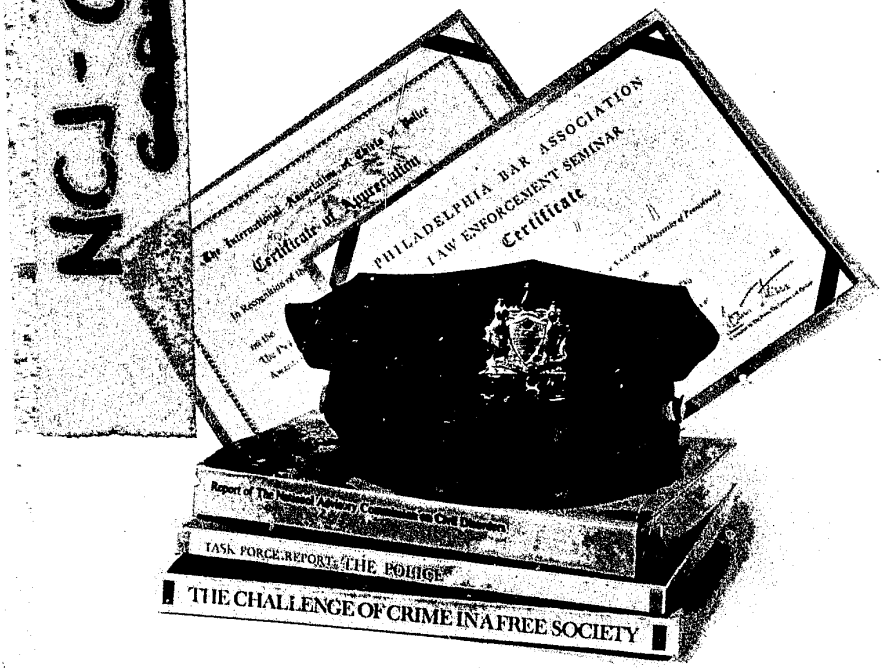
Police Guidance Manuals

A Philadelphia Model



Louis B. Schwartz and Stephen R. Goldstein
University of Pennsylvania Law School

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A Philadelphia Model

Louis B. Schwartz and Stephen R. Goldstein
University of Pennsylvania Law School

Project financed by the Office of Law Enforcement Assistance
United States Department of Justice

Printed by the University of Pennsylvania Printing Office
Philadelphia, 1968

A list of the

POLICE GUIDANCE MANUALS

bound together in this volume

Since these manuals were prepared to be issued seriatim, the pages of this volume are not numbered in continuous sequence; paging begins anew with each pamphlet. A detailed Table of Contents appears in each manual.

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ACKNOWLEDGEMENTS

The following colleagues at the University of Pennsylvania gave valued advice and criticism: Professors Paul Bender, Curtis R. Reitz, and Henry S. Ruth, Jr., of The Law School, and Dr. Marvin E. Wolfgang, Chairman, Department of Sociology, and Director, Center for Studies in Criminology and Criminal Law. Philadelphia Police Commissioner Frank L. Rizzo and Philadelphia District Attorney Arlen Specter made their facilities and staff freely available to the project.

The cartoons which humorously illustrate many of the themes of the manuals are by artist John Pretsch.

PREFACE

With the Law Enforcement Assistance Act of 1965, the federal government launched its first major effort to improve state and local law enforcement. Police efficiency and morale were understandably given a high priority, and the present series of Police Guidance Manuals was among the early projects sponsored by the Office of Law Enforcement Assistance of the United States Department of Justice.

The aim of the project was to provide metropolitan police departments and policemen with brief, informal, interesting reviews of some main concerns in police operations. We wanted to answer questions which any thoughtful policeman would ask about his job. We wanted every policeman to know the pros and cons of the great controversies about law enforcement, we wanted to treat him as a thinking, influential person, not as an automaton mechanically patrolling the streets and enforcing laws under a system which must often seem arbitrary unless history and reasons are provided. We wanted to recognize the policeman as a person who exercises important discretion in law enforcement, an official who must know when to refrain from action, when to restrict his intervention to warning, as well as when to arrest. We wanted to help the forward-looking "top brass" in the police departments to articulate general policies, a difficult task for administrators absorbed by daily crises, political, budget, and public relations problems. We wanted to provide police academies with materials constituting an outline of a training program.

The manuals do not purport to cover all subjects requiring training in a police department. In particular, this series is not the place to go into such matters as analysis of fingerprints, or handwriting, ballistic evidence, use of lie-detectors, interrogation techniques, or organization of communications. These specialties, practiced by a small minority of the police force, require more elaborate and technical exposition, and have less bearing on relations between the police and the community. The manuals make it clear that even on the subjects that are dealt with the information here must be supplemented and occasionally corrected by regular directives of the police department, by other training programs, and by day-to-day orders of superiors.

We have drawn heavily on the great recent studies of law enforcement, especially the Report by the President's Commission on Law Enforcement and Administration of Justice ("National Crime Commission") entitled The Challenge of Crime in a Free Society (1967) and some of its excellent Task Force Reports, e.g., The Police, Assessment of Crime, Organized Crime, Juvenile Delinquency. The Report of the National Advisory Commission on Civil Disorders (1968) provided authoritative background on the nature and causes of "race riots"; and the Federal Bureau of Investigation's Manual on Prevention and Control of Mobs and Violence (1967) is relied on for guidance in this difficult field. We have also drawn on leading books and articles relating to criminology, criminal procedure, bail, and many other subjects. Reading lists are incorporated in each manual.

The manuals were prepared in collaboration with the Police Department and District Attorney of Philadelphia. To be most useful to Philadelphia law enforcement officers, to whom the manuals will be issued on publication, they reflect at many points Pennsylvania law and Philadelphia practice and conditions. However, a prime purpose of the project was to provide a model for metropolitan police forces generally. The main problems are similar throughout the country, and legal differences are peripheral. We believe that, even without local adaptation, the manuals will be helpful in other cities. Local adaptation could be made merely by printing a supplemental sheet of variations and local references. But we expect local versions of these Police Guidance Manuals to be prepared in major cities, using large blocks of our material unchanged.

Others besides police departments may find one or more of the manuals useful as educational tools. The manuals are written in a style intended for readers with a high school education. Education regarding the legal system and law enforcement has been virtually non-existent in high schools, while interest in this aspect of society has mounted steadily.

We also hope that there will be material of interest here to police reporters, news editors, urban planners, and organizations interested in race relations and civil liberties.

The authors' qualifications to venture on the present project embrace experience in investigation, prosecution, and defense of criminal cases, as well as in law teaching. However, we felt it essential also to have direct contact with police experience. For this purpose, we spent many hours in consultation with officers of the Police Department at all levels, and rode with police patrols. Drafts and redrafts of the manuals were circulated to the Police Department and District Attorney of Philadelphia, as well as to colleagues at the University of Pennsylvania and to our National Board of Consultants. Errors of fact, law, and judgment for which we must bear responsibility may nevertheless be found in the manuals. Improvements will be made as the series is adapted elsewhere or goes through later editions in Philadelphia. The present manuals will have served their purpose if they prove to be a useful device for orienting large bodies of policemen to their difficult calling.

Louis B. Schwartz
Stephen R. Goldstein

Philadelphia, November 1968

Police Guidance Manual No. 1

The Policeman's Role in Criminal Justice

Louis B. Schwartz and Stephen R. Goldstein
University of Pennsylvania Law School

Project financed by the Office of Law Enforcement Assistance
United States Department of Justice

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TABLE OF CONTENTS

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The cartoons which humorously illustrate some themes in the Police Guidance Manuals are by artist John Pretch.

1. Purpose of Police Guidance Manuals

The purpose of this series of pamphlets is to answer questions that many policemen have about their jobs:

When am I supposed to make an arrest? When am I allowed to use force? When can I stop a person on the street and get information from him? Does he have to answer? Can I frisk him? What am I supposed to do when a person refuses to stop, or abuses me, or resists arrest? When can I force my way into a house, store, or apartment for law enforcement purposes? Why does the law prevent me from doing some things that would make it easier to catch criminals? What about bugging, wire-tapping? What is the Bill of Rights? What are "civil liberties"? When and why does the United States Supreme Court interfere with local law enforcement methods approved by our own state courts?

What is "disorderly conduct," "breach of the peace," "vagrancy," "loitering"? What am I supposed to do about crowds, demonstrations, corner gangs, noisy parties, drunks? Why are some laws not fully enforced especially in the fields of gambling, drink, and sex? When should I warn rather than arrest for an offense? How and why do juveniles get special treatment? Drunks? Insane? How far am I supposed to go, in the line of duty, to be a helper or social worker rather than a law enforcement officer? How can policemen work to change bad laws and improve law enforcement?

Complete answers to these questions would call for much more space than we have in these manuals. It would also take us into complicated legal issues to an extent suitable only for lawyers. So these manuals will not try to do more than give you the main outlines of the answers to policemen's questions.

Police Guidance Manuals are not a substitute for regulations of the Police Department. The policeman is bound by those regulations and the orders of his superior officers[1] *even if something in these manuals seems to the contrary.* The purpose of the manual is to give a general understanding of the duties of the policeman and the limits of his responsibilities.

2. Responsibilities of the Police: Law Enforcement and Community Service

The two main functions of the police are law enforcement and general community service. Law enforcement activities —maintaining public order and security, apprehending offenders, and preventing crime—are the primary and peculiar responsibility of the police. There is no other agency to do that job. The public relies exclusively on the police and prosecutors for this. Most criticism of police operations arises in the area of law enforcement, since this part of a policeman's work involves arrests and use of force, and since these operations are subject to review by the prosecutor and the courts. Accordingly, the present series of Manuals concentrates on law enforcement aspects of police responsibilities.

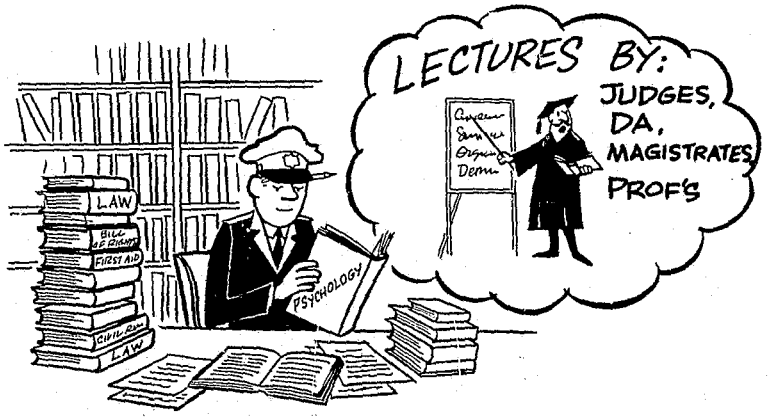
On the other hand, the average policeman will find that he has to do with criminals and crime far less than he has to do with non-criminal situations where people just need help of one kind or another. In the course of a patrol, the policeman will help a stranded motorist, give directions to a lost tourist, report a fire, look for a missing child, assist in getting medical aid for a heart attack victim, take complaints about garbage collection, take a drunk home, settle arguments between a husband and wife, give information about the juvenile court, social security, or other government operations.

Many policemen, especially new recruits, get their ideas about police work from TV shows or detective stories.

Therefore they believe that community services aren't really part of the job, or aren't very important. Some writers argue that most of this sort of thing should be done by "social workers." The Task Force on Police of the National Crime Commission came to the opposite conclusion:

> Proposals to relieve the police of what are essentially social services have also been lacking in their consideration of the relationship of such services to the incidence of more serious crimes. Domestic disturbances, for example, often culminate in a serious assault or a homicide. The down-and-out drunk is almost a certain victim of a theft if he is left to lie on the street and has any article of value on him. The streetwalking prostitute may, in one sense, be primarily a social problem, but many streetwalkers engage regularly in arranging the robbery of their patrons as a supplement to their income.

It might be desirable for agencies other than the police to provide community services that bear no relationship to crime or potential crime situations. But the failure of such agencies to develop and the relationship between the social problems in question and the incidence of crime suggest that the police are likely to remain, for some time, as the only 24-hour-a-day,



7-day-a-week agency that is spread over an entire city in a way which makes it possible for them to respond quickly to incidents of this kind.

With regard to law enforcement, which is the overriding concern of the police, the most important thing to bear in mind is that the police share law enforcement responsibility with many other types of officials. You will know your own job better if you understand the jobs of these other officials. There are prosecutors, defense lawyers, magistrates, County Courts, Courts of Quarter Sessions, the Superior Court, the Supreme Court of Pennsylvania, the Supreme Court of the United States, the City Council and the State Legislature. There are the F.B.I. and other federal investigating agencies. There are probation officers, parole officers, the prison people, the Parole Board, the Board of Pardons. Each one of these has a special assignment in law enforcement. By and large, the assignments don't overlap. For example, judges are not supposed to go out and catch criminals. Prosecutors don't make the laws—that's the job of the State Legislature. Policemen aren't authorized to administer punishment or correction of law violators—the law assigns that job to the judges, the prisons, and the parole people. Many of the rules that control police have to do with this matter of sharing law enforcement with other officials, and keeping the police from doing the job assigned to these other officials. The rest of this manual tells about the part assigned to these other officials who share responsibility with the police in dealing with crime and criminals.

3. The Magistrate's Job

The magistrate, like other judges, has many duties that do not concern law enforcement and the police. For example, he hears minor civil cases involving claims for debts or damages between landlord and tenant, employer and employee, sellers and buyers. We are here concerned with the magistrate's share in law enforcement. His main responsibilities in this field are:

(i) verifying the basis for police action in relation to arrests and searches;

(ii) advising the accused of his rights, including the right not to answer questions and the right to have a defense lawyer;

(iii) deciding, in case of serious charges, whether there is enough evidence on hand to justify holding the accused for trial;

(iv) if so, deciding whether the man can be safely released while awaiting trial;

(v) fixing the amount of bail, if any is required to assure that the accused will show up for trial;

(vi) in minor criminal cases, trying the accused, determining guilt, and fixing the punishment.

A. MAGISTRATES' RESPONSIBILITIES IN RELATION TO ARRESTS AND SEARCHES

Magistrates are directed by law to check on arrests and searches. They do this beforehand in warrant cases and afterwards in cases of arrest and search without warrant. The rules of arrest and search are discussed in Police Guidance Manuals 4 and 5. Generally, arrest without a warrant is for cases where circumstances require the policeman to act on the spot, without advance approval by a judge, as where the crime is committed before his eyes, or where he finds a person reasonably suspected of having committed a serious crime ("felony") who might disappear if the policeman had to go for a warrant before taking him into custody. Otherwise, a warrant should be secured.

Warrants: Advance Authorization by Magistrate

By issuing a warrant, the magistrate authorizes the policeman to make an arrest or search. The magistrate is supposed to issue the warrant only if the policeman has shown him evidence to justify taking the man into custody or looking into his private quarters or belongings. Of course, that doesn't mean that the policeman at this stage must have enough evidence to prove guilt. It's enough if the evidence provides reasonable ground for believing the

particular individual is probably guilty of the offense. On the other hand, the magistrate is not supposed to issue a warrant just because a policeman asks for it, or because the policeman suspects, even strongly, that the man is guilty. The policeman has to show the magistrate what his suspicion is based on. It's the magistrate's job to decide whether the facts on which the policeman's suspicion is based are sufficient to warrant arrest or search. If it were otherwise, there wouldn't be much point to going to a magistrate for a warrant. The policeman, or a police sergeant, could issue his own warrant.

Many people believe that the warrant procedure is a waste of time. They point out that the magistrate nearly always issues warrants requested by the police, and that delay and expense result from the need to go through this "formality". Also, magistrates are not always wise, well-trained, or even honest.

Defenders of the warrant procedure argue that the reason magistrates rarely refuse a warrant is that the police, knowing they must give the magistrate evidence to go on, usually meet the requirement satisfactorily. So there's no occasion for the magistrate to refuse. They argue, further, that if there were no need to satisfy the magistrate, the police would be tempted to act on pure suspicion, and so interfere more often with private citizens who turn out to have done nothing wrong. As for the poor quality of some magistrates, defenders of the warrant procedure say the cure for this is a better law on selection and training of magistrates.

In any event, the warrant procedure has been a part of our basic and constitutional law for centuries. It could not be abandoned without amending the state and federal constitutions. Amending the State Constitution is difficult. It requires approval by two-thirds vote of successive legislatures and a vote of the people. Amending the Federal Constitution is even more complicated. This is one of the cases where part of the law enforcement responsibility is not up to the police but belongs to other agencies. It is the legislature and the voters who make the rules. Police and magis-

trates have no authority to make rules or amend constitutions. Their job is to enforce rules made by others, and to observe the rules themselves.

Policemen, as citizens and as experts in law enforcement, have a perfect right to seek changes in the Constitution in relation to warrants as well as other matters. In taking his personal position on such questions, the policeman will want to consider all the pros and cons. One of the main things to be considered, apart from the saving in time that would result from eliminating issuance of warrants by magistrates, is the long history in England and America of having somebody beside the policeman o.k. arrests and searches. The good professional policeman is trained to be suspicious, alert to crime, interested in slim clues. His natural and proper impulse is to pursue all leads. But these qualities of a good policeman, given free reign in arrests and search, will lead to a good many unpleasant mistakes affecting innocent people. Such mistakes tend to build up feeling against the police. This feeling was so strong before and during the American Revolution against England that resentment against English law enforcement methods was one of the main motives of the rebellion. When the Revolution was successful and it came time to write a Constitution for the United States, the colonists insisted on a Bill of Rights including the Fourth Amendment, which says:

> "The right of the people to be secure in their persons, houses, papers and effects shall not be infringed, and no warrants shall be issued but on probable cause."

The Americans were so determined to guarantee these rights that they would have turned down the Constitution and the whole idea of establishing the United States if agreement had not been reached to include the Bill of Rights in the Constitution.

Magistrates' Review Following Arrest

Whether the arrest is with or without a warrant, the prisoner must, under the laws of all states, be brought before a magistrate "promptly" or "forthwith" or "without unnecessary delay".[2] The main purposes of this requirement

are to advise the accused of his rights, assure him an opportunity to get a lawyer, give him a chance to get out on bail, or, if he is not to be released, to transfer his custody from the police to the jail. At the same time the arrested person gets a chance to show that he is not the person named in the arrest warrant, or that for other reasons there is no basis for holding him.

Just as the magistrate would be stepping out of bounds if he went out playing detective and trying to make arrests, so the policeman would be stepping out of bounds if he tried to make decisions about how long an arrested man should be held. The policeman, can, of course, give the magistrate all the information he has which shows why the man should be held. But it's up to the magistrate to make this decision.

B. BAIL

The Philadelphia magistrate can set bail at his discretion for minor offenses. For more serious offenses, e.g. arson, rape, burglary, robbery, magistrates formerly had no power over bail, which had to be fixed by a judge of the Quarter Sessions Court. Under Criminal Rule 4002, however, magistrates have been given power to set bail in this class of serious offenses *but only with the consent of the district attorney.*

Bail is an ancient system for making sure that the arrested person need not be kept locked up while awaiting trial and to make sure that, if released, he will show up at the time of trial. Originally, some trustworthy friend of the accused would put up money or property as a pledge that the accused would appear. The accused was then released in the custody of his friend. Later, providing bail became a business. The professional bail bondsman for a fee gives the court a bond (that is, a solemn promise to pay a stated amount) secured by real estate or other valuables. If the accused shows up, the bondsman gets his bond back.

In recent years, bail practice has been seriously criticized on a number of grounds. Poor people have had to pay excessive fees. Where some people can afford to pay for bail and others cannot, the poor defendant stays in jail while

the rich defendant goes free, even though the poor defendant might be just as reliable so far as showing up for trial. Needless jailing of reliable defendants is expensive for the state, usually puts the defendant out of a job and his family on welfare, and interferes with proper preparation for trial. Occasionally there are scandals involving unlawful arrangements between bail bondsmen, policemen, and lawyers. A crooked bondsman will pay a crooked policeman to steer arrested persons to the bondsman. A crooked lawyer will pay a crooked bondsman to steer "customers" to the lawyer.

Recent reforms in the field of bail include substituting summons for arrest in minor cases, increasing use of release on own recognizance (ROR), and arrangements for supplying the magistrate or judge with more information about the reliability of arrested persons so that the good risks can be released pending trial without bail or on bail so low that the poor can afford it.

One of the important things a policeman should understand about bail is that the law does not authorize setting bail high for the purpose of keeping the accused in jail as a punishment for the offense. Even if the offense is a bad one and it appears quite clear that the defendant is guilty, punishment can only begin after trial and sentence by a court. High bail is authorized only where necessary to assure defendant's presence at trial, or possibly (the law is uncertain here) where there is danger that he might interfere with justice in other ways, for example, by attacking or threatening witnesses. If there's nothing of that sort in the picture, and if the accused is not likely to become a fugitive, because he has a family and a job here, he's entitled to be free under reasonable bail until he has been properly convicted. That is part of what is meant by the "presumption of innocence."

4. Detention Before Trial; The Jailer's Job

If the magistrate decides that the arrested man should be held, and the defendant cannot raise the bail, the man is sent to the "untried department" of the county jail to await action by the grand jury or trial. The important thing about this from the point of view of a policeman is that it is another case where the law draws a sharp line between the job of the police and the assignment of other officials in law enforcement. The law provides a special place to keep untried defendants, with special rules about the conditions of confinement. The jailer is responsible. He has to make sure that the prisoner cannot escape, that he can get in touch with, and be seen by, his relatives and a lawyer. That is why it is improper for the magistrate to remand a prisoner into the custody of the police, except with the consent of the arrested man and his lawyer. It is the policeman's job to gather evidence and catch criminals. It is the magistrate's job to make preliminary disposition of the prisoner. It is the jailer's job to hold untried, as well as convicted, prisoners.

5. The District Attorney's Job

The District Attorney, of course, handles the actual prosecution of cases in court. He also has many responsibilities before trial that affect the policeman's job. In the first place, he is the man elected by the people to decide what cases or classes of cases should be prosecuted. Somebody has to make decisions of this sort because the Police Department never has enough officers to investigate all possible offenses and the number of assistant district attorneys is strictly limited. Many obsolete laws are on the books, which it would be unjust or impractical to try to enforce.

The District Attorney is in daily touch with the Courts and knows what offenses they take seriously so that it is not a waste of time to prosecute. He also knows from experience how much evidence it takes to satisfy a judge and convince a jury. For all these reasons, the D.A. is the man who makes "prosecution policy," that is, he decides what kinds of cases are worth prosecuting and can be won. Since that is his job and not the job of the police, the Police Department takes its cue from him in this regard. It would be wasteful and improper for individual policemen to engage in investigations and make arrests in classes of cases not covered by prosecution policy. On the other hand, the policeman should not overlook offenses covered by prosecution policy merely because he doesn't agree with the law or doesn't like the prosecution policy. Still, many situations that might be prosecuted under established prosecution policy are so minor that a policeman can legitimately decide to warn rather than arrest. See Police Guidance Manual No. 7.

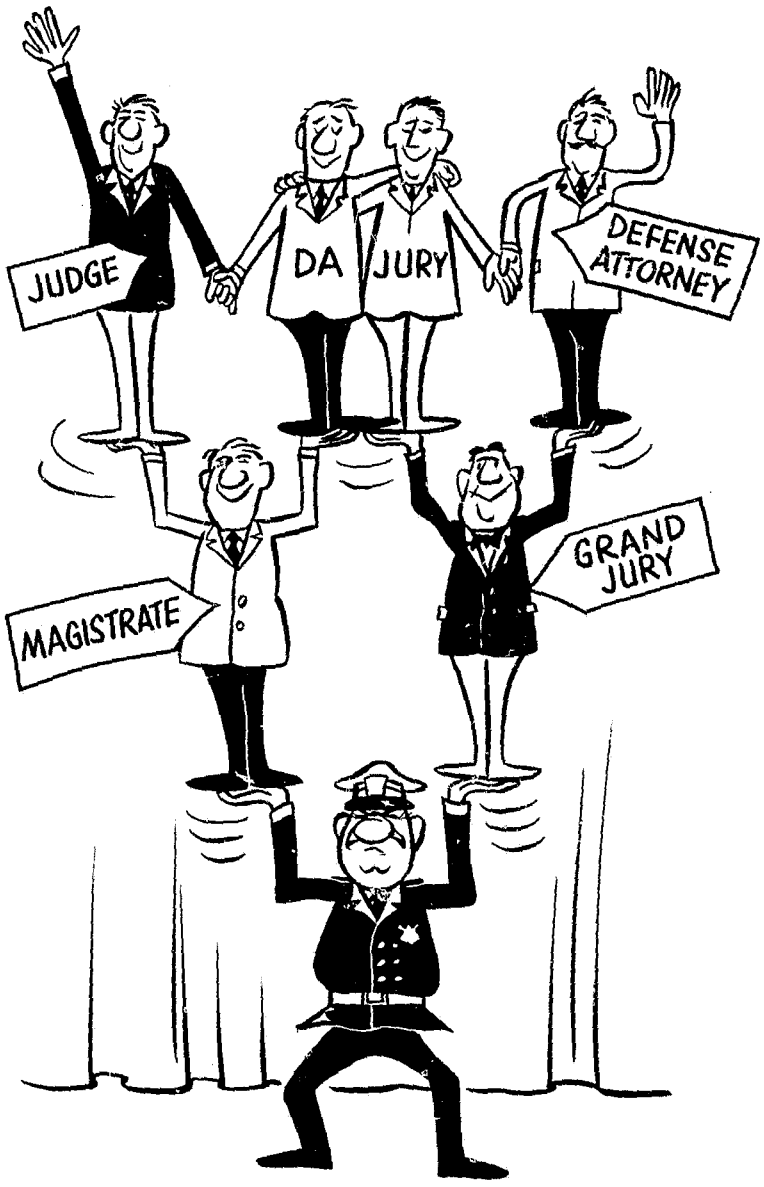
One area where the policeman must bear in mind who has the responsibility is the problem of illegal methods of investigation. The Police Department and the District Attorney cooperate on this because each of them has some responsibility here. The D.A. knows he will lose cases in court if it comes out that evidence has been illegally obtained. He also has a constitutional and professional obligation not to take improper advantage of an accused person. Furthermore, since it is a crime to engage in certain types of investigatory practice; e.g., wire-tapping, the D.A. has a personal concern not to become involved. It would also be embarrassing for both the D.A. and the Police Department if the D.A. were put in the position of having to prosecute a policeman for illegal law enforcement methods. Accordingly, the police are generally guided by the D.A.'s legal advice on methods of surveillance, search, eavesdropping, and the like.

An important thing to remember about the District Attorney is that he is bound by law and by the rules of the legal profession to see that all important evidence is laid before the judge and jury, whether the evidence favors the defendant or the government. It is not his job to convict somebody by holding back evidence that might raise doubts about guilt in the minds of the jurymen. This is another case where it is a question of who has what responsibility. It

is the responsibility of the jury (or the judge in cases tried without jury) to decide who is guilty on the basis of all the evidence. It is the job of the lawyers to present all the evidence.

Normally, where there is a prosecuting attorney and a defense attorney, the prosecuting attorney can count on the defense attorney to put in all the evidence favorable to the defendant. So the prosecutor concentrates on putting in the evidence *against* the defendant. But it sometimes happens that the defense hasn't been able to find evidence or witnesses they want, and the prosecutor has the evidence or knows where it can be found. It is up to the honest prosecutor in such cases to let the defense know about it. If he doesn't do that, for example, because he's satisfied that the defendant is guilty but might get off on the basis of the undisclosed evidence, the defendant might be unjustly convicted. The injustice would result from the District Attorney wrongly trying to do the jury's job as well as his own. He knows *all* the evidence and he makes up *his* mind that the defendant *must* be convicted, so he holds back some evidence. But that prevents the jury from doing *its* job, which is to decide whether the defendant is guilty based on all the evidence.

What has just been said about the District Attorney's duty throws some light on what the policeman's duty is. Just as the District Attorney should not hold back from the court evidence that might acquit the defendant, so the police may not hold the same kind of evidence back from the District Attorney. The District Attorney can't make intelligent decisions about whether to prosecute, and how to present the case, unless he knows all there is to know about the case, favorable and unfavorable. For example, the police should tell him, if it's so, that the complaining witness in a robbery at first gave a description that doesn't fit the defendant, or was unable to identify the defendant in a line-up. Quite apart from the needs of the District Attorney, the conscientious policeman wants the truth to come out, and therefore gives equal attention and treatment to evidence for and against suspects.



6. The Grand Jury's Job

The grand jury is an arm of the Court of Quarter Sessions. It consists of 23 people summoned to each term of court and ordinarily serving for only that term. At the beginning of the term, the judge instructs them as to their duties, mainly to consider cases presented to them by the District Attorney. Theoretically, the grand jury screens out cases which it would be unjust to prosecute, and returns indictments in the cases which they think should be prosecuted. The indictment is the first formal accusation in serious cases. After indictment the case is in the hands of the trial court.

The reason we say that grand jury "screening" is only theoretical is because the grand jury is usually so much under the influence of the D.A. that its decisions really are his decisions. He prepares the indictments for them. He produces the witnesses before them. He advises them as to the strength of the evidence. They are very likely to act on his advice, although occasionally there is a "runaway grand jury" that exercises its ancient power to go into matters not submitted by either the D.A. or the Court. Anyway, most of the screening out of poor cases has been done before the case gets to the grand jury. The police themselves drop some. The magistrates drop some. The D.A. drops some after considering the testimony taken in the magistrate's court.

Sometimes a D.A. wants to drop a case but is not willing to take the responsibility publicly. He covers himself by presenting the case to the grand jury, which conducts its proceedings in secrecy. Acting on the D.A.'s advice, the grand jury "ignores" the indictment he has prepared.

Some people believe the grand jury has outlived its usefulness, and is a needless formality in modern criminal procedure. They say it had its uses in days before the development of professional police and responsible public prosecutors. It has been abolished in many states. Where it is abolished, a paper called an "information" becomes the first formal accusation. It is drawn up and filed by the D.A.

Charge by information is used in Pennsylvania for misdemeanors and other minor offenses, and in cases where indictment is waived.

Those who favor retaining the grand jury argue that there ought to be some body of citizens with power to go around the D.A. if he is corrupt or incompetent. Also an honest D.A. can make effective use of the grand jury to conduct major investigations by employing its power to issue subpoenas, to compel witnesses to testify under oath, and to demand documents and records. The D.A. in Pennsylvania does not on his own have any of these powers. Perhaps they would have to be given to him if the grand jury were abolished. Some people would object to that because they fear to put so much power in the hands of a political figure. In contrast, the grand jury subpoena is controlled by the Court. It would be possible to give the power to the D.A. subject to some court control.

This debate over whether the district attorney should have power to make witnesses talk helps explain why the law gives so little power to policemen to compel suspects or arrested persons to answer questions or hand over evidence against themselves. It is once more a question of whose job it is to do that sort of thing.

7. The Defense Attorney's Job

The job of the defense attorney is to help the accused in every lawful way before trial as well as during trial and on appeal. A person charged with crime is in very serious trouble. He's got a lot going against him. There's a big, professional detective force looking for evidence against him. The judge and the jury are inclined to believe, as anybody would, that the accused is most likely guilty or else the police wouldn't have arrested him, the magistrate wouldn't have held him, the grand jury wouldn't have indicted, and the district attorney wouldn't be pushing for conviction. Finally, the law is complicated. Most people are scared by it and afraid they'll be tripped up.

The way we Americans look at it, a fellow caught in this situation is entitled to one man who's on his side and knows the law—a defense lawyer. To begin with, the defense lawyer is supposed to investigate the case from the point of view of his client's innocence or mitigating circumstances. From experience, he knows what kind of witnesses and testimony will be helpful to the defendant, and what kind of checks should be made to expose weaknesses in the evidence of probable prosecution witnesses. This kind of investigation is often more important than the showy business in court, because it's the facts, more than speeches, that influence judge and jury.

Investigation is so important that some people think the defendant doesn't get a fair break (unless he's rich and can hire expensive investigators as well as top lawyers), because the prosecutor has the whole police force working for him while the accused who is not so well off has little or no help in digging up witnesses and facts in his favor. This has led to proposals that police investigation be conducted for the benefit of both sides. Regardless of whether the system is set up that way officially, district attorneys often will make important evidence available to trustworthy defense lawyers.

The defense attorney must be loyal to his client. The ethical rules of the bar association, as well as the nature of the defense lawyer's job, require that just about anything the client says to his lawyer is confidential, even confession of crimes. This is much like the protection given to confessions made to priests. And the reason is the same: if the sinner knew that his words would go abroad, many would not tell the truth, and the purpose of confession would be defeated. So, if a client could not trust his lawyer completely, clients would often fail to tell their lawyers important things which the lawyer should know, for example, in advising the client whether to plead guilty or not guilty. Neither the lawyer nor the priest becomes involved in the guilts which he hears confessed. Each has a job to do for the sinner or accused.

Because of loyalty to his client, the defense lawyer is often in a position where he has to oppose the police. For example, he will usually tell his client not to answer police questions if there is any possibility that the answers could be used against the client. The defense attorney will generally cross-examine police witnesses at the trial. The cross-examination may be sharp. It may seem to a resentful policeman that the lawyer is simply trying to make him out a liar or a fool. Experienced policemen, however, know that the defense lawyer is only doing the job he's supposed to do for the defendant. The lawyer is testing the story told by the policeman. He is testing whether the policeman's memory is good, whether the policeman has any grudge against the defendant that would lead him to lay it on a little heavy, etc. If anything like that is so, it's the business of defense counsel to find it out and to lay it before the judge and jury, whose job it is to decide who is telling the truth. It makes no difference that the defense attorney personally believes that the policeman is telling the truth.

The experienced policeman also knows that the best way to deal with cross-examination is to stick to the facts, without exaggeration, without being afraid to admit it when he doesn't know the answer, and without losing his temper.

Of course, defense lawyers sometimes overdo it. There are rules about how far they can go. The judge is there to enforce those rules. The District Attorney is there to protect his witnesses by objecting to improper cross-examination. The D.A.'s objections remind the judge to enforce the rules and keep the cross-examination fair. In the same way, the defense attorney can object if the D.A. goes too far in cross-examining defense witnesses.

It is not the defense attorney's job to get his client off regardless of how he does it. The defense attorney, like the prosecuting attorney, is an "officer of the court". Neither may knowingly deceive the court. If either one got a witness to lie under oath, that would be contempt of court and also the crime of suborning perjury. If a lawyer gets into the position of working as a partner in crime, for example, by advising criminals how they can commit offenses without being caught, or by making an agreement with a racketeer to furnish legal services any time he is caught, the lawyer

would be guilty of criminal conspiracy. It's not a part of a defense lawyer's job to help criminals commit crimes, and if you as a policeman run into a lawyer who seems to be involved in that way, don't take it that all defense lawyers act the same way. That's as untrue and unfair to the great majority of honest defense lawyers as when unthinking members of the public distrust all policemen because some go wrong.

It is often asked how a lawyer can defend somebody he knows is guilty. The answer is easy when you understand the job he has to do in the administration of justice—a job assigned to him by society, not just his client. It's not his job to judge whether his client is guilty or innocent; that's the job of judge and jury. Furthermore, the fact that the client says he's guilty doesn't necessarily mean that it's so. Experienced lawyers and policemen are familiar with false confessions of guilt. Sometimes such a confession is made to protect someone else. Sometimes it is made by a person of low intelligence or who is actually insane. After the newspapers report a sensational crime, a certain number of such "nuts" are likely to seek publicity by falsely claiming to be involved. Sometimes uneducated defendants are ready to admit guilt because they don't understand simple things about the law. An uneducated man may think he is a murderer because he killed someone even though it was a case of self-defense. A youth who has had illicit intercourse with a woman may feel guilty, and may be stupid enough not to know that it was rape only if he forced her.

The defense lawyer knows these things and also that it is his job to dig up for the court and the jury all the witnesses and facts and law that favor the defendant. The District Attorney and the police are on the other side, presenting unfavorable evidence and law. Only after the judge and the jury have heard everything that can reasonably be said on both sides, can they come to a fair and reliable conclusion.

Another reason for taking on the "defense" of a man who is believed to be guilty, is that "defending" doesn't necessarily mean trying to get him off. It may mean advising him to plead guilty. If he pleads guilty, or is found

guilty after trial, one of the most important jobs of the defense lawyer still remains to be done, namely, to show the court everything good that can possibly be said of the defendant so as to lighten the sentence.

For these reasons, an experienced lawyer, retained or assigned to defend a man on a criminal charge, would no more think of starting off by asking if his client was guilty than would a surgeon operating on a captured and wounded bank robber. In each case the professional man is put there to help the fellow. They need to have information bearing on the defense or the medical situation. It's up to other people later to decide whether the man is guilty and what to do about it if he is. The situation is something like that of the policeman making an arrest, who often must say to himself, "Buddy, I'm not saying you did it or you didn't do it. It looks as if you did it, and so my job is to take you in. Other people will decide whether you're guilty."

An important part of the defense attorney's job is to keep the government on its toes and behaving according to the law. For example, when the defense attorney objects to evidence obtained by illegal search, he is of course seeking in the first place to save his client. But if he keeps the evidence out of the case and so gets his man off, the police will presumably be more careful after that to observe the rules regulating search.

A similar effect follows from every maneuver by defense counsel that involves criticism of the government's case. Thus the defense lawyer may bring out that the law under which his client is accused is unconstitutional, or that the grand jury was improperly constituted, or that the indictment is defective, or that workingmen or Negroes or women were discriminated against in the jury system. In a way, every criminal trial thus becomes a trial also of the way the government conducts itself. Defense lawyers perform a valuable function here.

About the worst mistake that can be made about defense lawyers is made by people outside of law enforcement, rarely by policemen. It is to identify defense lawyers with the offenses of their clients. A lawyer acting as defense

counsel in a rape case is not for that reason to be thought of as favoring rape, or disregarding the safety of women. Giving legal counsel to one on trial for treason doesn't mean the lawyer is a traitor or sympathetic with treason.

The defense lawyer has a job to do. It's a job as important to the community as it is to the defendant. If persons accused of rape or treason were tried without defense lawyers, the newspapers and the public would suspect that the trial was loaded against the defendant. There would be less confidence in the verdict, in courts, and ultimately in government. The defense lawyer's job is so important that our forefathers wrote it into the Constitution that the accused "shall enjoy the right to the assistance of counsel."

8. Judge and Jury; Trial; Evidence Rules; Sentencing

The judge's job is to preside over the trial, to see that prosecutor and defense attorneys operate fairly and in accordance with law, to tell the jury at the end of the trial the law bearing on the case, and, if the accused is convicted, to sentence the convicted man.

It's up to the judge to say what evidence the jury can or cannot hear. For example, he will not allow "hearsay" evidence, that is, testimony given by persons who do not have the actual information needed at the trial, but have only been told by somebody else who may or may not know what he's talking about. The person who knows first-hand is supposed to do the testifying in court, so he can be put under oath and be cross-examined to test his memory, judgment, and honesty. For centuries the British and the Americans have thought this to be extremely important, to prevent people from being convicted of crime based on rumor or gossip. So it was put in the Constitution that persons accused of crime are entitled to "confront" the witnesses against them.

There are some exceptions to the "hearsay rule." For example, a policeman comes on the scene of a shooting. The

victim is dying but able to speak. He names the killer. The judge at the trial will allow the policeman to tell the jury what the dying man said. This is because it is not possible for the dead man to testify himself, and it is believed that a dying man would be unlikely to lie even though he's not under oath. There are other exceptions to the hearsay rule too complicated to go into here. But these technical matters are for the prosecutor, the defense attorney, and the judge. The careful policeman will pay some attention to hearsay and rumor, because sometimes it puts him on the track of good evidence.

There are other kinds of evidence which the judge is required to exclude from the trial. He must exclude confessions obtained by threats or mistreatment, or by questioning a suspect under conditions that do not guarantee the statement was made freely and voluntarily. See Police Guidance Manual No. 4 for details. He must exclude evidence obtained by illegal search. See Police Guidance Manual No. 5.

Naturally such rules affect the way the policeman goes about his job, since the basic rules, often stated in the Constitution itself, are rules telling the police what they should not do, e.g., don't make unreasonable searches; don't compel accused persons to incriminate themselves. When the judges exclude illegally obtained evidence, they are just enforcing these rules by giving notice that it won't do any good for the police to violate the rules even if they do get evidence as a result of the violation. The judges don't make the rules ordinarily. The rules are laid down by the legislature and the Constitution. If the rules are unwise, policemen like other citizens have the right to persuade the legislature or the majority of citizens to change the laws or the Constitution.

A most important part of the judge's job in a trial is to "charge" or "instruct" the jury regarding the law of the case. If the indictment is for murder he tells them what the facts have to be before they can convict of murder of the first or second degree. For example, in Pennsylvania, he'll tell the jury that a murder is of the first degree if it was

"deliberate and premeditated," or if it was committed while defendant was perpetrating arson, rape, robbery, burglary, or kidnapping. The judge, in such a serious case, will go on to tell them what "deliberate" means, and what "premeditated" means, what kind of "self-defense" evidence warrants an acquittal, etc. In less serious cases where the jury is likely to know what's up, the charge will be less detailed, for example, if it's just a question of whether the particular defendant was or wasn't the man who snatched the lady's bag.

Very often testimony is conflicting: the prosecution witnesses say he did it; the defendant and his witnesses say he didn't. Reasonable people like the jurymen might not know which to believe. So the judge instructs them carefully on this point. To begin with, he tells the jury about the "presumption of innocence", basically, that the jury is not supposed to make anything of the fact that the police have arrested this man, that the grand jury indicted, that the prosecutor is pressing for conviction. All these things happened before trial. It is the evidence produced at the trial, and only that evidence, that the jury is to consider. Despite all that has gone before, the defendant comes before the court and jury as an innocent man to be judged solely by what is produced at trial.

Next, the judge tells the jury that the evidence must establish guilt "beyond a reasonable doubt". This amounts to telling them that if they are left in doubt by the conflicting testimony, it is their duty to acquit the defendant. This is so even if all twelve jurors believe the defendant is guilty, so long as they are not so certain about it as to exclude reasonable doubt. If some jurors are sure the defendant is guilty and some, even one, think he's not guilty, or have doubts about it, defendant cannot be convicted. There may be a "hung jury," that is, one that is hopelessly divided. The judge then declares a "mistrial." The case will be tried over again if the prosecutor thinks it important enough and likely to result in conviction the next time around.

Plainly, under such conditions, guilty defendants may escape conviction. Some policemen naturally feel frustrated

and annoyed when this happens. They may feel that it is a criticism of their own work in tracking down the defendant and the evidence. That is generally not so. The policemen have done their job, and the court and jury have done theirs. Such acquittals do not represent failure by anybody. It's just the result of the fact that the criminal justice system operates as a screening process with a series of finer and finer screens. Some suspects are screened out during investigation. Some are screened out by the magistrates, the D.A., and the grand jury. Among those that get to trial, a few more are screened out by the judge, if he thinks the evidence insufficient to go to the jury. The jury may, by acquitting, screen out additional defendants.

Each screening calls for a little more certainty of guilt. No wonder, then, that many who are justifiably arrested on the basis of "probable cause" cannot in the end be found guilty "beyond a reasonable doubt." If anybody in the system should be embarrassed by acquittals, it is not the policeman, but magistrates and prosecutors who have the responsibility for selecting the cases to go forward to prosecution.

The extreme care about "reasonable doubt" may seem to go too far, until you stop to think about it. The first thing to consider is how horrible it would be to be arrested for a serious crime with which you had nothing to do, taken off from your family and job, publicly disgraced, and perhaps sentenced to years in jail or even death. The idea that this can happen—as it has many times despite all the precautions we now take[3]—is so obnoxious that Americans have always been willing to take the risk of a few guilty getting off to minimize convicting the innocent.

The loss of some convictions, for this purpose, cannot be taken as seriously as might be thought at first, if we remember that the criminal law works reasonably well if most offenders get caught and punished. It is not necessary—in fact, it's impossible—for all offenders to be caught. If everybody who committed an offense was caught and convicted, nearly all of us would have criminal records, because it is well known that the great majority of people

have at one time or another done something that the law penalizes. So the limited object of any law enforcement program is to get enough offenders so that a person inclined to wrong-doing will know that he runs a heavy risk of capture and punishment. As long as the police of the country continue to bring millions of offenders to justice every year, we don't have to worry too much about the few who are let off because of the reasonable doubt rule and other safeguards of the innocent.

Besides, even the ones who escape conviction have already suffered arrest, disgrace, some confinement, loss of employment, and the expense and inconvenience of trial. Most criminologists would say that these are effective in many cases to deter people from committing crimes. It's the fear of being caught rather than any anticipation of specific punishment that stops most would-be offenders. That is why the policeman's part of the law enforcement program is so important and why the policeman (and the public) needn't be too concerned about the occasional acquittal on grounds of reasonable doubt.

At several points during the trial the judge has the job of deciding whether to acquit the defendant without letting the case go to the jury. Defense counsel will ask for this when the prosecution case is insufficient regardless of defense evidence. The law is that defendant is entitled to an acquittal without giving any defense or explanations, unless the prosecution first makes a convincing case against him.

If the judge overrules defendant's motion at the conclusion of the state's case, defense counsel will go ahead with his own witnesses. He will renew his motion to dismiss the prosecution after all the evidence is in. It will now be his position that the judge, having heard the defense story as well as the prosecution's, should throw the case out because no reasonable jury could possibly convict. If the judge believes that, he will dismiss the prosecution without submitting the case to the jury, because the law doesn't allow a defendant to be convicted on the basis of guesswork by a jury. The jury has to have something reasonable to go on. It's the judge's job to decide whether enough has been shown so that a reasonable jury could convict.

He doesn't have to be convinced himself that the defendant is guilty. If reasonable people could differ about it, for example, if it depends on whether one witness rather than another is to be believed, the job of deciding belongs to the jury. The judge will send the case to the jury, telling them, as has been noted above, that they must believe in guilt "beyond a reasonable doubt."

If the jury convicts, the judge has the responsibility to reconsider the whole case before judgment and sentence. This is brought about by defense counsel filing a "motion for new trial," listing all the mistakes he thinks have been made during the trial. He may complain of the judge's rulings on evidence, instructions to the jury, or even the judge's decision to submit the case to the jury, contending, despite the verdict, that no reasonable jury could have reached the conclusion of guilty. Judges sometimes change their minds at this point about decisions they have made in the haste of trial. If a judge does that, he orders a new trial. Otherwise he denies the motion for new trial.

Now comes one of the most important parts of the judge's job: sentencing. The problem of sentences is discussed in Police Guidance Manual No. 3, together with probation, parole, and other aspects of criminology and penology.

9. The Appellate Courts

The most important thing to remember about the appellate courts is that they do not have the job of deciding whether the defendant is guilty or innocent. Their job is to decide whether the trial was conducted fairly and lawfully. When the defense attorney takes a case to a higher court after his client has been convicted and sentenced, he always lists a number of "errors" he claims were committed by the trial judge. Sometimes it is said that the lower court tries the defendant and the appellate court tries the lower court. If the appellate court finds the lower court made a mistake

and did not try the case properly, the conviction is set aside, and the case is sent back to be retried.

Sometimes, as where the trial judge erred in letting the case go to the jury without enough evidence on which a reasonable jury might reach a verdict of guilty, the appellate court orders dismissal of the prosecution. This comes close to being an appellate decision on innocence, but technically it's still a matter of deciding that the trial court erred in not dismissing the prosecution. Mostly the errors are of the kind that can be corrected in a new trial, e.g., by excluding objectionable hearsay, or giving the jury proper instruction on the law.

It is interesting that in England, if the appellate court decides that the trial was unfair, the defendant cannot be tried again. The reason is that the British believe that it is a hardship and unjust to put a man through several trials for the same offense. Another reason given is that if the prosecutor and the trial judge know that the defendant will go free if error is found in his trial, they will be more careful to try the case right the first time. In the United States, the general rule is that a defendant can be tried over again after his original conviction has been reversed.

In Pennsylvania, criminal appeals go from the Court of Quarter Sessions and the County Court to the Superior Court. Only capital cases go to the Supreme Court as a matter of right. The State Supreme Court has authority, however, to review any decision of the Superior Court where it thinks an important legal question of general interest is involved. With very few exceptions, the appellate courts have no control over the trial court's discretion in sentencing. They may believe the sentence was too harsh or too lenient, but that is not the kind of "error" which the law authorizes the appellate court to correct, so long as the trial judge stayed within the limits set by the Penal Code. Some people believe the appellate courts should be given some authority in this field, primarily so that they could even out the great differences in sentences imposed by different judges.

The Supreme Court of the United States gets into the picture only in special situations governed by the Constitution of the United States. The chief basis for Supreme Court action is the provision of the Fourteenth Amendment that

> "No State shall deprive any person of life, liberty, or property without due process of law."

In general, this means that state laws and the actions of state officials cannot be arbitrary or inconsistent with traditional standards of freedom, equality, and decency in government. The Fourteenth Amendment was passed at the time of the Civil War. Many of the southern states had laws and procedures discriminating against Negroes. The federal government then wanted to make sure that the federal Supreme Court would have ultimate authority to declare arbitrary laws and practices invalid, whether whites or Negroes were involved.

A few examples of state criminal procedures which have been held to violate the Due Process Clause are: trial of serious criminal charges without providing a defense attorney to defendants unable to hire their own; use of evidence obtained by illegal search; discrimination against Negroes in jury selection; obtaining confessions by third-degree methods; convicting a person of breach of the peace based on evidence that other persons were about to engage in violence due to resentment of some lawful speech or demonstration which the defendant insisted on making against the orders of police.

A defense attorney who believes that the state law or procedure under which his client was convicted violates the Due Process Clause files a "petition for certiorari" with the Supreme Court of the United States. This asks the Supreme Court to order the highest court of the state to send up the record of the case, so that the Supreme Court can take a look. Nine out of ten such petitions are turned down because the Supreme Court doesn't have time to go into all such cases. It selects only the most important ones. If at least four of the nine members of the Supreme Court think the case involves a basic problem of general concern,

the petition is granted. Later the case is fully argued and decided by majority vote.

As in the case of the state appellate courts, the Supreme Court of the United States does not pass on guilt or innocence. Its job—laid down by the Fourteenth Amendment—is to see that the state laws and procedures come up to minimum federal standards of fairness.

10. Other Police Forces

There are different police forces for different territories and some specialized policing agencies that operate in the same territory as the city police. There are town police forces, state police, and sheriffs who do much of the police job in rural areas. There are federal enforcement authorities, including the F.B.I., the Secret Service, postal inspectors, narcotics agents, customs officers, tax investigators, immigration officers, etc. There are also military police with authority over members of the armed forces, and Park Guards with police authority within the boundaries of Fairmount Park and a few other areas. City police cooperate with these other groups. Sometimes it is necessary to get their help, so it is useful for the policeman to know something about their responsibilities.

A member of the Philadelphia police has authority only inside the city. If police action is needed in Camden, Wilmington, Upper Darby, Montgomery County, or, for that matter, San Francisco or London, the police of these places have to be notified. If it's a question of arresting a fugitive, they do the arresting, but a Philadelphia policeman may go along to identify the criminal and bring him back to Philadelphia after the necessary approval has been obtained from the local authorities. The only time when a Philadelphia policeman can act outside the city is when he is in "hot pursuit," that is, when he's chasing a felon inside the city, and the felon runs or drives across the city line.

A. STATE POLICE

The State Police is a force of law officers headquartered in Harrisburg and responsible to the Governor. They assist the Governor in enforcing the laws of the Commonwealth, and "whenever possible, cooperate with counties and municipalities in the detection of crime, the apprehension of criminals, and the preservation of law and order throughout the State."[4] They are required to collect classify, and keep available complete information useful for detection, identification, and apprehension of criminals. They have special responsibilities relating to traffic on state highways, motor vehicle inspection, enforcement of certain state revenue laws and laws relating to game, fish, forest, and waters. Regional headquarters of the State Police are at Belmont Avenue and Monument Road in Fairmount Park.

State police have all powers of members of city police forces and constables, including the right to arrest for "all violations of the law . . . which they may witness" and to serve warrants and subpoenas.[5] A state policeman, like any citizen, also has the common law power to arrest upon reasonable ground to believe that the person arrested has committed a felony. All in all, it looks as if the state police power completely overlaps the city police power. To avoid duplication, the State Police have a policy of not intervening in ordinary law enforcement problems in cities and other areas where there is an organized police department, except in emergencies upon request of the local authorities. An ex-

ample of an emergency would be where a riot gets out of hand and beyond the ability of the local police to handle. Incidents occurring in state institutions, e.g., the penitentiary or a state hospital for the insane, are also dealt with by the state police, although the city police are usually called in for ordinary offenses occurring in a state office building or similar public state facility.

Sometimes it is brought to the attention of the State Police that authorities in a particular locality are not enforcing gambling or other laws, as a result of either negligence or corruption. The Governor or the Attorney General may then direct the State Police to investigate the situation and, sometimes, to raid illegal operations.

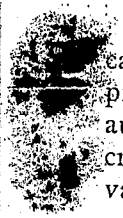
B. FEDERAL LAW ENFORCEMENT

The federal government does not have anything that can properly be called a police force except in places like the District of Columbia where state laws don't apply. The reason the United States doesn't have a general police force is because, under the federal Constitution, each state is responsible for the ordinary problems of safety and well-being within its territory. Each state makes its own criminal laws and its own arrangements for maintaining public safety.

However, the Constitution does give the federal government a number of powers under which federal criminal laws can be passed. For example, the Constitution gives the U.S. Congress power to regulate the mail. Congress has passed laws penalizing theft of mail, robbery of post offices, and use of the mail to operate fraudulent schemes or lotteries. The Constitution also gives Congress the power to regulate commerce between the states. Under this power, Congress has passed laws penalizing theft from interstate shipments, interstate movement of stolen autos and other property, interstate shipment of lottery materials, and transportation of women across state boundaries for immoral purposes.

Often the same conduct constitutes a crime under both state and federal law. For example, if somebody steals a car in Philadelphia and drives it to New Jersey or Delaware, he's guilty of larceny under Pennsylvania law, and of

an interstate motor vehicle violation under federal law. Similarly, a man who runs a house of prostitution in Philadelphia violates Pennsylvania laws and may also be guilty of violating federal law by bringing the women in from another state. Double violations are likewise possible under gambling, liquor, and narcotics laws.



The overlap of state and federal laws got started because the state and city law enforcement authorities had no practical way of operating outside the state. The federal authorities were everywhere and could more easily go after crooks, for example, who did their dirty work in Pennsylvania, but operated from a base in New Orleans or Hawaii.

But it would be a waste of time to have two investigations and two prosecutions every time a particular crime could be punished under both local and federal law. So the police have working arrangements with the federal investigating agencies under which the federals turn over any case that can be handled locally. The local police turn over to the federals cases that have a substantial federal angle, where, for example, federal help is needed to apprehend the criminal, or where the Philadelphia criminal activity is part of an interstate racket.

The federal agencies, as has been stated, are not strictly speaking police forces. None of them has the job of maintaining order in the community, protecting life and property, or performing all the non-law-enforcement tasks that the policeman is responsible for. Each federal agency has a set of particular federal laws to enforce. Treasury agents, including the Secret Service, enforce the laws having to do with counterfeiting and with safeguarding the President. The postal inspectors investigate violations of the laws relating to security of post offices and use of the mail in connection with frauds, lotteries, obscenity. The federal narcotics agents, immigration officers, alcohol tax agents, etc., each have their exclusive jurisdiction.

The F.B.I. has a broad group of federal laws to enforce, including those relating to espionage, interstate kidnapping, and interstate theft. The F.B.I. also carries on activities to coordinate and improve state and local law enforcement.

For example, it maintains central files of fingerprints and criminal records. It gathers and publishes national criminal statistics. It gives special training courses.

11. The Policeman's Job Outside Law Enforcement

This pamphlet has described the policeman's share of responsibility in law enforcement. But the policeman's job has always included more than law enforcement. He directs traffic. He persuades people to stop making nuisances of themselves to their neighbors. He settles arguments and fights that look as if they might lead to offenses. He picks up lost children and helpless drunks. He turns in fire alarms. He gives warning and advice to troublesome youths and their troubled parents. In short, he shares in the general "house-keeping" of the community, acts as counselor, and supplies emergency aid of all sorts.

When the policeman acts as law enforcement official, he is the arm of authority, and has the lawful right to use force in appropriate cases. In this capacity, he is armed when necessary, and is part of a uniformed service with special discipline resembling that of the defense forces. When the policeman is performing his other functions, he is more like a teacher or social worker. He helps rather than controls, and he often works with other social agencies. These agencies have special assignments, and it is important for policemen to know how their responsibilities fit in with his own, just as it is important for him to know how his law enforcement responsibilities fit in with the responsibilities of the magistrate, prosecutor, defense counsel, etc.

12. "Justice Without Trial"

Recently people who have studied the system of criminal justice have been struck by the frequency with which criminal cases are disposed of without going through the formal steps that are described earlier in this manual. One book

calls this "Justice Without Trial." [6] In the first place, since the police themselves very often make judgments about whether to arrest or merely warn, or question or advise, and since arrest is itself an unhappy experience for the person arrested, the police decision is a kind of disposition of the case involving weighing of evidence, discretion, and the imposition or nonimposition of a sanction. In the second place, the overwhelming majority of cases that are prosecuted end in a plea of guilty, often resulting from a kind of bargaining between the prosecutor and defense counsel. Defendant may agree to plead guilty in return for the dropping of a higher charge or in return for favorable sentence recommendations. It is said that the criminal courts would be unable to handle large volumes of criminal trials which would have to be held if there were no informal arrangements for disposing of cases without full trial. Obviously the functions of prosecutor and defense in this important area of "plea discussions" is quite different from the way it is when they face each other in a trial operating under strict rules of evidence presented above.

13. Conclusion

As this manual shows, the policeman's job is tremendous even though the responsibilities of the total enforcement program are shared with other legal and judicial authorities. The job is likely to become even harder and more important as people of many races concentrate more and more in big cities. In small towns, where everybody knows everybody else and it's hard to disappear after you've done something wrong, people tend to behave to keep the respect of their neighbors. The city dweller is less restrained by these influences, and consequently needs more policing. At the same time, they are more suspicious of the police, who are not, as in smaller communities, friends, fellow churchmen, members of the same fraternal organizations.

One of the important concerns of city police departments and city policemen is how to deal with this suspicious attitude, which is understandable but harmful. The attitude is summed up in the phrase "police state." The phrase is well

known to refugees from communist and fascist countries, and to their descendants and friends, and to the millions of people who have studied the history of Germany, Italy, Russia, and other authoritarian regimes. The meaning of the phrase as applied to those regimes is that the police were given a great deal of authority which, under our Constitution and laws, is reserved for other officials. The police there could arrest people and hold them without judicial authority. They were not limited by rules in searching for evidence or interrogating prisoners. They conducted secret trials or decided that certain people were guilty without trial. There were no appeals. The secret police sentenced and executed.

The leaders of the American Revolution were familiar with some of these practices as carried out by the British against them. They wrote into our state and federal Constitutions "bills of rights" to guarantee against giving any single branch of law enforcement too much authority. So we don't have a "police state" in this country, and no reasonable American wants one. At the same time, policemen are entitled to authority needed to do the job that is rightly theirs. Every policeman is entitled to a clear statement of how far that authority goes, what the limits are, and what the reasons are for those limits. If the reasons are no good, the rules should be and can be changed.

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FOOTNOTES

1. See Police Guidance Manual No. 2 on question of obedience to orders that are obviously unlawful.

2. Cf. Rule 116, Pennsylvania Rules of Criminal Procedure.

3. See Borchard, Convicting the Innocent (1932); Frank, Not Guilty (1957).

4. § 710 of the Administrative Code. 71 Purd. Pa. Stat. Ann. § 250.

5. § 712 of the Administrative Code. 71 Purd. Pa. Stat. Ann. § 252.

6. Skolnick, Justice Without Trial (1966).

Police Guidance Manual No. 2

The Police Career

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Project financed by the Office of Law Enforcement Assistance
United States Department of Justice

Printed by the University of Pennsylvania Printing Office
Philadelphia, 1968

TABLE OF CONTENTS

ACKNOWLEDGMENTS

The following colleagues at the University of Pennsylvania gave valued advice and criticism: Professors Paul Bender, Curtis R. Reitz, and Henry S. Ruth, Jr., of The Law School, and Dr. Marvin E. Wolfgang, Chairman, Department of Sociology, and Director, Center for Studies in Criminology and Criminal Law. Philadelphia Police Commissioner Frank L. Rizzo and Philadelphia District Attorney Arlen Specter made their facilities and staff freely available to the project.

The cartoons which humorously illustrate some themes in the Police Guidance Manuals are by artist John Pretch.

1. Introduction

The other manuals in this series concentrate primarily on the relationship between the police officer and the rest of society. This manual's main focus is on the relationship between the officer and the police department. It will cover such topics as the organization of the department, recruitment, training, compensation, promotion, employee organizations, professional conduct, and police discipline. As background for this discussion, the following is a short history of the American police system.

2. A Short History of the American Police System

American law enforcement, like so many other aspects of our life, can be traced to roots in English history. By the time of the American colonies, there were very simple police forces established in many of England's large towns. These were called the "watch and ward" and were responsible for protecting property against fire, guarding the town gates, and arresting those who committed offenses. Originally the "watch" only operated at night, but later a day shift was added.

The American colonies followed this British example and by the early 1700's Philadelphia had both a day and night watch made up of ten "patrols". By 1749 these watchmen were paid for their work.

But, with the movement of masses of people into the cities in the Industrial Revolution of the late 18th and early 19th centuries, the unorganized, small watch and ward groups proved unable to handle the new problems of maintaining order. It seemed to many that crime was becoming rampant in the streets.

In 1829, Sir Robert Peel, a member of the British Cabinet, organized in London the first modern police force. Be-

cause the force was formed by Sir Robert, the officers were called "Bobbies", a name that has stayed with the London police to this day. Peel divided London into divisions, then into patrol sections, and finally into "beats". The headquarters for the police commissioners looked out upon a courtyard that had been the site of a residence used by the Kings of Scotland and was, therefore, called "Scotland Yard." This name later became associated with the police headquarters itself. Although there were difficulties with the methods of police selection and with the low salaries in the London police force, Peel's experiment proved so effective that in 1856 Parliament required every borough and county to have a police force similar to London's.

The experiment of Sir Robert Peel in establishing metropolitan police forces was soon followed in the United States. With a bequest from Stephen Girard, Philadelphia established separate night and day police forces in 1833. Boston and New York soon followed Philadelphia. In 1844, New York combined the night and day units into one force, an idea quickly adopted by other cities.

Political interference, corruption and public hostility marred the early years of metropolitan police forces. Police positions were looked upon as patronage posts of the politicians. In 1883 the first federal civil service act was passed. Gradually, the concept of civil service appointment, free from political patronage, spread from the federal to the state and local level and included the police.

3. Organization of the Police Department

A. CIVILIAN CONTROL OF THE POLICE

One often hears public debate concerning civilian control of the police. This debate has centered largely on the issue of the desirability of civilian boards for police disciplinary proceedings. (That issue will be discussed later in this manual.) Controversy over civilian review or advisory boards however, should not be allowed to obscure the fact that in our society there always has been, and always will be, ultimate civilian control of the police. The police are part of the executive branch of city government headed by the mayor. Thus, ultimate responsibility for police functioning rests with the mayor, a civilian.

When you think about it, it is clear why this must be so. In our system of government the people are sovereign. Thus, ultimate responsibility must rest in officials who are elected by and responsible to the people. The mayor is responsible for the police department as he is for every other city department. This is analogous to the fact that our highest elected official, the President of the United States, is Commander in Chief of the United States Armed Forces.

Of course, this does not mean that the mayor can or does make detailed decisions on all police matters. Generally, such decisions are made by men in the department who are experienced in police matters. The mayor sets only broad guidelines, which police professionals make more detailed and put into operation. Even on these broad guidelines the mayor is advised by police professionals. Another aspect of civilian control is the relationship between the police and the district attorney. This relationship is discussed in PGM No. 1.

B. INTERNAL STRUCTURE OF THE DEPARTMENT

In 1966, there were approximately 420,000 people in police work in the United States. The Philadelphia Department has about 7,000 regular police, 700 to 800 school crossing guards, and approximately 500 civilian employees. At the head of the force, responsible directly to the mayor, is the Police Commissioner. The Commissioner is in charge of the overall running of the department. Also, as head of one of the major city departments the Commissioner acts as an important advisor to the mayor.

The structure of the department below the Commissioner varies from time to time based on the needs of the department and shifting views on organization. As of 1968, the Department is divided into six broad divisions: four staff divisions and two line divisions. Generally, the staff divi-

sions perform the technical, advisory and administrative work, while the line divisions, made up of Uniform Forces and Investigation-Training, are the peacekeeping, law enforcement and service arms of the department.

The four staff divisions are (1) the Staff Service Bureau, (2) the Internal Security Division, (3) the Community Relations Bureau, and (4) the Administration Bureau. The Staff Service Bureau includes records and communications, research and planning, court liaison and the departmental laboratory. The Internal Security Division carries out staff inspections, internal investigations of the Department and disciplinary functions. This last task is performed by the Department Advocate. The Community Relations Bureau is charged with the important and delicate task of maintaining good relations and communications between the Department and the rest of the community. It consists of the Civil Disobedience Unit, the Public Information Unit, and the Community Relations Division. Lastly, the Administration Bureau includes units concerned with finance, personnel, building maintenance, automotive service, administrative analysis, and safety.

The bulk of the day-to-day operations of the Force fall under the two line divisions: Uniform Forces and Investigation-Training, each headed by a Deputy Commissioner. Uniform Forces include the Patrol Bureau, Special Patrol (including Traffic), and the Tactical Division. The Tactical Division is made up of specialized units like the Subway Unit, the K-9 Patrol, and School Crossing Guards.

The other big line division is Investigation-Training. The Detective Bureau, with important branches like the Homicide Division and the Major Crimes Division, falls into this group. So do the Juvenile Aid Division and the Training Bureau.

Major bureaus are generally headed by inspectors or chief inspectors. The next rank is captain, in charge of a police district, detective division in a section of the city, or specialized unit. Lieutenants assist the captains, supervising sergeants who are in direct charge of sections or platoons. In the Uniform Forces, corporals assist the sergeants in

handling platoons. The patrolmen of the Uniform Forces are the backbone of the force and perform the bulk of the law enforcement and service duties of the Department. Detectives, who are on the same salary level as the corporals of the Uniform Forces (there are no corporals in the Detective Bureau) engage primarily in investigating major crimes.

Before leaving the organization of the Department, we should mention two ideas that might affect police organization in the future. For some time now, people have advocated that police departments should be more regionally organized for the most efficient use of modern crime detection and criminal apprehension technology. This idea envisions increasing cooperation between the Philadelphia department and the suburban police departments in the Philadelphia metropolitan area. At the same time that people are concerned with greater regional cooperation, a number of people also feel that for day-to-day maintenance of law order, large city police departments should be broken down into smaller neighborhood departments in order to bring police administration closer to the people the police are serving. This concept is usually called decentralization. A similar idea is becoming popular in regard to public education in large cities. We cannot predict whether or not these ideas will come to fruition, but everyone interested in police administration should be aware of them as possible avenues of future change.

4. Qualifications and Recruitment for Police Work

A. PHYSICAL CONDITION, CHARACTER, AND RESIDENCE REQUIREMENTS

Although requirements vary from one force to another, all police forces in this country emphasize good physical condition and good character as requirements for appointment. Most forces require that an applicant be a resident of the area for a certain period of time prior to appointment, varying from 6 months to 6 years. In Philadelphia, a

city ordinance requires all city employees, including police officers, to have been residents of Philadelphia for at least one year prior to appointment.[1] In theory this requirement can be waived by the Civil Service Commission, but it has never been waived for police officers. This type of residence requirement can be traced back to the days of the depression when employment was very scarce and cities attempted to give job preference to local residents.

Recently these requirements have been criticized. In its report published in 1967, the President's Commission on Law Enforcement and Administration of Justice ("National Crime Commission") concluded:

> These [residence requirements] are probably the most restrictive requirements of all, for they prevent many police departments from searching for recruits; they prevent many young men from small rural communities from embarking on police careers; they prevent, to give a particular vivid example of their questionable logic, young men who have put in a period of service in the military police from continuing in police work in civilian life.[2]

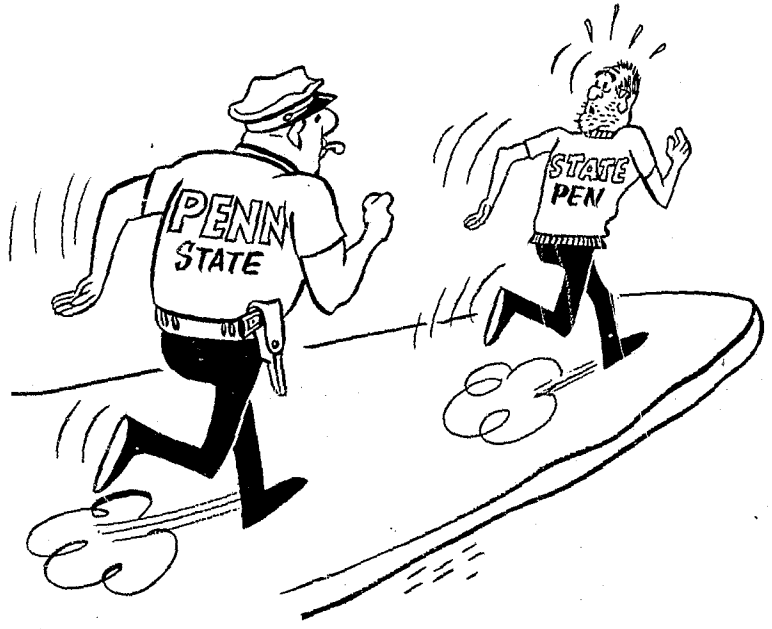
Some people believe residency requirements ensure that police officers will be familiar with the city. Others believe that an officer need not live in the city for a year to be familiar with it, and that the separate requirement of the City Charter that all officers live in the city while they are employed on the force is sufficient.

B. EDUCATIONAL REQUIREMENTS

One of the subjects of most interest today is that of educational requirements for police work. Two factors are of prime importance here. The first is that police work, from the era of the night watch on, has continually become more and more complex. Today police work requires a great deal of knowledge and sophistication in both technology and human relations. The second factor is that the educational level of our whole society has been continually rising. In recent times we have progressed from a stage when eighth-

grade education was the average to the point where college training is becoming the norm.

At present, most police departments require a high school diploma. Although most Philadelphia recruits are high school graduates, only a tenth grade education is required. Even a high school diploma is not the maximum that could be required in our complex age. The National Crime Commission in fact has suggested that ultimately the goal may even be a college degree for police appointments.[3]



C. CIVIL SERVICE EXAMINATIONS

As discussed earlier, adoption of the civil service system was a big step in divorcing police appointments from partisan politics. Most police departments are now on a merit civil service system. An applicant must pass a written civil service test for appointment as a recruit.

In Philadelphia this written examination is given daily, and any person can walk into the test center and take it. No appointment or prior application is necessary. The test

takes approximately 2-½ hours. As with other city employment, an applicant is given a 10 point bonus on his test score if he is a veteran. If an applicant passes the test, he is scheduled for a medical and psychiatric examination. If he passes these and an oral interview, he is selected as a recruit. As a recruit he receives a salary from the police department while attending the Police Academy. After graduation from the Academy the new police officer assumes his duties.

D. ATTRACTING MEMBERS OF MINORITY GROUPS

All major police departments are making efforts to attract more recruits who are members of minority groups. In addition, in 1968 the Lawyers' Committee for Civil Rights Under Law, formed in 1963 at President Kennedy's suggestion, joined with the Defense Department to recruit and train Negro servicemen for work as policemen in civilian life. The Lawyers' Committee feels that there is generally a critical shortage of qualified Negroes to serve in big city police departments. As of 1968, there are over 1,200 Negro officers in the Philadelphia department, approximately 20% of the force. In this regard, Philadelphia ranks second only to Baltimore, in which approximately one-third of the police force is Negro.

5. Educational Programs for Law Enforcement

Related to the trend toward higher educational requirements for police work is the current and rapidly growing movement among colleges, especially community and junior colleges, to develop programs for law enforcement officers. In 1966, there were 134 such programs oriented toward police service, one hundred of which were 2-year programs in police science offered at junior colleges. The community and junior colleges in the Philadelphia area are among those offering police science degrees. A four year program is being developed at Pennsylvania State University.

The purpose of college courses for policemen should be kept clearly in mind. It is not to prepare a man immediately to go out on the street and act as a police officer. That is the job of recruit training, such as is currently conducted by the Philadelphia Department Police Academy. Rather, the role of college courses is to give a man the background of general knowledge and experience upon which he can draw for his police work. Programs in police science include such courses as history and sociology as well as criminal law and criminology. The complex responsibilities of police work require that police officers understand their community and the conditions which breed crime and delinquent behavior. A good liberal arts education is the best source of such understanding.

In addition to this type of education, police officers need training in the technical aspects of their work. Police training schools got their start in the early 1900's. In many areas, however, it was not until the 1940's or 1950's that police departments established effective recruit-training courses. In Philadelphia, technical recruit training consists of a twelve-week course at the Police Academy. This course includes judo and self defense, firearms training, first aid, human relations, criminal law, tactical problems, and laws of arrest.

No matter how good his recruit training was, a police officer must continue to learn in order to keep up with changing police methods, procedures, and technology. The Department tries to keep each officer up-to-date with publications such as Assist Officer Bulletins and this series of manuals. Captains usually have the responsibility of distributing this material to their men. One of the primary functions of a captain is to keep his men advised of changes in policy and techniques and see to it that his district acts according to current policy.

Additional in-service training is provided by special supplementary courses. For example, the Philadelphia Bar Association has sponsored a series of all-day sessions on the law of search and seizure, including reenactments by police personnel of courtroom interrogation regarding the circumstances of a dramatized arrest and seizure.

6. Compensation

Compensation for police work varies from locality to locality. In general, salaries are higher in larger cities than in small towns or rural areas. The National Crime Commission reported that in 1966 the median starting salaries for patrolmen ranged from $4,920 in smaller communities to $5,834 in cities of over 500,000 population. Starting salaries varied from $2,820 in Durant, Oklahoma to $8,790 in Anchorage, Alaska.[4]

According to figures prepared by the Fraternal Order of Police, the following were the 1968 salary figures for police officers in cities having a population of over 1,000,000.

COMPARATIVE SALARY RANGE FOR MAJOR CITIES

City and State	Chief	Captain	Lieutenant	Sergeant	Detective	PATROLMAN Min.	PATROLMAN Max.	PATROLMAN Yrs. from Min. to Max.
POPULATION: OVER 1,000,000								
BALTIMORE, MD.	25,000	14,160	12,240	10,560	—	6,780	8,640	5
CHICAGO, ILL.	23,232	13,416	12,180	10,524	9,648	7,128	9,000	3½
DETROIT, MICH.	21,059	—	10,340	9,857	9,658	7,424	8,335	4
LOS ANGELES, CALIF.	28,692	15,672	13,284	11,280	—	8,124	10,380	4
NEW YORK CITY, N. Y.	35,000	17,500	13,100	11,600	11,500	9,583	9,986	3
PHILADELPHIA, PA.	29,500	10,949	9,167	8,317	7,774	6,907	7,429	2

In its Report, the National Crime Commission emphasized the fact, as the above figures show, that in most cities the maximum salaries for patrolmen are not much higher than the starting salaries. Typically the difference is less than $1,000. The difference in Philadelphia is only about $500. Therefore, in order to increase his salary substantially a patrolman must seek promotion to a supervisory position. In contrast, as of 1966 a special agent for the F.B.I. begins at $8,421 a year and can reach a high of $16,905 without promotion to a supervisory position. The Crime Commission stressed the need to increase maximum salaries.[6]

Police salary problems may be part of a larger problem affecting the salaries of all municipal employees. For example, as of 1968, the starting salary for Philadelphia teachers with a college degree was $6,100 with $9,900 as the maximum. Since increased salaries ultimately mean increased taxes to pay them—and no one likes higher taxes—all government employees face the problem of getting reluctant legislatures or city councils to raise salaries.

It seems to be a fact that the salary scale of police officers, as of many other government employees, is below private industry scales for equivalent jobs. As stated by the National Crime Commission Task Force Report on the Police:

> Although it is difficult to determine what occupations or professions compete with the police for personnel, it can be seen that police salaries are below those of most skilled occupations. In 1960, the median salary for professional and technical workers was $7,124; for craftsmen and foremen, $5,699 and for police, $5,321.
>
> In Seattle, policemen are paid $375 a month less than cable splicers; in Nashville, electricians earn an hourly rate of $3.22 in contrast to the police rate of $2.55; and retail buyers in Los Angeles earn a median salary of $9,492 as compared with the maximum salary of $8,820 paid to patrolmen.[7]

On the other hand "fringe-benefits" in police compensation compare favorably with those of private industry. These fringe benefits include paid sick leave, paid holidays, two or more weeks vacation, and free life and hospitalization insurance. In addition, the Philadelphia Department has a pension plan which allows a man to retire at half pay at age 50 after 20 years of service. Retirement after a greater length of service results in greater benefits up to a maximum of full pay for retirement after 40 years of service. This pension plan also provides for disability and death benefits.

7. Promotions

As is true of appointment to the force, promotions are now governed by the civil service system. To be eligible for

a promotion to a higher rank in the department, an officer first must have been in his present position for a stated period. For example, a person has to have two years experience as a patrolman in order to be eligible for a sergeant's position.

Once an officer meets this experience requirement, he can take the written civil service test for the position desired. The passing score for this exam is 70. If the applicant for promotion receives a 70 or better in this written test, there are then two other items added to the test score to produce his final rating. The first item added is based upon the latest performance report filed by the applicant's commanding officer. A performance rating of less than satisfactory disqualifies the applicant for promotion. There is no adjustment either way for a satisfactory rating. Performance ratings of superior and outstanding entitle the applicant to have 1-½ and 3 points respectively added to his test score. The other item added to the test score consists of points for seniority. Seniority points can amount to 10% of the final rating.

You should note that although both seniority and performance rating count in the final score, neither is counted unless the applicant first gets 70 or better in the written examination. Seniority and performance rating cannot be used to raise an examination score from below 70 to 70 or above.

Every person taking the written examination has a right to review his paper and appeal to the Personnel Director of Philadelphia if he thinks that an error has been made in grading his exam. This appeal must be taken within 30 days after the applicant is notified of his test results.

The applicant's final rating determines his place on the Eligibility List—those eligible for promotion to the desired rank when vacancies occur. The Eligibility List remains in effect for two years. After that time a new list comes into effect and a person on the old list who has not been promoted must take the examination again in order to get on the new list.

When promotion vacancies occur they are filled from the Eligibility List from the highest scores on down. Twice the number of persons are chosen from the list as there are positions to fill. For example, if there are 100 sergeant vacancies to be filled, the first 200 people on the Eligibility List are chosen. These 200 applicants are given personal interviews. The interviewers review the applicant's performance record and try to judge such qualities as leadership and initiative that are not reflected by test scores. One hundred applicants are chosen for the position. The 100 passed over go back on the list in their old positions. If later within the two year period there are more sergeant openings to be filled, the process is repeated. If, for example, 100 more sergeants are needed, the top 200 then on the Eligibility List are called for interviews (these would be the 100 interviewed previously but not chosen plus the next 100 on the list.) Again 100 are chosen from this group to get the positions. When an applicant has twice been chosen for an interview and passed over for the position he is removed from the list and must repeat the process when the next promotion test is given before he will again be eligible for promotion.

It should be noted that this promotion system was not devised specifically for the police department. It is the general civil service system governing promotions of all city employees. Some people have criticized the system because of the great weight given to the interview and the power that the interviewer therefore has. Others believe that this is necessary because the tests and other criteria can't measure all the individual qualities of a person that might be important in deciding whether or not to promote him. They maintain that only a personal interview can do this.

8. Transfers

An officer who desires to transfer to another duty post submits a transfer request to his superior. This request then goes through the chain of command up to the Commissioner who must finally approve it. If the request is

granted, the transfer will take place as soon as there is an opening in the requested post.

About 85% of the transfers in the department arise from the request of an officer. The majority of these transfer requests are based on the officer having moved to a new area of the city and thus desiring a shift to a more convenient assignment. Occasionally, men are transferred, not at their request, but because a personality clash or other friction has developed at their old posts. Transfers are not made for disciplinary purposes, however. If an officer believes that he is being wrongly transferred he should file a complaint with a Staff Inspector as explained later in this manual in the section on Reporting Misconduct and Registering Complaints.

9. "Moonlighting"

Related to the preceding discussion of police salaries and fringe benefits is the issue of whether or not police officers should be permitted to have outside employment and, if so, how much and of what type. This outside employment has become known as "moonlighting." Moonlighting raises issues concerning the efficient operation of the force and the image of the police officer in the eyes of the public.

An officer tired by a hard night's work might be unfit for the day's work as a policeman. Thus most people agree that if an officer is to carry out his obligations to protect life and property well, the amount of his time spent in other work must be limited. Most people also agree that an officer should not engage in outside employment which might involve, or give the impression of involving, a conflict of interest with his primary job as a police officer or which might otherwise demean the officer and his profession of law enforcement. Thus an officer should not engage in private police work such as being a security guard, should not be employed as a bartender or other worker in a liquor establishment, and should not work in the area he patrols.

On the other hand, because salaries are not as high as they should be, an officer may feel that he needs some kind

of an extra job to support himself and his family. The Philadelphia Police Department has considered the factors discussed above and concluded that an officer may work up to 16 hours a week on outside employment, with the nature of the employment subject to the prior approval of the department. Do not engage in outside employment without first obtaining this approval. Requests for approval should be made in writing to your commanding officer. Requests should state fully the nature of the employment and the hours involved. Engaging in unauthorized outside employment may subject an officer to a suspension of up to 30 days.

10. Police Employee Organizations

Policemen, like other groups of employees in our society, have felt the need to organize to promote such goals as higher wages, shorter hours, better working conditions, greater protections against erroneous discipline or dismissal, and better pension and survivor benefits. Policemen also have common concerns about law enforcement, and want to present their views to the government and public. Finally, policemen and their wives have many shared experiences and thus enjoy each other's company.

As a result, in virtually every department in the country there is today some form of police employee organization. The overwhelming majority of officers belong to independent local or national fraternal associations. A minority are affiliated with organized labor, being members of the American Federation of State, County and Municipal Employees, AFL-CIO.

The pioneer police organization is the Fraternal Order of Police (FOP), which was founded in Pittsburgh in 1915. The members are organized into local departmental lodges, each of which selects its own officers and board of trustees. The various local lodges in a state make up a state lodge. The state lodges in turn make up the grand national lodge. As of 1968, the FOP consisted of approximately 70,000 members in 690 local lodges in 38 states. Philadelphia has the largest local lodge of the FOP with approximately 10,-

000 members. This membership includes 98% of the active Philadelphia force and some 2,600 retired officers.

There are also numerous state and local police associations not affiliated with the FOP. For example, New Jersey and New York have statewide Police Benevolent Associations. A number of these independent police associations have joined together in the International Conference of Police Associations (ICPA), formed in 1954. The ICPA is an association of police associations, not of individual officers. Each officer is a member of a state or local association. That state or local association then joins the ICPA in order to coordinate activities with other independent associations throughout the country. As of 1967, the ICPA consists of police associations which together represent over 140,000 police officers throughout the United States, Canada and the Panama Canal Zone.

The FOP is the recognized bargaining agent for the Philadelphia police. In regard to such matters as salaries, pensions, and hours, the FOP negotiates with city officials outside the police department. The principal city officials involved in these negotiations are the Personnel Director, the Finance Director, the Labor Consultant, and the City Manager. In addition, FOP representatives appear before City Council when it is considering salary or other matters affecting the police.

What happens, however, when the FOP and the city can't agree? In a case of private employment the union might strike. But, Pennsylvania, in accord with the general rule in this country, has a statute prohibiting public employees from striking.[8] In addition, the FOP, along with the other police employee associations in this country, has a specific provision in its charter which prohibits strikes.

The Pennsylvania statute that prohibits strikes by public employees does not stop there, however. It also provides for appointment of a three man arbitration panel to settle disputes when the FOP and the City cannot agree. One of the three arbitrators is selected by the City, one by the FOP and the third jointly by the City and the FOP. The panel investigates the dispute and then makes what it considers to

be a fair settlement. A 1968 statute and amendment to the Pennsylvania Constitution make the decision of the arbitration panel binding upon both the FOP and the City. This binding arbitration procedure was adopted at the urging of the FOP which worked hard for the passage of the 1968 Constitutional amendment and statute.

On internal departmental matters such as discipline, the FOP negotiates with the Commissioner at weekly meetings. An unusual fact about the FOP is that it includes among its members the highest officials of the Department, sometimes the Commissioner himself. In most employee associations or labor unions, a line is drawn between employees and management, and the association or union consists only of the employees. In a police department such a line might be drawn between patrolmen and sergeants or maybe between sergeants and lieutenants. Yet this is not done. The FOP includes nearly everyone. Thus, when negotiating with the Commissioner, for example, the FOP may be negotiating with one of its own members. Some fear that this might interfere with the independence of the Commissioner. Others believe that this fear is unfounded. They say that the Commissioner's membership in the FOP is basically a social one and there is no difficulty in his dealing independently with the FOP on departmental matters.

The FOP and other police employee organizations also take stands on public matters that concern police officers. For example, the FOP in Philadelphia has long opposed the Police Advisory Board. While some argue with the particular positions that the FOP has taken, there is fairly general agreement that it is appropriate for a police organization to speak out on public issues involving law enforcement.

The Philadelphia FOP also provides such social functions as picnics and bowling leagues. It operates a gymnasium at its headquarters. There is a bar there for use by off-duty officers. Finally the FOP provides certain individual services to members. These include life insurance plans and free legal counsel for officers involved in civil, criminal, or disciplinary proceedings related to their police activities.

As stated earlier, FOP membership includes all police officers regardless of race, religion, ethnic group, or country of national origin. In addition to belonging to the FOP, however, a number of officers belong tc ethnically oriented social groups. These are The League of the Sacred Heart (Catholic), the Legion of Cornelius (Protestant), The Shomrim (Jewish) and the Guardian Civic League (Negro).

11. Professional Conduct

A. LAW ENFORCEMENT CODE OF ETHICS

The Philadelphia Police Department's Duty Manual sets forth in detail the various rules and regulations governing police conduct. All officers must be thoroughly familiar with the Duty Manual. Police Guidance Manual No. 2, The Police Career, does not duplicate or supplant the Duty Manual. We here discuss more general aspects of professional conduct.

A number of professions have long recognized the need for their members to adhere to a code of official conduct. Over 2,000 years ago, Hippocrates, considered the father of medicine, originated the Hippocratic Oath. This oath is still taken today by practicing physicians. The legal profession has similarly adopted codes of official conduct called Canons of Legal Ethics.

After extensive discussion and work by both high police officials and rank and file officers, the Law Enforcement Code of Ethics was developed in 1957 and has since been adopted by all major police associations and agencies in the country. It reads as follows:

LAW ENFORCEMENT CODE OF ETHICS

As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement.

The principles in the Code of Ethics run through all the manuals in this series, as they do all police literature aimed at increasing the acceptance of law enforcement as a profession. The principles that involve adherence to law and respect for the rights and liberties of the public are dealt

with in the other manuals of this series. This manual will deal briefly with some of the other aspects of the Code.

B. BRIBES, GIFTS, FAVORS AND GRATUITIES

When the International Association of Chiefs of Police adopted the Law Enforcement Code of Ethics in 1957, it also adopted the Canons of Police Ethics. Article 9 of the Canon of Police Ethics provides:

> The law enforcement officer, representing government, bears the heavy responsibility of maintaining, in his own conduct, the honor and integrity of all government institutions. He shall, therefore, guard against placing himself in a position in which any person can expect special consideration or in which the public can reasonably assume that special consideration is being given. Thus, he should be firm in refusing gifts, favors, or gratuities, large or small, which can, in the public mind, be interpreted as capable of influencing his judgment in the discharge of his duties.

Acceptance of a bribe, of course, is not only unethical but is a criminal offense. All attempted bribes should be immediately reported in writing to your commanding officer. Do not try on your own to go along with the bribe in order to get evidence. Such action may result in spoiling the case and, even worse, in casting suspicion on you. Remember, from another person's point of view, it is not always easy to determine whether you went along with the bribe to get evidence or whether you might have been inclined to take it. After you report the offer, wait for your commanding officer to tell you what to do next.

The Philadelphia Police Department prohibits any solicitation of gifts or favors by police officers. The only exception to this is the selling of tickets to the Thrill Show, a charitable performance sponsored by the Police and Fire Departments. What about unsolicited gifts? The rule followed by the Philadelphia Police Department is quite simple. *No officer may accept any duty connected gift or gratuity, without the prior written approval of his commanding officer.*

EXAMPLE

Facts: *You are on foot traffic patrol in a business area. At Christmas time a local merchant tries to give you a piece of jewelry saying, "Here's a little trinket for your wife." You know that he does the same with deliverymen and others whom he considers to have been of service to him. You also know that customers of his store may over-park or double-park while doing business with him.*

Action: *Politely refuse to accept the jewelry with some such statement as, "I appreciate your thoughtfulness but we do not accept gifts." This offer of jewelry was not in the same category as a bribe and should not be reported as such. Yet it should be refused. The same is true with such things as discounts in stores, free candy, cigarettes, restaurant meals, etc.*

The person offering the jewelry probably sees it as a gift or tip for service rendered to him. In some cases, he may see it as a way of obligating you to him so as to get special consideration, for example to induce you not to ticket his customers. Even if he does not view it in that way, other people might. A police officer is always under close public scrutiny. By the nature of his responsibilities, a police officer cannot permit himself to become obligated or appear to become obligated to anyone.

Moreover, there is the matter of self-respect and professional pride. A police officer does not work for tips. Nor is he looking for handouts. Police officers should and do take pride in the fact that they do not accept gratuities.

The rule against accepting gifts does not apply to presents given by members of a policeman's family or close friends unconnected with his professional work. The rule also does not bar accepting public awards for outstanding service. The Department itself recognizes outstanding performance with awards. Private citizens may also participate in this process.

EXAMPLE

Facts: *During the course of your duty you apprehend a person attempting to burglarize a department store.*

The store manager expresses his appreciation and tells you that they would like to give you a token of this appreciation in the form of a cash or property award.

Action: *Do not accept the award on your own. Request permission from your commanding officer. If appropriate, the award may be presented at the weekly award ceremony.*

C. POLITICAL PRESSURES AND POLITICAL ACTIVITIES

The Philadelphia Police Department, like most departments in this country, is under Civil Service. A principal aim of Civil Service is to remove police officers from political pressures. Any attempt by a politician to throw his political weight around and to influence the proper performance of your duty should be handled the same way as a bribe. It should be reported immediately in writing to your commanding officer.

In Pennsylvania it is a crime, punishable by imprisonment up to three years, to solicit political contributions from a police officer or other civil service employee.[9] The Philadelphia City Charter and Civil Service Regulations contain a number of restrictions upon political activity of police officers and other civil service employees.[10] The aim of these restrictions is to allow Civil Service employees to exercise their rights as citizens to participate in discussion and determination of public issues, but at the same time prevent them from being actively involved in partisan politics. A police officer may vote, sign petitions, and express privately his opinions on any political candidate. He may also be a non-paying member of a political party or club and attend its social functions and political meetings. Further, a police officer may participate actively in a campaign in support of an issue where the issue is not identified with a particular political party or candidate.

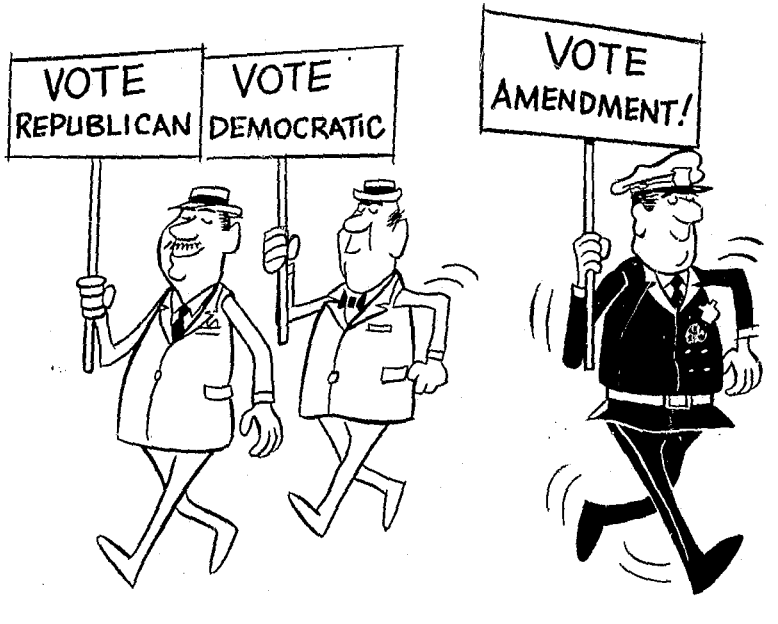
EXAMPLE

Facts: *An Amendment to the Pennsylvania Constitution is on the ballot for voter approval. The amend-*

ment is not identified with a particular political party or candidate.

Action: *Police officers may campaign for it. This was the situation with the constitutional amendment referred to previously which gave the legislature the power to require compulsory arbitration in public employee disputes. The City Solicitor of Philadelphia (the chief legal officer of the City) ruled that police officers could campaign for adoption of the amendment so long as they did not campaign in uniform and were very careful not to engage in partisan political activities.*

A police officer may not address a partisan political meeting. Nor may he be an officer of a political group or actively campaign for a political party or candidate. The Civil Service Regulations expressly prohibit a police officer from making "any contributions of money or any valuable thing whether voluntary or involuntary, for any political purpose whatsoever."[11] Violation of the anti-politics rules is ground for dismissal from the Department.



The discussion in this manual is necessarily quite general as to permitted and prohibited activities. Before engaging in any possible political activity beyond voting, signing a petition, or registering as a member of a political party, you should check the legality of the activity with the City Personnel Department.

12. Reporting Misconduct and Registering Complaints

One of the hardest problems that you as a police officer may confront is what to do when you discover that a fellow officer is engaged in serious improper conduct. A very natural inclination is to do nothing—to remain quiet. The other officer may be a buddy of yours. Even if not a close buddy, he is still a fellow officer with whom you feel a certain kinship. Also, you may feel that disclosure of this wrongdoing may discredit the whole Department in the eyes of the public. Yet police officers must try to resist this inclination. It is not easy to report a fellow officer. But if he is guilty of serious misconduct it must be done. Failure to report him may in some cases cast suspicion on you as participating with him. Moreover, serious misconduct will not disappear if you don't report it. It will eventually be brought to light by others and then give the Department two black eyes, one for its occurrence and the other for not doing something about it. As J. Edgar Hoover has written:

> If every officer and law enforcement agency must suffer in some degree from charges made against other officers, we cannot afford to take a passive view, shrugging the matter off as none of our business.
>
> I believe it is the duty of every officer in every law enforcement agency to take a personal interest in maintaining a high standard of conduct within his organization. To do otherwise invites public disgrace. The traitor to ethical standards of law enforcement will be discovered, but often not until he has brought a great deal of harm to both the public interest and the reputation of his organization and fellow officers. We should separate such elements from the profession at the earliest opportunity.[12]

It is the duty of all police personnel to report promptly any known instances of deficiencies, irregularities, waste, fraud, or other misconduct within the Department. As stated above, this duty includes reporting misconduct of fellow officers. All police personnel also have the right to register complaints of any personal wrong, injustice suffered, grievance or injury incurred.

The Internal Security Division headed by an Inspector who reports directly to the Commissioner, is charged with responsibility of hearing, inquiring into, and trying to resolve these complaints and misconduct reports. Complaints and reports may be registered orally, by calling the Internal Security Division for an appointment with a Staff Inspector. They may also be made in writing, addressed to the Staff Inspectors' Headquarters. *All complaints are treated in a strictly confidential manner.*

Effective operation of the police department requires all officers to obey the lawful orders of superiors. A refusal to obey a lawful order is a basis for dismissal from the force. Yet, an officer may at times receive an order to do something which he considers to be unlawful. All such orders should be reported to a Staff Inspector in the manner described above. Usually, reporting the order while still carrying it out will be sufficient to protect the officer from the possible consequences of doing the unlawful act. However, the fact that an officer is carrying out the order of a superior may not be a valid defense to doing an illegal act, when the act ordered to be done is seriously and manifestly unlawful.

13. Disciplinary Procedures

A key theme of these manuals is that a police officer, like all other citizens, must act according to law. The question then arises, what if someone charges that an officer has

acted illegally? What if there is a charge that he has acted against departmental conduct rules? Obviously there must be some means of determining whether or not the charges are true, dismissing them if they are not, and disciplining the officer if they are. The procedures should be fair, both to the person complaining and the officer involved. There should be a quick, inexpensive, and easy way of getting these charges acted on while at the same time giving the officer his rights in defending himself. A police officer, like all others in our society, is entitled to enjoyment of his constitutional and other rights.

A. INTERNAL CONTROLS

Internal control must be considered the most important means of making sure that police officers live up to the ideals of their profession. External forces such as civilian advisory boards, the Civil Service Commission and the courts are all removed from the day-to-day problems of the police officer. Also, they tend to become involved only when police conduct is seriously and obviously abusive. It is the job of the department itself to control daily police behavior.

Police misconduct can be divided into two basic groups. One is violation of departmental regulations in such matters as proper dress, filling out of forms, etc. The other involves mistreatment or abuse of members of the public. In the past, police forces have been criticized for concentrating their discipline very heavily on violations of internal regulations, such as dress, and not paying much attention to citizen complaints of police abuse.

This is not true in the Philadelphia Police Department. *It is a basic principle of the Department that citizens with grievances should be encouraged to file them.* A citizen complaint is not an attack on the force as a whole but an allegation against a particular officer. If the officer has not acted correctly, appropriate action should be taken. If he has acted correctly, he deserves to be cleared. In either event, the citizen must be made to feel that the department is truly interested in learning about and correcting misconduct. Discouraging citizen complaints would not only deprive the department of valuable information but also might make the public believe that the kind of practices complained about are condoned or even encouraged.

All complaints should be accepted and recorded. This is true regardless of whether the complaint is made in person or by telephone; regardless of whether it is made anonymously, not sworn to, or in any other form; and regardless of whether it comes from an alleged victim, an eyewitness, a person who says he merely heard about it, or an organization such as a civil rights group. *No officer should ever indicate to a citizen that there might be trouble for him if he files a complaint. Nor should an officer ever suggest that a criminal charge might be dropped or reduced if the person charged does not file a complaint of police misconduct.*

Complaints are most often taken by the district or division commander. If another officer takes it, he should immediately make out a report and give it to the commanding officer. In Philadelphia, a complaint report is then passed on to a Staff Inspector who makes a complete investigation of the alleged incident. If there appears to be some foundation to the complaint, a hearing is ordered. This hearing serves as important protection for the police officer as well as giving an opportunity for the complaining party to state his case fully and openly.

The Department Advocate, a member of the Internal Security Division, chooses a three member "Police Board of Inquiry" for the hearing. The men are chosen from a list compiled by the FOP and approved by the Commissioner. At least one member of the Board is of the same rank as the accused officer.

The hearing is designed to achieve a just result, which means giving a full, unbiased hearing to the person complaining while at the same time protecting all the rights of the officer. The FOP provides a free attorney for the officer. The officer has the right to call witnesses on his behalf and cross-examine the witnesses against him. A full record is made of the hearings.

A police officer, like other citizens, has the constitutional right not to be compelled to incriminate himself. Thus, the

Supreme Court of the United States has held that if a police officer makes an incriminating statement under the threat of losing his job for failure to give information against himself in a disciplinary proceeding, this statement cannot be used against him in a later criminal trial.[13] Nor may an officer be dismissed from the force for refusing to sign a waiver of his privilege against self-incrimination.[14] However, as provided in the Philadelphia City Charter,[15] any city employee, including a police officer, is subject to dismissal for refusing, in a departmental or other hearing, to answer questions related to the performance of his duty.

After the hearing, the three-man board decides the case by majority vote, and when it finds the officer at fault recommends a disciplinary action to the Commissioner. Although this is just a recommendation and not binding on the Commissioner, in practice he usually follows it.

If an officer is dismissed, demoted in rank, or suspended for more than ten days, he can appeal to the Civil Service Commission, which then holds a hearing. The Commission has the power to override the Department's action and has, on occasion, reinstated officers who had been dismissed. If the Civil Service Commission does not change the Department's decision, the officer has a right to appeal to the courts.

B. TRADITIONAL JUDICIAL PROCEDURES

Traditional judicial methods of controlling police conduct include civil suits or criminal prosecutions against an officer who allegedly has been involved in misconduct. In theory, a number of forms of police misconduct constitute torts, that is, civil wrongs for which a lawsuit can be brought and damages recovered. For example, there are torts of trespass, assault and battery, and false imprisonment. However, this remedy has not proven effective. Lawsuits cost money to bring, and the obstacles to winning and collecting are very great. In many cases the complaining person may have a criminal record or other attributes which would count against him with a jury. Also, he usually has to prove damages in terms of dollars and cents. Finally, even if he recovers a substantial judgment, a police officer may not have sufficient assets to pay the judgment.

Serious police misconduct may also violate state criminal laws and Federal Civil Rights Acts. The principal Federal Civil Rights Act with relevance to police misconduct is Section 242 of title 18 of the United States Code which prohibits the deprivation "under color of any law . . . of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States. . . ." Again, however, the victim may not himself be a very sympathetic type because of his status in society or a prior criminal record. Moreover, in criminal actions the alleged victim has the added problem of persuading the prosecutor to bring a criminal case against law enforcement officers with whom he is in daily contact.

Finally, the overwhelming number of citizen complaints against the police involve such things as verbal abuse and rudeness. Here civil and criminal penalties are clearly inappropriate. What the citizen wants, and should get where his charge is well-founded, are an apology and a change in conduct.

In PGM No. 5 we shall deal with another judicial remedy for police misbehavior, namely the rule that evidence illegally obtained may not be used in evidence against the accused.

C. CIVILIAN ADVISORY BOARDS

Many people oppose the exclusive use of internal police control on the grounds that it is a closed system. It is police disciplining police without any outward recognition that the general public also has a strong interest in police discipline. Rightly or wrongly a substantial segment of the public believes that the police officers will frequently decide in favor of another officer as against a complaining citizen. Some feel that this is even more true when the complaining person is poor or a member of a minority group.

It was in response to this feeling that the Philadelphia Police Advisory Board was established by the Mayor in

1958. Civilian Advisory Boards have also been established in Washington, D.C. (1948) and Rochester, New York (1953). Boards have been proposed in many other cities, including Chicago, Cincinnati, Detroit, Los Angeles, Oakland, Newark, Pittsburgh and Seattle.

As of 1968, the Philadelphia Board is not operating due to a Philadelphia Common Pleas Court decision that the method of appointing the Board violated the City Charter.[16] This technical question is being reviewed on appeal. In any event the issue of whether police advisory boards are a good thing will continue to be debated. Even if the lower court decision is affirmed, a new board might be set up in a way that does conform to the City Charter. The use of police advisory boards is a lively law enforcement topic throughout the country. The following description of the Philadelphia Board and the summary of arguments for and against civilian review boards is provided so that each police officer can be familiar with this important controversy in police administration.

The Philadelphia Board has consisted of eight members representing a broad spectrum of the Philadelphia community. A complaint would be filed by any person or interested group on behalf of any person who felt that he was the victim of improper police conduct. The Board would either dispose of the complaint informally or ask the Commissioner to investigate it. If the investigation indicated that a hearing was necessary, a hearing would be held before the Board. This hearing would resemble the hearing of the Board of Inquiry described earlier. A majority of the Board would decide the complaint and recommend appropriate action to the Commissioner. The Commissioner would be free to accept or reject this recommendation.

Opponents of civilian advisory boards, including many people in law enforcement, have raised numerous objections against them. The first is that a civilian board is unnecessary since good internal controls are available. As we have already discussed, those who favor civilian boards believe that even if internal controls are very good, there is a feeling in the public that it is the police force against the citizen when one officer judges another. Proponents of civilian

boards believe further that this public feeling is important. They state that it is not only important that the discipline procedures be fair; the public must feel that they are fair. Effective work of the police force depends on the goodwill of the citizen. They believe that this goodwill is increased when a citizen, particularly a member of a minority group, feels that he can file his complaint before a board that appears to him to be impartial.

Civilian boards are also attacked on the grounds that uninformed laymen cannot properly determine police behavior and that they may be partial to the complaining citizen over the police officer. Other people believe, however, that this contention ignores the fact, discussed earlier in this manual, that the ultimate judgments which govern police behavior are always made by civilians—legislatures, mayors and governors, or judges. They say that no group in our society is completely free to govern itself. Every group must be ultimately responsible to the whole public. Moreover, they insist that the Board does not deal with purely internal police matters such as smoking on duty. Rather it deals with the relationship between police officers and civilians. Finally, they point out that under the existing civilian advisory board system, the boards are just that—advisors. Final authority remains with the Police Commissioner.

To the argument that civilian boards are prejudiced in favor of the complaining person and against the officer, proponents of civilian boards answer that there is no evidence that this is true. They contend to the contrary that it appears that civilian boards may be easier on police officers than boards made up of their fellow officers. Indeed, some civil rights leaders have argued that the Philadelphia Board has been too lenient and, in fact, has been more lenient in its recommendations than the Police Board of Inquiry.

Proponents of civilian boards point out that the Board's role is to listen to complaints. Just as the department follows up and investigates all complaints so does the Board. Thus, proponents of civilian boards argue that an officer should not feel the Board is acting against him when it acts on a complaint. In the great majority of cases, the complaint is found to be baseless. When this happens the fact

that an independent board has investigated and exonerated the accused officer gives both the officer the satisfaction of being vindicated and the complaining person the satisfaction that an independent group has heard his story. When the reasons are explained for the officer's actions, the complaining person may even end up agreeing with the Board that the police officer has acted properly. The proponents of civilian advisory boards believe that this chance for "clearing the air" is a key feature of an independent board.

D. THE OMBUDSMAN

One complaint against police advisory boards that we have not considered is that they single out the police for special treatment. It is common knowledge that there are other government employees, such as welfare workers, probation officers, and building inspectors, who come into contact with the public and need to have their conduct subject to public control. The civil and criminal court remedies discussed above concerning the police are also ineffective with these groups. Internal controls for these employees are subject to the same argument of bias or the appearance of being in favor of the official as with police. Why then, people ask, are the police singled out for separate civilian boards?

One answer given is that the police can apply far more authority directly and immediately to individual citizens than other government employees, and that this power creates greater needs for police sensitivity to citizen rights and concerns. Thus, they say that it is not completely unreasonable to have a civilian board just for the police.

On the other hand, some people have suggested that it may be more desirable to have a board which hears and investigates complaints against all government employees. They point out that a principal aim of an independent board is to improve communication and understanding between the police and the public, particularly minority groups. A general board could mediate between citizens and all branches of the government, thus increasing the citizens' confidence that they are getting a fair deal.

The New York Association of the Bar has written that citizen demands for civilian advisory boards:

> do not really grow out of a movement against the police, but are part of a much larger concern with administrative and enforcement agencies of the government, not only in the United States, but also in many other countries having similar systems. There has been, during the past twenty-five years, a large increase in the regulatory and enforcement powers of government arising out of the growth of economic, social and political activities, not the least of which is the growth of population itself. As a result, many people have felt that it has now become necessary to regulate the regulators and police the policemen . . .
>
> We say all this to place the issue in its proper perspective; differences between the police and civilians are only part of a larger problem of public administration.[17]

The idea of a general citizen's advisory board is very similar to the Scandinavian concept of the "Ombudsman". The Ombudsman heads an independent office which investigates and tries to resolve citizen complaints against alleged abuse by government officials in all departments. The first Ombudsman was appointed in Sweden in 1809. The idea has since been adopted in Finland in 1910, Denmark in 1955, Norway and New Zealand in 1962, and Great Britain in 1966. Proposals for such an office have been made in the United States on the federal, state and local level, including Pennsylvania and Philadelphia.

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8. 43 Purd. P.S.A. § 215.1.

9. 71 Purd. P.S.A. §§ 741-905, 741-903.

10. See Philadelphia City Charter § 10-107; Philadelphia Civil Service Regulations § 29.

11. Philadelphia Civil Service Regulations § 29.0415.

12. J. Edgar Hoover, "Message from the Director," FBI Law Enforcement Bulletin, Dec. 1951, Quoted in The Police, p. 215.

13. Garrity v. State of New Jersey, 385 U. S. 493 (1967).

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16. Harrington v. Tate, C.P. No. 9, June term, 1965, No. 6330 (1967).

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Police Guidance Manual No. 3

Criminology for Policemen

Louis B. Schwartz and Stephen R. Goldstein
University of Pennsylvania Law School

Project financed by the Office of Law Enforcement Assistance
United States Department of Justice

Printed by the University of Pennsylvania Printing Office
Philadelphia, 1968

TABLE OF CONTENTS

NATIONAL BOARD OF CONSULTANTS

This is one of a series of manuals prepared for use by the Philadelphia Police Force and as a model for metropolitan police forces generally. The project was financed by the Office of Law Enforcement Assistance of the United States Department of Justice, and assisted by the Police Department and the District Attorney of Philadelphia. The following persons served on the National Board of Consultants:

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ACKNOWLEDGMENTS

The following colleagues at the University of Pennsylvania gave valued advice and criticism: Professors Paul Bender, Curtis R. Reitz, and Henry S. Ruth, Jr., of The Law School, and Dr. Marvin E. Wolfgang, Chairman, Department of Sociology, and Director, Center for Studies in Criminology and Criminal Law. Philadelphia Police Commissioner Frank L. Rizzo and Philadelphia District Attorney Arlen Specter made their facilities and staff freely available to the project.

The cartoons which humorously illustrate some themes in the Police Guidance Manuals are by artist John Pretch.

Preface

The public sometimes seems to assume that the Police Department is chiefly responsible for the existence and amount of crime. Newspapers carry stories about "crime waves," and directly or indirectly blame the police, or the courts. Policemen should therefore know the facts about crime, criminal statistics, the causes of crime, and the extent to which it is within the power of police departments to control the crime rate.

Concern over rising crime rates is world-wide, not confined to the United States and conditions that one happens to find here. In Holland and Scandinavia, in Germany and in Russia, police and criminologists are searching for explanations. Something that's going on all over the world certainly can't be fully explained by reference to American race conditions, or law enforcement failures, or decisions of the Supreme Court of the United States.

1. Difficulties in Measuring Crime

One of the most important things to know about reported crime rates is that they are not wholly reliable. When somebody tells you that the crime rate has gone up or down, ask him a few questions like: Have they changed the statistical system lately? Has anything happened to change the likelihood that victims will or will not notify the police? Have some kinds of crime become less frequent while other categories, perhaps of a trivial nature, have very much increased? Has the proportion of young people in the population gone up or down? (Some crimes are committed mainly by youths; a rise in the overall volume of such crimes might simply reflect a higher proportion of youths in the population rather than a greater propensity to crime.)

Crime rates are usually based on "crimes known to the police," or on "arrests." Both figures give an inexact picture of how much actual crime there is. Crime known to the police depends largely on victim complaints, and to a lesser extent on direct observation of crime by the police

themselves. There are only a few types of serious crime where the police can pretty much count on complaints by victims or their friends or relatives. Murders or violent rapes are examples. But even in rape cases the percentage reported can vary enormously. Often the victim or her parents may decide that avoiding publicity is more important than punishing the rapist. If the police and the district attorney announce a strong policy of protecting the identity of complainants, there might be a sudden rise in "rapes known to the police," but it wouldn't mean that more rapes were being perpetrated.

Burglaries are another instance where the rate of victim reporting can be quite independent of the crime rate. If the burglar is scared off after entering, or if he doesn't take much, there is a good chance that the police will never hear about it. Thefts and embezzlement by employees are frequently "settled" by the parties, although some of these private arrangements may themselves amount to the criminal offense known as "compounding a felony."

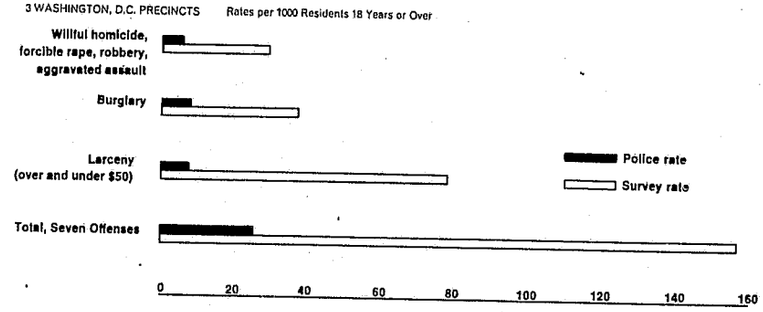
Thousands of fights and scuffles occur without being reported, although they constitute the crimes of assault and disorderly conduct. Sometimes the victim feels that it would be cowardly to squeal, or that he might end up being arrested himself. Reporting of misdemeanors may be discouraged by the fact that the filing of a sworn private complaint on which an arrest warrant can issue may cost the complainant $10 or more in Philadelphia.

In 1965, the President's Commission on Law Enforcement and Administration of Justice ("National Crime Commission") made some door-to-door surveys asking people about crimes they or the members of their families had suffered.[1] They found, for example, that there had been 3½ times as many forcible rapes as had been reported to the police, 3 times as many burglaries, and 50% more robberies. The following chart[2] compares crime rates in Washington, D.C. as found by the Survey with those in police statistics of the sort that go into the Uniform Crime Reports published by the Federal Bureau of Investigation.

CONTINUED

1 OF 4

Estimated Rates of Offense
Comparison of Police and BSSR Survey Data



The study also showed the reasons that crimes were not reported, the most frequent one being that victims thought the police would not or could not do anything about it. This was especially true of poorer and uneducated victims.

The greatest discrepancy between crimes known to the police and the actual crime rate occurs in the field of "victimless crime," that is, where the crime consists of a transaction between a willing buyer and a willing seller. Thus a very small proportion of illegal transactions in narcotics, gambling, prostitution and bootlegging is known to the police. The police often have to put themselves in the transaction by making the buy directly or through decoys and informers. The number of crimes known to the police thus depends very much on how active the police are. If the police department launches an enforcement drive, they will know about more offenses, and then it will look as if the "crime rate" went up!

Defects and changes in police reporting practices also have an important effect on the reliability of reported crime rates. The Federal Bureau of Investigation, which collects figures reported by police forces throughout the country, frequently finds radical differences and changes in local crime recording and reporting. The story is summarized in the following comparison of Chicago and New York City reporting of robbery and burglary:

Although Chicago, with about 3 million people, has remained a little less than half the size of New York City with 7½ million throughout the period covered . . . it was reporting in 1935 about 8 times as many robberies. It continued to report several times as many robberies as New York City until 1949, when the FBI discontinued publication of New York reports because it no longer believed them. In 1950 New York discontinued its prior practice of allowing precincts to handle complaints directly and installed a central reporting system, through which citizens had to route all calls.

In the first year, robberies rose 400 percent and burglaries 1,300 percent, passing Chicago in volume for both offenses. In 1959 Chicago installed a central complaint bureau of its own, reporting thereafter several times more robberies than New York. In 1966 New York, which appeared to have had a sharp decline in robberies in the late fifties, again tightened its central controls and found a much higher number of offenses. Based on preliminary reports for 1966, it is now reporting about 25 percent more robberies than Chicago.[3]

A well known textbook on criminology has the following to say about reporting practices:

The number of crimes known to the police is a reasonably efficient index of crime only if the police are honest and efficient in making their reports. Police have an obligation to protect the reputation of their cities, and when this cannot be done efficiently under existing administrative machinery, it is sometimes accomplished statistically. Politicians up for re-election are likely to be accused of neglect of duty if the crime rate has gone up during their administration, and they are likely to be praised if the crime rate has declined. Consequently, political administrations often try to show statistically that during their term in office the crime rate declined. . . . Bloch recently found a community in which the delinquency rate had apparently

been cut in half by establishment of a youth bureau attached to the police department, but investigation indicated that the rate actually increased and that the reported drop was the result of a change in the reporting system. Variations in crime rates among cities or among other jurisdictions must be interpreted with extreme caution, for the differences may be due merely to differential recording practices in the various police departments.[4]

Every policeman should feel a special responsibility for full and accurate reporting of crime. Incidents should be reported whether or not it seems likely that the culprit can be found, whether or not the victim of a property crime is insured, and whether or not he is interested in prosecuting.

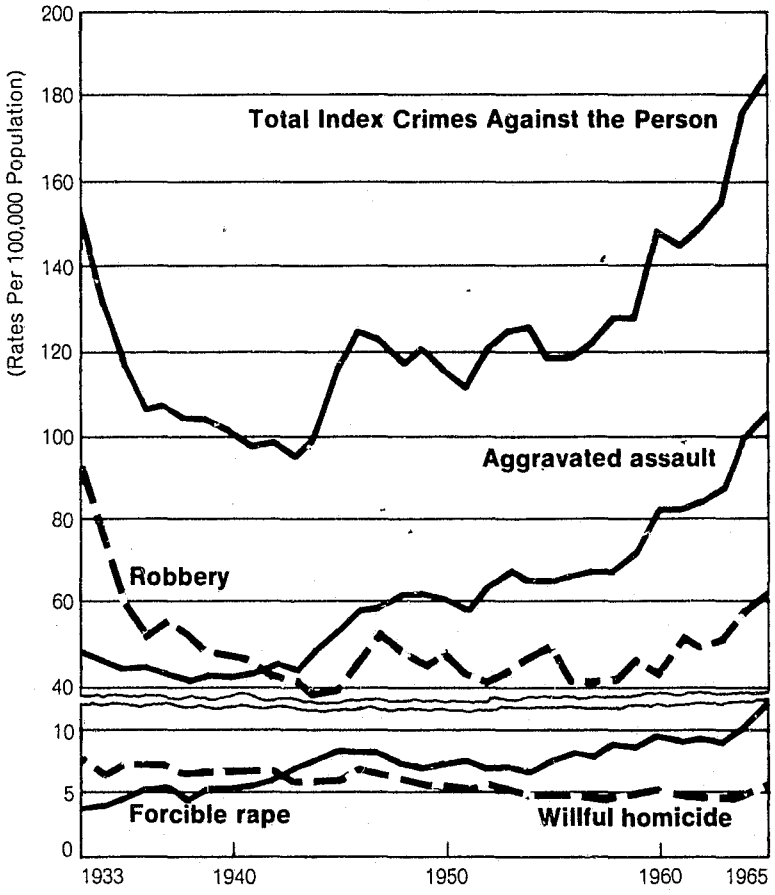
2. Is Crime Increasing?

The most widely used statistics on crime are the Uniform Crime Reports published annually by the Federal Bureau of Investigation. These are based on crimes known to the police as reported by local police departments to the F.B.I. Seven categories of crime have been selected as most serious and have been grouped together to form an "Index" of serious criminality. The seven categories are willful homicide, forcible rape, aggravated assault, robbery, burglarly, larceny of $50 and over, and motor vehicle theft.

The Uniform Crime Reports Index is subject to some of the statistical weaknesses discussed in the previous section of this manual insofar as it rests on local police reporting. Also, the selection of crimes used in the index leaves out important crime categories such as narcotics, liquor, gambling, corporate and "white collar" crime, minor assaults and disorderly conduct. Nevertheless the Index provides substantial confirmation for the widespread impression that violent crime has been increasing, as indicated by the National Crime Commission chart on the next page.[5]

A similar chart[6] of property offenses shows even sharper recent increases, especially for larceny over $50. However,

Index Crime Trends, 1933-1965
Reported Crimes against the person



NOTE: Scale for willful homicide and forcible rape enlarged, to show trend.
Source: FBI, Uniform Crime Reports Section; unpublished data.

the National Crime Commission found a number of reasons for thinking that the figures may exaggerate the crime "crisis," although there is still plenty to be concerned about. In the first place, studies have shown that a higher proportion of slum crime is reported nowadays than formerly.

> . . . Not long ago there was a tendency to dismiss reports of all but the most serious offenses in slum areas and segregated minority group districts. The poor and the segregated minority groups were left to take care of their own problems. Commission studies indicate that whatever the past pattern was, these areas now have a strong feeling of need for adequate police protection. Crimes that were once unknown to the police, or ignored when complaints were received, are now much more likely to be reported and recorded as part of the regular statistical procedure.[7]

In a way this amounts to saying that as things get better, they may look a little worse: poor people and minority groups now look for police protection they didn't use to expect, so more crime is reported. In the same way, increasing professionalization of the police force, stronger enforcement of, for example, juvenile delinquency or narcotic laws, make the statistics look worse when the law enforcement situation is getting better.

The National Crime Commission found that 40 to 50% of the reported increase in crime between 1960 and 1965 could be accounted for simply by growth of the population and, especially, a bulge in the percentage of young people, the age groups which always have the highest crime rates. Another 7 or 8 percent of the increase could be attributed to the movement of the population into big cities where reported crime rates are normally higher in most categories. Even the fact that Americans are on the average getting richer tends to inflate the crime picture: we have more cars to be stolen and are more careless in locking them. Storekeepers leave goods around tempting shoplifters. Rising prices change the statistical significance of thieving behavior. For example, the F.B.I.'s Uniform Crime Reports count larceny over $50 as a serious offense to be included as an Index Crime; the rate has gone up 550% since 1933. But the 1966 dollar is worth only 40% of the 1933 dollar; the average reported theft involved $26 in 1940, but $84 in 1965. That would produce a big statistical increase in crime

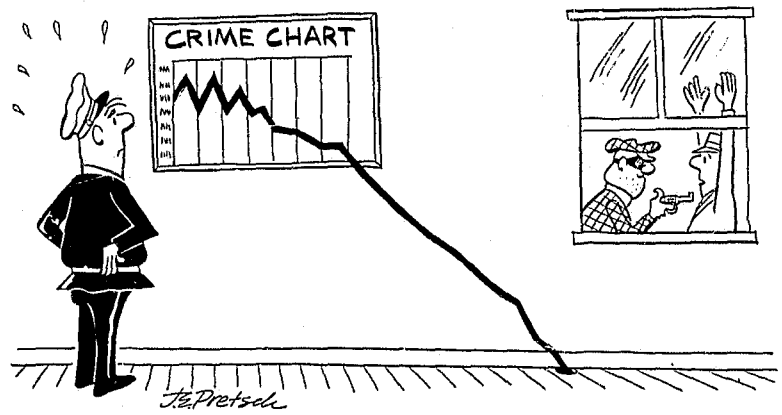
even though the number of thefts and the things stolen had remained unchanged.

It is therefore possible that the actual state of public safety in our big cities today is no worse than it has been in the past. If we read the newspapers of 50 and 100 years ago, we see that our ancestors had the same feeling as exists today, that there was a "crime crisis" about to overwhelm the country. The National Crime Commission summarized this history as follows:

> A hundred years ago contemporary accounts of San Francisco told of extensive areas where "no decent man was in safety to walk the street after dark; while at all hours, both night and day, his property was jeopardized by incendiarism and burglary." Teenage gangs gave rise to the word "hoodlum"; while in one central New York City area, near Broadway, the police entered "only in pairs, and never unarmed." A noted chronicler of the period declared that "municipal law is a failure . . . we must soon fall back on the law of self preservation." "Alarming" increases in robbery and violent crimes were reported throughout the country prior to the Revolution. And in 1910 one author declared that "crime, especially its more violent forms, and among the young is increasing steadily and is threatening to bankrupt the Nation."[8]

Current newspapers, on the other hand, occasionally report local decreases in crime rates. For example, in 1966 Philadelphia reportedly[9] experienced a decline in crime, as measured by the F.B.I. Uniform Crime Reports Index, while the national rate rose 11%. The metropolitan area, third largest in the country, ranked 126th in crime rate, with a rate less than half of that reported in New York City, Los Angeles, Chicago and Detroit.

Among things to notice about the crime trends shown in the chart on p. 6 is the fact that the homicide rate has stayed about the same or declined slightly over the last 30 years. The robbery rate in 1965 is just where it was in 1935 and it was much higher before that. By far the biggest increase in reported crime in the preceeding 30 years is in bur-



glary and stealing, that is, crimes basically against property.[10] The homicide figures are particularly interesting because this is a crime most likely to be accurately reported. The murder rate has gone down during a period when abolition of capital punishment has been gaining ground in law and practice (199 people were executed in 1935; only 1 in 1966[11]). During this same period, the Supreme Court of the United States has issued many decisions enforcing strong constitutional protections for persons accused of crime, particularly capital offenses.

3. Who Are the Criminals?

Sometimes when you read about "crime waves" or the "war against crime," you almost get the impression that there is a special group in the population, like an invading army. It seems as if all we have to do is train our big guns on them and wipe them out, so the rest of us can live in peace. Unfortunately, it's not that simple. Nearly everybody is or has been a criminal.[12] Perfectly respectable people commit crimes, the rich and educated as well as the poor and ignorant, judges, policemen, prosecutors, bankers, industrialists, and union leaders. Almost any honest adult will have to admit to himself that he's done one or more of

the following: taken something that didn't belong to him, cheated on his taxes, smuggled something into the country or undervalued it in paying duty, lied in some government form or affidavit, falsified a corporate or official record, engaged in punishable sexual activity, beaten somebody up, surreptitiously damaged property either public or belonging to some person he dislikes, driven an automobile in a criminally reckless manner. So in a sense all of us are criminals. If everybody who ever committed a crime was in jail, there wouldn't be many left outside to run the country's business, pay taxes, and enforce the laws. The job of law enforcement therefore is not to wipe out the criminal population, but to keep the pressure on by catching and convicting enough offenders so that everybody knows that it's risky to violate the law.

Although nearly everybody commits some kind of crime at some time in his life, studies show that crime—particularly the kinds of crime that city police have to deal with—occurs more frequently in some settings and groups than in others. The age group between 18 and 24, for example, figures disproportionately in police statistics as shown in the following table.[13]

Percent of Arrests Accounted for by Different Age Groups—1965

[Percent of total]

	Persons 11–17	Persons 18–24	Persons 25 and over
Population	13.2	10.2	53.5
Willful homicide	8.4	26.4	65.1
Forcible rape	19.8	44.6	35.6
Robbery	28.0	39.5	31.4
Aggravated assault	14.2	26.5	58.7
Burglary	47.7	29.0	19.7
Larceny (includes larceny under $50)	49.2	21.9	24.3
Motor vehicle theft	61.4	26.4	11.9
Willful homicide, rape, robbery, aggravated assault	18.3	31.7	49.3
Larceny, burglary, motor vehicle theft	50.5	24.7	21.2

SOURCE: FBI, Uniform Crime Reports Section, unpublished data. Estimates for total U.S. population.

Males offend more frequently than females; blacks more frequently than whites, the poor more frequently than the middle class. Notably, serious violent crime is concentrated in the slums of the "Inner City." On this point the National Crime Commission reported:

> One of the most fully documented facts about crime is that the common serious crimes that worry people most—murder, forcible rape, robbery, aggravated assault, and burglary—happen most often in the slums of large cities. . . . Crime rates in American cities tend to be highest in the city center and decrease in relationship to distance from the center. . . . An historic series of studies by Clifford R. Shaw and Henry D. McKay of the Institute of Juvenile Research in Chicago documented the disorganizing impact of slum life on different groups of immigrants as they moved through the slums and struggled to gain a foothold in the economic and social life of the city. Throughout the period of immigration, areas with high delinquency and crime rates kept these high rates, even though members of the new nationality groups successively moved in to displace the older residents. Each nationality group showed high rates of delinquency among its members who were living near the center of the city and lower rates for those living in the better outlying residential areas. Also for each nationality group, those living in the poorer areas had more of all the other social problems commonly associated with life in the slums.
>
> This same pattern of high rates in the slum neighborhoods and low rates in the better districts is true among the Negroes and members of other minority groups who have made up the most recent waves of migration to the big cities.[14]

Such studies show how foolish it is to think of crime as a matter of race or nationality. If life in the slums remains violent as different groups move into the same territory, and if the crime rate for members of the same group declines when they escape from the degraded and disorganized conditions of the slum, it is pretty clear that those conditions

rather than race or nationality are significantly related to crime.[15]

4. Who Are the Victims?

The extent to which opportunity governs crime is highlighted by some remarkable facts about interracial crime developed by the National Crime Commission.[16] There is a strong tendency for victims of assaultive crime to be of the same racial group as the assailant. A Chicago study showed that "a Negro man in Chicago runs the risk of being a victim nearly six times as often as a white man, a Negro woman nearly eight times as often as a white woman. . . . Negroes are most likely to assault Negroes, whites most likely to assault whites. Thus while Negro males account for two-thirds of all assaults, the offender who victimizes a white person is most likely also to be white." Eighty-eight percent of rapes in the District of Columbia involved persons of the same race; only 12 of 172 murders committed in the District in 1966 were interracial; only 9% of the aggravated assaults were interracial. The obvious explanation for these interesting figures is that crime is largely influenced by opportunity. The Negro assailant from a predominantly Negro neighborhood is likely to have a Negro victim.

Indeed there is a good likelihood in crimes of violence that, black or white, the assailant and the victim know each other. In Philadelphia during a 5-year period studied by Professor Marvin Wolfgang,[17] only one murderer out of every eight was a stranger to the victim. According to the F.B.I.'s Uniform Crime Reports:

> In 1965 killings within the family made up 31 percent of all murders. Over one-half of these involved spouse killing spouse and 16 percent parents killing children. Murder outside the family unit, usually the result of altercations among acquaintances, made up 48 percent of the willful killings. In the latter category romantic triangles or lovers' quarrels comprised 21 percent and killings resulting from drinking situations 17 percent. Felony murder, which is defined in this Program as

> those killings resulting from robberies, sex motives, gangland slayings, and other felonious activities, made up 16 percent of these offenses. In another 5 percent of the total, police were unable to identify the reasons for the killings; however, the circumstances were such as to suspect felony murder.

Another important fact about victims of crime is that they are often businesses or organizations rather than individuals. Thus a large fraction of property crimes (exact statistics are not available) consists of theft from stores by shoplifters, thefts from factories and shops by employees, stealing and vandalism against schools, libraries, telephone companies and other utilities, public housing, etc. There are several reasons for making a point of the difference between crime against individuals and non-violent crime against businesses and organizations. In the first place, people are more worried about crimes against the person and consider them more serious. The public should therefore be made to understand that the statistics include this other type of offense. Secondly, although property crimes against organizations impose a big collective cost on business and government, they don't hit any one individual very hard: businesses carry insurance or raise prices slightly to cover the cost of goods picked up by shoplifters and employees. Thirdly, the business and organization victim is usually in a better position than individuals to take self-protective measures against these crimes. Guards can be employed. Goods can be displayed and stored in safer ways. Accounting systems can be improved.

Of course even individual victims can do much to secure against property offenses, e.g., by not leaving ignition keys in parked automobiles, by locking house doors and windows. We do not know whether such measures would affect the total volume of crime or merely divert the criminals from one victim to another who is less careful. But education and encouragement along this line by the police will help those who feel most insecure to enhance the safety of their own property.

There will, however, always be crimes of violence that individual victims cannot guard against, and that hit them very hard. This has led to consideration of programs to compensate victims out of the public treasury for physical injuries resulting from crimes of violence.

5. Causes of Crime

Criminologists, psychiatrists and other scientists have been trying for a long time to identify the causes of crime, but we are still far from satisfactory answers. One thing we do know is that any simple answer to the question what causes crime is bound to be wrong. Many different factors combine in a complicated fashion to produce crime. Some of these contributing factors are sociological, that is, related to the individual's position in society: living in a city slum, being poor, unemployed, or subject to racial discrimination, being a member of a broken family, being a member of a gang. Other contributing factors can be classified as psychological or individual, as where the offender is mentally ill or drunk or under the influence of drugs. Following are brief comments on some criminogenic (crime-causing) circumstances.

A. POVERTY, UNEMPLOYMENT, SLUM LIVING CONDITIONS

Although crime rates can be statistically related to economic and social disadvantages, it is hard to put the finger on any one of these or any combination of them as "causing" crime, because the great majority of people in any of these groups are not criminals. This should warn us against taking an attitude of suspicion or hostility towards every slum-dweller as a likely criminal. There may be more criminals among them (and more victims!), but it only makes it tougher for the law-abiding majority if law enforcement officers treat them all as suspects. The following quotation is from an F.B.I. manual on Prevention and Control of Mobs and Riots (1967):

At the root of many of the riots that have beset American cities recently is the deprivation and debasement of people resulting from poverty and slums. While police do not have a responsibility to repair the economic and social damage of these conditions, they, more than any other group in the majority community, are witness to the degenerative process, and they, more than any other group in society, must deal with the consequences of the damage.

For these reasons police should utilize all appropriate opportunities to point out to the community *its* preventive role. In one state, the Association of Chiefs of Police has seen fit to issue a public statement calling for action to assure minority groups of equal opportunity in employment, housing, etc. In a number of communities police transmit to legislators and social planners their eye-witness account as to the need for improved recreational facilities, rehabilitation of housing, improved health and sanitation services.

B. URBANIZATION

Crime rates are in general highest in the big cities, next highest in the suburbs, and lowest in the rural areas. In most categories of serious crime, the average for the big cities is at least twice as high as elsewhere. Although on the average, the bigger the city the higher the crime rate, there are remarkable variations within any size group. For example, in 1965 of the 10 cities with the highest crime rates only one, Los Angeles, was a city of more than 1,000,000 population. Newark, New Jersey, had the highest rate of all; 5 of the top 10 were, like Newark in the 250,000-500,000 range. Philadelphia's overall rate was 51st.[18]

Some crimes, e.g. murder and rape, occur at about the same rates in the country, towns and cities. The differences in total crime rates are mainly due to the much higher frequency of *property* crimes in the cities. There are also great variations in crime rates between sections of the city. The central city and industrial areas tend to have the highest rates.

Explanations of high city crime rates relate to more opportunities and temptation to commit crime, harsh conditions of slum life contrasting sharply with the visible luxury of the prosperous, and the impersonality of life in the city, where the offender has no ties with neighbors and can easily disappear into the crowd.

C. GANGS AND OTHER "SUBCULTURES"

Sociologists have observed that groups of people bound together by some common tie may develop standards of behavior that are different from those generally accepted in the community. Some gangs, for example, may glorify violence, theft, or attacks on police. Inside such a group, the ability to commit such offenses and get away with it is much more highly regarded than the ability to get a normal education or to hold a job. They may develop intense loyalty to fellow-members of the group combined with contempt for the rights of others. These attitudes are transmitted to new members, "drop-outs" and other people who can't make the grade under the general community's normal value system.

In a less organized way, ethnic groups that feel excluded from the normal paths to "success" in the community, may adopt their own special ways of measuring success and achieving individual recognition. These attitudes may place less emphasis on order or respect for property or job holding, because such ideals are harder to maintain in a city slum and appear to yield no significant rewards. Such a subculture is likely to produce more than its share of vandalism, assault, and theft—not because the individuals are incapable of normal aspirations, but because their circumstances tend to lead to hopelessness and to the transmission of hopelessness to new generations.

D. ORGANIZED CRIME

The existence of large organizations carrying on criminal business in gambling, narcotics, alcohol, prostitution, loansharking, labor racketeering, and the like, is a powerful stimulant to crime. The profit motive causes such criminal

syndicates to seek constantly to expand in scope and to recruit new offenders as well as customers. Organization, bribery, and corruption of law enforcement make "success" more likely and careers in these crimes more attractive. The syndicates become subcultures of the sort described in Section C above, propagating their own anti-social scale of values and enforcing, often bloodily, their own codes.[19]

E. LOW INTELLIGENCE AND PSYCHIC DISABILITIES

The criminal behavior of individuals is sometimes attributed to low intelligence or to psychic disabilities. Some tests have indicated that the prison population on the average scores lower on intelligence tests or shows more signs of personality disorder. Critics of these findings point out that the tests have a "social bias," that is, that they have been made up mainly on the basis of middle-class white experience, and do not measure intellectual defect so much as bad home background and schooling, or lack of ambition due to being beaten down by racial discrimination or other circumstances. It is also pointed out that only a very small proportion of burglars and robbers, for example, are caught and end up in jail. It stands to reason that the brighter ones, who are in the great majority, do not get caught and so are not included in the psychologists' tests, The result is to make burglars' *average* intelligence look lower than it really is. A similar explanation suggests itself regarding "personality disorders" of prison inmates; but in addition critics say that living under prison conditions would naturally tend to aggravate the worries, fears, and resentments that would show up in any tests made in prison.

Psychiatric explanation of criminal behavior is mainly derived from Freud's theory of the "unconscious." We all know that lots of things go on in our heads without our being aware of them. For example, there are things we once knew but have completely forgotten. Sometimes we suddenly remember one of them. This shows that the information was there all the time but we didn't know how to reach it. Similarly, it is said, much that happens to us in early infancy is recorded in our "unconscious" and affects our

grown-up behavior. These infantile experiences, largely with our parents, include shocks, frights, and sexual feelings. Emotional patterns are established and remain in our unconscious long after the events of infancy have been forgotten. Everybody has had the experience of reacting violently to some little thing that doesn't seem worth all the fuss when you think about it in cold blood later. A Freudian explanation might be that the little thing stirred up in the unconscious a powerful feeling that dates back to infancy, and is practically uncontrollable even though you know nothing about it. A hidden infantile resentment of the father can, according to this theory, push a youth into defiance of all "father figures" including an employer, a policeman, or authority generally.

Most people, as they grow up, work out a balance between the secret pressure of those old emotions and the demands of every-day life. A forgotten anxiety can be relieved and turned into an ambition to make money and obtain security. Where the personality has been unable to make a satisfactory adjustment between the unknown forces within and the workaday world, it may become "neurotic," that is, subject to unreasonable fears, quirks, habits. When infantile patterns take over, the individual may lose touch with reality, become wild or hopelessly depressed, and may be classified as "psychotic."

The basis of Freudian treatment is to help the patient grope back into memories of his early life, to expose the infantile basis of the emotional pattern, and, by giving him more understanding of what is behind his own actions, hopefully to relieve his anxieties and increase his power to control his behavior in socially accepted ways.

The Freudian explanation of behavior does not mean that grown people are not to be held responsible for crimes they commit (unless they are so sick as to have the legal defense of insanity). After all, the hidden drives that push some people into crime are the same drives that push others into constructive work and even heroism. The criminal law can be regarded as helping to push people towards choosing useful rather than hurtful outlets for the hidden drives.

F. INHERITED CRIMINAL TENDENCY?

People believed at one time that criminal tendency was a matter of physical inheritance, like the tendency to overweight or the color of a person's eyes. According to this theory, criminals could be picked out of the ordinary population by shape of the head, proportions of the body, etc. There are still people who think they can tell a "criminal type" by looking at him, although experiments have shown that, with no more than a picture to go on, nobody can distinguish a thief from a judge, a businessman, a truck driver, or a news reporter. A trip to any penitentiary would convince most people of the same thing: the people in prison look much the same as the people outside.

G. RACE AND CRIME

What has already been said about causes of crime shows how useless and misleading it is to attribute criminality to race. People of the same race have different crime rates depending on their economic and living situation. People of different races tend to have comparable rates in comparable conditions. Different races or nationalities are picked out to be the crime scapegoat at various periods of history: it has been from time to time the Irish, the Italians, the Jews, the Negroes, the Puerto Ricans, etc. In concluding a survey of what is known about race and crime, one researcher said:

> All in all, there is every reason to believe, on the basis of what is now known that under comparable circumstances to those given whites, the Negro crime rate would not be substantially different from the white rate. Even Army trainees, with integration of the services, are not on a completely comparable basis because they must deal with society outside of military life. But within the military social system there is relatively equal treatment and equal opportunity for achieving status. Housing is integrated; men sleep, train, eat and strive together. Norms of conduct and role models are presented alike to Negroes and whites. Military authorities report that the offense rate since integration is lower for Negroes than for whites.[20]

Since studies have shown how little relation there is between race and criminal tendency, the healthy and constructive thing to do is forget about race in law enforcement except to make every effort to avoid giving the impression of race prejudice.

6. Punishment as Crime Control

A. INTRODUCTION

Although punishment has always been used as a means of controlling crime, there is no general agreement on how it is supposed to work or how much punishment best accomplishes the purpose. There are four ways that punishment might work to reduce crime and protect society:

(a) *General Deterrence.* The idea here is that we punish people to make an example for others; to "deter" is to frighten people into behaving themselves by threatening to hurt them in some way.

(b) *Special Deterrence.* By punishing the offender, we try to deter *him* from repeating the offense.

(c) *Incapacitation.* By locking up the offender, we very much reduce his capacity to commit crime so long as he remains in prison. Capital punishment is, among other things, permanent incapacitation for crime.

(d) *Rehabilitation.* To the extent that crime is caused by elements of the offender's personality, educational defects, lack of work skills, and the like, we should be able to prevent him from committing more crimes by training, medical and psychiatric help, and guidance into law-abiding patterns of behavior. Strictly speaking, rehabilitation is not "punishment," but help to the offender. However, since this kind of help is frequently provided while the subject is in prison or at large on probation or parole under a sentence that carries some condemnation and some restriction of freedom, it is customary to list rehabilitation as one of the objects of a sentence in a criminal case.

There is another point of view on punishment, that doesn't ask the question what good does it do or how will it work to reduce crime. Instead, it asks only whether the punishment was *deserved.* This point of view is called *"retributive."* It is sometimes referred to as the "eye-for-an-eye" rule.

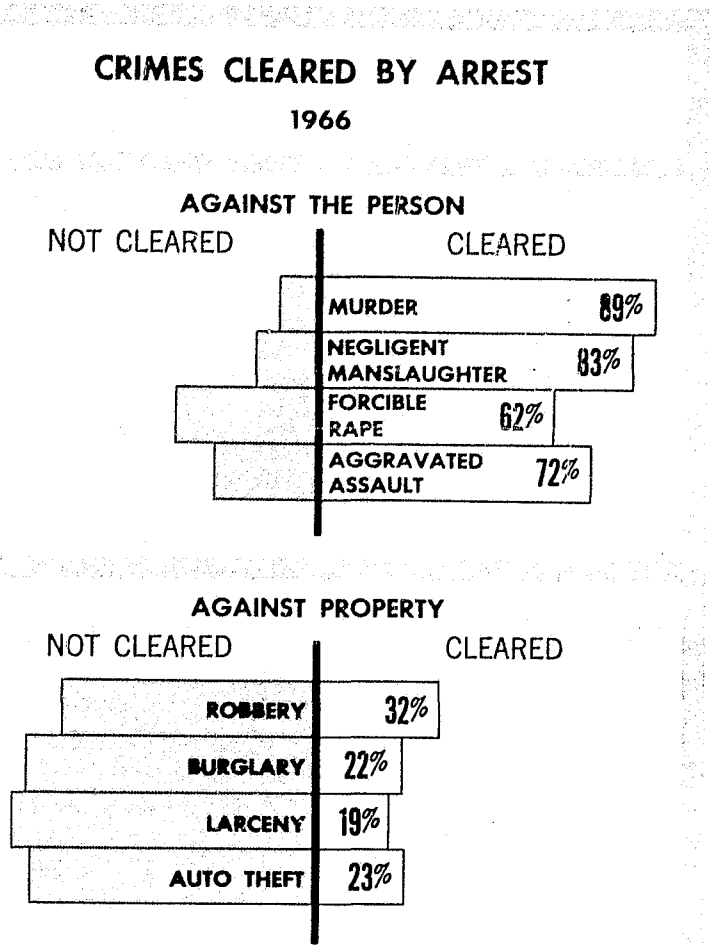
Most specialists in criminal law and criminology believe that all these points of view have some merit, and that all of them must be taken into account in making decisions about offenders. As a result, decisions about sentence are often difficult because the various goals of punishment conflict in application to a particular case. For example, if a young boy has been picked up for vandalism, it might be best from the point of view of deterrence to "make an example of him," and send him to an institution. But from a rehabilitative point of view, that may be the worst thing to do: the boy would be locked up with seriously delinquent types, and come out a confirmed criminal. From the retributive point of view, it may well be felt by his parents or the police or the judge that a sentence to an institution is more than the boy "deserves" for a minor, first offense.

B. DETERRENCE

Deterrence does not work equally well for all crimes or all people. It seems to work fairly well where the potential offender is likely to think about the risks involved, for example, in cheating on taxes or violating traffic laws. It seems to work less well when violent passions are involved, as in murders committed against unfaithful spouses or lovers. The fact that people go on committing murders, rapes, robberies, etc. doesn't prove that deterrence doesn't work. It only shows that deterrence has failed with some offenders. The question is how many people who might otherwise have committed offenses refrained from doing so, at least in part because the law penalizes the misbehavior.

Deterrence will not work if the risk of detection and conviction are low compared to the gain in committing the offense. Thus if fines for illegal parking are low and if cars are infrequently tagged, it will be cheaper for drivers to pay a fine once in a while rather than pay parking lot fees. In the same way, if penalties against landlords for housing violations add up to less than the expense of repairing the

houses, the houses won't be repaired. In relation to more serious crimes, the following charts[21] show likelihood of arrest on the basis of national figures in 1966:



Moreover, of those arrested a substantial number are discharged in preliminary proceedings or otherwise have their cases dropped before trial. One study[22] indicated that about a quarter of those arrested for burglary or theft are not held for prosecution, and that of those held for prosecution one

third are not convicted. One might conclude that the chance of punishment for serious crimes is not high enough to deter. However, prospect of arrest and prosecution, as well as the serious consequences of conviction probably do influence many would-be offenders.

General deterrence operates indirectly as well as directly on the mind of persons weighing the risk of punishment against possible gain from crime. The indirect operation of deterrence results from the criminal law's influence on public attitudes. The fact that burglary is a crime for which severe punishment is authorized reinforces the warnings of parents, teachers, journalists, and preachers, thus helping to build law-abiding attitudes in the community.

On the other hand, newspapers, TV, and magazines can undermine deterrence if they irresponsibly emphasize the impression that large numbers of criminals are "getting away with it."

Increasing punishment does not always increase deterrence. This rather surprising proposition has been established by historical and other penological studies. It has often been pointed out that when capital punishment was widely used in 17th and 18th Century England, thieving was common in the crowds that came to watch thieves hung. It is a matter of record that the bankers of England supported amendment of the old forgery law to eliminate capital punishment because they felt that prosecution was more likely if the penalty were reduced, with a net gain in deterrent effect.[23] In the same way, modern department stores favored "shop-lifting" laws, which carried only misdemeanor or summary offense penalties, as more likely to prevent theft in the stores than older larceny statutes with higher penalties. Finally, studies of capital punishment have shown no significant difference in the murder rate, whether of civilians or police, between states which have the death sentence and those which do not, or in the same state before and after abolition or restoration of the death penalty.[24]

It seems that when penalties are very high anyway, for example 20 years or life imprisonment or death, the offender is gambling on not being caught rather than on the

exact amount of punishment he might get. It seems unlikely, for example, that raising a penalty provision from 15 to 20, 25, or 30 years would ever change the mind of a would-be rapist or narcotics peddler. If any threat would stop him, 10 years would do it.

C. INCAPACITATION

The idea of getting criminals off the street so they can't hurt anyone is appealing, but it has to be used with care. In the first place, putting a man in jail doesn't completely incapacitate him for crime; it may just change the kind of crime he commits and the victims. Prisoners can still assault and kill each other and the prison personnel. There are opportunities for stealing and bribery and conspiracy. The conditions of prison life may actually increase the nervous pressures and temptations to commit such offenses. Certainly prison life pushes the inmates towards homosexuality.

Another difficulty with incapacitation as a basis for penal decisions is that it is hard to tell when a particular man ceases to be dangerous. Penologists have developed "prediction tables" that are useful to parole authorities in classifying prisoners into groups according to the likelihood of success on parole. Thus a parole board which uses such tables has reasonable basis to predict that one man out of ten in Group A is likely to fail, two men out of ten in Group B, etc. A sensible parole policy can then be pursued. The board has to decide whether it's worthwhile to keep all ten men of Group A in prison because one of them (it doesn't know which) is likely to repeat.

The prediction tables, however, do not provide reliable forecasts on particular individuals; and forecasts based on things like the prisoner's behavior in prison are untrustworthy. A dangerous criminal may be "stir-wise," that is, he knows how to behave in jail and how to curry favor so as to be released sooner. On the other hand, a man who might be safe outside may behave wildly in prison, especially if he feels that he was unfairly sentenced. So the margin of error in judging need for incapacitation is high. It is especially hard to judge at the time of trial, when excitement is at a maximum and there has been little opportunity to study the

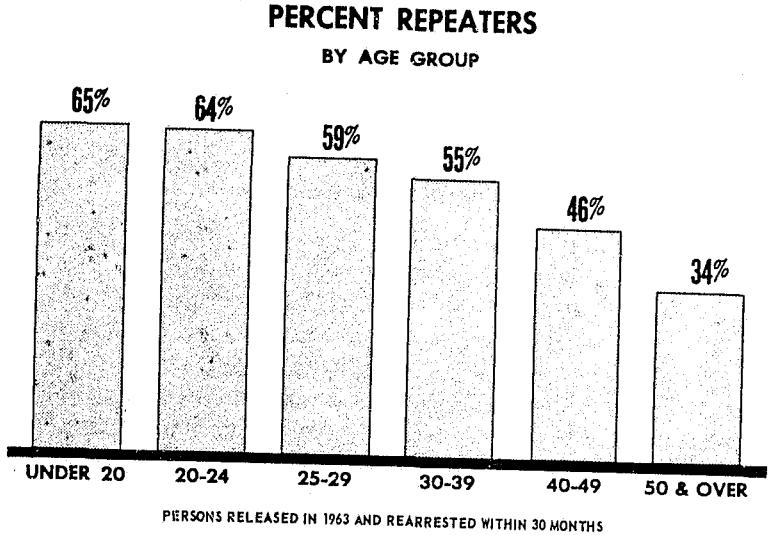
defendant's personality. If an indeterminate sentence is imposed, leaving it up to the Parole Board to decide within limits just how long to keep him in jail, they will have more information at the time of release and be in a better position to make statistical and other predictions of behavior.

Even if incapacitation worked quite well, it would have to be modified to take into consideration other bases of punishment. For example, experience shows that most murderers (those who kill relatives or acquaintances in a fit of passion) are quite unlikely to repeat the offense. From the point of view of incapacitation, there is no need to put them away for the safety of others. But deterrence and retribution might call for a sentence anyway. An incorrigible pickpocket with a long history of arrests and short jail terms might seem to require life imprisonment for the protection of the public. But few policemen, prosecutors, judges, or jurors would be willing to see such a penalty imposed when the man comes up on another $10 theft charge. Most people would feel that the punishment didn't fit the crime.

Statutes dealing with "habitual criminals" have been passed in many states. These provide for longer sentences for persons who have previously been convicted one or more times of serious offenses.[25] For various reasons, these statutes have not worked very well. Occasionally they are used by prosecutors and judges to impose longer sentences. But because even the normal sentence for a single crime of violence can be very long, e.g. armed robbery 20 years, rape 30 years, law enforcement people see little need to take on the burden of charging and proving former offenses and convictions under the habitual criminal acts, when the judge can take those convictions into account anyway in passing sentence for the crime itself.

D. REHABILITATION

The idea of curing offenders of their inclination to crime is very appealing as a goal of the criminal law and of sentencing. Much criminal activity is the work of persons who have previously been convicted of offenses, as appears from the following chart:[26]



It would therefore help reduce crime rates if we could treat first offenders in such a way as to nip the criminal career in the bud. Accordingly, an effort is made to save first offenders from the demoralizing influence of jail by putting them on supervised probation. In the prisons and special institutions for youthful offenders, there are programs to educate ignorant offenders, train them for jobs, give them good work habits, supervise their living conditions and associates. Much good work has been done, and there can be little doubt that these programs at the very least save many men from deterioration in prison. However, rehabilitation programs have suffered from limitations on money, personnel, and techniques. The results, therefore, of even the best programs have been disappointing; large proportions of the graduates of these programs "recidivate," that is, get into further trouble with the law.

Despite the frequent failures of rehabilitation programs, we should recognize that it is this approach to crime control that offers the most potential. Rehabilitation has proven to be moderately successful when properly directed and funded. The failures of rehabilitation frequently result from the fact discussed in the preceding section that the ma-

jor cause of the criminal behavior is in the community, and we cannot "treat" the community. For this reason, modern corrections emphasize the need to treat the offender in the setting of the community, with such programs as extended leaves from the institution, work release programs, half-way houses and extensive post-release supervision.

There are some dangers in the rehabilitative point of view. One is that the community will get an exaggerated idea of the possibility of "curing" offenders. This leads to laws giving broad discretionary authority to officials to keep people in confinement for very long periods while a cure is supposed to be going on. Thus a child might be put in an institution for years for a fairly trivial offense. Or a man who exhibits himself before women or who engages in relatively minor sexual misbehavior can end up in an institution under what amounts to a life sentence pursuant to the "sex psychopath" laws. There have been judicial decisions holding such confinements unconstitutional, where it was shown that no real effort was being made to provide any psychiatric or other treatment for men whose indefinite commitment was theoretically justified on the ground that the government was going to treat and cure them.

Rehabilitation clashes with other goals of the criminal law, and must sometimes then be compromised with them. For example, rehabilitation might require putting the offender in such pleasant surroundings that "punishment" would no longer deter. A long stay in a beautiful open camp with good food and wise and compassionate teachers might be the best way to win over dangerous rebel youths, but knowledge that the *worst* boys of a slum neighborhood would get this treatment is hardly likely to encourage other boys to behave. And the contrast between what happens to the "bad" boys and the way the "good" boys have to live would run counter to retributive feelings.

E. RETRIBUTION

The idea that punishment should be proportional with guilt is very old. We are so used to it that it seems part of the natural law that a man should be punished because, and

only to the extent that, he "deserves" it. "An eye for an eye, and a tooth for a tooth," says the Old Testament. This idea is often associated with revenge and cruelty; most people don't realize that it represents one of the earliest law reforms, replacing a system where torture and death were the penalties for assaults and other minor crimes.

The idea of retribution, like the ideas of deterrence, incapacitation, and rehabilitation, can be a constructive element in criminal law and administration, and it can also be abused and destructive. On the constructive side it prevents society from going hog-wild on punishment; it sets an outside limit on what we do to "retaliate" against offenders: "Don't do any more harm to him that he did to others". This would bar, for example, use of capital punishment for non-killing offenses like kidnapping, rape, burglary, or (two centuries ago in England) forgery and all except the pettiest thefts. Another useful implication of the retributive idea is that accidental and unintended harms should not be punished; guilt or fault has to be shown before a man is punished. From a deterrent point of view, punishment might sometimes be "useful" even though innocent people were punished. We recall stories of German occupation authorities in World War II executing hundreds of people in a town after someone had killed a Nazi soldier.

The retributive idea does not necessarily mean that society must do harm to the offender exactly equal to the harm he has done. A compromise between retribution and deterrence would mean that no *greater* harm must be done to him, and that his punishment may well be a *lesser* harm which is just sufficient to make the law's threat effective as a deterrent. A moment's thought will show the total unacceptability of the idea that we must hurt the criminal equally with the harm he has done. Criminal A murders a child of his enemy B. No one today would think it appropriate punishment to kill the criminal's child. Fiend C tortures to death victim D. Few people today would seriously propose that a public official should torture C to death.

The point is that we don't sink to the same level as the criminal. Decent people and decent communities don't imi-

tate the behavior of the worst elements. This point carries far beyond the question of sentencing. It applies to criminal procedure as well. You often hear people—and newspapers—complain that the law enforcement system, including police, prosecutors, and judges, are giving rights and protection to criminal suspects which the suspect never gave to the victim. This is the wrong way to figure it, even apart from the fact that the constitutional protections apply almost entirely *before conviction* and are designed chiefly to make sure that we get the right man. We treat the accused and even the convict more fairly and more considerately than he treated the victim precisely because we don't want to behave like vicious criminals.

7. Sentence of the Court; Probation

A. INDETERMINATE SENTENCE

The judge has to make the complicated compromise that, as we have just been seeing, goes into any sentence for crime. His choice is limited to some extent by the laws laid down by the elected representatives of the people. These laws set a maximum for each type of offense. That maximum was of course meant for the worst types of offenders in each class of offense, for example, repeaters, criminals who exhibit special cruelty, disregard for others, etc. The judge therefore uses his discretion to scale down the maximum for most offenders: he will give a particular offender a maximum of, say, 5 years where the statute allows him to impose as much as 20.

Pennsylvania judges also have the power to set a minimum, that is, the least amount of time which the prisoner must serve before he can be paroled. Parole means release from prison on order of the Parole Board, which will have supervision of the convict until the maximum fixed by the judge. Under Pennsylvania law the judge cannot set the minimum higher than ½ of the maximum that he sets. So a sentence might be 2½ to 5 years, or 5 to 10. The judge doesn't have to set the minimum at half the maximum. He could, for example, impose a sentence of 1 to 5 or 1 to 10.

The lower the minimum, that is, the bigger the gap between the minimum and the maximum, the more discretion the judge is handing over to the Parole Board to decide just how long the man shall remain in custody. The reason that the legislature prohibited the judge from setting the minimum higher than ½ of the maximum is that they wanted the Parole Board to have discretion over at least half of the total sentence. Sentences of the type 2½ to 5, or 1 to 10, are called "indeterminate" sentences as distinguished from "flat" sentences for a fixed period.

For some offenses, the legislature has set "mandatory minima." For example, some narcotics offenses carry mandatory minima as high as 10 years, and the judge's power to put defendants on probation is limited to first offenders. Where the legislature sets a mandatory minimum, that means that it doesn't trust the judges and the Parole Board to make the proper compromise between deterrence, rehabilitation, incapacitation, and retribution. The legislature seeks to emphasize deterrence and retribution. Sometimes a mandatory minimum seems so harsh for a particular minor offender that prosecutors and judges try to handle the offense on the basis of some other charge that doesn't carry a mandatory minimum. The National Crime Commission recommended elimination of mandatory minima.[27]

B. PROBATION

The most important decision that the judge has to make is whether to send the offender to prison at all, or whether to put him on probation. If the defendant is put on probation, he doesn't go to prison. He is released by the judge on stated conditions, e.g. that he behave himself, hold a job, support his family, and report to a probation officer. The probation officer is supposed to try to help the man go straight, although too often the probation officer's case load is so high that help and supervision of the probationer are more theoretical than real. If the probationer gets into trouble with the law again or violates the conditions of probation, he will be brought back to the judge who can then send him to prison very quickly without all the formalities of a regular trial.

Probation is not a question of whether to go easy on the defendant, or "give him another chance." The question is how to deal with the convicted defendant in the best interest of the whole community. The first consideration is whether the defendant would be likely to repeat his offense or be a danger to the community if released. If the judge believes that the man will not be dangerous if released, there are still some other points on which he has to be satisfied before putting him on probation. For example, he asks himself whether the particular offense committed by the defendant was aggravated or only a minor and nearly excusable violation of the law. This is a matter of whether defendant "deserves" the harshest treatment. The judge also asks himself whether he and his fellow-judges are prepared to accord probation in all cases with similar circumstances. This is a matter of fairness between different defendants. Nothing lowers respect for law and justice so much as a feeling that discretion in penalties is a matter of personal favoritism.

Finally, the judge has to ask himself what effect probation will have on respect for the particular law involved. If everybody who violates the law is put on probation, the law may come to be regarded as a joke. Sometimes newspapers play up a particular case of probation and create the wrong impression that the judges are turning everybody loose, whereas in fact most offenders are being more severely punished. When a newspaper does this, it encourages future law violations by creating the false impression that there is little risk of punishment.

Probation has advantages and disadvantages from the point of view of the community as a whole. Prison is a bad experience for many offenders, especially the young. They associate with other law-breakers—usually the toughest ones, because the others are likely to be only fined or put on probation. They learn new methods of crime. They make partnerships and plans to commit crime after release from prison. They get to think of themselves as permanently labelled criminals and jailbirds who will have a hard time getting back into normal employment and a normal family and community life. For these reasons, many people

believe that a prison experience often makes confirmed law-breakers out of accidental or first-time law-breakers. If this is so, the interests of law enforcement favor a strong probation policy.

In addition, prisons are crowded and old. The tax-payers are not eager to pay for new prisons. The cost of maintaining a man in prison is many times higher than supervision on probation. Additional costs of imprisonment that have to be taken into account are the welfare costs of maintaining the prisoner's family, which he would do if he were free on probation and working on a job.

The disadvantage of probation lies mainly in the difficulty of deciding the prime question, is it safe to release the defendant? To help the judge make that decision, the courts have probation departments which make presentence reports on the defendant's background, character and prospects. However, probation departments, like other branches of law enforcement, are understaffed, underpaid, and overworked. Presentence reports, therefore, can be made only in the more serious cases, and are often skimpy.

Even with the best presentence reporting, the sad fact is that there is no way to predict with assurance how a particular person is going to behave in the future. That means, for example, that for every ten men put on probation, the judges, the probation officers, and the police know in advance that one or two will go wrong.

Only we don't know which. The situation is something like that involved in life insurance. Nobody can say when a particular individual will die. But the life insurance company can predict that a certain percent of people of a certain age will die in a given year. It's a matter of statistics; and so is a probation program. The tough question is what to do about this. We could abolish probation, but that would mean sending 8 or 9 to jail needlessly so as to be sure that the one or two bad risks are not freed. Not many people would favor that. But if we're going to keep a probation system, we have to expect some failures. We should keep trying to improve the system and the methods of prediction, to cut down the proportion of failures.

Meantime, it is up to the policeman to understand how the system works, so that he can explain it to the public, and so that he himself doesn't feel frustrated when the judge puts a youth on probation after the policeman has worked hard to capture and convict the culprit. The policeman has done his job. The judge and the probation officers are doing theirs. Any of them may make mistakes in a particular case, but that's not a proper basis for general criticism.

8. Parole; Pardon

The job of the Parole Board has already been summarized in the discussion of sentencing at pp. 30-31 above. The difficulties which face it in trying to estimate whether a convict has reformed so that he may be safely released under supervision of a parole officer are very much like those faced by a judge in deciding whether to put a man on probation. Again it's a situation where the Board knows that a certain percentage of those whom it releases will go back to crime. Carefully prepared prediction tables (see p. 25 above) can tell the Board what the statistical probability of failure is in a given class of convicts; but there's no way of telling in advance which individuals will fail. The majority need no further imprisonment and actually will have less chance of succeeding outside if they are held longer. This must be weighed against the risk of more crime from the minority.

Criticism of a parole program or a parole board based upon individual instances of crime committed by parolees is ridiculous, for such occurrences are unavoidable in any parole program. Such criticism is like advocating life imprisonment for all crimes and criminals just because we know that among prisoners who serve out their term of years and are released without parole a substantial proportion return to crime. On the other hand, it is reasonable to be concerned about the cases that turn up now and then where a confirmed criminal with a long record seems to be too readily admitted to probation or parole.

Apart from such cases, responsible criticism must be based on statistics not individual instances. How many pa-

rolees succeed compared to the number of failures? Is our parole board doing better or worse than the parole boards of other states? Are our parole board and the State Department of Corrections carrying on research to improve methods of selecting men for parole and supervising parolees?

Under Pennsylvania law, the judges act as paroling authority in cases where they sentence to the county jail for terms under two years. Some judges like this responsibility and feel that it is in the interest of the prisoner and the public for the sentencing judge to have a continuing concern in the disposition of the prisoner. These judges give sentences with a maximum of 23 months so as to retain the parole power. Other judges regard judicial parole as a time-consuming nuisance, leading the prisoner and his counsel to hope that the judge will, in effect, reverse his original sentence of imprisonment if enough pressure is brought to bear on him. These judges also feel that they do not have the staff or facilities necessary to operate a good parole program.

Some sentences, notably life sentences in Pennsylvania, are by law not subject to parole. In other states and in the federal system, persons sentenced to prison for life do come under the parole system after serving a specified minimum period, for example, 15 years. Experience has shown that it is useless or harmful to keep people indefinitely imprisoned, and the State Constitution provides a way of handling these cases. The Governor, acting on the advice of the Board of Pardons, "commutes" the life sentence. That is, he authorizes the release of the prisoner, sometimes subject to a parole plan.

9. Conclusion

Since policemen constitute the largest body of citizens professionally involved in law enforcement, it is important for them to inform themselves about the extent and causes of crime, the goals of the criminal law, and the problems that come up in making decisions about punishment. With this information not only will the officer be a better policeman, but also he will be able to lead public opinion intelligently in fields where the public look to the police for leadership.

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FOOTNOTES

1. The Challenge of Crime in a Free Society, A Report by the President's Commission on Law Enforcement and Administration of Justice, p. 21 (1967), hereinafter referred to as the "Report."
2. Report p. 21.
3. Report p. 26.
4. Sutherland, Cressy, Criminology, p. 30 (7th ed. 1960).
5. Report p. 22.
6. Report p. 23.
7. Report p. 25.
8. Report p. 22.
9. The Philadelphia Evening Bulletin, August 10, 1967, p. 3.
10. Report pp. 22-23.
11. National Prisoner Statistics, No. 41, April, 1967 (publ. by U. S. Bureau of Prisons).

12. Report p. 43: "Ninety-one percent of the respondents admitted they had committed one or more offenses for which they might have received jail or prison sentences."

13. Report p. 56.

14. Report pp. 35-37.

15. Report p. 57.

16. Report p. 40.

17. Wolfgang, Patterns in Criminal Homicide (1958).

18. Report p. 27.

19. Report p. 187.

20. Wolfgang, Crime and Race: Conceptions and Misconceptions (1964) p. 61.

21. Taken from Crime in the United States (1966) p. 28, Uniform Crime Reports of the Federal Bureau of Investigation.

22. Tappan, Crime, Justice and Correction 362 (1960).

23. Radzinowicz, A History of English Criminal Law 556 (1948).

24. Sellin, The Death Penalty (1959), especially 52ff.

25. Section 1108 of the Pennsylvania Penal Code doubles the permissible maximum for a second offense committed within five years, and authorizes life imprisonment on a fourth conviction.

26. Taken from Crime in the United States (1966) p. 35, Uniform Crime Reports of the Federal Bureau of Investigation. Notice that "repeaters" are counted on the basis of subsequent *arrest,* not conviction.

27. Report pp. 142-143, 223.

Police Guidance Manual No. 4

Patrol Frisk Arrest

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Project financed by the Office of Law Enforcement Assistance
United States Department of Justice

Printed by the University of Pennsylvania Printing Office
Philadelphia, 1968

TABLE OF CONTENTS

ACKNOWLEDGMENTS

The following colleagues at the University of Pennsylvania gave valued advice and criticism: Professors Paul Bender, Curtis R. Reitz, and Henry S. Ruth, Jr., of The Law School, and Dr. Marvin E. Wolfgang, Chairman, Department of Sociology, and Director, Center for Studies in Criminology and Criminal Law. Philadelphia Police Commissioner Frank L. Rizzo and Philadelphia District Attorney Arlen Specter made their facilities and staff freely available to the project.

The cartoons which humorously illustrate some themes in the Police Guidance Manuals are by artist John Pretch.

1. Introduction

Patrol by the uniformed forces is the Police Department's main tactic to maintain order, assure the populace of the presence of protection and aid, deter and arrest the lawless, and pick up information which, supplemented by the investigations of the Detective and other bureaus, will lead to the detection of criminals at large.

A. TYPES OF PATROL

Most patrolling in Philadelphia, as in other cities, is done by automobile rather than on foot. Motor patrol has the obvious advantage over foot patrol of enabling officers to cover much more area in a given period of time, or, to put it another way, to visit the same points much more frequently. Motor patrol is also a more impressive show of force. A police car, with its distinctive color, red lights and insignia, helps to discourage potential wrongdoers by manifesting the presence or quick availability of officers of the law. It also reassures the public, who come to rely on the regular reappearance of the cars. Finally, motor patrol enables police officers to take along more equipment, e.g., for rescue or first aid, special weather gear, special purpose weapons, than an officer could carry while on foot.

On the other hand, foot patrol allows more person-to-person contact with the public than can occur when police officers are riding in the patrol car. This intimate contact can be quite important for both crime detection and community relations.

The Philadelphia Police Department has tried to draw a balance between these two forms of patrol. The city is divided into 22 districts or precincts, each under the command of a captain. Although most patrolling is done in cars, each district has some patrol officers walking beats. They are usually sent to commercial areas and high crime residential areas. The areas to be covered by foot patrolmen are

decided for each district by its captain. In addition, Philadelphia is experimenting with a combined motor-foot patrol system in which a two-man car is used with one partner walking a beat with a portable radio to communicate with the man in the car.

Today there is a good deal of controversy over whether one man or two man cars should be used for motor patrol. A leading book on patrol procedure summarizes the arguments on both sides of this question as follows:

Two Man Patrol Cars

(1) A two man patrol car provides the officer with a greater safety factor by doubling the firepower and the physical protection. It prevents trouble in many cases.

(2) The mistake that one man makes may be caught by his partner, and vice versa. We all have our bad days, and we are all different. A quality that one officer lacks is often a strong point of his partner.

(3) One officer does not have to drive a full eight hours, and he is therefore more rested and can do a better job. The variety of tasks makes the job more interesting.

(4) Two pair of eyes are better than one. It is difficult enough to drive in our present traffic let alone devote much attention to what is going on around us while we are driving.

(5) One man can operate the radio while the other drives.

(6) On quiet nights the driver can have someone to talk to and help keep him awake. Morale is improved through companionship.

* * *

Advantages of the One Man Patrol Car

(1) The preventive enforcement is doubled by having twice as many police cars on the street.

(2) When the officer is alone, he devotes his full attention to his driving and the beat rather than to the conversation with his partner.

(3) In a two man car, the officers begin to rely on each other, and as a result of human error, an officer expects support when it isn't there. A man alone develops self-reliance.

(4) In the two man car, an officer will take more chances than if he were alone. He apparently builds a false sense of security, and sometimes acts without caution because he does not want to appear to be a coward in front of his partner. More officers have been killed when riding in two man cars than when riding alone.

(5) Personality clashes are reduced. Riding in a small patrol car with another person, for eight hours will soon reveal most of his faults. In a short time these faults can get on the other person's nerves. It is very unusual for a two man team to last much over a year.[1]

The policy of the Philadelphia Police Department is to use two-man cars whenever possible. However, due to manpower needs, recent years have shown an increasing use of one-man cars. Two-man cars are generally concentrated in high crime areas. The captain determines where the available two man cars are employed in his district. It is the policy of the Philadelphia Department to have two-man cars racially integrated wherever possible.

Motor patrols are required to cruise the sector without parking for any length of time, unless instructed otherwise by higher authority. Officers on motor patrol should not leave the car except for specific purposes such as checking a store door at night to see that it is locked. Patrol should not follow a fixed route, but should be varied from day to day to prevent potential criminals from anticipating the officer's whereabouts. As stated in the Department's Duty Manual, a patrolling officer should eat only at his prescribed meal break, and is not to read newspapers or periodicals nor engage in idle conversation while on patrol.

B. LEGAL RESTRAINTS ON PATROL

Patrol officers are the first-line intelligence agents of the Department. As they drive or walk their beats, they should be constantly on the alert for unusual or suspicious or dangerous conditions and persons. They should get to know their districts thoroughly. They should open up channels of information with the residents and businessmen. In other words, the force is engaged every day and all the time in surveillance. If something suspicious turns up, surveillance of a particular person or situation becomes closer and more intense.

Sooner or later the officer will reach a point where he—or a detective or Juvenile Aid Officer or other specialist—must go *beyond surveillance to questioning of witnesses or suspects, searching persons, cars, or premises, or arresting a suspect.* Surveillance is simply a matter of keeping one's eyes and ears open; it is not regulated by law. Questioning, searching, and arresting, however, are regulated by law. The central theme of this Manual and the following one (PGM No. 5 on Search and Seizure) is at what point does unregulated surveillance turn into regulated activity, and what regulations apply.

At this point you might ask why the law regulates police action that goes beyond surveillance. Why can't an officer arrest a person when he has a hunch he is involved in criminal activity? Why can't he stop and search any suspicious looking car?

The essence of the restrictions on arrest or detention of people is the belief that government should leave a citizen alone unless there is a good reason to interfere with his private life. In our society the people are supreme and the government is the servant of the people, not the other way around. We all want the right to be let alone to lead our lives as we desire. We also all want the comfort of knowing that we will not be arrested and given the bad reputation that goes along with an arrest unless there is a good reason to arrest us. Thus, these restrictions protect us all—including police officers in their roles as citizens. The restrictions are not designed to protect criminals, although they may

have that effect occasionally. Rather they are designed to protect law-abiding citizens who might otherwise be innocent victims of the law enforcement process.

Accordingly, the nation's Founding Fathers adopted the Fourth Amendment to the Federal Constitution, which provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

The history of the Fourth Amendment will be explored more fully in PGM No. 5 on Search and Seizure. It should be pointed out here, however, that the prohibition of unreasonable searches and seizures had its origin in the abuses the American colonists suffered under the British. Almost immediately after independence, eight of the thirteen states (including Pennsylvania) adopted constitutional restrictions on searches and seizures of persons and property. These state provisions served as models for the later Fourth Amendment. Article 1, section 8 of the Pennsylvania Constitution is virtually identical with the federal Fourth Amendment.

Recently there has been a great deal of debate concerning whether or not the adherence by the courts to strict interpretations of these Constitutional principles is "handcuffing" the police. It is believed by some, including some highly respected law enforcement officials, that these guarantees hamper effective law enforcement. It is natural that those in law enforcement are deeply concerned with the need to protect the great majority of society against its criminal elements. Yet we do not have to go back to colonial times to realize the dangers possible in law enforcement that is not restrained by a deep concern for individual liberties. Our society has determined that the possible gains in law enforcement by unlimited interfering with individual liberties are not worth the loss involved.

Moreover, it is not at all clear that these constitutional principles really hinder law enforcement in the long run. Of course, every police officer is aware of cases in which someone he thought was guilty was not convicted because a police officer had violated restrictions on arrest or search and seizure. Looking solely at this effect on law enforcement, however, is looking only at the short run. Many of these cases may be ones in which a conviction could have been obtained if the officer had observed the rules. Also, these restrictions may provide a positive benefit by stimulating greater use of modern technology to make law enforcement more efficient. Finally, most violations of civil liberties seem to occur in areas which have the highest crime rates. Violations of the liberties of the residents of high crime areas can only antagonize them, thus making a bad situation worse.

2. Detection and Investigation of Crime

A. SURVEILLANCE

The key to effective patrol is familiarity with the ordinary activities of your area combined with an alertness to activities that are out of the ordinary. As discussed above, the law does not regulate what a police officer can do when he is observing activity without stopping, searching, or questioning a citizen. The point at which an officer's activity stops being mere observation and starts being a search that is regulated by law, is discussed in PGM No. 5 on Search and Seizure. The basic rule, however, is simple: when an officer is in a place where he has a right to be, his seeing, hearing, or smelling things does not constitute activity regulated by law. This applies to an officer who is on the street, an officer who enters a public building open to all people, or one who enters a private building by invitation of the owner or by other legal authority.

B. PRESERVATION AND COLLECTION OF EVIDENCE

The detailed, continuing investigation of a crime is a job for Detectives, men who are specially trained in investigative techniques. Since this manual is designed primarily for an officer on patrol, we will not go into detail as to these investigative techniques. A patrolling officer, however, does perform important immediate investigative functions when he arrives at a place where a crime has been committed.

After rendering aid, if necessary, to the victim of the crime, the first responsibility of the police officer is to prevent destruction of evidence. In order to do this, it may be advisable to prevent a crowd from gathering too close to the scene. This should be done by requests, if possible, rather than by commands. Use authority only if you really must. The assistance of citizens may be enlisted in restricting access to the crime scene.

The area should be scrutinized for evidence of a short-lived nature, such as liquids that may quickly evaporate and other things that may be altered or destroyed easily. It is advisable to have a notebook in which to record the exact position of all objects and persons at the scene and all actions taken by yourself and others.

Objects at the scene which could possibly be relevant to the crime must be carefully identified and preserved so that they can later be used as evidence. When the District Attorney offers in court evidence found at the scene of the crime, he must prove that the object offered is the exact one found at the crime scene. This is done by establishing a "chain of custody," that is, the chain of police officers and other officials who had custody of the object from the time it was found until it is introduced into court. Each officer who handled the object must testify in detail about his receipt of it, his possession of it, and his turning it over to someone else. In order to do this correctly at the time of trial, each officer who handles an object that might later be used in evidence should carefully record all these facts. Also, the fewer officers who handle an object, the easier it is to prove the chain of custody.

C. STOP AND FRISK

The Fourth Amendment and Article I, section 8 of the Pennsylvania Constitution prohibit unreasonable "seizures" of persons and property. Arrest is a seizure of the person and is forbidden except on "probable cause." We will later discuss in detail the meaning of "probable cause"; basically, it is the existence of facts and surrounding circumstances sufficient to justify a reasonable man in believing that a crime has been committed and that the person to be arrested has committed it.

The question arises, however, as to the legality of an officer stopping a person on the street, possibly frisking him, and detaining him for a short period of time. Does this constitute a "seizure" of the person within the meaning of the Constitution? If it does, can it be done without probable cause to arrest? In the Spring of 1968, the United States Supreme Court examined these questions.[2] The Court concluded that a stop and brief detention does constitute a "seizure." However, since it is a lesser restraint on the person's liberty than an arrest, it may be done under a standard that is not as stringent as probable cause to arrest. The standard is one of "reasonable suspicion" to believe that the suspect has committed or is about to commit a serious or violent crime.

It may be hard at times to determine whether an officer has only spoken with a person without stopping him or whether a stop has occurred. However, whenever an officer uses any authority to stop a person or keep him there, a stop has occurred. Thus an order to stop or an order to remain clearly constitutes a stop. Also, whenever a person is frisked a stop has clearly occurred.

When an officer makes a stop, he should explain to the person whom he has stopped the purpose of the stop. The officer may postpone this explanation until the completion of any frisk undertaken for the officer's protection. The explanation should include the information that the stop is not an arrest and that it is intended to last for only a short time.

You should bear in mind that stopping to question and frisk is an intrusion on a person's liberty and may constitute for him a serious source of embarrassment and irritation. Among youths and minority groups especially, these intrusions may be very much resented and may be an important factor in increasing undesirable police-community tensions. Thus stop and frisk authority should be used sparingly and only when good cause arises for its use. Do not stop on the basis of suspicion only for petty or non-violent offenses such as minor gambling and liquor violations or infractions of the motor vehicle code.

The purpose of a stop on reasonable suspicion is to make an immediate investigation of the situation. This is usually done by looking at the person stopped and briefly questioning him as to his identity and his actions. In some cases this information will be enough to make a decision to let him go or to arrest him on probable cause. This should not take more than a few minutes. In some cases, however, an officer may want to check out the person's story before deciding to release or arrest him. If this can be done quickly, for example, by a telephone call, the person stopped may be detained for the short time necessary to do this. Rarely would a stop of more than twenty minutes be justifiable.

Reasonable Suspicion

No precise definition of "reasonable suspicion" can be provided, but "reasonable suspicion" is clearly more than mere suspicion or an inarticulate hunch. It exists when specific facts, not mere conjectures, indicate that a person has committed or is about to commit a crime. Examples of persons who may reasonably be suspected although probable cause may not yet exist are:

(1) a person who generally fits a description, beyond that of race, gained from a victim, or police headquarters, of a perpetrator of a crime;

(2) a person running from the scene immediately after a crime has taken place;

(3) a person fleeing an area where there is an unexplained

body (unconscious, beaten or dead) or where there is evidence of forcible entry into a building.

EXAMPLES

I

Facts: *While patrolling your beat at 4 a.m. you receive a call that a burglary has just been committed. While en route to the scene, you see a man carrying a suitcase running from the direction of the reported burglary. He is a block from the scene of the reported burglary.*

Action: *You have reasonable suspicion to stop the man and question him as to his identity and actions.*[3]

II

Facts: *The same as above, but after you stop him he denies running from the direction of the burglary and states that he was coming from the opposite direction. He also states that he had been playing poker that night but cannot name any of the other players or where he had been playing. He is evasive concerning why he has the suitcase. You recognize him as one with a prior record for burglaries similar to the one reported.*

Action: *As discussed later in this manual, the facts now added to your original "reasonable suspicion" to stop constitute "probable cause" to arrest. Thus, you can arrest the suspect and search the suitcase, incidentally to the arrest.*[4]

Frisking

A frisk is a "patting down," an external feeling of clothing in order to find a weapon or weapons on a person. A frisk must be distinguished from a search of a person. A search is a more detailed exploration which involves going into pockets, bags, luggage, and the like.

You may not search a person who has been stopped on the basis of reasonable suspicion only. You do have, however, the limited power to frisk a stopped person for weapons when the facts indicate that he may have a weapon on him

which he could use against you. This may be based on the nature of the suspected offense or such things as bulges in the person's clothing.

Remember that this frisk power is not a power to search. It is a power only for the protection of the police officer and others in the vicinity; it is not a power to hunt for evidence. Thus you may not open an object the person is carrying, such as a handbag, suitcase, or sack, which may conceal a weapon, since you can, and should, place it out of reach of the suspect so that it will not present a danger to you or others.

EXAMPLES

I

Facts: *While patrolling in the afternoon, you notice two men standing on a street corner. Although you cannot pinpoint the basis for your suspicion, your training and experience lead you to be suspicious of them. You therefore take up an observation spot in a store entrance. You see one of the men walk down the street past a row of stores. He pauses and looks in a store window. In walking back he again looks into this store window. He talks to his companion and then the other man makes the same trip also looking in the window. The two men repeat this routine alternately about five or six times apiece. After observing all this you believe that the men are "casing" the store for a robbery.*

Action: *Stop and question the men as to their activities. On these facts you have a reasonable suspicion that the men are casing the store for a robbery. Note that you did not have this reasonable suspicion based solely on your initial unarticulated hunch about the men and you could not have stopped them at that time. You correctly investigated further without stopping them. After your suspicions were confirmed by their pacing activities you could stop them. You can also frisk the men for weapons. Since they are apparently casing the store for a daytime robbery it is reasonable*

to believe that they are planning an armed robbery and thus are armed.[5]

II

Facts: *A robbery has just occurred. You question the victim. She says that her pocketbook was taken at gunpoint and she gives a description of the suspect stating, among other things, that he is about six feet tall and is wearing a brown leather windbreaker. While the victim is receiving medical treatment, you start a search in the area and see a man running down a dark street. The man's hand is clutching a bulge under his brown windbreaker, and he glances back at you repeatedly. The suspect meets the description of the perpetrator except for one discrepancy: he is only five feet tall.*

Action: *You do not have probable cause to arrest the suspect for his description is clearly inconsistent with the victim's estimate of the perpetrator's height. However, from your experience you realize that victims of crime, in an excited condition, often give descriptions which are not correct in every detail. Although you lack probable cause to make an arrest, from all the circumstances you may have a reasonable suspicion that the man you have spotted has committed the crime. If you do suspect this person, stop him and ask for his identification and an explanation of his actions. Because the crime involved the use of a weapon and the suspect's windbreaker seems to conceal unnatural bulges which may well be a weapon, a frisk is in order.*[6]

If, in frisking, an officer feels something which he believes might be a weapon, he should uncover it and remove it. If it turns out that it is a weapon, the person frisked should be arrested for carrying a concealed weapon. There is no question that the weapon was properly seized and can be introduced into evidence at the trial. What about the situation, however, where, in frisking, an officer finds not a weapon, but some other contraband object, such as narcotics? While the law on this is not perfectly clear, the prevailing view is that the contraband can be seized and will be admitted into evidence at the suspect's trial. This view is based on the belief that evidence should not be excluded, so long as the police officer found it while acting properly in conducting a frisk. The evidence will be exluded, however, if an officer was not engaging in a good faith frisk, but was using a frisk as a pretext to conduct a search for general contraband and evidence.

D. QUESTIONING

General

While intensive interrogation is a task for experts, normally Detectives, general on-the-spot questioning of crime victims, witnesses and possible suspects is another important tool of the officer on patrol.

Questioning a Witness or Victim of Crime

Before questioning a witness or victim of crime you should identify yourself as a police officer, either by being in uniform or by showing identification. Many persons are overawed, frightened, or even panic-stricken by authority. The best approach, therefore, is usually that of being friendly and helpful, not formal, overbearing and officious. Be sympathetic to a victim who thinks he is in distress even if you do not feel the situation is serious.

You should consider the emotional state of the people questioned, particularly where crimes of violence have been

committed. Their observations may be partial and imperfect because of excitement and tension. Try to obtain an accurate account of the circumstances that existed immediately before, during and after the incident.

The person being questioned should be permitted to give an uninterrupted account while you make mental notes of omissions, inconsistencies and discrepancies that require clarification by later questioning. The talkative person should be allowed to speak freely and to use his own expressions, but should be confined to the subject by appropriate questions. You should attempt to put uneducated witnesses at ease and help them to express themselves as best they can, but should not put words into their mouths.

Questioning Possible Suspects

Some of the rules concerning questioning of witnesses and victims also apply to questioning possible suspects who have been stopped on the street or found at crime scenes. Again, identify yourself before any questioning. You may then request the suspect to identify himself and explain his presence or suspicious activity. You have no power to compel an answer, however, and should not attempt to do so. In ascertaining the person's name, you may request (but not order) verification of his identity. The person's response to your questions may be an element in determining whether or not probable cause to arrest exists. However, his refusal to answer your questions cannot form the sole basis of an arrest. If a suspect attempts to flee, his flight may also be an element in determining whether or not probable cause to arrest exists, but don't jump to conclusions; frightened witnesses sometimes run too.

Warning of Rights

The Fifth Amendment to the Federal Constitution provides that no person "shall be compelled in a criminal case to be a witness against himself." Thus, under our system of law, a person has a constitutional right not to answer questions if the answers might be used against him in a criminal trial.

In the famous case of *Miranda v. Arizona,*[7] the Supreme Court held that certain safeguards were necessary to protect this constitutional right during interrogation of a suspect in custody at a police station. These safeguards are necessary to insure that a person being interrogated knows he has a right not to speak, and that he speaks voluntarily and not from police pressure.

The major focus of the Supreme Court in the *Miranda* case was on station house interrogation. Such interrogation is the job of Detectives not patrolling officers. Yet, we are digressing a bit here for two reasons: (1) *Miranda* does have an effect on patrol; (2) the question of the legal restraints on interrogation is of interest to everyone associated with law enforcement.

The basic holding of *Miranda* is that whenever a person in custody is interrogated he has the right to have a lawyer present in order to safeguard his right not to be compelled to incriminate himself. If he can't afford to hire a lawyer, he must be provided with a free one. Thus, prior to interrogating someone in custody, a person must be given the following warnings, as recommended by the District Attorney's office:

(i) You have a right to remain silent and do not have to say anything at all.

(ii) Anything you say can and will be used against you in court.

(iii) You have a right to talk to a lawyer of your own choice before we ask you any questions and also to have a lawyer here with you while we ask questions.

(iv) If you cannot afford to hire a lawyer, and you want one, we will see that you have a lawyer provided to you before we ask you any questions.

The usual expectation is that after these warnings, a person will request a lawyer and then no interrogation can take place until the lawyer is present. The Supreme Court, however, did state that after these warnings a person might waive his right to have a lawyer present and proceed to answer questions. But, if a statement is made without the

presence of a lawyer, there is a heavy burden on the Commonwealth to demonstrate that the accused did in fact knowingly and intelligently waive his right to counsel.

We then come to the effect of *Miranda* on the officer on patrol. Although principally concerned with stationhouse interrogation, the Supreme Court stated that the *Miranda* rules apply beyond that to all "interrogations" of people "in custody." A person is in custody whenever he has been arrested or "deprived of his freedom of action in any significant way." This raises two questions as to the application of *Miranda* to questioning of a suspect on the street:

(i) Does simple on the street questioning concerning identity and activities constitute "interrogation"; and

(ii) Is a person "in custody" when he has not been arrested, but only stopped on the street?

The courts have not yet definitely answered these questions. Pending clarification on these points:

(i) You do not have to warn of constitutional rights if you are talking to a person whom you have not stopped by using stop and frisk authority described earlier;

(ii) You do not have to warn of constitutional rights even if you exert authority and stop a person if your questioning consists only of a few, direct preliminary questions such as "Who are you? What are you doing here?";

(iii) If your questioning of a stopped suspect becomes more extensive than (ii), the safest course is to give the *Miranda* warnings.

(iv) Interrogation designed to break down a person's story or to induce a reluctant person to talk should not be done at all on the street. That is not the job of patrolling officers. If you have probable cause to arrest a person, you should do so and bring him immediately to the station house. If not, you should take notes on his identity and answers to your general questions, and then allow him to leave.

(v) The *Miranda* warnings should always be given before any questioning of an arrested person on his way to the station house. Again, interrogation designed to break down a person's story or to pressure a reluctant person to talk should not be engaged in.

(vi) If a suspect indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, questioning must cease. If the suspect states that he wants a lawyer, questioning must cease until a lawyer is present. If the *Miranda* warning must be given, then no questioning can take place in the absence of a lawyer unless the suspect waives his rights.

3. Arrest

A. GENERAL

Most police officers consider an arrest to occur only when a suspect is "booked." Yet, for legal purposes, an arrest takes place whenever a person is detained beyond the very short period of time involved in an on-the-street stop, discussed above. The decision whether or not to arrest a suspect is one of the most important decisions a patrolling officer has to make. An illegal arrest may destroy an otherwise good case by making later obtained evidence inadmissable or by prematurely tipping off a suspect. Moreover, while arresting people may be all in the day's work for an officer, it is a very serious incident for the person arrested, particularly if he is innocent. An arrest is a major interference with a man's basic right of liberty. It also has the very practical effect of damaging his reputation and costing him valuable time and money. On the other hand, an arrest delayed too long may result in a suspect escaping or destroying evidence.

The law, balancing these considerations, declares that a police officer may arrest a suspect when the officer has "probable cause" to believe the suspect has committed a felony, or when he himself observes a minor crime being committed in his presence. We will shortly discuss in detail the meaning of this term "probable cause," but first let us turn to the need for arrest warrants.

B. ARREST WARRANTS

Felonies

In Pennsylvania a police officer can arrest for a felony without a warrant, if he has the requisite probable cause. In fact, in Philadelphia the great majority of arrests for felonies are made without warrants. The courts, however, have indicated that in a doubtful case an arrest under a warrant may be upheld where an arrest without warrant would be declared unlawful. PGM No. 5 on Search and Seizure details the historic preference of our society for the use of warrants.

Misdemeanors

Pennsylvania still follows the rule that, although an officer can arrest without a warrant for all felonies, he can arrest without a warrant for a misdemeanor only if the misdemeanor was committed in his presence. If the misdemeanor was not committed in the presence of an officer, an arrest can be made only *with* a warrant. In such a case, the complaining party must swear out an affidavit on which a warrant is then issued.

Of course, in many misdemeanor cases, it is advisable not to arrest at all. A warning or other action may be more appropriate. The need for a warrant in misdemeanor cases may be an effective way to justify to a complainant not making an arrest where one is not appropriate. A summons procedure, like that presently used for traffic offenses also might be a useful alternative to arrest. The extension of the summons procedure to other minor offenses is under consideration by the lawmakers in Philadelphia and throughout the country.

EXAMPLE

Facts: *A domestic fight has occurred and the wife is screaming for the arrest of her husband. You are certain, however, that the incident is minor and that she will want to forget the whole thing when she calms down.*

Action: *A patient explanation that you cannot make an arrest (since the fight did not occur in your presence), unless she comes down and swears out a warrant might be a tactful way of handling the matter.*

The distinction between misdemeanors and felonies is not an easy one to make in general terms. Basically, misdemeanors are crimes which are considered to be of a less serious nature than felonies. A definite determination, however, of whether a particular crime is a felony or a misdemeanor can only be obtained by looking at the appropriate section of the Penal Code. Frequently occurring misdemeanors are gambling offenses, most liquor offenses, prostitution (but "pandering" is a felony), operation of a disorderly house, possession of burglary tools, various forms of malicious mischief, assault and battery, aggravated assault and battery consisting of inflicting grievous bodily harm or cutting, stabbing, or wounding (but assault with intent to kill and assault with intent to maim are felonies), and involuntary manslaughter. To repeat, for these offenses and other misdemeanors an arrest without a warrant is lawful only if the offense occurs within the presence of the arresting officer.

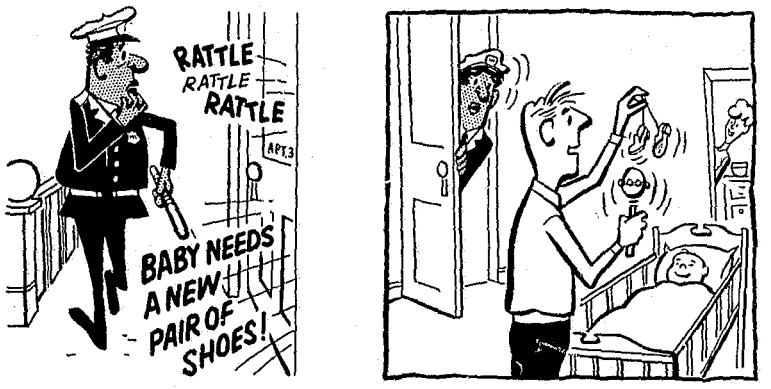
The "presence" of the arresting officer includes situations where the officer sees, hears or smells the offense being committed.

EXAMPLE

Facts: *You are in the hall of an apartment building and smell the odor of fermenting mash in one of the apartments.*

Action: *You can arrest the occupant without a warrant. The offense was being committed in your presence since you smelled the fermenting mash. The same would be true if you heard the rolling of dice together*

with typical conversation that goes with betting in a crap game.



Obtaining an Arrest Warrant

The procedure for obtaining an arrest warrant (sometimes called a "body" warrant) is similar to that for obtaining a search warrant. The officer, or complainant, must fill out a complaint and affidavit stating in detail the facts that show that there is probable cause to believe that a crime has been committed and that the suspect named in the warrant has committed it. Since search warrants are used more frequently than arrest warrants, the complaint and affidavit are covered in PGM No. 5 on Search and Seizure and an officer should refer to that material when he is considering obtaining an arrest warrant.

C. "PROBABLE CAUSE" FOR ARREST

Probable cause to arrest exists where the facts and surrounding circumstances of which the arresting officer has reasonably trustworthy information would justify a man of reasonable caution in believing that an offense has been committed and that the person to be arrested has committed it.

Probable cause requires *"belief";* suspicion is not enough. This is a higher degree of certainty than is required for a stop. On the other hand, the evidence required is less than would be necessary to convict the person.

This belief must be based on the facts and surrounding circumstances known to the arresting officer *at the time of the arrest.* An arrest cannot be justified by the results of a search after the arrest. Nor is the lawfulness of an arrest affected by the fact that the arrested person may later be found innocent.

The determination of "probable cause" does not have to rest upon evidence which could be introduced in a criminal trial. A police officer may and should consider all information available to him which has any bearing on whether a crime has been committed and whether the suspect committed it. He may consider the past record of the suspect and hearsay concerning the commission of a crime even though they might not be admissable at trial. Standing alone, however, such evidence would not be enough; you cannot arrest a man just because he has once been convicted and someone tells you he has committed a crime again.

Expert Knowledge

While the definition of probable cause quoted above speaks in terms of an ordinary man, a police officer is an expert in law enforcement and should use all his training, skill and experience in determining whether or not probable cause exists. Courts have recognized that a trained police officer may often have probable cause to arrest for a crime based on facts and circumstances which would not produce probable cause in the mind of an untrained layman.

EXAMPLE

Facts: *You smell an odor coming from a particular apartment. Because of your experience, you can identify the odor as being that of burning opium.*

Action: *You have probable cause to arrest the occupant of the apartment. This is true even though an untrained layman would not recognize the odor as that of burning opium. Keep in mind, however, that when later explaining the basis for this arrest to a judge, you are not explaining it to a trained law enforcement of-*

ficer. Also, he cannot just accept the statement that you have probable cause, but he must make his own conclusion that you had smelled the odor of opium. You must state fully the basis for your trained judgment. You must provide the judge with the aspects of your training and experience that led to this conclusion. You must state how you determined the facts and how these facts produced your conclusion. The same would be true if you were filling out an affidavit for an arrest or search warrant. See PGM No. 5.

Informants

A recurring problem of probable cause concerns how much an officer can rely on an informant's statement to justify an arrest. The main problem here is establishing the reliability of the informant. Going back to the test of the "reasonably cautious man," it seems obvious that such a man would not believe that A has committed a crime merely because he received an uncorroborated, anonymous phone call saying A had committed the crime. There are also serious problems of reliability with known informants. People who act as informants are sometimes not the most reliable members of the community and may themselves be engaged in criminal conduct. Many may be narcotic users or mentally retarded. Police are used to getting information, often false, from people who have been arrested and hope to get favorable treatment by talking. Paid informants may make up stories in order to get paid.

Nevertheless, reliable information is often received from informants. The difficulty lies in determining what information is reliable. Information, even from anonymous sources, should not be ignored. But such information must be further investigated before a decision to arrest can be made. Such investigation should include checking the background and prior reliability of the informant, attempting to corroborate the informant's story by personal observations, putting the suspect under surveillance, and checking out the record and background of the suspect.

EXAMPLE

Facts: *You are told by an informant whom you know that a particular worker in an automobile plant would bring narcotics into the plant on a given date in an automobile of a particular description with a particular license number. This informant had provided tips on previous occasions and his information had been found reliable. A stakeout is set up and the suspect appears at the time predicted in the described vehicle.*

Action: *You have probable cause to arrest the suspect. You knew the informant and he had provided reliable information in the past. You had no reason here, such as a personal quarrel between the informant and suspect, to think that this information was less reliable than that given by the informant in the past. This is the crucial factor in finding probable cause here. A reasonably cautious man would rely on information given by one who was previously reliable where there is no reason to think that this information would be less reliable than that given in the past. Here also the informant told you that the suspect would be at the plant at a given date in a car of a given description and you found that these things were true. Such correlations have been said to indicate that the further crucial information given by the informant—that the suspect would have narcotics with him—is also true. Nonetheless corroboration of reliability by observing innocent, predicted events should not be relied on too heavily. For example, if the suspect who worked at this plant usually drove the described car to work, these occurrences on the predicted date would show nothing. They clearly could not alone be relied upon to find probable cause.*

Previous Record

A person's previous record can be considered, along with other information in determining if there is probable cause to arrest him for a particular crime. However, a prior

criminal record can almost never be the primary factor in finding probable cause. The fact that a crime has been committed in an area does not mean that you can arrest everyone in the area with a previous record for such offenses. Such dragnet arrests are clearly illegal. However, some other information may be combined with a person's record to give probable cause. See the example of the burglary suspect discussed under Stop and Frisk above.

D. CONFRONTING THE PERSON ARRESTED

As soon as practicable, the arresting officer should tell the suspect that he is a police officer (if this is not clear from his uniform) and that the suspect is under arrest. If the officer is executing an arrest warrant, the suspect should be told that and shown the warrant if he asks to see it.

E. USE OF FORCE TO ARREST

The basic premise of the law concerning the use of force to arrest is quite simple: our society is against the use of unnecessary force; thus, force may be used to make an arrest only where it is necessary to use it. Whenever the suspect offers no resistance there is no necessity for any use of force by the officer and, therefore, the use of *any* force is illegal. Usually an arrest is made by words or a simple touching of the suspect.

A common complaint against the police relates to the use of unnecessary force. Riots, disturbances and extreme community tensions have often had their immediate cause in the shooting and killing of suspects. The taking of a human life is an act which our society authorizes only upon the greatest necessity and for the most important of reasons. Thus, the utmost caution is required in using firearms. It is the job of a police officer to protect life, not destroy it.

With this background of basic principles, the following rules should be adhered to in using force to arrest:

(i) Do not use blackjacks, nightsticks or similar equipment unless it is absolutely necessary to subdue a person resisting arrest. Under no circumstances should use of

this equipment be continued after the suspect stops resisting.

(ii) You may use firearms as a last resort where it is absolutely necessary to protect yourself or other persons against death or serious bodily harm.

(iii) Where there is no immediate threat to yourself or other persons, do not use your firearm to make an arrest unless all of the following facts are present:

a. There is no alternative way to make the arrest.

b. There is no substantial danger of your hitting innocent bystanders.

c. The person escaping has used or threatened the use of killing force in the commission of his crime, or you believe that, if not immediately arrested, there is a substantial chance that he will kill or seriously injure someone.[8]

d. You have seen the actual commission of the crime or have sufficient information to know, as a virtual certainty, that the escaping person committed it. It is obviously one thing to have sufficient probable cause to arrest a suspect. It is quite another to have sufficient basis to risk killing him.

F. ENTRY INTO A BUILDING TO MAKE AN ARREST

Assume an officer has probable cause to arrest a person and knows that the person is in his home. How should he make the arrest? First, it is clear that he should not just break down the door. Even though the person is subject to arrest, he still has the right not to have the door to his home unnecessarily broken. He also has the right not to have strangers come into his house without advance warning. Finally, unannounced entry into the house might result in unnecessary injury to the police officer by an occupant who believed he was exercising his right to protect his house from an unlawful entry.

Thus, except in the special circumstances which will be discussed below, when making an arrest of a person in a

building, an officer should knock on the door, announce that he is a police officer there to make an arrest and demand that the person inside open the door. Only if there is a refusal or no answer after a normal period of time to open the door, should the officer enter without the door being opened for him from the inside.[9] Even when he does enter on his own, the officer should try to do as little physical damage as possible.

The only exceptions to the rule discussed above operate where the arresting officer has good reason to believe that making the announcement might help the suspect to escape, constitute a source of danger to other persons (such as hostages) inside the house or to the arresting officer himself, or help the suspect destroy evidence.[10] When you do

enter without announcement and demand, it is imperative that you carefully record in detail in your report the surrounding circumstances and the reasons for this kind of entry so that you are later prepared to testify in court about it.

Failure to follow the rule generally requiring announcement before entry may turn an otherwise valid arrest into an invalid one. This may result in the exclusion of evidence as well as the civil or criminal liability of the arresting officer.

4. Search Incident to Arrest

The basic rule governing searches, as more fully explained in PGM No. 5, is that a search requires a search warrant. The most important exception to the need for a search warrant, however, is the search incident to an arrest. The courts have held that police officers have the power, without a search warrant, to make an immediate search of an arrested person and things under his immediate control. This power to search incident to arrest exists whether the arrest itself is made with or without an arrest warrant. The courts have justified this exception to the rule requiring search warrants by the need to seize weapons and other things which might be used to attack an arresting officer or to make an escape, and the need to prevent destruction of evidence of the crime. Both use of weapons and destruction of evidence could, of course, occur only when the weapon or evidence is on the accused's person or under his immediate control.

The statement of this exception and its basis clearly suggest its three basic limitations. First, since the search is premised upon an arrest there must be a *lawful arrest,* an arrest which satisfies the Constitutional and other legal requirements we have discussed. *When a search incident to an arrest is challenged in court, the court will review the legality of the arrest.*

The second basic limitation is that the search really must be *incident* to this lawful arrest. The basis for the search

is the arrest. *Thus, under the prevailing view, the arrest must precede the search.*[11] *Further, the search must be closely connected in time, place and purpose to the arrest.*[12] Clearly, a search remote in time or place from the arrest, cannot be justified on the basis of preventing the use of weapons or destruction of evidence by the person arrested.

EXAMPLES

I

Facts: *You arrest a man in his apartment and bring him to the station house. A few hours later, you decide to search the apartment.*

Action: *Get a warrant. A search at this later time would not be incident to the earlier arrest and would be unlawful.*

II

Facts: *You arrest a person on the street a few blocks from his apartment. You want to search the apartment.*

Action: *Do not search without a warrant. The arrest did not take place in the apartment and thus a search of the apartment would not be incident to the arrest and would be unlawful. The same would be true if you arrested him right outside the house or in the apartment house hallway. If you had arrested him in the apartment, you could have searched it, providing the other requirements of a search incident to an arrest were present. But you should not delay a possible arrest on the street so that you can search the apartment by waiting and making the arrest there. Remember we are talking about an incidental search. The primary thing must be the arrest, not the search.*

This second example raises the question of the area that can be searched incident to an arrest. There is no question that when an individual is lawfully arrested, his person may be searched. Some judges have pointed out that, since the

rationale for this warrantless search is the protection of the officer and the prevention of the destruction of evidence by the suspect, there is no basis for searching the surrounding area at all once the suspect is under control.[13] On the other hand courts have consistently held that things directly under a suspect's control, such as goods he is holding and the car he is driving, can be searched incident to his arrest, provided, of course, the search is properly one for weapons or implements, fruits, or evidence of the crime. There is a dispute, however, as to how much of the indoor premises in which a person is arrested can be searched.

EXAMPLES

I

Facts: *You arrest a person in his one-room apartment.*

Action: *You can search the room incident to the arrest, assuming you have a basis for thinking that weapons or implements, fruits or evidence of the crime are in the room. Courts have also upheld the search of all the contiguous rooms in a three or four room apartment.*[14]

II

Facts: *You arrest a person in one room of his eight room two-story house.*

Action: *The law is not clear as to whether you can search the whole house in such a case even if you have a basis for believing that weapons or implements, fruits, or evidence of the crime are elsewhere in the house. While some courts have upheld such searches, others have not.*[15] *For example, a court held a search invalid where police officers arrested a man for possession of narcotics in a first floor room of his house, and then searched a locked room on the second floor.*[16] *Under these circumstances, do not search without a warrant beyond readily accessible, contiguous rooms on the floor on which the arrest is made. Get a warrant if you want to search the rest of the house.*

The third basic limitation on search incident to arrest is that searches can extend only to places in which the arresting officer reasonably believes there may be proper objects of this type of search. These are, you will recall, weapons that may be used against the officer or to escape, and implements, fruits or evidence of the crime for which the person is arrested. The reasonable likelihood that fruits, implements or evidence might be present would, of course, depend on the nature of the crime and on the nature of the object sought.

EXAMPLES

I

Facts: *You arrest a person for a traffic violation.*

Action: *Do not search the person or the car. You have no basis at all to believe a traffic offender has a weapon. There are no implements, fruits, or evidence of this crime.*

II

Facts: *You make an arrest pursuant to a warrant issued on the complaint of the victim that the named person committed a battery, without a weapon, on the victim a few days earlier. The suspect is arrested in his apartment.*

Action: *You may conduct a search of the suspect's person for your protection and to prevent escape, as there was a relatively serious crime here (unlike the traffic violation above). On these facts, however, you should not search further. Since the suspect is in custody, weapons elsewhere in the room present no danger. Only when the suspect must move around the room, e.g., to get a coat from the closet, may you search a part of the premises, such as the closet, in which the suspect could get a weapon. Since this was a battery, without a weapon, there are no implements or fruits of the crime for which there could be a search. Nor is it likely that there will be physical evidence of the crime on the premises.*

Usually connected with a search incident to an arrest is the question of use of force or other means on a person's body to get objects from him. A police officer may use reasonable force to prevent the destruction of evidence, but our sense of decency puts a limit on this force.[17] Acts which threaten the suspect's life or so invade his body that they "shock the conscience" cannot be employed.[18]

EXAMPLE

Facts: *You arrest a person for possession of narcotics and he tries to swallow them.*

Action: *You may, using only as much force as necessary, prevent him from putting them in his mouth. If he gets it into his mouth, you may try to prevent him from swallowing it by force so long as you do not cut off his breathing. Once he swallows it, there is nothing more you can do to get it. It is unlawful for a police officer to use a stomach pump or any means of forced vomiting.*[19]

5. Conclusion

This concludes the manual on Patrol. It must be emphasized that this is not a complete guide to all aspects of patrol, or even to all the legal problems involved in patrol. Yet familiarity with and sensitivity to the concepts discussed here are essential to the proper performance of patrol. In the words of the International Association of Chiefs of Police:

> The police officer in a modern, democratic society must go far beyond the routine of providing basic preventive and investigative services. The task of preserving and extending those fundamental rights embodied in the great documents of freedom stands as the challenge and the reward of law enforcement. Achieving balance between public protection and personal freedom continues to involve the world's greatest intellects in an on-going debate.[20]

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FOOTNOTES

1. Payton, Patrol Procedure 54-55 (1966).

2. Terry v. Ohio, 88 S.Ct. 1868 (1968); Sibron v. New York, 88 S.Ct. 1889 (1968).

3. *Cf.* United States v. McMann, 370 F.2d 757 (2nd Cir. 1967).

4. *Ibid.*

5. *Cf.* Terry v. Ohio, 88 S.Ct. 1868 (1968).

6. *Cf.* Commonwealth v. Brayboy, 209 Pa. Super 1, 223 A.2d 878 (1966).

7. 384 U. S. 436 (1966).

8. This requirement represents sound law enforcement policy as advocated by the President's Commission on Law Enforcement and Administration of Justice (National Crime Commission), Task Force Report: The Police 189-90 (1967). This policy goes beyond the current law. Pennsylvania still adheres to the old rule that prohibits shooting to prevent the escape of a misdemeanant, but allows an officer to shoot to prevent the escape of any felon regardless of the nature of the felony. This rule developed when many felonies were punished by death. Our society has a greater respect for human life and takes it only under the most severe circumstances. Consistent with this change in society's attitude, it is now good law enforcement policy to shoot only when the situation is such that failure to apprehend the felon immediately would present a real danger to the lives of others.

9. See United States ex rel. Manduchi v. Tracey, 233 F.Supp. 423 (E.D. Pa), *aff'd*, 350 F.2d 658 (3d Cir. 1965), *cert denied*, 382 U. S. 943 (1965); Commonwealth v. Ametrane, 422 Pa. 83, 221 A.2d 296 (1966); Commonwealth v. Newman, 210 Pa. Super 34, 232 A.2d 1 (1967).

10. See Commonwealth v. Newman, *supra* note 9.

11. See Sibron v. New York, 88 S.Ct. 1889, 1902 (1968).

12. See Preston v. United States, 376 U. S. 364 (1964); James v. Louisiana, 382 U. S. 36 (1965).

13. United States v. Rabinowitz, 339 U. S. 56 (1950) (Frankfurter, J. dissenting).

14. See Harris v. United States, 331 U. S. 145 (1947); United States v. Garnes, 258 F.2d 530 (2d Cir. 1958).

15. *Compare* Drayton v. United States, 205 F.2d 35 (5th Cir. 1953) *with* Smith v. United States, 254 F.2d 751 (D. C. Cir. 1958).

16. Drayton v. United States, *supra* note 15.

17. See Rochin v. California, 342, U. S. 165 (1952); Commonwealth v. Tunstall, 78 Pa. Super. 359 115 A.2d 914 (1955); People v. Martinez, 130 Cal. App. 2d 54, 278 P.2d 26 (1955); People v. Sanchez, 11 Cal. Rptr. 407, 189 Cal. App. 2d 720 (1961); People v. Redding, 28 Ill. 2d, 305, 192 N.E.2d 341 (1963).

18. Rochin v. California, *supra* note 17.

19. See cases cited at note 17, *supra.*

20. Professional Standards Division of the International Association of Chiefs of Police, Training Key #61 (1966).

Police Guidance Manual No. 5

Search and Seizure

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Project financed by the Office of Law Enforcement Assistance
United States Department of Justice

Printed by the University of Pennsylvania Printing Office
Philadelphia, 1968

TABLE OF CONTENTS

ACKNOWLEDGMENTS

The following colleagues at the University of Pennsylvania gave valued advice and criticism: Professors Paul Bender, Curtis R. Reitz, and Henry S. Ruth, Jr., of The Law School, and Dr. Marvin E. Wolfgang, Chairman, Department of Sociology, and Director, Center for Studies in Criminology and Criminal Law. Philadelphia Police Commissioner Frank L. Rizzo and Philadelphia District Attorney Arlen Specter made their facilities and staff freely available to the project.

The cartoons which humorously illustrate some themes in the Police Guidance Manuals are by artist John Pretch.

1. Introduction

A. SEARCH, SEIZURE AND THE AMERICAN REVOLUTION

Americans traditionally have prized most highly the privacy of their persons, homes, and possessions. British violations of this privacy in great measure caused the American Revolution.

The British Government had enacted various trade regulations and customs restrictions for the American colonies. To enforce these measures, the British issued general search warrants called "writs of assistance." These writs gave British officials power to search any place where they suspected illegal goods to be and to break open any packages which they saw. Under this authority officials frequently searched at their whim, the liberty of every colonist was in the hands of the British. The general warrant violated the basic idea that every man's home was his castle.

Opposition to this arbitrary authority grew steadily. The issuance of writs of assistance was one of the principal grievances submitted to King George in the petition of the Continental Congress of 1774. Hatred of the writs was the first link in the chain of events which led directly to the American Revolution.

When independence was finally declared, most states passed declarations or bills of rights; and each contained some prohibition against unreasonable searches and seizures. Pennsylvania was in the forefront: shortly after the Declaration of Independence, on September 28, 1776, Pennsylvania adopted its Declaration of Rights. Section 10 of this Declaration contained the first clauses condemning unreasonable searches and seizures in language similar to the later Fourth Amendment to the United States Constitution. That Pennsylvania provision is found today in Article I, Section 8 of the Pennsylvania Constitution.

The colonists, fearing a repetition of British practices by the new national government, insisted that guarantees of their privacy be contained in the document that set up the federal government. Failure of the original Constitution

to contain a general Bill of Rights and, in particular, a prohibition against unreasonable searches and seizures was a major factor in arousing opposition to the federal Constitution. The Constitution was ratified only after general agreement was reached that it would be amended to contain a Bill of Rights. Thus, the people adopted the Fourth Amendment to the United States Constitution, which reads:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This Amendment, as well as the provisions of state constitutions, reflects the basic American belief in the importance of the individual, his home and his possessions. The state cannot, without good reason, invade the privacy of a person, for everyone in our society has the right to an area of life in which he is let alone. Mr. Justice Brandeis, one of the greatest justices of the United States Supreme Court, eloquently termed this right to be let alone "the most comprehensive of rights and the right most valued by civilized men."[1]

B. THE EXCLUSIONARY RULE

The existence of prohibitions against the government engaging in unreasonable searches and seizures raises the problem of how they are to be enforced. One enforcement method, long used in Anglo-American law, is to exclude from trial evidence that has been obtained illegally. In 1914 the United States Supreme Court held that the Fourth Amendment required the use of this exclusionary rule in federal prosecutions.[2]

In 1949 the Supreme Court unanimously decided that the Fourth Amendment applied to searches and seizures by state and local police officers.[3] Yet the Court was hesitant to hold that the exclusionary rule had to be used in state courts, and

by a divided vote decided that the state courts did not have to exclude evidence obtained by an unconstitutional search or seizure.

The Supreme Court, however, again faced this issue in the now famous case of *Mapp v. Ohio* decided in 1961.[4] The Court there decided that to safeguard the individual's right to be secure against unreasonable searches and seizures it had to enforce the exclusionary rule against state officers. In that case, the defendant had been convicted of possession of "lewd and obscene material." The evidence had been obtained by police who had come to her apartment on a tip that she possessed gambling paraphernalia. The police broke into her apartment, used force on Miss Mapp, conducted a search of the entire apartment, including bureaus, desks, and closets, and barred her lawyer from entering the apartment when he tried to get in to see her. Despite this complete ransacking of the apartment and the use of force, the police officers did not find the gambling paraphernalia they were looking for, but they did find alleged "lewd and obscene material" and so they had her prosecuted for possession of that. The Ohio courts recognized that the evidence had been illegally obtained, but since Ohio had not adopted the exclusionary rule, this illegally obtained evidence was used to convict Miss Mapp anyway.

In reversing the conviction, the Court stated that there really were no effective alternatives to the exclusionary rule in enforcing the command of the Fourth Amendment. By 1961 more than half the states had come to agree with this by deciding that their own constitutional provisions required the exclusionary rule. According to Justice Clark, who wrote the *Mapp* opinion, the Constitution required application of the rule in all the states for "to hold otherwise is to grant the right but in reality to withhold its privilege and enjoyment."

It should be noted that *Mapp* did not hold searches invalid that had previously been valid. All *Mapp* did was to employ an enforcement method against illegal searches and seizures. Local police officers who had engaged in such illegal searches and seizures had been clearly violating the

Fourth Amendment of the federal Constitution since the Supreme Court's 1949 decision, and they had been violating state constitutional provisions—including that of Pennsylvania—that go back to the beginning of this country.

This, of course, does not mean that *Mapp* was correct in holding that the exclusionary rule was required as a remedy for these violations. This issue is one of continuing debate. It has been argued that once police have violated an individual's privacy by an unreasonable search nothing can be gained by excluding from a criminal trial evidence obtained in that illegal search. The exclusionary rule, however, is a type of preventive medicine. Its basic idea is that if illegally obtained evidence is excluded from trials, the incentive to get this evidence will be removed. Exclusion of evidence obtained in an illegal search may result in some guilty people not being convicted. No one thinks that this is a desirable result. But the risk of some guilty people going free must be weighed against the need to enforce our constitutional prohibitions against unauthorized searches. In light of the American tradition of the protection of privacy it is not surprising that our courts decided that the scales should tip in favor of the individual. And by "individual" here, we mean not just the guilty individual who raises the point of illegal search when he is prosecuted. We mean also, and mainly, the numerous innocent individuals who will have their houses and persons improperly searched if police do not observe the constitutional restrictions on search.

The exclusionary rule recognizes the fact that police and other officials do not violate the constitutional rights of individuals out of bad motives; exclusion of evidence is not an attempt to punish the police. Rather, when these rights are violated, it is because the police desire to get incriminating evidence as quickly and effectively as possible. Since the violations arise from police zeal to do their job, it is difficult to prevent the violations by various means of punishment such as internal police discipline or criminal or civil penalties. Those who advocate the exclusionary rule believe that the way to prevent violations is to remove the incentive to get the incriminating evidence in illegal ways by excluding

from evidence items obtained by an unreasonable search and seizure.

The police, as one of the prime tools of law enforcement, have a duty to ensure that their work conforms with the law. Otherwise, respect for the law cannot be fostered. Finally, the exclusionary rule should not be a major obstacle to effective law enforcement. The requirements of the Fourth Amendment can be met if an officer is willing to take that little extra time and care necessary to check out leads, assemble his information, and get a warrant.

2. What is and What is Not a Search: Observation as Search

The Fourth Amendment is basically a restriction on governmental searching power. Thus it is important to determine what is and what is not a search. Generally, if an officer is not conducting a search, his conduct is not subject to the restrictions of the Fourth Amendment.

A. THE "OPEN VIEW" DOCTRINE

A policeman can often gather a great deal of information through the use of his five senses. As discussed in PGM No. 4 on Patrol, ordinary looking, hearing, smelling, etc., do not constitute a search in the sense for which constitutional authority is required. The basic principle is that if an officer is where he has a right to be and does not engage in improper conduct he is entitled, like anyone else, to observe what is going on. It is, of course, the officer's professional duty to be alert and make such observations of suspicious behavior. These observations may be important in creating probable cause for arrest or for issuance of a search warrant. The courts have held that looking at objects carried on the street or in parked cars is not a search; nor has an officer searched if he has noticed objects in plain view in a car which he has stopped, so long as stopping the car was proper. (See PGM No. 4 on Patrol, concerning when it is proper to stop a car.) Furthermore, there are

many public places such as stores, restaurants, train stations and the like into which an officer may enter as can any other member of the public. Once the officer is inside, if the object is in plain view, a closer examination will not be deemed a search.

EXAMPLES

I

Facts: *You properly stop a car for a traffic violation. While examining the driver's license you notice that the back seat of the car has been removed and the space filled with bottles of liquor without Pennsylvania tax stamps.*

Action: *The driver should be arrested for possession of untaxed alcoholic beverages. Your observation of the untaxed liquor on the back seat was not a search. Note that traffic stops should not be made as a pretext to look for evidence or other offenses. Note also, as discussed in PGM No. 4 on Patrol, that there is no general power to search a car incident to a traffic stop or arrest.*

II

Facts: *You are in a store open to the public and see what you recognize to be number slips change hands.*

Action: *Arrest and search the persons involved. Your seeing the illegal transaction was not a search. The "plain view" rule is not limited to things out of doors but applies also to objects in plain sight in public places such as a store or restaurant, the public area of a hotel, etc., into which you may enter as any member of the public may.*

B. THROW-AWAY CASES AND OTHER ABANDONED PROPERTY

Property which has been abandoned or thrown away may also be examined without the examination equaling a search. The law does not restrain police authority to seize apparently deserted objects that any other citizen could lawfully pick up.

EXAMPLE

Facts: *Walking your beat, you approach a person who, upon seeing you, throws something away. He walks away slowly.*

Action: *Go over and look at what was thrown away. If you find it necessary to examine the object closely, you should pick it up. Property thrown away or otherwise abandoned can be examined freely. If possession of the object itself is a crime, as in the case of narcotics, you should seize the object and arrest the person who threw it away.*

A person has not abandoned property, however, when he places it in an area like his home which is protected against unreasonable searches. The wisest course, if you have any doubt whether the property has actually been abandoned, is to obtain a search warrant if you have sufficient information to support a finding of probable cause.

EXAMPLE

Facts: *Investigating a suspected numbers operation, you arrive at the suspect's home and, after a request, you are voluntarily admitted. You suspect that there are numbers slips in the trash can, but the suspect refuses to let you examine its contents.*

Action: *Do not examine the contents of the trash can. Though the suspect may have discarded numbers slips, this was not an abandonment until the contents of the can were removed from the premises; the trash can was still within the suspect's home.*[5] *You have no warrant and, as discussed more fully in PGM No. 4 on Patrol, this could not be a valid search incident to arrest, for it would precede any arrest. Had the suspect thrown the incriminating evidence in a trash can located in a public place, he would have abandoned the goods and they could then be looked at and seized without a warrant.*

C. ENTERING A PROTECTED PLACE AND THE PROBLEM OF THE OPEN DOOR

Although the Fourth Amendment and Article I, Section 8, of the Pennsylvania Constitution speak of "houses," any building is within their protection. Thus, an apartment, a hotel room and even business premises are protected places, and a warrant is usually required to search such places. Furthermore, although open land is not protected against entry without a warrant, land areas closely connected with a building, such as back yards, are so protected.

EXAMPLE

Facts: *You and your partner are investigating a burglary and robbery and decide to pay a call on one of your prime suspects. While your partner approaches the front of the suspect's house, you walk around the house to a backyard not visible from the street. You see a small tool shed in the yard, and suspect that it might contain stolen goods.*

Action: *Do not search the tool shed. The yard is a piece of land so closely connected with the suspect's home as to be protected against unauthorized searches. Any entry without a warrant would therefore be illegal. If the entry is illegal, all further observations—even if no further action is taken—are illegal. However, had the tool shed been visible from the street and, assuming that its door was open so that the stolen goods were also visible from the street, the observation would have been of items in plain view. Since no entry into a protected place would have been necessary, the observation of the items would not have been a search.*

Very frequently, particularly in prosecutions for narcotics offenses and gambling, the whole case turns on observations made by police through an open door of a house or apartment. Although at the trial the officer testifies that he was able to observe the incriminating evidence when the door was opened by the occupant (such observation would not be a search), the occupant's version of the incident is often that the police entered before they saw the incriminating objects. If this latter version of the facts is believed, and none of the rare situations permitting a warrantless search is present, the police conduct was unconstitutional. Little can be done to prevent fabricated testimony by the occupant. However, the officer can minimize the situations in which observations made under these circumstances will be found unconstitutional. A police officer should never, prior to seeing the incriminating evidence, make any attempt to force open the door or demand that the occupant admit the officer. In either case a court would be justified in finding that the search preceded observation of the items and thus was constitutionally invalid. (In most situations, mere observation of the items such as narcotics packets or gambling apparatus would give the officer probable cause to arrest the occupant, and the goods could then be seized without a warrant as incident to a valid arrest.) The best procedure, whenever you have probable cause to believe that the goods are on the premises, is to arrive at the door armed with a search warrant.

D. ENTERING A PROTECTED PLACE AND THE PROBLEM OF THE UNDERCOVER AGENT

At the start of this section, we stated the general rule that it does not constitute a search for an officer to see things in open view in a place where he has a right to be. Thus, there is no problem when an officer enters a public place as any member of the public can. Suppose, however, that an undercover agent is invited to a private home by misrepresenting his identity and then sees things in open view. The courts have held that this does not violate the prohibition against unreasonable searches and seizures.

EXAMPLES

I

Facts: *You are an undercover agent who pretends to be interested in making a narcotics buy. On this basis you are invited to the house of a pusher. While in the home you see narcotics passing hands.*

Action: *Your seeing the narcotics passing hands was not a prohibited search. This evidence can be used to support an arrest or a search warrant and can be testified to by you in court. The same is true of any incriminating statements you may have heard while in the home.*

II

Facts: *The same facts as above, but while in the home, you want to go through desk drawers, and cabinets when no one is observing you.*

Action: *Do not search through the drawers and cabinets. Such action goes beyond the basis of your invitation to the home and would constitute an unconstitu-*

tional search. Not only would the evidence obtained by this search be suppressed, but you might jeopardize your ability to testify about other things you observed while in the home.

E. ELECTRONIC EAVESDROPPING OR BUGGING

The legality and wisdom of bugging and wiretapping by law enforcement officials is a subject of great controversy today. On one side of the question are those who argue that electronic eavesdropping is a very important tool of law enforcement, particularly in the fight against organized crime. Others do not agree that these devices are crucial, and point to the great threat to personal freedom and privacy involved in their use.

In the spring of 1967, Mr. Justice Tom Clark, wrote about the fantastic bugging devices available today:

> Sophisticated electronic devices have now been developed (commonly known as "bugging") which are capable of eavesdropping on anyone in most any given situation. They are to be distinguished from "wiretapping" which is confined to the interception of telegraphic and telephonic communications. Miniature in size—no larger than a postage stamp (⅜" x ⅜" x ⅛")—these gadgets pick up whispers within a room and broadcast them half a block away to a receiver. It is said that certain types of electronic rays beamed at walls or glass windows are capable of catching voice vibrations as they are bounced off the latter. Since 1940 eavesdropping has become big business. Manufacturing concerns offer complete detection systems which automatically record voices under most any conditions by remote control. A microphone concealed in a book, a lamp or other unsuspecting place in a room, or made into a fountain pen, tie clasp, lapel button, or cuff link increases the range of these powerful wireless transmitters to a half mile. Receivers pick up the transmission with interference-free reception on a special wave frequency. And, of late a combination mirror transmitter has been developed which permits not only sight but voice transmission up to 300 feet. Likewise, parabolic microphones, which can overhear conversations without being placed within the premises monitored, have been developed.[6]

Opponents of wire-tapping and bugging fear that the widespread use of powerful electronic eavesdropping devices will make people distrustful, hesitant to use the telephone, and constantly suspicious that the government may be listening in on private conversations. A former mayor of Philadelphia once declared that he could not conduct public business on the City Hall telephones for fear of wiretapping. Some union and business officials have expressed similar feelings. On the other hand, there is widespread belief that the activities of organized crime are so carefully hidden that only by wire-tapping and similar tactics can the government identify and convict the leaders of these dangerous organizations. The problem like many others in law enforcement, involves the balancing of two dangers against each other; the danger of using anything less than the most effective law enforcement techniques against the danger of excessive government prying which will inevitably extend to ordinary citizens talking privately or using telephones on which criminals may occasionally be making calls.

Until 1968, wiretapping by law enforcement officers was forbidden by federal and state law. The Crime Control Act of 1968[7] provides that federal law enforcement officers may tap wires when authorized to do so by a federal judge in certain types of serious criminal cases. The application to the judge must justify the procedure fully, including a showing of "probable cause" to believe that the serious offense is being committed and that messages regarding it will be obtained through the tap. In addition, it must be shown that "normal investigative procedures have been tried" and are too dangerous or unlikely to succeed. In emergencies involving national security or organized crime, messages may be intercepted without prior judicial order, but then application must be made to the judge within 48 hours. Unauthorized wire-tapping is a federal felony punishable by up to five years imprisonment.

The Crime Control Act of 1968 also authorizes state and local officers to tap wires under similar circumstances and conditions if the state has a statute authorizing such procedures. As of 1968, Pennsylvania and a number of other states did not have authorizing statutes, but on the contrary had statutes specifically prohibiting wire-tapping.[8] In the absence of an authorizing statute it is both a federal and state offense for policemen to participate in wire-tapping.

The Crime Control Act also deals with eavesdropping other than by wire-tapping, that is, listening "by means of any electronic, mechanical, or other device" to anything said by a person in a situation where he is justified in believing that he has privacy. This may be authorized by a federal judge upon showing of probable cause as in the case of wire-tapping or by a state judge if there is an authorizing state statute. As of 1968, Pennsylvania has no authorizing statute and it is a federal offense for police officers to engage in unauthorized bugging of the type barred by the Crime Control Act.

The anti-bugging provisions of the Crime Control Act would bar practices that have heretofore been used by some law enforcement agencies; for example, putting microphone pick-ups or recorders on the outside wall of an apartment occupied by a suspect, or locating such a receiver so as to record a suspect's voice while he is making a call in a telephone booth. The Act would not appear to bar the use of a recorder placed on a special agent or informant to whom the suspect is talking without knowing his voice is recorded, since the agent or informant hears the communication without the aid of the device, which merely preserves an accurate record of what the speaker freely discloses to the listener. This use of a recorder placed on a special agent may, however, be unconstitutional unless it is based upon a valid warrant issued by a judge or magistrate.

The controversy over the advisability of wire-tapping and bugging will undoubtedly continue as indicated by the debate in state legislatures over whether or not to adopt authorization statutes, and as is indicated by President

Johnson's statement that he disapproved of the use of wire-tapping and bugging except in national security cases and that federal law officials would not, during his administration, use the wire-tapping and bugging powers granted under the Crime Control Act except in national security cases.[9]

3. The Need for Search Warrants

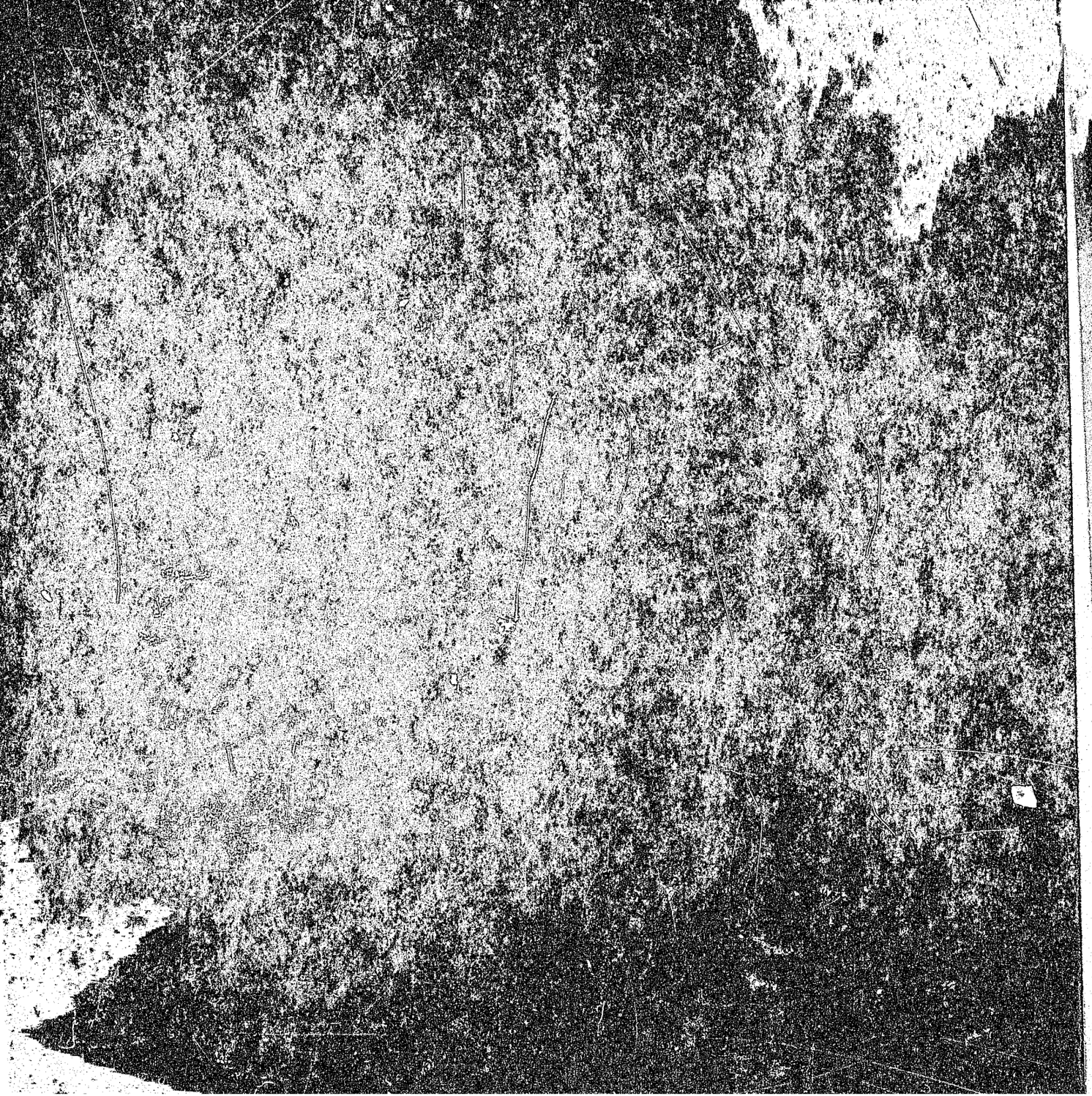
The Fourth Amendment is basically a rejection of the power of officials to search at any time and place without a warrant or check by a magistrate or other judicial official. It therefore requires that searches ordinarily be made pursuant to a warrant, that there be good reasons (in legal terminology, "probable cause") for each particular search, and that searches be limited in time and place and be made for specific things. Each of these general rules will be discussed in detail later in this manual.

Subject to limited exceptions, the first and foremost requirement of a constitutionally valid search is that it be made under the authority of a valid warrant. The three principal exceptions are a search incident to a valid arrest, an emergency search of an automobile or other movable (airplane, boat, etc.) and a search pursuant to consent of the individual whose person, possessions or premises are to be searched. Even in situations where an exception might be applicable, the Supreme Court has made it quite clear that a search under warrant may be sustained in a close case where a warrantless search would not. The lesson to be learned is a simple one—searches made without a warrant are risky business for the chances are substantial that a court will find the search not within one of the three exceptions and thus unreasonable.

At first glance, the need to get a warrant prior to search may seem an unnecessary technicality. Yet this requirement is at the center of the prohibition of unreasonable searches and seizures, and represents the result of the American colonists' victory over the hated writs of assistance. The writs of assistance allowed British police officials to search anything they desired with no outside check on them. The col-

onists, therefore, fought for the rule that a search should not occur unless a judicial officer approves it beforehand. This use of search warrants is another example of the different roles played by different groups in the process of law enforcement. The magistrate is presumably neutral and detached, while the police officer is engaged actively in catching suspected criminals and obtaining incriminating evidence. It is therefore preferable that the officer present his evidence to a magistrate who can then determine whether or not a search is proper.

The requirement of obtaining a search warrant also serves other important functions. In order to complete the affidavit in support of the warrant, an officer must collect, sort, and classify the information which he has gained through observation and investigation. This process serves as a means of checking the completeness of the officer's work. The officer can determine if his investigation has been sufficiently thorough and what else needs to be done to tie up any loose ends. Preparing to go before the magistrate is thus a chance for an officer to check on himself. It is better to do this at this stage than to find out there is not enough evidence at a later stage when the suspect has been alerted to the police interest. Also, we have all experienced the situation where we think we are right about something, but get second thoughts about our position when we have to stop, think, and explain it to someone else. Similarly, the requirement of having to write an affidavit justifying probable cause for a search acts as this kind of check on an officer. The affidavit also serves as a permanent record of the basis of the search. Finally, obtaining a search warrant affords the officer an opportunity to check on his investigation with his superiors in the department and the district attorney's office.



4. Obtaining a Search Warrant

A. GENERAL RULES

Both the Fourth Amendment and Article 1, Section 8 of the Pennsylvania Constitution contain the following requirements for a valid search warrant:

(i) it must describe, with particularity, the place to be searched;

(ii) it must describe, with particularity, the things to be seized;

(iii) it must be based on probable cause; and

(iv) it must be supported by a sworn complaint or affidavit.

In obtaining a search warrant, therefore, a police officer should present a signed, sworn complaint and affidavit which sets forth, in as much detail as possible, the premises to be searched, the items to be seized and the basis for the officer's belief that probable cause exists for the search.

Before filling out the Complaint and Affidavit for Search Warrant (as the form is titled in Philadelphia), an officer should review in detail with his commanding officer the investigation he has conducted in order to substantiate that there is sufficient "probable cause" for the warrant. Also, after filling out the complaint and affidavit, but before bringing it to a magistrate, an officer should contact, by telephone, the assistant district attorney then on duty to review these matters as a further check that the complaint and affidavit is sufficient.

Too often an excellent investigation and successful search are wasted because not enough care was taken in filling out the search warrant form. The most common error is the failure to set forth in detail the facts known by the police officer which led him to believe that seizable items are on the premises to be searched.

It cannot be overemphasized that, except as discussed later concerning confidential informants, you should include in the affidavit *all information of any possible bearing* on

your conclusions. Be overly detailed rather than conclusory; nothing should be left to the imagination of the magistrate. If space in the form is inadequate add additional sheets. Each additional sheet should be signed. Time spent in attempting to list all of the relevant information is always time well spent. Not only does it insure the validity of the warrant, but it also gives you an opportunity to decide if you have amassed sufficient information to justify issuance of the warrant. The state's case will very often be only as strong as your affidavit.

In addition to the written affidavit, you can always explain orally to the magistrate the full details of the case and all the facts which led you to believe that the items to be seized are on the premises to be searched. This oral information must be given under oath. Therefore, when you apply for a search warrant, the first thing you should do is have the magistrate swear you in. Information not given under oath cannot be used to support the warrant.

Do not, however, leave information out of your written affidavit on the theory that you can tell it orally to the magistrate. The dangers of relying on oral communications to the magistrate are obvious. In the first place, memory is often faulty and, by the time the trial arrives, you may no longer be certain of exactly what was said. Furthermore, when the information has been written down there can be no doubt as to the information you had at the time, and embarrassing attacks on your credibility at the trial can be avoided. The three basic rules are thus simple—(1) *always* include *all* your possibly relevant information in the warrant request; (2) be sworn in to answer the magistrate's questions; and (3) *do not rely on* oral explanation to supplement the affidavit.

B. PROBABLE CAUSE

The heart of any affidavit is the officer's demonstration that probable cause exists to justify the search. The basis for determining probable cause to issue a search warrant is essentially the same as that of probable cause for arrest. PGM No. 4 on Patrol is thus relevant here and should be

used for additional guidance about the probable cause requirement. The general test for probable cause to arrest is the existence of facts and surrounding circumstances which are sufficient to justify a man of reasonable caution in believing that an offense has been committed and that the person to be arrested has committed it. Similarly, the test for probable cause to search is the existence of facts and surrounding circumstances which are sufficient to justify a man of reasonable caution in believing that an offense has been committed and that the particular property to be seized is appropriately related to the offense and is located at the particular place named. Reduced to its essentials, probable cause means that the officer must have reasonable grounds to believe that things related to an offense are on the premises to be searched.

Facts which lead the officer to believe that seizable goods are on certain premises can come from two sources, (a) personal knowledge—what the officer has himself observed; or (b) what someone else has observed and told the officer about. Where the facts are within your personal knowledge, all that need be done is to set forth *in detail* in the probable cause section of the warrant the following: (1) the dates and times you observed the facts; (2) the place where you observed the facts; and (3) exactly what you observed (detail is most important here).

EXAMPLE

Facts: *During an investigation, you have seen John Smith receiving number bets. You want to get a search warrant to find slips and other apparatus and incriminating evidence.*

Action: *Fill out the probable cause section as follows: "On June 5, 1966 at 2:00 p.m. affiant personally saw John Smith receiving numbers slips and cash from a number of persons at John Smith's home, 111 Main Street, Philadelphia, Penna. Affiant believes that these were numbers slips because he observed them with three numbers on each and* recognized *them as numbers slips based on his training and experience as a police officer."*

Do not fill it out as follows: *"I have reasonable cause to believe that John Smith is a numbers writer and writes numbers in his home."*

Where someone else tells the police officer the facts, it is necessary to include in the affidavit the facts which caused the other person to believe that seizable goods are on the particular premises and, in addition, why the officer believed what the other person told him. Since there are these two distinct types of information required when the affidavit is to be based on an informant's observations, such an affidavit will necessarily be more lengthy than one based solely on the officer's personal knowledge. The probable cause section should contain: (1) the date the officer was told the facts; (2) the name and address of the person who told the officer the facts, except in the case of a confidential informant; (3) the date the other person observed the facts; (4) that the other person personally observed the facts; (5) the place where the other person observed the facts; (6) exactly what facts (in detail) the other person observed; and (7) an explanation of why the officer believes that what the other person told him is true.

Police are under no obligation to disclose the identities of their confidential informants in a search warrant affidavit. However, when a confidential informant's identity is not disclosed it is especially important that the officer explain fully why he believes that the facts related to him by the informant are true. To substantiate the informant's reliability, the following should appear in the probable cause section: (1) the informant's past record for accuracy; (2) whether valid arrests and/or convictions have been based on this information; and (3) what facts the officer has personally observed which corroborate the story related by the informant. Give as much detail as possible without revealing the informant's identity.

EXAMPLES

I

Facts: *There have been a number of jewelry store robberies recently in your district. One Jack Jones, a*

man known to you to be reliable, tells you that John Smith has been frequenting bars in the area attempting to sell watches and that the prices of the watches were far below legitimate wholesale prices. Jones also tells you that, when one of Smith's prospective customers said he wanted a different type of watch, Smith replied that he had more watches "at home." You check out the bars and, although unable to find Smith, do verify that a man of Smith's description had been in these bars attempting to sell watches.

Action: *Fill out the search warrant affidavit as follows: "There have been a number of jewelry robberies recently in the vicinity of Tulip and Main Streets. On June 21, 1967, Jack Jones, who resides at 222 Main Street, Philadelphia, Penna., told affiant that on June 20 and on June 21, 1967, he personally saw John Smith attempting to sell watches at far below legitimate wholesale prices in the Starlight Lounge, 50 Main Street, and in the Club 20 Bar, 20 Main Street. Jack Jones also told affiant that he personally heard John Smith say that Smith had additional watches at his house, 555 Main Street. Affiant personally is acquainted with Jack Jones, has discussed his reputation for truth and veracity with persons in the community and has found that Jack Jones' reputation for truth and veracity is excellent. Jack Jones has resided at the same place for ten years, is employed, is married and has no criminal record. Affiant's own investigation at the two bars listed above corroborated that a man of Smith's description was seen at the places attempting to sell watches."*

Do not *fill out the search warrant affidavit as follows: "On information received from a reliable informant, affiant believes that stolen watches are in the premises of John Smith, 555 Main Street."*

II

Facts: *You have received information from a reliable, confidential informant that John Smith is using his residence for a bookmaking operation.*

Action: *Fill out the search warrant affidavit as follows: "On June 21, 1967, affiant was told by an informant whom affiant knows to be reliable because on at least five occasions in the past said informant has given information to affiant, which has led to five arrests and convictions, that on June 20, 1967, said informant personally heard and saw John Smith taking numbers bets in person and by telephone at Smith's home, 111 Main Street, Philadelphia, Pa.;" or "On June 21, 1967, affiant was told by an informant whom affiant knows to be reliable because this informant has given affiant information regarding criminal activity on at least five occasions which affiant has personally checked out and always found to be correct, that, etc. (same as above.)"*

Do not *fill it out, as one officer did, by merely stating that the house should be searched based on "Very Reliable Information 100% In the Past."*

Finally, remember that it is imperative that the affidavit include the time when the observations of the officer or informant were made. The purpose of the affidavit is to show probable cause to believe that certain items are now at a certain place. If considerable time has passed from the date of the observations until the date of the affidavit, there may not be sufficient reason to believe that the items are still there. It is impossible to set down a strict rule as to when the time that has passed is so great that fresh observations are needed. This depends in large measure on the type and extent of the criminal scheme involved. If it is an extensive operation of the type that could be expected to go on for a long period of time, then probable cause for a search warrant may exist even weeks after the observations.

When more than a few days have elapsed between observations and affidavit, you should ask yourself whether in light of the nature of the criminal operation, it is probable that the items are still there. If it is not probable, fresh observations should be made. If you believe that it is still probable that the items are there, you should go ahead with the affidavit, but the affidavit should also contain the basis for your belief that the lapse of time has not affected probable cause. If you are in doubt as to whether or not to go ahead based on the old observations, check with your commanding officer or the district attorney's office.

C. THE PREMISES TO BE SEARCHED

The requirement that the premises to be searched be described with particularity is designed to avoid general searches. The description must therefore be sufficiently clear so that the officer who executes the warrant is in no doubt as to the place involved. Where possible include a street number address. If no street address is available, give as complete a physical description of the premises and location as possible. If possible, include the name of the owner or occupant of the premises in all warrants. If the building consists of only one unit, there is no need to be more specific than giving a street address or other description of the building. However, if you want to search more than one building on the premises, you should specify each building. For example a building and detached garage should be stated as "premises 220 Main Street and garage adjacent to it."

In multi-unit buildings, such as apartment houses, hotels, and rooming houses, it is important to identify carefully the particular place to be searched. This means, if practicable, an apartment or room number in an apartment house or hotel, and the name of the occupant and physical location of an unnumbered room in a boarding house. For example, if a purchase of narcotics has been made in the first-floor apartment of a three-apartment dwelling house and the officer has no reason to believe that the two other apartments are involved, the premises should be described as "first floor apartment of three-story dwelling house, 220 Main Street, Philadelphia, Penna.," not just 220 Main Street, Philadelphia, Penna."

Other specific parts of one building may be identified by their use, such as the part of a building used as a store. Where separate units of one building, having different occupants, are sought to be searched, it is advisable to prepare a different affidavit and get a different search warrant for each part. The officer can usually find out quickly if there is more

than one unit in a building by checking utilities records, or voter registration records, or by talking with persons in the neighborhood.

D. THE PROPERTY TO BE SEIZED

The requirement that the warrant state with particularity the things to be seized is also a means of preventing general searches or "fishing expeditions." The aim again is to describe the property with such detail that the officer executing the warrant will have as little doubt as possible as to what is covered by it.

Describing property merely as "stolen goods" or "other articles of merchandise too numerous to mention" is clearly inadequate. Obviously, however, the nature and particularity of the description of the goods must depend on the type of goods involved. For example, a general description of a "quantity of costume jewelry" may be sufficient for costume jewelry consisting of numerous pieces no one of which is highly valuable, whereas a "quantity of jewelry" would not be sufficient for easily recognized, distinctive bracelets, rings, etc.

5. Executing a Search Warrant

A. THE PREFERENCE FOR DAYTIME SEARCHES

Care in executing the warrant is as important as care in obtaining it, for an otherwise valid search can become unlawful if the warrant is not properly executed. The general rule is that a search warrant should be executed in the daytime (from dawn to dusk) unless there is strong evidence that the goods sought are in the particular place to be searched and there exists some special necessity for a nighttime search. Nighttime searches produce resentment and fear of the police, particularly in the unavoidable case of occasional mistake. They are a greater invasion of the privacy and sanctity of the home than daytime searches and should be conducted only when it is virtually certain that the goods won't keep.

In the unusual case where a nighttime search is necessary, the search warrant affidavit should clearly and in detail set forth the circumstances justifying the nighttime warrant. If the magistrate concurs in the issuance of a nighttime warrant, the face of the warrant should clearly set this fact forth.

B. USE OF FORCE IN EXECUTION

As discussed in PGM No. 4 on Patrol, the essential idea in executing any warrant, either for search or arrest, is to do as much as possible with the consent of the person involved and to use as little force as possible. Ordinarily, when executing a search warrant you should first knock at the door, identify yourself and request admission. This is done in order to give the occupant an opportunity to admit you voluntarily and peacefully. The occupant should be given sufficient time to respond to your request for admission. Only if he refuses entry or an emergency of the type described below exists should you enter without consent. Refusal can be inferred if there is no answer to the demand and you have good reason to believe that there is someone home. In certain emergency situations you do not have to knock first and request admission. The most important of these situations is where giving notice would result in the destruction of the goods you are seeking. Since you should always use as little force as possible in entering, when you enter without consent you should first see if the door is locked. If it is, try to use a pass key or pick the lock. Break the door down only as a last resort.

Once inside, refrain from breaking interior doors, chests, or other places you can lawfully search unless the occupant refuses to open them. Here again, the aim is to refrain from using force unless necessary and to use only the amount of force that is necessary. For example, if the occupant refuses to open a trunk which you have authority to search, you have a right to break it open. Under most circumstances, however, breaking the lock is more reasonable than smashing the trunk and thus, if possible, the lock should be broken.

The test of reasonableness also applies if there is no one at home when you arrive. If there is no need for immediate

action or it is likely that the occupant will return before there is a need for immediate action, you should wait so that you may be admitted by the occupant. If there is need for acting before the occupant returns, you may enter on your own, always of course using no more force than is reasonably necessary.

C. WHAT CAN BE SEIZED PURSUANT TO A WARRANT

For many years the United States Supreme Court insisted that certain property could not be taken even pursuant to a valid warrant. Thus, according to the Court, "mere evidence" of a crime could not be seized by the police; only the instrumentalities and means by which the crime was committed, the fruits of the crime such as stolen goods, weapons which could be used for escape, and contraband (property the possession of which itself is a crime) were subject to seizure. However, in 1967, the Court overruled its prior cases in *Warden, Maryland Penitentiary v. Hayden.*[10] In *Hayden* police were attempting to apprehend a suspected robber. They entered his home and, pursuant to a valid search, seized his cap, jacket and trousers. This evidence was used at the robber's trial as a means of identification to demonstrate that he was at the scene of the crime. Though only "mere evidence" had been taken, the Supreme Court decided that it could be admitted at the robber's trial. The Court did indicate, however, that one limitation does remain on the items which can be properly taken—if the property seized is "testimonial" in nature (such as the suspect's diary or other personal papers), its introduction into evidence would violate the suspect's Fifth Amendment right against self-incrimination.

In a search pursuant to a warrant, the warrant marks the boundaries of the search and limits the scope of the officer's authority. He cannot search beyond the premises named in the warrant; and even within these premises, the officer is not free to search everywhere at his complete discretion. He must always be looking for the particular things mentioned in the warrant. It is therefore obvious that he can look only in those places where it is possible that these

things may be found. Stolen television sets, for example, are not found in small desk drawers.

When articles specified in the warrant are found, the officer should, of course, seize them. That is the purpose of the search. Occasionally, however, the search will uncover articles which are related to the offense under investigation or to another offense but are not described in the warrant. If the search was not carried on in good faith for the articles named in the warrant in places where these articles might be found, the search was being conducted in an unlawful manner and, whether or not described in the warrant, the goods cannot be seized. But what about the situation where during a lawful search for named goods, other goods are discovered?

The argument in favor of permitting seizure of unnamed goods is based on the fact that the officer came across them in the proper performance of his duties. The situation, it is said by the proponents of this view, is the same as if the officer had seen the goods on the pavement while walking his beat. On the other hand, the requirement for a description of the goods in a search warrant is necessary to protect against general searches and seizures. Moreover, the basis of the search warrant is the magistrate's finding that there is probable cause for believing that the goods to be taken are properly related to an offense. The officer executing a warrant is only following the orders of the magistrate. It is not up to him to determine the issues on his own. But if he seizes things not named in the warrant, he is taking goods without a magistrate's determining probable cause.

Where possession of the goods themselves is a crime, that is, the goods are contraband, there is no necessity for a magistrate's determination that they are related to an offense. Also, since such articles may have no innocent use, the law is less concerned about taking them. Thus, if during a lawful search you discover contraband, you should seize it and arrest the possessor if he is present. Where you find unnamed goods which are not contraband, but which you believe should be seized as related to an offense, every at-

tempt should be made to seize them either pursuant to a new warrant or incident to an arrest.

If two officers are involved in the search, one should continue the search while the other obtains a warrant. The items found combined with other information may give probable cause to arrest and thus to seize the goods in an incidental search. Where neither of these alternatives is available (and it will be the rare case in which neither is), in order to insure that the later investigative work is not jeopardized by a premature seizure, the officers should not take goods not described in the warrant.

6. Exceptions to the Warrant Requirement

The law recognizes three principal exceptions to the requirement that all searches be pursuant to a warrant: consent searches, searches of movables, and searches incident to arrests. As we have discussed, courts closely scrutinize an officer's justification for dispensing with a warrant. Therefore, even if one of the exceptions may be applicable in a situation, you should still try, if practicable, to obtain a warrant.

A. CONSENT SEARCHES

A search pursuant to voluntary consent is risky. You can rarely rely in advance on consent of the person whose premises are to be searched. And if consent is not obtained, you have tipped off your interest in the suspect, possibly giving him time to flee or dispose of the incriminating items. Furthermore, when a consent search forms the basis of a criminal prosecution, the person who allegedly consented will often deny that he voluntarily gave his consent to the search. It is extremely difficult for the District Attorney's office to get incriminating evidence admitted into evidence on the basis of consent to a search. If the goods uncovered by the search are a necessary part of the Commonwealth's case and the defendant succeeds in his attempt to suppress the evidence, then the prosecution's case will fall.

The basis for consent searches is the fact that an individual may waive his constitutional right that all searches be pursuant to a warrant issued upon a showing of probable cause. When consent is obtained the search is not unreasonable even though there was no warrant and there was not even probable cause to obtain a warrant. A valid consensual search requires that the consent be voluntary and be given by an individual having power to consent to a search of the particular premises or property.

What Constitutes Voluntary Consent

If consent must be relied upon, the consent must be a product of the completely free will of the person consenting. It must be given to the police understandingly and voluntarily. Courts will not consider consent to have been given voluntarily unless the person is adequately advised that he has a constitutional right to refuse to consent to the search, and that, if he does refuse, the officer will leave and not conduct a search. It should be clear to the occupant of the premises that the officer is requesting, not demanding, authority to search. The officer should *never* suggest that he has authority to search without consent or that refusal to consent may result in arrest. As with other situations in which oral evidence is often crucial, the officer conducting the search should record exactly what the occupant of the premises said. Remember, silence on the part of the occupant is not consent; he must make affirmative responses indicating that he understands the nature of his constitutional rights and that he is consenting to waive them.

When a person has been arrested (an arrest includes any detention of a person beyond a quick stop on the street—see PGM No. 4 on Patrol), he must have advice of counsel or waive counsel before he can consent to a search. As in the interrogation situation governed by *Miranda* (see PGM No. 4 on Patrol), submission to police authority invalidates consent.

EXAMPLE

Facts: *You have received a tip from a reliable informant that John Smith is operating an illegal still in the basement of his home. You knock on the door of*

the Smith home, a man answers, and you ask, "Mind if I look around?" The man shrugs his shoulders, steps aside and allows you to enter. You find a still in the basement.

Action: *The search was invalid. First, assuming the man was Smith (a fact you didn't know), your question in no way represented an adequate attempt to inform him of his constitutional rights. Secondly, his response was not an affirmative indication that he waived his constitutional rights voluntarily and knowingly.*

Who May Consent

The fact that consent is voluntarily given will not validate a search unless the person consenting had authority over the premises. Constitutional rights are personal; one person cannot waive the constitutional rights of another. The basic rule is thus simple—consent to search premises can be given only by the occupant of the premises.

A landlord cannot consent to a search of a tenant's house, apartment or room even though the landlord has the right under the lease to enter the premises for purposes of cleaning or inspection. Likewise a building superintendent or custodian cannot consent to a search of the tenant's premises. Nor can a hotel desk clerk or manager consent to a search of a guest's room. Of course, you may search a vacated hotel room (or an apartment, house, etc.) with consent of the owner after the suspect has moved; in that case, articles left in the now vacant premises would be abandoned and thus subject to seizure.

Ordinarily, an employee cannot consent to a search of his employer's premises. The one exception would be when consent is obtained from an employee who has authority to give such consent, such as the general manager of a branch store. If you are in any doubt whether the employee has authority to consent, you should contact the employer or get a warrant. Although an employer can consent to the search of his business premises, his consent is not valid as to property in the exclusive use of an employee, such as the employee's desk or locker.

Neither the United States Supreme Court nor the Pennsylvania Supreme Court has passed upon the question of whether a parent can consent to a search of the room or belongings of a mature child living at home. Neither have they passed on whether a husband or wife may consent to a search of a jointly owned house or family car for things which may incriminate the other spouse. The lower federal courts and other state courts have disagreed about these questions. The trend of the law in this area, however, is to foster the personal nature of the freedom from unreasonable searches and seizures. Courts may therefore decide that

a parent cannot consent to a search of a mature child's room, nor one spouse to a search of a jointly owned house or car. To be safe, you should not rely on such consent but should get the consent of the occupant of the premises against whom the search is directed or, better yet, get a warrant.

So far in this section we have been discussing situations where the person against whom the search is directed has some interest in the premises being searched, that is, he either occupies them alone or with another person such as his wife or parents. What of the case, however, where one person just gives some property to another for safekeeping. Can the person holding the property consent to its search? Again, the law is not clear and courts are divided.

The rules to be followed are shown by the following examples.

EXAMPLES

I

Facts: *A and B are neighbors. With B's consent, A has stored some boxes filled with A's goods in B's basement for safekeeping. The boxes are closed tightly and A has not given B permission to open them.*

Action: *With B's consent properly obtained you may enter his basement and look around. During such search, if you see the boxes, you may examine them closely but you may not open them or otherwise go through them without either a warrant or A's consent. Nor can you take them away without either a warrant or A's consent. Remember that the law protects two kinds of property from warrantless searches. The first is houses or other dwellings. Here since you had B's consent, you could search his basement and examine anything, including A's boxes which are in plain view in the basement. However, the law also protects personal property from search and seizure regardless of where it is. Although the boxes were in B's basement they were still A's boxes and B could not consent to a search of them.*

II

Facts: *A leaves his car in a parking lot, locks it, and gives the key to the attendant. You want to search the car.*

Action: *With the properly obtained permission of the person in charge of the lot, you may enter it and look into the car from the outside. This is analogous to looking at the boxes in B's basement, in the preceding example. Even though the attendant had the key, you may not open the car or its trunk without a warrant or A's consent. The key was given to the attendant for the narrow purpose of parking the car and driving it out. He does not have authority to use it to allow a search. The same would be true if A had lent his car to a friend. The friend could not consent to a search of the car.*

B. SEARCH OF MOVABLES

As early as 1925, the Supreme Court recognized that in many cases it may not be practicable to obtain a warrant for an emergency search of an automobile or other movable vehicle since it can quickly leave the locality in which the warrant must be sought.[11] The Court therefore carved out an exception to the rule requiring warrants to search, and decided that movables (usually a car, though boats, planes, etc. may also qualify) may be searched without a warrant. Note that this exception requires that the car actually be moving when stopped for a search or that it be parked somewhere where it is likely that it might be moved before a warrant can be obtained. This exception does not apply where there is no danger of the car being moved.[12]

Note also that the movable exception only does away with the need for a search warrant. It does not do away with the need for probable cause to search a vehicle. As stated by the Pennsylvania Supreme Court:

> While a warrant may not be necessary for the stoppage and search of a moving automobile, such rule does not relax the requirement that the officers *must* have "reasonable or probable cause" to believe that the auto-

mobile contains contraband. Without a warrant the officers take a calculated risk; the search and seizure must be shown to have been upon reasonable and probable cause, i.e., that the officers had reasonable grounds to believe an offense has been or is being committed. The character of the object to be searched goes to the question of justification for not having obtained a search warrant; in no manner does it alter the requirement that reasonable and probable cause must exist to justify the search.[13]

C. SEARCH INCIDENT TO ARREST

The Courts have held that police officers have the power, without a search warrant, to search an arrested individual's person and things under his immediate control. This exception is based on the need for an arresting officer to prevent the destruction of evidence and to seize weapons and other things which might aid the suspect to escape or endanger the officer. Searches incident to arrest must be (1) based on a lawful arrest, (2) follow the arrest in time, and (3) be closely connected in time, place and purpose to the arrest. As searches incident to arrest are really part of the arrest process, they are discussed in detail in the Arrest section of PGM No. 4.

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FOOTNOTES

1. Olmstead v. United States, 277 U. S. 438, 478 (1928).
2. Weeks v. United States, 232 U. S. 383 (1914).
3. Wolf v. Colorado, 338 U. S. 25 (1949).
4. 367 U. S. 643 (1961).
5. See Work v. United States, 243 F.2d 660 (D.C. Cir. 1957).
6. Berger v. New York, 388 U. S. 46, 47 (1967).
7. P.L. 90-351, 18 U.S.C. §§ 2510-2520.
8. The Pennsylvania statute is the Act of July 16, 1957, 15 Purd P.S. § 2443.
9. 3 Criminal Law Reporter 2248 (1961).
10. 387 U. S. 294 (1967).
11. Carroll v. United States, 267 U. S. 132 (1925).
12. Where a car is in police custody it, of course, is not capable of being moved without police permission and thus a warrantless search of it cannot be based on the movable exception. However, where a car is being held by the police for a considerable period of time pursuant to proper authority, it may be appropriate to inventory the car and its contents. Items discovered during the course of such an administrative inventory are not deemed to have been discovered in an unauthorized search. See *Cooper v. California,* 386 U. S. 38 (1967).
13. Commonwealth v. One 1958 Plymouth Sedan, 418 Pa. 457, 463, 211 A.2d 536, 539 (1965).

Police Guidance Manual No. 6

Vice and Organized Crime

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University of Pennsylvania Law School

Project financed by the Office of Law Enforcement Assistance
United States Department of Justice

Printed by the University of Pennsylvania Printing Office
Philadelphia, 1968

TABLE OF CONTENTS

NATIONAL BOARD OF CONSULTANTS

This is one of a series of manuals prepared for use by the Philadelphia Police Force and as a model for metropolitan police forces generally. The project was financed by the Office of Law Enforcement Assistance of the United States Department of Justice, and assisted by the Police Department and the District Attorney of Philadelphia. The following persons served on the National Board of Consultants:

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ACKNOWLEDGMENTS

The following colleagues at the University of Pennsylvania gave valued advice and criticism: Professors Paul Bender, Curtis R. Reitz, and Henry S. Ruth, Jr., of The Law School, and Dr. Marvin E. Wolfgang, Chairman, Department of Sociology, and Director, Center for Studies in Criminology and Criminal Law. Philadelphia Police Commissioner Frank L. Rizzo and Philadelphia District Attorney Arlen Specter made their facilities and staff freely available to the project.

The cartoons which humorously illustrate some themes in the Police Guidance Manuals are by artist John Pretch.

1. Introduction

A. SPECIAL DIFFICULTIES OF LAW ENFORCEMENT IN THIS FIELD

This Police Guidance Manual deals with gambling, drugs, morals offenses, and obscenity, which we shall sometimes refer to collectively as "vice" offenses. They are handled together here because these offenses have something in common that makes them all quite different from crimes like arson, rape, robbery, or burglary. Crimes of these last types are perpetrated against innocent victims, who are glad to report them to the police and to cooperate in the prosecution. In the vice offenses, however, the buyer of the illegal goods or services is usually a satisfied customer. Far from being a victim in the ordinary sense, he may himself be guilty of crime by his participation in the transaction. He does not ordinarily report the transaction to the police, and he is not anxious to cooperate in the prosecution. So the law enforcement job is harder.

As a consequence, the police often have to use controversial methods of detection in order to get vice offenders. They have to rely on paid informants or stool pigeons, who may be criminals themselves and not very trustworthy. They have to use decoys, sometimes going so far that the courts hold that the police have "entrapped" the defendant. Entrapment occurs when the policeman goes beyond merely giving the suspect an "opportunity" to commit the crime: the policeman actually causes the crime to be committed, as by planning it or by urging a reluctant suspect to go through with it. At that point, the courts draw the line and say that it's the policeman's business to *prevent* crime, or catch criminals, not to *promote* crime for the purpose of prosecution.

The difficulties of law enforcement against vice also put great pressure on the police to push searches beyond the limit of legality and to engage in "bugging" and wire-tapping. See Police Guidance Manual No. 5. Such surveillance practices,

however useful to the police in dealing with organized vice, involve intrusion on the privacy of innocent as well as guilty people. Some sacrifice of privacy may be the cost which a community must pay for making gambling and other vice offenses criminal and demanding that the police suppress them. Some people think the cost too high. Whether you agree with them or not, the Police Department has to take a good deal of criticism and suspicion on these grounds, and this too is part of the cost to the community.

Another difficulty with law enforcement in this area is that different classes of people have different feelings about the morality or heinousness of some of these offenses. Everybody is against robbery or burglary, and wants them punished severely. That's not true about gambling, for example. Some religious groups regard any form of gambling as sinful and demoralizing; other religious groups tolerate gambling as a minor harmless pleasure, or even use forms of gambling to raise money for the church. Some states and countries have official lotteries to raise money for public purposes. In other states and countries, some forms of private gambling are lawful. Even in states where gambling is closely restricted, as in Pennsylvania, there are special laws allowing gambling at race tracks. The most respectable elements of the community frequently participate in gambling or near-gambling, as in the case of newspapers which give prizes based on readers' social security numbers. For many middle-class people, playing the stock-market is the equivalent of poor people playing the "numbers." Under these circumstances, it is easy for policemen, magistrates, prosecutors, and judges, many of whom like to gamble a little themselves, not to take gambling violations very seriously.

The troubles listed above have, at times, led to proposals to legalize gambling and to restrict the scope of criminal law in other morals offenses. Policemen are entitled to their own views on this subject as citizens, but of course as professional law enforcement officers, they are duty-bound to enforce the laws as they exist, subject to Police Department directives and prosecution policies laid down by the District Attorney.

B. ORGANIZED CRIME

Since the vice offenses basically consist of the commercial provision of services, products, and entertainment to customers, great illegal organizations have been created to engage in these illicit businesses. The importance of these organizations was described by the National Crime Commission as follows:

> It is organized crime's accumulation of money, not the individual transactions by which the money is accumulated, that has a great and threatening impact on America. A quarter in a jukebox means nothing and results in nothing. But millions of quarters in thousands of jukeboxes can provide both a strong motive for murder and the means to commit murder with impunity. Organized crime exists by virtue of the power it purchases with its money. The millions of dollars it can invest in narcotics or use for layoff money give it power over the lives of thousands of people and over the quality of life in whole neighborhoods. The millions of dollars it can throw into the legitimate economic system give it power to manipulate the price of shares on the stock market, to raise or lower the price of retail merchandise, to determine whether entire industries are union or nonunion, to make it easier or harder for businessmen to continue in business.
>
> The millions of dollars it can spend on corrupting public officials may give it power to maim or murder people inside or outside the organization with impunity, to extort money from businessmen, to conduct businesses in such fields as liquor, meat, or drugs without regard to administrative regulations, to avoid payment of income taxes, or to secure public works contracts without competitive bidding.[1]

It is therefore important for the policeman to be especially alert, in the enforcement of gambling and other vice laws, to evidence linking particular offenses to higher-ups in the organization. Unless the organization is broken up, the imprisonment of a few petty offenders will have little effect

on the general level of criminal activity. A policeman must also carefully avoid any association or activity that would give rise to suspicion that he was "on the take" or friendly with persons engaged in the "rackets."

2. Gambling; Lotteries; Numbers

A. THE STATUTES

Lotteries

The main provision relied on in gambling prosecutions is § 601 of The Penal Code, which deals with "lotteries, whether public or private." A person commits the offense if he

> "erects, sets up, opens, makes or draws any lottery, or is in any way concerned in the managing, conducting or carrying on the same."[2]

A lottery involves three elements: a *prize* to be won, selecting the winner by *chance*, and some kind of payment or *consideration* given for the chance.

Selling numbers is the clearest case of lottery: the buyer pays for a chance to win a big pay-off. Where the prize is offered to a ticket-buyer who picks the most winners in a list of ball games, it has been argued that the prize is won not by chance, but by skill. The courts have answered however, that it is no defense that some skill is involved in winning, if it is mainly a question of luck.[3]

Sometimes a lucky-draw arrangement is defended on the ground that nothing was paid for the chance. For example, "bank night" at the movies involved buying a ticket for the "regular price" which included a chance to win a prize. The Court had no trouble holding that money was paid for *both* the chance to win a prize and admission to the theater.[4]

Maintaining Gambling Device or Apparatus

Section 603 of The Penal Code makes it a misdemeanor to maintain a gambling device or apparatus "to win or gain

money or other property of value."[5] Anyone who "aids, assists or permits others to do the same" is also penalized. This statute overlaps the lottery statute, since in general gambling devices are means by which the player buys a chance for a prize. Slot machines and pin-ball machines are gambling devices if the player pays for the privilege of playing and if he gets a chance to win additional money or property. Punchboards, by means of which customers by chance get cash or merchandise of different values, are gambling devices. So is a crap table.

The "free game" feature of slot machines is often used as a method by which the player is paid money for the "free games." If there is evidence of that, the machines are gambling devices; but the courts of Pennsylvania have held that where the player merely gets the right to play more games the additional "recreation or amusement" is not "property," and the machines are not gambling devices.[6] However, where the machines are equipped to total up free games won (which looks like they're going to be paid for rather than played), and to cancel that total without playing the games (which would be done if the player is paid for free games), and to keep a record of the number of free games cancelled, the Supreme Court of Pennsylvania has upheld police seizure of the machines.[7]

It is not an offense merely to *possess* a gambling device without using it or intending to use it for that purpose. But if the device is plainly one that has no other purpose than unlawful gambling, police and juries are entitled to infer that the required unlawful purpose is present. Possession plus this purpose constitutes maintaining under the statute.

Setting Up Gambling Games

Section 605 of The Penal Code[8] reaches:

(i) persons who "set up or establish" gambling games or betting places;

(ii) persons who "permit or allow" persons to "collect and assemble" for gambling purposes on premises under the control of the accused;

(iii) persons who "lease, hire, or rent" premises for such use; or

(iv) landlords who, having learned that their premises are being so used, fail to complain "forthwith" to law enforcement officers.

This section reaches "floating" crap or card games, among other things.

EXAMPLE

Facts: *X and Y join in an open air crap game for a few minutes, then move five feet away. X smooths a place on the ground with his foot, passes some money to Y, and they begin to roll the dice. Immediately others join them. Money is seen to pass.*

Action: *X and Y are subject to arrest for setting up a game.*[9]

Pool-Selling; Book-Making

Section 607 of The Penal Code[10] makes it a misdemeanor to "engage in pool-selling or book-making," and prohibits a

variety of related activities, including:

(i) occupying a place with books, apparatus or paraphernalia for recording bets or selling pools;

(ii) selling pools on political nominations or elections;

(iii) acting as custodian or depository of bets;

(iv) receiving, recording, or forwarding bets to or for a race-course;

(v) knowingly permitting premises to be used for such purposes.

Book-making is defined as including the recording or registering of bets or wagers on any trial or contest of speed or endurance, or the selling of pools.[11]

Seizure and Destruction of Gaming Devices

An old statute[12] authorizes law enforcement officers to seize and remove any device or machine "used and employed for the purpose of unlawful gaming." The officer must report the matter to the Quarter Sessions Court which can order the device to be forfeited and publicly destroyed if the judge is satisfied that it was used for unlawful gaming. Without such a court order, it is not lawful for the police to destroy gambling equipment.

B. POLICE DEPARTMENT POLICIES

Police Department policy in relation to gambling is developed in cooperation with the district attorney's office in the light of the intent of the legislature, necessity of deploying limited personnel for maximum law enforcement, respect for the privacy of citizens, and maintenance of good community relations.

"Social Gambling"

The legislation described above is clearly focused on professionals, operators, and profit-makers in gambling. The law in Pennsylvania is not entirely clear about the lawfulness of private and amateur gambling. Judges have said that gambling as such is not criminal in Pennsylvania.[13] On the

other hand, a statute of 1794, still on the books,[14] provides a $3 fine for anyone who:

"shall play at cards, dice, billiards, bowls, shuffleboard, or any game of hazard or address, for money, or other valuable thing . . ."

The police will not interfere with *small-scale, non-profit, non-professional* fund-raising for recognized religious, charitable, and fraternal organizations by customary devices like raffles and bingo. Occasional card or other games on private premises among friends do not invoke police action unless there is indication that the game was set-up or maintained for someone's profit, as where playing is regular and protracted with changing participants who do not necessarily know each other. Crap or other games in public places are suspect because they lend themselves to easy exploitation by semi-professionals who operate "floating" games, into which casual participants are invited. Under these circumstances, cheating, assaults, and robbery are possibilities. Also the public character of the operation would give rise to complaints which the Department cannot ignore, and where failure to intervene might be misinterpreted. On the other hand none of these dangers may be present even though the scene may be technically public.

EXAMPLES

I

Facts: *Some youths are playing cards for small stakes on a doorstep in the early evening. The boys are recognizably from the neighborhood, and there is nothing to suggest that the game will lead to trouble or complaints.*

Action: *Warn them to play elsewhere and more privately. Do not arrest unless necessary because of complaints and defiance of warning.*

II

Facts: *You observe a number of different men entering and leaving a private house where you have had a tip that a numbers operation is being carried on. The*

shades are drawn so that you cannot observe what is going on inside.

Action: *Report to your supervisor. Do not, as a uniformed officer, try to investigate on your own. That would tip off the gamblers, and your presence in the place could be used against you. This is a job for plain clothesmen.*

Professional Gambling

It is important to report any evidence of professional gambling. That way the officer avoids suspicion that he is involved in arrangements to overlook violations. A substantial gambling operation cannot be carried on very long without coming to the attention of the police of that district. Since illicit gambling is very profitable, people, including the newspapers and political figures, are ready to assume that a pay-off has been made. To preserve the reputation of the Department, there are cross-checks on the operation of each police district. Each inspector has 6 to 8 plain-clothesmen. The Chief Inspector has a special squad. That squad operates throughout the city, as do the state and federal officials concerned with rackets. It is a serious matter if a gambling raid is staged in your district by outside forces.

The Department does not employ harassment as a law enforcement technique. This means, among other things:

(i) no arrests or searches are to be made without legal basis just to make people uncomfortable, even if you know or strongly suspect that a man is in the racket. Arrest and search are for purpose of prosecution only.

(ii) illegal arrests and searches, resulting in prompt suppression of the evidence and discharge of the defendant, have at times been means by which corrupt police try to give the appearance of enforcement while actually protecting the racketeers. Police operations must give no ground for suspicion of this sort.

(iii) it is useless in law enforcement, and contrary to Department policy, to try to "clean up" one district by threatening to arrest a suspect unless he moves out into

another district. This only adds to the problems of the next district if the man is really an illegal operator. If he is, it's up to you to get the evidence to prove it. If you can't get that evidence, he's entitled to be let alone.

3. Narcotics and Dangerous Drugs

A. THE STATUTES

Narcotics and dangerous drugs are closely supervised under federal and state statutes. The principal state law is the Drug, Device, and Cosmetic Act of 1961. The main idea is to confine traffic in narcotic and dangerous drugs to legitimate channels of manufacture, distribution, medicine, and pharmacy, and to legitimate use in treating disease. Manufacturers and dealers must register with the state. Drugs may be sold or dispensed only by a licensed pharmacist.

The Act defines narcotics to include opium, cocaine, heroin, marijuana, and other drugs designated as "addictive" by the U.S. Treasury Department, which enforces the federal narcotics laws. "Addictive" means that the drug affects the body physically, so that the user needs larger doses all the time as the body builds up a "tolerance" for quantities previously taken, and so that if the user is suddenly cut off from his supply, he becomes painfully sick. Marijuana is not addictive, but by the terms of the statute is brought within the same heavily penalized provisions as heroin and other addictive narcotics. "Dangerous" drugs include amphetamines ("pep pills"), barbiturates (sleeping pills and sedatives), hallucinogens (LSD and other drugs producing odd states of consciousness), and other substances found habit-forming or unsafe for unsupervised use.

Among the offenses established by the act are:

(i) selling, dispensing, giving, possessing, etc. [outside authorized channels of trade]. Possession for personal use pursuant to a prescription obtained in good faith is excepted.[15]

(ii) *using, taking, or administering* a narcotic drug, except by direction of a physician.[16] This provision against *use* of drugs is the basis for arrest and conviction in some cases where the offender is not found in possession, but is visibly under the influence of drugs and shows "tracks," that is, the dark lines on the arm where the injection needle has left scars.

(iii) dispensing or prescribing to a person known as a habitual user, except for treatment of an illness "other than the drug habit."[17] This provision makes illegal in Pennsylvania the medical practice, followed in some countries and recommended by some authorities in this country, of providing addicts with limited quantities of drugs as part of a program of treatment designed to break the drug habit.

(iv) prescribing without physical examination.[18] This is intended to reach unscrupulous physicians supplying narcotics under the pretense of treating ordinary illness, but without bothering to ascertain whether the "patient" has any such illness.

Since heroin ("horse") and marijuana ("pot" or "grass") have no legitimate medical uses, the medical exceptions from the prohibitions of the statute are inapplicable, so that use, possession, sale, dispensing, etc. of these is absolutely forbidden. Morphine and codeine are addictive narcotics derived from opium, as is heroin; but they are standard drugs used to kill pain and treat coughs. It is not, of course, illegal to *use* them or the non-narcotic "dangerous" amphetamines or barbiturates, upon prescription or administration of a doctor.

The Act prescribes severe penalties.[19] Illegal possession of narcotics is a felony with imprisonment of 2-5, 5-10, and 10-30 years for first, second, and third offenses respectively. For illegal selling, dispensing, or giving, prison sentences for first and later offenses are 5-20, 10-30, and life. Departing from normal penal policy, the legislature has deprived the judges of the discretion they have to set low minimum sentences: the judge must fix the minimum at or above the minimum indicated above. Moreover, the legislature has cut

down the usual power of the Court to put an offender, even one convicted of a serious felony, on probation: for narcotics offenders probation is excluded for first offenders. With regard to drugs designated as "dangerous" but not narcotic, misdemeanor penalties are provided.

B. THE CRIMINOLOGY OF DRUG ABUSE

In view of the public attention focused on the drug problem, law enforcement officers should know something about this field whether or not they are directly involved in policy-making or in the day to day work of the Narcotics Unit of the Police Department.

You might start by asking why the use of these drugs is so strictly prohibited. It is not simply because they are bad for people, although physical and mental health is endangered by drug abuse. The same could be said of alcohol and tobacco. Narcotics present a law enforcement problem, as well as a medical or health problem, because of a belief that drug abuse leads to other dangerous criminal behavior. For example, some studies have shown that the average drug addict in New York needed about $15 a day to pay for drugs. Many addicts, coming from the poorer section of the community, must therefore steal, sell drugs, engage in prostitution, or otherwise illegitimately obtain the money required by the habit. Certainly large numbers of criminals turn out to be drug users as well.

On the other hand, the groups and classes in the community that supply a disproportionate part of drug users also seem to play a large part in criminal activity with or without drugs. No noticeable difference in overall crime rates has been observed as between cities where the drug problem is supposed to be serious and those where it is not. So it may be not so much a matter of drugs producing crime as that certain miserable conditions of big city life encourage both crime and drug abuse.

Experts disagree about the relation of drug abuse to violent crime, but the President's Commission on Law Enforcement and Administration of Justice concluded in 1967:

> "Assaultive or violent acts, contrary to popular belief, are the exception rather than the rule for the heroin addict, whose drug has a calming and depressant effect."[20]

The question has arisen whether narcotics addiction should be treated as a disease rather than a crime. Since it is difficult or impossible for an addict to resist the impulse to secure and use the drug to which he is addicted, the situation is something like that of a crazy man with an "irresistible impulse" to kill or commit other crime. The Supreme Court of the United States has held that the mere state of being addicted cannot constitutionally be made a crime, any more than having cancer could be made criminal and punished. Robinson v. California, 370 U. S. 660 (1962). This doesn't mean that addiction is a defense to prosecution for another crime which the offender might not have committed if he weren't an addict. For example, an addict can be prosecuted for stealing money to buy drugs; a compulsion to have drugs doesn't require a man to steal rather than work for the money he needs. Similarly an addict-pusher can be prosecuted for illegally selling drugs.

Some lawyers believe that the Supreme Court may eventually hold that "use" of drugs and "possession for own use" cannot, consistently with the Robinson case, be made criminal. Meanwhile, however, users and possessors are the most numerous objects of law enforcement even though they are in a sense the "victims." This has been defended on the ground that conviction of sellers and dealers can be secured only by going after users, who will be obliged to testify against their suppliers.

Marijuana presents a different picture. Since it is not addictive, its use is not compulsive. Therefore it seems less likely that people would be driven to crime to finance the habit. It is also cheaper and much more available. All sorts of people experiment with it for "kicks." It produces a combination of stimulation and depression comparable to that produced by alcoholic beverages. The National Crime Commission examined the evidence for and against the existence of a relation between marijuana and crime, and concluded

that none had been demonstrated.[21] The Report also deals with the question whether a marijuana user is likely to go on to addictive drugs:

> The charge that marijuana "leads" to the use of addicting drugs needs to be critically examined. There is evidence that a majority of the heroin users who come to the attention of public authorities have, in fact, had some prior experience with marijuana. But this does not mean that one leads to the other in the sense that marijuana has an intrinsic quality that creates a heroin liability. There are too many marijuana users who do not graduate to heroin, and too many heroin addicts with no known prior marijuana use, to support such a theory. Moreover there is no scientific basis for such a theory. The basic text on pharmacology, Goodman and Gilman, *The Pharmacological Basis of Therapeutics* (Macmillan 1960) states quite explicitly that marijuana habituation does not lead to the use of heroin.
>
> The most reasonable hypothesis here is that some people who are predisposed to marijuana are also predisposed to heroin use. It may also be the case that through the use of marijuana a person forms the personal associations that later expose him to heroin.

C. NON-PENAL TREATMENT OF NARCOTIC ADDICTION

The federal government, a number of states, and private agencies are working on various lines of attack on the problem of addiction. The United States Public Health Service maintains hospitals at Lexington, Kentucky, and Fort Worth, Texas, for convicts with drug problems and for persons who voluntarily commit themselves for treatment. Prevention and rehabilitation centers are being established in Philadelphia and other cities. Under some recent laws, a person charged with crime can elect treatment in place of criminal prosecution. New drugs are being tried. Methadone, a synthetic opiate, is being administered during a period of treatment while psychological and social rehabilitation is pursued. Cyclazocine, a non-narcotic "opiate

antagonist," is being used experimentally to block the effects of heroin and render its use disagreeable to addicts. Group psychological therapy is being tried.

There is controversy over the effectiveness of all treatment methods. There is also disagreement among medical authorities and enforcement agencies about whether it is proper to provide narcotics on a controlled basis over a long period of treatment directed against the addiction. Some people believe that this is almost the same as providing legal drugs for addicts. Even that might be better than throwing the addict to the mercy of extortionate pushers of the illegal trade, according to some opinions. But the main justification is said to be the greater possibility of changing the addict by psychological treatment, once the unbearable pressure of guilt and risk of criminal conviction, associated with illegal procurement of drugs, can be relieved.

D. POLICE DEPARTMENT OPERATIONS: RECOGNIZING DRUGS AND ADDICTS

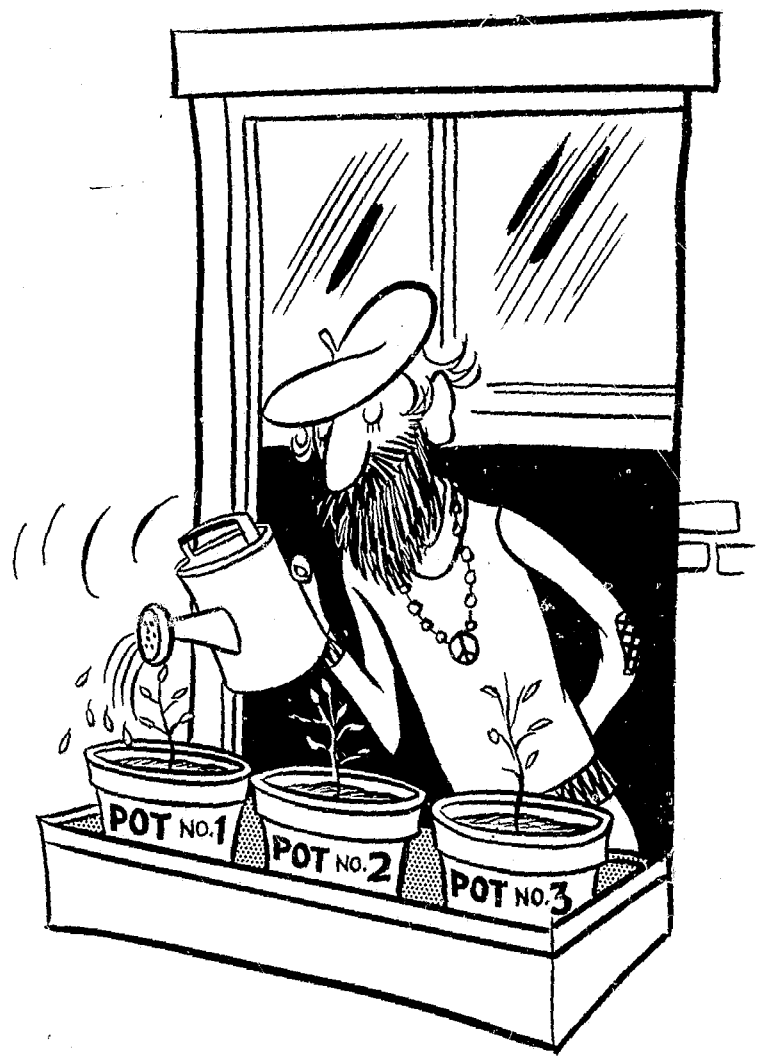
The Narcotics Unit is headquartered at 22nd and Hunting Park Avenue. It investigates narcotics and dangerous drug cases in coordination with state and federal law enforcement agencies. Considerable use is made of informants and decoys since narcotics transactions are not likely to be made where uniformed personnel could observe. An uncoordinated arrest of a minor figure in the narcotics traffic may interfere with a more elaborate investigation aimed at higher-ups. Where there is some indication that a narcotics offense has been committed, district officers should promptly call in the Narcotics Unit.

Indications that a person is under the influence of heroin are as follows: Eyes are glazed and watery. Blinking is likely. The pupils of the eyes contract following administration of the drug, and enlarge when the addict has been deprived of his customary dosage during "withdrawal." Behavior is slow-moving. Since an ordinary cold could produce these symptoms, more tangible indications of illicit drug use are desirable. Signs of recent administration are fresh needle puncture marks, usually on the inside of the

forearm. Where the drug is taken by sniffing or "snorting," there is likely to be a runny nose and inflamed nostrils; the nostril hair will be burnt out. Hypodermic needle marks in the muscle (this method of taking the drug is called "skin topping") may last three days. The "track" of an injection into a blood vessel ("mainlining") shows up as a dark or reddish-brown line about half to three-quarters of an inch long. Such lines ordinarily disappear in a week. But they may become permanent scars as a result of frequent inexpert injections with unsanitary equipment or of certain adulterations in the drug.

Heroin appears as a white (occasionally, tan) powder. The drug normally has a bitter taste; dilution with milk sugar sweetens it, but that sign of adulteration displeases the customer. Peddlers therefore further adulterate the drug with bitter quinine. Heroin is usually carried in transparent plastic bags about an inch square. The bag may be doubled for security against tearing or dampness. Larger quantities may be carried in glassine bags three or four inches square, or a "bundle" of 20-25 of the smaller bags may be held together by a rubber band. In some sections of the country capsules are used. Purchase of empty capsules from a druggist is often a lead to an offender. For injection, the powder is dissolved in a few drops of water heated in bottle-top or spoon over a match, and then drawn into the needle attached to a small syringe or medicine dropper.

Marijuana is made from the leaves of the hemp plant, which resembles ragweed. It is easily grown in any part of the country, ranging in size from 3 to 16 feet depending on the climate. The leaves have saw-toothed edges and have a number of sub-leaves or lobes in odd numbers, e.g., 3, 5, 7, 9. The leaves are dried, ground or crumbled for smoking. The material resembles a greenish tea, and is carried loose in brown paper bags. The cigarettes are rolled by the user, and are about half the thickness of ordinary cigarettes, with ends crimped or pushed in to hold the loose dry marijuana. Sometimes, tea, catnip, or the cooking herb oregano are passed off as marijuana by fraudulent sellers.



Cocaine is a white crystalline powder derived from the South American coca plant. It has a powerful stimulant effect, but is so expensive compared with other available drugs that it is less frequently encountered. Wild, unrestrained, almost psychotic behavior may attend use of this drug.

LSD and other chemical hallucinogens may be in liquid form (a drop on a sugar cube was a common method of use), but it is more likely to be encountered in tablets or capsules. The tablets may resemble aspirin tablets with a kind of icing. The lack of any clear identification makes it risky to infer from appearance that particular pills are one of these dangerous drugs. Reactions of different people taking an LSD "trip" vary widely. The following description is from the Oakland, California Police Department Training Bulletin III-H, Jan. 13, 1967:

> Symptoms of the drug include pupil dilation, muscular tension, change in the pulse rate (fast or slow), deep respiration, lack of orientation, inability to concentrate and visual disturbance. Trivial objects assume a magnitude of importance. Perceptions of reality are distorted and a state similar to mental illness is produced. Medical authorities agree that if large doses of LSD are taken without proper supervision or if impurities in an illegally produced dose are ingested, brain damage could occur. However, no documented cases of human deaths resulting solely from ingestion of LSD have been reported. The drug is not addictive but could become habit forming. Hospitals report numerous cases of permanent psychosis from use of the drug.
>
> One subject under controlled medical conditions reacted by making nervous and furtive movements, rubbing his face with his hands, sucking his thumb and rolling out of a chair onto the floor. He began to cry and bite his hand. When the effects of the drug subsided, the subject explained his convulsion by saying, "My face was very large and had scars running down it. I experienced the desire to rip my skin off and pull out my hair. The experience was horrible."

Barbiturate effects resemble drunkenness without the odor of liquor. In all cases of suspected drug influences, police should be alert to the need of medical attention.

4. Liquor Offenses

Among the numerous offenses connected with regulation of the liquor trade, the following are most frequently encountered by the district police officer:

(i) unlicensed sale of liquor, e.g. operating a "speakeasy";[22]

(ii) buying, possessing, or transporting liquor not purchased from a state liquor store;[23]

(iii) buying liquor in Pennsylvania from anybody but a state liquor store;[24]

(iv) selling or furnishing alcoholic beverages to "any person visibly intoxicated, or to any insane person, or to any minor, or to "habitual drunkards, or persons of known intemperate habits";[25]

(v) permitting licensed premises to be frequented by "persons of ill repute, known criminals, prostitutes, or minors";[26]

(vi) operating a taproom after 2 A.M., or private clubs selling alcoholic beverages between 3 and 7 A.M.;[27]

(vii) involving minors in liquor transactions.[28]

Enforcement responsibilities in the liquor field are shared by the city police, the State Liquor Control Board enforcement agents, and the federal Alcohol Tax agents. The federal agents are especially concerned with unregistered stills and failure to pay federal taxes. The state agents are concerned with all the state tax and regulatory laws, and especially with the question of revoking taproom licences based on offenses committed on the premises. Information is usually exchanged between the different enforcement agencies.

Some of the offenses listed above are very loosely defined. Fairness to the operators has required enforcement policies to specify the offensive behavior a little more exactly. For example, the provisions against sale to insane persons or to "persons of known intemperate habits" are usually enforced on the basis of a doctor's certificate of mental incompetence or alcoholic addiction. The problem

is that a wife or other relative might try to get a policeman to prevent a taproom operator from serving a certain person. The request may or may not be reasonable. A policeman is not in a position to make this judgment.

With regard to licensed premises being frequented by "persons of ill repute, known criminals, prostitutes" etc., the undesirable character of such customers or frequenters must usually be brought home to the operator on the basis of police records of the individuals. Also, the requirement of "frequenting" means more than just the fact that a man with a record of gambling convictions is found in a taproom buying a drink. As a matter of general enforcement policy, the frequenting must be in such numbers or of such regularity as to raise the question whether the premises are being conducted in an orderly fashion. This is mainly a licensing matter on which relevant information should be passed along to the Liquor Control Board agents.

5. Prostitution; Pandering; Pimping

A. THE STATUTES

The three basic provisions in this area are Sections 512, 513 and 515 of The Penal Code. Section 512 penalizes "prostitution or assignation" and related activities, including using or permitting use of premises for these illegal purposes, and taking or directing people to a place for purposes of prostitution or assignation.[29] Section 513 deals with "pandering," that is, inducing or forcing women into prostitution. Among the acts penalized by Section 513 are:

(i) procuring a female for a house of prostitiution,

(ii) inducing, encouraging, or coercing a female to become a prostitute or an inmate of a house of prostitution,

(iii) receiving or giving money for recruiting prostitutes, and

(iv) importing prostitutes into the state.[30]

Section 515 prohibits accepting money or other valuables "without consideration from the proceeds of the earnings of any woman engaged in prostitution."[31]

Section 512 is a misdemeanor carrying a maximum imprisonment of one year. Sections 513 and 515 are felonies carrying a maximum imprisonment of 10 years. The difference is that the legislature in § 512 probably had in mind mainly small scale operations by the prostitute herself, or in voluntary association with others, whereas in §§ 513 and 515 the legislature was thinking of the imposition on women by panders and pimps, and of larger organized crime syndicates which traffic interstate in prostitutes and recruit girls into the business sometimes by threat or violence.

Prostitution is the business of providing sexual intercourse for money or other valuables. It is not enough to prove that parties engaged in fornication, or even that a girl has relations with men indiscriminately. But evidence of indiscriminate solicitation of men, for example in a taproom or on the street, helps to show that the relationship was commercial rather than personal. Although fornication itself is a finable offense in Pennsylvania, the law dealing with it is used mainly as a basis for compelling fathers of illegitimate children to pay for their maintenance.[32] If the girl is under 16, fornication is subject to punishment as so-called statutory rape, unless she is "not of good repute."[33]

B. POLICE OPERATIONS

Proving a prostitution case in court requires clear evidence of a *price* paid or to be paid, and of the *sexual services* given or to be given for that price. Since much of such dealing is done by hints and suggestions, the required proof is not easy to make. Uniformed personnel are rarely able to testify directly to such a deal. Indeed it is unwise and improper for uniformed personnel to frequent the bars and other places where most professional prostitutes solicit business. The Department therefore operates mainly through plainclothes men. The main target is the organized business, sometimes a "disorderly house" fronting as a cheap hotel, or a telephone business supplying "call girls."

The uniformed officer on the street therefore faces a difficult problem. He rarely is in a position to make a "good pinch," that is, to arrest with a good prospect of convicting.

He may also know that the court will not impose substantial penalties even if the defendant prostitute is convicted, and that she will be back on the street very soon. On the other hand, he may daily be confronted with women obviously engaged in soliciting men on the street, in bars, or other public places. Furthermore, he may feel pressures from police superiors to make more vice arrests. Sometimes the word goes around that a district has a "quota" of vice arrests. Some points to remember are as follows:

(i) The Police Department does not assign "quotas" of arrests. Arrests are to be made when justified and useful, not to fill quotas. The real measure of police efficiency in a district is the extent of vice in the area, not the number of arrests.

(ii) No arrests or other police measures are authorized for the purpose of harassment or for the purpose of getting the offender out of a particular district. The law enforcement goal is to reduce vice in the city, not to move it around.

(iii) Although many people believe that prostitution cannot be eliminated and that it would be better to tolerate it in some limited area, there is no tolerated red light area in Philadelphia. Nor is any organized criminal activity permitted to continue on the theory that it localizes the offense and may serve as a contact point between police and possible sources of information.

(iv) Every policeman should regard himself as an intelligence agent for control of organized crime. Report observations bearing on the existence and extent of vice on your beat, especially indications of organized activity.

6. Sodomy; Homosexuality

Section 501 of The Penal Code provides as follows:

"Whoever carnally knows in any manner any animal or bird, or carnally knows any male or female person by the anus or by or with the mouth, or whoever voluntarily submits to such carnal knowledge, is guilty of sodomy, a felony . . ." [34]

This legislation is very broad on its face. It seems to treat alike acts in public or in private, acts of married couples and acts between unmarried partners, cases involving force and violence equivalent to rape and cases involving seduction whether of adults or minors.

The Police Department does not have the manpower or the inclination to maintain surveillance of all voluntary sexual activity of adults carried on in private. Such an effort would impair its effectiveness in controlling ordinary crimes of violence, and would create severe problems in community relations. The Department also takes cognizance that, according to scientific studies, homosexual episodes occur among boys and young men in an experimental way without their becoming confirmed homosexuals, that psychiatric treatment may be preferable to prosecution as a way of dealing with homosexuality, and that the dangers of blackmail and extortion must be guarded against.

Accordingly, the Department's enforcement effort under the sodomy laws is concentrated on cases involving threats, violence, or children under 16 (as in "statutory rape"), and on acts occurring in public or in public facilities where offense to other citizens is likely.

7. Open Lewdness; Public Indecency

The statutory provision on this refers to "open lewdness, or any notorious act of public indecency, tending to debauch the morals or manners of the people." [35] The offense requires certain kinds of *behavior* plus a degree of *publicity*. In other words, the idea is that some acts, especially of a sexual nature, that are allowable or, at least, not criminal if done privately, may not be done where people are likely to observe the conduct and be shocked or offended.

The most common behavior of this character that policemen encounter is males exposing their sex organs in the presence of females in public places. These people are generally perverts who get sexual satisfaction without actual contact with females. Psychiatrists say they are not likely

to commit rape or other violent attack; but the behavior can be quite frightening to women and girls. Officers receiving complaints of this sort should report the incident to the Juvenile Aid Division, which has responsibility for investigating morals offenses by adults as well as juveniles. Be specially alert to patrol parks and other places where the activity is reported.

A common defense presented by men charged with open lewdness, on the basis of their having exposed themselves, is that the purpose was not sexual but simply to urinate. Officers should bear this in mind for two reasons. In the first place, men sometimes do get taken suddenly and have to relieve themselves in a park or alley. It would be a great injustice and shame to arrest such a person on a charge of open lewdness, implying that he is a sexual pervert. In the second place, if the offense has actually been committed you will want to make sure of a proper arrest and conviction by making your surveillance as thorough as you can under the circumstances. For example, take note of the place and duration of the exposure, the availability of lavatories, and any other condition bearing on a possible innocent explanation and defense.

There are other instances of exposure or nudity in public but without lewd intent where police action may be called for. These might fall within the language of the statute about "notorious act of public indecency."

EXAMPLES

I

Facts: *A group of young fellows strip to go swimming in the river. They can be seen from a nearby highway.*

Action: *Request them not to swim without trunks pointing out that some passersby object. If they do not comply, warn of possible arrest. The warning will help to get compliance, and, if they don't comply, will show that disregard of the feelings of others was intentional or reckless.*

II

Facts: *A young couple are "petting" in a car or on a bench in the park at night, or on the steps of a house.*

Action: *Proceed with request and warning as in I. Consider carefully whether to interfere at all. This decision will depend on whether the behavior goes beyond limits that are generally tolerated. Remember, the question is not whether you as an individual disapprove or wouldn't like your daughter behaving that way. It's not whether a particular neighbor complains. You represent* the whole public, *young and old, strictly religious and not so strict. That's the point of view the judge and the prosecutor are also obliged to take. If you decide against doing anything about the complaint, explain carefully to the complainant so that he or she will understand that you are doing your duty, not shirking it.*

III

Facts: *A person or persons engage in conduct that would fall within the statute if done "openly," but they are doing it in their own room. However, their behavior can be observed because the window-shades are not drawn.*

Action: *Depends on circumstances. If the window is on the first floor and opens on the sidewalk where passersby confront the activity, the behavior is legally "open" even though the parties are within their own premises. If request or warning is disregarded, arrest is appropriate, especially if there is any indication that the offender intentionally made a public display. If the window were on an upper story and the only person who might be offended would be a single neighbor who would observe the behavior only by peering through his own window into his neighbor's upstairs windows, it may be reasonable to infer that no display or offense was intended. A request for more respect for the neighbor's feelings should solve the problem.*

8. Obscenity

A. THE STATUTES

Section 524 of The Penal Code makes it a felony, carrying two years maximum imprisonment, to engage in various transactions relating to "obscene" books, magazines, pictures, writings, etc.[36] Obscene is defined as:

> that which, to the average person applying contemporary community standards, has as its dominant theme, taken as a whole, an appeal to prurient interest.

Section 414.1 of The Penal Code provides imprisonment up to one year for anyone who

> (i) telephones another person and addresses to or about such other person any lewd, lascivious, or indecent words or language, or
>
> (ii) anonymously telephones another person repeatedly for the purpose of annoying, molesting, or harassing such other person or his or her family.

Although this law goes far beyond obscenity, being directed at all kinds of unreasonable annoyance by telephone, a good many of the complaints received by the police do relate to obscene telephone calls.

B. WHAT IS "OBSCENE"?

Prurient interest means a *morbid* or *sick* curiosity about sex, defecation or other customarily private aspects of life. There is, of course, a perfectly normal curiosity about these matters, especially among youngsters who are just beginning to learn the facts of life. And it is perfectly normal for grown people, as well, to find pleasure in statues and paintings of nudes. Books and magazine stories written by famous authors, marketed by prominent publishing firms, and read by hundreds of thousands of respectable people, deal frankly with intimate relations between men and women.

The fact that all this is lawful and proper, and protected against official interference by the "freedom-of-speech"

provisions of federal and state constitutions, poses for police, prosecutors, and courts the delicate job of drawing the line between legitimate presentation of nudity and sex in books, magazines, film, and art, on the one hand, and, on the other hand, illegitimate exploitation of sick appetites. This is a job for experts, and should ordinarily not be undertaken by an officer without direction from the Department. The Department in turn often consults the District Attorney.

It's partly a matter of whether the questioned material goes outrageously beyond ordinary limits of tolerance in the community. Everybody knows that things like adultery, homosexuality, abortion, and birth control are commonly discussed in public today, although a few years ago that would have been regarded as offensive and shocking. We are used to women today wearing minimum bathing suits and ordinary dress exposing so much of the person as would

have led to prosecution in earlier days. In the same way customs and styles change in books, magazines, movies, shows, and dances.

Guidelines worked out by the Supreme Court of the United States include the rule that to be obscene, material must go *substantially beyond customary limits* of freedom in discussion, entertainment, photography, or other art. It's not a question of what shocks an individual policeman or

magistrate, but rather what would be acceptable to no substantial group or class in the community. Nothing can be banned if it has some merit or justification as art, science, education, etc. There must also be some showing that the storekeeper or other person involved in the distribution or exhibition of allegedly obscene material was aware that he was dealing in illegitimate material, or at least was reckless about it.

The foregoing information is provided because policemen often wonder why there is no interference with some fairly disgusting books, magazines, and shows. The policeman must understand and be able to explain this to others. Sometimes the question comes up of the effect of this trash on juvenile delinquency. Experts are not in agreement on this. Some believe that it causes readers or viewers to do some of the things they read about. Other experts think that reading the stuff is a *substitute* for action. Still other experts insist that if everything were suppressed that could conceivably be suppressed under the obscenity laws, the minority of sick, dangerous types would find just as much stimulation from sex and violence in ordinary movies, TV, and comics. So about all you can say regarding the relation between obscenity and crime, is that very little is truly known about it.

If you see somebody peddling what is called "hard core" pornography, that is dirty pictures of sexual acts, arrest him. But when it comes to magazines publicly displayed on newsstands or movies about which complaints are received, the matter should be reported to higher authority to make the difficult decision about legality.

9. Keeping a Disorderly House

Section 511 of The Penal Code makes it a misdemeanor to:

> "keep or maintain a common, ill-governed and disorderly house or place, to the encouragement of idleness, gaming, drinking, or misbehavior, and to the common nuisance and disturbance of the neighborhood or orderly citizens . . ."[37]

This provision overlaps many of the more specific offenses discussed in this manual as well as the disorderly conduct offenses discussed in Police Guidance Manual No. 7. It is infrequently employed, usually in connection with more specific violations of other sections. However, it can be useful against the owner or operator of an establishment where unidentifiable customers or guests are creating a neighborhood nuisance and disturbance. The section makes the person who keeps the place responsible for the nuisance even though he was not directly involved.

It is not the policy of the Department to use this rather vague statute to regulate coffee houses or other places of entertainment except where actual offenses like disorderly conduct are committed. "Misbehavior" and "encouragement of idleness" are not judgments which policemen can make without statutory or judicial guidance. The fact that people dress in an odd fashion, play unusual music or games, or just lounge around in a way that some neighbors find offensive is no basis for police action so long as the noise level is kept down to reasonable levels. Different classes and groups are sociable and amuse themselves in different ways. One man's entertainment is another man's "idleness" or "misbehavior," and people have to learn to live together with different tastes, so long as no specific crime is committed. You as a policeman will frequently be called on to explain this to complainants.

SOURCES AND READINGS

Pennsylvania Criminal Law and Criminal Procedure (Official State Police Manual prepared by the Pennsylvania State Police Academy, 1964 ed.)

The Challenge of Crime in a Free Society, Report of the President's Commission on Law Enforcement and the Administration of Justice ("National Crime Commission"), chaps. 4, 7 and 8 (1967), and the following Task Force Reports: Narcotics and Drug Abuse; Organized Crime; The Police.

President's Advisory Commission on Narcotics and Drug Abuse, Final Report (1963).

FOOTNOTES

1. The Challenge of Crime in a Free Society, Report of the President's Commission on Law Enforcement and Administration of Justice, 187-8 (1967).

2. 18 Purd. Pa. Stat. Ann. § 4601. Selling or advertising lottery or numbers tickets is also covered by § 602 of The Penal Code, 18 Purd. Pa. Stat. Ann. § 4602. Both offenses carry fines up to $500 and imprisonment up to one year. The buyer is not guilty of any offense.

3. Commonwealth v. Laniewski, 173 Pa. Super. 245 (1953).

4. Commonwealth v. Polite, 190 Pa. Super. 329 (1959).

5. 18 Purd. Pa. Stat. Ann. § 4603. This section also penalizes "common gamblers": those who "engage in gambling for a livelihood" or who are "without any fixed residence, and in the habit or practice of gambling." Manufacturing gambling devices is penalized under § 604, 18 Purd. Pa. Stat. Ann. § 4604.

6. In re Wigton, 151 Pa. Super. 337, 30 A. 2d 352 (1943). Compare In re Sutton, 148 Pa. Super. 101, 24 A. 2d 756 (1942).

7. In re Trombetta, Appeal of American Legion Post No. 51, 397 Pa. 430, 156 A. 2d 107 (1959).

8. 18 Purd. Pa. Stat. Ann. § 4605. See also § 4606 dealing with enticing persons to gamble.

9. Commonwealth v. Gauci, 152 Pa. Super. 437; 32 A. 2d 920 (1943).

10. 18 Purd. Pa. Stat. Ann. § 4607.

11. Ibid.

12. § 60 of the Penal Code of 1860, held to be still in force. In re Sutton, 148 Pa. Super. 101, 24 A. 2d 756 (1942).

13. Commonwealth v. Silverman, 97 P.L.J. 88, 90 (1949): "It is clear that the Pennsylvania Legislature has never made the sporadic or casual act of wagering, or betting, or gambling an indictable offense in Pennsylvania." Comm. v. Manuszak, 38 A. 2d 355, 155 Pa. Super. 309, 313."

14. 18 Purd. Pa. Stat. Ann. § 632a.

15. 35 Purd. P.S.A. § 780-4(q.).

16. 35 Purd. P.S.A. § 780-4(r).

17. 35 Purd. P.S.A. § 780-4(v).

18. 35 Purd. P.S.A. § 780-4(w).

19. 35 Purd. P.S.A. § 780-20.

20. Task Force Report: Narcotics and Drug Abuse, p. 10. Cocaine, a powerful stimulant which might be expected to lead to more aggressive behavior, is much less frequently used. Id. at p. 3.

21. The Challenge of Crime in a Free Society, 224-225, Report of the President's Commission on Law Enforcement and Administration of Justice (1967).

22. § 491(1) of the Liquor Code, 47 Purd. P.S.A. § 4-491(1).

23. § 491(2) and (3) of the Liquor Code. Cf. § 491(11) (importing). There is an exception for up to one gallon of liquor brought back from a foreign country duty-free under federal customs laws.

24. § 491(3) of the Liquor Code.

25. § 493(1) of the Liquor Code.

26. § 493(14) of the Liquor Code.

27. §§ 492(5) and (7) of the Liquor Code.

28. § 643 of The Penal Code, 18 Purd. P.S.A. § 4643 (child under 18 employed to entertain in places where liquor or beer is served, or to deliver liquor or beer); § 677 of The Penal Code, 18 Purd. P.S.A. § 4677 (inducing minor to buy liquor or beer).

29. 18 Purd. Pa. Stat. Ann. §§ 4512. There are special provisions on prostituting a wife (§ 4514), or child under 16 (§ 4508).

or permitting children under 16 to be in a "reputed house of prostitution" (§ 4509).

30. 18 Purd. Pa. Stat. Ann. § 4513. See also § 4516 (detaining female in house of prostitution for debt); § 4517 (transporting prostitutes).

31. 18 Purd. Pa. Stat. Ann. § 4515. See also § 4518 (male frequenter of bawdy house who asks for or takes money from operator or inmate).

32. § 506 of The Penal Code, 18 Purd. P.S.A. § 4506.

33. § 721(B) of The Penal Code, as amended in 1966. 18 Purd. P.S.A. § 4721(B). The male must be over 16. Under § 532 of The Penal Code, 18 Purd. P.S.A. § 4532, a boy 18 or over may be guilty of "corrupting the morals of a child" if he engages in sexual intercourse with a girl under 18. Commonwealth v. Delacy, 204 Pa. Super. 163, 203 A. 2d 587 (1964).

34. 18 Purd. P.S.A. § 4501. § 4502 penalizes, in addition, assault with intent to commit sodomy and solicitation of sodomy.

35. § 519 of The Penal Code, 18 Purd. P.S.A. § 4519.

36. 18 Purd. P.S.A. § 4524: (i) sell, lend, distribute, exhibit or give away; (ii) possess with intent to sell, lend, etc.; (iii) knowingly advertise such material or sources where it can be obtained; (iv) print, publish, manufacture, prepare, draw, photograph; (v) hiring minors to do any of the foregoing. §4527 makes it a misdemeanor to put obscene pictures or writing on public walls, passageways, etc. § 4528 deals with obscene shows and movies, and includes anyone permitting such shows on premises which he controls. § 4530, largely overlapped by § 4524, refers to publication, exhibit, and sale of "indecent, lewd, and obscene" pictures and statues, specifying one year as maximum imprisonment.

37. 18 Purd. P.S.A. § 4511.

Police Guidance Manual No. 7

Preserving Order and Keeping the Peace

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Project financed by the Office of Law Enforcement Assistance
United States Department of Justice

Printed by the University of Pennsylvania Printing Office
Philadelphia, 1968

TABLE OF CONTENTS

1. Introduction

This manual deals with the policeman's responsibility in regard to minor offenses like drunkenness, disorderly conduct, and loitering, and in regard to some offenses like resisting arrest which although often serious may sometimes be petty. We take up these offenses as a group because they are vaguely defined and often require an exercise of judgment or a policy determination as to whether certain situations should be treated as violations or not. Often there is no complainant since nobody has been seriously hurt. Thus the minor offenses are unlike the major felonies, like burglary, robbery or rape, which are more clearly defined, and always have a victim-complainant.

In dealing with minor offenses, the policeman often must decide on the spot whether the public interest and good order demand an arrest or will be better served by warning the offender. The policeman will be guided by Department policy and directives, as well as by the orders and advice of superior officers.

The overall policy of the Department is to use the minor offense law as a set of tools to be selectively employed to do the main job, keeping order. A police captain who keeps order in his district or a patrol officer who keeps order on his beat, with only a few arrests for minor offenses, may be doing a better job than others who arrest more often.

There is a substantial probability that a minor offender will be discharged at the district or by a magistrate. In that case, he and his family and friends are likely to blame you and police generally for a "bum pinch," even though you were entirely justified as a matter of law in making arrest. Thus arrest policy has to be based not only on whether there was a technical violation but also on the likelihood that a reasonable magistrate would convict.

The situation is made more complicated for the officer and harder on the citizen by the fact that the officer cannot

in Philadelphia at the present time issue a summons for minor offenses other than traffic violations. He has to make the choice between either arresting or warning. Arrest involves immediate and usually unexpected interference with the freedom of the arrestee. It is more likely to lead to anger and even resistance than a single notice to appear with opportunity to pay a fine by mail.

In place of arrest and prosecution, the experienced policeman who knows his neighborhood and the people in it will often use advice, warning, discussion with parents or other relatives, friends, ministers, and the like. Sometimes he will inform a social agency. He keeps an informal record of these encounters (a notebook is useful) so that if the trouble is repeated and an arrest becomes necessary, he will be able to give the background to the district officer, the prosecutor, and the court.

The patrol officer should bear in mind, when he encounters minor offenses, that some of them may be connected with serious crime that falls within the responsibility of the Detective Division. This will be a consideration in deciding whether to arrest. In any event the patrol officer should be alert to pass on to his superiors any information of interest to any other part of the police force.

2. Drunkenness

A. THE PROBLEM

In terms of numbers, drunkenness is one of the major police problems. About 45% of total arrests in Philadelphia during the years 1965-1966 were for drunkenness. In 1966, the President's Commission on Law Enforcement and the Administration of Justice ("National Crime Commission") described the national situation as follows:

> TWO MILLION ARRESTS in 1965—one of every three arrests in America—were for the offense of public drunkenness. The great volume of these arrests places an extremely heavy load on the operations of the criminal justice system. It burdens police, clogs

lower criminal courts and crowds penal institutions throughout the United States.

The two million arrests for drunkenness each year involve both sporadic and regular drinkers. Among the number are a wide variety of offenders—the rowdy college boy; the weekend inebriate; the homeless, often unemployed single man. How many offenders fall into these and other categories is not known. Neither is it known how many of the offenders are alcoholics in the medical sense of being dependent on alcohol. There is strong evidence, however, that a large number of those who are arrested have a lengthy history of prior drunkenness arrests, and that a disproportionate number involve poor persons who live in slums. In 1964 in the city of Los Angeles about one-fifth of all persons arrested for drunkenness accounted for two-thirds of the total number of arrests for that offense. Some of the repeaters were arrested as many as 18 times in that year.

A review of chronic offender cases reveals that a large number of persons have, in short installments, spent many years of their lives in jail. . . .

The police do not arrest everyone who is under the influence of alcohol. Sometimes they will help an inebriate home. It is when he appears to have no home or family ties that he is most likely to be arrested and taken to the local jail.

One policeman assigned to a skid row precinct in a large eastern city recently described how he decided whom to arrest:

"I see a guy who's been hanging around; a guy who's been picked up before or been making trouble. I stop him. Sometimes he can convince me he's got a job today or got something to do. He'll show me a slip showing he's supposed to go to the blood bank, or to work. I let him go. But if it seems to me that he's got nothing to do but drink, then I bring him in."

Drunkenness arrest practices vary from place to place. Some police departments strictly enforce drunk-

enness statutes, while other departments are known to be more tolerant. In fact, the number of arrests in a city may be related less to the amount of public drunkenness than to police policy.

The Commission also called attention to unfair and undignified handling of drunks in the minor courts, the poor condition of the jails, and the merry-go-round of repeated arrest, jail, and release that accomplish nothing except to keep the police busy. It concluded:

> The Commission seriously doubts that drunkenness alone (as distinguished from disorderly conduct) should continue to be treated as a crime. Most of the experts with whom the Commission discussed this matter, including many in law enforcement, thought that it should not be a crime. The application of disorderly conduct statutes would be sufficient to protect the public against criminal behavior stemming from intoxication. This was the view of the President's Commission on Crime in the District of Columbia, which recommended that the District of Columbia drunkenness law be amended to require specific kinds of offensive conduct in addition to drunkenness.
>
> Perhaps the strongest barrier to making such a change is that there presently are no clear alternatives for taking into custody and treating those who are now arrested as drunks. The Commission believes that current efforts to find such alternatives to treatment within the criminal system should be expanded. For example, if adequate public health facilities for detoxification are developed, civil legislation could be enacted authorizing the police to pick up those drunks who refuse to or are unable to cooperate—if, indeed, such specific authorization is necessary. Such legislation could expressly sanction a period of detention and allow the individual to be released from a public health facility only when he is sober.[2]

B. THE LAW

In Pennsylvania, the main basis for arresting drunks has been a law providing a fine up to $5 against any person

"found intoxicated in any street, highway, public house or public place."[3] In addition, statutes relating to the House of Correction include provisions for confining "habitual drunkards" for terms of three months or more depending on the number of prior convictions.[4] In 1967, however, the Philadelphia Court of Common Pleas held that

> ". . . habitual intoxication is an illness, and as such may not constitutionally be made a criminal offense. It follows that the common manifestations of the compulsive habit, the staggering on the street, the rolling in the gutter, cannot convert the status of addiction into a crime any more than the violent sneeze, obnoxious (or even infectious) as it may be to another person within range, can render the common cold a crime."[5]

The Court went on to make it clear that drunkenness would not excuse crimes like assault, rape, theft, or even disorderly conduct, despite the fact that intoxication might contribute to the commission of the offense. The Court indicated that the only constitutional way to deal with alcoholism as a disease is by therapy in hospitals or other treatment facilities for which provision has been[6] or ought to be made. The continuing uncertainties in this field are demonstrated by Powell v. Texas, a case decided by the United States Supreme Court, June 17, 1968. By vote of 5 to 4, the Court sustained the conviction of a chronic alcoholic for being drunk in a public place.

C. ROUTINE HANDLING OF DRUNKS

Until the city or the state provides some other way of dealing with the problem, the Police Department has to work with the authority and facilities that we have. Drunks have to be taken into custody if found in public in a condition dangerous to themselves or others or if they are engaged in disorderly conduct. The patrol officer is often in no position to make judgments as to whether the drunk is habitual or not, and even if the habitual alcoholic is not to be treated as a criminal, he has to be picked up and somehow turned over to the medical or social services. In a metropolitan com-

munity this means drunks generally have to be brought to the district police station. Only exceptionally will the patrol officer know that a particular drunk can be returned to his home nearby, without disrupting his patrol and with some assurance that the family can control the situation.

Be on the alert to the possibility that something more serious than drunkenness is going on. The person may be having a heart attack or an epileptic seizure, whether or not he's been drinking. In such cases immediate transportation to a hospital or other medical assistance is called for.

At the police station, the question arises whether to keep the drunks and slate them for hearing before the magistrate or to release them as they sober up. This depends partly on legal considerations and partly on practical considerations. If, as a legal matter, the drunk at the police station is regarded as in protective custody, like a lost child or juvenile delinquent, then he is not there under arrest and need not be detained after he sobers up or if family or other responsible people show up to take charge of him.

The practical question is what good does it do to take up police and court time, transporting, hearing, and jailing them however briefly? It would seem much more sensible to let the district personnel operate in relation to drunks somewhat like Juvenile Aid Officers in relation to children. The J.A.D. officer in most cases makes what is called a "remedial" decision, releasing the child to his parents or other appropriate custody where there is no need or use invoking court authority. Thus, the first thing the district would do, after recording the custody, is make sure that there is no medical emergency. (This is a continuing responsibility as long as there are people in the cells.) Then contact would be made with a hospital, rehabilitation center, or other civil agency currently interested in or handling drunks. Contact would also be made with the family where practicable. Without resort to the courts, drunks would be turned over to a responsible agency or family, or would be released on sobering up. On May 24, 1968, the Police Department moved in the direction of such a policy by authorizing prehearing release of drunks to responsible persons.

The picture changes so rapidly with respect to civil agencies and facilities to handle drunks, and the legal status is so unsettled that it is impossible in a permanent manual like this to specify procedures to be followed. Consult current directives of the Police Department.

In any event, police officers should treat drunks as human beings under care. They are not to be ridiculed, degraded, or otherwise abused.

D. WHO IS "DRUNK"?

A man is not drunk or intoxicated just because he has liquor on his breath or is seen taking a drink.[7] He must do something that shows his judgment or control is affected, for example, stagger, annoy passersby with loud and boisterous behavior, or sit or lie on the street, sidewalk or other inappropriate place.

Drunkenness or intoxication is not the same as being "under the influence of intoxicating liquor." Section 1037 of the Motor Vehicle Code prohibits operation of an auto in that condition, and the Supreme Court has made it clear that any drinking which substantially impairs judgment, clear thinking, or normal faculties is enough for a violation of that section, although that may not amount to drunkenness.[8]

EXAMPLE

Facts: *In investigating an incident you approach a bystander and ask him if he saw what happened. You smell alcohol on the bystander's breath. He responds in an unpleasant manner, with derogatory remarks about the police.*

Action: *Hold your temper. Continue your questioning if you think you can persuade him to give useful information. If not, leave him with a warning that he's getting close to arrest for disorderly conduct or public drunkenness. Do not arrest for drunkenness just because he's "fresh." Arrest for disorderly conduct only if the behavior meets the tests of Section 3 below. Remember that it's perfectly lawful for adults*

to drink; and it would be unfair, and therefore contrary to Department policy, to arrest rude drinkers where a non-drinker would not be arrested in the same circumstances.

E. DRUNK AND DISORDERLY

Drunkenness is not an excuse for disorderly conduct or any other offense. Accordingly, an individual who is misbehaving in a way that would call for arrest if he were sober should be arrested and charged with disorderly conduct or whatever other offense he may be committing. But a man may be so drunk that he doesn't know what he's doing, and there are some offenses that can only be committed if the person knows what he's doing.

EXAMPLES

I

Facts: *You get a call that someone is trying to break into a house. When you arrive at the scene you find a staggering drunk who insists that it's his house. The circumstances are such that if he weren't drunk, you would have cause to believe he was a burglar. It turns out that he does live nearby in a house that could be mistaken for the one he was trying to enter.*

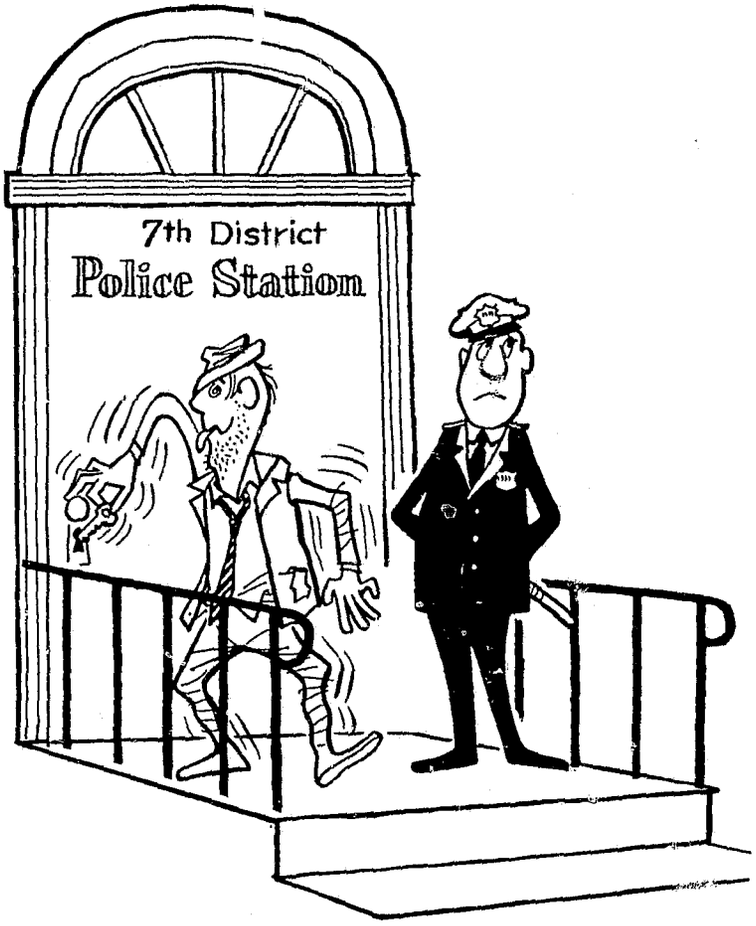
Action: *Help him over to his own house. Do not charge him with burglary or attempted burglary if you are satisfied that in fact it was a mistake as he insists. A man is no burglar if he doesn't intend to commit a felony in the building he's entering, but only means to get into his own house.*

II

Facts: *Same as in I, but the drunk is using a brick to break a window trying to get in over the protests of the occupants.*

Action: *Arrest for public drunkenness, malicious mischief, and disorderly conduct (if he's making a sufficient disturbance) would be warranted. These offenses can be committed without any "specific intent" such as is required in burglary or larceny. However,*

if the damage was minor and the persons immediately affected are reluctant to cooperate in prosecuting the offender (out of neighborliness or friendship or because the culprit or his family offers to pay for the damage), it would be within the discretion of the officer to



decide that no good purpose would be served by an arrest. The officer must not undertake to settle or compromise such cases by exacting payment of damages for the injured party. Not even a magistrate is authorized to do that. Under Pennsylvania Rule of

Criminal Procedure No. 315, only a court of record acting with the consent of the district attorney can discharge a defendant on the basis of a settlement agreement.

F. "DRUNKEN DRIVING"

The following quotation from the Pennsylvania Supreme Court decision in Commonwealth v. Horn, 395 Pa. 585, 590 (1959), tells the story:

> The statute does not require that a person be drunk, or intoxicated, or unable to drive his automobile safely in traffic, but merely that the Commonwealth prove beyond a reasonable doubt that defendant was operating his automobile while under the influence of intoxicating liquor. It is very difficult to define "drunk," or "intoxicated" or "under the influence of intoxicating liquor." Intoxication is a matter of common observation and knowledge, and because of observation, knowlege or experience, the opinions of laymen are admissible and medical opinion, while of course admissible, is not required. . . . The statutory expression "under the influence of intoxicating liquor" includes not only all the well known and easily recognized conditions and degrees of intoxication, but also any mental or physical condition which is the result of drinking alcoholic beverages and (a) which makes one unfit to drive an automobile, or (b) which substantially impairs his judgment, or clearness of intellect, or any of the normal faculties essential to the safe operation of an automobile.

G. MINORS PURCHASING, CONSUMING, POSSESSING, OR TRANSPORTING ALCOHOLIC BEVERAGES INCLUDING BEER

In 1963 the State Legislature made it an offense for any person under 21 to "attempt to purchase, to purchase, consume, possess or to transport any alcohol, liquor or malt or brewed beverages within the Commonwealth."[9] This subject is discussed in Police Guidance Manual No. 9—Juvenile Delinquency.

3. Disorderly Conduct; Breach of the Peace

A. GENERAL RULES

The basic definition of disorderly conduct is found in Section 406 of the Penal Code:[10]

> Whoever wilfully makes or causes to be made any loud, boisterous and unseemly noise or disturbance to the annoyance of the peaceable residents near by, or near to any public highway, road, street, lane, alley, park, square, or common, whereby the public peace is broken or disturbed or the traveling public annoyed, is guilty of the offense of disorderly conduct.

A somewhat broader definition of disorderly conduct applies in relation to annoying 1) passengers on railways, elevated and subway trains, bus platforms and terminals and 2) visitors to public *or private* parks or picnic grounds.[11] Here the use of "obscene or profane" language, annoying or disturbing the public, is expressly mentioned.

Another section[12] makes it an offense to "wilfully and maliciously disturb or interrupt" any meeting, congregation, ceremony, exhibition, etc. There is no requirement here that the disturbance be loud or boisterous, and no requirement that the occurrence be near public highways or annoy the public. The right of religious, political, fraternal, labor and other groups to run their meetings in good order is protected by this section without regard to whether we or other people approve of the organization.

City ordinances[13] also prohibit "loud and unnecessary noises" in or near streets and other public places. Specifically prohibited are noisy handling of trash cans, unnecessary noise near hospitals, churches, schools and courthouses, use of noisy devices to peddle goods, defective auto mufflers, use of auto horn except in emergency, etc.

There is no statute on "breach of the peace." Such an offense exists under the common law, which is still in force in Pennsylvania. It is closely related to disorderly conduct, but its exact limits are vague. For police purposes it is best

to stick to the disorderly conduct charge as defined by the legislature, except in some extraordinary situations mentioned below.

Here are some things to notice about disorderly conduct under Section 406:

a) *Not all loud, boisterous conduct is prohibited. The conduct must be "unseemly"* as well as loud and boisterous. The idea is that people are allowed to be loud and boisterous under some circumstances. "Unseemly" means that the loudness and boisterousness are improper under the circumstances. For example, a certain amount of loud and boisterous behavior is usual and proper at sporting events or in the conduct of some kinds of business.[14]

b) *The disturbance must "annoy . . . peaceable residents . . . or the traveling public."* In other words, "loud, boisterous and unseemly" noise or disturbance doesn't constitute disorderly conduct unless it rises to the level where it annoys people in the vicinity. It's not a question of whether some particular individual is annoyed or complains. The question is whether the behavior has gotten to the level where the nearby public would be made uncomfortable. The question of annoyance to the public should not be confused with annoyance to the police officer. Often the officer called to the scene of a minor disturbance is personally annoyed by the attitude of the subjects. Don't let that kind of annoyance affect your professional judgment. On the other hand, if the conduct is disturbing enough to annoy residents or passersby it is an offense even if the policeman is the only one who happens to be present observing it.

c) *Disorderly conduct in private is ordinarily no offense.* That's what the statute means when it talks about "public peace" being broken by misbehavior near "public highways," etc. Of course, if passersby or neighbors are subjected to unreasonable disturbance by loud noises emanating from private premises, the misbehavior is no longer private. It is appropriate for the police officer to knock on the door of the house or apartment and politely warn that the noise must be reduced to avoid violating the law.

d) *Disorderly conduct does not include odd behavior or dress, public displays of affection.* Young people often dress or behave in a way that shocks people, but unless the behavior is extreme enough to violate some other law, for example, open lewdness,[15] there is no offense. The Pennsylvania Supreme Court has declared that a disorderly conduct statute would be unconstitutional if it amounted to a "dragnet statute which permits the arrest of persons who are acting in a manner which does not meet the approval of the authorities."[16]

The Supreme Court of New Jersey has barred revocation of taproom licenses for permitting homosexuals to congregate, stating:

> "So long as their public behavior violates no legal proscriptions, they have the undoubted right to congregate in public [but not to engage in] overtly indecent conduct and public displays of sexual desires manifestly offensive to currently acceptable standards of propriety."

The court unanimously held that it was not enough to show that the homosexuals lisped, giggled, swished, looked in each others' eyes, held hands, and flirted.[17]

e) *It is not Disorderly Conduct or Breach of the Peace to make a speech, to congregate, or to do anything else lawful, even if there are people about who don't like the speaker and will react against him in a disorderly fashion.* Many times when there is trouble brewing, the officer responsible for keeping order is understandably tempted to prevent the trouble by stopping the activity which is provoking the unruly crowd. This question is gone into more deeply in Police Guidance Manual No. 10, dealing with demonstrations, riots, etc. It is enough to say here that the American rights of free speech and assembly must be protected by the police. The officer may *request* the speaker to desist or move, but he *may not order.* Police action must be directed against the disorderly or riotous persons who are taking illegal measures against the speaker. Call for police assistance promptly.

f) *Profanity is not necessarily disorderly conduct.* Notice that only the statute dealing with disorderly conduct on trains, subways, etc., refers to "obscene or profane" language.[18] The reason why the legislature has not authorized punishment of profanity in all circumstances is that profanity is part of the customary speech of many groups or classes. Youngsters trying to show off, soldiers and sailors, and working people in some plants, use language that many would find offensive but which is common in their own circle.

So don't treat dirty language as disorderly conduct, even when it's addressed to you or other officers, unless the combination of loudness, offensiveness, and disturbance of surrounding people adds up to a general nuisance. Section 407, above, shows that the necessary degree of disturbance by profanity is present in public transportation situations, amusement parks and the like, where all kinds of people are present and some of them are unfairly subjected to unpleasantness. In such situations the same degree of loudness is not required as would be required for other disorderly conduct.

g) *Disorderly conduct must generally be "wilful."* Although the exact legal meaning of "wilful" is unclear, for police purposes you should treat it as meaning that the subject must have intended to annoy or disturb, or at least that he was reckless about it. "Reckless," in this connection, refers to a situation where the offender has a pretty good idea he is making a nuisance of himself, but just doesn't care. Mere negligence, that is, where the offender ignorantly fails to realize that he is disturbing others, may not satisfy the legal requirement of "wilfulness." Accordingly, it is often wise for the police officer to warn the subject who is engaged in disturbing behavior, perhaps without realizing it. Then if the misbehavior continues, it will clearly be "wilful."

Violation of the Philadelphia ordinances mentioned above do not expressly require "wilfulness," but the officer should generally warn before arrest if it appears that a warning will probably secure compliance.

h) *Breach of the Peace* might be used as the basis for arrest in a case of serious verbal abuse, threats, or racial epithets that appear immediately likely to precipitate violence or riot, if the offender does not desist on warning.

As stated earlier, breach of the peace is not covered by statute in Pennsylvania. It is a common law misdemeanor, which means that it's not a summary offense punishable by a magistrate, but requires indictment by a grand jury, and carries substantial penalties. This shows that breach of the peace is considered a fairly serious offense.

It is commonly said that breach of the peace includes not only acts of violence and public disorder but also "any act likely to produce violence.[19] However, the courts of Pennsylvania, as well as the Supreme Court of the United States, have made it clear that this definition is too broad insofar as it covers lawful speech or lawful conduct merely because it may produce unlawful violence by others.

EXAMPLES

I

Facts: *Jehovah's Witnesses play to several willing listeners on the sidewalk phonograph records contain-*

ing material disrespectful of other religions. Their behavior is not "noisy, truculent, overbearing or offensive," nor does it result in illegal obstruction of traffic on the sidewalk where the occurrence takes place. Some hearers are deeply offended, and it looks as if they may assault the person playing the record.

Action: *Do not arrest for breach of peace.*[20] *The only people who are breaching the peace are those getting ready to commit assaults, and you might tell them so. A respectful request to the Witnesses to refrain from provoking disorders would be permissible.*

II

Facts: *A group of youths lounging at a street corner taunt and harrass passersby with insults and vile language.*

Action: *If a request or warning is not effective, arrest is warranted. "Fighting words," the U.S. Supreme Court has held, may be penalized.*[21] *Such a case does not require loudness or boisterousness of the degree ordinarily necessary in disorderly conduct.*

B. ARGUING WITH OFFICER

It is not an offense to argue with a police officer. A person being placed under arrest, or his friends, or even passersby, may express disapproval of the policeman's action. This can be very hard to take, especially when the argument takes a disrespectful form; but every experienced policeman knows that he has to expect this sort of thing in the course of his job. The best thing to do is to give firm, brief response to reasonable questions, but mainly to do what you have to do without being drawn into arguments.

Of course, in arguing with an officer, the subject may become so loud and boisterous, so foul-mouthed, that there results the kind of public disturbance covered by § 406. But don't be too quick about turning an "argument" case into a disorderly conduct or resisting arrest.[22] Keep cool. Try to reason with the subject. Don't do or say anything to provoke him. Remember that a person whose arrest starts the

argument may be innocent even though the arrest is entirely proper because you have good reason to believe him guilty. People are naturally resentful, suspicious, and excitable under these circumstances.

The courts of Pennsylvania have declared that it is not illegal obstruction to stand in front of a policeman who has made an arrest, ask for his number, and remonstrate with him for ill-treating the prisoner:

> "There was really no hindrance or obstruction. The demand for the number of an officer is no crime, nor is the momentary standing in front of him. Still less is it an offense to remonstrate, provided there is no incitement to resistance." [23]

C. REFUSAL TO "MOVE ON"

A citizen is not required to obey police orders except in a few special situations. Refusal to move on when directed to do so by a policeman makes a person subject to arrest only if the person's behavior is otherwise an offense.

EXAMPLES

I

Facts: *A group of people are illegally obstructing passage on a sidewalk. The officer orders some to move on so as to clear passage. They refuse.*

Action: *After appropriate effort to persuade the obstructers to clear a path for other users of the sidewalk, an arrest may be appropriate. But the arrest is for the illegal obstruction, not for disobedience of police orders. The police order or request simply gives the offender a chance to avoid arrest by ceasing his illegal behavior.*

II

Facts: *An automobile driver at a controlled intersection refuses to move on when the light turns green, and ignores the traffic policeman's direction to proceed.*

Action: *Summons or arrest is appropriate for violation of the Pennsylvania Motor Vehicle Code* §

1221(d), which specifically penalizes refusal to obey lawful orders or signals of a uniformed policeman controlling traffic.

III

Facts: *A group of people gather at the scene of an arrest or traffic accident. There is no obstruction of traffic nor anything that could be called obstruction of officers in the execution of their duty.*

Action: *Do not use official authority to move this legal assembly of people. You do have authority to do what is necessary to maintain the peace and public safety. But orders that go beyond what is reasonably necessary for that purpose are unlawful, and disobedience of such orders is no offense.*

D. LYING TO OFFICERS

Pennsylvania has no statutory offense of lying to officers. The nearest thing to such an offense is the prohibition of false fire alarms and false reports of bombs and explosives. It may seem strange to the inexperienced policeman that something so troublesome to law enforcement as lying to investigating officers is not an offense. There are several reasons why the law hesitates to make this an offense, but rather restricts itself to punishing only lies told under oath in open court, that is, perjury, or lies told in writing under oath, as in affidavits. In the first place, most people will be glad to help a good police department and a polite policeman without threat of prosecution. Of course suspects and their friends will not; but our constitutional policy of not compelling a man to incriminate himself prevents us from trying to make the offender help to convict himself. Then there is the risk that an occasional policeman would "frame" a suspect by falsely charging and testifying that the suspect or his friends lied. Police-community relations would be injured if the public understood that any talk with a policeman was at the risk that he could later report that he had been lied to, with the result that the informant would be prosecuted.

Since the common law is still in force in Pennsylvania, there is a vague possibility that certain classes of aggravated false statements to police may be offenses, e.g. volunteer reports that falsely incriminate an innocent person and put the police department to much trouble and expense.

4. Loitering; Vagrancy; Criminal Registration

§ 418 of the Penal Code[24] provides up to a year in jail for anyone who "at night time maliciously loiters or maliciously prowls around a dwelling house . . ." The Philadelphia Code of Ordinances § 10-603 provides a fine up to $25 for loitering in subway or elevated platforms or concourses, railway stations, or staircases leading to any of them. The ordinance defines loitering as "idling or lounging," but not presence for the purpose of using the transportation facilities.

The vagrancy statute[25] covers (i) wandering beggars "with no fixed place of residence" in the township or ward; and (ii) persons from outside the state who "loiter or reside" here without a job or visible means of support, and who "can give no reasonable account of themselves or their business" here. The statute appears to provide a mandatory sentence of at least 30 days compulsory labor on the roads and not more than 6 months in jail. There is also a "tramp" statute[26] covering wandering beggars "with no fixed place of residence." There may also be a common law vagrancy offense still surviving in Pennsylvania's uncodified criminal law, but for present purposes you can forget about that one.

This is a very confusing set of laws. Some of them come down from hundreds of years ago when, in England, it was practically a crime to be unemployed, or to change your residence because you were poor. [The taxpayers where you moved were worried about the extra relief payments just like today.] To some extent these laws may be obsolete or unconstitutional. On the other hand, they are meant to deal with some real problems of public order that still exist.

It's up to us in the Police Department to apply them sensibly. A few simple guidelines will help:

Nobody should be arrested or bothered under these laws just because he looks poor, or is poorly dressed, or appears to be a stranger in the neighborhood or city.

Nobody should be arrested. or bothered under these laws on mere unfounded suspicion that he may be guilty of some serious offense, or because you want to search him. As explained in Police Guidance Manual No. 4, arrests and searches have to be justified by probable cause to believe the person has committed that offense. "Probable cause" means that you have to have some basis you can point to, more than just hunch, for thinking this man guilty. That requirement of probable cause cannot and should not be disregarded or evaded by treating the loitering or vagrancy law as a substitute.

The malicious loitering and prowling law is intended and should be enforced only against persons preparing to commit burglary, peeping, eavesdropping or some other specific misbehavior.[27] As you know, burglary is not committed until the offender has actually gotten himself or at least a tool inside the premises. Attempted burglary is when the offender is caught trying to get in. The courts have taken a narrow view of the law of attempt; so that a man has to go pretty far along towards entering a building, e.g. by putting a jimmy under a window-sash, to be guilty of attempted burglary. But you can pick him up under the malicious loitering and prowling law before he has gone that far. Whether or not you pick him up, it is of course appropriate to ask the man for identification and explanation of any unusual behavior. See Police Guidance Manual No. 4 as to the extent of authority to "stop-and-frisk."

You ought to have good ground for believing that the man is getting ready to commit burglary, for example, by activities amounting to "casing," especially where you recognize him as a former offender. If you have reasonable ground, you can of course arrest him for malicious loitering, and in that connection and for your own protection you will

search him. If he is carrying burglary tools, you will have him for that offense too.

Notice that the statute is limited to the neighborhood of *"dwelling houses"* at *night.* So it can't be used generally for prowlers in the neighborhood of stores, warehouses, etc. This is probably because the law-makers were particularly interested in the security of women and others in their own homes who become alarmed when they observe suspicious-looking men lurking about the neighborhood at night. But the risk of picking up and inconveniencing innocent men is so considerable, when the policeman intervenes before the stage of "attempt," that the law-makers have not been ready to extend the malicious loitering law beyond protection of the dwelling house.

If the man gives an explanation that satisfies you he is not preparing to commit burglary or other misconduct, *do not take him to the District.* If you are uncertain about his explanation, but his behavior has been such as to give reasonable people in the neighborhood cause to be alarmed for the safety of their persons or property, take him into custody.

The Philadelphia subway and railway loitering ordinance should likewise be used selectively and with discretion. Its main purpose is to keep these areas accessible to the public and free of disorder. Although the ordinance applies literally to anybody who, for example, ducks into a railroad station during a rainstorm and sits down to read the paper, it would be obviously unwise for a policeman to arrest or disturb such a peaceful citizen on the basis that he was "idling" in the station without intending to buy a ticket or make a trip. Illustrations of proper occasions for enforcing the ordinance would be as follows:

(i) Rough and boisterous youths congregate and inconvenience or annoy users of the transportation facilities. Often the behavior will be within or close to "disorderly conduct."

(ii) Recognized pickpockets hang around waiting for an opportunity to work on the crowds.

(iii) Bums or others abuse the premises by littering, taking up scarce seating facilities or the like.

(iv) Subway platforms and stairs which have been the scene of violence or disorders may have to be kept clear as a precautionary measure against renewed violence.

Often, a warning to leave will be enough to accomplish the purpose of the ordinance.

Vagrants; Tramps; Bums. The best policy for the officer to follow is to avoid taking bums into custody on the basis of vagrancy or tramping. Arrest only if the person is guilty of one of the other minor offenses discussed in this Manual, for example, disorderly conduct or public drunkenness.

Criminal Registration. A Philadelphia ordinance[28] requires certain people previously convicted of serious crime in this state or elsewhere to register with the police department within 48 hours after coming to the city. Various arrangements have been made to bring this requirement to the attention of persons obliged to register. For example, men released from prison are informed at that time, and notices are posted in transportation terminals. It is the policy of the Police Department to encourage and facilitate compliance with the registration ordinance, without harassment of individuals who may through ignorance have neglected to register. Police officers encountering such individuals should advise them of the ordinance and afford fair opportunity to register.[29]

5. Obstructing Officer; Resisting Arrest; Failure to Aid Officer

Section 314 of the Penal Code provides in part:

Whoever knowingly, wilfully and forcibly obstructs, resists or opposes any officer . . . in making a lawful arrest . . . or rescues another in legal custody; or whoever being required by any officer, neglects or refuses to assist him in the execution of his office in any criminal case, or in the preservation of peace, is guilty of a misdemeanor . . .

In addition to this statutory provision, there is the common-law which reaches some obstructive behavior of an intimidating character even though the law enforcement officer is not yet making an arrest or executing a warrant, as specified in the statute above. One case, for example, dealt with armed obstruction of a sheriff on his way to investigate a complaint.[30]

A. OBSTRUCTING; RESISTING

Section 314 has been authoritatively interpreted as follows in relation to the first clause, "knowingly, wilfully and forcibly obstructs, resists or opposes any officer":

. . . [V]erbal remonstrances, unaccompanied by threats or incitement to resistance, are insufficient. But where there is a presence of deterring power and threats of physical force, either express or implied . . . it comes within the contemplation of the statute. Officers charged with service of process should be and are under the protection of the law. To intimidate them by the use of threats, accompanied by an exhibition of physical power and an apparent intent to use it, thus preventing the execution of process, is a crime. For instance, if one exhibits and threatens to use a deadly weapon on an officer if he executes a process, and the officer is thus deterred from carrying out his official duty, it is just as effective an interference with service as if actual force had been used . . . mere vituperation not constituting the offense, unless there be an apparent intention to resist by force.[31]

The foregoing makes it clear that *force or threat of force of such a character as to deter officers from carrying out their duty is the essence of the offense.* As an officer of the law, you are authorized to use reasonable force when necessary in carrying out your job, and to protect yourself while doing so. Nobody is allowed to use force or threat of force against you. On the other hand, your job requires you to do unpleasant things to people, like arresting or searching.

Sometimes these people may turn out to be absolutely innocent. Sometimes your arrest or search may turn out to be unlawful even though you have done no wrong. Sometimes the people affected, or their neighbors or friends, may be ignorant and rough characters. It's part of a policeman's job to put up with the grumbling and arguments that are bound to occur in such situations.

Notice that the offense must be committed "knowingly" and "wilfully." This means, for practical purposes, that the defendant must be aware that his behavior will prevent or obstruct the execution of the law. It is good practice, therefore, for the officer to warn the person who is obstructing or resisting that he is interfering in a way that will lead to arrest and prosecution under § 314.

Other clauses in Section 314 and amendments, not quoted above, make it an offense to assault or beat an officer. *Actual physical attacks upon an officer will be vigorously prosecuted so as to promote the safety of police personnel.*

B. NEGLECT OR REFUSAL TO ASSIST OFFICER

This offense is quite distinct from forcible obstruction or resistance. It is related to an ancient common law right of sheriffs in England to order people to join in pursuing offenders. This law is virtually obsolete today when we have organized professional police forces. It does have the effect that a citizen who responds to a police request for assistance cannot be held liable for damages inflicted while apprehending the suspect.[32] It is the policy of modern police departments to rely on voluntary citizen cooperation, rather than coerce unwilling assistance.

6. Fights; Family Quarrels

Fights and family quarrels are among the most frequent incidents with which the police have to deal. There is plenty of law making this kind of misconduct illegal; the problem is when and how to use the law with common sense.

Fighting is of course assault and battery, an indictable offense carrying up to two years imprisonment.[33] It is also

disorderly conduct, in most circumstances where the public or nearby residents are affected. Disorderly conduct is a summary offense punishable by not more than 30 days jail. There is another old offense, called "affray" which involves fighting in a public place on a scale sufficient to alarm the public, in which case the maximum imprisonment rises to three years.[34]

A. FIGHTING

With three separate offenses which are similar but carry quite different penalties, it is easy to see that judgment is called for. It would make no sense to turn every fist-fight between juveniles into a criminal case or a juvenile delinquency case. The same goes for adults, where no weapons are involved, no disturbance of the public, no indication of a purpose to do serious injury.

EXAMPLES

I

Facts: *At a baseball game, two young fellows grabbing for a foul ball hit into the stands start punching each other.*

Action: *It will usually be enough to warn them to break it up or face arrest for disorderly conduct. If they persist, arrest* [*or preferably citation to appear in magistrate's court, if such procedure comes into effect in Philadelphia*] *is proper to maintain order so that others can comfortably watch the game. If arrest is necessary, try to confine it to* one *of the fighters, where it is clear that he is the aggressor.*

II

Facts: *Responding to a radio call that a fight is in progress on the parking lot of the General Electric plant, you find on arrival that the fight is over, but a man is sitting on the ground with a black eye and a bloody nose. The assailant is gone. The victim tells you that he has just been beaten up by X another worker in the plant, following a quarrel over a park-*

ing space. From his account, which is confirmed by bystanders, X has several times beaten others up and is generally looking for trouble.

Action: *Since the incident did not occur in your presence and does not amount to a felony, you cannot arrest without a warrant. Your problem is to choose between a) doing nothing (except noting the incident in case of repetition); b) advising the victim that prosecution is possible if he swears out a warrant; c) arranging to talk with the assailant to get his side of the story and to warn him not to make more trouble; d) encouraging the victim and others who saw the attack and are willing to testify, taking their names and addresses for interview by the Detective Division.*

The recommended action would be c or d, depending on how bad the situation seems to be. The Police Department has a responsibility to keep order and protect people. Also respect for the police and a willingness of the public to cooperate depends on showing legitimate complainants that action will be taken.

Under no circumstances should an aggravated assault be treated lightly just because it occurs in a poor neighborhood where such assaults may be frequent. Don't operate on the theory that violence is a "way of life" in some areas. The great majority of people, even in the "worst" neighborhoods want order, and expect the police to secure it.

B. FAMILY QUARRELS

Where a wife complains that her husband is beating her or their children, additional elements of judgment come into the picture. In the first place, there is a high probability that if the case comes to court the parties will have made up, the wife won't want her husband jailed, and the judge may regard the situation as a waste of his time and public money. In the second place, family beatings followed by complaints to the police, may indicate that something is wrong in the family that requires other kinds of help than the police can provide. There may be an alcoholic problem, a problem of unemployment, or welfare payments, or a support order. What we say here also applies to cases of "families" where there is no legal marriage.

There are a number of welfare and social service agencies that a policeman should keep in mind in dealing with troubled families: Family Service of Philadelphia is a nondenominational private agency providing advice and help for all kinds of family problems. It has offices in West Philadelphia, North Philadelphia, and Frankford, as well as downtown. Similar services are available from the Jewish Family Service, Catholic Social Service, and Episcopal Community Services. Usually it is advisable to get in touch with one of these agencies by telephone, since they can often provide useful information without need for the person to go to the office.

If it's a question of the wife or children needing support money, the Domestic Relations Division of the County Court at 1801 Vine Street provides help. Where support is needed for illegitimate children, the Women's Division of the County Court at the same address is the place to contact. Some family counseling is also provided by Bureau of Family Services of the State Department of Public Assistance, where welfare payments are involved.

If it's a question of protecting children from abuse or neglect, the Division of Family and Child Services, of the City's Department of Public Welfare, 8th Floor, City Hall Annex, Juniper and Filbert Streets, is concerned.

EXAMPLES

I

Facts: *A radio call, based on a neighbor's telephone call to the district police station, tells you that a man is beating his wife at a stated address. You interview the informant, who tells you that she heard the sound of heavy blows and shrieks from the wife; but everything is quiet now.*

Action: *Knock at the door of the house or apartment where the disturbance took place. If you are voluntarily admitted, ask whether anything is wrong,*

or if there is anything you can do to help. Do not force your way in unless you have good reason to believe that someone has been or is about to be seriously injured so as to require emergency assistance, since you do not have a search warrant. If nothing serious has happened, it should be enough to warn against further disorderly conduct. If it appears that it might be helpful, you can: a) explain to the wife her right to file a complaint and get a private warrant; or b) tell them about the social service agencies mentioned above; or c) suggest consultation with a minister. Sometimes an experienced officer can settle an argument with a little common sense advice ("Why don't you go to your mother or a friend for the rest of the night, until this cools down?"), but do not be drawn into the argument. You are not a judge, and you don't have time to find out who's lying, or what may really be the root of the trouble.

II

Facts: *A woman stops the patrol car to tell you that she has just been driven out of her apartment by the man who has been living with her. He came home drunk, started to beat the children, and threatened her with a knife.*

Action: *Get the full story from her, including any facts that might raise a question about her credibility or her responsibility for the difficulty. Explain to her about the private warrant, the social agencies mentioned above, and that you don't have authority to arrest for misdemeanors just on her say-so. If the man is still in the apartment, offer to take her back there. She can let you in. Warn the fellow on disorderly conduct, aggravated assault, cruelty to children, etc. Try to persuade him to leave and stay away if that's what she wants. If he refuses and is loud, abusive, and threatening to the point where it amounts to disorderly conduct, arrest is warranted. If he has been drinking excessively, and refuses to comply with reasonable requests to solve the situation, this is one of the few*

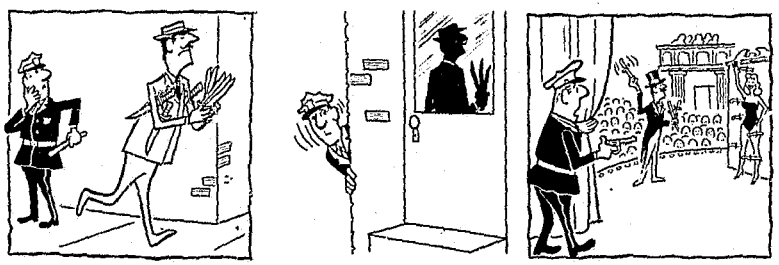
cases where it is appropriate to arrest for private *drunkenness, under the old statute of 1794.*[35]

7. Weapons

A. THE PROBLEM

Weapons are often employed to commit crime and their use contributes to more serious crime, e.g. homicide, robbery, burglary, rape, aggravated assault. One way the law sometimes responds is by raising the penalties for ordinary crimes if weapons are involved. This should have some tendency to discourage armed crime. Another approach is to try to restrict access to arms. For example, only licensed persons may carry certain firearms. Unfortunately, the control of firearms in this country is very loose.[36] Licensing generally does not extend to hunting guns. Guns could be bought by mail or brought in from areas with weak or no controls. New federal legislation in 1968 has begun to tighten these controls.

The hardest problem in a weapons control program is how to deal with common articles that may or may not be used as weapons, e.g. knives, hammers, razors. It is not practical to require licenses for these articles. It is not real-



istic or fair to assume that such articles are always carried to use on people. Even where the circumstances suggest that the article is for use in fighting, the question remains whether the person has this "weapon" to defend himself or to use in unlawful attacks on others. Too aggressive an enforcement policy will generate resentment in the commun-

ity, when people who are giving no cause for concern find themselves frisked or charged with crime. Furthermore, depriving a person of one of these implements may not do much to promote law enforcement, since these articles are so easy to acquire.

The legislation described below is of limited help in solving these problems, and leads to the necessity of a uniform police policy in the enforcement of weapons law.

B. THE LAWS

The statutes of this state forbid:

a) carrying a "firearm" without a license, in any vehicle or concealed on or about the person, except in his place of abode or fixed place of business.[37] There are many exceptions, e.g. for law enforcement people, military, bank and other business guards, licensed hunters going to and from hunting. Firearm is defined as a pistol or revolver with a barrel less than 12 inches, a shotgun with a barrel less than 24 inches, or a rifle with a barrel less than 15 inches.

b) carrying a deadly weapon concealed upon the person "with intent therewith unlawfully and maliciously to do injury to any other person."[38]

c) carrying a switchblade knife (whether or not concealed) with the same intent as in b.[39]

d) pointing or discharging a gun, pistol, or other firearm at any other person, "playfully or wantonly."[40]

e) selling deadly weapons, ammunition or dangerous explosives to children under 16.[41]

f) furnishing, by sale, gift or otherwise, a starter pistol to anyone less than 18 years, or possessing such a pistol if the possessor is under 18.[42]

Some points to notice about these laws:

(i) *Carrying firearms requires a license, but carrying other "deadly weapons" does not.* Deadly weapons include not only guns, but also knives, brass knuckles, clubs, bicycle chains manifestly carried for use in fighting, and anything else capable of inflicting severe injury.

(ii) *The offense of carrying a deadly weapon is not committed if the weapon is carried for a lawful purpose, for example, self-defense.* In some neighborhoods gang or other attackers may be so frequent that boys, and adults too, feel compelled to carry some sort of weapon for their own safety. The law says there's no offense if there's no "unlawful and malicious" intent, but "the jury trying the case may infer such [unlawful and malicious] intent from the fact that the defendant carried such weapon."[43]

C. POLICY

The concealed weapon law will be employed primarily where the carrier is obviously heading for trouble in which the weapon may play a part, for example, a rumble or a riot. In such cases, treat a *concealable* weapon as within the law even though it may be exposed at the moment. The courts are willing in appropriate circumstances to infer that a knife or other small weapon ordinarily carried in a pocket has been there, and so concealed, shortly before it was exposed.

Be especially on the look-out for weapons customarily used aggressively, for example, brass knuckles, black jacks, daggers, switch-blade knives.

Where in the course of a lawful frisk ordinary pocket-knives show up, use some judgment. Do not arrest or charge on this ground alone, where there is nothing pointing towards illegal use of the weapon. Do not confiscate the knife.

SOURCES AND READINGS

Banton, The Policeman in the Community (London 1964) Chap. 5

J. Goldstein, Police Discretion Not to Invoke the Criminal Process: Low Visibility Decisions in the Administration of Justice, 69 Yale L. J. 543 (1960)

LaFave, Arrest: The Decision to Take a Suspect into Custody (1965), Part II, The Decision Not to Invoke the Criminal Process

LaFave, The Police and Non-Enforcement of the Law, 1962 Wisc. L. Rev. 104, 179

President's Commission on Law Enforcement and Administration of Justice ("National Crime Commission"), The Challenge of Crime in a Free Society (1967) Chap. 4; Task Force Report: The Police (1967) Chap. 2

FOOTNOTES

1. The Challenge of Crime in a Free Society (1966) pp. 233-234.

2. The Challenge of Crime in a Free Society (1966) p. 235.

3. 47 Purd. P.S.A. § 722. An older statute of 1794 provides a penalty of 67 cents for "excessive drinking," with commitment to the house of correction for 24 hours if the 67 cents is not paid. 18 Purd. P.S.A. § 1523. See also 18 Purd. P.S.A. § 632 (intoxication on Sunday).

4. 61 Purd. P.S.A. §§ 672, 681.

5. Commonwealth ex rel. Lee v. Hendrick, Philadelphia Legal Intelligencer, September 13, 1967 p. 1 (1967). The decision followed several similar federal cases. Robinson v. California, 370 U. S. 660 (1962) (narcotics addiction); Easter v. District of Columbia, 361 F. 2d 50 (1966) (compulsive addiction to alcohol is defense to charge of public intoxication).

6. See 50 Purd. P.S.A. § 2105 (civil commitment of persons "addicted to the excessive use of alcohol").

7. "Walking on the street at three o'clock in the morning with the odor of liquor on one's breath does not constitute drunkenness, breach of the peace, vagrancy or riotous or disorderly conduct, nor does it constitute an offense committed in the officer's presence under the act forbidding minors to consume alcoholic or malt beverages." Commonwealth v. Pincavitch, 206 Pa. Super. 539, 543 (1965).

8. Commonwealth v. Horn, 395 Pa. 585 (1959).

9. Section 675.1 of The Penal Code, 18 Purd. Pa. Stat. Ann. § 4675.1 (1966 Supp.). The offense is summarily punishable by fine and up to 30 days imprisonment.

10. 18 Purd. P.S.A. § 4406.

11. § 407 of the Penal Code, 18 Purd. P.S.A. § 4407.

12. § 405 of the Penal Code, 18 Purd. P.S.A. § 4405.

13. Philadelphia Code of General Ordinances (1956) §§ 10-401 to 10-408.

14. For example, an airport or a track where "Go-Karts" (children's cars with gasoline engines) are raced. Commonwealth v. Greene, 410 Pa. 111 (1963).

15. § 519 of the Penal Code, 18 Purd. P.S.A. § 4519.

16. Chester v. Elam, 408 Pa. 350, 356 (1962).

17. One Eleven Wines & Liquors, Inc. v. Division of Alcoholic Beverage Control, 235 A.2d 12 (N. J. 1967).

18. See page 11 above. There is also a statute dealing with "blasphemy," which penalizes wilful and premeditated speaking "loosely and profanely" of God, Jesus, or the Scriptures. 18 Purd. P.S.A. § 4523. This statute is of doubtful constitutionality and would be inapplicable anyway to the usual foul-mouthed disturbance.

19. 5 Pa. Law Encyc. 606.

20. Cantwell v. Connecticut, 310 U.S. 296, 308-311 (1940). See also Cox v. Louisiana, 379 U.S. 536, 546-7 (1965) (civil rights demonstration by Negroes, violently resented by some white onlookers). Cf. Commonwealth v. Millhouse, 34 Pa. D. & C. 2d 693 (1964).

21. Chaplinsky v. N.H., 315 U.S. 568 (1942).

22. Thompson v. Louisville, 362 U.S. 199, 205 (1960); Commonwealth ex rel. Johnson v. Police Commissioner, 21 Pa. D. & C. 2d 591 (Philadelphia. 1960).

23. Commonwealth v. Baltzley, 11 D. & C. 2d 235, 243 (Adams Co. 1957) quoting Commonwealth v. The Sheriff, 3 Brewster 343 (1869).

24. 18 Purd. Pa. Stat. Ann § 4418.

25. 18 Purd. Pa. Stat. Ann. § 2032ff.

26. 18 Purd. Pa. Stat. Ann § 4617. The penalty is up to 1 year's imprisonment.

27. Commonwealth v. DeWan, 181 Pa. Super. 203, 208 (1956) ("whose purpose can only be explained in some preparation for or attempt at illegality or crime").

28. Chap. 10-900, Code of General Ordinances.

29. See Lambert v. California, 355 U.S. 225 (1957), holding that the Los Angeles ordinance could not constitutionally be applied to a person whose default was innocent.

30. Commonwealth v. Baltzley, 11 D. & C. 2d 235 (Adams Co. 1957) (human chain of strikers armed with clubs stops sheriff's investigation).

31. Commonwealth v. Frankfeld, 114 Pa. Super. 262, 268 (1934).

32. Commonwealth v. Sadowsky, 80 Pa. Super. 496 (1923).

33. § 708 of the Penal Code, 18 Purd. P.S.A. § 4708.

34. § 401 of the Penal Code, 18 Purd. P.S.A. § 4401.

35. See footnote 3, above.

36. The Challenge of Crime in a Free Society, Report of the President's Commission on Law Enforcement and Administration of Justice (1966) p. 239.

37. Uniform Firearms Act, § 1(e), 18 Purd. P.S.A. § 4628(e).

38. § 416 of the Penal Code, 18 Purd. P.S.A. § 4416.

39. § 416 of the Penal Code, 18 Purd. P.S.A. § 4416.

40. § 716 of the Penal Code, 18 Purd. P.S.A. § 4716.

41. § 626 of the Penal Code, 18 Purd. P.S.A. § 4626.

42. § 626.1 of the Penal Code, 18 Purd. P.S.A. § 4626.1.

43. See Commonwealth v. Festa, 156 Pa. Super. 329 (1944).

CONTINUED

3 OF 4

Police Guidance Manual No. 8

Traffic

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Project financed by the Office of Law Enforcement Assistance
United States Department of Justice

Printed by the University of Pennsylvania Printing Office
Philadelphia, 1968

TABLE OF CONTENTS

ACKNOWLEDGMENTS

The following colleagues at the University of Pennsylvania gave valued advice and criticism: Professors Paul Bender, Curtis R. Reitz, and Henry S. Ruth, Jr., of The Law School, and Dr. Marvin E. Wolfgang, Chairman, Department of Sociology, and Director, Center for Studies in Criminology and Criminal Law. Philadelphia Police Commissioner Frank L. Rizzo and Philadelphia District Attorney Arlen Specter made their facilities and staff freely available to the project.

The cartoons which humorously illustrate some themes in the Police Guidance Manuals are by artist John Pretch.

1. Introduction

It has been said that "vehicular traffic, because it is a major factor in the saving and losing of lives, is perhaps the foremost problem of the police today." [1] The monetary loss each year from traffic accidents far exceeds the losses from all other kinds of law-breaking and incidents within police cognizance. Moreover, more people have been killed in traffic accidents in the short period of automobile use in our country than have died in all of the wars in our nation's history. Effective traffic law enforcement is a key element in reducing this tremendous loss of life and property. It is, therefore, one of the foremost aspects of police work.

Traffic control is an important aspect of police work for yet another reason. Speaking at an Institute on Traffic Safety conducted in 1962, a businessman made the following observation on the importance of proper traffic enforcement:

> As a citizen and businessman, I look upon the traffic officer as the main connecting link between myself—the public—and law enforcement. Of course, I understand something about the work of detective squads, investigators, and others, but I do not see much of them. Neither do I see much of the chief of police. It is the man behind the badge on the street—the traffic officer—whom everyone sees. Whatever you look like, however you act, you are the arm of the law through whom we form our image. I might say you are the official host of the city through whom the city's good will is portrayed.
>
> This is much like a business organization. The president of a company, as far as the public is concerned, is usually the least important in portraying an image of what the company is like. That image is built by persons with whom the public comes in contact.
>
> Thus the traffic arm of the law is the person seen by the public. We see you in every action downtown and in squad cars, patrolling the traffic in every area.[2]

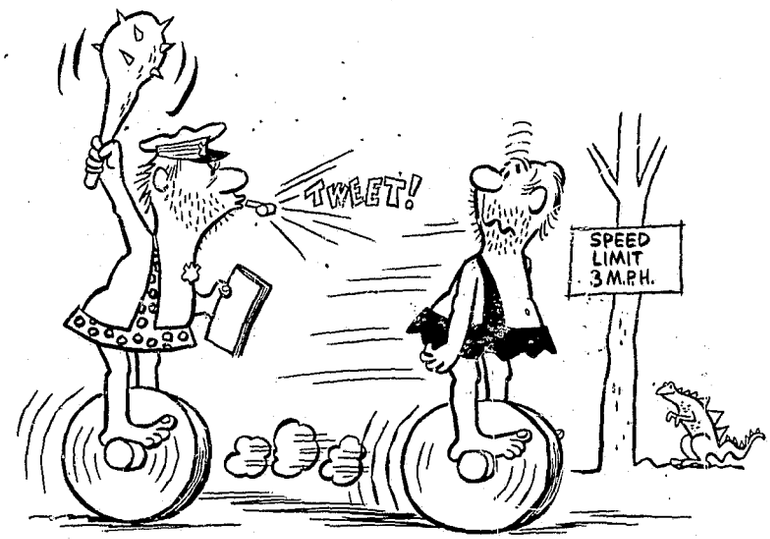
2. Organization of Traffic Enforcement in the Philadelphia Police Department

As discussed in PGM No. 2 on The Police Career, the Philadelphia Department is organized with two deputy commissioners directly under the Commissioner. They are the Deputy Commissioner for Uniform Forces and the Deputy Commissioner for Investigation-Training. Under the Deputy Commissioner for Uniform Forces is the Chief Inspector, Special-Patrol Bureau. Below him is the Inspector for the Traffic Division. The Traffic Division is divided into three units—Highway Patrol District, Foot Traffic District and Accident Investigation District. The Highway Patrol District operates in cars and motorcycles and has crime prevention and detection as its primary responsibility. It consists of approximately 200 men. The Foot Traffic District handles street corner traffic direction and center city parking violations. It consists of approximately 200 men. The Accident Investigation District consists of a group of approximately 60 men who are specialists in investigating accidents discovered by or reported to the police. In addition to these units involved in traffic control, there are the school crossing guards, who are also within the Special Patrol Bureau but are in a separate unit, not in the Traffic Division.

Those units, however, are not the only group of officers charged with enforcing the traffic laws. Every police officer has the authority to enforce traffic laws. This does not, of course, mean that every officer on patrol can spend as much time enforcing traffic laws as do the officers in the Traffic Division. Traffic law enforcement is only one of the many duties of an officer on general patrol. Yet, it is one that should not be ignored. For this reason, all officers, not only those in the Traffic Division, should be aware of the principles and policies of traffic law enforcement.

3. General Principles of Traffic Law Enforcement

Although traffic regulations can be traced back to ancient times, the great importance of these regulations dates from the beginning of extensive use of the automobile. In 1902, Philadelphia was one of the first localities to adopt a traffic ordinance. Also, in 1902, the Pennsylvania legislature passed one of the first Motor Vehicle Codes. Virtually every session of the legislature thereafter has taken some action in this area. The latest major revision of the Pennsylvania Motor Vehicle Code took place in 1959.



The State Motor Vehicle Code[3] contains the basic restrictions on operating motor vehicles, such as the prohibition of reckless driving, speed restrictions, right of way and passing provisions. It also contains the requirements of automobile and driver licensing.

These provisions of the State Motor Vehicle Code operate over the entire state; cities and towns cannot vary them.

Cities and towns do, however, have the power to make rules concerning traffic signals, one-way streets, left hand turns, parking and the like. These subjects are regulated by ordinance in Philadelphia.

From its inception, the Motor Vehicle Code has been enforced by police officers. Originally all violations of the Code were misdemeanors and were tried in the Quarter Sessions Court of the county where the offense took place. Today a number of the most serious violations, such as driving under the influence of liquor or drugs, drag racing, hit and run driving, and driving with a suspended or revoked license are still misdemeanors which are tried in the Quarter Sessions Court. However, most violations, both of the State Motor Vehicle Code and of city ordinances regulating motor vehicles, are not misdemeanors, but are "summary offenses" tried before a magistrate. In Philadelphia a special Traffic Court has been established to handle these summary offenses.

Prosecutions for motor vehicle misdemeanors are handled in the same manner as other misdemeanors. This manual will concentrate on the majority of motor vehicle violations: summary offenses, the prosecution of which is begun by issuance of a traffic ticket.

In handling these matters, a police officer must always keep in mind the basic fact that *the purpose of traffic regulation is to prevent the destruction of lives and property by automobile accidents and to increase the efficiency of the use of our highways and limited parking facilities. It is not to collect revenue.*

The Philadelphia Police do not consider ticketing as a profit-making operation for the city. Whatever may be the practice elsewhere, or even the practice here in times past, the Philadelphia Police Department's firm position is that no officer has a quota of tickets to issue or money to bring in. To repeat, the aim of traffic enforcement is to encourage safe and efficient driving habits. This aim necessarily requires an officer to use his judgment. Not all offenders should be ticketed. In many cases a warning is preferable.

Indeed, in some unusual cases it may be appropriate not to stop the offender at all.

Of course, fairness and consistency require that, as far as possible, all officers should use the same enforcement standards. This uniformity of enforcement is aided by adoption of departmental policies which are communicated to you by your commanding officer and such publications as Assist Officer Bulletins and this manual. Yet it is impossible to set common standards for enforcement of all traffic regulations. Ultimately the officer involved must use his judgment based on the guidelines set down by the department. The following section will explore some general enforcement guidelines along with examples of specific enforcement application.

4. Guidelines for Traffic Law Enforcement

A. CONCENTRATED ENFORCEMENT TO ACHIEVE SPECIFIC GOALS

There will be many occasions when good traffic control enforcement requires strict enforcement by giving tickets to all those who commit a particular offense.

EXAMPLE

Facts: *There have been numerous complaints by citizens about serious congestion created by illegal parking in a section of the city.*

Action: *Ticket all illegally parked cars. Indeed, your commanding officer may assign more men to this area so that there will be concentrated enforcement until the public respects the need for cleared streets.*

B. TOLERANCE

Do not stop a driver for speeding that is not in excess of the tolerance limit. The prohibition against speeding is, of

course, one of the most basic elements in traffic enforcement. Yet neither the people who write the prohibitions nor the general public expect that all drivers who go a mile or two over the limit will be stopped and ticketed. The Motor Vehicle Code itself requires that before ticketing a motorist for speeding either two officers must clock him over a measured distance of not less than ⅛ mile or one officer must clock him for ¼ mile.[4] Moreover, the officer's speedometer must have been tested for accuracy within 30 days of the ticket. In Pennsylvania, only the State Police may use radar.

Even without these restrictions on enforcement, the Philadelphia Police Department would not have the manpower to ticket all speeding offenders. Ticketing only the very few that an officer could get would create a feeling of unfair treatment in those stopped. Also, speedometers are not perfect instruments and minimal excess speed may be due to a faulty speedometer as much as to intended violation of the law. Thus, it is a departmental policy to ticket only those speeding offenders who go over the allowable mileage "tolerance." Your commanding officer will advise you of the tolerance levels for different highways and areas in the city.

Police officers must be careful in discussing speeding tolerance with non-police personnel. If the department openly advertises specific tolerances, it may result in rewriting the law in the minds of the citizens. For example, if a 5 mile tolerance for speeding is openly advertised the effect may be to set a new speed limit. Therefore it is necessary to speak in general terms of tolerance. This does not mean, however, that an officer should apologize for tolerance levels. As we have discussed, they are an inherent part of our traffic law.

C. UNAVOIDABLE VIOLATIONS

A warning or help, rather than a ticket, should be given when the driver has no reasonable way of preventing the violation.

EXAMPLE

Facts: *You see a car drive through a red light after having been stopped there for a time. When you stop the driver he tells you that the light is apparently not working, as he has waited there for 10 minutes and it hasn't changed. Your observation confirms his story.*

Action: *Do not give him a ticket. Report the traffic light as out of order. Check with your headquarters as to whether or not you should direct traffic there until the situation is remedied. Other instances where drivers could not reasonably avoid a violation might be where brakes suddenly go out without warning, head lamps burn out while the car is on the road, etc.*

There is another problem in this area, however. The foregoing example assumed that you believed the motorist. The case of a defective traffic light is easy to check out. On the other hand, what about the case where the motorist's tail lights are out and he tells you that "my lights were o.k. when I started"? It is usually impossible to verify this story. The only thing to do in such a case is to use your judgment. If you believe the motorist do not give him a ticket.

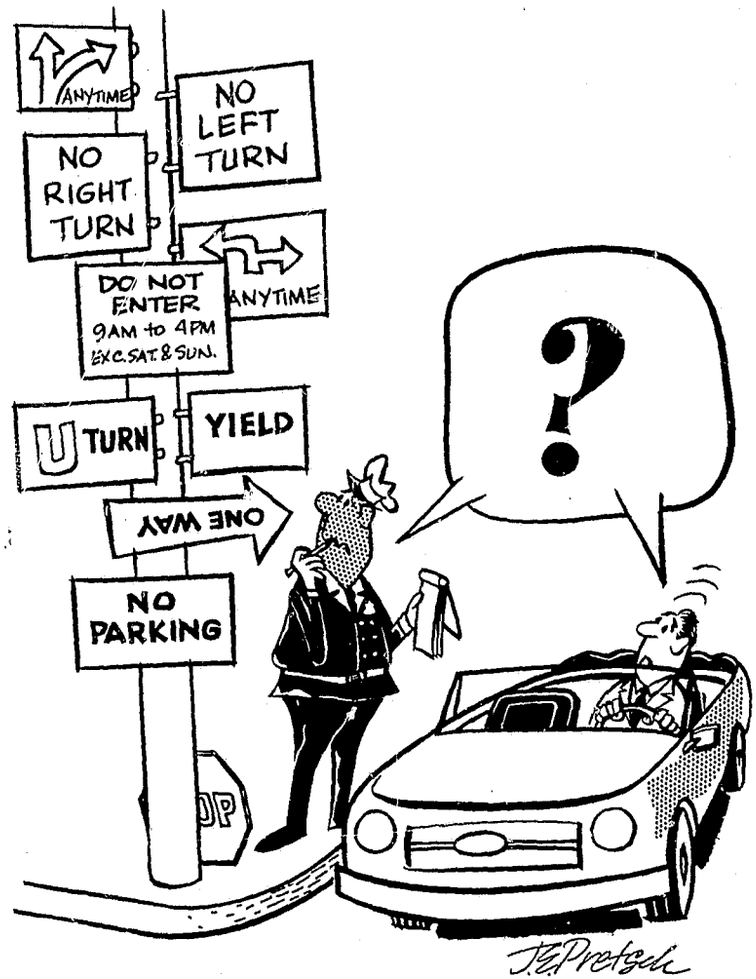
D. EXCUSABLE VIOLATIONS

A warning or help, rather than a ticket, should be given when you believe an offender innocently violated a regulation because a situation was new or confusing to him.

EXAMPLE

Facts: *You see a driver make an illegal turn in a confusing area where traffic is being detoured due to construction. The driver appears genuinely perplexed as to what he should be doing in this area.*

Action: *Stop the driver and explain to him the situation and the right course of action. Do not give him a ticket. Special concern should be given to out-of-towners in these confusing situations.*



Another type of excusable violation occurs in emergency situations. Help, rather than a ticket, should be given where a driver commits a violation because he has encountered a dire emergency.

EXAMPLE

Facts: *You stop a car for flagrant speeding and the driver, in a very excited state, tells you he is driving his passenger to a hospital for emergency treatment. Your observation confirms his story.*

Action: *Your aim here is to deal intelligently with the whole situation, not just to decide whether a ticket should be issued. If there really is an emergency, you will want to help, either by calling an ambulance or by escorting the motorist's car to the hospital. In some instances a driver may honestly think an emergency exists when in fact it does not. If you believe that, it may be appropriate just to try to calm the driver down and convince him that there is no emergency. If you are convinced that he understands that there is no real emergency and will therefore now drive safely, let him go. If you are not convinced of this, if practicable, follow him for a distance to make sure he drives safely.*

E. HAZARDOUS ENFORCEMENT PRACTICES

Generally, do not engage in traffic enforcement activities that themselves create accident dangers.

EXAMPLE

Facts: *You are stationed in your patrol car in a filling station parking lot at a corner. Your specific task is to observe the crowd leaving a baseball game and make sure they conduct themselves in a lawful manner. Due to the baseball game, traffic is very heavy on one street; on the other street which crosses the busy one traffic is light. On this second street a driver approaches the intersection, where the traffic light has turned yellow. Instead of stopping, he accelerates. The light turns red with the driver just entering the intersection, but he speeds on through. The baseball traffic immediately swarms forward on the heavily-travelled street. Several pedestrians begin crossing the intersection.*

Action: *Do not pursue the driver. There is a good chance that by taking off in hot pursuit you will cause a serious accident with other drivers or pedestrians. Beside the injuries you might cause, you would tie up the traffic. It is better to either delay or lose the pursuit than to become involved in an accident where death or injury may result to an innocent person including po-*

lice personnel. As for the driver who will get away, he has committed a major violation. Yet he does not seem to be the kind of driver, such as an extremely reckless one or a drunken one, who must be stopped from menacing citizens at all costs, especially if the costs are likely to include a police-caused accident.

F. CERTAINTY OF OFFENSE AND OFFENDER

Do not write tickets unless you are sure of what occurred and the identity of the offender.

EXAMPLES

I

Facts: *While patrolling an expressway in a squad car, you observe a driver clearly exceeding the speed limit and the tolerance your superiors have established. However, the expressway is very crowded and you decide that it would be unsafe and futile for you to pursue the driver. You had a moment to observe the automobile's license number, but you are not completely sure of this number.*

Action: *Do not write out a ticket. In the interest of justice, public relations, and your professional integrity, all possible certainty must attend your identification of traffic offenders. For you to make a mistake in this situation would seriously injure the wrong man as well as harming the reputation of the force.*

II

Facts: *You stop a driver for going through a red light. He insists that it was amber and that in his situation he was entitled to go through it. When you hear this you are not sure of your position and think he might be right.*

Action: *Do not give him a ticket. In the interest of justice and good public relations, give the benefit of doubt to the driver in all borderline cases.*

5. Confronting The Moving Traffic Violator

A basic rule of traffic enforcement is that, if at all possible, whenever a ticket is written for a moving violation, the motorist should be stopped and personally given the ticket. As discussed above, this will ensure that you have the right person. It will also result in making the driver immediately aware of his offense. This is much more effective in controlling his driving habits than the mere receipt of a summons at a later time when the offender may not even recall exactly what he has done.

The most important element in confronting a traffic violator is the adoption of a professional attitude. You have a duty to perform and you should do so in an impersonal, calm, and business-like manner. The following are some specific ingredients of this approach:

(a) Stop the driver in a way that is safe for you and the violator and will not interfere unduly with other traffic.

(b) Make up your mind whether to ticket or only warn the driver *before* confronting him. This will put you in a position to avoid the appearance of being unsure of yourself, thereby inviting argument from the driver in an attempt to talk you out of a ticket.

Of course, as discussed in the preceding section, facts that you find out from the driver may change your mind. Yet these should be rare cases. Deciding what you are going to do before confronting the motorist will also help to insure that your actions are based on the offense committed, not on how personally irritating the motorist is to you.

(c) After greeting the driver by saying "Good Morning (afternoon, etc.)," inform him (1) of what exactly you observed him doing and why this violated the law, (2) what action you have decided to take (ticket or warning). The immediate announcement of what you saw and what action you are taking will reduce the chance of prolonged debate. As discussed above, if you announce courteously but firmly

that you are giving him a ticket, it may deter him from trying to talk you out of it. If you have decided to warn him, it is also quite important that this be stated at the very beginning. Doing this will impress upon him that the warning is a result of good police judgment as to the proper enforcement of the traffic laws, rather than a tribute to his ability as a "fast talker."

(d) After informing the driver of what he did and what you are going to do, request his driver's license and vehicle registration certificate. Never accept billfolds, wallets, or card cases; only requested cards. Check the validity of the cards and match the descriptions against the driver and the vehicle.

(e) Although your aim is to keep the conversation as brief and as business-like as possible, you may encounter drivers who want to talk a good deal—drivers who want to "let off steam" at you. When this happens, listen courteously to the motorist and let him have his say. Do not argue with him.

(f) If you are going to give the driver a ticket, advise him to stay inside his car while you write out the ticket. When you have finished writing the ticket, give him his copy and explain what he has to do. Answer all pertinent questions. Do not, however, give advice about things you can't control, such as what the traffic court will or will not do in this case.

(g) Do not address adults by first name. Many people resent this as an undue familiarity. The Department's reputation for courtesy benefits when policemen customarily use "Mr.," "Miss," "Dr.," or other appropriate titles.

6. Stopping for License Checks

Section 1221 of the Pennsylvania Motor Vehicle Code[5] provides that uniformed police officers have the authority to stop any motorist and require the motorist to exhibit his registration card and operator's license. Failure to comply

with the request to stop or exhibit the cards is a summary offense punishable by a $10.00 fine.

Some people have argued that, if applied literally to allow an officer to stop any car he wants to, this statute is unconstitutional. They make the further argument that even if the statute could be used legitimately in some cases, it would be unconstitutional to use it as a method of harrassing people. Others argue that since the law requires each operator of a motor vehicle to carry his license and registration card, the stopping of people is justified as a means of enforcing this requirement.

The Philadelphia Police Department does not apply the statute literally by authorizing officers to stop any car they want to. Such action just is not good police procedure. It wastes manpower and needlessly irritates the stopped motorist.

The policy of the Philadelphia Police Department is to stop motorists only in those cases where either:

(a) *A motor vehicle violation has been observed by the officer;* or

(b) *There is a reasonable ground to believe another offense had been committed so as to allow a stop under the criteria discussed in PGM NO. 4.*

Stopping a car for a motor vehicle violation does not in itself give you any basis to frisk the driver or search the car. See PGM No. 4 as to when a frisk is justified following a stop.

7. Enforcement of Parking Restrictions

Although we have discussed generally the aim of traffic law enforcement, some specific points should be made about parking violations. It is generally in regard to parking violations that people contend that restrictions are really revenue raising not traffic enforcement devices. They argue that if society really wanted to prevent illegal parking the fines

would be higher than they are now. They point out that with the fines at the present rates, and with the fact that people are not caught each time they park illegally, many people, particularly residents in the downtown areas, see their traffic tickets as a cost of parking equal to or cheaper than parking at a garage.

Other people argue, however, that the aim of parking restrictions is to help the traffic flow on the streets. They contend that even parking meters and limited time parking aim at a fair distribution of available on-street parking.

Despite this disagreement, a number of things seem clear. The first is that the Philadelphia Police Department does not view parking violation ticketing as a revenue device. The second is that the Department does not have the manpower even to attempt to ticket all cars parked illegally in the city. *It is therefore necessary to concentrate on places where violation is flagrant and most seriously impedes the flow of traffic.*

The necessity for selective, concentrated enforcement may result in virtual non-enforcement of parking restrictions in less critical areas. This may not be too unfortunate insofar as illegal parking results from severe shortage of parking lots and other off-street parking facilities. Also many people seem to feel they have a right to park outside their homes even though parking lots are available not too far away. However, it would be preferable to recognize such a situation by removing the restriction rather than by openly and continuously tolerating law violation.

Related to a resident's feeling that he has the right to park outside his home is a resident's complaint that others are parking in front of his house. This complaint is heard quite frequently. The short answer is that, except for specified limited or no-parking areas, anyone has a right to park his car at the side of any street in the city. There is no law giving a resident a special right to the spot in front of his house. Nor is there a prohibition against a business with many cars, *e.g.*, a car dealer, parking them in legal spots along a street. There is also no prohibition against loading or unloading a car or truck so long as the car or truck is legally parked. However, a Philadelphia Ordinance

prohibits automobile repair shops from using the street for repairing cars except, of course, for emergency road service.[7]

Ticketing is not the only remedy for illegal parking. The Pennsylvania Motor Vehicle Code provides that cities can set up procedures for towing away illegally parked cars where this is deemed necessary. In Philadelphia, an ordinance provides that cars parked illegally in specified "towing zones" may be towed away.[6] These zones are modified from time to time.

The Philadelphia Police Department has its own tow truck and operator to remove cars. The law requires that within 12 hours after a car is towed away notice should be sent to the owner of the car telling him where it is, and why it was towed away. In order to reclaim his car, the owner must pay a $10.00 towing charge and a storage charge of $3.00 for the first day and $1.00 for each succeeding day. If the owner maintains that his car should not have been towed away he can pay these charges under protest. If he pays under protest, the owner will get the payment back if a magistrate finds that the car was not parked illegally or that, even though parked illegally, the owner was present and willing to remove the car himself at the time it was towed away.

Section 12-1120 of the Philadelphia Traffic Code makes it an offense to leave an abandoned vehicle parked on a street and provides for police authority to remove an abandoned vehicle if the owner does not remove it within five days after he has received notice to do so. An abandoned vehicle is defined as "any vehicle not capable of being moved under its own power; or with deflated tire or tires; or without current license tags." Any officer who sees an abandoned vehicle should contact the appropriate District Operations Supervisor to find out if an abandoned vehicle report is currently on file for the vehicle. If one is on file, the officer need do nothing more. If there is no report on file, the officer should try to establish the name and address of the registered owner by investigation in the area.

If the registered owner is discovered, a ticket should be prepared and issued to him for violating section 12-1120-1

of the Philadelphia Traffic Code. The officer should also obtain from the District Operations Supervisor an "Abandoned" label which should be put on the vehicle at the left side of the windshield, or, if the car has no windshield, on the roof over the left door, and then submit a Complaint and Incident Report, giving full particulars, to the District Operations Supervisor.

When an officer is not able to determine the registered owner by investigation, no ticket can be issued, but a Complaint and Incident Report should be filed, giving as much information as possible. The District Operations Supervisor will determine who owns the car and see that the owner gets notice to remove it.

Enforcement of parking regulations requires the same kind of judgment and tolerance that we have already discussed in regard to moving violations. As a specific example of this judgment, the need for consistency and fair treatment means that if one illegally parked car is ticketed, all others illegally parked in the same area should be ticketed. As another example, cars should not be ticketed for parking one inch too far from the curb.

8. The Traffic Court

As stated earlier, a few of the most serious Motor Vehicle Code violations (such as driving under the influence of liquor or drugs, drag racing, hit and run driving, and driving with a suspended or revoked license) are misdemeanors. These are usually dealt with by arrest and prosecution in a Quarter Sessions Court in a manner similar to the handling of other misdemeanors. Most traffic violations, however, constitute summary offenses which are tried before a magistrate. In Philadelphia, these cases are tried in a special magistrate's court, the Traffic Court, located at 800 N. Broad Street.

A traffic "ticket" consists of (1) an affidavit of the police officer that he personally observed the commission of a certain offense by the driver concerned, and (2) a notice to the driver as to what he should do next. This ticket is a

legal document and you should take great care in filling it out. A badly filled out form may result in the violator unjustifiably avoiding a penalty. Even if this is not so, sloppiness in filling out the ticket will reflect badly both on you and the Department.

Most summary offenses have exact fines set by the statute or ordinance involved. In these cases, the violator need not appear at the traffic court but can plead guilty and mail in the amount of the fine. Where the magistrate, however, has discretion in setting the amount of the fine, as, for example, with reckless driving (fine from $10.00 to $25.00) the violator must appear.

Although the ticket has a place on it for telling the violator the date and time of his appearance, this is not filled out by the police officer. The reason for this is obvious. Date and time of appearance must be set according to the Traffic Court's calendar of business. Thus, if the violator does not want to plead guilty and pay the fine by mail, he does nothing until he receives a notice from the Traffic Court telling him the date and time to appear.

If the violator does not appear pursuant to this notice, the magistrate may order a warrant for his arrest. If he does appear, the magistrate will hold a hearing on the offense allegedly committed.

At this point a special problem appears. In other types of offenses police officers may themselves sometimes be witnesses, but this is not invariably the case. However, in motor vehicle violations usually the only one who could testify personally about the offense is the officer who wrote the ticket. With the great number of tickets written in the city, it would be an enormous waste of police manpower to have officers spend their time waiting and testifying in the Traffic Court for all offenses. On the other hand, elementary principles of justice seem to require that a driver not be convicted of an offense unless the police officer does testify in open court and is subject to cross examination.

In an attempt to do something to alleviate this problem, it has been the practice in Philadelphia since 1966 to send a violator a "waiver" card along with his notice to appear. This card provides that unless the violator checks the box stating that he wants the officer to appear and mails the card back, the violator will be deemed to have "waived" his right to have the officer personally appear. In that case the traffic ticket would be used at the hearing in place of statements and testimony by the officer.

Some legal experts have questioned the validity of this waiver procedure. They argue that a traffic violation is a criminal offense and a person cannot be deemed to have waived his right to confront the witness against him merely by omitting to send the card back. Others argue, however, that these summary traffic offenses are not truly criminal violations and that, therefore, this kind of waiver is valid. This issue has not been resolved by the courts.

In practice, if the violator has not returned the card requesting the officer to appear and the offender does appear at the hearing, the traffic ticket is used as the basis of the case against him. The Magistrate either convicts or acquits depending on how he views the statements on the ticket as against the violator's version of the incident. If the violator does return the card requesting the officer to appear and the officer does not appear, the case is usually dismissed.

Before the use of this waiver card a great number of cases were dismissed because the officer did not appear. The Philadelphia Police Department now attempts to have the ticketing officer appear at all hearings where the violator has requested his appearance. Yet, even if this waiver card system is maintained there may be times when the Department just cannot afford the manpower involved in having all officers appear when requested. The determination then of what violations are sufficiently serious to have the officer appear and what are not will be another example of the selective enforcement of the traffic laws.

The Magistrate's disposition of the case should also be looked at as a part of the selective enforcement process. A police officer naturally feels a sense of frustration when a case is dismissed. Yet a dismissal does not mean that the officer has not properly performed his job. Nor does it mean that the driver has gotten off "scot free." He has been punished by the embarrassment and delay involved in receiving the ticket and by the time and trouble involved in appearing in court to fight it out. Even when he believes that the violator is guilty the magistrate may feel that, under the circumstances of the given case, a fine is not necessary; a stern rebuke is all the motorist needs to make him a better driver. Just as an officer must use his judgment in determining whether to warn or give a ticket, so a magistrate must use his judgment in determining whether to add a fine to the "punishment" the violator already received.

The result is, therefore, that a person who appears in Traffic Court has quite a good chance of avoiding a fine. Unfortunately, since Traffic Court is not open nights or weekends, the people who can most easily appear in person are those who are salaried and can afford to take time away from work. Some people believe that this discriminates unfairly against people who work by the hour or the day. They suggest that Traffic Court be open some nights or weekends.

In Philadelphia, all magistrates take their turn sitting in Traffic Court. The atmosphere of the court is more informal than in many other courts. Attorneys do not usually appear for violators. Nor is there usually a representative of the District Attorney's office present. A stenographer, however, does make a transcript of the proceedings. Those convicted have a right to appeal to the Quarter Sessions Court. This is seldom done because the amount of the fines involved usually does not justify the time and expense of an appeal. Moreover, if the driver does not take an appeal he must post bond in the amount of twice the possible fine and costs.

9. Other Sanctions for Violating Traffic Laws

Section 616 of the Pennsylvania Motor Vehicle Code[8] requires that the Pennsylvania Secretary of Revenue suspend for one year the license of a driver guilty of certain very serious traffic offenses. These include operating a car while under the influence of alcohol or narcotics, and failing to stop and render aid where a driver is involved in an accident resulting in personal injury or property damage. These offenses are misdemeanors under the Motor Vehicle Code.

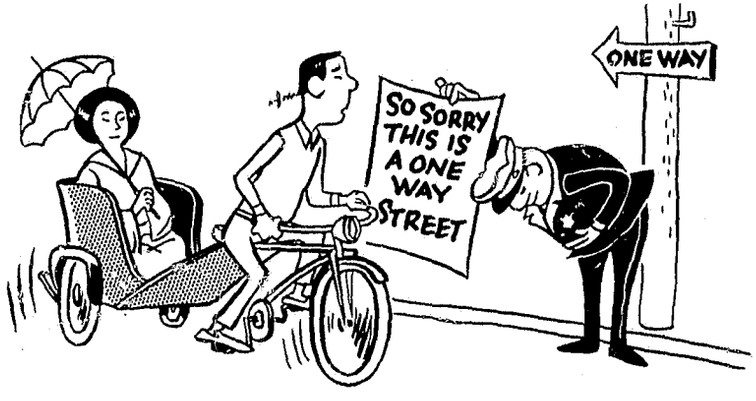
In addition, Section 619.1 of the Motor Vehicle Code[9] requires the Secretary of Revenue to maintain a record of all convictions for state Motor Vehicle Code violations, including the summary offenses. This section then sets up a point system for the various offenses. This point system is enforced by the Bureau of Motor Vehicle Safety of the State Department of Revenue in Harrisburg.

Whenever a motorist has pleaded guilty or been found guilty of a moving traffic violation, notice of this goes to the Bureau of Traffic Safety. Depending on the violation, the driver is given anywhere from three to six points based on the schedule contained in Section 619.1 of the Motor Vehicle Code. These points are added and action is taken by the Bureau based on the total number of points accumulated. At lower levels these actions include required attendance at a driver improvement school or clinic. Suspensions occur when a driver reaches 11 points. His points are reduced if a driver does not commit a violation for a period of a year. The details of this point system are explained in a pamphlet entitled "Point System for Driving Violations" distributed by the Bureau of Traffic Safety.

This point system enables close control of chronic violators. At the same time it lets the occasional violator know exactly where he stands. Most important, a driver has ways of improving his point situation by taking driver education courses and by safe driving for a period of time.

10. The Problem of the Nonresident Motorist

Good traffic law enforcement requires special concern for out-of-towners who may be confused by our traffic rules and situations. This is also one of the main areas where an officer can help people with problems. This concern promotes both good law enforcement and good relations for Philadelphia.



However, there will be cases where stronger action than a warning must be taken against a nonresident motorist. Those who are not from Philadelphia but are residents of Pennsylvania present no special problem. Their tickets can be dealt with by the Philadelphia Traffic Court in the same manner as those of Philadelphians. If the violator does not appear at the hearing, a warrant for his arrest can be served wherever he resides in Pennsylvania.

An arrest warrant, however, cannot be served on a person outside the state. Thus, a nonresident of Pennsylvania who receives a ticket and does not appear at Traffic Court can avoid arrest by staying out of the state. In consideration of this problem, the Pennsylvania Motor Vehicle Code provides that a police officer can arrest a motorist for even a summary offense in the limited situation where the officer has "reasonable ground to believe" (1) that the motorist is a

nonresident of Pennsylvania, (2) that he may not appear in Traffic Court when requested to, and (3) that he will not be available for service of a warrant.[10]

There are good reasons, however, why this statute is not often used. First, arrest is a significant infringement of liberty for a summary traffic offense. It is bound to create ill will with the nonresident motorist. Second, the statutory requirement of reasonable grounds to believe that the motorist will not appear in Traffic Court is very hard to apply. On what basis could an officer say that a particular motorist would not appear? Third, the arrest of the nonresident is an expensive use of available police manpower. Fourth, nonresidents often do pay their tickets. For these reasons the general policy of the Philadelphia Police Department is not to arrest nonresidents for summary offenses. Nonresidents should, in this regard, generally be treated in the same way as Pennsylvania residents—ticketed where appropriate.

Another problem area with nonresidents of Pennsylvania involves parking violations. Many nonresidents ignore parking violations and it is very difficult for Traffic Court to do anything about it. For this reason, some people suggest that it is useless to even ticket cars with out-of-state license plates. The Philadelphia Police Department does not agree with that view. One reason to ticket out-of-state cars is to give at least an appearance of fairness to our local citizens. Imagine the reaction to a case in which the Pennsylvania cars in a line of illegally parked cars received tickets and the out-of-state cars did not.

Enforcement powers against nonresidents are not completely lacking. If parked illegally in a towing zone a nonresident's car may be towed away in the same manner as a resident's. In addition, there is a provision in the Philadelphia ordinance that an illegally parked car with an out-of-state license can be towed away from any street in the city if the police "officer has knowledge that the owner has previously failed to pay for a parking violation."[11] This provision can be viewed as the equivalent of the arrest provision for moving violations. It is not used too frequently, however, for many of the same reasons that the arrest provision

is not used. Finally, in some flagrant "scofflaw" situations a warrant may be issued and served on the nonresident by an officer who waits by his car. This is costly in time and money. But it should be done where persistent disregard of the law by an out-of-state car obstructs traffic or fosters general disregard of the law.

11. Accident Reporting and Investigation

Extended investigation of a traffic accident is a job for the Accident Investigation District (A.I.D.)—a highly trained group with special equipment. That does not mean that other officers on the force have no responsibilities in this field. Quite the contrary.

Since the primary aim of traffic law enforcement is to prevent accidents, the determination of proper enforcement policies requires continued analysis of the traffic accidents that do occur. This analysis stems from statistics compiled from traffic accident reports. It is the duty of the first police officer who arrives at an accident scene to gather the facts and report the accident to the pertinent district operations officer on the form provided for that purpose. *All accidents must be reported regardless of severity.*

It is not necessary, however, to summon A.I.D. to the scene of all accidents. This unit should be called whenever the accident involves significant personal injuries or fatalities, hit-and-runs regardless of severity, or damage to property owned by the city.

The obvious first responsibility of an officer at an accident scene is to care for victims who need immediate treatment. After doing that, and calling A.I.D. if necessary, the following are the main responsibilities, not necessarily in order of priority, of the police officer:

(a) If necessary, enlist the aid of bystanders to caution approaching motorists and keep vehicular traffic moving past the scene at a reasonable rate of speed.

Keep pedestrians off the traffic lanes and a safe distance from the wreckage. This precaution will not only help to avoid additional mishaps at the scene, but will expedite the arrival and departure of emergency vehicles. Furthermore, such action will help preserve evidence which might otherwise be destroyed or altered by the movements of curious spectators while the police officer is tending the injured.

(b) Render additional first aid to victims if necessary.

(c) Summon additional personnel or equipment as may be needed.

(d) Scrutinize the area for an evidence of a "short-lived" nature, such as liquids which may quickly evaporate, and other kinds of evidence which may be altered or destroyed easily.

(e) Move or have moved to the side of the highway any wreckage creating a hazard.

(f) Arrest or take other proper action when a violation of the law has been committed.

Another aspect of police work at an accident scene concerns the towing away of disabled vehicles. In order to protect motorists from unscrupulous towing companies, Philadelphia strictly regulates the activities of these companies.[12] All towing companies engaged in accident work must be licensed and must file a schedule of charges with the Department of Licenses and Inspections. A copy of the license must be carried in each tow truck.

Before a disabled vehicle may be towed away, a towing agreement, in triplicate, has to be signed by the operator of the disabled vehicle and a police officer, if one is present. If he is there, the police officer keeps the original of the agreement and must attach it to his accident report. The towing agreement is in a set form and sets forth the towing charge in accordance with the company's schedule.

This towing agreement is just that—it cannot also be an authorization to repair the car. Such authorization can only be given after the towing is completed. Also, a repair authorization must be based on a prior estimate of the cost of repairs.

The towing ordinance expressly prohibits the towing company from offering any gratuity to an officer in order to induce him to recommend the company for towing business. It is a violation of departmental regulations for an officer to solicit business for a towing company. For the reasons expressed in PGM No. 2 on the Police Career, an officer should not accept any gift or gratuity from a towing company.

12. The Controversy Over the Proper Extent of Police Involvement in Traffic Work

We have discussed the extensive involvement of the police in traffic control:

(a) in enforcement of moving violation provisions;
(b) in enforcement of parking violation provisions;
(c) in traffic direction;
(d) in accident scene aid, reporting and investigation.

This involvement, however, has not been free of controversy. It is generally agreed that enforcing moving violation laws and investigating accidents are clearly appropriate for police work. Enforcing moving violation laws is law enforcement to protect lives and property and thus a traditional police function. Accident scene work is a major helping function of the police department. It is also related to enforcement of moving violation laws as many accidents involve moving violations; also the results of accident analysis are important in determining proper enforcement against moving violations.

Many people, including some police administrators, believe, however, that the police should not be involved in directing traffic or in enforcing parking restrictions. This view has already achieved some results. Meter maids, who are civilians without full police powers, do a great deal of

the parking-meter ticketing in many cities. In a few cities, meter maids can issue summonses, not only for meter violations, but for any parking violation. Meter maids have not yet been given the power to deal with violations of moving vehicles. School crossing guards, usually women or older men, also without full police status, have enabled many officers to be freed of school traffic duties. In Pennsylvania, civilians have replaced the state police at the job of administering driving tests and licensing drivers.

Some planners advocate even further reduction of the police role in enforcement of traffic laws. Many who feel this way are greatly concerned with the police image and believe that traffic enforcement should be separated from "police work," by which they mean traditional law enforcement. They argue that the better image for the police would be that of only law enforcers, with directing traffic left to others.

The contrary view is that police involvement in traffic work is good for the police image. The reasoning here is that traffic work brings the police into contact—often their only contact—with the "good" citizen and that by conducting themselves well in this contact, the police can favorably impress these good citizens. Those who advocate less police involvement in traffic enforcement counter this with the fact that no one likes a ticket, even if it is given him courteously, and thus it is hard to see how even a politely issued ticket can be good public relations for the department.

To many people, even more persuasive than the issue of the police image is that of practical manpower problems. It has been estimated that approximately 25% of police man-hours in the United States are devoted to traffic functions, primarily directing traffic at intersections. At the same time, the police departments of most big cities are 10% to 15% undermanned because they cannot find qualified personnel. Many people, though conceding that traffic control and parking enforcement are demanding and hard work, believe that this work need not be done by people who fulfill the very strict physical and other qualifications required of

police officers generally. Nor need they have the same intensive training as police officers generally.

For these reasons, in 1967 Los Angeles became the first city in the United States to hire men solely for full-time duty directing traffic. The age, eyesight and weight requirements were less stringent than those for Los Angeles police officers. Moreover, they took one week of training as compared to twenty weeks for a Los Angeles police officer.

These Los Angeles traffic control officers do not have "police" power, but are civilians without the right to arrest for traffic offenses or issue tickets. The Los Angeles officials do not feel that this lack of police power will affect the traffic control officers' ability to do their job. They believe that most people obey a man directing traffic simply because he is there; drivers don't stop because the person directing the traffic has full police powers but because he has put up his hand and because traffic is moving across the intersection. At construction sites, for example, most drivers obey the traffic signals of workmen without worrying about their authority. School Crossing Guards have also been successfully used in many areas.

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2. Printed in the Southwestern Law Enforcement Institute, Traffic Law Enforcement, p. 7, 1963.
3. 75 Purd. Pa. Stat. Ann. §§ 101 and following.
4. 75 Purd. Pa. Stat. Ann. § 1002.
5. 75 Purd. Pa. Stat. Ann. § 1221.
6. Phila. Code § 12-2405.
7. Phila. Code § 9-207.
8. 75 Purd. Pa. Stat. Ann. § 616.
9. 75 Purd. Pa. Stat. Ann. § 619.1.
10. 75 Purd. Pa. Stat. Ann. § 1203.
11. Phila. Code § 12-2405.
12. Phila. Code § 9-605.

Police Guidance Manual No. 9

Juvenile Delinquency

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Project financed by the Office of Law Enforcement Assistance
United States Department of Justice

Printed by the University of Pennsylvania Printing Office
Philadelphia, 1968

TABLE OF CONTENTS

1. Juveniles Under the Law

The law has always taken a special attitude towards children who commit offenses. Under the common law, that is, the ancient, unwritten, judge-made law of England, which America took over in part, a child under 7 could not be convicted of crime, no matter how grave the offense. Thus the child of tender years might kill or rob or set fires without suffering the penalties (often death, under the old law) to which an adult would be subject. The young child was regarded as not responsible, like an insane person, and so not chargeable with blame.

In the case of children between 7 and 14, the common law "presumed" that the child was not responsible, but it was open to the prosecutor to rebut that presumption by proving that the particular child did have enough intelligence, judgment, and moral awareness to know what he was doing, understand the consequences, and realize that his behavior was wrong. Since many children could pass this test, it was not uncommon for eight-, nine-, or ten-year-olds to be convicted of major offenses and to be sentenced to very long terms in the penitentiary, or even to death.

Gradually in the Nineteenth Century, public opinion turned against this spectacle of youngsters being imprisoned with hardened adult criminals. Reformatories and training schools were set up for detention of young offenders. Special programs of education and moral rehabilitation were provided in these institutions. The legislature authorized special kinds of sentences for the young, e.g., detention until the age of 21, regardless of the kind of crime committed. The idea was that there would be a better chance to reshape the character of a young boy under these circumstances and to save him from a life of crime.

The next step in this development was to establish a special court and special procedures to try juveniles. The Pennsylvania Juvenile Court Law of June 2, 1933,[1] replacing a series of earlier laws, deals with these matters. The preamble to the law states the philosophy of the Act:

> "The welfare of the Commonwealth demands that children should be guarded from association and con-

tact with crime and criminals, and the ordinary process of the criminal law does not provide for such care, guidance and control as are essential to children in the formative period of life; and

"Experience has shown that children, lacking proper parental care or guardianship, are led into courses of life which may render them liable to the penalties of the criminal law, and that the real interests of such children require that they be not incarcerated in jails and penitentiaries, as members of the criminal class, but be subjected to wise care, guidance and control so that evil tendencies may be checked and better instincts be strengthened; and

"To these ends, it is important that the powers of the courts, with respect to the care, guidance and control over delinquent, neglected and dependent children should be clearly distinguished from those exercised in the ordinary administration of the criminal law."

2. The Juvenile Court

The Juvenile Court for Philadelphia is part of the County Court, located at 1801 Vine Street. By law it is the only court that can handle cases involving delinquents below the age of 18, with two exceptions. Murder cases can be tried in the regular criminal courts, and delinquents over 14 can be tried in the criminal courts if the Juvenile Court thinks it best to certify the case to the District Attorney for regular prosecution. If a case against a 16-18 year old happens to get started in the criminal court, as might occur if the delinquent claimed to be over 18, the criminal court can either go ahead or transfer the case over to the Juvenile Court.

In theory, what happens in the Juvenile Court is not a "prosecution" and there can be no "conviction." Where an adult or youth over 18 would be found "guilty" for example, of rape or robbery, the Juvenile Court will instead conclude with an adjudication that the juvenile "requires care, guidance and control." The idea is not that the State is trying to "punish" but only to find out what's wrong and how to deal with it in a way that's best for the child as well as the public.

Pursuant to this theory, the juvenile court laws provided extremely informal procedure, because it was felt that there was no need to protect the child against injustice or oppression by the state: the state was only trying to help. Juvenile court cases were not captioned "Commonwealth against Child," like criminal cases, but "In re Child," which means "About Child" or "The Case of Child." The first formal paper is called a "petition," rather than an indictment or information. It may be filed by anyone who knows the facts, for example, a parent or neighbor; the district attorney need not be involved. The hearing is supposed to be held in the privacy of the judge's chambers rather than in open court. There is no jury. Until the *Gault* case, discussed below, there might be no defense attorney. The judge could use any information brought to his attention by probation or other officers without regard to rules against "hearsay" evidence. He and the law enforcement officers could question the child without regard to ordinary rules against compulsory self-incrimination. The judge's discretion regarding what to do with the child was very broad. He could send the child to a reform school or other institution for many years (until the child reached 21) even for an offense for which an adult could not be imprisoned more than a few months. On the other hand, he might send the child back to its parents even where he was satisfied that a very serious offense had been committed.

Under these circumstances, juvenile courts came under severe criticism. On the one hand, they were accused of failing to protect the public by excessive leniency. On the other hand, they were also accused of arbitrary and unjust dealing with individual children. Juvenile courts sometimes appeared to fail to protect the public when they allowed youngsters involved in serious offenses to go home without substantial punishment or effective supervision. Juvenile court action can be unjust when large numbers of youngsters are hurried through the court with only a few minutes spent

on each case and no real chance for the child or its parents to explain or prove what really happened.

Many of the difficulties of the Juvenile Court are not the fault of the people involved. Legislatures fail to provide the money necessary to make the Juvenile Court idea work the way it was intended. We need more judges, more probation officers, and especially more institutions where children can be housed and retrained, and the more dangerous ones kept off the streets.

Criticism of the juvenile courts came to a head in the *Gault* case.[2] Gerald Gault was a 15 year old boy who was committed to the State Industrial School under the Arizona Juvenile Code. A neighbor lady, Mrs. Cook, had complained to police that Gerald and another boy had called her on the telephone and made offensive lewd remarks. Gerald was on probation on a previous delinquency. He was picked up and brought to the Children's Detention Home without notice to his parents. They located him that afternoon, were told "why Jerry was there," and were informed that there would be a hearing next day.

On the following day at the hearing, probation officer Flagg filed a petition that gave no information about the nature of the charges, but said only that Gerald was a minor "in need of the protection" of the court. The parents did not receive a copy of the petition. Mrs. Cook was not present at the hearing. Flagg testified to what she had told him in a telephone call. There was conflicting testimony as to whether Gerald had done anything more than dial the call to Mrs. Cook. Nobody was put under oath. The judge questioned Gerald and obtained some admissions from him, but the exact nature of these admissions could not be determined later because no record was made of the hearing. Gerald was committed to the State Industrial School until he was 21. That meant up to six years confinement for an offense which for an adult carried a maximum penalty of two months.

The Supreme Court ordered Gerald released on habeas corpus, holding that the hearing was fundamentally unfair in a number of respects. He and his parents should have

received: "specific notice of the charges," "adequate time to prepare his defense," "clear advice of his right to counsel" to be provided without cost if need be, opportunity to face and cross-examine his accuser in court, protections of the *Miranda* sort [See Police Guidance Manual No. 4] against involuntary confessions and self-incrimination, and a fair opportunity to appeal based on a transcript of his hearing.

It is too soon to say what effect the *Gault* case will finally have on the handling of juvenile delinquency. The first thing to notice about the case is that it directly affects *only the cases that go to court for hearing,* where the child may be sent away to an institution for years. Prehearing dispositions by police or court staff, not resulting in substantial involuntary confinement, have not been ruled on by the Court. The procedures set forth later in this Manual are designed to secure fundamental fairness along the lines marked out by the Court at every stage of the proceedings. In some circumstances a child may be questioned without the standard warnings against self-incrimination, or without providing counsel, if it is clear beyond question that the case will not go beyond a "remedial" or prehearing disposition on the basis of the answers obtained.

3. The Juvenile Aid Division

The Juvenile Aid Division of the Philadelphia Police Department is a specialized branch of the force familiar with the problems of children, the law and practice of the Juvenile Court, and the social agencies that can deal with problem children. The job of the JAD is to investigate offenses alleged to have been committed by juveniles and to handle juveniles in police custody. JAD officers also patrol school and other areas where disorders may be expected, maintain surveillance of gangs, and investigate morals offenses (whether or not they involve children).

After investigating, the Juvenile Aid Officer decides whether a youngster's case should be taken to the Juvenile

Court. If he decides that the case does not warrant court action, for example, because the youngster is innocent or his involvement in misbehavior was minor and can be corrected by parental control, he makes what is called a "remedial decision" instead of "referral" to court. A remedial decision means police advice or admonishment to the child or its parents, reference to a welfare agency, or other non-court disposition.

This screening of cases is carried out by the Intake Division of the Juvenile Court at the Youth Study Center on the Benjamin Franklin Parkway. There is a hearing before a probation officer, who may "adjust" the matter, i.e. dispose of it by releasing the child without court action. Where court action is called for, he decides whether the case shall be "court-in" or "court-out." Court-in means that the youngster must be held in custody until the judge can hold a hearing. This may mean several weeks delay because of the crowded docket. The child may be held in the Youth Study Center on the Parkway or the older ones may be detained at Pennypack House.

Court-out cases are released in custody of their parents usually. Crowded conditions in the Youth Study Center, and the undesirability of holding children in Pennypack House, put pressure on the intake officers to make the cases court-out. That is why police and complainants are often frustrated to learn that fairly serious offenders are quickly on the street again. The trouble here is the familiar problem of getting the state and the taxpayers to be willing to pay for proper institutions.

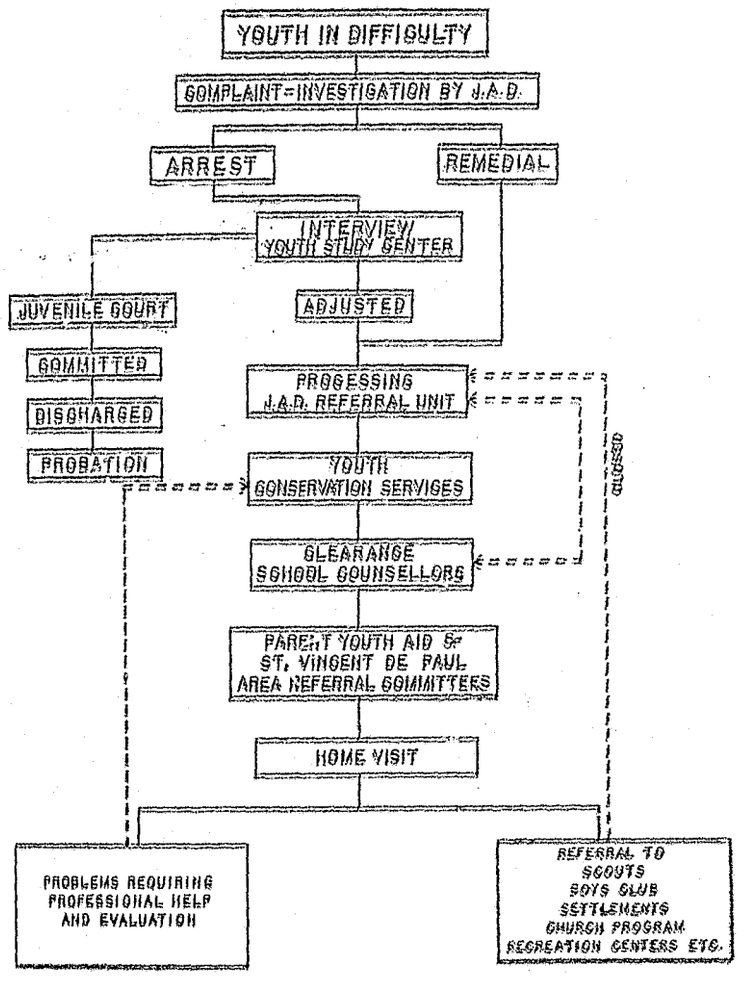
On the page facing this is a diagram of the handling of a juvenile case, taken from the Investigations Manual of the Juvenile Aid Division.

PHILA. DEPT. OF PUBLIC WELFARE

DIVISION OF YOUTH CONSERVATION SERVICE

JUVENILE AID DIVISION POLICE DEPT.

REFERRAL PROGRAM IN ACTION



4. Police Officer's Attitude Towards Offending Youngsters

This is a very important point. It applies both to JAD officers and to regular district personnel, since the man on the beat has first contact with most cases where youngsters get into trouble. In many neighborhoods a large part of the beat man's work is with minors. It is very important for the beat man to know his neighborhood well, to become friendly with the youngsters there, "good" and "bad," as well as their parents. Only then can the officer be the constructive and trusted influence that the Police Department wants him to be.

The hardest thing is to really accept the point of view of the Juvenile Court Act and the Juvenile Aid Division. The State Legislature, the Court, and the Police Department are committed to the viewpoint that we are *"aiding"* the troublesome youngster, even the ones who are serious and repeated offenders. Unless and until a Juvenile Court Judge chooses to certify a particular case to the district attorney for indictment, the law and the community want to try to *help* him, so far as this can be done without turning a dangerous person loose on the public. We are not helping him because we like him, but because we believe that this is the best way to prevent a troublesome kid from becoming even more dangerous. And "helping" doesn't mean coddling. Many troublesome kids need strong discipline, and they get it at Glenn Mills and White Hill when other methods won't work.

But the *helping attitude* does mean that nobody in the law enforcement process, whether in the Court or the Police Department, should abuse a youngster either physically or by words. He may be ugly, filthy-mouthed, and even dangerous. As a human being you may be angry. But it's your job to do the best you can to *keep your temper and, if possible, your good humor.* Be firm, protect yourself against physical attack, but play it cool. Don't swear back at him. Don't go down to his level; don't lose the respect of people who may be watching the incident. Where you must take

a youngster into custody, try to give the impression that you are doing what you have to, for his good, and that you regret that his behavior has brought about the necessity for your using authority or force. This is especially important where you are not *absolutely certain* that you have the right boy. Nothing is worse for the Police Department, the public, and the youngster than having him treated with unnecessary force or rudeness, when it may turn out to be the wrong boy.

Be "color blind." Everybody knows that a major part of today's policing job is in the big city slums, often predominantly Negro, and that relations between this part of the population and the police are very touchy. All the big city "race riots" have started over some police incident, generally where the policeman was acting perfectly properly. We have to make sure that we give absolutely no basis for

anybody to believe that the Police Department plays favorites or picks on any group.

Every officer should do the best he can to eliminate race, nationality, or religion as a consideration in his behavior. This is not easy. Policemen are human beings, and have prejudices like other people. You're not expected to like all groups equally. In fact, you may be kidding yourself if you say you do. It's much healthier to admit that, because of your own upbringing or some personal experience, you do have a prejudice; but knowing that, make up your mind to watch out for it and not let it affect your official conduct and manner.

There are lots of "traps" in thinking about race. It's easy to fool yourself. For example, if 500 well-dressed University of Pennsylvania students go on a rampage in a "Rowbottom," upset cars, and break windows in busses, some people might take the attitude "Boys will be boys. They're just working off steam." The same kind of incident in a Negro "ghetto" tends to be taken much more seriously. The Philadelphia Police Department is firmly committed to even-handed justice in dealing with disorders, regardless of the source.

Another thinking trap may be crime statistics. You are told or you know that a high percentage of delinquents are Negro, or a high proportion of the people in prison are Negro. It's easy to jump to the wrong conclusion that a dark skin is an indicator of criminal tendency. But if you or somebody else looked into the figures a little more, you would learn that these high delinquency rates match up against living in rotten neighborhoods with bad schools and high unemployment, *whether or not they are Negro neighborhoods*. That's the case in some parts of the country with very poor Puerto-Rican and Mexican neighborhoods; and there has been similar experience in the past in this and other countries with poor immigrants of various European nationalities. See Police Guidance Manual No. 3 on criminology, causes of crime, and the relation between crime and race.

Another example of concealed bias is in identification of suspects by persons of another race. When one thing is quite noticeable about a person, and makes it possible easily

to put him in a certain group, we tend to notice that thing and to pass over other things that are harder to notice and remember. In China or Africa, all white people look more or less alike to the natives, because their white skins strike the observer first and most forcibly. Similarly many white Americans find it harder to identify Negroes as individuals unless they know them well.

An experienced observer of police practices, who is himself Negro, pointed out:

> Policemen are trained to deal with identification based on many factors other than race. Since all Negroes do not look alike or even have the same skin color, it ought to be stressed that phrases — quite commonly used — such as "Negro male" are inadequate. It is the policeman's duty to attempt to secure and transmit more particular identifying data, as complete and descriptive as in the case of white suspects. *A major cause of Negro citizen resentment arises out of the feeling that in many instances he may be interrogated by white police officers solely on the basis of the physical description "Negro."*

To behave properly on the race question, you have to try to imagine that you were in the position of the other fellow. The Negro boy you pick up, who hears you refer to his color or race in disrespectful language, feels a deep unfairness. He feels that you are moving against him not because of what he did but because of who he is. It is as if a Negro policeman, working in an Irish or Italian or Polish neighborhood, were to call any kids he picked up there dirty Micks or Wops or Pollocks. You can imagine the race riot that would soon follow that kind of talk.

The best policy is not to think of the disfavored group as "them" against "us." We're all Americans of many immigrant stocks; and the Negroes, incidentally, were in America long before the ancestors of many white Americans. Think of any boy you have to take into custody as "one of us" — an American, a Philadelphian — who's in deep trouble, and who is giving the rest of us — people of his own race as well as others — trouble.

5. Who Is a "Juvenile Delinquent"?

The law defines "juvenile delinquent" very broadly. It includes both very serious offenses and mere truancy or habitual disobedience.[3] Violation of "any law . . . or ordinance" is delinquency according to the words of the law. So theoretically any time a boy commits a traffic offense or parks overtime at a meter he could be adjudicated a "juvenile delinquent," and sent away until he's 21 years old if a juvenile court judge thought he needed that kind of care and control. However, it is plain that the legislature never intended such a result. The policy of the District Attorney is against it. And the Juvenile Court would be even more swamped than it is if the Police Department brought in every traffic violator. Accordingly, as a practical matter ordinary traffic offenses of juveniles are handled like adult traffic offenses, on the basis of summons and disposition in the Traffic Court.

The legislature has also responded with a special provision of the Vehicle Code authorizing [but not requiring] prosecution of a juvenile over 16 for summary traffic offenses in the same manner as an adult, except that he can't be jailed for non-payment of fines.

A series of traffic offenses or one quite serious traffic offense might indicate that the youngster needs more than routine treatment in a traffic court. In such a case the Juvenile Aid Division should be called into the picture.

There are a number of other minor law violations which do not indicate any basic personality trouble in the youngster or any special problems in his family that make it worthwhile to call in the special facilities of the Juvenile Aid Division or the Juvenile Court. It will be a matter of judgment whether in a particular case the misconduct is especially bad or repeated enough so that the offender should be regarded as a delinquent. In case of doubt consult the J.A.D.

EXAMPLES

I

Facts: *A youngster violates city ordinances by feeding pigeons, keeping a dog without a license, littering the streets, or smoking in a forbidden place.*

Action: *Do not treat or book as juvenile delinquent for these summary offenses. In some cases, a citation or summons may be issued either by the policeman or on application to a magistrate.*

II

Facts: *A youngster is seen writing or drawing on a wall, throwing stones at cars on a highway, or tampering with a fire hydrant. These are violations of city ordinances and in some cases of the state penal code.*

Action: *Although the Juvenile Aid Division has the basic responsibility of deciding whether a remedial decision will be enough without taking the child to Juvenile Court, the officer on the beat may, in cases of clearly trivial violations by very young children, with no apparent likelihood of repetition, refrain from taking the child into custody as a delinquent. Consider taking the child to its home with a reminder to the parents to try to prevent recurrence. An obviously defiant trouble-maker, annoying and inconveniencing others, may have to be brought in for processing by the J.A.D.*

III

Facts: *An officer assigned to keep order at a stadium where a high school football game is being played suddenly finds himself confronted with a fight. About a dozen males are involved, all apparently of high school age.*[4]

Action: *Here again, the first duty of the officer is to stop the disorderly conduct on the part of the few who would spoil the day for everyone. This accomplished, he should get the names and addresses of those involved for referral to the school authorities and for notification of the parents. Since this is a school activity, discipline of those who are students can best be left with the school and the home. Those who promise to behave can be left at the game. Those who refuse to cooperate can be required to leave or taken into cus-*

tody, if necessary. Those cases in which dangerous weapons are displayed or in which serious injury occurs should go to court and probably should involve taking into custody. Police officers working such an assignment should, upon arrival at the stadium, contact the school faculty members who are there representing the school administration.

IV

Facts: *On the eve of a high school football homecoming game, an officer in his cruiser on his beat in the downtown area gets a complaint that juveniles are running wild in one corner of the area — racing automobiles, shouting, and generally disturbing the peace. As he rounds the corner near the source of the complaint, he comes across an auto legally parked at the curb with about 15 juveniles in and about it, singing school songs at the tops of their voices.*

Action: *In this case there is no injury to person or property involved. In addition, the officer has no way of knowing that this group was involved in the conduct in the complaint. After stopping the disturbance, the officer should check the registration of the car and the driver's license of the juvenile behind the wheel. His name and address should be taken, along with a description of the car. This will be useful in the event of further complaints later that evening. No police action is called for beyond warning the group about further disturbance of the peace and about the dangers of overloading an automobile.*

6. Minors and Alcoholic Beverages

Section 675.1 of the Penal Code[5] makes it a summary offense for any person under 21 to purchase, consume, or transport alcoholic or malt beverages including beer. The offense is punishable by a fine or up to 30 days jail. Drinking is often a factor in assaultive crime and traffic offenses, and this law makes it possible for police to intervene in a preventive way even where there is no drunkenness or disorderly conduct. It also facilitates investigation leading to adult offenders who have been illegally selling liquor to minors.

On the other hand, the law goes quite far in some respects raising problems of police policy in enforcement. Moderate consumption of beer by youngsters over 16 or 18 is not regarded as criminal by some sections of the population, is permitted and widespread among young men in the armed services, and is not forbidden by law in some other states. Some minors of 19 or 20 are married, work for a living along with adults who drink beer at lunch, and generally function in an adult environment where it seems natural for them to partake of beverages consumed by their companions. Furthermore, with beer sold in groceries and otherwise widely available, there will be occasions when a minor is "transporting" beer solely from the store to his parents' home.

In view of these possibilities enforcement effort is focussed on (i) alcohol in association with crime-producing or accident-producing situations especially juvenile gangs; and (ii) drinking by teen-agers presumably still in the custody of parents who are or should be interested in keeping their children away from alcohol.

7. "Delinquents" Who Are Not Law Violators: Truants and Wayward Children

The Pennsylvania Juvenile Court Act includes within the definition of "delinquent" some classes of youngsters who need attention even though they have not done anything for which a grown-up could be punished. The child may be "wayward or habitually disobedient," or "habitually truant," or behaving so as to "endanger the morals or health" of himself or others.

The main responsibility for these cases is not on the police, but there are situations which a policeman has to handle, and he handles them differently from cases of delinquency

based on punishable offenses. The Board of Education, for example, has the main responsibility for truants. Its Division of Pupil Personnel and Counseling employs hundreds of "attendance officers," and several "court representatives" whose job is to present to the Juvenile Court the more serious truancy cases.

EXAMPLES

I

Facts: *You have noticed a 15-year-old boy loafing in a railroad yard during school hours. He is technically trespassing but you have no good reason to believe that he has been stealing or injuring property. When you ask him about school he is evasive or defiant.*

Action: *Ideally, a child in this situation should be returned to school or parental custody with minimum intervention of the police. Thus, the state Guide for Cooperation between School Officials and Police*[6] *says:*

a. If school is in session the investigating officer should return the child to the school principal's office with a brief report of the circumstances, action taken, etc.

b. If school is not in session the investigating officer will contact the parents and request their immediate presence if possible.

c. If the parents cannot be located the police should convey the child to police headquarters and refer the matter to the Juvenile Unit or officer in charge.

However, in a big city it would not be practical for patrol officers to undertake to find the parents, identify the proper school, and take the child to the school. The specialized Juvenile Aid Division is the police agency for handling these problems. Accordingly, the boy should be taken to the district police station, not for booking as a juvenile delinquent but to be turned over to J.A.D. Unless J.A.D. has reason to believe that some more serious misbehavior is involved, the J.A.D. officer will follow the course indicated by the state Guide, without booking the child as a juvenile delinquent. It is important in such cases that detention at

the police station be restricted to the absolute minimum time necessary to return the child to persons responsible for its welfare.

In exceptional cases, where the child involved is very young and the patrol officer happens to know that the home is nearby with a parent available to take charge, the child may be taken there directly.

II

Facts: *The mother or father of a child complains to you that their 16-year-old won't go to school, disobeys them, and has come home occasionally smelling of alcohol.*

Action: *Tell the parents about the availability of school attendance officers, the Family Service Agency, and the Juvenile Aid Officers. A parent may file a delinquency petition but should not do so without advice of one of the services mentioned. Although the facts make out a case technically within the Juvenile Court Law, the uniformed police should not assume responsibility by taking the child into custody, but rather should report the matter to J.A.D.*

8. Neglected and Dependent Children

The Juvenile Court Act gives the Court jurisdiction not only over delinquents, but also over the quite different classes of neglected and dependent children. These are children who are abandoned or homeless or whose parents don't take proper care of them, or children who "associate with vagrant, vicious or immoral persons."

This is an altogether different proposition from delinquency. The children involved are younger on the average than the delinquent group. They are *in* danger rather than being a danger to others. As in the case of a child who is simply lost temporarily by its parents, the neglected and

dependent child isn't doing anything that calls for punishment (except maybe punishment of the parents). All the officer has to do is see that the child is taken where people will care for him. This usually means that the officer first takes him to his home. If there is no home or if the home is plainly unsuitable (parents drunk or insane, etc.), then the child must be taken to a suitable social agency.

There will be many cases where the officer on the beat must make a judgment whether to regard the child as delinquent or as neglected. If in doubt, take the child to the district police station and notify the J.A.D.

9. Curfew

Philadelphia has an ordinance making it unlawful for a child under 17 to "remain" in a public place, amusement place, or private business establishment after 10:30 at night (midnight on Fridays and Saturdays). Remain means "loiter, idle, wander, stroll, or play." The ordinance doesn't apply where the youngster is accompanied by a parent, or engaged on an errand for a parent, or has a lawful job during curfew hours.

The ordinance provides that a police officer who finds a minor violating curfew shall take his name, address, age, and the name of his parents for report to the Juvenile Aid Division. The child is to be told to go home immediately. The J.A.D. will notify the parents of the violation. Parents and owners of establishments who "knowingly permit" violations can be fined.

The curfew ordinance is very broad. There can be many situations which are technically violations but where it would be wrong for a police officer to do anything about it. It would be contrary to the intention of the law and to the interests of the Police Department. The ordinance states that the purpose is to deal with "menace to . . . public peace, safety, health, morals and welfare." Accordingly, the Police Department has understandings with various church and school groups, for example, that children can attend parties

or other gatherings even though this will keep the children out a little later than the curfew permits.

The individual policeman should also use his judgment and refrain from questioning youngsters or ordering them home when there is no reason to suspect that the youngster may get into trouble or that good parents would normally object to the child being where it is. If the policeman is too free or quick in enforcing the curfew, perfectly law-abiding, responsible youngsters and their parents will come to dislike and disrespect law enforcement officers. Under no circumstances should a youngster be treated as a juvenile delinquent merely because he violated curfew.

EXAMPLES

I

Facts: *Youngsters are coming out of a movie at 10:45 P.M. on a mid-week evening, and strolling off in an orderly way. Under the curfew ordinance, they shouldn't have been in an amusement place after 10:30, and shouldn't be strolling the street at that time.*

Action: *A general admonition to get home promptly is all that is called for. The violation is trivial (like the motorist who is exceeding the speed limit by only a couple miles an hour), and the situation is self-explanatory.*

II

Facts: *At 3 A.M. you stop a car going the wrong way in a one-way street. The driver appears to be 18. His companion, male or female, looks 14.*

Action: *Beside the action you take on the traffic offense, make the curfew inquiries, and unless* absolutely certain *of the legitimacy of the situation, take the youngsters to the district station for handling by the J.A.D. The violation is not a minor one, and it is important to enforce the ordinance even-handedly. The public must not get the impression that the ordinance is enforced only against the poor or minority groups.*

10. Questioning Juveniles

The general policy and rules on questioning adults are discussed in Police Guidance Manual No. 4. Do different rules apply in the case of juveniles? The law on this is unsettled in some respects, but one thing is clear. Under no circumstances should the child, any more than an adult, be compelled to answer questions, either by physical force or psychological pressure.

In some ways, the juvenile's privilege against self-incrimination may not go as far as the adult's. It is unconstitutional for a prosecutor or a judge, trying an adult, to put

him on the witness stand and ask him questions, even though he is allowed to claim his privilege against self-incrimination. The idea is that an unfair inference of guilt might be drawn from his declining to answer, and that the situation itself puts improper pressure on the accused. But it has been accepted practice in juvenile court for the judge to ask the youngster questions, and to take into consideration his answers or his refusal to answer. This seemed constitutional prior to the Gault case because the judge was supposed to be asking questions for the purpose of *helping* the youngster not punishing. Also the law provides that what the youngster says in juvenile court cannot be used against him later.

On the other hand, the juvenile gets more protection in some ways against police questioning than an adult gets. For example, the youngster's "consent" to answer questions may not be enough to legalize if it he is too young to realize the risk and consequences, or if his parents or lawyer are not present. Even offer of a lawyer's services and formal warning that answers may be used against him may not be enough in the case of an ignorant young child.

On the other hand, warnings would appear to be required only where there is to be a series of questions directed at a suspect in an effort to elicit incriminating admissions or a confession. A policeman, like any other person is free to ask questions of children as well as adults, especially where the child is not in custody or restraint.

Some Working Rules on Questioning Youngsters

A. *So long as you are just picking up information and not trying to pin something on the youngster you're talking to,* feel free to ask children questions, in as friendly manner as possible, without threat and without suggesting that they are bound to answer because you are a policeman. No offer of counsel or warning about self-incrimination is required.

B. *Even where you are taking custody of the youngster,* the circumstances may make it appropriate for you to ask a few questions for information immediately needed so that the officer can make the judgments required on the scene.

EXAMPLES

I

Facts: *The officer comes on a child who is apparently lost, or runaway, or truant, or engaged in minor mischief not seemingly calling for more than a reprimand or taking the matter up with parents.*

Action: *The officer may, without formal warnings as to counsel or self-incrimination, inquire as to identity, address, and the immediate situation at the time the officer comes on the scene, so long as the questioning does not take on the aspect of systematic interrogation to lay the basis for charges.*

II

Facts: *The officer comes on the scene where a group of youngsters have apparently been involved in a purse-snatching. The adult victim has hold of one and identifies another as participant.*

Action: *The officer may detain the group for an emergency sorting out process, in the course of which he may ask a few questions to clear up just what is going on, for example, "Who has the purse? Who was that kid that just ran off? What did you do to this lady?" It is plainly absurd to offer the boys counsel in this situation, or to try to explain the privilege against self-incrimination while trying to hold onto several hostile youngsters. The alternative of taking everybody along to the district without some initial effort to clear up just what has happened, who is involved and who is by-stander, is also clearly undesirable.*

C. *Do not enter into an extended or systematic interrogation or try to get a written statement.* That is the job of the J.A.D. officer, who before any interrogation will give the youngster a standard warning regarding his rights, including the right to remain silent and the right to counsel.

D. *While the youngster is in custody and on the way to the District,* if there's going to be any further discussion — even voluntary talk by the youngster — give him the standard warning at the earliest possible moment.

11. Taking Custody of Delinquents: Protective Custody of Young Children

There are two bases for taking custody of children: 1) to safeguard the child and the parent's interest in keeping control of the child; 2) to subject a delinquent child to proper investigation, discipline, and correctional measures. The difference between the two should be kept clearly in mind because the policeman's right and duty to take custody is quite different in the two classes of cases. If it's a matter of protective or parental custody, the policeman can act without any evidence of wrong-doing by the child, but only in regard to very young children who appear to be lost or in dangerous circumstances or otherwise in a situation where ordinary parents would like to have their child picked up.

As children get older, into the teen-age category, they become more independent. Most parents allow them to move around the neighborhood and the city more and more without supervision. They don't expect the police to be picking up their teen-agers, at least during the day and early evening, and the teen-agers themselves would strongly resent interference that was not based on some evidence of wrongdoing. The older and more clearly independent the child, the less appropriate it is to take custody for protection, and the stronger must be the evidence of misbehavior, until ultimately, in the case of offenders over the juvenile court age, the general rule is "no interference without probable cause to arrest." See Police Guidance Manual No. 4 on arrest and other law enforcement stops.

Some Working Rules on Taking Custody for Delinquency

A. *Don't take custody of a youngster or order him around when you can accomplish your purpose by politely asking him questions where you find him.*

B. *In case of a stop on the street, stop the fewest individuals for the briefest time that will permit you to accomplish*

your purpose. Where the situation requires any substantial detention, the youngster should be taken to the district and turned over to the J.A.D. which is responsible for all police custody of children.

C. *If it's necessary to take custody, do so with the least possible embarassment to the youngster and his family.* For example, in picking up a youngster at school, work through the principal's office. Have the youngster brought there, instead of going to a classroom for him, shaming him in front of everybody, and giving him reason to put up a big front of resistance or disobedience. If he works, try to arrange to pick him up before or after working hours. Unless there is special justification for doing otherwise, don't get him out of his home in the middle of the night, disturbing the family and its neighbors.

D. *Notify parents or the people he lives with,* as soon as possible, unless there is a particular good reason not to, for example, if these other people have been engaged in criminal activities with the child and have been or are about to be arrested. In the ordinary case of a pick-up on the street, telephone his home or let him do so. If there is no telephone, walk or drive by his home to leave word, even before you take him to the district. At the very latest, get the word to the parents promptly upon arriving at the district. Parents or other relative, employer, attorney, or other person interested in the youngster should have the earliest possible opportunity to come to the district with the child.

E. *Do not detain or transport juveniles along with adult offenders,* if you can help it. Remember that we are trying to keep "juvenile delinquency" and "adult crime" on two separate tracks, with two quite different attitudes and methods of treatment. If the youngster finds himself in the wagon or in a police station cell next to adult drunks, prostitutes, and pickpockets, it will be no use pretending to him that we are trying to "help" him but "punish" the others.

12. Fingerprints; Photographs

The presumption is against taking fingerprints and photographs in juvenile cases. But this may be done in accordance with the following policies:

No fingerprinting of children under 14.

Fingerprint only in serious cases of the sort where police experience shows that prints will be useful in solving future cases, e.g. homicides, rape, robbery, burglary, aggravated assault, house breaking, purse snatching and auto theft. Prints are made only at direction of the J.A.D. officer.

Prints are retained in Juvenile Aid files, not forwarded to other agencies, or incorporated in adult files. They are accessible only to the Juvenile Court and other police agencies.

Cards are destroyed if J.A.D. is satisfied upon investigation that the juvenile was not culpably involved in the offense, or when the juvenile reaches 21 if there is no record of additional delinquency after 16 or if, in the opinion of J.A.D., any recorded offense in the 16th or 17th year was not serious.

In addition to those fingerprints that will go into the file, prints of juveniles may be taken as an investigative aid in a current case. If latent prints are found at the scene and there is reason to believe that a particular juvenile participated in the offense, he may be printed for purposes of immediate comparison, even if his prints could not be filed under criteria listed above. If the result is negative, the fingerprint card should be immediately destroyed. If it is positive, it should be made a part of the investigative report forwarded to the court. If the case is not sent to court despite a positive comparison, the prints should be destroyed or, with the special permission of the juvenile court judge, filed with the police copy of the investigative report. It should not go into the juvenile fingerprint file.

Photographs are to be made and retained only on special request of J.A.D., ordinarily only for temporary use in identification. Identification from photograph, always difficult, is especially unreliable for juveniles who are changing in appearance very rapidly.

13. Gangs

There are all kinds of "gangs." Some of them regularly give serious trouble. Others rarely give trouble, usually of a minor mischief sort. Even the ones that give serious trouble probably spend most of their time in non-criminal activity, providing the only "social club" available to the members. Moreover, it is important for the police officer to bear in mind that there are some members of even the most troublesome gangs who belong because they're afraid not to belong, or as a means of self-defense against other gangs. The reason for bearing this in mind is that dangerous gang activity can be successfully suppressed only by zeroing in on the worst elements. The policeman who doesn't discriminate between the "good" and "bad" gangs, between the "good" and "bad" members of gangs, and between "good" and "bad" behavior even of the bad gangs is just going to make matters worse. All the boys, good and bad, will learn to hate policemen and law as stupid and unfair.

So *the best advice to police officers is to be fair and, so far as possible, to treat every member of the gang as an individual,* who may or may not be party to the disturbing or criminal behavior that brings the police into the picture. The fewer people you have to use your authority against, the better.

EXAMPLES

I.

Facts: *Someone telephones a complaint that a gang of teenagers hanging at the corner of X and Y streets is creating a disturbance and calling obscenities to passing women. You arrive on the scene and there is a group of boys lounging outside a corner candy store. They are no longer creating a disturbance, perhaps because your squad car has been observed.*

Action: *Try to get the ring-leaders identified by the storekeeper or neighbors. Warn them and let them see you make a note of the warning in your notebook. Let*

the rest of them know that you are aware that others were involved too, but that some were not, and you'd be sorry to have to take further action.

Do not *order the entire group to leave. Corner chasing has been found generally ineffective to maintain order and needlessly irritating to minority groups. The gang will collect again either at another corner or at the same one the minute you leave. And they will be more determined to defy the police or harass the complainants by renewed disorder. Sometimes it will be helpful just to stay a while and keep them under surveillance. Things may get so dull that the group disperses voluntarily. If the group has dispersed before you get there, collect whatever information you can; but* do not *pick up an individual boy who may happen to be standing there or sitting on a nearby doorstep.*

II.

Facts: *There has been a shooting with racial or gang overtones in a school. Immediately afterwards there is general tension in the neighborhood. You encounter groups of known gang members on your beat.*

Action: *If they appear to be moving towards a troubled area or in the direction of a neighboring gang's "territory," advise them against it, tell them not to look*

for trouble and to go home. Notify J.A.D. at once. Stay with the gang as long as possible so that your presence helps to cool the situation. Do not, *whether you are the district man or J.A.D., give them orders which you are not prepared and authorized to enforce. Pick them up only if you have some ground, other than just being members of the gang, to believe that these individuals took part in the unlawful incident at the school, or if they are presently engaged in substantial delinquent conduct.*

III.

Facts: *There has been a serious criminal incident on your beat. It could easily have been an incident in continuing hostilities between two gangs, but you have nothing to go on. An unknown person telephones that X, one of the gang leaders, did it or ordered it.*

Action: *Pick up all the information you can by discrete questioning of cooperative persons. If you think it will do any good, talk to X at his home or if you encounter him on the street. If you get enough information to warrant an arrest, pick up the suspects pointed to in that information.* Do not *round up all gang members for questioning in the district.*

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FOOTNOTES

1. 11 Purd. Pa. Stat. Ann. §§ 243 and following.

2. 387 U. S. 1 (1967).

3. 11 Purd. Pa. Stat. Ann. § 243(4) provides:

> (4) The words "delinquent child" include:
>
> (a) A child who has violated any law of the Commonwealth or ordinance of any city, borough or township;
>
> (b) A child who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian or legal representative;
>
> (c) A child who is habitually truant from school or home;
>
> (d) A child who habitually so deports himself or herself as to injure or endanger the morals or health of himself, herself, or others.

4. Illustrations III and IV are with minor modifications quoted from Myren & Swanson, Police Work with Children, Children's Bureau, U. S. Dept. of Health, Education, and Welfare (1962), pp. 48-49.

5. 18 Purd. Pa. Stat. Ann. § 4675.1 (1966 Supp.).

6. Department of Public Instruction, Commonwealth of Pennsylvania, School Executive Series No. 2 (1962).

Police Guidance Manual No. 10

Demonstrations Picketing Riots

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Project financed by the Office of Law Enforcement Assistance
United States Department of Justice

Printed by the University of Pennsylvania Printing Office
Philadelphia, 1968

TABLE OF CONTENTS

ACKNOWLEDGMENTS

The following colleagues at the University of Pennsylvania gave valued advice and criticism: Professors Paul Bender, Curtis R. Reitz, and Henry S. Ruth, Jr., of The Law School, and Dr. Marvin E. Wolfgang, Chairman, Department of Sociology, and Director, Center for Studies in Criminology and Criminal Law. Philadelphia Police Commissioner Frank L. Rizzo and Philadelphia District Attorney Arlen Specter made their facilities and staff freely available to the project.

The cartoons which humorously illustrate some themes in the Police Guidance Manuals are by artist John Pretch.

1. Balancing Order and Liberty

One of the toughest problems the community and the Police Department have to face is how to deal with mass demonstrations, parades, picketing, and other crowd behavior that involves or threatens to involve public inconvenience or danger. The reason the problem is tough is that we—law enforcement officers, law-makers, and the community as a whole—are often caught between two opposing pressures, two opposing obligations. On the one hand, it is the duty of the police to maintain order, to keep the streets and sidewalks open to travel, to protect residents and passersby from unreasonable disturbance, and to prevent riots. On the other hand, people have the right to come together, to express their opinions, to hear and make speeches, to complain about conditions they don't like, to support or oppose candidates for office, and just to have a good time together. The police are under just as much duty to protect these rights as they are to maintain order.

If the police department bears down too hard on maintaining public order—if, for example, they tried to stop every meeting or union picket line where there was a risk of fights breaking out—the Department would soon be criticized, properly, for excessive interference with citizens' liberty while trying to maintain order. If the police *never* interfered with a meeting, even when the meeting blocks a busy intersection, or an angry crowd is being urged by a speaker to set fires and break into stores, the Department would properly be held responsible for the ensuing traffic jams and riots, that is, for failing to protect public order out of excessive concern for citizens' liberty. The proper adjustment of the conflicting demands of liberty and order is one of the central problems of all government. As we shall see later, it is not left entirely to the discretion of the Police Department, but is controlled by law and by constitution.

The need to take account of liberty as well as order often puts the Police Department and the individual policeman in the uncomfortable position of having to put up with and even protect demonstrators whom the police and the majority of the public may not like at all. All sorts of people want to speak, march or demonstrate: pacifists and war veterans, Nazis and anti-Nazis, people who are for and against racial integration in housing and education; people who hate or fear Catholics or Jews or the police. Because all these people have the right to express their opinions and prejudices in public, the policeman will sometimes find himself observing a picket line or listening to a speaker for a position that the policeman finds obnoxious or dangerous. The policeman may even find himself detailed to protect this obnoxious person from a menacing crowd of hecklers and counter-pickets.

Unless you understand the reasons why the Police Department must be committed in this fashion to protect liberty as well as order, you may be unhappy in your professional work as a policeman and out of step with what the courts are doing, and must do, under the Constitution. The reasons for allowing and protecting unpopular minority demonstrations are not just technical or legal. The Constitution guarantees such protection as a result of centuries of experience in this and other countries. This experience demonstrates that, although there are risks involved in letting all kinds of agitators speak their piece or circulate pamphlets, it is even more dangerous to let any government decide what can be said or published. Governments which have this power to suppress freedom of speech or press or assembly always seem to find more and more to suppress until all criticism of the government and all political dissent becomes criminal.

Limiting the government's power to suppress only "unreasonable" or "irresponsible" dissent doesn't work because the people who make the governmental decisions represent the great majority who are satisfied with things as they are. Fundamental opposition generally strikes them as unreasonable, especially if the manner or style of the criticism is harsh or outlandish. The makers of the American Revolu-

tion and the framers of the Constitution had such bad experience with the relatively mild British censorship that they chose to deny government any power to edit or control public debate. They thought that the better and safer protection against misleading, provocative, or irresponsible speech or demonstration was the liberty of others to answer back. In a *peaceful* competition to persuade the public, a minority, if its ideas are baseless, will almost certainly lose to the reasonable majority whose views are taught in the public schools and expressed in the newspapers, magazines, radio, television. In short the American constitutional position is that propaganda is dealt with by education and other voluntary methods, not by government coercion. The American position is to trust the good sense of the people to reject the foolish and dangerous.

There is another reason for the large freedom which Americans give to minority expression. Experience shows that *some minorities turn out to be right* and end up as majorities. Only minorities, at first, favored social security and minimum wage laws, or were interested in preventing child labor or pollution of air and water. Very few people believed at first that the world was round, that the blood circulated through the body, or that countries could be governed without kings. The anti-slavery movement in this country was a despised minority for a long time before the Civil War. Christianity itself started out as a tiny, persecuted, and derided minority which the Roman government tried to put down as dangerous.

Minority opinion may be helpful even when it is clearly wrong, as it very often is. It forces the majority to think about matters which they may have taken for granted. Psychological experiment with "planted error" has shown that majority judgment improves when the experimenters arrange to have one member of the group insist on a wrong answer to test questions. Finally, freedom to get "wrong" opinions off their chests may, for some would-be revolutionaries, be a peaceful outlet for resentments that would otherwise be expressed in violence if they are driven underground.

George Washington said:

If men are to be precluded from offering their opinions on matters which involve the most serious and alarming consequences that invite the consideration of mankind, then reason can be of no use, freedom of speech may be abolished, and, dumb and silent, we may be led like sheep to the slaughter.

2. Civil Disobedience

In connection with demonstrations and riots, you will often hear references to "civil disobedience" and "non-violent" resistance. What is generally meant is open violation of the law without attacks on property or persons. For example, persons opposed to war may announce that they will not pay taxes to support the war, or that they will refuse to serve in the armed forces. They know that such behavior is penalized, and in effect they are inviting arrest and prosecution in order to attract attention to their protest. One of the most famous incidents of this sort in American history was the refusal of Henry David Thoreau, Yankee writer and philosopher, to pay taxes to support the Mexican War of 1847, as a result of which he was jailed. His essay on Civil Disobedience popularized the phrase, and argued for the moral obligation to disobey the law under some circumstances. The history of this notion goes back for ages. Early Jews and Christians wilfully disobeyed Roman laws requiring worship of pagan gods. In the American revolution, the colonists wilfully disobeyed the laws of their country (England at that time) regarding taxes, smuggling, etc., as illustrated in the famous Boston Tea Party. In modern times, Ghandi used civil disobedience in India in leading the country to independence from England.

In this country, Rev. Martin Luther King and other Negro leaders have taken the same course. Their people may sing and demonstrate in places where this is against the law. They may lie down in streets and passageways where this amounts to illegal obstruction. They may "sit in" restaurants or other premises to protest segregation. Sometimes

the activity may actually be lawful under the Constitution, although prohibited by an unconstitutional statute or ordinance. In other situations, the behavior is unlawful and presents a true civil disobedience situation.

The police have no alternative under such circumstances but to enforce the law under the direction of superior officers and higher political authorities. It is not for the Police Department to decide when disobedience to law is morally justified, if ever. Every individual policeman can recognize that brave people in Nazi Germany were morally justified and obligated to resist Nazi racist laws. But, where the law that is being violated is not so clearly inhuman and unjust, and where there is a fair chance to change laws by lawful, democratic methods, no government can concede the right to use lawless methods to change laws.

Because of the special problems involved in all kinds of demonstrations including civil disobedience, modern police departments have developed administrative and operating units trained to deal with them. The FBI Manual on Prevention and Control of Mobs and Riots (1967) states that "This organizational concept is particularly well suited for large, congested and complex communities." (p. 42) The National Crime Commission in 1967 commended the Civil Disobedience Squad in Philadelphia as "unusually successful in dealing effectively with demonstrations while maintaining good relations with the demonstrators."[1] Time Magazine, December 9, 1966, p. 57, reported one Philadelphia experience as follows:

> . . . In one month, Philadelphia alone produced 15 demonstrations against such diverse targets as hard divorce laws, soft rape laws, slum landlords, black power, and the Viet Nam war. Even the Janus Society hit the bricks, indignant because the Navy excludes homosexuals.

In drawing a line between lawful and unlawful demonstrations, U.S. police face a tougher task: they must keep order while protecting peaceful demonstrators' constitutional rights. And many police efforts are embarrassing failures. Although good intelligence work

prevents and solves crime, few police can afford the time to study the widely varying plans and personalities of protest groups. As a result, they often send too few men to shield pickets from counter-pickets, or they go to the other extreme and send so many that they cripple law enforcement elsewhere. Worse, too many police respond too readily to demonstrators' taunts. And when choleric cops blow their tops, the skilled rabble-rouser is delighted, for it is "police brutality" that attracts TV news cameras and dramatizes "the cause."

EARLY WARNING. To prevent such errors, Philadelphia police are developing a new specialist: the "civil-disobedience man." . . . However small in numbers, the squad is worth a division of oldtime head bashers.

For one thing, C.D. men go out of their way to befriend all sorts of potential demonstrators long before they become uncivilly disobedient. . . . As a result, the police department knows precisely what size force to deploy without wasting men. Sometimes an entire demonstration requires only two C.D. men (invariably a white-Negro team); alert to changing moods, the team can summon help quickly if things start to turn ugly.

3. Limits on Demonstrations

A. CALLS TO VIOLENCE; THE CLEAR AND PRESENT DANGER RULE

Although the Federal Constitution literally appears to forbid any legal restraint of freedom of speech (and written communication), some kinds of speech are subject to governmental and police control because they are closely linked to action. There is no doubt, for example, that a man can be prosecuted for *soliciting* another to commit murder or to accept a bribe, although soliciting consists of just words addressed to another. If the murder were carried out, the solicitor could be convicted of murder as an accomplice, although his only connection with the offense was his verbal instigation. Similarly *incitement* to riot is a crime. However, to be guilty of this crime the speaker must *call for action*. It is not enough that he stirs up the crowd by telling them things, true or false, that make them angry and therefore likely to resort to violent or disorderly action. The Supreme Court of the United States has put it this way:

> Those to whom advocacy is addressed must be urged to *do* something now or in the future, rather than merely to *believe* in something.[2]

This Constitutional freedom to advocate beliefs extends even to advocating the *belief* that violent overthrow of the government is necessary or desirable, so long as the speaker is not calling for *action* on that belief. So a Negro militant may lawfully tell an audience that "Whitey will never give up his privileges unless we use force," because that's a matter of belief. That kind of a proposition can sometimes be true, e.g. in South Africa or when the Irish or the Americans rebelled against British government. What such an agitator cannot lawfully do is to start the rebellious action by saying "Let's go out and burn this town down."

Under some circumstances, language that sounds like a call for *action* may be so remote from the possibility or likelihood of action, that it's hard to take seriously as an actual effort to get started on "the revolution." It's just "talk," and the law treats it as part of the discussion of beliefs rather than part of the action. For example, an extremist might write a pamphlet about wrongs allegedly done by Negroes or Jews or Masons or bankers; and the pamphlet ends up "Brothers let's unite and destroy these dangerous elements at once before they destroy us". This sounds like a call for immediate action. Yet neither the writer nor the reader understands it so. In relation to situations like that, the courts have said that there must be *"a clear and present danger"* of criminal consequences before such expressions can be treated as crimes.

B. LIKELIHOOD OF VIOLENCE RESULTING FROM LAWFUL SPEECH OR OTHER LAWFUL BEHAVIOR

It is settled law in this country that a man is not guilty of breach of the peace or disorderly conduct just because he makes a speech that excites or angers his hearers. Laws or ordinances that try to penalize the speaker under these circumstances, because the crowd might get out of hand or turn into a riot, are unconstitutional.[3]

The law takes the position that it is the job of the police to deal with the unruly crowd and to arrest those in the crowd who are committing offenses—e.g. disorderly conduct, inciting to riot—rather than arrest the speaker who is committing no offense. It makes no difference that the speaker knows that the crowd is against him and is likely to present the police with a difficult problem. As a law-abiding, tax-paying citizen he is entitled to the protection of the police against those who would lawlessly attack him, however little we may sympathize with his views or his manners.

EXAMPLE

Facts: *F, a university student, makes a speech during an election campaign at a busy intersection in a predominantly Negro section of town, protesting revocation of a permit to hold a radical meeting in a school building. He makes derogatory remarks about the President, the Mayor, the American Legion. He urges Negroes to rise up in arms and fight for their rights. A crowd gathers to hear him, filling the pavement and requiring some passersby to walk in the busy street to get by the crowd. Police officers make an effort to compress the crowd so pedestrians can get past. There is some shoving and pushing in the crowd. One listener tells an officer that, if the police don't take that "S.O.B." off the box from which he is speaking, he—the complainant—will.*

Action: *Try to persuade the speaker to move to some place where his audience won't block traffic. Warn him that he may be guilty of inciting to riot. If he continues and says anything that amounts to incitement to riot, considering the discussion on pages 7 and 29 of this Manual, arrest for that offense. Arrest for disorderly conduct if the speaker's own behavior satisfies the requirements of Pennsylvania law by being excessively "loud, boisterous and unseemly." See Police Guidance Manual No. 7.*

In the actual case on which the example is based,[4] the New York police charged the man with violating a provision of the New York Disorderly Conduct Law requiring obedience to a police order to move on when there is a disorderly congregation on the public street. A conviction was upheld in the Supreme Court of the United States based on findings that there was a "clear and present danger" of violence plus incitement to riot. Three Supreme Court justices dissented. Some people believe that the later cases mentioned in footnote 3 above indicate that Feiner's conviction would not stand today. Others believe that even if the Supreme Court would not uphold a conviction today in a case like Feiner's—because his speech did not amount to a call for violence or incitement to riot—nevertheless in the face of imminent serious disorder in a situation where police could not handle the crowd, the police could act to prevent an immediate outbreak by physically removing the troublemaker. This would not be an arrest for crime, but an emergency preventive measure. There is great uncertainty as to the existence or extent of such power, and it should be employed only on special authorization by higher authority. In such cases, the speaker should first be asked to do the minimum necessary to preserve order before physical force is used. If the speaker puts up a substantial physical resistance to force which the policeman is privileged to use, he will be guilty of common law breach of peace, assault, or violation of Section 314 of the Pennsylvania Penal Code (obstructing officer, etc.; see Police Guidance Manual No. 7).

The hardest situations are those that involve speeches and demonstrations attacking other peoples' race or religion. Very strong feelings are aroused by derogatory words and statements in this field. Fascist and Ku Klux Klan

groups will express their hatred of Jews and Negroes in extremely provocative manner and circumstances. Anti-Catholic groups may invade a Catholic neighborhood with literature and speeches utterly offensive to most of the residents. Negro militant extremists can stir up strong anti-white feelings in Negro or mixed neighborhoods, with the prospect that some Negroes will go on a rampage or that a white mob will go on a rampage against the Negroes. One leading Supreme Court case, Terminiello v. Chicago, 337 U.S. 1 (1949), involved a violently anti-Semitic speech which caused a large audience to start shouting "Kill the Jews," while outside the hall counter-demonstrators began milling around, shouting and throwing stones. In the Chicago trial court, the judge told the jury it could convict of breach of the peace if the speech

> stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance.

The Supreme Court held this was wrong and unconstitutional. The majority opinion declared:

> A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging.

Since the ordinary laws of disorderly conduct, breach of the peace, and inciting to riot don't apply to a speaker who doesn't call for illegal violence or who merely arouses violent opposition, some states and cities have special laws penalizing incitement of hatred against any group by reason of its race, color or religion. Opinions differ on the desirability, usefulness, and constitutionality of such laws.[5] There is some risk that such laws might be used against people who merely quote statistics, or history, or current events, making one group or another look bad. It's not easy to get convictions, because the defendant can argue that he was telling the truth, or sincerely believed it, or that he is being persecuted for his opinions. Some experts believe that prosecuting racial and religious fanatics just

makes martyrs of them without much effect on the underlying group hostilities or on the amount of "hate literature" put out by them.

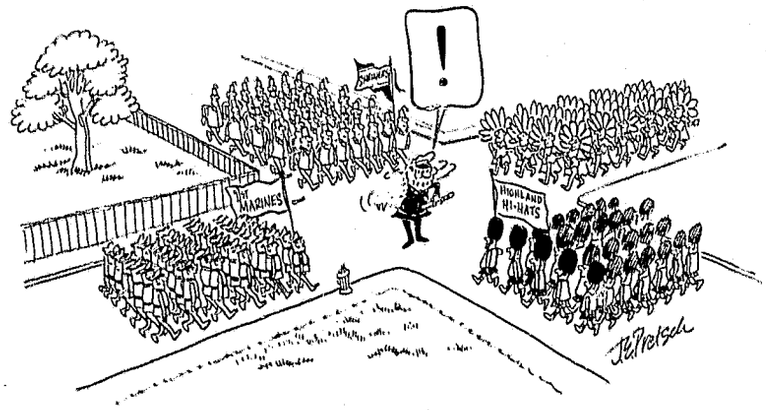
All this shows how complicated a question it is whether law enforcement can help solve the problem of racial and religious conflict. Law enforcement isn't necessarily the answer to every social or political issue, any more than doctors have the answer to all bodily or mental illness. Policemen often have to explain this to laymen who expect the Police Department to come up with a solution for troubles that go much beyond the policeman's responsibility or power.

C. PARADES AND OTHER DEMONSTRATIONS

The right to demonstrate, parade, and make public speeches is not unlimited. People who are not demonstrating also have rights. They have the right to use the public streets and sidewalks, the right to enter and leave public buildings, stores, places of employment and amusement, without being subject to unlawful violence, threats, obstruction or disorderly conduct. Often the Police Department has the job of arranging things so that both the demonstrators and the non-demonstrators can enjoy their rights.

For example, if some people want to hold a parade that would block traffic, the Police Department would be interested in seeing to it that the parade is held at a time and place when traffic will not be held up unreasonably. The Department, if notified and consulted in advance, will suggest schedules and routes for the parade, set up convenient detours for regular traffic, and detail extra police to guide and help both the paraders and the regular traffic. If several groups want to parade on the same day, it can be arranged so that they won't interfere with each other.

To enable the Police Department to do this job, a city ordinance forbids any "parade, procession, or assemblage" without a Police Department permit. Police Directive No. 94 of November 20, 1958, provides for applications two weeks ahead of time, and states that permits will not be issued where the event will disturb public peace or "excessively delay normal traffic." Exemptions from the permit procedure



are provided in the ordinance and Department directive for parades of the armed forces, the police and fire departments, and funeral processions. Opinion No. 32 of the City Solicitor, July 18, 1952, points out that the permit procedure does not apply to street corner meetings on sidewalks, but is strictly a traffic control arrangement. Thus, Department discretion in relation to issuance of parade permits is limited to traffic considerations and it cannot discriminate for or against any political, religious, racial, national, or other group desiring to hold a parade or demonstration. Indeed, an ordinance which gave the Police Department unlimited discretion to allow or disallow parades and demonstrations would be unconstitutional.[6] It would also be embarrassing and undesirable for the Police Department, which would be under heavy pressure from groups opposing parade permits on grounds having nothing to do with the Department's responsibilities.

A regulation of the Fairmount Park Commission establishes a permit procedure for meetings of more than 10 persons in park areas (including park squares throughout the city) if the meeting "may reasonably be expected to deprive the public of the reasonable use and enjoyment of the Park."

Although all unauthorized "parades, processions, and assemblages" are violations of the city ordinance, it is not the policy of the Department to arrest or to interfere with

minor affairs of this sort where there is no substantial illegal interference with public order and convenience.

EXAMPLES

I

Facts: *A neighborhood association learns that the Zoning Board is about to consider an application to allow some undesirable building or business in the neighborhood. After an excited meeting, the association votes to go down to City Hall. They get together a dozen automobiles, put protest signs on them, and proceed to drive down town. There is no obstruction or other violation of traffic laws.*

Action: *There is no occasion to inquire about permits, even if the other party in the zoning proceeding brings up the question by complaint to the Police Department for the purpose of stalling off or harassing the complaining neighbors. The purpose of the permit procedure is to prevent traffic snarls. Nothing of that sort is present in this situation. Besides, groups of this sort frequently don't learn about the thing that bothers them until too late to comply with the permit procedure. Minor, informal, spontaneous "demonstrations" of this sort are part of the liberty which the Police Department protects.*

II

Facts: *A pacifist, anti-draft group holds a protest meeting near a Selective Service headquarters. An American Legion chapter, acting without permit on short notice, holds a parade and orderly counter-demonstration.*

Action: *Keep the opposing groups apart so as to maintain order and prevent inconvenience to the public. Do not arrest for violation of the permit ordinance or try to disperse the counter-demonstrators.*

III

Facts: *Overenthusiastic high school students stage a "victory parade" after a football game.*

Action: *No arrests except, where warranted, for substantial disorderly conduct or traffic offenses. Any minor inconvenience involved is part of ordinary community life. On the other hand, appropriate police detachments will, in a good-natured way, try to herd the crowd away from busy traffic arteries, and to keep it from getting so dense as to lead to danger.*

IV

Facts: *A citizen protest demonstration occurs before a public building. Three or four juvenile participants in the demonstration begin acts of vandalism against automobiles and other property.*

Action: *Focus available police resources on the individuals involved, apprehending and removing them as quickly as possible. Such violence unchecked has a tendency to spread. On the other hand, utmost effort is called for to avoid giving the crowd any basis for believing that necessary police counter-measures are directed against the demonstration itself, or that the police regard all the demonstrators as guilty participants in the vandalism.*

D. RESTRICTING DEMONSTRATIONS IN PARTICULAR AREAS

The two classes of places where a citizen has the most extensive right to speak are his own private premises and public places like streets, sidewalks and parks. There are other places that are public in one sense but are devoted to particular uses which would be unreasonably interfered with if everybody were free to hold meetings and give speeches there. City Hall, the court buildings, public libraries and museums, churches and synagogues are such places. Disturbance that could be tolerated on the streets may well constitute disorderly conduct or breach of the peace in areas like that. However, it is important to remember that, even near specially protected public facilities, people may peacefully speak or demonstrate. They cannot be charged with disorderly conduct or breach of the peace merely because a hostile crowd will react in a way that would interfere with

the public functions. The right to demonstrate and protest must often be exercised near the place where the public officials concerned can get the message.

In addition to the law of disorderly conduct and breach of peace, there are statutes and ordinances that expressly restrict picketing and other demonstrations likely to interfere with the important regular functions carried on in public or semi-public facilities.[7] Philadelphia Ordinance 10-403 prohibits

> unnecessary noise in the vicinity of any hospital or church during hours of public worship, courthouses during hours of holding court, or school during school hours.

Sometimes the law of trespass has been used to prevent demonstrations on property owned by the city or state. An ordinary private property-owner obviously has the right to keep out people who would like to use his house or land as the place for a meeting. Similarly, it has been argued that the city can keep people from using its property for meetings and demonstrations. It is argued on the other side that city or state ownership of land is quite different from private ownership: the city, it is said, "owns" property on behalf of everybody for all normal uses, whereas private ownership is for the exclusive use of the owner. If city ownership were enough basis to bar speeches and demonstrations, the city could make the streets, sidewalks and parks out-of-bounds for public meetings and discussions, whether or not traffic was interfered with.

It is not easy to draw the line between proper and improper exercise of the city's "proprietary" control over its real estate. The United States Supreme Court has upheld trespass convictions against demonstrators who marched onto the grounds around a jail, against warnings and orders of the sheriff.[8] But some of the Justices felt that this was an unconstitutional restraint of freedom of speech, assembly, and petition, because the jailhouse grounds were open, the place was appropriate for registering a protest against imprisonment, and there was no showing of disorder, danger to the jail, or previous practice of excluding the public.

It is clear that a city may not exercise its proprietary rights in a discriminatory fashion, e.g. letting Republicans hold meetings but barring Democratic meetings.

Private ownership does not in all circumstances confer an unlimited right to control what people say on the premises. For example, where a manufacturing company owns the whole town where its employees live, including the streets, people have the constitutional right to free speech on those streets, whether or not the company approves.[9] Similarly, public characteristics or functions override the private ownership argument in such circumstances as the following:

(i) demonstration on the grounds of the New York World's Fair, which was organized as a "private" corporation although sponsored by the City of New York.[10]

(ii) distribution of anti-war leaflets in a bus or train terminal.[11]

(iii) peaceful, non-obstructive demonstrations in walkways or other open facilities of large shopping centers.[12]

The police may be called on to assist the owner of property in ejecting demonstrating trespassers from clearly private premises, including stores and other business premises. Owners are entitled to compel intruders to leave, and may use reasonable force for that purpose, unless of course the owners are themselves violating a law that forbids discrimination against the "intruders." Frequently, a storekeeper or other occupant of premises, faced with an illegal trespasser, prefers to call the police rather than resort to violence. It is Department policy to assist the owner in such case in order to minimize violence. Persons who refuse to leave after reasonable request may be forcibly removed. Notice that this removal is not an arrest for prosecution. Trespass is not a criminal offense in Pennsylvania, except in a few special cases involving farm land and other areas posted with no-trespassing signs. Resistance to removal might take such disorderly or violent form as to amount to breach of the peace, disorderly conduct, assault, or the like. See Police Guidance Manual No. 7.

4. Picketing

A. RIGHT TO PICKET LAWFULLY

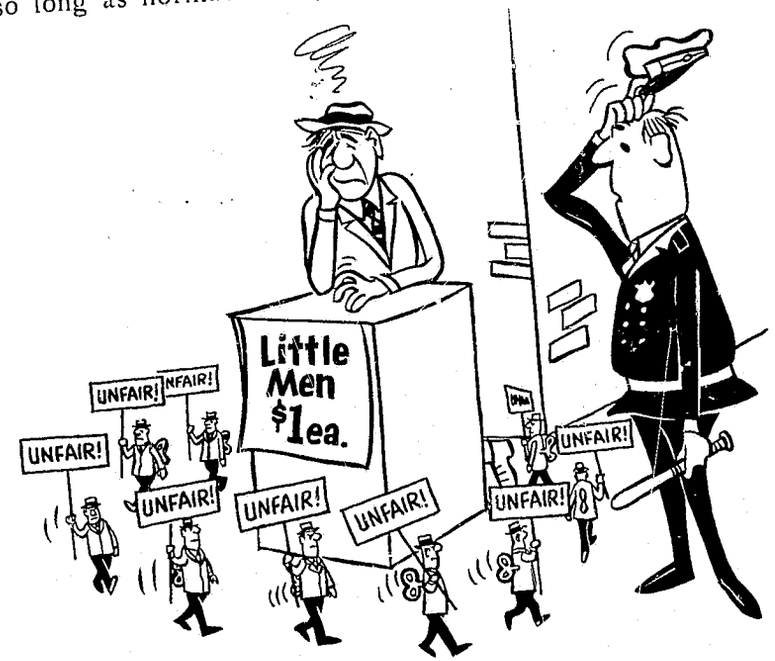
A common form of demonstration is for a dissatisfied group to walk back and forth near the site of the dissatisfaction. The picketers may carry signs relating to their complaint, but whether they do or not picketing is regarded as a form of expression which is within the protection of the Constitutional guarantees of freedom to communicate and assemble. Like other demonstrations, picketing can be lawful or unlawful depending on how it is carried on.

Examples of unlawful activity would be disorderly conduct, obstruction of the street or sidewalk, trespass, threats or assaults on persons who disregard the picket line, and picketing in areas where demonstrations are forbidden because of interference with governmental operations. In other instances, picketing may involve nothing that you could arrest a man for, but is unlawful in the sense that the person who is picketed may have a right to go to court and get an order to stop the picketing, for example, because it violates certain labor or antitrust laws. It is important for policemen to understand and be able to explain to others the reasons for Police Department policy in relation to different kinds of picketing.

So far as concerns ordinary crimes committed in connection with picketing, there are a few things to remember:

1. Any arrest or other police action should be directed against the individuals committing the offense and those who are aiding in the offense. If somebody in a picket line punches a non-picketer, that doesn't make everybody in the picket line guilty of assault or disorderly conduct. They may all be "sympathizers" but that's not enough. You have to be able to identify the man or men who did the act and those who actively joined in by helping or encouraging the culprit or physically obstructing the police effort to deal with the situation.

2. In deciding whether an offense like disorderly conduct or obstructing the sidewalks has been committed, some allowance has to be made for the *right* of the picketers to communicate and to use the sidewalk. Only *unreasonable* interference with public convenience is barred. The way the law looks at it, the sidewalks are there to be used in all the different ways that people might want to use them: not just to walk to a particular destination, but also to stop, look in shop windows, let the public know about religion, politics, goods for sale, etc. There is no illegal obstruction so long as normal use by others continues without undue



interference. There is no disorderly conduct merely because the demonstration involves some loud talking that some passersby find annoying. There is no illegal "loitering" just because the demonstrators stop on the sidewalk, so long as others can easily move by them on the sidewalk. There is no obligation on a citizen to "move on" when a policeman says so. Good citizens will generally cooperate voluntarily with an officer's request to move in order to facilitate traffic. Or an officer may, when there has been actual criminal obstruction, prefer to give warning rather than arrest, thus giving the offender the alternative of moving on to end the obstruction rather than be arrested for continued obstruction. But it is not within the power or policy of the Police Department to keep peaceful, non-obstructing demonstrators moving.

3. In dealing with picketing, the Police Department's main policy is to preserve order. Therefore, a decision sometimes has to be made whether it is worthwhile to arrest for a particular minor offense where this will not serve the primary purpose to preserve order.

EXAMPLE

Facts: *There is a picket-line and some counter-picketing. A man in the picket-line shoves one of the opponents. Somebody throws a punch. For a short time passage on the sidewalk is blocked.*

Action: *Although several offenses have been comitted it may be wiser to try good-naturedly to restore order and separate the opponents rather than make an arrest. An arrest might lead to greater disorder, especially if there are only a few officers on hand to keep the peace.*

It is the policy of the Police Department that arrests in demonstration cases should be made only on the authority of someone at the level of captain or higher. The officer in charge at the scene will usually be a member of the specialized Labor Squad or Civil Disobedience Unit. Arrest procedures have been specified in department directives. There is first a request to the subject to cease from the activity which constitutes an offense. After giving the subject an opportunity to comply, the police officer gives a warning of arrest. If the warning is not heeded, the officer makes the arrest.

B. JUDICIAL CONTROL OF LABOR AND OTHER PICKETING

Since much picketing grows out of labor disputes, officers should understand some of the law and background of this

subject. Both federal and state law support "collective bargaining" by industrial workers. Unions are encouraged to organize and are protected from employer interference in this regard. It is lawful for union representatives to seek to bring new groups into the union by soliciting employees in non-union shops, even where no employee in that shop is a member of the union or wants to be a member. The union may picket such a shop to publicize its case. Other union members or sympathizers among the public may, as a result, decline to patronize the picketed establishment, and unionized truck drivers may decline to go through the picket line to make deliveries to or for the employer. Similarly, where disputes occur between an employer and his union [or, for that matter, non-union] employees, a strike and picketing may be used to influence the employer or to persuade non-striking employees to quit work.

Picketing puts considerable pressure on the non-union employer and employees or on employers who resist demands of union employees. It may be a real hardship on them. However, insofar as this results from peaceable communication of views directed at achieving a lawful purpose, the union activity is legal and constitutionally guaranteed against interference by police or other government officials. On the other hand, the employer has the right to continue to operate his business with workers who are not on strike or with new workers; and customers and suppliers have the right of access to him. There are American labor leaders and others who believe that collective bargaining means that a business should operate only when the employer and his employees are in agreement, and that it is wrong and trouble-making for the employer to try to run his plant while his employees are on strike. But this is not the law today, and it is therefore Police Department policy to protect employers and non-striking workers, as well as strikers and pickets, against violence or other criminal activity that would close down a business by illegal force.

If there are enough incidents of violence or threats or massing of people so as to *coerce or physically prevent* persons from patronizing or serving the struck plant, the picketing loses its constitutional protection as *communication* and takes on the character of *action* that can be regulated by the Courts. Similarly, if the purpose of the picketing is barred by the labor laws, the Courts or the labor board may be empowered to prevent pressure being exerted by an illegal strike or picketing.

The law on picketing by unions and others is complicated. Consequently the Police Department often has to wait until a court has passed on the case before the rights and wrongs of the matter can be clarified. The Court has the matter brought to its attention by a private complainant. If the complainant persuades the Court that an injunction should be issued, the injunction will either ban the picketing or restrict it in such a way as to eliminate coercive or disorderly features. For example, it may limit the number of pickets or forbid them from massing so as to obstruct gates or passageways. Disobedience of a court order is not an ordinary crime for which a policeman may arrest on sight. It is the sheriff rather than the police department that enforces court orders. If the sheriff, who is an officer of the court, believes that a court order has been violated, he is authorized to bring the violator to the court, where a judge may hold him "in contempt of court," and punish him. Sometimes in case of violation of injunction, the sheriff will call on the police for help. In that case, the police would be acting as the sheriff's assistants, and not arresting for crime. Accordingly, they would not take the subject to the district for booking, etc. However, if the conduct constituted an ordinary offense as well as violation of the injunction, the police could arrest for the offense without waiting for the sheriff. On the other hand, since the sheriff and the court are already in the picture, the policeman would be justified in taking into account the views of the sheriff or other interested parties before deciding to make arrests for minor offenses.

5. Crowds

Crowds differ from the demonstrations, parades, and picketing that have been discussed above, and also from the riots that will be discussed later. A crowd isn't organized, planned, or directed at a purpose of communication or protest. A crowd just "collects." It may collect at the scene of an accident, a fire, an arrest, a demonstration, or even just a bargain in a store. People are satisfying their curiosity, or they may be pursuing their regular business or recreational interests, ending up in a crowd only because many other people have the same interest at the same time. The space available just turns out to be inadequate to take care of the numbers. Something (maybe the fact that the first people on the scene don't move along rapidly enough) holds up traffic creating unexpected congestion. There is

nothing illegal in being a member of a crowd or in attracting a crowd, whether by bargains or speeches, even though the existence of the crowd may impose burdens on the Police Department, which has to keep streets and sidewalks open, maintain traffic, and prevent people from getting hurt.

Crowds, though innocent (and therefore not to be confused with riots), may involve risks, inconvenience, and danger. They may obstruct streets, sidewalks, access to businesses and transportation facilities in a way that would be an offense if it were done purposely. They may block fire-fighting equipment, ambulances and police operations. They may result in people being pushed together and consequently pushing each other in what would ordinarily amount to disorderly conduct or assault. Very large crowds can kill people by crushing and stamping. Accordingly, the Police Department has to manage and control crowds to guard against these dangers.

Special tactics and maneuvers have been worked out for handling large crowds. These matters are covered in detail by Police Department directives and training courses. The duties of individual policemen will be determined by orders of superior officers on the scene. Among the things which generally have to be kept in mind are these:

1. *A peaceful crowd can easily be turned into an unlawful riot.* This may be accomplished by agitators, by a fight or other incident in the crowd, *or by some act or attitude of a policeman.* The policeman may be acting perfectly lawfully, for example, arresting for an offense or using lawful force to push the crowd back from a street. Yet the persons arrested or pushed, and their friends, will resent the action. In a crowd under pressure (especially if the weather is hot!), tempers are short, rumors and excitement spread quickly. *It is of utmost importance that each policeman remain courteous and good-humored, regardless of provocation. Be firm but friendly. Use no more force than is necessary. A joke or an apology may save the situation. An arrest, even though justified, may precipitate mass violence.*

2. Small crowds are less likely to be dangerous. That's why police efforts in dealing with large crowds will be pointed towards breaking it up, opening up different avenues along which separated parts of the crowd can disperse. Small occasional crowds of curious on-lookers at a fire, a fight, an accident or a police raid should not be interfered with except to the extent required by the situation and the safety of the crowd itself. People can be kept at a safe dis-

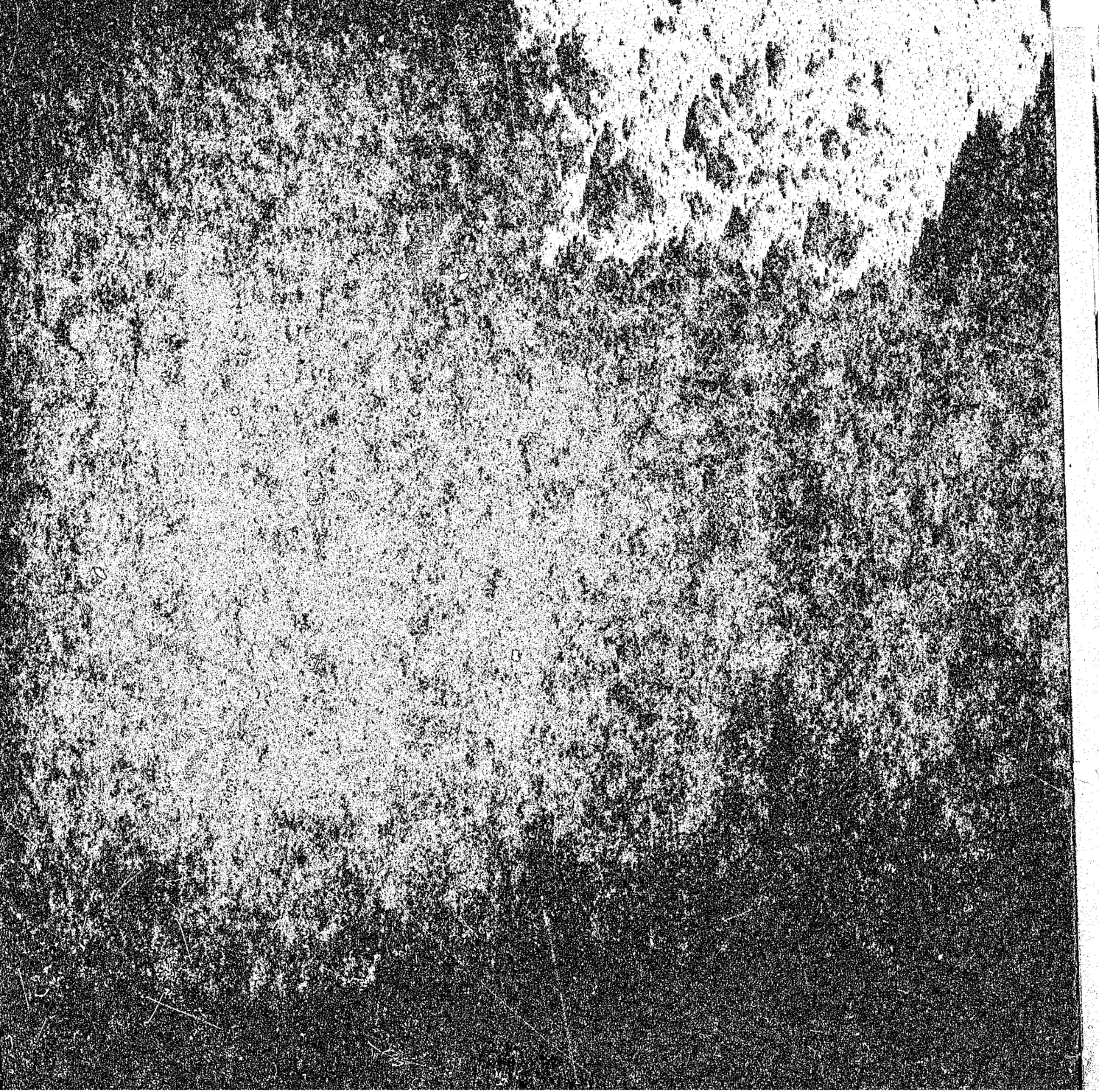
tance from the fire. Traffic lanes can be kept open. But the Police Department respects the right of the public to observe what is going on, including the right to observe and criticize police behavior. A responsible police officer exercises *discretion* in accommodating the public while maintaining community services. *Discretion* does not mean doing whatever the officer pleases; it means using *judgment* after giving due consideration to the rights and desires of everybody.

3. Where an inconvenient crowd is attracted by the behavior of some individual—he may be making a speech, or putting on a performance or exhibition—it often seems that the easiest way to deal with the resulting obstruction of traffic is to order the individual who is the center of attention to move on. However, there is no law requiring such an individual to obey a policeman's order to move on. It is the policy of the Department to handle these situations by getting the audience to shift its position so that passersby are not unduly inconvenienced, and by *requesting* the central individual to move to some less inconvenient nearby position. The Police Department does not attempt to solve its traffic problems by forbidding lawful, attention-getting behavior in public areas, any more than it would, for the sake of preventing crowds, forbid a storekeeper from advertising bargains, or a football team from scheduling a popular game.

6. Riots

A. BACKGROUND; CAUSES

A riot is a crowd engaged in mass disorderly conduct, threatening or actually inflicting harm to persons or property. Crimes ranging from malicious mischief to arson, burglary, and even murder may be committed in the course of the riot. The word riot has recently been used so much in relation to disorders in Negro slums of the big cities that it is necessary to remind ourselves that mass disorders can



occur in all kinds of settings. There are aimless or "fun" riots that occur, for example, when a crowd celebrates a football victory by swarming onto the field to tear down the goal posts. There have been riots by farmers against low prices and mortgage foreclosures and by poor whites against landlords and creditors.

One of the bloodiest riots in history occurred in Philadelphia in 1841. "Nativist" Protestants aroused by a mild proposal to give the Catholic version of the Bible equal treatment with the Protestant version in the public schools and inflamed by rumors that Catholics were going to "take over the public schools," burned Catholic churches. More than 100 deaths resulted from the disorders, a figure equivalent to nearly 1000 deaths if the same proportion of Philadelphia's 1967 population were to die. The Antidraft Riots in New York City during the Civil War have been described as follows:

> the first drawing of names . . . was the signal for terrible riots. Apparently the Irish-Americans of New York, always hostile to the Negro, were disaffected by the Emancipation Proclamation, and inflamed by the importation of 'contrabands' to break a stevedores' strike. On 13 July, while the names were being drawn, the provost marshal was driven from his office by a mob. Men, women, and boys paraded the streets during the better part of four days and nights, sacking shops, gutting saloons, burning mansions, lynching or torturing every Negro who fell into their clutches. The police—who also for the most part were Irish-Americans—did their best but it was not until troops were poured into the city that order was restored, after the loss of hundreds of lives.[13]

Widespread intense discontent with political, economic, and social arrangements is the basic cause of serious riots. This is the central proposition established by the 1968 Report of the National Advisory Commission on Civil Disorders. Among the fundamental factors identified by this Riot Commission were: racial discrimination in employment,

education, and housing, excluding many Negroes from the benefits of the economic progress which is manifest all around them; concentration of Negro immigrants in black ghettos where housing, public facilities and services were allowed to decline below legal standards; frustration (often by lawless actions) of Negro hopes for improvement following favorable statutes and judicial decisions; development of a climate favorable to violence as a result of white terrorism against non-violent protest and also of protest groups using lawless means to secure changes in policies with which they disagree; a widespread belief among Negroes that there is a "double standard" in law enforcement—one for blacks and another for whites.

The Federal Bureau of Investigation pamphlet on Prevention and Control of Mobs and Riots (1967) similarly takes note of underlying injustices that set the stage for riots, and calls upon the police to

> . . . utilize all appropriate opportunities to point out to the community *its* preventive role. In one state, the Association of Chiefs of Police has seen fit to issue a public statement calling for action to assure minority groups of equal opportunity in employment, housing, etc. In a number of communities police transmit to legislators and social planners their eye-witness account as to the need for improved recreational facilities, rehabilitation of housing, improved health and sanitation services.

The same publication, noting that "animosity toward police is part of the fuel which ignites whenever an incident sparks a riot," continues (p. 38):

> In their efforts to reduce this animosity, police must take into account the perception which the minority poor have of current police practice. In large part they do not believe that police treat them with the same respect accorded other citizens. Indeed, they are prepared to cite what they believe to be chapter and verse to support this view. Among police practices which minority groups believe are applied to them differently than to their other fellow citizens are: slowness in response to appeals for help; use of dogs in residential areas; excessive use of "stop and frisk" and "move along" practices; harassment; verbal abuse and racial slurs; discriminatory employment and deployment policies regarding minority group police officers.

Where the negative perception is not warranted, the true circumstances must be interpreted. Where the perception is justified in even the slightest degree, the police should be quick to make whatever changes may be appropriate. But in order for police to know what these negative perceptions are, and in order for them effectively to interpret their role to the minority poor, there must be established open channels of communication through which the minority community at every level, not only its nominal leadership, is encouraged to speak its mind and to hear the truth about the police position. Pilot experiences in a number of cities with this form of police-grass roots dialogue have shown that once confidence has been established, both sides begin to listen attentively and learn from one another.

The police must treat individuals from economically deprived neighborhoods with the same respect as afforded other citizens. This in no way implies that officers should ignore or excuse instances of criminality from minority groups. Surveys of ghetto citizens have, in fact, revealed great concern over lawlessness and law enforcement since the decent people of these disadvantageous areas are themselves frequently the victims of crime.

The extent to which riots are caused by radical speakers and agitators is unclear. The National Crime Commission reported:

> Although once underway some riots were exploited by agitators, they were not deliberate in the sense that they were planned at the outset; the best evidence is that they were spontaneous outbursts, set off more often than not by some quite ordinary and proper action by a policeman.[14]

Of course, to the extent that speeches, pamphlets, demonstrations, and agitators sharpen the discontent that is the basic source of serious riots, they do help to bring on these disorders. But this kind of stirring up of dissatisfaction with poverty, slum housing, segregation, or governmental handling of welfare payments is clearly legal exercise of freedom of speech. As pointed out in Section 1 of this Manual, the line between lawful leadership in demanding reforms and unlawful incitement to riot is drawn so as to condemn *calls to violence where there is a clear and present danger.*

Once the riot starts, it is clear that there are many individuals around who are glad to take advantage of the situation, and who exert criminal leadership of the riot, planning attacks on property and persons, obstructing and assaulting police and firemen, disrupting communications, etc. Law enforcement efforts to quell the riot and bring offenders to justice focuses particularly on these leaders. In circumstances of actual riot, even the usual privilege to "fan discontent" while avoiding direct calls to action must give way to the overriding duty of the police to maintain order.

B. RIOT LAW

Section 401 of the Pennsylvania Penal Code authorizes imprisonment up to three years for anyone who "participates in any riot." Like many other provisions of the Code, this Section fails to define the offense. It is left to the "common law," that is, to judicial decision, what kind of behavior constitutes the crime of riot, and what makes a person guilty of "participating" in the riot. The following language from Commonwealth v. Hayes, 205 Pa. Super. 338 (1965) gives the general idea:

> A riot is commonly defined as a tumultuous disturbance of the peace by three or more persons assembled and acting with a common intent either in executing a lawful private enterprise in a violent and turbulent manner, to the terror of the people, or in executing an unlawful enterprise in a violent and turbulent manner. . . . Inciting to riot is not a statutory offense in Pennsylvania but it is a common law crime. Inciting to riot, from the very sense of the language used, means such a course of conduct, by the use of words, signs or language, or any other means by which one can be urged on to action, as would naturally lead, or urge other men to engage in or enter upon conduct which, if completed would make a riot. . . . All persons who are voluntarily present and not assisting in the suppression of a riot, where their presence tends to encourage the rioters, shall be prima facie inferred to be participants.

A few points to notice about this description of the Pennsylvania common law are:

1. A minimum of three persons must be involved, but in view of the requirement of tumult, turbulence, and terror, it would usually require a considerably larger number to be taken seriously as a riot. On the other hand, three drunken trouble-makers in a tap-room who involve a number of other patrons, waiters, etc. in a general rampage, would qualify.

2. The definition of "inciting to riot" to include words and action "as would naturally lead" to riot has to be read in the light of the constitutional law discussed in Section 1 of this Manual. Accordingly, it does not mean that a man can be arrested for inciting to riot just because he makes a speech about the wrongs allegedly done to Negroes or Puerto Ricans or welfare clients, or agricultural workers, even if the speech is calculated to make his audience angry. The broad definition of inciting, given in the *Hayes* case, is appropriate when a riot has occurred and the question is whether the defendant was criminally connected with it. Hayes' guilty connection with the serious riot that admittedly occurred was fully established by evidence that he was leading groups in jeering at the police, that he told a policeman that "he was in charge of the area," that he shouted "No. No." when the police asked the crowd to disperse, etc.

3. One of the main effects of the riot law is that a person can be held without proof that he was directly involved in the acts of violence which turn a crowd into an unlawful riot. Those who are running with the crowd become "prima facie" participants in the riot. It is obviously impossible for

the police to identify the particular individuals in a huge crowd who are throwing stones, breaking car windows, etc. On the other hand, note that the participant must be "voluntarily present." There are always some people involuntarily and unexpectedly caught in the turmoil of a riot. They may have been driving through the area. They may be "present" because they live there and are standing guard over their property or families so that their presence hardly "tends to encourage the rioters," as required by the law. Even if "voluntarily present and not assisting in the suppression," they are only "prima facie" participants. Thus the policeman has authority to deal with persons who claim they are only on-lookers or passersby, but if a clearly innocent explanation of the individual's presence or action is apparent, the policeman should not arrest. *Especially, there should be no interference with reporters, press photographers, and others who have a professional justification for being there,* except where the presence of such persons at a particular place directly obstructs police measures to control the riot.

In addition to the Penal Code section quoted above, there is a Pennsylvania statute,[15] dating back to 1850, dealing with the duties of city officials in attempting to disperse rioters, and penalizing those who refuse to disperse:

> If any persons shall be unlawfully, riotously and tumultuously assembled together, to the number of twelve or more, so as to endanger the public peace of said police district, it shall be the duty of said marshal in person, or in case of his absence or inability to command, of the officer then in command of said police, to go among the said rioters, or as near to them as he can safely go, and then and there with a loud voice make proclamation in the name of the commonwealth, requiring and commanding all persons there so unlawfully, riotously or tumultuously assembled, and all other persons not being there on duty as police, immediately to disperse themselves and peaceably to depart to their habitations, or to their lawful business; and if such persons, notwithstanding such proclamation made, unlawfully, riotously or tumultuously remain or continue together, to the number of twelve or more after such proclamation made, then such continuing together shall be adjudged a misdemeanor, . . .

This statute does not mean that a formal proclamation and the presence of 12 or more people are required before police can act against disorders. It just makes disregard of such a formal proclamation a misdemeanor. Under § 401 quoted at the beginning of this section, rioting is punishable whether or not there has been a request to disperse. Good police practice, however, often calls for a request or demand for compliance with the law before taking more drastic action.

Other parts of the 1850 Act authorize the use of "all necessary force" to disperse or apprehend the rioters, and make it a misdemeanor for policemen to "abuse the powers hereby granted." There is also provision for an owner of property to recover damages from the city for mob destruction of property unless the owner neglected to call for police protection when he knew it would be needed.[16]

C. CONTROL OF RIOTS

Police strategy and tactics to control riots is a complicated matter beyond the scope of this Manual and covered by special manuals and directives of the Police Department. The Civil Disobedience Unit is the specialized branch of the Philadelphia Police Department to handle mobs, riots, and demonstrations other than labor disputes which come under the jurisdiction of the Labor Squad.

In general, the Police Department has to keep itself informed about people likely to stimulate or lead riots. It has to know the likely trouble spots, and plan for emergency handling of transportation, communications, special equipment, location of command and observation posts, relations with the community and the press, economical disposition and use of available manpower. Basically, the goal is to block off the trouble area to keep the riot from spreading, then as rapidly as possible to split up the mob into smaller and smaller groups using specially trained squads and formations. Force must be employed, of course, but the F.B.I. has cautioned against indiscriminate use of force

by the police, in the following language from its 1967 publication on *Prevention and Control of Mobs and Riots,* pp. 89-90:

> The basic rule, when applying force, is to use only the minimum force necessary to effectively control the situation. Unwarranted application of force will incite the mob to further violence, as well as kindle seeds of resentment for police that, in turn, could cause a riot to recur. Ill-advised or excessive application of force will not only result in charges of police brutality, but also may prolong the disturbance. The major portion of persons constituting a mob may be law-abiding citizens who have been driven or led to participate in a lawless act because of their belief in a cause.

For many, the mere appearance (Show of Force) of police who represent law and order will be sufficient to bring them to their senses and they will obey the order to leave peaceably. The application of force by degrees will, in turn, cause more to realize their error and they, too, will depart. Applying force by degrees insures that the maximum force employed to restore order was applied to the most violent and lawless individuals only. The degrees and the order of the application of force should be decided in advance of the operation, and preferably included in the plan. All officers involved in the operation must be aware of these degrees and must know when each is to be applied and by whose authority. This is not meant to imply that police should not meet force with greater force; it does mean that unnecessary bloodshed must be avoided whenever possible.

The most extreme action which a law enforcement officer can take in any situation is the use of firearms. Under no circumstances should firearms be used until all other measures for controlling the violence have been exhausted. Above all, officers should never fire indiscriminately into a crowd or mob. Such extreme action may result in injury or death to innocent citizens and may erupt into a prolonged and fatal clash between the officers and the mob. The decision to resort to the use of firearms is indeed a grave one. Such a decision must be based upon a realistic evaluation of the existing circumstances. Among the important considerations, of course, are the protection of the officer's own life, as well as the lives of fellow officers, and the protection of innocent citizens. A basic rule in police firearms training is that a firearm is used only in self-defense or to protect the lives of others.

The firing of weapons over the heads of the mob as a warning is objectionable. In addition to the possibility of injuring innocent persons by richocheted bullets or poorly aimed shots, the firing may only incite the mob to further violence, either through fear or anger. At best, this is a bluffing tactic and a basic rule when dealing with a mob is NEVER BLUFF.

The possibility of receiving sniper fire cannot be overlooked. A sniper must be dealt with rapidly and severely. If permitted to operate, a sniper will not only pin down the police force but will remain a threat to human life—both police and citizens. To effectively handle a sniper, it may be necessary to employ a countersniper, equipped and trained in the use of high-

powered, telescopic-equipped rifles. Police officers, crouched behind any means of protection available and firing their service revolvers or shotguns aimlessly at a building or rooftop, are endangering lives and, at the same time, are prevented from accomplishing their mission.

In cases where a riot gets beyond the control of the municipal police force, local authorities can call on the State Police, and the Governor of the state can call out the National Guard or even request federal military assistance. When military forces are called in to aid the police, their functions and responsibilities are essentially the same as the regular police. They act as emergency auxiliary police, providing the required additional numbers, arms, and force. In extreme situations "martial law" may be declared by the Governor. The Governor would ordinarily declare martial law only when civilian law had broken down to the extent that the courts were unable to operate or their orders were being forcibly resisted on a wide scale. As long as martial law is validly in effect, ordinary constitutional and civil rights are suspended to whatever extent is necessary in the reasonable judgment of the military commander.

An ordinance enacted by the Philadelphia City Council in 1967[17] authorizes the Mayor to declare a *State of Emergency* when there is "imminent danger" of a riot, and to take various actions during the emergency, including: prohibiting public gatherings, halting the movement of trains and other vehicles within the city, establishing a curfew, closing tap-rooms, prohibiting sale of gasoline, firearms and other weapons. Violation of the Mayor's regulations would be an offense punishable by fine and imprisonment up to 90 days. The constitutionality of this ordinance has not yet been tested.

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FOOTNOTES

1. Task Force Report: The Police, p. 193 (1967), The President's Commission on Law Enforcement and Administration of Justice. See also Fox (Chief Inspector, Philadelphia Police Force), The Civil Disobedience Man, in The Police Chief, November 1966 issue, p. 20.

2. Yates v. United States, 354 U. S. 298, 325 (1957).

3. Cox v. Louisiana, 379 U. S. 536 (1965); Edwards v. South Carolina, 372 U. S. 229 (1963); Terminiello v. Chicago, 337 U. S. 1 (1949).

4. This example is based on Feiner v. New York, 340 U. S. 315 (1951).

5. Beauharnais v. Illinois, 343 U. S. 250 (1952); State v. Klapprott, 22 A.2d 877 (N. J. 1941).

6. See Cox v. New Hampshire, 312 U. S. 569 (1941); cf. Freedman v. Maryland, 380 U. S. 51 (1965); Shuttlesworth v. City of Birmingham, 382 U. S. 87 (1965); Cox v. Louisiana, 379 U. S. 536 (1965).

7. See Pa. Crim. Code § 327 (picketing or parading "in or near" a courthouse or a building or residence used by a judge, juror, witness, or court officer, with intent to influence or interfere with the proceedings); § 405 (maliciously disturbing or interrupting meetings, congregations, ceremonies, lectures, etc.); § 407 (transport facilities, terminals, picnic grounds).

8. Adderly v. Florida, 385 U. S. 39 (1966).

9. Marsh v. Alabama, 326 U. S. 501 (1946).

10. Farmer v. Moses, 232 F. Supp. 154 (S.D.N.Y. 1964) (demonstration enjoined, however, upon showing of mass interferences with access and traffic).

11. Cf. Wolin v. Port of New York Authority, 392 F.2d 83 (2d Cir. 1968).

12. Amalgamated Food Employees Union v. Logan Valley Plaza, Inc., 88 Sup. Ct. 1601 (1968).

13. Morrison and Commager, The Growth of the American Republic, Vol. I, 705-706 (1950).

14. The Challenge of Crime in a Free Society, Report of the President's Commission on Law Enforcement and Administration of Justice (1967) p. 37. The National Advisory Commission on Civil Disorders (1968) made similar findings. Report pp. 4-5, 89.

15. 53 Purd. P.S.A. §§ 16.620-16.627.

16. 16 Purd. P.S.A. §§ 11.821, 11.822.

17. Section 10-819 of The Philadelphia Code.