating compliance. The Boston Police Department mailed the questionnaire to a large number of police departments across the country. Second, based in part on the survey information, Project staff visited three police departments to study police policymaking more intensively.

The next two chapters (XVII and XVIII) report our methods and our interpretation of the data we collected by means of the questionnaire and at the site visits. In each chapter we offer our conclusions based on the responses and information we gathered.

CHAPTER XVII

NATIONAL SURVEY OF POLICE AGENCIES

The Scope and Purpose of the Survey Questionnaire

In order to determine the extent and type of policymaking that is taking place in police departments nationally, survey questionnaires were sent to selected cities requesting information on their experiences in developing minimal investigative guidelines.[1] The questionnaire requested information on several issues:

1. The areas in which polices exist.
    a. The existence of written criminal investigative procedures (Questions 1, 4);
    b. The types of criminal investigative procedures (2);
    c. The existence of written enforcement priorities (14);
    d. The types of written enforcement priorities (15).
2. The process by which policies are developed.
    a. The groups participating in police development (5, 6, 7, 8);
    b. The method of updating written policies (11, 12);
    c. Communication of policies to non-departmental groups (9).
3. The methods of checking and stimulating compliance with the written policies.
    a. The method of communicating policies to departmental personnel (10);
    b. The accountability of officers with regard to the policies (3, 13).

In addition, in late February 1978 the Boston Police Department sent a follow-up letter to those departments that claimed to have written

---

1. Notes and references for this chapter begin on page 339.

criminal investigative policies, requesting a sample of their policies that included, if possible, the table of contents from their policy manual. Also requested was a specific description of the mechanism the department uses to check the compliance of officers with the policies, and information as to when an officer was most recently disciplined/commended for non-compliance/compliance with the policies. The purpose of these requests was to determine in more detail than the first questionnaire permitted the extent to which the departments formally attempt to bring the actual behavior of their officers in line with their stated policies.

Sampling Procedures

The Boston Police Department sent the survey questionnaires, over the signature of the Police Commissioner, to 141 selected cities. The primary sample consisted of 121 cities randomly selected within specific size categories (Table XVII).[2] For cities of 100,000 and above, the sample was drawn from the Census Bureau estimates of 1975 population, while for cities between 99,999 and 25,000 the sample was drawn from Table A-4 in the City County Data Yearbook (1970), but excluded those cities that were on the Census Bureau list. In addition to this primary sample, survey questionnaires were sent to 17 Massachusetts cities and towns in the Boston area, as well as three other cities known to have engaged in policymaking.

The survey was sent in December 1977; in February 1978, a follow-up mailing of the survey was sent to those departments that had not yet responded. The Boston Police Training Academy received the responses.

Tabulation of Responses

Of the 121 cities that received this questionnaire, 94 or approximately 78 percent, responded to the survey. Response rates ranged from 87.7 percent among the largest cities to 65.2 percent among the smallest (see Table XVII-2). Because of the small number of cities in the three smallest size categories, responses for cities from 25,000 to 249,999 were collapsed into one category, "other cities," for comparison with "big cities" (those of 250,000 and over) in the analysis that is presented below (Table XVII-3).

Of the 94 departments responding to our questionnaire, 71, or 75.5 percent, indicated that they had written criminal investigative procedures (Table XVII-1). Of these 71 departments, 15 included a sample of their procedures or other supplementary information when they returned the initial questionnaire. A subsequent request for sample materials was mailed to 55 of the departments[3] and 23 sent samples of their procedures. Thus far the project has collected sample policies or other information from 38 of the 71 departments which said that they have written criminal investigative procedures.

It should be noted that the survey questionnaire provided a rather broad definition of policies, thereby increasing the likelihood that police departments would respond affirmatively, even when their written policies did not correspond to those developed in the Boston Police Department. This must be kept in mind in order to understand the responses described below. In addition, as in any organization, the role of the individual completing the survey provides a particular view of the policies and policy development process, a view which may differ considerably from that of individuals in other units of the organization.

Most of the surveys were completed by officers in "Planning and Research" departments.

Analysis of Responses

1. The Types of Policies

The majority of departments reporting written criminal investigative procedures have policies that appear to be narrowly technical or procedural in substance.

While 75.5 percent of the departments responding claimed to have criminal investigative procedures, 68.4 percent of the 38 departments from which samples or other supplementary materials were received have procedures that merely describe the mechanics of police work. These policies describe, for example, how to obtain a search warrant, how to approach a subject, and how to book a suspect, but do not describe the options available in specific situations or provide legal or other information to guide officers in the exercise of discretion. Five of these departments (13.2 percent) have legal procedures based on state codes. Of the specific procedural areas listed in the survey, cities of all sizes are most likely to have procedures on arrest (88.7 percent) and least likely to have procedures on eyewitness identification (52.0 percent) (Table XVII-4).

Few departments reported having written policies on enforcement priorities.

Of the 71 departments reporting criminal investigation procedures,

38 percent do not have written policies on enforcement priorities. Of those claiming to have such enforcement priorities, more deal with patrol officers (40.8 percent) rather than specialized units. Smaller cities are slightly more likely to have enforcement priorities for patrol officers and less likely to have them for specialized units. In both size categories, departments are most likely to have priorities for patrol officers and least likely to have them for organized crime units (Table XVII-5).

Given the technical nature of most of the sample criminal investigative procedures, however, it may be that these reported enforcement policies are also narrow in scope and do not actually structure the discretionary activities of police officers.

Departments reporting written policies containing legal information are for the most part those of medium-sized cities.

Except for one very large midwestern city, the departments that have extensive legal policies are located in cities between 275,000 and 425,000. Further research on these departments may reveal more specific urban factors (e.g., types of communities, policing style, etc.) that contribute to this pattern. These five departments constitute 13.2 percent of the 38 departments on which detailed information was obtained.

Particularly in smaller communities, legal information bulletins provide officers with extensive and detailed legal polices.

Of the 38 departments, 18.4 percent reported utilizing legal information

bulletins to provide material to their officers. In six of these seven departments, the material is quite extensive and in fact outlines the legal options available to officers in specific situations. Except for two, these departments are in rather small cities, ranging in size from 35,000 to 115,000. Further research may reveal more specific factors that contribute to this pattern.

Information obtained in the survey on the process of the policy development in smaller cities indicates that apparently these departments often lack the internal capabilities and specialization, or close affiliation with an outside research organization, needed to produce written policies in the format of a policy manual or book of procedures (see Section 2 below). For such departments, legal information bulletins may be an effective method of developing and communicating legal guidelines to structure discretion. Several of the smaller departments noted this fact. One police officer wrote:

> Each office is provided monthly briefs on all significant state and federal, Appellate and Supreme Court decisions . . . I realize this procedure would seem inadequate in a large department but we have 84 sworn officers. We believe the training bulletin is appropriate for our needs. (Response to Criminal Investigative Procedures Questionnaire, 1977).

2. The Process of Policy Development

Police departments in smaller cities do not appear to have the capabilities or internal specialization to engage in the development of written policies. Smaller departments are less likely to report having policies, or, if they report them, less likely to develop them on their own or with the involvement of specialized units.

Smaller cities are less likely to claim to have criminal investigation procedures (Table XVII-2); if they have any, they are likely to have fewer such procedures (Table XVII-4). Big city departments are more likely to develop their policies alone (46.5 percent) than are smaller cities (32.1 percent). Departments of smaller cities are more likely to rely on outside agencies either for assistance or for the complete development of policies (Table XVII-6).

In cities of all sizes, policy development is directed by police administrators, most often by superior officers or planning and research divisions. Direction by a designated committee, a legal advisor or legal consultants is extremely rare.

Among departments that developed criminal investigative procedures alone (Table XVII-7).

a) Big city policy development is most often directed by planning and research (50.0 percent) and next often by superior officers (35.0 percent); 15.0 percent are divided by a designated committee of sworn officers, and none by patrol officers.

b) Smaller city policy development is most often directed by superior officers (77.7 percent). None reported direction by a legal advisor or a designated committee of sworn officers.

Among departments that developed criminal investigative procedures with outside assistance (Table XVII-10)

a) Big city police development is most often directed by planning and research (52.9 percent) or superior officers (29.4 percent) and never by legal consultants, designated committees of sworn officers or patrol officers.

b) Smaller city policy development is most often directed by superior officers (72.7 percent) or planning and research (45.4 percent) and never by designated committees, legal advisors or city attorneys.

In cities of all sizes, participation in policy development was reported to have a strong legal component, with high involvement by legal advisors, district attorneys, and city attorneys. Participation by a designated committee, patrol officers or legal consultants tends to be low, although there is frequent participation by detectives.

Among departments that developed criminal investigative procedures alone (Table XVII-7)

a) Participation in big city policy development was reported to be lowest for patrol officers (40.0 percent), next lowest for a designated committee of sworn officers (55.0 percent) and highest for a legal advisor (80.0 percent).

b) Participation in smaller city policy development is highest for patrol officers and detectives (77.7 percent) and lowest for training academy staff (22.2 percent). Smaller departments invite the participation of rank and file patrol officers and detectives to a greater degree, probably because of their lack of internal specialization.

Among departments that developed criminal investigative procedures with outside assistance (Table XVII-8)

a) Participation in big-city policy development is most often by superior officers (94.1 percent) or district attorneys (88.2 percent) and least often by judges or legal consultants (29.4 percent).

b) Participation in smaller city policy development is most often by district attorneys (90.9 percent) or city attorneys (72.7 percent) and least often by a designated committee (27.3 percent).

The District Attorney was reported to be the most frequent source of written policies for those departments that rely entirely on outside agencies.

This was true for the smaller cities (50.0 percent) as well as for the big cities (100.0 percent). The "Other" category for smaller cities was relatively large because they made use of county prosecutors/attorneys,

state police or state attorneys general for their investigative procedures more often than did big city departments (Table XVII-9).

Departments reported that planning and research is most often responsible for updating policies and that a variety of methods is used to communicate written policies to officers.

Among all cities that update their policies, planning and research is most likely to be responsible for modifying and updating policies, more so for big cities (]7.5 percent) than for smaller cities (52.0 percent). Smaller cities are less likely to use any consistent method to update policies. In the "other" category, superior officers and/or the police chief are most often indicated (Table XVII-10). Outside consultants are rarely used for updating (Big city: 2.5 percent; Other: 0 percent).

Big cities are most likely to use in-service training (90.7 percent) and departmental orders (88.4 percent) to communicate written policies, while smaller cities are more likely to use officer manuals (85.7 percent) and in-service training (78.6 percent). There were no patterns in the "other" responses (Table XVII-11). Three cities mentioned the use of video-tapes in training.

The majority of police departments reporting criminal investigative procedures claimed they circulate the policies only internally. If the policies are circulated to outside agencies, the district attorney is the usual recipient.

Smaller cities are slightly more likely to circulate their policies only internally and slightly less likely to inform outside agencies of their policies: The "other" category of smaller cities is relatively

large since they more frequently mentioned circulation to city officials and county prosecutors or attorneys (Table XVII-12).

3. Methods for Stimulating and Checking Compliance with Written Policies

Most police departments reported no well-developed system of incentives nor any mechanisms of evaluation and compliance.

Supervisory evaluation is the most frequently cited incentive for both big cities (86.0 percent) and smaller cities (78.6 percent). The next most frequently cited incentive is promotional exams for big cities (81.4 percent) and court prosecutions in smaller cities (75.0 percent) (Table XVII-13).

In the follow-up letter a more specitic question was asked so as to obtain more detailed information on how departments check compliance with their policies or any attempt to discipline/commend officers with regard to these policies. These are some typical responses on this matter:

> We have no mechanism to check compliance or noncompliance with this policy other than section 2/4.00 of our Rules Manual that covers attention to duty.
>
> Disciplinary proceedings for non-compliance have not been held . . .
>
> We are not aware of any cases in which a police officer has been disciplined for non-compliance with written criminal investigative policies.
>
> I have been in charge of the Criminal Investigation Section for the past two years and no one has been disciplined for non-compliance with our written policies concerning our criminal investigations.
>
> I cannot factually state when personnel have been either disciplinarily cited or commended based on the requirements of the subject procedures. I can state however, with reasonable assurance, that if either situation referred to has occurred, it has been rare.

Several departments noted that officers are disciplined only for infractions more serious than disregarding criminal investigative procedures, or that violations of the procedures would appear in the form of more serious infractions.

This reported lack of mechanisms within departments to check compliance with written policies as well as to discipline officers for violations of such policies is significant: nearly half of both "Big City" and other departments report that their criminal investigative procedures are mandatory rather than advisory (Table XVII-14). The problematic status of rules and accountability that the Project found in the Boston Police Department may be common to other police agencies (see Chapter VI).

It is also interesting that, of the five departments appearing to have legal policies that we believe might serve the purpose of structuring discretion, two reported some instances of officers being disciplined. While the discipline proceedings may not have been related specifically to violations of criminal investigative procedures, they nevertheless indicate a certain perspective on police policies in the administration of these departments different from that of other departments. In addition, another of the five cities, while not reporting a specific discipline case, did claim to have close supervision of officers' actions by immediate superiors, an attorney, and court prosecutors. This same department also stated that a verbal reprimand by a supervisor is the most common form of disciplinary action for such violations.

Except for the use of policy material on promotional exams, police departments do not report using any positive incentive to encourage

officers to know the written policies, nor do the departments report much value in such positive incentives.

While promotional exams were the third most frequently cited incentive in cities of all size, commendations/other rewards were cited the least in both size categories (Big City: 11.6 percent; Other: 10.7 percent). Use of policy material on qualifying exams for special positions is also low. Smaller cities are less likely to utilize any given incentive. However, disciplinary proceedings were frequently mentioned (Table XVII-13). Several departments noted that commendations (i.e., "positive incentives") are inappropriate since compliance to these policies is expected as a normal part of police work.

> Commendations for compliance with written policies generally are verbal as professionalism in the field of law enforcement continually demands such compliance.
>
> This Police Division doesn't reward compliance with written policies as it is expected from the individual officer.
>
> Members who adhere to written policies are not normally rewarded for compliance alone.

Summary

Despite over 10 years of discussion on the advantages of police agencies engaging in policy making to structure the discretion of their officers, very few police departments report having developed written policies for this purpose.

Police departments still appear much more willing to provide written policies on the technical (and legal) aspects of police work than policies on order maintenance or selective enforcement. It may be that the nature of police work in a democratic society is inherently so controversial that the police

find it politically difficult to develop the latter types of written policies.

Possibly, technical procedures are one important way to address the problem of accountability. For example, the technical procedures of a department in one large midwestern city in regard to search warrants, while lacking the legal information of the Boston Police Department's criminal investigative guidelines, provide a higher degree of review and accountability. Specifically, a supervisor or command officer must be present at all search warrant executions; immediately prior to the execution the Command Post must be notified of all the details of the warrant; and immediately after, the district desk officer and the Command Officer must be notified of the results. This provides the possibility of administrative control over the execution of warrants. However, there is no indication that police departments use technical policies in this manner.

The potential for police policymaking appears to be a function of the size of the community in which the department is located.

Survey responses indicate that departments in small cities do not have the internal capabilities, and often not even the external contacts, to engage in policymaking. Consequently they do not develop written policies as frequently as other departments. When they do develop policies, they often rely on officials in the criminal justice system, such as the district or county attorney, who are already in regular contact with the department.[3]

Based on survey results, it appears that most efforts to develop written policies and upgrade police practices appear to have taken place in middle-size communities. This may be due to the fact that departments in such communities have neither the constraints found in smaller nor

those found in much larger cities, The departments that have such written policies are located in relatively homogeneous and economically sound communities, which often demand professional government services of all sorts. Furthermore, the departments themselves are large enough to support a staff capable of developing written policies, but not large enough to generate any considerable internal opposition to such policies.

Despite much emphasis in the literature on the need for police agencies to adopt modern management techniques, most departments do not report using participatory management schemes or devices such as positive incentives to encourage compliance with written policies.

Direction of policymaking by a designated committee of sworn officers or by patrol officers is virtually non-existent, and even the participation of these groups in policymaking is limited. Smaller cities are more likely to utilize rank and file officers in policy formation, probably because these small departments have less internal specialization. In addition, several departments explicitly rejected the use of positive incentives. While this project did not explore the basis for such opposition, this attitude is a major obstacle to modernizing police management in the direction suggested by the police policymaking literature.

A strong impression left by this survey material and information contained in follow-up letters is that a major need of police departments is mechanisms for knowing and reviewing what officers are doing.

While most departments claim to have a structure of supervisory evaluation as an "incentive" for officers to familiarize themselves

with written policies, what this specifically involves is unclear. Few departments reported any mechanism to determine compliance with their policies or any attempt to discipline or commend officers with regard to these policies.

NOTES

1. For a copy of the questionnaire, see Appendix XVII-1 that appears at the end of this chapter.

2. All tables appear at the end of this chapter.

3. Included in the 55 were 4 of the 15 departments that had returned some material already. Five other departments returned their initial questionnaire indicating the existence of written procedures, after this follow-up request for material had been mailed.

TABLE XVII-1

NUMBER AND PERCENT OF CITIES SAMPLED BY SIZE CATEGORY

Population Size	Percent Sampled	Number
250,000 and above	100%	57
100,000 - 249,999	20%	19
50,000 - 99,999	10%	22
25,000 - 49,999	5%	23

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-2

SAMPLE SIZE, RESPONSE RATE AND NUMBER OF POLICE DEPARTMENTS INDICATING WRITTEN CRIMINAL INVESTIGATIVE PROCEDURES

Type of Agency	Total Sampled	Total Responding	Response Rate	Indicating Written Procedure	
				Number	Percent of Total Responding
"Big City"[a]	57	50	87.7%	43	86.0%
"Large"[b]	19	14	73.7	9	64.3
"Medium"[c]	22	15	68.2	11	73.3
"Small"[e]	23	15	65.2	8	53.3
Total	121	94	77.7	71	75.5

a. In cities with populations over 250,000
b. In cities with population 100,000 to 250,000
c. In cities with population 50,000 to 100,000
d. In cities with population 25,000 to 50,000

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-3

SAMPLE SIZE, RESPONSE RATE AND NUMBER OF POLICE DEPARTMENTS INDICATING CRIMINAL INVESTIGATIVE PROCEDURES

City Size	Total Sampled	Total Responding	Response Rate	Indicating Criminal Investigative Procedures	
				Number	Percent of Total Responding
Big Cities	57	50	87.7%	43	86.0%
Smaller Cities	64	44	68.8	28	63.6
Total	121	94	77.7	71	75.5

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-4

TYPE OF PROCEDURES IN DEPARTMENTS INDICATING WRITTEN POLICIES FOR CRIMINAL INVESTIGATIVE PROCEDURES

(Percent Distribution)

Criminal Investigative Procedure	Type of Police Agency		
	"Big City"[a]	Other[b]	Total[c]
Search Warrants	86.0	78.6	83.1
Motor Vehicle Searches	83.7	75.0	80.3
Searches Incident to Arrest	86.0	78.6	83.1
Consent Searches	83.7	67.9	77.5
Emergency Searches	72.1	53.6	64.8
Stop and Frisk	81.4	71.4	77.5
Arrest	93.0	82.1	88.7
Eyewitness Identification	74.4	42.9	62.0
Other	27.9	46.4	35.2

a. In cities with population over 250,000 (N=43)
b. In cities with population 25,000 to 250,000 (N=28)
c. In cities with population 25,000 and over (N=71)

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-5

DEPARTMENTS INDICATING WRITTEN POLICIES ON ENFORCEMENT PRIORITIES FOR PATROL OFFICERS, DETECTIVES OR SPECIALIZED UNITS BY SIZE OF AGENCY

(Percent Distribution)

Officers or Units	Type of Police Agencies		
	"Big-City"	Other	Total
Patrol Officers	39.5	42.9	40.8
Detectives	30.2	21.4	26.8
Drug Unit	34.9	17.9	28.2
Vice Unit	34.9	14.3	26.8
Organized Crime	20.9	7.1	15.5
No Policies	37.2	39.3	38.0
Other	20.9	21.4	21.1

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-6

DEVELOPMENT OF POLICIES IN AGENCIES INDICATING CRIMINAL INVESTIGATIVE PROCEDURES

(Per Percent Distribution)

Source of Policy	Type of Police Agency		
	"Big City"	Other	Total
By Department Alone	46.5	32.1	40.8
By Department With Outside Assistance	39.5	39.3	39.4
By Outside Agency	7.0	10.7	8.5
By Department and Outside Assistance	7.0	17.9	11.3

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-7

DEVELOPMENT OF CRIMINAL INVESTIGATIVE POLICIES IN AGENCIES THAT REPORT POLICIES DEVELOPED ALONE

(Percent Distribution)

	Directed			Participated		
	Type of Police Agency			Type of Police Agency		
Staff	"Big-City" N=20	Other N=9	Total N=29	"Big-City" N=20	Other N=9	Total N=29
Legal Advisor	10.0	0.0	6.9	80.0	66.6	75.9
Designated Committee of Sworn Officers	15.0	0.0	10.3	55.0	44.4	51.0
Planning & Research	50.0	33.3	44.5	70.0	44.4	62.1
Training Academy Staff	10.0	33.3	17.2	70.0	22.2	55.2
Superior Officers	35.0	77.7	48.3	70.0	55.5	65.5
Patrol Officers	0.0	11.1	3.4	40.0	77.7	51.7
Detectives	5.0	33.3	13.8	70.0	77.7	72.4

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-8

DEVELOPMENT OF CRIMINAL INVESTIGATIVE POLICES IN AGENCIES THAT REPORT POLICIES DEVELOPED WITH OUTSIDE ASSISTANCE

(Percent Distribution)

Staff	Directed			Participated		
	Type of Police Agency			Type of Police Agency		
	"Big-City" N=17	Other N=11	Total N=28	"Big-City" N=17	Other N=11	Total N=28
Legal Advisor	17.6	0.0	10.7	76.5	45.4	64.3
Designated Committee of Sworn Officers	0.0	0.0	0.0	64.7	27.3	50.0
Planning & Research	52.9	45.4	50.0	52.9	45.4	50.0
Training Academy Staff	5.9	9.1	7.1	58.8	45.4	53.6
Superior Officers	29.4	72.7	46.4	94.1	63.6	82.1
Patrol Officers	0.0	9.1	3.6	47.0	45.4	46.4
Detectives	11.8	36.4	21.4	70.6	63.6	67.8
City Attorney or Corporation Counsel	11.8	0.0	7.1	76.5	72.7	75.0
District Attorney	11.8	18.2	14.3	88.2	90.9	89.3
Judges	11.8	9.1	10.7	29.4	63.6	46.4
Legal Consultants	0.0	9.1	3.6	29.4	36.4	32.1

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-9

OUTSIDE AGENCY REPORTED TO
DEVELOP CRIMINAL INVESTIGATIVE PROCEDURES

(Percent Distribution)

Outside Agency	Type of Police Agency		
	"Big-City" N=7	Other N=8	Total N=15
City Attorney or Corporation Counsel	57.1	25.0	40.0
District Attorney	100.0	50.0	73.3
Judges	42.8	25.0	33.3
Legal Consultants	28.6	12.5	20.0
Other	28.6	87.5	60.0

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-10

STAFF MEMBERS RESPONSIBLE
FOR MODIFYING AND UPDATING POLICIES

(Percent Distribution)

Staff	Type of Police Agency		
	"Big-City" N=40	Other N=25	Total N=65
Legal Advisor	47.5	28.0	40.0
Planning and Research	77.5	52.0	67.7
Training Academy Staff	15.0	28.0	20.0
Outside Consultants	2.5	0.0	1.5
Other	35.0	48.0	40.0

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-11

METHODS USED TO COMMUNICATE WRITTEN POLICIES TO OFFICERS IN THE DEPARTMENT

(Percent Distribution)

Method of Communication	Type of Police Agency		
	"Big-City"	Other	Total
Recruit Training	86.0	50.0	71.8
In-service Training	90.7	78.6	85.9
Officer Manual	67.4	85.7	74.6
Departmental Order(s)	88.4	64.3	78.9
Other	25.6	35.7	24.6

Source: Criminal Investigative Procedures Questionnaire, 1977

Table XVII-12

CRIMINAL JUSTICE AGENCIES
INFORMED OF POLICE DEPARTMENT'S POLICIES

(Percent Distribution)

Outside Agencies	Type of Police Agency		
	"Big-City"	Other	Total
Local Judges	20.9	14.3	18.3
District Attorneys	53.5	46.4	50.7
Other Police Departments	25.6	21.4	23.9
Circulated Internally Only	51.2	53.6	52.1
Other	18.6	32.1	23.9

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-1

INCENTIVES FOR OFFICERS TO FAMILIARIZE THEMSELVES WITH POLICIES

(Percent Distribution)

"Incentives"	Type of Police Agency		
	"Big-City"	Other	Total
Promotional Exams	81.4	57.1	71.8
Qualifying Exams (for special positions)	27.9	14.3	22.5
Commendations or Other Rewards	11.6	10.7	11.3
Disciplinary Proceedings for Non-compliance	62.8	57.1	60.6
Successful or Unsuccessful Prosecutions in Court	79.1	75.0	77.5
Supervisory Evaluation	86.0	78.6	83.1
Other	16.3	14.3	15.5

Source: Criminal Investigative Procedures Questionnaire, 1977

TABLE XVII-14

STATUS OF POLICIES IN AGENCIES INDICATING
CRIMINAL INVESTIGATIVE PROCEDURES

(Percent Distribution)

Type of Police Agency	Type of Policy		
	Mandatory	Advisory	Both
"Big-City"	48.8	20.9	27.9
Other	46.4	42.9	7.1
Total	47.9	29.6	19.7

Source: Criminal Investigative Procedures Questionnaire, 1977

APPENDIX XVII-1

QUESTIONNAIRE

1. Does your department have written policies for criminal investigative procedures?

   Yes _____
   No _____

2. If your department does have written policies for criminal investigative procedures, which areas are covered? (Check all that apply)

   Search warrants _____
   Motor Vehicle searches _____
   Searches incident to arrest _____
   Consent searches _____
   Emergency searches _____
   Stop and frisk _____
   Arrest _____
   Eyewitness identification _____

   Other (Please specify) _____

   _____

3. Are these policies mandatory or advisory in nature?

   Mandatory _____
   Advisory _____

4. If your department does not have written policies for criminal investigative procedures, who would an officer contact for advice on criminal investigative procedures? (Check all that apply)

   Legal advisor _____
   Training academy staff _____
   District Attorney _____
   Immediate supervisor _____

   Other (Please specify) _____

   _____

5. Were the policies for ciminal investigative procedures first developed by your department alone, by your department with outside assistance, or by an outside agency?

   By the department alone _____
   By the department with outside assistance _____
   By an outside agency _____

6. If the policies for criminal investigative procedures were developed by your department alone, who directed the effort, and who participated in the process? (Check all that apply)

	Directed	Participated
Legal advisor	_____	_____
Designated committee of sworn officers	_____	_____
Planning and Research	_____	_____
Training academy staff	_____	_____
Superior officers	_____	_____
Patrol officers	_____	_____
Detectives	_____	_____

   Other (Please specify) _____

7. If the policies for criminal investigative procedures were developed by your department with outside assistance, who directed the effort, and who participated in the process? (Check all that apply)

	Directed	Participated
Legal advisor	_____	_____
Designated committee of sworn officers	_____	_____
Planning and Research	_____	_____
Training academy staff	_____	_____
Superior officers	_____	_____
Patrol officers	_____	_____
Detectives	_____	_____
City attorney or corporation counsel	_____	_____
District attorney	_____	_____
Judges	_____	_____
Legal consultants	_____	_____

   Other (Please specify) _____

8. If the policies for criminal investigative procedures were developed by an outside agency, what agencies were involved? (Check all that apply)

City attorney or corporation counsel ____
District attorney ____
Judges ____
Legal consultants ____

Other (Please specify) _____

_____

9. Once developed, were the department's policies brought to the attention of: (Check all that apply)

Local judges ____
District attorneys ____
Other police departments ____
Circulated internally only ____

Other (Please specify) _____

_____

10. What method(s) have been used to communicate the written policies to officers in the department? (Check all that apply)

Recruit training ____
In-service training ____
Officer manual ____
Departmental order(s) ____

Other (Please specify) _____

_____

11. Does your department have a procedure to modify and update its criminal investigative policies?

Yes ____
No ____

12. If your department does have a procedure to modify and update policies, who is responsible for the modification? (Check all that apply)

Legal advisor ____
Planning and Research ____
Training academy staff ____
Outside consultants ____

Other (Please specify) _____

_____

13. What encourages officers to familiarize themselves with and use the criminal investigative policies? (Check all that apply)

Promotional exams ____
Qualifying exams (for special positions) ____
Commendations or other rewards ____
Disciplinary proceedings for non-compliance ____
Successful or unsuccessful prosecutions in court ____
Supervisory evaluation ____

Other method (Please specify) _____

_____

14. Does your department have written policies on enforcement priorities for patrol officers, detectives or specialized units? (Check all that apply)

Yes, for patrol officers _____
Yes, for detectives _____
Yes, for Drug Unit _____
Yes, for Vice Unit _____
Yes, for Organized Crime Unit _____
No policies on enforcement priorities _____

Other (Please specify) _____

_____

15. Are these policies mandatory or advisory in nature?

Mandatory _____
Advisory _____

This space is provided for any comments you may wish to add.

Name of person completing the questionnaire _____

Position within the department of person completing the questionnaire

_____

CHAPTER XVIII

SITE VISITS TO SELECTED CITIES

The Scope and Purpose of the Site Visits

In order to determine in more detail the extent and type of policy-making that is taking place within police departments, three cities were selected for site visits by our staff. Our goal was to gather information on these major issues: 1) the areas in which policies exist; 2) the process by which policies are developed; and 3) the methods of stimulating and checking compliance with the written policies.

On each site visit, we conducted interviews with the chief of police, superior officers (usually the chief's assistants), training officers, officers in planning and research, and officers in a specialized unit, usually either vice or prostitution. In addition, we interviewed other personnel as warranted in the particular city: department legal advisor, criminal justice planner in city government, city prosecutor, or citizen members of policy task forces. In two of the three cities, staff rode with patrol officers for segments of their tours of duty. We also obtained and examined copies of departmental rules and policies, budget, collective bargaining agreements, and the like.

Selection Procedures

Based on the responses to our initial survey and to a follow-up letter, the project developed a list of departments that appeared to have engaged in policymaking on selective enforcement issues or to have extensive legal policies to structure discretion in criminal investigative procedures.[1] Several of these departments were asked by phone to send additional materials

1. Notes and references for this chapter begin on page 379.

so we could determine with more certainty the type and extent of their policies.

It sould be noted that we spent no more than two and one half days in each of these departments. While we had numerous interviews and obtained extensive written material, it should be clear that in this limited time we could not obtain a complete picture of the operation of these departments. Nevertheless, we were able to grasp certain political and sociological features relevant to understanding policymaking and these are what we stress.

In our site visits, we discovered that policymaking was not central to the operation of two departments (Southern and Western). Therefore, in our report we stress what officers in these departments consider important and relate this information to the policymaking that did take place. Consequently, we gathered more information on police policymaking in one city (Midwestern) than in others. We begin with a brief description of each site-visit city.

Midwestern City

Midwestern City is a medium-sized community that is a state capital and the site of a large state university. As a result of the large governmental and educational work force, the community has a significant number of professionals, who are young and often liberal on a variety of issues. The city and the state in which it is located have reputations for progressive politics.

With the smallest police force and fewest serious crimes per capita of the four cities we studied[2], the Midwestern City police department has probably gone farthest towards engaging in policymaking as envisioned by its proponents.

Policymaking Process

Policymaking efforts began with the installation of a new police chief in December 1972. The department utilized a task force in the formulation of police policies, although it was called a committee to play down the aura of task forces. An assistant to the chief selected committee members who would be "representative" of department ranks and composition, and who were known for their experience, "credibility," and "reasonableness."[3]

Eight months after he took charge of the department, the police chief became embroiled in controversy with members of the department. Much of the opposition in the ranks of the department stemmed from the changes in policies and organization that the chief pursued, changes that some saw as converting police officers into social workers. Other opposition centered around the personality of the chief. Over a hundred officers signed a petition to have the chief investigated on charges of fraud and mismanagement. After a year-long investigation, a city commission, the agency responsible for selecting police chiefs and to which the department is partially accountable, cleared the chief of all charges.

It was during this time that most of the policies were developed by the committee. Initially, the committee worked on the basis of consensus. Later, as disputes with the chief increased, animosities appeared in the workings of the committee. Disputes over personalities spilled over into disputes over policies. A sergeant on the committee asked to be relieved of his committee assignment when he was promoted to lieutenant.

Law students wrote the initial drafts of the policies, basing them on research on existing policies and practices in the department. When the draft policies were presented to the policy committee, the students stayed in the background, especially when controversial issues were discussed.

According to one member of the command staff, committee officers were concerned with a policy only if they had a direct interest in it or if the policy had a direct bearing on police work.

At the start of policymaking, there was no legal advisor or planning and research division. The city attorney was hesitant about the project because he was not convinced that the police department should be making policies or that law students should be formulating policy proposals. He thought that at the very least the law students should be under his direction. Judges and the district attorney were given copies of the final policies, but they did not respond to them.

At the present time, an officer in planning and research routinely examines and updates the policies in light of outside developments. Initiation of new policies comes primarily from the top ranks of the department.

Types of Policies

The earliest policies were developed in response to specific police practices (firing of warning shots, crowd control, officers' carrying second guns) and reflected a concern for community service. For many of the policies in the criminal procedure area--stop and frisk, search and seizure--the Model Rules prepared by the Arizona State University (1974) served as a model. However, only "the guts" of the Rules were used. More detailed materials were deleted but made available for reference. The Midwestern department preferred to rely on its own processes rather than the Arizona State University Rules, with many of the developed policies being tailored to the particular needs and values of this city.

Two examples are useful here. In prostitution cases, department policy

states that arrests will be made only if at least one of five factors is found to be present (e.g., if a pimp is involved). In marijuana cases, department policy provides for a citation rather than arrest when less than three ounces is involved. In both these situations, the department has been successful at getting the city to pass ordinances that reflect its own approach.

Training

Training has not been closely coordinated with the policymaking process. Policies are incorporated in the training only where they are relevant. Approximately 50 percent of the policies are covered in training, primarily in law enforcement and community relations. Officers are expected to become familiar with all the policies.[4] Policy material is included on promotional exams; officers can bring the policy manual to exams and refer to it. Conformance to policies is also claimed to be a part of a performance evaluation done by superior officers.

Citizen Involvement

A community-police relations committee, a group of citizens, worked closely with the chief as the policies were being developed. This committee was selected by the chief to provide citizen input into the policies developed by the department and met informally to discuss proposed policies.

A police advisory committee, representative of the various groups in the city, was created in response to the existence of the police chief's committee.[5] It reviewed all police department policies in order to advise the mayor, the council, and the chief on the responsiveness of the policies to community attitudes and needs. The committee introduced very few changes

into the policies it reviewed and was not concerned with legal issues. If a legal issue arose, it would be referred to the city attorney. Most of the citizens reviewed the material on the basis of the interests of the groups to which they belonged.

It should be stressed that no claim of active citizen involvement was made by anyone inside or outside the department. However, community sentiment clearly played a role in the development of policies. Citizen involvement tended to be selective, depending on the issue; community sentiment could easily be mobilized for some issues but not others.

Policies as Rules

Officers seem to perceive the police manual as a reference manual for some of the more complicated policies rather than as a guide to behavior before the fact. However, just what policies this observation pertains to is not clear since, in discussing the manual and the policies contained in it, officers very rarely distinguished among policies, procedures and rules.

Some officers we spoke to complained that policies were used to "hang" officers, and that the policies are an attempt to change the police into social workers. The policies are mandatory (as the chief believes that advisory policies are not taken seriously), and some patrol officers thought that it was impossible not to violate some policy at some time. They did not object to disciplinary action for flagrant violations, but they cited several cases in which officers were charged on very minor violations; they found this objectionable. They also agreed that there was too much material, and that policies should have been introduced into the department gradually rather than all at once. Furthermore, the material should have been more simple, direct, and brief--aimed, as one officer said, at the "dumbest guy"

in the department rather than the brightest.

Accountability

This department has a number of mechanisms to maintain accountability for policies and rules.

1) The department stresses record-keeping. Officers in this department are required to write reports on everything except vehicles in need of aid and false alarms.

2) All arrests are reviewed by a sergeant or lieutenant at headquarters when the suspect is first brought in. Reviewing officers also set bail for suspects. The department has a list of standard bails for specified violations that reviewing officers are expected to follow. A patrol supervisor suggested to us that a significant number of arrests are rejected by the reviewing officer and that patrol officers object to having this decisionmaking power taken away from them. They want to be able to make decisions, to act on their own, and to have supervisors trust their decisions.

3) There are few officers working in the department (thirty on any one shift) and therefore, the span of control is low. Shift supervisors are responsible for checking the behavior of patrol officers, especially younger ones; keeping track of certain "production" factors, such as the number of arrests and field interrogations; and checking on the effectiveness of officers in referring people to outside agencies and on how closely they follow policies. When on the scene with patrol officers, they are expected to observe the activity rather than to get involved.

4) The city agency that oversees the police serves as a de facto citizen review board, although it is not called by that name. Citizens can go directly to the Commission or to the chief of police with their complaints.[6] This

agency is informed in writing of all disciplinary matters within the department. It keeps no records on these proceedings.

The rules developed by the department had been the focal point of a disciplinary proceeding before this commission two years prior to the site visit. An officer, to justify his actions, had questioned the validity of the department's policy manual. Charges against him were heard and sustained. That case established the fact that officers are expected to know the rules and will be held accountable for them, and that ignorance of the department's policies cannot be used as a defense. According to the former chairman of the commission, the decision enhanced the legitimacy of the policies within the department.

Policies on Selective Enforcement

Midwestern City deals with its prostitution problem in its own way. Prostitution here is carried on mostly by call girls. Occasionally, pimps arrive from out of town but they are quickly driven away. Sex for sale increased two years ago, when nearly 50 escort services and some massage parlors were established. This led to newspaper editorials, deliberations by city council, and complaints from citizen groups. The police attempted to strike a balance between the demands of the various groups in the community, some of which wanted little or no enforcement while others demanded full enforcement of the prostitution laws.

The police department backed a city ordinance that made prostitution a misdemeanor and that stressed the arrest of clients as well as prostitutes. The ordinance was passed over the opposition of the city attorney, who did not want to handle the extra cases that it would create; and it has allowed the police department to develop an unwritten policy on whether

to charge prostitutes with violation of the city ordinance or the state felony law.

The police department developed the written policies on prostitution that stated that enforcement would concentrate on sex for sale involving juveniles, pimps, organized crime, a public nuisance, gambling or drugs. The police department set up its own escort service in an attempt to trap steady customers and thus obtain evidence on the involvement of a pimp as operator of the service. The police arrested four men who had called the escort service and one of them was able to produce evidence to implicate the pimp. In this way, the police began a crack-down on escort services.

Conclusion

The policymaking process in the Midwestern City police department has come to a halt. At the time of our visit, the department had no legal advisor. The committee that had developed the current set of policies had been disbanded. No interns from the law school were working in the department to produce new policies or revise old ones. The future place of the policies in the overall scheme of police work rules seemed uncertain.

The chief's philosophy as reflected in the department's policies seemed to some officers to be directed at transforming them into part officer, part social worker, and this displeases some of them. But, beyond statements about the democratic police officer, courtesy, community service, and the like, his philosophy is not a radical departure from the positions taken by many reformers in the recent past (Fogelson, 1977). The future direction of the department seems somewhat uncertain; nevertheless, police policymaking has gone much further in the Midwestern City police department than in the other departments we studied.

Southern City

Southern City is a medium-sized city located in an area noted for its tourist-amusement-convention facilities. Southern City has experienced a comparatively rapid increase in population (13 percent) between 1970 and 1975 and at the same time almost a doubling in the number of square miles encompassed by the city limits. The police force has grown faster than the population (47 percent between 1970 and 1976) and Southern City now has a police/population ratio (354 per 100,000) almost as large as Boston's (361 per 100,000).[7] In contrast to Boston, however, this police department employs relatively young sworn police officers.

Of the three cities visited, Southern City had the fewest reported serious crimes per capita. According to command staff, the one continuing problem seen as serious enough to warrant a larger force was the influx of transients, many of them young people, seeking employment in the rapidly expanding tourist industry.

This department had engaged in policymaking, but to understand its significance, the place of the police department in city government must be discussed first.

Political Autonomy

Due to the convergence of several factors, the Southern City police department has achieved a remarkable degree of autonomy within city government. In fact, of the four departments studied by this project, Southern City's achieved the highest degree of autonomy. Population growth, the availability of federal money, community satisfaction with police service, little internal opposition from a weak police union, the absence of serious scandal, and political foresight of past chief executives have converged to

CONTINUED

4 OF 9

make the police department the most respected organ in the city government and the one with the most political leverage.

Much of its autonomy is due to the political astuteness of its present police chief, who has used federal funds for innovations that would win praise in national police circles and financial support from city government. On controversial local issues such as prostitution (discussed below), he was able to create a citizen's committee to gauge public sentiment. As his successes and the reputation of the department grew, he obtained the support of the mayor and the director of public safety, and a relatively free hand in directing the department.

Autonomy has also resulted from the weak position of the police union in Southern City. Formed quite recently and in a region not noted for or receptive to union activity, this organization has played a relatively minor role in departmental affairs and in challenging managerial decisions.[8] Members of the command staff explicitly recognize the advantages of dealing with a weak union and plan to introduce major changes quickly, before the union becomes a significant opposition.

Managerial Innovation and Innovations in Policing

Innovation has followed autonomy. At the level of administration, zero-base budgeting and management by objectives have been introduced and appear to be well accepted by most of the command staff members we met.[9] In contrast to Boston and the other cities visited, the idea of the "police officer as manager" is well established among Southern City senior officers.

Introduced after a year of experimentation, a variant of team policing is the major innovation affecting patrol officers. An effort to increase the responsiveness of officers to citizen demands, team policing also seems

to serve short and long term managerial goals. Giving small work teams responsibility for follow-up investigations, community relations efforts and even training of fellow officers has had, according to command staff, the intended effect of increasing the productivity of patrol officers. Patrol officers express some dissatisfaction with increased workloads and management acknowledges the possibility of higher attrition rates, but command staff sees this as advantageous; turnover is healthy, they say, especially when many officers no longer see policing as a career.[10]

Structuring Discretion

The implications of team policing for structuring the discretion of patrol officers is unclear. There was no indication from patrol or supervisory personnel that patrol officers are in need of guidance. Operating in one-man patrol cars, officers as members of a team are subject to a number of compliance mechanisms.[11] As in Midwestern City, all arrests are reviewed by a superior stationed in the jail. Shift supervisors check up on the activities of patrol officers in the field. In addition, the department normally employs two legal advisors who are readily available to dispense legal advice as it is needed.[12] Conversations with patrol officers indicate that they use and appreciate this legal advice.

Policymaking: Selective Enforcement

The major effort at selective enforcement in this department centered on a problem of prostitution affecting certain neighborhoods. A task force assembled by the police department and composed of eight civilian members met over a period of four months, taking testimony from police and citizen witnesses. After issuing a series of position papers, the task force made its

recommendation to the police department, which acted promptly to suppress the two major forms of prostitution: streetwalking and escort services.

Although the effort superficially conformed to prescriptions concerning citizen involvement offered in the policymaking literature, it differed in significant ways, perhaps unanticipated by the proponents of policymaking. First, according to one prominent task force member, the work of the task force may have served the political interest of the police department by gauging for the department the community sentiment on the issue of prostitution. Given the position of this police department within its community, the distaste with which prostitution is viewed, and the full, not selective, enforcement efforts that followed the task force recommendations, this conclusion may be warranted. The department could have acted without task force approval (since the work of the task force was not legally mandated, the police chief was under no obligation to accept its recommendations) but chose not to. The policies enunciated resulted neither in a permanent change in police department operations nor in clarification of existing policies for the public at large. Instead, policymaking as it occurred here was an apparently intentional and astute political act by a politically sensitive chief executive. This seems to push policymaking in a direction not intended by its proponents.

Western City

Western City is a large city with a diverse racial, ethnic and economic composition. Based on a statistical profile, Western City is more similar to Boston in terms of size, crime problem and number of sworn officers than either of the other two cities visited. This was one of the factors influencing our selection of this city.[13] In addition, there were indications (1) that its criminal investigative procedures were more highly

developed than in other police departments of comparable size; and (2) that this department had established priorities for the enforcement of drug laws as the Boston Police Department's Drug Control Unit was attempting to do.[14] We discovered that the command staff, while proud of the department's accomplishments in these areas, did not dwell on them in our conversations. They were more interested in city politics.

Political Autonomy

The Western City police department had achieved less political autonomy vis-a-vis its city government than other departments visited. In this respect, the Western City police department again resembles Boston's and perhaps most other big city police departments.

Several kinds of evidence support this conclusion. First, members of the command staff indicated that they lack political leverage in city government.[15] City-government personnel interviewed expressed the same opinion. Second, the police department was under closer scrutiny in matters concerning police conduct than Boston's and those of the other cities visited. This took the form of a city-funded office of complaints that, with the cooperation of the police department, investigated approximately 200 complaints against the police between 1974 and 1977.[16] Third, over the objections of the police and some citizen groups, the mayor and the city council had passed a stringent deadly-force policy; later there was an initiated referendum to amend it. Fourth, unlike Southern City and Midwestern City, Western City had a state and federally funded criminal justice agency active in research and planning; this agency produced several innovations that the department, somewhat reluctantly, had to adopt.[17] Finally, the department had an interim police chief, and the task of selecting a new

chief had been delegated to a citizen panel said to be representative of the citizens of Western City.

This lack of autonomy seemed to affect all levels of the Western City police department. Morale was said to be low. The police felt unable to enforce the law fully because of the "chronic" complaints and "interference" of citizen groups, which appeared to the police to have political agendas of their own. The department felt that they were singled out for observation and condemnation for practices common throughout city government. Furthermore, the department had in recent times lacked a strong executive capable of intitating independent action and top members of the command staff indicated no desire to be considered for the position of police chief.

While this project did not gather information specifically on this point, it appears that the problems experienced by the department in Western City, and similar problems in Boston, are not peculiar to these cities or these departments. Rather, the politics of big cities may well generate the conflicts, problems and issues that police managers must grapple with. Police policymaking, just like policing, does not occur in a vacuum. Future efforts at policymaking must begin with an analysis of the relationship between the police department and its city government.

Policymaking: Criminal Investigative Procedure

Because the issue of the political autonomy of the department dominated discussions with police personnel and raised important questions related to our experiences in the other site-visit cities, we did not learn much about the state of the department's rules and regulations. Also, there were no ride-alongs. Examination of training materials and discussions with training academy staff suggested to us that recruit training is well organized and quite

thorough, although criminal investigative procedures receive no special treatment. Once again, as in the other departments, police personnel did not indicate that regulating the conduct of line personnel presented problems to supervisors.

Policymaking: Selective Enforcement

As mentioned earlier, Western City police department did have policies on drug enforcement practices that all officers were expected to follow. Discussions with a member of the drug control unit indicated that there had been no elaborate policymaking process; rather, the unit's priorities changed with the appointment of a new commanding officer.

Findings

Based on this small sample of cities (including Boston), we offer the following provisional findings. Each raises important questions that require additional comparative studies before these findings can be generalized to other cities and apply to future policymaking efforts.

1. Police policymaking, as described in the literature, is not a primary concern in the departments we visited.

The policymaking literature focuses on administrative rulemaking as a method of standardizing police behavior and aiding police-citizen interaction. Yet in two of the departments visited, police personnel did not mention these issues at all. Rather, the primary concern in both departments was the relationship of the department to city government. In Southern City, police administrators had used managerial innovations to gain leverage over the city government. The department is regarded as the most "progressive" unit within the city governmnet, regularly obtains its budget

requests, and has a modern, spacious headquarters building. In Western City, the department has a history of corruption charges, and has been plagued by a rapid turnover of police chiefs. The city government has a good deal of leverage over departmental operations. Here police complained of the intrusion of "politics" into the department and expressed a wish for more autonomy. The reader may recall that in Boston, too, a major concern of the department has been to increase productivity and visibility, a concern which is a result of the efforts of the city government to keep a lid on fiscal expenditures. Only in Midwestern City did the department discuss the issues of standardized police behavior and police-citizen interaction. As indicated earlier, the city is the state capital and the site of a large state university. With the resulting presence of a large number of professionals, it is likely that concern for these sorts of issues is more often expressed in public meetings and the media. This focus was probably enhanced by the close cooperation of the department with the law school of the university. In more heterogeneous communities (such as Western City) or in communities with fewer professionals (such as Southern City) it is unlikely that police issues will be expressed in the manner suggested by lawyers or administrators writing on policymaking.

2. <u>The composition of the community significantly affects the possibility and direction of police policymaking</u>.

Both Boston and Western City are large, heterogeneous communities, with diverse ethnic groups and with a number of vocal community groups involved in local politics. In both, the city government has apparently been heavily involved in decisions on police operations, and neither department appears to be particularly innovative in policymaking or police management generally.

Due to the controversial nature of police work, particularly in the

area of vice crimes (where the greatest opportunity for allegations of corruption exists), it appears unlikely that police departments in large, heterogeneous cities will readily make their policing policies explicit. To do so would arouse the opposition or complaints of some community groups. Furthermore, the political leaders in such cities undoubtedly consider some type of control over police operations necessary, both to maintain coalitions of diverse groups and to prevent opposition groups from gaining leverage with the police.

Two of the cities examined were relatively small and homogeneous. In Southern City, the community was frequently described as "apathetic;" and while there is a large minority population, it was reported that attempts to mobilize it politically had failed. Furthermore, the mayor, perhaps because he himself has no major opposition, trusts the police chief and allows him much independence in running the department. Thus, the police administrators here can pursue changes in police operations without worrying about significant public opposition. There is a limit to such action, however. Before dealing with a prostitution problem in Southern City, the chief organized a task force with citizen, media and community group representation. The purpose of the task force was apparently to test the climate of opinion in the community about police activity in this controversial area.

In Midwestern City there was some diversity of opinion on police operations but the lines of division were somewhat unusual. The mayor, the police chief, and the professional groups were all very liberal, while many of the police officers and some groups in the community were more conservative in the areas of police policies and police operations. The prominence of professionals in the community probably helped the chief in his reform

attempts, but, in the enforcement of prostitution laws, the department tried to steer a middle course among divergent views.

3. The political context of the police department has a signficant impact on police policies and operations, although it is rarely mentioned in the policymaking literature.

As indicated in Findings 1 and 2, the ability of a police department to engage in policymaking is influenced by

a) the composition of the community in which it is located;

b) the power and status of the department relative to the city government; and

c) the fiscal constraints under which it and the city must operate.

Those engaged in future attempts at police policymaking must recognize that these are not minor external variables that must be taken into account merely to "fine-tune" policy efforts. Rather, these factors have a decisive impact on police policies and operations and the latter cannot be understood or altered without an analysis of these factors.

4. The ability of police administrators to engage in policymaking is inversely related to the strength of rank and file associations and their capacity to act in trade-union fashion.

The department that had introduced the most wide-ranging managerial innovations, that of Southern City, is the department with the weakest rank and file organization. The union had only recently been formed and had to operate in a generally anti-union climate. Ride-alongs with several officers indicated confusion as to which ranks could join the union and surprise at the activities of the Boston Police Patrolmen's Association. The union in Southern City apparently did not challenge the police administrators on one-man patrol cars or on any of several other major decisions. In fact, the

police administrators specifically mentioned that they are trying to intitate several managerial reforms before the union gets any stronger.

In contrast, the Boston Police Patrolmen's Association challenged its administrators on a variety of issues, particularly those related to productivity. It saw patrol officer involvement in policy-formation as an administrative ploy to deflect future challenges to the policies. As a consequence of its opposition in this area, the project had to change its research strategy in developing the criminal investigative procedures.

In Midwestern City, there was a long history, starting in 1947, of patrol officer unionization and bargaining. As a result, much of the initial tension and hostility between management, evidenced in Boston in the late 1960's, had presumably become routinized in stable procedures for resolving conflict. Nevertheless, the union was probably the major source of opposition to the policies that the chief tried to introduce. While the patrol officers in Western City had had a union operating since 1957, ten years before Boston, it did not appear to be a significant force.

5. <u>The leadership style of the police executive is important in promoting policymaking and in defusing opposition</u>.

In Southern City, the police chief was quite adept at assessing and utilizing for his own purposes the interests of community groups, the media, city government, and officers in the department. As a result of these skills, he was able to pursue managerial innovations that increased the status of the department and his own status within the department, within city government and even nationally.

In Midwestern City, the police chief tried to exert strong leadership, but he often did so in a way that aroused the opposition of the police union and even at times the public. The pro[illegible]ion of many of his policies was

probably hampered by his lack of skill in exploiting the political context of his department. The same appears to be true of Police Commissioner di Grazia's work in Boston. While di Grazia promoted several managerial innovations, he often aroused the opposition of rank and file and superior officers by his style of leadership. His and the Mayor's thinly-disguised hostility to the BPPA did not help promote change in the Boston Police Department.

In Western City, the police department lacked the opportunity to make policies: for a variety of reasons, the initiative had passed out of the police department and into the hands of city executives.

6. Police departments can offer very few positive incentives to motivate proper behavior by police officers.

All three cities visited as well as Boston had difficulties with developing "positive incentives." Southern and Midwestern City both pointed out how limited promotional opportunities in police agencies are. Tight fiscal situations of the city government limit monetary rewards in Boston, Midwestern and Western City. Southern City is planning to introduce a second career track involving rotation through specialist positions rather than promotion in an attempt to alleviate part of this problem. Several officers in the department, however, felt that, if they failed to develop a particular specialized skill, this system would confine them to the lowest organizational levels.

7. The legal advisor did not have a significant role in police policymaking.

In none of these departments did the legal advisor appear to have any important involvement in the policymaking process. Two of the departments were undergoing a turnover in legal advisors.

8. It is unlikely that police departments would engage in policymaking

without the availability of LEAA funds.

It does not appear that Boston and Southern City would have engaged in policymaking or other managerial innovation without the outside impetus of an agency like LEAA. The department in Southern City experienced rapid growth in the late 1960's at the same time that LEAA was expanding. By embracing LEAA programs in the period of expansion, the department was able to develop many programs that enhanced its managerial ability as well as its status locally and nationally. Without the presence of LEAA, this department probably would have developed quite differently. Similarly, it is quite clear that policymaking would not have taken place in Boston without the LEAA funding and outside consultation of this project.

In Western City, the city executive, through a planning agency, was utilizing LEAA funding in a reverse fashion, to gain control over the police. Nevertheless, these funds were used to introduce new management techniques into the police department. It should be noted that such LEAA funding appears to be working at cross-purposes with the notion of policymaking; rather than increasing the possibility of policymaking within the Western City department, it was minimizing the possibility by increasing the control of the city government over the department.

Only in Midwestern City did policymaking take place without significant LEAA funding. Here the department was able to work with the local law school, which had several promoters of this concept on its staff. This is an unusually advantageous situation for a department wishing to pursue policymaking.

NOTES

1. See Table 5 and Chapter XVII.

2. See the Tables in Appendix XVIII-A, which compare Boston, the three site visit cities, and their respective police departments, on relevant variables.

3. Reasonableness, we were told, was defined not necessarily as agreement with the police chief but with flexibleness and thoughtfulness. A patrol supervisor not sympathetic to the goals of the chief gave us another version of policy development. According to him, one person was responsible for writing all the policies. In regard to officer participation, he stated that the task force was composed of "suck asses." There was no real participation, he claimed, and opponents weren't listened to. When asked about the future development of policies, this officer showed us some recent policy revisions that consisted of minor changes to be inserted in the policy manual.

4. The trainers hope to develop testing on the policies to determine the effectiveness of their teaching rather than the specific knowledge of the recruits. There is talk of attempting to develop a test to measure officers' understanding of these policies, but, as we understand it, this test is so far only in the talking stage.

5. These citizen groups are also empowered to initiate the development of department policies, but they have been indifferent to this possibility and have rarely done so.

6. Officers in the department can also appeal department decisions to the committee, but this was done only in extraordinary cases.

7. The percentage of city employees who work in the police department is slightly higher in Southern City than in Boston. See the Tables in Appendix XVIII-A.

8. For example, discussions with patrol officers during ride-alongs indicated confusion among them as to which ranks are allowed to join the union, a situation that would be unheard of in Boston.

9. In this respect, the Southern City police department is more innovative than its city government, which still operates under a conventional line item system. In contrast, Western City government had introduced a new budgeting system, and the police department eventually adopted it.

10. This police department claimed that its attrition rate is below the national average.

11. Ride-alongs in Southern and Midwestern Cities suggest that officers in one-man units are subject to peer pressure to conform to some rules, especially those that relate to officer safety. Since each serves as a back-up to another unit, failure to respond in an

appropriate manner to calls for officer assistance can elicit a collective negative response from other officers.

12. The legal advisors are also responsible for writing training bulletins to inform officers of the latest developments in case law.

13. In some other respects, Western City Police Department is different from Boston's. For example, following the San Diego Patrol Staffing Study (Boydstun, et al., 1977), Western City increased its percentage of one-officer cars from 53 to 56 percent in 1977 and projected a bigger increase (to 80 percent) in 1978. The use of one-officer cars does not appear to have been a source of serious union-management conflict, as it has been in Boston. Also, although Western City, like many other cities, was about to integrate its public schools by busing school children, the opposition that this was likely to evoke did not appear to strain the resources of the police department as it did in Boston.

14. Western City Police was one of nine departments that responded to a questionnaire mailed by the Boston Police Department's Drug Control Unit. See Appendix A, Chapter A-II.

15. Statements took the form of complaints about political interference, without further elaboration.

16. The number of complaints diminished significantly over the three years.

17. Providing legal or practical guidance to patrol officers on the issue of officer accountability did not appear to be a research priority of this organization.

REFERENCES

Arizona State University College of Law and Police Foundation
1974 Model Rules for Law Enforcement. Washington, D.C.: Police Foundation.

Boydstun, John E., Sherry, Michael, E., and Moelter, Nicholas P.
1977 Patrol Staffing in San Diego One- or Two-Officer Units. Washington, D.C.: Police Foundation.

Fogelson, Robert
1977 Big-City Police. Cambridge: Harvard University Press.

APPENDIX XVIII-1

PROFILE OF BOSTON
AND THREE SITE VISIT CITIES

VARIABLE	Boston	Southern City	Midwestern City	Western City
Population (1975)	637,000	113,000	168,000	487,000
Percent population change 1970-75	+1%	+13%	+2%	+8%
Area (square miles, 1970)	46	27	48	84
Population per square mile (1970)	14,000	3,600	3,600	6,400
Percent Black (1970)	16%	30%	2%	7%
Form of Government	mayor-council	mayor-council	mayor-council	mayor-council
Total number of city employees (1975)	16,500	3,300	2,000	8,600

Source: International City Management Association Municipal Yearbook, 1978 and U.S. Department of Commerce, City and County Data Book, 1973, and U.S. Department of Commerce, Commerce News, Apriol 14, 1977.

APPENDIX XVIII-2

SELECTED CHARACTERISTICS OF
BOSTON AND SITE VISIT CITY POLICE DEPARTMENTS

VARIABLE	Boston	Southern City	Midwestern City	Western City
Number of sworn officers	2,300	400	300	1,000
Sworn officers per 100,000 population	360	350	180	200
Number of non-sworn personnel	480	190	44	300
Department Budget (in 1,000's)	$66,900	$8,200	$6,600	$31,200
Police Department Percentage of total city	16.8%	17.9%	17.2%	15.1%
Personnel Expenditures as percent total expenditures	95%	86%	87%	83%
Total Crime Index	76,000	11,500	11,300	40,000
Robbery	6,100	300	100	2,100
Burglary	16,000	2,700	2,300	11,800
Larceny-Theft	24,000	7,200	8,300	21,200
Motor Vehicle Theft	26,400	460	510	2,900

Source: Personnel and Crime Statistics - U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Report (1976); Expenditures; U.S. Department of Justice, LEAA, and U.S. Department of Commerce, Bureau of The Census, Expenditure and Employment Data for the Criminal Justice System 1976.

APPENDIX A

DRUG ENFORCEMENT PRIORITIES: SUPPLEMENTARY MATERIALS

CHAPTER A-I

DRUG ENFORCEMENT PRIORITIES: SUPPLEMENTARY MATERIALS

Introduction

As part of the Center's work with the Drug Control Unit Task Force to develop drug enforcement priorities, we prepared a number of documents and research papers. Three pieces are included in this Appendix. The first is a statistical analysis of drug use and arrests in the city of Boston, the results of which were incorporated into the drug plan. The second paper reports the results of a survey questionnaire on the priorities and needs of other drug control units in some big-city police departments across the country. The third paper is the draft of the Plan for Drug Enforcement Priorities developed by the Center and the Drug Unit Task Force (Chapter A-IV). The last chapter (A-V) contains the citation proposal presented to the criminal investigative task force discussed in Chapter V.

CHAPTER A-II

STATISTICAL ANALYSIS OF THE DRUG PROBLEM IN BOSTON

Introduction

This chapter examines current statistical data that measure drug use in the city of Boston and the response of the Boston Police Department to the distribution and use of illegal drugs in the city. Its major purpose is to establish what drugs are being used most frequently, as reported to the public and private agencies entrusted with the care of those who misuse prescription and non-prescription drugs. These numbers are then compared with data showing the drug violations for which the Boston police have made arrests.

It must be stressed at the outset that these data cannot and should not be used to argue that Boston has a serious "drug problem." That judgment cannot be wrung out of this information, because establishing standards of right and wrong cannot be based on simply counting the numbers of drug users. As a recent federal publication (Strategy Council, 1976:2) stated

> Over the past several years, most public officials have come to recognize that society is most concerned about the social costs resulting from the adverse effects which drug use has on the lives of drug users and those who interact with them: by inducing or contributing to criminal behavior; by leading to poor health, economic dependence, or in difficulty in discharging family responsibilities; by causing death; or by creating other undesirable conditions.

Yet the statistics we have describe mostly the use of drugs and only to a much lesser extent the effects of drugs. With the exception of mortality statistics and indicators of poor health, reflected in people's seeking medical attention for the misuse of drugs, we have no information on those societal effects that define the problem. For example, we have

no statistical information on the basic question of the relationship between drug addiction and property crime in Boston. Thus, we lack the basic data that come closest to measuring the social problems that people worry about when they think of drug abuse.

The comparisons we can make are the following: (1) the use of one drug or class of drugs relative to another drug or class of drugs; (2) the use of one drug (heroin) relative to itself over time; and (3) the estimated use of one drug (heroin) in the Boston metropolitan area relative to its use in other cities at one time.

Data Sources

The sources of information include

-- The estimates from the Drug Abuse Warning Network (DAWN), a large-scale data collection system developed by the National Institute on Drug Abuse and the Drug Enforcement Administration;

-- Deaths in the city of Boston attributed directly to drug abuse;

-- Statistics on persons enrolled in drug treatment programs funded by the Massachusetts Department of Mental Health;

-- Estimates of the number of heroin addicts residing in the Boston metropolitan area, available from researchers of the Public Health Service and the National Institute of Drug Abuse;

-- Trends in the use of heroin, as estimated by the city of Boston Drug Treatment Program and the Mayor's Coordinating Council on Drug Abuse;

-- Opinions of workers in drug treatment programs and the Boston Police Department;

-- The number of drug arrests reported by the Boston Police;

-- The number of search warrants Boston Police officers served to enforce narcotic drug laws in the city of Boston.

We have separated drug arrest and search warrant statistics from all other sources of information. The police data are probably not a valid

indicator of drug use, nor are they likely to be consistent with those from other data sources. The ways in which the police set their own priorities, and the practical problems they encounter in enforcing narcotics laws, suggest that their information is best regarded as an indicator of their level of enforcement rather than as an indicator of the underlying drug use itself. Obviously, the police are not the only drug enforcement agency operating in Boston: state and federal agencies have jurisdiction over some drug violations in some locations. Certainly there is some duplication of effort and even competition between agencies and this complicates the interpretation of police statistics. In addition, the resources that the Boston Police Department has devoted to the enforcement of drug laws have fluctuated: a special unit was organized in 1970, and then the number of detectives assigned to that unit was allowed to dwindle. There is no way of knowing, from arrest statistics alone, what impact these organizational changes have had on the consumption and distribution of drugs, or vice versa.

None of this is meant to suggest that data from non-police sources are more valid or reliable indicators of drug use. On the contrary, all these data are limited in that their recording is contingent on a drug user's voluntarily or involuntarily coming in contact with an official agency. These data, including those generated by Projece DAWN, are in no sense comparable to criminal victimization surveys or national surveys of drug use that draw samples from a fixed population to estimate the true prevalence and incidence of crime or drug use in that population. As such, they are all subject to the same biases that afflict officially recorded crime rates: under-reporting, problems of definition, classification errors and even deliberate manipulation for

political purposes. These data can, however, probably tell us the extent to which one drug is being used relative to another and, when combined with other demographic information, give us a reasonable estimate of the number of drug users in Boston. These data may also indicate the sorts of priorities the police have set for themselves.

Definition of Terms

The four drug categories of the Boston Police Department's crime classification scheme are used in this paper:

-- Opium or cocaine and their derivatives,

-- Marijuana,

-- Synthetic narcotics,

-- Dangerous non-narcotic drugs.

The use of this scheme means loss of some detail. Also, its classification of drugs is open to criticism, most troublesome being the inclusion of hallucinogens (LSD, PCP) in the synthetic narcotic category. Nevertheless, because the ultimate focus of this report is the police response, the scheme is retained because it allows comparisons between different data sources.[1] Where appropriate, reference is made to specific drugs included in one of the broader categories.

All the sources we reviewed include alcohol or alcohol-in-combination as a drug and report its use relative to other drugs. In this paper, alcohol is excluded from all calculations. Had it been included, we would have demonstrated what is already known, that the use of alcohol alone or in combination with other drugs is the first or second most serious "drug problem."

1. Notes and references for this chapter begin on page 421.

Reports of Drug Use in Boston

Project DAWN

The Drug Abuse Warning Network (DAWN), established by the Drug Enforcement Administration, provides information on cases of drug use that were treated in emergency rooms, in-patient units, crisis centers, or by medical examiners in the Boston metropolitan area (population 2,753,800 in 1970) and in 28 other Standard Metropolitan Statistical Areas (SMSA's) between April 1974 and April 1975. DAWN counts any drug use that leads to medical or psychological treatment as a "drug abuse episode." Data provided by medical examiners include deaths related to drug abuse. DAWN presents its information in terms of "drug mentions," and these count the specific drug substances that are involved in drug abuse episodes.

According to the DAWN report (Drug Enforcement Administration, 1975), the ten most-mentioned drugs in the Boston SMSA -- excluding alcohol-in-combination and aspirin -- were, in order of frequency,

1. diazepam (Valium)
2. heroin
3. marijuana
4. secobarbital (Seconal)
5. chlordiazepoxide (Librium)
6. LSD
7. methadone
8. d-propoxyphene (Darvon
9. methaqualone
10. flurazepam.

These ten drugs accounted for 72 percent of all the drug mentions in which a drug was identified in the Boston metropolitan area. These findings are consistent with national data. Also consistent was the high proportion of episodes caused by dangerous non-narcotic drugs, for six of these ten drugs fall into this category. Perhaps the most striking accomplishment of

the DAWN project was to establish clearly the role of tranquilizers and sedatives in medical episodes, in contrast to public concern over the effects of "harder" drugs.

According to DAWN, 15 percent of all drug mentions in the Boston area were for "natural" narcotics, with 81.3 percent of this total (N=684) for heroin[3] (see Table A-II-1). Compared to the total system data (18 percent narcotic mentions, 75 percent of these for heroin), Boston would appear to experience relatively fewer morphine, cocaine and codeine episodes than other metropolitan areas, but about the same percentage of heroin episodes. These data also show the proportion of marijuana and dangerous non-narcotic drug episodes to be slightly higher than the distribution of these totals nationally. Note that while marijuana accounted for the smallest percentage of drug episodes (11.6 percent) among the four categories, it ranked third after Valium and heroin in the number of mentions.

Although the DAWN report cautions against comparing metropolitan areas on the incidence of drug episodes because of differences in the rates at which medical facilities were "saturated" with questionnaires, the report does draw the following conclusions by aggregating drug mentions:

> Three SMSAs, Los Angeles, Detroit, and San Francisco, provide 48% of the heroin mentions in the total DAWN system. These same SMSAs provided only 29% of the mentions of all drugs.
>
> Two-thirds of all PCP mentions originate in three SMSAs, Los Angeles, Detroit, and San Francisco.

By similar calculations let us note that the Boston SMSA accounted for 3.4 percent of all heroin mentions in the DAWN system and 3.7 percent of all drug mentions. Only 4.1 percent of the PCP mentions originated in

Boston. The Boston area does not contribute a disproportionately high number of mentions of either drug.

Division of Drug Rehabilitation

Another source of information is the statistical data on first admissions and re-admissions collected by the Division of Drug Rehabilitation of the Massachusetts Department of Mental Health from the program it funds. These include, among others,

-- residential programs
-- drop-in and counseling centers
-- methadone programs
-- alternative schools
-- vocational, prison, and hotline programs.

Clearly, the purpose of most of these programs is not drug treatment alone and most of those who enter the programs are not motivated by a drug problem but rather are seeking help for other reasons. Only 29 percent of the people in the programs indicated that they were there because of a drug problem, and even this may exaggerate their number since many probably chose to overlook other, inter-related problems. As the author of the report from which some of these data are drawn cautions, (Division of Drug Rehabilitation, 1976:2),

> The information in this report reflects the population seen by funded facilities and is not to be taken as representing any other population . . ..

In contrast to the findings of Project DAWN, these data report many more cases of heroin use and much less use of dangerous non-narcotic drugs (see Table A-II-2). Half (49.1 percent) of the clients of programs in the state and about three-quarters of those entering programs in the city of Boston reported using heroin more frequently than any other drugs.[4]

TABLE A-II-1

REPORTED NUMBER OF DRUG EPISODES IN THE BOSTON METROPOLITAN AREA AND THE TOTAL DAWN SYSTEM: April 1974 - April 1975.

Drug	Reported Drug Episodes in Boston SMSA		Reported Drug Episodes in Total DAWN System	
	Number	Percent	Number	Percent
Opium or Cocaine and Their Derivatives	841	14.9	26,881	18.4
Marijuana	652	11.6	14,277	9.7
Synthetic Narcotics	808	14.4	20,926	14.2
Dangerous Non-Narcotic Drugs	3,320	59.1	84,761	57.7
Total	5,621	100.0	146,955	100.0

Note: Episodes for alcohol-in-combination and aspirin are excluded.
Data for the total system based on reports from facilities in 29 SMSAs

Source: Drug Enforcement Administration, 1975.

TABLE A-II-2

REPORTED DRUG USE AMONG PEOPLE ENTERING PROGRAMS FUNDED BY THE DIVISION OF DRUG REHABILITATION : July 1975 to July 1976.

Drug	Most Frequently Used Drug For People Reporting Drug Use			
	Massachusetts		Boston	
	Number	Percent	Number	Percent
Opium or cocaine and their derivatives	2341	49.1	1097	72.2
Marijuana	1483	31.1	251	16.5
Synthetic narcotics	232	4.9	32	2.1
Dangerous non-narcotic drugs	709	14.9	140	9.2
Total	4765	100.0	1520	100.0

Note: Based on the responses of those who reported using a drug other than alcohol.

Source: Division of Drug Rehabilitation, Department of Mental Health, 1976.

Client information indicated that they use dangerous non-narcotic drugs much less frequently. Note that about a third of all those in the state who reported drug use and for whom there are reports were affiliated with a program in Boston.

Drug Abuse Related Deaths

Another indicator of the drug problem is the number of drug-related deaths that come to the attention of coroners and medical examiners and that are directly attributable to drugs. These figures suffer from underestimation due to the attribution of deaths actually caused by drugs to other, more easily detected symptoms (e.g., pneumonia), but they are still useful. Data obtained from the city are compared with those collected by Project DAWN from medical examiners/coroners in the Boston metropolitan area. These latter data should have captured drug-related deaths as well as suicide attempts and gestures. Keep in mind that the DAWN data refer to the entire Boston metropolitan area for the period of a year, while Boston mortality statistics refer only to deaths in the city itself.

Although deaths attributable to narcotics, mostly heroin, account for a smaller proportion of deaths than dangerous non-narcotic drugs regardless of the data source or year, from year to year the number of deaths attributable to heroin has increased. Deaths attributable to dangerous non-narcotics, on the other hand, show a slight downward trend. However, we must caution in making inferences about changes between years because the magnitude of the base figures is so low. Overall, these data are consistent with less fatal drug episodes from all sources reported in DAWN. (See Table A-II-3).

This information again stresses the major role of sedatives and barbiturates in drug episodes that lead to medical problems. Nearly

a third of these deaths (20) in 1975 were related to barbiturates, either taken as an overdose alone, or ingested in combination with alcohol. Non-barbiturate sedatives (Darvon, Dalamine, Doriden, Propanolol, Quaalude, and Valium) were responsible for 14 deaths. Barbiturate-related deaths decreased slightly in 1976 from the previous year to 17, while non-barbiturate (sedatives) related deaths increased to 18. This may indicate an overall decrease in the use of barbiturates, with a corresponding increase in the use of Valium and other non-barbiturate tranquilizers. In general, the abuse of pills accounted for 66.9 percent of all drug-related deahts in the city of Boston for the years 1975 and 1976 combined.

Reports from Other Facilities

To supplement the various statistical data obtained, interviews were arranged with three drug treatment centers in the Boston area in the summer of 1977. One is a small, private center (The Washingtonian), one a large, private hospital with a small drug treatment program (Tufts-New England Medical Center), and the third a large, federally-funded hospital with a large drug treatment program (V.A. Hospital, Roxbury).

The Washingtonian serves 50 patients at a time, half being treated fro alcoholism and the other half for drug abuse, primarily of heroin. The V.A. Hospital in Roxbury is a federally-funded treatment center serving 370 veterans at a time. Here 39 percent are addicted to opiates and another 23 percent have multiple-drug addictions. Tufts-New England Medical Center is partially funded by the government and treats 104 patients; at the time of the interviews, 72 percent of its patients were being treated for opiate addiction. The V.A. Hospital has made a

significant observation that in recent years a lower dosage of methadone than was formerly used will now alleviate withdrawal symptoms. One explanation for this may be that the purity of street heroin has decreased. This would also help to explain the increase in the number of deaths from heroin overdoses (See Table A-II-3), because, with a decrease in purity, a larger dose is needed to get a comparable level of intoxication. An increase in the use of Dilaudid was also noted at the V.A. Hospital. Dilaudid is a semi-synthetic derivative of morphine with similar addictive powers and even greater potency.

Heroin

A considerable proportion of the time, money, and effort devoted to the study, treatment, and prevention of drug abuse is directed at heroin use. As a result, more information is available on the use of this drug than of any other. Data have been gathered to estimate short-term trends in use, and the number of heroin users in this city and elsewhere. We have therefore reviewed this information so as to answer two questions: has the use of heroin been increasing or decreasing in the Boston area, and how many heroin users are living in the city of Boston?

A comprehensive review of six heroin indicators for the 1971-1977 period by the City's Drug Treatment Program and the Mayor's Coordinating Council on Drug Abuse leads to the conclusion (1977:3) that "the most salient feature related to drug abuse trends in the City of Boston seems to be the moderate resurgence of heroin abuse during the last three years." Table A-II-4 summarizes four of the indicators for Boston with national data presented for comparison where available.

TABLE A-II-3

DRUG ABUSE RELATED DEATHS IN THE CITY OF BOSTON AND THE BOSTON METROPOLITAN AREA: 1974 to 1976

Drug	Drug Episodes reported by Medical Examiners in the Boston SMSA: 1974 to 1975		Drug Related Deaths in City of Boston			
			1975		1976	
	Number	Percent	Number	Percent	Number	Percent
Opium or cocaine and their derivatives	9	13.9	11	20.0	17	28.8
Marijuana	0	0.0	0	0.0	0	0.0
Synthetic narcotics	6	9.2	8	14.5	5	8.5
Dangerous non-narcotic drugs	50	76.9	36	65.5	37	62.7
Total	65	100.0	55	100.0	59	100.0

Note: Deaths attributed to serum hepatitis are counted as narcotics-related deaths in the City of Boston (1975 and 1976).

Source: Drug Enforcement Administration, 1975 and unpublished data from the City of Boston.

TABLE A-II-4

SUMMARY OF HEROIN INDICATOR TRENDS
FOR BOSTON: 1973-1977

Heroin Indicators	Years	Boston	USA
Reported cases of serum hepatitis	1971 to 1976	+	-
Death by overdose	1975 to 1976	+	-
Purity (bulk)	1972 to 1975	+	
	1975 to 1976	-	
Purity (bag)	1972 to 1974	+	+
	1974 to 1975	0	
Price (bag)	1972 to 1973	+	
	1973 to 1975	-	
Price (bulk)	1972 to 1976	-	+
Total admission to treatment	1973 to 1976	+	N.A.
Readmission and new admission to treatment	1974 to 1976	-	N.A.

Note: The purity of heroin is assumed to vary directly with its availability while price is assumed to vary inversely with the availability of this drug. A (+) indicates an increase in an indicator; (-) a decrease; and (0) no change.

Source: City of Boston Drug Treatment Program and the Mayor's Coordinating Council on Drug Abuse, 1977.

Several points need to be made about these data. Where comparisons are possible, the findings for Boston conflict with national trends. National reports suggest a downward trend in heroin use for the most recent period. This is especially true when one considers purity and price indicators. Secondly, not all these indicators -- several of them short-term (18 months) -- point unambiguously in the same direction. There are contradictions, for example:

> . . . first admissions have dropped significantly, and continue to do so . . . . One can surmise from this that fewer, younger first-time users are evident and that more of the drug use occurring is correlated with older chronic users (City of Boston, 1977:12).

Also, there are no indications here that the severity of the problem (even assuming a resurgence in heroin use) is comparable to the situation in the late 1960's and early 1970's. Several of the key indicators (e.g., reported serum hepatitis cases) that begin in the 1970-1972 period suggest that the use of heroin is not as widespread now as it was then. Finally, in some cases the base figures from which changes are deduced are very small. There is no way to determine whether increases have any practical or statistical significance. Consequently, a moderate resurgence in heroin abuse cannot be translated into an estimate of numbers of new users.

The Size of the Heroin-User Population

Researchers in the Public Health Service and National Institute of Drug Abuse have attempted to estimate the size of the heroin-user population in 24 SMSA's, including Boston. The authors begin with heroin-prevalence rates estimated indepenedently for at least two cities, one having a high value, the other a lower. Based on these "known" values and the

values of five indicators of heroin use for each SMSA, heroin-prevalence rates are calculated for the other SMSA's with a regression equation that defines the relationship between the two original "anchor points." These calculations yield an estimate of 12,800 heroin users in the Boston SMSA in 1975, 463 per 100,000 population. Of the 24 SMSA's in the sample, on a per capita basis 8 cities ranked lower and 15 higher than the Boston metropolitan area (Person, 1976).

Since no other estimate has been made for the city, the only criterion against which this estimate can be judged is its reasonableness.[6] The first task in assessing its reasonableness is to apportion the estimated number between the city and the surrounding communities included in the Boston SMSA. The Boston SMSA had a population of 2.7 million in 1970, but only some 641,000 persons lived in the city that year. A disproportionate number of the 12,800 addicts could be expected to live in Boston. Let us assume that between 80 and 100 percent of the users are Boston residents, an estimate of between 10,240 and 12,800. These estimates are probably high because the Boston SMSA includes, among others, the cities of Revere, Chelsea, Cambridge, Everett, Somerville, Quincy and Dedham, cities all likely to contribute some number, no matter how small, to the user pool. (See pp. below). An estimate of more than 10,000 heroin users in the city can be shown, in the light of the size of the city's white and minority populations and their respective age structure, to be unreasonable (see Appendix A-II-2 attached to this chapter).

An estimate of 10,000 heroin users in the city would mean that 1 out of every 10 black males between the ages of 15 and 34 is using heroin, and this might strike some as unrealistic.[7] If so, a lower estimate of the size of the heroin user population is called for. An alternative

calculation based on the fact that between 60 and 80 percent of the heroin users in state-funded drug treatment programs are unemployed, yields an estimate lower than 10,000 users (see Appendix A-II-3 attached to this paper). Finally, let us note that researchers at the Kennedy School of Government at Harvard University (1972) estimated that the heroin user population in Boston was 5500 in 1970. The conditions in Boston have probably not changed so radically in the last five years as to cause the heroin user population to double.

Interviews

The most frequently abused drugs, according to a DCU detective are pills (barbiturates, amphetamines, Valium). He believes that there has been a slight increase in the use of pills in recent years, and that LSD and various other hallucinogenic drugs have greatly decreased in popularity over the years. However, there has recently been a rise in experimentation with a new drug called PCP. PCP is a licit, veterinary anaesthetic which is being used illicitly as a hallucinogen. The detective says that marijuana use, especially among college-age persons, has increased substantially. He believes that the same people who, years ago, would have been using alcohol are now using marijuana. He has noted that, over the years, the starting age for marijuana use has declined.

According to the director of TASC, heroin is the second most frequently abused drug, after Valium. Although heroin use is very high, it has remained relatively stable. He believes that the abuse of Valium has not actually increased very much, but that the high rate of Valium abuse was never noted before. He also believes that there has been a

rise in the use of PCP or "Angel Dust." The TASC client profile shows that heroin is the preferred drug at 74 percent, followed by sedatives at 14 percent.

The Police Response: Drug Arrests in the City of Boston

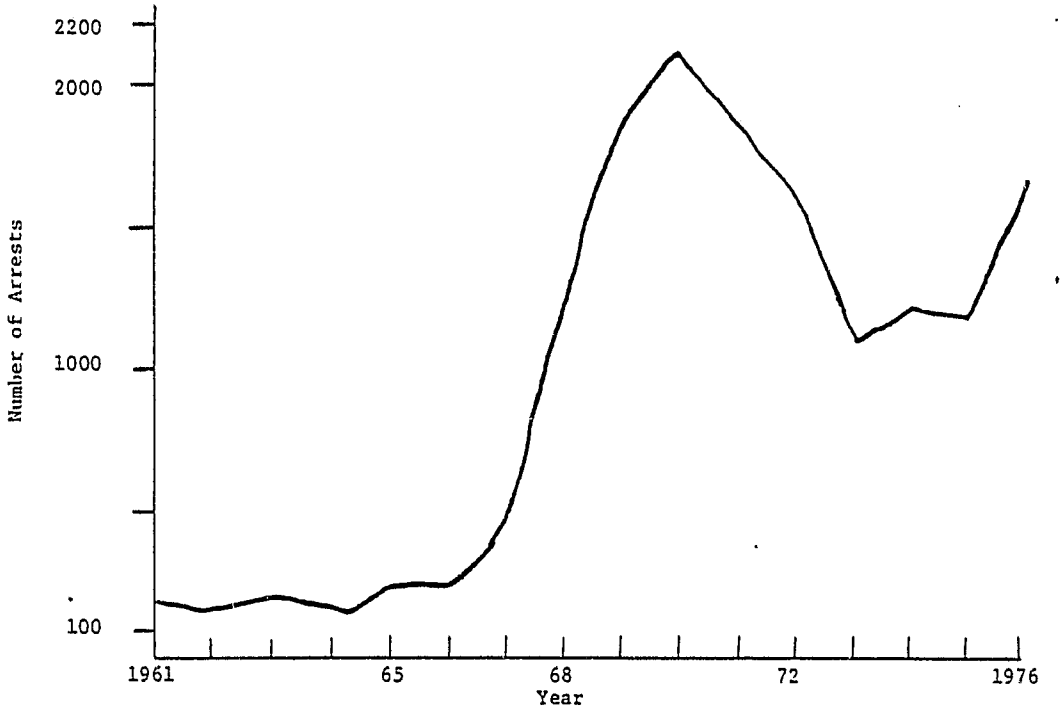
Data show a dramatic upsurge in the total number of narcotics arrests beginning in 1967, culiminating in the arrest of 2100 persons in 1970 (see Figure A-II-1). In the six years prior to 1970, an average of only 200 persons had been arrested each year for violating narcotic drug laws. Arrests decline after 1970 but showed a sharp increase in 1976. Last year (1977) 1629 persons were arrested in Boston for narcotics violations.

Arrests for all categories of drugs display the same downward and then upward trend after 1970, with one important exception: arrests for heroin-cocaine began to increase sharply in 1974, while arrests for other drugs increased again only in 1976 (see Figure A-II-2 and Table A-II-5). The number of arrests for cocaine-opium fell off sharply for the first ten months of 1977. Arrests for all other drugs, especially synthetic narcotics and dangerous non-narcotics, were up sharply in the first ten months of 1977.

In every year (except 1977), arrests for heroin or cocaine have accounted for at least 50 percent of all narcotics arrests. Marijuana arrests have been as low as 28 percent of the total (1975) and as high as 40 percent (1973). Arrests for heroin as a percentage of all Boston drug arrests is much higher than the national percentage as reported to the Federal Bureau of Investigation in 1976 (see Table A-II-6). The corresponding percentage of marijuana arrests in Boston is much lower.

FIGURE A-II-1

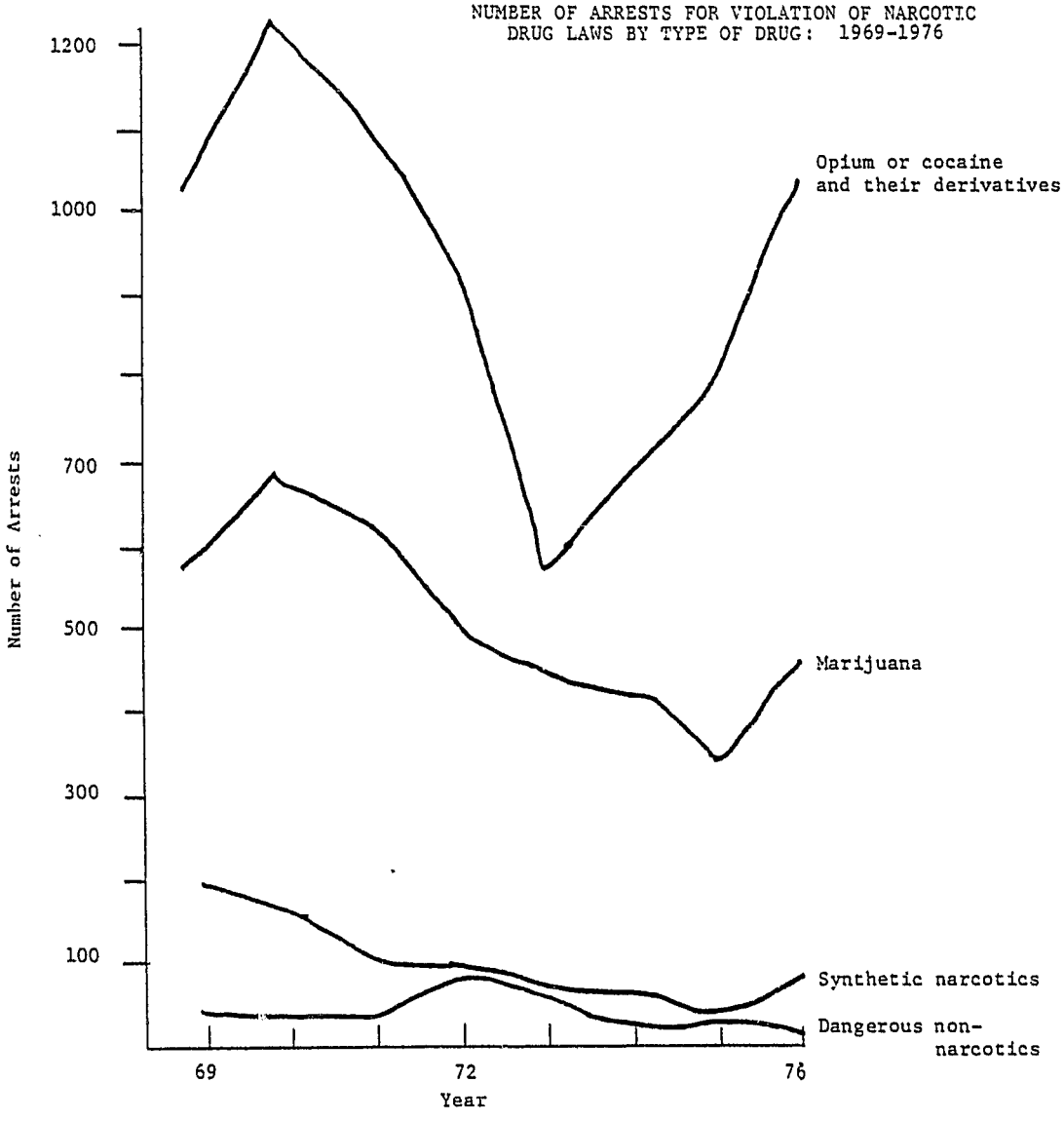
NUMBER OF ARRESTS FOR VIOLATION OF THE
NARCOTIC DRUG LAWS IN BOSTON: 1961-1976



Source: Commonwealth of Massachusetts, Statistical Reports of the Commissioner of Corrections, 1961-1968 and Boston Police Department Arrest Statistics, 1969-1976.

FIGURE A-II-2

NUMBER OF ARRESTS FOR VIOLATION OF NARCOTIC DRUG LAWS BY TYPE OF DRUG: 1969-1976



Source: Boston Police Department Arrest Statistics, 1969-1976

TABLE A-II-5

TOTAL NUMBER OF NARCOTICS ARRESTS IN BOSTON
BY TYPE OF DRUG: 1969-1977

Year	Opium or Cocaine		Marijuana		Synthetic Narcotics		Non-narcotics		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
1969	1021	56.2	562	30.9	192	10.6	42	2.3	1817	100.0
1970	1236	58.6	675	32.0	161	7.7	36	1.7	2108	100.0
1971	1091	59.3	618	33.6	98	5.3	33	1.8	1840	100.0
1972	917	57.3	502	31.4	83	5.2	97	6.1	1599	100.0
1973	570	50.9	441	39.3	64	5.7	46	4.1	1121	100.0
1974	694	54.5	426	35.7	93	7.8	24	2.0	1192	100.0
1975	797	67.0	329	27.7	33	2.8	30	2.5	1189	100.0
1976	1056	64.8	471	28.9	83	5.1	19	1.2	1629	100.0
1977[a]	513	41.1	472	37.9	165	13.2	97	7.8	1247	100.0

a. January 1, 1977 to October 31, 1977

Source: Boston Police Department Arrest Statistics, 1969-1977

TABLE A-II-6

ARRESTS FOR NARCOTC DRUG LAW VIOLATIONS
IN BOSTON AND THE UNITED STATES: 1976

Drug	Total Drug Arrests			
	Boston		United States	
	Number	Percent	Number	Percent
Opium or cocaine and their derivatives	1056	65.0	60,200	9.9
Marijuana	471	28.9	441,100	72.4
Synthetic narcotics	83	5.0	18,200	3.0
Dangerous non-narcotic drugs	19	1.1	90,200	14.7
Total	1629	100.0	609,700	100.0

Source: Boston Police Department Arrest Statistics, 1976 and
The Federal Bureau of Investigation, Uniform Crime Reports, 1976,
Table 24, p. 173.

In the Northeastern states -- no finer breakdown of arrests by city size or type of drug is available -- the FBI reports that 19.9 percent of narcotic drug law arrests were for heroin, a percentage greater than the national total but still much lower than Boston's. Also, a much higher percentage of persons is arrested for dangerous non-narcotic drugs (14.7 percent) nationally than in Boston (1.1 percent).

The FBI also reports that the 52 cities with over 250,000 population have an overall drug arrest rate of 404.2 per 100,000 population. The comparable figure for Boston is 255.8 drug arrests per 100,000 population. Thus, the total drug arrest rate is much lower in Boston than the average rate for these cities. Drug arrest statistics from particular cities would help to put the Boston situation in perspective.

In 1976, the Drug Control Unit accounted for 41 percent of all narcotics arrests and 50 percent of all heroin arrests in the city. Eighty percent of the Unit's arrests were for heroin-cocaine and the remaining 20 percent for all other drugs (see Table A-II-7). Perhaps reflecting personnel changes within the Unit, DCU arrests through October 31, 1977 accounted for only 25 percent of all drug arrests in the city (see Table A-II-8). One conclusion that emerges from these data is that, although the DCU accounts for a disproportionately large number of "serious" drug arrests, other officers and units contribute considerably to drug arrest totals. For example, 30 percent of all persons arrested by Boston Police for the sale of heroin in the city in 1976 were not arrested by the Drug Control Unit.

In 1972 the Kennedy School of Government of Harvard University issued a report (1972: 2) that discussed heroin arrests:

> The overall strategy of the Boston Police Department in the past

TABLE A-II-7

NUMBER OF ARRESTS FOR VIOLATION OF
NARCOTIC DRUG LAWS IN BOSTON: 1976

Drug	Drug Arrests by the Drug Control Unit			Total Drug Arrests in the City of Boston		
	Number	Percent Distribution	Percent of Total	Number	Percent Distribution	Percent of Total
Opium or cocaine and their derivatives	534	79.4	50.4	1056	65.0	100.0
Marijuana	100	14.9	21.2	471	28.9	100.0
Synthetic narcotics	29	4.3	35.8	83	5.0	100.0
Dangerous non-narcotic drugs	7	1.4	38.9	19	1.1	100.0
Total	670	100.0	41.1	1629	100.0	100.0

Source: Boston Police Department Arrest Statistics, 1976

TABLE A-II-8

NUMBER OF ARRESTS FOR VIOLATION OF NARCOTIC DRUG LAWS IN BOSTON: 1977[a]

Drug	Drug Arrests by the Drug Control Unit	
	Number	Percent Distribution
Opium or Cocaine and their derivatives	214	67.3
Marijuana	62	19.5
Synthetic Narcotics	22	6.9
Dangerous non-narcotic drugs	20	6.3
Total	318	100.0

a. January 1, 1977 to October 31, 1977

Source: Boston Police Department Arrest Statistics, 1977

> has been to concentrate their efforts against consumers of heroin, and arrest statistics reflect that emphasis. If low-level addict-dealers constitute about 20 percent of the addict population, then arrest statistics should show about 20 percent of the arrests to be for the sale of heroin if addict-dealers are arrested in proportion to their number in the population. However, in 1969, only 10 percent of the heroin-related arrests were for illegal sales, and in 1970 the figure was about 9 percent. This past year, however, witnessed the first real departmental attempt to crack down on the addict-dealers, and the next few years may give rise to a more balanced strategy.

In 1976, about 27 percent of all heroin-cocaine arrests were for the sale of these drugs and 58 percent for possession (Table A-II-9). For all drugs, the proportion of arrests for unlawful possession was much higher. In the last six years, however, the Department does seem to have changed its strategy, as the Kennedy School suggested it might.

However, we will have to make further inquiries within the Department before we can conclude that it is pursuing a "more balanced strategy." In 1976, the Drug Control Unit reported 670 arrests and these were translated into 914 drug-related charges (Table A-II-8 and Table A-II-10). Because an arrestee might be charged with more than one charge at the time of booking, it is to be expected that there would be more charges than arrests. In most cases this is correct. For example, 152 charges for possession of marijuana are reduced to 73 reported arrests, the differences between these two numbers (79) representing arrests for more serious offenses. However, there are some exceptions to these observed reductions of charges to arrests.

Note that there are fewer <u>charges</u> for unlawful sale of heroin than <u>arrests</u> for unlawful sale and the proportion of <u>charges</u> for unlawful sale of heroin is much less than the proportion of <u>arrests</u> (37.5 percent vs. 15.7 percent). Without clarification, data on charges do not

TABLE A-II-9

TOTAL NUMBER OF DRUG ARRESTS IN THE CITY OF BOSTON BY DRUG CHARGE: 1976

Drug	Unlawful Possession		Unlawful Sale		Other Violations		Total	
	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
Opium, or cocaine and their derivatives	617	58.4	282	26.7	157	14.9	1056	100.0
Marijuana	343	72.8	111	23.6	17	3.6	471	100.0
Synthetic narcotics	65	79.5	11	13.2	7	8.4	83	100.0
Dangerous non-narcotic drugs	13	68.4	3	15.8	3	15.8	19	100.0
Total	1039	63.8	407	24.9	183	11.3	1629	100.0

Source: Boston Police Department Arrest Statistics, 1976

TABLE A-II-10

NUMBER OF DRUG ARRESTS AND DRUG CHARGES REPORTED
BY THE DRUG CONTROL UNIT: 1976

Drug	Arrests or Charges	Unlawful Possession		Unlawful Sale		Other Violations		Total	
		Number	Percent of Total	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
Opium or cocaine and their derivatives	Arrests	272	50.9	200	37.5	62	11.6	534	100.0
	Charges	516	80.0	101	15.7	27	4.2	644	100.0
Marijuana	Arrests	73	73.0	20	20.0	7	7.0	100	100.0
	Charges	152	88.9	19	11.1	0	0.0	171	100.0
Synthetic narcotics	Arrests	21	72.4	7	24.1	1	3.5	29	100.0
	Charges	36	100.0	0	0.0	0	0.0	36	100.0
Dangerous non-narcotic drugs	Arrests	2	28.6	2	28.6	3	42.8	7	100.0
	Charges	61	96.8	2	3.2	0	0.0	63	100.0
Total	Arrests	368	54.9	229	34.2	73	10.9	670	100.0
	Charges	765	83.7	122	13.3	27	3.0	914	100.0

Note: The "unlawful possession" category includes possession and possession with intent to distribute; "unlawful sale" includes charges for delivery, distribtuion and sale of each drug. Charges for conspiracy to violate the narcotic laws (N=38) are excluded from the calculations because no drug is specified.

Source: Annual Report of the Drug Control Unit for Year 1976 and Boston Police Department Arrest Statistics, 1976.

strongly support the conclusion that the Department is arresting addict dealers. Conceivably, the DCU has included in the unlawful sale category charges for "possession with intent to distribute," which we have included under "unlawful possession." Charges for possession to distribute heroin or cocaine in the 1976 DCU report were as follows:

Heroin	271
Cocaine	84
Total	355

Including all of these charges in the "sale category" would increase the total number of arrests to more than 200. It is possible that there were non-drug charges against individuals who were also charged with committing even more serious non-drug offenses. The Drug Unit reported 152 charges in 1976 for other offenses that included violation of the fire-arms laws, armed robbery, and assault and battery, among others. However, FBI guidelines suggest that only the more serious offense would count as the "arrest."[8]

An explanation of the discrepancy between charges and arrests is needed. A judgment on the strategy that the Department is currently pursuing as revealed by these statistics, depend at least in part on understanding how arrests have been converted into charges.

A Note on the Size of the Pool of Arrestees

A careful examination of the 1976 drug arrest statistics indicates that, although 1629 arrests were reported, only 1517 persons were arrested because some were arrested more than once for violating the narcotic drug laws (see Table A-II-11). Furthermore, 13 percent of all persons arrested in Boston for all drug violations were not residents of Boston (202 of

TABLE A-II-11

NUMBER OF PERSONS ARRESTED FOR DRUG OFFENSES BY FREQUENCY OF ARREST AND ARRESTEE'S PLACE OF RESIDENCE: 1976

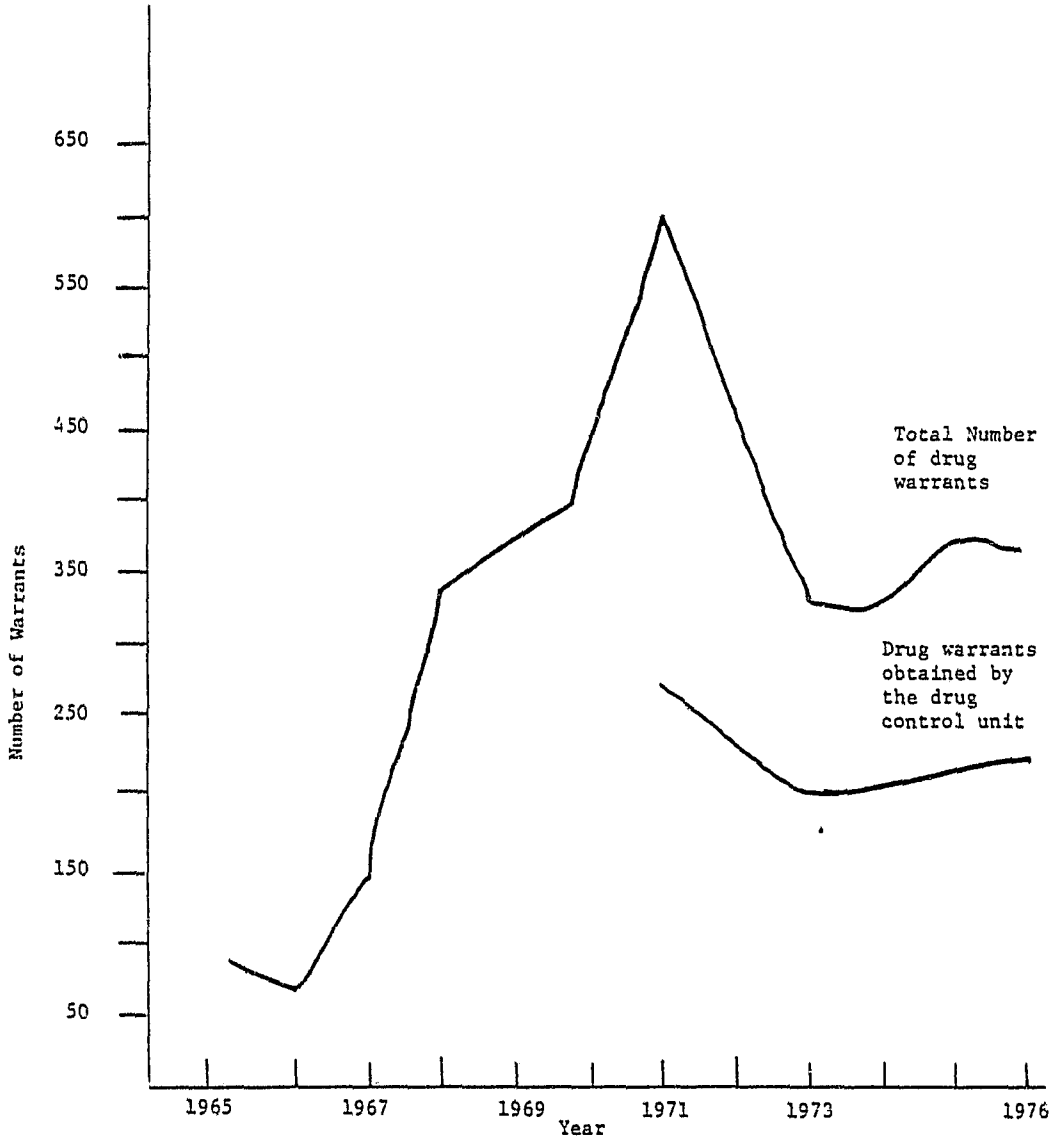
Drug	Boston Residence				Residence Outside of Boston				Total	
	Arrested Once		Arrested more Than Once		Arrested Once		Arrested more Than Once			
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Heroin or cocaine and their derivatives	775	63.0	71	83.5	115	57.8	3	100.0	964	63.6
Marijuana	379	30.8	13	15.3	62	31.2	0	0.0	454	29.9
Synthetic narcotics	60	4.9	1	1.2	19	9.5	0	0.0	80	5.3
Dangerous non-narcotic drugs	16	1.3	0	0.0	3	1.5	0	0.0	19	1.2
Total	1230	100.0	85	100.0	199	100.0	3	100.0	1517	100.0

Note: Frequency of arrest calculated by district for drug offenses only. Persons counted in all categories might have been arrested and charged for other drug and non-drug offenses in other districts in 1976.

Source: Boston Police Department Arrest Statistics, 1976

FIGURE A-II-3

NUMBER OF SEARCH WARRANTS OBTAINED FOR INVESTIGATION OF VIOLATION OF NARCOTIC DRUG LAWS: 1965-1976



Source: Commonwealth of Massachusetts, Statistical Reports of the Commissioner of Corrections, 1965-1971 and Annual Reports of the Drug Control Unit, 1971-1976.

1517). The largest group of repeat offenders were those arrested for heroin-cocaine. Note that only 8.4 percent of Boston residents for heroin-cocaine violations were arrested more than once in 1976 (71 of 846).

These data tend to support the conclusion reached earlier that estimates of the heroin-user population for the Boston metropolitan area do not accurately reflect the situation of drug use in the city itself. Non-resident violators still add to the police workload, although the workload implication of the re-arresting the same offenders is unclear. Certainly the movement of heroin users between cities within the metropolitan area suggests that the responses of other police departments should be considered in any planning effort.

Search Warrants to Investigate Violations of the Narcotic Drug Laws

As shown elsewhere in the report (Chapter X) in 1976 almost half the search warrants obtained by Boston Police were to enforce the narcotic drug laws. The nature of the requirements for search warrants, particularly the need to demonstrate probable cause to conduct a search, suggest that search warrant data are good indicators of police investigative efforts.

The number of search warrants obtained for drugs shows the same downward trend between 1971 and 1973 as that shown by arrest statistics (see Figure A-II-3). Since 1973 there has been a moderate increase in the use of warrants. This pattern, too, is consistent with that exhibited by the arrest statistics. (The effects of the busing controversy on the ability of the Police Department to conduct normal operations may very well be reflected in the arrest and search warrant statistics).

Almost three-quarters of the search warrants obtained in the five police districts served by the three largest district courts were for

heroin or cocaine. About 20 percent of the warrants specified cocaine as the object sought. Detectives from the Drug Control Unit obtained most of the drug warrants (81 percent) sought by Boston Police in these districts. Most of the warrants for marijuana were obtained by the Drug Control Unit, but district detectives sought almost as many warrants for marijuana as for heroin (see Table A-II-12).

The execution of search warrants does not significantly contribute to drug arrest totals. Only 12 percent of all persons (142 out of 1147) arrested for violating narcotic drug laws in these five districts were reported arrested as a result of the serving of search warrants.

Reflecting the nature of search warrants and drug offenses, officers frequently came up empty-handed when they served warrants for drugs or else came away with illicit goods other than those originally sought (see Table A-II-13). In 77 of 207 drug warrants (37.2 percent) for which we have data, no items were reported seized. The most frequently mentioned category of items reported seized (after drugs) were guns and ammunition: 22 warrants list weapons seized.

Convictions on DCU Arrests

The number of convictions stemming from the DCU's arrests is high. In 1975, 63.5 percent were found guilty and this increased to 71.8 percent in 1976. There was a finding of not guilty or the case was dismissed in only some 3 percent of the arrests in 1975, and 5 percent in 1976. Cases for which the court found no probable cause were minimal: .4 percent in 1975 and .2 percent in 1976. The majority of cases without guilty findings were continued; these accounted for 27.9 percent of the dispositions in 1975, and 19.7 percent of the dispositions in 1976.

TABLE A-II-12

NUMBER OF SEARCH WARRANTS OBTAINED FOR DRUGS BY
THE BOSTON POLICE DEPARTMENT IN FIVE DISTRICTS: 1976

Drug	DCU Detectives		District Detectives		Other Officers[b]		Total	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Heroin	91	54.2	10	40.0	5	35.7	106	51.2
Cocaine	37	22.0	3	12.0	2	14.3	42	20.3
Marijuana	21	12.5	8	32.0	2	14.3	31	15.0
Multiple[a] drugs	4	2.4	2	8.0	0	0.0	6	2.9
Other drugs	15	8.9	2	8.0	5	35.7	22	10.6
Total	168	100.0	25	100.0	14	100.0	207	100.0

a. Combinations of heroin, cocaine or marijuana

b. Includes detectives in other specialized units and patrol officers

Source: District Court Search Warrant File, 1976

TABLE A-II-13

NUMBER OF WARRANTS REPORTING ITEMS SEIZED
IN FIVE POLICE DISTRICTS: 1976

Item Seized	Drug Control Unit		Other Officers		Total	
	Number	Percent	Number	Percent	Number	Percent
Drugs [a]	80	47.6	18	46.1	98	47.4
Weapons and drugs	19	11.3	3	7.7	22	10.6
Weapons	4	2.4	1	2.6	5	2.4
Other items	3	1.8	2	5.1	5	2.4
No items seized	62	36.4	15	38.5	77	37.2
Total	168	100.0	39	100.0	207	100.0

a. Includes all drugs, specified and not specified, in the warrant

Source: Search Warrant Data File, 1976

A Note on the Enforcement of Laws Relating to Barbiturates and Sedatives

There is a contradiction between the description of drug abuse in Boston and the present enforcement practices of the DCU. Most of the indicators lead one to conclude that the abuse of barbiturates and sedatives is a significant problem. Yet, the arrest statistics of the DCU (and the interviews of DCU detectives) reveal that there is very little enforcement in this area.

The enforcement of barbiturates and sedatives is claimed to be difficult. First, the distribution of these drugs is not characterized by the same type of distribution network that characterizes heroin or cocaine, because barbiturates and sedatives are essentially licit drugs. Second, many of the cases of abuse can be traced to some form of medical prescription. Lastly, and more importantly, the DCU does not have a history of enforcing laws designed to regulate these drugs. The DCU develops cases against heroin dealers with informants who have been involved in heroin trafficking. This model is inappropriate for barbiturate enforcement. The DCU informers have little knowledge about barbiturate distribution.

NOTES

1. While DAWN statistics can be made compatible with police data, the reverse is not possible. Project DAWN has issued an extensive listing of drugs; a separate appendix is therefore included at the end of this chapter for these drugs, with each one listed under the appropriate police department category.

2. "As no means exists, within the anonymous reporting framework of DAWN, of identifying an individual who seeks treatment, a number of episodes cannot be equated with a number of drug abusers or addicts. Therefore, 100 episodes may represent fewer than 100 individuals, either because of repeated contacts with the same facility or contacts with multiple facilities over time.

   "Drug mentions represent the sum of all substances, in the aggregate, which played a part in causing an abuser to seek treatment or other help. Many episodes are associated with more than one substance, and so the number of mentions exceeds the number of episodes. However, for any given substance, such as heroin, the number of mentions is equal to the number of episodes involving that substance," (Drug Enforcement Administration, 1975:5-2).

3. Percentages calculated from Project DAWN begin with tht totals for the 35 leading drugs. These drugs accounted for 69 and 67 percent respectively of all drugs mentioned in Boston and the total DAWN system. This means that, of the 10,011 drug mentions in the Boston area, only 6952 are attributable to a specific drug; 3159 mentioned cannot be classified with the information provided in the DAWN report. Therefore, the base figure is taken to be the total mentions of the leading drugs minus alcohol-in-combination and aspirin. Of course, a smaller base figure has the effect of inflating the relative share of each category. According to the DAWN report, 5 percent of all drug mentions nationally fall in the "drug unknown" category. Therefore about 26 percent of the mentions omitted could be expected to fall in an existing category or belong in an "other" category. Since information on these other substances -- any one of 3000 identified by DAWN -- is not provided, these mentions were excluded from the calculations.

4. The use of cocaine, the only other drug in the opium or cocaine category besides heroin, is minimal; 1.2 percent of the Boston respondents and less than one percent (0.8) of the respondents in the entire state.

5. Two indicators are omitted from the summary table; arrest statistics (to be discussed separately) and emergency room contacts (included in Project DAWN).

NOTES (Cont'd)

6. This same point is made by Person, et al., (1976:9). See also Singer (1971:341).

7. It is interesting to note that Singer's estimate of 70,000 addicts in New York City in 1971, arrived at by considering, among other things, the size of New York's young, black population, is also lower than the estimates generated by Person, et al. for that city for 1973.

8. The Federal Bureau of Investigation's Uniform Crime Reporting Handbook (1974:75) offers seven guidelines on the preparation of arrest statistics. One pertains to the problem of multiple charges:

> If the person is arrested for more than one offense, find the crime classification that is first on the list of offenses as listed on the Age, Sex and Race of Persons Arrested return. For each person arrested use only one crime classification.
>
> A man is arrested for burglary, larceny, possession of firearms and vagrancy. Burglary is first on the listing of offenses thus you would score one arrest opposite burglary only.

There are 18 crime categories -- nine Part I and nine Part II offenses -- that come before "narcotic drug laws" and 11 that come after it. These categories correspond perfectly with those listed in the Boston Police Department Code Book (rev. June 1975). If the Boston Police Department follows the FBI guideline, then a person arrested and charged with robbery, murder, larceny-theft, auto theft and weapons offense, among others, and a narcotic drug law violation will be counted as an arrest only under the more "serious" offense, not for the narcotics violation.

REFERENCES

Boston Police Department
1975 Code Book. Boston.

City of Boston Drug Treatment Program and the Mayor's Coordinating Council on Drug Abuse
1977 Heroin Indicator Trends for Boston: 1973-1977. Boston.

Division of Drug Rehabilitation Department of Mental Health
1976 Fiscal Year 1976 Monitoring Data Report. Boston.

Drug Enforcement Administration
1975 Drug Abuse Warning Network Phase III Report: April 1974-April 1975. Amblee, PA: IMS America, Ltd.

Kennedy School of Government
1972 Heroin Abuse in Boston. Cambridge: Harvard University.

Person, P., R. Retka and J. Woodward
1976 A Method for Estimating Heroin Use Prevalence. Washington, D.C: U.S. Government Printing Office.

Singer, Max
1971 "The Vitality of Mythical Numbers." The Public Interest 23:341.

Strategy Council on Drug Abuse
1976 Federal Strategy for Drug Abuse and Drug Traffic Prevention. Washington, D.C: U.S. Government Printing Office.

United States Department of Justice Federal Bureau of Investigation
1974 Uniform Crime Reporting Handbook. Washington, D.C: U.S. Government Printing Office.

Appendix A-II-1

Below are listed the drugs included in Project DAWN (Appendix A-Table 31) arranged by the Boston Police Department's classification scheme.

Opium or cocaine and their derivatives

heroin
cocaine
codeine
morphine

Marijuana

marijuana
hashish

Synthetic narcotics

LSD
methadone
PCP
meperidine
meprosamate
hydromorphine
PCP combinations

Dangerous non-narcotic drugs

diazepam
secorbarbital
chlordiazepoxide
d-propaxyphene
methaqualone
amphetamine
pentobarbitol
phenobarbital
secobarbital/amobarbital
speed
amitriptyline
glutethimide
oxazepain
amobanbital
methamphetamine
pentazocine
clorazepate
butabarbital
methylphenidate

Appendix A-II-2

A. Number of Heroin Users Estimated From Demographic Data

1. In fiscal year 1976, approximately 68 percent of the clients of the state-funded drug treatment programs in Boston were male; 32 percent were female. The average age was 29.2 years, and we will assume that 75 percent of user population was between the ages of 15 and 34. The race-ethnicity of this population was:

White	57.5%
Black	34.7
Hispanic	7.0
Oriental	0.3
Other	0.5
	100.0

2. Seventy-five percent of the addict population can be apportioned by sex and race as follows:

	Male	Female	
White	29.3%	13.8%	
Black	17.7	8.3	
Hispanic	3.6	1.7	
Oriental/Other	0.4	0.2	
	51.0%	24.0%	= 75%

3. The 1970 census reported a total of 97,038 males and 116,987 females age 15-34 living in the City of Boston distributed among the categories of white, black and other as follows:

	Males	Females
White	80,375	95,925
Black	14,662	18,997
Other	2,001	2,065
Total	97,038	116,987

4. The census reported that 2.8 percent of the total Boston population was of Spanish heritage (distributed among the black, white and other categories). Let us assume these individuals were classified as white

and the "other" category contains orientals then:

	Males	Females
White	77,658	92,649
Black	14,662	18.497
Spanish	2,717	3,276
Other	2,001	2,065
Total	97,038	116,987

5. Between 1970 and 1975, the Black and Spanish populations increased in size by 25.5 percent and 21.7 percent, respectively. The white population declined 11.1 percent. Applying these growth rates to the above demographic data yields the following estimate of the number of males age 15-34. (The "other" category is assumed not to have grown.)

	Males	Females
White	68,000	82,400
Black	18,400	23,800
Spanish	3,300	4,000
Other	2,000	2,000
Total	92,700	112,200

6. An estimate of 13,000 addicts in Boston suggests 2300 of these were black males and 3800 white males, both groups between the ages of 15 and 34. An estimate of 10;000 addicts suggests a correspondingly lower estimate of 1800 Black and 2900 white males aged 15 to 34.

Reaching the first estimate of the user population (13,000) requires, based on the size of black and white cohort 15 to 34 years old, that 1 in 8 blacks and 1 in 18 whites be heroin users. The second, lower estimate requires that 1 in 10 black males and 1 in 38 white males be heroin users. While both estimates for the white population are not unreasonable, the latter estimate of 10,000 appears more reasonable in the light of the demographic character of the city's black population. Note, too, that

this estimate requires us to believe that communities surrounding Boston have very few heroin users living within their borders.

B. Number of Heroin Users Estimated from Unemployment Data

1. In fiscal year 1976, approximately 68 percent of the clients of the state-funded drug treatment programs in Boston were male and 32 percent were female. Between 60 and 80 percent of those individuals were unemployed.

2. In 1975, the following number of males and females were reported to be unemployed (by race):

	Males	Females
White	16,182	11,743
Black	6,361	4,937
Spanish	1,602	898
Total	24,148	17,078

3. To reach an estimate of 10,000 users requires us to assume that (1) the probability that unemployed male and female heroin users is the same; (2) 1 in 7 of the unemployed use heroin; and (3) 60 percent of the user population is found in the ranks of the unemployed.

Assume	Estimated Number of Addicts		
	Males	Females	Total
1 in 8 addicted	3,020	2,135	5,155
1 in 7 addicted	3,500	2,440	5,940
1 in 6 addicted	4,024	2,850	6,874
1 in 5 addicted	4,830	3,400	8,230

(5,940 divided by 60 percent yields an estimate of 9,900 heroin users.)

CHAPTER A-III

RESULTS OF THE DRUG UNIT SURVEY

Introduction

Preliminary work with the Drug Control Unit of the Boston Police Department led the Center to the belief that Boston's requirements for drug enforcement operations could be better understood through comparative analysis of data from other cities of similar size to Boston. The Drug Unit Task Force would be able to gain a broader picture of the "state of the art" of drug enforcement from such a survey. Nineteen cities were selected for the survey -- four that had been recommended because of some special drug problem or unit, and fifteen that have populations similar in size to Boston's. Questionnaires were returned by two cities in the first group and seven in the second, a forty-seven percent response rate. The names of the cities have been omitted and each is referred to by letter.

Survey Results: Perceived Drug Abuse and Drug Arrests

The departments responding to the drug questionnaire were asked to rank a list of drugs by order of perceived abuse in their cities. These results appear in Table A-III-1.

Marijuana is the drug reported most abused in every city, according to the responding police departments. Heroin and amphetamines rank second, overall, although there is a great deal of variation among departments. After those drugs in terms of perceived abuse came cocaine, hallucinogens and barbiturates.[1]

Each city's reported changes from 1976 to 1977 in the use of drugs and in arrests appears in Tables A-III-2 and A-III-3. Some significant trends in drug enforcement can be seen by comparing the two tables. For example, in City A use of drugs was seen as increasing only for cocaine, while in City E use of all drugs except hallucinogens was on the increase. City I reported no changes in drug use. If we look at individual drugs, the use of cocaine, marijuana and heroin was reported to be increasing in most of the cities. Hallucinogens were considered to be decreasing in use, with most of the others mixed or slightly on the increase.

Drug arrests for the most part followed the trends in use changes, with some interesting exceptions. In City G, for example, drug arrests decreased for all categories of drugs. City I, which had indicated little change in drug use, also showed little change in drug arrests. There were only a few categories in which use was decreasing but arrests were increasing, all of which occurred in City A. This might indicate a conscious effort by that department to focus on those drugs. It might also reflect a lag between arrest and perceived use, indicating that arrests resulted in lessened drug use. In other cities, however, drug arrests were reported to be decreasing while use was reported to be increasing. These were noted in marijuana and cocaine arrests, and occurred primarily in Cities F and G. Overall, arrests were decreasing for two categories of drugs -- barbiturates and hallucinogens.

Enforcement Priorities

In a series of questions regarding enforcement priorities for heroin, cocaine and marijuana, departments were asked to rank priorities for each drug by type of defendant (user, street dealer, middle-level dealer, major

dealer, or juvenile), and by type of violation (possession, possession with intent to distribute, sale, or being present). Tables A-III-4 through A-III-6 show the responses for the types of defendants.

The majority of responding departments indicate that the major dealer represented the highest priority in drug enforcement, followed by middle-level and street dealers. In City E, however, the department concentrated on middle-level dealers more than on major dealers. City C had different priorities for heroin, cocaine, and marijuana. Its drug unit considered middle-level heroin dealers as its highest priority (giving major dealers fourth priority), but for cocaine it focused on the street dealer. In marijuana enforcement, the major dealer was the prime concern.

The reported enforcement priorities for each type of violation relating to type of violation appear in Tables A-III-7 through A-III-9. Cities D and H applied priorities that differed from those of the other cities for cocaine and heroin offenses, concentrating on possession rather than sale. The majority of responses listed sale as the priority offense, followed by possession with intent to distribute and then mere possession. Being present, when that was also a drug law violation, was accorded the lowest priority. However, this should not be taken to mean that persons found at the scene of a drug sale of possession would not be arrested.

For marijuana offenses, six cities listed priorities similar to those for heroin and cocaine offenses. City D concentrated on possession rather than sale (consistent with its heroin and cocaine priorities), while cities G and I did not list any priorities for sale or possession of marijuana. City I, oddly, noted only that possession with intent was a second priority, and listed no first priority. This response may be due to the delegation of responsibility for marijuana offenses to another unit in the

department.

Drug Unit Resources

Several potentially relevant indicators of the ability and efficiency of the drug units that responded to the questionnaire were the number of officers assigned to the unit, the amount of "buy" money available to the units, the willingness of the department to pay overtime for various types of drug work, and the cooperation between the drug unit and other drug enforcement agencies in the city. The degree of the department's commitment to its drug control unit is reflected in the personnel involved in drug work and the resourses available to them.

Tables A-III-10 through A-III-13 illustrate these resources. Boston has been included with the responding departments in Table A-III-10 and ranks lowest in percentage of officers assigned to the Drug Control Unit. City H, comparable in population to Boston, proportionately has four times as many officers assigned to its drug unit.[2] In absolute numbers, only City E has a smaller drug unit (11 officers) than Boston.

Buy money is a prime method for tracking large amounts of drugs. A greater availability of buy money gives a drug unit the opportunity to pursue the middle-level and major dealers of drugs. Restrictions on buy money can often have a deadening effect on a drug unit. City H, with a relatively large drug unit, also ranks highest in the amount of available buy money (Table A-III-11). City C can draw upon only two hundred dollars per week for drug buys. Clearly, if the unit anticipates a large buy it would have to forego any other buys until enough money is accumulated.

A department's willingness to pay overtime for investigatory drug acitivites and for court time provides an additional stimulus to drug

unit officers. Table A-III-12 indicates that most departments pay overtime, or give compensatory time, for court activities and for investigation. Time spent on information gathering and processing and on prolonged surveillance is less likely to be paid by the department, although seven of the departments make some provision for compensation for surveillance work. Only three departments allow overtime payments for other types of drug unit activities.

Cooperation between a drug unit and other drug enforcement agencies is another important factor in efficient performance. Interagency communication helps to develop and solidify major drug cases that a single agency may not be able to pursue successfully. The responses of the various cities indicate that in drug enforcement nearly all departments cooperate with the DEA, the FBI and other police departments. Only City I, which did not respond to the inquiry concerning agencies other than DEA, and City B (which reportedly does not work closely with the FBI) reported anything other than full cooperation with similar agencies.

Conclusion

The results of the questionnaire cannot, by themselves, paint a complete picture of any drug unit, but the data collected were extremely relevant to the drug project. They indicated, for example, that the resources and staff of the Boston Drug Control Unit are significantly smaller than those of other "comparable" drug units across the country. The information also emphasized that drug enforcement priorities are fairly uniform throughout the country, and that in general police departments are attempting to concentrate their efforts on the sellers of drugs rather than on the users. With the results of the survey data, the Drug Unit Task Force was able to develop a list of required resources for the Drug Enforcement Plan.

TABLE A-III-1

RANK ORDERING OF DRUGS BY DEGREE OF PERCEIVED ABUSE BY CITY

Drug	City								
	A	B	C	D	E	F	G	H	I
Heroin	4	7	2	3	5	3	3	4	1
Cocaine	2	6	5	4	7	4	2	5	2
Barbiturates	6	3	6	6	3	7		6	6
Amphetamines	5	4	3	2	2	6	4	2	5
Sedatives	8	5	4	7	4	5		3	7
Hallucinogens	3	2	7	5	6	2		7	4
Marijuana	1	1	1	1	1	1	1	1	1
Other	7							8	

1 = Most frequently abused
8 = Least frequently abused

A black space indicates no response

Source: DCU Questionnaire, 1977

TABLE A-III-2

REPORTED CHANGE IN USE OF DRUGS BY CITY: 1976-1977

Drug	City								
	A	B	C	D	E	F	G	H	I
Heroin	-	-	+	+	+	+	+	+	0
Cocaine	+	+	+	+	+	+	+	+	0
Barbiturates	0	0	0	0	+	-	-	0	0
Amphetamines	0	0	+	+	+	-	+	0	0
Sedatives	0	+	+	0	+	+		0	
Hallucinogens	-	+	-	-	-	+	-	-	
Marijuana	-	+	+	+	+	+	+	+	0
Other	-								

(+) indicates an increase; (-) a decrease and (0) no change.
A blank space indicates no response.

Source: DCU Questionnaire, 1977

TABLE A-III-3

REPORTED CHANGE IN ARRESTS BY DRUG BY CITY: 1976-1977

Drug	City								
	A	B	C	D	E	F	G	H	I
Heroin	-	-	+	+	+	+	-	+	
Cocaine	+	+	+	+	+	-	-	+	-
Barbiturates	0	0	0	-	0	-	-	-	0
Amphetamines	-	0	+	+	+	-	-	-	0
Sedatives	0	+	+	-	0	+	-	0	0
Hallucinogens	0	+	+	-	0	+	-	0	0
Marijuana	+	+	-	0	+	-	-	0	-
Other	+						-		0

(+) indicates an increase; (-) a decrease and (0) no change.
A blank space indicates no response.

Source: DCU Questionnaire, 1977

TABLE A-III-4

REPORTED PRIORITIES FOR HEROIN
BY TYPE OF DEFENDANT BY CITY

City	Type of Defendant				
	User	Street Dealer	Middle Level Dealer	Major Dealer	Juvenile Addicts
A	4	3	2	1	3 1/2
B	4	3	2	1	5
C	3	2	1	4	5
D	3	1	2	-	
E	5	3	1	2	4
F	4	3	2	1	4
H	*	3	2	1	*
I				1	

(1) indicates highest priority; (5) indicates lowest priority;
a blank space indicates no response
* possession reported enforced by patrol

Source: DCU Questionnaire, 1977

TABLE A-III-5

REPORTED ENFORCEMENT PRIORITIES FOR COCAINE BY
TYPE OF DEFENDANT BY CITY

City	Type of Defendant				
	User	Street Dealer	Middle Level Dealer	Major Dealer	Juvenile Addicts
A	4	3	2	1	3 1/2
B	4	3	2	1	5
C	4	1	2	3	5
D	3	1	2	3	
E	5	3	1	2	4
F	4	3	2	1	4
H	*	3	2	1	*
I				1	

* Possession reported enforced by patrol
A blank space indicates no response

Source: DCU Questionnaire, 1977

TABLE A-III-6

REPORTED ENFORCEMENT PRIORITIES FOR MARIJUANA
BY TYPE OF DEFENDANT BY CITY

City	Type of Defendant				
	User	Street Dealer	Middle Level Dealer	Major Dealer	Juvenile Addicts
A	4	3	2	1	3 1/2
B	4	3	2	1	5
C	4	3	2	1	5
D	3	1	2		
E	5	3	1	2	4
F	4	3	2	1	4
H	*	3	2	1	*
I			1		

* Possession reported enforced by patrol
A blank space indicates no response

Source: DCU Questionnaire, 1977

TABLE A-III-7

REPORTED ENFORCEMENT PRIORITIES FOR
HEROIN BY TYPE OF VIOLATION BY CITY

City	Type of Violation			
	Possession	Possession w/ Intent to Dist.	Sale	Being Present
A	3	2	1	
B	2	2	1	4
C	3	2	1	4
D	1	2	3	
E	3	2	1	4
F	3	2	1	
G	3	2	1	4
H	1	2	3	*
I	3	2	1	4

* Reported not unlawful
A blank space indicates no response

Source: DCU Questionnaire, 1977

TABLE A-III-8

REPORTED ENFORCEMENT PRIORITIES FOR
COCOAINE BY TYPE OF VIOLATION BY CITY

City	Type of Violation			
	Possession	Possession w/ Intent to Dist.	Sale	Being Present
A	3	2	1	
B	2	2	1	4
C	3	2	1	4
D	1	2	3	
E	3	2	1	4
F	3	2	1	
G	3	2	1	4
H	1	3	2	*
I			1	

A blank space indicates no response
* Reported not unlawful

Source: DCU Questionnaire, 1977

TABLE A-III-9

REPORTED ENFORCEMENT PRIORITIES FOR
MARIJUANA BY TYPE OF VIOLATION BY CITY

City	Type of Violation			
	Possession	Possession w/ Intent to Dist.	Sale	Being Present
A	3	2	1	
B	3	2	1	4
C	3	*	1	4
D	1	2	2	
E	3	2	1	4
F	3	2	1	
G				
H		2	1	
I		2		

A blank space indicates no response
*State law does not allow charge of possession with intent to distribute regarding marijuana; only charges of sale or possession allowed.

Source: DCU Questionnaire, 1977

TABLE A-III-10

NUMBER OF OFFICIERS ASSIGNED TO DRUG CONTROL UNIT
AS PERCENTAGE OF TOTAL NUMBER OF OFFICIERS: 1976

City	Officer Assigned to Drug Control Unit	Total number of Sworn Officers	Drug Unit Officers as a Percent of Total Officers
Boston	14	3200	0.4%
A	20	1200	1.6%
B	22*	3400	0.6%
C	28	2000	1.4%
D	24	1300	1.8%
E	11	1200	0.9%
G	20	1600	1.2%
H	26	1000	2.6%
I	56	4300	1.3%

* Includes three cadets

Source: U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Report, 1976 and DCU Questionnaire, 1977

TABLE A-III-11

REPORTED AMOUNT OF BUY MONEY

City	Amount of Money Per Year
A	30,000
B	21,600
C	10,400
E	18,000
G	50,000
H	65,000

Cities B and E reported amounts per month;
City C, per week.

Source: DCU Questionnaire, 1977

TABLE A-III-12

PAYMENT OF OVERTIME BY TYPE OF ACTIVITY BY CITY

	A	B	C	D	E	F	G	H	I
Court Time	-	+	+	+	+	+	+	+	+
Investigation	+	+	+	0*	+	+	+	+	0
Information Gathering and Processing	+	-	-	0*	+	+	-	-	0
Prolonged Surveillance	+	-	-	0*	+	+	+	+	0
Other	+	-	-	-	-	-	+	+	

(+) indicates yes; (-) indicates no; (0) indicates that compensatory time is given
(0*) response indicates that not paid but might be paid in compensatory time;
A blank space indicates no response

Source: DCU Questionnaire, 1977

TABLE A-III-13

REPORTED COOPERATION BETWEEN DRUG CONTROL UNITS AND OTHER AGENCIES BY CITY

	A	B	C	D	E	F	G	H	I
DEA	+	+	+	+	+	+	+	+	+
FBI	+	-	+	+	+	+	+	+	
Other Police	+	+	+	+	+	+	+	+	
Other	+	+	+	+		+	+	+	

(+) indicates yes; (-) no;
A blank space indicates no response

Source: DCU Questionnaire

CHAPTER A-IV

DRUG ENFORCEMENT PRIORITIES PLAN

The following action plan for drug enforcement priorities was prepared by a Task Force within the Drug Control Unit and the staff of the Boston University Center for Criminal Justice. Another Task Force had been working with the Center for Criminal Justice for some time formulating guidelines for criminal investigation. Funds were available under the grant supporting this endeavor to assist in the formulation of drug enforcement priorities.

The methodology that produced the plan is reported in Chapter VII.

The plan that follows has two major sections. The first summarizes the major findings of the planning effort; and the second section contains specific recommendations for drug enforcement strategies and priorities within the Boston Police Department.

Findings of the Drug Enforcement Priorities Plan

Based upon the research and analysis of the Drug Control Unit Task Force, the following findings are made:

1. Historically, the Boston Police Department has given limited emphasis to drug enforcement. Prior to 1970, this may relate both to departmental priorities and to the limited extent of the problem. Based strictly on arrest statistics, drug enforcement was given some emphasis in 1970. In the six years prior to 1968, on average, only 250 persons had been arrested each year for violating drug laws. In 1970, the figure was 2,100. In 1976, the figure was 1,629. In relationship to other larger cities, however, Boston has a fairly low drug arrest rate. Boston's rate in 1976 was 255.8

CONTINUED

5 OF 9

drug arrests per 100,000 population compared to 404.2 per 100,000 population for other cities of 250,000 populatior or higher.

This could be explained in terms of difference in emphasis and/or nature of the drug problem or both. Regardless, it is difficult to draw any important conclusions from drug arrest statistics alone. Given the range of other serious problems confronting both Boston and the Department, it certainly may be appropriate not to give drug enforcement any significant emphasis. In fact, as was demonstrated during the 1960's, real dangers are attached to overemphasizing the "drug problem." Community expectations may grow while it is doubtful that massive new resources allocated within the Department would result in major reductions in drug trafficking or narcotics abuse. Without question, local law enforcement will always operate under conditions where victims and witnesses are not readily available to complain or to testify. With all of this being said, the Task Force concludes that the Boston Police Department has important responsibilities in drug enforcement which must be met in conjunction with other law enforcement agencies. These include keeping informed of drug abuse and trafficking patterns, attempting to contain the drug problem, working with other agencies to reduce the number of new addicts, responding proactively to larger scale trafficking in dangerous drugs, and responding to community concerns and gaps in information about drug enforcement.

2. Individual detectives and patrol officers within DCU and the various districts have done impressive work in the area of drug enforcement. At great personal risk, departmental personnel, for example, have worked to make and have made significant cases against major drug traffickers. In general, though, it is the Task Force's view that the Department's current enforcement program has serious deficiencies. These can be summarized as follows:

(a) As noted in the Introductory section, the Department has no cohesive objectives or priorities in drug enforcement. Thus, there are no short or longer term strategies and no methods for measuring the performance of DCU or departmental personnel in this area.

(b) The Department has virtually no intelligence capability related to drug enforcement. Individual detectives in DCU and personnel within the districts have personal knowledge of various drug activities, but there is no sustained process for keeping the Department informed of drug abuse and trafficking patterns. It is difficult, therefore, for DCU to develop cases against larger traffickers of dangerous drugs. This is a serious deficiency which must be corrected and the Department should not and cannot rely essentially on DEA or other police agencies for intelligence information on drug activities in the City of Boston. What is needed instead is better coordination and an exchange of intelligence collected by the individual agencies.

(c) DCU currently has insufficient personnel and equipment to respond effectively and proactively to larger scale trafficking in dangerous drugs in Boston. Even supporting the notion of lower priority for drug enforcement, DCU compares poorly to other centralized drug control units surveyed in terms of personnel, vehicles, and surveillance equipment.

DCU's drug enforcement problems are further exacerbated by the fact that there is ongoing pressure on DCU to take action against street dealers throughout the city regardless of the importance of the particular investigation or case. With few exceptions (such as District 13 which has two drug officers based upon the initiative of

the Deputy Superintendent), drug enforcement in the city is left largely to DCU. In addition, most detectives and patrol officers within the districts are poorly trained to engage in effective drug enforcement. DCU in particular and the Department in general has devoted almost no resources to the illegal trafficking in controlled substances such as barbiturates. Enforcement in this area is left largely to the Drug Enforcement Unit within the State Police.

(d) There is limited coordination of effort in drug enforcement between the Boston Police Department and other law enforcement agencies such as DEA and neighboring police departments. This is a strong working relationship between DCU and the Suffolk County District Attorney's Drug Unit, but coordination of effort in more significant and longer term investigations is lacking.

(e) There is limited coordination of effort in care of drug abusers, between departmental personnel and the public and private treatment agencies. The Department has focused little attention, in recent years, to training on the types of referrals to be made when the police come into contact with drug abusers in need of care.

3. Because of the lack of an ongoing intelligence capability within the Department, it is difficult to assess accurately drug abuse and trafficking patterns in Boston. Far more information is available on heroin than on other narcotic or dangerous drugs. Estimates of heroin users in the City appear to range from 5,500 to nearly 13,000, but we tentatively estimate that the figure is closer to 8,000-10,000. Much of the heroin being distributed in Boston within recent years has been brown heroin coming to the United States through Mexico. The major dealers of brown heroin appear to be Hispanic, while organized white heroin (with European and

Asian origins) trafficking continues to be primarily controlled by Blacks.

Based upon a variety of sources, including statistical information drawn from the Drug Abuse Warning Network (DAWN), the three drugs which are the most used and abused are diazepam (Valium), heroin, and marijuana.

Statistically, DCU and the Department in general devote most of their attention to heroin and cocaine. Approximately 80 percent of all DCU arrests relate to heroin or cocaine offenses; the figure for the Department as a whole is 65 percent. The only other area of statistical significance relates to marijuana offenses. Nearly 15 percent of DCU arrests fall into this category; 29 percent for the Department as a whole. These figures are significantly different than those for the nation as a whole, where 72.4 percent of all arrests are for marijuana related offenses and only 9.9 percent are for heroin or cocaine.

A fairly high percentage of departmental arrests, however, relate to possession as opposed to sale offenses. According to 1976 arrest statistics for the Department, approximately 58 percent of all heroin or cocaine arrests and 73 percent of marijuana arrests were for possession charges. The comparable DCU figures were approximately 51 percent and 73 percent respectively. Some of the possession arrests conceivably involve possession with intent to distribute. It is likely, however, that the statistics reflect that much of the emphasis in drug enforcement continues to be on street-level dealers with cases primarily being made on the buy-bust method.

4. Members of the [illegible]k Force, based upon their collective experience and their analysis of the data and information which has been collected, consider heroin, cocaine, PCP (Phencyclidine), and certain tranquilizers (particularly Valium) as the drugs most in need of enforcement priority. This conclusion is reached by weighing three factors: (a) relative harm

to users; (b) organized crime's involvement in sizable distributions; and (c) crime related to or stimulated by addiction and trafficking. In the Task Force's view, heroin, PCP, and depressants constitute serious risks to users. This is reflected in DAWN data as to heroin and valium. PCP is just emerging as a problem drug in the Boston area and, in the opinion of the Task Force, can cause severe reaction and psychotic episodes if taken in large doses. Task Force members' experience indicates that heroin and cocaine are the drugs most likely to involve organized criminal elements in sizable distributions. Finally, based upon national studies, heroin is clearly the drug most associated with other crimes which are stimulated by addiction and trafficking.

Given these findings, it is apparent that the concerns which initially stimulated this effort were justified. A planned response to the "drug problem" is needed now. The suggested components of such a response are contained in the section that follows.

The Plan for Drug Enforcement Priorities

For the next 24 months, the Drug Control Unit Task Force proposes that the Boston Police Department establish the following objectives:

A. To increase the risks entailed in illegal trafficking in large quantities of dangerous drugs in the City of Boston, particularly large quantities of heroin, cocaine, PCP, and barbiturates and sedatives such as Valium;

B. To increase the risks entailed in serious violations of the drug laws by street-level dealers, users and persons subject to regulation under Chapter 94C of the Massachusetts statutes;

C. To expand departmental involvement in referral of drug abusers to

appropriate public and private treatment programs;

D. To better inform the community about drug enforcement problems and needs and to involve community groups in defining and reviewing drug enforcement priorities;

E. To formulate and utilize criteria for measuring successes or deficiencies in drug enforcement which are consistent with this drug enforcement priorities plan.

The basis for these objectives and program priorities are described below.

A. Increasing the Risk Entailed in Illegal Trafficking in Large Quantities of Dangerous Drugs

The Boston Police Department in general and the Department's Drug Control Unit more specifically have limited resources. This requires that drug enforcement priorities be established both for DCU and for the Department as a whole. In the opinion of the Task Force, DCU's primary objective should be focused on illegal trafficking in large quantities of the more dangerous drugs and the drugs in which the more organized criminal element is involved.

The Department, however, probably will never have the resources to concentrate continually on the upper echelon of drug traffickers, i.e. those who finance and control large-scale drug trafficking organizations. That level of offender will, for the most part, have to remain within the domain of the Drug Enforcement Agency and the United States Department of Justice Organized Crime Strike Force. Therefore, DCU should focus on middle-level dealers and distributors on its own and work in conjunction with DEA on top echelon figures. Based upon its own experience and the statistical information it has analyzed, major emphasis over the next 24 months should be given to increasing the risk entailed in illegal trafficking in large quantities of heroin, cocaine, PCP, and barbiturates such as valium. Because the Drug

Investigation Unit of the State Police has an existing capability in enforcement of controlled substances such as barbiturates, cases involving illegal trafficking in large quantities of barbiturates should be undertaken in conjunction with DIU.

Although DCU should emphasize investigations involving more serious drug traffickers and should be evaluated accordingly, it must be understood that minor offenders will have to be arrested and investigated as a way of obtaining critically needed information about major distribution systems or major drug traffickers. DCU, however, should no longer be actively involved in investigating and making cases involving street-level dealers, users and persons subject to regulation under Chapter 94C unless such matters are directly related to investigations involving illegal trafficking of dangerous drugs in large quantities.

To enable the Department to increase the risks entailed in larger scale illegal drug trafficking, two priority programs must be initiated immediately:

(1) Improve the capability of DCU and redirect its energies to more serious drug trafficking cases; and

(2) Improve coordination of effort between DCU and other law enforcement agencies in intelligence gathering on and investigations of larger scale illegal drug trafficking.

It will not be difficult or prohibitively expensive to improve DCU's capability and redirect its energies. The essential steps necessary to achieve this result include:

-- Returning the Unit's complement to 18 to enable it to have three squads of six detectives. It is simply not possible for DCU to shift its emphasis effectively with its current complement. This will require adding only five additional personnel to DCU. Some

of the five could be patrol officers or officers with specialist's ratings. Within the complement of 18, there should be at least two women, one black and one white. The complexities and dangers of drug enforcement should be taken into account in making assignments to DCU.

-- Creating an Intelligence Unit within DCU. The Unit can be comprised of six detectives assigned on a rotating basis from the three regular squads. Detectives assigned to the Unit should report directly to the DCU Commander. While on assignment to intelligence gathering, detectives should focus on detecting patterns in drug trafficking and the major figures involved in them. Emphasis should be on obtaining information and not making cases. The Intelligence Unit should coordinate its activities with other law enforcement agencies. Intelligence information should be collected on an ongoing basis from detectives and patrol sources within the various districts. Steps should be taken to obtain approval for detectives to have more flexible working hours while on intelligence gathering assignments.

-- Obtaining new equipment for DCU or improving its access to necessary equipment through pooling arrangements within the Department. The quality and quantity of equipment available to DCU personnel is, for the most part, grossly deficient. In order for the unit to achieve its new objectives, it must have ready access to a variety of undercover vehicles, high quality surveillance and communication equipment, and a sizable flash roll (probably an amount of around $10,000). Most of the departments responding to the Task Force's survey do have access to such equipment and resources.

Some improvements in equipment have recently been made, but others are needed immediately. Either the Unit should receive its own equipment in current areas of deficiency, or satisfactory pooling arrangements within the Department should be made for items such as more sophisticated camera equipment. A specific list of equipment needs will be available shortly after submission of this plan.

-- Obtaining appropriate in-service training for DCU personnel on major case investigations. With the proposed shift in emphasis for DCU, it will be necessary to provide in-service training to personnel on intelligence gathering, case screening, and major case investigations. In particular, emphasis should be placed on new aural and visual surveillance methods, legal standards for such surveillance, and the investigation and preparation of drug conspiracy cases. Either the Training Academy should be commissioned to prepare such an in-service program in conjunction with qualified experts in the immediate area, or personnel should be sent to various training programs offered by such agencies as DEA and the Dade County Safety Department Organized Crime Training Program.

In order to improve coordination of effort with other relevant law enforcement agencies, the following steps should be taken.

-- Establish a formal coordination effort with DEA. The purpose of the program should be to improve intelligence gathering, sharing of information, and major case investigations. DCU and DEA should each be asked to formally assign well-respected officers to each others' unit on a rotating basis. Specific tasks and responsibilities should be agreed to in writing between the Commissioner and the regional director of DEA.

-- Improve the working relationship between DCU and the Suffolk County District Attorney Drug Unit. There is a fairly good relationship now between DCU and the Suffolk County District Attorney's Office, but it will need to be improved given the new emphasis for DCU. DCU will need better access to knowledgeable assistant district attorneys to resolve legal questions in longer term intelligence gathering and investigation efforts. In addition, for more complicated conspiracy cases, an assistant district attorney should play an active role during the investigative stages. For this reason, the Boston Police Department and the Suffolk County District Attorney's Office should agree: (1) to have knowledgeable assistant district attorneys available around the clock on a rotating basis to confer with DCU personnel when necessary; and (2) to involve an assistant district attorney as part of the investigative team when a potentially significant drug investigation is initiated.

-- Establish a formal coordination effort with DIU. Since barbiturates (particularly Valium) are heavily abused in the Boston area, DCU should attempt to focus on illegal trafficking in large quantities of barbiturates in its intelligence gathering effort. This should probably be done in conjunction with DIU since it has assumed primary responsibility in this area for enforcement of controlled substance requirements. Thus, the two units should share intelligence with each other on larger illegal trafficking. If such trafficking is uncovered, consideration may also be given to joint investigative efforts. For the time being, however, it appears that potential cases should be referred to DIU.

B. Increasing the Risk Entailed in Serious Violations of the Drug Laws by Street-Level Dealers, Users and Persons Subject to Regulation Under Chapter 94C.

As was noted earlier, since 1970, DCU has been responsible for a sizable percentage of drug arrests in Boston. According to 1976 arrest statistics, for example, DCU with its limited personnel accounted for 41 percent of all narcotics arrests in the city (670 of the 1629 arrests) and 50 percent of all heroin arrests. This suggests that limited emphasis is given to drug enforcement efforts within the various districts.

In an earlier portion of this Report, the Task Force indicated that it may not be inappropriate to give drug enforcement, particularly minor possession violations, less priority than other more serious matters. On the other hand, based upon interviews with officers in various parts of the City, it appears that greater attention should be given within the districts to serious street-level drug offenses. This will become even more true when DCU shifts its priorities.

To increase the risks entailed in serious violations of the drug laws by street-level dealers, users and persons subject to regulation under Chapter 94C, which we consider a valid objective for this Department, the following priority program should be initiated immediately:

-- Primary responsibility for discouraging violations of the drug laws by street-level dealers, users and persons subject to regulation under Chapter 94 through periodic proactive enforcement efforts and responses to citizen complaints should be returned to the various districts.

Some obvious difficulties are involved in decentralizing major responsibilities for drug enforcement. First of all, a large number of patrol officers have never received training on drug enforcement and have limited experience in the intricacies involved in the making of a drug case. It is

unlikely that a massive in-service training program can or should now be initiated for all patrol officers in this area. Second, most of the detective units within the districts have small numbers and emphasis within these units is rightly being given to serious crimes against the person. For these reasons, a decentralization program for drug enforcement should include the following components:

-- Establishing an in-service training program on drug enforcement for a selected number of patrol officers and detectives who could then become drug enforcement experts in their districts. The others who have received special training could function much the same way as do the two drug experts now in District 13 in undertaking their own case investigations. Further, they could provide guidance to the patrol officers and detectives in their districts, and they could provide intelligence information to DCU on patterns within the district. The in-service training for these experts could be provided, in large part, by DCU personnel.

-- Formulating and disseminating guidelines on drug enforcement with specified levels of priority to officers and detectives throughout the Department. In lieu of immediate massive in-service training on drug enforcement, guidelines should be developed as quickly as possible. The guidelines could focus on the types of activities which might arouse suspicion, available investigative techniques, and drug cases which deserve priority attention. The Department does not have the resources to extensively enforce drug law violations. It would be useful for district personnel to gain a sense of which drug problems should receive priority attention. Guidelines should be drafted which might discourage any emphasis

being given to marijuana possession and focus attention on such matters as the need for periodic enforcement efforts for general deterrence purposes, the need to reduce open and notorious drug transactions and the need to respond to community concerns about trafficking in such places as areas near schools. The Drug Control Unit Task Force with the assistance of the Center for Criminal Justice might be asked to help develop such guidelines over the next several months. To the extent possible, enforcement priorities might be developed with input from some community groups within the City.

-- Providing training on drug enforcement to the current recruit class. In order to begin the process of educating departmental personnel on drug enforcement policies, basic instructional material on drug enforcement should be presented to the current recruit training class. Personnel from DCU should be asked to assist the Training Academy staff in preparing and presenting such material.

C. Expanding Departmental Involvement in Referral of Drug Abusers to Appropriate Public and Private Treatment Programs.

One way of containing the drug problem in Boston is to increase the number of hard-core addicts and severe drug abusers who are in treatment or under competent medical care. Patrol officers constantly interact with serious drug abusers. Many more could be using this contact as a way of making referrals to appropriate public and private drug treatment programs. The problem is that too often patrol officers are not aware of the worthwhile programs that do exist in the City. Police agencies continue to offer the best potential referral source for citizens in need of medical or social services. It is appropriate, therefore, to establish an objective that the

Boston Police Department expand its knowledge on appropriate referral possibilities. To assist the Department in improving its referral capability, it is proposed that

-- The City of Boston Drug Treatment Program and the Mayor's Coordinating Council on Drug Abuse be asked to prepare a manual for Boston Police personnel on referral opportunities within the City and on symptoms of serious drug abuse.

D. Better Informing Community about Drug Enforcement Problems and Needs and Involving Community Groups in Defining and Reviewing Drug Enforcement Priorities.

The citizens of Boston are badly informed about drug enforcement problems and needs. Calls for service are constantly being made to the districts and to DCU by citizens who are unaware of the legal complexities in making drug cases or the limits in resources and the need to establish drug enforcement priorities. At the same time, departmental personnel are often insulated from community groups and have very limited information about actual levels of concern and tolerance within various neighborhoods. For these reasons, the Department should attempt over the next 24 months to expand its efforts of discussing drug enforcement problems and needs more openly with citizen groups. This can be achieved in a number of ways including the following:

-- DCU personnel and other officers trained in drug enforcement should meet with community groups on a regular basis to discuss departmental plans and guidelines on drug enforcement priorities.

-- The Drug Control Unit Task Force could meet with community groups as part of its efforts in formulating and revising departmental plans and guidelines on drug enforcement priorities.

Each of these efforts might give community groups a clearer sense of depart-

mental potential and limitations along with providing community input into the setting of drug enforcement priorities. Community input could also be helpful in reviewing priorities and their impact on community problems once they have been established.

E. Formulating and Utilizing Criteria for Measuring Success or deficiencies in Drug Enforcement which are Consistent with this Drug Enforcement Plan.

Once this plan is put into effect, it will be important to provide incentives for its implementation and techniques to determine whether it has been a success or failure. The Department will want to know, for example, whether or not DCU, began to concentrate effectively on major trafficking cases. The Department will also want to know whether decentralization of certain aspects of drug enforcement was successful and whether personnel followed guidelines on drug enforcement priorities in selection of cases or in the making of referrals. Such measures are important not only for determining whether this plan was successfully implemented, but also for determining which personnel made the greatest efforts to comply with it. Too often, departmental personnel are evaluated on such limited criteria as number of arrests. Based upon this plan new criteria should be developed which would take into account such factors as

-- intelligence gathering capability;

-- conviction rate for major drug traffickers;

-- selection of cases for prosecution or referral;

-- efforts at coordination with other agencies;

-- involvement with community groups.

To achieve the objective of formulating and utilizing criteria for measuring successes or deficiencies which are consistent with this plan, it is proposed that:

-- The Director of Personnel work with the Drug Control Unit Task Force to devise measures for evaluating the performance of personnel under this Plan. Once the measures are devised, they should be instituted but only after appropriate supervisors are trained in their use.

CHAPTER A-V

CITATION PROPOSAL

Introduction

The Boston University Center for Criminal Justice is in the process of developing guidelines in the area of arrest for the Task Force on Police Investigative Procedures of the Boston Police Department. In this proposal the Center for Criminal Justice is putting forward a new topic, related to arrest, for consideration on an experimental basis. This concept is the use of citations in lieu of arrest in non-traffic misdemeanor cases. This proposal describes the benefits of this process, and how such a system - within the existing statutory framework - might work on an experimental basis.

General Description

When a police officer stops a person upon probable cause the person has committed a crime and decides to make an arrest, he or she must transport and book the suspect, a process which removes the officer from his or her patrol area for one to two hours. The arrest and subsequent physical custody of many misdemeanants serves only to invoke the criminal process and to ensure the person's appearance in court. Many misdemeanants represent little, if any, risk to society or themselves and could be released pending arraignment with a high probability of their appearance in court.

Traditional arrest of these persons is costly to both the police and the accused. The police incur costs from transporting, booking and incarcerating the person and from diverting the officer from his patrol duty for

a substantial time period. The arrest record, detention, and possible incarceration to ensure court appearance, weigh heavily on the accused, especially those with limited resources. In addition, some court resources are consumed in the process of admitting the accused to bail.

An alternative to this system has, for some time, been in effect in traffic cases. There, a police officer under certain circumstances is, by statute, given the option of using a citation instead of an arrest. This citation system could be implemented - without any statutory amendment - on an experimental basis in no-traffic misdemeanors.

Under the existing statutes, a police officer who has the power to arrest a person on the street may, instead of making an immediate arrest, go to court and obtain a complaint. The citation proposal would simply have the officer inform the person that a complaint would be sought. Briefly, an officer would use his power under M.G.L. ch. 41 §98 to stop someone he would normally arrest for a misdemeanor and conduct a threshold inquiry, detaining the person long enough to obtain the necessary information about the person so that the officer could go to court and swear out a complaint. Before releasing the person, the officer would inform him of the offense(s) with which he or she is charged, the time and date a complaint will be sought, and the person's right to be present in court for the complaint application. If the person appears in court, immediate arraignment and speedy processing is possible. If the person does not appear, an arrest warrant or a summons will issue, in the discretion of the District Court judge. In essence, the police officer would be acting in the same manner as a private citizen in going to court. In Massachusetts anyone who is competent to make an oath to it may make a complaint.[1]

---

1. Notes and references for this chapter begin on page 471.

Benefits

The benefits of using citations rather than arrests in appropriate misdemeanor cases are substantial. Various forms of a citation system have been implemented in several U.S. cities - Oakland, California; Evanston, Illinois; New Haven, Connecticut - with substantial success (Comment, 1974; Comment, 1972; Berger, 1972).

Considerable savings have been realized in all the areas listed above, while the court appearance rate of persons cited has not decreased in comparison to the pre-citation system rate. Use of citations in some, if not all, misdemeanor situations is recommended by the Report of the National Advisory Commission on Criminal Justice Standards and Goals, Corrections, (1973) Standard 4.3; Courts, (1973) Standard 4.2; and by the President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: The Courts, (1967).

Estimates are that 70% of the cost of a traditional arrest (based on national statistics) can be saved by use of a citation at the stop site (Weisberg, 1975: 53). Costs are saved in three primary areas: transportation; booking; and custody until arraignment. Costs are saved also in resources comsumed and by allocating police time to the most cost-beneficial duties.

The experience of three cities shows that substantial savings can be realized. In Oakland, cost-benefit analysis reveals a savings of $20.37 per field citation (Comment, 1972: 1361 n.120). A considerable saving of police man-hours has resulted. A citation in Oakland takes 15 minutes as compared to one hour for an arrest. In Evanston, a citation also takes 15 minutes whereas an arrest requires a minimum of two hours. New Haven's experience was that two hours were saved with each citation (Comment,

1974: 79).

Estimates of Savings with Citations

Conservative estimates for savings in Boston range from $28,000 to $51,000.[2] While part of these savings would be in Department expenditures, the greatest benefit to the Boston Community would be the additional police protection resulting from increased police presence on the street.

The total amount saved is greatly affected by the number of arrest situations in which the accused is eligible for citation. That is, the larger the number of eligibles, the larger the savings realized. The estimates include only costs of transportation and booking; if the costs of custody to arraignment (the most expensive aspect of traditional arrests) were included, the amount of savings would increase dramatically.

The percentage of persons cited and released out of a total of all arrested (including citations in the arrest total) varied from 7.4% to 43.5% in selected jurisdictions in 1974. In computing the following estimates, the conservative release rates of 7.3% and 12.0% of all arrested were applied to the figures for total arrests in Boston in 1970 and 1972. The estimated average public expenditure cost per accused is $4.16 for transportation (based on 2-man patrol) and $5.92 for booking, for a total of $10.08.

	Total Arrests	Release Rate	Savings Possible
1970	42,899	7.3%	$31,316.27
		12.0%	$51,981.84
1972	38,392	7.3%	$28,026.16
		12.0%	$46,438.56

One measure of the success of citations systems is the rate of court appearance of the people cited. Under Oakland's program, in which a

majority of misdemeanants receive citations, the overwhelming majority of those cited appear in court as scheduled. The rate of court appearance is equivalent to that of persons released on bail (Comment, 1972: 1347-8). A national estimate of "unwillful" failure to appear is 11.1% of those released, but the "willful" failure to appear drops to 3.9% (Weisberg, 1975: A-23). The court appearance rate of persons issued citations in New Haven was 5.3% for non-motor vehicle offenses (Berger, 1972: 408). Fears that citation release would result in large numbers of cited persons failing to respond to the citation are not borne out in experience.

Moreover, use of citations can be beneficial in other ways. It introduces flexibility into an otherwise rigid arrest process. An officer having stopped a misdemeanant may consider a traditional arrest to be too severe for that offender, yet the alternative of release with a warning too lenient. In such cases, a citation would be an effective alternative. New Haven police found greater ease in performing their duties, no violence in citation cases, and improved police-community relations. The citation program was viewed by the public as an effort by the police to improve the treatment of persons arrested (Berger, 1972: 411).

Experimental Implementation

The Center for Criminal Justice proposes that initial work be done to determine how to obtain the benefits of a citation system without any statutory amendment in Boston. A District would be chosen in which to implement the system in cooperation with the appropriate District Court. Guidelines would be developed as to what offenses may be subject to a citation,[3] and what factors should be considered in the decision whether to arrest or give a citation.[4]

Boston Police Arrest Reports — June 1976 - June 1977

Offense*	Number of Arrests		
	District 1	District 2	District 4
Assault and Battery (c.265 §13A)	91	120	73
Possession of Marijuana (c.94C §34)	61	45	34
Sale of Marijuana (c.94C §32)	48	13	31
Disorderly Person (c.272 §53)	175	94	79
Trespassing (c.266 §120)	76	31	77
Prostitution (c.272 §53)	601	4	404
Allowing Premises to be used for Immoral Purposes (c.272 §24)	27	-	8
Common Nightwalker (c.272 §53)	188	-	197
Using Automobile Without Authority (c.90 §24)	33	95	39
Nonsupport (c.273 §1)	3	56	1
	1,433	732	1,082
Approximate number of man-hours spent in conducting these arrests (4 man-hours per arrest, based on two-man patrols and an average of 2 hours per arrest)	5,732	2,928	4,328
If citations were issued in 50% of the cases listed above, considerable savings in man-hours (of patrol time) would result. Using a base of 20 minutes for issuing a citation (a saving of 100 minutes/arrest per officer), the savings in man-hours would be:	man-hours 2,300 2/3	man-hours 1,220	man-hours 1,803 1/3

Thus, more than one-third of the time spent in making the arrests shown above would be saved, and the police officers would spend that much more time on the street, patrolling.

The most important benefit from using citations in such situations would be increased police presence on the street. An officer's time could be used more efficiently to the benefit of the community.

*The offenses listed are misdemeanors in which citations could be used instead of arrests.

NOTES

1. Commonwealth v. Carroll, 14 N.E. 618, 145 Mass. 403 (1888).

2. The estimates in this section are derived from Weisberg (1975).

3. In Oakland, all misdemeanors are citable; in New Haven, all misdemeanors except those involving juveniles and sex offenses are citable; but in Evanston, citations are used for only seven misdemeanors and all municipal ordinance violations. Evanston's seven misdemeanors are: curfew violation; simple assault; disorderly conduct; ticket scalping; sale, use, or explosion of firearms; solicitation of alcoholic or non-alcoholic beverages; and Dram Shop Act violations.

4. All the implemented programs and the proposals are in substantial agreement on situations in which citations are not appropriate. These are when:

    1. Release of the accused presents a potential for violence to himself or the community;

    2. The accused is likely to continue or (immediately) resume the offense;

    3. There is an arrest warrant outstanding on the accused;

    4. The accused fails to provide identification and the necessary information to complete the citation;

    5. The accused has no ties (family, job, residence) to the jurisdiction reasonably sufficient to assure his appearance in court;

    6. The accused refuses to sign the citation;

    7. The accused has previously failed to respond to a citation or summons.

    8. Arrest and detention are necessary to carry out additional legitimate investigations;

    9. The accused is unable to care for him or herself;

    10. The accused requires medical attention;

    11. The accused has violated the conditions of any pretrial release program.

REFERENCES

Berger, Mark
1972 "Police Field Citations in New Haven." Wisconsin Law Review 1972: 382.

Comment
1972 "Pretrial Release Under California Penal Code Section 853.6: An Examination of Citation Release." California Law Review 60: 1339.

Comment
1974 "An Analysis of the Citation System in Evanston, Ill.: Its Value, Constitutionality and Viability." Journal of Criminal Law and Criminology 65: 75.

Commonwealth of Massachusetts
1970 Statistical Report of the Commissioner of Correction
1972 Statistical Report of the Commissioner of Correction

Weisberg, Susan
1975 Cost Analysis of Correctional Standards: Alternatives to Arrest, Vol. II: National Institute of Law Enforcement and Criminal Justice, L.E.A.A.

APPENDIX B

CRIMINAL INVESTIGATIVE GUIDELINES: SUPPLEMENTARY MATERIALS

CHAPTER B-I

CRIMINAL INVESTIGATIVE GUIDELINES: SUPPLEMENTARY MATERIALS

Introduction

Much of the Center's work with the Boston Police was helping the Department develop criminal investigative guidelines. The basic features of this process, which included working with a departmental Task Force of senior officers and interacting with many line personnel, were described in Chapter V. This Appendix details this aspect of the policymaking process. The first chapter (B-II) describes how the Center combined social science and legal research to develop the criminal investigative guidelines. The second chapter (B-III) reports on our attempt to write guidelines that address a particularly difficult problem of policing: the decision of a police officer to stop a suspect. The third chpater (B-IV) contains a reproduction of the Criminal Investigative Guidelines, the major product of this Project's effort at police policymaking.

CHAPTER B-II

THE DEVELOPMENT OF CRIMINAL INVESTIGATIVE GUIDELINES

Selection of Areas for Guideline Development

Project staff and the task force agreed that in the first phase of the project, three criminal investigative areas required priority attention in the formulation of guidelines. These were obtaining and executing search warrants, car searches, and searches incident to arrest. These areas were selected for a number of reasons.

We believed that, like most police departments, the Boston Police Department relied only minimally on search warrants as authority for engaging in searches and seizures. Generally, authority to search or seize is derived instead from the many exceptions to the search warrant requirement such as searches incident to arrest or exigent circumstances. Supervisory personnel wanted to increase the use of warrants, but saw many restrictions that prevented them from doing so. These included the unavailability of magistrates during evening hours and weekends, Massachusetts caselaw,[1] and the perceived difficulty of preparing affidavits adequate to withstand judicial scrutiny. The Task Force and the staff selected the area of obtaining and executing search warrants as one of the first to address.

Without question, the Supreme Court's decisions on car searches are confusing to many who read and attempt to interpret them.[2] There are questions, for example, about when a warrant is needed to search a car,

---

1. Notes and references for this chapter begin on page 500.

how extensive the search may be, and where car searches may be made. The task force agreed, therefore, that it would be valuable to have guidelines that establish department policy in this area.

The majority of searches are now conducted incident to arrest. Considerable confusion exists between Supreme Court [in Chimel v. California, 395 U.S. 752 (1969); United States v. Robinson, 414 U.S. 218 (1973); and Gustafson v. Florida, 414 U.S. 260 (1973)] and the additional restrictions imposed by the Massachusetts legislature following these decisions.[3] Given the frequency of searches incident to arrest, the Task Force determined that this area should receive priority attention.

The areas of arrest, stop and frisk and eyewitness identification were selected for guideline development during the second phase of the project.

Both a stop and an arrest constitute seizures of the suspect's person but statutory and decisional law suggest clear differences in suspect's rights and permissible police authority during a stop based on reasonable suspicion and an arrest based on probable cause. Knowledge of these differences is critical to the police officer both to protect the admissibility of any evidence he obtains and to protect the suspect's rights. In practice however, the distinction between a stop and an arrest may be obscured. For example, Task Force members expressed the opinion that many officers in Boston believe any detention of a suspect is an arrest. The negative consequences of this perception are obvious. If the detention is based only on a reasonable suspicion, the officer's authority is more restricted than it would be in an arrest situation. However, the officer may engage in conduct normally associated with the arrest power creating

the danger that the encounter will later be determined to have been an illegal arrest. Additionally, many of these encounters would be legal under Terry[4] and its progeny yet some officers, acknowledging the absence of probable cause, perceive them to be illegal but justifiable. Because their opinion of permissible activity is more restrictive than the law allows, the effect may be a decreased respect for and compliance with legal standards generally. It was agreed therefore that guidelines that provide workable definitions of stops and arrests and establish police conduct appropriate to each, would benefit the department and officers in the field.

The final criminal investigative area selected for guideline development was the role and conduct of pre-trial eyewitness identification procedures. A review of appellate cases in Massachusetts substantiated the view of task force members that many pre-trial identifications were excluded at trial. Although the success of important prosecutions was endangered by suggestive or unreliable pre-trial procedures, admission of in-court identifications often saved the Commonwealth's case. Consequently, officers developed a reliance on in-court identifications and thus underutilized pre-trial procedures or conducted them with insufficient regard for protecting suspect's rights or obtaining admissible evidence. Procedures in this area were to be developed to enable police officers to utilize important investigative tools while affording adequate protection to suspects.

Legal Research

To determine the legal framework within which policies would be developed, Center staff began by using traditional legal research techniques.

Staff examined

(1) model codes (most pertinent were the Arizona State University Model Rules (1974), and the American Law Institute Model Code of Pre-Arraignment Procedure (1966);

(2) current federal and Massachusetts court cases-interpreting the Fourth Amendment, and Massachusetts cases interpreting the state constitution and statutes;

(3) existing and proposed Massachusetts statutes and court rules;

(4) innovative statutes and rules, existing and proposed, in other jurisdictions (e.g., California statute on telephonic warrants and proposed Rule 41 of the Federal Rules of Criminal Procedure);

(5) existing Boston Police Department regulations, policies, legal opinions, and training materials;

(6) regulations of other police departments (e.g., Cambridge, Kansas City, Dayton, Cincinnati, San Diego, New York, Los Angeles, Washington, D.C.);

(7) proposals of professional organizations (e.g., International Association of Chiefs of Police, Police Foundation, National Police Legal Advisors Association); and,

(8) relevant literature in field (e.g., American Bar Association) Standards on Urban Police Function (1973).

Most legal research was undertaken during the preparation of draft guidelines for discussion with task force members and selected detectives and patrol officers assigned to their commands. Ambiguities, impracticalities and omissions noted by Task Force members during their review frequently required staff attorneys to more closely scrutinize decisional and statutory law in a continuing attempt to refine drafts to appropriately balance practical critiques and traditional sources of legal doctrine.

Moreover, this process helped project staff determine what additional information was needed on existing field practices and it helped staff define an appropriate social science research design.

Collection of Agency Data

Initially, we believed that existing court and Department records and periodic interviews with task force members would be the primary sources of data on police practices and needs. Court records would provide information on such issues as the impact of the exclusionary rule on the suppression of evidence in particular types of cases. Department records, such as incident reports, would give a statistical picture of the handling of other relevant problems and would identify individual officers who might be interviewed and observed in the field. Staff drew samples of incident reports from Districts 2 and 5 for review.[5]

Incident reports, however, turned out to be of neglible value. The reports were so sketchy that we could not determine when or if a search had been conducted, the scope and intensity of the search, or even the order in which probable cause was developed for each crime when there was more than one charge. The lack of particularity in Department records -- with the exception of those documents the officers prepared for review by court officials, such as search warrant affidavits -- provided limited useful data. This paucity of statistical data led to a modification: data collection and analysis were confined to examining issues such as the use of search warrants and the impact of the exclusionary rule.[6]

The Training Academy and the Use of Videotapes

Although the setting for initial substantive discussions with police officers was the Training Academy and the sessions were referred to as in-service training, the purpose and format differed significantly from traditional training in the Boston Police Department. Staff and task force made explicit to participants that the sessions were not to review recent developments statutory or case law, but rather to discuss current practices and perceived problems in selected legal areas. Consequently, staff discarded the traditional lecture approach and developed new materials to stimulate discussion of street activities. Staff attorneys, law students, and police officers working with the project, devised scenarios based on problems that officers commonly encounter during car searches, searches incident to arrest and search warrants. Using existing case law and the recent field experiences of department personnel, these placed legal issues in situational contexts familiar to officers. Staff wrote the scenarios as script outlines and the Department's video unit used them to produce video tapes for the Academy sessions. In addition, staff designed questionnaires based on these taped scenarios that presented a range of possible police responses to each situation portrayed. For example, a single video depicting the execution of a search warrant might raise several issues such as manner of entry, announcement of authority and purpose, sufficiency of evidence for obtaining an arrest warrant, plain view, and safeguarding property.

Before developing videotapes, the Center experimented with orally presenting hypothetical situations to officers for their response. This technique was less satisfactory than using videotape for several reasons.

First, officers often interpreted described situations in terms of their previous experiences: even before the Center staff would finish reading a situation, officers would comment that it was similar to a particular situation that they had confronted in the past. They would recall the previous experience, and all subsequent questions would be answered in terms of what each officer had done in the past rather than in terms of their response to the specific situation portrayed. This made comparing the responses of the officers exceedingly difficult. This problem was avoided with the video questionnaires.[7]

The production of the videotapes provided project attorneys with their first opportunity to explain the project and its purposes to officers who were neither supervisors or administrators. Not surprisingly, the explanations were initially greeted with skepticism. While staff encouraged questions and discussions, verbal assurances had little impact on the officers' cynicism about the intended participatory nature of the effort and its substantive goals. This attitude began to change only after video production began and officers took advantage of the invitation to evaluate and modify the materials being produced.

Meeting in small groups (7-10 officers) with staff attorneys and Academy personnel, the detectives viewed the videotapes. At the conclusion of each taped situation, but prior to any group discussion, each officer was asked to indicate quickly, on a specially prepared form, what he would do if he were confronted with that situation.[8] To encourage candid responses, officers were specifically instructed not to identify themselves on the forms.

After the detectives completed the questionnaires, Center staff and Academy personnel discussed with the officers why they had decided to

take a particular course of action. Staff recorded the points raised during these discussions, which helped the staff to identify areas in which there was the least consensus among officers.

These sessions had two objectives: to get formal participation in the guideline development process by line officers of the Department; and to identify additional areas in which guidelines should be formulated. This process appears to have been effective. Officers helped identify substantive areas in which they thought guidelines would be useful and they explored not only their own decision-making processes but also their views about investigative procedures.[9]

The Center used the results of the video questionnaire for officer input. Because the officers themselves often were unaware of how they would react to a situation until confronted with it, the video-based questionnaire provide a richer image to which the officers might react than did open-ended interviews. When it is not possible to observe officers' procedures in the field, or when it is necessary to compare the reactions of different officers to the same situation, the video questionnaire can provide a cost-effective and relatively efficient means of obtaining this information. Using the video questionnaire for officer input, however, has limitations in that it does not provide any information or why the officers would take a particular course of action under particular circumstances. It should not serve as the only mechanism for officer input, but should be supplemented with open-ended interviews and field observations. When Academy staff recognized the extent to which the Academy sessions could provide some information about officer's decision-making in a variety of investigative situations, all agreed

on the limitations inherent in generalizing from the classroom setting to the field. Participants in the sessions expressed considerable interest in the issues raised and were intrigued by the diversity of opinion about the appropriate course of action in a given situation. Therefore, project staff were eager to accept the invitations of participating officers to ride with them and to "see what it's really like."

Ridealongs were intended to give Center staff attorneys a chance to observe police encournters relevant to the issues selected for guideline development. The purpose was neither to observe and report whether officers diverge from legal rules nor to obtain quantifiable data that might systematically and objectively report what officers actually do in the field. Rather it was to assess the difficulties experienced by field officers in applying legal standards, as they understood them, to commonly encountered investigative situations.

Research Problems

Project staff expected to encounter many of the same problems that field researchers in other police departments reported. In addition, there were two problems peculiar to Boston. The BPPA's posture toward the Department's ridealong policy threatened observer access to officers in the field and even with access, if observers were believed to be members of the anti-corruption Special Investigation Unit, they would not be able to gather the information they sought.[10] Aware of these issues Project staff and Task Force members decided that officers should participate on a voluntary basis rather than be ordered to have field observers present during their tours of duty.

With the cooperation of unit supervisors on the Task Force, ridealongs were scheduled to begin immediately after officers from the four units (Districts 2 and 4, Vice Control and Drug Control) had completed the first in-service sessions. The patrol officer working at the Center provided training for observers in ridealong techniques, staff developed observation checklists for use as refreshers in evaluating each ridealong.

As described below, not all officers from the four units participated in the in-service training. Therefore, to control for possible effects that participation in the "training" may have had on observed behavior, observers allocated their riding time equally between officers who had participated in the training programs and those who had not. This proved difficult to implement and was abandoned because of the differences in tasks between day detectives and night detectives.[11] Instead, a disproportionate number of ridealongs with night detectives were scheduled to maximize opportunities for observing contacts related to the areas of study. The change had the desired effect.

Some important but not unanticipated, research problems emerged during the ridealong program. These included citizen perceptions about the "civilian" riding with officers; officers concerns that their activities would be reported to superior officers; the temptation of observers to actively assist the officers; and observer availability to testify about events witnessed. Two examples illustrate both the problems and the attempts to resolve them.

In order to maximize informational access and to demonstrate observer trustworthiness, it was tempting for observers to acquiesce to requests

to participate more actively in investigative activity as relationships between observers and officers solidified. Yet, the need to maintain observer status and minimize the biasing effect of observer presence was also crucial. A staff consensus gradually emerged about an appropriate level of participation. Passing a flashlight or carrying a walkie-talkie were seen as acts of little consequence. However, offering legal advice or responding to questions soliciting legal opinions about situations confronting officers, was more troublesome. In these instances staff agreed that, if pressed, observers should attempt to communicate a range of alternatives or considerations but should not advise a course of action. This posture would allow the observer to maintain an adequate level of rapport with the officer but not make it impossible to learn how the officer would handle the situation without outside assistance.

The issue of observer availability to testify was perhaps the most troublesome. It was understood by all participants that if an observer were subpoenaed, he or she would have to appear and truthfully testify about events observed to the extent that such information was not privileged. However, early in the project, staff had decided not to voluntarily testify in judicial or in departmental disciplinary proceedings. The promise of confidentiality helped develop trust between officers and observers but some demonstration of commitment to this policy seemed necessary to ensure continuing informational access. Project staff and task force members drafted a statement which incorporated and agreed upon limitations on testifying . It was signed by the Project Director and Commissioner and placed on file in the Department. Observers were careful to explain this policy to officers in the field. Verbal

explanation had some effect but tangible demonstrations of observance of the policy were more reassuring to the officers.

For example, on one occasion an observer was present when an officer discharged his service revolver in a pursuit situation. No person sustained injury during the episode. Boston Police Department Rule 303 requires an investigation of any firearm discharge under street conditions to determine whether it complied with department policy. The observer communicated her unwillingness to provide investigators with any information on the incident and the investigators chose not to formally request her testimony.

On another occasion an observer was present during the interrogation of an individual detained on one charge and suspected of another serious crime. At the suspect's probable cause hearing on the second crime, he offered testimony inconsistent with his statements at the interrogation. The assistant district attorney assigned to the case requested the observer to testify. The observer explained that since she could only corroborate the testimony of the interrogating officers, the case would not be substantially strengthened. On the other hand, if the observer testified, the potential damage to the Project's future was quite serious in that a precedent for such testimony might be established. The observer was not subpoenaed. This occurrence led however, to a project decision not to have observers present during interrogations where sustained and focused contact with a suspect would make it more likely that the observer's presence would be recalled.

After these events, the officers directly involved and those who learned of the discretion of project observers seemed satisfied that observed behavior would not be voluntarily reported to the department

administration or judicial authorities.

Guideline Training

The guidelines revised on the basis of responses to videotapes and field observations were the subject of a day-long second in-service training session conducted at the Police Academy by Task Force members and Center attorneys. This session offered detailed instruction on the content as well as the legal and practical justifications of the guidelines. Each officer attending received a copy of the draft guidelines. Classroom lectures and discussions, supplemented by a new series of videotaped situations, illustrated the guidelines and their application. Within a week following the training session and distribution of the draft guidelines to all detectives in these units, staff attorneys held a series of field training sessions with the detectives who had attended. These meetings provided opportunities to further explain the project's purposes as well as the substance and application of the guidelines. Additionally, officers used the meetings to suggest issues that they believed were not adequately addressed by the guideline drafts.

Continuing Guideline Development

In view of the apparent success of the strategies used to develop the initial set of guidelines, a similar process was used for the second three areas selected (Stop and Frisk, Arrest and Eyewitness Identification). Key issues were identified and preliminary approaches were formulated in conjunction with the Task Force. Troublesome issues were identified and incorporated into videotaped simulated street situations. The

Training Academy was used to obtain responses to the simulations and to other issues surrounding the new areas; and, direct insights and information were gathered through observations in the field.

Discussions with the Task Force and the Commissioner's staff led to the conclusion that the field research should be undertaken in District 1, basically the downtown section of Boston. The command staff in District 1 agreed, and the District 1 Detective Sergeant joined the Task Force. Patrol officers participated both in the ridealong program and in-service "training" sessions because the new areas were equally relevant to the patrol function. The results of the three Training Academy sessions and the ridealongs were incorporated in the new guideline drafts in a manner similar to that used for the first set of guidelines.[12]

Guideline Examples

Subject areas addressed by the Arizona State University (ASU) Model Rules for Law Enforcement (1974) were given priority consideration in selecting topics for the development of criminal investigative guidelines in the Boston Police Department. Sworn personnel suggested that policies like the Model Rules did respond in general to many of the concerns they had but they believed that, to be perceived as useful aides by most officers, policies had to be oriented to the problems and needs of a particular police department. Therefore, as previously described, the project developed a variety of research techniques designed to elicit both formal and informal input from a broad spectrum of officers in the BPD.

The end product of this process was a set of guidelines in each of the six investigative areas selected by the task force and project staff.

Each specific guideline was followed by examples drawn from situations commonly faced by Boston Police personnel.[13]

Examples of how the various research techniques were used to formulate the policies are included in the following discussion of selected guidelines.

Search Warrants: Search of Unnamed Persons Present at a Search Site (Guideline 217)

Each of the information-gathering methods relied upon by the project played a substantial role in shaping the policy on searches of unidentified individuals found at the site of a warrant execution.

The ASU Rules deal with this subject in a very broad statement: "(a)ny person on the premises may be searched if it reasonably appears that an item listed in the warrant may be concealed on his person." Legal research indicated that the present state of the law offered little more guidance than that provided by the ASU Rules. Appellate decisions revealed that, at best, a case-by-case approach to determine the reasonableness of a search was constitutionally sound. It remained to be learned whether Boston Police officers felt a need for guidance on this issue.

Task Force meetings reflected a division of opinion about searches of unnamed persons. Some members expressed the view that no one could be searched under the authority of a warrant unless specifically identified or described in the warrant. On the other hand, the commander of centralized investigative unit asserted the need for broad powers to search persons present, and acknowledged that officers under his command almost always searched everyone found at the location.

A video sequence and questionnaire raising this issue was presented to the detectives who participated in the first situational video session. The sequence depicts the execution of a search warrant for stolen typewriters in Mr. Oakes' business office. Present at the time of the officers' arrival is an unidentified man in business clothes, seated across the desk from Mr. Oakes, holding a large briefcase in his lap. The detectives were asked several questions regarding what they would do at this point. The degree of consensus on the entire cluster of questions related to this fact situation as measured statistically was 34 percent; the range of scores for all groups of related questions was 1.4 percent to 79 percent. It is clear that the video raised more than average uncertainty (ranked 6th out of the clusters). Responses to the single question concerning search of the visitor's briefcase is even more revealing. Detectives in Vice and DCU, the two Boston Police Department units most experienced at executing search warrants, revealed a dramatically low degree of consensus on whether to search, 17 percent and 0 respectively. The latter figure indicates that DCU officers were evenly split on the issue -- a complete lack of consensus. On the other hand, District 4 and District 2 detectives, who execute fewer search warrants, but are more frequently involved in stolen property investigations, were in much greater agreement: 79 percent and 67 percent, respectively, in favor of not searching. This was one example supporting an initial project assumption: that police officers frequently see the law as more restrictive than it actually is.

In the discussion following the videos, almost all detectives stated that they would have wanted to search the briefcase, whether or not they actually would have done so. Some responded by saying they would have searched the briefcase even though they were unclear as to whether the

law authorized it. This discussion, plus the questionnaire results, suggest a widespread desire to perform a search, but doubts by the officers about their authority to ever make such a search. DCU and Vice officers by virtue of their extensive experience with search warrants and greater familiarity with the law were more likely to overcome these doubts.

Observations made during ridealongs revealed a similar confusion concerning the legality of searching unnamed persons at the site of a warrant execution. A decision to search or not to search appeared to be made on the basis of the officer's predisposition on the subject rather than on an assessment of the specific circumstances confronting him.

These data supported the conclusion that guidelines would be a valuable aid in clarifying a search issue little understood by line officers. In light of the division of opinion, it was agreed that the guideline should adopt a position somewhere between a ban on the search of unidentified persons and an invitations to always search all persons present. The ASU formulation was considered too broad an authorization to officers therefore the guideline was written to require that the searching officer have probable cause to believe that the sought after items would be found on the unidentified person. In order to control as well as assist an officer's exercise of judgment about the existence of probable cause, the guideline identifies six factors the officer should take into account in determining whether probable cause exists. Finally, extensive examples are offered to illustrate this extraordinarily detailed guideline.

The guidelines concerning searches of persons found on the premises is one of the longest because of the apparent need to provide instruction in an area where information is greatly lacking and to sensitize officers to the very delicate legal and policy questions involved.

Searches Incident to Arrest: Admissibility of Objects Seized (Guideline 303)

Legal problems contemplated neither by model rules nor initially by research attorneys, may become central to the policy development process in a police agency. Research into Massachusetts law revealed that the search warrant statute had been amended in 1974[14] (in response to the United States Supreme Court decisions in Robinson and Gustafson), establishing restrictions on a search incident to arrest. Early discussions at Task Force meetings suggested that the amended statute presented serious difficulties for police officers who were confused about its scope. It was commonly believed that under no circumstances would evidence of a crime other than the crime for which the arrest was made be admissible in evidence to support another charge. The extraordinary result if this interpretation of the statute were accurate, would be elimination of the plain view doctrine as an exception to the Fourth Amendement's search warrant requirement.

Traditional legal research offered minimal guidance on whether the statute was as restrictive as officers feared; there were no appellate decisions, no recorded legislative history, and only two brief articles discussing the statute's intended purpose. Officers' interpretations and experience with the amendment were probed during each Training Academy session and during ridealongs. For example, following a ridealong

where several on-the-street arrests were made, the observer questioned the detectives about the brevity and superficiality of street searches as compared to the intensity of the inventory search at the station. The detectives first expressed their concern about getting the arrestee off the street before a crowd gathered and not "blowing" their cover, but the overriding issue seemed to be the 1974 amendment, which they perceived as limiting the admissibility of evidence during a search incident to arrest. The detectives seemed to feel that the best way to deal with CH 276 §1 was to take only those actions on the street necessary to protect themselves, and to follow up later with an extensive station-house inventory so that contraband not related to the offense for which the arrest was made would still be admissible.

Staff attorneys, the police officer assigned to the project, and Task Force members contacted a number of additional superior officers, detectives, and patrol officers about their experiences with the statute. No instances were discovered where judges excluded evidence, police officers chose not to seek complaints, or magistrates refused to issue complaints, because of the statute. Still, however, it was clear that there was considerable confusion and anxiety among police officers over the statute. One illustration of this was a statewide police lobbying effort to repeal the amendment.

With this statute identified as a major problem for which no judicial resolution of ambiguities was available, guidance was sought from the legislature and participants in the criminal justice process outside the police department. Key legislators, prosecutors, defense attorneys, and District Court judges were interviewed. The legislators

stated that, although the bill had been poorly drafted, the intent was to do no more than maintain the pre-Robinson/Gustafson law on searches incident to arrest in the Commonwealth. The attorneys and judges concurred in this interpretation and stated, further, that they had no experience with and had heard of no motions to suppress evidence based on the statute.

While the Arizona State University Model Rules do not directly address the admissibility of evidence seized during a search incident to arrest, Task Force members urged that a separate guideline on the issue was crucial in this department to clarify the statute's scope, to articulate the department's interpretation of the statute, and to emphasize the conceptual underpinning of the other guidelines on searches incident to arrest. Thus, one of the first guidelines in this area states that a reasonable search incident to arrest is one directed to the discovery of arrest evidence and weapons and that, with probable cause to arrest, an officer may seize accidentally discovered evidence of an offense other than the arrest crime.

Stop and Frisk: Duration of Stops

The ASU Model Rules on Stop and Frisk, propose a twenty minute limitation on a detention pursuant to a stop. This view is supported by reference to the American Law Institute's Model Code of Pre-Arraignment Procedure which sets an absolute time limit of twenty minutes and was adopted in the Operations Manual of the Cambridge Police Department.

Task Force members expressed the view that most field encounters last less than twenty minutes. They were concerned that if a specific time limit were established, officers would be inclined to detain a

suspect longer than necessary. The result might be that the stop would later be viewed as an arrest and analyzed on the basis of whether probable cause existed. At the same time, they recognized the potential value of establishing an absolute standard. Project staff were advised to seek the opinions of field personnel.

Two videotapes were produced to raise the issue with officers at Training Academy session. In one, a person generally resembling a rape suspect was stopped. The suspect produced identification, but then refused to answer further questions with specificity, and finally simply stated that he was leaving. In the second videotape, a person vaguely fitting the description of a robbery suspect was stopped. After an extended but unproductive conversation, he started to walk away. Project staff focused discussion on whether the suspect could be forcibly detained and for how long. Officers were specifically asked whether they thought it would be useful if department policy established a precise time limit for detentions based on reasonable suspicion.

Initial responses suggested that a precise time limit would offer maximum guidance and therefore be helpful. However, subsequent discussion revealed that officers routinely applied the principle that the length of detention should be controlled by the investigative purpose of the stop and wanted further, to retain this flexibility. This was verified during field observations. For example, when an officer had reason to believe that a warrant was outstanding for a suspect and proceeded to run a warrant check or called for another officer thought to be able to identify the suspect, detentions were longer than when the stop was simply to learn the suspect's identity or obtain an explanation of his

suspicious actions. Discussion with officers during ridealongs supported the view that department policy should recognize and accompanying examples illustrate, that the length of permissible detention will vary according to the circumstances.

The guideline, as drafted and promulgated, adopts a more flexible "reasonable time" standard and explicitly requires that the officer have articulable facts supporting the relationship between the stop purpose and the length of detention.

Arrest: Arrest Warrants (Guideline 708)

The ASU Model Rules do not cover arrest. The subject is, however, covered by the American Law Institute Model Code of Prearraignment Procedure (1966) and the Uniform Rules of Criminal Procedure (1974). They suggest that warrants should be obtained when there is sufficient time before an arrest is made in felony cases. In the United States v. Watson, the Supreme Court held that a warrantless arrest made with probable cause to believe a felony has been committed is valid even if there was ample time to get a warrant. This decision is generally consistent with earlier cases. Drawing from our experience with officers' general hesitancy about the search warrant process, project staff assumed that the department would be opposed to indicating any preference for arrests made pursuant to warrants even though the arrest is on firmer ground because a magistrate has already reviewed the issue of probable cause.

The issue was raised during three separate Academy sessions with detectives and patrol officers from District 1. To the surprise of project staff, there was near consensus that it is advantageous to get

arrest warrants whenever possible. Officers were in agreement that primary benefit of proceeding under a warrant is the unrestricted right to enter private property where the officer reasonably believes he can find the person named in the warrant to make an arrest. Without a warrant there are few situations in which such entry can be made. Another reason cited for favoring the use of search warrants was that officers in another district in the City or in another jurisdiction will not act without a warrant if asked to make the arrest. Further, some officers indicated that when a victim's testimony is essential to a case, the victim often is more likely to appear in court when the trial is scheduled if he has been involved in obtaining a warrant.

For these reasons, the arrest guidelines urge that officers seeking a complaint obtain an arrest warrant whenever there is an opportunity to do so.

Eyewitness Identification: Prompt Stationhouse Identifications (Guideline 235)

A prompt confrontation between an arrested suspect and an eyewitness to a recent crime is an accepted police investigatory technique incorporated by the drafters of the Arizona State University Model Rules. Existing Boston Police Department records do not indicate the extent to which the bringback is utilized locally. Meetings with selected Force members revealed, however, that it is a frequently employed identification procedure but there are circumstances in which conducting a bringback, while legally permissible, is impractical.

Task Force members wanted to develop an alternative procedure to be used when a bringback would pose a substantial risk of danger to

the officer or witness or when the witness is only willing to view the suspect in the security of the station. A similar need was also expressed during follow-up interviews with detective-sergeants who had responded to a questionnaire probing current department practices and problems regarding eyewitness identification procedures. Many felt that if a suspect were apprehended within a reasonable period of time after the crime, an officer should neither be precluded from conducting an immediate identification, nor required to arrange a formal line-up. A prompt identification procedure conducted at the station under specified conditions was suggested as an alternative.

ASU Rule 202 suggests that officers conduct prompt confrontations between an eyewitness and arrested suspect " . . . at any appropriate place." The rule contains no factors which the officer might consider to determine an "appropriate" location. The commentary suggests however, that appropriate places are confined to street or on-the-scene locations. Under the ASU scheme therefore, a formal lineup would appear to be the only available identification procedure permissible if bringback were not feasible. However, the complexities of arranging a lineup could result in unnecessarily prolonged detention of an innocent suspect and the loss of valuable time needed to pursue the actual perpetrator.

To determine whether the need expressed by superior officers was perceived by line officers, the issue was raised at a series of meetings at the Police Academy with a group of detectives and patrol officers from a downtown police district. The officers viewed a situational video showing a suspect arrested less than one hour after a reported rape. The officers were then asked to assume that the victim was unwilling to view the suspect at her location, but was willing to come to the station.

There was widespread uncertainty, however, about the admissibility of identification evidence obtained from a stationhouse identification procedure other than a formal lineup. A review of Massachusetts appellate decisions revealed that eyewitness identification evidence was invariably suppressed at trial or condemned on appeal as suggestive when it was obtained from non-lineup procedures conducted in a police facility. In no decision, however, was there any indication that such procedures are, by their very nature, suggestive. In each case there was a defect in the manner, rather than in the location, in which the procedure was conducted. What appears to have led the courts to determine that a procedure was "impermissibly suggestive" was conducting the procedure long after the commission of the crime; or singling out the suspect by showing him alone, among uniformed police officers, or among persons physically dissimilar; or giving the witness instructions which strongly suggested that the officer believed that the person being viewed was guilty.

The guideline authorizing prompt stationhouse identifications is narrowly drawn to respond both to the investigatory needs of police and to the judicial concern with the fairness of the procedure and reliability of the evidence derived from it. It defines the limited circumstances in which the procedure is permissible, and instructs the officer how to conduct it in a manner which avoids singling out the suspect.

NOTES

1. This caselaw appears to prevent magistrates from taking additional statements from a police officer to determine whether or not probable cause to search exists if an affidavit is unclear.

2. Cooper v. California, 386 U.S. 58 (1967); Chambers v. Maroney, 399 U.S. 42 (1970); Coolidge v. New Hampshire, 403 U.S. 443 (1971); and Cady v. Dombrowski, 413 U.S. 1074 (1973).

3. M.G.L. Ch. 276 §1

4. Terry v. Ohio, 392 U.S. 1 (1968).

5. In the area of searches incident to arrest, for example, the sample focused on weapons and narcotics arrests from District 2 and 4 for the period, January 1 through June 20, 1975. These arrests were identified on computer printouts. Student interns collected and coded data that provided preliminary information on the frequency of narcotics and weapons charges stemming from evidence found during searches incident to arrest for other crimes.

6. See Chapter X on Search Warrants and Chapter XIV on the Exclusionary Rule in Boston.

7. A second problem was boredom. This problem was not encountered with the videos, which seemed to hold the officers' attention much more than the oral presentation.

8. For example, following a scene in which a suspect is arrested in his office on an arrest warrant for receiving stolen property, the officers are asked, "What would you most likely do in this situation? Would you: Search the suspect's desk drawer? /_____/_____/_____/_____/." NO MAYBE PROBABLY YES

9. Responses to the questionnaires were not used to evaluate knowledge of the law, but were clustered into appropriate legal categories and analyzed with a special measure of group consensus. The measure of consensus was weighted so that, on a scale of 100, a 100 percent score indicated complete agreement as to a course of action; and, a 0 score showed an even split. This consensus score was used to help identify particular topics for guideline development. If the score showed a great deal of disagreement or confusion about the scope of the detectives' permissible discretion, guidelines would focus on educating the officers. If the scores showed that a certain course of action was a common practice in an area where the law itself was unclear, the guidelines were directed toward developing a Department policy statement about the proper exercise of discretion by its officers.

NOTES (Cont'd)

10. BPPA, Inc., et al. v. Police Commissioner of Boston, Mass. App., 357 N.E. 2d 779.

11. These had not been taken into consideration in drawing participants for the in-service session. In District 2, for example, day detectives spent a far greater percentage of their time working on follow-up investigations and making court appearances and, therefore, had fewer encounters relevant to the substantive issues of concern to the project.

12. In some instances, this research strategy was supplemented by additional data collection. For example, questionnaires relating to eyewitness identification procedures were sent to all assistant district attorneys in Suffolk County and to all detective sergeants of the Department to learn about the frequency of certain types of procedures and problems associated with them at trials.

13. A separate document was prepared containing legal and policy commentary for each set of guidelines. In addition, to give further guidance to supervisory and training personnel, these commentaries respond to the many requests received by Center staff from individual officers for the legal background supporting the guidelines.

14. A search conducted incident to arrest may be made only for the purposes of seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest has been made, in order to prevent its destruction of concealment; and removing any weapons that the arrestee might use to resist arrest or effect his escape. Property seized as a result of a search in violation of the provisions of this paragraph shall not be admissible in evidence in criminal proceedings." M.G.L. Ch. 276 §1.

REFERENCES

American Bar Association Project on Standards for Criminal Justice
1973 Standards Relating to the Urban Police Function. Chicago: American Bar Association.

American Law Institute
1966 A Model Code of Prearraignment Procedure. Philadelphia: American Law Institute.

Arizona State University College of Law and Police Foundation
1974 Model Rules for Law Enforcement. Washington, D.C: Police Foundation.

National Conference of Commissioners on Uniform State Laws
1974 Uniform Rules of Criminal Procedure. Approved draft. St. Paul, MN: West Publishing Co.

CHAPTER B-III

THE DEVELOPMENT OF GUIDELINES ON THE DECISION TO STOP

The stop and frisk guidelines developed in the second phase of this project underwent a number of drafts before publication and distribution in the Boston Police Department. Developed from case law and model rules by a staff attorney, the draft initially included two types of progressions to guide the use of the stop power. The first, adapted from the Arizona State Model Rules (1974), incorporated the notion of "contacts" broken into two parts, one to deal with those citizen encounters not related to criminal investigation, and the second to deal with criminal investigations that are only cooperative and lack any forcible elements. In this latter part, officers were told that suspects could be approached on a hunch but were free to walk away (Terry v. Ohio, 392 US 1 (1968)). The second progression derived from the argument in the American Law Institute Model Code (1966) that stops should be limited to offenses of underlying seriousness. Rather than adopt the American Law Institute approach of explicitly tying stops into the substantive criminal law (e.g., interpersonal violence and serious property offenses), the draft proposed a formula of reasonable suspicion plus necessity.[1]

The draft portions concerning how to conduct the stop -- detentions, questioning, and frisks -- were generally accepted by the Task Force, subject to tightening and rephrasing. But the portions concerning the decision to stop prompted considerable debate and ultimately were substantially revised. The Task Force found the "contact" category

---

1. Notes and references for this chapter begin on page 517.

potentially confusing and subject to officer excess in application. The Task Force advised that, while some police suspect interactions might not be stops in a strict legal sense, it was better to have only one category to guide the officer's prospective actions on the street: the stop. Center staff professed substantial skepticism about the "necessity" category and this skepticism was bolstered by comments from street officers to the effect that it was redundant and patronizing.[2]

The Task Force and Center staff agreed that the decision to stop a suspect was the most difficult problem in the stop and frisk area. Therefore, a supplementary study was undertaken early in 1977 (1) to enhance guidelines on stops and detentions on less than probable cause, and (2) to develop guidelines on the decision to stop. More specifically, research questions posed were:

(1) Were the stop and frisk guidelines on the decision to stop useful to officers as drafted?

(2) Is it feasible to develop guidelines on the decision to stop?

(3) To what extent is it feasible to develop guidelines on stopping that incorporate non-legal concepts (e.g., situational factors)?

Behind these questions were the following observations drawn from the research and discussions that went into the development of the guidelines drafts:

(1) The decision to make a stop may require as much guidance as does the conduct of a stop

(2) Most stops do not culminate in arrest, thereby avoiding conventional judicial review

(3) The traditional legal sources -- statutes, case law, treatises, model rules, articles -- do not helpfully illuminate the issues surrounding this discretionary action.

Work with the Tactical Patrol Force

It was decided that work would proceed in three stages: (1) classroom meetings with selected officers to discuss stops and frisks in general and, more specifically, to obtain their impressions on whether guidelines on the decision to stop could be developed; (2) ride-alongs to observe stop practices and to continue discussions in a less formal setting; (3) concluding discussions in the classroom to discuss the original guidelines drafts on stops and to consider possible revisions.

The commanding officer of the Tactical Patrol Force (TPF), who also served on the Task Force, agreed that the TPF would be an excellent group of officers to engage in this study. At the time the Center worked with them, the TPF was a group of highly motivated and experienced officers. They are deployed anywhere in the city where additional police are needed, frequently in response to tension-filled situations.[3]

Although Center staff already knew a number of TPF officers, including two who had worked directly on the Project, our presence and purpose were introduced through a memorandum from their commanding officer. From mid-December 1976 through March 1977, the period of contact with the TPF, the unit was assigned patrol duties in the downtown adult entertainment Combat Zone and East Boston. Supplementing District One officers in the Zone, TPF worked in uniform in cruisers and on foot and had one plainclothes anti-crime unit team of three or four officers engaging in decoy work and patrolling in an unmarked car.[4] In East Boston, TPF patrolled in uniform and marked cars. Their presence there was a response to confrontations between residents and Navy personnel that jeopardized the continued use of the dry-dock facilities of the port of Boston by the Navy.

Introductory TPF Meetings

Work with TPF began with two small group meetings in December. Two staff members attended each meeting; there were five TPF officers at one and four at the other. Staff prepared two stop and frisk hypotheticals to focus discussion, and suggested as discussion topics broad questions about when to make a stop and what a stop is, the length and quality of detentions, the conduct and place of frisks, Miranda warnings, and on-the-street identifications. The sessions concentrated on what a frisk is as opposed to a full search, including the handling of separable items; the use of Field Interrogation and Observation Reports, which record details about stopped persons; and the stimulus for a stop and its conduct.

On the decision to stop, discussions with some officers did not advance beyond reliance on an officer's "sixth sense" and some generalities about types of people. Other officers, through also asserting that the decision to stop someone derives from a "sixth sense," believed that this really amounts to experienced observation and can be articulated. According to them, what basically makes officers stop someone, is that they see a disharmony between the person and the place. A person's behavior may raise initial suspicions-- the person may appear to be trying to conceal something or mask an intention. The TPF officers believed that it might be possible to list incongruities associated with criminal activities in such categories as body language, weather conditions, lighting conditions, physical locations, and cars. This discussion pointed out not only the variety of perceptions and concerns among officers which would lead one officer to regard a certain person with suspicion and another not to; but, that inferences of suspicious behavior are tied to groupings

of criminal offenses as well: robbery and larceny from the person, gun possession, car theft, prostitution, drug sale. Each activity, they said, has its own peculiarities.

Most officers agreed that, once a stop has been made, its character is generally determined by the attitude of the suspect. Not all contacts with suspects are seen as stops; the TPF officers believed that a stop does not occur until the officer makes some forcible move, such as a frisk. This after-the-fact approach underlines the haziness surrounding the stop decision and the general police view that it is what happens during the stop that is important rather than the reason the stop was initiated. No officer had experienced a court challenge to his decision to stop; this observation reflects the paucity of cases on this issue as well as the common vagueness of a reviewing court faced with this problem. The officers agreed that the issue would rarely come up in court, not only because lawyers tend to focus exclusionary rule motions on the frisk issue, but also because most cases are resolved through plea bargaining.

Field Interrogation Observation Reports were seen as good crime deterrents, as a mechanism to record behavior patterns of individuals or within neighborhoods, as important records for refuting alibis and enabling officers to focus investigations once more information about a crime was obtained.[5]

A major problem raised was the difference between a stop and an arrest. Because there was general agreement among the officers that any physical detention was an arrest, it became apparent that both the guidelines for stop and frisk and those for arrest would have to

indicate clearly the difference between the two types of seizure of the person. Also, the officers expressed enough confusion over the difference between a frisk and a search incident to arrest that we felt it necessary to alter the guidelines slightly to indicate that a frisk, while limited in scope and purpose to weapons, may be stronger and more probing than a superficial pat-down.

The two meetings served a number of purposes. We met, in the non-threatening environment of the Training Academy, officers we would later be riding with.[6] The discussions covered a range of issues and led to some immediate decisions to change certain aspects of the guidelines. We were able to give the officers some legal instruction, while they provided us with important information on the practice and problems surrounding stops and frisks. Finally, we had reason to believe that the questions that led us to undertake the exercise would be answered and that the viewpoint of TPF officers would be an important resource.

Field Observations

Center staff participated in 15 full-tour ride-alongs beginning in late February 1977 and ending that March 1977. All tours were at night, starting at about 6:00 PM and ending at about 1:30 AM. The officers we rode with were friendly, cooperative, and generally frank. They seemed interested in the project, and looked forward to receiving the printed guidelines on search warrants, car searches, and searches incident to arrest. One officer even indicated that we had "checked out okay" with the union.

During a total ride-along time of about 112 hours, 41 interactions with suspects that would be defined by the criminal investigative guidelines as stops were observed. The following table shows the number of stops observed and the sort of action that was taken, including release. In eight stops, not "reasonable suspicion" but "probable cause" was judged by Center staff to be present before the action took place. If these are excluded, a total of 33 stops was observed. Of the 33 stops, two led to arrests and one to a decision to send the suspect to a detoxification center. Note that more than half of the stops (22) resulted in release of the suspect. Staff reports also mention seventeen situations, five of them involving prostitutes, observed or investigated in which no stop was made, either because the officers concluded that their suspicions were not reasonable or because no suspect was discovered.

The following are paraphrases from the stop-related conversations with police officers reported by staff:

-- Whenever a suspect is seized physically, except for a search, an arrest has been made.

-- Criminal investigative guidelines will make no difference unless judges accept them.

-- Having to articulate reasonable suspicion should not be required. Rather, officers should be able to rely on their experience and the issue should simply be officers' good faith.

-- Location is the most critical factor in determining suspiciousness. People are suspicious just because they are in a certain area.

-- An officer's experience includes not just his experience on the police force. Someone who grew up on the city streets has a sensitivity to street crime that even an experienced officer who grew up in the suburbs lacks.

-- There are as many reasons to stop someone as there are officers on the street.

-- Discussions with officers are much more important sources of information to develop guidelines than ride-along observations.

In addition to these summary comments, a few staff observations stand out as significant:

-- When stops or arrests were made, the decision was sometimes reached jointly by both officers. There frequently would be a brief exchange, frequently that of men who are comfortable with and accustomed to each other, before acting.

-- There was significant familiarity with people in the area, particularly the Zone, where TPF had been spending substantial amounts of time even prior to the crack-down; this is true even though the Zone is not a residential neighborhood.

-- The recollected details of stories seem as instructive on a wide variety of problems as was the observation of stops and arrests, though each had its own value.

-- Because there was a limited opportunity to observe stops on the street, there was a built-in limitation on our ability to direct discussion to the points we were particularly concerned about for fear of becoming too intrusive.

-- The importance of automobiles, both police and civilian, appears to be a neglected topic in the literature on police, although how they pertain to guideline development is not clear. In discussions, officers could not articulate differences between being in a car and on foot.

-- Once the Department eliminated overtime (especially crucial to TPF officers, whose income had, in some cases, trebled as a result of busing) as an economy move, officers working night shifts court-time became important to supplement their income. The possibility that some "stops" and subsequent arrests were designed to meet this need cannot be ruled out.

Follow-up Meetings with the Tactical Patrol Force

Two follow-up meetings were held in the Training Academy, with three Center staff members and four TPF officers attending each meeting. These meetings differed from the introductory meetings in all TPF officers had now been given copies of the decision-to-stop portion of the draft

guidelines, and in that both staff and officers could speak from the common ride-along experiences.

The officers reiterated the view that the essence of a stop was restraint of the person, whether physically or by tone of voice. Implicitly, the officers ordered their interactions with suspects along the Arizona State University (1974) contact/stop distinction. However, in practice such distinctions seem irrelevant unless a stop leads to an arrest and a court case. The officers were generally vague on the purposes of a stop, except to point out through illustrations that it is general circumstances rather than particular crimes that lead to their actions.[8] They admitted that sometimes stops are made for traffic violations when the purpose is a broader investigation, although car stops by plainclothes officers were strongly discouraged as being too dangerous. Finally, the notion of alternatives to stops by the guidelines was thought to be useful to plainclothes officers but of minimal value to officers in uniform because surveillance by them is practically impossible.

Regarding reasonable suspicion, the officers found some difficulty in the draft guidelines' division between primary and secondary factors.[9] They did not find one type of factor more important than another, but indicated that it was the grouping of factors that was important. For instance, the area in which the stop takes place together with the person's appearance would be sufficient to make a stop, though this seems to apply principally to the preventive use of stops; e.g., for prostitution or mugging. Of overriding importance are the individual's actions. If these actions are actually criminal, there would be probable cause to arrest; actions important with regard to stops are signals that criminal

activity is afoot: drug dealer and customer in an alleyway rather than on the street corner; nervous head movements of burglars; vehicles parked illegally in commercial areas, possibly indicating breaking and entering.

The officers expressed considerable skepticism that physical detention of a person need not be an arrest, believing that judges would not accept that view. They were skeptical as well about the importance of having guidelines on the decision to stop, because such rationalizations seem unimportant in the context of busy courts that emphasize plea bargaining and reduction of charges. For these officers, the more important part of the guidelines dealt with detentions and the general conduct of stops and not with the initial decision to stop, which is made on the basis of experience and common sense and is rarely challenged. If officers feel a need to detain someone, there are mechanisms other than the stop, e.g., moving violations, detox statutes, provocative actions, that can be used. Furthermore, the conduct of the stop will often be determined by the response of the suspect; unless there is reason at the outset to be concerned about danger, an officer will use the least restrictive means to obtain the information he wants. This is similar to the Arizona State University (1974) contact provision.

Conclusions

Were guidelines on the stop decision as drafted useful to police officers?

The consensus of the officers we met with was that the guidelines on the decision to stop were not useful.[10] They were too "legalistic," did not reflect the personal variations among officers, and were not

shown to have any bearing on judicial practice as they knew it. Of particular interest was their concern over distinghishing stops from arrests and their viewpoint that not all suspect interactions are stops; a viewpoint that seems to contradict the policy decision reached by the Task Force to eliminate the "contact" category. Because of their viewpoint that the problem is negligible when compared, for instance, with their conduct of a stop that is challenged, it is possible that the guideline approach -- as opposed to the rulemaking approach as recommended by American Law Institute (1966) -- is simply irrelevant.

Is it feasible to develop guidelines on the decision to make a stop?

While there are outer legal boundaries to a police officer's discretion or authority to use his stop power, the legal constraints on that power are so vague and undefined that recourse to legal standards in developing guidelines on the decisions to stop does not get the drafter very far.[11] Thus, it probably is not feasible to develop guidelines on the decision to stop if the principal reliance is on the law as it now stands. This conclusion is also supported by the response of the TPF officers to the drafts: in their experience, the law does not touch most stops because there is no arrest; when there is an arrest, lawyers and judges seldom focus on the stop decision but rather on the conduct of the stop. Their other complaints have already been mentioned: that the guidelines are "too legalistic" and do not encompass the variety either among officers in their perceptions and concerns or among the types of offenses they deal with. Nor is it at all clear that these variations could be adequately dealt with through examples to illustrate the guidelines.

To what extent is it feasible to develop guidelines on stopping that incorporate non-legal concepts?

Legal research in the stop area does not take the drafter very far. Field observation can be used to firm up and make "realistic" guidelines derived from legal research but our observations were not terribly helpful in the area of stop and frisk.

Would it be more helpful to develop guidelines on the stop decision along situational lines rather than in accordance with legal concepts? In the abstract, such a situational approach seems possible. On the one hand, experience with the TPF indicates that officers who are not forced by the courts to respond in legal categories, as they are to some extent in the arrest area, simply do not think along those lines. There is not impetus to do so. As an example, in talking about stops, officers relied heavily on stories. The stories were situational and usually began with the officer describing himself in a certain area, which he saw as a setting for criminal activity. The officer then recounted what it was, within that context, about a particular person's look or activity that focused his suspicions. The officer often indicated the crime or range of crimes he thought the person might be involved in. The only legal term he would use, other than "stop" or "arrest," was "frisk."

On the other hand, the experience of the Center staff that interpreting and reporting these situations is no easy matter. Police experience that can be drawn from sociological studies -- (e.g., from Reiss (1971) and Skolnick (1967) -- and our own observations are not suitable for guidelines because the police frequently create situations and rely on investigative techniques that the public may be tolerant of but would rather not learn

about. Only if situations and techniques judged to be legally sufficient were used could models incorporating situational factors be tested through exercises similar to that undertaken with the TPF. Whether this can be done efficiently without the heavy expense of full-fledged field observation remains to be seen.[12]

Finally, two general observations. First, we should stress that police officer input on the stop and frisk guidelines consisted more often of clarifying confusing passages written by attorneys than of active involvement in shaping their substance. Second, the disagreement of these officers with the decision of the Task Force not to distinguish between stops and contacts is important for an understanding of the policymaking process. There are police interests and perceptions that vary by rank and assignment, and these differences must be considered when the police are urged to articulate their own policies.

TABLE B-III-1

STOPS BY TYPE OF OFFENSE AND DISPOSITION

TYPES OF OFFENSE	NUMBER OF STOPS	DISPOSITION				
		ARREST	DETOXIFICATION	CITATION	WARNING	RELEASE
Fight	4	2	0	0	0	2
Weapons	2	1	0	0	0	1
Moving Violation	14	3	1	4	3	3
Prostitution	7	2	0	0	0	5
Drugs/ Alcohol	4	0	0	0	0	4
Disturbance	3	0	0	0	0	3
Larceny From Person	3	2	0	0	1	0
Assault on Officer	1	0	0	0	0	1
Other	3	0	0	0	0	3
TOTAL	41	10	1	4	4	22

NOTES

1. In the original draft "necessity" was explained as follows: "In addition to reasonable suspicion, the second part of the formula calls for there to be a necessity for you to use your authority to stop. Do you need to use your power to stop a suspect to achieve your purpose or can that purpose be accomplished with a less restrictive means?"

2. Also, this contraction of the stop power conflicted with the notion that the guidelines should describe what officers can do rather than what they cannot do, particularly when this project was not designed to uncover police abuses and devise rulemaking remedies for them as the ALI Model Code would do.

3. They were the central back-up unit involved in city implementation of the federal court school desegration order. They also comprise the city's Anti-Crime Unit, employing decoy techniques, and the SWAT Team. Among their ranks are K-9 and mounted officers.

4. Their presence in the six-block area of the Zone clearly put a lid on over street activity, thus implementing a policy decision made after the stabbing death of a Harvard football player and a public outcry about prostitute-muggers.

5. Use of Field Interrogation Reports (FIO) is erratic, with TPF using them frequently, some districts rarely, and some districts having once had F10 quotas. Because of their erratic use, they could not serve as significant sources of hard data pertaining to stops. Staff concluded that questions of privacy and of the proper use of F10's warranted both investigation and the temporary excision of F10 references from guidelines and examples until a policy could be formulated. Such a policy has so far not been formulated.

6. One of the officers was a union representative whose support (or lack of opposition) would be needed to conduct this exercise. The Tactical Patrol Force has been strongly supportive of the BPPA.

7. The guidelines offer this definition: "A stop occurs whenever you use your authority to temporarily detain a person based on a reasonable suspicion that he has committed, is committing or is about to commit a crime."

8. One officer pointed out that the use of a stop to gather information on non-arrest misdemeanors so as to enable a civilian to file a complaint is not helpful, not only because of suspect non-cooperation, but, more importantly, because patrol officers are discourgaged from continuing an investigation after the initial stop. For an arrestable offense, the information would be funneled into the detective unit for further investigation.

NOTES (Cont'd)

9. Primary factors are a person's appearance in relation to a past crime or his/her actions that alone indicate criminality; secondary factors are those that would be insufficient without additional factors. This distinction was eliminated in later drafts.

10. Because the first meeting and the ride-alongs were meant to be instructional and information-gathering, the TPF officers were not provided with the guideline drafts until the ride-alongs were almost completed. The draft portions concerning the decision to stop were sent to all officers on March 22, 1977, with a covering memorandum from their commanding officer reviewing the project and asking that they review the enclosed guidelines and provide their comments to the officers named, who would be meeting with Center staff. Thus, the question of usefulness would be answered by their critical reading and by our observations and evaluation.

11. In fact, that is why the American Law Institute (1966) approach comes down to basic policy decisions instead of legally-required limitations.

12. In the San Diego Field Interrogation Study, 133 field interrogations were observed in 635 hours, or one interrogation every 4.7 hours. We saw on the average, one "stop" every 2.7 hours. Full observations were curtailed in San Diego because they did not prove useful (Boydstun, 1975).

REFERENCES

American Law Institute
1966 A Model Code of Preassignment Procedures. Philadelphia: American Law Institute.

Arizona State University College of Law and Police Foundation
1974 Model Rules for Law Enforcement. Washington, D.C: Police Foundation.

Boydstun, John E.
1975 San Diego Field Interrogation Study: Final Report. Washington, D.C: Police Foundation.

Reiss, Albert J.
1971 Police and the Publice. New Haven: Yale University Press.

Skolnick, Jerome H.
1967 Justice without Trial. New York: Wiley.

Boston Police

Criminal Investigative Procedures

Search Warrants
Motor Vehicle Searches
Searches Incident To Arrest

A volume containing commentaries to the guidelines involving search warrants, searches incident to arrest, and motor vehicle searches is available in the library at the Training Academy. These commentaries explain the legal and policy considerations which support the criminal investigative procedures prepared for Boston police officers.

ACKNOWLEDGMENTS

Boston Police Task Force on Criminal Investigative Procedures

Deputy Superintendent Earl Bolt
Lieutenant Frank Coleman
Captain Edward Connolly
Detective Sergeant John Daley
Lieutenant Anthony DiNatalie
Superintendent John Doyle
Captain William Hogan
Detective Sergeant Frank Mulvey
Deputy Superintendent Joseph Rowan
Lieutenant Joseph Sheridan

Boston University Center for Criminal Justice Project Staff

Professor Sheldon Krantz, Project Director
Paul Froyd
Carol Rogoff Hallstrom
Janis Hoffman
David Rossman
Charles Smith
Patrol Officer Paul Johnston (departmental liaison)

PREFACE

This volume contains guidelines on criminal investigative procedures prepared for Boston police officers. The guidelines that follow cover procedures involving search warrants, searches incident to arrest, motor vehicle searches, stop and frisk, arrest, and eyewitness identification.

I am enthusiastic about these guidelines, which were initially developed under the leadership of Robert diGrazia, for two reasons. First of all, they were prepared under the direction of a department task force with the active involvement of the Training Academy and personnel of all ranks. Second, they are advisory in nature and, unlike court decisions and rules which generally restrict their discussion to what officers cannot do, these guidelines offer affirmative suggestions about what officers can do in a variety of complex situations. Examples of how guidelines apply in practice are contained throughout the material. The examples as well as the guidelines were developed with the assistance of detectives and patrol officers. The illustrations were prepared by Patrol Officer Donald Carter. The Department also had the legal assistance of the Boston University Center for Criminal Justice and Nicholas Foundas, the department legal advisor, in preparing these materials.

It is my hope that departmental personnel will find these guidelines helpful in defining available options in the handling of criminal investigations.

Joseph M Jordan

Joseph Jordan, Commissioner,
February, 1978.

TABLE OF CONTENTS

TABLE OF CONTENTS (Cont.)

524

PART ONE: DEFINITIONS

101. Reasonable Suspicion and Probable Cause

These are two differing measures of how certain you must be that circumstances call for an action you wish to take. For example, if you wish to ***arrest*** a person for an armed robbery, you must have ***"probable cause"*** to believe that the person you wish to arrest committed the armed robbery. On the other hand, if you wish to ***stop*** a person on the street for questioning, you must have a ***"reasonable suspicion"*** that he has committed, is presently committing or sometime in the immediate future will commit a criminal act. Usually you cannot know with absolute certainty whether a crime has been, is now or will be committed. At most, you can only rely on the probabilities to decide just how certain you are that your belief is correct.

These guidelines are intended to help you decide what to do in a variety of perplexing situations. In some situations the guidelines will say you should have probable cause before you do anything. In others, you don't need to be that certain but only have to have reasonable suspicion. These two degrees of certainty are used throughout the guidelines.

102. Reasonable Suspicion (or "reason to suspect"). There is a "reasonable suspicion" that a particular situation exists if a ***reasonable police officer*** (that is, an officer with good common sense) draws conclusions from facts which he has personally observed that the particular situation exists. This must be more than a hunch. The officer must be able to ***state***, rather than just "feel", his conclusions and he must be able to state ***how*** he arrived at those conclusions. That is, if he concludes that a man is carrying a gun, he must be able to say that he based that conclusion on facts which he observed, such as a bulge in his coat or his hand thrust in his pocket. The officer may rely on his experience to support his conclusions; some circumstances may mean very little to the average citizen, but mean something to an experienced police officer.

103. Probable Cause. Probable cause to believe that a certain situation exists is more difficult to establish than mere "reasonable suspicion". As with "reasonable suspicion" a reasonable officer may draw conclusions from circumstances he has personally observed. Again, he must be able to state the conclusions and the facts which support them. Unlike reasonable suspicion, the facts must be able to do more than simply lead an ***experienced police officer*** to conclude that a certain situation exists. To establish probable cause, the facts must be so strong that they will lead a ***neutral independent magistrate*** to conclude that a certain situation exists.

Often you will rely not on facts which you have personally observed, but on information given to you by an informant. If you want to establish probable cause with this tip, you must normally support the tip with:

1. facts which show that the informant is reliable:
   a. the informant's past performance has led to a conviction or seizure of contraband, and,
   b. an indication of how the informant obtained the information, and
2. some independent corroboration of the tip by your investigation.

It is useful to know that if police corroboration of the tip is very strong, that in itself is a strong showing of the informant's reliability.

104. Seizable Items:

a. evidence of a criminal offense;

b. contraband, fruits of a crime, or any other thing criminally possessed;

c. instrumentalities, that is, anything which is intended to be used as means to commit a crime or which has been used as means to commit a crime.

105. Reasonable. An appropriate police response which balances constitutional rights with law enforcement needs. Whenever you see the word "reasonable" in the guidelines, stop to think precisely which factors determine what is a reasonable course of action in a given situation. The guidelines should help you decide which factors to use in making this determination.

106. Likely. Better than 50 percent probability. More likely than not.

107. Search. A search is an ***intrusive*** examination by a police officer of a citizen's person or his property. The search may be performed by any of your senses: seeing, hearing, smelling or feeling. A search is governed by the Fourth Admendment; you must have probable cause to believe a crime has been, is presently being or is about to be committed, and you must have probable cause to believe that evidence of that crime will be found in the place you want to search.

Notice that a search is an "intrusive" examination. This means you have made an effort to put yourself in a position to make the examination, and that position is one where you would not ordinarily be. If you are in a place where you have a right to be and happen to observe suspicious facts, this is not an "intrusive" examination. It is not a search.

108. Plain View. Basically, a plain view occurs when you are in a place where you have a right to be and you happen to observe something that you come across inadvertently. Like a search, a plain view is an examination by a police officer of a citizen's person or property. Like a search, a plain view may be performed by any of your senses. Unlike a search, the officer does not need probable cause to make a plain view examination, because it is not an intrusive examination. In order for a plain view to occur, you must accidentally discover the objects while you are in a

position where you would ordinarily be in the course of your regular duties. This means that your position must be unrelated to any intentions to examine the objects.

109. Seizure. A seizure is a police officer's interference with a citizen's ability to control his person or his property. Types of seizures are arrests, stops, and removal of property including contraband. A seizure is governed by the Fourth Amendment.

110. Frisk. A frisk is a "patting down", or external feeling of clothing to assure that the suspect is not carrying a weapon. A suspect may be frisked if you have a "reasonable suspicion" that he is carrying a weapon. If you feel an object that seems to be a weapon you may reach into the clothing to remove the object.

A frisk is not a search. Unless a frisk reveals a weapon-like object, you may go into a person's clothing, pockets or handbags only if you have probable cause.

PART TWO:
SEARCH WARRANTS

201. Perference for Warrants

If you acquire information which you believe creates probable cause to conduct a search, you should obtain a search warrant. Courts have persistantly stated the importance of giving an independent magistrate the opportunity to review the facts which a police officer already knows in order to assure that these facts justify an intrusion into the suspect's privacy. To encourage the use of warrants, the U.S. Supreme Court has stated first, that the courts should read warrants and affidavits in a commonsense non-technical way, and, second, that warrantless searches will be much more closely scrutinized by the courts than will searches for which there is a warrant. Moreover, a search warrant will usually permit a far more extensive search than would be the case if a search were permitted only as one of the exceptions to the constitution's warrant requirement. These exceptions include search incident to an arrest, hot pursuit, plain view, certain automobile searches and other situations where the need for immediate action is urgent. What all this means to you is that if you take the time to get a warrant, your search is much more likely to stand up in court.

202. Uniformed Patrol Officers

All police officers — uniformed officers as well as detectives — may attempt to obtain and execute search warrants.

If you, as a patrol officer, discover facts which you believe establish probable cause for a search, you should send out a code call to your patrol supervisor requesting that he join you at the scene where you discovered the facts. Your patrol supervisor may permit you to try to obtain a warrant if:

1. the situation requires prompt execution of a search warrant;

2. a detective is not immediately available;
3. a time consuming investigation is not required to gather further necessary facts; and
4. a check with the appropriate Headquarters detectives' — especially the Drug Control Unit — shows that you would not be upsetting one of their investigations if you served a search warrant.

A final decision the patrol supervisor must make is whether the law enforcement needs of the community would be better served if, on the one hand, you took your car off the air and obtained and executed a warrant or if, on the other hand, you simply stayed on the air in the hope that a detective could be notified in time.

If the patrol supervisor agrees that you should obtain a warrant, you should return to the station to fill out the affidavit. After completing the affidavit, you should request the duty supervisor to screen it. You should then go to the district court which serves the area in which you wish to execute the warrant. If speed is very important, you should go directly to the district court without stopping at the station. The patrol supervisor should meet you at the courthouse. In any case, leave a backup man to watch the suspicious premises.

If it is impossible to submit your affidavit and your request for a warrant in that district court, you may then go to either another district court or to a superior court. You should be aware of the fact that each court has its own affidavit and warrant forms. Use the appropriate affidavit form. A court clerk will fill out the warrant for you.

If the courts are closed, your duty supervisor will provide you with a list of home addresses and telephone numbers of judges and clerks who will arrange to meet you to examine the affidavit.

As you make out the affidavit you should refer to these three items which appear on the next seven pages:

1. the definition of probable cause (Section 203).
2. the probable cause checklist (Section 204).
3. the search warrant affidavit outline (Section 205).

EXAMPLE:

> You have been informed that a man wearing a red jacket, black slacks and hat has stolen five TV's which were removed from a loading dock and put into his white 1970 Impala. While on patrol, you spot a man fitting that description carrying a large heavy cardboard box. He disappears around the corner. Nearby you see a car fitting the description. By the time you get around the corner the suspect is emerging empty handed from the door of an apartment building. You permit the suspect to drive away from the scene before stopping him. Because the suspected stolen merchandise may be moved at any time, you know a prompt search is desirable. However, a warrant is necessary to get inside the building. Therefore, while questioning the suspect, you call your patrol supervisor who will then decide whether it will be necessary for you to obtain and execute a search warrant in order to perform a prompt search.

203. Supporting a Determination of Probable Cause

Whether probable cause exists depends entirely on the particular facts of each case. It is important to make sure all relevant facts are presented when attempting to obtain a search warrant and when testifying against a motion to suppress. A checklist on relevant considerations in determining if there is probable cause is set forth in the next section.

When attempting to obtain a search warrant, if all the information which you present in the affidavit is information which you personally observed, you should simply write down ***all*** the important facts on the affidavit. You should be as specific as possible. If a sentence in your affidavit reads, "I saw the suspect writing numbers," that is not good enough. That is only your ***conclusion;*** it it is not ***facts.*** Instead you should say, "I observed James Downey standing at the cash register of Mel's Delicatessen for two hours. During that two hours, approximately five adult males approached Downey and handed him what appeared to be money. Downey then quickly wrote something on a small slip of paper which he handed to each of the men who then left. None of the men purchased any food. Downey has been convicted and three times arrested for participating in illegal gaming operations." These are facts upon which you—and the judge — can base the conclusion that James Downey was "writing numbers." Check items 1 through 8 of the Probable Cause Checklist for hints about what sort of facts should appear in the affidavit.

If some or all of the important information you wish to put in the warrant is obtained from a person who will not appear before the judge and swear to those facts, your affidavit will be more complicated. This is a "hearsay" tip. As the definition in Section 103 states, this tip must be supported with:

1. facts which show that the informant is reliable:
   a. the informant's past performance has led to a conviction or seizure of contraband, and,
   b. an indication of how the informant obtained the information, and
2. some independent corroboration of the tip by your investigation.

If you use an informant, you should check with items 9-21 of the checklist.

Remember that if you have never used this informant before (see questions number 10 and 11 of the checklist) it will be very difficult to persuade a judge that he is reliable. If you do get a tip from a first-time informant, check out the information yourself. If your own investigation provides enough information to establish probable cause, don't bother to mention the informant in the affidavit. If this investigation results in an arrest, seizure of seizable items, an indictment, or, best of all, a conviction, then your first-time informant becomes an informant with a history of at least one tip which has proven to be reliable. You can then easily use him in later affidavits in the manner described by question number 11 of the probable cause checklist.

Often you won't be able to corroborate your first-time informant's information. For example, he may say that bets are being taken in a certain locksmith's shop. If ***you*** went in there, all the suspects would act straight or destroy the evidence. In situations like that, ask one of your experienced informants to go in and observe what your first-time informant observed. Describe your experienced informant in the affidavit. Again, if you have any success in this case, your first-time informant can then be used as a reliable informant in later cases.

Use the checklist as a list of reminders. Read it through and write down "yes" or "no" for each question. Generally, the more times you can answer "yes" to the questions on the checklist, the better off you are. Go back and look at each of the questions to which you answered "yes". Write out a description of the facts which prompted you to answer "yes". These descriptions should appear on the affidavit in the places indicated by the search warrant affidavit outline in Section 205.

Finally, remember that the checklist is not complete. It is merely a guide. There may be very suspicious facts which wouldn't be raised by any of the 21 questions of the checklist but which should be included in the affidavit anyway.

204. Probable Cause Checklist

Questions About the Suspect

1. Does the suspect have a prior criminal record which includes the offenses in which you believe he is now engaged?
2. If not, are these previous offenses similar to the present suspected offense?
3. Is this suspect generally known by the police and others to be involved in the type of crime now suspected despite having never been convicted?
4. Have the suspect's activities been the sort performed by a person who is engaged in the suspected criminal activity?
5. Is the activity described in number 4 the sort of activity in which an innocent citizen is unlikely to be engaged?
6. Have you had experience investigating the sort of criminal activity in which you believe the suspect is engaged?
7. Is your information very recent, that is, "fresh"?
8. Did you observe all the suspicious activity yourself?

Questions About Your Informant's Credibility (If you are not using an informant ignore these questions)

9. Does the informant admit involvement in the particular crime being investigated here?
10. Has this particular informant been used in the past?
11. If yes, has his information:
    - lead to an arrest but no conviction?
    - lead to an arrest and seizure of incriminating evidence but no conviction?

    - lead to an indictment but not conviction?
    - lead to a conviction?

Questions About the Credibility of Your Informant's Tip (If you are not using an informant ignore these questions)

12. Does the informant claim to be an eyewitness to the suspicious or criminal acts?
13. Does the informant state that none of his information came from unnamed or unknown sources?
14. If not, does the informant give a convincing reason for believing the source?
15. Is there independent police corroboration of the information supplied by the informant?
16. Does the informant set forth the facts underlying his conclusion that the suspect has committed a crime?
17. Is the informant's information up to date, *i.e.*, "fresh"?
18. Is his information detailed as to time?
19. Is it detailed as to place?
20. Does the informant name specific persons?
21. Does he describe people or objects in detail?

205. Search Warrant Affidavit Outline

On page 15 is a blank affidavit form used by the Boston Municipal Court. The forms used by the other courts are very similar.

These are the steps you would take in filling out the blank affidavit:

1. State your *name* and *unit.*

2. State the ***facts*** which give your probable cause to believe that a crime has been committed and facts which give you probable cause to believe that seizable items (evidence, loot, contraband) related to that crime will be found in the place you wish to search. The best way to present the information is to tell it like a story from the beginning to the end. Tell how you put together the information. Describe events in the order in which they occurred. Include all dates, addresses and names. If you don't know names, give physical descriptions. Pretend that your partner has been away and knows nothing about the case. You want to bring him up to date with a note telling him all the important facts. Many of the things you would tell your partner are things a judge would need to know.

Sometimes your affidavit will describe actions or objects which do not immediately raise a ***civilian's*** suspicions but which you and other police officers know to be commonplace habit or pattern of illegal behavior. Your affidavit should explain the significance of these objects or actions; it should explain that you know this as a result of your experience as a police officer; and you should briefly describe your experience. (See item 6 on the checklist.) For example, if you state in your affidavit that you saw on the seat of the suspect's car an aluminum bottle cap blackened with soot, you should also add, "Because of my experience as a Boston Police Officer, I recognized this to be a 'cooking cap', a makeshift device in which heroin users prepare an injection of heroin. I have been a narcotics officer in the Boston Police Department for five years. I have participated in numerous investigations and arrests which have resulted in the conviction of 45 persons on narcotic charges."

State the ***source*** of facts. If ***you*** personally observed the facts, say so. If any of the facts were observed by ***someone else***, say so. You must also explain why this information is believable. Do this by explaining:

— Why the ***informant is credible*** (for example: "information provided by the informant has resulted in a 1972 conviction in the case of ***Commonwealth v. Smith***"; questions 9 - 11 of the checklist will raise facts which help explain why the informant is credible.)

— Why the ***tip is credible*** (for example: "the informant stated that he personally observed the sale . . ."; questions 12 - 21 of the checklist will suggest facts which help explain why the informant's tip is credible.)

You should make clear which facts were observed by you and which you learned from others.

3. Describe the ***objects*** you wish to seize. The description should be as precise as possible. If possible ***all*** items should be particularly described, (for example: "two 17 inch black and white GE portable televisions, model number DW1014, serial numbers 298645 and 298646").

Select the appropriate choices provided by the affidavit form (for example: if you seek stolen property strike out items (1) and (3) leaving only "(2) is stolen property").

The ***premises*** you wish to search should be described as precisely as possible (for example: "apartment 2A of 35 Bromley Street" or "the clerk's office of the second floor of the warehouse located at 369 Dorchester Avenue in South Boston").

4. ***Persons*** which you expect to be ***present*** at the search site which you wish to search. The facts presented in part 2 above should support ***probable cause*** to search these persons. The identification of these persons should be as precise as possible. They may be identified in different ways:

— Name (for example: "Tony Spadafora, date of birth: May 26, 1944")

CONTINUED

6 OF 9

— Physical Description (for example: "a short bald man usually wearing a blue suit and straw hat")

You will not always know in advance everybody who will be present on the search site at the time of service of the warrant, so you will not be able to identify in the affidavit all these persons. Just because a person is not identified in the warrant does not mean you cannot search them. On the other hand, you cannot search everybody merely because they are present on the site unless you have presented in your affidavit probable cause to believe that everybody present will have on their person the items you seek or unless you have very firm probable cause to believe that the specific unnamed individual possesses the items even though you do not have probable cause to believe the same thing about other persons present. See Section 217, "Persons Found Upon the Premise."

If there is not enough room on the affidavit blank, complete the information on another sheet of paper. This sheet of paper should be securely attached with scotch tape to the affidavit at paragraph number 2 of the affidavit form. You should sign and date this second sheet.

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

MUNICIPAL COURT OF THE CITY OF BOSTON
FOR CRIMINAL BUSINESS.

.....1976

1. I, ...
   being duly sworn, depose and say:
   I am a police officer of the City of Boston
2. I have information, based upon

3. Based upon the foregoing reliable information (and upon my personal knowledge) there is probable cause to believe that the property hereinafter described as:

(1) was or will be used in the commission of a crime
(2) is stolen property
(3) is possessed for an unlawful purpose and may be found (in the possession of or any other person) at the premises there situate and numbered and further described as follows:

4. The property for which I seek the issuance of a search warrant is the property described above.

WHEREFORE, I respectfully request that the Court issue a warrant and order to seizure, authorizing the search of the aforesaid described premises and the person of ..... and directing that if such property or evidence or any part thereof be found that it be seized and brought before the aforesaid Court, together with such other and further relief that the Court may deem proper.

.....
Name

Then personally appeared the above-named ..... and made oath that the foregoing affidavit by him subscribed is true.

Before me, this ..... day of 197

Justice .....
Asst. Clerk

206. Wearing of Uniform

The search team should include at least one uniformed officer if this will not jeopardize the success of the search. All nonuniformed officers should wear their badges on an outer garment where they will be highly visible. Every attempt should be made to have the uniformed officer the most visible member of the search team.

EXAMPLES:

(1) You have warrants to search two cars for numbers slips and other betting paraphernalia. You know that the two cars will rendezvous one block west of the L Street Annex of South Boston High on Columbia Road. Because the rendezvous is in an open area, an approach by a uniformed officer may prematurely alert the suspects to your plan. You should not use a uniformed officer.

(2) You have a warrant to search an apartment on Marlborough at Hereford for six stolen stereo amplifiers. Because the suspect could not hope to destroy or hide the amplifiers when he learns police officers are at the door, there is no reason not to use a uniformed officer. Because the suspect is less likely to resist in the mistaken belief that the person at his door is a robber, the uniformed officer should announce the search party's authority and purpose and be the first person through the door.

(3) You have a warrant to search four apartments and two automobiles in the South End for large amounts of heroin. You know that a single supplier intends to deliver the heroin in one morning to the parties named in the warrants. The operation will require twenty men and careful coordination in order to assure that all the suspects are caught with the evidence and do not tip off the other suspects. Because of the complexity of the operation you choose to employ only men who have worked together for years and who have considerable experience in drug raids. These men all happen to be detectives; you may proceed without a uniformed officer.

207. Promptness in Executing Warrants

All warrants should be served as promptly as possible and in no event later than seven days after issuance. Massachusetts statutes require that the warrant be returned on the seventh day after the day of issuance. Any unreasonable delay of service within seven days should be avoided.

EXAMPLE:

(1) You have been issued a warrant on January 2, 1976, for an apartment suspected of containing heroin. That day, two of your fellow officers have resumed surveillance of the apartment. They should notify you when it appears that the apartment is occupied. When you receive notice from the stakeout, you should bring the warrant to the site and execute it. This procedure assures that, consistent with Section 212, "Vacant Premises," a party is present to witness the search, thereby reducing the chance of false claims against the search team. Bringing the warrant to the site only at the moment you wish to search reduces the chance that the courts will declare that the search was unreasonably delayed: some judges prefer that officers not wait around the search site, warrant in hand, until a suspect arrives.

208. Time of Service

Warrants for the search of a residence should be served at a time when you expect the occupants to be awake. However, if the circumstances of the case make you believe that the success of the search or the safety of persons will be jeopardized, you may serve the warrant at a time when you do not expect them to be awake. Unless you have facts indicating otherwise, you may assume that the occupants will be awake from 6:30 a.m. to 11:30 p.m.

If you are going to serve a search warrant at night, Massachusetts statutes require that you specifically request a nighttime warrant. Do this by orally asking the judge or clerk to indicate on the warrant whether it is a "night" or a "day" warrant. For the purpose of meeting this statutory requirement, "nighttime" is defined as "one hour after sunset on one day and one hour before sunrise on the next day." Check with a Farmer's Almanac or the U.S. Weather Bureau for times of sunset and sunrise. Massachusetts law appears to permit the service of daytime warrants only during the daytime and nighttime warrants only during the nighttime.

Note that the "waking hours" during which the service of search warrants are encouraged by these guidelines will not always coincide with the "daytime" hours as defined by the Massachusetts statute, thus a 10:00 p.m. search for which these guidelines require no special consideration nevertheless may require a special authorization on the face of the warrant.

EXAMPLES:

(1) On January 30, 1976, you learn that a large shipment of drugs is coming into the city either the night of February 1, 1976 or the morning of February 2. The drugs will be taken to Apartment No. 10 on Gove Street, Boston, and be distributed immediately to

dealers. Because you want the flexibility to serve the warrant when both the drugs and the dealers are present, you chose to request a warrant authorizing a search in the daytime and in the nighttime.

(2) You have reliable information that a house in Jamaica Plain is being used to store loot from a ring of house burglars. Because you believe there are large quantities of stolen goods in the house that will not be moved during the night, you do not need to request a search warrant for a nighttime search.

209. Assuring the Search Site is Correct

If you are the officer in charge, you should check the warrant to make sure the place to be searched and items sought are so clearly described that you have no doubt about where the search is to take place and what is sought. You should also check to make absolutely sure the premises about to be entered are those described in the warrant. Finally, you should always be on the alert for changes in circumstances that would eliminate the need for the search. Any doubt on these matters should be resolved in favor of delaying the search until they are cleared up.

EXAMPLES:

(1) You have a warrant for Apartment No. 7 at 9 Summit Avenue, Boston. Upon entering the building you discover there are two apartments on the seventh floor designated 7A and 7B. Because of this, you are unclear which apartment on the seventh floor is to be searched. You should investigate further to determine which apartment is correct, then obtain another warrant with all the correct information.

(2) You have a search warrant for Apartment No. 6 at 34 Irving Street, Boston. In order to gain entry to the building you have explained your purpose to the owner of the building. At that time he informs you that the occupants of Apartment No. 6 have moved to Apartment No. 7 the day before. You should not execute the warrant for Apartment No. 6, nor may you use it to search Apartment No. 7. You should obtain another warrant for Apartment No. 7.

210. Announcement of Authority and Purpose

Before entering the premises, you should tell the occupants that you are an officer of the Boston Police Department and that you have a search warrant authorizing you to search their apartment. You should first call attention to your presence by knocking, speaking in a loud voice, or other appropriate means.

You should wait a reasonable time, until a point at which circumstances indicate that:

1. you or other persons will be endangered by delay, or
2. the occupant is escaping, or
3. no occupant intends to voluntarily admit you, or
4. evidence is being destroyed or in immediate danger of being destroyed.

Once a reasonable time period has passed and you have not been voluntarily admitted by an occupant, you may use whatever force is necessary to gain entrance. However, the least destructive entrance that can safely be executed should always be used.

Notice that the length of a "reasonable" wait can be very different in different cases. The circumstances of a particular situation might mean that a reasonable delay is only a fraction of a second.

EXAMPLES:

(1) You have a warrant to search a residence for six stolen TV sets. All known exits are covered, and the occupant has no known history of violence. The delay may be quite long even if you hear the sounds of hurried scuffling inside.

(2) Your search warrant states that heroin is the object of a search. The delay may be very short regardless of the likelihood of violence or signs of activity.

211. No Knock Entry

You may dispense with the announcement of authority and purpose before entry is made if you have probable cause to believe that this announcement will:

1. jeopardize the safety of persons within, or of you or fellow officers; or
2. result in the escape of a person sought; or
3. lead to the destruction of the items sought.

In those situations where no announcement is required, breaking down doors or windows should be attempted only if necessary. You should try to deceive the suspect into voluntarily opening the door whenever there is reason to believe that this approach would be quicker, quieter, safer, less destructive of property or more likely to result in a successful search.

In some instances, you may know that an armed and dangerous person occupies the search site. If practical, you should surround the building and demand the person surrender. This probably is not practical, for example, where the apartment building you are searching must be emptied, or where tear gas grenades would constitute a serious threat of fire to the community.

Note that if a hostage situation develops, you should immediately notify the Operations Section, clear citizens from the endangered area, try to keep the captors confined to a small area, avoid the use of firearms or other actions which might endanger the hostage, then await further instructions. The hostage situation will be handled in accordance with Rule Number 200 of the Boston Police Rules and Regulations.

EXAMPLE:

(1) You have a warrant for a South End apartment suspected of containing heroin. You had intended to serve the warrant tomorrow. However, you have just received a phone call from a reliable informant who told you that "Reddy Freddy" is going to be spending tonight — and tonight only — in the apartment. You are convinced that "Reddy Freddy" is a big dealer from New York but cannot establish probable cause for his arrest. He has a reputation of having successfully eluded raids by New York narcotics officers. You wish to act promptly to catch him in the presence of heroin. Only 2 men are available. Because Freddy may readily escape and because the heroin is readily disposable, you may enter without announcement of authority or purpose.

(2) Some tactics which officers have used with success include:

- have a woman police officer in civilian dress ask to be admitted;
- dress as a priest or ask a priest to request admittance;
- dress like a mailman with a parcel post delivery;
- if the front door to the apartment building has a buzzer, call box and remote lock, simply buzz any apartment; if necessary just mutter into the speaker;
- wear a cast and carry crutches;
- scratch on the door like a cat.

212. Vacant Premises

You should execute your search warrant when at least one occupant is present on the search site. This is especially true if the search site is a residence.

You should attempt entry into a vacant search site only if one of the following circumstances is present:

1. There is reason to believe the occupants will not be returning to the premises for an extended time period, if at all;
2. The objects you seek will be removed or destroyed if the premises are not immediately searched;
3. Returning to serve the warrant at another time will cause substantial inconvenience to the search team, and will improperly waste manpower.

When entry into a vacant search site is permissible, you should determine whether a key to the premises is readily available. The manner of entry should always be the least destructive possible.

If you find nothing, or if you seize items which do not give you probable cause to arrest any of the occupants, you may return to your other duties, but you should leave a copy of the warrant in a conspicuous place. You should also make certain that the premises are secure before leaving. (See Section 222 "Protecting Premises.") If, on the other hand, you seize items which give you probable cause to arrest the occupants you should await their return, then perform the arrest.

EXAMPLES:

(1) Upon approaching an apartment to be searched under a warrant, it appears vacant. However, several occupants of the building have now seen you. You are afraid they will "tip off" the absent occupant if any delay in execution is attempted. You may proceed with the search.

(2) After much preparation you are ready to execute a warrant of an apartment suspected of containing drugs. The occupants of the apartment are considered dangerous, and in addition, the apartment has several exits that must be covered. Because of these factors you have assembled a squad of ten officers, all fully equipped for a raid of this sort. Upon arrival you notice signs that the apartment is presently unoccupied (e.g. no lights on, no cars in driveway). Because of the manpower involved and the preparation for such an endeavor, you may decide to execute the warrant anyway.

(3) You are about to execute a search warrant for gaming paraphernalia. The window shades of the search site are open. You can see that the place is empty. You should not bother to search the site because you will find nothing and because you would pointlessly open yourself to claims that you stole the occupant's property while you were inside. If you wish, you may resume surveillance to see if the gaming operation returns at a later date.

213. Intensity of Search

Within the search site area described in the search warrant, you may search any space, place, object or container that might reasonably contain or conceal the items named in the warrant. You should be looking only for items specifically described in the warrant.

EXAMPLES:

(1) You enter an apartment with a warrant for cocaine. Your search may include the entire apartment area described in the warrant and everything in it.

(2) You enter an apartment with a search warrant for stolen typewriters. There is no need to look in small dresser drawers, medicine cabinets, coffee cans or any other place that could not reasonably contain an item the size and weight of a typewriter. If you wish to search smaller items for evidence related to the stolen typewriters — for example, pawn slips — you must have probable cause to believe these items exist and are present on the premises. You should describe these items in your affidavit and explain why you have probable cause to believe that they are at the search site. These items must be listed on the search warrant.

However, if these related items are not listed on the warrant, but you accidentally discover them while you are looking in places where it would be reasonable to find the typewriter, these guidelines and the plain view doctrine permit you to seize the related items, if, at the time of discovery, you have probable cause to believe that these items are evidence of a crime. See Section 216, "Objects Not Named in Search Warrant" and Section 108, "Definition of Plain View."

214. Scope of the Search

Your search may extend throughout the area specifically described in the warrant.

1. If the area described in the warrant is the address of a single family, detached home, you may search any structure on the lot at that address. If you wish to search an automobile parked on that location, be certain to clearly identify the automobile in the warrant.

2. If the area described is the residence of one party in a multiple party dwelling, you should search only the place in which the suspect party resides.

3. If a proper execution of a search in a multiple unit building leads you to a suspicious object located in a common way, for example, a hallway or fire escape, you may examine that object pursuant to the plain view doctrine. (See Section 108.) If the object is a container and you wish to examine the contents, a search without a warrant can be justified only if you can show that the container was abandoned and the owner intended to relinquish his reasonable expectation of privacy in the container.

4. If the area described connects to another area not included in the description you may search that area only if the nature of the connection and the way the occupants use the connection gives you probable cause to believe that the occupants regard the two areas as not being separate but one single area. However, it will always be safer to get an additional search warrant as described in Section 220.

EXAMPLES:

(1) You have a warrant to search a one-family house at Townsend Street in Dorchester. In the back yard is a tool shed which was not specifically mentioned in the warrant. According to number 1 above, you may search the shed because it is a part of the same home unit.

(2) You have a warrant to search "the residence of Johnny Dodson who lives at 192 Thornton Street." One-ninety-two Thornton Street is a two story, two family house; Johnny lives on the second floor. You should search only that part of the second floor which Johnny uses as his home.

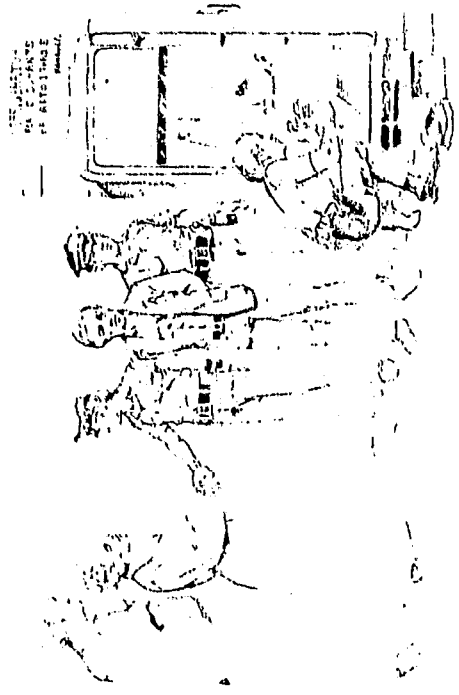
(3) Your warrant describes the place to be searched as Apartment 2B, a three-room apartment. A large 3' x 5' hole is in the wall of one of the rooms. It is covered with canvas. It opens directly into the next apartment, number 2A. Apartment 2A is dark and silent. The wall around the hole is water stained. Shattered plaster, hammers, bags of plaster lie on the floor. The suspect says that 2A is occupied by a young couple that he does not know. He explains that the hole is the result of repairs to the wall which was ruined when a pipe burst. If you do not find what you are looking for

and you wish to search 2A, provision 4 of the guideline, above, says that you must obtain another warrant because the occupants apparently treat the two apartments as separate units. Section 220 permits you to restrict the activities of persons present while the new warrant is obtained.

(4) You are executing a search warrant on a suspected bookie joint operating out of the back room of a Brighton spa. The search warrant describes the search site as the entire spa and gives the address. Upon entry you discover two men in the back room sitting at a table with two telephones but no evidence. You notice a square 2' x 2' hole in the wall. Peering in with a flashlight you observe that it leads to a utility closet of the laundromat next door. The suspects say they believe the hole is there to permit access by electricians who have been working on occasion over the last several days. Because you have only a suspicion but do not have probable cause to believe that occupants of the spa and the laundromat treat the two spaces as a single area of operations, provision 4 of the guideline, above, states that you should get a second search warrant. If you had seen one of the suspects hurriedly hand a bundle of papers or money to an arm emerging from the hole, you could enter the laundromat utility closet in pursuit of the new suspect.

(5) You have a warrant to search a nine room home in Jamaica Plain. To the best of your knowledge it is owned and occupied solely by Mr. & Mrs. Harris. When you arrive, a third party, Mr. Maxwell, is present. Upon attempting to search one of the rooms on the second floor, Mr. Maxwell objects saying that that is his room, not the Harris'. Your questioning reveals that he rents the room for $25 per month, they often eat

If the area described in the search warrant connects with another area not described in the search warrant, you may search the undescribed area only if you have probable cause to believe that the occupants regularly use the connection and treat the two areas as a single, shared area.



You may search areas not described in the warrant if they are "connected" to areas described in the warrant and they are treated by the occupant as a part of the described area.

meals together, and Mr. Maxwell has a key to the door but does not lock it because the Harris' like to listen to his record player while he is gone. Because the three occupants do not treat the room as a distinctly separate unit, you may search the room. However, it would be wise to postpone searching the boarder's room and guard it until you have failed to find the items named in the warrant. Although it may not be necessary, it would be still wiser to get a second search warrant for Mr. Maxwell's room.

215. Conduct During the Search

A xerox copy of the warrant should be read and furnished to a responsible occupant as soon as practicable under the circumstances. If no one is present, a copy of the warrant should be left in a conspicuous place whether you seize anything or not.

If it is too inconvenient for you to obtain a xerox copy of a search warrant, at least permit an occupant to view the warrant closely enough to assure him of its probable validity. (Do not allow opportunity for the suspect to destroy it.) You should then inform the suspect at which court house and when he may view the warrant and affidavit.

Every effort should be made by the police to act in a courteous manner, to minimize any unavoidable destruction of property, and to leave the search site in as close to its original condition as possible.

If your search takes you behind walls and ceilings or requires the disassembly of furniture or similar items, be certain that you have brought screwdrivers, wrenches, crow bars and other necessary tools.

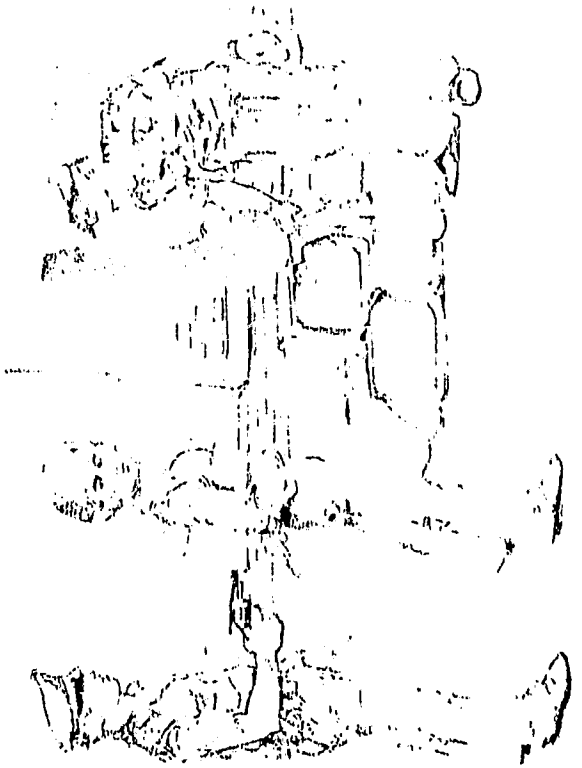
If you search drawers or closets, return the items to the drawers.

Remember that you will very often be taking photographs for evidentiary purposes. If photos revealing general destruction or even messiness are shown to a jury or a judge, your case is weakened.

216. Objects Not Named in Search Warrant

Objects which are not named or described in the search warrant may be seized only if all of the following conditions are met:

1. The search is a ***proper search.*** That is, the search is within the ***scope*** of the warrant (see Section 214) and the search is only as ***intense*** as is necessary to find the objects identified by the search warrant. (See Section 213).
2. The unnamed object was discovered in ***plain view.*** That is, the unnamed object was seen, smelled, felt or heard while you were legitimately looking, smelling, feeling or listening for a named object in the course of a ***proper search.***
3. The discovery was ***unintentional.*** That is, you were not searching for the items named in the warrant merely as a ***pretext*** for finding objects not named in the warrant.
4. ***At the time of discovery,*** you had ***probable cause*** to believe that the unnamed object was a ***seizable item*** , that is, either
   - contraband,
   - fruits of a crime
   - an instrumentality used in a crime, or
   - evidence of a crime



If, while properly executing a search warrant, you discover in plain view objects which are not named in the search warrant but which you have probable cause to believe are illegally possessed, you may seize them.

EXAMPLES:

(1) You are executing a search warrant for stolen radios. You discover on the kitchen table of this rather run-down apartment, a very expensive-looking jewel box. There are gouges near the lock. If you happen to have with you a hot sheet of stolen goods and the box fits the description provided by one of the entries on the list, you may seize the box as evidence of a crime. You may seize the box because you unintentionally saw the box sitting in plain view while you were standing in place where a proper seach would take you. The hot sheet provided the probable cause at the time of your discovery.

If on the other hand, you do not have a hot sheet or any other information about the box, you may conduct a threshold inquiry to learn more about it. That is, you may examine the box right at the kitchen table. This means, for example, that you may turn it over to read the under side. If you find the name of a jewelry store or of another person, you may telephone that name to see if the box has been stolen. By the same token, you may, for example, slide away from the wall a TV about which you are suspicious.

You must be careful to establish probable cause ***before*** "seizing" any unnamed items. That is, you may not even momentarily, take "possession" of the object as though it were yours and not the suspect's. According to the law, a "seizure" is different from a "threshold inquiry". For example, if your search for the stolen radios uncovered a plastic bag of white powder, you could not take it to Food and Drug for testing to see if it is a controlled substance. Or if you found a reel of 16mm film labeled "Five Little Girls and One Big Boy" you could not put it on the suspect's projector and run it to see if it is obscene. Nor could you even pick up the suspiciously expensive jewel box and carry it to the next room in order to describe it over the phone. In short, it is difficult to say precisely what the courts will regard as a "seizure" and what they will regard as simply a "threshold inquiry". To play it safe, you should handle as little as possible, suspicious objects which are not identified in the search warrant. As examples, you may use a field drug identification test on the suspicious white powder described above or, if your partner has drug enforcement experience, you may ask him to come over and try to identify it for you. Concerning the film described above, you might be able to examine it properly simply by holding it up to the light, rather than running it through the projector.

217. Persons Found Upon the Premises

A. Frisk. Any person found on the premises may be frisked for weapons if you have reason to believe that the person is armed. You may seize any weapons you find. You should ask the persons from whom you took firearms whether they have with them a license to carry the weapon or, if you are in the person's home or place of business, whether he has a firearm identification card. If he does not have the appropriate authorization, you should place him under arrest. On the other hand, if the weapon is legally possessed, you should return it at the completion of your search. Before returning the firearm, you may remove the ammunition from the weapon and return it separately.

B. Freeze. If you have reason to suspect that any person present would interfere with the search by such actions as harrassing or distracting the search team or attempting to destroy or conceal evidence, you may restrict the movements of that person as long as is necessary to complete the search. However, one person should be allowed to witness the search if at all possible.

If you discover on the search site persons not named in the warrant, you may nevertheless *frisk* for weapons anyone you have reason to believe is armed, and *freeze* anyone you have reason to believe will interfere with the search.

C. Search.

1. Any person ***arrested*** on the premises may be searched incident to arrest (See generally WARRANTLESS SEARCH OF PERSON INCIDENT TO ARREST, PART THREE.)

2. Any person ***named in the warrant*** as a person to be searched, may be searched as closely as is necessary to discover the items named in the warrant;

3. Named items may be sought by a search of any person who is ***not named*** in the warrant but is particularly ***described*** in the warrant by specific details (for example, ". . .heavy-set, short, white male with bushy grey hair, about 40 years old, usually wearing a tan windbreaker . . .")

4. Named items may be sought by a search of any person who is ***neither named nor described*** in the warrant if that person is present at a premises where the circumstances are such that there is probable cause to believe that ***all persons present*** will be carrying the items named in the warrant. However, in order to establish probable cause to believe that all persons present will be carrying the items, the facts supporting this conclusion must be set out in detail in the affidavit. The affidavit should carefully describe:

   a. the character of the premises, for example, its location, size, the particular area to be searched, means of access, neighborhood, whether it is a public or semi-public setting or a private setting;

   b. the nature of the illegal activity believed to be conducted at the location;

c. the number and behavior of persons observed to have been present during the times of day or night when the warrant is sought to be executed;

d. whether any person apparently unconnected with the illegal activity has been seen at the premises.

Note that the Massachusetts Supreme Judicial Court has declared that the "all persons present" phrase which appears in the search warrant printed forms is inoperative except in specific cases where there is probable cause to believe that, in fact, any one or all persons present is carrying the items named in the warrant. If you specify on the affidavit facts a through d of provision 4, it is more likely that the "all persons present" language of the search warrant printed form will be valid.

5. As a last resort, if you have been unable to state in your affidavit facts sufficient to support probable cause to believe that all persons present are carrying the named objects, you may search a person found on the premises who is ***neither named nor described*** in the warrant only if you have probable cause to believe that the particular suspect or suspects you wish to search have these items on their persons. Your belief is more likely to amount to probable cause if one or more of the following facts are true:

   a. size, weight, and other characteristics of the item permit it to be easily hidden on the person;

   b. the item has not been discovered after a thorough search of the premises;

   c. the item may be easily destroyed, or disposed of;

   d. the unidentified person exhibits facts which bear a close relationship to the facts which provided the reason for searching the premises;

   e. the unidentified person is unable to convincingly explain why he is there or is unable to explain away the facts described in d.

Part d needs more explanation. Part d says that if the unnamed person exhibits any facts which are similar to the facts you used to establish probable cause in your search warrant affidavit, he probably may be searched. Suppose you raid the backroom of a pool hall on a tip that a known fence is going to meet some people to buy some expensive clothes and jewels. You find nothing except the fence who is carrying only a small amount of money and one other person whom you do not know but who is wearing a raccoon coat and blue jeans. A search of that second person will probably be upheld. If the third unidentified person is standing there carrying a portable tape recorder, a search of him will probably not be upheld. You have no reason to believe that the suspected fence was going to be dealing in electronic gear, nor is there anything suspicious about a person carrying a portable tape recorder.

Persons "found upon the premises" includes persons who arrive while the search is in progress. You should apply the six factors to newly-arriving persons in the same manner as you would to persons who are present when you arrive. However, it will always be more difficult to justify a search of late arrivals because (1) they probably will have had no opportunity to conceal the items you seek, which will tend to weaken a search based on factors a through c of provision 5; and (2) you probably will not have had the opportunity to observe what that person was doing in the search site, which may make it more difficult to support a search based on factor d of provision 5.

The critical difference between provision 4 and provision 5 above, is that in applying number 4, you explain in an affidavit, ***in advance of the search,*** why the unidentified persons you search

will be carrying the items, while in number 5 you will learn these facts only in the course of the search and might be required to justify the search in a suppression hearing ***after the search.*** Applying provision number 4 is much more likely to result in admissible evidence, because the law is much clearer concerning this provision.

Parts a through e of provision 5 can be summarized by saying that the more likely it is that the unidentified person would *want* to conceal the items sought and the more likely it is that he could *succeed* in doing so, the more likely it is that you will have probable cause to search the unidentified person.

6. If there is a person whom you have no reason to search, you should also decline to search the apparel or carrying accessories (e.g. coats, hats, briefcases, purses, backpacks) which that person reasonably expects to be private in the immediate circumstances.

7. If you expect one or more women to be present and searched at the site, make certain that a female officer is in the search party.

EXAMPLES:

(1) You serve a search warrant at a house suspected of containing stolen color T.V.'s. Several persons are present at what looks like a small party. You may freeze the movements of the guests in order to have them not interfere with the search's smooth progression. You may then frisk the persons to make certain none has a weapon. Or you may achieve the same result by asking them to leave, in which case you should make no attempt to search them or their personal possessions.

(2) A reliable informant has told you that a betting office is on the third floor of a small brown three-story wood frame building located near the southeast corner of the intersection of Second Street and I Street in South Boston, in a largely residential area. Placing the building under surveillance, you learn that the window shades of the first two floors are always open and these floors are apparently unoccupied. The window shades of the third floor are always closed. Three phone lines lead into the building. The only persons observed going in or out of the building are adult males. Each day the same three men arrive at 10 a.m., 11 a.m. and 11:30 a.m., respectively. Each is carrying a brown manila envelope. Two of the three are known to you as suspected numbers runners. At differing hours of the day, three other men will singly depart and return sometimes with food or drink. One of them carries a past conviction for numbers writing. Irregular visits are paid by persons you cannot identify. Your informant tells you that the top floor is a single apartment of five rooms.

If all of the above information is carefully included in your affidavit as prescribed by provision 4 of Section 217 and if you serve the warrant in the late morning or during other times of the day in which you observed the above activity, you will probably be able to conduct a valid search of everyone you find on the third floor pursuant to the "all persons present" clause of the warrant. If the facts are not carefully stated in the affidavit, the court will probably refuse to apply the "all persons present" clause.

(3) Based on information obtained from a reliable informant and from several weeks surveillance, you have obtained a search warrant for a North End "social club" in which you expect to find evidence of

an illegal gaming operation. You have not been able to establish probable cause to believe that all persons present will be in possession of such evidence. However, you know the names of some of the persons that you expect to be present during the raid, and you know other persons only by sight. You have described both groups of men in your search warrant affidavit as carefully as you can, giving names where possible and physical descriptions where names are unknown. These are men who you have probable cause to believe are actively engaged in illegal operations. Your affidavit has sought permission to search them and a search warrant has granted it.

When you enter the social club to execute the warrant you first discover several children and women whom you do not recognize. You do not have any reason to suspect that they are related to the gaming operation, so you ask them to remain where they are and do not search them, or you ask them to leave.

In another room you discover four men playing cards. You frisk them all for weapons and find nothing.

i. Among these men is Tony Spadafora who was named in the warrant. In accordance with C.2., above, you search Tony, but find nothing.

ii. Also present is a man whose name you did not know but who was described in the warrant as a man who makes the same five daily stops at various shops and parked automobiles before arriving at the social club. In accordance with C.3., above, you search him and find nothing.

iii. Also present is Roberto Michaelangelo, whom you did not expect to find here but who you know has several gaming convictions. In accordance with C.5., above, you search him and find nothing.

iv. Finally, there is a man you do not know at all. He is wearing a sport coat. All the other suspects are wearing sport shirts without jackets. The frisk which you performed earlier revealed that two of his inside jacket pockets contained bulky flat objects like billfolds or envelopes. Because the warrant clearly gives you the power to search the premises, you complete the search of the building before deciding whether to search the fourth man. The search of the premises turns up only the three telephones which were described in the warrant. Despite the fact that you have probable cause to believe that the premises contain large amounts of gaming paraphernalia you have been unable to find most of it. The person of the fourth man is the only place left to search. Therefore, in accordance with C.5., above, you search the fourth man and discover the evidence you have been seeking. All are arrested.

The search of the last man may prove to be a problem in a suppression hearing because prior to obtaining the warrant, you had no probable cause to believe you would find him there and that he would be carrying the evidence you sought. Nevertheless, you believe your search of the unexpected suspect will be upheld because you had probable cause to believe that illicit gambling operations were carried on at that

address; the phones partially confirmed that belief; known gambling operatives were present; the evidence you sought was the sort easily concealed on a person, especially someone with large pockets; your search had ruled out the possibility that the evidence could be found any place else in the premises; and your legally permissible frisk revealed facts which indicated that the unexpected suspect may be carrying the evidence you sought. All these facts probably raise the probable cause necessary to search the fourth man under authority of the warrant.

(4) You have a warrant to search a West Roxbury home for five stolen cassette tape recorders and twenty-four stolen pre-recorded cassettes. The home is occupied by a family of five, all of whom are known to you as respected members of their community. Your investigation has failed to reveal that any member of the family has a record of involvement in criminal activity. However, the 17 year old son's employer has concluded that the son is responsible for many missing items, including the five recorders and 24 tapes. The employer has provided detailed information on which the search is based.

As you begin the search, you discover that the father is discussing matters with a man who is introduced as an insurance agent but is otherwise unknown to you. At the opposite end of the same room in which the two men are seated are a briefcase, a coat, and a gym bag. The father claims the case; the visitor, the coat; the bag belongs to the boy.

There is no reason to search the visitor or his coat. Because there is no indication that he is related in any way to the suspected thefts that prompted the search,

the visitor's person would not be searched. For the same reason his coat would not be searched. The visitor is justified in expecting as much privacy in the coat as he does in his pants' pockets.

There is little reason to search the father's person because there is little reason to suspect he is related to the theft. However, you may later search the father if diligent search of the house fails to uncover all the specified items. Failure of the search, added to the facts that the father is related to the son and to the premises, will overcome his apparent lack of direct relationship to the theft itself.

Regardless of whether you search the father, his briefcase can be searched immediately. He has no greater expectation of privacy in the briefcase than he does in his desk drawers or closets, all of which can be searched pursuant to the warrant.

The gym bag and the person of the son can be searched because of the boy's apparent direct relation to the reason for the search.

218. Termination of Search

Your search should terminate upon seizure of all named items. Even though all the items may not have been found, you should end your search if it has been diligent enough to have discovered the named items under ordinary circumstances.

EXAMPLE

(1) You enter an apartment looking for 4 color T.V. sets, 2 typewriters and one stereo amplifier. After a few minutes all items listed have been found. At this point the search should terminate, even though you

might believe more stolen goods could be discovered if a search continued. However, if this is your belief, Section 220 may apply.

219. List of Things Seized

If you are the officer in charge of the search, you should, upon completion of the search, prepare a list of all items seized and leave it with the person in charge of the premises. If the occupants are not present, you should have another officer witness the preparation of the list, and should leave a copy of the list in a conspicuous spot. If the list of items is very long, you may postpone preparation of the list until you return to the department.

If your search has uncovered money, be very careful not to give the suspect an opportunity to claim you stole any money. If you do not intend to seize the money as evidence, do not touch it. Tell the suspect to pick it up, count it aloud then put it in his pocket or some other place where no officers will be searching. If you wish to seize it, ask the suspect to count the money, then write out the amount on a slip of paper, sign it and date it. Sign it with your own signature and date it. Do this again on another slip of paper. Mark one "copy one of two copies" and the other "copy two of two copies". (If you bring carbon paper you need to write everything out only once, then give the suspect a copy of the writing.)

220. Obtaining Additional Warrant

If during the search there appears probable cause to believe a seizable item is in an area outside the scope of the warrant being used, a new warrant should be obtained. If necessary, persons present may have their activities restricted while the new warrant is sought in order to assure the situation does not change.

EXAMPLE:

(1) You are searching an apartment which is on the top floor of a four story building on Marlborough Street. During the search you discover there is a trap door in the ceiling of the apartment. The occupants tell you it leads to the roof of the building and to the building's wiring. The ceiling is quite high and there are no signs of frequent use (fingerprints, scuff marks and other signs of wear). This indicates that the apartment dwellers do not treat the attic as a part of the apartment. On the other hand, a nearby closet contains a tall stool which is tall enough to reach the trap door. Because the attic is not described in the warrant and the attic is not clearly treated by the occupants as part of their apartment, it would be wise to obtain a new warrant for the attic. If persons are present in the searched apartment who you fear would attempt to frustrate the new search, you may curtail their actions to the extent necessary to maintain the "status quo" while a new warrant is obtained. You may, for example, urge them to leave, then guard the entries to the apartment. If they refuse to leave, you may simply guard the trap door until a warrant is obtained.

221. Maintaining a Record

After completing your search you should record in your Incident Report, the time of entry, departure, and any other pertinent occurrences encountered during the search. Some examples of pertinent facts which should be recorded are: items not named in the warrant which were seized; circumstances of their discovery and seizure; searches of persons not identified in the warrant and reasons why; issuance of ***Miranda*** warnings; description of circumstances surrounding injury to property or to persons; arrests; refusal of police protection (see Section 222). You

may wish to make tape recordings, photographs or videotapes of the search. They provide very effective evidence to obtain convictions and to protect you from claims of theft, destruction or other abuses.

EXAMPLE:

(1) While executing a warrant for stolen jewelry, you discover under a couch seat cushion, a plastic bag containing white powder you suspect is cocaine. After issuing a ***Miranda*** warning to the occupant of the apartment, you question him about the substance. He admits that he has used cocaine in the past but claims that he gave it up. However, he first denies knowledge of the powder then claims it is baking soda he borrowed from a neighbor. You seize the powder. Then you record where the powder was found, why you were searching that area, the fact that a ***Miranda*** warning was issued, a summary of the interrogation and all other relevant facts such as those mentioned in this section.

222. Protecting Premises

Once a search is completed you should take care that the premises are adequately secure before leaving. This can be done in most cases by locking up all entrances, or leaving the premises in the hands of a person responsible for them. However, if the premises' security devices are no longer effective because they were damaged by your entry, police protection should be offered to the person in control of the premises. If no such person is present, protection should be supplied until repairs are made. Under no circumstances should protection be given if rejected by a person responsible for the premises. If protection is rejected, that fact should be noted on the Incident Report. (See Section 221.)

In order to provide temporary protection until repairs are completed several procedures may be attempted. (1) Where the door opens inward and remains largely intact, you may nail several 2 x 4 timbers across the door from the inside, then depart through another exit, locking that exit behind you. (2) If the first procedure is impossible, you may mount one or more hasps on the outside of the damaged door, padlock it, and turn the key over to the owner of the premises. (3) If no other means are effective, you should provide an officer to guard the premises. (4) In all cases you should notify the district patrol supervisor of the situation and request special attention by patrolmen until repairs are completed.

EXAMPLES:

(1) In order to execute a search warrant you had to break in the front door of a house. The owner of the house is offered police protection until the door can be replaced. He refuses your assistance. You are relieved of all obligations to remain.

(2) You break down a door to search an apartment for drugs. In the apartment you find an occupant who does not claim ownership. You arrest him after seizing some heroin. Regardless of his statements about the security of the building you choose to leave an officer behind to protect the premises. If the owner returns before the apartment is secured, his wishes should be respected, even if he is arrested at that time.

223. Control of Seized Property

Any object which you seize should be placed in a clear plastic evidence bag. The bag, or the object itself if it will not fit in a bag, should be labeled with your name, a witnessing officer's initials, the date of seizure and a brief description of the object or

After you have completed a search, secure the searched premises in the surest manner possible.

objects in the bag. You should store the evidence in any evidence storage locker and should retain possession of the key.

Until the case comes to trial, you should turn over control of the evidence to no one except in instances where weapons are brought to Ballistics or drugs to the Department of Public Health at 600 Washington Street. In these instances, be certain to obtain a signed and dated receipt which describes the object or objects.

224. Return of the Warrant

As the officer who executed the warrant, you should return the warrant to the issuing court. It is not necessary that the person who returns the warrant is the affiant. Return should be made as soon as possible and in no event later than seven days after issuance. In computing the date of return, the date of issuance is counted as day zero; the return date is the seventh day. If the warrant is issued on a Friday, it must be returned no later than the next Friday.

If the warrant was issued by a Superior Court judge, it should be returned to the district court designated by the judge in the warrant. If no specific district court is so designated, return it to the court which serves the geographical area in which the warrant was served.

The list of items seized which you described in your affidavit should be listed on the back of the warrant itself. The list of items which you seized but did not describe in your affidavit should be on a separate sheet of paper and attached to the warrant.

225. Returning Seized Items

Non-contraband property no longer required for prosecutorial purposes should be released to the rightful

owners. You should contact an assistant district attorney who will assist you in entering into an agreement with the party to whom you are returning the property. The court will enter this agreement into its records.

PART THREE:
SEARCHES INCIDENT TO ARREST

301. Preference For Search Warrants In Arrest Situations

Whenever you obtain an arrest warrant, you should also attempt to obtain a search warrant if:

1. you have probable cause to believe that evidence of the crime for which the arrest is to be made will be found at the scene of the arrest; and
2. the arrest will take place where the suspect or others have a reasonable expectation of privacy.

A search with a search warrant can be broader than a warrantless search incident to arrest. Also, a search supported by a warrant is more likely to withstand judicial scrutiny in a suppression hearing than is a warrantless search.

EXAMPLE:

(1) You have reliable information that Jeff Jones, a prime suspect in a series of armed robberies, is staying at a specific apartment. On swearing out an arrest warrant, you should also keep in mind the possibility of gathering sufficient information to obtain a warrant to search the apartment for evidence relating to the armed robberies, such as weapons and clothing. Without the search warrant, your search is limited to the area within Jones' immediate control at the time of the arrest. The search warrant, on the other hand, may authorize you to search the entire apartment.

302. Purposes

A search of the person incident to arrest has two permissible purposes:

1. the discovery of concealable or destructible evidence of the crime for which you made the arrest; and
2. the discovery of weapons that may harm you or others or may be used for escape.

"Person" means the physical person of the suspect, the clothing he is wearing and any articles he is carrying.

If possible, you should make your full search of the person incident to arrest at the time and place of arrest. You may, however, choose to make a cursory search then and make a more thorough search incident to arrest at the stationhouse.

EXAMPLE:

(1) You have a warrant to arrest John Jones for an assault and battery committed with fists and feet. Because there is no evidence of the offense that could be discovered in a search, you are limited to a protective search for weapons.

(2) You respond to a call reporting a bank robbery in progress. When you reach the scene, the suspect is just leaving the bank. He is carrying a brown paper bag and a small leather bag that looks like a doctor's bag. When you arrest the suspect, you may search both the brown paper bag and the doctor's bag, as well as the suspect's clothing and person for weapons and evidence of the robbery.

(3) On a hot summer night, you observe what you have probable cause to believe is a drug sale. The streets are fairly crowded and tensions have been high. Once you make the arrest, you conduct a protective search for weapons and a quick search for drugs. Because of the circumstances, you will probably want to conduct the full search incident to arrest at the stationhouse, even though easily concealable evidence (drugs) is involved. Any item that you accidentally find and that you have probable cause to believe is evidence of other crimes, such as syringes or stolen credit cards, may be seized and used to support those charges in court if you found it where you, in your experience as a police officer, reasonably believed you would find drugs or weapons. (see Sections 303 - 305.)

303. Admissibility of Objects Seized

Any evidence of the arrest crime you seize will be admissible in court if the arrest itself is valid and precedes a reasonable search. Searches that qualify as reasonable are described in Sections 304 and 305. Furthermore, any item you have probable cause to believe is evidence of another crime, whether by the arrestee or another person, that you accidentally discover while you make a reasonable search incident to arrest, may be seized and used in court to support that other charge. If that item provides probable cause for another charge against the arrestee, you may search him for additional evidence to support that new charge as well as search for evidence of the original arrest offense.

Any evidence, whether of the arrest crime or another crime, and any weapons you seize as part of your search incident to arrest should be recorded in the narrative of the incident report. This record can support your testimony in a later suppression hearing.

EXAMPLES:

(1) You arrest an individual for disorderly conduct. You may search him for weapons. A search of the individual's person for the purpose of discovering incriminating evidence, however, would not be proper because no evidence relating to disorderly conduct could be found. During your weapons search, you feel an item which you believe may be a weapon, but which turns out to be a hypodermic syringe. You also find a switchblade knife. You may seize the syringe and the knife and they would be admissible in evidence on the syringe and dangerous weapons possession charges. As well, you may now search for further items used to inject controlled substances (for example, needles). On the incident report, you should record that you found the syringe and the knife during your weapons search and the places where you found them.

(2) You observe a man whom you do not know enter a variety store that you have under surveillance as a numbers parlor. He comes out within a couple of minutes. He is not carrying anything. He looks up and down the street a couple of times and then walks away rapidly. You suspect he may be carrying betting slips. Your threshhold inquiry does not reveal any wrong doing. You tell him he is under arrest for betting and you then undertake a full search hoping to find betting slips. You find slips. And you find a packet of heroin.

It is likely that neither the slips nor the heroin would be admitted in evidence, as they both come from a search following an arrest that lacked probable cause.

304. The Search for Evidence

Because a search of the person for evidence is an intrusion of privacy, the Fourth Amendment requires that the search be reasonable. When you have reason to suspect that the arrestee possesses evidence, under Massachusetts law the evidence search will be reasonable if:

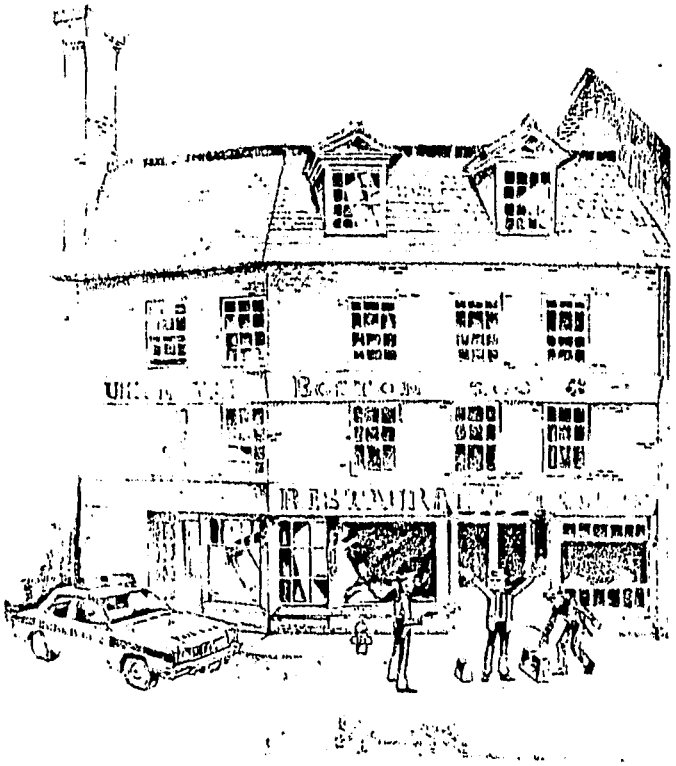
1. the search is for evidence of the crime for which the arrest is made; and
2. the size of the evidence is such that it could be contained in the places where you search.

If an article is locked or sealed, you may take it from the arrestee. If you wish to search it for evidence, it is preferable that you try to obtain a search warrant.

EXAMPLE:

(1) You arrest William Bono on a warrant for receiving stolen property: six men's wrist watches. You believe he has the watches on his person. You search his right coat pocket and find two watches matching the description of the stolen watches. You search his left coat pocket and find there three gold bracelets, all with initials different from his. You may seize them, too, as the initials plus the fact that there are three of them give you probable cause to believe they are stolen. If they prove to be stolen, they may be used as evidence on a second receiving charge.

In his inside coat pocket, you find a box 6" x 4" x 2" that is taped shut. You take the box. The fact that there still are four watches you have not found plus the size of the box gives you probable cause to believe the box may contain the missing watches. Using those



1. Searches of locked, sealed, or closed carryable items for evidence of the arrest crime may be made incident to the arrest, but it is preferable to obtain a search warrant before doing so. Unless you reasonably suspect that such an item contains explosives, there is no reason to search it for weapons.

facts, you may open the box. It is preferable, however, for you to apply for a search warrant before cutting the tape on the box and opening it, because the sealing indicates a high expectation of privacy. When you open the box, you find that it contains 60 decks of heroin. The fact that they were discovered accidentally during a search with a warrant will help assure their admissibility as evidence on a possession with intent to sell charge.

305. The Search for Weapons

Because a search of the person incident to arrest for weapons is an intrusion of privacy, the Fourth Amendment and Massachusetts law require that it be reasonable. In order for it to be reasonable, it is not enough to speculate that any person ***might*** have a small weapon concealed on his person because of your past experience in finding razorblades, needles, etc. hidden in shoes, lapels, hatbands, coat linings, etc, or attached to the body. You should have reason to suspect that ***this*** particular arrestee may have such weapons so concealed in order to justify more than an ordinary search for a weapon the size of a gun, knife, or club.

Your experience is a major guide in deciding how extensively you should search the person for weapons. The following factors may be relevant:

1. your pat-down or your evidence search turned up a weapon, indicating that the person was potentially violent;
2. based on your perceptions as an experienced police officer, the person's behavior on being arrested was abnormal, for instance, unnaturally resistant or unnaturally calm, or he said something odd;

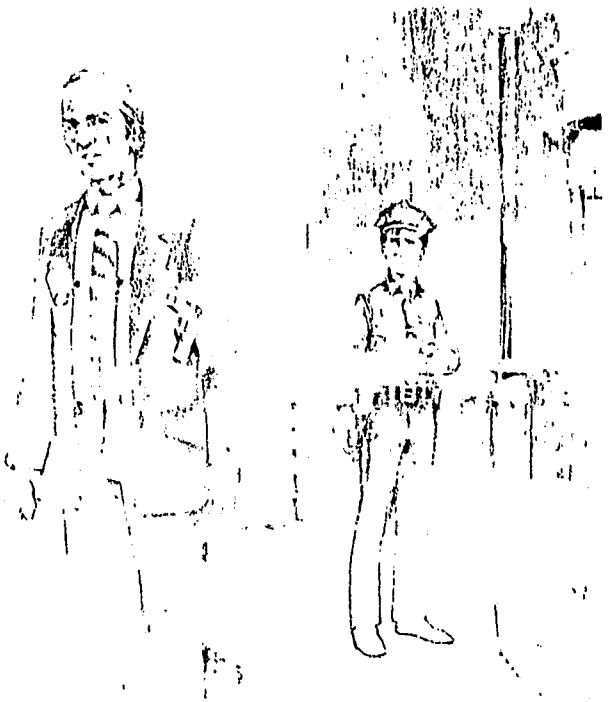
3. you know from personal experience, from others, or from records that the person is known to carry weapons or to be violent;
4. the offense for which you made the arrest involved weapons;
5. the offense for which you made the arrest is one that frequently involves people with weapons, such as prostitution or narcotics; and
6. the place you searched was one from which the suspect could have taken a weapon in the custodial situation.

These are factors you should consider in deciding where to search for weapons and this analysis will promote the admissibility of any evidence you seize, whether relating to the arrest crime or to another crime.

Any article that is locked or sealed may be taken from the suspect, but it should not be opened to search for weapons (unless you have reason to suspect it contains an explosive device), because the suspect could not have taken a weapon from it while he held it and you are protected by removing the article from the suspect's possession.

EXAMPLE:

(1) On a chilly winter night, you arrest a woman in the Combat Zone for prostitution. Unlike common nightwalking, for which there is no seizable evidence, prostitution requires proof of a financial agreement. Therefore, your search incident to arrest may be for the purpose of discovering and seizing evidence of prostitution (for example, money) and weapons. You choose to make only a cursory search at the scene of arrest. You search her coat pocket and her pocketbook for destructible or concealable evidence and for



You may search the person incident to arrest for weapons in those places where you reasonably expect the particular person may have a weapon concealed on him, and any evidence of the arrest crime or other crime found in such places may be seized under the plain view doctrine.

weapons. You find a gun in the suspect's pocketbook. That gun may be used as evidence of illegal weapon possession and carrying. It also gives you further cause to undertake a very thorough weapons search at the arrest scene or at the stationhouse. You may retain custody of the pocketbook for a more thorough stationhouse search, whether or not you found a weapon or evidence in your initial street search. Your partner, a policewoman, may make a more intrusive search of the suspect's person.

At the stationhouse, the woman refuses to identify herself and you do not know her. You look in her wallet for identification, starting where such identification is most likely kept. If you do not find a driver's license or other identification, you then may look in her personal papers. Once sufficient identification is found, that purpose of the wallet search is completed. You may still search the wallet for money as evidence, and, if your experience as a police officer tells you it is reasonable to suspect that this particular woman may have a weapon hidden in her wallet, you may search for that too. You find a square tinfoil packet in the change pocket of her wallet. You know from experience that heroin and cocaine often are kept in such packets. You therefore have probable cause to seize the packet and open it and, if there is a powder that you have probable cause to believe to be a controlled substance, to seize the powder and have it tested, and if contraband, to use it as evidence.

As you make a more intensive search of the suspect's pocketbook at the stationhouse, you find a clear plastic container filled with pills. You are not experienced enough to know whether the particular pills may be contraband. Because you personally do not

have probable cause to believe that the pills are a controlled substance, you may not seize them on your mere suspicion. As part of your search incident to arrest, however, you may ask for the assistance of an officer more knowledgeable about narcotics. If his experience provides him with probable cause to believe that one of the pills is contraband, those pills may be seized, tested, and, if contraband, used as evidence on a possession charge.

These searches of the suspect's possessions should be made in her presence.

Your partner, a policewoman, may undertake a search of the suspect's clothing and physical person. Knowing from experience that many Combat Zone prostitutes carry small weapons that may be dangerous or facilitate escape, the policewoman's search of the clothes the suspect is wearing and of her person may be very thorough. The reasonableness of your concern about small concealed weapons is strengthened by the discovery of the gun in the pocketbook. As this weapons search would be much more intense than the search for evidence of prostitution, your partner searches the top inside part of the suspect's lace-up boot. It may be unreasonable, however, for her to remove the boot to search incident to arrest for weapons under the inner sole since, even though weapons may be concealed there, they can't be reached in this custodial situation. A boot search for weapons or contraband may, however, be reasonable as part of a pre-lockup inventory. (See Sections 312 — 315.)

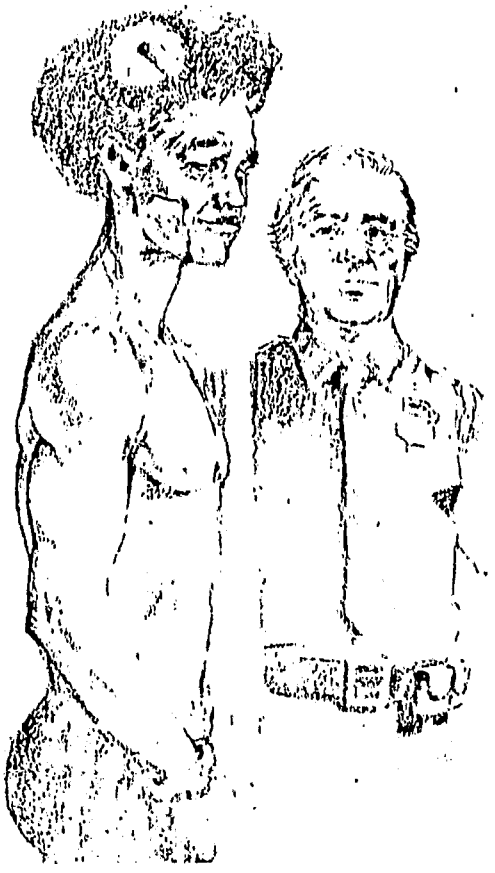
306. Search of Body Cavities and Head Hair

Incident to arrest, you may search the mouth and head hair of an arrestee if you have reason to believe that evidence of the arrest crime or a weapon is concealed in those places. The suspect should be asked to cooperate and not to resist. If he insists on resisting, the suspect may be held securely and handcuffed. With your hands, you may use the minimum force necessary to make your search, and you should avoid injuring the suspect. Because such searches must be reasonable, you should balance the need to extract evidence with force against the seriousness of the arrest offense, the necessity of that evidence for a successful prosecution, and the possibility of retrieving the item later under a search warrant.

If you wish to have body cavities other than the mouth (for example, the blood stream, subcutaneous tissues, anus, vagina, stomach) of the suspect searched, you should first confer with your supervising officer. If you have probable cause to search those places and if you and your supervising officer believe the seizure of evidence contained there is necessary because the charge is one that should be prosecuted and the evidence is required, you or your supervising officer should contact the Department's Legal Advisor. In all such cases of serious bodily intrusions, a search warrant should be sought. If it turns out that there is insufficient time to obtain a search warrant because the evidence will disappear, the Legal Advisor will indicate whether the search should still be made. In all cases, such intrusive body cavity searches should be made only under medical supervison.

EXAMPLE:

A woman flags down your car. She says that two males just robbed her at knife-point, taking her wallet and her diamond wedding ring. She agrees to go with you. Two blocks away, she sees the two men. You place them under arrest. You may search their clothes,



With reason to believe that evidence or weapons of the arrest crime are hidden in the suspect's hair or mouth, you may search those places for such items as part of your search incident to arrest

their persons, and anything they are or were carrying for weapons and for evidence of the robbery such as the wallet, cards from the wallet, the ring, and the knife. While one arrestee noisily protests his being arrested, the other remains silent with his mouth firmly shut. You ask him what his name is. He shakes his head "no." Your experience tells you that he probably has the ring in his mouth. You immediately may use reasonable force to make him open his mouth so you can search it or make him spit out whatever he is concealing. In your search of the arrestee's mouth for the ring, you discover what appears to be a deck of heroin. Because you discovered it accidentally during a reasonable search incident to arrest, it is admissible in court on a possession charge.

If, on the other hand, you believe the suspect swallowed the ring, you should confer with your supervisor and, if he agrees, you or he should call the Legal Advisor. If it is determined that the ring should be retrieved, not only for evidence but also for the victim, you may wish to have the suspect's stomach pumped. To do that, you will need a search warrant, and, to obtain the warrant, you will need probable cause. It is possible, therefore, that an X-ray of the stomach will need to be taken. Judicial authority to take the X-ray should be sought in the form of an application for a search warrant to have an X-ray made. The X-ray itself then will provide the probable cause necessary to obtain a search warrant for stomach pumping. You should consider the option of obtaining court authority to place the arrestee in isolation under proper surveillance while nature takes its course.

307. Search of Areas Where Arrestee has Reasonable Expectation of Privacy

Whenever you arrest a person in a place where he has a reasonable expectation of privacy, your right to search the area is limited. Examples of places where a reasonable expectation of privacy would exist are:

1. in the arrested person's residence or vehicle;
2. in a place to which he has exclusive or near-exclusive access, such as an office desk, locker, safe deposit box, or rented garage; and
3. on private premises where he is a guest.

Whenever you make such an arrest, you may search any place or object where the suspect is able to reach, at the moment of arrest, for weapons or for evidence of the crime for which the arrest was made. "Moment of arrest" means that short period of time during which you are securing physical control over the arrestee. You should conduct this search at the time of arrest and in the presence of the arrestee. If you wish to search beyond the area the suspect can reach and if you wish to search any place after the suspect has been removed from the premises, you will need a search warrant.

EXAMPLES:

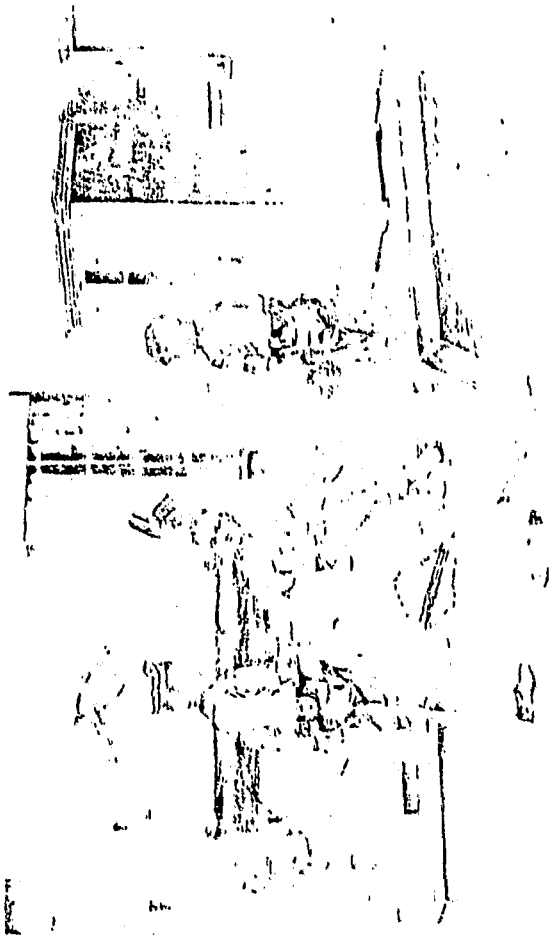
(1) Adele Brown has filed a complaint against her husband, William Brown, alleging that he beat their child and threw the child against a wall. An arrest warrant has been issued for William Brown for assault and battery.

At roll call, you are assigned the task of arresting William Brown. You are told he will be found at Barton's Rooming House. You go there, find Brown in his

room, and arrest him. Because there is no evidence of the crime, the purpose of your search incident to arrest is limited to weapons. You may search him and the area within his immediate control for weapons.

(2) From prior investigation and information from a reliable informant, you know the identity and habits of three adult males who have been engaged in daylight street robberies of pedestrians. The three — Arthur Bowes, Charles Dilly, and Elbert Francis — have been making hits on persons they observe leaving a local bank and stores carrying large sums of money. Their modus operandi is to follow the person and, using a knife, push him into a doorway or alley and rob him. One of them takes the money and they split up and go separately on foot to Bowes' apartment, where they split the take.

You saw the three together two hours earlier and noted what they were wearing. A radio call tells you that three men who meet the description of Bowes, Dilly, and Francis and were wearing distinctive hats just robbed a man carrying the day's cash receipts from Good's Variety Store to the bank. This is the area where you saw Bowes, Dilly, and Francis earlier. You immediately drive to Bowes' apartment building. You see Bowes and Dilly go into the building. They are wearing the hats described over the radio. You follow them in hot pursuit into the apartment. Once inside, you arrest Bowes, Dilly, and Francis. You see the money on a table. You may seize that money. You search the areas within the immediate control of each suspect. Bowes is arrested within reach of the table. You look in the table drawer, where you find a bag you think the money may have been in, as well as a pair of brass knuckles and a syringe. You may seize all three



Without a search warrant, the search incident to arrest of the area where the arrestee enjoys an expectation of privacy is limited in scope to places the arrestee can reach and in purpose to weapons and destructible evidence

items and the knuckles and syringes may be used as evidence of additional offenses. As Francis was wearing his hat when you arrested him, you may seize that. You do not find Bowes' or Dilly's hat within plain view or within the immediate control of any of the suspects. You should obtain a search warrant before looking for the two hats.

You search Bowes, Dilly, and Francis for other evidence of the crime, such as the knife, and you search each of them for weapons. In your weapons search of Dilly, you find a key to a Greyhound Terminal locker. As the key came into your possession during your weapons search and because it could be used to harm you, you may keep it to be placed with his belongings if there is pre-lockup inventory. To search the locker, you should obtain a search warrant.

(3) You enter an apartment with a warrant to arrest John Jones, a suspect in a one-man jewelry store robbery. A woman opens the door and, as you ask for Jones, you see him toss a flight bag into an adjacent room. You may search for the flight bag, because it was in his possession while you were trying to effectuate an arrest, and because the suspicious nature of its being thrown implies that it may contain evidence of the robbery or a weapon the woman could use.

Several other people are in the apartment. You may frisk them if you believe that to be necessary for your own protection, even though you lack probable cause to arrest them.

(4) Without a search warrant, you are admitted to an apartment to execute an arrest warrant for Carl Smith for possession and sale of heroin. You may search the suspect for weapons, heroin, money, or other evidence of the crime for which the arrest is made. The moment of arrest is the short period of time during which you are securing physical control over the arrestee. If the arrestee is standing next to a table when you handcuff him, you may search that table, including unlocked drawers, where he could reach for weapons or the evidence of heroin possession and sale. However, if you search a desk across the room from Smith, or other rooms of the apartment, for evidence of heroin possession or sale or for weapons, any evidence discovered would not be admissible against Smith at trial, because it was not within his reach at the moment of arrest.

308. Protective Sweep for Persons on Private Premises

When you arrest a suspect on private premises, and you have probable cause to believe that evidence relating to the offense for which the arrest has been made is on the premises but not within reach of the arrestee, and, in your experience as a police officer, you reasonably suspect that there are other persons on the premises who might harm you or who might conceal or destroy the evidence while a search warrant is being obtained, you may make a protective sweep of the premises in order to discover such persons: This protective sweep is *not* a search for evidence or weapons, although you may frisk any persons found for weapons to ensure your own safety. You also may restrict their movements. (See Section 309, "Freezing the Scene.") In addition, if you accidentally discover evidence of another crime in plain view while making your protective sweep, that evidence may be seized and used in court.

EXAMPLES:

(1) At 5:00 p.m., a reliable informant tells you that Gordon Coles told him that part of a cache of stolen guns will be moved in half an hour from Coles' apartment at 21 Wellington Street, Apartment 6. He tells you they will be moved in a 1967 blue Chevrolet van. You inform your superior, call for a backup car and go to 21 Wellington Street where you observe a man you know as Gordon Coles carry a suitcase to the van. He sees you and turns back into the apartment building. Leaving one backup officer to guard the van and to radio for more help, you, your partner, and the third officer run after Coles and enter apartment 6 on his heels. You follow Coles into the living room where you arrest him and another man. You seize two .38 automatics in plain view on a coffee table. While the third officer secures the two men, you and your partner undertake a protective sweep. Neither of you find anyone. In the bedroom, you see a closed wooden box that could contain rifles and you see two new color television sets that are not plugged in. You ask your partner to guard the bedroom, knowing that a search warrant for the guns should be sought before the box is opened. Because the TV's are in plain view, you may inspect them for serial or identiguard numbers. You may lift the TV's to find the numbers, but you should not move them from their places. If, for example, you carried them to a phone so you could read the numbers to a fellow officer, that movement would be a seizure without probable cause and the TV's would not be admissible at a trial. If, after making appropriate inquiries to determine whether the TV's are stolen, you do locate the rightful owner who declares they were stolen, or if the numbers appear on a hot sheet, you may seize them. It is preferable, though, to include them in your search warrant affidavit along with the guns.

A protective sweep of private premises may be made to discover persons who might be dangerous to you or who might destroy evidence

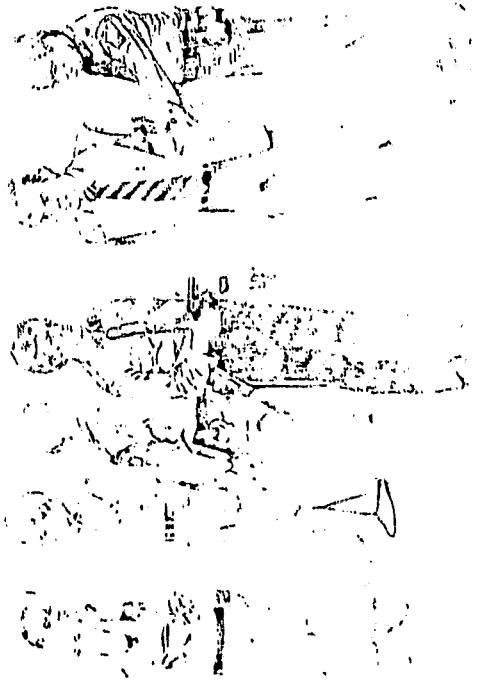
After obtaining the warrant, you may search all rooms of the apartment for guns (and for more stolen TV's). You may seize the stolen TV's as well as any guns which you have probable cause to believe are illegally possessed.

If, while trying to obtain the warrant for the guns and the TV's, you are unable to quickly find information giving you probable cause to believe that the TV's are stolen, you should not delay obtaining and executing the search warrant for the guns, even though it means you cannot seize the TV's. The danger is that if you freeze the apartment for too long, the court will find the freeze to be an unreasonable "seizure" of the apartment and refuse to admit into trial any evidence you obtain as a result of the freeze.

(2) You receive a call that individuals have entered a home where the occupants are on vacation. You enter and find two men in the house with burglary tools. You arrest them. You may search them and the area within their immediate reach. You may sweep through the house to make certain that no other intruders are present and to discover the mode of entry (for example, a window). You should consider awaiting the return of the owners or contacting them to obtain their permission to search the house for evidence of the break-in. If the owners are going to be gone longer than you can delay your investigation, you should try to obtain a search warrant.

309. Freezing the Scene on Private Premises

When you arrest a suspect on private premises and you reasonably suspect that other persons, who are already on the premises or who later arrive and have a right to enter, might



Persons on private premises where an arrest is made may be asked to remain where they are to protect yourself and to make sure they do not destroy evidence that you hope to discover as soon as a search warrant arrives.

destroy or conceal evidence of the offense for which the arrest was made or present a threat to your safety, you may instruct these persons that they must either leave or not enter the premises, or must permit an officer to remain with them on the premises while the search warrant is being obtained. If those persons insist on staying, you may restrict their movement and frisk them for weapons.

While the search warrant is being obtained, you may deny access to the premises to any person who does not own the premises or reside there.

If your instructions are not followed (for example, if an individual insists on going into other rooms), you may then search areas of the premises where individuals insist on going, if you reasonably suspect that you may find in that area weapons or destructible evidence of the crime for which the arrest was made. The search need not take place in the presence of the arrested person, but, if possible, you should ensure that a third party does observe your search and you should record on your incident report who that person is.

EXAMPLE:

(1) Following a hot pursuit, you make a valid arrest for possession and sale of heroin. You may look briefly through the house in which the arrest was made for the purpose of discovering other people. (See Section 308, "Protective Sweep for Persons".) This is not a search for evidence. If other people are discovered, and you believe that they may pose a threat to your safety or to the safety of evidence relating to the possession and sale of heroin, you may instruct those people that they must leave the premises while a search warrant is being obtained, or they must permit an officer to remain in the house with

them. They may be frisked for weapons. Likewise, you may deny access to the house to anyone who does not live there or own the premises. If someone with a right of entry insists on entering the premises, such as the husband or wife of the suspect, that person must let you accompany him/her and you may conduct a search for evidence or weapons without warrant in places where that person insists on going. For example, if the person wishes to use the bathroom and evidence of the arrest crime or a weapon could be concealed there, you may search the bathroom for such evidence or a weapon without a warrant before permitting the person to use the facilities. You may seize any weapons and any evidence of the arrest offense. However, these items must come into plain view while you are searching places where a weapon or arrest offense evidence could have been concealed.

310. Limited Emergency Search for Destructible Evidence on Private Premises

If you have probable cause to believe that evidence relating to the crime for which the arrest has been or is just about to be made, is on premises where the suspect or others have an expectation of privacy and if, in your experience as a police officer, you have reason to believe that the evidence is in ***immediate*** danger of destruction, you may then immediately search for and seize such evidence in order to prevent its destruction. This applies to destruction of evidence only, and not to mere concealment. Destructibility should be evaluated according to the nature of the evidence, e.g., drugs.

Once the ***immediate*** danger has passed, the search should be stopped until you have a search warrant.

EXAMPLE:

(1) You receive information that gives you probable cause to arrest Curtis Stakes for the felony of possessing false lottery tickets with intent to sell them. You go to his apartment, are admitted, and arrest Stakes. At the same time, you observe a woman emerge from a back room holding what appear to be packets of lottery tickets. She sees you, runs back in the room, and shuts the door. You may forcibly enter and search that room for lottery tickets to prevent their destruction. This search should be stopped if no tickets are discovered quickly, and the scene should be frozen and a search warrant sought.

311. Search of Areas Where Arrestee Has No Expectation of Privacy

When you arrest a person in any place open to the public or to a substantial segment of the public, you may search any place where you reasonably suspect the suspect has discarded or concealed any weapon or evidence, whether or not it is evidence of the arrest crime. You may seize any weapon or evidence you find whether or not the evidence is related to the crime for which the arrest was made. When a suspect works in the public area, there may, however, still be places where his expectation of privacy would require a search warrant; thus, in this situation a warrantless search should be made only in places within his reach at the time of arrest and in the remaining public places where he has no reasonable expectation of privacy.

EXAMPLES:

(1) After responding to an armed robbery call, you find that an officer who arrived earlier has been

shot. Witnesses say they saw the suspect run into a movie theater. On apprehending the suspect inside the theater, you may search any place where the suspect might have concealed evidence or weapons.

(2) Warren Cabot shines shoes in the vestibule of the men's room in a large business building. You have a warrant to arrest him for illegal possession of a firearm. When you arrest him there, you may search the area within his reach at the time of the arrest and you may search the men's room and the public areas of the vestibule for the gun, other weapons, or evidence of any other crime. To search any of his shoe shine boxes or his seating and storage area that lie beyond his reach, you should obtain a search warrant.

312. Pre-Lockup Inventory: Purposes

When an arrestee is to be incarcerated prior to the setting of bail or arraignment, an inventory of the arrestee's person and possessions should be made. An inventory has two purposes:

1. It is a search of the arrestee's person to remove potential weapons, other harmful items, and contraband that otherwise would be taken into the lockup, in order to prevent escape and to protect the arrestee and others. This purpose is accomplished by removal of such items from the arrestee's control.
2. It is a form of property safekeeping. It protects the arrestee's property from loss, theft, or destruction; and it protects police officers from later claims of civil liability based on allegations of loss, theft, or destruction of the arrestee's property. These purposes are accomplished by:

a. listing the arrestee's property on the booking form; and

b. sealing or tagging the property or sealing it in a property envelope.

If you have not completed your search incident to arrest while on the street, you may continue the search in the stationhouse for the purpose of finding evidence of the arrest crime or weapons. Any further stationhouse search of the person or his possessions should be part of your inspection for the purposes of pre-lockup inventory.

EXAMPLES:

(1) You arrest Manny R. for possession of a stolen diamond necklace. You pat down the arrestee on the street and plan to make a more thorough search incident to arrest at the stationhouse. During your stationhouse search, you find an aluminum tin wrapped with tape. Manny asks you not to open it because it contains 100 feet of unexposed 35 mm. film. You continue your search of Manny's person and find the necklace. Your search incident to arrest is complete. You do not need to open the tin in search of evidence or weapons. Nor should you open it as part of the inventory procedure. Inspection of the contents of the tin would be unnecessary because it presents no weapon threat and the item can be kept safely without inspection in a property envelope.

(2) While driving in your patrol car, you observe a car go through a red light. You pull the car over. The driver is unable to provide a license or registration, but the car has not been reported stolen. You arrest the

driver. You pat him down for weapons, find none, and take him back to the stationhouse. At the station, there would be no purpose in searching the contents of the driver's pockets incident to arrest because there is no physical evidence of the arrest crime that you could discover and you know he has no weapons there. However, you could remove the items from his pockets as part of the inventory procedure.

313. Pre-Lockup Inventory: Seizure of Items Inventoried

You may seize without a search warrant any item that comes into plain view during an inventory if you have probable cause to believe that the item is:

1. contraband,

2. fruits of a crime,

3. an instrumentality used in a crime, or

4. evidence of any crime.

You should list any item that comes into plain view during an inventory if you have only reason to suspect, but not probable cause to believe, that the item is contraband, evidence, fruits, or instrumentalities of any crime. Without seizing it, you may use the item as a basis for further investigation. You may write down information about the item (for example, serial numbers, description) and use that information to develop the probable cause you need to obtain a search warrant. Once the item is in a property envelope or is stored, you should obtain a search warrant before seizing it because the item is no longer in plain view and the suspect retains a privacy interest in his possessions even though they are held by the police.

If you seize an item without a warrant during an inventory, you should describe the item seized in the narrative of the incident report. This record will support any later court testimony about the seized item.

EXAMPLES:

(1) You arrest a man for a jewelry store robbery which occurred the previous day. During the inventory, he places what appears to be a safety deposit key on the table. Your suspicion aroused, you record the identifying characteristics of the key and inventory it. Upon investigation, you learn that he had rented the box early that morning. You should get a search warrant before seizing the key from the property envelope, as well as a warrant to use the key to open the box.

(2) You have arrested a woman for prostitution and have completed your search incident to arrest. Because she will be incarcerated awaiting the setting of bail, you undertake an inventory. As you and the policewoman were not concerned that the arrestee could reach any weapons or destroy any evidence of prostitution in her boots or the hem of her dress during the arrest period, the policewoman did not search those places incident to arrest. You both are concerned, however, that there may be small concealable weapons or contraband in the boots or the hem that the arrestee could use in the cell. As part of your preincarceration inventory, the boots and hem may be searched. A packet of narcotics is found in a boot. It may be seized and introduced in evidence on a possession charge. That seizure should be recorded in the incident report.

You move on to the arrestee's pocketbook. As she will not be taking that into the cell, your concern is safeguarding her property. You ask her if she would prefer that you not inventory the contents and tell her that, if she prefers, it will be sealed. (See Pre-lockup Inventory: Inventory of Suspect's Person, Section 314). If you don't seal it, you proceed in her presence to take each item from the purse and record it on the inventory form. You indicate which procedure was taken on the booking sheet.

Your inventory turns up a pawn ticket for a 17" Zenith Color TV set serial number 58527. You may use the information you record on the booking sheet or other sheet as a basis for an investigation. The following day, a check of the stolen property list shows the TV to be stolen. You now should obtain a search warrant to seize the pawn ticket from the property envelope, and use it as evidence of constructive possession on a receiving stolen goods charge.

You find a clear plastic container filled with pills. If you or another narcotics expert have probable cause to believe the pills are a controlled substance, you may seize them, have them tested or identified, and if contraband, used as evidence in a possession charge. If such probable cause is not present, you simply note the item on the inventory and seal it with the rest of the arrestee's belongings.

314. Pre-Lockup Inventory: Inventory of the Arrestee's Person

All carryable items such as coats, packages, suitcases, purses, briefcases, and knapsacks should be removed from the arrestee's control. You may remove all items from the arrestee's pockets and place them on the booking desk. You may remove the arrestee's belt, necktie, shoelaces, or any other item that could be used for self-injury in the lockup.

If you believe the arrestee may assault you, you may use reasonable force to remove the items from his control.

If you did not complete your search of the person incident to arrest at the time and place of arrest, you may continue that search at the stationhouse. The arrest search of the person should be completed before you perform the pre-lockup inventory of the person. Because the purposes of the search incident to arrest and the purposes of a pre-lockup inventory are different, a court may apply different criteria to determine the admissibility of objects seized depending upon whether you were searching incident to arrest or inventorying at the time the object was discovered.

If you feel it is necessary to search any body cavities for pre-lockup safety purposes, you should consult with the department's Legal Advisor.

EXAMPLES:

(1) You arrest a man for driving while intoxicated and driving to endanger. During the inventory search, he places on the table an item you have probable cause to believe is a deck of heroin. You may seize it and charge him with possession.

(2) You are working with a decoy anticrime unit. A well-dressed middle-aged man stops to assist the decoy. The decoy signals that the wallet has been taken, but that no weapon was used. You move in and arrest the man. You seize the wallet from his coat pocket where one of you saw him put it. You spread-eagle him, pat him down, and find no weapons. You put him in your car and take him to the station for booking. He is very contrite, appears a bit tipsy, and gives you his driver's license and a business card indicating that he is a bank teller. You find no rap sheet on him. Because you have already found the evidence and because you have no indication that he is dangerous or carrying weapons, your search incident to arrest is completed and should be recorded on the incident report. Were you to search him further incident to arrest, anything you found would probably be suppressed. Because it is nighttime, you decide the man should be locked up overnight to sleep it off and to await the setting of bail. You are worried about his remorse and stability so you decide it would be wise to remove his belt, necktie, and shoe laces and to search him carefully for any weapons he might use on himself. You should note on the incident report any evidentiary items you had probable cause to seize that came into plain view while you were making a pre-lockup weapons search for security. On the booking sheet you should note any nonseizable items taken from the suspect as part of this inventory.

315. Pre-Lockup Inventory: Property Safekeeping

All items that are taken from the person should be placed on the booking table. The contents of any closed container (for example, a wallet, a purse, knapsack, briefcase, suitcase, shopping bag, or box) may be inspected for inventory recording, but the arrestee should be offered the option of the container being

sealed without inspection. Return of the item as sealed plus a notation on the booking sheet of uninspected sealing along with the suspect's signature should protect you from liability based on allegations of loss, damage, destruction, or theft. If the suspect elects to have the contents inventoried, the items may be removed and recorded on the booking sheet which the suspect should sign. Papers should be listed as "personal papers." Any money you remove should be counted in the arrestee's presence and the amount should be listed on the booking sheet. Although an arrestee may elect to have his or her wallet or purse remain closed, you may look into a wallet, purse, or similar item if there is any question as to the person's correct identity.

Any small items taken should be placed in a property envelope. The envelope should be sealed; and the sealing tape should be signed and dated by the booking officer and the arrestee. Containers too large for property envelopes should be sealed with tape and signed and dated by the booking officer and the arrestee. If clothing taken does not fit into a property envelope, it should be tagged; and the tag should be signed and dated by the booking officer and the arrestee. On the booking sheet, you should record any item that is "sealed, no inspection at arrestee's request."

EXAMPLES:

(1) You arrest a man trying to jimmy the back door of a pawn shop. You seize his tools and search him for weapons. Back at the stationhouse, you determine that the search incident to arrest was completed at the scene of arrest so that the only remaining search would be as part of an inventory. In his wallet, you find $25 in bills, some change, and his driver's license for identification. He says the wallet contains no more money or credit cards, but there are personal papers he would like to remain personal. Because there is no question as to his identity, the wallet should be sealed in a dated and signed property envelope without looking into its contents and the information should be recorded on the booking sheet.

(2) You arrest three men for assault and robbery of a security guard which occurred several hours earlier. You search them for weapons and take them to the police station. You choose not to search the wallet incident to arrest for evidence of the robbery. Before placing them in cells, you make an inventory of their possessions. You place one man's wallet on the table; you see in plain view several dollar bills with blood stains on them protruding from the wallet. You may seize the bills as evidence. The blood stains on the bills, the fact that they were protruding from the wallet, and the arrest for robbery and assault provide sufficient connection between the money and the robbery to provide probable cause for the warrantless seizure of the bills during the inventory. The bills also could have been seized pursuant to a search of the wallet for evidence incident to arrest for robbery.

PART FOUR:
MOTOR VEHICLE SEARCHES

401. Locked Vehicles and Compartments

The guidelines in this section deal with situations in which you may enter and search a motor vehicle. However, many times the area you want to search will be locked.

Whenever your entry is authorized by these guidelines, and it is necessary to open a locked vehicle, a locked glove compartment or a locked trunk for which the keys are not available, you should — unless it is an emergency — obtain authorization from your patrol supervisor. The patrol supervisor should base his decision on whether there is a pressing need for such entry. Some of the factors that should be considered are:

1. entry is necessary to solve or prevent a serious crime as opposed to merely establishing the ownership of a car that may just be left on the street overnight;
2. entry can be made quickly and without damage; and
3. entry is necessary to seize contraband.

Any attempt to gain physical entry into a locked vehicle or compartment should be made without causing damage. When necessary to avoid physical damage and the investigation will allow it, a tow truck should be dispatched to make the entry.

If you have a search warrant authorizing entry of a vehicle, and the vehicle is locked, you may enter the vehicle even though you cannot reach your patrol supervisor to obtain authorization.

Locked suitcases, briefcases, tool boxes and the like may be seized from a vehicle on probable cause without a warrant as

outlined in Section 406 (Probable Cause Vehicle Searches). These locked containers may be opened under the same conditions as set out in the first three paragraphs of this section.

EXAMPLES:

(1) While on patrol you are alerted by radio to be on the lookout for a white 1975 Oldmosbile, Massachusetts registration 54321, from which an off-duty police officer observed what appeared to him to be narcotics sales (he reported seeing money being exchanged for decks of heroin as he walked past on the sidewalk). Ten minutes later you spot the vehicle in traffic. After stopping it and placing the driver under arrest, your search of the vehicle and the driver incident to the arrest turns up no narcotics, but you are unable to open the glove compartment because it is locked and you were unable to find the key to it. You should seek authorization to open the glove compartment from your patrol supervisor.

(2) While on routine patrol about 9:30 a.m., a woman about 38 years old flags your cruiser down. She reports that while passing a gas station she observed two black males moving a gray canvas bag into the trunk of a 1974 yellow Dodge Charger, and that while doing so two handguns fell from the bag. At that time, she stated, the men quickly recovered the weapons, returned them to the bag, locked the trunk, and then departed the scene in an unknown direction. After proceeding to the service station, the mechanic informs you that the vehicle is there for a lube and tune-up, and that the owner will return for it shortly. His description of the men along with the description given by the woman match the description of a pair of men wanted for several armed robberies in your district. While questioning the gas station attendant the patrol supervisor, Sergeant Smith, arrives on the scene. After briefing him on the details of your investigation, he decides to call for the tow truck to open the trunk. He does not need further approval.

402. Motor Vehicles: Plain View

If you are outside a vehicle (for example because you have stopped it and are questioning the driver), anything you happen to observe in, on, or connected to it, including anything you observe with the use of a flashlight, may be used to furnish probable cause to search the vehicle or seize the item observed. Once you have probable cause, you must determine if you can enter the vehicle and seize what you observed without a warrant. For help in making that decision, see Section 406 (Probable Cause Vehicle Searches).

If you are already inside a vehicle (for example because the owner or driver has given his consent or because you are in the process of making an otherwise legal search), you may seize anything which comes into your view, which you have probable cause to believe is contraband, fruits, instrumentalities or evidence of any crime.

EXAMPLES:

(1) On patrol you observe a vehicle parked in front of a fire hydrant. You call for a departmental tow truck, and while the hook is raising the car you observe a brick of marijuana slide out from under the seat. You now have probable cause and may seize the brick without a warrant.

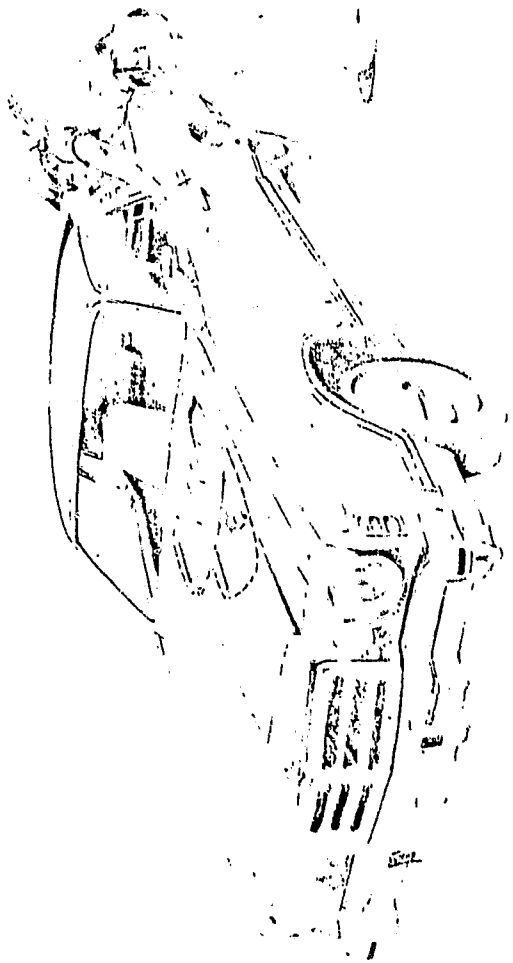
(2) After a vehicle chase you have apprehended a suspect wanted for an armed robbery. The suspect

has been cuffed and is waiting with your partner in the cruiser for the arrival of the wagon. You are searching the suspect's car for weapons, mask and money associated with the robbery. While searching beneath the front seat you come upon an envelope containing glassine bags of heroin. You may seize the heroin without obtaining a warrant even though it is unconnected with the robbery.

(3) While on routine patrol at night you observe a parked car with the license plate wired on. Suspecting that the car might be stolen, you shine the flashlight in the car to see whether the ignition is popped. However, instead of a popped ignition the flashlight illuminates a stereo set lying on the floor below the driver's seat. You may seize the stereo only if you have probable cause to believe it is evidence of a crime. If a later investigation turns up sufficient information to provide probable cause to believe the stereo was stolen, at that point you must decide whether you can seize the stereo immediately or must obtain a warrant as explained in Section 406 (Probable Cause Vehicle Searches).

(4) While placing a parking violation tag under the wiper of a vehicle, you observe what appears to be the edge of a plastic bag partly under the seat. After looking at it for a moment, you see seeds, leaves and twigs giving you probable cause to conclude that it contains marijuana, and possibly a substantial amount of it. You have probable cause to search the car for the purpose of determining whether the bag contains contraband.

(5) While walking a beat in a business district, you happen to see what appears to be a gun barrel



If you are in a position where you otherwise have a right to be, anything you see in plain view — even if you use a flashlight — can be used to provide you with probable cause to search a motor vehicle

partly covered by a sweater lying on the front seat of a parked vehicle. You have probable cause to enter the vehicle. If it is locked you should follow the procedure set out in Section 401 (Locked Vehicles and Compartments).

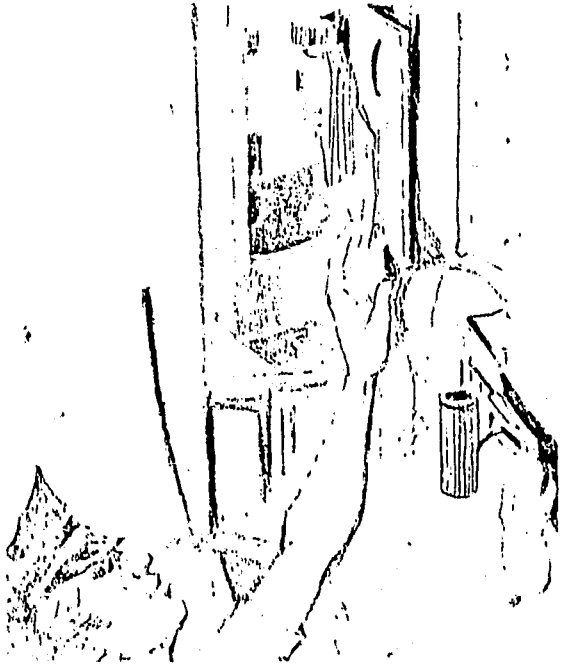
403. Vehicle Identification and Investigation

Whenever you have reason to suspect that a vehicle is stolen (for example, because you can see that the ignition has been popped) or has been involved in the commission of a crime or whenever you have a need to know the identity of the owner of a vehicle to determine whether it has been abandoned or has been the object of crime, you should check the registration number and VIN, if visible from outside the vehicle. NCIC will provide information if the vehicle has been reported stolen or has been involved in a crime. The Registry of Motor Vehicles can supply a listing on the vehicle either from the registration number or VIN.

You may enter the vehicle to ascertain the VIN only if:

1. a check of the registration number fails to produce the information you need; and
2. the vehicle identification number cannot be read from outside the vehicle; and,
3. you believe the VIN is necessary for the investigation of vehicle identification. If the vehicle is locked, you should follow the procedure set out in Section 401 (Locked Vehicles and Compartments).

You should satisfy yourself that you cannot identify the owner from the registration and the VIN before you look further in the passenger compartment. If, however, the registration and VIN check prove unsuccessful and if you have reason to suspect other evidence of vehicle identification may be found on the steering post or visor, you may look for identification in those



If you have to establish the ownership of a motor vehicle, and you can't get any information from the computer by using the registration or VIN, you may look in the glove compartment for evidence of ownership, like gasoline receipts or the registration slip

areas. If these provide no information, and there is still a need to establish the vehicle identification, you may look in the glove compartment for identification. Entry into a glove compartment — locked or unlocked — may be made only as a last resort to establish identification after all other steps have failed, and not as a pretext for a general search. If the glove compartment is locked, you should follow the procedure set out in Section 401 (Locked Vehicles and Compartments).

If you have reason to suspect that a moving vehicle is stolen or being operated without authority, you may stop the vehicle to check its registration.

EXAMPLES:

(1) On routine patrol you observe a late model car being driven by a youth who looks too young to drive. You suspect that the auto has been stolen. According to the last paragraph of Section 403, you may stop the vehicle for investigation. The driver presents a valid Massachusetts driver's license but does not produce the registration certificate. He explains that a friend lent him the car, but cannot give the friend's address or telephone number. The dispatcher reports that NCIC does not list the plates as belonging to a stolen vehicle and that the Registry has no listing for them. Now you should have the dispatcher run the VIN through both the Registry of Motor Vehicles and NCIC prior to any physical entry into the vehicle. If nothing is turned up from the VIN, you should ask the driver to check whether the glove compartment contains any evidence of the owner's name and address. If the driver does not comply, you do not need to obtain consent to look into the glove compartment, and you may look there for identification.

(2) On patrol you observe an older model vehicle, without plates, parked on a street in a commercial area. The vehicle identification number is not on the dash. You may enter the car to ascertain the number from the door post. You may also check the glove compartment or sun visor for evidence of identification if no information is obtained by use of the VIN.

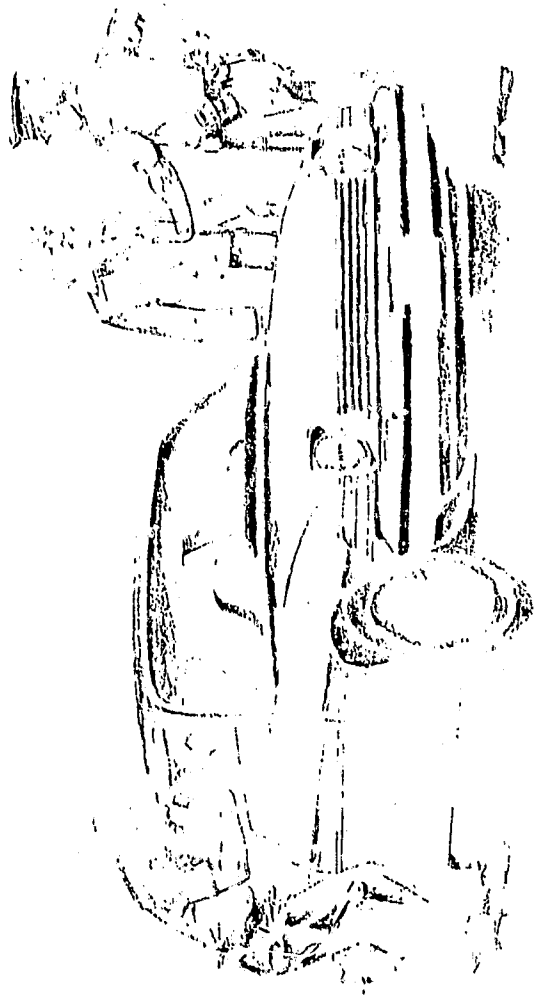
(3) On patrol you observe a late model car without plates parked on a street in a commercial neighborhood. A rag appears to be covering the dash at the place where you expect to find the vehicle identification number. You may enter the vehicle to read the number.

(4) You stop a vehicle for speeding. The driver produces a valid driver's license, but cannot find the registration certificate in his wallet. He states that he has no idea where it may be. You ask the dispatcher to obtain a listing of the registration number. Information relayed back to you shows that the plates belong to the vehicle and the vehicle is registered to the driver. Your vehicle identification inquiry is complete. You may still issue a citation for the traffic violation.

404. Vehicle Stop and Frisk

You may stop any vehicle for investigation whenever you have reason to suspect that the driver has violated a traffic regulation, or that the vehicle or its occupants are, have been, or are about to be involved in a criminal offense. You may not detain the vehicle or its occupants any longer than necessary to ascertain whether a crime or traffic violation has been committed, unless you make an arrest or issue a citation.

Whenever you have stopped a vehicle or whenever you make contact with an occupied vehicle which is not moving, and



If you stop and frisk an occupant of a motor vehicle, and after your frisk you still have a reason to fear for your safety, you may examine for weapons the area of the motor vehicle that the person came from before you let him re-enter.

you have reason to suspect that any occupant of the vehicle is armed, you may require him to leave the vehicle and submit to a frisk for weapons. You should notify the dispatcher that you've stopped a car, according to the procedure set out in Special Order Number 75-141.

Even after frisking the occupant, you might still have reason to suspect that he could present a danger to you. If so, before allowing him to re-enter the vehicle, you may inspect those parts of the car which he can reach and which could contain weapons that might be used to assault you.

EXAMPLES:

(1) On patrol you observe a youth who appears to be about 14 or 15 years old driving a late model car. Suspecting unauthorized use or driving without a license, you stop the vehicle for a license and registration verification. His actions give you reason to suspect that he may be armed. You may order him out of the car and frisk him for weapons before asking him to produce his driver's license and vehicle registration certificate. After the frisk he produces a valid license and registration, but still seems angry. Before you let him back in the car, you may also examine any area of the car within his reach which could contain a weapon which might be used to assault you. These areas include an unlocked glove compartment, console between bucket seats, above the sun visors, beneath the seat, under clothing, paper, or other things on the seat. You may also inspect containers such as bags, purses, packages, or briefcases that will be within his reach and may contain a weapon and be readily opened. If you can determine whether a container, such as a paper bag, has a weapon inside by feeling it without opening it, you should do so. You may not go

into an area like the trunk, since it is not readily accessible, unless the detainee attempts to open it in such a manner that you have reason to suspect that he might be seeking a weapon.

(2) On patrol you observe a vehicle approaching with no front license plate. You turn around and pull the vehicle over. The driver is unable to produce the registration certificate. He says that he must have left it in another coat. You call in the registration number and VIN. NCIC does not report the vehicle stolen. You ask for a listing from the Registry. However, the Registry computer is out of order. You are informed through the dispatcher that the computer should be functioning in about ten minutes. You may detain the suspect for at least this period of time since it is a reasonably short period of time and is necessary to pursue the investigation. However, if you cannot determine when the computer will be functional again, further detention is unreasonable, and the suspect must be released. You may, however, still issue a citation.

405. Search Incident to Arrest

In general, Massachusetts law allows you to make a search of any arrestee and of the area within his reach for weapons, whether or not the crime for which the arrest is made is one for which there is evidence. Once you have made an arrest, your power to search is broader than under the general power of stop and frisk discussed in Section 404. Part A. below is your guideline for this aspect of the search incident to arrest. In addition to this weapons search, whenever you have probable cause to make an arrest for a crime with which evidence is associated, you will generally have probable cause to search the vehicle for this evidence. When this occurs both parts A. and B. of this section apply.

A. Weapons Search in Any Arrest

1. Whenever you arrest a suspect who is in a vehicle, you should search his person and clothing to the extent necessary to ensure safety for yourself and others while transporting the arrestee to the station.
2. You may order other occupants out of the vehicle to be frisked for weapons if you have reason to suspect that they might be carrying dangerous weapons; and if your suspicion continues after the frisk, you may assure yourself that the area of the car from which the occupants left does not contain weapons that might be used to assault you before you allow them to re-enter the vehicle.
3. Incident to arrest, you may search for weapons in the immediate area of the vehicle from which the arrestee was removed.

B. Arrest for Crime Associated with Evidence

1. Whenever you have probable cause to believe that the vehicle contains evidence of the crime for which the arrest is made, part A. above is your guide for any weapons search, and Section 406 (Probable Cause Vehicle Searches) is your guideline for searching the vehicle for evidence.
2. You may order any occupant not under arrest out of the vehicle to facilitate the vehicle search.
3. If you have probable cause to believe that the arrestee is concealing on his person or in his clothing evidence of the crime for which the arrest is made, you may search those parts of his person and clothing which may conceal the evidence sought.

C. Vehicle Disposition. If no search of the vehicle is made or if the search is completed, you should dispose of the vehicle as follows (in order of preference):

1. you should leave it with a person having apparent authority to assume control of it; or
2. you should park it legally, close the windows, lock it if possible and attempt to notify the registered owner; or
3. you should leave it at the side of the road, windows closed and locked if possible, if traffic is not obstructed and arrangements can be made for its removal without undue delay; or
4. you should have it towed to the tow lot for storage.

You should note the disposition of the vehicle in the Incident Report.

EXAMPLES:

(1) On routine patrol you observe an automobile driving erratically along Columbus Avenue. After observing the vehicle run a red light, you stop the vehicle. It is driven by a teenaged youth. Four others are in the car with him. When the driver is unable to produce a valid license, you order him out of the car and place him under arrest. Your pat-down for weapons uncovers a pocket knife. The other occupants of the car are acting hostilely, and you suspect they may be carrying dangerous weapons. You may order the other occupants out of the car and frisk them for weapons which might be used in assaulting you. However, since there is no other evidence associated with the crime (no license) for which the driver was arrested, your search of the vehicle and other occupants must be

limited to places where you reasonably expect to find weapons that they could reach and assault you with. For example, while you probably do not have reason to suspect that any weapons in the trunk could be used to assault you, an unlocked glove compartment is accessible and could contain such weapons.

(2) You were alerted at roll-call to be on the lookout for a blue 1973 Pontiac driven by a white male, 5'7", 160 lbs., blond hair, wearing a gray raincoat, who was observed leaving the scene of an armed robbery in your district in the late afternoon. While on patrol you observe an automobile corresponding to this description being driven by a white male with blond hair. You stop the suspect for investigation. You look in the car with a flashlight and see what appears to be a gray raincoat on the floor of the back seat. You now have probable cause to arrest the suspect and, incident to the arrest, to search him and his car for weapons and for evidence of the armed robbery.

(3) You have been asked to be on the lookout for a white male wearing glasses who knocked down a police officer who was issuing parking tags. He is wanted on a charge of assault and battery with a dangerous weapon: an automobile. The assailant was seen leaving the scene driving a late model blue car, registration number 8704. Later on patrol you spot that vehicle being driven by a man corresponding to the description. You stop the vehicle, order the driver out, and place him under arrest. Since there is no evidence connected with this crime other than the car itself, your search is limited to a search of the arrestee's person for weapons, a search for weapons in the immediate area of the car from which he was removed, and an examination of the exterior of the vehicle for evidence of the collision with the officer.

(4) A reliable informant has given you information that a certain person is selling cocaine from his automobile. Your own observations confirm what appears to be a narcotics sale. An hour later you stop the car, order the driver out, place him under arrest, and search him for weapons. You should also search his person for narcotics. Since cocaine is kept in packets and may be concealed in the car, you may search the car thoroughly on the spot for them or have it towed for later searching.

(5) You have just stopped a vehicle to investigate whether it is stolen. You observe that the ignition switch is popped. NCIC reports that the vehicle has not been reported stolen, and the Registry is unable to provide a listing. The driver does not have the registration, and cannot give a satisfactory account for how he got the vehicle. You place the driver under arrest for operating the vehicle without authority. You may search the vehicle for evidence of the crime such as a dent puller or for evidence of ownership.

406. Probable Cause Vehicle Searches

A. In general you do not need a warrant to stop and search a vehicle capable of being moved when you have probable cause to believe that evidence of crime is contained within it. A search permitted by this guideline may be conducted whether or not an arrest or search incident to arrest has been made, so long as you have probable cause to search. This is because the mobility and accessibility of the vehicle raise the possibility that the vehicle will not be there or the evidence in it will be destroyed or removed before you can return with a warrant.

B. When probable cause does exist, the following are some circumstances which make seeking a warrant to search a vehicle unnecessary:

1. the vehicle is moving;
2. the vehicle has recently been moving;
3. you have reason to believe that persons known or unknown may move the vehicle;
4. the possibility exists that an alerted criminal will use the vehicle to flee;
5. it is impractical to post a detail to guard the vehicle pending your return with a warrant;
6. the possibility exists that time or the elements might destroy the evidence;
7. it is an emergency situation in which a vehicle must be searched to save life, prevent injury to others, or prevent serious damage to property.

If any one of these circumstances exist, or if any other aspect of the situation makes obtaining a warrant impractical, you may search the vehicle without a warrant.

C. The following are some circumstances which may make it necessary to seek a warrant to search a vehicle:

1. the evidence sought has not been tampered with for a significant length of time and there is no reason to believe it will be while a warrant is being sought;
2. it is necessary to seize the whole vehicle and you know where it may be found;
3. the vehicle is not capable of being moved.

If any one of these circumstances exist and the type of circumstances described in Section B. above are absent, you should obtain a warrant to search the vehicle.

D. You may search any part of the vehicle in which the items sought might reasonably be found.

E. You should have the vehicle towed to the district station in order to be searched later if it is impractical to conduct the search immediately at the scene.

F. When the search of a vehicle is completed and it need not be towed for that purpose, you should dispose of the vehicle as follows (in order of preference):

1. you should leave it with a person having apparent authority to assume control of it; or
2. you should park it legally, close the windows, lock it if possible, and attempt to notify the registered owner; or
3. you should leave it at the side of the road, windows closed and locked if possible, if traffic is not obstructed and arrangements can be made for its removal without undue delay; or
4. you should have it towed to the tow lot for storage.

You should note the disposition of the vehicle in the Incident Report.

EXAMPLES:

(1) You have been alerted to be on the lookout for a blue 1969 Chevrolet, Massachusetts registration 128075, which eye-witnesses observed as the getaway car used in an armed robbery of a supermarket in the Fenway. While cruising down Commonwealth Avenue in Allston, you observe the vehicle parked in the lot of another supermarket. You check with the store manager who informs you that everything is in order. You have probable cause to search the vehicle for evidence of the robbery. It is 45 minutes since the robbery and the heat from the engine convinces you that the car has only recently been moving. Since you are searching for evidence such as mask, gun and loot, you may search anywhere in the passenger compartment, glove compartment, or trunk.

(2) On patrol you are flagged down by a local merchant whom you know. He informs you that he has just seen a man carrying a sawed-off shotgun enter a vehicle and drive off. He describes both the man and the car to you. He agrees to accompany you as you cruise the neighborhood to help you spot the car and driver. Ten minutes later you see the car parked and unoccupied. As you approach the car the merchant notices the man coming down the sidewalk. You see him turn and flee. He did not appear to be carrying the gun. You have probable cause to search the car without a warrant. You may search under the seats, under any items on the seats or floor, or in the trunk. However, you may not search the glove compartment for the gun since it is too large to fit inside. If you found the gun under the seat, you would then have probable cause to look in the glove compartment for implements such as ammunition which are related to the gun and which may provide a basis for additional criminal charges or additional evidence on the gun charge.

If you have probable cause to search a vehicle, and if the vehicle is moveable, you may conduct your search without a warrant, on the street if necessary. If the vehicle is locked, you may call a department tow truck to open it. You may search in any area of the vehicle that the object may be hidden

(3) You were informed by a reliable informant that a known narcotics dealer was observed near Blackstone Park on several occasions during the past month taking small quantities of a white powder in glassine bags from the trunk of his car and exchanging them for money. A short time after receiving the information, you see the dealer in his car approaching Blackstone Park at night. You now have probable cause to believe there are drugs in his car, and you may search it. You do not need a warrant because the vehicle might still be moved or the narcotics removed from it.

(4) You have reason to believe that a particular automobile was driven by an associate of a prominent labor union personality who is suspected of complicity in the latter's unexplained disappearance. Visual inspection of the vehicle reveals what appear to be blood stains on the back seat of the car. The vehicle is owned by and is under the control of a third party who is not a potential suspect, and who therefore would not be expected to destroy the evidence. You desire to search the car thoroughly and test the blood stains in the laboratory. You should obtain a warrant for the search. .

(5) You are responding to a complaint of a marital dispute. The woman who opened the door appears to be badly bruised about the face and tells you that her husband, from whom she has recently separated and who has been drinking, threatened to kill her. She informs you that the husband keeps a pistol in the glove compartment of his car. She walks to the window and points the car out to you on the street below. She does not have the keys to the car. She further says that her husband might have gone to one of several

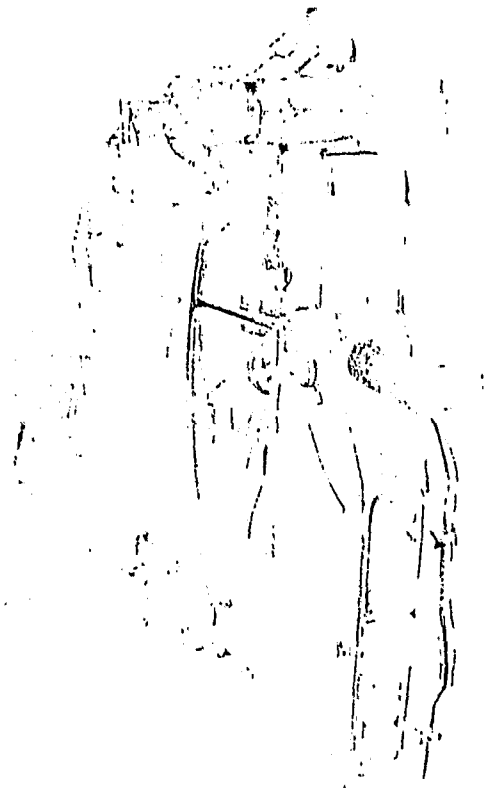
CONTINUED

7 OF 9

bars in the neighborhood. She is afraid that he is going to drink himself into a rage and come after her with the gun. You may search the car for the gun without obtaining a warrant.

407. Vehicle Inventories

Whenever you are securing a vehicle on the street (for example a vehicle involved in an accident or one which a person you arrested was driving) and you discover valuable personal property in it, you should ask the person who owns the property what he wants done with it. If the person who owns the property is not available, you should remove it from the vehicle and turn it over to the duty supervisor when filling out your report on the incident. In this case, you should leave written notification in the vehicle describing what property was removed and where and when it may be claimed.



When you secure a car on the street, you should remove any valuables from it and leave a note that the owner may claim them from the station.

PART FIVE:
CONSENT SEARCHES

501. Consent Searches

Consent to search an area — whether the area is in a building, on privately owned land or in a motor vehicle — is unnecessary when a search is authorized under any other guideline. Consent should be used only as a last resort because it is often subject to question after the fact. If you have sufficient probable cause to get a search warrant, it is preferable to make the search under a warrant rather than base it on consent.

You may search a vehicle without a warrant if you have obtained the voluntary consent of (in order of preference):

1. the registered owner; or
2. a person whom you have reason to believe is authorized by the registered owner to use the vehicle (for example a family member in possession of the keys); or
3. the driver.

A person's consent is not valid if it is obtained in the presence of an individual who objects to the search and wh is granted a higher priority in the above list of preferences. That is, a consent from the driver is no good if objection is raised by the registered owner sitting in the back seat. On the other hand, the registered owner could validly consent to a search of the vehicle even if the non-owner driver objects.

Generally, if the area to which you wish to obtain consent to search is in a building or on private land, you must obtain consent from whomever has control over that area. More specifically, you can obtain consent from:

1. the homeowner to search the home;
2. the homeowner's spouse to search the home;
3. a parent to search a minor child's room;
4. a high school official to search a high school student's locker;
5. a roommate (co-tenant) to search an apartment or a dorm room; or
6. a hotel clerk to search a room with no registered guest.

On the other hand, you will be unable to obtain a valid consent from:

1. a landlord to search a tenant's apartment;
2. a parent to search an adult child's room;
3. a college official to search a dorm room;
4. a roommate (co-tenant) to search an apartment or dorm room if it is at all possible to ask the suspected roommate (co-tenant) for permission to search;
5. a hotel clerk to search a room occupied by a guest; or
6. an employer to search an area, such as a desk or locker, over which the employee is granted exclusive control.

In order to help present the strongest case if the voluntary nature of the consent is challenged, you should tell the person from whom consent is sought that incriminating evidence found in the search may be used against him and that he has a right to

withhold consent. Some factors which may be used to attack the voluntary nature of the consent are:

1. the youth of the person;
2. his lack of education or fluency in English;
3. his lack of even average intelligence;
4. his length of detention;
5. repeated or prolonged questioning;
6. physical or mental stress; and
7. his lack of knowledge of the consequences of consent and the right to withhold consent.

You should obtain consent in writing, if possible, whenever the person from whom the consent is sought is a suspect or is under arrest. Each duty supervisor should have available a supply of consent forms similar to the one that follows.

CONSENT FORM

I consent to a search by officers of the Boston Police Department of _____
(specify place, vehicle or object and parts thereof to be searched including address, registration number, vehicle identification number, etc.)

for evidence related to the crime(s) of _____

I am giving this consent voluntarily with the knowledge that evidence of crime found may be used against me in criminal proceedings and that I have the right to refuse to give this consent.

_____ _____
date signature of consenting party

_____
witness to signature

EXAMPLES:

(1) At about 1:15 a.m. you are alerted by radio to be on the lookout for a white male about 18 years old, 6 feet tall, 170 lbs., dark hair, wearing a tan leather jacket and dungarees who was seen placing a television set in the trunk of a light blue late model car at the scene of a house break. On routine patrol about 30 minutes later you stop a vehicle answering the description driven by a white male with similar physical characteristics, but whose clothing does not match the description. You desire to search the trunk of the vehicle but you do not have probable cause. You may search the vehicle in this situation only with consent of the driver or owner of the vehicle.

(2) The same fact situation as in Example (1) above except that while inspecting the driver's license and registration you notice a tan leather jacket and a pair of dungarees rolled up on the back seat. You now have probable cause to arrest the driver and search the trunk for the television. You do not need to obtain consent or a warrant for this search.

(3) You respond to a radio call to investigate an attempted auto theft. When you arrive at the scene, the owner of the vehicle shows it to you. The auto had apparently been entered and an attempt made to pop the ignition while it was parked in a lot behind the owner's apartment building. You ask for the consent of the owner to search the vehicle for evidence. Oral consent is sufficient.

(4) On routine patrol, at about 2:40 a.m., you stop an automobile observed to have one headlight and the license plate light burnt out. Six men are in the car.

Only passenger Jones is able to produce a driver's license, but he also has the registration for the vehicle which belongs to his brother. The others produce no identification at all. You have a feeling that these people have been involved in criminal activity and you desire to search the car. Since you lack probable cause, and since the only arrest you can make is on the traffic charges you may lodge against the driver, if you want to search the vehicle you should obtain consent from Jones. In order to protect yourself, however, you may frisk any of the occupants you have reason to believe have weapons and may use them to assault you, and areas of the car from which they could easily take weapons.

(5) While in the course of an investigation of a series of armed robberies, you go to a suspect's house to question him. He is not home, but his wife is. You ask her if it is all right to search her husband's bedroom. The wife's oral consent is sufficient. The wife also tells you that if you want, you may go ahead and search the room she rents out to a boarder. You cannot use the wife's consent to search the boarder's room, but must ask the boarder himself.

PART SIX:
STOP AND FRISK

601. Definition of a Stop

A stop occurs whenever you use your authority to temporarily detain a person based on a reasonable suspicion that he has committed, is committing or is about to commit a crime.

Although both an arrest and a stop involve restricting a person's freedom of movement a stop differs from an arrest in several significant ways. First, your knowledge at the time of the stop amounts to reasonable suspicion but not to probable cause. Second, in a stop, your purpose is to investigate or prevent criminal activity, while in an arrest, your purpose is to take the person into custody and charge him with committing a crime. Further, unless a stop produces information establishing probable cause to arrest, the suspect's detention will be relatively short. It will usually take place at the location of the stop, while in an arrest, you will detain the person for a longer period of time and take him to the station to be booked.

EXAMPLE:

You are dispatched to the scene of an automobile accident. When you arrive, you see two vehicles that appear to have been involved in a collision. On the front seat of one vehicle, a person is lying unconscious. The windshield of the other car is broken, and the vehicle is unattended.

While your partner calls for an ambulance and attends to the injured person, you approach a small group of people standing on the sidewalk. You ask these bystanders whether they have any information about the accident. You

learn that no one saw a crash or any person leaving a vehicle. They were attracted by the sound of the crash. You do not view any of these people as suspects in a possible moving violation or battery offense, nor are you restricting the liberty of any person in this group. Therefore, you have not "stopped" any of these people. However, one of the bystanders tells you he believes the man sitting under a tree was at fault. He is rubbing his head with his hands. He is pointed out to you, is near the accident, separated from the crowd, and appears to be shaken up. You believe, based on these facts, he may somehow be involved in the accident, perhaps as the driver of the car with the broken windshield. When you approach this person, to investigate his possible involvement in criminal activity, he is a suspect and is not free to leave. Therefore, you are engaged in a stop.

602. Purposes of a Stop

In general, your purpose in stopping a person is to momentarily detain him so you can investigate his connection with a past crime or with present criminal activity, or so you can prevent his involvement in criminal activity in the immediate future. More specifically, your purposes in exercising your power to stop include:

1. to establish probable cause to arrest through questioning of the person and information from other sources (e.g., NCIC, witness, other officers) about his connection with a crime;

2. to gather information about the person that, while not establishing probable cause at the moment, may help create probable cause for a later arrest with or without a warrant;

3. to gather information that will enable a civilian to file a complaint for non-arrest misdemeanors;

4. to determine whether or not a crime has been committed to which you can link the person's suspicious actions;

5. to prevent the commission of a crime; and

6. to remove your suspicions about the person.

EXAMPLES:

(1) At roll call, you are told that a number of reports have come into the District over the past two weeks from parents who are concerned about their children's safety in the Public Garden and the Common. They report that a pudgy, white, middle-aged man, of medium height with longish brown hair wearing denim and sometimes riding a ten-speed bike, has been approaching their children and asking if he can play with them. There is no indication that the man has molested or criminally assaulted any children, but the parents are worried about the possibility. In the Common, you see a man of this description seated on a bike leaning over talking to two children. Because of the combination of time, place, description, action, and the serious nature of the crime, you may stop the man for a brief investigation.

(2) A merchant comes out of his store, spots you, and runs over to you saying: "That woman just took a necklace without paying." Although you do not have the authority to arrest the woman for this alleged misdemeanor not committed in your presence, you may stop the woman for a threshold inquiry. You ask her her name and address and then furnish that information to the merchant. He, in turn, may use that information to file a complaint against the woman. Should the woman refuse to answer your questions or give inadequate answers, you should not detain her further.

(3) You receive a crime analysis bulletin about C.B. radio thefts from vehicles in your district. The bulletin describes the approximate times, general area of thefts, and suspected method of entry: dent puller.

On a clear day, several days after you receive this information, you are patrolling in the vicinity of the incidents during the time period described in the bulletin. You see a white male whom you do not recognize walking on Medford Street, supporting a heavy object under his coat. You suspect it may be a dent puller. You get out of your car and ask him to approach you. As he does, he pulls the coat tighter about him. Your stop is justified by your prior knowledge and your observations. Your purposes in stopping the person are to prevent a crime, to investigate the possibility of possession of burglarious implements and to clear up your suspicions of the person.

603. Authority to Stop

By statute (M.G.L. Ch. 41 section 98) Massachusetts authorizes police officers to stop, detain, frisk, and engage in a threshold inquiry any person reasonably suspected of criminal activity who is "abroad." This includes the authority to stop automobiles whenever you have reason to suspect that the driver is violating a traffic regulation, or that the vehicle or its occupants have been, are, or are about to be involved in a criminal offense.

A command or a request that a suspect stop, halt, approach you or your car, or remain where he is so you can approach him is a "seizure" of the suspect's person and must be "reasonable" under the Fourth Amendment. This power under the Fourth Amendment of the United States Constitution applies to persons who are not abroad as well as those who are in public. Therefore, you have the authority to exercise your stop power in any place you have a right to be. Such places include areas open to the public and private premises you have entered with a search or arrest warrant, with proper consent or invitation, or because of emergency or exigent circumstances.

EXAMPLES:

(1) You are dispatched to a garage where a silent alarm has been triggered. As you go into the back yard to check for an open door or window, you encounter a middle-aged man dressed in dirty clothes. Because you are legitimately on private premises in response to the alarm, you may stop that person for questioning.

(2) You and your partner are executing a search warrant for stolen radio components. While you are in the apartment, a woman comes out of the kitchen. Because you are properly on private premises, you may stop her for a threshold inquiry directed to the search warrant purpose. You detain her for the short period necessary to complete your inquiry. Your suspicions of her remain. Therefore, you continue to detain her, without her consent, for a reasonable period of time, on suspicion of receiving stolen goods, while you make your search. Once, however, your suspicions about her are lifted or it looks as though your search is making her detention unreasonably long, you should permit her to leave.

604. Exercising Your Authority

A. Preliminary Considerations

You should only consider exercising your stop power when it is clear to you that a stop is the most appropriate action you can take to discover or prevent criminal activity. You may wish to pursue other avenues of investigation because stopping a person may tip your hand, threaten your safety too greatly, or interfere with other or broader investigations. If you are in plain clothes, alternate investigative means may not only be safer but more productive in developing probable cause to arrest. Whether in uniform or not, you should keep in mind that a premature stop can ruin a good arrest.

B. Supporting Your Stop Decision

When you have a reasonable suspicion that a person has committed a crime, or is involved in criminal activity, or is about to be involved in criminal activity, you may command that person to stop. There is a "reasonable suspicion" that a particular situation exists if a ***reasonable police officer*** (that is, a knowledgeable, trained and cautious officer with good common sense) draws conclusions from facts he has personally observed indicating the persons or vehicle may have been or may be involved in criminal activity and therefore is a proper object of investigation. When your source of information is an anonymous tip or an informant of questionable reliability, you should corroborate or add to the information by your own observations before making the stop.

Justification for the stop may be demanded later. You should be able to state, rather than just "feel," your conclusions, and you must be able to state ***how*** you arrived at those conclusions. You may rely on your experience to support your conclusions; some circumstances may mean very little to the average citizen, but mean something to an experienced police officer. If you have only a hunch that the person committed a crime or is about to be involved in criminal activity, you should use investigatory techniques other than a stop--for example, observation or contact with the turret--to remove your suspicion or to add facts to it so it becomes "reasonable suspicion" before you consider stopping him.

While one fact may be so strong that it alone provides reasonable suspicion, usually you should have two or more facts you can articulate to provide you with suspicions that are reasonable. In general, for present or impending criminal activity, suspicions will arise when the person's behavior or presence is abnormal in the circumstances or fits a pattern you recognize as typical of criminal conduct including preparation to commit a crime in the immediate future. The following are factors that, usually in combination, create reasonable suspicion:

1. the appearance of the person or the vehicle. Does the description fit a person or vehicle wanted for a particular offense? This factor is strongest and may be enough by itself when the description is specific and detailed and the fit is close.

2. the actions of the person or the vehicle. Does the behavior indicate possible criminal conduct? Is the person on foot or in a vehicle lurking in a deserted area? Is he carrying anything that might be connected with a crime?

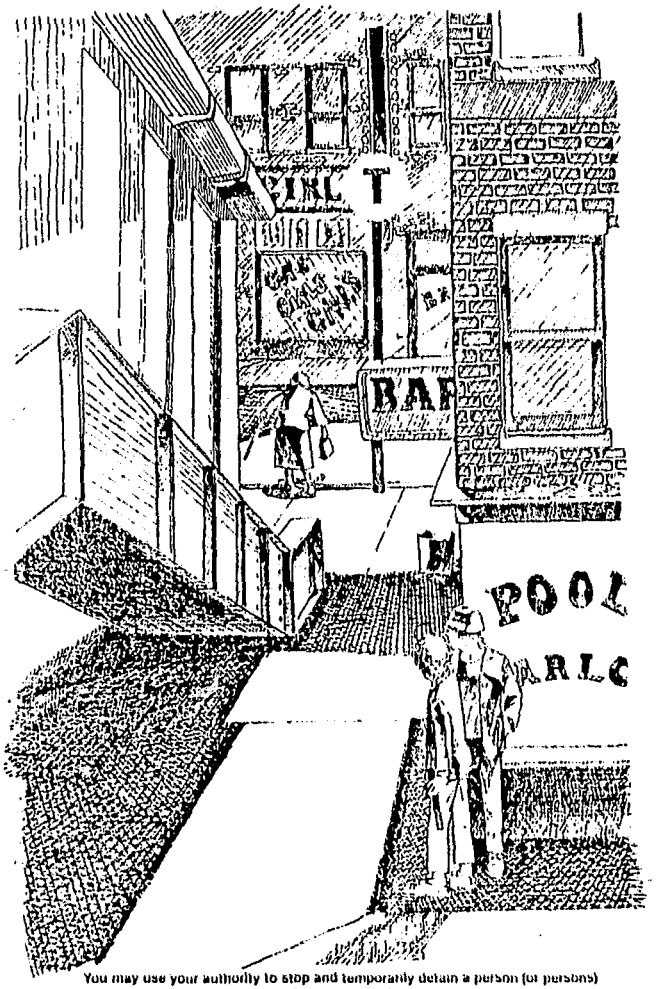
3. area of the stop. Is the person or vehicle near the area of a known offense soon after its commission? Is the immediate area the site of recent activity of the kind you suspect the person is involved in? While the mere fact that the person is in a high crime area is not a sufficient single cause to make the person a suspect, the area plus the person's actions may create reasonable suspicion.

4. time of day. Is it unusual for people or vehicles to be in this area at this time? Is it unusual for people with the suspect's characteristics to be in this area at this time? Note that these questions combine other factors with time of day.

5. knowledge of the person's criminal convictions. Does the person have a prior record of convictions for offenses similar to the one for which you have him under suspicion? This alone is never a reason to stop someone

EXAMPLES:

(1) It is 10:30 p.m. You are in plain clothes in an unmarked car. The area is principally used by businesses. The streets are deserted. You pass by two young men you do not recognize, standing in a store doorway near a subway exit.



You may use your authority to stop and temporarily detain a person (or persons) whom you reasonably suspect has committed, is committing, or is about to commit, a crime.

You know that recently there have been a number of handbag snatches in the area. You suspect the young men may be waiting for a victim. Instead of using your stop power immediately, you stake them out for awhile to see if anything transpires. You observe them for fifteen minutes. You see them looking up and down the street and watching the subway exit. A couple comes out of the subway and the youths confer but do not go toward the couple. You choose, now, to terminate surveillance and exercise your power to stop and detain them for investigative questioning.

(2) It is a hot summer day. You have heard over the radio that a man wearing a dark heavy coat just tried to break into a home but was scared off. Shortly after receiving the call, you see a man wearing a wool winter army coat sitting on a curb three blocks from the location of the attempted break. His coat distinguishes him from all others on this day. You have reasonable suspicion to stop him for investigative questioning.

(3) An arrest warrant for armed robbery of a bank has been issued against Carleton Simms, described as white, mid-twenties, six feet tall, long sandy hair, pockmarked face, medium build. He lives at 385 Tremont Street. He has not been seen for three days, but there is information that he is still in Boston and may be returning to his apartment. Walking on Tremont Street, you see a man who fits that description but his hair is short and he has a wispy moustache. You have reasonable suspicion to stop him to attempt to learn whether he is Carleton Simms.

(4) While walking on priority patrol on Commonwealth Avenue, a woman you do not know approaches you and says she just saw three boys trying to break into a blue Volkswagen parked at Dartmouth and Commonwealth. You find the VW with the youths around the driver's door. One is

hitting the vent window with his fist. You have reasonable suspicion that they may be trying to break into the car. These facts support your decision to conduct a threshold inquiry to determine whether the car belongs to any of them and to prevent a possible theft.

(5) It is early afternoon. You are on patrol in the Back Bay. You see three youths leaving an apartment building carrying a TV set and a suitcase. They are getting into a taxi and seem to be in a hurry. You know that the area is occupied primarily by young working people and that daytime B and E's are common. You also know that taxis are frequently used by such offenders. You may stop the cab and the occupants for a threshold inquiry.

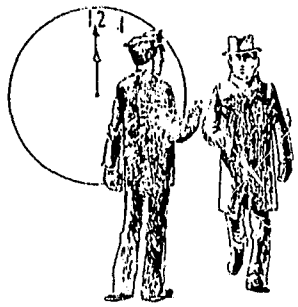
605. Conducting the Stop

A stop always means detaining the suspect. This detention is not an arrest. But because it is a seizure of the suspect's person and its conduct is governed by the Fourth Amendment, it must be reasonable.

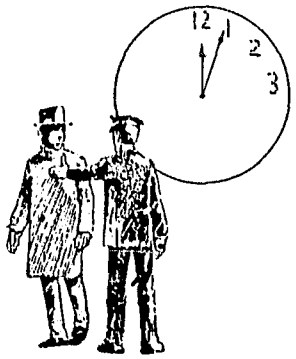
A. Approaching the Suspect

You should identify yourself as a police officer as soon as it is practical and safe to do so. Your uniform may be sufficient identification, or you may state that you are a police officer and show proper identification.

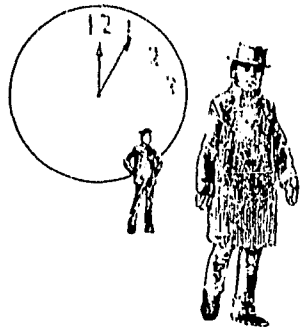
If it is safe, it is better not to use any physical restraint or psychological coercion beyond the initial command or request that the person stop or come over to you. It may be helpful at the outset to explain to the suspect that he is not under arrest, but that he is a suspect in criminal activity you are investigating and that you have a right to detain him. Because you based your stop on reasonable suspicion of the suspect's involvement in criminal activity, you still have the power to use reasonable force to detain or frisk him if necessary, without those actions being viewed as an arrest.



If it is safe to do so, it is better to stop and detain a suspect without using (physical) force or coercion beyond your command or request that the person stop.



If the suspect refuses to obey your command or request to stop, you may use the least forceful means necessary to detain him. Guns, clubs, mace, handcuffs, and other harmful tools should not be used



The amount of time the suspect is stopped must be reasonable. The suspect's detention should be relatively short unless the stop produces information establishing probable cause to arrest

B. Use of Force

If the suspect refuses to obey your command or request to stop, or if the suspect indicates by his actions or words that he will not stay with you while you undertake your investigation, you may use the least forceful means necessary to detain him. Less forceful means include a verbal request and an order; more forceful means include threatened physical force and actual physical force. If you believe before, or when you make a stop, or at any time during the stop, that it is necessary to hold a resisting person against his will, you may physically restrain him. This may be done by putting your hands on him, surrounding him, or placing him in the back seat of your car. Guns, clubs, mace, handcuffs, and other harmful or punishing tools should not be used to make a stop or ensure a detention. (See BPD Rules 303 and 304.) However, if you are attacked, you may use the amount of force necessary to defend yourself.

C. Duration of Stops

The amount of time the person is detained must be reasonable. The reasonableness of the length of detention will depend upon the purpose of the stop. You should be able to point to specific facts that made it necessary for you to deprive the suspect of his liberty for any period of time prior to arresting him or releasing him.

The length of detention must be related to either the original purpose of the stop, or to a new purpose based on reasonable suspicion arising during the stop. It may be reasonable, for example, to detain a suspect for about five minutes when your threshold inquiry purposes are simply to learn his identity and to obtain a brief explanation of his suspicious actions. If the person has adequately identified himself and explained his suspicious actions, he should not be detained further. On the other hand, a suspect's refusal to answer your threshold inquiry questions may extend the reasonable length of a detention beyond a few minutes to let you pursue alternative means to learn his identity or verify or remove your suspicions, such as a call to the turret to see whether any offenses like that you suspect have been reported in the

area or a call to another officer nearby who you believe may be able to identify the suspect.

When your stop involves a motor vehicle, you may detain the vehicle and its occupants only as long as necessary to ascertain whether a crime or traffic violation has been committed and to issue a citation, unless you make an arrest.

D. Movement of Stopped Suspects

In most situations, you should question the suspect at the place where you make the stop because moving the suspect could be viewed later as an arrest. Under special circumstances, however, you may move the suspect a short distance away from the point of the stop. Examples of such circumstances are when a hostile crowd has gathered or when you wish to reach a police radio. You may place the suspect in the back seat of your car, if clearly necessary, to hold him while you are waiting for an answer to a radioed request or the arrival of an eyewitness.

E. Questioning the Stopped Suspect

1. Threshold Inquiries

You may begin your questioning with a threshold inquiry. You should request, not command, that the suspect answer a few questions. Threshold inquiries are questions posed to a person about his identity and where he is coming from and going to. You do not need to warn the suspect about the possible effects of his answering or refusing to answer your threshold inquiries.

Normally, the first few questions you ask the suspect will concern his identity. If the suspect refuses to give you his name and/or address or you are doubtful that the name or address he gave you is correct, you may ask him to show you identification papers, such as a driver's license or a credit card. He may give them to you voluntarily; if he refuses, you

cannot order him to give them to you nor go into his pockets for them. Refusal to identify oneself or to do so to a police officer's satisfaction is not a crime, except for motor vehicle offenses. Contradictory or evasive answers to identity questions may, however, strengthen your suspicions and be supportive factors in concluding there is probable cause to arrest, especially when a person has been identified by name as having committed a crime. In most situations, though, refusal or unsatisfactory identification serves only to make a longer detention reasonable so that you can pursue other identification means, such as seeking further information from a victim or witness or from the turret or another police officer. Of course, once you have exhausted alternate identification sources, you should let the suspect leave unless you have probable cause to arrest or are still investigating his actions.

The second threshold inquiry question concerns the person's actions. When you believe you are preventing the commission of a crime or are investigating a crime you believe is being committed, which includes not only the act itself but the short period involved in leaving the scene, your questions will concern from where the suspect is coming, where he is going, and what he is doing. When you have stopped a suspect for a crime that occurred an hour or even days before, your threshold inquiry questions will be of the same general exploratory nature, directed to the time the crime was committed, to confirm that he should be a suspect or to remove your suspicions.

2. Focused Questioning

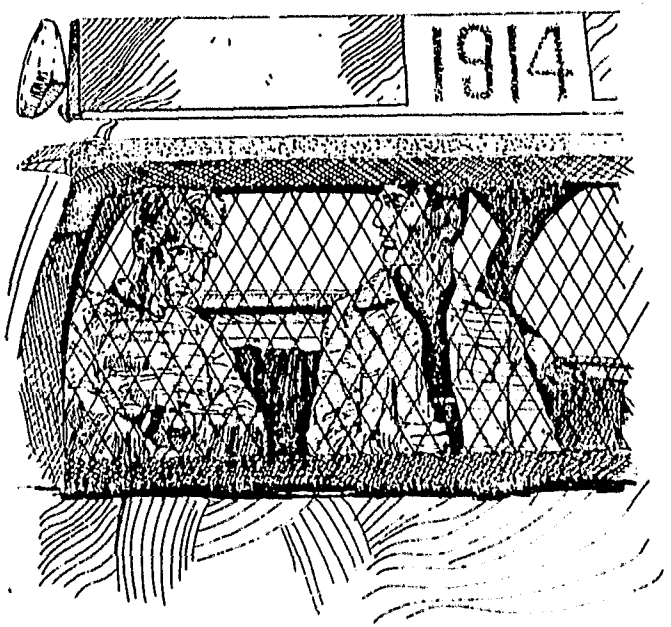
If your suspicions are not laid to rest or are heightened, you may wish to question the suspect more directly about his involvement in the suspected criminal activity. However, once your questioning moves beyond threshold inquiries, there is a point at which the suspect's Fifth Amendment right to

silence becomes an issue. Essentially, this occurs when your questioning becomes sustained or insistent, focuses on the suspect as the perpetrator of a crime, and has as its purpose obtaining incriminating statements from the suspect. At this point, you should attempt to make sure that the suspect answers your questions voluntarily. You should consider telling him that he does not need to answer your questions and stating or repeating that he is not under arrest. During this type of questioning, if the suspect indicates in any way at any point that he does not want to answer your questions, you should stop your interrogation. His desire to remain silent is not a factor that supports either reasonable suspicion or probable cause. However, at this point, you may do one of the following:

a. You may allow the suspect to leave.

b. You may change your line of questioning by acknowledging his right to silence and asking if he would be willing to answer some different questions. If you later return to the questions he did not want to discuss, you should be certain that he responds voluntarily. An explicit statement that he does not have to answer and that anything he says may be used against him is advisable and may be necessary.

If you decide that the case and situation are so critical that you must question the suspect in a manner similar to a stationhouse interrogation the suspect clearly is not free to leave, your questioning is intense and insistent, more than one officer may be involved in the questioning, and your purpose clearly is to elicit a confession or other crucial information from him that will allow you to arrest him--you have established a custodial interrogation situation where the full ***Miranda*** warnings are necessary, even though the person is not under arrest. This situation will be rare, however, and is likely to occur in places where you have isolated the person, such as a patrol car or a house or apartment.



If you question the suspect in a manner similar to a stationhouse interrogation — the suspect has been isolated and he is clearly not free to leave, your questioning is intense, and your purpose clearly is to elicit a confession or other incriminating statements — full *Miranda* warnings may be necessary even though the suspect is not under arrest.

EXAMPLES:

(1) While on patrol late at night, you observe a paneled van backed into an alley between two warehouses. You and your partner stop your cruiser, radio your location and your intention to investigate. You suspect a B and E. Across the street, you see a man sitting on a darkened doorstep. You and your partner approach him. Your uniform identifies you as a Boston Police officer. You suspect the man may be a lookout. He does not appear drunk, and he makes no threatening or suspicious gestures. Your partner asks him to accompany you over to your car. He agrees. As part of the threshold inquiry, your partner asks him why he is in this deserted neighborhood at night. Before he can answer, a second man comes out of the alley going toward the van's door. Your partner stays with the first man while you approach the second. He bids you "good evening" and makes no hostile or suspicious movement. Out of earshot of the first man, you ask the second man for identification. He produces a driver's license. You tell him that because burglaries are frequent in this area, you and your partner have questions about his presence in the area. You explain that you hope a few questions will clear the matter up, and that you are not placing him under arrest.

(2) Driving down St. Botolph Street at night, you see a woman you reasonably suspect of being a robber and a prostitute. She is talking to a flashily dressed man you recognize as a known pimp. You ask them to approach your car. The woman comes over, but the man keeps going. You may go after the man and order him to come back to the car with you, as you have reasonable suspicion he also may be involved in a crime. If he starts to pull away, you may restrain him and conduct him to your car, where you conduct your threshold inquiry.

(3) You see a man who resembles in height, clothing, and general description, someone wanted for a bank robbery that took place fifteen minutes earlier. You stop him, frisk him, and ask him for identification and an explanation of his actions in the past half hour. You tell him he is not under arrest, but he closely resembles someone who was just involved in a robbery. He identifies himself with a driver's license and two credit cards. He opens his briefcase showing you that it contains textbooks. At this point, your suspicions have been laid to rest and you permit him to go on his way.

(4) You see a man run out from an apartment building in an area where there have been many burglaries recently. He is carrying a large, full shopping bag. He appears to spot your cruiser, because he stops and reverses direction and walks away nonchalantly. You swing your car around, pull up next to him, tell him you want to talk with him, and get out of the car. He refuses to give you his name, tells you he was running to find a bus, and that he changed directions because he remembered there was a nearer bus stop that way. He then refuses to answer any other questions. You may detain him further to give you time to call the turret to ask if any crimes were just reported, particularly from the building he just left, and to make a quick check of the building.

(5) You have stopped a youth you reasonably suspect just mugged an elderly woman three blocks away. Her description, however, as broadcast, was not exact enough for you to conclude you have probable cause to arrest the youth. As well, his responses to your questions are ambiguous enough for him to be a suspect but not sufficiently incriminating for an arrest. You learn from the radio that another car is taking a report from the woman. Your partner radios to ask that the victim be brought to your location. You

explain to the suspect that he is not under arrest, but he has to stay with you for a brief period of time, while you await the arrival of the victim.

(6) It is a late Friday afternoon, the time when the small businesses in your patrol sector take the day's receipts to the corner bank for deposit. Over the past few months, there have been several robberies of carriers by two young men who move quickly, escape in a car, and seem familiar with the carrier's route and identity.

You observe two men, sitting in a car near the bank, watching pedestrians. Thirty minutes later, when you drive by, the men are still there, and they seem to hide their faces when they spot you. Because you suspect they may be involved in the robberies, you approach the car and ask the men to get out. You separate the men and you and your partner ask them threshold inquiry questions out of hearing of each other. The driver fails to identify himself adequately, and you cannot demand his license or registration as there is no suspected motor vehicle violation, so you check the license number with NCIC, and call for further descriptions of the robbers before questioning further.

(7) You know there is an arrest warrant for murder out for John Gorde. You do not know him personally, but you know his name, address and description from a department flyer.

During a tour of duty, you enter a Combat Zone bar. You spot a man who fits Gorde's description. In order to get a better look to be sure of his identity, you approach the man and ask his name and address. He provides no identification, but says he is Jerome Brown, and gives an address different from that on the flyer. However, with a closer look, you are sure he is Gorde. You arrest him on the murder charge.

Even though you zeroed in on Gorde as a wanted felon before you detained him for questioning and possible arrest, your identification question is simply part of a threshold inquiry. While it was intended to help identify a criminal, it did not aim at eliciting any particulars of the crime itself. Therefore, regardless of whether he was in custody or even under arrest, you did not need to tell him he has a right to remain silent or to give him a full ***Miranda*** warning.

(8) Recent reports have identified the Fenway as the scene of a number of muggings and rapes by small gangs of youths. While on patrol in the early evening, you see three youths sitting on a bench. They stare at your car as you pass. Twenty minutes later, you hear a radio report that two youths, whose descriptions generally fit two of those you saw earlier, seriously injured an elderly man in a mugging near where you had seen them earlier. A half hour later you see the three youths on Hemenway Street. When you approach them, they split up and quickly walk away. You and your partner each apprehend one of the three suspects. You separate the two and start your threshold inquiries. Your partner's suspect is hostile; he refuses to identify himself adequately and answers questions about his recent activities with vague generalities. Your suspect, too, is reluctant to talk and is nervous. He doesn't fit the description of the two muggers. But you suspect he was involved with them. You feel it would be helpful to ask him direct questions about his companions and the crime. Before you ask him these questions, you tell him he is not under arrest, and inform him that he does not have to answer your questions. If you place him in a custodial situation, such as inside your car, to ask him whether and how he participated in the crime, you should state he is not under arrest and give a ***Miranda*** warning, particularly if you are asking questions whose answers would be confessions.

606. Frisks

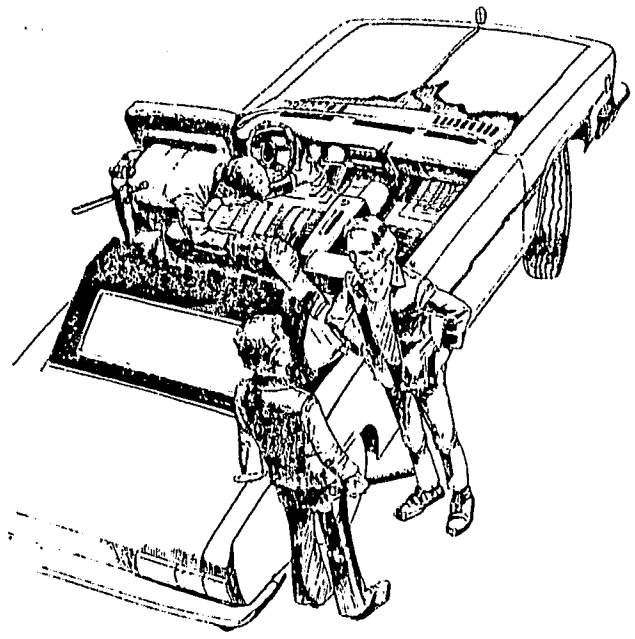
Frisks are limited searches and are governed by the Fourth Amendment's reasonableness requirement. They are protective and are done only to find weapons or other dangerous instruments. A frisk is not a search for evidence or contraband. Like stops, frisks should be based on reasonable suspicion. You may frisk any suspect you reasonably suspect is armed and dangerous. You make frisk a suspect at any point during your stop and detention. Whenever you have stopped a vehicle or whenever you make contact with an occupied vehicle which is not moving and you have reason to suspect that any occupant of the vehicle is armed, you may require him to leave the vehicle and submit to a frisk for weapons. You should notify the dispatcher that you have stopped a car, according to the procedure set out in Special Order Number 75-141. Even after frisking the occupant, you might still have reason to suspect that he could present a danger to you. If so, before allowing him to re-enter the vehicle, you may inspect those parts of the car which he can reach and which could contain weapons that might be used to assault you. If you know that a weapon was used in a particular crime or the crime was one of violence and the stop is made soon after its commission, those facts alone give you reasonable suspicion to frisk the stopped suspect immediately.

If you frisk a suspect without reasonable suspicion that he is armed and dangerous, incriminating items you find, including weapons, may not be admitted at trial. This would be especially unfortunate if the items would have been found after arrest in a search incident to arrest or during a stationhouse inventory.

Reasonable suspicion to frisk may arise at any point during a stop and may be based on the following types of factors:

1. The suspect's appearance--Is there a bulge in his clothing that suggests to you from your experience that a weapon is concealed?
2. The suspect's actions and words--Did he make a movement as if to hide a weapon as he was approached? Is he unusually

After frisking the occupant of the car you might still have reason to suspect that he could present a danger to you. If so, before letting him back in the car, you may inspect those parts of it which he could reach and which you reasonably suspect may contain a weapon that could be used to assault you.



threatening or nervous in such a way that your experience indicates he may be armed and dangerous?

3. The suspect's record and reputation--Does he have a record of weapons offenses? Of violent assaults? In particular, against police officers? This factor alone may justify an immediate frisk.

4. Companions--Are you outnumbered? This factor alone may not justify a frisk if the suspected crime is not one normally involving or actually involving weapons.

5. Time and place--Is it dark so you can't see the suspect well? Are you in an isolated area with the suspect? This factor alone may not justify a frisk if the suspected crime is not one normally involving or actually involving weapons.

You should be able to tell a court why, based on your observations and experience, a frisk was necessary.

A. Conducting a Frisk

Generally, your frisk should be no more than a pat down of the suspect's outer clothing. It should be done with sufficient care and strength to let you feel any concealed weapons. If the outer clothing is too bulky, stiff, or hard to allow you to feel a firearm or other weapon concealed underneath, the outer clothing may be opened to allow a pat down of the inner clothing. You may go into a pocket only to take out an object you have felt that you reasonably believe to be a weapon. However, if you have a reasonable belief, based on reliable information or your own observations, that a weapon is concealed in a specific place on the suspect's person, for instance in a pocket, waistband, or boot, you may immediately reach into that area before performing a general pat down in order to determine whether or not a weapon is concealed there.

If you have a reasonable belief, based upon reliable information or your own observations, that a weapon is concealed in a specific place on the suspect's person, you may immediately reach into that area to determine whether a weapon is present before performing a general pat down search.

B. Frisk of Separable Possessions

If the suspect is carrying a handbag, briefcase, knapsack, or the like, and you reasonably believe the item could be used as a weapon against you or it will make your frisk of the person difficult, you may take the item and place it out of his reach for the duration of the stop. The basic rule is that you should not go into the item as part of a frisk; and, it should be returned unopened at the end of the stop if no arrest is made. There may be circumstances, however, where you will have a reasonable suspicion: (a) that the separable item itself contains a weapon; (b) and that the suspect can open the item easily; and (c) that if you return it to the suspect, he may take the weapon out and use it against you, your fellow officers, or others in the immediate area. In these situations, you should take the least intrusive means to determine if the item contains a weapon. Pat or squeeze the exterior surface of the item. If the item is of such a character that patting or squeezing will not reveal its contents, you may open the item and conduct a visual inspection. If you see a closed container inside that could contain a weapon and that could be easily reached by the suspect when you return the larger separable item to him, you may pat or squeeze it or, if necessary, open it for a visual inspection.

C. Seizing Items During Frisks of the Person and of Separable Possessions

If, while making a pat down of the suspect's clothing or a separable possession, you feel an object which you reasonably suspect is a weapon or other dangerous instrument, you may reach into the area where the object is located and remove it. Any items you take from the person to ensure your safety and any items you find in plain view while searching for weapons should be returned to the suspect when the detention is completed, if no arrest is made.

You may make an arrest when you have probable cause to believe that the suspect is illegally possessing any weapon, other dangerous instrument, or contraband found in plain view and seized during your frisk.

EXAMPLES:

(1) There has been a series of violent crimes in the North End, including murders believed to be linked to organized crime. Your partner informs you that he just received a phone call from his informant who told him that three men, Johnson, Wright, and Warren, were in a North End restaurant and they all had guns. Although you do not know the men personally, you do know what they look like. You notify your sergeant and the three of you head for the restaurant. On the way over, you discuss the fact that Warren has been convicted on a gun carrying charge, has done time and then had his parole revoked, and is known to carry weapons. On the street by the restaurant, you see Wright and Warren. The sergeant goes to Warren. You and your partner approach Wright, frisk him, and find nothing. While your partner stays with Wright, you go over to Warren and the sergeant. There is no bulge under Warren's sweater to indicate a concealed weapon, but the sergeant frisks Warren and finds a loaded .38 calibre revolver. Both frisks are proper and common sense self-protection, and Warren's gun will be admitted in evidence against him at trial, because your knowledge of Warren's past and the fresh information that he is carrying a gun gave you reasonable suspicion to frisk for weapons.

(2) You hear over your radio that three masked white men have just robbed a bank in Kenmore Square. The dispatcher says a witness described the getaway car as a gray late model Gran Torino, with the first two letters of the license being AR and the third possibly a Z. Five minutes later, you spot a car of that description with the license AR-326, carrying two white men, in the 800 block of Commonwealth Ave. You suspect this may be the getaway car, so you stop it and order the occupants out. Because the robbery involved weapons, you frisk the men before questioning them, but find nothing. They provide adequate identification, and you turn up no reason for further detention. Before letting them back in the car, however, you may look in areas around the front seat and the glove compartment if you reasonably suspect a weapon may be there that could be used to harm you.

(3) You are frisking a suspect you reasonably suspect is wanted for armed robbery. In his left front pants pocket, you feel a small hard packet that you think may be a tinfoil of heroin. You do not go into that pocket as part of your frisk because, although you imagine the packet contains contraband, it does not resemble a weapon. You squeeze the suspect's right boot and feel a long, hard object. You may reach in that boot and remove the object, which you think could be a weapon. It turns out to be a switchblade. You place the suspect under arrest for possession of a dangerous instrument and conduct a search incident to arrest.

(4) You have been told by a reliable informant that John Jones is carrying a revolver in his waistband at the small of his back. When you stop him, you may immediately lift up his shirt and feel the area where you have been told he carries the gun. If you do not find the gun there, you may continue your frisk of all other places where he could reach for a weapon.

(5) You are on foot patrol late at night, in a burglary ridden area in Charlestown. You spot a man you arrested a year ago for burglary. He is walking fast, carrying a large satchel, and turns quickly up a side alley when he sees you. You stop him for a threshold inquiry. You spot a bulge in his coat that could be a weapon, so you decide to frisk him. Because you have no reason to suspect the satchel contains a weapon, you merely place it aside rather than searching it, while you frisk the suspect. When you pat the bulge, it feels like a gun barrel, so you pull it out. It turns out

to be a crowbar. As you turn the subject around, you see a screwdriver and a switchblade in his back pocket. These items, along with answers to your questions, may be used to give you probable cause to arrest the suspect.

(6) You are cruising downtown with a man who claims to have been robbed at knifepoint by a group of prostitutes. He points out a woman he believes looks like one of the prostitutes. You recognize her as a woman arrested previously for attacking another woman with a switchblade. She is carrying a pocketbook. You may take the pocketbook from her while questioning her. The man is not positive she is one of the assailants, and her answers do not provide probable cause to arrest. However, as she is belligerent and has been known to carry a knife, you still suspect she may be armed, so you squeeze her purse to see if you can feel a weapon before returning it. The pocketbook is made of a hard material so you cannot tell if it contains a weapon. Therefore, you open it and look in. You don't see a weapon so you return the purse and allow her to leave.

607. Consent

Normally, when you exercise your stop power you may briefly detain the suspect at the location of the stop. You should not on your own extend the length of detention or move the suspect because of the possibility of your actions later being viewed as an arrest on less than probable cause. However, the suspect may voluntarily agree to remain with you beyond the short period of time necessary for you to conduct your threshold investigation or voluntarily agree to accompany you elsewhere, ***e.g.,*** to the stationhouse or back to a victim. When the suspect has consented to your request, he remains free to leave at any time unless probable cause develops and you arrest him.

Because "consent" is such a difficult concept for the courts (See Guideline 501, "Consent Searches"), you should be careful that the

suspect's cooperation is voluntary, and you should not assume that the suspect has voluntarily agreed to your later requests simply because he cooperates with you initially. Consent is more likely to be viewed as voluntary if (1) the stop and detention did not involve force, (2) the suspect agreed to any search or frisk, (3) your request was polite and did not imply or state that the suspect had to agree, and (4) you told the suspect he had a right to withhold consent.

EXAMPLES:

(1) You have just stopped a man who fits a very vague description of a man alleged to have just beaten and robbed a woman a few blocks away. He answers your questions satisfactorily, but you would like to be sure he is innocent before releasing him. You explain to him that he has a right to refuse but if he accompanies you back to the woman, the matter may be cleared up quickly. He agrees, but as you walk back up the street, he changes his mind and says he wishes to leave as he has an appointment. Even though he consented originally, you cannot now force him to return with you to the crime scene.

(2) You respond to a sick person call in an apartment on Commonwealth Ave. When you are shown the person, you see needle tracks on his arm and symptoms of overdose. The woman who lets you in says there had been a party, but everyone left when she called the police. After you call an ambulance, you ask the woman if she would come down to the station to answer a few questions. You explain she is not under arrest, and need not accompany you back to the station, but it would expedite the investigation. She consents, so you take her to the station in your cruiser.

PART SEVEN: ARREST

701. Arrest: General

A. *Definition of Legal Arrest*

Although there is no exact formula for determining when an arrest has occurred, generally a legal arrest is any situation where:

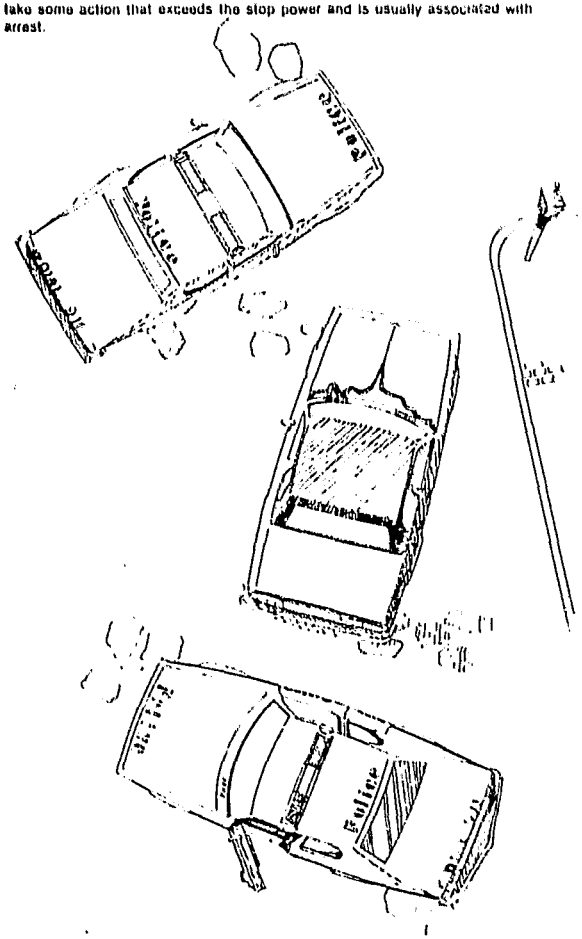
1. you detain a person by force, by verbal commands, or by creating circumstances that implicitly make it clear to that person that he is not free to leave; and

2. you detain the person for a longer period of time than the *brief period needed to conduct an initial investigation* following a stop; or you take any action which exceeds the stop power and is usually associated with arrest; and

3. you have enough information to give you probable cause to believe that the person has committed an offense for which you have the power to arrest. (See Guideline 702: Power to Arrest; Guideline 703: Probable Cause).

It is important to know when an arrest takes place, and what the requirements are for a legal arrest. Not all arrests are legal, that is, in accordance with the constitution and existing laws. Any situation where the first two factors are present, but the third is not, is an illegal arrest. If you arrest a person upon information that is not sufficient to give you probable cause, or if the offense is a misdemeanor not within your arrest power, a court is likely to rule that the arrest was illegal. This will *not prevent you from prosecuting the arrested person*, but the court will probably not admit any physical evidence or statements obtained as a result of the arrest.

An arrest occurs when you restrict the freedom of movement of a person whom you have probable cause to believe has committed an arrestable offense and you take some action that exceeds the stop power and is usually associated with arrest.



B. Significance of Determining Point of Arrest

An arrest initiates the criminal justice process against a suspect. The actual point of arrest is important because normally only when a legal arrest has taken place may the arresting officer detain a suspect for an extended period of time, conduct a search incident to arrest, move a suspect, or any other procedure normally associated with the arrest power. If a suspect is searched before the point of legal arrest, the evidence from the search is likely to be inadmissible in court. Any statements by the suspect in response to police interrogation after the point of arrest are also likely to be excluded by a court unless he is first given a ***Miranda*** warning.

C. Difference Between Arrest and Stop

Although both an arrest and a stop involve restricting someone's movement, there are three factors that set an arrest apart from a stop: the amount of information you have about the person; your purpose in detaining the person; and the degree to which you interfere with the person's liberty (such as detaining the person a long time, or moving the person from the stop site).

When you stop a person, you have a reasonable suspicion that the person has been involved or is about to become involved in criminal activity. Your purpose in conducting a stop is to allay that suspicion or to gain more information to establish probable cause for an arrest, arrest warrant, or search warrant by questioning the person. If you believe the person is about to become involved in criminal activity in the immediate future, your purpose may also be to prevent him from committing a crime. After questioning the person for a short time, if you do not develop probable cause to arrest him you should release him.

In contrast, when you arrest someone you have enough information to give you probable cause to believe the person has committed a crime. Your purpose is to hold the person and charge him with committing a crime. You detain the person for a longer period of time, taking him to the stationhouse for booking and possible pre-arraignment detention.

A stop can turn into an arrest when:

(1) your initial stop of a suspect was based on probable cause or your stop elicits additional information that, combined with your information from other sources, gives you probable cause to arrest; and

(2) you take some action that exceeds the stop power and is usually associated with arrest, such as detaining the suspect longer than the brief period needed to conduct an initial investigation, moving the suspect from the location of the stop or conducting a more intrusive search than a frisk for weapons.

You do not have to use your arrest power as soon as probable cause develops in every case. You may want to wait to obtain further evidence, or you may want to handle the problem in some manner short of arrest. However, when a court determines whether an arrest took place, the court will not view as decisive the fact that you did not intend to make an arrest. Instead, the court will examine at what point probable cause developed, the type of force used and the length of detention.

D. ***Miranda*** Warnings for Stopped Suspects

Most situations that require giving ***Miranda*** warnings to a suspect occur after an arrest has taken place. However, there are times when a stopped suspect must be given the ***Miranda*** warnings. Once your questioning moves beyond threshold inquiries, there is a point at which the suspect's Fifth Amendment right to silence becomes an issue, even though the suspect may not be under arrest. If you decide that the case and situation are so critical that you must question the suspect in a manner similar to a stationhouse interrogation -the suspect clearly is not free to leave; your questioning is intense and insistent; more than one officer may be involved in the questioning; and, your purpose clearly is to elicit a confession or other crucial information from him that will allow you to arrest him--you have established a custodial interrogation situation where the full ***Miranda*** warnings are necessary, even though the person is not yet under arrest.

EXAMPLES:

(1) While on patrol in Government Center, you observe a car weaving over the center lane of traffic. You follow the car down Tremont Street, and the car runs the red light at Park Street. You pull the car over, and when you ask for license and registration, the driver slurs his words, and appears intoxicated. Because you intend to give him a field sobriety test, you ask the driver to get out of his car. The driver says that he cannot stand up and you notice an empty bottle of Old Mr. Boston bourbon on the floor of the car. Because driving under the influence is a crime for which you have arrest power and you have probable cause, you arrest the driver.

(2) You receive a phone call from an informant, whom you have never used before. He tells you that Danny Baker, whom you know to be a major heroin dealer, is in a Commonwealth Avenue bar and is in possession of two ounces of heroin. When you ask the informant where he obtained this information, he tells you that he can't talk any more because someone is watching and he hangs up. You proceed to the bar, and upon asking the bartender if Baker is around, he points to someone talking on the phone. Because you don't have probable cause at this point, you do not arrest and search the suspect. If you did, any contraband that you find will probably be excluded at the trial. Because you have reasonable suspicion to believe that a crime is being committed, you may stop the suspect and make a preliminary inquiry about what he is doing in the bar. If there is any indication that the suspect is armed and dangerous, you may frisk him.

(3) While on Center Street, you see two teenagers engaged in a brawl. You break up the fight and tell each of them to go home and you are going to report the incident to

their mothers. Although you have probable cause to arrest each of them for assault and battery, and have restricted their freedom of movement, an arrest has not occurred because you have not exceeded your stop power in any way normally associated with arrest. You do not place them in your car and drive them home without their consent because this might be viewed as an arrest.

(4) You receive a call from the dispatcher that a man has just attempted to hold-up a liquor store on Brighton Avenue. The owner has described the man as Caucasian, early-twenties, dark hair and wearing a hawaiian print shirt. You spot a man matching this description, but wearing very thick glasses, outside of Ken's Pub on Commonwealth Avenue. Because you are not sure that this is the perpetrator, you stop the suspect and ask him for identification. He tells you that he does not have his wallet. You ask him what he is doing and he tells you that he is waiting for a bus. Because you know that there is not a bus stop in the area, your suspicions have not been abated. In the meantime, your partner has requested another car to pick up the liquor store owner, who had indicated a willingness to assist you, and bring him to Ken's Pub. Because you know the owner will come to the scene within five minutes, you detain the suspect until the owner arrives. The owner positively identifies the suspect and you place the suspect under arrest. Although you have physically detained the suspect, an arrest did not occur until after the owner identified the suspect because you did not take any action normally associated with arrest until that point.

(5) One night at 2:00 A.M. while cruising the Fenway, you see a man crouched behind a car in a parking lot on Brookline Avenue. Because he appears to be tampering with a car, you pull your cruiser up to the car and ask him what he is doing. He says he isn't doing anything and you ask him if this car belongs to him. He says it doesn't. You

ask him for identification and while he reaches for his wallet, you notice a bulge under his left arm. You frisk the man and the bulge is really a narcotics kit. You do not announce to the man that he is under arrest, but you continue to search him and find glassine envelopes of white powder in his pockets. Because this search is a characteristic of a search incident to arrest at this point, the stop turned into an arrest, even though you did not tell the suspect that he was under arrest. The glassine envelopes of heroin will be admissable at trial as proper results from a search incident to arrest, because you had probable cause to arrest when you found the kit. By continuing the search beyond what you may do under your stop power, you brought about an arrest even though you never used the actual word. It is better practice, however, to inform the suspect that he is under arrest before you make this kind of search.

(6) Delbert Souse has called the station to report that he has just returned home and has found his wife apparently strangled by burglars. You arrive at the apartment and find Mrs. Souse dead with strangulation marks around her neck. Mr. Souse tells you that he arrived home from work and found his wife in this condition and the drawers to his dresser had been rifled. You request Mr. Souse to accompany you to the police station in order to prepare a written report and tell him that he will be taken home when this is finished. On the way to headquarters, Mr. Souse asks you if he is in trouble. You tell him that he is merely a witness, whose story must be recorded at a place that is less upsetting than the bedroom. After taking his statement, Mr. Souse again says that he is in trouble and whispers to you, "Well, if you can keep a secret, I might as well tell you. I couldn't take her sass anymore and strangled her scrawny neck with these fingers. You immediately tell Mr. Souse that he is under arrest and give him his ***Miranda*** warnings. Because you made it clear to Mr. Souse, prior to his making

any statement, that he was not under arrest, nor were any of the familiar procedures of arrest involved, Mr. Souse was not under arrest until after his confession. If Mr. Souse attempts to claim that he was under arrest before he made his confession, it will probably fail.

(7) You know that a car used in an armed robbery committed two weeks ago was traded in the day of the robbery for a 1965 Chevrolet. You also have a vague description of the suspect. While on patrol in Brighton, you see a car fitting the description, parked on Parsons Street. There are several young men standing nearby. You approach them and ask to whom the car belongs, while your partner checks the license number with NCIC. One of the men, who claims the car, fits the vague description. Although you do not wish to arrest this man until you have more information linking him to the crime, your questioning has become more focused.

As you ask more pointed questions, the crowd becomes hostile, shouting and threatening, so you place the suspect in your cruiser for further interrogation. Because this may be viewed as custodial interrogation you now give the suspect his ***Miranda*** warnings.

702. Power to Arrest

A. Arrest With A Warrant

You have the power to arrest any person for whom a valid arrest warrant has been issued, if you have actual knowledge that the warrant is in full force and effect.

B. Arrest Without a Warrant

You have the power to make a warrantless arrest only if you have probable cause to believe the person has committed a crime.

602

1. Felony

You have the power to arrest any person you have probable cause to believe has committed a felony, whether or not the felony was committed in your presence. A felony is any offense punishable by death or by imprisonment in a state prison. All other criminal offenses are misdemeanors--whether they appear in the General Laws passed by the legislature or in municipal ordinances and by-laws.

2. Misdemeanor

(i) Breach of the Peace in Your Presence

You have the power to arrest for any misdemeanor committed in your presence which constitutes a breach of the peace. "Breach of the peace," though not clearly defined, generally means that, in the circumstances, the misdemeanor causes or threatens direct harm to the public. The most common of these misdemeanors are assault and battery (Ch. 265§13A) and affray (Ch. 277§53).

(ii) Not a Breach of the Peace in Your Presence

If a misdemeanor committed in your presence is not a breach of the peace, you do not have the power to arrest unless the statute specifically gives you the power. Some of the most common misdemeanors for which the statute specifically gives you power to arrest (if committed in your presence but not breaches of the peace) are:

a. use of a motor vehicle without authority, Ch. 90§24

b. any traffic violation committed by a person driving without a license granted by the Registrar of Motor Vehicles, Ch. 90 §21

c. driving after suspension of license, Ch. 90 §23

d. leaving the scene of an accident causing personal injury, Ch. 90 §24

You may not make an arrest for a misdemeanor not committed in your presence unless there is a statute specifically giving you the power to arrest

e. trespass, Ch. 266 §120

f. larceny of any amount of property, Ch. 276 §28

g. disorderly conduct, Ch. 272 §53

(iii) Arrest on Probable Cause

For some misdemeanors, the statute gives you the power to arrest upon probable cause, whether or not the misdemeanor was committed in your presence or constitutes a breach of the peace. Examples of these misdemeanors are:

a. driving under the influence, Ch. 90 §24

b. possession of hypodermic needle or syringe, Ch. 94C §27

c. possession with intent to distribute a Class D or E controlled substance, Ch. 94C §32

d. possession of a controlled substance, Ch. 94C §34

e. knowing presence where heroin is kept, Ch. 94C §35.

(iv) Municipal Ordinances

You have the power to arrest any person whose identity you don't know who is in willful violation of a municipal ordinance regulating use of streets, public reservations, or parkways (Ch. 272 §59). You may also arrest any person whose identity you don't know who throws rubbish or other substances on a street or sidewalk in your presence and refuses to obey your request to remove it. As soon as you learn the person's identity, however, you must release him. (Ch. 272 §60).

C. Situations Outside the Power to Arrest

As a general rule, when you encounter a situation involving a crime

where you don't have the power to arrest, you may attempt to ascertain the identity of the person involved in order to seek a criminal complaint and arrest warrant. If a victim or witness is involved, you should inform the person of the procedure for obtaining a criminal complaint from the appropriate court. There may be times--such as in a domestic dispute--when it may be appropriate to suggest other options to the person, such as, consulting a professional or religious counselling service.

EXAMPLES:

(1) While waiting in court to testify, another policeman informs you that an arrest warrant has been issued for Helen Brown, with whom you have had contact in the past. While on patrol, you see Ms. Brown coming out of a restaurant on Atlantic Avenue. Because you know that a warrant exists for her arrest, you may arrest her immediately, even though you do not possess the warrant.

(2) The manager of a drug store on Washington Street has called you to tell you that he has caught a middle-aged shoplifter. You go to the store and inform the manager that the legislature has not given the police the power of arrest for this type of crime. You proceed to tell him of the procedure for obtaining a criminal complaint.

703. Probable Cause

Probable cause to arrest exists when you have sufficient specific information to believe that it is ***more likely than not*** that the suspect has committed or is committing a crime. If the legality of the arrest is later challenged in court, a judge will review the information you had at the time to determine whether it was sufficient to give you probable cause to arrest. Therefore, you must be able to articulate specific and objective factors on which you relied to determine that the suspect probably committed a crime. Probable cause to arrest does not require you to have evidence sufficient to convict the suspect of a crime, but it does involve more than a reasonable suspicion of a person's involvement in a crime.

When you encounter a situation where you do not have the power to arrest you should inform the victim or witness that he or she may go to the clerk's office at the appropriate court and swear out a criminal complaint

In determining whether you have probable cause to arrest, you may rely on the sources of information listed below. The significance of the sources will vary, depending on the circumstances of each case. While one source may provide you with strong enough information to supply probable cause, usually you should have a combination of information from two or more sources.

1. Your personal, direct observations including those made of the suspect and of the crime scene, as well as your past experience as a police officer in evaluating these observations.

2. Information received from other police officers (this may be based on their observation, collective knowledge within the department, and radio broadcasts from the dispatcher).

3. Information supplied by the victim or witnesses of a crime.

4. Information supplied by an informant. This information must be supported by further evidence that the informant can be trusted and that the information is accurate. The trustworthiness of the informant may be established by showing that he has given good information on past occasions. The accuracy of the information may be substantiated by further investigation producing additional corroborating information. In addition, where the information is sufficiently detailed to indicate that the informant had firsthand knowledge of the information, accuracy is established.

5. You may consider the suspect's responses in evaluating probable cause (in order of significance);

   a. incriminating statements

   b. contradictory statements

   c. evasive answers

   Neither contradictory statements nor evasive answers are enough, by themselves, to supply probable cause.

The plain clothes officer has probable cause to arrest based on his observation of the transaction across the street and on his experience in how drug deals are made

In addition, the following factors may be considered in adding up all the facts of a situation to arrive at probable cause. These factors are less significant than any of the above and do not, by themselves, provide probable cause.

6. The flight of the suspect upon your approach
7. Your knowledge of a suspect's prior criminal record

EXAMPLE:

You have just received a radio call describing a maroon 1973 Chevrolet, driven by a black male, just involved in an armed robbery in District 1. As you turn on to Massachusetts Avenue by Symphony Hall, you see such a car, driven by a black male, but with a female passenger. You turn and follow the car for a few minutes. The driver parks in front of an apartment building near City Hospital. Both occupants get out of the car and begin talking to a group of people on the sidewalk. You approach and say you would like to ask a few questions. You ask for some identification and they say they have none. When you ask where they were coming from, they say they have been talking to these people for about 45 minutes and [illegible]ny they were just in the car. Because the suspect and [illegible] car match the description, and because of the evasive and clearly false answers to your inquiries, you now have probable cause to believe the man was involved in the crime, so you arrest him.

704. Arrests on Private Property

A. General

In a case where you have power to arrest someone, you may still need to decide whether you may enter private property to make the arrest. Because a police officer's entry into private premises is an intrusion into a place where people have a greater expectation of privacy

than on the street, your power to arrest in such places is restricted under the Fourth Amendment.

If an area is privately owned but is open to the public, such as a retail store, you may exercise your arrest power without meeting further requirements. To enter property that is not open to the public, the general rule is that you need an arrest warrant. You may enter private property without a warrant only in an emergency or if someone with authority to consent gives you consent to enter--the requirements of these limited situations are set out in part C below.

If you anticipate that you will need to go on private property to make an arrest, you should first obtain an arrest warrant. A warrant is especially important when you intend to enter someone's dwelling, where a warrantless arrest is illegal unless justified by one of the circumstances described in part C. Your right to enter private property is much greater with a warrant than without one, and having the warrant will help avoid any later questions about the legality of the arrest.

You should attempt to obtain a search warrant if you have probable cause to believe that evidence of the crime for which the arrest is to be made will be found at the scene. Your search can then be broader than a warrantless search incident to arrest and will be more likely to withstand judicial scrutiny in a suppression hearing.

B. Arrest With a Warrant

To execute an arrest warrant, you may enter any private property where you reasonably believe you will find the defendant. You may enter a third person's residence, for example, if you reasonably believe the defendant is inside. It is preferable to have the warrant with you when executing an arrest warrant, but as long as you know that it exists, you may arrest pursuant to the warrant even if it is not in your possession at the time. When you are executing an arrest warrant, you have the authority to disregard objections to your entry; however, there may be situations where it may be preferable to call in your patrol supervisor, if possible, to explain your authority to enter to those who object. You should enter in the manner described in part D below.

C. Arrest Without a Warrant

1. Already on Premises

You may arrest someone on the premises without a warrant if you are already present for a valid reason, such as executing a search warrant or responding to a request for help, and you did not expect that person to be there so that you had no time to obtain an arrest warrant.

2. Entry to Arrest

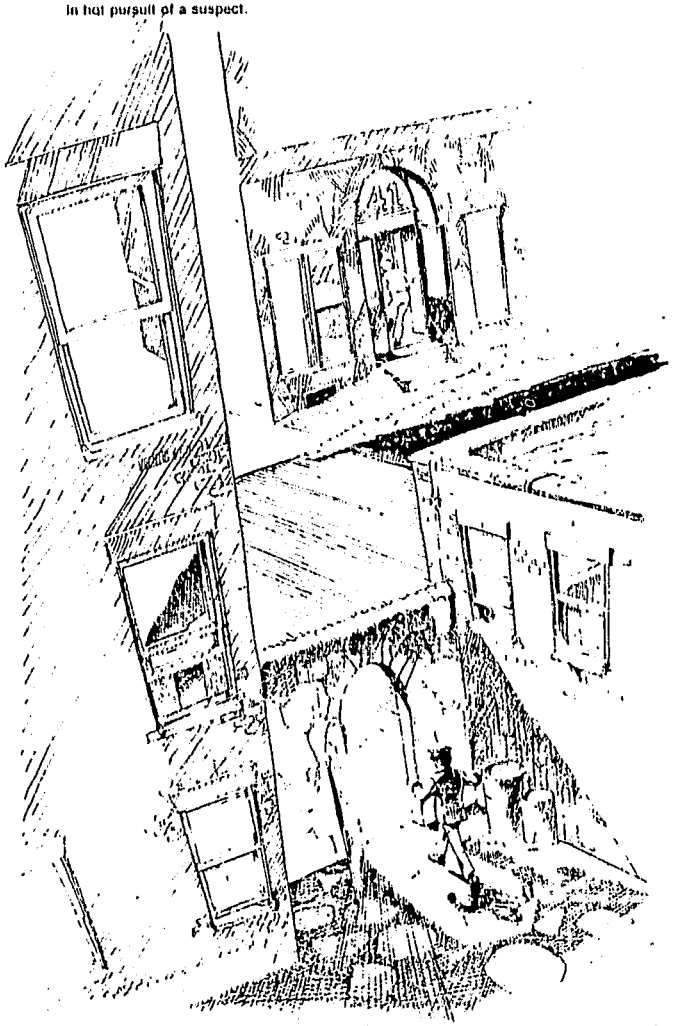
If you are not already present for a valid reason, you may ***enter*** private property in order to make a warrantless arrest only in three situations: (1) when you are in hot pursuit of a suspect; (2) in exigent circumstances; and (3) when someone with authority to consent consents to your entry. The first two situations refer to ***emergencies*** where the suspect's entry into private property ***could not be foreseen.***

An arrest made after a warrantless entry that does not meet these conditions is likely to be ruled illegal by a court. If the legality of the arrest is challenged in court, you will be required to show that circumstances developed unexpectedly, creating a need for quick action, and that it was not feasible to obtain a warrant before entering the premises. Massachusetts law requires that a judge scrutinize carefully all the circumstances to determine whether the need to enter was not reasonably foreseeable. An unsuccessful attempt to find a magistrate, who could issue a warrant, may justify a warrantless entry if there was no deliberate or inexcusable delay before the attempt to find a magistrate was made.

(i) Hot pursuit

Hot pursuit occurs when there is a continuous chase,of a suspect who enters private property immediately ahead of the police. You need not have actually seen the offense, so long as you are chasing someone who has committed a

You may enter private property to make an arrest without a warrant when you are in hot pursuit of a suspect.



crime for which you have the power to arrest.If you are in hot pursuit of such a suspect, you may continue your chase onto the private property in order to apprehend him. The key concept in hot pursuit is the short lapse of time between the suspect's entry and your entry.

(ii) Exigent or Emergency circumstances

In the absence of a hot pursuit situation, you may enter private property such as a dwelling only if an emergency situation develops. For example, if you follow a suspect for hours because you are waiting until he enters his home to arrest him, a court may hold the arrest invalid because there was no real emergency requiring that you make a warrantless entry.

You must be able to demonstrate to a court that an emergency developed justifying your failure to obtain a warrant. Added together, the following factors tend to show exigent circumstances justifying a warrantless entry into a dwelling:

a. You clearly have probable cause to arrest;

b. You have strong reason to believe the suspect is inside;

c. The crime with which the suspect is charged was one of violence or the suspect is armed (an immediate entry is necessary to protect your safety or the safety of others); and

d. There is a likelihood that the suspect will escape if not immediately apprehended.

Whenever it is foreseeable that circumstances might develop requiring you to enter private property, you should attempt to get an arrest warrant without delay. You should keep in mind that there are situations where you

could anticipate that the arrival of uniformed officers might create an emergency. Also, if you expect to find evidence or contraband, try to obtain a search warrant at the same time. Any inexcusable delay might result in the arrest being held illegal for failure to obtain a warrant, and all resulting evidence might be inadmissible in court. For example, if you intend to arrest a person in his dwelling and wait for three hours in the early evening before attempting to obtain a warrant, the warrantless arrest may not later be justified by explaining that when you finally did attempt to get a warrant no clerks were available. If you have no justification for the delay and you have not demonstrated that an unforeseeable emergency situation existed, a court would be likely to rule the entry illegal.

(iii)Consent to Enter

If you are not in hot pursuit or exigent circumstances have not arisen, you may still gain entry by obtaining consent to enter. Consent should be used only as a last resort because it is often subject to question after the fact. If you have sufficient probable cause to get a search warrant, it is preferable to make the search under a warrant rather than base it on consent. The standards of consent to enter are similar to those of consent to search (see Guideline 501, Consent Seraches.) If the consent is challenged later, a court will examine the situation very carefully to determine whether:

a. the consent was given voluntarily; and

b. the person had the authority to consent to your entry.

If these elements are not all demonstrated, the arrest may be declared illegal.

To develop a strong case if the validity of the consent is challenged later, you should explain to the person that

he has a right to withhold consent and that any incriminating evidence found in a search incident to the arrest may be used against him or the suspect (if they are different persons). You should avoid any hint of coercion in your words or conduct. If possible, you should obtain consent in writing. Your patrol supervisor should have a supply of consent forms like the one that follows.

In general, any person with rights of control over or access to the premises equal to the suspect's (for example, a householder, spouse or cotenant) has the authority to consent. For specific examples of persons from whom you can obtain a valid consent and of persons without such authority, see Criminal Investigative Procedures Guideline 501, (Consent Searches, page 114). Listed in the same guideline on page 115 are some factors that may be used to challenge the voluntary nature of the consent.

If the person withdraws consent before you find the suspect, you should leave immediately.

CONSENT FORM

I consent to (a search, entry) by officers of the Boston Police Department of (

)

(for evidence related to the crimes of, for arrest of)

I am the

of the named (place, object, or vehicle).

I am giving this consent voluntarily with the knowledge that evidence of crime found may be used against me in criminal proceedings and that I have the right to refuse to give this consent.

Date

D. Manner of Entry

When you have a warrant you wish to execute on private property, you should announce your authority and purpose and wait a reasonable time to be admitted. In warrantless entry situations, you should also announce your authority and purpose if you believe there is no danger and the suspect will not flee. Tactically you might be more likely to obtain consent to enter if you first announce your presence.

With or without a warrant, you may dispense with the announcement of your authority and purpose if you have probable cause to believe it will jeopardize your or others' safety, result in the escape of the person sought, or result in the destruction of evidence. Once a reasonable time period has passed and you have not been voluntarily admitted by an occupant, and you have a reasonable belief that the person to be arrested is inside, you may use whatever force is necessary to gain entry. However, the least destructive manner of entry that can be safely executed should always be used. Whenever you have had to use force to gain entry into private property, you should take care that the premises are adequately secure before leaving.

In the emergency situations where you make a warrantless entry and where you may dispense with the announcement of your authority and purpose, breaking down doors or windows should be attempted only if necessary. In these emergency situations, you may try to trick the suspect into voluntarily opening the door whenever there is a reason to believe that this approach would be quicker, quieter, safer, less destructive of property, or more likely to result in a successful arrest.

1. Hostages

Note that if a hostage situation develops you should immediately notify the Operations Section, clear bystanders from the endangered area, try to keep the captors confined to a small area, avoid the use of firearms or other actions that might endanger the hostage, and then await further instructions. The hostage situation should be handled in accordance with Rule 300 of the Boston Police Rules and Regulations.

EXAMPLES:

(1) As you step out of a sub shop on Center Street in Jamaica Plain, you see a youth grab a baseball glove and a few other items from a sale table in front of the dime store and run around the corner. You chase him on foot, up a side street. He runs into a triple decker. Although this is private property, you may follow him in to make the arrest since you are in hot pursuit.

(2) Sadie, who has given you very reliable information in the past, tells you that Carlos Santini is the murder suspect for whom you have been looking. She had a date with him last night and he told her all about the murder. He said that he was taking a plane for Mexico tonight, and is in his apartment now packing for a flight that will leave in two hours at 11:00 p.m. Because you have probable cause to believe that a crime of violence has been committed by this person, and have reason to believe that this suspect is inside his apartment and will escape if not immediately apprehended, you may enter his apartment and arrest him without a warrant.

(3) You answer a call about a fight in a Dorchester bar. When you arrive, the bartender describes the incident, in which Clyde Puckett attacked T. J. Lambert with a broken beer bottle, cutting him severely. The story is corroborated by another witness who also explains that George Beston just left to drive Clyde home. You obtain Clyde's address and drive there. When you knock on the door, a man identifying himself as George answers. As Beston does not live here, he does not have capacity to consent to your entry to arrest Clyde. You ask for Clyde, but George explains he has passed out in the bedroom. At this point, Barbara Jane, Clyde's wife appears. As her consent would be valid, you explain that you wish to talk to Clyde because he has been involved in a bar fight, but make clear that she need not consent to your entry. She says she is sick of Clyde's drinking

and getting into fights, so she lets you in. As you approach the bedroom, however, Barbara Jane changes her mind, begins crying and screams at you to get out of her house and leave Clyde and her alone. Since she has withdrawn her consent, you no longer may stay and make the arrest.

705. Arrest Beyond the Jurisdiction

You may cross city lines to make an arrest beyond your jurisdiction in the four situations listed below.

A. To Execute a Valid Arrest Warrant (Ch. 276 §23).

You should notify both your supervisor and the other jurisdiction's police department beforehand and, if possible, have one of its officers accompany you when executing the warrant.

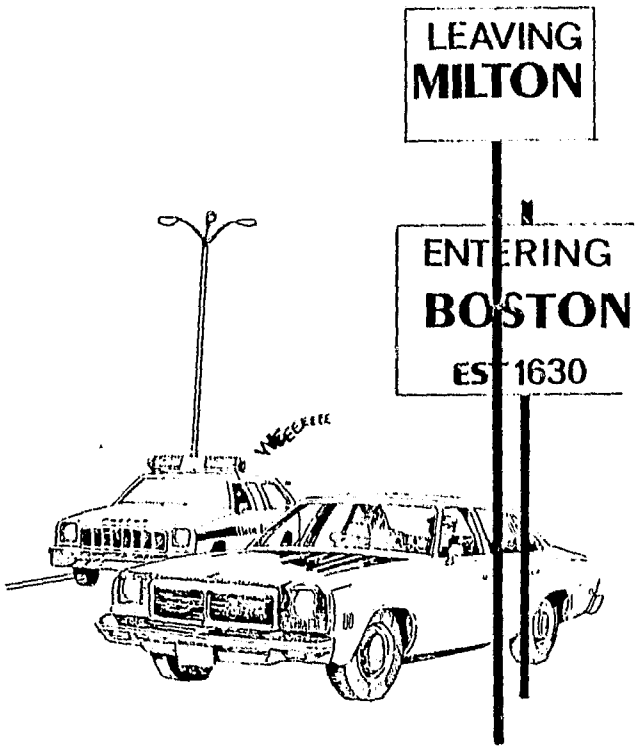
B. In Fresh Pursuit (Ch. 41 §98A).

You may cross municipal lines to make a warrantless arrest if:

1. the crime for which you are pursuing the suspect was committed in your jurisdiction; and
2. the crime was a felony or was a misdemeanor committed in your presence; and
3. you have the power to make a warrantless arrest for the crime; and,
4. you are in fresh and continuous pursuit. (Rule 100, §7)

You need not actually see the suspect cross the city line to be involved in a fresh and continuous pursuit. However, "fresh and continuous" means the lapse of time between spotting the suspect and catching him must be short; and you should have a continuous knowledge of the suspect's whereabouts as opposed to making a general search of an area outside city limits. For example, if during a car chase, you lose sight of a suspect just as he is entering the expressway headed out of town, and you pursue him and spot him just

You may cross municipal boundaries to make an arrest if you have probable cause to believe the suspect committed an arrestable offense and you are in fresh and continuous pursuit when you cross the jurisdictional line.



over the city line several minutes later, you may continue your pursuit and arrest him when you catch him. On completing the pursuit, you should either arrest the suspect and return him to your jurisdiction or give him a traffic citation.

C. Under a Mutual Aid Agreement. (Ch. 41 §99)

When Boston and another city or town have entered into an agreement to provide mutual police aid programs (Ch. 40 §8G), you have the same authority within that other jurisdiction as you have in Boston. (Boston has no such arrangement currently.)

D. State of Emergency

When the Governor declares a state of emergency and mobilizes the police force for civil defense, you should then follow the Governor's orders as commander-in-chief (Ch. 147 §7).

EXAMPLE:

While on patrol on S. Huntington Avenue, you observe a man grab a pocketbook from a nurse who is entering the V.A. Hospital. The man enters a car and the car speeds away down S. Huntington. You immediately follow the car and the car makes a left turn into Brookline. You stop the car and make the arrest. Even though you have entered another jurisdiction, you may arrest because it was a crime for which you have the power to arrest and you were in fresh and continuous pursuit when you crossed the jurisdictional boundary.

706. Procedures to be Followed on the Street After Arrest

After you have made an arrest, either with or without a warrant, you should take the following steps at the scene of the arrest:

1. Inform the person of your authority and of the charge for which he has been arrested.

2. Pat down the person for weapons.

3. Handcuff the person.

4. If the person is sick or injured, inform the dispatcher of his condition and request an ambulance, and administer appropriate first aid. You must wait for the ambulance to arrive and have one police officer accompany the person in the ambulance. If the person is admitted to the hospital for treatment, you should proceed in accordance with Special Order 77-52 (May 3, 1977).

5. Although it is not necessary to give a ***Miranda*** warning unless you are going to question the suspect, giving the warning is a worthwhile safeguard in the event that an interrogation situation does arise.

You may also want to conduct a search or a street identification. For the circumstances when these are appropriate, you should refer to the Guidelines on Search Incident to Arrest and the Guidelines on Identification Procedures. If it appears that physical evidence at the scene will be important in determining the facts, you should take precautions to secure and protect the scene of the incident (Rule 312, §4). You should contact the Major Violators Division at Police Headquarters if the crime for which you arrested the person meets the Division's standards (Commissioner's Memorandum 75-162).

EXAMPLE:

(1) You learn there is an outstanding warrant for J. Edward Tweed, who allegedly embezzled $100,000 from a Boston bank. You proceed to his home on Joy Street, knock on the door and he answers the door. You inform him of the warrant for his arrest in connection with the embezzlement of a large sum of money. You pat him down for weapons, and place handcuffs on him. Even though you do

not plan to interrogate him immediately, you give him his *Miranda* warnings to be sure that any information gathered will be admissible at his trial.

707. Release of a Person After Arrest

A. General

Any person you have arrested has a right to be brought before the proper court as soon as possible, and in any case no later than the next morning that court is in session.

If your investigation after making an arrest convinces you that you no longer have probable cause to believe the suspect committed the crime for which he was arrested, you may release him without bringing him to court. Even though the arrest may have been perfectly legal, if you release a suspect without presenting the case to a magistrate you can be held liable for false imprisonment in a civil lawsuit. Therefore, before you release any suspect you have arrested, you should tell him that he has a right to be brought into court but that he may waive that right. If the suspect voluntarily waives his right to be brought into court, you should have him sign the following release form. This form will provide a defense if a civil suit arises after the release.

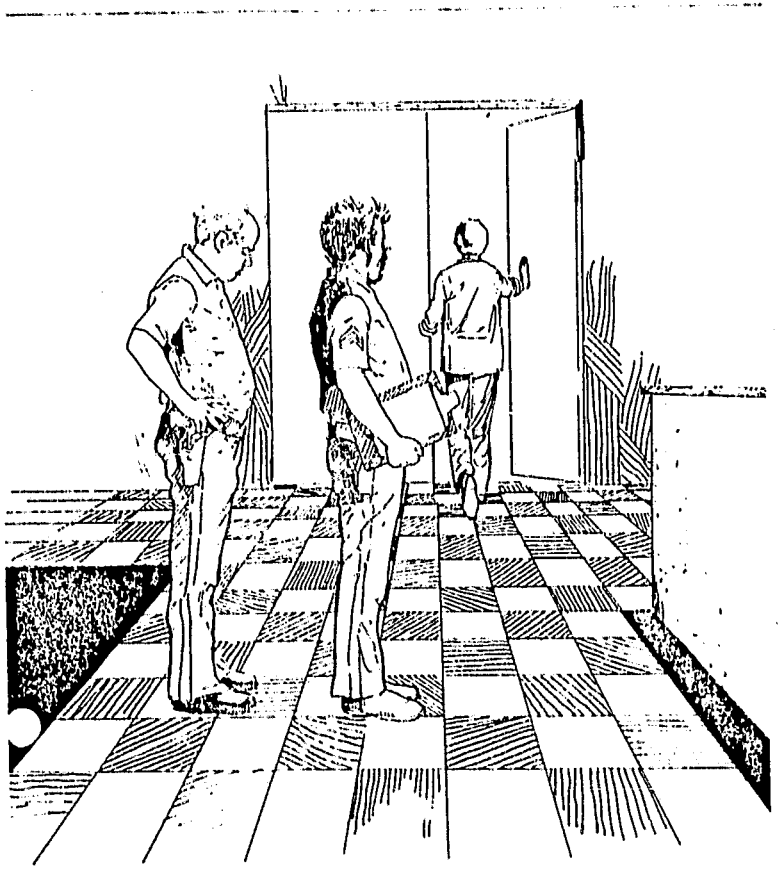
B. Release on the Street

Whenever you wish to release someone on the street, you should ask the person to sign a release form. You should also make a record of the incident either on an incident form or an FIO.

C. Release at the Station

Whenever you wish to release someone at the stationhouse, you should have the Booking Officer supervise the signing and release process. You should also fill out an incident report.

After making a valid arrest and transporting the arrestee to the station, further investigation may convince you that you no longer have probable cause to believe the suspect committed the crime. Following proper procedure, it is appropriate to release the suspect without first bringing him to court.



RELEASE FORM

I understand that I have a right to go before a judge or magistrate. I waive that right. I authorize the Boston Police Department to release me without bringing me before a judge or magistrate.

_____

Date: _____

Witness: _____

D Refusal to Sign Waiver

If the suspect does not sign the waiver form, you should still release him. To protect yourself from civil liability you should go to court as soon as possible and inform the magistrate of all the facts which led you to believe the suspect was not guilty.

EXAMPLE:

(1) Miss Viola Bumpus, age 70, resident of Back Bay, has reported to you that a man calling himself Lance Hardwick, of Hardwick Introductions, LTD., has swindled her out of $1,000. The scheme was that Mr. Hardwick was going to introduce her to eligible bachelors. To date, there have been no introductions and to make matters worse, his phone has been disconnected. You know that there is a man working this con in the Back Bay because Miss Bumpus has not been the first to complain. She has given you a very good description of the alleged Mr. Hardwick.

You resume patrol and see a man, matching Miss Bumpus' description, having dinner at the Cafe Vendome with an elderly lady. You place this man, who identifies himself as Quentin Thursbee, under arrest. No sooner do you turn around and start walking to your cruiser, than Miss Bumpus walks up to you and inquires to where you are taking Mr. Thursbee. She explains that she and Quentin have been whist partners for years and he is, by no means, that naughty Lance Hardwick. Because you no longer have probable cause to believe that Quentin Thursbee committed the crime in question, you wish to release him as soon as possible. You tell him that he has a right to be brought into court, but he may waive that right. However, Mr. Thursbee indignantly refuses to sign the waiver form. You release him, nevertheless. In order to protect yourself from a suit for false imprisonment, you go to a magistrate as soon as possible and tell him of all the facts of the case.

708. Arrest Warrants: General

An arrest warrant is a written order issued by a judge or clerk in the name of the Commonwealth, naming a person charged with a crime and commanding the proper officers to arrest that person and bring him before the court. In general, there are two types of arrest warrants: (1) those issued after a complaint or indictment is authorized, commanding the arrest of persons who have not yet been before the court; and (2) those seeking the return of defendants who are wanted by the court because they defaulted or violated the terms of their probation.

When a complainant or a police officer obtains a criminal complaint in a District Court in a case where the defendant has not yet been arrested, either an arrest warrant or a summons will be issued.

To obtain a warrant, you should go to the District Court within whose boundaries the offense was committed and fill out the application form provided. You need not state the full facts on the form but must state the offense (statutory violation) with which the suspect is charged and

list the names of any witnesses. When you believe that there is a risk that the suspect will not appear in response to a summons or that his continued liberty will pose a danger to the public, you should suggest that an arrest warrant be issued. The clerk will prepare the complaint and, if authorized, the arrest warrant; a docket number will then be stamped on the papers in the docket room.

In Boston Municipal Court, you must explain under oath the facts and circumstances of the case to the judge in a complaint session in the third criminal session courtroom. If the judge is satisfied that probable cause exists, he will sign the application form, authorizing the complaint. In all other District Courts, a clerk of court administers the oath, hears your description of the case's facts and circumstances, decides whether to authorize a complaint or whether a warrant should issue, completes the forms, and stamps the papers with a docket number. The warrant may be executed upon completion of this process.

When you make an arrest authorized by an arrest warrant, probable cause has already been reviewed by a judge or clerk and upheld. In general, therefore, an arrest made with a warrant is on firmer ground than an arrest made without a warrant. Whenever the opportunity arises, you should seek a complaint and ask for the issuance of an arrest warrant rather than making a warrantless arrest. Arrest warrants are also helpful in coordinating activities between Districts, where officers in one District seek to arrest a suspect who may be found in another part of the city. In addition, obtaining a complaint and an arrest warrant is sometimes useful as a method of ensuring cooperation from witnesses necessary for the prosecution.

709. Arrest Warrants: Execution

A. Time

Although there is no definite time limit within which an arrest warrant must be executed, you should execute any arrest warrant without unreasonable delay. Whether a delay is reasonable or not depends on the circumstances. For example, if you don't know where the defendant can be found, a great deal of delay may be reasonable in order to make a proper investigation of his whereabouts.

Arrest warrants may be executed at any time of the day or night, but you should execute an arrest warrant at a reasonable time, bearing in mind the offense with which the person is charged. For minor offenses, warrants should be executed during the day, so that the person can be taken to court that day. It would not be reasonable, for example, to execute a warrant at 11:30 p.m. on a person charged with a minor traffic offense. In contrast, 11:30 p.m. might be a reasonable time to execute a warrant on a suspect charged with armed robbery who is only at home (where few people might be endangered) for a few hours late at night.

B. Place

An arrest warrant may be executed anywhere in the Commonwealth. If you have a warrant that must be executed outside the city limits, you should notify your supervisor and arrange to have an officer of the other jurisdiction's police department accompany you. Likewise, when you are going to execute an arrest warrant in a district other than your own, you should notify that district.

C. Manner

If you have an arrest warrant with you when you make the arrest, you should show it to the suspect, or a person acting on his behalf, after you have him securely in custody. If you do not have the warrant with you, you should inform the suspect of the charges against him and should show him the warrant (if he wants) as soon as possible.

In executing arrest warrants, you should follow the guidelines and the BPD regulations, Rule 303--Deadly Force and Rule 304--Use of Non-lethal Force.

D. Return

The officer making the arrest should return the warrant to the court

which issued it and bring the suspect to the proper court as soon as possible. This means that the defendant must be brought to court no later than the next morning that court is in session.

EXAMPLE:

(1) You have obtained an arrest warrant for James West, who has run up a total of $560 in parking tickets and has failed to pay any of them, or to answer previous summonses. You do not execute the warrant at night because considering the crime with which West has been charged, a nighttime execution of this warrant is unreasonable. Therefore, you execute the warrant during the daytime.

710. Arrest of Juveniles

A. General

The law establishes different procedures for the arrest and prosecution of young people, who are subject to the jurisdiction of the juvenile court. Young people are formally charged in the juvenile court with being delinquents because of criminal acts they have committed. Although the prosecution of all juveniles will begin in the juvenile court, juveniles between the ages of 14 and 17 charged with felonies or violent offenses may be transferred upon order of the juvenile court to the Superior Court for trial as adults.

B. Definition of a Juvenile

Any young person who has passed his 7th birthday but has not yet turned 17 is a juvenile. In addition, any young person who is 17 years old and is arrested for a crime committed before his 17th birthday is also treated as a juvenile. The juvenile court does not have jurisdiction to charge a young person who is less than 7 years old with being a delinquent, and therefore you have no power to arrest a child six or younger. If a child under 7 is involved in an incident, you should remove him from the situation and, preferably, take him home.

C. Establishing Age

Whenever you arrest someone who appears to you to be a juvenile, you should establish the suspect's age as part of the booking procedure. If the suspect appears to you to be a juvenile but claims to be an adult, you should treat him as an adult but have the Booking Officer call in a probation officer who will then call the suspect's parents. If you have ***strong*** reason to believe the suspect is a juvenile even though he claims to be an adult, treat him as a juvenile. The suspect's age will, if it hasn't already, come out in court. If the suspect appears to be an adult but claims to be a juvenile, you should treat him as a juvenile--the suspect's true age will usually come out when the probation officer notifies his parents.

D. Booking procedure for juveniles

1. Notifying probation officer

Whenever you arrest a juvenile, you should bring him to the station for booking and contact the juvenile officer. When the juvenile officer arrives, inform him of the facts and circumstances of the case; he will then take charge of processing the juvenile and you may resume your other business. You should proceed on your own if a juvenile officer is not available and consult the Superior (Desk) Officer on all decisions. After the suspect is booked, the Superior Officer must notify a probation officer from the court having jurisdiction over the location of the crime and must notify at least one parent or guardian. If court is in session, a probation officer can be reached at the courthouse; otherwise, the Desk Officer's list of probation officers' names and telephone numbers should be consulted.

The juvenile should be detained in the juvenile "cage" or other area separate from adult offenders pending release or transfer. If the juvenile officer is not present, you should remain at the stationhouse until you are released by the Superior Officer.

2. Release or detention of juveniles

The probation officer makes all the decisions regarding release or detention. If you have information which is relevant to the decision whether or not to release the juvenile, you should inform the probation officer. If you have arrested the juvenile pursuant to a warrant which directs that he be held pending his appearance in court, he should be detained in the DYS-approved facility specified in the warrant.

Unless the juvenile has a long arrest record or is charged with a serious crime, it is likely that he will be released. If the probation officer decides to release the juvenile, the Superior Officer will contact the parents or guardian or other person with whom the juvenile resides. The responsible person should be told when the arrest took place, the reason for the arrest, the time and place of the hearing, and the fact that the juvenile will be released to them if they come down to the station and promise in writing to be responsible for his presence in court. When the person appears at the station and signs the printed release form, the juvenile should be released. If no one can pick up the juvenile, you should take him home in a police car (***not*** a patrol wagon). If the person who is expected to pick him up does not arrive, you should take the juvenile to DYS or the YMCA to stay overnight, as the probation officer directs.

If the probation officer decides not to release the juvenile, the Desk Officer should still contact the parents or guardian or person with whom the juvenile resides. The responsible person should be told when the arrest took place, the reason for the arrest, and that the juvenile will be detained in an approved juvenile detention center (specify which one) until his appearance in court unless bail is obtained. If the probation officer so requests, the juvenile should be released to the probation officer. If a juvenile is detained, you should transport him (in a car) to the juvenile detention center designated by the probation officer.

EXAMPLE:

(1) You have arrested Denny Ortiz on a charge of vandalism. Denny claims to be 19, but appears much younger. While booking Denny, the juvenile officer informs you that he is virtually certain that he has dealt with Denny before and he is only 15. Because you have strong reason to believe that Denny Ortiz is a juvenile, you treat him as a juvenile, even though he claims to be an adult.

PART EIGHT:
EYEWITNESS IDENTIFICATION

801. Judicial Concern with the Reliability of Eyewitness Identifications

Eyewitness identification evidence that you have obtained will only be admitted at trial if the court can be convinced that the evidence is reliable. That is, the identification must appear to be based on the free choice of a witness who was able to observe and can recall the physical characteristics of the criminal. The court, therefore, will look at the type of identification procedure you arranged and the manner in which you conducted it to determine whether the witness was influenced, intentionally or unintentionally, by your actions. A correct eyewitness identification obtained improperly or under conditions even suggesting impropriety can be excluded at trial. If the evidence is admitted, the jury may still find it unpersuasive if sufficient doubt can be raised about its reliability.

These guidelines will assist you in selecting the identification procedure most appropriate for your investigation. In many instances, there are several procedures that are equally appropriate. When selecting from the appropriate procedures, you should decide which is most practical to arrange. Additionally, the guidelines offer assistance in conducting the procedure in a manner that will ensure your obtaining reliable eyewitness identification evidence. If the procedure is conducted in accordance with the guidelines, the evidence that you obtain is more likely to be admitted at trial, more persuasive when presented to the jury and more likely to result in a conviction in cases where identification is an important issue.

802. The Decision to Conduct a Pretrial Eyewitness Identification Procedure

A pretrial eyewitness identification procedure is an opportunity that you arrange to give an eyewitness to a crime the chance to clear or identify a suspect as the perpetrator. You should consider initiating

eyewitness identification procedures prior to trial only for those crimes where the identity of the perpetrator is clearly at issue and where you believe that there is a strong likelihood that the witness, based on his observations during the crime, can recognize the suspect. When you believe that conducting a pretrial identification procedure is appropriate, it should be arranged as soon as possible after the commission of the crime. Generally, pretrial identification procedures are not necessary when the suspect is apprehended during the commission of the crime, when his identity is not contested or when the witness would be unable to recognize the suspect as the criminal. Additionally, it may be unnecessary for you to conduct an identification procedure when the eyewitness, who may be the victim, already knows the identity of the criminal and can tell you who he is.

If you have arrested a suspect whom you believe fits the major violators profile, any decisions about conducting an identification procedure should be made jointly by you and an assistant district attorney. You should contact the Major Violators Division of the District Attorney's Office (247-4461) ***at the time of booking*** and coordinate your activities with the assistant district attorney who responds. In other cases, when an assistant district attorney has been assigned to your case you should consult him or her whenever you consider arranging an identification procedure.

EXAMPLES:

(1) John Darcy, who was robbed on the Common last night, has come to the station, at your request, to look at photographs in an attempt to identify the suspect. He is unable to make any identification. While standing with him in front of District One, waiting for a taxi, a patrol wagon pulls up in front of the station. From the back of the wagon, an officer leads a handcuffed man into the station to be booked on an unrelated charge. Darcy immediately identifies the man as the person who robbed him.

The identification evidence will be admitted at trial because the ID was the result of an accidental encounter which you did not arrange and which you could not have avoided.

(2) While doing a first half, you receive a call to investigate a reported handbag snatch at Hanover St. near Cross. When you arrive Marie Pucci tells you that as she was walking her dog, someone knocked her down from behind and grabbed her purse. It contained her wallet with several credit cards, a gold key case with her initials and a pair of green stone earrings set in gold. She never saw her assailant.

When you return to the station at the end of your tour you learn that a man had been arrested for an unrelated offense a short time ago and during a pre lock-up inventory of his property, credit cards bearing the name Marie Pucci were discovered. It would not be appropriate or practical to conduct an identification procedure for the victim because she had no opportunity to observe the person responsible.

(3) You are taking a report from a stabbing victim who has gone to Boston City Hospital for treatment. The victim tells you that he was attacked by Russell Turnbow, his next door neighbor with whom he regularly goes to the track. The victim gives you a detailed description of Turnbow. It may not be necessary to conduct a pre-trial identification procedure as part of your investigation because the victim is able to tell you with certainty who his attacker was.

803. Right to Counsel

A defendant generally has the right to have a lawyer present at any pretrial identification procedure at which the defendant is present and which is conducted in relation to a crime with which he has been formally charged. He retains this right even if he is released prior to trial. In Massachusetts a criminal defendant is formally charged by complaint or indictment. A person arrested on a warrant acquires the right to counsel for identification purposes at the time of arrest because an arrest warrant can only issue following complaint or indictment. A person arrested without a warrant acquires the right to counsel when the complaint is sworn out against him. However, delay in seeking the complaint only for the purpose of conducting an identification procedure will not postpone the time at which the right to counsel attaches. Diligent efforts should be made to have counsel present at an emergency identification. However, even if the suspect has been formally charged, you may proceed in his absence if the delay caused by notifying him and awaiting his arrival will result in the sacrifice of necessary identification evidence. (Guideline 814). Counsel is never required at photographic identification procedures.

A. What the Right to Counsel Requires

1. Informing the Suspect

You should inform a defendant who has the right to counsel of his right to have a lawyer notified and present at the identification procedure whether or not you have already given him the ***Miranda*** warnings. Your warning should contain the following five elements, although you need not use precisely these words.

a. "You have a right to have a lawyer present at the identification procedure."

b. "If you wish to hire a lawyer, you may use the telephone to do so."

c. "If you cannot afford to hire a lawyer, one will be appointed for you if this has not already been done."

d. "Your lawyer will be informed of the time and place of the identification procedure."

e. "You may waive your right to counsel. But any identification evidence obtained may be used in court against you." The waiver must be voluntary and you should take it in writing on a departmental waiver form (a copy of which follows). It is a wise precaution to have one or two persons not assigned to the investigation witness your giving the warnings and to have them sign the waiver form as witnesses.

BOSTON POLICE DEPARTMENT
WAIVER OF RIGHT TO A LAWYER AT LINE-UP

Name of suspect: .....

Charge: .....

Before you appear in a line-up conducted by the Boston Police Department, you must understand your legal rights.

You are about to be placed in a line-up with several other persons to permit a witness to attempt to identify you in connection with this offense.

If you are identified, this identification may be used against you in court.

You have the right to have a lawyer present at the line-up. If you want a lawyer but cannot afford to hire one, a lawyer will be appointed for you at no expense to you.

I understand my right to have a lawyer present at the line-up. I do not want a lawyer and I voluntarily waive that right.

.....
Signature of suspect

.....
Date and time

Certification:

I, ..., hereby certify that I read
(name of officer)

the above warning to ..... on
(name of suspect)

....., that he informed me that he understood
(date)

his right, and that he signed the waiver form in my presence.

.....
Signature of officer

.....
Signature of officer witness

2. Contacting the Defendent's Lawyer.

If you have arrested an indigent defendent on a warrant and intend to show him to a witness prior to the appointment of counsel at the defendent's arraignment, you should contact the Legal Advisor (247-4550). He will assist you in arraigning to have an attorney present at the identification proceeding. If the defendant intends to hire his own lawyer, you should allow him a reasonable opportunity to do so.

After arraignment, most defendants will have had a lawyer appointed or will have retained a private attorney. You should speak to the lawyer to inform him of your intention to conduct an identification procedure. If you are unable to speak with him after making a reasonable effort to do so, you should inform him by certified mail, return receipt requested, or hand-deliver a notice to his office. If you have notified the defendant's lawyer, but he does not respond within a reasonable time, you may conduct the identification procedure. If the defendant intends to hire a lawyer following the arraignment, but has not yet done so, you should allow him a reasonable opportunity to do so. However, if a reasonable period of time has passed and the defendant has not yet retained a lawyer, you should contact the Legal Advisor and he will assist you.

B. Conduct of Counsel at the Identification Procedure

The primary function of a lawyer at the identification procedure is to observe the proceedings. Before the procedure actually begins, you should inform the lawyer that he has a right to consult with his client. But you should warn him that he is not permitted to speak to the witnesses or his client during the procedure and that he is required to maintain proper decorum throughout. If he causes a disturbance, you should warn him to stop or leave. You may exclude him if the disruption continues. You should advise the attorney however, that if he has any questions, comments or suggestions he should address them to you or to the district attorney. You should record their substance and you should implement any of them that are reasonable and will increase the fairness of the identification procedure.

EXAMPLES:

(1) At 11 p.m. on Saturday night, you make a warrantless arrest of Theodore Connolly for an armed robbery at a waterfront restaurant from which a large sum of money was taken. The robbery occurred five hours earlier and you realize that you cannot conduct a bringback. With your supervisor's approval, you arrange to have the witness view a line-up on Sunday morning. You may proceed with the line-up without notifying the suspect's attorney. However, if you decide that notifying and awaiting the arrival of Connolly's lawyer would not impede the investigation, you may choose to await his arrival.

(2) There is an outstanding arrest warrant for Sidney Toland charging him with rape. At 8 p.m., you receive information from an informant that Toland is in a lounge on Washington Street. You arrest Toland and a prompt line-up is arranged. You should inform Toland of his right to have a lawyer present at the line-up and, if the suspect does not voluntarily waive his right to have a lawyer present, the line-up should not proceed until the lawyer arrives.

(3) You have arrested Walter Grundy on a warrant charging him with mayhem. You read him the ***Miranda*** warning and he voluntarily waives his right to a lawyer. A line-up is arranged and the victim identifies Grundy. The identification evidence will be suppressed at trial because Grundy was not specifically informed that he had the right to have a lawyer present at the line-up. Waiver of his ***Miranda*** rights is not a waiver of his right to counsel at the identification procedure.

804. Advisability of Having Counsel Present

Even when a suspect does not have a right to counsel, it may be beneficial to your case to have his lawyer attend a non-photographic identification procedure if practical. The lawyer's presence alone may be sufficient to reduce the likelihood of a motion to suppress being filed, and if filed, his presence may be instrumental in defeating the motion.

Therefore, if it will not seriously impede your investigation, you should consider waiting until counsel is present before you conduct the identification procedure in the following situations:

1. If, after you have taken the suspect to the station to be booked, the suspect telephones his attorney who requests that his client not participate until he is present;
2. If, while the suspect is in custody, his attorney appears and states his desire to be present;
3. If the suspect has been brought to the station to be booked for a serious crime, for example, armed robbery or rape;
4. At an emergency identification;
5. When a suspect in custody has already been formally charged with one crime and you contemplate an identification procedure for an unrelated offense with which he has not yet been formally charged.

If you have determined that counsel should be present, refer to Guideline 803 with regard to contacting and conduct of counsel.

EXAMPLES:

(1) You have arrested Oliver Tawdry without a warrant. While being booked at the station, Tawdry telephones his lawyer and his lawyer requests that no identification be attempted until he, the lawyer, arrives. Although the suspect does not have a right to have his lawyer present at any identification procedure at this time, you may wish to postpone any identification procedure at which Tawdry will be

present, until his lawyer can be present.

(2) You and your partner respond to an armed robbery in progress call at the Star Market on Boylston Street. You arrest Willie Button and a complaint is issued. Button is unable to make bail following his arraignment. Because his appearance and modus operandi make him a suspect in several other recent store hold-ups, a line-up is arranged to allow witnesses to the other crimes to view the suspect. Button does not have a right to a lawyer for this line-up, but you should consider waiting until his lawyer is notified and present before the line-up is held if the delay would not unduly impede the investigation.

805. Factors Governing the Admissibility of Pretrial Eyewitness Identification Evidence

A. When the Defendant Does Not Have a Right to Counsel

For an eyewitness identification to be admissible at trial, if it is made at a pretrial procedure at which the suspect does not have a right to counsel, the trial judge must be convinced that the evidence is reliable. Evidence derived from a procedure which is not unnecessarily suggestive will tend to be more reliable. These guidelines present a variety of permissible identification procedures and a specific manner in which each should be conducted. All procedures will tend to be less suggestive and the identifications derived from them more reliable and therefore admissible if:

1. You present to the witness a sufficient number of other persons or photographs resembling the suspect. Even when one-on-one confrontations are permissible, presenting the witness with a selection of subjects, if practical, will make the procedure less suggestive and increase the likelihood of identification evidence being admitted at trial.

2. Your instructions to the witness do not suggest, directly or indirectly, that you believe a particular individual may be the criminal. Additionally, you should avoid communicating to the witness any information about the suspect or about evidence linking him to the crime, since this may inadvertently supply the witness with a suggestion or encourage him to exaggerate the certainty of his choice.

3. When there is more than one witness to a crime, you arrange to have only one witness view the suspect or the photographs at a time, out of the immediate presence of the other witnesses. Additionally, you should instruct each witness not to communicate with other witnesses immediately before or after the identification procedure.

4. When there is more than one suspect, you arrange to present each suspect or his photograph to the witness in a separate identification procedure.

5. You show the suspect or his photograph to a witness only once. Repeated viewings of the same individual may cause the witness to associate that individual with the crime and to replace the witness' memory of the person actually observed during the crime. A witness may be exposed to more than one identification procedure involving the same suspect if:

   a. you conducted the first procedure when the suspect was unknown or at large and another identification is necessary to verify whether you have apprehended the right person; or

   b. the witness requests another opportunity to view the suspect to resolve his doubt; or

   c. the suspect or his lawyer requests that you conduct an additional procedure.

B When the Defendant Does Have a Right to Counsel

For an eyewitness identification to be admissible at trial, if it is made at a pretrial procedure at which the suspect has a right to counsel, you should:

1. In conformity with Guideline 803, inform the suspect of his right to counsel and notify his attorney of the planned procedure unless the suspect waives his right to counsel; and
2. convince the trial judge that the evidence is reliable and was obtained from a procedure which you conducted according to the procedures set forth in Part A.

EXAMPLES:

(1) You have arrested Georgie Brabber for a number of handbag snatches which took place between four and six p.m. on Washington Street near Filenes. You have asked one of the victims to meet you at the BMC the following morning to see if she can identify him. The woman sees Georgie alone in the dock when the case is called. She identifies him. It is likely that her identification will not be admitted in evidence because the conditions under which it was made, singled out the suspect in a highly suggestive manner.

(2) You have arrested a suspect about an hour after a street robbery during which the victim's wallet was taken. When you search the suspect incident to his arrest you find the wallet. Because you have arrested the suspect a short time after the crime, you may bring him back to the victim in an attempt to have the victim make an identification, but you should not tell the victim about the recovered wallet.

(3) You have been assigned to investigate the murder of a young woman whose body was found in an alley next to an apartment building in the Back Bay. Richard Perkins, a truck driver, was working the night of the murder and he has told you that he saw a man take a woman from the rear seat of a car and carry her in the direction of the alley. At the time, Perkins thought the woman was sleeping or drunk.

The investigation has focused on a man with whom the victim had lived. You show Perkins a group of nine photographs. Perkins tentatively selects the suspect's photograph and tells you that he could be certain if he saw the suspect in person. You know that the suspect is one of the bartenders at a Back Bay lounge, so you arrange to take Perkins to the lounge at an hour when there are usually a number of patrons present. You tell Perkins that you are going to the lounge to have him attempt to identify the suspect, but you should in no way direct his attention to the suspect.

806. Factors Governing the Admissibility of In-Court Eyewitness Identification Evidence

If an eyewitness identifies the defendant from the witness stand as the perpetrator of the crime, this identification may be admissible even if testimony about an improper pretrial identification is excluded. However, for it to be admissible, the trial judge must be convinced that the in-court identification could have been made by the witness even if the out of court procedure had never occurred.

An in-court identification is more likely to be admitted if the pretrial identification procedure which you conducted was not suggestive. Therefore, conducting proper pretrial procedures will aid in having a persuasive in-court identification admitted into evidence. The likelihood of its admission will be further increased if:

1. the witness had an adequate opportunity to observe the suspect during the commission of the crime under satisfactory lighting conditions;

2. you obtained a description of the criminal from the witness *soon after the crime, prior to conducting an identification* procedure, and that description is consistent with the defendant's appearance;

3. the witness' initial identification was positive and made as soon after the crime as possible;

4. the witness has never failed to identify the suspect when given the opportunity and has never identified anyone else;

5. the lapse of time between the crime and trial is not too long.

Many of the factors which the court will consider to determine whether an in-court identification is admissible are not within your control. The most that you can do is document them for court. Because the Massachusetts courts regard the witness' opportunity to observe the suspect during the commission of the crime as the most important factor, you should pay particular attention to developing evidence which supports the existence of the witness' opportunity to observe.

EXAMPLES:

(1) Mary Wells, a nurse at the Carney Hospital, has told you that she was driving home at night along Columbia Road after finishing her shift. While stopped at a red light, a man approached her car from the rear on the passenger side, reached in through the open window, and grabbed her purse. She tells you that she was very frightened and by the time she looked up the man was a couple of blocks away. He turned and she saw his face illuminated by a street light, for a couple of seconds. She describes him to you.

Several days later you ask Ms. Wells to come to the station to view a suspect. You take her to the lock-up where the suspect is being held on another charge. She identifies

If the witness had a good opportunity to observe the suspect during the commission of the crime, the witness may be permitted to identify the defendant at his trial even if a pretrial identification is excluded at his trial as unreliable

him as her assailant. The highly suggestive station identification will not be admitted at trial. And, because Ms. Wells had a very limited opportunity to observe the suspect at the time of the crime, it is doubtful that it will be clearly shown that her in-court identification of him is based on those observations and not on the improper station procedure.

(2) You suspect Thomas Tucker has committed an armed robbery of a Western Union office two days ago. The only witness to the crime is Harold Dow, night manager of the office. He comes to the station to view photographs and you show him a group of ten photos which includes two photos of Tucker. Dow does not identify the suspect. You then show him a second group of photos, where only Tucker's photo is repeated. Dow is unable to make a positive identification, but is able to tell you that he thinks the man in the photo is the perpetrator. Based on other information your investigation has produced, Tucker is arrested. You ask Dow to come to the station to view a line-up in the guard room. The line-up contains three men in addition to the suspect. One is much shorter than the suspect and the other two are plain clothes police officers who regularly work the sector in which the Western Union office is located. Tucker is the only person in the line-up whose photograph has been previously shown to the witness. Dow identifies the suspect.

It is not likely that either the line-up identification or an in-court identification will be admissible at trial. The repeated suggestive procedures made it almost inevitable that the witness would identify the suspect. Moreover, the failure of the witness to identify the suspect from photographs when he had an opportunity to do so, casts doubt on the reliability of his later identification.

(3) You have asked Jack Weston to the station early in the morning to view a person you suspect of having robbed him two weeks ago. The robbery occurred when Weston, an intern at Children's Hospital, was walking home on Longwood Terrace. At about 11:30 p.m., a man approached him, showed him a knife, backed him up against a wall, and demanded his wallet. He faced his attacker in the well-lighted area for about a minute and got a good look at him. He was able to give you a detailed description.

When Weston arrives at the station you ask him to wait in the lobby for a couple of minutes. You know that the suspect is in custody and is about to be taken to court on another charge. While Weston is waiting, two uniformed officers cross the lobby with a handcuffed person who they are taking to court to be arraigned for a cab robbery. When you rejoin Weston, he immediately tells you that the handcuffed person he just saw is the man who robbed him. The stationhouse identification will probably not be admitted into evidence. However, because Weston had a good opportunity to observe the suspect at the time of the crime and was able to give you a good description which matched the suspect, Weston will probably be permitted to identify the defendant in court at the trial.

807. The Use of Photographs for Identification Purposes: Preliminary Considerations

A. When Photographs May be Used

Photographs are used most frequently for identification purposes when you have determined that it is necessary to obtain an eyewitness identification but the suspect is not in custody. Photographs may also be used for identification purposes when the suspect is in custody but staging a line-up is impractical.

You should consider conducting a photographic identification procedure when:

1. you have no definite suspect;

2. you have a definite suspect but his whereabouts are unknown;

3. you have a definite suspect but do not have probable cause to arrest him;

4. a definite suspect is in custody but is so far away that it is impractical for you to arrange a line-up;

5. you have a definite suspect in custody but it is impractical to arrange a line-up because, for example, the witness is unwilling to view a line-up, the suspect threatens to be disruptive or it is difficult to arrange for suitable stand-ins; or

6. you have a definite suspect who has been charged and released pending trial.

When you intend to conduct a photographic identification procedure, you should show the photos as soon as possible after commission of the crime. At this time the witness' memory is freshest and the opportunity for a positive identification is greatest.

When there is more than one witness to a crime you should arrange to have each witness independently view the photographs out of the immediate presence of the other witnesses.

Whenever one or two witnesses identify a suspect from mug books, but you still lack probable cause to make an arrest, a group of photographs including the selected photograph should be assembled for the remaining witnesses. If you do have probable cause to make an arrest, and you believe that a further identification procedure is necessary, it may be advisable to consult the assistant district attorney assigned to your case or your supervisor, with regard to arranging a line-up for the remaining witnesses while the suspect is in custody.

B. Securing Photographs

Whenever you need a photograph of a suspect for investigative purposes, you should request it from the Identification Section in person or by phone (247-4401). You should request the most recent photograph available and ask that it be "backed-up" with the name, date of birth, height and weight of the person, the date photographed and the photograph identification number on the reverse side of the photograph.

The Massachusetts Crime Reporting Unit (M.C.R.U.) (formerly called the Massachusetts State Bureau of Identification) maintains photo files of all persons arrested for felonies in the Commonwealth, including the City of Boston, during the last 5 years. You may request copies of these photographs by telephoning the M.C.R.U. at 566-4500.

You should cross out or cover with non-transparent tape any date appearing on the face of a photo to be used in an identification procedure

C. Instructions to Witnesses Prior to Viewing Photographs

To reduce the suggestiveness of the identification procedure and increase the reliability of an identification made by the witness, you should include the following information in your instructions to the witness prior to having him view the photographs:

1. "Take your time; look at all the photographs carefully before making up your mind."

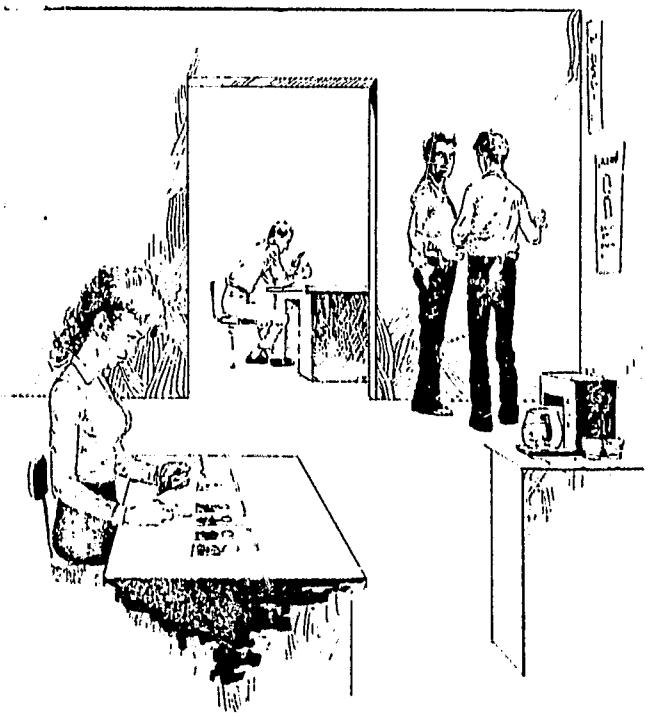
2. "A photograph of the perpetrator may or may not be in the display; only select a photo if you recognize the man or woman whom you believe committed the crime."

3. "Do not turn the photographs over."

4. You may inform the witness that the subjects in the photographs may differ from his recollection of the criminal

626

When you plan to have more than one witness to a crime view photographs for identification purposes, you should have each witness view the photographs out of the immediate presence of the other witnesses. Photographs shown to a witness should be similar in type and size, and each photograph should depict a person physically similar to the suspect.



because of changed hair style, facial hair or lighting conditions.

You should avoid suggesting, directly or indirectly:

1. that one of the photographs depicts the suspect; and

2. any information, for example names, prior arrests or convictions, about the persons depicted in the photographs.

EXAMPLES:

(1) You take a report from four teenagers who tell you that they were robbed at knife-point at approximately 9:30 p.m. as they walked through a well-lighted area of the Fens near Park Drive. They tell you that they were stopped by a group of seven or eight males who threatened to kill them if they didn't turn over their cash and jewelry. The attackers fled after taking the valuables. One of the youths, Mary Ellis, tells you that she is sure that she can identify the assailants. The others, more visibly shaken by the episode, are less certain. A detective on duty asks the victims to look at several mug books. He does not draw their attention to any particular picture but he does allow them to sit together and go through the books. During their examination of the photographs, Mary Ellis selects a picture of Jimmy Earl. She asks each of the others "This is one of them, isn't it?" After conferring, all the victims agree that it is.

The fact that one witness was permitted to make suggestions about the culprit's identity to other witnesses during the identification procedure, may increase the likelihood that the reliability of the identification evidence will be attacked at trial and the evidence excluded.

CONTINUED

8 OF 9

(2) You have arrested Joey Kennedy in connection with a liquor store holdup which occurred earlier in the day on Center Street in Jamaica Plain. After booking him, you take him to Identification to be fingerprinted and photographed. A witness who saw the man running from the store at about the time of the robbery, tells you that he was stuffing money and what appeared to be a gun into his pocket. You assemble a group of ten similar photographs to show her two days after the crime. Only the photograph of the defendant bears the date of the robbery. You cover the date appearing on the photograph before showing the group of photos to the witness so that it will not influence her attempt to identify the robber.

(3) You are investigating an armed robbery at the Mount Vernon Cooperative Bank on Boylston Street. The description given to you by three of the bank tellers is quite detailed. It includes a description of the robber's distinctive speech and of a tattoo on his forearm that was visible during the robbery. You believe that Archie Woodruff may be the perpetrator. Therefore, you include his photograph with nine others to show to each of the witnesses independently. You explain to each witness that the perpetrator's photograph may or may not be among those viewed. However, the photograph of Woodruff is two years old and shows him without the beard or moustache described by the witnesses. You may tell each witness, before having them look at any of the photographs, to study them carefully because the subjects in the photographs may have changed their hair styles or grown or shaved facial hair since the photographs were taken.

(4) You are investigating a number of rapes of children that have occurred in the early morning hours as the children were on their way to school. All occurred in the same area and the children with whom you have spoken have given you descriptions which suggest that one man, Clarence Weeks, may be responsible. You have a photograph of Weeks, who has a history of child molestation. On the reverse side of his photograph is routine personal data about Weeks, including his prior record. When you show the photograph, among a group of similar photographs, you instruct the witness not to turn any of the photographs over. In this way, you prevent the possibility of allowing the witness to be influenced by the information located on the reverse side.

You have placed the photograph of Weeks mid-way through the stack of ten which you have handed to the witness. She does not indicate any recognition when she passes his photo. You ask her if she is sure that the photo she just looked at is not the man. This question may indirectly suggest that you think that the person in the photograph is the rapist. It would be advisable to tell the witness, before she looks at any photographs, to take her time and carefully look at all the pictures. Only then should she select a photograph if she recognizes the culprit.

808. Photographic Array

A photographic array is a group of selected photos which you may show to a witness when you have a definite suspect who is not in custody or when the suspect is in custody but it is impractical to stage a line-up.

A. Composition of the Photographic Array

1. The array should consist of only one photograph of the suspect and at least 8 other photographs. The array should contain no more than 12 photographs. If however, the suspect was placed in a line-up, a witness who did not view the line-up may be shown a photograph of the line-up without other photos.

2. If you have more than one suspect for the crime under investigation, you should show each suspect's photo in a separate array.

3. Each photograph in the array should be similar in type and size. If the suspect's photo is from another department, all photographs in the array should be from that department.

4. Each person in the photograph should be similar in age, sex, race, and as many other visible characteristics as possible.

5. The persons depicted in the photographs should not be wearing distinctive clothing or headwear.

3. Procedures for Conducting Photographic Arrays

1. Photo Placement

You should randomly place the suspect's photo among other photographs in the array. The photographs may be laid out in a regular pattern on a surface in front of the witness, inserted into the pockets of a photo display page and then handed to the witness to examine or the photos may be handed to the witness in a deck provided that the suspect's photo is neither on top or bottom.

2. "Blank Array"

If you have a sufficient number of photographs of persons with physical characteristics similar to those of the suspect, you should consider using a "blank array." That is, you should assemble one or more groups of photographs without the suspect's photo. These "blank arrays" should be shown to the witness prior to showing him the group with the suspect's photo. You should not tell the witness the number of groups he will view. This technique will tend to counter a witness' assumption that the suspect's picture will appear in any particular group and will thereby discourage the witness' tendency to simply select a photo merely resembling the perpetrator.

3. Second Array

If the witness fails to identify the suspect's photograph from an array, you may arrange to show the witness a second array. It should contain one or two other photographs from the first array in addition to the suspect's as well as several new photographs.

EXAMPLES:

(1) You have obtained a photograph from the Brookline Police Department of a flim-flam suspect. Brookline photographs are noticeably larger than those taken by the Boston Police Department Identification Section. To assemble a fair selection of photographs to show to your witness, who has told you that he thinks he can make an identification, you obtain eight other photos from Brookline of persons physically similar to the suspect.

(2) Steve Brand has come to the station to report a robbery. He explains that he was in his first floor apartment at 1301 Commonwealth Avenue, when he opened the door for a man claiming to have a special delivery letter. When threatened at knife-point by the man, Brand gave up his money, credit cards, and jewelry. From investigations of other similar robberies, you have a hunch that John Dyer may be involved, but you have not yet developed any strong leads. Dyer fits the description given by Brand of a 20-25 year old white male with medium length brown hair, about six feet tall, weighing approximately 175 pounds. There are approximately thirty-five photographs in your files of men who fit this description. Brand agrees to look at photographs. Out of view of the witness, you assemble two groups of twelve photos each, placing Dyer's photo in the second

group. You explain to the witness that the perpetrator's photograph may or may not be among those that he views. You show the witness the first group of photographs and you ask him to carefully examine them. You then show him the second group. Showing the witness separate groups of photographs will discourage him from assuming that the criminal's picture appears in one group or the other and will encourage him to make a more reliable identification.

809. Mug Books

Mug books should be used when you do not have a definite suspect but the witness indicates an ability to recognize the perpetrator.

A. Maintaining the Mug Books

Each detective unit is responsible for maintaining the mug books although they should be available for use by all officers. The supervisor of each detective unit should select one of his officers to keep up the books on a regular basis. The officer in charge of the mug books should:

1. include all photographs as received from the Identification Section;
2. make sure that each photo is properly "backed-up" with the name, date of birth, height and weight, date photographed and the photo identification number on the reverse side of the photograph;
3. cross out or cover with non-transparent tape any date appearing on the face of the photograph;
4. make sure that no information, other than dates of birth, race and sex of the photo subjects appear on the mug book cover in view of the witness. Specifically, information about the crimes for which persons in the books were arrested should not be visible to the witness;

5. maintain a separate looseleaf binder containing the mug book record sheets. There should be a separate record sheet for each book. When a photo is placed in the mug book, the date of insertion, the photo identification number and name of the photo subject should be entered on the appropriate sheet. When a photo is permanently removed from the book, the date of its removal should be entered on the record sheet.

B. Removal of the Mug Books

Whenever it is necessary to remove mug books from the detectives' room, for example, to show them to a witness in the hospital, you should notify the officer in charge of them so that other officers will be able to find out where they are and when they will be returned.

C. Procedure for Showing Mug Books to a Witness

In addition to the preliminary considerations for using photographs appearing in Guideline 807, whenever you attempt to obtain an identification through the use of mug books, you should:

1. allow the witness to start at the beginning of the book and encourage him to look at a number of photographs before making his selection;
2. xerox copies of the mug book record sheet and keep it in your file if a witness makes an identification from a mug book;
3. inform the officer assigned to the case that you have done so and inform him whether an identification was made.

D. Personal Mug Books

You may find it useful to compile your own mug books. You should maintain them in the manner indicated in Part A above.

E. Massachusetts Crime Reporting Unit Photograph Files

Whenever a witness to either a crime of violence or a major property crime has been unable to make an identification from the mug books available to you, you may take him to view the photograph files at the Massachusetts Crime Reporting Unit (M.C.R.U.) located at 1010 Commonwealth Avenue, Boston. The M.C.R.U. maintains files of all persons arrested for felonies in the Commonwealth within the last five years. You may bring witnesses there from 7 a.m. to midnight, Monday through Friday. If it is necessary to use the M.C.R.U. at other times, phone 566-4500, identify yourself to the operator, briefly describe your case and request that a technician be called in for the time you expect to arrive with your witness. Technicians are on call at all times to handle identifications related to very serious crimes.

MUG BOOK RECORD SHEET

Mug Book Volume _____

Photo ID #	Name of Subject	Date Photo Placed in Book	Date Photo Removed

EXAMPLES:

(1) You have arranged to interview a rape victim shortly after her release from Boston City Hospital. You intend to show her photographs which are included in identification bulletins bearing the words "Notice of Release of Sexual Offenders." To obtain a reliable identification which is not influenced by improper suggestion, you remove or cover these words before showing her the bulletins. You also cover any other personal information contained in the bulletins about the subjects pictured in the photographs.

(2) You are preparing to testify at the trial of Harry Mobile. The prosecution intends to introduce evidence regarding the witness' pretrial identification. The witness selected the defendant's picture from a mug book which he viewed a short time after the crime. To rebut a defense claim that the identification is not reliable and should not be admitted, you retrieve the mug book record sheet. It indicates which photographs, in addition to the suspect's, were in the mug book when it was viewed by the witness. It can be used to persuade the court that the witness viewed a fair selection of photo subjects when he made his identification. If the court were to require the book itself to be produced, the record sheet would permit you to reconstruct its contents at the time it was presented to the witness.

810. Sketches and Composites

Sketches or composites should be attempted when you have determined that a witness to a crime of violence or a major property crime has a good recollection of the perpetrator but his identity is unknown and the witness has been unable to select a photograph from the mug books. The purpose of using a sketch or composite is to enable you to identify a definite suspect. When you have done so but do not yet have probable cause to arrest, you may then show the suspect to a witness

in a live or photographic identification procedure, should further identification evidence be necessary.

Sketches are preferred to Identi-kit composites because the artist can tailor each feature to the description given by the witness. The Identi-kit composite, however, can be readily transmitted by number to other law enforcement agencies anywhere in the country. A composite, therefore, should only be used when the department artist is unavailable or when it is necessary to transmit the composite to other departments.

(1) Lisa Atherton has given you a description of her kidnapper but she tells you that none of the photographs in any of the mug books you have shown her resemble the perpetrator. You arrange to have her meet with the department artist. He draws a sketch which Lisa says closely resembles the man.

You show the sketch to a number of people who live or work in the area where the kidnapping began and in the area where Lisa was released several hours later. A bartender to whom you have shown the sketch, recognizes the subject as a man who periodically stops by for a drink. With this and other leads you develop, you go to the Massachusetts Crime Reporting Unit where you obtain a photograph of Mark Strasser. You include Strasser's picture in a group of photographs that you now use in an attempt to gain further identification evidence.

811. One-on-One Confrontations: Preliminary Considerations

All identification procedures during which you present the suspect alone to the witness are highly suggestive. The witness will usually assume that you are showing the suspect because you believe that he committed the crime. You may initiate one-on-one confrontation,

therefore, only when there is extreme necessity, as when the suspect or witness is in danger of dying, or when the confrontation can be arranged shortly after the crime making an accurate identification most likely.

In conducting any one-on-one identification procedure, it is advisable to take affirmative steps to reduce its suggestiveness. If possible, you should show the suspect without physical restraint. You should avoid unnecessarily suggestive gestures and comments and, if practical, you should suggest to the witness that the suspect may not be the person who committed the crime.

812. Bringback Identifications

A bringback occurs when you arrange to have a witness to a very recent crime attempt to identify a suspect immediately following his arrest. Its purpose is to afford the witness an opportunity to verify whether the correct person has been arrested and, if not, minimize interference with the innocent suspect's liberty and allow the search for the criminal to continue while the chances of finding him are still good.

A. When a Bringback is Permissible

1. Time Limits

You may arrange a bringback when a witness is willing to make an identification, and the identification can take place within a reasonable time after the crime. As a "rule of thumb," the identification has been made within a reasonable time if no more than two hours has elapsed between the commission of the crime and the confrontation between the witness and the suspect. As more time passes after the crime, however, the witness' recollection will begin to fade. Thus, a confrontation which occurs between two and three hours will be reasonable, and therefore permissible, only if the description reported by the witness is especially detailed and the suspect closely matches it. A confrontation occurring

more than three hours after the crime will usually be unreasonable. When you are unable to stage the confrontation within a reasonable time after the crime, you should take the arrested suspect to the station to be booked. If an identification procedure is necessary you should arrange a line-up, photographic array or other appropriate procedure.

2. Old Crime

A bringback may also be arranged when a witness reports observing the person who some time ago committed a crime, for example, a month ago, and that person is apprehended and viewed by the witness within a reasonable time after observation.

B. Preparation for Conducting the Bringback

1. Arresting the Suspect

When the suspect is arrested, you should follow the procedures set forth in the Arrest Guidelines. You should, in addition, inform the suspect that you intend to show him to a witness for identification.

2. Transporting the Arrested Suspect

You should bring the arrested suspect back to the location of the witness, whether or not this is also the scene of the crime. Only if this is impractical, should you request another car to bring the witness to the location of the arrest.

C. Conducting the Bringback

1. Avoiding Suggestiveness

To the extent consistent with the continued secure custody of the suspect, you should avoid making any suggestive gestures or comments about the suspect in the presence of the witness. Nor should you tell the witness any

A suspect arrested shortly after the commission of a crime may be brought back to an eyewitness in an attempt to have the witness make an identification

personal information about the suspect or whether your investigation has revealed any other evidence linking him to the crime.

2. Having the Suspect Speak

If the witness heard the suspect speak during the criminal episode, you may ask him to repeat the words spoken for the witness. You should not ask the suspect any questions calling for personal data or information about the crime.

3. Distinctive Clothing

If the suspect was arrested in possession of distinctive clothing described by the witness, you may ask the suspect to put it on if he is not already wearing it. You may also ask the suspect to remove a hat, coat or other garment.

D. Release of Suspects

If the witness fails to make an identification and if you no longer have probable cause to charge the suspect, you should release him in accordance with Arrest Guideline 707.

EXAMPLES:

(1) You are taking a report from Danny Cutter shortly after his Hemenway Street apartment was broken into at approximately 1:30 a.m. Cutter tells you that he pretended to be asleep while the burglar walked about the room looking through drawers and a closet. Cutter further tells you that he was able to observe the man for about ten minutes and he gives you a detailed description of the man, his clothing, and the items taken.

While on patrol in the same neighborhood at about 3 40 a.m., you see a man fitting Cutter's description. He is carrying a shopping bag. Upon seeing your cruiser, he turns

and starts to run in the opposite direction. You pursue him. When you stop him, you find that he is dressed exactly as Cutter described. He is carrying a camera of the same type that was taken from the victim's apartment. You place him under arrest. Because the victim had an excellent opportunity to observe the suspect during the crime and was able to give you a detailed description which the suspect fits, you choose to conduct a bringback even though it is more than two hours since the crime occurred. However, you do not tell Cutter that property similar to that stolen has been recovered.

(2) You are on patrol in Jamaica Plain when a man flags down your cruiser. He tells you that his name is Joe Lopes and that four days ago, he had witnessed the theft of his neighbor's car. Lopes also tells you that he reported the incident to the police and was shown a number of photographs but did not see any resembling either of the two men involved. He further reports that just five minutes ago, he saw one of the men in a diner on Center Street. He describes to you where the man was seated, what he looks like and what he is wearing. You ask Lopes to accompany you in the cruiser. He explains that he is late to pick up his wife, but he will be at his house on Lochstead Avenue in about twenty minutes.

You confirm the account given you by Lopes and you drive to the diner where you observe a man fitting the description. You arrest the suspect. Although it is several days after the commission of the crime, only a few minutes have passed since Lopes observed the suspect at the diner. You decide, therefore, to bring the arrested suspect back to Lopes to allow the witness to identify him.

813. Eyewitness Identification of a Stopped Suspect

When you have stopped a person because you have reasonable suspicion that he is committing or has committed a recent crime, you may wish to obtain an eyewitness identification to help develop probable cause to arrest the suspect. Because you do not yet have probable cause to arrest him, you should not bring the suspect back to the witness because moving the suspect could be viewed later as an illegal arrest. However, under certain circumstances, you may detain the suspect where you stopped him to enable a witness to the crime to be brought there to attempt an identification.

A. When Permissible

You may exercise your authority to detain a suspect in order to conduct an eyewitness identification when:

1. you have reason to suspect that the person is committing or has committed a crime and you have stopped him for a threshold inquiry investigation; and
2. you believe that an eyewitness identification of the suspect will be helpful in developing probable cause to arrest; and
3. you believe that the witness may be able to identify the suspect; and
4. the witness or witnesses can quickly be brought to the scene of the stop, preferably in another car; and
5. you believe that the confrontation will take place within a reasonable time after the commission of the crime. As a "rule of thumb" you can consider a one-on-one confrontation when no more than two hours have passed from the time of the crime until the confrontation.

B. Preparation for Conducting the Identification

1. Detaining the Suspect

You should first inform the suspect that you believe he may have been involved in the crime under investigation. You may then ask him if he is willing to remain with you until the witness can be brought to the location of the stop to view him. If he refuses, you should inform him that you will detain him a short time for this purpose. You may detain the suspect for as long as is ***reasonably necessary*** to conduct the identification procedure. As a "rule of thumb," a detention of up to twenty minutes will be reasonable if there is a strong likelihood that the witness will be able to recognize the perpetrator and the witness is expected to arrive at the scene shortly. The reasonableness of the longer detention will be further supported if the crime is very serious, for example, rape or armed robbery, and you believe the suspect will not be available at a later time for an identification procedure.

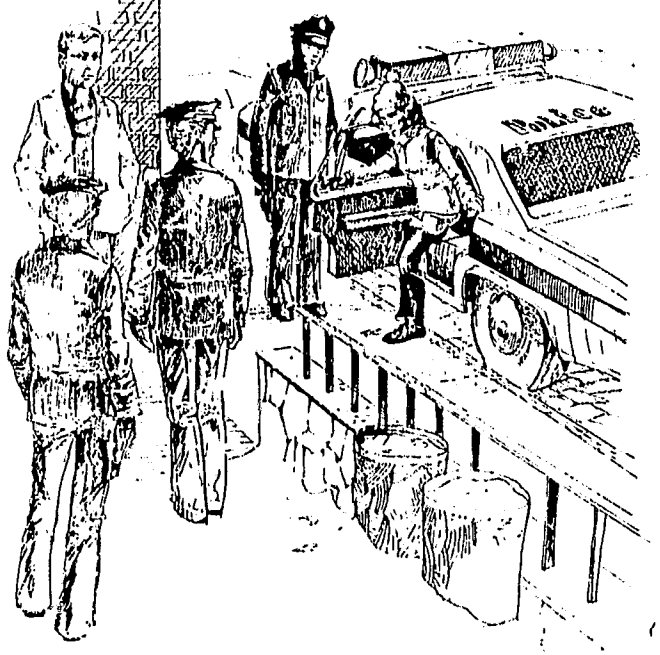
2. Location of Identification

Because you do not yet have probable cause to make an arrest, in most situations you should arrange the identification procedure at the place where you make the stop, unless the suspect consents to go with you to another location. However, under special circumstances, you may move the suspect from the location of the stop without a court's later viewing the transportation of the suspect as an illegal arrest. Such circumstances may include the gathering of a hostile crowd at the place of the stop or when the victim has been injured and is unable to be brought to the scene of the stop. Whenever it is necessary to move the suspect without his consent, you should move him to the nearest location where the identification procedure can be completed.

C. Conducting the Identification Procedure

If the witness requests, you may have the suspect put on or remove outer garments. You may also ask the suspect to repeat words or gestures used during the crime. But you and the officers who tran-

A suspect whom you reasonably suspect has committed a recent crime may be stopped and detained for a brief period of time while an eyewitness is brought to the location of the stop.



sport the witness should avoid making any suggestive gestures or comments about the suspect in the presence of the witness. Nor should you tell the witness any personal information about the suspect or whether your investigation has revealed any other evidence linking him to the crime. If conditions permit, you can approximate the conditions of an informal line-up by having the suspect stand among other people. To the extent possible, you should show the suspect without visible restraint. In some cases, though, you may have to use non-deadly force to detain the suspect during the identification (See Stop and Frisk Guideline 605. B.). After he has had a chance to view the suspect, you should ask the witness if he recognizes him.

D. Arresting or Releasing the Suspect

If you have developed probable cause to arrest the suspect, you may do so taking precautions that the witness is not likely to be placed in unreasonable danger. However, if the witness or witnesses fail to make an identification and you do not have enough other evidence to develop probable cause to arrest, you should allow the suspect to leave.

EXAMPLES:

(1) At 10:30 p.m., you and your partner arrive at 63 Mount Vernon Street in response to a radio call. You are met by a Mr. Calloway, who tells you that when he and his wife arrived home at 10:00 p.m., they discovered that their first floor apartment had been broken into. Ms. Calloway's jewelry had been taken along with a number of valuable pieces of antique silver. Mr. Calloway further informs you that as they were entering the front door to the building, a man who was carrying a suitcase and who appeared very nervous, pushed by him out the front door. Calloway did not recognize him as a tenant in the building. He describes the man as a white male, dark hair, moustache, about 5'8" tall, 150-160 pounds, wearing a tan windbreaker and dark trousers. Calloway explains that he will be glad to cooperate

in whatever way he can.

After taking the report, you and your partner resume patrol. While on Charles Street near Father's III at approximately 11:15 p.m., you observe a man whose physical appearance and clothing approximate the description given. He does not have a suitcase with him. You stop and ask him for identification and an explanation of what he is doing in the area. He refuses to identify himself and his answers about his presence in the area are contradictory. You explain to the suspect that he is not under arrest, but that he must remain with you for a brief period because of your suspicions. Because only a short time has passed since the crime and Mr. Calloway has indicated his ability and willingness to identify the burglar, you may attempt to arrange a confrontation between the witness and suspect. While you stay with the suspect, your partner radios to have another car bring Mr. Calloway to the scene to attempt an identification. You may hold the suspect up to 20 minutes while waiting for the witness to arrive, because the witness has indicated an ability to identify the burglar and can quickly be brought to the scene. But unless the suspect consents, he should not be taken to the location of the witness, because you do not yet have probable cause to arrest him.

(2) The dispatcher has notified all cars on the district of an armed robbery on the Common at 5:45 p.m. in which $65.00 in cash was taken along with a gold woman's watch and a diamond cocktail ring which are described in detail. The suspect showed a chrome plated revolver. He is described as a light-skinned black male with a medium afro, wearing a dark waist-length jacket, dark pants and brown Cuban heels. Driving on Washington Street at approximately 7:00 p.m. near the King of Pizza, you observe Bobby Ellsworth, who meets this general description, but he has

no jacket and is wearing a watch-cap. You have arrested Ellsworth twice in the past six months for armed robbery. Following your threshold inquiry, your suspicions about Ellsworth are not laid to rest, and you ask him if he is willing to go with you to the location of the witness. He agrees to return with you to the victim who is staying at the Ritz-Carlton.

Your partner stays with Ellsworth while you go into the hotel to get the witness. The witness tells you that when she was robbed the man threatened her with a gun and told her to give him all her cash and jewelry. To assist her in making an accurate identification, you may ask Ellsworth to remove the watch-cap and repeat the words spoken during the crime, if the witness requests; but you should not tell her that Ellsworth has been arrested previously for similar offenses because this suggestive information could encourage her to identify him, even if she is not certain that he is the robber.

814. Emergency Identifications

Whenever you have reason to believe that a witness or suspect is in imminent danger of dying you may, if necessary, present the suspect singly to the witness. In most instances, the suspect or witness will be on the "critical list" in the hospital. The purpose of this procedure is to secure identification evidence necessary to solve a crime or to use at trial when death may prevent conducting a less suggestive procedure at a later time.

A. Preparation for an Emergency Identification Procedure

1. Permission of Medical Authorities

You should seek permission to conduct the identification procedure from the appropriate medical authorities before going to the hospital. You should not unnecessarily risk life by having the witness view the suspect without the permis-

sion of the hospital authorities or the injured person's physician.

2. Presence of Counsel

If the suspect has been arrested but not yet formally charged with the crime under investigation, he does not have the right to have counsel notified and present. But if he has been formally charged with the crime, you should attempt to contact his lawyer before conducting the identification procedure. Although you should make a diligent effort to inform the lawyer of your plan and afford him an opportunity to be present, you are not obligated to sacrifice the chance of obtaining identification evidence either because you cannot contact the lawyer or because he is unable to arrive in time. You should keep a written record documenting your efforts to contact the defendant's lawyer.

3. Informing the Suspect

You should inform the suspect, prior to the identification procedure, that you intend to show him to a witness. However, you may proceed without informing him if his physical condition prevents communication.

B. Conducting the Emergency Identification Procedure

You should show the suspect to the witness in the least suggestive manner consistent with the physical condition of the person whose life is in jeopardy. If the witness is hospitalized, you should bring the suspect and, if possible, a few other people who roughly resemble him, into the witness' room at the same time. You should then ask the witness if he recognizes anyone associated with the crime. When the suspect is hospitalized and you bring the witness to the hospital for the identification, you should, if possible, attempt to take him past a number of other persons in addition to the suspect. You should then ask the witness if he recognizes anyone associated with the crime. You should avoid telling the witness anything about the suspect's physical condition or its cause.

EXAMPLES:

(1) You and your partner respond to a call on Keystone Street in West Roxbury. In the kitchen, you discover the body of Thomas Bailey, who has been stabbed to death. His wife has been stabbed repeatedly but she is still alive. She tells you that when she and her husband returned home from shopping, they were attacked by a man whom they discovered in the house. She is able to give you a good description of the man. You call an ambulance and Mrs. Bailey is taken to the hospital where she undergoes major surgery to save her life.

Two days later, you respond to a call for a burglary in progress on the same street as the Bailey home. You arrest Timmy Blake, who fits the description of the attacker given you by Mrs. Bailey. You call for a detective to meet you at the scene and when he arrives, he agrees that an immediate attempt should be made to present Blake to the hospitalized victim and have her attempt an identification. Because the suspect has not been charged in relation to the Bailey crime, and because of the critical condition of the witness, you do not delay to arrange to have a lawyer present for the suspect at the hospital identification. You do, however, contact Mrs. Bailey's surgeon and obtain his permission to bring the suspect to the victim's room.

(2) Al Foyt has been released on bail following his arraignment on a charge of assault and battery with a dangerous weapon. The victim, Bob MacMillan, was unconscious for two days following the assault, but you have just been informed by his doctor that he has regained consciousness. The doctor tells you that MacMillan is still in serious condition, but the doctor gives you permission to bring Foyt to the hospital in several hours. You contact Foyt and his attorney. The defendant agrees to participate,

providing that his attorney is present. When you meet them at the hospital, you have Foyt put on a doctor's coat and go into the victim's room with similarly dressed hospital personnel.

815. Cruising the Area

When an arrest has not yet been made, you may ask an eye witness to a very recent crime to accompany you in a police vehicle to cruise an area where you may reasonably expect to find the perpetrator. The purpose of a cruise is to give the witness an opportunity to point out to you the person who committed the crime.

A. When Cruising an Area Is Appropriate

You may conduct a cruise of the area with a witness when:

1. the witness has given you a description of the suspect and indicates an ability to recognize him; and
2. you have reason to believe the suspect may be found in a public place in the area; and
3. the witness is willing to cooperate although it may not be advisable to request a severely distraught witness to cruise the area; and
4. you believe that the confrontation will take place within a reasonable time after commission of the crime.

B. Conducting the Cruise

A cruise should be conducted within two hours of the commission of the crime, or within three hours if the witness has given you a particularly detailed description of the criminal. You may take the witness to any public location where you may reasonably expect to find the offender. Because only a short period of time has elapsed from the commission of the crime, the witness' memory is fresh and the possibility of getting an accurate identification is great. Therefore, a one-on-one confrontation is permissible.

While cruising you may direct the witness' attention to any person you have reason to suspect may be the perpetrator. You should limit your aid to asking the witness whether he has noticed that individual and avoid suggesting by word or gesture that you believe a particular individual is the perpetrator.

If more time has elapsed, however, you should conduct an Informal Identification Procedure (Guideline 816) to ensure that a fair selection of persons will be viewed by the witness. You should take the witness only to locations where a number of persons are likely to be present so that the witness has the opportunity to identify the suspect from among those present.

If the witness tentatively identifies the suspect and you reasonably suspect that he is the perpetrator, you may stop the suspect in accordance with the Stop and Frisk Guidelines.

If the witness positively identifies a suspect or identifies him with sufficient certainty so that you now have probable cause to make an arrest, you may do so taking precautions that the witness is not likely to be placed in unreasonable danger.

EXAMPLES:

(1) You and your partner are patrolling through the Common when an elderly woman flags down your cruiser. She tells you that while sitting on a bench a few minutes ago, a man grabbed her purse and ran toward Tremont Street. She describes the man to you and agrees to accompany you to look for him. Her description suggests to you that Bobby Parker, whom you have arrested in the past for similar offenses, may be the culprit. You know that Parker often goes to the Arcade on Washington Street. You drive directly to the Arcade and see through the window that, other than the cashier, Parker is the only person inside. Because only a short time has passed since the crime

occurred, you may take the woman into the Arcade and allow her to view Parker. You should not tell her about Parker's past arrests or in any other way suggest that you think he may be responsible.

(2) At 1:00 a.m., you respond to a larceny call to meet a man at the corner of Tremont and Stuart. When you arrive, John Tice tells you that several hours ago, between 8 and 9 p.m., he was walking on LaGrange Street. A woman approached him and asked him if he would like to go out. He refused but she rubbed up against him and it was a couple of minutes before he could get away. He then went into a bar to get a drink and noticed that his wallet was missing. He didn't report the incident earlier because he didn't want his wife to find out that he was in the area. He has been looking for the woman but can't find her and now he wants to go home but he doesn't have any money.

Because several hours have passed since the crime occurred, you do not take the victim to any locations at which he might see the suspect alone. You do however attempt an informal identification by taking the victim to several crowded bars in the area and to the Trailways, but he doesn't see anyone he recognizes. You tell him that you will make out a report and that he should contact the detectives who will be able to show him photographs from which he can attempt to make an identification.

816. Informal Identifications

An informal identification procedure occurs when you arrange to have a witness observe a suspect who is at liberty. Its purpose is to allow the witness to attempt an identification from a fair selection of persons when conducting a formal line-up is not possible and too much time has passed since the commission of the crime to allow you to arrange a one-on-one confrontation.

A. When an Informal Identification May Be Used

1. Before the Suspect Has Been Formally Charged

You may conduct an informal identification procedure when you either lack probable cause to arrest a definite suspect or when the identity of the suspect is unknown, and

a. you do not have a usable photograph of the suspect; or

b. the witness has made a tentative photographic identification and desires to see the suspect in person to verify his prior photographic selection.

You may arrange to have the witness view the suspect without the suspect being aware that he is under observation. The suspect does not have a right to counsel because he has not been formally charged.

2. After the Suspect Has Been Formally Charged

If a suspect has been formally charged and released prior to trial, you may conduct an informal identification if:

a. it is not practical to stage a formal line-up; and

b. the defendant has been informed that you are arranging the informal procedure and you believe that he will cooperate; and

c. the defendant's attorney has been informed of your plan.

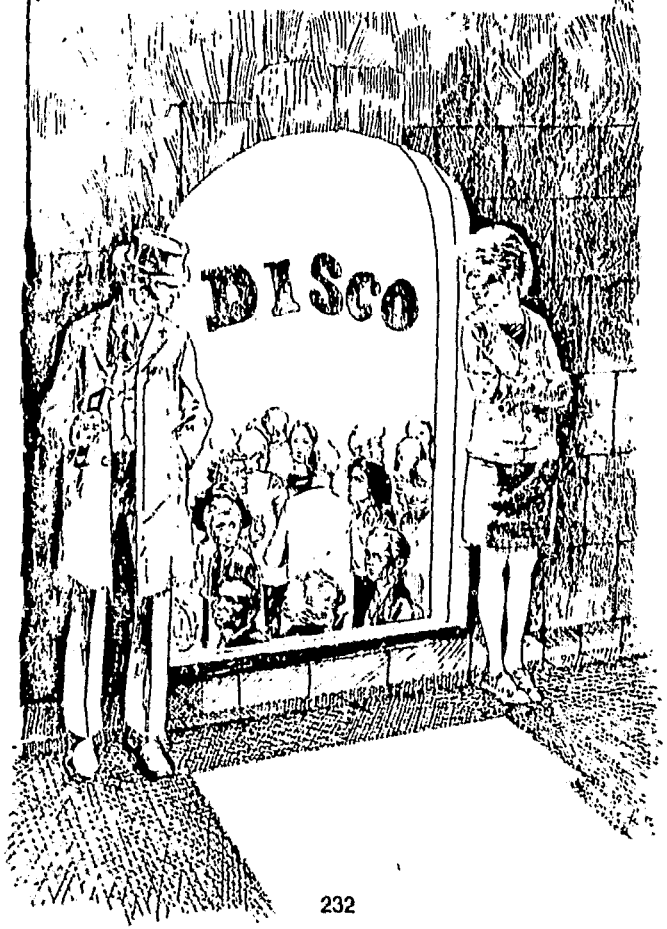
B. Procedure for Conducting Informal Identifications

To minimize suggestiveness the informal identification procedure should be conducted for only one witness at a time in the following manner:

1. Single Location

You may take the witness to a single location where the

In an attempt to have an eyewitness identify a suspect who is not in custody, you may take the eyewitness to a location where a fair selection of persons in addition to the suspect can be viewed in a non-suggestive manner.



suspect and a number of people, some of whom are similar to him, are likely to be found, or are likely to pass by. For example, you may bring the witness to the courthouse to view a suspect who is not in custody and is awaiting his arraignment. You may ask the witness to observe people in the spectator's section of the courthouse or in the corridor. You should complete the identification procedure before the suspect's arraignment begins. An identification of the suspect in the dock should be avoided because it is likely to be unnecessarily suggestive and will jeopardize the admissibility of all identification evidence by your witness at trial.

2. Multiple Location

If you believe that no single location is likely to have a number of people, some of whom physically resemble the suspect, you should take the witness to several similar locations at one of which you expect to find the suspect.

3. Informal Hospital Identification

If a suspect is hospitalized for extended treatment, but not in danger of dying, you may attempt to arrange to have the witness view the suspect in the hospital with the permission of medical authorities. You should attempt to have the witness observe several patients with similar physical characteristics.

C. Instructions to the Witness

The conditions of an informal identification procedure are much less subject to your control than those of a formal line-up and, therefore, more likely to be suggestive. It is critically important that you avoid, by word or gesture, suggesting to the witness that you believe a particular individual may have committed the crime.

D. Procedure After Viewing the Suspect

If the witness fails to identify the suspect, you should have the wit-

ness leave the location without drawing his attention to the suspect. However, if the witness tentatively identifies the suspect and you reasonably suspect that he is the perpetrator, you may stop and detain him in accordance with the Stop and Frisk Guidelines. If you do not develop probable cause to arrest the suspect, you should remove the witness from the location and allow the suspect to leave. However, if the witness positively identifies the suspect or identifies him with sufficient certainty so that in combination with other evidence you now have probable cause to make an arrest, you may do so provided that the witness is not likely to be placed in unreasonable danger.

(1) William Chase is a suspect in a series of recent breaks in the Back Bay, but you do not yet have sufficient information to make an arrest. Your only witness is Charles Lacey, a janitor in one of the buildings. Chase fits the description given to you by the janitor of a man who was leaving the building around the time of the last reported break. Lacey tells you that he is sure he would be able to make an identification if he saw the man again. He further tells you that he took notice of the man because he had never seen him before, he appeared nervous, and he was carrying two suitcases that Lacey thought belonged to the first floor tenant.

Several days later, you learn that Chase has been arrested for car theft, released on bail and will be arraigned tomorrow morning. You decide to ask Lacey to come to the courthouse shortly before court convenes to attempt to make an identification. You meet him in the corridor where there are thirty or forty people milling around. You tell Lacey to look carefully at all the people and inform you if he sees the man. You should complete the identification procedure prior to Chase's arraignment on the other charge, while there are a number of other persons present, in order to avoid having the suspect singled out in the presence of the witness.

(2) Shortly after Harry Jordan was released on bail following his arraignment for homicide by motor vehicle, he was hospitalized for treatment of severe hepatitis. He may be hospitalized for an extended period. You have a key witness who has not yet identified Jordan and whose identification testimony would be useful to your case. Because you believe that an in-person identification procedure is appropriate, you arrange with the hospital authorities to have the witness observe the suspect in the hospital. Because Jordan has been formally charged with the crime under investigation, you inform the defendant and his attorney of the planned identification procedure and explain that you will give the witness the opportunity to view a number of other persons in addition to the defendant.

817. Prompt Stationhouse Identifications

A prompt stationhouse identification procedure occurs when you arrange to have a witness to a recent crime view an arrested suspect in the station under conditions approximating those of an informal identification procedure. Its purpose is to afford the witness an opportunity to identify the arrested suspect soon after the crime when conducting a bringback is impossible or impractical. It is an exceptional procedure and should only be attempted when the circumstances set forth below are present.

A. When a Prompt Stationhouse Identification is Permissible

You should consider arranging a prompt stationhouse identification as a substitute for a bringback ***only when*** the witness indicates a willingness and ability to make an identification and:

1. you can arrange to have the witness view the suspect within two hours of the crime or within three hours if the witness has given you a particularly detailed description and the suspect matches it; and
2. the suspect can be shown to the witness without the

necessity of being visibly restrained, under conditions approximating those of an informal identification procedure; and

3. it is not practical to conduct a bringback because:

a. conducting a bringback would pose a substantial risk of danger to you, the witness, the suspect or to others; or

b. the witness is unwilling to view the suspect at the witness' location; or

c. you have made the judgment that a bringback is inappropriate because the witness has been traumatized by the crime, and is less likely to make a reliable identification at the scene of the crime than at the station.

B. Preparation for the Identification

1. Booking the Suspect

You should have the suspect booked immediately upon his arrival at the station unless you expect that the witness will arrive before the booking has been completed. If the suspect phones his lawyer at the time of booking, the lawyer may request that no identification procedures occur until he arrives. If you proceed without the lawyer's agreement, the risk of having identification testimony excluded at trial will be increased because the Commonwealth may have to rebut the defense claim that you conducted the procedure in order to expose the witness to improper suggestions. Therefore, you should consider abandoning your plans for the prompt stationhouse identification when the suspect's lawyer makes this request.

2. Avoiding Accidental Confrontations

You should take every possible precaution to prevent the witness from observing the suspect before you have completed all arrangements for him to be viewed as planned.

3. Informing the Suspect

You should inform the suspect that you intend to have a witness view him and that he has no right to refuse to be shown. If the suspect is uncooperative or threatens to be disruptive, you should not proceed with the stationhouse identification because it is highly suggestive to show a visibly restrained individual to a witness. Instead, you should arrange a photo array for the witness or seek a court order to compel the participation of the uncooperative suspect in a line-up at a later time.

C. Conducting the Stationhouse Identification

1. Approximating an Informal Line-up

You should have the witness view the suspect only in the company of non-uniformed persons, preferably of roughly similar physical characteristics. The purpose of approximating informal line-up conditions is to counter the argument at trial that showing the suspect in a location where most of those present are police personnel was highly suggestive of guilt. The best condition in which to show the suspect is in an open area of the station. If this is not possible, you may place the suspect with others behind a one-way mirror if your station has one. However, this is only permissible if the suspect has been informed beforehand that he is to be shown for identification purposes. If neither of these two arrangements can be made, you should seek to arrange a formal line-up or another appropriate identification procedure at a later date.

2. Instruction to the Witness

You should inform the witness that he is coming to see if he can identify anyone associated with the crime. The witness should be taken to several locations in the station, including that of the suspect. You should then ask him whether he has recognized anyone associated with the crime. If you

use a one-way mirror, the witness should be asked whether he recognizes anyone on the other side of it. You should offer the witness no information other than the fact that you have a suspect. Nor should you reveal whether you have other evidence linking the suspect to the crime.

3. Multiple Witnesses

If there is more than one witness you should only bring one to the station for a prompt identification. If the witness identifies the suspect but further identification evidence is necessary for the successful prosecution of your case, it may be advisable to consult with an assistant district attorney or your supervisor with regard to arranging other less suggestive identification procedures for the remaining witnesses.

4. Multiple Suspects

If there is more than one suspect, you should arrange to present each suspect to the witness in a separate identification procedure.

D. Release of Unidentified Suspects

If the witness fails to make an identification and if you no longer have probable cause to charge the suspect, you should release him in accordance with Arrest Guideline 707, Release of Person After Arrest.

EXAMPLES:

(1) You and your partner have stopped two men who match the general description of suspects wanted for stealing handbags in a movie theatre approximately fifteen minutes ago. While you detain the suspects who are not under arrest, another car brings the usher from the theatre to your location. He positively identifies the suspects and you place them under arrest. You would also like to have two

of the victims who saw the thieves make an identification. The usher tells you that they are waiting at the theatre and that they said they could identify the men if they saw them again. Because less than an hour has passed since the crime and it is practical to arrange a bringback, you do so. It would not be appropriate to take the arrested suspects to the station and conduct an identification there.

(2) You have arrested Joey Saville in connection with an attack on Marie Latella in her apartment forty-five minutes ago. The victim, a middle-aged woman who lives alone, was very upset by the incident but she was not hurt and was able to describe her attacker who fled when neighbors responded to her loud screams. You wish to conduct an immediate identification procedure to confirm that the right man has been arrested. The victim is willing, but she does not want the man brought back to her apartment. You are concerned that conducting the identification there may be very disturbing to her and interfere with her ability to make a reliable identification. Under these circumstances, you decide to promptly conduct a stationhouse identification.

You arrange to have another car pick up the victim while you book the suspect. Although informed of his right to make a phone call, Saville does not call his lawyer and, because he has not been formally charged, he has no right to have an attorney present for the identification. You tell him that you intend to have the victim view him among several other non-uniformed persons. Although resistant at first, Saville agrees to cooperate after you explain that he has no right to refuse and that you will seek a court order requiring him to participate in a line-up at a later date.

You seat the suspect at a table in the guardroom and give him a newspaper to look at. You arrange to have several officers in plainclothes seated at the table reading or

watching television. After telling the victim that you want her to see if she recognizes anyone, and taking her to several other locations in the station including a couple of offices where detectives are working, you bring her into the guard-room and tell her to look around. You do not say or do anything which causes her to focus her attention on the suspect.

818. Line-ups

A line-up occurs when you arrange to have a witness view a suspect who has been placed in a group of individuals with similar physical characteristics. The purpose of conducting a line-up is to provide the witness with a fair selection from which to attempt to identify the perpetrator. Whenever a suspect is in custody and you believe that eyewitness identification evidence is necessary for the successful prosecution of your case, you should consider arranging a line-up. This identification procedure may be advantageous because the witness may be more likely to recognize the culprit in person than from photographs which may not be recent or which may distort the suspect's appearance. The decision to conduct a line-up should be made with either an assistant district attorney, if one has been assigned to your case, or your supervisor.

A. Preparation for Conducting the Line-up

1. Time of Line-up

You should make every effort to stage the line-up as soon as possible after the suspect's arrest, while he remains in departmental custody. The witness' memory is freshest at this time and the likelihood of his being able to make a positive identification is greatest.

2. Court Orders

You should ask the assistant district attorney assigned to your case or the department legal advisor to seek a court order to compel the suspect to participate in a line-up whenever a decision has been made to conduct a line-up and:

a. the suspect is in custody but refuses to participate in a line-up; or

b. the suspect has been charged with the crime under investigation but has been released on bail or personal recognizance pending trial and refuses to voluntarily participate

3. Photographing the Line-up

A photograph of the line-up will document the fairness of the procedure and thus increase the likelihood that the identification evidence obtained from it will be admitted at trial. You may take the photograph yourself with a Polaroid camera, if one is readily available. If not, you should contact the department photographer (247-4401 during the day; 247-4393 at night) and arrange to have him present at the line-up. You should have the department photographer take the photograph if you intend to show it to other witnesses who are unable to attend the line-up, as he can take a larger and better quality photograph than is possible with a Polaroid.

An additional photograph should be taken whenever the suspect takes a new position with respect to the other line-up participants.

4. Notification to Suspect

You should inform the suspect that he is going to be placed in a line-up at a specified time and place so that a witness to a particular crime can attempt to identify him. If the suspect has been formally charged with the crime under investigation, you should inform him that he has the right to have his attorney present (Guideline 803). If he is in custody on another charge, but has not yet been charged with the crime under investigation, and you believe it will be beneficial to your case to have his lawyer attend, you should refer to Guideline 803 with regard to contacting an attorney.

Additionally, you should inform the suspect that he will be allowed to select his position in the line-up and that he may select a new position for each witness if there is more than one called to view the line-up. If you intend to have the suspect speak certain words, perform certain movements, or put on certain clothing, you should so inform him and explain that the other line-up participants will be required to do the same.

5. The Uncooperative Suspect

If the suspect indicates that he is unwilling to participate in the line-up procedure, you should inform him that:

a. he has no right not to participate; and

b. you can get a court order to compel him to participate; and

c. if he disobeys the court order he can be found in contempt and sentenced.

If the suspect is still unwilling to cooperate, you should have the assistant district attorney assigned to the case or the department legal advisor obtain a court order. You should warn the suspect of the consequences of refusing to obey the order. If the suspect still refuses to cooperate it is not advisable to proceed with the line-up. You should inform the assistant district attorney or department legal advisor of the suspect's refusal so that a contempt citation may be sought from the court.

6. Number of Line-up Participants

A line-up should be composed of at least five (5) persons in addition to the suspect. You should take precautions against using any non-suspect participants who may be known to any witness.

7. Multiple Suspects

When you have more than one suspect, you should present each suspect to the witness in a separate line-up.

8. Physical Similarity of Line-up Participants

Whenever possible, you should allow the suspect or his attorney to select the non-suspect participants. If you choose them, you should select persons who resemble the suspect in age, race, height, weight, and as many other visible physical characteristics as possible. Additionally, all persons in the line-up should be similarly clothed. When the witness is brought in to view the line-up, the suspect should neither be handcuffed nor given special attention by police officers.

9. Instructions to Stand-Ins

You should inform each non-suspect line-up participant that a line-up is going to be held to give the witness a crime a chance to attempt to identify the perpetrator. Whenever possible, you should conceal the identity of the suspect from the other line-up participants. When this is impractical, as when the suspect is allowed to change his position for each witness viewing the line-up, the non-suspect participants should be instructed to avoid indicating the suspect in any way. You should instruct them not to look at, glance at, or take any notice of any other line-up participant.

10. Avoiding Unintended Confrontations

You should prevent any witness from seeing any line-up participant, suspect or non-suspect stand-in, prior to or following the line-up. This can be accomplished by instructing the witness(es) to appear and leave the line-up location at a different time than the line-up participants.

646

BOSTON POLICE DEPARTMENT
LINE-UP WITNESS INSTRUCTION SHEET

1. Take your time and observe the line-up carefully.

2. The person who committed the crime may or may not be present in the line-up.

3. If you wish one or more line-up participants to perform or repeat certain words, actions or gestures, tell the person conducting the line-up; all line-up participants will be asked to perform the actions.

4. If you see any other witness to the crime, do not speak with him until the line-up procedure has been completed.

5. The positions of the persons in the line-up will be numbered from left to right, beginning with number one (1) on your left. When you have finished viewing the line-up, if you have previously seen one or more of the persons in the line-up, place an X in the space corresponding to the number of the person in the line-up.

1	2	3	4	5	6	7	8
( )	( )	( )	( )	( )	( )	( )	( )

6. When the line-up has been completed sign your name below and hand this sheet to the officer.

_____
Signature of Witness

_____
Date and Time of Line-up

_____
Signature of Officer Conducting Line-up

B. Conducting the Line-up

1. Multiple Witnesses

If more than one witness has been called to attempt an identification you should permit only one witness to view the line-up at a time. A witness who has already viewed it should not be allowed to communicate with other witnesses who have not. Nor should a succeeding witness be informed whether a prior witness was able to make an identification

2. Uniform Conduct by Line-up Participants

You should have all line-up participants perform or repeat any words, movements, or gestures you want the suspect to perform. You may ask them to perform a movement either in unison or in numerical sequence, as appropriate. If the witness asks that the words or action be repeated, you should direct each line-up participant to do so. After all participants have repeated the action for a second time, you may have any one of them repeat it if the witness so requests.

3. Neutral Questions and Comments

You should ask line-up participants only questions which call for an identical response from each of them. For example, you may ask "Number one, would you repeat the words 'put the money in the bag.....' Number two, would you repeat the words 'put the money in the bag.....'," and so on. Line-up participants should not be asked questions calling for personal data (such as name, address, prior arrests) because individual responses may cause the witness to focus on or eliminate from consideration a line-up participant for reasons not related to his recollection of the perpetrator's physical appearance.

You should avoid directing any question or comment to a witness which draws attention to only one line-up participant.

Only one witness at a time should be allowed to view the line-up. To assist the witness in making an accurate identification, all line-up participants, in unison or in numerical sequence, may be ordered to assume a particular stance, make a particular gesture or put on a distinctive item of clothing.
If the suspect has been charged with the crime for which the line up is being held, his attorney must be notified and given the opportunity to observe the proceeding

You may ask questions such as "Do you recognize anyone in the line-up as the perpetrator of the crime?" You may also direct the attention of the witness to each person in the line-up in sequence by repeating the same question, for example: "Does number one look like the perpetrator?.....Does number two look like the perpetrator?" and so on.

EXAMPLES:

(1) Jim Kirk has been arrested on a warrant for assault and battery with a dangerous weapon. He will be in custody at the station overnight and will be taken to court to be arraigned on the assault charge in the morning. You suspect that he may have been involved in a liquor store robbery last week. You know that a witness to the robbery is available to attempt to make an identification. Therefore, you consult your supervisor and decide to conduct a line-up at the station as soon as it can be arranged. You inform Kirk of your plan. Because Kirk was arrested on a warrant, he has been formally charged with the assault but he has not been charged with the robbery and therefore, has no right to have his attorney present at the line-up. However, you decide to attempt to notify his attorney and offer him the opportunity to be present if he can arrive without causing any delay.

(2) Anne Kelly has been released on bail following her arraignment on a charge of manslaughter. You wish to have several witnesses view her in a line-up, but she refuses to cooperate even after you threaten to seek a court order to compel her participation. The assistant district attorney assigned to the case obtains the order and you inform Kelly that she will be committed to jail if she is found in contempt of the order. After consulting with her attorney, the defendant agrees to cooperate.

(3) Leonard McCoy has been charged with larceny by

false pretenses. You are preparing to conduct a line-up for several persons who have allegedly been victimized by him. You have arranged to have McCoy and his attorney select and instruct the stand-ins to arrive an hour before the scheduled line-up. When they arrive, you take them into the room where the line-up will be held and request that they remain there until the identification procedure has been completed. To avoid unintended viewing of the line-up participants by the witnesses, you take the further precaution of arranging to have the witnesses arrive only half an hour before the line-up is to begin. You seat them in a room in another part of the building. You have an officer remain with them to remind them not to discuss their recollections of the perpetrator or communicate to each other whether or not any of them has made an identification.

You ask McCoy if he has any preference about where in the group of six he stands and he chooses the second position from the left. You have the department photographer, present at your request, photograph the line-up. After the first witness has viewed the line-up and left the room, you agree to McCoy's request to change his position before the next witness is brought in. You have the department photographer take another picture.

When arrested, McCoy was wearing a distinctive hat described by one of the witnesses. After you have this witness brought in to view the line-up, you have each of the persons in the line-up, in turn, put on the hat. The witness positively identifies McCoy and marks the appropriate box on the line-up witness instruction sheet which he hands you. Before he leaves the line-up room, you instruct him not to talk with any of the remaining witnesses about his identification.

END