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[ca. 1964]

THE POLICE AND THE COMMUNITY:
POLICE PRACTICES AND MINORITY GROUPS

By

Alan Gartner
Florina Lasker Fellow in
Civil Liberties and Civil Rights,
Brandeis University

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I. INTRODUCTION

This paper is designed to do three distinct tasks. First, to investigate the existence and extent of police malpractice in the Boston area, especially as it relates to minority groups. Second, to collect and evaluate various procedures to remedy the problem. And third, to make specific proposals for Boston, and to note their applicability to the larger problem of police-community relations throughout the country.

The extent of police malpractice is difficult to document. By the very nature of the problem, both in terms of the situation(s) in which it occurs and the people involved, documentary evidence is rare. Perhaps as important as documentary evidence is the perception of the public, or some portion of the public, regarding the existence of the problem. It may well be true that the Negro* community overstates the frequency and severity of police malpractice; so, too, the larger community fails to be aware of, or ignores the problem to the extent that, in fact, it does exist. Equally important as the Negro community's perception of the problem, is the belief that there are no institutional ways to deal with it. This feeling of helplessness leads to contempt for the police and a breakdown in the necessary cooperation between citizens and public authorities in order to maintain law and order.** Further, it encourages extra-legal steps to seek justice.

Our society asks of its police a variety of services, many of them contradictory and some of them incapable of fulfillment. Distinct from any other community service organization -- and that is what the police are -- the police are in an adversary role with the public. They seek to prevent citizens from acting as they wish to act. While the police are asked to perform a community desired role, they are on the one hand restricted in the tools they may use, and on the other hand given a little respect, especially in relation to the magnitude of the job asked of them.

* Negroes comprised 92% of Boston's 1960 non-white population.

** A small note, which may be indicative of the community's attitude toward the police, is in regard to a recreation program to be held in the Washington Park area of Roxbury. The young teen-agers, for whom the program was designed, were asked to sign up at police stations in order to participate; their unwillingness to do this has led to the use of other community facilities as "sign-up" places.

The precise function of the police, the prevention of crime and the apprehension of criminals, must be sharply delineated. Too often the police come to see themselves as an organ of adjudication. The decision by the police of an individual's guilt, especially in certain crimes and by members of certain minority groups, leads to many forms of malpractice.*

'Our criminal convictions are constantly being reversed on technicalities - not on the evidence. The police are frustrated.'

'The criminal is being afforded more legal protection than the ordinary citizen.' Police Chief Robert W. Murray of District of Columbia.....

Chief Murray implies that the police are capable of distinguishing between a 'criminal' and an 'ordinary citizen.'

But they are not; nor is it their function to try. The determination of guilt is the function of judges and juries.

The function of the police is to enforce the law without breaking the law. If this proves frustrating, then it is the price of a free society.**

The problem which faces the police is compounded by the urban situation in which they find themselves.

It would be difficult to devise a combination of factors more conducive to crime and disorder than is found in the typical great city of the United States. Rarely does history record so many people of varied beliefs and modes of conduct grouped together in so competitive and complex a social structure.***

The metropolis created a whole new type of public with which the police must work. The public is impersonal. Its members are not aware of their membership in the community, hence they have no interest in it.****

The community must make clear the nature of its demands upon its organ, the police. For too often the concern is solely for "property rights and personal comfort. Both can be better secured against the depredations of

* See in this matter William A. Westerley, "Violence and the Police," American Journal of Sociology, LIX, 1 (July, 1953), pp. 34-41.

** "'Criminal' and 'Ordinary Citizen'," Boston Herald, February 18, 1963.

*** William Parker, "The Police Challenge in our Great Cities," The Annals of the American Academy of Political and Social Sciences, Vol. 291 (January, 1954), p. 5. See also, The Police: An Interview by Donald McDonald with William H. Parker, Chief of Police of Los Angeles (Center for the Study of Democratic Institutions, 1962).

**** Larry W. Fultz, Inspector of Police, Houston, Texas, "Racial Factors in Law Enforcement," A paper presented at the Police-Community Relations Institute, 1959 (Michigan State University, East Lansing, Michigan).

the lawless elements of society, in the measure that police agencies are given greater control over individuals."* Rather, there must be from the community an increased awareness of the balancing of social order and personal liberty. When we as a community recognize that law and police procedures are designed to protect society -- both from lawlessness and excessive constraint -- then we can better tell the police what it is we want them to do. Some crimes will not be solved because we are unwilling to sacrifice the personal liberty and the infringements upon individual freedom necessary to do so. As Justice William O. Douglas has said, "We in this country . . . early made the choice -- that the dignity and privacy of the individual were worth more to society than an all-powerful police."**

The protection of its citizens, their rights and property, is what a free society has a right to expect from the police. The police, in such a society, need the cooperation of the citizenry to accomplish this goal. Respect for law and order is not something which simply occurs, nor is it a quality with which people are born. They learn this from their family, community, and experience. "The average citizen's respect for the authority of society is dependent upon the degree which that authority is impartially exercised. The impartial enforcement of the law builds necessary respect for the authority of society."*** While the fact of impartial enforcement is crucial, important, too, is the perception within the community that this is so. "It is legitimate to argue that at least as important as the fact of impartial justice is the image of justice in a community. Do the poor and minority-group members of a community believe that justice is administered on an impartial basis?"****

The experience of other countries, as noted by Bruce Smith, who was until his death in 1960 the leading student of police affairs in America, is

* Richard A. Myren, "Freedom and the Policeman," The Nation, Vol. 196, 1 (January 5, 1963), p. 12.

** Cited in "Our Own Police State," Boston Herald, June 28, 1960.

*** Fultz, loc. cit.

**** John A. Hannah (Chairman of the United States Commission on Civil Rights), "Equal Protection Under the Law - Fact or Fiction," A paper presented at the Police Community Relations Institute, 1962 (Michigan State University, East Lansing, Michigan).

illuminating. "Distortion of the judicial processes are of rare occurrence in other English-speaking countries, largely because responsible police authorities have learned to exercise restraint in the handling of prisoners."* The present American scene is not without its bright spots. A new attitude and style is best expressed by Philadelphia's Deputy Police Commissioner who has said, "We must better attune ourselves to our community's needs and desires and understand that the people we work for have the right to make the rules by which we serve."**

* Bruce Smith, Police Systems in the United States, 2nd rev. ed. (New York: Harper & Brothers, 1960), p. 11.

** Howard R. Leary, "A Police Administrator Looks at Police-Community Relations," A paper presented at the Police Community Relations Institute, 1959 (Michigan State University, East Lansing, Michigan).

II. BOSTON

The City and the Police Department

The most recent and exhaustive study of the Boston Police Department notes that the Department "has probably availed itself of more expert opinion over the years from outside sources than any other municipal law enforcement agency in the country."* The preface to the "Tamm Report" goes on to note that the earlier surveys had recommended superior practices.

Previous administrations have made little use of the results of the earlier studies. Progress has been slow. This can be attributed in part to an unwillingness of the then incumbent administrations to change existing, comfortable, and familiar ways of doing things to modern, efficient, and effective practices. This failure was compounded by a failure of other officials and the citizenry to demand superior law enforcement services.**

Boston's population in 1960 was 697,197, down from a 1950 high of 801,444. The city has a relatively small proportion of the population of the U. S. Census standard metropolitan statistical area, 36.8%. The city area is 47.8 miles.

Boston pays more for its police services, per capita, than does any of the fourteen cities nearest it in population. Per capita cost for these fourteen cities range from \$6.79 to \$20.95, with a median per capita cost of \$16.80. In 1961, Boston's per capita cost for police services was \$26.36. Police employees per square mile in these fourteen cities ranged from 4.1 to 46.7; Boston had 62.6 police employees per square mile. Police per one thousand inhabitants for these cities ranged from 1.2 to 3.7; in Boston there were 4.3 police employees per one thousand inhabitants.***

Thus for each of the categories, per-capita police cost, number of police employees per square mile, and number of police employees per one thousand inhabitants, Boston ranks highest of the fourteen cities closest to it in population. "The high ratio of salary costs in Boston is a reflection of the large number of personnel, not well-paid employees."****

* Field Service Division, International Association of Chiefs of Police, A Survey of the Police Department of Boston, Massachusetts, 1962, p. 1. This report is commonly referred to as the "Tamm Report" and will be so noted here.

** Ibid.

*** Ibid., Table 1.3.

**** Ibid., p. 7.

Of the twenty-one cities over 500,000 population, Boston's maximum salary for patrolmen is the lowest except for five southern cities and Philadelphia.*

While Boston's population declined 13% between 1950 and 1960, the size of its police force increased almost 9.5%, and police expenditures increased 85.2%. Relative to all U. S. cities over 250,000 in population, Boston's police costs both on a per capita basis and per one thousand inhabitants increased at a higher ratio.**

From any aspect, including the thorough local analysis which composes this report, the Boston Police Department is over-staffed and has been for a long time. . . . For years, the citizens of Boston have permitted themselves the luxury of a large force, not because crime and crime engendering conditions required it, but because of misuse.***

Statistics on crime are subject to many questions, but they do offer a measure of comparison of the work of various police forces. The 1961 Federal Bureau of Investigation figures for crimes per 100,000 population shows the Boston metropolitan area strikingly lower for all major crimes except auto theft than the average of all metropolitan areas. In percentage of offenses cleared by arrest for major crimes, Boston compares favorably with the average of the thirty-three largest cities.****

As a central focus of this report is the community's minority group population, it is appropriate to say a brief word about this group. "Over two-thirds of the Negro population of the state lives in the Boston metropolitan area, and more than half within the city limits."***** Over nine per cent of Boston's population is Negro, and "within the city, almost the entire Negro population lives in a contiguous, geographically compact area . . . Fewer than 1,500 of the 63,165 Negroes in Boston live outside this belt."***** In

*The maximum salary for patrolmen in Boston is \$5,500. Ibid., Table 4.2.

**Ibid., Tables 1.6, 1.7.

***Ibid., p. 16.

**** Cited in Martin Meyerson and Edward C. Banfield, "Law and Order," Boston Herald, May 2, 1963, p. 25.

***** Housing Discrimination in Massachusetts, Statement to the Public Meeting of the Housing Sub-Committee, Massachusetts Advisory Committee to the United States Commission on Civil Rights, March 5, 1963, by Helen Kistin, p. 4.

*****Ibid., pp. 4, f.

addition to being segregated, Boston's Negro population lives in a disproportionate share of unsound housing and pay a higher share of their income for this inferior housing.

A comparison by color of median earnings in Boston for males in the same occupation in 1959 shows non-whites earning from twenty to sixty per cent less than whites in such occupations as professional workers, sales, laborers, managers, etc.* An examination of the latest statistics published by the Business Manager of the Boston schools shows less money spent per capita for all but one item in the instructional budget for the seven districts containing schools having a population 90% or more Negro, as compared with the city as a whole.** This brief recitation is but a small sample of the available information which shows the seriously disadvantaged position in which Boston's Negro population finds itself.

The present Boston Police Force consists of over 2,900 officers. Of these, thirty-six are Negro, the highest in rank being a sergeant. Of the 261 school crossing guards, 10 are Negro.

The Complaints

The existence of police malpractices is undeniable. The fact that it is infrequent and in its worst aspects performed by relatively few officers is clear. These statements are true both for the whole country and for Boston.*** Not only does police malpractice exist in Boston, but far more serious is the

* U. S. Census of Population: 1960. Detailed Population Characteristics, Massachusetts. Final Report PC (1) - 230. (U. S. Government Printing Office, Washington, D.C., 1961), Table 124.

** Annual Report of the Business Manager to the School Committee of the City of Boston for the calendar year 1961, School Document No. 8-1962, Table 2. See also the author's forthcoming chapter, Civil Rights in Massachusetts, in Craig Spence, ed., Goals for Massachusetts.

*** On a nationwide basis, the best, and almost unique source is Volume V, Justice, 1961 United States Commission on Civil Rights Report. (Washington, D.C.: United States Government Printing Office, 1962). Several state advisory committees to the United States Commission have held public meetings on police practices, and their reports offer much relevant information. The Massachusetts Advisory Committee, chaired by Rev. Robert F. Drinan, S.J., Dean of Boston College Law School, held such a public meeting on May 24, 1963. For a report on this meeting, see the Boston Globe and the Boston Traveler for May 24, 1963, and the Boston Globe, the Boston Herald, and the Christian Science Monitor, May 25, 1963.

belief in many segments of the community that it exists on a large scale. This belief may well be, and most likely is false. Nonetheless, this belief is both a serious problem in itself and a severe detriment to effective police service. As Police Chief E. C. Hale of Lexington, Kentucky, pointed out, "The true victims of police brutality are the police themselves, since it develops widespread hostility and disrespect for the law among many members of minority groups."*

In Boston, the complaints of Negroes vis-a-vis the Police are largely of two orders: first, the failure to provide adequate services, and second, the mistreatment of Negroes. The most extreme statement of grievance is by Reverend Louis X, Boston leader of the Muslims, who said, "The police are not in our community to stop crime but to organize it and benefit from it."** While most responsible commentators would reject this as exaggerated and applicable, if at all, to a very small number of officers, many persons in the community are aware of serious problems.

Mrs. Sylvester Wright, Executive Director of the Roxbury Community Council, testified before the meeting of the Massachusetts Advisory Committee to the United States Commission on Civil Rights that the typical reaction of the Boston Negro to a police siren is to ask, "Who is being punished?" not, "Who is being protected?"

Rev. James Breeden, chaplain of the Roxbury Juvenile Court, told the Advisory Committee of a policeman pushing food off a restaurant counter and drawing a gun on some Negro youths, ordering them out to the street. He described the action as "beyond the area of what is allowed." Attorney Richard Banks said that some members of the Police Department have "a zoo keeper attitude toward Negroes in the Roxbury area." He charged that between one-fourth and one-sixth of Negroes who are arrested by the police are "roughed up."

An experienced police reporter notes the particular lack of respect for Negro adults, relating not so much brutality as "roughing up" and verbal abuse. Instances of verbal abuse, symptomatic of lack of concern and respect for the people, are reported by many persons. The problem of mistreatment is compounded when in addition to the racial component, one adds low economic status and lack of education. "The lower class Negro gets it the worst. There

* Cited in John A. Hannah, op. cit.

** Interview with the author, May 6, 1963.

is an element in the community who catches the most hell, knows least what to do; they don't know the sources of help."* Experienced community workers say, "People fear calling the police, for they make the situation worse - they inflame the situation."

The actions of the police at the melee in the Orchard Park Housing Project on May 25, 1963 offers illustration of this point. Following a fight, not considered to be racial in origin, the police arrested two Negro youths. A large number of white youths, armed with bats, tire irons, and other weapons, who had participated in the fight, were not arrested. A later complaint of a Negro woman, charging that she was struck by several white youths, one of whom she named, was followed neither by an investigation nor was an arrest made.** A public letter from the chairman of a Roxbury community organization and the local President of the National Association for the Advancement of Colored People charged that the police action in this case "Reinforced . . . the already strong feeling of the Negro citizens of the area that prevailing police attitude toward them is hostile and justice unequally applied, and, at another time or another place, this feeling could bear bitter fruit."***

Not unrepresentative is the plaintive remark of a Youth Board worker, "What are we as parents to teach our children about the police when we know how they act?"

The problem of corroborating allegations of police mistreatment of citizens has already been noted. The persons most likely to be mistreated are often transient; they either do not know of or have no faith in the agencies within the community to voice grievances; the situations occur where friendly witnesses are few, if any -- e.g., the police station****; therefore, documentary evidence is

* John Hatch, social worker in Roxbury and the South End, interview with the author, March 20, 1963.

** Boston Herald, June 4, 1963.

*** Letter from Kenneth Guscott, President, Boston Branch, National Association for the Advancement of Colored People, and Miss Elma Lewis, President, Boston Improvement Association, to Edmund L. McNamara, Commissioner, Boston Police Department, May 29, 1963.

**** A comprehensive study of a middle-size mid-western police department states "the most significant finding is that at least 37% of the men believed that it was legitimate to use violence to coerce respect." William A. Westerley, "Violence and the Police," American Journal of Sociology, LIX, 1 (July, 1953), p. 39. A further study of the same department, in response to a secret questionnaire, administered to 50% of the officers in the department, on whether they would report another officer who they knew had been stealing goods while on the job and on whether they would testify against another officer, says, "The results show that 73% of the men would not report their partners, and that 77% would perjure themselves rather than testify against their partners." William A. Westerley, "Secrecy and the Police," Social Forces, XXXIV, 3 (March, 1956), p. 255.

infrequent. However, there are cases where the evidence is abundant, and others sufficiently credible to allow of presentation in this study.*

The most frequent complaint is in the area of discourtesy and failure to provide service to the Negro community. The attitude of many police officers is at the bottom of these two grievances. Lack of respect for Negroes, especially Negro women, leads to much verbal abuse. Disinterest in the community leads to many complaints of failure of officers to respond promptly and effectively to calls for assistance.** An additional complaint is the failure of the police to enforce the law, or at least certain laws, within the Negro area. Many responsible citizens have complained that such crimes as prostitution and dope peddling are openly allowed to continue within the community without significant police action. Such a charge, if true, means that the law-abiding elements of the community are not being assisted by the police in gaining protection from the lawless, nor are they being aided in building a lawful community.

The range of grievances once a citizen has an encounter with the police is lengthy: The constitutionality of arrest on suspicion, and arrest under the "abroad-in-the-night-time" statute; harrassment of interracial groups; the fingerprinting and photographing of prisoners and the failure to return same when no charge is brought or when innocence is found; failure to grant the right of prisoners to make a telephone call; the general treatment of sick prisoners and lack of access to medical attention; the use of the so-called "release form" as a condition of release from police custody; the use of unnecessary and excess force; and illegal search and seizure. A brief word on each of these is appropriate.

Several items relate to the stopping and arrest of citizens. The Boston Police Department currently uses the charge of "arrest on suspicion." During the most recent year for which figures are available, 1260 arrests on suspicion were made.*** This practice is at direct variance with the Fourth Amendment's requirement that arrests be made for "probable cause," a requirement not satisfied by mere "suspicion."

* A detailed account of cases will be found in Appendix A.

** See especially press reports of public meetings held in Roxbury during December, 1962 and January, 1963 following the murder of Daniella Saunders. Also, reports of a public protest meeting held at the Jeremiah E. Burke School on June 6, 1963.

*** Fifty-Sixth Annual Report of the Police Commissioner for the City of Boston for the Year Ending November 30, 1961, Public Document No. 49, Table XII.

The "abroad-in-the-nighttime" statute is perhaps the best known of the several detention procedures commonly used. From an hour after sun-down to an hour before sun-up, the police may ask of a citizen his "business" -- name, address, destination, and an adequate explanation of his presence in the night at the particular location. If the citizen fails to give an accounting, satisfactory to the police, he may be arrested. This law, on our books for 112 years,

runs squarely athwart that very fundamental presumption of an open community that is embodied in the Fourth Amendment, namely, that ordinary citizens are free to go about their business unmolested by the police, in the absence of probable cause to believe that someone is committing, or trying to commit, a violation of the law.*

Several of the cases described in Appendix A begin with a charge of being "abroad-in-the-nighttime."**

At least one case which came to court began with a policeman's unfavorable attitude toward a mixed couple.*** There are many reports that the police are more likely to stop and question mixed couples than all white or all Negro groups.

The photographing and fingerprinting of all persons "booked" by the police appears to be standard practice. There is, however, no broad statutory basis for this practice. The primary purpose is to ascertain whether the individual is wanted on some other charge and for later purposes whether he has a previous record. While these may well be legitimate police activities, many citizens find them an indignity, especially citizens who feel themselves falsely arrested. Many job applications require information as to an individual's arrest record, and increasingly security clearances, including arrest record checks, are part of job applications. When an individual is released without a trial, or when he is found innocent, he often seeks the return or destruction of the fingerprint and photograph file; the police are generally unwilling to do this, and, further, the prints and photograph are already in the files of State Police and Federal Bureau of Investigation.

According to former Assistant Attorney General for Civil Rights and Civil Liberties, Gerald A. Berlin, the complaint most frequently brought to

* Gerald A. Berlin, "Detention, Arrest and Release." Presentation prepared for Massachusetts Advisory Committee, United States Commission on Civil Rights, n.d. [May 24, 1963], pp. 2, f.

** See Cases 5, 17, 20.

*** See Appendix A, Case 18.

his attention during the four years he was in the Attorney General's office, related to failure to allow use of the telephone.*

The death, due to a massive cerebral hemorrhage, of a man being held by the Braintree police on a charge of "drunkenness,"** only highlights the need for attention to the general problem of police treatment of sick and injured persons in their custody. Failure to either provide or seek medical attention for individuals injured in their custody, or elsewhere, is a frequently recurrent issue. In several recent cases,*** it has been charged that persons who were clearly injured were either not offered medical attention or it was offered belatedly.

The so-called "release form," under which the police release from detention certain detained persons on condition they sign a waiver of their rights to civilly sue the police, is most frequently used for persons taken in as drunk. It is applied, too, in other cases.

I am convinced that in the very nature of things many, if not most, such releases are inherently obtained under duress and as such have no legal standing whatsoever. This is a dubious instrumentality for the police to hide behind.****

The release form was used with notable coercion in the case of a Boston social worker.***** In one case, the judge from the bench instructed the accused to sign such a release.***** There are other reports "that on occasion our judges have entered findings of not guilty only on the implied or explicit condition that the accused execute such a release.*****

The charges of excess force far outrun demonstrable cases. We have collected some thirteen instances where some evidence of brutality is alleged.***** In many of them, court findings have corroborated the charge. The most brutal

* Berlin, op. cit., p. 6.

** Boston Herald, February 20, 1963.

*** See Appendix A, Cases 2, 9, 15, 20, 22 for a full discussion.

**** Berlin, op. cit., p. 7.

***** Appendix A, Case 9.

***** Appendix A, Case 7.

***** Berlin, loc. cit.

***** Appendix A, Cases 1, 2, 5, 8, 9, 11, 12, 14, 15, 18, 20, 21, 22.

was the Amons case, and it is worth noting that one of the officers involved in this case was subsequently involved in another known "brutality" case.* A second officer in this case, later shot his wife and lawyer on the courtroom steps; the question of psychological screening of police officers will be discussed under recommendations for new selection procedures.

The fact that some instances of police physical mistreatment of citizens do occur, and the usual effort to "whitewash" such cases, lends credence to other charges, less substantiated but nonetheless accepted by the community.

The director of the Massachusetts Defenders Committee has said that until the Mapp case,** the use of search warrants was almost unknown in Massachusetts.*** Since that landmark decision,**** making federal court restrictions on the use of illegally obtained evidence applicable to state courts, the use of search warrants has slightly increased. Two cases, one in Newton and the other in Boston,***** illustrate the problem. In both instances there appear to have been no immediate need for violating the privacy of the individuals concerned; a "stake-out" of the property, so as to prevent any suspected party from leaving, while a search warrant was sought would have been a far more desirable procedure. Both police chiefs, when complaints were made regarding their force's behavior, cited the police's object in the search but showed no cognizance of the citizen's rights.

The "New" Department

The Boston Police Department of 1963 is a very different department than it was five years ago, or even a year ago. Direct responsibility to the mayor was established late in 1962, and a new commissioner appointed. The

* Appendix A, Cases 2 and 22.

** Mapp v. Ohio, 367 U. S. 643 (1961).

*** Interview by the author of Wilbur Hollingsworth, March 15, 1963.

**** In the Mapp case, June 1961, the Supreme Court held that evidence obtained by unconstitutional search vitiated a State prosecution. In so ruling the Court held that the Due Process Clause of the Fourteenth Amendment incorporated the prohibition against "unreasonable searches and seizures" set forth in the Fourth Amendment which curbs the power of Federal officials. Two years later, June 1963, in Ker v. California, the Court reaffirmed Mapp.

***** Appendix A, Cases 13 and 6.

"Quinn Tamm Report" includes many positive recommendations, several of which have been partially or completely implemented. There is a greater willingness on the part of the police to meet with and listen to citizen groups.

While responsiveness to the community is greater than it has been in the past, there is a long way to go. The "no comment" response from Police Commissioner McNamara to a most serious charge from responsible community organizations is again a sign of insensitivity to the need for communication with the community.

'Many of the Negro citizens of Boston,' the NAACP said in a letter to Police Commissioner McNamara, 'have need not just of protection by the police, but protection from the police.'

To all this, and more, Commissioner McNamara's response is a terse 'No comment.'

It is an unacceptable answer.

The NAACP charges are said to be based on affidavits. But even if they were not they would deserve more than a curt brushoff from the Commissioner.*

The handling of citizen complaints against police officers has changed in the past several years. In May, 1959, Commissioner Sullivan ordered that departmental trials resulting from citizen complaints shall be public; this step was editorially hailed as a "useful safeguard."** However, the proposal of Attorney General McCormack's civil rights division for an independent review board to hear citizen complaints was rejected.*** Seventeen months after Commissioner Sullivan decreed that hearings of civilian complaints would be public, the Boston Herald noted that no such hearings had yet been held.**** Apparently, that portion of the 58 cases heard by the Review Board in 1959 which arose after May, the 22 cases in 1960, the 20 cases in 1961,***** and an unknown number of cases in 1962 did not result from civilian complaints, for there was no public hearing of the Board from the time it was established in May, 1959 until December, 1962.

* "Ignoring a Powder Keg," Boston Herald, June 5, 1963.

** Boston Globe, May 27, 1959.

*** Boston Herald, May 20, 1959.

**** "Rusty Rights Mechanism," Boston Herald, November 11, 1960.

***** "Tamm Report," op. cit., Table 6.1.

III. THE HANDLING OF CITIZENS' COMPLAINTS

Boston Now

At the heart of a citizen's faith in his government is the belief that wrongs will be justly righted.

The police cannot be expected to hold the line against rampant crime without total public support and cooperation; and currently existing procedures for dealing with allegations of police malfeasance are not adequate to retain such support. Investigations of such allegations are almost invariably intradepartmental affairs; their results are rarely published; and both the public and the accused officer may be frustrated by inability to have the matter heard by an impartial, public tribunal.*

The best way to illustrate this matter on the Boston scene is to look at the most recent public case before the Police Review Board. Returning home at about 1:30 a.m. on December 3, 1962, John Washington was stopped by a call from a police cruiser at the corner of Dartmouth and Berkeley Streets, in Boston's Back Bay. Following an inquiry into his "business," as permitted by the "abroad-in-the-nighttime" statute,** a struggle ensued, during which Washington suffered a compound fracture of the nose, a badly hemorrhaged eye, and a severely strained leg. A Boston Municipal Court judge found Washington guilty of "assault and battery upon a police officer," a decision overturned by a Superior Court trial, in January, 1963. Following his beating on December 3rd, Washington filed a complaint with Police Commissioner McNamara, charging Officers Dailey and Harvey with abuse of their authority. This complaint was referred by the Commissioner to the three captain Police Review Board.

In May, 1959, Commissioner Sullivan had ordered that the hearings before the Police Review Board were to be public, when they involved charges resulting from citizens' complaints. It was not until December, 1962, that a case came to a public hearing. Washington's lawyer, Edward J. Barshak, engaged for him by the Congress on Racial Equality (CORE), attended that first public hearing, based on charges made by a Mr. McDonald. About that hearing, he wrote

* Statement of Attorney General Edward W. Brooke to the [Massachusetts] 7 Advisory Committee to the United States Civil Rights Commission, May 24, 1963, p. 2.

** Supra, p. 18.

The departmental type of hearing which I viewed in the McDonald case may be adequate for ordinary disciplinary matters within the police department. It may be perfectly proper when the only issues concern the obedience of members of the police force of the department's rules and regulations. However, it obviously is not suited for the determination of the vitally important issues raised by Mr. Washington who claims that, as a member of the public, he was illegally detained, arrested and abused by police officers.*

To assure his client of a fair hearing, Attorney Barshak raised the following issues: 1) the site of the hearing; 2) notice to the parties and to the public of the hearing; 3) the right of the complainant to representation by counsel of his own choice; 4) the application of the rules of evidence; and 5) hearing before an impartial, non-police board of citizens.**

The first points are easily understood. Barshak sought to have the hearing held on "neutral" ground, not in the police headquarters. He also sought to assure that the public nature of the hearing be carried to reality by informing the public of the hearing and providing adequate facilities for it at the hearing -- at the single previous public hearing (the McDonald case) held at police headquarters, only about fifteen seats were provided for the public.

The right of the complainant to counsel of his own choosing is both a simple and complex matter. Clearly, the most elementary standards of justice require the granting of this privilege -- but the question is, who is the complainant? Reading of the relevant Police Department Rule Number 54 varies. Police Commissioner McNamara said that he had been advised that it is the Department who is the complainant and, therefore, it has a lawyer (provided by the Corporation Counsel's office) as do the defendants -- the two police officers.*** On the other hand, Barshak argued that it is Washington who is the complainant and is thus entitled to counsel of his own choice.**** The issue was not settled in the Washington case, as Commissioner McNamara refused Washington's request for counsel of his choice, and therefore, Washington did not appear at the Police Review Board hearing. A subpoena was issued ordering

* Letter from Edward J. Barshak, attorney for John Washington, to Edmund L. McNamara, Commissioner, Boston Police Department, December 20, 1962.

** Ibid.

*** Letter from Edmund L. McNamara, Commissioner, Boston Police Department, to Edward J. Barshak, attorney for John Washington, January 4, 1963.

**** Letter from Edward J. Barshak, attorney for John Washington, to Edmund L. McNamara, Commissioner, Boston Police Department, January 7, 1963.

Washington's appearance. On advice of counsel, Washington did not appear; no action was taken to enforce the subpoena. Leaving aside for the moment the complexity of language of the departmental regulation, it would appear a matter of equity to allow all parties to such a proceeding the right to counsel of their own choice.

Commissioner McNamara, in a letter published in the Boston Herald August 5, 1962, stated that "These hearings [Police Review Board] are conducted in compliance with all the legal standards of a district court hearing." This would apparently include the application of the rules of evidence; however, such rules were not in evidence at the McDonald case, and indeed, one of the Police Captains who sat as a member of the Board, declared that the ordinary rules of evidence did not apply.

It was to the last of Barshak's points, hearing before an impartial, non-police board of citizens, that most public attention was directed. Editorials in several Boston papers, letters to the editor, public statements, etc., all indicated interest in this matter. The question of citizen review or advisory boards is not merely a Boston concern, but has concerned police departments and citizens all across country.

Philadelphia Police Advisory Board

The Philadelphia Police Advisory Board (formerly called Police Review Board) was established by Mayor Dilworth in the fall of 1958. Complaints of police malfeasance, dating from the mid-1950's, brought to the Police Department by the American Civil Liberties Union, the Philadelphia Bar Association, the city's Human Relations Council, and the local branch of the National Association for the Advancement of Colored People, were unredressed. A City Council hearing on "search and seizure" procedures in January of 1958 was used to air these grievances. Councilman Sawyer, then President of the Greater Philadelphia branch of the Civil Liberties Union, proposed a bill to establish a citizen review board*; this was "pigeon-holed." Under his own authority, Mayor Dilworth appointed the Board, as an advisory body to him.

* The initial idea apparently came from an earlier Civil Liberties Union proposal for labor unions to establish independent tribunals "to hear appeals by union members who claim that they have been deprived of their democratic rights." "Democracy in Labor Unions," Statements by the American Civil Liberties Union (September, 1958), p. 25.

This Board was charged with the responsibility of considering citizens' complaints against the police where the charge involved brutality, false arrest, discrimination based on race, religion or national origin, or other wrongful conduct of police personnel toward citizens.*

The annual report of the Board, as well as several articles, provide information as to the procedures, results, and effect of the Board.** In brief, any individual (not necessarily the party who is personally aggrieved) may file a complaint with the Advisory Board.*** The investigation of the complaint is made by the police department itself.**** Where there is sufficient evidence, or where the individual specifically requests a hearing, such is held. In practice, the Executive Director of the Board has acted as a screening device, making a determination as to whether there is sufficient justification for the complaint.

As a result of the investigation, informal settlements are often reached. A frequent basis for such settlement is the removal of the arrest

* "First Annual Report of the Police Review Board of the City of Philadelphia," (September 15, 1959), p. 1.

** Annual Reports have been issued for each of the four years of the Board's operations, 1958-1962. See also, Robert J. Bray, Jr., "Police -- Philadelphia's Police Advisory Board -- A New Concept in Community Relations," Villanova Law Review, VII (Summer, 1962), pp. 656-673; Spencer Coxe, "Police Advisory Board: The Philadelphia Story," Connecticut Bar Journal, XXV, No. 2 (June, 1961), pp. 138-155; Ruth Marossi and Gerald Krefetz, "Philadelphia: Policing the Police," The Reporter, July 19, 1962, pp. 39-40. Several formal papers have been presented on this topic at the Police-Community Relations Institutes, held since 1955, at the Kellogg Center, Michigan State University, East Lansing, Michigan.

*** The Board, as of its latest annual report, was composed of eight members; Professor Thorsten Sellin, Chairman of the Department of Sociology, University of Pennsylvania, was chairman, and Clarence Pickett, a Nobel Peace Prize winner, was vice-chairman. Three of the other members were attorneys. As a result of a local political squabble, which involved the dismissal of the executive secretary by Mayor Tate, Professor Sellin resigned, and was replaced as chairman by Mr. Pickett, March, 1963.

**** Apparently this arrangement was not by design, but because the Board has not had funds to do its own investigation; when established, the Board was allocated no funds. In 1960, \$4,000 was allocated, and in 1962, \$5,000, all of which was used for the salary of the Executive Director. Following a change in Executive Director, March, 1963, the former one a lawyer and the new one a minister, funds were allocated for his salary, a legal aid, and secretarial assistance.

record from the police files. Approximately ten per cent of the cases received by the Board in its first three years of operation were resolved in this manner.

Where the evidence justifies proceeding further, and when an informal settlement is not possible, a public hearing is held. About fifteen per cent of the complaints have gone to a public hearing (47 of the 312 cases in the four years of operation). Of these cases, the complainant was sustained in twenty-seven and the police officers in eighteen instances.*

The crucial question in regard to the activities of the Board is its effect upon the police force as a whole and the actions of individual officers. The most militant opposition has been mounted by the Fraternal Order of Police (FOP) whose committee on "Human Rights and Law Enforcement" writes, "Review Boards undoubtedly can and do serve as a secret weapon of the Communist Party."** After noting the support of review boards by the American Civil Liberties Union, the National Association for the Advancement of Colored People, the Americans for Democratic Action, and the 1960 Democratic Convention, another Fraternal Order publication stated,

Purposes and influences in most instances are of a nebulous nature. However, when groups of national organizations band together, plan, organize and finance the efforts of its members to form Police Review Boards . . . the resulting confusion, unrest and demoralization of the government and public can be identified as Communist goals.***

A special bulletin on "Police Review Boards" from the FOP national secretary, February 27, 1963, warns all members that "this hazard to the police profession is still with us."

The attitude of the officials of the Philadelphia Police Department is in sharp contrast to that of the Fraternal Order. "The Review Board has not in any way limited the efficiency, assertiveness, or determination of the police to do their job. Our records show that the Board has not hurt the Department."****

* Fourth Annual Report of the Police Advisory Board of the City of Philadelphia, September 30, 1962, Appendix A. Two cases were then as yet unresolved.

** Police Review Boards: A Threat to Law Enforcement (Philadelphia, Pennsylvania: Grand Lodge, Fraternal Order of Police, 1962), p. 4. See also, Police Review Boards: Articles, Opinions, Statistics (Philadelphia, Pa.: Grand Lodge, Fraternal Order of Police, 1962).

*** Police Review Boards (Philadelphia, Pa.: Grand Lodge, Fraternal Order of Police, 1962), p. 5.

**** Interview by the author with Deputy Commissioner Howard Leary, April 17, 1963.

The director of the Community Relations Division of the Philadelphia Police Department remarked, "If you have the powers that a police officer has, you must be discrete in exercising that power. . . . Police action affects the citizen, so he has the right to know about it."* The most significant comment is that of former Police Commissioner Thomas J. Gibbons. The Philadelphia Lodge of the Fraternal Order of Police sought to enjoin the activities of the Review Board. Commissioner Gibbons testified at the court hearing.

Question: "Have you found that it [Police Review Board] has a good or harmful effect on the morale of the police department?"

Commissioner Gibbons: "Well, if you talk to some individual officer who has appeared before the Board, then I guess the answer would be that it has a harmful effect, but from my point of view as Commissioner, I think the Board has not only aided me, but has aided the police department."**

Before a ruling was made upon the request of the FOP for a permanent injunction restraining the activities of the Board, an agreement was reached which permitted the Board to continue with modified rules of procedures and a new name --- the Police Advisory Board, instead of the Police Review Board. This change in name illustrates the nature of the agreement. In the future, the Board was to "request," not "order," an investigation; policemen who were to appear before the Board were to be notified by the Police Commissioner and not by the Board directly; the Board was to provide copies of the complaint to the policemen involved, or to his counsel.*** These changes were generally designed to restrain the Board's direct interference in the chain of command of the police department and to emphasize its advisory function. Both before and after this agreement, the ultimate power of the Board was to make a recommendation to the Police Commissioner -- it could not and cannot directly discipline any member of the force.

Other Citizen Review Boards

In addition to the Philadelphia Police Advisory Board, there is one other citizen board functioning, that in Rochester, New York. There have been,

*Interview by the author with Lt. Chester G. Gethers, April 18, 1963.

**Testimony of Thomas J. Gibbons, Police Commissioner, City of Philadelphia, Conway v. City of Philadelphia, No. 367, December 1959 Term, Court of Common Pleas No. 2.

***Second Annual Report, The Police Advisory Board of the City of Philadelphia, Pennsylvania, September 30, 1960, pp. 5f.

in the past several years, two other boards established, but both now are inoperative. A citizen board was established in Minneapolis, Minnesota, in 1959, which held one meeting, where it drew up regulations, similar to those in Philadelphia. Following that meeting, there have been no further meetings and "the work of the board was brought to a halt by an opinion that members of the board had no legal status and might be subject to suits for libel."* A board also exists in York, Pennsylvania. The City Council established a board, whose members were to be appointed by the mayor. There then followed an election, and the new mayor, who as a member of the Council had opposed the establishment of a board, has never appointed any members. A council resolution, sponsored by the mayor, to abolish the board was defeated, 2-3, but as no members have been appointed, the board has never functioned.** In numerous other cities efforts of one sort or another have been made to establish citizen boards, all with, as yet, no success.***

The Rochester, N. Y. board, established by city council ordinance, March 26, 1963, was the result of a long series of grievances against the police of that city. The final act, involving the police break-up of a religious meeting at a Muslim temple, led to a "sit-in" at the police station by members of Rochester CORE (Congress on Racial Equality) and several local ministers. Among the proposals to deal with rising community tension, was the establishment of a citizen board. Acrimonious debate took place within the community, in the newspapers, and within the City Council; ultimately the Democratic majority supported the establishment of the board.****

* Letter from M. S. Waltson, Executive Secretary, Minneapolis Branch American Civil Liberties Union, to Spencer Coxe, Executive Director, Greater Philadelphia Branch American Civil Liberties Union (n.d.).

** Interview by the author with James Higgins, editor, York Gazette and Daily, May 10, 1963.

*** Such efforts have been made in Detroit, Michigan; Los Angeles, California; Providence, Rhode Island; Chicago, Illinois; Washington, D.C.; St. Louis, Missouri; Kansas City, Missouri; Columbus, Ohio; Cincinnati, Ohio; Wilmington, Delaware; Baltimore, Maryland; Louisville, Kentucky; Denver, Colorado; Houston, Texas; Newark, New Jersey; and Toronto, Ontario. The American Civil Liberties Union, New York City, N.Y., has been a "clearing house" for information on citizen review boards.

**** For a full description of the course of events leading up to the establishment of the Board, see the Rochester Democrat and Chronicle, February 2, 1963 through March 27, 1963.

In general, the Rochester Police Advisory Board* follows the Philadelphia model. However, the Rochester Board was established by City Council ordinance, while the Philadelphia board is a creature of the mayor. The Rochester Board's jurisdiction is limited to complaints of the "use of excessive or unnecessary force," while the Philadelphia Board considers a broad range of alleged police malfeasance. Most of the Rochester Board's activities will take place in executive session, while the Philadelphia Board holds public hearings. In both cases, the police department is the primary organ of investigation, although both Boards may conduct independent inquiries; this is more likely in Rochester where the Board is provided with staff in the ordinance establishing it. Neither board may directly discipline a police officer; in Philadelphia the Board's recommendations are directed to the mayor and then to the police commissioner, while in Rochester they go to the City Manager and then to the Commissioner of Public Safety and the Police Commissioner.**

Other Procedures

We have now seen two alternate procedures for dealing with civilian complaints against police officers -- the Boston model, and the Philadelphia and Rochester citizen boards. Most large city police forces have some form of review board; it usually resembles the Boston model, wherein the Chief may appoint (or there is a standing board) a board consisting of high department officials to hear the evidence of the complaint and make recommendations to him for disposition of the complaint. In some instances, the Board is not exclusively composed of department officials, and may include an officer of the same rank as the accused.***

A further refinement exists in New York City where a special Civilian Complaint Review Board, composed of the Deputy Commissioner in Charge of Community Relations and two other Deputy Commissioners appointed by the

* The Rochester Board has nine members, and is chaired by Joseph Gioia, a businessman. Membership is carefully balanced between Protestant, Catholic and Jew, labor and industry, Negro and white.

** See Appendix B for a detailed comparison of the Philadelphia and Rochester boards.

*** City of Philadelphia, Police Department Board of Inquiry. This is the Department's own board. In hearings before it, both the policeman and the complainant may be represented by council, the rules of evidence are in effect, and the public and the press are admitted.

Police Commissioner, hear civilian complaints of abuse of authority, or the use of unnecessary force; all other civilian complaints go directly to the Chief Inspector for processing.*

Recommendations

Although speaking in another context, the proposals made by Professor Clark Byse for student dismissal procedures offer appropriate guidelines for our inquiry.

I believe that when vital personal interests are at stake, the official who is to act should be fully informed concerning the factual bases of his proposed action; that the person whose interests are directly involved is uniquely qualified to assist in the development and verification of the needed data; and that when decision hinges upon controverted facts relating to past events, the methods of a trial - principally notice of the charges, confrontation, cross-examination, rebuttal testimony, and decision on the record by an unbiased tribunal - will be a superior means for discovering falsehood and correcting unwarranted interferences. I would also underscore Mr. Justice Robert Jackson's admonition that 'due process of law is not for the sole benefit of the accused. It is the best insurance against those blunders which leave lasting stains on a system of justice which is bound to occur in an ex parte consideration.'**

Professor Byse's proposals, appended to by Justice Jackson, offer two important lessons: first, the full panoply of trial procedure is the best guarantee of ascertaining truth, and second, "due process of law" is of benefit not to the accused alone but to the entire society.

In seeking a procedure to handle citizen complaints, our purpose must be twofold -- allowing the police to perform their necessary and proper function while at the same time protecting the rights of individual citizens and society as a whole. The purpose of a complaint procedure should be neither to harass the police nor to whitewash legitimate complaints.

Many persons, most notably police officials, have cited the variety of avenues of redress available to an aggrieved citizen -- federal, civil and criminal statutes,*** state and local civil and criminal actions, complaint to

* City of New York, Police Department, "Rules and Procedures of the Civilian Complaint Review Board," Chapter 21.

** Clark Byse, "Procedure in Student Dismissal Proceedings: Law and Policy," Journal of College Student Personnel, March, 1963, pp. 139, f.

*** United States Code, title 42, sections 1981, 1983, 1984, 1985, 1986; and section 242, respectively.

the police chief, complaint to the Federal Bureau of Investigation, complaint to the district attorney.* Massachusetts Attorney General Edward W. Brooke notes both the inadequacies of such remedies for the present problem and the need for an additional procedure to protect the community's interest.

Civil remedies are designed to redress personal wrongs; they are not adaptable for use beyond this purpose. Similarly, criminal action is generally reserved for more serious aberrations of minimally acceptable conduct . . . The public interest demands that police abuses be brought to light as swiftly as possible, that impartial adjudications be made, that whatever steps that may be appropriate to be taken to correct the situation; and that the public be made aware that this is being done.**

Whatever its merits -- and they may well be considerable -- a complaint procedure which allows the police department itself, or any of its agents, to sit in judgment on complaints of citizens will be perceived by citizens as inherently unfair. Previous experience with such procedures, as well as their inherent frailty, will lead the public to be suspect of any findings of a board so composed. Whether the charge is justified or not, the public's reaction to a finding of innocence on the part of the policeman will be met with scorn and suspicion.

The normal discipline of the department should be handled within the department in a manner protective of the rights of the individual officer as well as of the department. However, instances of citizen complaint -- especially of abuse of authority or misuse of force -- require special handling. Citizen perception of the inequity of a police-manned tribunal robs such a board of a prime necessity -- the confidence of the community that complaints will be thoroughly and equitably investigated and the called-for action taken. In order to operate effectively in a democratic society, a police force must have the support and confidence of the public, and any procedure which robs the police of such confidence works to the detriment of the force and ultimately, of the community itself. A practical, albeit not ideal, balance is struck wherein the complaint is heard by an independent board with the final disposition of the case remaining in the hands of the Commissioner.*** In Philadelphia

* For a full discussion of these, see Justice, 1961 United States Commissioner on Civil Rights Report, op. cit., pp. 45-83.

** Statement of Attorney General Edward W. Brooke, op. cit., p. 3.

*** Many persons, including a majority of the members of the Philadelphia Advisory Board, favor giving the citizen board direct disciplinary authority. While this may be ideal, and a board with only advisory capacity may be hamstrung by the unwillingness of the police to follow its recommendations, it seems that considering political reality a board with advisory powers only is called for. If, after consistent failure of the police to follow recommendations made by such an independent advisory board, further control is necessary, a board with direct disciplinary power may be called for.

and Rochester, the Advisory Board makes a finding, and if warranted, a recommendation as to action to be taken vis-a-vis the particular officer(s). There is then no unwarranted interference in the functioning of the department, nor is there any deprivation of administrative prerogative from the Chief by the Board in that the final disposition of the matter -- the disciplining of the individual officer(s) -- is in the hands of the Police Chief.

We must provide for the whole community the dual protection from criminal action as well as from illicit police action. A long stride toward this goal is taken when citizens' complaints are aired before an impartial, independent body, while ultimate departmental discipline remains in the hands of the commander of the police force.

IV. RECRUITMENT AND TRAINING OF POLICE OFFICERS

Recruitment

It is obvious that the type of recruit entering the department determines to a high degree the nature of that police department.

The ultimate factor in any study of police misconduct must be the individual policeman. The manner of his selection and of his training are crucial factors. When a police department fails to screen out the strongly prejudiced, the emotionally unstable, or the unintelligent, it is inviting official misconduct.*

In Boston, the selection process begins with a competitive Civil Service multiple-choice test. The content is drawn for the most part from a 102-page manual issued by the Division of Civil Service. It includes a discussion of various legal definitions, police procedures regarding arrests, the duties and responsibilities of police officers, crimes relating to fires, and first aid procedure.** It has been stated by top level officers that "Any applicant who has not studied this manual thoroughly cannot hope to pass the entrance examination. The officers estimated between 12 and 18 months as the absolute minimum preparation time required."***

In addition to this test, candidates must pass medical and physical fitness tests. There follows an oral interview presently conducted by the Police Commissioner and a background investigation made by the Civil Service. On the basis of recommendations contained in the "Tamm Report" the department also conducts an investigation of certified candidates.****

There are now in Massachusetts no minimal educational requirements, nor is there a screening of persons psychologically unfit for police work. Recognition of the need for psychological tests as part of police selection procedures is growing.***** A study of selection instruments being made for

* Justice, 1961 United States Commissioner on Civil Rights Report, vol. V, op. cit., p. 84.

** Division of Civil Service, Commonwealth of Massachusetts, A Manual for the Instruction of Applicants for Examinations for the Police Service, 1963.

*** "Tamm Report," op. cit., pp. 76, f.

**** Ibid., pp. 79-84.

***** See Address by Inspector Robert R. J. Gallati, Police Department, City of New York, Annual Conference, International Association of Chiefs of Police, 1958; A. C. Germann, Police Personnel Management (Springfield, Ohio: Charles C. Thomas, 1958); O. W. Wilson, Police Planning, 2nd ed. (Springfield, Ohio: Charles C. Thomas, 1957).

the New York City Police, offers considerable hope that new, more effective testing devices will soon be available.* However, there are presently adequate tools with which to begin a testing program; several police departments, including Los Angeles and Philadelphia, require that recruits pass a psychological test. The "Tamm Report" proposes use of a written personality inventory profile "to alert the examiner to serious personality deviations,"** and a psychiatric interview "immediately prior to certification. A decision by the psychiatrist that the applicant is maladapted to police work should constitute grounds for disqualification."***

It would appear that a good part of the recruitment and selection problem centers around the role of the Civil Service Division.****

Not only does the Director [of Civil Service] have the examining responsibility but he also establishes the standards for persons applying for positions. In addition to these sweeping powers, the law has gone still further by granting the Director authority to actually approve or disapprove specification of the position proposed by the appointing authority -- in the case of the Boston Police Department, the Police Commissioner.*****

"State-administered civil service control, as exemplified in Massachusetts, has yielded the least desirable results in terms of personnel selection, promotion, and discipline."***** Further, "part of the disciplinary problem can be attributed to the selection program of recruitment of the organization. In 1948 Bruce Smith stated that the Boston recruitment program resembled a dragnet more than a screening process."***** Of the twenty cases appearing before the Police Trial Board in 1960, twelve of the officers had arrests prior to their entering the force for drunkenness, malicious destruction of property, assault and battery, and various traffic violations including speeding, "hit and run" and driving without a license.*****

* Leo R. Eilbert, "Research on Selection and Training for Police Recruits: Summary of Developmental Work," American Institute for Research, Pittsburgh, Pennsylvania, 1962.

** "Tamm Report," op. cit., p. 78.

*** Ibid., p. 87.

**** Ibid., pp. 69-88, 135-141.

***** Ibid., p. 75.

***** Bruce Smith, Police Systems in the United States, 2nd rev. ed. (New York: Harper and Brothers, 1960), p. 128.

***** "Tamm Report," op. cit., p. 139.

***** Ibid., pp. 139, f.

While it is beyond the scope of this report to make recommendations regarding the precise role of the Civil Service Division in the recruitment and selection of police officers, its control of this process is subject to serious question. Failure to promulgate regulations as to minimal educational requirements, near exclusive reliance upon a single written examination, lack of psychological screening tests, failure to disqualify applicants with serious criminal records, all indicate that candidates ill-qualified for police work are permitted to enter, and indeed in some cases forced upon the department. Further, the granting of veteran's preference to those persons with mental disability* seriously endangers both the department and the public.

The nature of police service imposes unusual demands upon the individual policeman; he must consequently excel in intellectual, emotional, ethical, and physical qualities if he is to be successful. . . .**

In order to meet this standard, a number of important changes must be made in the selection procedures for the Boston Police Department. In some cases these can be done within the department, while in other instances changes in Civil Service regulations or state law will be required; in either case, if we are to have the possibility of a first-rate police force, these must be done.

In order to allow for a longer period of expected service and to protect the department from society's rejects, the minimum age should be lowered to 21 and the maximum to 29; at present they are 22 and 35.

To provide for minimal intellectual standards, a high-school diploma should be required of all applicants.

To assure better measurement of candidates, the present written examination should be replaced by a battery of tests, as proposed in the "Tamm Report."***

To protect both the members of the force and the public, psychiatric tests and interviews conducted by professionally trained persons ought to be used, and all questions resolved in the department's favor.

* There is no statutory limit on the maximum percentage of such disability. The minimum for (veteran's) preference is 10 per cent." Ibid., p. 80.

** O. W. Wilson, "Toward a Better Merit System," Annals of the American Academy of Political and Social Science, Vol. 291 (January, 1954), p. 87.

*** Ibid., p. 86.

Training of Police Officers

Training programs fall into two categories: those teaching methods of detection and crime control, and those dealing with human relations. There is more than a casual relation between the two, for "a policeman trained in crime detection and proof may have less motivation for brutality than his less sophisticated counterpart."* As J. Edgar Hoover has said, "the ill-trained officer might think [that] . . . a severe beating will force a confession. But the trained officer, schooled in the latest techniques of crime detection, will think otherwise. . . ."**

Selection and training of police officers, of course, share a common goal. Attempts at improving selection and training programs are predicated upon the belief that such improvements can promote effective police performance. Selection contributes by screening out those individuals whose personal characteristics impede good job performance, and training contributes by offering the recruit knowledge and skills required for adeptly handling the variety of situations police officers are likely to encounter.*** Of course, other factors besides selection and training influence police behavior; to mention but two, organization and supervision are crucial.

The police today, more than any other instrument of urban government, have a direct, on-going relationship with the citizenry. It is in its dealings with citizens that the force will ultimately be judged. As the Chief of Police of St. Louis has noted, the policeman must understand why "an officer who uses derogatory terms undercuts his own work and the entire force by convincing the offender -- and everyone in earshot -- that an arrest is based on prejudice and not on a breach of the law."**** Human relations training is not a frill, but goes to the very heart of police work.

There have been, in general, two distinct approaches to police training, one conveniently called the "Lohman" approach, and the other the "Allport" approach. Dr. Lohman, who was Chairman of the Division of Correction of the

* Justice, 1961 Report of the United States Commission on Civil Rights, op. cit., pp. 85, f.

** Ibid., p. 86.

*** Eilbert, loc. cit.

**** Curtis Brostron, "Let's Draw the Line," A paper presented at the Institute on Police-Community Relations, 1961 (Michigan State University, East Lansing, Michigan).

State of Illinois and Lecturer in Sociology at the University of Chicago, has stressed the "professional attitude" of the police.* His approach is basically sociological, growing out of theories that see human behavior as dependent upon the official role of the person and the group within which he finds himself at the time. A professional attitude is sought, "relying on the hierarchical power structure typical of police and military organizations."** Policemen are trained to see that their role in society requires them to behave in a fair, impartial fashion toward all groups. "Impartial conduct is demanded and obtained from the police officer first as a matter of discipline and secondly as a matter of professional pride."***

Allport, Professor of Sociology, Harvard University, bases his approach upon theories and practices which are basically psychological and psychiatric in motivation.**** Through the process of group discussion, an attempt is made not only to change opinion, and hopefully attitude, but also, to bring about group acceptance and reinforcement of any changes in behavior. A minimum of emphasis is placed upon the informational aspects of race relations, and a maximum of emphasis on what is almost a group therapeutic technique.

In fact, most training programs now are an amalgam of these two basic approaches.***** In many instances, this combination appears to be unplanned, as a piece of one is combined with a piece of the other. Both the need for professionalization and efforts to change behavior and attitude, through such techniques as role-playing, are indiscriminately combined. The training program developed for the City of Philadelphia is an example of such a combination.*****

* See, for example, Joseph D. Lohman, The Police and Minority Groups (Chicago, Illinois: Chicago Park District, 1947).

** Bernard Weisberg, "Racial Violence and Civil Rights Law Enforcement," The University of Chicago Law Review, Vol. 18, No. 4 (Summer, 1961), pp. 778, f.

*** Ibid., p. 779.

**** See, for example, Gordon W. Allport, "A Tentative and Partial Manual for Police Training on the Subject of Police and Minority Groups," 1944 (mimeographed).

***** See Appendix C, for a survey of police training programs.

***** Arthur I. Seigel, Philip Federman, Douglas G. Schultz, Conference Leader's Materials for Professional Police-Human Relations Training (Wayne, Pennsylvania, Applied Psychological Services, 1961).

Although Boston, participating in the work of Dr. Allport, was in the forefront of police human relations training in the 1940's, it now lags far behind. Except for revolver practice training, there has been no in-service training program. The recruit program is held in inadequate facilities for a period of eight weeks, including 260 hours of training.*

The methods of instruction presently practiced are decidedly limited in scope and presentation. Lessons are offered in a formal fashion with many lengthy lectures. There has been no use made of modern teaching methods such as, teaching machines or role-playing techniques, and there is little recruit participation in any part of the program. No plans have been made to raise the professional level of the training school.

...**

In discussing the content of the program, the "Tamm Report" notes, "The present lesson plans on file at the Boston Academy are somewhat archaic in their phraseology and their content gives additional evidence of their obsolescence."***

As one high police officer has noted, "Considering the lack of admission standards and the low level of training offered them, the Boston policeman has turned out surprisingly well!" An indictment with faint praise!

The "Tamm Report" proposes major changes in police training,**** and includes a stock model recruit training program outline for a 455 hour course, including 36 hours in "Social Science."*****

Describing her experience in teaching Philadelphia policemen, Dr. Charlotte Epstein notes,

above all, probably the best teaching aid was the calculated informality of the sessions, the complete absence of censure for any expression, opinion, or attitude and the mutual understanding that the primary interest of the men in taking the course was to develop more efficient methods of operation on the job.*****

* "Tamm Report," op. cit., pp. 123, f.

** Ibid., p. 124.

*** Ibid., p. 125.

**** Ibid., p. 127.

***** Ibid., pp. 373-387.

***** Charlotte Epstein, "Problem Areas in Intergroup Relations Education for Police Officers," The Police Journal, March, 1959, p. 24. See also, Charlotte Epstein, Intergroup Relations for Police Officers (Baltimore, Maryland: The Williams and Wilkins Company, 1962).

While she uses the role-playing techniques typical of the Allport approach, Dr. Epstein here emphasizes the importance of job efficiency as the purpose of human relations training, more in the fashion of Lohman.* Knowledge of the changing nature of the community, its increasingly heterogeneous population, would serve the police well. Of course, civil rights law, local, state and federal, is basic. Most important, however, is training in the manner of handling citizens. The difference between a gruff, aggressive approach, and a polite but firm manner is sufficiently self-evident as not to require comment.

One point of concern is, who would teach such a program. While there is merit to having a police officer do it -- he "understands" the problems the men face, they accept him, he is not an outside "do-gooder" -- a strong case can be made for a "civilian" teacher. As Dr. Epstein has said, "the outside person teaches not police work as such, but his specialty, human relations."** This approach was affirmed by Philadelphia's Deputy Commissioner, who said that police officers would not likely have sufficient background or training to teach such a complex subject, and further, even if they did, "They would be swayed to identify with the police officers and thus lose the advantage of the training."*** On the local scene, in Brookline, training courses have been conducted by sociologists and psychologists, under the guidance of the Brookline Mental Health Center.

Dr. Shephard Ginandes, Court Psychiatrist at the Roxbury District Court, has described the course conducted for the Brookline Police Department, starting with how to handle emotionally disturbed people, leading to a better understanding of underlying psychological and sociological factors, and coming to a better understanding of one's own emotional situation.**** While this short course was valuable, Dr. Ginandes noted, it only allowed for a brief introduction of many complex issues; further, it was on a voluntary basis so that all of the town's police officers were not involved. Group discussion sessions to aid a person in performing his job have been used successfully not only for police officers but also for other professions whose members work

* See p. 51, supra.

** Interview with the author, April 16, 1963.

*** Interview by the author with Howard Leary, April 17, 1963.

**** Statement of Dr. Shephard Ginandes, Massachusetts Advisory Committee to the United States Civil Rights Commissioner, Boston, Massachusetts, May 24, 1963.

under stress -- teachers and social workers. Such sessions should be an important part of a regular recruit training program, and would also be useful as an on-going program for in-service training.

A program for Boston in human relations should have as a minimum approximately forty hours for all recruits. Professionally-trained persons should conduct it. The main teaching techniques which have proved successful elsewhere, the case method of instruction and role-playing, should be employed. While demographic, sociological and legal information is important, the main thrust of the program should be to train the officers to be better able to deal with the on-going relationships with citizens of all racial and social backgrounds.

Such a program will ultimately fail, despite expert teachers and well-prepared materials, unless it has the full and continuing support of the top officers of the department, and unless it is abundantly clear that the procedures taught in the program are not to be learned and forgotten but are the standard operating procedures of the department in the field. This means proper supervision of the officer and quick, firm discipline for those who act otherwise.

*In Boston the most recent figures (1951) show that excluding drunk-
drivers there were 6,177 arrests without a warrant. Fifty-ninth Annual Report of
the Police Commissioner, op. cit., Table II.*

*Edward F. Delaney, Prosecuting Attorney, Middlesex County, Michigan,
"The First to Banquet," A paper presented at the Police-Community Relations
Institute, 1950 (Michigan State University, East Lansing, Michigan).*

See Berlin, op. cit., p. 7.

V. LEGAL REMEDIES

The consequences of unlawful police activity have been touched upon. Both illegal activities by the police, and actions which are legal but seriously infringe upon citizens' rights, destroy the necessary cooperation between citizen and police.

The fact is, in metropolitan areas particularly, that many thousands of arrests without a warrant are made yearly,* which cannot be justified upon the legal grounds given. The fact that in all but a few of such cases, no public outcry is raised may be attributed to a number of factors:

- 1) The ignorance of the affected members of the public as to their rights -- the law -- and the corresponding duties of the police -- in this area.
- 2) The inability in any case of those arrested to vindicate their rights.
- 3) The economic and social condition of those arrested.
- 4) The possible public need for a period of temporary detention for investigation on suspicion only.**

The first step is to make the public aware of their rights. While the hardened criminal is well aware of his rights, the average citizen, unaccustomed to contact with the police, needs this information. The pamphlet prepared by the Attorney General's office, is a good one, but its availability at the crucial moment is rare. Each person as he is booked by the police, could be given this or a similar pamphlet. This method of distribution, in addition to the present broad-scale circulation, would help citizens to understand their rights, and the duties of police officers.

It is a fundamental presumption of an open society, embodied in the Fourth Amendment, "that ordinary citizens are free to go about their business unmolested by the police, in the absence of probable cause to believe that someone is committing, or trying to commit, a violation of the law."*** Two

* In Boston the most recent figures (1961) show that excluding drunkenness there were 6,717 arrests without a warrant. Fifty-sixth Annual Report of the Police Commissioner, op. cit., Table XI.

** Edmund F. DeVine, Prosecuting Attorney, Washtenaw County, Michigan, "From Arrest to Sentence," A paper presented at the Police-Community Relations Institute, 1958 (Michigan State University, East Lansing, Michigan).

*** Berlin, op. cit., p. 3.

factors -- one a law and the other present police procedure -- run athwart of this intrinsic fact of an open community; these are the "abroad-in-the-nighttime" law and the practice of arrest on suspicion. While recognizing the legitimate powers of the police to investigate suspicious behavior, and indeed because of this faith in legitimacy, we believe that a statute such as the "abroad-in-the-nighttime" statute, which gives the police the power to stop, and detain against his will, a citizen who has committed no crime, is improper.

The most extensive recent study of arrest on suspicion, or arrest for investigation, was conducted in Washington, D.C. by a committee of three lawyers for a sixteen-month period. They found that arrests on suspicion rather than on probable cause did not require police to take prisoners before a judge; that no clear standards governed such arrests; and that many persons were detained for extended periods of time without permission to notify family or attorney.* While no such extensive inquiry has been made here, the 1,260 arrests on suspicion made in 1961 by the Boston Police Department, cannot be reconciled with the Fourth Amendment, which sanctions arrest only for "probable cause." "The practice of holding on suspicion seems a clear declaration that, at the time of detention, the enforcement officers could not produce sufficient evidence of probable cause to support the issuance of an arrest warrant."** Boston should, as has Lawrence and other cities, shun what is both a bad police practice and a violation of citizens' rights and give up the practice of holding someone on suspicion of felony.***

Present fingerprinting and photographing practices are most undesirable when used in regard to persons detained and never subsequently held for trial, or persons booked on suspicion, or especially persons falsely arrested. As has occurred in Philadelphia through the cooperation between the Police Advisory Board and the Police Department, some procedures for clearing the "files" of the prints of such persons should be looked into and established. Even though the prints remain on file with the State Police and the Federal Bureau of Investigation, a citizen would receive an important measure of

* Report and Recommendations of the Commissioners' Committee on Police Arrests for Investigation (District of Columbia, July, 1962).

** Berlin, op. cit., p. 3.

*** The Ford Foundation has recently announced a five-year study to be conducted by the American Law Institute, to examine the question of a criminal suspect's rights immediately after his arrest.

satisfaction when he is assured that the local prints are destroyed.

Under Massachusetts law, the police are required to advise an arrested person of his right within an hour to use a telephone, at his own expense. As former Assistant Attorney General Berlin has pointed out, "access to a telephone may in effect be the difference to access to counsel or not -- i.e., the difference between the Sixth Amendment as a myth or as a reality."^{*} This is to say nothing of the personal matter of being able to inform one's family or friends of the detention.

Despite the telephone statute, there are a number of pitfalls. First, as the statute refers to the right of persons who are formally booked, for those individuals who are held under suspicion there is no basis for establishing the time for the commencement of the right. Of far greater consequence is the lack of any enforcement procedures in the statute. The Boston Police Department has recently indicated that they are establishing a new procedure by which the booking officer will present each prisoner with a standard form on which he indicates his desire in writing to make a phone call, or explicitly waives that right. "This new Boston practice is a commendable reform, but even so unless some mode of enforcing is added to the present telephone statute, such as exclusion of admissions obtained during the period of wrongful denial, the law will remain largely precatory."^{**}

Perhaps the most serious of the current police official procedures in regard to persons in their custody, is the "practice of releasing certain detained persons not held for formal charges on condition that they execute a written waiver of their right to sue the officers civilly for false arrest."^{***} There have been claims that the police use coercion to obtain the signature of the prisoner on such a release.^{****} Even were this not so, we must recognize that "most persons under the dread and tension and misery of detention will execute anything to obtain a release."^{*****} The fundamental dubiousness of this whole procedure is indicated in the Police Department's manual.

^{*} Berlin, op. cit., p. 6.

^{**} Ibid.

^{***} Ibid., pp. 6, f.

^{****} See Appendix A, Case 9.

^{*****} Berlin, op. cit., p. 7.

While it is true that a release given by a prisoner . . . will serve to exonerate the police from responsibility, it must be remembered that this release in and of itself is always subject to judicial review on the complaint of the person giving the release. He may claim that the release was given under duress or that he did not understand the agreement. Even though a release is properly given, the only way the police can be sure that they will not be answerable for an abuse of authority is to present the facts to a magistrate at the earliest possible moment.*

Within this statement of the police we can see the germ of a new procedure. As it is recognized that the mere signing of a "release form" does not in and of itself absolve the officer of responsibility for his actions, why continue with it, since it carries with it at least an implied threat of coercion.

For if the police have confidence in their own capacity and integrity, they should be able to stand up to the threat of civil action, especially in view of the fact that their municipalities will conduct their defense for them. After all, an arrest is presumably lawful even if the accused is later found innocent.**

The question of the role of the municipality leads into the final legal note. That is, what responsibility should the municipality have to pay judgments made against a police officer? In the "Amons" case,*** where some four years after a judgment was entered in favor of Mr. and Mrs. Amons, the two police officers involved have not paid one cent, nor has the city, which may accept responsibility for the payment. In almost every state, including Massachusetts, the 17th century concept of "sovereign immunity" means that "governments cannot be sued without their consent for the wrongful acts of their agents or employees."**** In Florida, the State Supreme Court has repudiated the concept's application to law officers,***** and the Supreme Court of Illinois abrogated the doctrine of sovereign immunity and held a school district liable for the negligence of a school-bus driver.***** While in these two

* "Arrests in Suspicion of Felony," Police Department Manual, City of Boston, p. 229.

** Berlin, op. cit., p. 7.

*** Appendix A, Case 2.

**** Justice, 1961 United States Commission on Civil Rights Report, op. cit., p. 81.

***** Hargrove v. Town of Cocoa Beach, 96 So. 2d 130 (Fla. 1957).

***** Molitor v. Kaneland Community Unit District No. 302, 163 N.E. 2d 89 (Ill. 1959).

states the doctrine has been limited by judicial decision, only New York has given its consent by statute to be sued according to the same rules that apply to private employers.

When New York policemen use unnecessary violence in the performance of their duties, therefore, injured parties may bring a civil suit for damages against the State or municipality as well as against its employee, the officer. The statute makes the governmental employee liable for the wrongful acts of its agents -- the policemen. . . .*

A similar ordinance in Massachusetts would have made the Amons case end justly, that is by allowing a person duly awarded a judgment by the court to collect it. Further, it would place ultimate responsibility for police wrongdoing not with the individual officer, but with the state or municipality where it belongs.

* Justice, 1961 Report of the United States Commissioner on Civil Rights Report, loc. cit.

VI. CONCLUSION

The purpose of this survey has been to examine the existence of police malfeasance in our community and to offer various suggestions for remedial action. It may be well once again to note the importance of police-community confidence and respect as the indispensable prerequisite to the maintenance of law and order in a democratic society. It is in this light that the foregoing recommendations, here summarized, have been made. Their prompt adoption will serve to call a halt to rapidly increasing disrespect for police officers and to build effective cooperation between the citizen and the police.

To treat complaints equitably and to create an atmosphere conducive to the respect and cooperation from the public so necessary for effective police work, a citizen advisory board to handle all complaints of police malfeasance by citizens should be established immediately, by the mayor or by city council ordinance.

To protect the public and allow for a high-level of police performance, recruitment and selection procedures should be revised so as to provide minimum educational standards of a high-school diploma, to replace the present single multiple-choice examination with a battery of tests, and to include psychiatric screening of recruits, as well as for all members of the department.

To better prepare our police officers, a comprehensive training program in human relations, taught by a civilian expert using modern training techniques, should be instituted as an integral part of all recruit training. A similar program, of at least a week's duration, should be established for all present officers.

To place police action within the framework of law and justice, procedures which unduly and improperly limit citizens' rights, such as the "abroad-in-the-nighttime" law, arrests on suspicion, and the use of the "release form" should be stopped. The right of citizens to an effective Sixth Amendment protection should be assured by an enforcement clause to our present telephone statute. Assurance of just settlement of complaints would be achieved by the Commonwealth's waiver of its sovereign immunity from suit.