

THE DEVELOPMENT OF AN  
INSTRUMENT FOR THE DETERMINATION  
OF THE FACTORS INFLUENTIAL IN THE  
EXERCISE OF  
"SITUATIONAL POLICE DISCRETION"

Thesis for the Degree of M. S.  
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Allan Robert Speevak  
1966

THESIS



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By

Allan Robert Speevak

AN ABSTRACT

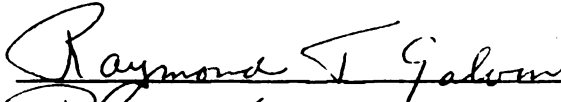
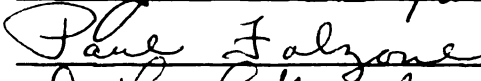

Submitted to  
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APPROVED

## ABSTRACT

### THE DEVELOPMENT OF AN INSTRUMENT FOR THE DETERMINATION OF THE FACTORS INFLUENTIAL IN THE EXERCISE OF "SITUATIONAL POLICE DISCRETION"

by Allan Robert Speevak

Within the metropolitan areas of America today, many demands are placed daily upon law enforcement officers. The officer in order to effectively complete his duties is granted authority to command in situations requiring his attention, and to effect the law by such measures as it deems necessary. This role of enforcement is based on what is termed "police discretion". On the street or at the scene of an incident, however, the officer makes these judgments necessarily with great speed and objectivity. This process of judgment within the incident by the individual officer is defined as "situational police discretion" and has become the focus of this thesis.

Specifically, an attempt has been made to identify and define the exercise of discretion in police duties with particular emphasis on the judgment of whether an officer invokes the legal process. In addition, an attempt to derive the possible influences upon "situational police discretion" was accomplished so that an instrument or research tool might be developed which would examine analytically the role



of discretion in enforcement situations.

A basic exploratory research methodology has been followed including a review of pertinent published literature on police discretion, the analysis of actual field incidents and informal interviewing with officers in these situations. The review of the literature examined discretion by defining its role, the implications of its utilization, and the controls placed upon it. Several areas affecting the exercise of discretion were explored in an effort to uncover the factors which influence the judgment of an officer in any call for police service. These included various aspects of community relations, actual methods used by law enforcement officers, the role of the legal system and the total administration of criminal justice, as well as the effect of the public, the mass media, and what has been termed the internal factors of the job, its nature, and the personality of the officer.

The analysis of the incidents was based upon seven weeks participant observation in a large metropolitan city police department. Narrative summaries of one hundred incidents, checked for accuracy, were flow-charted in terms of police actions, to reveal typical patterns and to identify those points where both decisions are made and discretion is involved.

It was found that the incidents could be categorized into ten typologies involving five derived classifications of decisions; programmed, investigatory, operational,

discretionary, and charging. Some thirty police actions, it was determined, could be utilized to accurately describe any enforcement situation. In addition, based mainly on the literature review and supported by the analysis of the incidents, sixty-four factors influencing "situational police discretion" were derived.

Based upon the above resulting data, an instrument to identify and measure the influences on the decisions made by police officers was developed. This was termed a Data Coding Form, having been designed for computerized tabulation and analysis. In addition, a companion Decision Incident Chart was designed, and a complete methodology for a systematic participant-observation study of "situational police discretion" was proposed. Based on the derivation of the influencing factors and on the standard police actions utilized, it was hypothesized that the instrument developed from this exploratory research was both valid and reliable.

In this way it is hoped that the total area of police discretion, which is a focal point of the problems existing between the police and the community, might be studied. This should allow for the determination of whether discretion is being properly utilized by patrolmen, whether it should therefore in fact be allocated to this level of the police organization, and perhaps indicate how it might be better controlled and guided through training and administration.



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Without the continued support and  
encouragement of two persons, this work  
would not have been possible.

- To Mom and Dad



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Sincere appreciation must be extended to Assistant Professor Raymond T. Galvin whose patient guidance throughout this past eighteen months was climaxed with the production of this document. The Thesis Committee in particular, as well as the faculty and staff of the School of Police Administration and Public Safety deserve special thanks for their countless contributions and suggestions. Miss Linda Bunker, my typist, deserves much of the credit for her patience and fortitude throughout the many drafts. Yet the tremendous exchange of ideas could not have been accomplished without the constant support of a special group of individuals, my fellow students.

While I am also indebted to a number of individuals who have provided the many "stepping stones" to date, special mention must be made of my grandparents, Mr. and Mrs. Myer Speevak, who have always been at my side, and of Mr. and Mrs. Alan Sheren, who have certainly helped to guide, what with luck, will be a successful career in law enforcement.

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## CHAPTER I

### INTRODUCTION

The role of the police officer in most American cities today is totally ill-defined and indefinite. The officer has become a buffer between the laws which he is supposed to enforce on the one hand, and the needs and desires of the community on the other. In theory, the laws and community needs should be similar. Yet today, due to many social and economic problems, this no longer appears to be true. The result has been the total condemnation of the police.

The conflict is most evident in what are termed under-privileged areas in which a sub-economic standard of life persists, reinforced by continuing unemployment, broken families, and a high rate of social welfare. This has led to the development of a radical sub-culture of norms and practices which are quite apart from the established law.

The police traditionally are agents of the government, bound with the duty to enforce the law. While this primary responsibility has not changed, they have been called upon to both officially and unofficially answer for a wealth of other community problems which range from traffic to marriage counseling. The officers' actions in these cases can only be based upon their training which in turn

reflects their official foundation, the law. Thus only traditional responses or actions have been evoked to these contemporary problems.

In view of this, it is necessary to determine whether the police officer has been properly conferred with a clearly defined status and concurrent allocated responsibilities and authority. Such a determination requires observation of the police in action to ascertain their required role and the adequacy of the tools at their disposal. These police tools involve their legal status, the police organization, and the established policies.

While these factors are of utmost importance, it must be realized that much of the criticism towards the police originates in the street or at the scene of a disturbance. It is stressed in this study then, that much consideration and attention must be directed at the stages when the police first come into contact with members of the community, namely the functions of the individual patrolman. It is friction at this point in the organization's contact with the public that has, to some degree, nurtured the "explosion." It is at this level that adverse criticism, in the form of public cries of discourtesy, harassment, brutality, and false arrest, has been heard time and time again.

## I. STATEMENT OF THE PROBLEM

In view of the community crises and the demands made daily upon law enforcement officers, a single influencing

factor in this position of trust and responsibility is all important, that is, the role of police discretion.

"Discretion" involves a decision in which personal judgment has become the guideline. For the police officer, discretion is the consideration of particular, and often unique, circumstances in order to determine the objective, the nature, and the degree of the lawful action necessary and demanded. In the field, these decisions are made necessarily with great speed and supposed objectivity. It is this process of judgment by the individual police officer which shall be termed "situational police discretion."

This exercise of "situational police discretion" must be analyzed to determine the adequacy of any existing guides for the official action taken by police officers. In effect, it is necessary to explore police discretion with a view towards developing an instrument by which these "authoritative decision processes" might be studied, evaluated, and measured.

## II. SCOPE AND NATURE OF THE STUDY

This study is an examination of the existence of, exercise of, and influences upon police discretion. The following goals exemplify this objective.

(1) To identify and define the exercise of discretion in Police duties. An attempt will be made, by a review of the literature and by analysis of a series of field observations, to determine the existence of discretion at the different

levels in the police organization. Where is discretion used, when is it necessary and why, and how is it accomplished? The particular judgment not to invoke the criminal law process will be analyzed, in addition to showing where the process is invoked. Both invocation and non-invocation procedures involve the exercise of discretion at several stages, each of which will be demonstrated. Thus it will be shown:

- (a) where officers have no choice and are forced to invoke the process;
- (b) where officers have discretion to ignore the legal process; and
- (c) where there are no guides and the officers must rely on pure judgment.

In total, then, this analysis should reflect the issue of police discretion, its nature, and its role in law enforcement.

(2) To identify the possible influences upon "situational police discretion." That there is a need for "situational police discretion" is emphasized by the fact that there are no hard and fast rules for the officer to follow in any given situation. The normal procedure is for the policeman to decide for himself whether or not to take action under the particular circumstances. This decision is influenced by his own personality and prejudices, his knowledge of department policy, and of the type of cases for which the prosecutor will issue a complaint, and his knowledge of judicial decisions as they bear on the situation. Thus several factors including

administration, legal, and operational issues are involved which necessarily limit and affect his decisions.

(3) To develop an instrument or research tool by which the role of discretion in enforcement situations may be examined.

It would be based on the influences affecting the police officer's operational decision. Hopefully this instrument will be refined so as to measure the amount of influence bearing on an officer's judgment in an attempt to predict the outcome. It will be developed through the use of standard social-scientific research procedures, based on the factors uncovered in (2). Based upon preliminary studies, it is proposed that an instrument capable of analyzing what has been defined as "situational police discretion" may be constructed.

The basic hypothesis of the research is that the research instrument derived is valid and reliable, as supported by the literature, the experiences of the author as a field research observer, and by logical reasoning. The scope of this research, however, will be necessarily limited:

- (a) The literature reviewed as a basis for the instrument will be limited to published books and periodicals on the topic;
- (b) The analysis of typical police situations is based upon narrative-style reports gathered while acting as a field research observer. It is from these step-by-step narratives that the logical sequence of situational factors will be analyzed.
- (c) An instrument for an analysis of the influences



on police discretion will be constructed.

### III. IMPORTANCE OF THE STUDY

The total area of the use of police discretion is really the focal point of the problem between the police and the community which they serve. To have realized that discretion exists and is exercised is a first step. To explore the necessity for the discretion and the influences upon it could enable researchers to explain the most basic enforcement processes, including the nature of the patrol techniques, the warning, the arrest, and the use of physical force.

It is hoped that an instrument such as the one proposed would be employed to determine if discretion is being properly used in the field at the patrolman's level. This would provide a basis for judgments for the allocation of more or less discretion by law, so that legislatures and the judiciary would be given a factual and empirical basis for rulings.

If discretion is to be retained in the field, the instrument might well be able to illustrate how operational decision making and training might be improved through a knowledge of the factors influencing discretion.

Such an application should serve to indicate that where discretion on the part of the officer is necessary, the limiting or controlling conditions which influence his judgment either serve the public goals in law enforcement

or hamper the officer's functioning in his role as a public servant, damaging community relations and endangering the public safety.

#### IV. DEFINITIONS OF TERMS USED

It is important to start the research from a common ground of understanding. The accurate defining of several terms, in the light of how they will be used by the author, is therefore relevant to the problem area. These definitions are the synthesis of many ideas in the literature and the author's judgments. Discussion in a later section will provide reference for these terms.

Decision. A decision is a choice from among a selection of possible courses of action when confronted with a problem. An "operational decision" will be the term used for the decision made by a line police officer in the street or at the scene of an incident.

Judgment. Judgment is the power of arriving at a decision. It is an estimate based on the indications and probabilities of the different factors affecting a problem. It is then a type of personal decision made when facts are not easily ascertained.

Influence. Influence is used as a noun--as something that affects the condition or the development of, in this research, the decision.

Authority. Authority refers to the right to command. *It* is the power and responsibility to control a situation by

virtue of the office vested in the man, here officers engaged in the administration of justice.

Discretion. Discretion is the power of individual judgment. It is authority, used here with reference to the decision-making process. It includes all the measures taken to arrive at a decision and thus involves a personal judgment. Discretion commences when the individual becomes aware of a problem or situation and terminates with the action following the judgment. "Situational police discretion" will refer to the decision-making process carried on with authority on the street, at the incident, or in the station by police officers.

Arrest. Arrest is, broadly speaking, any interference with a person's freedom by an officer of the law or by a citizen representing such authority. For the purposes of this paper, however, "arrest" shall be termed the process by which a person is taken to the police station. This process commences at that period where a suspect is informed by an officer of the law that he is to be detained and concludes with either the charging decision by the prosecutor or the release of the suspect without any appearance before a magistrate. It may not necessarily include the separate booking process of fingerprinting, photographing and recording of the arrest.

## V. ORGANIZATION OF THE REMAINDER OF THE STUDY

The remainder of this thesis is divided into four chapters. They are as follows.

Chapter II will deal with a review of the literature. It will constitute an analysis of the numerous books, periodicals, and journals pertaining to discretion in law enforcement.

Chapter III will deal with the charting of a random sampling or what will be termed "typical police incidents." The object here is to indicate the points at which various factors appear to influence discretion at the scene of a radio call. This is based on a knowledge gained from the literature as well as logical deduction in each situation.

Chapter IV will present the construction of the model research instrument. This will be based on the influencing factors derived in Chapters II and III.

Chapter V will summarize the study in an effort to compare the literature, the field studies, and the model, in order to support the derived research instrument. Applications of the research instrument will be suggested.

## CHAPTER II

### REVIEW OF THE LITERATURE

#### I. A DISCUSSION ON DISCRETION

##### Definitions

In the introductory chapter, it was noted that discretion is the power or the authority of individual judgment. This judgment was then linked to the decision-making process. Yet, as the term "discretion" is really at the heart of this research, much elaboration on its meaning is necessary in order to comprehend the importance and implications of "discretion" in law enforcement.

Wayne LaFave, in his study Arrest: The Decision to Take a Suspect Into Custody,<sup>1</sup> also linked discretion, the decision-making process, and personal judgment, based on Webster's New International Dictionary:

The ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right, or wise may be presupposed. . . . The latitude of decision within which a court or judge decides questions arising in a particular case, not expressly controlled by fixed rules of law according to the judgment of the court or judge.<sup>2</sup>

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<sup>1</sup>Wayne R. LaFave, Arrest: The Decision to Take a Suspect Into Custody (Boston: Little Brown & Company, 1965), p. 63.

<sup>2</sup>Webster's New International Dictionary (third edition, 1961), p. 647.

Judge Breitel relates this dictionary-judicial format to law enforcement, when he described discretion as:

The power to consider all the circumstances and then determine whether any legal action is to be taken. And if so taken, of what kind and degree, and to what conclusion.<sup>3</sup>

The nature of discretion it must be noted has changed from mere "ability" to a "power." If we are dealing with a power, that is, a right of command, then its exact nature must be justified, as well as the official to whom its exercise is allocated. This is one major issue in the role of discretion in law enforcement.

Discretion is an authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgment and conscience. . . . It is objected to strongly by those who urge the definition of law as a body of rules admitting only of genuine interpretation and application within their expressed terms.<sup>4</sup>

It must be realized, however, that the nature of our society, indeed the structure of life today, is too complex, too variable, to allow for everything to be reduced to the rules surrounding the regime of justice. Thus Pound continued:

It is an idea of morals, belonging to the twilight zone between law and morals.<sup>5</sup>

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<sup>3</sup>Wayne R. LaFave, "The Police and Non-Enforcement of the Law," Wisconsin Law Review, Vol. 1962, p. 105.

<sup>4</sup>Roscoe Pound, "Discretion Dispensation and Mitigation: The Problem of the Individual Special Case," New York University Law Review, Vol. 35 (1960), p. 926.

<sup>5</sup>Ibid.

He postulated four categories of discretion. There are those cases governed by the literal exactness of the law, some which must be reasoned from authoritative principles using authoritative techniques and ideals, those decided by judicial discretion based on "the analogy of principle of law," and last, cases left to the personal discretion of the judge or official without being based on specifically organized guides to decision making.<sup>6</sup>

The use of discretion has come to be based on principles of law with the intent of balancing both general security and individual freedom. This is perhaps one of the most difficult problems in the science of law. It is crucial in the relationship of the community to responsible law enforcement.

#### The Role of Discretion in Law Enforcement

From the commission of a crime until the eventual release of the convicted offender, there are many stages of judicative pronouncements and certainly discretion of one sort or another is present at each stage. Yet one of the most significant features in current criminal justice administration is the great amount of discretion which is exercised by the police.

Thomas R. Brooks in an article, "Necessary Force-- or Police Brutality," published in the New York Times Magazine

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<sup>6</sup>Ibid., pp. 929-30; Wayne R. LaFave, "The Police and Non-Enforcement of the Law," Wisconsin Law Review, Vol. 1962, p. 105.

(page 68) on December 5, 1965, stated:

Police power is an awesome thing; the determination as to how it is to be used ought not to be a police matter.

It must be determined then whether the discretion which is utilized has been properly delegated to the police; or are they exercising judgments in areas where they should have no authority?

In Great Britain, Canada, and the United States, the policeman possesses few powers not enjoyed by the ordinary citizen. Indeed, utmost discretion must be exercised by the police to avoid over-stepping the limited powers which they possess. Yet through growth and development, somewhat less judicial and political control has been exercised over law enforcement bodies. In Britain, the original judicial pronouncements on which the American agencies are based gave definite assertion of the independent nature of the police officer's role. It is this claim, this measure of independence from outside control, that has far reaching implications; and it is this same independence that causes a reaction as voiced by Thomas Brooks.<sup>7</sup>

Should the police under any circumstances be entitled to exercise discretion, and if so, what controls have been established to balance the system?

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<sup>7</sup>Royal Commission Report on the Police, Final Report (Her Majesty's Stationary Office, London, May, 1962), CMND. 1728; Jerome H. Skolnick, Justice Without Trial (New York: John H. Wiley & Sons, Inc., 1966), p. 71.



In theory, the police have no choice as to which laws to enforce. Yet discretion is essential to the police role if they are to fulfill their obligations. The decision to invoke the criminal process, to seek an arrest warrant, to take immediate custody, to arrest for prosecution or other purposes, or to use force, can all only be made by the trained professional judgment of the individual officer as he interprets the situation.<sup>8</sup>

Police decisions not to enforce the law rarely become known to the public, and thus these decisions are rarely challenged by the courts, the legislature, or the community. In this sense, discretion does replace the rule of law and to that extent it becomes arbitrary. Yet this discretionary responsibility must be reconciled with the discipline and the orders which the constable is also subject to. If he were too closely controlled, however, his impartial status would be definitely affected. In terms of these factors, certainly the independent status of the police officer is appropriate to his functions.<sup>9</sup>

"Arrest," one of the most vital of police powers, is literally the taking into custody of a person, for the

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<sup>8</sup>Michael Banton, The Policeman in the Community (London: Tavistock Publications, 1964), pp. 45, 63; Wayne LaFave, Arrest, Op. Cit., pp. 8-12; Nelson A. Watson (ed.), Police and the Changing Community (Washington: International Association of Chiefs of Police, 1965).

<sup>9</sup>Wayne LaFave, Arrest, Loc. Cit.; Charles O. Breitell, "Controls in Criminal Law Enforcement," University of Chicago Law Review, Vol. 27, No. 3 (Spring, 1960), p. 427; Royal Commission Report on the Police, Op. Cit., pp. 24-25.

of prosecution. More broadly, it has been termed to be any interference with a person's freedom. Arrest results in the detention of the individual, usually a search of his person, sometimes the use of force, and often damage to his reputation. Therefore it is important to analyze who makes the decision to arrest, how it is made, and how it is controlled to insure conformity with the objectives of justice.<sup>10</sup>

The discretionary judgment to arrest or not is made in a wide variety of circumstances and thus different considerations may be raised with each case. While it is assumed that the decision to arrest is made by the police officer, and the decision to charge by the prosecutor, LaFave points out that the suspected offender may often be released by a supervisory police officer. In view of these variable procedures, it must be realized that where discretion is sanctioned, it becomes known to violator and officer alike. This may create an atmosphere of bargaining wherein the officer's power takes on more personal overtones. Thus Spencer D. Parratt pointed out that it is one thing to ignore a law and quite another to publicly acknowledge that it is being ignored.<sup>11</sup>

Several facts then have become apparent. First it

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<sup>10</sup>Wayne LaFave, Arrest, Op. Cit., pp. 3, 4.

<sup>11</sup>Sanford H. Kadish, "Legal Norm and Discretion in the Police and Sentencing Processes," Harvard Law Review, Vol. 75 (1962), p. 908; Wayne LaFave, Arrest, Op. Cit., p. 6; Spencer D. Parratt, "How Effective is a Police Department," Annals of Political Science, Vol. 199 (September, 1938), p. 144.

has not proved possible to draft a criminal code which unambiguously encompasses all criminal conduct. Law itself just cannot keep pace with the changing conditions of our society. Second, the law enforcement agencies do not have the resources to enforce all the laws effectively. Somehow the boundaries of enforcement must be defined. Last, the circumstances of each and every individual situation vary in such a way that justice will not be attained by the enforcement of mere rules. It would seem that the presence and expansion of discretion is both a desirable and necessary inevitability.<sup>12</sup>

#### Implications

Herman Goldstein accurately summarized the exercise of discretion. Its existence implies that there is a variety of factors which causes the police to decide how much of an effort will be made to enforce certain laws. Even in those situations when there has been an offense, and the offender and the evidence are at hand, the officer may decide not to arrest. Yet the goals of justice may still be attained. Discretion then:

. . . tends to portray the officers as something other than automatons--as reasonable men whose judgment is essential in determining whether or not to invoke the criminal process.<sup>13</sup>

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<sup>12</sup>Michael Banton, Op. Cit., pp. 129-130; Charles O. Breitel, Op. Cit., p. 427.

<sup>13</sup>Herman Goldstein, "Police Discretion: The Ideal Versus the Real," Public Administration Review, Vol. 23 (1963), pp. 140-141.

The police forces, however, have not acknowledged the existence of discretion and thus they carry the burden of an impossible problem. They attempt to maintain an image of full enforcement--officers take broad oaths of enforcement--and to maintain the integrity of the force they attempt enforcement on a black or white basis. Yet this denial of discretion has given support to the citizens who continue to maintain that the job of the police officer is a simple one, that it requires little judgment, and that it is not worthy of professional status.<sup>14</sup>

## II. CONTROLS ON POLICE DISCRETION

It was noted that police discretion involved ability, power, experience, and authority aimed at enforcement of a legal code of rules. Yet this exercise of discretion has been given boundaries beyond mere interpretation of the letter of the law. It is the nature of these restrictions and their effectiveness in determining the behavior of the individual police officer that is the foundation of this research.

While officers enjoy a great degree of independence in the exercise of their powers, the police are certainly not completely free to investigate crime in any manner they please, even when their actions are lawful. In fact, the 1962 Royal Commission on the police conceded that the extreme view of police independence, as advanced by many witnesses,

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<sup>14</sup>Ibid., pp. 143-148.

could not be legally justified. The Commission uncovered a highly developed system of practical administration which attempted to offset deficiencies in the law. In this sense, the Commission redirected the problem of controlling the police to that of controlling the chief constables.

The chief constables, however, were not ordinarily brought to account for their administration, although this was primarily the concern of the local watch committee--the "police authority."<sup>15</sup> If these local authorities are liable for police action, Geoffrey Marshall maintained, then it would entitle them to demand a full measure of control over the arrest and prosecution of offenders.<sup>16</sup>

The Royal Commission Report's conclusions emphasized, however, that there should be no change in the legal status of the police--they were to retain their present "independence"--and other means of control were suggested. Chief constables should be subject to more effective supervision. They should be required to submit annual reports. The "police authority" would be responsible for the appointment of chiefs, subject to the approval of the Secretary of State.

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<sup>15</sup>"Police authority" here refers to the council, the watch committee, which, representing the township, established and maintained the local police unit.

<sup>16</sup>Fisher v. Oldham Corporation (1930 2 K.B. 364), wherein a man named Fisher was arrested on a warrant for obtaining money under false pretenses. It was found that he was the wrong man and not the one named in the warrant. He sued Oldham Corporation claiming that the officers were acting through the authority of the watch committee of Oldham. See Geoffrey Marshall, Police and Government (London: Methuen & Co., Ltd., 1965), p. 35.

Last, the "police authority" should be liable for the wrongful acts of police officers.<sup>17</sup>

The undertone of this "quasi-governing" by the "police authority" constitutes an attempt to introduce a degree of formal accountability into the relations between the chief constable and the central government. In Great Britain, however, a more informal means of control is exercised through the Inspectorate of the Police. The Inspectorate constitutes an attempt to superimpose over the police service an effective system of government inspection. The Inspectorate determines the efficiency of the force with particular emphasis on the dealings of the chief. They also verify the adequacy of provisions made by the local watch committee, and attempt to make available to all forces the latest information on research and up-to-date techniques, as well as endeavoring to promote collaboration between forces. The inspectors, all recruited based on their personal police service background, have no powers of direction over the chief or the "police authority." Their results are achieved solely through good will and persuasion, especially in view of the federal police subsidies. In this way, the incompatible objectives of an impartial police force immune from outside influence, and at the same time provided with a form of external control, are at least somewhat balanced.<sup>18</sup>

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<sup>17</sup>Royal Commission Report on the Police, Op. Cit., 34; Sandford H. Kadish, Op. Cit., p. 35; Geoffrey Marshall, Op. Cit., pp. 74-77.

<sup>18</sup>Royal Commission on the Police, Op. Cit., pp. 77-80.

### Legislative and Legal Controls

As the problem of maintaining order becomes acute, societies increasingly adopt more formal controls. A delineation of the role of discretion then within this framework becomes necessary.

/ The law provides a skeletal guide for the exercise of discretion--full enforcement. "Full enforcement" implies that every disturbing event which is reported to the police is investigated, an effort is made to find the perpetrators, and all the evidence collected is presented to the prosecutor for his determination as to whether the full criminal process will be invoked. Yet the police are subject to local government control based on election, powers of appointment, boards, lay administrators, and many other political-structural forces. These factors limit the police agency. It may not be able to raise the money it requires. This leads to the necessary development of priority schedules of enforcement. This in turn will affect the discretion of the patrol officers.<sup>19</sup>

Thus "police situational discretion" involves the many restrictions upon action as well as that discretion not to act. There are five major areas of control over this

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<sup>19</sup>Jerome H. Skolnick, Op. Cit., p. 164; Michael Banton, Op. Cit., pp. 5, 130; Bruce Smith, Police Systems in the United States (New York: Harper Brothers Publishers, 1949), pp. 138, 206-210; Roscoe Pound, Op. Cit., p. 927; M. Glenn Abernathy, "Police Discretion and Equal Protection," South Carolina Law Quarterly, Vol. 14 (1962), p. 475.

discretion: intradepartmental supervision and discipline, criminal and civil (quo warranto) action against officers, as well as the basic constitutional rights to equal protection.

According to law, police officers may arrest when a felony has actually been committed and the person arrested committed the offense. The officer must have reasonable grounds to believe that a felony has actually occurred and that the suspect arrested committed it, even when he may not have done so. A misdemeanor must constitute a breach of the peace and must be committed in the officer's presence, for an arrest to be made without a warrant.<sup>20</sup>

LaFave maintained that this vital and responsible decision as to the necessity of immediate custody should not be made in the street, but at a later stage in the criminal process. This is discussed by Roscoe Pound who emphasized the very serious possible consequences of abuse in this area. Thus there appears to be an inherent need for controls over discretionary power.<sup>21</sup>

Out of these "discretionary" rather than "ministerial" official actions has grown the tort accountability of the public officer. Thus where official action or inaction involves the exercise of discretion, the public officer is protected.

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<sup>20</sup>Wayne LaFave, Arrest, Op. Cit., pp. 153-164; Richard C. Donnelly, "Police Authority and Practices," The Annals of the American Academy of Political and Social Science, Vol. 339 (January, 1962), pp. 93-94.

<sup>21</sup>Wayne LaFave, Arrest, Op. Cit., p. 166; Wayne LaFave, "The Police and Non-Enforcement of the Law," Op. Cit., p. 125.



The criminal courts have admitted that the police functions of arrest and search and seizure involve the exercise of discretion; and yet the normal "discretion-exception" is not generally applied to police officers. The individual police officer is in somewhat of a dilemma--his broad liability might even render him loathe to carry out his duties.<sup>22</sup>

It is admitted that this personal liability is a necessary restraint upon the officer, and certainly without it the patrolman might act without sufficient consideration or caution. Yet a constable could not carry out his duties effectively if on every occasion on which he had to act, he had to consider the risks of action against him.

The Police Federation had devoted itself to securing that in practice police authorities should stand behind the police by meeting the costs of any proceedings brought against a constable in respect of action taken in good faith in the intended execution of his duty.<sup>23</sup>

### Freedom or Protection?

The dilemma of achieving social order while maintaining strictly legal procedures is perhaps epitomized in the issue of police discretion. The essential focus is whether there should be a tightening or loosening of the restraints on the decisional latitude of the police. How much discretion should the police have, and how may this discretion be controlled?

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<sup>22</sup>William C. Mathes and Robert T. Jones, "Toward a Scope of Official Duty Immunity for Police Officers in Damage Actions," Georgetown Law Journal, Vol. 53, pp. 889-896.

<sup>23</sup>Geoffrey Marshall, Op. Cit., p. 64.

Police decisions not to invoke the criminal process (i.e., not to arrest or serve a summons) largely determine the outer limits of discretion. Such decisions have been termed "of low visibility," as they are seldom subject to review by any authority. Yet such a review seems essential to the functioning of the law in our system. Most of the authors reviewed, as emphasized by Wayne LaFave and Joseph Goldstein, have maintained that criminal law enforcement can be substantially improved by introducing arrangements to heighten the visibility of police discretion. The decisions must be evaluated in the light of the total objectives of the system of justice.<sup>24</sup>

Yet where can these controls be placed? To supervise or judge such decisions, the individual must be aware of the totality of the situation, and he must be legally qualified to review and in effect make a "charging decision." Either this is accomplished by a judge or prosecutor--whose offices are presently swamped with more responsibilities than can reasonably be accomplished--or the decision must be made at a higher level within the administration of the police. Even then, the decision, though it may be removed from the street, will be influenced by the same relevant knowledge, social influence, past judicial decisions, the behavior of the persons involved and the personability of the agent

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<sup>24</sup>Jerome Skolnick, Op. Cit., p. 71; David Stahl, Fredrick B. Sussmann and Neil J. Bloomfield, The Community and Racial Crisis (New York: Practicing Law Institute, 1966), p. 543.

exercising discretion. Only this individual agent has the key to the relative influence of these factors.

Once again then, all the devices for popular and administrative control, the enactments of the legislatures, the aims of governmental executives, and the hierarchies of structural organization, all converge upon one focal point, the policeman.

Basically the police organization is geared toward the guarding of the freedom of individuals. This results in restrictions, limits on their range of legitimate actions. The acceptance of police controls in a society where there is a strong aversion to individual authority rests on a tenuous combination of trust and suspicion. Therefore:

. . . it cannot be too strongly emphasized that in the situation of perennial and inevitable tension between a police goal of absolute efficiency and a philosopher's goal of absolute freedom, no easy answers, no ready-made judgments, are permissible to a public which desires a maximum of both freedom and protection.<sup>25</sup>

### III. DISCRETIONARY ASPECTS OF COMMUNITY RELATIONS

#### The Social Disorganization

The focus of this paper has been limited to lower class racially mixed areas. An examination of the conditions within the boundaries of such areas reveals the stagnation, the on-going social welfare to combat increasingly drastic

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<sup>25</sup>Robert H. K. Walter, "Comment: Some Proposals for Minimizing the Law of Arrest," California Law Review, Vol. 39 (1951), p. 119.

situations in education, unemployment, housing, and broken families.

Explanations for the low living conditions vary, generally being attributed to the nature of the inhabitants, the Negro. The problem is magnified when one considers the relatively high rents for low class housing paid in these areas, as well as the accumulation of filth and debris exemplified by the total lack of maintenance by either the lessee or the owner of the building.

Yet according to Harlem residents, housing ranks second to crime as the worst problem in the lives of these people.<sup>26</sup> Certainly then some explanations of the conditions and the crime produced is necessary to demonstrate what the patrolman in the street is facing each and every day.

Family life is extremely broken. Most of the women work or take in roomers to try to feed their offspring. There is usually a different man in the house every few weeks, common law relationships being prevalent, and thus no medium is available in which the children can grow up respecting their parents.<sup>27</sup>

William J. Goode based the "uncompleted family unit" on what he termed "role failure" of the members of the family. The family is dissolved by the departure of one spouse.

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<sup>26</sup>Insight: "Why Negroes Riot," The Gazette (Montreal), Wednesday, September 7, 1966.

<sup>27</sup>Based on observations by the author.

This eventually results in the "empty shell" in which individuals live together but have minimal communication and contact with one another, failing especially to give emotional support to one another in times of depression and crisis.<sup>28</sup>

Unemployment affects not only the income of the individual, but also his self-respect--"the sense of being at fault and somehow having failed."<sup>29</sup> Certainly if a man is out of work long enough, he may eventually just stay home. The wife usually is forced to find work, totally disrupting the family unit. Meanwhile the male waits hopelessly to be called back or to hear about work somewhere. He withdraws from social contact except for association with other men in the same predicament.<sup>30</sup>

Thus the patrolman views the non-working inhabitants who pass their time on the porches, idly consuming alcoholic beverages, until the late afternoon or evening, when, with the temperature slipping below 95 degrees, they feel slightly more energetic. Yet it is still too hot to sleep, so they wander the streets all night long.<sup>31</sup>

Leroy G. Schultz tries to explain "Why the Negro Carries Weapons."<sup>32</sup> The rural southern Negro expresses

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<sup>28</sup>Robert K. Merton and Robert A. Nisbet, Contemporary Social Problems (New York: Harcourt Brace and World, 1961), p. 390.

<sup>29</sup>Ibid., p. 506.

<sup>30</sup>Ibid.

<sup>31</sup>Based on observations by the author.

<sup>32</sup>Leroy G. Schultz, "Why the Negro Carries Weapons," Journal of Criminal Law, Criminology, and Police Science, Vol. 53 (1962), p. 486.

aggression more freely and has less respect for life and law. Newly arrived, he does not lose his southern heritage immediately. Close living generates the tensions which result in aggressive acts and counter-aggression and it is not long before the new migrant finds the city as a somewhat dangerous place to live.

The desire for self-protection becomes for the officer a criminal-social deviation. The officer hears typical explanations again and again:

- the offender had just purchased or found the weapon a short time before he was arrested;
- the offender didn't know how the weapon got on his person or in his car;
- the offender needed a weapon for protection.

Schultz, however, categorized the real reasons in a brief study. His results are reflected in the figure below. Thus Schultz concluded that, based on the actual daily experiences of police officers, the Negro in the lower socio-economic group is traditionally viewed as a weapons carrier.

LaFave pointed out that the victims of these assaults rarely wish to have the offender prosecuted. In this sense, the attitude of the victim becomes an important factor in the exercise of police discretion--the victim controls the arrest decision even in serious offenses.<sup>33</sup>

This applies as well, of course, in more minor fracasés such as domestic quarrels where pressure is put on the police

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<sup>33</sup>Wayne LaFave, Arrest, Op. Cit., p. 112.

## FIGURE I

## SCHULTZ' FINDINGS AS TO THE NEGRO WEAPONS CARRIER\*

<u>Purpose</u>	<u>Percentage</u>
Use in employment	2%
To commit a property crime	4%
To use in a gang fight	6%
To force the payment of a debt	8%
To commit a crime against a person	10%
Anticipate attack	70%

\*Leroy G. Schultz, "Why the Negro Carries Weapons,"  
Journal of Criminal Law, Criminology, and Police Science,  
Vol. 53 (1962), p. 486.

by the wife to arrest the husband. Yet as the husband is her only means of support, she is unlikely to appear as a complainant in court some twenty-four hours later and he will be released. Thus the police officer would prefer not to arrest, and this is justified by his lack of legal authority; no misdemeanor having occurred in his presence. The patrolman merely advises the complainant to swear out a warrant at the local prosecutor's office.<sup>34</sup> (One officer remarked to the author that in his estimation, maybe 2 percent of these complainants actually swear out such a warrant.)

This deviant behavior in the community, while it is simultaneously deviant from the law, is in conformance with the norms of the local area. In this sense, Negro crime can be differentiated by type, rate, and location. It reflects a lower economic class pattern of violence. Yet this same Negro is sensitive, he wishes to avoid being taken advantage of, and thus will act on the basis of inferences of the behavior of others towards him. This leads to chronic feelings of mistrust and suspicion, heightened by the problems of urban-social adjustment, and this for the Negro is a lack of legal protection, especially when an officer merely states that he cannot take action.<sup>35</sup>

The officers on the other hand have learned that serious assaults are merely the acceptable means of settling

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<sup>34</sup>Ibid., p. 21.

<sup>35</sup>Robert K. Merton and Robert A. Nisbet, Op. Cit., p. 731; Leroy G. Schultz, Op. Cit., pp. 480-481.



disputes among these Negro classes. The "fight" conforms to their stereotyped image of the high crime rate area. When both parties involved are Negro, there is no immediate danger to the public; it is only a private argument and thus the criminal process may not even be invoked. More often than not, if the process is invoked, the prosecution and courts will dismiss the action or greatly reduce the charge, especially when there is the usual lack of cooperation from the victim.<sup>36</sup>

Often the officer's only solution seems to lie in an attempt to discipline the situation himself. This rough police action has only added to the resentment, and helped to turn the image of the police into enemies or punishers--rather than to emphasize their role as defenders of law and order.<sup>37</sup>

The police have become the family doctor, lawyer, and clergyman for the poor and uneducated people of these communities; the police are the first port of call in time of trouble. Yet there exists a massive breakdown in communication between the public which must have protection and assistance, and one of the only agents in a real position to view this disorganization, the police. The officer must

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<sup>36</sup> Joseph Goldstein, "Police Discretion Not to Invoke the Criminal Process: Low Visibility Decisions in the Administration of Justice," Yale Law Journal, Vol. 69 (March, 1960), p. 575; J. Skolnick, Op. Cit., p. 218.

<sup>37</sup> David Stahl and Fredrick B. Sussman, Op. Cit., p. 45.

enforce relatively unpopular laws within a defiant community. He comes to regard the public as his enemy, and yet he must maintain control. Therefore the officer may attempt to coerce respect from the public using almost any legitimate means to complete the "good" arrest. This "wall," invisible to both sides due to the very different frames of reference, has thwarted any accomplishment and any communication between the police officer and the man on that street corner.<sup>38</sup>

### The Role of Law Enforcement

It should be noted that the role of patrolman has become that of a "peace officer" rather than merely a law officer. The degree and method to which laws are enforced will necessarily vary with each neighborhood and community. Each policeman must determine the standard to be set in his area of responsibility. Bruce Smith emphasized that while "immediate superiors may be able to impress upon him some of the lessons of experience, for the most part, such experience must be his own."<sup>39</sup> Any action which the police officer takes is the result of the influence of the various forces upon him. He is, then, in Smith's terms ". . . a policy-forming police administrator in miniature, who operates beyond the scope of the usual devices for control."<sup>40</sup>

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<sup>38</sup>Nelson A. Watson, Op. Cit., p. 1; Jerome Skolnick, Op. Cit., p. 166; Elaine Cumming, Ian Cumming and Laura Edell, "Policeman as Philosopher, Guide and Friend," Social Problems, Vol. 12, No. 3 (1965), p. 285.

<sup>39</sup>Bruce Smith, Op. Cit., p. 21.      <sup>40</sup>Ibid.

In a very real sense, the officer is placed in a buffer position between the disadvantaged groups, their resentments and hostilities, and the "established" community. The only possible result of the use of force to control any social outbreak is community and group tension. Any officer then who takes a strictly legalistic view of his duties, prevents himself from attaining the personal relationship status necessary to enable his serving as an effective social mediator.

. . . If he is too detached from the community he no longer has the understanding of the people's feelings which he needs if he is to exercise his discretion effectively. . . . If he is too detached, the people will resent his implied claim to be their moral superior.<sup>41</sup>

This argument clearly emphasizes the need for police discretion at the patrol levels of the organization.

On the other hand, if he develops close ties with the local people, he may well find himself unable to act against them with the necessary vigor as prescribed by his foundation, the law. In this sense, the police officer is in a very precarious position, with two very contradictory objectives. In most cases, the only solution is to place a definite stress on good judgment in handling the people. This "good judgment" results in a relationship as variable as the officer's experience and temperament, and as fragile as the people whom he encounters, and about whom he has only the most meager of information.<sup>42</sup>

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<sup>41</sup>Michael Banton, Op. Cit., p. 188.

<sup>42</sup>Ibid., pp. 108-188

In an article, "The Policeman as Philosopher, Guide, and Friend,"<sup>43</sup> the authors draw an interesting analogy among the various professions which deal with the criminal and para-criminal elements. They point out that correction officials, doctors, and parole officers, handle criminals in a dual way. That is, they attempt to control behavior, but also support the individual--they are on "his side." All such agents then operated based on either a "supportive" or "controlling" methodology. While it is impossible to perform acts of support and control simultaneously, support without control is over-protection and invites passivity and dependency, while control without support is tyranny and invites rebellion.

The role of the policeman is, however, one of control; keeping the law from being broken, and apprehending those who break the law. In controlling one member of society, the officer provides indirect support to another. (One example is the apprehension of a wife-beating husband, in which the man is arrested which controls his behavior and supports the wife's cause.) The officer's role also encompasses the giving of help directly. When he does this, the balance between support and control has shifted. He has, the authors maintain, at this point changed from a professional to an amateur, the implication being that the officer is not equipped for "social work."<sup>44</sup>

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<sup>43</sup>Elaine Cumming, Ian Cumming and Laura Edell, Op. Cit.

<sup>44</sup>Ibid., p. 45.

The police have a pivotal role as governmental and community agents, both in the handling of racial crisis manifestations, and in the all-important day-to-day relations with Negro citizens. Banton and LaFave illustrate for example several categories of the arrest decision; those to avoid a strain on police resources, charges to maintain respect for the police or to maintain a public image, arrests to punish criminals who may have avoided convictions on more serious charges, and arrests to aid in the investigation of other offenses. Yet persons living in high tension areas, who are illegally arrested, are suspicious of the police, and this will tend to influence their conduct in their daily activities.<sup>45</sup>

One often hears the charge of Negro over-policing or harassment. Yet often this is calculated non-enforcement, justified on grounds that a lesser morality exists, it being therefore unwise to apply general legal standards to these Negroes. For example, Negroes are rarely arrested for bigamy, cohabitation and often not even for felonious assault. Yet these decisions not to invoke the process may well be just as detrimental to the community as decisions to use improper methods in discovery and proceedings against the guilty. Thus in a sense, those who have been arrested and charged have definitely violated the law, and they are being dealt with consistently, even if other persons guilty of

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<sup>45</sup>Michael Banton, Op. Cit., p. 143; Wayne LaFave, The Police and Non-Enforcement, Op. Cit., p. 112.

criminal conduct are not proceeded against.<sup>46</sup>

In summary, the differences in cultural and environmental conditions generates much confusion within the police role. The projection of a standard of values becomes difficult and this results in pressures upon law enforcement agencies stemming from a continued threat of rioting within the Negro ghettos. This violence is placing a heavy strain on law enforcement agencies, much of that burden being absorbed by the officers who must patrol that ghetto. These men have been left with little choice but to police in such a way as to attempt to control the numerous criminal elements and the nature of this task requires the vast exercise of police discretion.<sup>47</sup>

#### IV. POLICE METHODS AND DISCRETIONARY NON-ENFORCEMENT: DUALITY IN THE HANDLING OF DEVIANTS

##### Arrests and Non-Enforcement

In the introduction to this research, "authority" was termed "the right to command; . . . a power and responsibility to control a situation by virtue of the office vested in the man." This "authority" gives the officer the duty to enforce the law. One phase of enforcement involves the taking and keeping in custody under rules of law a person who has

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<sup>46</sup>Jerome Hall, "Police and Law in a Democratic Society," Indiana Law Journal, Vol. 28 (Winter, 1953), p. 159.

<sup>47</sup>News Roundup: "Cops on the Spot: Racial Violence Taxes Police Anew, But They Head Off Serious Riots," The Wall Street Journal, Vol. CLXVIII, No. 43, Friday, September 2, 1966; D. Stahl and F. B. Sussman, Op. Cit., p. 107; Spencer D. Parratt, Op. Cit., p. 153.

committed a crime or breach of the peace. This is termed the officer's power of arrest. Arrest is confined by law to situations where the officer has reasonable cause to believe a felony has been committed and that the person he has arrested is the offender, or where a misdemeanor is committed by some person in his presence.

This simple outline of the "arrest" however has become an issue of definition. For example, it is obvious that an officer may ask an individual a question and this act will not be termed an arrest provided that the individual is not confined or restrained against his will. In fact, it is a common practice to stop and question suspects when there are insufficient grounds for arrest. This is a means of crime prevention and detection. Yet is the act of stopping and frisking (for the officer's protection) to be considered an arrest, in view of the necessary physical contact between the officer and the subject? It must be realized that if we term this an arrest, as we can infer that a form of restraint is involved, many field interrogations are arrests, although immediate release usually follows.<sup>48</sup>

The decision to take a suspect into custody may be influenced by many factors in addition to the criminal act at hand. The officers may be concerned with a search and seizure, which legally requires a prior arrest; or they may wish to

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<sup>48</sup>Frank S. Remington, "The Law Relating to On-the-Street Detention, Questioning and Frisking," Journal of Criminal Law, Criminology and Police Science, Vol. 51 (1960), pp. 386-389); Edward L. Barratt, Op. Cit., p. 32.

avoid disclosure of a continuing investigation, or wish to safeguard evidence or witnesses. In these cases, custody of the suspect will be deemed necessary.<sup>49</sup>

LaFave also indicates those factors about the suspect himself which bear on the arrest situation. Is he likely to appear in court? This depends on the nature of the offense, the residence, and the character of the individual and the likelihood of his conviction. Is it in the interest of the individual to be taken into immediate custody? For example, does it cause unnecessary hardship for the individual or his family; is there a chance of possible harm coming to the suspect or a possibility of suicide, and is he able to maintain himself?<sup>50</sup>

There are, however, many cases in which the police should arrest persons and they delay. The arrest itself might be inappropriate or would be ineffective. Arrest might cause harm to the offender or victim which outweighs the risks from inaction, or an arrest might cause a loss of public respect and support. Oftentimes the failure to arrest could benefit the law enforcement system, such as when an offender could be utilized as an informer.<sup>51</sup>

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<sup>49</sup>Wayne LaFave, Arrest, Op. Cit., pp. 68, 144-152.

<sup>50</sup>Ibid., p. 177-202.

<sup>51</sup>Ibid., p. 125-143 and Sanford H. Kadish, Op. Cit., p. 907. Kadish also notes cases of arrest to check a suspect's identity, to check physical evidence, and arrests on mere descriptions.



In a very definite sense, this non-arrest situation is inconsistent with the rule of law. Some of the most difficult cases are those in which the policeman declines to make an arrest of an apparently guilty suspect on the grounds that it is better for him that the criminal process not be invoked. Yet Kadish emphasizes that this creates inequality in official action, it leads to arbitrariness, discrimination and abuse.<sup>52</sup> Very definitely there are considerable differences then, between the degrees of danger posed in such arrests, and the desirability and feasibility of eliminating such judgments. On the other hand, the officer would maintain that there is a need for mediation between the laws and human values. This need then has created the exercise of police discretion.<sup>53</sup>

The officer's role then may be focused upon the sensitive use of a discretion to enforce the law by determining whether a particular violator should be handled by a warning or an arrest. Yet many authors have found fault with this present use of discretion. They, like Edward L. Barrett, Jr.,

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<sup>52</sup>Jerome Skolnick, Op. Cit., p. 234. It is pointed out that police discretion is "hidden" in that the officer makes decisions in direct interaction with the suspect. For example, numerous tactics might be employed in a misdemeanor arrest without a warrant. (See Wayne LaFave, Arrest, Op. Cit., p. 28-30.) The officer might (1) insure cooperation of the complainant to preclude a possible false arrest action; (2) encourage another offense to create the basis for a lawful arrest; (3) persuade the offender to voluntarily remain in custody while a warrant is sought, and (4) justify the arrest as a felony.

<sup>53</sup>Sanford H. Kadish, Op. Cit., p. 909.

in his "Police Practices and the Law,"<sup>54</sup> point out that some thirty-four percent of all arrests, as in his survey of two California cities, resulted in release. Seventy-five percent of those were due to insufficient evidence. Another twenty-five percent of those released had confessed to the offense but the cases involved bad checks or stolen automobiles, wherein the victim refused to prosecute. Either the police are completely maintaining their authority or the system itself is totally defective.

It becomes necessary then to determine the pressures within and surrounding the department, which force the police to invoke the criminal process selectively. Under the present law, if police brought all arrested persons promptly before a magistrate, the courts would be literally swamped. Further it is by no means clear that the liberties of the ordinary citizen would be enhanced as a result.

Yet Joseph Goldstein insists that the police have not been delegated discretion not to invoke the criminal process within what he terms the area of "full enforcement."<sup>55</sup> He notes the lack of enforcement of narcotics laws against informers, the lack of enforcement in felonious assaults when

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<sup>54</sup>Edward L. Barrett, Jr., "Police Practices and the Law," California Law Review, Vol. 50, No. 1 (1962), pp. 38-39.

<sup>55</sup>Joseph Goldstein, Op. Cit., p. 556. An area of no enforcement lies between the perimeter of total enforcement and the outer limits of full enforcement. In this no enforcement area, the police have no authority to invoke the criminal process. Within the area of full enforcement, the police have not been delegated discretion not to invoke the process.

the victim will not prosecute, and the decisions to harass rather than prosecute the numbers racketeers. Each of these decisions is made even though a crime has been committed and the offender is known.

It must be realized that both Banton and LaFave have emphasized that there are many cases when there is ambiguity in legislative intent, where prosecution would achieve nothing and might even lose the police respect, or where it would entail punishment disproportionate to the particular characteristics of the offense. Often too, as in Goldstein's cases above, the conduct is common in the offender's section of the population, and in these cases oftentimes a warning is insufficient, or as in the case of reliable informers, they may not deserve prosecution. It must also be realized that where minor offenses such as drinking in public are involved, under-enforcement is the general rule.<sup>56</sup>

Joseph Goldstein defines a system of full enforcement. Herein the police investigate every disturbing event which may be a violation of the law and which is reported to or observed by them. Following a determination of a criminal violation and a discovery of the perpetrators, all the collected information is presented to the prosecutor for his determination of whether or not to invoke the criminal process. Certainly the effects of such a program must be considered. Will such enforcement place the legislature in

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<sup>56</sup>Edward L. Barrett, Op. Cit., p. 46; Joseph Goldstein, Op. Cit., pp. 554-561.

a more advantageous position to evaluate present laws? In narcotics for example, what would be the effects of full enforcement? Would prices be increased to the user and would this in turn cause an increase in the frequency of crimes committed by him; or would full enforcement reduce the number of users and therefore the frequency of connected crimes?<sup>57</sup>

Basically an officer can deliver equal justice to the extent that he has the situation under control. The police could perhaps turn over all the evidence to a prosecutor for evaluation, as suggested by Goldstein and others. Then if a complaint were issued, all parties would appear before a judge and those "victims" who might not desire prosecution, would be themselves charged with perjury if they changed the facts of the incident. In this way, the role of each agency would be more clearly delineated and integrated. While much of the burden is then removed from the police, it must be recognized that the exercise of discretion will not be completely eliminated.<sup>58</sup>

The prosecutor's decision must be in strict conformance with the law. In this sense, the circumstances surrounding such a "charging decision" are very different from those at the time of arrest. It is at this time that a test of verifiable probable cause could be established. In effect,

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<sup>57</sup>Joseph Goldstein, Op. Cit., pp. 559-573.

<sup>58</sup>Ibid., pp. 577-586.

Goldstein has attempted to raise the visibility of the arrest decision. "Without this visibility" he maintains, "the likelihood of compliance (with the rules of law) is greatly reduced."<sup>59</sup>

This author, however, would still attempt to uncover a means of determining whether the individual officer, despite his own value system, can respond to officially articulated community values, and thus be delegated broad powers of discretion. In effect, we must give the officers a stronger foundation for discretion by making them perceive and evaluate the effect of their "street decisions" on local programs in integration, school, housing, and employment.

#### Detention for Investigation

One of the most controversial areas in the administration of criminal justice concerns the detention of suspects for investigation by the police. The process involves a request to the suspect to come voluntarily or at times taking the person to the station, where he may be held, but is not booked and therefore technically not "arrested."<sup>60</sup>

Usually a supervisor will decide whether to hold the person for investigation, for a warrant, or to release him, based on a short interrogation. If booked, the charge may

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<sup>59</sup>Ibid., pp. 552, 556-557; Wayne LaFave, "Detention for Investigation by Police - An Analysis of Current Practices," Washington University Law Quarterly (1962), pp. 340-349.

<sup>60</sup>According to the definition of arrest in the introductory chapter.

read "suspicion of \_\_\_\_\_," which is at the present time illegal. Generally speaking, persons held for investigation cannot obtain their immediate release.<sup>61</sup>

The police maintain that detention for investigation is required to obtain sufficient evidence for conviction, to investigate other offenses or other offenders. Usually a short unrecorded detention will not be considered an arrest. Yet the arrest of a person who is not known to have committed a crime, simply to discover whether he might possibly have done so some place, is totally unjustifiable and unethical.<sup>62</sup>

For the officer on the beat, detention for questioning constitutes an overwhelming proportion of his activity. Without it, the number of cases successfully closed would diminish considerably. Thus the officer may "bluff" the suspect with the threat of charges, he may arrest on an irrelevant charge or may even let the suspect go free in an effort to insure cooperation.<sup>63</sup>

If we are to allow such detention, then the practice must be reasonably regulated. Reasonable cause must exist to justify any detention. The length of detention should be determined by definite standards, and the practice should be judicially authorized when reasonable grounds of necessity

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<sup>61</sup>Wayne LaFave, "Detention for Investigation by the Police - An Analysis of Current Practices," Op. Cit., pp. 331-338.

<sup>62</sup>Ibid., pp. 350-384.

<sup>63</sup>Robert H. K. Walter, Op. Cit., p. 106.

are shown. This would require a judicial official independent of the law enforcement agency. In this way, then, detention for investigation can become a legal and useful tool for the officer, while the public safety is protected by its redirected status to the minimum necessary for adequate law enforcement. Certainly too, the practice can be of advantage to the detained person--if innocent, he has a good prospect of being released without any publicity or stigma. In each instance, however, the task of detention must be aimed at accomplishing the goals of law enforcement, while not overriding the reasonable freedom of the individual.<sup>64</sup>

#### Special Cases

There are several areas of both arrest and non-enforcement which particularly allow for the exercise of discretion by police officers. For example, intoxicated persons are often arrested for their own safety, prostitutes for health reasons, tranvestites as a means of control, and gambling and liquor arrests as purely punitive measures. Similarly, narcotics laws are not enforced against informers, gamblers, and numbers men are often harassed and often no arrests are made in clear felonious assaults because the victim and offender are "friends." It must be emphasized that no legal provisions authorize the police to exercise

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<sup>64</sup>Wayne LaFave, Arrest, Op. Cit., p. 26; Edward L. Barrett, Op. Cit., pp. 40-54; Joseph Goldstein, Op. Cit., p. 550; Wayne LaFave, "Detention for Investigation by the Police - A Review of Current Practice," Op. Cit., p. 398.

such discretion. In this way, those laws of social control place the police officer in many untenable positions.

One of these is his utilization of the criminal informant. Robert Earhart, in his analytical thesis on the use of informers, points out that the officer becomes involved in personal problems and may be compromised in his dealings with the "stool pigeon." Often the individual is permitted to continue covertly his own criminal activities. In this way, an officer may develop too much trust in the informant and risk dealing with a "double-agent." Yet these positive associations are most valuable to the beat officer who represents the law on his post.<sup>65</sup>

Considerable discretion is exercised in the protection of an informer's identity. Such is the case of the policeman who fails to report some crimes which he "knows" his informer committed.

In Westville, informants are sometimes well paid and are sometimes permitted to commit crimes. . . . In general, burglary detectives allow informants to commit narcotics offenses, while narcotics agents allow informants to steal.<sup>66</sup>

As aptly illustrated, police relations with informers are in the pattern of a bargain. The police maximize their bargaining power by utilizing their official authority.<sup>67</sup>

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<sup>65</sup>Robert S. Earhart, "A Critical Analysis of Investigator-Criminal Informant Relationships in Law Enforcement." Thesis, Michigan State University, School of Police Administration (Summer, 1964), pp. 24-25.

<sup>66</sup>Jerome Skolnick, Op. Cit., p. 126.

<sup>67</sup>Ibid., pp. 124-134.



In narcotics enforcement, however, informants use their position for personal gain, and a determination between the ideals of morality and the demands of efficiency is placed before the officer. Their decisions here are illustrated in Joseph Goldstein's study wherein eighty percent of those apprehended for narcotics violations during one year were discharged. The detectives logically justify their policy of trading full enforcement for information in that it allows them to eventually reach a supplier, instead of continuously locking up the "victim junkies."<sup>68</sup>

In dealing with prostitutes, a discretionary use of a quarantine medical check may give the officer his bargaining power. In this sense, non-enforcement of the quarantine requirement exemplifies how an officer may create a more discretionary structure in which to operate.

It must be realized that this class of repeated offenders must be properly "managed" by the officer. The prostitute may carry a razor or a knife and thus constitute a potential danger. If the policeman treats this arrest as a game in which he has won, it usually will be a more easily handled situation. If he degrades the girl, he will probably have a rough time. In this sense though, vice control officers feel that any breaks a particular defendant deserves have already been meted out within the operational environment.<sup>69</sup> In terms of informants, junkies, and prostitutes,

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<sup>68</sup>Ibid., pp. 115-139.

<sup>69</sup>J. Skolnick, Op. Cit., p. 110. It is noted that while greater discretion may lead to racial discrimination, the race of a prostitute is not salient, while her demeanor is.

careful consideration must be directed at higher visibility of these decisions. Yet with less discretion or high visibility are the police goals more likely to be attained?<sup>70</sup>

### Juveniles and Discretion

The police officer in the course of his duties usually encounters youthful offenders in one of three ways; he spots a "wanted juvenile," he encounters the offender at or near the scene of an incident, or he directly observes misbehavior or definite "suspicious circumstances." The central task confronting the officer is to determine what action to take against the offender.

Irving Pilavin and Scott Briar noted several influencing discretionary factors in dealing with juveniles.<sup>71</sup> It was noted that the extensive practice of discretion with juveniles was sanctioned by departmental policy, based upon what was best for the youngster. The officer had a choice of five dispositions for any particular case: outright release, release and submission to a field interrogation report, official reprimand, citation to juvenile court, or arrest and confinement in juvenile hall.

In the third, fourth and fifth dispositions, the offender was taken to the station where he acquired a juvenile police but not a court or criminal record.

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<sup>70</sup>Ibid., pp. 99-197.

<sup>71</sup>Irving Pilavin and Scott Briar, "Police Encounters With Juveniles," American Journal of Sociology, Vol. 70 (September, 1964), pp. 206-214.

The disposition decision by the officer usually has a profound consequence for the youth. In this sense, a youth is termed a delinquent only because someone in authority such as the police officer has defined him as one. Thus any formal arrest may act as a catalyst for the deviant behavior, especially where there is a tendency to give Negro and similar youths severe dispositions due to their recurrent exposure to the police. The officers, however, had to justify their decisions based on the youth's character, though no explicit rules have been laid down. These researchers found that in minor violations, the violation played an insignificant part in the disposition decision. Rather personal characteristics, prior record, and demeanor formed the basis of the officer's judgments. To a very great degree then, the officers exercise wide discretion in their dealings with juveniles, reflecting a judicial rather than the perhaps intended ministerial role of the police.<sup>72</sup>

#### Violence and the Use of Force

The use of physical force by officers of the law is the most dramatic exhibition of what is involved in the vital issue of police discretion. While the use of force is functionally related to the collective objectives of the police, they will as a group, based on their occupational experience, justify its use. Undoubtedly some officers either willfully or through a lack of knowledge abuse their

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<sup>72</sup>Ibid.

authority at times. Yet there are many contradictory interpretations and examples of the use of force. For example, Brooks quotes Dr. Westley from "Violence and the Police:"

The individual who lacks respect for the police, the "wise guy" who talks back in a disrespectful way, deserves brutality.<sup>73</sup>

On the other hand, a recent review by the Wall Street Journal quoted an official of the NAACP who stated that

. . . officers moved smoothly to restore order without shooting or throwing their weight around . . .<sup>74</sup>

in reference to recent riots in east New York section of Brooklyn.

Officially the police organization tolerates only that amount of force necessary to apprehend the alleged criminal.<sup>75</sup> The latitude allowed the officer involved is not fixed by the rule books. In theory, the well-trained policeman should be able to judge exactly how much force is required. Yet because he is pre-occupied with potential violence, the officer quickly learns to identify certain kinds of people as symbolic assailants. In this sense, the officer is required to implicate himself by necessarily quickly responding to danger. Further in most cases, the

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<sup>73</sup>Thomas R. Brooks, Op. Cit., p. 63.

<sup>74</sup>News Roundup, "Cops On the Spot - Racial Violence Taxes Police Anew, But They Head Off Serious Riots," The Wall Street Journal, Vol. CLXVIII, No. 45 (September 2, 1966), p. 1.

<sup>75</sup>Commonwealth vs. Duerr, 158 Super 484, 491-92, 45 A. 2d. 235, 238 (1946) wherein "an officer endeavoring to make an arrest in the case of a felony, may use all the force necessary to overcome resistance, even to taking . . . a life." (From Joseph Goldstein, Op. Cit., p. 545.)

officers merely attempt to restrain an individual rather than to combat with him. Yet the onlooker only perceives the four struggling officers and the single fighting "victim."<sup>76</sup>

It must be emphasized that in the split second or so in which the officer has an opportunity for arrest, he must at his peril go through a most problematic "balancing" process to determine reasonable cause both for the arrest and the degree of force necessary. Gerald Roblin justifying homicide by police in his study, concludes:

. . . the officers exercised considerable restraint in delaying the use of fatal force as long as they did. . . . It was rationally utilized as a last resort.<sup>77</sup>

The right of police to use force then must depend upon its necessity (the particular circumstances), the lawfulness of the arrest, and that the officer has reasonable grounds to believe that the person is aware that the arrest by a police officer is being attempted, and that he could avoid physical violence by submitting to the authority of the law. Certainly the officer here acts at his peril, and the balance must in these circumstances be totally in favor of the police agent. In support of this, the Royal Commission on the Police suggested that the liability for acts committed

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<sup>76</sup>Thomas R. Brooks, Op. Cit., pp. 60-61; Jerome Skolnick, Op. Cit., pp. 45, 54.

<sup>77</sup>Gerald D. Roblin, "Justifiable Homicide by Police Officers," Journal of Criminal Law, Criminology and Police Science, Vol. 54, No. 2, p. 227. (He noted that in 28 of 32 cases, the offenders were warned verbally, by the firing of a shot in the air, or both.)

by officers in the execution of their duty, be placed upon the police authority.<sup>78</sup>

I hate to think of the number of policemen who were shot or stabbed to death simply because they didn't use their gun fast enough.

- a Philadelphia Police Commander<sup>79</sup>

While every department is under criticism from the community, and this forces the police to justify themselves to the public, at the point where force is required, discretion of the officer must be spontaneously based on his training and past experience.

## V. DISCRETION AND THE LAW

### Legislative and Political Controls Affecting Discretion

There is almost no subject of greater importance for the legislature to discuss than the police. Yet the politicians have made the police officer an all-purpose public servant, called upon to play wide variety of roles, and assuming a number of imposing responsibilities.

Political manipulation and law enforcement, however, always seem to have been closely associated in America. There is little doubt that one of the greatest handicaps of modern police administration is derived from partisan politics.

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<sup>78</sup>Robert H. K. Walter, Op. Cit., p. 106; Wayne LaFave, Arrest, Op. Cit., pp. 208-225; Royal Commission on the Police, Op. Cit., p. 25.

<sup>79</sup>William M. Kephart, Racial Factors and Urban Law Enforcement (Philadelphia: University of Pennsylvania Press, 1957), p. 68.

Since popular control is exercised through the medium of the political party, the private citizen who seeks to avoid the effect of police restrictions naturally turns to political representatives for aid.

In addition, appointed police chiefs, captains, and lieutenants often invite and rely upon political assistance at every turn. It has been stated that "if there were fewer police in politics, there would be fewer politics in police."<sup>80</sup>

In this sense then, the police often become a political football, and they are particularly vulnerable to political attack. Certainly a most forward step could be attained if more departments could develop a professional public relations attitude to at least build a foundation of support and a shield of defense against the barrage of partisan politics.<sup>81</sup>

Control of the police is a tremendous asset to a spoils-minded political machine, for the service which the police can render to that machine is legion. When the police department is controlled by the machine, political influence begins with the appointment of the recruit, rallies to save him from discipline or discharge, helps him to secure unearned wages or disability benefits, grants him unusual leaves of absence, secures an unwarranted promotion for him, or

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<sup>80</sup> Bruce Smith, Op. Cit., p. 9.

<sup>81</sup> Ervis W. Lester, "Some Aspects of American Police Problems," Journal of Criminal Law, Criminology and Police Science, Vol. 40 (1950), p. 804.

gives him a soft job. Politics in a force then will gradually undermine the character of every rank and file policeman.<sup>82</sup>

In a very real sense, a proper balance must be achieved. The police must be free from outside controlling influences, and yet responsive to community goals in enforcement. Thus Abernathy suggests regular but informal communication between the police and certain elected local policy-making officials.<sup>83</sup>

Aside from the possible influences of political control upon the officer's decision making, it must be determined exactly what the law-makers have said about discretion. What powers have the police been given?

Generally state legislatures have denied the police authority to not invoke the criminal process. Yet a review of the applicable statutes may leave the matter in doubt.<sup>84</sup>

Seldom, for example, are statutes phrased in permissive terms; the police have a duty to enforce all the criminal laws. The legislatures expect "full enforcement." Yet "full enforcement" is physically impossible; it just is not a realistic expectation. Consequently, the police have developed the use of discretion in prosecution. This discretion has formed an area of great power and in time has

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<sup>82</sup>Michael Banton, Op. Cit., p. 92 (as quoted from Municipal Police Administration, p. 10).

<sup>83</sup>M. Glenn Abernathy, Op. Cit., p. 474.

<sup>84</sup>Wayne LaFave, "The Police and Non-Enforcement of the Law," Op. Cit., p. 181.



expanded the great amount of legislation.<sup>85</sup>

In addition, the legislature frequently draws up laws in broad terms so that the task of interpretation and applicability evolves upon the police. They must determine if a particular act falls within the legislation concerned. (One example is the difficult interpretative differences between social and organized gambling.) Some laws were never intended by the enactors to be really enforced. If all violators were arrested, the prosecutors and courts would find it impossible to do their work, and the officers would be in court so frequently that they could not properly perform their regular duties. Thus the officer in the street is left with little choice but to settle many cases informally.<sup>86</sup>

It might be concluded that, if such an exercise of discretion by the police is inherently dangerous, the situation could be corrected by substantial legal reform. Each relevant piece of legislation must be analyzed to demonstrate not only that they reflect current attitudes, but that they are unambiguous, that a specific conduct is declared criminal, and that such conduct alleviates administrative problems. In this sense, a reappraisal of the responsibilities given to law enforcement as well as greater police compliance with the law, would be achieved. Our police would be given a role

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<sup>85</sup>Wayne LaFave, Arrest, Op. Cit., pp. 76-82; Joseph Goldstein, Op. Cit., p. 557; Ben Whitaker, The Police, Penguin Books (1964), p. 170.

<sup>86</sup>Sanford H. Kadish, Op. Cit., p. 909; Richard C. Donnelly, Op. Cit., p. 92.

in which the public and politician can aid rather than obstruct the law enforcement agencies.<sup>87</sup>

Although Joseph Goldstein recommends that the police should not be granted discretion not to invoke the process, it is felt that legislative action such as that recommended above would sufficiently tighten the control of over-discretionary law enforcement. "Full enforcement" of the law could then be interpreted as the freedom of the citizen from the possible arbitrary power of government. The retained independence of the police coupled with the renewed cooperation of the politician, could only lead to a new summit in successful police service.<sup>88</sup>

#### The Imbalance Between Law and Discretion

The police agencies deserve greater guidance in the discharge of their law enforcement responsibilities than is afforded by the law today. Criminal law attempts to define behavior which is deemed intolerably disturbing or destructive to community values, and proscribed sanctions which the state is authorized to impose upon persons convicted or suspected of engaging in such conduct. The policeman's art then consists

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<sup>87</sup>Wayne LaFave, Arrest, Op. Cit., pp. 83-101; W. LaFave and Frank S. Remington, "Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions," Michigan Law Review, Vol. 63 (April, 1965), p. 1012; Ben Whitaker, Op. Cit., p. 171.

<sup>88</sup>Nelson A. Watson, Op. Cit., pp. 17-18; Joseph Goldstein, Op. Cit., p. 586; Sanford Kadish, Op. Cit., p. 909; W. LaFave, "Detention for Investigation by the Police," Op. Cit., pp. 394-398; M. Abernathy, Op. Cit., p. 472.

in applying and enforcing a multitude of laws and ordinances so that the greatest degree of protection will be secured.<sup>89</sup>

Yet the exercise of police discretion in this enforcement has rarely been recognized because of what has been termed the "low visibility" of such decisions, and because of the limited means by which specific instances of inaction may be challenged.

The whole nation of legality . . . involves a distrust of excessively wide discretionary powers and seeks to impose such limitations as are consistent with public interest.<sup>90</sup>

In this regard, it must be determined how wide a divergence exists between the law in the books and the law in practice.

In attempting to apply the law, Roscoe Pound derived four categories of cases: those which are governed by law in the strictest sense, those decided by reasoning from authoritative principles as starting points, using an authoritative technique guided by authoritative ideals, those cases calling for judicial discretion, that is, guided by an analogy of principles of law as starting points for a reasonable determination, and last those cases left to the personal discretion of the person authorized to act.<sup>91</sup>

Yet the prosecutor and the courts are rarely given the full picture of police practices, nor are the police

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<sup>89</sup> Joseph Goldstein, Op. Cit., p. 544; Bruce Smith, Op. Cit., p. 10; David Stahl and Fredrick B. Sussman, Op. Cit., p. 394.

<sup>90</sup> B. M. Barker, "Police Discretion and the Principle of Legality," The Criminal Law Quarterly, Vol. 8, No. 4 (July, 1966), p. 405.

<sup>91</sup> Roscoe Pound, Op. Cit., pp. 929-930.

informed of the legal basis of judicial decisions. Thus there is a breakdown in adequate communication between the courts and the police.<sup>92</sup> The courts only hear challenges based on a narrow set of facts, while the police fail to utilize recent and daily appellate court opinions. Often these are merely filed and rarely are they even used in training. This is certain to result in less selectivity on the part of the police. Yet Jerome Hall emphasizes that:

. . . he (the policeman) is the living embodiment of domestic law. If he conforms to that law, he becomes the most important official in the entire hierarchy able to facilitate the progressively greater realization of democratic values.<sup>93</sup>

#### Police Work Under the Law

The government bestows police authority on an individual or group of persons to perform the governmental duties of the office of police. This authority is general and particular. That is, there is general authority or a right to be a police officer and to perform police duties, while particular authority exists over an individual who has violated the law. The police power is not an authority given to the individual officer; rather it is based upon the inherent right of the government to regulate the affairs of the citizens by enforced legislation. An offense then

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<sup>92</sup>Wayne LaFave and Frank L. Remington, Op. Cit., pp. 1003-1007.

<sup>93</sup>As evolved in Joseph Goldstein, Op. Cit., p. 570.

constitutes an opposition to the authority of the government.<sup>94</sup>

Yet policemen often view the criminal procedure as craftsmen; they feel that the system should allow them to freely employ the techniques of their trade. These techniques, however, may at times be contrary to due process of law. In this regard, Jerome Skolnick emphasizes that the purpose of criminal law is to control the behavior of criminals, while criminal procedure is used to control the authorities.<sup>95</sup>

On the street, the officer has the greatest potential for discretionary judgments, especially those not to invoke the criminal law. Yet the dangerous nature of the work combined with the police authority--the officer's right to command--may at times undermine his attachment to the strict rule of law. He is caught in a system of production, dealing with intensified incidents under pressure. The policeman becomes somewhat alienated, this serving to heighten his perception of dangerous symbols.<sup>96</sup>

The necessity for the use of force often requires an immediate decision by a police officer in the face of physical danger to himself or to others. The privilege of hindsight and leisurely contemplation is not afforded a policeman faced

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<sup>94</sup>Public Service Institute, Principles of Police Procedure (Pennsylvania Valley Publishers, Inc., Pennsylvania State College, 1955), p. 16.

<sup>95</sup>Jerome Skolnick, Op. Cit., p. 196.

<sup>96</sup>Ibid., p. 232.

with this split-second decision. For this reason, the law gives him an area of discretion within which his judgment may be exercised. In exercising this discretion, a police officer may, in good faith, err in evaluating the threatened danger, but if under the circumstances there was reasonable justification for his apprehension of harm, he does not abuse this prerogative.

On the other hand, while a police officer has considerable latitude, his decision as to the amount of force required in a particular situation does not justify his resolution to use physical means in the first instance. Thus it is not enough that the officer believes the force he is using is necessary; his belief must be reasonable. This determination of reasonableness is subject to review by a higher authority.<sup>97</sup>

The arrest has been defined as the taking into custody of a person so that he may answer for the commission of a crime. Yet any deprivation or restraint of a person's liberty might be termed an arrest, whether or not he is booked, or charged with a crime. While at present our police have no strict legal right to detain people for questioning in police stations, it has been emphasized earlier in this research, that in certain circumstances, they have a need to

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<sup>97</sup>David Stahl and Fredrick B. Sussman, Op. Cit., p. 109; Richard J. Smith, "The Use of Deadly Force by a Peace Officer in the Apprehension of a Person in Flight," University of Pittsburgh Law Review, Vol. 21, p. 132; Noboek vs Town of Montclair, 23 N: J. Super 420 110 A 2d. 339 (1954).

do so; in fact they could not conduct their investigations without doing so. Thus Judge Breitel defined police discretion as "the power to consider all the circumstances and then to determine whether any legal action is to be taken."<sup>98</sup>

The police manuals are ambiguous in their instructions to the officer. They follow the strict legal requirements towards full enforcement of the law. In these ways, the resulting discretion is unavoidable according to the law. The law gives no guide as to whether it is desirable, whether it should be eliminated or controlled, nor does it provide any means of control . . . merely enforce all the law!<sup>99</sup>

Yet the officer's discretion is affected by his experience and the extent to which he believes a crime has been committed and that the suspect at hand is the offender. His knowledge of facts may be direct through his senses, or indirect through circumstances and evidence. Yet he must be certain of both the breach of law and the offender.

Negligent use of discretion then, is a real possibility and thus he must be certain to be able to prove reasonable grounds for belief--all within the flash of the split-second decision.<sup>100</sup>

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<sup>98</sup>Charles O. Breitel, Op. Cit., p. 427.

<sup>99</sup>Sanford H. Kadish, Op. Cit., p. 907; Ben Whitaker, Op. Cit., p. 61; Paula R. Markowitz and Walter I. Summerfield, Jr., "Philadelphia Police Practice and the Law of Arrest," University of Pennsylvania Law Review, Vol. 100, p. 1185.

<sup>100</sup>Wayne LaFave, Arrest, Op. Cit., pp. 231-263; Richard J. Smith, Op. Cit., p. 136.

Thus the law does not provide the police officer with anything but a fragile and ever-shifting foundation. It grants no power of discretion, but demands the interpretation of a totality of circumstances before application. Further, the success of the police is measured only to the extent of perfection by which they enforce these laws.<sup>101</sup>

### The Role of the Courts

It is one thing to arrest on reasonable cause and quite another to prove a charge in court beyond a reasonable doubt.<sup>102</sup>

There has been a rather continuous stream of court decisions restricting the police and their authority to enforce the laws and protect the lives and property of our citizens. In a sense, these opinions reflect a hostility against the police. Yet in reality, they are meant to curtail the usurpation of the judicial function and any interference with liberty, by a police guided by principles of expediency.

Skolnick illustrates two "models" which reflect the police attitudes towards the courts. The "due process model" emphasizes legal guilt over factual guilt. Herein the criminal process conforms to the rule of law. The "crime control model" on the other hand, emphasizes factual guilt. It stresses social control over individual justice. The presence of procedural requirements in routine cases really

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<sup>101</sup> Spencer D. Parratt, Op. Cit., p. 153; State vs Nolan, 354 Mo. 980 192 S.W. 2d. 1016 (1946).

<sup>102</sup> Frank D. Day, "Criminal Law Enforcement in a Free Society," Journal of Criminal Law, Criminology and Police Science, Vol. 54, No. 3, p. 364.



emphasizes Skolnick's "due process model."<sup>103</sup>

These "models" reflect the adoption of the exclusionary rule by the judiciary. This exclusionary rule for the policeman focuses on his discretion, his basis for reasonable cause both for arrest, interview, and the incident search. Skolnick lists many factors which influence the officer's judgment of reasonable cause. These include the nature of the information, the character of the informer, delays which might enable the person to escape, details of description, time of day, flight, furtive conduct, presence at the scene of the crime, results of a consent to search, admissions by the person being questioned, the criminal record of the arrested person and/or his associates, the reputation of the premises, and recent crimes in the neighborhood.<sup>104</sup>

Wayne LaFave on the other hand challenges the exclusionary rule maintaining that it has not met three very important objectives. First, the requirements of law are insufficiently detailed so as to meet the objective needs of law enforcement and individual rights, as reflected by the rule. LaFave debates whether these requirements are really understood by the front line men; the officers in the street, and certainly it can be debated whether the police

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<sup>103</sup>Jerome Skolnick, Op. Cit., pp. 182-183; O. W. Wilson, "Police Authority in a Free Society," Journal of Criminal Law, Criminology and Police Science, Vol. 54, No. 2, p. 177.

<sup>104</sup>Jerome Skolnick, Op. Cit., p. 214.

desire convictions enough so as to totally comply with the rule.<sup>105</sup>

Yet the courts continue to "plod" over law enforcement, and this is reflected in the restrictions such as the sixth amendment which requires, according to interpretation, the production of informers, Section 605 of the Federal Communications Act, which forbids the interception and divulgence of a communication, the varying definitions of entrapment and enticement, the McNabb-Mallory rules regarding arraignment and confessions, and numerous instances of case law in the area of self-incrimination and bodily invasions.

Within this realm, the police insist that they lack any guide even for routine decisions. The police perception of a line between legality and illegality is hazy. Thus the officer attempts to handle the situation with a view towards justifying legality, irrespective of actual circumstances. He aims to legitimize the evidence pertaining to the case, rather than analyze the sufficiency of the circumstances. The officer will be able to reconstruct a set of complex happenings in such a way that, subsequent to the arrest, probable cause will be found according to the appellate court standards. Only because the officer respects the necessity to comply with arrest laws does he engage in post hoc manipulations. Above all, the alert and vigilant officer sees his real task as ferreting out crime. In this sense

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<sup>105</sup>Wayne LaFave and Remington, Op. Cit., p. 1003.

then, only good can come out of search for example, which may be legally defined as "unreasonable."<sup>106</sup>

In the lower courts . . . frequently evidence is suppressed and defendants (are) set free on grounds that . . . would not be sustained in our higher courts.<sup>107</sup>

There is very little justice meted out within the bungling of our lower courts today. The judge, for example, makes no inquiry as to the grounds for arrest, but merely sets a time by which the police must formally charge or release the suspect. There is no actual review of the arrest decision. Rather the common practice at a trial in the first instance consists of a judicial notification to the defendant of the charge, a setting of bail, and a determination of the need for a preliminary hearing. This emphasis on speed and the resulting careless handling of facts reflects the judge's reliance on and the dominance of the discretion of the prosecutor.<sup>108</sup>

Certainly both the exclusionary rule, the defense of entrapment, and the constant reinterpretation of the American Constitution are formal recognitions of the responsibility of the trial judge to concern himself with enforcement methods. Yet rarely does the judge articulate how the numerous

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<sup>106</sup>Jerome Skolnick, Op. Cit., pp. 214-220.

<sup>107</sup>O. W. Wilson, "Police Authority in a Free Society," Op. Cit., p. 177.

<sup>108</sup>Wayne LaFave and Frank J. Remington, Op. Cit., p. 995; Samuel Dash, "Cracks in the Foundation of Justice," Illinois Law Review, Vol. 46, pp. 386-391.

acquittals relate to these factors of judicial regulatory emphasis.<sup>109</sup> Certainly though ". . . with more freedom from political entanglements, he (the judge) can take over much of the power now exercised by the prosecutor and become the master of criminal law enforcement."<sup>110</sup>

Another important contribution to injustice is the process by which a great number of felony cases are eliminated through pleas of guilty to a lesser offense.<sup>111</sup> Many crimes which carry penalties of twenty years or life are punished with as little as thirty days.<sup>112</sup>

It must be realized that the trial judge occupies a strategic administrative position. He not only controls the efficiency of his own court by encouraging guilty pleas through his leniency in sentencing, or by his support of the

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<sup>109</sup>Donald J. Newman, Conviction: The Determination of Guilt or Innocence Without Trial (Boston: Little Brown & Co., 1966), p. 5.

<sup>110</sup>Ibid., p. 171.

<sup>111</sup>Samuel Dash, Op. Cit., p. 392. Dash notes that 38 percent of felony cases presented to the courts are reduced to lesser felonies or misdemeanors. For example, robbery, burglary, and rape are reduced to petty larceny, assault and battery and contributing to the delinquency of a minor. See Bureau of Criminal Statistics, Watts Riot Arrests, Los Angeles, 1965: Final Disposition, State of California Department of Justice (June 30, 1966), p. 37. "Most rioters were charged generally with burglary, but . . . the great majority . . . were in the final analyses convicted of trespassing."

<sup>112</sup>The author's field experience includes an episode in a local municipal court wherein a judge sentenced a drunk to sixty days and a burglar to thirty. Then he went on to find another offender guilty of "attempted drunk," but suspended his thirty-day sentence.

negotiated pleas, but also uses adjudicative discretion to control other agencies such as the police. When he dislikes the enforcement methods, he can and does acquit defendants who have been subjected to those methods.<sup>113</sup>

Donald Newman maintains that guilty pleas account for approximately 90 percent of all criminal convictions. As there is no requirement that the prosecutor give a reason for any reduction in charge at the typical arraignment, the court rarely learns anything about the defendant or his crime. This process in which a defendant pleads and is convicted of an offense less than the one of which he is guilty, is only one of a series of discretionary patterns of "high visibility" which characterizes the administration of justice.<sup>114</sup>

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<sup>113</sup> Samuel Dash, Op. Cit., p. 392.

<sup>114</sup> Donald J. Newman, Op. Cit., pp. 5-8, 22, and 76. Newman classifies the reasons for acquittal as follows:

1. The trial judge may disagree with the intensity of enforcement, as reflected in the judgment of enticement in vice arrests. Yet it is emphasized that the prostitute is fully aware of the illegality of her conduct, and certainly she was not first introduced to such behavior by the police.
2. The trial judge disagrees with the meaning and purpose of the law; though the courts seldom differentiate clearly between an interpretation of the statute defining the crime and the adequacy of the evidence or the propriety of the police methods involved.
3. Acquittal may be a means of supporting police detection methods, as in the case of offenders who become informants. Here the judge just fully understands the facts of the case and its connection with the law enforcement operation, fully agreeing with the measures taken. (See pages 189-196.)

It is admitted wholeheartedly that where the mechanisms of enforcement are inadequate, respect wanes, and any legal controls will become impotent. In order to maintain respect, we must emphasize fairness and legality. Yet the courts are to a great extent asserting a negative control on the police in their efforts to fill what is probably a non-existent vacuum. Seldom is the individual case seen in the light of the larger enforcement problem. Certainly the police officer cannot deal with the social and racial enigma which he faces daily in the street unless he has the full support of the total court system.

#### Higher Visibility?

There is no stage in the administration of criminal justice that judges can state is not their concern. Empirically they exercise a "judicial-supervisory" role, and the relationship between the judiciary and the police becomes crucial. Judges participate in making law enforcement decisions when they impose orderly procedures and neutral legal decisions. Though these are based on supposedly informed deliberate determinations, judicial action appears to be based on destructive rather than constructive techniques.<sup>115</sup>

It would appear based upon current practice, that police officers do not share a vital concern for warrants,

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<sup>115</sup>Wayne LaFave and Frank J. Remington, Op. Cit., pp. 987-989.

reasonable cause, and individual liberties. The inducement to seek judicial review on their part is lacking. Certainly then, it would be worthwhile to consider if they would show more concern, respect, and legal discretion, if the consideration of these factors were theirs alone. This implies, however, that present judicial procedures such as the obtaining of a warrant act as a deterrent to effective policing.<sup>116</sup>

A more standard policy might be obtained through an extension of the functions of the public prosecutor, who presently handles only about eight percent of the serious crimes. Many supporters would remove prosecuting decisions from the police realm. This definitely might improve their relations with the public as each offense, assuming there were enough prosecutors allotted, would receive individual consideration according to definite pre-established criteria. Yet this would shift the discretion to the prosecutor and with no supervision, he would be making law for the state, even though such a practice is directly contrary to all legislative provisions.<sup>117</sup>

The focus, however, may still be retained on the police. Certainly the incessant increase in crime is indicative of failing police powers. A critical review of the law and judicial practices is in order, with an aim towards accomplishing a criminal law system which, through proper

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<sup>116</sup>Ibid., pp. 992-994.

<sup>117</sup>Ben Whitaker, Op. Cit., p. 32; Samuel Dash, Op. Cit., p. 395.

enforcement, would make citizens law abiding, thus increasing our freedom from crime while not jeopardizing innocent men. In this way, only the law will be enforced, with equal service to all.

## VI. ADMINISTRATIVE INFLUENCE UPON DISCRETION

### Administrative Discretion

It may be repeated that an official assumption of the total system of criminal justice is that the police are supposed to enforce all the laws against all offenders in all circumstances; there is no place then, for expert administrative discretion. Yet this ideal is impossible to carry out. "It is like directing a general to attack the enemy on all fronts at once."<sup>118</sup>

While the problem of crime control is constantly with the police administrator, many influences prevent consistent pressure towards attaining the goals of law enforcement.

The adoption of the budget for example, rarely provides the chief administrator with his minimum financial requirements, for the size and equipping of a police department is limited by the tax structure. Thus the chief's forces are spread thinner than his expert analysis demanded. These limitations on manpower and resources forces a massive reallocation which must involve administrative judgment.<sup>119</sup>

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<sup>118</sup>Wayne LaFave, "The Police and Non-Enforcement of the Law," Op. Cit., p. 107 (quotes Thurman Arnold's Symbols of Government).

<sup>119</sup>Sanford H. Kadish, Op. Cit., p. 908; Herman Goldstein, Op. Cit., p. 142; Ervis W. Lester, Op. Cit., p. 799.



It is imperative, however, that the administrator achieve the maximum efficiency from the limited manpower, equipment, and resources which he has available. Thus the alert police administrator attempts to anticipate future needs by distributing his force accordingly. Yet other limitations come to view. The administrator is faced with political pressures, graft, corruption, factional strife, and attacks by the press and special interest groups. It becomes necessary to inflict strict internal controls over his policemen to reinforce "administrative and craft values."

Yet it has been found that these controls usually emphasize efficiency rather than strict legality. (For example, as reflected by measuring efficiency by crime clearance rates.) Certainly too, with decision makers more numerous and dispersed in the police department, it is clear that each man will not give the same response to any single situation. Then there are many community forces which provide the working policeman with praise for the "good arrest" rather than a necessarily "legal" one, praise them for efficiency, and in a sense opposition to the due process of law.<sup>120</sup>

These demands for police efficiency have created a type of "professional" police image in which minimal concern

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<sup>120</sup>Jerome Skolnick, Op. Cit., pp. 234, 243; Frank E. Walton, "Selective Distribution of the Police Patrol Force," Journal of Criminal Law, Criminology and Police Science, Vol. 49 (1958), p. 165; William M. Kephart, Op. Cit., p. 26; Wayne LaFave, "Police and Non-Enforcement of the Law," Op. Cit., p. 118.

is given to legality. Yet the "ideal" of legality rejects any discretionary innovation by the police. The "professional" ideal of "democratic management" encourages worker freedom, autonomy, and thus such initiative. Thus the police can only develop a conception of "legal professionalism" when the community rewards them with compliance and support. The presence of what Skolnick has entitled "an official system of justice without 'trial'" has provided the policeman with a foundation of efficient principles. The beat officer thus adopts an "official" perspective while he desperately tries to accomplish a social good. Having exercised this administratively recognized discretion, he can hardly be expected to presume the innocence of the arrested suspect, nor the lack of justice in his decisions not to invoke the process.<sup>121</sup>

In summary, the principle of legality only requires that the boundaries of enforcement, as drawn by the police administrator, conform to that permitted by the legislature. This system, however, depends upon the exercise of discretion in a rational, consistent, and equal fashion.

Successful police administrative ideology today must be enlarged to include values based on democratic legal principles, rather than merely on technological proficiency.<sup>122</sup>

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<sup>121</sup>Jerome Skolnick, Op. Cit., pp. 106-107, 234-239; H. Goldstein, Op. Cit., p. 142; Wayne LaFave, Arrest, Op. Cit., Chapter 5.

<sup>122</sup>Wayne LaFave, "The Police and Non-Enforcement of the Law," Op. Cit., p. 112; M. Glenn Abernathy, Op. Cit., p. 474.

### Communication, Training and Discipline

Police officers are not expendable, and when they are assigned to tasks exposing them to injury or death, they must be given the training, the equipment, and the support that will enable them to handle each incident successfully. Their direct actions, however, must be controlled by administratively outlined policies to define where discretion may be exercised. The importance of a clearly delineated policy is reflected in the maintenance of the public peace. Clear instructions must permeate the department from top to bottom. Control over these policies can then be maintained by an organized system of rewards and punishments, many of which are socially conditioned and built informally into existing relationships.<sup>123</sup>

The control exercised by any administrator rests on his power to discipline each member of the organization. Intradepartmental supervision is accomplished by internal review, based on regularized reporting as well as the possibility of criminal or civil action directed at the officer for his mis-judgment. Certainly, too, a properly administered complaint review system will deter aberrant behavior and lead to the desired standards of conduct among the police officers.<sup>124</sup>

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<sup>123</sup>Michael Banton, Op. Cit., p. 2; David Stahl and Fredrick B. Sussman, Op. Cit., pp. 167, 263.

<sup>124</sup>Bruce Smith, Op. Cit., p. 155; Wayne LaFave, "The Police and Non-Enforcement of the Law," Op. Cit., pp. 130-136; Harold Beral and Marcus Sisk, "The Administration of Complaints by Civilians Against the Police," Harvard Law Review, Vol. 77 (1964), p. 500.

More basic administrative control is maintained through the disposition of cases. Each complaint might be cleared by arrest or service, be proven unfounded, be termed inactive, or be categorized in some other similar fashion. Rates of crime clearance by arrest, property recovered and by conviction, have generally served as a measure of a department's performance. Yet these may well be a faulty control mechanism. Skolnick, for example, illustrated how a suspect may "cop out" to a number of crimes, which he may not have in fact committed. This leads to falsely "solved" cases. Similarly discretion exercised at the time the report is taken may lead to more arbitrary selections between a true "offense" and what might be termed a "suspicious circumstance." This process of discretionary screening by the officers before a detective is assigned, may definitely affect the crime rate statistics.<sup>125</sup>

Overall employee performance can be improved by thorough communication and participation in training programs. The most basic instrument of communication is the "Rules and Procedures" of the department, a copy of which is issued to every officer. This volume extensively details the organization, discipline, and administration of the department, while also establishing routine duties and procedures.<sup>126</sup>

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<sup>125</sup>Jerome Skolnick, Op. Cit., pp. 170-176.

<sup>126</sup>Matthew J. Neary, "Motivating the Foot Patrolman," Thesis, Bernard Baruch School of Business and Public Administration, City College of New York (June, 1962), pp. 45, 61.

In the contemporary dynamic police environment, frequent changes arise which are greatly enhanced if given adequate and proper presentation. Merely to publish rules and procedures without making provision for each member to be sufficiently exposed to it, negates the original effect and any attempt at control.<sup>127</sup>

The sergeant is the line supervisor responsible to exact and control the performance of the officer on patrol. To a great extent, the success or failure of the patrol force rests with the sergeant, and thus the supervisor can be "exploited" in communication, training, and disciplinary activities. For example, the use of interpersonal conversations and communication as well as conference sessions and pre-promotional training, all effectively serve as an administrative-influencing structure.<sup>128</sup>

It must be emphasized that men do not stay trained, and even if they do not forget what they have learned, in police work as in any dynamic social occupation, it will soon become obsolete. This bears directly on the laws to be enforced, and the freedom of discretion. Officers should be made to answer to superiors for cases that are lost in court. As well, court police officers should be made responsible for regularly reporting relevant judicial decisions. In this way, before a charge is laid, the officer will know

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<sup>127</sup> Ibid., p. 108.

<sup>128</sup> Ibid., pp. 34-37.

the probable outcome based on recent legal opinion. Later, these discretionary issues can be added to training manuals and discussed at roll call instruction periods or in a training bulletin. Certainly the well-informed officer will be a more valuable asset to the department. He will become more aware of his supervisory problems and more understanding and tolerant of the ever-changing police ideology.<sup>129</sup>

## VII. "INTERNAL" POLICE FACTORS UPON DISCRETION

### The Nature of the Job

The police officer is in an unparalleled position to observe the machinery of society in operation. In fact, his sense of judgment is derived from his participation within the society he polices, and yet he knows that any of these resulting decisions are sure to be challenged in court.<sup>130</sup>

The nature of the police job involves restraint and at times produces conflict. The focus of the officer is chiefly upon disruptions among what are supposedly efficient human relationships. While his work resembles that of physicians, lawyers, nurses, and the clergy, his training is much too short to be even comparable. His job is to seek rather than to be sought. The criminal who is the main object of the officer's efforts, strives for avoidance. Yet

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<sup>129</sup>Ibid., pp. 53, 61; Wayne LaFave, Arrest, Op. Cit., p. 74; Wayne LaFave and Frank J. Remington, Op. Cit., p. 1005.

<sup>130</sup>Michael Banton, Op. Cit., p. 144.

as the climax of the police role is the arrest of the law-breaker, the environment in which the officer must work is certain to be unfavorable.<sup>131</sup>

The policeman is not supposed to be concerned with the activities of the courts, for "playing" judge and jury is beyond his realm of responsibility and authority. Yet in practice this distinction is difficult to maintain. Each officer makes his own decisions on his own responsibility.

He must act honestly in good faith without reckless indifference or from bad motives.<sup>132</sup>

The street patrolman is especially prone to asserting authority when facing outright hostility even when he may be without the formal capacity to impose legal sanctions. When the officer is actually boss of the situation, however, his conduct may be tempered. When he faces potential danger, he is more inclined to resort to the use of his authority in order to reduce the perception of danger. In effect, when the citizen makes a policeman sweat to take him into custody, he has created a situation most apt to lead to police indignation and anger.<sup>133</sup>

This element of necessary authority also accounts for the social isolation of the police. The officer must attempt

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<sup>131</sup>David Stahl and Fredrick B. Sussman, Op. Cit., p. 167; Jack J. Preiss and Howard J. Ehrlich, An Examination of Role Theory, University of Nebraska Press (1966), p. 7; Bruce Smith, Op. Cit., p. 2.

<sup>132</sup>Roscoe Pound, Op. Cit., pp. 929-930.

<sup>133</sup>Jerome Skolnick, Op. Cit., pp. 88-89.

to regulate, in addition to criminal and traffic activity, the public morality. Thus he must investigate everything from parked lovers to gamblers, prostitutes, and drunks. The nature of these social investigatory problems and the incident public reactions, are certain to affect his "operational discretion." Thus Jerome Skolnick attempted to show "how it is possible for him to be accorded wide decisional latitude, to be racially prejudiced, and to carry out his work even-handedly."<sup>134</sup>

#### The Personality Factors

The police, as a result of the combined features of their social situation tend to develop ways of looking at the world distinctive to themselves. This "working personality" is perhaps most highly developed in the beat patrol officers.

Key to the policeman's perceptual apparatus is his response to symbols of danger. In fact, the combination of the two variables of danger and authority often seem to frustrate routine legal and departmental procedures. Based on his exposure to violence, the officer's conduct towards members of the public and his relations with fellow officers is affected. This results in the solidarity feature of the police group, with the resulting sub-culture of brother-officer obligations.<sup>135</sup>

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<sup>134</sup> Ibid., p. 84.

<sup>135</sup> Jerome Skolnick, Op. Cit., pp. 105, 44; M. Banton, Op. Cit., p. 110.



The police see their office vested with moral authority as well as legal power. Thus they develop the discretionary use of persuasion rather than prosecution, attempt to act within the popular morality, and try to get offenders to recognize their wrong doing. Michael Banton emphasizes, for example, the extreme extent to which the officer will go to argue the right and wrong of a situation.<sup>136</sup>

While the policeman sees himself as a man who extends justice even-handedly, and this exerts some control over his behavior, the police as a group are withdrawn to some degree, because of the power with which they are vested. The officers' conceptions are shaped by persistently trained suspicions. Indeed this is a necessary feature of the good officer--to be able to perceive events or changes in the physical surroundings which may indicate the occurrence of disorder. Yet the training of etiquette, including the ability to make fine social distinctions is important in his daily exercise of observatory judgments.<sup>137</sup>

For the police administrator, a major role concerning these "internal" police factors is the evaluation of the officer. That is, the administrator must attempt to assess the personality characteristics of the police officer, which may affect his operational efficiency. H. P. Vignola<sup>138</sup>

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<sup>136</sup>Michael Banton, Op. Cit., p. 147.

<sup>137</sup>J. Skolnick, Op. Cit., pp. 48, 67, 83; M. Banton, Op. Cit., p. 190.

<sup>138</sup>H. P. Vignola, "The Personality of the Police Officer," Interdisciplinary Problems in Criminology. Papers of American Society of Criminology, Ohio State University (1964).

of the Montreal Police Department, attempted to investigate the personality of the police officer within the working environment. He noted that, according to psychologists such as Allport, Krech, and Crutchfield, the personality is the result of forces within the environment, which influence the development of the individual's total potentialities. This was supported in "Racial Factors and Urban Law Enforcement" by William M. Kephart who showed the role of attitudes as they affect the working personality. For example, to questions such as "Do you have to be more strict with Negroes?" he received answers such as "Yes, because they have no respect for the law." "They are usually under the influence of alcohol." "Nearly all of them carry knives and like to use them." "You've got to be tough with them; they expect leniency."<sup>139</sup>

Vignola then defined the police personality as "the dynamic organization of the habits, dispositions, and emotions, directed towards the original fulfillment and adaptation of an individual to his police environment, from a professional as well as a social point of view."<sup>140</sup>

From this research, six key personality traits evolved; the attitude towards police work, professional conscientiousness, self control, cooperation, comportment, and attitude

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<sup>139</sup>William M Kephart, Op. Cit., pp. 81-83.

<sup>140</sup>H. P. Vignola, Op. Cit., p. 105.

towards others.<sup>141</sup>

Certainly the personality of the officer is important in influencing his "situational discretion." Yet it would appear that from the key factors listed, the core of the judgmental problem lies rather in the officer's skill in handling the ambiguous situation. In this sense, Kephart's "social factors" perhaps allow greater direct application to the job and working assignments. He notes length of service or experience, education, working with Negro officers, living in a Negro-inhabited neighborhood, the visibility of Negro offenders and Negro policemen, and the treatment of the Negro offender. Certainly these emphasize the formation of attitude and in this sense, we must study the officers as individuals within their particular society.<sup>142</sup>

James Q. Wilson defines the police problem as largely one of morale. The officer must find a satisfactory basis for self-conception. It must be realized that the police routine is that of dealing with antagonists. Further, his role demands service to incompatible ends; that is, the public which he serves cannot make up its mind what it wants.<sup>143</sup>

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<sup>141</sup>Ibid., pp. 103-105. Other characteristics were knowledge of police work, accuracy, understanding of people, capacity to learn, ability to carry out instructions, drafting of reports, initiative, appearance, and practical judgment.

<sup>142</sup>Ben Whitaker, Op. Cit., p. 11; Michael Banton, Op. Cit., p. 203; William M. Kephart, Op. Cit., p. 96.

<sup>143</sup>Wilson cites as an example the symbolic enforcement of gambling regulations; citizens want to be allowed to place bets with honest bookies.

In addition, the officer must conform to the group, for he feels that he is an outcast--a sort of pariah, and these are his only allies.<sup>144</sup>

Wilson maintains that there are two group organizations, each providing a different definition of the "good cop." The system code maintains institutionalized rules and norms. The policeman is a member of a group which keenly feels its "pariah" status. The professional code expresses an external body of expert knowledge about "correct" police work--there are no feelings of group separateness. Wilson terms the system "particularistic," rewarding the particular individual for his actions in particular circumstances, with "particular" others; whereas the professionals reward proficiency in the application of universal standards. Hence they are "universalistic."<sup>145</sup>

Using either code, a police officer has considerable discretion in enforcing the law. The system would define the policeman as the source and the enforcer of the law on his beat. Discretion then is essential to maintain a maximum of public respect for the police. The professional is keenly aware of the possible creation of ill will by enforcing all the laws sans discretion, but he believes in the good of his cause and thus attempts to treat all law-breakers as the

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<sup>144</sup>James Q. Wilson, "The Police and Their Problems," Public Policy, Vol. xii, 1963, pp. 191-193; Michael Banton, Op. Cit., p. 118.

<sup>145</sup>Ibid., pp. 200-201.

rules of the law state he should. "Professionalism" then permits discretion in the area of which laws to enforce, solely towards attaining higher enforcement ends.<sup>146</sup>

The system attaches authority to the person based upon group support, whereas the more bureaucratic "professional" image places authority on the office which the man represents. Based on this foundation, the use of violence coerces public respect in one code,<sup>147</sup> while it is only used in self defense, escape, or "subdue situations" in the other. In a similar fashion, then, Wilson analyzes features of the total police organization.<sup>148</sup>

Michael Banton notes that morale is affected by the courts, the prosecutor, internal pride, and discipline. This is certainly reflected in the complaints of police officers who feel that the judiciary is too lenient, especially where racial matters are concerned. They note a lack of community support and respect, as well as poor treatment by the press, and the constant attachment of racial connotations to every police action involving non-white citizens. It becomes evident, then, that the qualifications, the integrity and the ideal of each police officer, will determine the

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<sup>146</sup>Ibid., pp. 203-209.

<sup>147</sup>William R. Westly, "Violence and the Police," American Journal of Sociology, Vol. 59, p. 39. Westly found that 37 percent of the men believed it was legitimate to use force to coerce respect.

<sup>148</sup>Ibid.

efficiency of the police force as a whole.<sup>149</sup> In the words of O. W. Wilson,

I do not consider police officers to be robots who are prohibited from exercising discretion. Each . . . every day is called upon to decide whether or not to search, to arrest, or to hold an individual. This is as it should be. If we took discretion out of the job of a police officer, we would reduce the task to one which could be performed by people of less capability, and much less pay.<sup>150</sup>

#### VIII. THE PUBLIC VOICE: INFLUENCE UPON DISCRETION

##### Education of the Public

The police role has been described as focusing upon the discovery of suspicious circumstances, the obtaining of evidence, and the apprehension of suspects and witnesses. In a definite sense, the officer also represents the public conscience, especially in his threat to the status of the wrong-doer. While the nature of the role requires a definite amount of secrecy, it must be realized that the intonation of such concealment in combination with the traditional scanty records of the police, generally provides a base for the suspicious inquisitiveness of the public. Any discrepancy between what the people expect and what is necessarily done for their protection, results from their lack of understanding

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<sup>149</sup>Ben Whitaker, Op. Cit., p. 17; Michael Banton, Op. Cit., pp. 100-104; David Stahl and Fredrick B. Sussman, Op. Cit., p. 155; H. P. Vignola, Op. Cit., p. 101.

<sup>150</sup>Wayne LaFave, Arrest, Op. Cit., p. 61 (as in PAX 501, June 16, 1962).

of the police purpose and what the police must do to accomplish it.<sup>151</sup>

It is emphasized that popular controls must guide the major policies of the police departments as well as indirectly influencing the manner in which such policies are applied in the routines of police work. Thus to provide stability and acceptance of the existence and function of police discretion, the police and public at large will have to share the same norms of propriety. This ideal, however, has become very difficult to realize, especially in view of the recent social and racial problems.<sup>152</sup>

Yet this basic police-public relationship must be focused completely down the line of police ranks, for nothing is more important than that the individual officer should exercise good judgment in handling people and situations, as reflected in the public eye. The beat officer, then, who wields moral authority, responds in a predictable fashion and in a manner that is socially approved, will be an officer in whom the public will have the greatest confidence and respect.<sup>153</sup>

When you deal with the public, an ounce of kindness is worth a pound of toughness.<sup>154</sup>

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<sup>151</sup>Spencer D. Parratt, Op. Cit., p. 156; Jack J. Preiss and Howard L. Erhlich, Op. Cit., p. 7; O. W. Wilson, "Police Arrest Privileges in a Free Society: A Plea for Modernization," Journal of Criminal Law, Criminology, and Police Science, Vol. 51 (1960), p. 398.

<sup>152</sup>Michael Banton, Op. Cit., p. 146.

<sup>153</sup>Nelson A. Watson, Op. Cit., pp. 28-31.

<sup>154</sup>William M Kephart, Op. Cit., p. 69.

### The Critical Atmosphere

Yet the favorable climate in which a police-public relationship can flourish just does not exist. The general tide of opinion runs strongly against the police, and this is illustrated daily on the street.

While the officers were being beaten, not one citizen could or would muster the courage to assist them, or even to call for additional help so the men could be properly defended.<sup>155</sup>

Thus the thousands of men who day and night patrol our thoroughfares, who must strenuously contend with criminal activities and risk their lives in the public service, are certain that the public is ever ready to castigate them for the ever-growing social situations with which they must deal.

To counterbalance this influence, the police officer attempts to and indeed must exercise careful discretion. It is very evident, especially in underprivileged areas, that the public does not want law enforcement in the strict sense of this term. In response to these demands, the instrumentalities of law enforcement have been weakened. Certainly, too, this newly emphasized awareness of the public point of view influences many daily police decisions. Based on public policy, then, the police discretion is tempered between the legal rule and the limits of toleration.<sup>156</sup>

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<sup>155</sup> Frank D. Day, Op. Cit., p. 361.

<sup>156</sup> Spender D. Parratt, Op. Cit., p. 163; Michael Banton, Op. Cit., p. 145; Bruce Smith, Op. Cit., p. 5.



It is also time, however, for the news media to re-evaluate their impact upon the general lawlessness. Certainly the macabre fascination of the press with vigorous terms such as "black power" and "brutality" and their constant sensational interpretations of even routine incidents has created the foundation for hostility against the police.

The police must rely on these same agencies to enlighten the public. Here effective public relations must counteract the prejudices of the unschooled public, for there are too few influences which inform the public of the harsh realities of police duty. It must be constantly demonstrated and re-demonstrated that each and every Negro offender is not the innocent victim of white man's law. This will only be accomplished through the creation of a contemporary police image. At this point, the police will begin to obtain citizen approval, and from this stage, the police-community relationship will extend and expand in scope and stature.<sup>157</sup>

#### IX. POLICE DISCRETION AND THE INFLUENTIAL FACTORS

##### Summary

That "discretion" has become an issue in the role of contemporary law enforcement need not be further elaborated upon at this point. It has been shown that the very basis

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<sup>157</sup> Spencer D. Parratt, Op. Cit., p. 164; Bruce Smith, Op. Cit., p. 7; Quinn Tamm, "On the Bitterness of Molotov Cocktails," Police Chief, Vol. XXXIII, No. 9 (September, 1966), p. 6.

on which the police have been organized, that is, as field agents charged with the governing of laws and morality, and the varied obligations which a police force must fulfill, rest on a fulcrum which must balance the public safety with our constitutionally declared individual freedoms. This fulcrum is discretion--the decisions to invoke the process, to arrest, to mediate, to initiate police service--based on the trained judgment of an officer attempting to control an incident or breach of the peace.

That the police have no choice as to which laws to enforce, then becomes absurd. The criminal code cannot hope to encompass all conduct without someone's interpretation at definite points in the chain of events that surround a breach of law. Further, the agencies of justice just do not have the manpower or the facilities to enforce the law per se. In addition, it has been emphasized that the individual circumstances of each and every situation vary so that the mere application of rules cannot hope to attain the desired justice and prevention.

Based on these recognized facts, it must then be determined which agency or agencies should exercise the necessary discretion. The police agencies are controlled by the law as well as the organization of government. An examination of the legal status of the officer distinguishes his authority and its exercise from discretion under the law. It was demonstrated time and time again, that the police have over-stepped the legal bounds in their attempts

to "right" a situation.

It must be determined if, based on this consistent assumption of broader power, the laws which attempt to control the police are outmoded. The Royal Commission concluded that the present legal status of the police was justified; they should retain their independence. Other means of effective control, while not restricting the accomplishment of the police task must be found.

The police officer in the minority racially-mixed and transient community, is dealing constantly with an extreme of human life, and yet is attempting to apply a norm. A "tug of war" has developed between these classes with what has been termed "their own morality," and what has become a minority of police attempting to attain control based on what are totally radical standards to the slum inhabitants.

The effect of these opposing forces is a distinct split within the community. The inhabitants bind closer together even though they appear to the outsider to be their own worst enemy. They maintain a regime of self-protection, enforced every time a "link" of the chain is lost to the other side.

Similarly, the police who must attempt to infiltrate and handle this society, consistently expect violence, for even the most routine of calls have become dangerous. The deviant behavior within these communities conforms with local social norms, and enforcement of other than those accepted norms, has brought rebellion.

Unfortunately, the literature has not been able to adequately define the officer's role in this war within our communities. Should he bow or cater to the minorities' perceived values, should he allow the fights, the assaults, the theft, in fact the total disintegration of order, to perpetuate? Or should he insist that every breach of law endangers the community, and thus the legal codes which prescribe the "right behavior" must be enforced? The legislatures, the law, the public, in fact the persons within these communities have provided no answers. We have left the officer with absolutely no choice but to exercise his judgment--police discretion.

The police are craftsmen. Their tools are the laws of the criminal code, their goal is social order, peace and safety. The street is their workshop--the focus of police work and the climax of discretionary judgments. Demands for production are placed upon the officer. Yet these demands are ever shifting; the law giving only a fragile guide, while the judges and prosecutors merely concern themselves with the efficiency of their own agencies.

Their efficiency most often becomes acquittals and the acceptance of guilty pleas to lesser offenses (90 percent of all convictions according to one author). The police officer's system is imbalanced by these attempts to exercise supervisory discretion. The destructive techniques appear then to negate any virtues of "higher visibility," and thus the focus of discretion must still be retained on the police.

The nature of the exercise of discretion on the street varies with the many incidents. In some, officers have no choice but to enforce the law; in others, there is choice and the process may not be invoked. The law is "ignored," and yet, in many more, the situation is only guided by the personal judgment of the officer.

The officer is dealing then with both action and restraint, which when coupled with the many stresses of the inter-community "tug of war," the result is a sheer wall of conflict. This strain has produced both the system cop and the professional police officer, each adhering to a morality and a goal interpreted from the same legal framework.

These officers are not robots. They seriously try to make headway in the community, for they are one of the only agents who seem to view the total disintegration. They are the only agents in the administration of criminal justice with the experience to know what must be done on the street. With more and better training and equipment, based on sound scientific and social research, these men can be equipped to do the job. At that point, they will be able to view the implications of their decisions and relate them to the needs of the community. In this way, they will successfully exercise the discretion which they must have to police our streets.

#### Some Recommendations

The basis for a review of this discretionary procedure is the inherent intent on assuring soundness and honesty

in its exercise between the extremes of the complete failure to initiate the process of the criminal law, to the imposition of a form of punishment or treatment for which there is no legal sanction.

In order to measure the effectiveness of the allocated duties, it is necessary to inquire into the methods and results of police agencies. What are the laws entrusted to the police and how are they enforced? Do these laws lead to confused responsibilities?

The function of the principle of legality begins when arbitrary power to judge and punish has effective limits placed upon it. These limits are the criminal law. Law enforcement may be strengthened by legalizing common police practices which would extend and reinforce discretion, and facilitate the discovery of criminals and evidence of their guilt, and lessen the exclusion of this evidence at their trial.<sup>158</sup>

The fact that there are more laws than can be reasonably enforced is not a handicap, but an aid to the police because it gives them so many offensive "weapons" to launch against the particular law breaker. Therefore the attempt to resolve the conflict between the principle of legality and the need to sensitize the criminal law to the felt needs of society is found in the exercise of police discretion.<sup>159</sup>

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<sup>158</sup>B. M. Barker, Op. Cit., p. 400; O. W. Wilson, "Police Arrest Practices in the Free Society," Op. Cit., p. 399.

<sup>159</sup>Thurman Arnold, "Law Enforcement" (in Robert

The role of police as decision makers then must be expressly recognized. The officers, through experience, gain the "expert understanding" and the special competence required to make discretionary judgments in the field. Yet their authority to perform these necessary functions and to allocate the necessary resources involved, must be more clearly delineated and actively supported. Means must be devised whereby abusive judgments may be minimized or neutralized, and conscientious judgments guided to insure consistency with the goals of a criminal law system.<sup>160</sup>

Controls must be established which accurately define the particular crimes in terms of on-the-street situations. There must exist a form of centralized supervision over those who exercise discretion, to ensure uniformity under these redeveloped contemporary laws. Such supervision should provide prompt and effective sanctions for abuse of the discretionary responsibility, as well as merit and applause awarded for the applied balanced judgments.

In a somewhat similar vein to Britain's Inspectorate of the Police, and Goldstein's Policy Appraisal and Review Board, there should be developed a state-wide body with the ability to coordinate the law enforcement programs within its boundaries. This would involve a sharing of discretionary

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Scigliano's The Courts: A Reader in the Judicial Process) (Boston: Little Brown and Company, 1962), pp. 215-216;  
B. M. Barker, Op. Cit., p. 400.

<sup>160</sup>Wayne R. LaFave, "The Police and Non-Enforcement of the Law," Op. Cit., p. 115.

policies by not only different police agencies, but among the police, the prosecutor, the courts, and correction and parole officials. Each step in the administration of criminal justice would be based upon common definitions of police procedures, each agency or unit would understand the other's intent, and in a true sense, this administrative machinery would be able to correlate even the "thinking" of the agencies involved in crime control. Yet just as good officers will use discretion wisely, so might such a board attempt to control discretion wisely.<sup>161</sup>

Any policies or programs antagonistic to the rule of law would be influentially abandoned, while the very act of re-examining the police workload would stimulate greater cooperation and implementation. In this way, the organization of the administration of justice would be established so as to control the police while enabling them to perform their duties impartially and to achieve maximum efficiency and use of manpower. With discretion formally recognized at all levels, the police force, if properly manner, trained, and paid to do its job, might become sufficiently candid in its relations with the citizenry to maintain a more outward or open-door policy of enforcement, in and for the community and believed in by the community.

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<sup>161</sup>J. Goldstein, Op. Cit., pp. 582-586; M. Glenn Abernathy, Op. Cit., p. 483.



## Conclusions

This review of the literature has attempted to provide a foundation for the study developed in the following chapters. It served to accurately draw the boundaries of the area under concern by defining "discretion," its legitimate and illegitimate roles, the legal, administrative, and operational controls affecting its use, and by reviewing a broad scope of the duties of a police officer to portray its necessity.

Within this frame, the author has attempted to seek out factors which appear according to the authors reviewed, to influence the personal judgments in discretion of a police officer in any situation.

The decisions made at the station, in the car, and at the incidents are influenced by many factors. Figure 2 lists the factors derived from the literature review, by noting the page number from the aforementioned literature review, and the summarized factor. This may be compared to the factors derived within B. M. Barker's study, "Police Discretion and the Principle of Legality." Unfortunately, this article does not elaborate on the sources of Barker's factors, but Figure 3 represents the extracted list.

These items then will be termed the "influencing factors" on "situational police discretion." The instrument to be designed will constitute an attempt to identify and measure their relative influence on a police officer's judgment in typical complaint situations.

FIGURE 2

## FACTORS INFLUENTIAL IN THE EXERCISE OF POLICE DISCRETION

(As Indicated by This Literature Review)

FACTOR

Nature of event	37, 58,
Nature of the community--Economic and Racial Constitution	23, 33,
Need for Immediate Custody	34,
Extent to Which the Officer Maintains Control	38, 72,
Danger to the Officer	55, 71-72,
Need for Force	55, 45-48,
Time of Day	58,
Need for Actions for Purposes Other Than Prosecution	41,
Characteristics of the Offender: Demeanor--Sobriety-- Mental Health--His Admissions--Prior Record-- Attitudes Toward Victim--Attitudes Toward Police--Marital Status--Employment Status	24-26, 45, 58,
Characteristics of the Victim: Demeanor--Sobriety-- Mental Health--His Admissions--Prior Record-- Attitudes Toward Offender--Attitudes Toward Police--Marital Status--Employment Status	24-26, 45, 58,
Characteristics of the Bystander: Demeanor-- Sobriety--Mental Health--His Admissions--Prior Record--Attitudes Toward Participants-- Attitudes Toward Police--Marital Status-- Employment Status	24-26, 45, 58,
Officer's Personal Acquaintance with Participants	30,
Availability of Police Resources--Equipment-- Manpower	65, 69,
Need to Avoid a Strain on Police Resources	32,
Officer's Legal Authority to Take Action	26,

Likelihood of a Reduction in Charge or Dismissal of the Action by the Courts or Prosecutor	27,61,
Likelihood of a Guilty Plea	27,62,
Basis for Reasonable Cause to Believe Offense Committed (Means by Which Officer Encounters Situation)	33,48,57,
Basis for Reasonable Cause to Believe Suspect is Offender	33,48,57,
Details of Description	58,
Need for Action to Conform with Legal Requirements	34,
Nature of Legislation Covering the Incident	37,51,
Nature of Punishment in Proportion to the Crime	37,44,
Nature of Political Policy or Control over Incident	48-52,
Recent Appellate Court Opinions	54,
Recent Supreme Court Opinions	54,59,
Chance of Review of His Decisions by the Courts or Superior Officers	60,
Liability of the Officer	20,48,68,
Prosecutor's Criteria	64,
Supervisor's Criteria	68,
Applicable Rules and Procedure	68,
Need to Maintain Respect for the Police	32,
Need for Action to Punish Criminals Who May Have Avoided Previous Convictions	32,
Need for Action to Assist in the Investigation of Other Offenses	32,39-41,
Police Desire for Convictions	59,
Public Support in the Area	78-80,
Recent News Coverage	80-81,

Officer's Value System: Professional Conscientiousness--Attitude Toward Police Work--Self Control--Cooperation--Comport- ment--Attitude Toward Others--Morale	39,72,75,76,
Officer's Knowledge of his Authority	45,54,
Officer's Experience	48,72,
Officer's Training	48,69,

## FIGURE 3

## FACTORS INFLUENTIAL IN THE EXERCISE OF POLICE DISCRETION

by

B. M. Barker\*

The degree of criminal sophistication shown by the alleged offender.

Amount and quality of the evidence relating to the alleged offense and available to the police.

Whether or not the offender is under treatment for mental disorder.

The police view of the efficacy of a caution in prohibiting the reoccurring of offenses.

The nature of the offense.

The strength of the police desire to keep the offender out of contact with the criminal court.

The desire of police to share in the positive treatment reaction to crime.

The offender's attitude towards the police.

The offender's attitude toward the victim of the offense.

The attitude of the victim.

The degree of temptation involved.

The clarity of criminal legislation most relevant to the offense.

The prevalence of the conduct in question.

The effect of a prosecutor on police public support.

The police view of the suitability of the punishment provided for the particular offense.

Particular priority of the alleged offense as a call upon police resources.

Attitudes of the individual officers.

Attitudes of the courts to the type of offense as known to the police.

Public attitude towards the conduct in question.

Sex of the alleged offender.

Age of the alleged offender.

Social status of the alleged offender.

\*B. M. Barker, Op. Cit., pp. 402.

## CHAPTER III

### ANALYSIS OF THE INCIDENTS

#### I. METHOD

The foundation of this study of police discretion has been established by the review of the literature. It was found that there appear to be many factors which influence any particular decision of the officer in the field. It must be determined, then, whether these factors can be supported by analysis of actual incidents.

The design of some method whereby officers could be observed first-hand performing their police duties, while not interfering or affecting their mode of conduct, was necessary. Participant observation would allow for such an accurate study, especially if the complete intentions or scope of the research was not revealed. Thus a large metropolitan city was visited for a period of seven weeks during which time, the researcher rode as observer in patrol cars in two particularly high crime rate low economic areas.

The particular precincts were chosen so as to yield a maximum number of incidents in the shortest period of time. In addition, while it was realized that the 4:00 P.M. to midnight watch would be busiest, the observer rode on all shifts so as to view all types of police activity. In fact, about

fifty percent of the time was spent on the 4:00 P.M. to midnight watch, twenty-five percent on the 8:00 A.M. to 4:00 P.M. watch, and twenty-five percent on the midnight to 8:00 A.M. watch.

The officers were met in an informal fashion by sitting in at the roll call each evening. The observer merely explained that the research involved the police problems within the community, what problems the area and people specifically contributed to the police workload. It was found that this explanation was not only accepted, but provided an excellent springboard for discussion during each tour of duty.

The observer made a practice of rotating cars each day so that almost all officers were observed in each precinct. In the car, only an incident log (see Figure 4) was maintained, noting the times of the run, arrival, and in-service dispatch, the address of the incident, and its nature. If questioned about the log, the observer explained that merely a narrative summary of the incident was written up after the tour of duty.

After each watch, narrative reports were completed, carefully maintaining the proper sequence of each step in each incident. These narrative summaries coincided with prepared book-type programmed reports, which were a part of another on-going study. As these book-type reports were divided into numerous sections for the nature and behavior of the participants, the actions involved, and other details,



## FIGURE 4

## Police Observation Study

## Incident Log

[illegible]

Observer's Name \_\_\_\_\_ City \_\_\_\_\_ Date \_\_\_\_\_

Precinct \_\_\_\_\_ Patrol Area \_\_\_\_\_

a cross check on the accuracy of the narrative summary was obtained. In this way, almost two hundred incidents were observed and recorded.

## II. ANALYSIS OF THE REPORTS

Based on a random selection, one hundred incidents were subjected to a more detailed analysis. These included twenty felony complaints, thirteen misdemeanors, twelve juvenile incidents, twenty-six disturbances, five auto accidents, thirteen traffic violations, eight injured persons, and three fires.

The intended analysis was an attempt to determine the significant patterns of actions that occurred within the incidents. Specifically, an attempt was made to determine where and what decisions are made by the officers and where discretion is exercised. Logical analysis at each of these points gave support to the particular decision made. Thus the incidents were described in terms of the officers' actions and were deemed to start with the receiving of the run or viewing of the incident by the officers, and end with the final radio transmission. An attempt was made to keep all terminology consistent.

A flow chart was designed (see Figure 5). This allowed for a "pictorial" presentation of the incident, for description of each step in sequence, and indications of both decision points and decisions made.



After the flow-charting was completed, it was found that the incidents could be classified as follows, according to the particular pattern:

	<u>Percent</u>
a) Incidents involving felony complaints which culminate in an arrest	4
b) Incidents involving felony complaints (no arrest)	16
c) Misdemeanor complaints involving arrests	5
d) Incidents involving misdemeanor complaints (no arrests)	8
e) Incidents involving juvenile complaints	12
f) Incidents involving disturbances, disputes, disorderlies (no arrests)	26
g) Incidents involving automobile accidents	5
h) Incidents involving traffic violations	13
i) Incidents involving injured persons	8
j) Incidents involving fires	<u>3</u>
Total Incidents	100

It was noted that very similar basic patterns evolved (see Figures 6 to 15). Yet within these patterns, there was a significant difference in the number of decisions made between those cases which involved an arrest, and those which did not (see Figure 16). Similarly, there appears to be a significant similarity between those incidents which involved largely programmed decision-making;

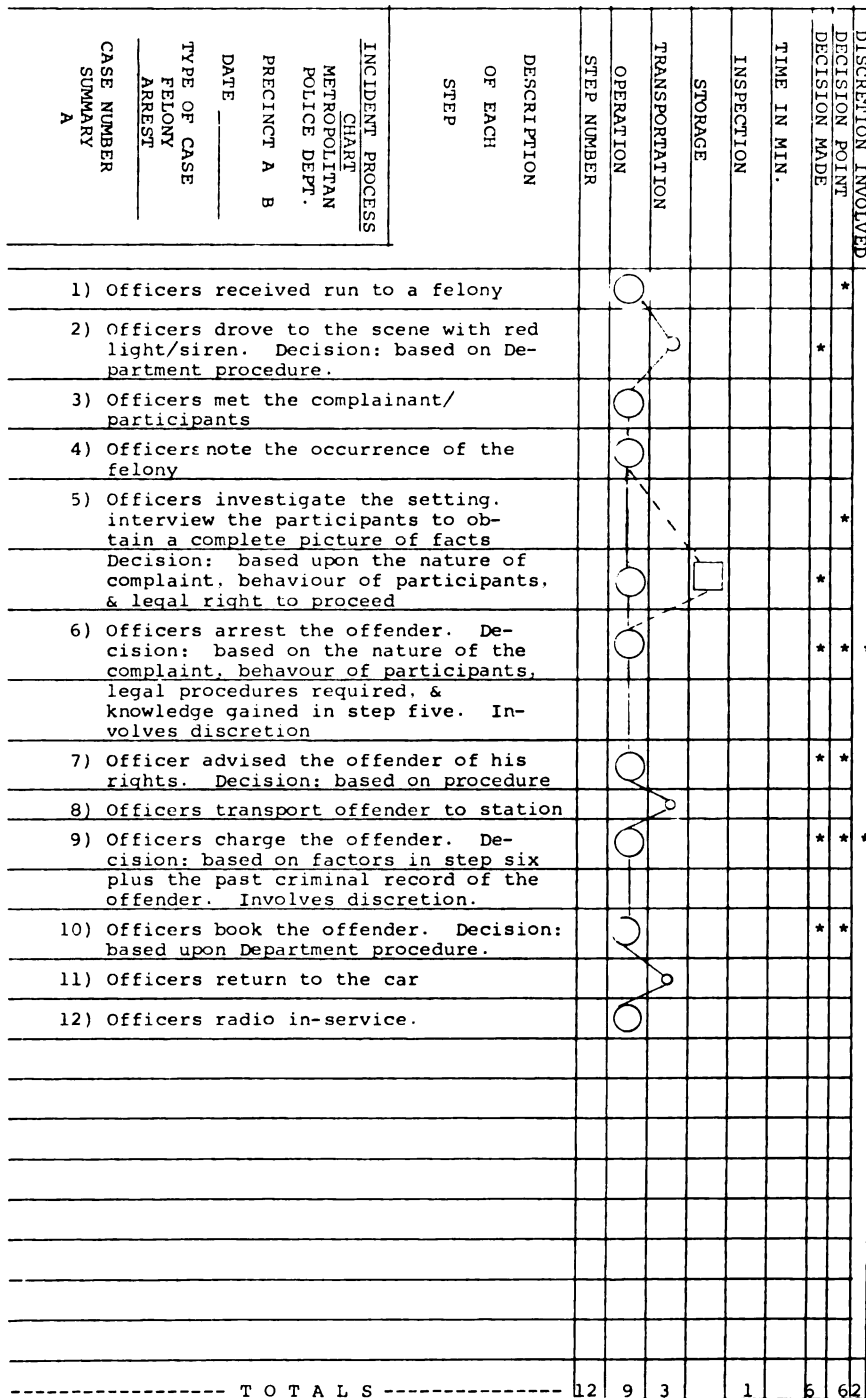


FIGURE 7

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B		DISCRETION INVOLVED	DECISION POINT	DECISION MADE	TIME IN MIN.	INSPECTION	STORAGE	TRANSPORTATION	OPERATION	DESCRIPTION OF EACH STEP
1) Officers received run - a felony										
2) Officers drove to setting, possibly expediting.		*	*							
Decision: based on the policy/procedure of the dept.										
3) Officers meet the complainant(s)										
4) Officers note the complaint as indicated by the complainant.			*							
5) Officers carefully look over the scene to determine exact nature of the offense.		*								
Decision: based on the nature of the complaint; investigatory type of decision.										
6) Officers note the facts learned.			*							
7) Officers complete a felony report.		*	*							
Decision: based on the following factors: nature of the complaint, behavior of the participants, facts learned through investigation, department procedure, previous local court opinion, available resources.										
8) Officers returned to the car.										
9) Officers radioed in-service.										
----- T O T A L S -----										9 6 2 0 1 --- 3 3 1

FIGURE 8

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE _____ TYPE OF CASE MISDEMEANOR (ARREST) CASE NUMBER SUMMARY C	DESCRIPTION OF EACH STEP	TRANSPORTATION OPERATION STEP NUMBER	STORAGE	INSPECTION	TIME IN MIN.	DISCRETION INVOLVED		
						DECISION POINT DECISION MADE		
1) Officers received the run or were on patrol and received or noted the misdemeanor violation. 2) Officers drove to the setting or entered situation. Decision: according to the pro- cedure of the department (or according to the nature of the incident). Possible discretion if it is an observed misdemeanor. 3) Officers investigated to determine the facts of the offense. Investigatory decision determined by the nature of the incident. 4) Officer arrested the offender. Decision to ar- rest based on the following: nature of the com- plaint, behavior of the offender, complainant and/or bystanders, procedural requirements, facts learned in (3) above. 5) Officers transport the offender to the station. 6) Officers decide on charge. Decision: based on above factors in (4), as well as the past record of the offender. 7) Officers search and book offender. Decision: procedural 8) Officers return to the car. 9) Officers radio in-service.		○				*		
			○			*		
						*		
		○				*		
		○				*	*	
		○				*		
		○				*	*	
						*	*	
		○				*		
----- T O T A L S -----		9-6	3			5	5	2

FIGURE 9

	DISCRETION INVOLVED	DECISION POINT DECISION MADE	TIME IN MIN.	INSPECTION	STORAGE	TRANSPORTATION	OPERATION STEP NUMBER	DESCRIPTION OF EACH STEP	INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B	DATE	TYPE OF CASE	MISDEMEANOR	CASE NUMBER	SUMMARY D
1) Officers received run; a misdemeanor complaint	*						○							
2) Officers drove to the setting.							○							
Decision: procedure of the department.		*					○							
3) Officers met the complainant(s)							○							
4) Officers noted the complaint; a misdemeanor offense.							○							
5) Officers inspect the setting and/or interview the complainant to obtain more information.		*	*											
Decision: Investigatory in nature based on type of complaint, and behavior of complainant.		*												
6) Officers took a misdemeanor report.	*						○							
Decision: Discretionary type based on the nature of the complaint, behavior of complainant, offender and/or bystanders, the facts learned in (5) above, department procedure, and the laws relating to the reporting of such an offense.		*												
7) Officers return to the car.							○							
8) Officers radio in-service.							○							
TOTALS	8	5	2	0	1	---	3	3	1					



FIGURE 10

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE _____ TYPE OF CASE JUVENILE CASE NUMBER SUMMARY E	DESCRIPTION OF EACH STEP	OPERATION STEP NUMBER	TRANSPORTATION	STORAGE	INSPECTION	TIME IN MIN.	DECISION POINT DECISION MADE	DECISION INVOLVED
1) Officers received run or observed the offense. 2) Officers drove to setting. Decision: based on procedure of the department. 3) Meet complainant. 4) Officers note the complaint. 5) Officers ask questions to determine more facts (e.g., the identity of the offenders). Decision: Investigatory decision based on the nature of the complaint, and the behavior of the com- plainant. (Discretion is exercised as to whether to proceed.) 6) Officers took juvenile offense report, or sought out offenders immediately. Decision: involving the exercise of discretion based on factors listed on attached sheet. 7) Officers return to the car. 8) Officers radio in-service.		1					*	
			2				*	
		3						
		4					*	
		5					*	
							*	
		6					*	*
-----T O T A L S-----		6	2	0	0	---	33	1

FIGURE 11

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE _____ TYPE OF CASE DISTURBANCE CASE NUMBER SUMMARY F	DESCRIPTION OF EACH STEP	TRANSPORTATION OPERATION STEP NUMBER	STORAGE	INSPECTION	TIME IN MIN.	DISCRETION INVOLVED	
						DECISION POINT DECISION MADE	
	1) Officers received run; a disturbance.	○				*	
	2) Officers drove to the setting (possible expediting)					*	
	Decision: based on the department policy/procedure.						
	3) Officers enter the scene; meet the complainant and offender (usually); note any bystanders present.	○					
	4) Officers note the complaint or dispute.	○				*	
	5) Officers ask questions, or seek possible weapon, etc..	○					
	to determine exact nature of the complaint.					*	
	Decision: based on the nature of the complaint and on the behavior of the participants; investiga-						
	tory in nature.					*	
	6) Officers note their legal position and explain it to the participants, offering any possible solutions to the dispute.	○				*	*
	Decision: Discretion exercised depending on the nature of the complaint, behavior of participants, policies/procedures/local court opinions, prosecutor's requirements, knowledge of the participants personally.						
	7) Officers return to the car.						
	8) Officers radioed in-service.	○					
	----- T O T A L S -----	8	6	2	0	---	331

FIGURE 12

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B		DESCRIPTION OF EACH STEP		TRANSPORTATION OPERATION STEP NUMBER		STORAGE		INSPECTION		TIME IN MIN.		DECISION POINT DECISION MADE		DISCRETION INVOLVED	
1) Officers received the run; an auto accident. Decision: how to proceed to the scene; determined by procedure based on the run (injuries).				○								*			
2) Officers drove to the setting.						○						*			
3) Officers view the accident; the extent of damage. Decision: to determine what help is required (ambulance, tow truck, accident investigation unit) based on administrative procedural requirements in line with the observed facts. This involves discretion based on the nature of the incident the equipment available.								□				*		*	
4) Officers meet the complainants.				○											
5) Officers take an accident report. Decision: based on the procedural requirements and on the law.				○								**			
6) Officers issue summons or ticket to offender. Decision: to serve summons, give ticket or arrest; based on nature of incident, behavior of those involved, administrative & procedural dictates, previous local & possible Supreme Court decisions and temperament of officer (involves discretion).				○								*		*	
7) Officers return to car.						○									
8) Officers radioed in-service.				○											
-----T O T A L S-----				8		5		2		0		1		---4 4 2	

<u>INCIDENT PROCESS CHART</u> METROPOLITAN POLICE DEPT. PRECINCT A B						DISCRETION INVOLVED	DECISION POINT	DECISION MADE	TIME IN MIN.	INSPECTION	STORAGE	TRANSPORTATION	OPERATION STEP NUMBER	DESCRIPTION OF EACH STEP
1) Officers were on patrol and viewed the offense.							*							
Decision: whether or not to stop the offender or to ignore the violation; involves discretion based upon available resources (i.e., what the men are doing at the time, their ability to catch the offender and how busy they are or expect to be), upon the procedural and administrative requirements based on the type of offense and on the supervisory dictates (whether they are "down" on tickets).							*							
2) Officers stopped the offender.														
3) Officer checked the license and registration.							*	*						
Decision: based on the procedural requirement.														
4) Officers served him with a ticket for the offense.							*							
Decision: what action to take towards the offender; whether to serve a ticket, merely warn the offender, or to arrest him. This involves discretion based on the nature and severity of the violation, the demeanor of the offender and members of his group, procedural/administrative requirements, knowledge of the offender, officer's need for a ticket based on the supervisor's requirements, and on personal whims.							*	*						
5) Officers resumed patrol.														
----- T O T A L S -----						5	4	--	--	1	--	3	3	2



FIGURE 15

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE _____ TYPE OF CASE INJURED PERSON CASE NUMBER SUMMARY J	DESCRIPTION OF EACH STEP	TRANSPORTATION OPERATION STEP NUMBER	STORAGE	INSPECTION	TIME IN MIN.	DISCRETION INVOLVED		
						DECISION POINT DECISION MADE		
1) Officers received run to an injured person		○						
Decision: Method of driving to scene - procedure						*		
2) Officers drove to the scene.		○				*		
3) Officers meet the complainant/victim		○						
4) Officers inspect the injury - victim				□		*	*	
Decision: must determine that injury is real - the nature of the emergency. Discretion is involved, based on the nature of the incident, procedure, availability of equipment. demeanor of participants								
5) Officers call for ambulance		○				*		
6) Officers make follow-up investigation, Decision based on the nature of the incident - the determined cause of the injury. Discretion is involved based largely on factors in step four.		○				*	*	*
7) Officers take an injured person report. Decision: based on the nature of the complaint. procedure and action requirements, e.g. involvement of public space or public transportation to hospital.		○				*	*	
8) Officers return to the car.		○						
9) Officers radio in-service.		○						
-----T O T A L S -----		9	6	2	1	4	4	2

FIGURE 16

AVERAGE NUMBER OF DECISIONS IN THE  
DIFFERENT TYPES OF INCIDENTS

<u>Type of Incident</u>	<u>Average No. of Decisions</u>
Incidents Involving Felony Complaints Which Culminate In An Arrest	7.25
Incidents Involving Felony Complaints (No Arrests)	4.41
Incidents Involving Misdemeanor Complaints Which Culminate In An Arrest	7.25
Incidents Involving Misdemeanor Complaints (No Arrests)	2.86
Incidents Involving Juvenile Complaints	3.00
Incidents Involving Disturbances	3.10
Incidents Involving Automobile Accidents	4.40
Incidents Involving Traffic Violations	3.92
Incidents Involving Injured Persons	3.28
Incidents Involving Fires	3.33

that is, where strict guides are laid out for the officers' actions. Examples may be drawn between felony complaints (no arrests) and auto accident incidents, or between felony arrest and misdemeanor arrest situations.

It was noted that discretion is involved in all incidents in some form. Figure 17 reflects these differences among the types of situations. Basically, discretion appears to enter into the areas of decisions to investigate and actions to be taken against offenders. Those incidents involving less than one discretionary decision appear to be those complaints which are procedurally clear, or programmed, and little decision-making is required. Yet if there are only two decisions per incident in which discretion is involved, what is the basis of the remaining range of decisions which are ready by the officers?

It was found that all the decisions made could be classified into five key types, to allow for explicit definition and distinction of discretionary actions by officers. These include programmed, investigatory, operational, discretionary, and charging decisions.

Programmed decisions refer to those judgments in which the pattern for the choice is pre-determined by the law, police procedure as set by the department, administrative or supervisory regulations, or unrecorded informal but accepted procedures, or a combination of these factors. Little or no discretion is involved in the programmed choice. Rather, the decision is merely one to act in accordance with



FIGURE 17

NUMBER OF DECISIONS IN WHICH  
DISCRETION IS INVOLVED

<u>Type of Incident</u>	<u>No. of Decisions In Which Discretion Is Involved</u>
Incidents Involving Felony Complaints Which Culminate In An Arrest	2
Incidents Involving Felony Complaints (No Arrests)	1
Incidents Involving Misdemeanor Com- plaints Which Culminate In An Arrest	2 (3)
Incidents Involving Misdemeanor Com- plaints (No Arrests)	1
Incidents Involving Juvenile Complaints	1
Incidents Involving Disturbances	1
Incidents Involving Automobile Accidents	2
Incidents Involving Traffic Violations	2
Incidents Involving Injured Persons	2
Incidents Involving Fires	2

procedure; that is, to ascertain the application of the program. Examples of programmed decisions include the procedure or method of driving to the scene--that is, whether or not to utilize the red light and siren, as well as steps such as the advisement of rights. In research, the scientist must carefully ascertain and distinguish between habitual or informally accepted response-decisions, and those which prescribe to actual written policy.

Investigatory decisions are those made in order to obtain more complete information about the complaint. These may or may not involve the exercise of discretion, being based both on "common sense" and accepted police procedures. Yet the decision to investigate further may be influenced by the nature of the complaint, its apparent validity, the behavior of the participants, and the legal authority of the police to investigate, as well as the resources available to the officers (e.g., time available). Investigatory decisions then are made in order to obtain more information.

Operational decisions involve discretionary judgments made during an on-going incident, to perform certain operations. Examples include the decision to give first aid to the injured, to use physical force to prevent further attack or escape, and to disperse a crowd. This discretionary judgment is based mainly on the nature of the complaint, and the behavior and condition of the participants, though department policy and accepted procedures may well influence this possible choice.

The discretionary judgment involves the decision to take action, to invoke the process, or not to take action or non-invocation of the legal process. It is most aptly illustrated in the decision to arrest the suspected offender--a decision which marks the height of police authority and discretion. The discretionary judgment is influenced by many factors including the nature of the offense, the behavior of the participants, the legal and police procedures required, the knowledge of the facts gained as a result of investigation, previous local court opinion, the available sources, officer's interest in the complaint, the present whereabouts of the offender(s), the requirements of the prosecutor in order to build a court case, the influence of the setting (for example in a bar), and the officer's personal acquaintanceship with the participants.

Charging decisions refer to the decision made at the time the prisoner is booked at the station. At this time, a charge is recorded in the "blotter" or arrest book, and the legal process is properly in motion. While this decision is usually made at the time of the arrest, often the "learned" facts had changed by the time the booking stage was reached, and thus the charge was altered or the prisoner was released. The charging decision is discretionary being based on exactly the same factors as the "discretionary judgment" in addition to that of the past criminal record of the offender.

Figure 18 illustrates the types of incidents involving the police and the nature of the decisions involved

FIGURE 18

## NATURE OF DECISIONS AMONG DIFFERENT INCIDENTS

<u>TYPE OF INCIDENT</u>	<u>DECISIONS</u>				
	PROGRAMMED	INVESTIGATORY	OPERATIONAL	DISCRETIONARY	CHARGING
1. Incidents Involving Felony Complaints Which Culminate In An Arrest	X	X	X	X	X
2. Incidents Involving Felony Complaints (No Arrests)	X	X		X	
3. Incidents Involving Misdemeanor Complaints Which Culminate In An Arrest	X	X		X	X
4. Incidents Involving Misdemeanor Complaints (No Arrests)	X	X		X	
5. Incidents Involving Juvenile Complaints	X	X		X	
6. Incidents Involving Disturbances	X	X	X	X	
7. Incidents Involving Automobile Accidents	X	X	X	X	
8. Incidents Involving Traffic Violations	X			X	
9. Incidents Involving Injured Persons	X	X		X	
10. Incidents Involving Fires	X		X	X	

in each. It is noted that arrest situations involve the exercise of all the classifications of decisions, while the "simplest" of incidents procedurally require, categorically-speaking, a lesser range of decision types.

### III. SUMMARY

In a basic but logically consistent manner, one hundred incidents involving typical police actions were selected and analyzed in order to determine the nature of the decisions made and the discretion exercised by police officers.

It was found that officers made five types of decisions in field situations: programmed, investigatory, operational, discretionary, and charging decisions. These judgments were found to be based on similar factors to those derived in the literature review. Figure 19 reflects those influencing factors specifically illustrated by this analysis.

It is necessary, however, not to merely amalgamate the totality of the derived factors, but rather to group like factors and to carefully define the nature and scope of each. These elements then shall provide the basis for the derivation of an instrument to measure the factors which influence "situational police discretion."

## FIGURE 19

INFLUENCING FACTORS DERIVED FROM THE  
ANALYSIS OF THE INCIDENTS

Nature of the Complaint  
Nature of the Setting  
Behavior of the Participants  
Knowledge Gained Through On-The-Scene Investigation  
Legal Authority of the Police to Investigate  
Legal Procedural Requirements  
Police Procedural Requirements  
Local Court Opinions  
Requirements of the Prosecutor For a Court Case  
Available Resources (Time, Equipment and Manpower)  
Present Location of the Offender(s)  
Officer's Interest in the Complaint  
Officer's Personal Knowledge of or Acquaintance with the  
Participants  
Past Criminal Record of the Defendent

## CHAPTER IV

### DEVELOPMENT AND UTILIZATION OF THE INSTRUMENT

#### I. OBJECTIVES OF THE INSTRUMENT

The goal of this study is marked by the development of a research instrument to uncover the nature of "situational police discretion." This instrument is intended to be utilized by the researcher who seeks insight into the influential variables which affect the police officers' decisions on the street. Yet the scope of this study implies an eventual broader applicability of such an instrument.

If the rudiments of "situational discretion" are uncovered, to that extent the adequacy and nature of the authority of the officer can be adjudged. Furthermore, a foundation for possible training in discretion might well be established, based on the possible knowledge revealed by this instrument's interpretation of the influences upon police discretion.

Upon comparison among the various lists of factors uncovered by the literature review and field analysis, it was determined that the list derived from the actual literature analysis encompassed all the factors developed elsewhere in this study. This list then was renumerated so that

a total of sixty-four possible influencing factors are utilized (see Figure 20).

It must be realized that no amount of field research, nor review of previous studies, could hope to uncover all the possible influencing factors which might affect a police officer's decisions. Thus it must be readily admitted that this list is not exhaustive, and any instrument to be designed must be "open" so that any additional factors which develop might be utilized.

The instrument must as well be applicable to actual police situations. It must be based upon first-hand knowledge with as little "pre-interpretation" as possible. The instrument must attempt to analyze facts of actual action, rather than abstraction. For these prerequisites, the observation method of study was chosen as the mode for the research design.

## II. THE RESEARCH METHODOLOGY

As indicated, the heart of any research is the measuring instrument for gathering the data. While observations of particular social behavior are of little value if they do not include an adequate description of the larger social atmosphere or unit of activity, the research instrument allows for systematic viewing, for consideration of the phenomena in a perspective with relative frames of reference.

The scientific value of a fact depends on its connection to other facts, and in this connection the



FIGURE 20

## THE INFLUENTIAL FACTORS DERIVED FROM THE RESEARCH

1.	NATURE OF THE EVENT (TYPE OF COMPLAINT)
2.	NATURE OF THE COMMUNITY (ECONOMIC/RACIAL)
3.	NEED FOR IMMEDIATE CUSTODY
4.	EXTENT TO WHICH THE OFFICER MAINTAINS CONTROL
5.	DANGER TO THE OFFICER
6.	NEED FOR FORCE
7.	TIME OF DAY
8.	NEED FOR ACTIONS FOR PURPOSES OTHER THAN PROSECUTION
9.	OFFENDER'S Demeanor
10.	" Sobriety
11.	" Mental Health
12.	" Admissions
13.	" Attitudes Towards The Victim
14.	" Attitudes Towards The Police
15.	" Marital Status
16.	" Employment Status
17.	" Prior Record
18.	COMPLAINANT/VICTIM'S Demeanor
19.	" Sobriety
20.	" Mental Health
21.	" Admissions
22.	" Attitudes Towards The Offender
23.	" Attitudes Towards The Police
24.	" Marital Status
25.	" Employment Status
26.	" Prior Record
27.	BYSTANDER(S)/INFORMANT(S) Demeanor
28.	" Sobriety
29.	" Mental Health
30.	" Admissions

31.	BYSTANDER(S)/INFORMANT(S)	ATTITUDES TOWARDS PARTICIPANTS
32.	"	ATTITUDES TOWARDS THE POLICE
33.	"	MARITAL STATUS
34.	"	EMPLOYMENT STATUS
35.	"	PRIOR RECORD
36.	OFFICER'S PERSONAL ACQUAINTANCE WITH THE PARTICIPANTS	
37.	AVAILABILITY OF POLICE RESOURCES	
38.	LEGAL AUTHORITY TO TAKE ACTION	
39.	LIKELIHOOD OF A REDUCTION IN CHARGE BY PROSECUTOR	
40.	LIKELIHOOD OF A GUILTY PLEA	
41.	BASIS FOR CAUSE TO BELIEVE OFFENSE WAS COMMITTED	
42.	BASIS FOR BELIEF THAT THE SUSPECT IS THE OFFENDER	
43.	DETAILS OF DESCRIPTION	
44.	NEED FOR ACTION TO CONFORM WITH THE LEGAL REQUIREMENTS	
45.	LEGISLATION COVERING THE INCIDENT	
46.	NATURE OF PUNISHMENT IN PROPORTION TO THE CRIME	
47.	POLITICAL POLICY/CONTROL OVER THE INCIDENT	
48.	RECENT APPELLATE COURT DECISIONS	
49.	RECENT SUPREME COURT OPINIONS	
50.	CHANCE OF REVIEW OF DECISION BY SUPERIORS OR THE COURTS	
51.	LIABILITY OF THE OFFICER	
52.	PROSECUTOR'S CRITERIA	
53.	SUPERVISOR'S CRITERIA	
54.	APPLICABLE RULES AND PROCEDURES	
55.	NEED TO MAINTAIN RESPECT FOR THE POLICE	
56.	NEED TO PUNISH CRIMINALS WHO HAVE ESCAPED CONVICTION FOR OFFENSES	
57.	NEED FOR ACTION TO ASSIST IN THE INVESTIGATION OF OTHER OFFENSES	
58.	POLICE DESIRE FOR CONVICTIONS	
59.	PUBLIC SUPPORT IN THE AREA OF ENFORCEMENT	
60.	RECENT NEWS COVERAGE	
61.	OFFICER'S VALUE SYSTEM	
62.	OFFICER'S KNOWLEDGE OF HIS AUTHORITY	
63.	OFFICER'S EXPERIENCE	
64.	OFFICER'S TRAINING	
65.	OTHER FACTORS-----	

most commonplace facts are often precisely the most valuable ones. . . .

- W. I. Thomas<sup>162</sup>

Yet this research is a focus on the operational decision making of police officers in an effort to portray the characteristics of and influences upon discretion. The nature of this focus is so very broad, being affected by such a wide latitude of possibly unaccountable factors, that this particular study can only hope to be formulative or exploratory in nature.

The emphasis throughout has been on the discovery of factors--of ideas, and therefore a fairly flexible research design is required to consider the many different aspects of the phenomenon of police discretion. Yet a research design proposes to arrange "the conditions for the analysis of data in a matter that aims to combine relevance to the research purpose with economy in procedure."<sup>163</sup> Thus a standard exploratory research method has been adopted whereby all related literature was reviewed, officers in the field were informally interviewed, and actual situations were analyzed in some detail.<sup>164</sup>

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<sup>162</sup>Pauline V. Young, Scientific Social Surveys and Research (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1966) fourth ed., p. 3.

<sup>163</sup>Claire Selltiz, Marie Jahoda, Morton Deutsch, Stuart W. Cook, Research Methods in Social Relations (New York: Holt, Rinehart & Wilson, 1965), p. 50.

<sup>164</sup>Ibid., p. 53.

The proposed instrument must consider facts which are physical, mental or emotional occurrences. Backstrom and Hursh in their work, "Survey Research," note that depth interviews are probably most fruitful to uncover the influences on decisions, while participant observation best allows for the determination of how decisions are made.<sup>165</sup> Thus a method of participant observation, boosted by informal interviewing on the job, has been selected for the proposed instrument design.

By utilizing actual case studies, the researcher can get at the behavior directly. These observations, being summarized in a standardized fashion, will lead to new insights as well as provide a foundation for later testing by other techniques.

It must be emphasized that the quality of research is especially dependent upon the fruitfulness of the measuring devices employed. A good measurement procedure must be valid and reliable; that is, it must measure what it is supposed to accurately and must be able to produce similar results when repeated under the same conditions. In addition, the measurements must be distinct or fine enough to achieve the intended purpose.

Differences in scores should reflect true differences in the characteristic being measured. Differences due to

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<sup>165</sup> Charles H. Backstrom and Gerald D. Hursh, Survey Research (Northwestern University Press, 1963), pp. 24-26.

transient personal factors, to situational factors, to research sampling procedure, to mechanical factors, or factors in the actual analysis, on the other hand, must be explicitly clarified.

The nature of a decision-making study wherein influences are to be determined and measured, indicates that a fairly large sample of incidents will be required to ensure any accurate or reliable determinations. In addition to size, however, the sample must be representative of all types of police situations. It must be realized that basically three factors determine the sample size: the degree of similarity among the characteristics (homogeneity), the number of categories to be extracted, and the precision or degree of confidence required.<sup>166</sup> The instrument then must provide the foundation for the efficient organization of a large volume of data, based on logical interrelationships.

### III. THE OBSERVATION METHOD

Observational techniques make possible the recording of behavior as it occurs. Yet there is a distinct subjective aura about the nature of this methodology in research. Participant observation is suggested as a scientific technique in this study in that it serves a definite research purpose, is based on systematic planning, all in addition to being recorded in an organized fashion in the derived instrument.

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<sup>166</sup>Ibid., pp. 4-6.

Close supervision of the field observers would be required, however, to insure valid and reliable observations.<sup>167</sup>

It must be realized that the observatory survey method contains many characteristics which may limit the validity of any resulting data. Specifically, the observations must be independent of the ability or willingness of the officers to reveal their decisions. Certainly some officers may attempt to create impressions, and yet, in the experience of this author and others who have studied field police activity, the demands of most enforcement situations are such so as to override any artificiality imposed by the officer.

Yet the participant observer is limited by the methodology. It is impossible to predict the spontaneous occurrence of events within any situation to allow for absolute complete observation. The duration of events is most often particularly brief, and thus few specific observational techniques may be applied. In addition, the personal attitudes of the observer, his mood, state of fatigue, health, ~~men~~ mental set, and distractibility, are transient uncontrollable factors. And yet, this method relies heavily upon the interpretative ability of the particular participant observer. The constant emphasis in applying the instrument to be derived then, must be on the systematic recording of police actions, especially insofar as the goal is to observe typical

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<sup>167</sup>Claire Selltiz et al., Op. Cit., Chapter VI.

cases. All of these, however, will be to some extent influenced by the officer's reactions.<sup>168</sup>

Unstructured participant observation here deals with the viewing of complex police incidents, each of which involves a group of interpersonal actions by the participants, based upon a number of specific interrelated facts. The facts range from the complaint through to the basis for arrest or other police action. Thus the observer utilizing the instrument must note the participants, their condition and behavior, the setting, the purpose that has brought the officer and citizen together, and the inter-social behavior in order to determine what actually occurs and the duration of the interaction. Each of these factors must be carefully specified within the actual instrument.

While the observer must not become too involved with the police community or the particular officers, so that their actions are taken for granted, the participant role can be utilized to enhance the "naturalness" of his position. Most often, he will gain the friendship and respect of the officers and be taken for a plainclothes officer in any situation by the citizens involved. Through such active observation, more factors within each incident will necessarily be revealed. In addition, the close interaction involved will allow for the indicated informal interview-conversations from which the researcher can relate the observed actions to the officer's values and exercise of discretion.

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<sup>168</sup> Ibid., pp. 59, 202-204.

With so many factors bearing upon the operational police decision, this tool can indeed be very useful so long as the researcher is careful to qualify any possible conclusions to be drawn. While it has been emphasized throughout this discussion that any method which incorporates unstructured observation is restricted by the bias' and interpretations of the researcher, the choice of such a methodology is dictated by the very nature of a topic such as "situational police discretion."

#### IV. THE INSTRUMENT

The crux of the research problem of "situational police discretion" lies in the interaction between the numerous factors influencing the exercise of discretion and derived from this research analysis (see Figure 20) and those acts performed by the police officers which reflect these decisions. Thus, observed police actions become the dependent variable while the "measured" influencing factors are the independent variable.

In this sense, the two variables might be measured along two axes. However, it is important to note that the sequence of police actions is important in reflecting both the nature of the influence, as well as the technical and legal detail involved. For example, in a situation wherein a suspect confronting the officer has an apparently suspicious bulging pocket and the officer searches, finds a weapon, and arrests the offender, the sequence of each of



these acts is important. The arrest legally must precede the search. Did the mere finding of the weapon lead to the officer's arrest decision, or did the arrest precede the search so that other factors were responsible? To account for this determination of sequence, each comparison drawn along the two constructed axes of police actions and influencing factors must be numbered in order of occurrence.

Based on these requirements, an evaluation instrument was designed. In view of the need for a large sampling of incidents, it was determined to develop an instrument adaptable to computer programming. This would facilitate the analysis as measured by the intended instrument, as well as reducing the research calculation time immeasurably.

Using a basic computer data coding form, consisting of graph-like squares (30 squares by 80 squares) as a model, two axes were established. The vertical axis represents some thirty possible police actions which allow for any operation which the officers might perform within any single incident (see Figure 21). The horizontal scale represents the sixty-four influencing factors derived from the analysis within this research (see Figure 20). The form also contains pertinent identification information: precinct, date, times, type of incident (according to the ten pre-established categories in the analysis of the incidents) and incident number (see Figure 22).

FIGURE 21

Police Actions

1. O. mobilized
2. O. entered situation
3. O. met complainant/com. gp.
4. O. met informer/inf. gp.
5. O. met offender/off. gp.
6. O. met bystander(s)
7. O. noted complaint - F.M.J.D.T.A.Fi.I.
8. O. investigated by inspection
9. O. investigated by interview
10. O. checked license/registration
11. O. re-directed traffic
12. O. gave first aid/comforted
13. O. used physical force to subdue/restrain
14. O. used physical force for protection
15. O. performed other operation \_\_\_\_\_
16. O. arrested for specific offense
17. O. arrested for investigation
18. O. issued ticket
19. O. took a formal report
20. O. reprimanded/warned
21. O. suggested other agency/action
22. O. arbitrated/counselled
23. O. used "cool-out" technique
24. O. did \_\_\_\_\_
25. O. advised offender of his rights
26. O. searched offender
27. O. transported offender/called wagon
28. O. booked offender on original charge
29. O. booked offender on final new charge
30. O. returned to service/patrol

TIME

## LICE ACTIONS

0. 'S MOBILIZED																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			</
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## - DATA CODING FORM -

DATE

TYPE OF INCIDENT

INCIDENT NUMBER

## FACTOR - RELATIONSHIPS

27.	BYSTANDER(S)/INFORMANT(S) DEMEANOR
28.	" " SOBRIETY
29.	" " MENTAL HEALTH
30.	" " ADMISSIONS
31.	" " ATTITUDES TOWARDS THE PARTICIPANTS
32.	" " ATTITUDES TOWARDS THE POLICE
33.	" " MARITAL STATUS
34.	" " EMPLOYMENT STATUS
35.	" " PRIOR RECORD
36.	OFFICER'S PERSONAL ACQUAINTANCE WITH THE PARTICIPANTS
37.	AVAILABILITY OF POLICE RESOURCES
38.	LEGAL AUTHORITY TO TAKE ACTION
39.	RELIANCE OF A REDUCTION IN CHARGE BY THE PROSECUTOR
40.	RELIANCE OF A GUILTY PLEA
41.	FACTS FOR CAUSE TO BELIEVE THAT AN OFFENSE WAS COMMITTED
42.	FACTS FOR BELIEF THAT THE SUSPECT IS THE OFFENDER
43.	RE FAILURE OF DESCRIPTION
44.	REASON FOR FAILURE TO CONFORM WITH THE LEGAL REQUIREMENTS
45.	LEGISLATION COVERING THE INCIDENT
46.	FAILURE OF PROSECUTOR IN PROPORTION TO THE CRIME
47.	POLITICAL POLICY/CONTROL OVER THE INCIDENT
48.	APPELLATE COURT DECISIONS
49.	SUPREME COURT DECISIONS
50.	CHARGE OF REVIEW OF DECISION BY SUPERIOR OFFICERS OR THE COURTS
51.	LIABILITY OF THE OFFICER
52.	PROSECUTOR'S CRITERIA
53.	SUPERVISOR'S CRITERIA
54.	APPLICABLE RULES AND PROCEDURES
55.	REASON TO MAINTAIN RESPECT FOR THE POLICE
56.	REASON TO PUNISH CRIMINALS WHO HAVE ESCAPED CONVICTION FOR OFFENSES
57.	REASON FOR ACTION TO ASSIST IN THE INVESTIGATION OF OTHER OFFENSES
58.	POLICE DESIRE FOR CONVICTIONS
59.	PUBLIC SUPPORT IN THE AREA OF ENFORCEMENT
60.	PEOPLE'S COVERAGE
61.	OFFICER'S VALDE SYSTEM
62.	OFFICER'S KNOWLEDGE OF HIS AUTHORITY
63.	OFFICER'S TRAINING
64.	OFFICER'S EXPERIENCE
65.	OTHER FACTORS -----
66.	
67.	
68.	
69.	
70.	
71.	
72.	
73.	
74.	

Due to the nature of this instrument in terms of size and detail, it was determined for practical reasons that an observer riding in a patrol car would require a brief smaller form, but one which would keep his attention on the particular factors sought. Thus a companion Incident-Decision Chart was designed (see Figure 23). This lists vertically the thirty police actions in similar fashion to the coding sheet. There are additional vertical columns, however, for step number, specification of each step and times, decision made and discretion involved columns, and influencing factors column, and pertinent identification areas for precinct, date, type of incident, and incident number. Attached would be a list coding the influence factors numerically.

It is intended that the Incident-Decision Chart would be utilized by the researcher in the car to record each situation. Each incident would then be summarized on the coding sheet according to the following methodology.

#### V. USE OF THE INSTRUMENT

The following paragraphs constitute complete instructions as to the application of the derived research instrument.

##### Method of Observation

The research observer is the key to success in the application of this instrument. While the basic theory of

FIGURE 23

POLICE ACTIONS		#	SPECIFICATION	DEC	DIS	FACTORS	INCIDENT- DECISION PRECINCT DATE TYPE OF INCIDENT NO.			
1. O's mobilized										
2. O. entered situation										
3. O. met complainant/com. gp.										
4. O. met informer/inf. gp.										
5. O. met offender/off. gp.										
6. O. met bystander(s)										
7. O. noted Complaint-F.M.J.D.T.A.Fi.I.										
8. O. investigated by inspection										
9. O. investigated by interview										
10. O. checked license/registration										
11. O. re-directed traffic										
12. O. gave first aid/comforted										
13. O. used physical force to subdue/restrain										
14. O. used physical force for protection										
15. O. performed other operation										
16. O. arrested for specific offense										
17. O. arrested for investigation										
18. O. issued ticket										
19. O. took a formal report										
20. O. reprimanded/warned										
21. O. suggested other agency/action										
22. O. arbitrated/counselled										
23. O. used "cool-out" technique										
24. O. did										
25. advised offender of rights										
26. O. searched offender										
27. O. transported offender/called wagon										
28. O. booked off. original charge										
29. O. booked off. on final new charge										
30. O. returned to service/patrol										



1.	NATURE OF THE EVENT (TYPE OF COMPLAINT)
2.	NATURE OF THE COMMUNITY (ECONOMIC/RACIAL)
3.	NEED FOR IMMEDIATE CUSTODY
4.	EXTENT TO WHICH THE OFFICER MAINTAINS CONTROL
5.	DANGER TO THE OFFICER
6.	NEED FOR FORCE
7.	TIME OF DAY
8.	NEED FOR ACTIONS FOR PURPOSES OTHER THAN PROTECTION
9.	OFFENDER'S DEMEANOR
10.	" SOBRIETY
11.	" MENTAL HEALTH
12.	" ADMISSIONS
13.	" ATTITUDES TOWARDS THE VICTIM
14.	" ATTITUDES TOWARDS THE POLICE
15.	" MARITAL STATUS
16.	" EMPLOYMENT STATUS
17.	" PRIOR RECORD
18.	COMPLAINANT/VICTIM'S DEMEANOR
19.	" SOBRIETY
20.	" MENTAL HEALTH
21.	" ADMISSIONS
22.	" ATTITUDES TOWARDS THE OFFENDER
23.	" ATTITUDES TOWARDS THE POLICE
24.	" MARITAL STATUS
25.	" EMPLOYMENT STATUS
26.	" PRIOR RECORD
27.	BYSTANDER(S)/INFORMANT(S) DEMEANOR
28.	" SOBRIETY
29.	" MENTAL HEALTH
30.	" ADMISSIONS
31.	" ATTITUDES TOWARDS PARTICIPANTS
32.	" ATTITUDES TOWARDS THE POLICE
33.	" MARITAL STATUS
34.	" EMPLOYMENT STATUS
35.	" PRIOR RECORD
36.	OFFICER'S PERSONAL ACQUAINTANCE WITH THE PARTICIPANT
37.	AVAILABILITY OF POLICE RESOURCES
38.	LEGAL AUTHORITY TO TAKE ACTION
39.	LIKELIHOOD OF A REDUCTION IN CHARGE BY PROSECUTOR
40.	LIKELIHOOD OF A GUILTY PLEA
41.	BASIS FOR CAUSE TO BELIEVE OFFENSE WAS COMMITTED
42.	BASIS FOR BELIEF THAT THE SUSPECT IS THE OFFENDER
43.	DETAILS OF DESCRIPTION
44.	NEED FOR ACTION TO CONFORM WITH THE LEGAL REQUIREMENTS
45.	LEGISLATION COVERING THE INCIDENT
46.	NATURE OF PUNISHMENT IN PROPORTION TO THE CRIME
47.	POLITICAL POLICY CONTROL OVER THE INCIDENT
48.	RECENT APPELATE COURT DECISIONS
49.	RECENT SUPREME COURT OPINIONS
50.	CHANCE OF REVIEW OF DECISION BY SUPERIORS OR THE COURTS
51.	LIABILITY OF THE OFFICER
52.	PROSECUTOR'S CRITERIA
53.	SUPERVISOR'S CRITERIA
54.	APPLICABLE RULES AND PROCEDURES
55.	NEED TO MAINTAIN RESPECT FOR THE POLICE
56.	NEED TO PUNISH CRIMINALS WHO HAVE ESCAPED CONVICTION FOR OFFENSES
57.	NEED FOR ACTION TO ASSIST IN THE INVESTIGATION OF OTHER OFFENSES
58.	POLICE DESIRE FOR CONVICTIONS
59.	PUBLIC SUPPORT IN THE AREA OF ENFORCEMENT
60.	RECENT NEWS COVERAGE
61.	OFFICER'S VALUE SYSTEM
62.	OFFICER'S KNOWLEDGE OF HIS AUTHORITY
63.	OFFICER'S EXPERIENCE
64.	OFFICER'S TRAINING
65.	OTHER FACTORS

observational research has been discussed, several particular factors deserve re-emphasis.

The researcher in a police car is called upon to carefully and objectively observe and report complex events, that is, emotion-packed street incidents involving interaction between law enforcement officers and citizens. These events and the police decisions made within each, are the focus of attention in this study.

Each incident is made up of a number of different factors, all of which will quite naturally be interpreted differently by the citizen, the police officer(s), and by the research observer. Therefore it is extremely important to carefully distinguish between fact and inferences. The observer must only report facts. In addition, it is imperative that he have clearly in mind the definition of terms used throughout the report, as pre-established in this research (see Figure 24). To assist in complete observation, several specific aspects of each situation must be carefully noted mentally by the observer. These include:

- the definition of the situation by the radio dispatch
- the response of the officers to the dispatch
- the setting of the situation
- the arrival of the police; their initial actions
- the citizens involved, their state, description, and roles
- the bystanders involved, their state, description, and roles



## FIGURE 24

## Definitions of Terms\*\*

General role refers to the capacity in which the person is acting in the situation. Typically, persons who have contact with the police do so as "private citizens," but school principals ("public official") call about school problems, businessmen about troublesome customers, etc.

Manner: Consider the general manner of each participant.

Specific Roles: Classify the participants in the situation according to the following definitions:

Complaint -- the person(s) who wants police action in response to what he or they see as an "offense" of some kind, e.g. a man whose car is stolen, or a woman who complains about teenagers in the neighborhood. The fact of a known offense, does not, of course mean a complainant is necessarily present in the situation.

Offender -- the person(s) who is seen as "out of line" or as a possible violator of some sort in the situation, e.g. a person accused of shoplifting or a man seen as an irresponsible husband. "Offender" is a sociological, not a legal category for these purposes.

victim -- the person(s) who needs or requests help from the police in a situation that does not involve an offense, e.g. a sick person, or a mother of a missing child. A victim of a violent crime should be classified as a complainant, even if his condition is such that he can't communicate.

member of complainant group -- the person(s) who supports or stands with the complainant(s). Do not include mere bystanders who are sympathetic, e.g. members of a group of tenants who protest a loud party.

member of offender group -- the person(s) who supports or stands with the offender(s), e.g. a group of rowdy boys in the street.

member of victim group -- the person(s) who supports or is concerned about the victim(s). Typically this category will be used for designating fellow family members & friends of sick or injured persons.

informant -- a person(s) who gives information relevant to the nature of a situation, but who does not support or stand with any of the central participants. Do not include mere guides here, since their information has to do only with where situations are rather than what situations are.

bystander -- a person(s) who is nothing more than an onlooker and who would not be there if there were no situation requiring the police. Place mere guides in this category.

Police Actions refer to the list of operations indicated in Figure 21.

Manner of Police behavior: be sure to think of the officers' behavior as well as actions.

Offenders taken to the station: Complete this lay-out as much as possible, depending on how much of the process you actually observe. Sometimes the offender will be taken to the station in another vehicle, and only the pre-station interview will be seen. In such a case, fill out what you can of the 'charts'.

Log Entry: If a log is used, ask if you may see it if it is not visible to you.

**\*\*Figure 24 is extracted from the "POLICE OBSERVATION REPORT INSTRUCTIONS," issued to observers by Dr. A. J. Reiss, Director of the Center for Research on Social Organization, University of Michigan, 1966.**

- the facts of the situation
- police actions (decisions made) in terms of:
  - formal or official action
  - informal use of power
  - informal action
  - suggested further action
  - physical service
  - "cool-out"
  - miscellaneous activities

While this list appears exhaustive, with a little experience, an amazing amount of detail can be noted very quickly.

It was indicated that the researcher should conduct an informal conversation-type interview with the officer(s) while riding on patrol. This will serve to enlarge the reference-foundation of knowledge of the observer about the particular officer, his precinct, and the department.

While the function of the informal interview is to focus attention upon the occurrence, its causation and effects, the manner and timing with which the questions are asked are left largely to the interviewer's discretion. He has the freedom to explore reasons and motives and to probe further in directions that might be perhaps unanticipated.

While the interview is to be focused over a broad area, it is definitely informal in nature. The interviewer-observer must attempt to extract all the possible factors. At the same time, he must be wary of the officers merely learning to respond with simple or easy answers, or

responding in accordance with categories which they think are particularly of interest to the observer. Further, the observer must be cautious of particular gripes which recur often as the officer tries to honestly reinforce his complaints relative to the system.

It must be emphasized that the interpretation of factors by the officer is not of interest here, but rather the mere existence of the factors as an influence. For example, the focus is not the correct interpretation of a Supreme Court ruling, but rather the observer is to determine whether the officer feels that the ruling is an influence. In other words, the officer's statements as to what he actually thinks, is of interest.

A possible further bugaboo is the "I don't know" response, in which the officer truly cannot verbalize why he performed some action. Further probing is required, often by careful "directive interviewing" to ascertain that the officer actually does not know. Such a response should be noted, its existence being in itself significant, although it is not to be considered as an "influencing factor."

It is further expected that some of the responses even after careful interviewing will be wrong or invalid. For this reason, it is essential to handle a large number of incidents so that occurring errors would not be so significant as to adversely affect the study.

Specifically, the researcher should probe the general characteristics of the officers and their territory. For

example, their perspective of the percentage ethnic composition, income level, nature of industrial and residential areas, and particular trouble spots within the territory. The officers' attitudes towards Negroes, other ethnic groups, the Civil Rights Movement, towards demonstrators and picketers, the heads of government, as well as health and welfare agencies, and the specific courts, should be ascertained through conversation. Other opinions as regards particular laws and legal procedures, towards political matters, as well as towards precinct officials could also be solicited so as to add to a judgment of the officer's value system, his professional conscientiousness, and his intellect.

Generally, it will be found that the officers will talk freely about the job, its needs and their experiences and opinions, although the researcher must be careful not to be given a false impression by the individual who tries to feed the kind of information which he thinks the researcher wants to know.<sup>169</sup>

The participant observer should learn to utilize some forethought in his informal questioning by judging "How will the respondent interpret this?" and "What does this question actually mean?" He should express himself in simple vocabulary, using limited, but legitimate jargon, avoiding

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<sup>169</sup>W. M. Kephart, Op. Cit., p. 32. The author notes "that the bugaboo of the non-valid response failed to materialize and it is believed that this will become self-evident."

leading statements as well as subjective words. In this way, objective unstructured observation will be achieved.<sup>170</sup>

#### Procedure With the Instrument

The observer should utilizing the Incident-Decision Chart, commence writing with the receipt of a dispatch. Here each step is numbered in the order that it occurs in the situation. As well, specification notes or brief descriptions of occurrences might be entered and times of mobilization, arrival, and return in-service. Last, the precinct, date, and type of incident should be noted on the form. It is most probable that while riding in the car, the observer will only have time to complete the Incident-Decision Chart to this point (see Figure 25). Yet he should carefully review his notations on the spot, referring to the attached list of influencing factors, so that he can mentally judge the basis for the officers' decisions and verify this through on-the-spot conversation.

During breaks or immediately after the tour of duty, each Incident-Decision chart must be completed. This is accomplished by numbering in order those steps where decisions are made and discretion was involved. At each of these points, the attached list of factors should be consulted, and the coded numbers for each of those which seemed to

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<sup>170</sup> See "Structured Questions" in P. Young, Op. Cit., p. 190.

FIGURE 25

Completion Point of Decision Chart in the Car

POLICE ACTIONS	#	SPECIFICATION
1. O's mobilized		
2. O. entered situation		
3. O. met complainant/com. gp.		
4. O. met informer/inf. gp.		
5. O. met offender/off. gp.		
6. O. met bystander(s)		
7. O. noted Complaint-F.M.J.D.T.A.Fi.I.		
8. O. investigated by inspection		
9. O. investigated by interview		
10. O. checked license/registration		
11. O. re-directed traffic		
12. O. gave first aid/comforted		
13. O. used physical force to subdue/restrain		
14. O. used physical force for protection		
15. O. performed other operation		
16. O. arrested for specific offense		
17. O. arrested for investigation		
18. O. issued ticket		
19. O. took a formal report		
20. O. reprimanded/warned		
21. O. suggested other agency/action		
22. O. arbitrated/counselled		
23. O. used "cool-out" technique		
24. O. did		
25. O. advised offender of rights		
26. O. searched offender		
27. O. transported offender/called wagon		
28. O. booked off. original charge		
29. O. booked off. on final new charge		
20. O. returned to service/patrol		

influence the decision should be entered beside the indicated decision points (see sample, Figure 26).

At this stage then, the steps that occurred in the incident will have been numbered according to the list of police actions, each will have been elaborated upon in the specification column, those involving decisions and the exercise of discretion would be numerically indicated, and the influencing factors would also have been noted by number.

The researcher now turns to the evaluation instrument--the data coding sheet. Here at the intersection of each police action involving a decision (as indicated by the Incident-Decision Chart) and each influencing factor corresponding to the indicated code number, the decision number should be recorded. Those police operations not involving decisions would be indicated by a "0" in the non-decision column on the Coding Form. Thus each incident can be completely transcribed onto the Coding Form.

The Coding Form then indicates the nature of the factors influencing each type of police action requiring discretion. It must be realized that, based upon a maximum of 30 police actions, 80 influencing factors, as well as an average of possibly 8 decision points in any situation, there is a range of  $80 \times 30 \times 8$  equalling 19,200 possible combinations of factors to be dealt with for any single incident. Thus a sampling of a mere thousand incidents could involve some 19,200,000 factors, although this particular figure would be extremely unlikely.



FIGURE 26

POLICE ACTIONS	#	SPECIFICATION	DEC	DIS	FACTORS
1. O's mobilized	1	O. rec'd run - woman screaming			
2. O. entered situation	2	O. drive red I/S to mid. Class apt.	1		54
3. O. met complainant/com. gp.					
4. O. met informer/inf. gp.					
5. O. met offender/off. gp.	3	O. exited elevator to view fight- 4N/m/f			
6. O. met bystander(s)					
7. O. noted Complaint-F.M.J.D.T.A. P.I.					
8. O. investigated by inspection	6	O. viewed apt.--torn apart completely	4		4 1 41
9. O. investigated by interview	12	O. re-entered to determine cause of fight.	8		8 1 9 41
10. O. checked license/registration					
11. O. re-directed traffic					
12. O. gave first aid/comforted					
13. O. used physical force to sub- due/restrain	4/9/13/	O. restrained combatants	9/6/2	2/6/9	4 6 9
14. O. used physical force for protection	5/8	O. were attacked - fought	5 3	3 5	1 4 5 6 9
15. O. performed other operation					
16. O. arrested for specific offense	10/14	O. arrested N/F2&1. N/M 1. dis/con.	7 10	7 10	1 9 10 14 41 55 (3)
17. O. arrested for investigation					
18. O. issued ticket					
19. O. took a formal report	16	O. completed offense report	11		54
20. O. reprimanded/warned	7	O. warned N/F 1. who called his wife a 'whore'			
21. O. suggested other agency/action					
22. O. arbitrated/counselled					
23. O. used "cool-out" technique					
24. O. did					
25. advised offender of rights					
26. O. searched offender					
27. O. transported offender/called wagon	11/15	O. took off.s to the wagon			
28. O. booked off. original charge					
29. O. booked off. on final new charge	17	3 ass. on police. 3 dis. con.			
30. O. returned to service/patrol					

INCIDENT-DECISION PRECINCT DATE TYPE OF INCIDENT INCIDENT NO.

CHART A B 9-6-66 9-6-66 Misdemeanor - Arrest M - 14

Based upon this range of factors, and utilizing a large number of incidents, a computer would be necessary to perform the calculations. This would be accomplished by punch cards transcribed from the Coding Form. Each card represents a single police action and all the factors which influence it. Thus any single card could conceivably contain up to eighty factors, while an incident as recorded on this Coding Form could require up to thirty cards. These cards would then be run on a computer according to standard pre-established programs to extract the desired information.<sup>171</sup>

## VI. EXTRAPOLATION OF THE DATA

While the format of the research instrument lends itself to many possible applications, several basic measures can be extracted to determine the influences on "situation police discretion."

This involves tabulation or tallying the number of times any particular factor appears to influence a police action. In this way, the influencing factors can be ranked, ordered and then compared with standard tests of statistical significance.

Appendix II contains seven sample Incident-Decision Charts constructed from the reports gathered during the initial observation stage of this study. These provide the

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<sup>171</sup>Daniel D. McCracken, A Guide to Fortran Programming (New York: John Wiley & Sons, Inc., 1961), Chapters 2 and 3.

data for interpolation with the Coding Form and overlays for the seven incidents, found in the envelope inside the rear cover of the thesis. These overlays may be applied to the Coding Form for interpretation. Based on this data, simple calculations might be accomplished as follows.

The seven incidents are comprised of one juvenile complaint, two misdemeanor-arrest situations, one misdemeanor complaint, one felony arrest, one felony complaint, and one disturbance. Each of the Incident-Decision Charts has been completed according to the preceding instructions within this chapter.

These charts were then applied to the Data Coding Forms by transcribing the influencing factors in terms of decision numbers. These Coding Forms become then the data for all calculations.

From the Data Coding Forms, a count was made of the number of times each factor was found to be influential in a decision made by a police officer. This tally is pictorally depicted in Figure 27, the bar graph of the influencing factors. These graphs could also be drawn in terms of percentages rather than in response units, which would perhaps more clearly illustrate the role or amount of influence of each factor. Such a graph shows which factors were influential in decision making among the seven sample incidents.

The factors could then be ranked in order of their influence upon discretion, taking into account any statistical measures applied (such as means or the average number of

FIGURE 27

Bar GraphThe Influencing Factors Among Seven Sampled Cases

1	NATURE OF THE EVENT (TYPE OF COMPLAINT)	27
2	NATURE OF THE COMMUNITY (ECONOMIC/RACIAL)	1
3	NEED FOR IMMEDIATE CUSTODY	5
4	EXTENT TO WHICH THE OFFICER MAINTAINS CONTROL	4
5	DANGER TO THE OFFICER	1
6	NEED FOR FORCE	4
7	TIME OF DAY	1
8	NEED FOR ACTIONS FOR PURPOSES OTHER THAN PROSECUTION	
9	OFFENDER'S DEMEANOR	22
10	" SOBRIETY	10
11	" MENTAL HEALTH	
12	" ADMISSIONS	1
13	" ATTITUDES TOWARDS THE VICTIM	
14	" ATTITUDES TOWARDS THE POLICE	5
15	" MARITAL STATUS	2
16	" EMPLOYMENT STATUS	
17	" PRIOR RECORD	
18	COMPLAINANT/VICTIM'S DEMEANOR	11
19	" SOBRIETY	
20	" MENTAL HEALTH	
21	" ADMISSIONS	1
22	" ATTITUDES TOWARDS THE OFFENDER	
23	" ATTITUDES TOWARDS THE POLICE	
24	" MARITAL STATUS	2
25	" EMPLOYMENT STATUS	
26	" PRIOR RECORD	
27	BYSTANDER(S)/INFORMANT(S) DEMEANOR	1
28	" SOBRIETY	

29	BYSTANDER(S)/INFORMANT(S)	MENTAL HEALTH	
30	"	ADMISSIONS	
31	"	ATTITUDES TOWARDS PARTICIPANTS	
32	"	ATTITUDES TOWARDS THE POLICE	
33	"	MARITAL STATUS	
34	"	EMPLOYMENT STATUS	
35	"	PRIOR RECORD	
36	OFFICER'S PERSONAL ACQUAINTANCE WITH THE PARTICIPANTS		
37	AVAILABILITY OF POLICE RESOURCES		
38	LEGAL AUTHORITY TO TAKE ACTION		
39	LIKELIHOOD OF A REDUCTION IN CHARGE BY PROSECUTOR		1
40	LIKELIHOOD OF A GUILTY PLEA		
41	BASIS FOR CAUSE TO BELIEVE OFFENSE WAS COMMITTED		15
42	BASIS FOR BELIEF THAT THE SUSPECT IS THE OFFENDER		2
43	DETAILS OF DESCRIPTION		1
44	NEED FOR ACTION TO CONFORM WITH THE LEGAL REQUIREMENTS		4
45	LEGISLATION COVERING THE INCIDENT		5
46	NATURE OF PUNISHMENT IN PROPORTION TO THE CRIME		
47	POLITICAL POLICY/CONTROL OVER THE INCIDENT		
48	RECENT APPELLATE COURT DECISIONS		1
49	RECENT SUPREME COURT OPINIONS		
50	CHANCE OF REVIEW OF DECISION BY SUPERIORS OR THE COURTS		
51	LIABILITY OF THE OFFICER		1
52	PROSECUTOR'S CRITERIA		
53	SUPERVISOR'S CRITERIA		13
54	APPLICABLE RULES AND PROCEDURES		
55	NEED TO MAINTAIN RESPECT FOR THE POLICE		7
56	NEED TO PUNISH CRIMINALS WHO HAVE ESCAPED CONVICTION FOR OFFENSES		
57	NEED FOR ACTION TO ASSIST IN THE INVESTIGATION OF OTHER OFFENSES		
58	POLICE DESIRE FOR CONVICTIONS		1
59	PUBLIC SUPPORT IN THE AREA OF ENFORCEMENT		
60	RECENT NEWS COVERAGE		
61	OFFICER'S VALUE SYSTEM		
62	OFFICER'S KNOWLEDGE OF HIS AUTHORITY		
63	OFFICER'S EXPERIENCE		2
64	OFFICER'S TRAINING		
65	OTHER FACTORS-----		

occurrences of the factors). The influential factors developed from this application of the instrument would provide the foundation not only for the analysis of operational decision making, but also for the base from which we might hope to predict "situational police discretion."

## CHAPTER V

### CONCLUSIONS

#### Summary of the Research

This thesis has attempted to explore the problem of situational police discretion in a quasi-explanatory manner. The study was aimed at a specific social-cultural context--the minority group areas in metropolitan cities. Yet the social-temporal context ingrained within this focus, is marked by the Civil Rights Movement, heightened by the extreme sensitivity of both the community and the police, and involves the initiation of a slow but vast police reorganization.

While this thesis constitutes mere exploratory research, a valid methodology was adopted, wherein the problems underlying police discretion were carefully examined and defined. One hundred cases, selected from a period of seven weeks' observation in two of the highest crime rate areas in the country, were charted and analyzed to specifically uncover where decision-making occurs, the nature of individual decisions and decision-types, as well as indicating the actual involvement of discretion. While the total sampling of police incidents represents a "universe," the one hundred

incidents were classified into ten categories. At this point, it was felt that the sample was really of inadequate size, though it was an efficient tool from which the analysis could commence.

One feature of the sample is perhaps atypical in that it was drawn from a single period of observation at the start of a hot summer, that is, a single particular season or time of year. Yet with these limitations in mind, the incidents utilized were certainly actual, unaltered situations of the type encountered daily by police officers in this country. The analysis of the charts appears reliable in that very similar patterns of action evolved. Although empirically based, this analysis is definitely subjective. It is completely affected by the interpretative abilities of the author, his bias' and limits of observation and interview. The types of decisions that evolved can then only be validated in terms of their recurrence within the one hundred cases.

The key to this thesis lies in the nature of the influencing factors that evolved both from the case analysis and the review of the literature. While many of these might appear obvious based on logical deduction, it is felt that each of these factors has been validated by the research.

The instrument designed then, was based on the derived factors, which influence discretion, and on a breakdown of operations or actions performed by police officers in all situations. It was indicated that to determine adequately



the relative influence of each of these factors, a fairly large sample of incidents would be required. This would be the first step in any continuation of this research.

Based on the above, the influencing factors and police actions were adapted for purposes of efficiency, to computerization by utilizing a simple Data Coding Form Model. This model applied both the factors and the actions along a tri-dimensional axis wherein the sequence of decisions would also be revealed and related to both the influencing factor, and the particular police action. It must be noted that the design of the instrument allows for the addition of other influencing factors which might be derived from further study. However, careful definition of any possible factor is extremely necessary. This model then allows for the analysis of field police incidents in terms of the numerous factors within the situation which affect the decisions and exercise of discretion by the police officer.

It is hypothesized that this Coding Form would provide an actual measure of the role or amount of influence of each of the sixty-four derived factors as they affect "situational police discretion." The methodology required to validate this hypothesis has been described. It must be determined then, whether each of these individual factors do play a significant role in the use of discretion by the officer. Can the researcher indeed get at all the factors which might influence an officer's decision? While this

might appear doubtful, certainly most of the influences should be derived if fine observation, probing interviews and logical analysis were utilized.

#### Importance of the Research

It has been demonstrated that the exercise of police discretion is clouded by many problems involving legal authority, communication, the effects of organization, the attempt to impose checks and balances by the prosecutors and the judiciary, the intentions of the legislature, as well as accepted police procedure and the demands of the individual situation.

It is felt that the instrument developed within this thesis provides a foundation with which to study the exercise of discretion by the officer in the street. Such an examination should accomplish either support for the present independence of the officer and his discretionary role, or illustrate his lack of ability to impartially enforce the law. Should the latter prove to be the most feasible conclusion, then the role of the police officer must be completely redefined and limited according to the needs of the community to be served. Should, however, the former conclusion be supported, then the community should respond by actively supporting the police role and by establishing a more complete and efficient legal basis for the maintenance of the present status and authority of the police officer.

### Recommendation for Further Research

The instrument proposed might be adapted to several modes of research. For example, the instrument could be used to validly examine the decision-making process of a single officer, or perhaps to compare a small number of officers, observed over a long period of time. On the other hand, a repetition of the observation study already accomplished, utilizing the instrument derived herein, might also prove extremely fruitful, so long as a sufficiently large sampling of incidents was achieved.

As indicated, the first step in any continuation of this research would be an attempt to show the relative role of each of the derived factors in influencing a police officer's decisions. Yet it is proposed that the research instrument developed herein might serve as a broader foundation for study.

For example, it is evident that a number of social problems have come to rest on the shoulders of our municipal police agencies. It is realized too that these agencies could and indeed must be considerably improved. Yet daily, the brunt effects of society's ills are felt by the officer in the street, and his patrol level supervisors. While these men do not necessarily expect to command respect for the uniform they wear, or the individual within the suit of clothes, there must be among the populace with which the officers deal an honoring of the badge--the office of policeman. This

distinction is important in determining what the officer in the street expects. It appears that it is this lack of an established tradition of honoring the office rather than the man, both on the part of the disobedient citizen, and on the part of the at times over-demanding officer, which is significant in determining the reactions of the policemen in what are routine and relatively simple complaints. In terms of this instrument then, can a base be provided which would determine to what extent a man's reactions can be predicted both by training and testing? This question involves qualities of prejudice, harassment, and all of the sixty-four derived situational factors. Yet in the split second decision, the men respond. Are these quick decisions affected or affected in retrospect by the influencing factors?

The police officer has been put on the defensive by a combination of four important community factors: recent local court interpretations, the actions of the prosecutor's office, and recent press coverage and public opinion. These elements affect his work in the street and his use of discretion. Yet is the effect of these factors so great as to hamper effective law enforcement?

It was established in the review of the literature that administrative checks can be utilized by command personnel to control the discretion exercised by patrolmen. It appears that through a lack of utilization of these checks--a lack of good supervisory practice--that bad habits, overspecialization, and other occurrences might well have

developed. Based on the role of the influencing factors, which would be revealed by an application of this instrument, could simple influences as well as particular training be brought to bear upon the officer, so as to raise the visibility of police discretion within the police organization?

Furthermore, through training can the frames of reference of patrolmen be enlarged so as to include overall community objectives. While this could only be determined after the thorough application of this and similar instruments, the question as to whether an officer can practically utilize this knowledge of the total effect of his daily decisions must be answered.

The above paragraphs have indicated the extremely wide scope of problems and research required before we can hope to deal with the problems that arise from the officer's use of discretion. Yet it must be re-emphasized that while these problems exist, a police officer whose authority and role is defined by law and who is properly selected, trained, supervised and supported by the community, can indeed validly and reliably exercise wise decision-making power. Inevitably such an application of "situational police discretion" will not only enhance the aims of law enforcement, but also serve to ensure that the simultaneous goals of the public safety and the inherent respect for individual liberties will be achieved. The officer's authority of individual judgment becomes then one of the most indispensable tools at his disposal--that is, police discretion.

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**APPENDIX ONE**

**SAMPLE**

**INCIDENT CHARTS**

## APPENDIX I

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE 2-7-66 TYPE OF CASE Felony Arrest CASE NUMBER F-25	DESCRIPTION OF EACH STEP	OPERATION STEP NUMBER	TRANSPORTATION	STORAGE	INSPECTION	TIME IN MIN.	DECISION MADE	DECISION POINT
	Officers rec'd run - fight - gun involved	1	<input checked="" type="radio"/>			1504		*
	Officers drove to the scene with red light/siren -- a lower class duplex	2				1509	*	
	<u>Decision:</u> method of driving to the scene determined by dept. procedure							
	Officers met the complainant and offenders, a Negro family middle aged, son about 20 yrs.	3	<input type="radio"/>					
	Officers note the complaint of a fight in which shots were discharged.	4	<input type="radio"/>					*
	Officers asked to see the gun, request refused, officers viewed several bullet holes and smelled the powder.	5	<input type="radio"/>				*	
	<u>Investigatory Decision:</u> based on the nature of the complaint, demeanor of the participants.						*	
	Officers searched the home, found the gun.	6					*	
	<u>Decision:</u> based on the nature of the complaint, demeanor of the participants, facts viewed on investigation.						*	
	Officers arrest the father and the son.	7	<input type="radio"/>				*	
	<u>Decision:</u> based on the above factors as well as the discovery of the gun.						*	
	Officer 1 restrains Mr X the son who grabbed a hammer	8	<input type="radio"/>				*	
	Officers transport the offenders to the station	9						
	Officers book the son ADW Gun, release the father	10	<input type="radio"/>				*	
	<u>Decision:</u> based on the facts learned, the nature of the complaint, behavior of the participants, the need to prevent further violence.							
	----- T O T A L S -----							

[illegible]

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE 13-6-66 TYPE OF CASE Felony CASE NUMBER F - 44		DESCRIPTION OF EACH STEP	OPERATION STEP NUMBER	TRANSPORTATION	STORAGE	INSPECTION	TIME IN MIN.	DECISION POINT DECISION MADE
		Officers rec'd a run - burglary unspecified.	1	<input type="radio"/>			1924	*
		Officers drove to the setting a low class rooming house <u>Decision:</u> Nature of the response to the scene based on Department procedure	2	<input type="radio"/>				*
		Officers met the complainant Miss JB, her guests Miss B, Mr X & Mr Y, all sloppily dressed, Mr Y being the only white person.	3	<input type="radio"/>				
		Officers noted her complaint of a missing record player and \$70.00	4	<input type="radio"/>				*
		Officers noted that the landlady had seen the offender, and from the description that Miss JB knew him personally. <u>Decision:</u> based on interview procedure, due to the nature of the complaint, the demeanor and occupation of the complainant.	5	<input type="radio"/>				*
		Officers told Miss JB that she should find the offender and tell him to return the items or be reported to the the police. <u>Decision:</u> based on the nature of the complaint, facts learned through interview, demeanor & occupation of the complainant, setting.	6	<input type="radio"/>				*
		Officers noted Miss JB's agreement	7	<input type="radio"/>				
		Officers returned to the car	8	<input type="radio"/>				
		Officers radioed in-service	9	<input type="radio"/>			1944	
		----- T O T A L S -----	9				8/123	3

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE 8-6-66 TYPE OF CASE Misdemeanor Arrest CASE NUMBER M 13	DESCRIPTION OF EACH STEP	OPERATION STEP NUMBER	TRANSPORTATION	STORAGE	INSPECTION	TIME IN MIN.	DECISION MADE	DECISION POINT
Officers rec'd run a man down		1	<input type="radio"/>			1607		*
Officers drove to the setting a row of lower class homes in a racially mixed area <u>Decision:</u> based on the Department procedure as to the nature of proceeding to the scene of a Man Down		2	<input type="radio"/>			1612		*
Officers viewed a man down -male white about 60 yrs. unconscious on the porch of the house		3	<input type="radio"/>					
Officers determined that the man was drunk by inspection. <u>Decision:</u> based on the nature of the complaint, behavior of the offender.		4			<input type="checkbox"/>			*
Officers met the lady of the house, who complained that the man was a stranger.		5	<input type="radio"/>					
Officers met 3 Negro males who volunteered to take him home, to avoid the arrest.		6	<input type="radio"/>					*
Officers determined that they do not really know the offender and do not know where he lives. <u>Decision:</u> based on the nature of the complaint, behavior of the complainant and the bystanders.		7	<input type="radio"/>					*
Officer 1 sat drunk down on curb, called for the wagon Drunk is placed under arrest. <u>Decision:</u> based on the nature of the complaint, behavior of the complainant, offender, facts learned through investigation		8	<input type="radio"/>					*
Officers searched the offender & placed him into the wagon. <u>Decision:</u> based upon Department procedure		9	<input type="radio"/>					*
Officers return to the car		10	<input type="radio"/>					
Officers radio in-service		11	<input type="radio"/>			1625		
----- T O T A L S -----		11				5/135		5





INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE 13-6-66 TYPE OF CASE Juvenile CASE NUMBER J - 10	DESCRIPTION OF EACH STEP	OPERATION STEP NUMBER	TRANSPORTATION	STORAGE	INSPECTION	TIME IN MIN.	DECISION MADE	DECISION POINT
Officers rec'd run - larceny of a bicycle		1	○			2315		*
Officers drove to the scene - a lower class house <u>Decision:</u> Nature of response to the scene based upon Department Procedure.		2	○			2320	*	
Officers met Mr. & Mrs C, and L. their son, a Negro family, known personally to Officer 1.		3	○					
Officers noted that Mrs X desired that the boy be re- moved from the home as incorrigible.		4	○					
Officers noted that 2 stolen bikes were presently in the kitchen -- stolen by L. the son.		5	○					*
Officer 1 talked with Mr. X in private, suggesting that he go with the boy, and return the bikes. <u>Decision:</u> involves discretion, based on the time of day, personal acquaintance with the participants, nature of the complaint, behavior of the complainant and offender.		6	○				*	*
Officer 1 talked with L. the son, warning him of possible legal action, and placement in a Delinquent <u>Decision:</u> based on nature of complaint, behavior of offender, and latitude assumed by officers regarding juvenile complaints. (policy)		7	○				*	
Officers noted the cooperative attitude among the parties concerned.		8	○					
Officers returned to the car.		9	○					
Officers radioed in-service		10	○			2331		
----- T O T A L S -----		10				5/113	3	

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE 9-7-66 TYPE OF CASE DISTURBANCE CASE NUMBER D - 46		DESCRIPTION OF EACH STEP	OPERATION STEP NUMBER	TRANSPORTATION	STORAGE	INSPECTION	TIME IN MIN.	DECISION POINT DECISION MADE	
		Officers rec'd run - disturbance in a liquor store	1	○			1800	*	
		Officers drove to the scene - a relatively clean busy liquor store on the main street of the precinct. Decision: nature of response to the dispatch - determined by Department procedure.	2	○			805	*	
		Officers met the customers Mr & Mrs X and the store owners Mr & Mrs Y, Negro and White respectively	3	○					
		Officers noted that Mr. X felt that he had been short-changed \$10	4	○					*
		Officers interviewed the participants, noting that Mr. X was a regular customer. Decision: based on the nature of the complaint, demeanor of the participants.	5	○				*	*
		Officer advised Mr X to leave quietly and to count his change before leaving the store, the next time. Decision: based on the nature of the complaint, the behavior of Mr. Y, the store owner, law (it was a civil matter) and Dept. procedure	6	○				*	
		Officers noted that Mr. & Mrs X agreed and left	7	○					
		Officers returned to the car	8	○					
		Officers radioed in-service.	9	○			1817		
		----- T O T A L S -----	9				5/12	2	2

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE 5-7-66 TYPE OF CASE Traffic Violation CASE NUMBER T - 93	DESCRIPTION OF EACH STEP	OPERATION STEP NUMBER	TRANSPORTATION	STORAGE	INSPECTION	TIME IN MIN.	DECISION MADE	DECISION POINT
Officers were on patrol and viewed an auto make an improper left turn at an unreasonable speed.	1	<input type="radio"/>				2355	*	
Officer 1 asked officer 2 whether he wanted a ticket, decided it was worth a check, <u>Discretionary Action</u> illustrates decision in step 3.	2	<input type="radio"/>						
Officers stopped the offenders. <u>Decision:</u> based upon the nature of the offense, the time of day, the behavior of the offenders	3	<input type="radio"/>					*	
Officer 1 checked the license and registration and verbally informed the driver of the offense. <u>Decision:</u> Investigatory check based upon Department procedure, nature of the offense.	4	<input type="radio"/>			<input type="checkbox"/>		*	
Officer 1 noted that the offenders were Navy men stationed at "ABC"	5	<input type="radio"/>						
Officer 1 noted that the driver was civil and cooperative	6	<input type="radio"/>					*	
Officer 1 told the driver to drive safely and warned him to be careful. <u>Decision:</u> based upon the nature of the offense, the demeanor of the offender, officers knowledge of who or what the offender was (i.e., Navy)	7	<input type="radio"/>					*	
Officer 1 returned to the car, "I hate to give a serviceman a ticket".	8	<input type="radio"/>						
Officers resumed patrol	9	<input type="radio"/>				2401		
----- T O T A L S -----	9					6	3	3



INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE 4-7-66 TYPE OF CASE INJURED PERSON CASE NUMBER I - 5	DESCRIPTION OF EACH STEP	OPERATION STEP NUMBER	TRANSPORTATION	STORAGE	INSPECTION	TIME IN MIN.	DECISION POINT DECISION MADE
Officers rec'd run - injured person, ambulance dispatched		1				1742	*
Officers drove to the scene, red light/siren, arrive with ambulance at a low class poolroom.		2				1743	*
Decision: based on procedure of the Department as to nature of response to the scene.							
Officers note witnesses statements to effect that victim took a seizure and collapsed.		3					*
Decision: to determine facts, based on the nature of the complaint, the nature of the setting, behavior of the victim.							
Officers followed ambulance to hospital		4					*
Officers ascertained doctor's diagnosis		5					*
Decision: to determine facts, based on procedure and the nature of the complaint.							*
Officers completed an injured person report.		6					*
Decision: based on the nature of the complaint, facts learned through above investigation, behavior of the victim, procedure of the Department.							
Officers returned to the car.		7					
Officers radioed in-service.		8				1756	
----- T O T A L S -----		8				3/11	4

INCIDENT PROCESS CHART METROPOLITAN POLICE DEPT. PRECINCT A B DATE 25-6-66 TYPE OF CASE FIRE CASE NUMBER Fi - 80		DESCRIPTION OF EACH STEP	OPERATION STEP NUMBER	TRANSPORTATION	STORAGE	INSPECTION	TIME IN MIN.	DECISION POINT DECISION MADE	
Officers rec'd run to a fire			1	○			0939		
Officers expedited to the scene - a lower class at- tached dwelling <u>Decision:</u> nature of proceeding to the scene de- termined by Department procedure			2	○			0940	*	
Officers entered the smoking home to obtain infor- mation while firemen sought the source of the smoke			3	○					*
Officers helped the firemen search <u>Decision:</u> based on the nature of the event, dis- cretion involved.			4			□		*	*
Officer 1 obtained information from the resident, a Negro family, middle-aged. <u>Decision:</u> according to the procedure of the De- partment.			5	○				*	
Officers & firemen found source of fire - rags in basement.			6	○					*
Officer 2 completed a fire report. <u>Decision:</u> based on the nature of the event, De- partment procedure.			7	○				*	*
Officers returned to the street, directed traffic. <u>Decision:</u> based on the nature of the event, dis- cretion is involved.			8	○				*	
Officers returned to the car.			9	○					
Officers radio in-service			10	○			10 10		
----- T O T A L S -----			10				1/305	5	

**APPENDIX TWO**

**SAMPLE**

**INCIDENT - DECISION**

**CHARTS**

APPENDIX II

POLICE ACTIONS	#	SPECIFICATION	DEC	DIS	FACTORS	INCIDENT NO.
1. O's mobilized	1	O. rec'd run - fight - gun involved				
2. O. entered situation	2	O. drove red L/S to L/C duplex	1			54
3. O. met complainant/com. gp.	3	O. met N/F 50 yrs - the mother				
4. O. met informer/inf. gp.	4					
5. O. met offender/off. gp.	4	N/M 50 & 20 yrs & father/son resp.				
6. O. met bystander(s)						
7. O. noted Complaint-F.M.J.D.T.A. Fi.I.	5	F. complaint - fight, shots discharged				
8. O. investigated by inspection	7	O. viewed several bullet holes - & searched the home & found gun	3		1 9 41 45	
9. O. investigated by interview	6	O. asked to see the gun - refused	2		1 9 41	
10. O. checked license/registration						
11. O. re-directed traffic						
12. O. gave first aid/comforted						
13. O. used physical force to subdue/restrain	9	O. restrained son who grabbed a hammer	5		4 5 6 9	
14. O. used physical force for protection						
15. O. performed other operation						
16. O. arrested for specific offense	8	O. arrested father & son--ADW gun	4		1 3 9 18 21 41 42	
17. O. arrested for investigation						
18. O. issued ticket						
19. O. took a formal report						
20. O. reprimanded/warned						
21. O. suggested other agency/action						
22. O. arbitrated/counselled						
23. O. used "cool-out" technique						
24. O. did						
25. advised offender of rights	12	O. advised son of his rights	7		54	
26. O. searched offender	10	O. searched offenders	6		1 54	
27. O. transported offender/called wagon	11	O. transported to the station				
28. O. booked off. original charge						
29. O. booked off. on final new charge	13	O. booked son ADW, released father	8		1 41 42 9 12 39 45	
30. O. returned to service/patrol	14					

INCIDENT- PRECINCT  
A B  
DECISION  
CHART

DATE  
2-7-66

TYPE OF INCIDENT  
Felonny (arrest)

F - 25



POLICE ACTIONS	#	SPECIFICATION	DEC	DIS	FACTORS
1. O's mobilized	1	O. rec'd run - somebody screaming			
2. O. entered situation	2	O. drove red L/S to lower class apt	1		54
3. O. met complainant/com. gp.	3	O. met Mr. P. 81 yrs. W/M, German			
4. O. met informer/inf. gp.					
5. O. met offender/off. gp.					
6. O. met bystander(s)					
7. O. noted complaint-F.M.J.D.T.A. F.I.	4	O. noted F.-robbery f&v, - loss \$60			
8. O. investigated by inspection	6	O. searched basement escape route	3		
9. O. investigated by interview	5	O. noted poor eyesight of Mr. P, - no description available	2		1 18
10. O. checked license/regISTRATION					
11. O. re-directed traffic					
12. O. gave first aid/comforted					
13. O. used physical force to subdue/restrain					
14. O. used physical force for protection					
15. O. performed other operation					
16. O. arrested for specific offense					
17. O. arrested for investigation					
18. O. issued ticket					
19. O. took a formal report	7	O. completed a robt ry report	4		1 18 41 44 54 58
20. O. reprimanded/warned					
21. O. suggested other agency/action					
22. O. arbitrated/counselled					
23. O. used "cool-out" technique					
24. O. did _____	8	O. gave details to detectives	5		54
25. advised offender of rights					
26. O. searched offender					
27. O. transported offender/called wagon					
28. O. booked off. original charge					
29. O. booked off. on final new charge					
30. O. returned to service/patrol	9				

INCIDENT- PRECINCT DATE TYPE OF INCIDENT INCIDENT NO.

DECISION

CHART

A

B

24-6-66

Felony

F 40

POLICE ACTIONS	#	SPECIFICATION	DEC	DIS	FACTORS
1. O's mobilized	1	O. rec'd run - woman screaming			
2. O. entered situation	2	O. drove red L/S to mid. Class apt.	1		54
3. O. met complainant/com. gp.					
4. O. met informer/inf. gp.					
5. O. met offender/off. gp.	3	O. exited elevator to view fight-4N/m/f			
6. O. met bystander(s)					
7. O. noted Complaint-F.M.J.D.T.A. Fi.I.					
8. O. investigated by inspection	6	O. viewed apt. - torn apart completely	4	4	1 41
9. O. investigated by interview	12	O. re-entered to determine cause of fight	8	8	1 9 41
10. O. checked license/registration					
11. O. re-directed traffic					
12. O. gave first aid/comforted					
13. O. used physical force to subdue/restrain	4/9/13/	O. restrained combatants	9/6/2	2/6/9	4 6 9
14. O. used physical force for protection	5/8	O. were attacked - fought	5 3	3 5	1 4 5 6 9
15. O. performed other operation					
16. O. arrested for specific offense	10/14	O. arrested N/F2&1, N/M, dis/con.	7 10	7 10	1 9 10 14 41 55 (3)
17. O. arrested for investigation					
18. O. issued ticket					
19. O. took a formal report	16	O. completed offense report	11		54
20. O. reprimanded/warned	7	O. warned N/F 1, who called his wife a 'whore'			
21. O. suggested other agency/action					
22. O. arbitrated/counselled					
23. O. used "cool-out" technique					
24. O. did					
25. advised offender of rights					
26. O. searched offender					
27. O. transported offender/called wagon	11/15	O. took off.s to the wagon			
28. O. booked off. original charge					
29. O. booked off. on final new charge	17	3 ass. on police, 3 dis. con.			
30. O. returned to service/patrol	18				

INCIDENT-  
DECISION  
A  
PRECINCT  
DATE  
TYPE OF INCIDENT  
Misdemeanor-Arrest  
M - 14  
INCIDENT NO.

POLICE ACTIONS	#	SPECIFICATION	DEC	DIS	FACTORS				INCIDENT- DECISION CHART	PRECINCT A B	DATE 16-7-66	TYPE OF INCIDENT Misdemeanor-Arrest	INCIDENT NO. M - 15
1. O's mobilized	1	O. on patrol viewed situation	1	1	1	9							
2. O. entered situation	2	O. stopped car											
3. O. met complainant/com. qp.													
4. O. met informer/inf. qp.													
5. O. met offender/off. qp.	3	noted M/N 25 yrs, passed out											
6. O. met bystander(s)													
7. O. noted Complaint-F.M.J.D.T.A. Fi.I	4	M. offenses - drunk											
8. O. investigated by inspection													
9. O. investigated by interview	5	O. verbally tried to rouse M/N	2	2	1	9	63						
10. O. checked license/registration													
11. O. re-directed traffic													
12. O. gave first aid/comforted													
13. O. used physical force to sub- due/restrain													
14. O. used physical force for pro- tection													
15. O. performed other operation	7	O. carried N/M to ptl car	4	4	9	10							
16. O. arrested for specific offense	6	drunk	3	3	1	9	10	8	54				
17. O. arrested for investigation													
18. O. issued ticket													
19. O. took a formal report													
20. O. reprimanded/warned													
21. O. suggested other agency/action													
22. O. arbitrated/counselled													
23. O. used "cool-out" technique													
24. O. did													
25. O. advised offender of rights													
26. O. searched offender	8		5		54								
27. O. transported offender/called wagon	9	O. transported to stn.											
28. O. booked off. original charge	10	Drunk	6	6	9	10	45	54	1				
29. O. booked off. on final new charge													
30. O. returned to service/patrol	11												

POLICE ACTIONS	#	SPECIFICATION	DEC	DIS	FACTORS
1. O's mobilized	1	O. rec'd run; a larceny report			
2. O. entered situation	2	O. drove to scene; entered a lc house	1		54
3. O. met complainant/com. gp.	3	Mrs. N N/F, 35 yrs.; Mr. X, her father			
4. O. met informer/inf. gp.					
5. O. met offender/off. gp.	4	Miss N N/F about 15 yrs.			
6. O. met bystander(s)					
7. O. noted Complaint-F.M.J.D.T.A. Fi.I.	5	M. complaint; missing \$60 from Mrs. N's purse			
8. O. investigated by inspection					
9. O. investigated by interview	6	Mrs. stated that \$40 found in Miss N's purse; demands the arrest of Miss N.	2	1	18
10. O. checked license/registration					
11. O. re-directed traffic					
12. O. gave first aid/comforted					
13. O. used physical force to subdue/restrain					
14. O. used physical force for protection					
15. O. performed other operation					
16. O. arrested for specific offense					
17. O. arrested for investigation					
18. O. issued ticket					
19. O. took a formal report					
20. O. reprimanded/warned					
21. O. suggested other agency/action	7	O. told Mrs. N. to swear out complaint	3	3	1 18 45
22. O. arbitrated/counselled					
23. O. used "cool-out" technique					
24. O. did _____	8	O. noted Mrs. N's continued threats; ignored her.	4	4	18 27
25. O. searched offender					
27. O. transported offender/called wagon					
28. O. booked off. original charge					
29. O. booked off. on final new charge					
30. O. returned to service/patrol	9	O. exited and resumed patrol			

INCIDENT-  
DECISION  
CHART

PRECINCT  
A B

DATE  
26-6-66

TYPE OF INCIDENT  
Misdemeanor

INCIDENT NO.  
M - 19

INCIDENT- DECISION CHART	PRECINCT	DATE	TYPE OF INCIDENT	INCIDENT NO.	POLICE ACTIONS					SPECIFICATION	DEC	DIS	FACTORS				
					#												
A	B	25-6-66	Juvenile	J-2	1.	O's mobilized				O. rec'd run - juvenile waving knife							
					2.	O. entered situation				O. drove to the scene--a supermarket	1					54	
					3.	O. met complainant/com. gp.				O. met store mgr. W/M 30 yrs							
					4.	O. met informer/inf. gp.											
					5.	O. met offender/off. gp.											
					6.	O. met bystander(s)											
					7.	O. noted Complaint-F.M.J.D.T.A. P.I.				J. complaint--boy threatening with a knife							
					8.	O. investigated by inspection											
					9.	O. investigated by interview				O. obtained--ve descrip. of the boy	2	2			1	18	
					10.	O. checked license/registration											
					11.	O. re-directed traffic											
					12.	O. gave first aid/comfoted											
					13.	O. used physical force to sub- due/restraint											
					14.	O. used physical force for protection											
					15.	O. performed other operation											
					16.	O. arrested for specific offense											
					17.	O. arrested for investigation											
					18.	O. issued ticket											
					19.	O. took a formal report				O. completed a Juvenile report	3	3			1	18	43 54
					20.	O. reprimanded/warned											
					21.	O. suggested other agency/action											
					22.	O. arbitrated/counselled											
					23.	O. used "cool-out" technique											
					24.	O. did				O. informed mgr. of police procedures							
					25.	advised offender of rights											
					26.	O. searched offender											
					27.	O. transported offender/called wagon											
					28.	O. booked off. original charge											
					29.	O. booked off. on final new charge											
					30.	O. returned to service/patrol											

POLICE ACTIONS	#	SPECIFICATION	DEC	DIS	FACTORS				INCIDENT- DECISION	PRECINCT	DATE	TYPE OF INCIDENT	INCIDENT NO
1. O's mobilized	1	O. rec'd run--man with a gun											
2. O. entered situation	2	O. drove red L/S, entered lower class home	1					54					
3. O. met complainant/com. gp.	5	O. met Mrs X, N/F 35 yrs											
4. O. met informer/inf. gp.	6	O. met Mr. X, N/M 35 yrs											
5. O. met offender/off. gp.	4	O. met 2 F/N bystanders, directed upstairs											
6. O. met bystander(s)	7	O. noted D. Complaint, he held a gun to her face											
7. O. noted Complaint-F.M.J.D.T.A. Fi.I	8	O. inspected quickly without searching, no gun found	3					1	9	10	18		
8. O. investigated by inspection													
9. O. investigated by interview													
10. O. checked license/registration													
11. O. re-directed traffic													
12. O. gave first aid/comforted													
13. O. used physical force to subdue/restrain													
14. O. used physical force for protection													
15. O. performed other operation	3	O. entered with guns drawn	2					1	2	41			
16. O. arrested for specific offense													
17. O. arrested for investigation													
18. O. issued ticket													
19. O. took a formal report													
20. O. reprimanded/warned	9	O. warned & explained legal position	4					1	9	10	15	18	24
21. O. suggested other agency/action	10	O. suggested that Mrs. X seek a warrant	5					1	9	10	15	18	24
22. O. arbitrated/counselled													41
23. O. used "cool-out" technique													45
24. O. did													48
25. advised offender of rights													52
26. O. searched offender													63
27. O. transported offender/called wagon													
28. O. booked off. original charge													
29. O. booked off. on final new charge													
30. O. returned to service/patrol	11												

D - 45

Disturbance

26-6-66

B

A

CHART

Pocket has: 8 Data Fovms

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SUPPLEMENTARY  
MATERIAL



## DATA CODING FORM

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TIME



DATE

2-7-66

TYPE OF INCIDENT

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INCIDENT NUMBER 7-2-4

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## DATA CODING FORM

				
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24-6-62

7-6-1007

INCIDENT NUMBER 740

# FACTOR - RELATIONSHIPS

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TYPE OF INCIDENT

WILSON, EMMERSON

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INCIDENT NUMBER *M*


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F A C T O R - R E L A T I O N S H I P S



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TYPE OF INCIDENT

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INCIDENT NUMBER

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# FACTOR - RELATIONSHIPS



## - DATA CODING FORM -

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# FACTOR - RELATIONSHIPS



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TIME



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TYPE OF INCIDENT

JUVENILE

INCIDENT NUMBER

15

FACTOR - RELATIONSHIPS

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## - DATA CODING FORM -

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26-6-66

DISTURBANCE

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