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Policing

Joseph M. Livermore*

I. INTRODUCTION

Concern over police practices, at least in academic circles, has recently become widespread. Brutality and callousness, in the language of the moment "insensitivity," have been assumed to be endemic. Beyond this, many believe that police regularly use improper criteria, such as race, in making important decisions. While these claims have been made with great assurance, often accompanied by gratuitous statements about the "pig mentality," few critics have attempted to document their claims systematically or to suggest means of improving police performance.¹

It was in this climate that I decided to attempt to learn more about police practices by observing police from the back seat of various squad cars during the summers of 1969 and 1970. While I expected to concern myself primarily with abuses of police power, I found instead that the most pressing problem was one that has not been popularly articulated—that of the appropriate role of the policeman. What one would expect police to do from an examination of the criminal statutes and ordinances has little relationship to how most policemen spend most of their time.

The first task of this article will be to describe the police patrol function as I saw it.² Thereafter, an effort will be made to

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1. P. CHEVIGNY, *POLICE POWER* (1969) is an exception in documenting various types of abuses in frightening detail. He is unable, as perhaps anyone would be, to estimate the total incidence of abuse. For two examples of less systemic, more impressionistic, criticisms see Lipset, *Why Cops Hate Liberals—And Vice Versa*, *ATLANTIC*, March, 1969, at 76; Brown, *Mirrors of Prejudice*, 208 *NATION* 498 (1969).

2. While the police are the subject of a great many recent scholarly books and articles, surprisingly little has been written about routine patrol, the activity accounting for 70 to 80 percent of police time. I make no effort to cite all the expanding literature on the police. The best general works are M. BANTON, *THE POLICEMAN IN THE COMMUNITY* (1964); W. LAFAYE, *ARREST* (1965); A. NIEDERHOFFER, *BEHIND THE SHIELD* (1967); J. SKOLNICK, *JUSTICE WITHOUT TRIAL* (1966); W. WESTLEY, *VIOLENCE AND THE POLICE* (1970); J.Q. WILSON, *VARIETIES OF POLICE BEHAVIOR* (1968). See also PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *TASK FORCE REPORT: THE POLICE* (1967); *THE POLICE: SIX SOCIOLOGICAL ESSAYS* (D. Bordua ed. 1967). For a somewhat overdrawn but perceptive account of a policeman's job see L. WHITEMORE, *COP* (1969). A good fictional account is J. WAMBAUGH, *THE NEW CENTURIOS* (1970).

evaluate some of the options open to a community in determining how it wishes to be policed, the means that might be employed to improve performance of the functions now undertaken by police, and the methods that could be used to reduce abusive or otherwise improper policing.

There are, of course, problems raised whenever an observer wishes to generalize from his own impressions. One such problem relates to the accuracy of his perceptions, and to this there is no real solution; the reader must assess the conformity of the facts reported to his own perceptions. There can be no doubt that a different observer would emphasize different aspects of a policeman's job or of particular transactions between the police and citizens. I hope that other observers will make that effort. My particular focus will be on what tasks the community, whether avowedly or not, wants police to perform, the alternative ways those tasks might be performed and the nature of the performance that can reasonably be expected if policemen continue to be responsible for those tasks.

A more fundamental problem of a study such as this is whether an outside observer can get an accurate view of present police practices. Is it not to be expected that the police will so temper their conduct that it will appear blameless to the observer? That it is to be expected seems obvious except for two things. First, most policemen I dealt with believe they are behaving reasonably and consequently are unafraid of observers. Moreover, when police have to act in circumstances inviting misconduct, they often have to act so rapidly that reflection about what action will please an observer is impossible. Second, the question assumes not only a malign conspiracy to purify but also a knowledge of what it is about police work that the observer will wish to criticize. Some of the things that are open to criticism are clear, of course, brutality and corruption being the two most obvious. But many other features of existing law enforcement are not at all plainly evil, and these features are generally open to observation.

All my observations were of one police department, that of Minneapolis, Minnesota. That department seemed to me neither brutal nor corrupt.³ Nonetheless, enough problems remain to make a study of its practices worthwhile. Indeed, the very absence of those most-feared evils throws in greater relief the less conspicuous aspects of police work that few have even begun to

3. For a fascinating account of a corrupt department see J. GARDINER, *THE POLITICS OF CORRUPTION* (1970).

question. Further, the nature of existing calls for police service and the response to those calls probably do not vary significantly from city to city.⁴ Particular human problems are universal. Whatever unique attributes Minneapolis has as a city should not affect the conclusions to be drawn from a study of the situations to which its police are called or the ways in which they respond to those situations.

The plan of this article is first to describe in somewhat less than full detail five working days of three squad cars in various parts of the city. Thereafter, an effort will be made to describe more fully the nature of particular kinds of police work, relating, for example, to domestic disturbances, and the police responses that might be appropriate. Finally, I will offer my own views of changes that could be made to improve those responses.⁵

II. THREE WEEKS IN A SQUAD CAR

A. THE SQUAD CAR SYSTEM

The Minneapolis Police Department has approximately 800

4. The impression one gets from the press, popular magazine articles and books like CHEVIGNY, *supra* note 1, is that other cities have a substantially greater problem with police abuses and that in those cities the police are viewed much more suspiciously by some parts of the community. Whether these reports are exaggerated only an observer in those cities could tell. Obviously, if the reports are true, the common behavior of patrolmen will be different. Nonetheless, the situations to which police are called should be similar and the questions to be asked about how those calls should be handled will be identical.

5. I am grateful to the Ford Foundation for funding this study. An even greater debt is owed, of course, to the Minneapolis Police Department for their willingness to let me pry without any assurance that my prying would be benign. Mayor Arthur Naftalin, his administrative assistant, Eugene Eidenberg, Chief Donald Dwyer and his inspectors, W. G. Sherman, Leonard Brucciani and Scott Kline were all tremendously helpful to me when I began this project. Shortly after I started riding, Charles Stenvig, a burglary detective, was elected mayor, and he appointed a new chief of police who in turn appointed a new police administration. Chief Basil J. Lutz and Deputy Chief Gordon Johnson have been uniformly cordial and helpful to me, as have Captain Kenneth Moore, Lieutenant Calvin Nelson, Sergeant Lyle Thernell and Reis Mitchel, the department's legal advisor. My greatest debt is to the patrolmen who let me observe their job over a protracted period. They are Jerry Becking, Bill Berg, Ron Bird, Boyd Blomberg, Carl Boeckmann, Pat Brady, Tim Branson, Leo Buchan, Jack Compton, Bob Cook, Perry Dunphy, Dick Fisher, Jene Frydenlund, Jack Gorczyca, Al Hancock, Jack Hanson, Larry Hanson, Bill James, Duane Johnson, John Johnson, Paul Jongquist, Bruce Kath, Bob Lutz, Chuck Manly, Jim Mossey, Bob Nelson, Jeff Porupsky, Tom Reed, George Ringkob, Andy Savage, Mike Schoeven, Bill Scott, Jon Searles, Steve Simmons, Len Skoglund, Dick Streed, Mike Sundstrom, Don Wagenknecht, Larry Will and Joey Winslow.

men, 75 percent of whom are concerned primarily with patrol work. Patrol cars, manned by two officers, are assigned to each of five precincts within the city. The officers meet at the precinct station for roll call before they begin their shift. Roll call is an informal affair at which the presiding officer advises the patrolmen of crimes occurring in the precinct during the past 24 hours and of any possible unusual demands for police services (such as a school dance at which trouble is feared) expected during the coming shift. In addition, the patrolmen are given a fresh list of unrecovered stolen cars and the names of people wanted on new felony warrants. Roll call usually takes from ten to twenty minutes.

Once the squad car is on the street, the officers take their instructions from a downtown radio dispatcher. The police radio in Minneapolis operates on three frequencies with three dispatchers, one servicing precincts two and four, another three and five, and another, headquarters or the first precinct. Calls for police service reach the dispatcher in two ways, either by a direct call to the police emergency number in the radio room or by referral from a precinct desk officer who has received a citizen's call. In both cases, the call is recorded with an abbreviated description of the problem (such as "kids disturbing") on a card which is handed to the dispatcher. He dispatches the squad car responsible for the district in which the problem exists. If the district squad is busy on another call, the dispatcher, depending on the urgency of the call, may send some other car to handle the call. A typical call by the dispatcher with responses from the squad car is:

Dispatcher: "555."

Squad car 555: "555."

Dispatcher: "Car 555 go to 34 ... 1st Avenue, domestic."

Squad Car 555: "34.... 1st Avenue, domestic."

In short, the officers responding to a radio call have only the tersest description of what it is they are expected to handle.

Most patrolmen operate on three shifts—midnight to 8:00 a.m., 8:00 a.m. to 4:00 p.m. and 4:00 p.m. to midnight—rotating shifts at the start of each month. Additional patrolmen, however, are on the street in the evening hours when the demand for police service peaks. These patrolmen start their shift at 6:00 p.m., 7:00 p.m. or 8:00 p.m. It is with this evening shift that I spent my time.

In addition to these regular precinct shifts, there is a tactical squad of about fifteen cars that is on the street each evening ex-

cept Sunday.⁶ They generally take regular calls when the district cars are overloaded, but they are available for use anywhere in the city should serious trouble develop requiring more force than the precinct is able to bring to bear. Also on the street are two cars responsible for making accident reports in traffic accidents involving personal injuries.

The material that follows describes the calls and other matters handled by three different squad cars in a typical working week. Much of the time, of course, the officers are simply cruising, looking for traffic violations, stolen cars or unsecured businesses. Where the car was dispatched by radio, I begin by quoting the dispatcher's instructions.

B. CAR 555

Car 555 covers an area three-fourths of a mile wide by one and one-half miles long. This area at its northernmost point lies about a mile south of downtown Minneapolis. In recent years, the northern two-thirds of 555's district has become an area inhabited largely by young single men and women, many of whom hail from rural areas. Older large homes have been converted into apartments or flats. New apartment buildings, both low and high rent, have been erected. A number of old and less expensive apartment buildings also lie within the district. The southern third of the district is similar to most of South Minneapolis. It consists almost wholly of single family dwellings of a value of \$15,000 to \$25,000. The demand for police service in this section of the district is slight. The northern two-thirds of the district,

6. If common hearsay, both police and non-police, is even partially true, the tactical squad in Minneapolis as well as other cities seems to have had a much higher proportion of instances of abusive police practices. (Complaints against tactical squad members have recently declined in Minneapolis because of the appointment of additional supervisory personnel.) In part this must derive from the fact that they are a separate force, self-perceived to be an elite corps of "super-cops," sometimes "unleashed" to handle particularly difficult problems. The legal niceties are least likely to be observed by those who are assigned as a special unit to prevent the spread of riot or rebellion. Since that use of their services is rare, and since there appears to be a carryover of aggressiveness in other contexts where its appropriateness is not even arguably proper, it would be wise in my view to make institutional changes to minimize the dangers of such abuse. I would suggest that the tactical squad be a group of officers, otherwise permanently assigned to precincts, trained to handle crowds or large disturbances and available for quick dispatch to such occurrences. The remainder of their time could be spent in routine backup patrol in the precincts to which they were assigned and to which their primary allegiance would be owed.

however, furnishes enough calls to make 555 one of the busiest cars in the city. In addition, since several major streets run through the district, and since many inhabitants of the district are young, traffic enforcement occupies much of the car's time on the street.

1. *Sunday*

8:30 *Customer trouble at a Dairy Queen on Lake Street.* On arrival, it was learned that no call had been placed by the proprietor. The dispatcher was so advised. A recheck of the complaint showed that it had been misread, and a car from the adjoining precinct was sent to a dairy store at roughly the same address on East Lake Street rather than West Lake Street.

8:35 29___ 1st Avenue, man chasing woman. We⁷ drove around the area and located a man and woman walking. The man had a grip on the woman's arm, and she was crying. We stopped and asked her if there was any trouble. She said that the man had beaten her. He said that he had found her in a restaurant talking to a man and that no woman of his could get away with that. While they were not married, they had lived together for eight years and had four children. One officer said to him, "It is no way to handle it by hitting her. Don't you agree?" The man said no, he did not agree. The officers asked the girl if she wanted to press charges. She said she was afraid to. The man asked if he could leave. The officers said that he could. As he left, he told the officers to watch their houses because he was going to burn them down.

The girl was taken back to the restaurant. She was asked if she wished to press charges. She replied, "If I press charges, he'll just come back and beat me up again." The officer responded, "Well, that's the chance you have to take. If he does, we'll arrest him again. This way is no good either." Although the girl was reluctant to take any action, the officers made an assault report so that a detective would see her in a couple of days after she had had an opportunity to think over her situation.⁸

7. I use the term "we" to describe the squad car with which I was riding because it is so much more convenient than repeating constantly the phrase "the officers." I do not mean to imply by this use that I approve of all that was done or that I was somehow involved in the decisions made.

8. I have not reported generally the time it takes for the officers to complete a call. This can vary tremendously. If only some form of counseling is required, a call usually takes ten to fifteen minutes. When it becomes slightly more involved, as in the call just described, it can

9:10 10— *W. Lake, silent alarm.*⁹ There was no evidence of a break-in, and we left after the alarm company employee arrived.

9:12 *Dean Boulevard and Lake, P.I. (personal-injury automobile accident) check for ambulance.* Using lights and siren, we arrived quickly at the scene of the accident, learned that no one was injured, and advised the dispatcher that no ambulance was necessary. One of the cars involved in the accident, although seriously damaged, had left the scene, a woman driving. The license number of the car had been obtained. The traffic car then arrived and made the hit-and-run report. We drove around the area and, at 9:35, located the hit-and-run car. A tow was obtained, and the car was held for investigation by the hit-and-run squad.¹⁰

9:55 Two cars drag-racing on Lake Street were stopped. Although no clocking had been obtained, they were tagged for speeding at 40+ miles per hour.¹¹

10:00 *28th and Oakland, car prowler at railroad bridge.* We learned that the "prowler" was the owner who had locked his keys in the car.

10:25 A car tagged for running a stop sign.

10:35 35— *Harriet, light on in an unoccupied house.* We checked the exterior, finding no sign of a break-in. A neighbor let us in the house, and again there was no visible indication of entry. The light was turned off, and we left.

take up to thirty minutes or more. If an arrest is necessary, the officers may be "off the air" and unable to provide police service for up to two hours or more. This will depend on the length of time, if any, that they have to wait for a tow truck to remove the car of the person arrested and on the number and complexity of the reports they have to complete as a consequence of the booking. Efforts to reduce the time an officer is not "on the street," largely a technical matter, are much needed.

9. A "silent alarm" is a protective device, installed by many businesses, designed to warn of any intruder without in any way alerting him that his presence is known. A signal is given at the office of the private alarm company, which then advises the police.

10. Presumably the car was seizable as the instrumentality by which a crime was committed.

11. While officers could tag on the basis of their opinion as to the speed of a car and testify to it, they are generally reluctant to issue a speeding citation unless they have a clocking, by use of a calibrated speedometer, of the offender. In the unusual case of a tag without a clocking, such as the one described, something extra is usually present. Here the offense occurred on Lake Street, where drag-racing has become widespread and is the subject of much complaint to the police. Second, the cars involved in this case were particularly flagrant racers, squealing rubber for half a block.

10:50 A car was tagged for an illegal U-turn.

10:57 12.... *West Lake, silent alarm.* There was no visible sign of entry. We left after so advising the dispatcher and learning that an alarm company employee was on his way.

11:00 27.... *Blaisdell, Apt., harassment.* We were met by a very upset man of about 35. He told us that he believed that he and his wife were being harassed by her ex-husband. Two years before, when this couple was dating, the ex-husband had threatened to kill the man if he continued to see his ex-wife. Then, after they were married, the man's car had been burned under circumstances suggesting the ex-husband's participation. This night, the couple had suddenly been deluged with chicken, pizza, hamburgers and such, all of which had been ordered by phone for delivery but none of which had been ordered by them. In addition, they had received threatening phone calls. There was no evidence, other than inferential, as to who might have been the cause of this trouble. The complaining husband was very distraught, saying such things as, "I'm not going to stand for this. I'll run him through with a knife. I just can't take this." The officers, though very sympathetic, could only suggest getting an unlisted phone and offer to drive by his car several times during the course of the evening to insure that it had not been tampered with.

11:30 A car was stopped, and its driver was advised that he had no tail lights.

1:05 A car was tagged for parking next to a fire hydrant.

1:20 26.... *Hennepin, check a drunk.* No drunk was in sight when we arrived. We so advised the dispatcher and left.

1:35 13... *West Lake, silent alarm.* The building was secure, and the matter was left to the alarm company employee.

2:00 26 ... *Pleasant, stolen auto.* A report was made, and the information was phoned into the auto theft desk.

2:30 A car was tagged for an illegal U-turn.

2. Tuesday

8:35 We were stopped by a man who had found some lost or stolen credit cards outside his house. The property was inventoried and turned in at the precinct station.

8:53 *Take drunk off bus number 1351 at Nicollet and Lake.* When the bus arrived at that corner, we entered and roused a person who appeared to be in a drunken stupor. When we got

him out of the bus, he seemed able to navigate and was sent on his way.

9:45 28th and Nicollet, *see a man about a threat*. When we arrived at the scene, we were met by a man who said that he had just been threatened by another man with a knife. With some difficulty, we were able to determine that the complainant had been visiting a female friend, the mother of the alleged assaulter. The complainant took us back to the home of his friend. When we arrived, the man who had threatened the complainant with a knife was out. His mother said that she believed both men were drunk. The complainant said that no one was going to threaten him with a knife and that he was going to sign a citizen's arrest. When the alleged assailant returned, he got into a shouting match with the complainant, and each of them said that the other was drunk. The mother heartily agreed with both. The officers finally persuaded the complainant to leave. That did not solve the problem, however. At that point, the mother began to complain to the officers about the fact that her son drank too much. The son in turn complained that the mother refused to move to better quarters. The officers suggested to each that if they didn't like living together, they ought to live separately, but that seemingly satisfied neither the mother nor the son. A sample of the mother's words gives the tone: "I'm his mother, and I've been putting up with this for over six years with him. Every dime he earns. I love him, or I wouldn't have him here. I married a man like him. I was beat up every night. I had to get a divorce. But he's nothing but a wino. Every dime he earns goes for wine. It's hell on earth for me. This house is a pig pen, and my sister is coming on Monday; and I can't even get it cleaned up. I can't do anything. I'm too ill. I weigh 85 lbs. from this kind of business. I drink beer, and what am I going to do?" The mother wanted the officers to persuade her son to seek psychiatric help. The officers, finally disgusted, left, one of them saying, "Look, he's not my son. If you can't get along, tell him to get out."

10:40 30— 1st Avenue, Apt. —, *a possible burglary*. We arrived and were met by a tenant who told us that he had promised to watch the apartment next door while its occupants were away for the weekend and that he had heard a noise in the apartment. He had a key and opened the apartment for us. Nothing had been disturbed.

11:15 22— Portland, Apt. —, *shots fired*. We met the complainant who said that she had heard gun shots. The officers in-

quired whether it wasn't possible that she had heard a car back-firing or kids shooting off firecrackers. The complainant replied that she knew the sound of gun shots when she heard them. The officers looked around the area, saw nothing and advised the complainant that if she heard any other suspicious sound she ought to call back. While we were at this address, we heard a loud party next door, and we told the participants to keep the noise down.

12:40 *Round-up Bar, Portland and Lake, fight, one participant with a gun.* When we arrived at the scene, another squad car had already ascertained that no participant in the fight had a gun. The problem of separating the participants and restoring the peace was handled by that car.

1:40 A car was stopped, and its driver was warned that he had been speeding. Because we had been unable to obtain a clocking, no ticket was given.

1:55 We stopped a car and issued a speeding tag. The driver claimed that he had speeded up to avoid being pushed off the road by another car. We had been following him and had not seen any such incident.

2:05 *36th and Garfield, shooting out car windows.* We saw that car windows had been damaged, but there was no one in the vicinity.

2:45 *36th and Nicollet, girl being chased.* When we arrived at that intersection, we saw a girl standing in a public phone booth. She came out, got into the squad car and told us that as she had been walking home to an address on the near north side, two men had forced her into a car. They had driven all over Minneapolis, finally stopping near this intersection. The girl had been able to take a pen knife out of her purse. She used it on one of the men and then ran. An abduction report was made for transmittal to detectives, and then the girl was driven downtown, where she was met by a squad car from the north side which in turn took her home.

3. Wednesday

8:45 2.... *East 27th, missing children.* We were met by a frantic mother, who joined us in the squad car. We cruised around the neighborhood searching for the children without success. We took down a description of the children and advised the mother that if they returned she should call the Juvenile Department and tell them. We then went to a call box in order to call in the description to the Juvenile Division. By the time

we were able to place the call, the mother had already telephoned to say that the children had returned.

9:20 We stopped a car that had been speeding and weaving from side to side. While the driver was obviously intoxicated, he was very polite and understood that he was in serious danger of being arrested for driving while intoxicated (DWI). The officers tagged him for speeding, but instead of arresting him for DWI, they escorted him to a coffee shop and advised him not to drive for the remainder of the evening.

9:50 A car was tagged for a defective muffler.

10:10 A car was tagged for running a red light.

10:12 21— *Garfield, Apt. —, burglary.* We were met by a distraught tenant. Her apartment had been burglarized and the burglars had torn up everything in the apartment leaving the floor covered with litter. In addition, they had written "fuck you" on the mirror. A burglary report was made listing the missing items. Nothing could be done to relieve the tenant's distress.

11:45 28— *4th, down, stranger in the house.* We located a very drunk man who claimed that he had been trying to get into the house to see a friend. The occupants of the lower part of the house stated that this man did know someone upstairs in the house. The occupant of the upstairs portion was not there. We advised the drunk to go home and return to visit his friend when he was sober.¹²

12:40 We stopped a car at 28th and Blaisdell after it had run a red light. Using a flashlight, one of the officers saw an open liquor bottle in the car. The driver and the occupant were minors. The driver was tagged for running a red light. Both the driver and the occupant were booked for having an open bottle in an automobile and for being in possession of liquor.¹³

12. While most people are amenable to police suggestions, presumably because they fear arrest, it is interesting to consider what the police could do if the suggestion were not followed. In this case, the man might have been arrested as a drunk or for disturbing the peace. The ultimate criterion would not be guilt of the substantive charge but unwillingness to obey an order of the police designed to satisfy the complainant by eliminating that which was offensive to him.

13. An "open bottle" violation (MINNEAPOLIS, MINN., ORDINANCES § 403.070 (1970)) almost always results in a booking. Often a summons would be sufficient to accomplish the enforcement purpose. Booking seems to be preferred, in part, as an administrative means of demonstrating the seriousness of the offense. If booking is to serve that purpose, should there not be some means of making the assessment of seriousness by the political process?

2:05 26___ *East Lake of the Isles Boulevard, P.I., ambulance on the way.* Using lights and sirens, we arrived quickly on the scene, learned that the injuries were not serious and advised the dispatcher that the ambulance did not have to use its siren. We arranged for the automobile to be towed. No accident report was necessary because only one car was involved. It had gone out of control on a curve and had run into a stone retaining wall.

4. *Friday*¹⁴

9:10 We pulled alongside a car that had been involved in a drag race. One of the officers said, "Don't play games. I'll take that car away from you."¹⁵

10:02 *Lyndale and Lake, DK (drunk) on the bus bench.* We located a 19 year old girl who appeared to have passed out on the bench. It was immediately evident, however, that she was not drunk, although she was giving a good performance of drunkenness. At first, she refused to talk to the officers except to say that she wanted to go to jail. Eventually, it was learned that she wanted to escape her drunken, assaultive husband. "I just want a good night's sleep," she said. The officers advised her that if she went to jail she would not be able to sleep because of the noise coming from the drunk tank. They suggested that she go rent a hotel room. She said that she couldn't afford that. One of the officers then said that if she couldn't afford a hotel room, she surely could not afford a \$25 fine for being drunk. Some helpful bystanders offered to let her sleep in their homes for the night, but she turned those offers down.

10:27 *In front of the Silver Dollar Bar, PD (property damage automobile accident).* A squad car had been hit by another car. An accident report was prepared.

11:13 25___ *Dupont, loud party.* We were advised by the owner of the home next door that the boys who rented the house were always having parties that lasted long into the night and prevented residents from sleeping. By the time we arrived, however, the boys were gone and the house was empty. We listened, at first sympathetically and then not so sympathetically, to a long harangue from the woman who lived next door, saying that the

14. The officers were late getting on the street because the prior shift using the same squad car was working overtime on a booking.

15. One of the functions of a training supervisor riding along, proposed *infra* at 728, would be to suggest that such a warning is needlessly insulting and that the enforcement purpose could be accomplished with much more polite language.

boys were bad boys, that they urinated out the window, that they threw garbage on her lawn and that they did other bad things. The woman was advised to call the police the next time such things happened.

11:13 33— *Humboldt, loud radio.* Although we received this call at the same time as the call on Dupont, it was 11:40 before we were able to answer it. By that time, we could hear no loud radio in the neighborhood.

11:52 We were stopped at Blaisdell and Lake by a man who informed us that a bystander had left the license number of a hit-and-run car that had run into his car. We obtained the name of the person to whom that license had been issued and gave it to the man.

12:30 34— *Grand, suspicious car.* We located the car in question and determined that the occupant was only waiting for the owner of the nearby house to return from work.

12:33 29— *Bryant, sick person.* We learned from the woman who answered the door that her husband was having serious ulcer difficulty. An ambulance was called, but the officers did not wait for its arrival.

12:42 As we were passing a house, we heard a very loud party. The participants were warned to reduce the volume.

12:50 30— *Finley, DK at door.* When we arrived, the drunk was gone.

12:50 21— *Grand, loud party.* The yard of the house was a mess, with cans and bottles strewn everywhere. The officers told the occupants of the house that they were pigs and a discredit to the neighborhood. Nothing more was done since the party was in the process of breaking up.

1:02 24th and Lyndale, *H-and-R (Hit-and-Run).* Since the victim of the hit-and-run accident had moved his car and had been struck on private property, no report was made.

1:10 A car was given a speeding tag.

1:14 32nd and 1st, *DK in the street.* When we arrived, the drunk was gone.

1:20 A car was given a tag for running a red light.

1:30 *Magoo's Bar, take a stolen (stolen auto report).* When we arrived, no one was there from whom to take a stolen auto report.

1:50 We provided transportation to jail for a prisoner booked for traffic offenses by the sergeant on duty.

2:55 *Blaisdell and Lake, PD.* We were told by the driver who had been rear-ended that the other driver had refused to give his name. In addition, the man's date had taken his place in the driver's seat. We talked to the man who had been driving, obtained his name and then checked by radio to see if he had a driver's license. His license had been revoked. Since the officers had not seen this man driving, it was necessary, in order to arrest him for driving without a license and driving while intoxicated, to obtain a citizen's arrest from the person who had been the victim of his driving, which we were able to do. While we were on the scene, another police officer came up and said that the man we proposed to book had on prior occasions assaulted police officers and that, consequently, we should be very careful. We booked the man, but he refused to take an intoxication test.

5:10 As we were returning to the precinct station, we saw a car run a red light. We stopped it, discovered that the driver had no driver's license in his possession and radioed to see if he had a driver's license. We were told by radio that there was no record that he had a license. We were also told by a passing police officer that this had happened before and that the driver did indeed have a license but that the state agency could never locate it. We allowed the driver to go with that police officer to his home and obtain his license. He was, however, given a tag for running a red light.

5. *Saturday*

8:15 25___ *Garfield, Apt. ____, domestic.* The 30 year old husband was standing on the doorstep of the apartment building when we arrived. He said that his wife had left and that he was worried. His wife then returned and said that she had also called the police. We went to their apartment, where the husband had been having a beer and watching television. The following conversation then ensued:

Wife: He was drunk and acting like a crazy fool.

Husband: I just called the police because I couldn't find my wife.

Officer: He doesn't seem too intoxicated now.

Wife: Well then, he was putting on a pretty God damned good act lying on the floor.

Officer: Have you been married a pretty long time?

Wife: Four years.

Officer: Do you have a minister or someone you can go to to straighten this out?

Husband: Minister or somebody? We have no problem, I mean.

Officer: You call on us, there must be a problem some place.

Husband: Well, I thought she was lost in the building; that is the reason I called you.

Wife: Well, he laid on that floor and told me he couldn't see. He had the DT's here not too long ago, and I was scared.

Officer: Have you been treated as an alcoholic?

Husband: Yes.

Officer: When was the last time?

Husband: Three months back.

Officer: Hold a steady job?

Husband: Yes.

Officer: You know more than I do what a drink can do to you. Is it smart to keep drinking? You've been to doctors before. If they can't help you, I'm sure I can't, but think of your wife; she's worried about you. This laying on the floor is probably a way of getting sympathy or something. It's not going to work too much longer. Let's straighten up.

Officer: (to wife) Next time he complains of being sick I would call the doctor.

8:30 24— *Harriet, juveniles drinking.* We were met by a distraught housewife who told us that teenagers in the neighborhood were joining together in groups and drinking. She wanted us to find them and to arrest them or, at a minimum, to inform their parents. Since the kids were gone, the officers left after talking with the woman. Shortly thereafter, about four blocks away, we saw some kids. They also saw us and began throwing beer cans in a hedge. When we got out of the car, some of the kids ran while others stayed. One officer asked one of the boys to get the other boys so that he could tell them not to drink. "Aw, bull shit," the boy said. The officer grabbed the boy by the shirt, lifted him off the ground and told him that he could not talk to officers that way. The boy was trembling. As we drove away, the officer commented that he just didn't understand why kids thought they could get away with such things these days.

8:48 33— *Pillsbury, down, unwanted guest.* We were told by the occupant of the flat that her ex-husband was refusing to leave the house. She claimed that the ex-husband wanted to be there when her boyfriend arrived to take her out for a date. The ex-husband, in turn, claimed that he merely wanted to visit with the children. The officers persuaded the ex-husband to leave and commiserated with him about the emotional difficulties involved in a divorce. As we were driving away, one of the children called out to his father saying that he would be out in a moment to go for a hamburger.

9:00 33... Pillsbury, man hanging around. When we returned to the same address as our previous call, the ex-husband had left.

9:55 27th and Harriet, new construction, damage to property. We were told by a neighbor that kids had been throwing rocks through the windows of an apartment building under construction. Since they were gone, there was nothing we could do.

10:55 Nicollet, domestic.

Officer: Hi, you called?

Woman: Yeh, my little girl is gone. She's been gone about 15 minutes.

Officer: Your husband?

Woman: No, my boyfriend. We got into an argument, and I got out of the car, and I asked if he was going to bring her in, and he said, "Yes," and he took off like crazy, and he's drunk.

Officer: What's her name?

Woman: Susan.

Officer: Five years old?

Woman: Yes.

Officer: What's your first name?

Woman: Linda.

Officer: And what's your boyfriend's name?

Woman: Richard.

Officer: Where does he live?

Woman: 24th Avenue, North, a yellow house with a trailer in front.

Officer: What kind of car does he drive?

Woman: A tannish Chevrolet, about a 1963.

Officer: How many doors?

Woman: Four.

Officer: How old is he?

Woman: 25.

Officer: How tall?

Woman: About 5 foot 8.

Officer: What was Susan wearing?

Woman: She was wearing a print jacket, blue slacks, blue sweat shirt and black shoes.

Officer: Did he say where he was going at all?

Woman: When I left, he said he was going back to the house.

Officer: Did you give him permission to take the girl?

Woman: No.

Officer: Do you wish to press charges against him?

Woman: Yes, I do.

We told the dispatcher of the abduction, and a north side car was sent to locate the boyfriend.

10:20 25— *Nicollet, P.D.* The victim's car had been hit by another car which had then driven away. We made a hit-and-run report and obtained the name of the person to whom the other car's license plate was issued.

10:30 We returned to— *Nicollet*, the scene of the 10:05 domestic, to recheck the information. After verifying what we had learned earlier, we called the sergeant in charge of the shift. He advised us to dictate an offense report. In order to do so, it was necessary to go to City Hall. While there, we learned that Richard, the boyfriend, had been picked up by a north side car and had denied any knowledge of the incident. After finishing the report, we went back to the *Nicollet* address about midnight. The sergeant, the deputy inspector on duty, a detective, the attorney for the police department and others were there. The detective had received permission to search the house. In a closet, behind a number of stacked shoe boxes, he found the little girl asleep. He asked her how she got there, and the little girl replied, "Mommy put me here." The woman then became hysterical. She accused Richard of trying to get her into trouble. She picked up a steel ball which she started to throw at Richard, but the detective disarmed her. She then said, "Nobody is going to take my children away from me." The officers informed her that no one was trying to do that. But she became more and more hysterical and continued screaming that same phrase. Her children began to cry. The woman was persuaded to seek psychiatric admission to General Hospital, and she was driven there by the sergeant. We went back down to City Hall to file a complaint against her for a false felony report.

1:20 31— *Pleasant, Apt. 5, DOA* (a dead body). The deceased was a 64 year old woman, living alone, who had a long history of medical problems at General Hospital. There was no indication that the cause of death was anything other than natural. The coroner was informed, but he did not want to come and examine the body. The next of kin was advised, but he didn't want to come either. Eventually, the next of kin was persuaded to contact a funeral home. As soon as we learned that the funeral home was coming to pick up the body, we left.

3:05 30— *Stevens, up, break-in.* On arrival, we found a drunk trying to get into his girlfriend's apartment. She said that she didn't want to see him. We told him this and convinced him that he ought to go home.

C. CAR 120

Car 120 covers an area one-half mile wide by one mile long in the heart of downtown Minneapolis. Bisecting the district along its long axis is Hennepin Avenue, a street lined with bars, night clubs and movie theaters. South of Hennepin Avenue lie the shopping and business areas of Minneapolis; north of Hennepin are warehouses and older office buildings. At the east end of the district lies the Mississippi River, and along it, just north of Hennepin Avenue, is the Burlington Northern Railway Station. That portion of the district is heavily populated with derelict alcoholics.

1. *Sunday*

7:16 *Audible alarm, 8th and LaSalle.* The officers investigated the building and located some painters who were working in it.

9:10 *7th Street and 11th Avenue, assault.* We were met by a 20 year old boy who advised us that he had been unable to recover some tires he had loaned to a former girlfriend. He said the girl's father threatened him with bodily harm if he remained at the girl's house. The officers had dealt with the girl's father on occasions in the past and they considered him to be a very difficult person. We took the young man back to the girl's house. The girl's father then launched a harangue against the boy. He didn't want his girls to go out with him, he said, because the boy associated with "niggers," because he had been in a reformatory and because he wanted the girls to hustle. The officers tried to ignore this and devoted their efforts to resolving the matter of the tires. Eventually, this was worked out. As we were about to leave, the father said to the boy, "If I ever see you on this porch again, I'll shoot you, and I've got the gun to do it with too." He was told not to make such threats.

10:25 We were stopped outside the district by a citizen complaining of teenage car prowlers. We saw four teenage boys a block away, and when we stopped to talk with them, three of them ran.¹⁶ One officer pursued them. The other officer hand-

16. Is flight in itself a basis for apprehension? While almost all officers, by necessity, believe it to be, there is little legal support for that proposition. Perhaps refusal to answer questions, save on grounds of privilege, or flight when approached ought to be criminal. It is unlikely that officers will be able to ignore the common sense proposition that if a man runs from the police, it is for a reason requiring the police to investigate.

cuffed the remaining boy though he protested that he had nothing to do with the boys who had run. We drove after the boys and pursuing officer, and as we were doing so, we spotted one boy walking down an alley panting heavily. He claimed that he was just walking home from a movie. He was out of breath, he said, because of a chest ailment. He, too, was handcuffed. The other two boys were caught by the pursuing officer. All four boys were returned to the scene where several of them were identified. The boy in the alley, who had protested his innocence, was the brother of one of the boys who had eventually been caught by the pursuing officer. All four boys were under 18. When one of them asked that his handcuffs be loosened, one officer replied, "I don't think so, that may be the only punishment you get until you're 18."¹⁷ The boys were taken to the Juvenile Division at City Hall. The officers prepared offense and arrest reports.

2. Monday

7:45 — *East 15th, Apt., man with no clothes.* We were met at the door of an apartment house by a girl who said that when she had returned home to enter her apartment, she had found a naked man asleep on the floor. We went to the apartment, awakened the man, who was obviously drunk, and managed to convince him to get dressed. He said, "Give me a break, officer," and promised that he would walk home. We asked where home was, and he didn't seem to know. The officers went through the identification in his billfold and saw that he had recently been released from the county workhouse. They finally decided to arrest him since he didn't seem to be able to walk without falling down. As we took him to City Hall in the squad car, he said, "I'll claim you beat the shit out of me." He then engaged in some fake convulsions. On the jail elevator, he attempted to kick one of the officers in the groin.

8:35 *4th and Hennepin, at the public library, parking problem.* There were a number of cars illegally parked in the middle of the library lot blocking the exit of other, legally parked cars. Parking tags were issued.

8:45 We saw a car with three juveniles in it. They appeared to be drinking beer. We stopped them and discovered that they

17. This is an example of a mild form of vigilante justice caused by the common understanding that juveniles are immune from punishment and that the "fatherly lecture" of the juvenile judge, instead of reforming, only makes the offender sassier.

indeed had beer in their possession. The beer that was in sight was confiscated, and the boys were asked where they got it. They said that they had found a wino who purchased it for them in return for their giving him some money to buy wine. They were asked if they had anything else in the car, and they denied it but said that if the officers wished they might search the car. The officers were on the verge of letting the boys go after making a Juvenile Division report; at the last moment, however, one officer decided to check the trunk of the car. Three more six-packs of beer were found. The officer said, "Mr., that lie is going to cost you a trip downtown." The boys were taken downtown. Since two of them were under 18, they were sent to Juvenile Division. The 18 year old was charged with possession of liquor and booked at the jail. The officers told the boys as they were driving them downtown that, had the boys admitted possession of this extra beer, the officers would only have confiscated it without booking them.

11:45 *9th and 14th, car prowlers.* By the time we arrived, the car prowlers were gone. A description of them was received from the complainant.¹⁸

12:02 *Nicollet and Washington, meet Car 6.* We met a morals squad officer and transported two arrested prostitutes to jail.

12:41 *7th and Hennepin, see the beat man.* We provided transportation for a man arrested by the officer on the beat.

1:00 *WCCO, assault.* A large heavy-set 20 year old man had run into a television station complaining that he had been assaulted. It became evident that he was a homosexual who had been beaten up by another homosexual. The location of the assault was a place called "Geno's," a spa for gay youth. It sold not liquor, but soft drinks and hot dogs. The complainant talked incessantly, either trying to regale us with scuttlebutt about the homosexual community or complaining about how much his face hurt. Despite the fact that he said he was afraid, he signed a

18. On a call of this sort, the police log the service provided as "received info." This is a shorthand designation for listening to a complaint that involved no criminal conduct or crimes not possible of solution. In this case, it would have been a waste of time to search for those tampering with cars since the probability of finding them, given the very general description of the complainant, would be remote. As might be expected, police sometimes give up too easily. It would be difficult, however, to create an equation using gravity of conduct and probability of apprehension that could more effectively guide officers in deciding when to pursue a matter.

citizen's arrest against his assailant. We went to Geno's, located the assailant and arrested him.

3. Tuesday

7:00 16— *Elliott, down, DK.* When we arrived, we could locate no drunk.

7:48 *Grant and 1st, Wesley Church, possible burglary.* We were met by a scoutmaster who said that when he had arrived for the weekly troop meeting he had found a boy in the church. The boy had admitted that a friend of his had taken 35 cents from the church publications box. We talked to the boy and told him that he ought not to participate, even by watching, in such activities and then began to take him home. As we drove, we found his brother and the other boy who had been with him. The money had already been spent on candy. We first took the two brothers home, talked to their father and informed him of their problem. He said that the boys were being led astray by the third boy, their cousin. He asked us to talk to the cousin's parents. As we were coming out of the apartment building, one of the officers playfully poked a teenager in the stomach and said, "No smoking." He poked something hard, thought at first that it was a pistol and discovered a liquor bottle. The boy was the brother of the cousin who had been picked up earlier. The officers started to take both these boys home, but they told us that they had no father and that their mother was at a local bar drinking. The officers took the boys to the Juvenile Division.

9:50 *Scotch Mist, threats.* We arrived at a downtown night club where a White man, fresh from the farm, had made the mistake of insulting a Black for having a White girlfriend. Both men were very upset when we arrived. We managed to separate them and advised the White that interracial dating was none of his business.

10:20 *9th and Nicollet, young girl crying.* We were unable to find her.

10:50 *American Linen, silent alarm.* Several squad cars converged on this call. We covered the front of the building while the other officers searched it. Nothing was found.

11:05 *7th and 1st Avenue North, one down.* We located a drunk passed out and were unable to awaken him. We called the paddy wagon.

12:00 *246 4th Avenue, Serville Hotel, trouble.* We were met in front of this cheap hotel by a tenant who said that the desk

clerk had attempted to proposition the tenant's girlfriend and then had hit him. The desk clerk said that the tenant had hit him. The tenant was willing to move out if the desk clerk would refund his prepayment. The desk clerk said, "He forfeited that when he hit me." We advised both men to reconsider in the morning. The tenant offered to shake hands and forget it, but the desk clerk refused. The tenant wanted us to stand guard while he packed, but we refused to do so since it didn't appear to be necessary.

12:45 *Serville Hotel, trouble.* One officer said, "I don't exactly relish going back." "We could book him for drunk," the other replied. When we returned, we stood guard while the tenant packed his belongings. All the while he was packing, he was working himself up to a fever pitch about "that nasty Black motherfucker" of a desk clerk.

1:25 *6th and Chicago, burglary suspect in a foot chase with another squad car.* We drove around the area trying to locate him without success.

1:30 *Radisson Hotel, trouble.* We were met by the desk clerk who said that a domestic situation had occurred earlier when a husband and wife visited a tenant and the wife decided she wanted to spend the night with the tenant. Since we had seen a husband and wife fighting as they left the hotel when we entered, we assumed that the episode was over.

1:45 *Circle K, 915 Hennepin, DK.* When we arrived, the paddy wagon had already reached the scene and handled the matter.

4. Friday

6:50 *Red Baron, 217 South 6th, DK, trouble.* A drunk walked out of this bar as we walked in, and we were advised that he had been the source of the trouble.

6:55 *1800 1st Avenue South, fight or domestic.* We were told by the person who met us at the door that there had been a fight between a boyfriend and a girlfriend in her apartment but that they had already left.

8:00 *Willow and Spruce, in the park, fight, 9 against 1.* We learned that a group had been attacking a soldier. The soldier turned out to be a paratrooper who did not wish to press charges and thus bring his shame to public view.

8:57 We stopped a car that had been carelessly driven and warned the driver.

9:15 We noticed some young people apparently trying to break into a car. When we stopped, we learned that they had locked their keys inside the car. The officers were able to open the car for them with a bent coat hanger.

9:35 We saw two men shooting off fireworks. We stopped, warned them and confiscated their remaining fireworks.

10:15 *Rand Hotel, 618 Hennepin, argument over a room.* We were met by a 67 year old woman who seemed to be having mental difficulty. She accused the management of this cheap hotel of trying to "get" her. She said that she had lots of friends in the Police Department. She talked incessantly for twelve minutes without raising any problem requiring police assistance. The call was catalogued as one in which the officers "received info."

10:32 *The Carousel, take a stolen.* Outside this bar we met a man who told us that his car had been stolen, and we prepared a report of the auto theft.

10:50 *6__ 1st Street North, audible alarm.* It turned out to be an audible fire alarm, and we left as the fire trucks arrived.

11:55 A car was stopped and a tag was given for running a red light.

12:05 A car was stopped and warned for careless driving.

12:23 *Black Angus, robbery of person.* A derelict alcoholic had wandered into this restaurant and complained that he had been rolled. He said that he had been attacked in a church by a gang of Indians and that \$110 had been taken from him. The officers made a robbery report despite the victim's incoherence. We then took him to the address where he claimed to live. On the way, we advised him that he ought not to carry that kind of money when he was going to become so drunk. The man replied, "Maybe I should be more perfect tomorrow. I don't think you guys are going to help me. I'm going to talk to the FBI, J. Hedgar [sic] Hoover. I'm tired of these goddamned Indians." We learned the next day that the victim did not live at the address given since the detective had not been able to locate him there.

12:57 We saw a driver apparently careening out of control down Hennepin. We stopped him. He turned out to be a student from Wisconsin with no driver's license in his possession. He was booked for careless driving and no driver's license.

1:45 Someone threw a rock at the squad car, missed it and broke the window of an adjoining business.

5. *Saturday*

6:45 We saw some derelicts drinking wine, and the officers forced them to pour the wine out.¹⁹

7:00 9— *West Franklin, Apt. —, unwanted guest.* The caretakers of the apartment building advised us that the ex-husband of one of their tenants was threatening harm to the tenant and abduction of the tenant's child. He had also threatened the babysitter. We determined the kind of car that the ex-husband was driving. The tenant then returned with a friend and asked us to keep out of the area so that her husband would not be afraid to find her. She then hoped to tell him that the divorce was final and that he ought not to bother her any more.

7:50 *Cassius Bar, fight.* It had been settled by the time we arrived.

7:58 — *Cafe, domestic.* A 20 year old girl and her sister-in-law met us and advised us that the girl's stepfather, the proprietor of the cafe, had let the air out of the tires of the girl's car. He had also pulled loose some wires under the hood and then had blocked their car with his. All of this had occurred in the cafe's parking lot. She also claimed that he had hit her. We talked to the stepfather and mother of the girl, and they said that they had taken this action in order to prevent the girl from driving to Wisconsin until she had cooled down. They claimed that she had had a fight with her husband, that she wanted to get away by driving to see her grandmother in Wisconsin, and that she was too emotionally upset to drive. This was apparently evidenced by the fact that she was willing to take her baby with her in only a short sleeved shirt. The mother also told us that the girl was a bad driver with many arrests and that the car wasn't safe. The officers advised the girl that she could call a tow truck and that, if she wished, she could sign a complaint against her parents in the morning. We then left.

8:28 — *Cafe, "settle it this time."* The sister-in-law claimed that she had been verbally abused by the stepfather. The officers decided to wait until the tow truck arrived. The stepfather moved the car that was blocking. The parents of the girl began to criticize the officer in sarcastic terms, saying such things as, "Isn't it a shame that the police have nothing better to do than to spend hours helping to start a car." They also threatened not to

19. Under MINNEAPOLIS, MINN., ORDINANCES § 856.030 (1970) it is illegal to consume alcoholic beverages "in any place frequented by the public."

give half price food to police officers any more. The tow truck arrived and reinflated the tires of the car. However, the tow truck driver was unable to start the car. The stepfather, although advised by one of the officers not to do so, tried to move his car in a position to block his daughter's car. The officer at that point booked him for reckless driving and failure to obey a lawful police order.²⁰ The officer had the stepfather's car towed away. Another squad car came to sit on the situation until the tow truck had moved the girl's car to a service station. We took the stepfather to jail, where he immediately arranged to bail himself. The stepfather said that he was going right back. The officer replied, "We can book you more than you've got money." As soon as we left the police station, we went back to the parking lot and found that the girl's car had been started and that she had left town.

9:55 — *Spruce, Apt. —, unwanted guest.* The tenant told us that she had been ill and that she had not opened the door when her landlady knocked. The landlady then had opened the door and walked in. The girl tenant was upset. The officers went to talk to the landlady and told her, "You can't just walk in. You are invading her privacy." The landlady replied, "The hell I can't, you damned hippie-lover. I'm going to call the mayor." "Go ahead," the officer said. He then added, "The next time this happens, we will advise the tenant to use a citizen's arrest on you."

10:35 We saw a woman crying outside a downtown bar and a man with his hands on her. We stopped but were told by both that this was merely a domestic situation.

10:50 The officers saw a drunk in an alley, awakened him and sent him on his way.

10:55 We saw a door open in a downtown automobile dealership. When we checked, we learned that all the employees were there to carry out an inventory.

11:15 As we drove by an area near the University which was known as a gathering place for the disaffected young, we noticed an elderly man in a car talking to a number of rather rough

20. Since all this occurred on property owned by the "offender," it is difficult to see what crime had occurred or what right the police had to give orders. See MINNEAPOLIS, MINN. ORDINANCES § 403.020 (1970). Nonetheless, it would seem to have been senseless to say that the girl must leave her car there and pursue civil remedies. The really difficult problem is to determine a restricted formulation for police power to give orders that would reach only those cases where police action is considered to be appropriate.

looking motorcycle types. We stopped and learned from the motorcyclists that the man was very intoxicated. They offered to drive the car for him to a parking spot, and the officers allowed them to do this. The man was told by the officers to sleep off his drunk condition, and the officers took the keys from the car and threw them into the trunk so that he would be unable to drive further that evening.²¹

11:45 *15th and Hawthorne, gang fight.* When we arrived, the officers from two other squad cars were busy booking some young men. The officers believed that occupants of the top floor of the building adjoining this corner had been throwing things at them. When the landlord refused admittance to that building, the officers broke the door down. The apartment from which the objects had been thrown was locked, and the tenants refused admittance. Again, the officers broke down the door and booked the occupants.²²

12:25 *Nicollet Hotel, blocked alley.* By the time we arrived, the car which had blocked the alley had been driven away.

12:55 *11th and LaSalle, take a stolen.* We made a report of a stolen automobile.

1:22 As we were driving through a lower class apartment neighborhood, we saw one woman and two men standing outside an apartment building. The men appeared to be fighting. One man and the woman said that the other man was bothering them. We sent him away. The couple then went into an apartment building. As we drove away, we saw the man who had been sent returning and trying to obtain entrance to the apartment building. We returned and booked him as a public drunk.²³

1:45 *Continental Hotel, see a robbery victim.* We took a report from a young man who had been robbed at knife point. We drove around the neighborhood looking, without success, for his assailant.

21. The officers knew that the man would have to obtain another set of keys or have a new set made, each option involving some cost, but viewed this administrative punishment as substantially less harsh than its criminal counterpart.

22. One common difficulty for policemen, present in this case, is that officers arriving at a call after other officers are present are forced to follow the lead of the initial officers. If those officers have made a mistake, later arrivals will compound it since they will not have the means of learning what happened earlier.

23. This is another example of the use of the public drunk ordinance as a means of enforcing police orders which they have no legal authority to give.

D. CAR 447

Car 447 serves as a back-up car for the same district covered by Car 441. This district is approximately a mile and a half square and lies about one mile north and a mile and a half west of downtown Minneapolis. This district includes some public housing projects, a large area of lower priced, mainly Black housing and at its northern edge some lower middle class White housing. Car 447 also answers calls in the district adjoining on the east. This district is characterized by lower class and lower middle class housing and has a large number of Indians residing within it.

1. *Sunday*

8:37 A car was tagged for speeding and for jumping a red light.

9:15 The officers saw a man believed to have committed a number of burglaries. They kept him in view while they checked by radio to see if any warrants were outstanding on him. None were.

9:34 6__ *Oliver, domestic*. When we arrived, no one was there.

11:00 The officers stopped a bedraggled car for no apparent reason, other than that the occupants of such cars often are either presently engaged in criminal activity or have arrest warrants outstanding against them. These weren't and didn't.

11:02 The officers went to Morgan and Plymouth, the heart of the Black area, in order to back up another squad car that was waiting for a tow truck to tow the car of a person who was being arrested. The back-up was thought necessary because a crowd might gather and thus endanger the officers.

11:12 6__ *15th Avenue, unwanted guest*. A woman greeted us at the door, led us into a flat where a young man was drinking beer at the kitchen table and proceeded to tell this tale:

Wife: I came home and two guys were sitting here and my husband was in bed. When I come home, I don't want someone else sitting here and my husband trying to chase me out of the house. Now he tried to run me out of here. My own husband tried to run me out of my own damn house. This has happened constantly. I'm sick and tired of it.

Officer: [indicating young man] Is this your son?

Wife: No, that's not my son. But I'm sick and tired of it. This is my home, and he has his friends here, but that's different; I'm not supposed to have my own family here in this house.

Officer: You're not supposed to have your own family here?

Wife: No.

Officer: Oh.

Wife: I'm not supposed to have my own family here in this house. And anyway when I come home and they're sitting here at the table, and he's in there laying. And then I come home, and I said now will you guys leave, get out. Get out now, I want to go to bed. It's only right. And then he [indicating young man] said, "I'm going to wake up Danny and tell him what you said." He said, "Danny, get up, she's telling us to get out." Danny got up after me and said, "get out, get out, get out," and chases me out. It's my house, too. I'm his wife, and now he is trying to run me out of my own home.

Officer: Well, you said when we came in here that everything was all right.

Wife: Well, I thought it would be, but now I can hear the way he is talkin' and he's not gonna be, and he's crazy. He'll take off, and he'll come back after you're gone like he always does.

Officer: Is this your husband [pointing to the man coming out of the bedroom]?

Wife: Well, of course, that's him right there. He has them sitting here at the kitchen table when I come home, and, oh boy, everything is hunky-dory. I'm not supposed to say a word to anybody. I'm not supposed to open my mouth or say one darn word wrong to anybody. I'm supposed to take it all. I'm supposed to take all this like he does to me [beginning to uncover bruises to show us]. This kind of stuff right here. All this kind of beatings, this is what I'm supposed to take. I'm supposed to take all this kind of dirt, that's what I'm supposed to take. Beatings on my head right here and on my temple.

Officer: How long have you been married?

Wife: 18 years, this is what he has given me, brain concussions and everything else. I've put up with it, and this is what I'm supposed to take. Now I'm scared of it, and he'll try it again tonight.

Officer: What action do you want us to take?

Wife: Well, I want to have something done about it because I have to have something done. I can't take no more beatings. I just want to have a complaint signed against him so he can't beat on me any more.

Officer: There is no such action.

Wife: Well, I can go down to the court house, right?

Officer: That's correct. If he assaulted you, you can go down and see the city attorney. As far as tonight, there is not much that we can do. He hasn't assaulted you.

Wife: Yeah, but he will again. What do you call this?

Officer: It didn't happen tonight though. Did it?

Wife: No, it didn't.

The husband and wife then began yelling at each other. The officers advised them that if they had to return, someone would be going to jail.²⁴

24. Officers often say that should they have to return, an arrest will be made. This is done even in circumstances where a basis for ar-

11:26 7__ 16th Avenue, juvenile trouble. We received information from a resident of the neighborhood about kids shooting off firecrackers.

11:30 27th and 4th, in the park, rape. We drove quickly to the scene and were met by two men, one of whom said that he had stumbled over a nude girl while he was walking his dog. One of the officers approached the girl, took her pulse and found that she was dead. The ambulance crew which arrived shortly thereafter confirmed the officer's impression. A call was placed for the sergeant on duty and for the homicide car. The officers guarded the scene, got the names of witnesses and then listed the cars parked nearby. The officers then went to City Hall to dictate a report of what had happened.

1:35 A bedraggled car was stopped and the occupants were asked to give their names, addresses and birthdates so that a check could be made to see if any arrest warrants were outstanding. None were.

1:50 As we were driving by Plymouth and Morgan, we saw a car which apparently had gone out of control and over the curb onto the sidewalk. We approached and discovered that the occupant had been brutally beaten. An ambulance was called, as was the homicide car. It became apparent that the victim had been beaten across the street in the lot of a closed gasoline service station. We could find no witnesses willing to speak. The remains of the assault were inventoried for the detective.

2. Tuesday

7:45 *The Clock Drive-in, teenage gang.* We discovered a group of high school teenagers involved in the silly pranks associated with a high school club initiation. We counseled them to be quiet and discreet.

8:40 A car was stopped, warned about speeding and tagged for a defective muffler.

8:50 A car was stopped, warned about speeding and tagged for an illegal lane change.

9:00 A car was stopped and warned that it had no taillights.

9:07 A car was stopped, warned for speeding and tagged for going the wrong way on a one-way street.

rest is unlikely and where there is no real intent to make an arrest. It is enough for the officers that the hollow threat seems to work. If their bluff is called, they would probably rely on a convenient Minnesota statute making it a crime to be drunk even in private. MINN. STAT. § 340.96 (1969).

9:15 A car and a motorcycle were stopped for speeding. The driver of the car was warned. The driver of the motorcycle was booked because he had no driver's license. As we were taking the driver of the motorcycle downtown, the officer driving the car suddenly stopped and forced two men on a major street to place their hands on the car and be frisked. The men were upset and couldn't comprehend why this was happening. The officer had heard over the radio a description of two robbery suspects that had matched these men. He had the description rebroadcast only to find that it wasn't applicable. He apologized to the men, and we continued on our way to City Hall.

10:30 As we were returning from City Hall to the district, we passed 1405 Fifth Street and saw it go up in flames. We remained on the scene preventing cars from approaching the fire trucks for fear that they might run over the fire hoses and destroy the water pressure.

11:20 A car with three juveniles passed and two of the juveniles made an obscene gesture at the police. The police pulled the car over, warned the occupants not to use such gestures and also warned them that they could be arrested for under-age drinking.

11:28 As we were driving past Plymouth and Emerson, we saw a car on fire. We notified the Fire Department and then took the driver to General Hospital for treatment.

12:45 *Shots at Plymouth and Queen.* We arrived and could locate no one on the streets in the neighborhood. We so informed the dispatcher.

12:50 *Shots at 14th and Queen.* Again we could locate nothing and so advised the dispatcher.

1:25 11.... *Logan, tenant troubles.* We were met by the downstairs tenant who told us that the woman upstairs was drunk and was dumping water on the floor which was leaking into the downstairs flat. We looked into the downstairs flat and saw that a lot of water had come through the ceiling. We went up to see the upstairs tenant, and the officers discovered that she was an old-time prostitute with whom they had had many dealings in the past. She told the officers that she had done nothing wrong and promised that she would do nothing wrong in the future. The officers left after advising the downstairs tenant that, should trouble continue, she should call the landlord.

2:00 As we passed 14th and Emerson we noticed a dead dog. We notified the Health Department.

3. Wednesday

7:30 A car was stopped for going too fast through an intersection in a residential neighborhood heavily populated with children. A radio check was made to see if any arrest warrants were outstanding against the driver. None were, and he was released with a warning about his driving.

7:40 *Cy's Bar, assist Squad 448.* Our car, along with at least three other squad cars, arrived to find that a fight between the patrons, Indian vs. Black, had been stopped, and Squad 448 had managed to cool most tempers.

8:00 We heard a call for Squad 441 at 12__ Queen, man disturbing. We went to the scene in order to back them up in case they needed assistance but left when we discovered it was only a neighborhood squabble over a dog.

8:05 18__ Penn, domestic. The yard of the house was covered with glass from broken windows. We were met by a very upset and touchy Black male of about 28. No one else was in the house. We advised him to cool down. He replied that we could either take him to jail or get the hell off his property. We did the latter.

8:35 18__ Penn, domestic. The man had left, but his wife, who had been hiding next door, met us and signed a citizen's arrest for simple assault. The man had hit, choked and bitten her. When she told him on his return that he was under arrest he grabbed her, and the officers had to wrestle him into submission. The officers also had to use substantial physical force to get the man into the squad car. He became very demanding, asking the officers to loosen his handcuffs, go into the house to bring him his shirt, get him a cigarette and get him his pills. When one of the officers gave him a cigarette, the man spit it out, saying it wasn't the right brand. He claimed to be upset because his wife had waited until he returned home from work to tell him that his father had had a stroke and because she had had other men in the house. He was taken downtown and booked for the assault and for breach of the peace.

10:12 A car was stopped and warned that it had a defective tail light.

10:21 13__ Bryant, silent alarm. Several squad cars arrived at once and checked out the building. No break-in could be found.

11:10 Open door at an auto parts company on Broadway. Several squad cars converged on the scene, but no burglary had

taken place.

11:40 A car occupied by several juveniles was driving erratically, stopping, starting and backing up with lights turned on and off. The car was stopped and they were advised to drive more carefully.

11:45 A motorcycle was stopped and advised to go at once to a service station to repair a defective headlight.

12:00 *Broadway and Logan, burglary in progress.* When we arrived, no burglary was taking place.

1:50 13.... *Bryant, silent alarm.* Several squad cars arrived to find that no break-in had occurred.

2:05 As we were driving past a business, we saw a light. We investigated, only to find that the owner was working late.

2:15 We saw a very drunk and apparently helpless man on the street. Since he lived only three doors away, the officers escorted him home.

2:25 A car was stopped and warned that it had made an illegal U-turn.

2:25 Squad 445 was involved in a foot chase at Lowry and Aldrich. Squad 447 and several other squad cars converged on the area to look for the suspect. We spotted him at 30th and Dupont. One of the officers chased him, firing two warning shots, but eventually lost him. He had run when his car had been stopped by officers. Those officers had seen burglary equipment in the car and knew that the car belonged to a man named X of 29.... Bryant. We went to 29.... Bryant and were advised by X's wife that X was asleep and that his car was being used by a man named Y. We drove to two places where Y was reputed to stay, but he was at neither place. Another squad car returned to X's house, and in a search of it, located Y in the closet.

4. *Friday*

8:45 27.... *Aldrich, fight in the street.* Several squad cars arrived at about the same time and broke up a fight between neighbors.

8:50 11.... *North Sixth, domestic.* A man and his girlfriend were having an argument in the backyard. The man seemed reluctant to let the girl go where she wanted to go. He was advised that he had no power to prevent her.

10:15 On hearing that Squad 440 was to handle an employment problem at the Blue Note, a bar frequented chiefly by

Blacks, Squad 447 went over to that area to back up Squad 440. The matter was handled without incident.

10:25 A drunk was passed out on a bus bench at 4th and Broadway. He was awakened and sent on his way.

10:55 *Plymouth at Washington, Billy Bud's, large fight.* Several cars arrived on the scene simultaneously. Apparently, what had happened was that a Black had walked into a country and western night club and had asked for a beer. A racial incident had developed and had led to a large fight. One White man was arrested when he tried to go after a Black man despite the warning of the policeman. One Black was booked on a citizen's arrest for assault. We booked the Black.²⁵

12:05 16— *North Fourth, DK.* We were met by the owner of the house who advised us that her son and daughter-in-law were having a domestic argument. She was fearful that her son was going to become violent, but her daughter, while we were there, told her that everything was under control, and we left.

12:35 12th and Fremont. We were stopped on the street by a man saying that he had just been stabbed by his ex-wife. We located her after a short chase, and a reconciliation of sorts took place between her and her ex-husband. He declined medical help and refused to sign a citizen's arrest against her. We took her to the downtown area so that she could find a cab to take her to her home on the south side. Later that night, another squad car was called by the man. He was taken to General Hospital for treatment.

12:45 16— *Fifth Street, assault.* An older couple had been assaulted in their home by teenagers. We took a report.

1:05 16th to 17th, Fifth to Sixth, *juveniles breaking windows.* We apprehended two teenagers who said that they had not been involved but had been at someone's house. We checked at that home and found that they had not been there. They were booked for curfew violation.

25. The officers stated that they honored the citizen's arrest not because they believed the Negro guilty—indeed they hoped and expected that the arresting party would fail to pursue the matter—but instead because by arresting a Negro and a White they would suggest to the crowd an "equitableness" of resolution which would in itself tend to restore peace. If one assumes the wisdom of such a suggestion, why would it not have been possible to place the Negro in the car to create the appearance of an arrest and then to release him several blocks away. When I asked that question, the officers said it would invite false arrest liability.

5. *Saturday*

7:20 11.... *Upton, meet detective* We went to that address but the detective could not be found.

8:00 *Plymouth and Emerson, check for ambulance.* We arrived quickly on the scene by using lights and siren and discovered a bad property damage automobile accident. No ambulance was necessary, and the dispatcher was so informed. The drivers of the cars involved in the accident exchanged names and insurance companies. We waited on the scene until tow trucks arrived to haul away the disabled vehicles.

9:10 We were stopped by the resident of 5.... 16th who said that teenagers in the area were threatening to break his windows. He was fearful because he had a small baby, and he planned to take his family elsewhere for the early evening. He asked us to check the area from time to time. We promised to do so but never had an opportunity.

9:35 We stopped a car and warned its driver for speeding.

9:55 As we drove by 18th and Aldrich, we saw a car on the sidewalk with an open ignition. The officers obtained by radio a listing of the address of the owner to whom the car was registered. That address was 18th and Aldrich. The officers awakened the owner and had him turn the ignition off.

10:10 26.... *Logan, prowlers.* We drove down an alley and located some young teenagers playing hide-and-seek. They were sent home after being informed that they were disturbing other residents.

10:25 A car was being driven erratically near 27th and Fremont. When the officers saw it was a woman driver, they decided that the matter was hopeless and did not stop her.

10:30 *7th and Olson, Car 7 needs help.* While we were driving there, we saw a speeding car whose driver was drinking from an open bottle. He was stopped and booked for speeding and for having an open bottle in the car. He was very unhappy, used obscenities and attempted to escape.

11:32 *Plymouth and Washington, help Squad 448 with prowlers.* Squad 448 had seen some movement in a fenced auto parts company. The officers investigated and found a 12 year old runaway boy. He said that he had not attended school that day because other children teased him in gym class about his inability to swim. The officers took him home and suggested to his mother that she ought to consider taking him to the YMCA for a swimming class.

12:45 *Twin Cities Opportunity Workshop, silent alarm.* We arrived, investigated and discovered a cleaning crew.

1:41 17— *James North, exposé.* Two girls who had been walking through a park had been approached by a naked man. They had run to a nearby lighted house, and the owner had taken them in and called the police. We made a report of the incident and took the girls home.

2:00 We stopped a car at Olson and Penn, because it met the description of a stolen car. However, after investigation, we learned that the car was not stolen.

2:10 We saw a car in a darkened alley. The driver claimed that he lived in the neighborhood. A radio check verified this fact, and a warrant check showed that he was not wanted for any offenses.

2:30 11— *Logan, assist 441.* We were met by one of the officers on Squad 441 who told us that a woman in the building had been assaulted by her husband, that she had signed a citizen's arrest against him, but that the officers had been unable to effect the arrest because the man would not open the door. We joined the officers, talked to the landlord and got his permission to enter the woman's apartment. Using his key, we did so and made the arrest.

III. THE CATEGORIES OF POLICE SERVICE

Police exercise of authority occurs most often, not in situations where it is legally required, but in situations where citizens demand it. What police do, in short, is a function of what people want them to do as expressed in the call for police service. While some requests are denied, the police generally try to help, even if such help is well beyond their legal mandate. Such help can be offered only because of their recognized ability to arrest²⁶ and their consequent ability to persuade due to general citizen habits of obedience. A clear majority of calls for the police involve minor abrasive conflicts that can be, and generally are, settled by a combination of counselling and exhortation. Whether such mediation would be possible absent the implied threat of arrest is a question to which we will have to return.

26. H. Goldstein, *Police Response to Urban Crisis*, 28 PUB. ADMIN. REV. 417, 418 (1968): "Thus, the ability of a police officer to resolve a dispute and to eliminate a nuisance stems, in large measure, from widespread recognition of the fact that he has the authority to initiate criminal prosecutions."

Often police are called to situations simply because the caller can think of no other agency willing to perform the service he needs. Examples are numerous: (1) a woman locked herself out of her home, then called the police because she believed that they would be able to pick her lock (fortunately, this problem was solved with a screwdriver); (2) an 87 year old man called at 2:30 a.m. for assistance in opening his back screen door from the inside so that his dog could go out into the backyard; (3) a retarded girl was lost and thought to be at one of the bus or train stations, and the police were asked to search for her; (4) lost property had been found, and the finder wished to turn it over to the police.

A more common occurrence is the call for assistance when someone is sick or has had an accident. Police perform this service because they are closest to the scene, but all they really are able to do is to call an ambulance if one is needed and to advise whether the ambulance should rush. Occasionally the police can solve a medical problem, as when a frantic mother said that her eight year old son had drunk a quart of bourbon, and the officer was able to tell her by smelling the bottle that the product consumed was Listerine.

The police, for lack of a better agency, also get called to the scene of any non-hospital death (DOA) to insure that the body is not tampered with before the coroner has had an opportunity to ascertain the cause of death. This is generally viewed by police as the most unpleasant task they must perform. They rarely do anything other than wait in the room with the body until the coroner personally or by phone releases the body to relatives of the deceased or a public agency for disposal. To the extent that one can isolate a reason for police participation in these situations, it probably is that an immediate official response is soothing to those who observe it—only in the very rare case is there even a hint of foul play.

Police also are expected to handle certain problems of the mentally ill.²⁷ Most often this simply takes the form of listening to their complaints by phone.²⁸ Occasionally, however, such

27. See generally Bittner, *Police Discretion in Emergency Apprehension of Mentally Ill Persons*, 14 Soc. PROB. 278 (1967).

28. On the one night on which I listened to the telephone calls made to the precinct station, two "mentals" phoned for police assistance. One wanted to report a gang fight that she had learned about by "general information and public audio." The other complained that a radio personality "is cutting through on Channel 9 and using profanity against me; she also comes through the walls, the plumbing, and the vacuum cleaner. I'll get the warrants out when the antenna is down.

a person is convincing enough to persuade the answerer at the station to dispatch a squad car. An elderly man complained of prowlers one evening. The officers checked the area and were able to find nothing. They advised the man to call again if the prowlers returned. This he did. Again, the officers found nothing. This time, however, the man added that he was also receiving telephone threats. At that point, the officers ceased taking him seriously but were courteous enough to suggest that he call again if the problem persisted. In a similar case, where a young man complained of hearing police calls over his electric fan, the officers told him to lay off the booze. Sometimes the complainant seems to have no comprehensible need for the police except as someone to listen to his woes. In such cases, the officers tend to listen for awhile, then to become visibly exasperated and then to leave as graciously as possible. Finally, there was the case of the elderly couple having mild domestic problems. The senile wife refused to take her medication when her husband offered it. The husband then called the police. The officers persuaded the woman to take the medication. Soon the officers were called several times a month to perform this service.

A large number of the disputes to which police are called are essentially civil in character. People tend to demand that the police act as the instant enforcers of rights they believe they have. This is most often illustrated in traffic accidents. There the party thinking himself faultless frequently urges the police to arrest the transgressing driver or at a minimum to issue a tag.²⁹ The thought is that this will aid the victim of bad driving to recover insurance money. The police invariably tell the complainant that if he feels that strongly he ought to go to the city attorney and make a complaint. They do not tell him, although perhaps they should, that it is not their job to referee out-of-court tort claims, properly the subject of civil litigation.

In another case, a four and one-half year old White girl threw a rock that hit and broke the windshield of a new, uninsured Cadillac owned by a Black man. He became so excited that he found himself unable to persuade the girl's mother to promise to pay for the repair of the windshield. He called the police, and their presence seemed to prompt the conscience of the mother so that she

I've already called the FBI." In each case, the callers were told that police officers would be immediately assigned to their problems.

29. The police are unable to issue a misdemeanor tag in these cases since they have not witnessed the violation. See MINN. STAT. § 629.34 (1969). They are not likely to advise the complaining party that he may make a citizen's arrest.

promised to pay. This was a difficult situation. It is doubtful that the mother was legally liable. There was no doubt that the car owner felt terribly wronged. It would have been difficult to persuade him that his rights were civil in nature. If that had been attempted, it is probable that he would have taken it as a racial slight. Yet to act as the police did was informally to coerce the mother to admit a liability she may not have had.

A similar situation arose when a car drove off a three foot embankment from a service station into a street undergoing repair. It was night and neither the impropriety of that exit nor the propriety of another was marked or lighted. The Black driver was furious when his car ended up nose down in the mud. He threatened the station attendant, who then called the police. The officers sympathized with the driver, although this became increasingly difficult when he began to berate them by saying, "Don't fuck with me, motherfucker. I have enough trouble without you guys." Finally, the officers and a friend of the driver were able to cool him down. They then persuaded him that, however at fault the oil company was for improperly marking the exits, his wrath at the company ought not to be directed at the teenage attendant. They advised him to note carefully the lighting and the absence of warning signs and then to seek legal advice as to his rights against the oil company. The officers gave the driver their names and offered to act as witnesses in his behalf. The driver in turn apologized for having become upset.

Another fertile source of civil litigation for the police is the landlord-tenant relationship. When a landlord discovers that he has rented an apartment to tenants who spend every night carousing to the dismay of his other tenants, he is likely to call the police not only to try to quiet the obnoxious tenants but also to advise him on how to end the problem. The officers as anxious as the landlord to have the disturbing tenants elsewhere so that they won't have to deal with them, can only advise the landlord to see a lawyer. Sometimes an apartment caretaker gets too involved with the tenants. In one case, a woman caretaker walked in on tenants unannounced. She was advised to respect their privacy. In another instance, a rather drunken male caretaker, when asking an attractive but impecunious female tenant for her rent, suggested that she might sleep with him instead of paying it. The police could only advise him to keep his propositions to himself and advise her to pay the rent.

On one occasion, the police were asked to help repossess a rented television set. They accompanied the store employee to

the door, and the sight of the blue uniforms was itself almost enough to persuade the woman who was renting the set to return it. She asked what the police would do if she did not return the set, and they replied, "Nothing. This is a civil matter." She then declined to release the set. It is questionable whether the police ought to allow themselves to be used as colorable legal authority by merchants seeking to avoid civil litigation. Similar enforcement requests come from restaurant owners faced by people who do not want to pay their checks.

Another difficult problem began when a man out for a night on the town lost his billfold when he was with a girl who sang at a country and western night club. Somehow, his wife learned of the story and, like an avenging angel, located the girl and called the police about "stolen property." The officers immediately separated the disputants. The girl agreed to return the billfold and did so with a knowing smile at the wife. Had the police been unable to arrange this resolution by consent, it is questionable whether they had the power to do anything to resolve the matter.

A. DOMESTICS

Calls involving marital or family strife are among the most difficult to handle.³⁰ Police may be called to handle a routine police problem, to "scare" the caller's opponent, to protect a party from actual physical danger or to quiet a disturbance that is bothering the neighbors. In each of these cases, the officers are only told that the call is a "domestic." Their first job then is to find out what the facts are, a matter often made difficult by the high emotional state of the parties. Police are inclined to let the situation develop so that the facts can be learned and some assessment can be made of who "is in the right."

The most common reason for a call is that one marital partner is upset at the other and wants police sympathy and a lecture by the police to the offending party. One example is the young girl feigning drunkenness on a bus bench hoping to be arrested and thus to escape a drunken and assaultive husband. Because of fear of retaliation or perhaps for some other reason, she did not wish to have her husband arrested for assault. She knew no one in the city to whom she could turn for help. She wanted out. The police could do nothing but advise her to get a divorce. In a

30. See Parnas, *The Police Response to the Domestic Disturbance*, 1967 WIS. L. REV. 914.

similar case, a very young wife complained that her husband did not treat her properly, that he preferred the company of his hippie friends. The officers lectured them on the responsibilities of marriage and parenthood and advised them to seek religious or other marital counselling.

Similar to the cases evincing general marital upset are the calls where one marital partner wants the police to require the other marital partner to live up to some accepted standard of behavior. A wife with an alcoholic husband called the police when he began drinking again. The police told the husband that in his circumstances it was probably unwise to drink and advised the wife that it was not a police function to lecture a recalcitrant spouse. In another case, the wife called, complaining that her husband had locked her out of the house. The police knew no way to force him to open the door. Consequently, they could only offer to take the wife to some other house to spend the night, which they did. In yet another case, the wife complained, as she had many times before, of being beaten by the husband. When the officers arrived, the wife did not answer the door; the officers opened it and discovered her lying on the floor. She then got up and complained at length of her husband's behavior. The officers asked her what she wanted them to do. She seemed to want them to lecture her husband, and she went next door, where her husband was, and said, "Dad, someone is here to see you." When the husband came, he laughed and said, "Oh, she has called you again, has she." The officers told the husband that he ought not to beat his wife. He denied beating her and said that she simply fell when she became drunk. At this point, there was very little for the officers to do except leave.

Requests for the police to enforce a code of proper behavior also arise when a marriage is being terminated. For example, a wife called the police when her ex-husband refused to leave at a time when he knew that the ex-wife was expecting her boyfriend to come to pick her up for a date. The wife thought that her ex-husband was simply trying to harass the boyfriend. The husband claimed that he wanted to spend more time with his children and that this was a good opportunity since they would be home alone. The officers advised the husband that he could not stay in his ex-wife's house without her consent and told him that he must leave, which he did. In another case, a wife who had instituted divorce proceedings wanted her husband to leave the house. The officers knew no way to require this since he was part owner of the house. It eventually developed that the wife

was irritated at her husband more than anything else for failing to take her out for a hamburger. Once this fact was apparent, the officers left. In another similar situation, the wife complained that the husband's presence violated a court restraining order. The officers then ordered the husband out of the house, and his willingness to go indicated to them that he was, indeed, under a restraining order.³¹

Domestic calls sometimes originate when the disputants are disturbing the peace of neighbors. In one instance, the officers arrived at the scene of a domestic disturbance to be greeted by an irate husband, who asked, "What do you guys want?" The officers explained that they had received a call that there had been a domestic disturbance. The husband said, "Go away and leave me alone." At that point, the husband's parents came to the door and explained that he and his wife had had a quarrel and that he was very upset. The officer explained to them that he had no control over whether he would answer this call and that it didn't help matters any to be greeted by an enraged husband. He said, "If there's no problem, I'll be glad to leave." A more serious domestic call was reported because the husband was systematically breaking the windows in his house to the dismay of his neighbors. When the officers arrived, the husband told them that it was none of their business if he wanted to break everything in his house. He had thrown an expensive stereo set out into the driveway and smashed it. While the officers were there, he threw a chair, already thrown out through one window back inside through another window. He told the officers to either arrest him or get off his property. They left. Shortly thereafter, another call came, and the officers returned. They then learned that the husband had assaulted his wife and that she in turn sought refuge next door. She signed a citizen's arrest for assault. Ultimately, the man was arrested by force.

Sometimes domestic calls involve a real danger of physical harm to one of the disputants. The police responded to one domestic disturbance billed by the dispatcher as "man with a gun." The officers found on arriving at the scene that the husband had

31. If he had refused, the police might have been powerless. They are not able to enforce restraining orders, particularly those known only by hearsay. Perhaps a trespass case could have been found. Regardless of what powers are presently available, the crucial question remains: What powers do we wish police to have in situations like this where a failure to resolve the matter in some form might cause the disputants to escalate the level of the dispute to a point where police action would plainly be necessary?

already been subdued by a neighbor, and he, the husband, was taken into custody. He had escaped that day from the county workhouse and had come to see his estranged wife at her parents' home. Her parents were not about to admit him to the house. He became violent and assaulted several people. He was arrested. In another case, the police responded to a stabbing call. They found that the stabbing, minor in nature, had occurred during a domestic dispute. The stabbed husband did not wish to prosecute his wife, so the police did nothing other than call an ambulance. In yet another situation, the police responded to a call of "man berserk." On arriving, they learned that a young man had become violent and assaultive when his ex-wife had appeared at his home. He started tearing up the house and no one had been able to subdue him. The sight of the uniforms apparently accomplished that, and neither his parents nor his ex-wife wished to prosecute. A final example was when the police were called to a domestic disturbance at which the complaint was that the drunken husband had beaten his child. Though there were no external marks on the baby, the police immediately began searching the area. They found the husband driving a car and booked him for drunken driving, as well as on the wife's complaint for assault.

The most poignant of the domestic calls are those in which the wife is obviously terrified of her husband and fearful of a vicious beating. Invariably in these cases, assaults have occurred on many prior occasions. There is little that the officers can do since the man has not as yet committed a crime. They can only tell the wife that should he assault her she may lodge a complaint with the city attorney. She generally does not find much solace in this. The police are not too sympathetic in these circumstances, because usually the wife has taken no action in response to past assaults, and the officers usually believe that all she really wants is the police to tell the husband to "be nice."

Many of the same kinds of problems arise in boyfriend-girlfriend disputes. For example, it is not uncommon for a woman to ask the police to drive her boyfriend away because she is tired of having him around. Since in these cases the boyfriend is at the girlfriend's residence, it is easy for the police to say that he must leave if she asks him to. One kind of recurring situation which bothers police occurs when the girlfriend asks the police to rid her of her boyfriend even though all the parties know that at some future time the torch will be rekindled. The police often find themselves driving the same fellow away from the same

girl on various pretexts on many occasions. Sometimes the situation is more serious, as when the intent to terminate the relationship is clear but the boyfriend will not give up. One such case turned into a shouting match that threatened the peace of the whole neighborhood. The situation was finally settled when the girl signed a citizen's arrest for assault.

Boyfriend-girlfriend disputes sometimes involve real danger. In one instance, the girlfriend called after she had been severely beaten by her boyfriend. At first, she requested an ambulance, but she was persuaded by her friends and her repentant boyfriend to forego medical and police service. In another instance, the girlfriend had been beaten, but she was so fearful of her boyfriend that she refused to prosecute. The police, of course, could only tell the boyfriend to behave.

As much as in marital disturbances, police are called upon in these situations to make one of the parties behave according to an accepted code of conduct. In one case where the relationship had been terminated, boyfriend charged that girlfriend refused to give him back his clothes which were stored in her apartment. She told the police that she didn't have them and besides that he had refused to return her clothes. It was obvious that each party was trying to make the other party behave. The police, however, had no authority to do anything to anybody. They simply suggested that the parties take their complaints to the city attorney. In another case, the girlfriend accused boyfriend of abducting a child in order to make boyfriend adhere to her standards of behavior. Ultimately, a false felony complaint was lodged against her.

Similar problems arise in disputes between parents and children. Officers are often directly asked by a parent to come to the parents' home and lecture the child on the consequences of his misconduct. Police officers hesitate to do this because they dislike viewing themselves as professional terrorizers of children. They usually suggest that the parent talk to a school counselor, who in turn can advise the child. Sometimes the demand for an authoritarian lecture comes from parents of adult children who are engaged in misconduct, generally drinking, in the home. The officers then tell the parent that if they don't want the child around, they ought to have him move out. They may add, for the parents' benefit, that the child ought not to so misbehave but that they will do nothing about it. Finally, a neighbor will sometimes call the police because he believes that parents are ignoring their children. In one instance, the police were called because chil-

dren had been left in a car in the parking lot of a bar. By the time the police arrived, the parents had returned to the car and were leaving. If the parents had not been there, the officers would have gone into the bar, located them and advised them not to leave the children unattended. This probably would have been enough to obtain parental compliance with accepted social norms. If it had not been enough, the officers probably would have been unable to do anything else.

Parental problems also arise when children run away. As related before, one evening officers located a very frightened ten year old hiding in a used auto parts lot. He said that he had run away because the kids at school teased him over his inability to swim. The officers persuaded him that he ought to return home. When they reached home, the officers talked to the mother about getting special instruction in swimming at the YMCA or some other agency of that sort. In another case, the officers spotted a very upset teenage boy, started talking to him and learned that he had run away that day because he felt that his parents made impossible demands on him. It appeared to the officers that the boy wanted to go home but that he couldn't bring himself to do it. They tried to persuade him that that would be the wiser course of action. At that point, his mother, who had been out looking for him, came up and asked him to come home. The boy screamed, "Get off my back, you bitch." He then ran off. The officers did nothing. In yet another instance, officers received a call that a runaway child had been spotted by her mother. The officers met the mother at a bar, and she said that she had seen her daughter, who had been missing for a month, walking about a block from the bar. The officers rushed over and spotted four young teenage girls. None of them precisely met the description that the mother had given the officers, nor did any of them admit to being the girl. The officers felt powerless to do anything, and went back and told the mother so. She became indignant and said that the officers were simply not performing their job. The officers put her in the squad car and tried to relocate the girls without success. The mother said that she would "be just like the colored" and complain to higher authorities. The officers decided they did not have to take this abuse and let her out of the car.

Although police are hesitant to use their arrest power in family situations involving parents and children, they sometimes are forced to. One evening officers received a call to a home in which the mother said that she did not want her son to continue

to live with her. The boy, fifteen years old, was on probation from a state correctional institution. The officers called his probation officer, who suggested that they take him down to the Juvenile Detention Center where the probation officer would see him in the morning. While this was going on, the sister of the boy said to her mother, "Mom, don't send him back to Red Wing." Despite the plea, the mother persisted, and the officers took the boy to the Juvenile Detention Center. In another case, the White wife of a Black man became disgusted with her 18 year old son. She accused him of being racist toward her. She said that she did not want him in the house any more. The officers told him that if she did not want him in her house he could not stay, and he left. Finally, there is the case discussed earlier in which the parents attempted to render their 20 year old daughter's car inoperable so that she could not drive to visit her grandmother in Wisconsin. The officers were at first sympathetic with the parents' claim that the girl was too emotionally upset. But as the situation developed, and as the parents became more abusive, both toward the daughter and toward the police, the officers changed their mind. They offered what help they could to the girl. This primarily took the form of being there to prevent illegal conduct by the parents. When her father disobeyed the police order and again attempted to block her car with his, the officers arrested him for reckless driving and for failure to obey a lawful police order.

B. DISTURBING THE PEACE

The most common kind of disturbing call is the public drunk. As in most cities, public drunkenness is a crime in Minneapolis.³² Whether a public drunk will be arrested for public drunkenness depends on a number of factors. If the drunk engages in conduct like entering another's house in order to sleep, he will be arrested. If the drunk has simply passed out on the street, officers will first attempt to awaken him and send him on his way; he will be arrested only if he slumbers on. When an arrest is necessary in the downtown area the paddy wagon is called. In outlying precincts, however, the officers must place the drunk in the squad car and take him downtown. This in itself is a strong deterrent to arrest, since most down-and-out public drunks make unpleasant passengers. In the downtown precinct, the officers are fa-

32. "No person shall be in any public place while obviously or helplessly under the influence of alcohol." MINNEAPOLIS, MINN., ORDINANCES § 870.030 (1970).

miliar with many of the drunks, having arrested them countless times. As one officer remarked, as we were driving through an area heavily populated with such drunks, "Whenever I drive through this area, I think of all the mountains left to climb. All the drunks left to book." On some occasions, especially with drunks known to the officers, they attempt to find some alternative to arresting the individual. In one case, for example, the officers took a drunk who had been booked approximately 200 times back to the railroad yards where he could flop for the night.³³

The public drunkenness charge is useful for reasons other than the aesthetic one of cleaning up downtown streets. In one instance, officers saw two drunks panhandling on the main street of town. Although the drunks were able to walk, and ordinarily would not have been booked for public drunkenness, in this case they were arrested because they violated the panhandling ordinance.³⁴ The drunkenness charge was considered much easier to prove than the panhandling charge since it would not be possible to get as witnesses the persons whom the drunks approached for money. In another case, officers received a call that a prowler was ringing doorbells in a neighborhood at 2:00 a.m. The officers arrived in the neighborhood, saw a man resembling the description they had received by radio, drove around the block and when they returned saw him approaching a house. They pulled up and asked for identification. He ran but was quickly apprehended. The officers could not charge him with the misdemeanor of disturbing the peace by ringing doorbells since they had not seen it. So they charged him with public drunkenness instead and took him downtown.

Many disturbing the peace calls involve alleged misconduct by children. Sometimes this can be quite minor. On one occasion, investigation of complaints of prowlers in an alley identified the prowlers as kids playing tag. In another case, neighbors complained that children were playing in an abandoned house. The officers arrived only to find that the children were using the garage as a club house. The officers told the children that their club would be fine, but that they ought not to enter an abandoned house because it was possible that there was rotting lumber in it. Adults often become disturbed about the conduct of

33. See generally Bittner, *The Police on Skid-Row: A Study of Peace Keeping*, 32 AM. SOC. REV. 699 (1967); Nimmer, *The Public Drunk: Formalizing the Police Role as a Social Help Agency*, 58 GEO. L.J. 1089 (1970).

34. MINNEAPOLIS, MINN., ORDINANCES § 870.020 (1970).

neighborhood children. One irate mother wanted the police to round up the teenagers in the neighborhood, whom she claimed were drinking, take them home and tell their parents that they ought to watch them. The officers decided instead to find the kids, confiscate the beer and lecture them on underage drinking. In another instance, a family complained that the teenage girls next door were playing records at a distressing volume and smoked cigarettes and necked in cars in the neighborhood. The officers merely advised the girls to keep the noise down and told them of the other complaints.

Around the Fourth of July, police get countless calls about the illegal use of firecrackers. Police hate these calls. They have no intention of arresting the kids shooting off the firecrackers, and they view the calls as distracting them from policing more serious criminal conduct. When they apprehend a child with firecrackers or they are informed by the complainant of the names of the children using the firecrackers, they go to the parents of the offending children, tell them that such conduct is forbidden and inform them that if it occurs again it will be necessary to take the children down to the Juvenile Center. The police have no real intention to carry out that threat, unless pressed hard enough, but feel that they have to issue such a warning in order to assuage the complainant. In one case, the lectured parent became irate and said that the officers were doing this only because he was a Negro. The officers were in a very difficult position because they could not admit to him that they had no intention of carrying out their threat, and they had to satisfy the man by saying that they used this kind of lecture with every parent.³⁵

Children also become involved in more serious incidents. In one case three families on the near north side of Minneapolis complained about rock-throwing children. In two instances only broken windows had resulted, but in the third, several older adults had been hit. The complainants could not identify the children. The police were powerless to help them. In another

35. The "booking mentality" demonstrated in this situation highlights what could be considered a significant failure of enforcement. If the offense is one which is generally perceived to be minor, police are often reluctant to book an offender. They then take no action. It is possible to issue a summons, but that method of instituting an action is rarely used. What would be more appropriate in many such instances would be the issuance of a summons which could be satisfied by mailing in a small fine. Issuance of such summons in firecracker cases, assuming parental liability for the act of the child, might well result in some deterrent where none now exists.

case, kids were throwing firecrackers in the window of an apartment occupied by an 80 year old lady. Again since the offenders could not be identified, the police could do nothing. On a complaint that children were entering unlocked cars and rummaging through them, the police began driving around the neighborhood. They spotted four young teenagers who ran when approached. They were apprehended, taken back to the scene of the alleged car prowling, identified by the complainant and booked for juvenile investigation. In one area on the near north side, the police had been receiving complaints over a period of months that one boy and his friends were engaged in various types of harassing activities. When a call would come, then, charging that teenagers had entered a house and physically harassed the elderly occupants, that there was a gang fight or that the kids in the neighborhood were breaking windows, the police would descend on the scene and grab teenagers on the street. They would question them, and if not satisfied with the answers, they would book them for curfew violations or some other similar charge. On one occasion in another part of town, the parents of a boy said that he and his friends had physically assaulted them. The officers went to a local pool hall, located the kids and lectured them about their misconduct. The kids were insolent. Later that night, when the kids were seen on the street, they were arrested for curfew violation. In another case, a girl who called one of the officers a "motherfucker" was arrested for curfew violation. The officer said that he intended to teach her that it was criminal to call him that after ten o'clock at night.³⁶

Disturbing the peace calls involving adult offenders take almost every form. The most common kinds of calls, other than drunks, are those involving either loud parties or other noise or unwanted guests. Usually these calls are easily handled. The party or parties making the noise are informed that they are disturbing the neighbors and are asked to quiet down. They generally do so. Unwanted guests are simply asked to leave, and almost invariably they do. Sometimes, however, loud party calls become difficult. If the party is very large, the officers are inclined to call for assistance so that they do not run the risk of

36. It is difficult to know what powers could be given police short of arrest to handle the problems of difficult children. There is a natural hesitancy either to let the situation ride until it reaches serious criminal proportions or to let the police intervene for essentially petty, though offensive, conduct. Perhaps the nub of the difficulty is the nonexistence of any consensus as to when "a kid is just being a kid" or when serious delinquency is present.

getting into a fight with drunken young people. Sometimes the party gets entirely out of hand and it is necessary, under threat of arresting³⁷ all the participants, to break it up. Such cases usually involve either repeated complaints about the noise or a party so large that it has spilled out of the house into the street. In another case, where the officers answered a loud party call, they asked at the door for the owner of the house. The person answering the door said he did not know who the owner was and that as far as he knew the owner was not there. The officer said that in that case the party would have to end since there was no one to whom to assign responsibility for controlling the noise level of the party. The responder went back into the room and said, "The pigs say we've got to go." The police took great delight in supervising the termination of that party.

Other typical disturbing calls include the following:

The police were told by radio that a motorcycle gang was disturbing at a certain address. They arrived to discover a disreputably-dressed gang of motorcycle enthusiasts having a party at a house. They were not making an undue amount of noise. The police advised them to stay as quiet as they could because a gang of their sort was particularly likely to outrage the sentiments of the "straight" community and suggested that they be particularly careful to avoid any conduct that might put them in danger of arrest. As the officer put it: "Do your own thing, but do it with discretion."

A prowler call turned out to be a case of a rather drunk young man who had been ringing several doorbells late at night in a vain search for his girlfriend. He had unfortunately run into a homeowner who held him at gunpoint for the police. The police listened to his story, decided that he was probably telling the truth, advised the homeowner that he probably ought to be released and after receiving the homeowner's acquiescence sent him away with a lecture to go home and sleep it off.

A young man was fearful that he had left his billfold in a bar. He went back to the bar after closing time and shook on the door to get the attention of the proprietor.

37. In Minneapolis it is illegal to remain at a party "from which noise emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area." MINNEAPOLIS, MINN., ORDINANCES § 870.061 (1970).

He became so vigorous in his efforts that he broke the glass in the door. The officers arrived on the scene, helped the young man search for his wallet and then let him go after he promised the proprietor of the bar that the window would be replaced.

During a traffic stop, a group of young men in an apartment upstairs began to yell, "Turn off those fucking red lights." They also threw beer cans out the window. The officers went to the apartment and lectured the occupants, all of whom professed complete innocence and claimed that they were being unfairly harassed.

The police dispatcher said that a disorderly couple was parked at a certain address. The officers expected considerably more than what they found, which was only a couple necking. The officers told the couple that while there was nothing wrong with their conduct, it might be wise to move out of sight of the person they were offending. The officers could see a little old lady peeking around a curtain in her house nearby.

A group of mentally retarded young adults live at a home called Outreach. The overflow from that home is boarded at another nearby apartment house. The two groups became involved in a little intramural bickering which escalated into a threatened knife fight. The officers separated the antagonists, lectured everyone and arrested the young man with the knife.

The wife of a doctor was hit by a thrown bar glass in a downtown strip joint. The doctor was so outraged he called for the police and asked that the rather drunken patron who had thrown the glass be arrested. The police first arranged to have his wife taken to the hospital. They then had the doctor fill out a citizen's arrest form. When the time actually came for the arrest, however, the doctor became fearful that there might be some later physical repercussions and refused to carry out the arrest.

In response to a call of a man beating a woman in a local park, the police arrived to find that there had only been a quarrel between fiances. The girl had become so irate that she had thrown away her engagement ring, and the boy was busy searching in the grass for the ring. The officers told him that he should count his blessings and left.

A tenant in a rundown apartment house complained that a tenant downstairs was making so much noise that this tenant's baby was unable to sleep. The officers advised him to complain first to the landlord and, if that did not work, to the city attorney. The officers also went to the offending tenant's apartment. That tenant was on the phone. He hung up and said that the officers had just prevented him from signing a contract for \$100,000 with a Chicago firm. The officers were not too upset and suggested that he ought to keep the noise down.

Officers were stopped on the street by a man who said that a group of winos had taken over his porch for drinking purposes and that they refused to leave at his request. The officers went to the scene and located two couples who were very drunk. They advised them to leave, which the winos did, protesting loudly.

The management of a local hotel said that they had a problem. The officers were led into the rest room and saw the back of a man's legs sticking out the door of one of the toilet stalls. They knocked on the door of the stall and told the people inside to come out. First, a construction worker came out with a rather smug smile. He was sent on his way. Then a man dressed in a business suit came out, saying that he had just invited the other fellow in for a drink. The officers asked him his name and where he worked. The man called the officers aside and said, "Christ, I am an attorney." The officers told him that attorneys ought not to engage in such conduct and sent him on his way.

The occupants of a downtown apartment house for women complained of a peeper. Officers saw a man on the top floor of a parking ramp. They proceeded up to his location and asked him what he was doing. He said, disarmingly, "I'm looking at the girls." The officer said, "Well, they're complaining. Perhaps you ought to go home." He agreed, and the incident was over.

The occupants of a highrise apartment for the elderly complained of a girl having been in the lobby for six to eight hours. The police arrived and discovered a girl about twenty-two years old who was obviously mentally retarded. They asked her where she lived and she gave them an address in South Minneapolis, some

three miles away. The officers did not at first believe her and tried some of the nearby homes for the mentally retarded. None of them claimed her. They then took her to the address she named, but there was nobody home. The officers asked the neighbors if the girl lived there, and the neighbors said that she did. None of the neighbors, however, were anxious to have the girl stay with them until her parents returned home. The officers then asked the girl if she could stay alone until her mother returned, and she said that she could.

A call was received that a man was disturbing at a local restaurant. When the officers arrived at the restaurant, the two obviously terrorized teenage employees said that they had made no call. Since the officers could do nothing without a complainant, they left. One of the officers, however, noticed a man who had disturbed at that and another restaurant before. He would playfully go behind the counter and put on an apron and pretend that he was an employee. He managed, thereby, to thoroughly disrupt the operation of the restaurant. Later that night, the supervisor of the restaurant arrived and called again. This time the complaint stood. The officers took the man aside and told him that he would have to leave. He became slightly irate, but the officers did not arrest him and let him go on his way.³⁸

Many disturbing the peace calls involve neighbor trouble of various kinds. One middle class homeowner complained at length about the young men who had rented the house next door. She said that they threw garbage in her yard, urinated out the window and constantly had loud parties. The officers advised her to call the police again when any of these incidents occurred and when she could identify the offender. In another case, an upstairs drunk tenant was sloshing water around that ended up leaking into the downstairs tenant's flat. The downstairs tenant was advised to contact her landlord, and the upstairs tenant was told to behave. In yet another case, neighbors had come to blows.

38. In the course of two summers I saw several episodes with this same man. He was never arrested while I was present though his conduct might well have led to an arrest with others. Considering the problems he was causing in the neighborhood, I believe arrest would have been desirable. I can only speculate that it did not occur, in part, because his size, strength and temperament suggested that the police would have to fight him to book him and were unwilling to do so except for very clear cause.

Several squad cars arrived on the scene, separated the parties and advised them to avoid each other. Illustrative of this kind of call is the following transcript:

Officer: What did they do?

Girl: They were coming up to the house. They called me and said that if I didn't let them in, they'd break in. He has broken a couple of windows here before.

Officer: Do you know him?

Girl: Yes, I do.

Officer: Well, you can sign a citizen's arrest against them for breach of the peace.

Girl's brother: We shouldn't do that. She just wants to be sure they don't show up here again.

Officer: I see. Well, we get tired of coming just to tell people to go away.

Girl: Can I make a citizen's arrest?

Officer: Yes, they were breaching your peace.

Girl: I don't know.

Officer: Well, you are the victim, not me.

The girl finally decided that she did not want to offend her neighbors by having them arrested. The officers located the boys and lectured them. Neighbor disputes also arise over the conduct of children. One irate homeowner said that the children across the street were attempting to push her car down the street, although this was obviously a physical impossibility, for the children were very young. The officers separated the neighbors and tried to advise each that the best course of action was to avoid the problem rather than litigate it.

C. TRAFFIC

Because of the diversity of enforcement philosophy and technique, traffic policing is one of the most interesting things for an observer to view.³⁹ For a long period of time, Minneapolis had special cars devoted exclusively to traffic enforcement. This system was changed late in 1968 to permit more officers to be available for more serious calls. Only two traffic cars remained, and their responsibility was to handle accident reports in traffic accidents involving personal injuries. All cars are now responsible for traffic enforcement. Many officers, however, feel that, at least with respect to minor traffic offenses, enforcement is unimportant. During the period I rode along, there were no quotas⁴⁰ on traffic enforcement except in one precinct. In that

39. An excellent discussion of existing variations in traffic enforcement and the reasons for those variations is contained in J. GARDINER, *TRAFFIC AND THE POLICE* (1969).

40. Ticket quotas are usually considered evil because they induce officers to tag in questionable circumstances solely to fulfill a quota.

precinct, the captain felt that traffic enforcement was an important function. In the monthly meetings with patrolmen he would inquire about the number of citations issued and urge the officers to enforce the traffic laws vigorously. While there was no set quota of tags, most of the officers in the precinct felt that they had to write at least ten moving violations a month. The result in that precinct was a much more vigorous enforcement of the traffic laws and a tendency to be on the lookout for such violations. In other precincts, the violation would have to be quite flagrant before the officers would take notice of it. One other consequence, probably not intended, of urging traffic enforcement on officers is that the officer will tend to write a tag that is easy to prove and that, consequently, will probably not require him to go to court on his off hours. For example, in Minneapolis it is illegal to make a U-turn at any intersection controlled by a traffic light or a stop sign.⁴¹ Many residents have no idea that such conduct is illegal; in many circumstances, of course, it is not at all dangerous. Nonetheless, illegal U-turns are one of the more popular tags. Similarly, loud muffler tags are popular because of the improbability that they will be litigated.

If there is one proposition to remember for one wishing to avoid a tag, it is to admit that he made a mistake and to apologize for it. When officers are faced with a sincere "mea culpa," they are inclined to feel that they have already accomplished their enforcement purpose and feel no need to tag. If, on the other hand, the offender denies that he committed offense, the officers are likely to become angry and almost certainly will issue a citation.

Most traffic citations involve only the issuance of a tag. Since all these violations are misdemeanors, however, the officer has discretion to arrest and book any violator. The most likely offenses for booking are driving while intoxicated, driving with an open liquor bottle and driving without a license or with a suspended license.⁴² When a driver is booked, almost invariably his car will be towed away.⁴³ Occasionally, however, the car will be

The absence of quotas seems to result in non-enforcement in instances where the violation is very clear and well beyond any set limits of toleration.

41. MINNEAPOLIS, MINN., ORDINANCES § 407.130 (1970).

42. MINNEAPOLIS, MINN., TRAFFIC ORDINANCES § 422.020 (1970) requires an arrest for driving while intoxicated or driving with a suspended or revoked driver's license.

43. It is a policy of the Minneapolis department that anytime a person is booked out of an automobile, the car may not be parked but must

released to a passenger who has a license and who is sober. The principle of confession and apology can work even in these more serious cases to avoid a booking. For example, a drunk driver was stopped. He admitted that he was in serious trouble, apologized, and asked the officers what they wanted him to do. The officers told him to park his car at the curb, go to a nearby coffee shop and call a cab. They issued a citation for careless driving and warned him that if the car were moved during the night they would sign a citizen's arrest for driving while intoxicated. Similarly, if one engaged in an open bottle violation apologizes, and if he seems to understand that he has done wrong, the officers may be willing to release him with a warning or to issue a mere citation.

One of the more interesting traffic problems that arose while I was riding along occurred at 1:30 one morning when the officers were returning to their precinct from downtown. As they drove down a one-way street, they saw a car without lights approaching, going the wrong way on the one-way street. The officers flashed their lights at the car, but this had no effect on the driver who then proceeded to run a red light. When the officers were finally able to get the attention of the driver, they directed him to pull over to the curb. Apparently, he did not know how to use his footbrake and finally managed to stop the car a half a block down the road by use of his handbrake. The driver was a 73 year old man who spoke rather poor English. He had emigrated from Russia 50 years before. When the officers asked him for his driver's license, he carefully removed from his pocket a handkerchief, untied the knot, and removed an outdated car registration. The officers told him that this was not a driver's license, and he informed them in return that it was all that he needed. The officers decided that he had to be booked because they could not allow him to drive his car away. He was booked for no driver's license, no current registration, driving the wrong way on a one-way street, no headlights, obstructed vision, running a red light and careless driving. The officers did talk to the jailers, suggesting that the man be released without bail. The

be towed to a lot. This is defended on the ground that it prevents city liability for anything that might occur to the car while it is parked. It is an extremely irritating policy because it results in the arrestee having to pay a tow charge. It seems the police could allow the car to be parked at the owner's option if he would be willing to sign a waiver of liability. This not only would remove a major irritant but also would save officers an enormous amount of time now spent waiting for tow trucks to arrive.

jailers agreed to this if they could make him understand that he had to appear in court the next day. The officers also wrote a report in which they requested that no driver's license ever be issued to this man. They also suggested that some social agency be advised to help this man arrange for the sale of his car.

Another very difficult traffic problem arose when officers were called to the scene of an accident where a damaged car was leaking gasoline. The driver had called the fire department, and they in turn had called the police. The fire department was hosing down the area because the car's gas tank was leaking. It was obvious that the car had hit something, since there was yellow paint on the damaged area, and the car was very seriously damaged. The officers asked the driver what had happened, and he said that he did not know. His driver's license revealed that he lived in a wealthy suburb. It became obvious that he had no intention of talking:

Officer: Let me try to explain it to you this way. We are not here to give you a hard time or anything . . .

Man: You're here to help me?

Officer: Well, I don't know if we're to help you, because probably it's going to get you into some trouble. You've done some damage to property.

Man: It could be complicated. I say nothing.

Officer: We have an obligation to find out what has happened here. Now, you can help us by telling us.

Man: And hurt myself?

Officer: You might. You see, I don't know what you've done. Until we find out, we're going to hold you.

Man: Are you arresting me? You can't hold me unless you arrest me.

Officer: That's what I mean. We'll just have to arrest you. We don't have any choice.

Man: On what charge?

Officer: We'll hold you for investigation by the hit-and-run division. You won't be charged with anything; you'll just be held.

Man: Am I under arrest?

Officer: That is up to these officers here [indicating the district car 557] to make the decision, not to me.

Man: What's the reason?

Officer: There's no question about the reason; just look at your car.

Man: You look at my car; that's fine. You have no idea what happened. You don't know what hit me.

Officer: Maybe something hit you; you're right, and you could help us by explaining it.

Man: Talk to my lawyer.

Officer: You're not going anywhere.

Man: Am I under arrest?

Officer: You're being detained.

Man: You don't detain anybody. [He began to walk away and was restrained by one of the officers.] Okay, I'm under arrest.

Officer: We tried to treat you like a gentleman, but you want to play silly games.

Man: What am I under arrest for?

Officer: Investigations, hit-and-run and probably public drunk.

Man: But I haven't been drinking. [He was placed in the squad car in the back seat with me. Later this conversation took place.]

Man: What are you people doing this to me for? Is this some sort of sadistic satisfaction you have?

Livermore: I'm not a cop.

Man: I bet. I haven't resisted anybody. I asked if I were under arrest, so they had to find a reason, just find a reason. Fucking cops, I'll kill them all. What did I do?

Livermore: You started to walk away. They told you that if you did, you'd be held for investigation.

Man: I said "Can I go get the car towed away," you know?

Livermore: You didn't say, "Can I get a tow."

Man: Well, I said "Can I go"; is there any reason . . .

Livermore: You said "Arrest me, or I'm going to walk away."

Man: What else can you say to a cop? You have no choice; you're just faced with authority.

Livermore: I don't know what you've done, and I don't really give a damn.

Man: I haven't done anything; somebody else hit me.

Livermore: Then, why don't you tell them?

Man: How can you trust a cop? Look what happened here; this is why you can't trust them.

Livermore: Well, I think you're wrong.

Man: I was a cop in North Carolina once, and I quit because I couldn't stand the way it was run.

Livermore: I don't know what goes on in North Carolina, but I don't think you've had any trouble here. You're enough out of the ordinary so that they had to call the sergeants.

Man: I'm going to write a hell of a lot of letters.

Livermore: I'll tell you what they think. They are afraid you're a hit-and-run car.

Man: I wouldn't have called the fire department if I had done anything.

Livermore: Why didn't you talk?

Man: They asked questions in such vague generalities; I don't want to incriminate myself. I'm not about to say a thing about this, not till I see my lawyer. I don't know who they are accustomed to speaking with, but I'm not going to tell them a thing. This may cost somebody a lot of money. They are leading questions, and they are open end.

Livermore: You don't leave them much choice.

The man was booked as a public drunk and for leaving the scene

of the accident. Later the officers had time to investigate and noticed damage to a public traffic island. This was the probable source of the yellow paint on the man's car. If he had simply told the officers what happened, it is almost certain that nothing would have been done; the officers probably would have felt that more than enough penalty had been inflicted by the damage to his car.

D. CALLS INVOLVING DANGEROUS OR SERIOUS CRIMINAL CONDUCT

The most frightening calls with which the police have to deal are, of course, those in which there is a genuine element of physical danger. Most often the call in fact involves no danger, but that does not reduce the level of apprehension. The most frequent kind of call of this sort occurs when a private alarm company informs the police that a silent alarm is going off in a building. The natural thought is that the building is being burglarized. That is, in fact, very rare. Generally, a cleaning crew, a late-working employee or a faulty alarm will be the cause. Nonetheless, the police arrive hurriedly, with guns drawn, ready to do battle with criminals. Similarly, the police get a number of calls about people with weapons. Almost always the person with the weapon is gone or there was no weapon in the first place. For example, one evening there was a call that a restaurant had a patron with a gun. Investigation determined that he had a toy pistol in his possession. Similarly, reported gun fights have turned out to be firecrackers.

Obviously, however, the police have to take these calls seriously. This can lead to some strange sights. One early evening the police received a call that a woman with a gun was threatening another woman at a location in the heart of a Black neighborhood on the near north side. Eight policemen arrived in response to the call and approached the house with pistols drawn. Some of the officers were armed with shotguns. Passersby were shocked to see this army invading. As it turned out, such force was not necessary. A woman had come to this address with a pistol and threatened another woman who she claimed was running around with her husband. By the time the police arrived, the offended wife had left. But, of course, the police have no way of knowing this when they arrive at a call.

In those instances in which a firearm has actually been brandished but the brandisher has departed, the police often spend a great deal of time trying to locate him. Usually, they have little

success. Other officers are advised that such a person is loose on the street and can be on the lookout for him. One example is the case of the wife who called and informed officers that her husband was drunk and had left the house with a rifle in his possession threatening various kinds of misconduct. All the officers could do was to radio a description of the man and of his car so that officers could be on the lookout for him.⁴⁴ In another instance, two young men had threatened a group of youths with a knife and a gun. The officers finally located one of the offenders. The officer then went to the victims and informed them that, unless they were willing to sign a citizen's arrest and to testify in court against the offender, there was little reason to arrest him. Although the victims were reluctant to "become involved," they finally decided that they would sign the citizen's arrest.

Enforcement of the laws regarding more serious property crime can also involve elements of danger. It is sometimes difficult to determine whether one is dealing with a burglar or only an unwanted guest. One evening the police received a call that a man was breaking in at a house. The occupants said that two men in a white Falcon had tried to break in and when they had been refused admittance had threatened to shoot down the door. The alleged offenders had left, of course, by the time police arrived. The officers noted, however, a young man standing around outside. When he was questioned, he admitted driving a white Falcon that stood nearby. The officers flashed their light in the car and discovered a fully loaded 22 caliber automatic pistol. The young man was taken upstairs, but the tenants could not identify him. He did admit that he had tried to obtain admission upstairs, but he said that he only wanted to see the young girl who lived there; he claimed she had favored him with provocative looks from her window. The officers finally released him, although they surely could have charged him with violation of the city gun ordinance.

When serious crime has actually taken place, the officers usually have nothing to do but to make a report. This is most clearly seen in the common household burglary situations where all the officers can do is to make a brief report that will be passed on to the detectives for action. But the same phenomenon occurs

44. A fragment of dialogue from a woman explaining why she called the police after her husband stormed out of the house, gives the flavor of these episodes: "He's in such a rage to kill; always talking about it. I don't know whether he will kill or not."

in serious crime. Often, as in domestic stabbings, the victim, though he wanted the police for protection, decides not to prosecute. In other situations, the crime is complete, and the police can do nothing but make a report. This is clear when the victim is dead or so beaten that he is unable to say anything. In other cases, though an apprehension is made, no real work is involved. Thus, in two shootings which the officers with whom I was riding were called, the perpetrators turned themselves in to the officers.

Sometimes, however, wrinkles appear. One evening a call came in of an armed robbery at a large supermarket. The manager had seen the license plate of the getaway car. Officers quickly located the car, but when they tried to make a stop a chase began. The chase wandered through downtown Minneapolis, on a night when the stores were open, at speeds of 60 to 70 miles per hour and ended only when the robber turned the wrong way onto a one-way street and ran into another car. This kind of apprehension is also common when police attempt to stop a stolen car. Great danger to others is always involved in such chases, but there seems to be no way to avoid them if felons are not to escape simply on the basis of their greater willingness to risk the lives of others.

A rather more interesting effort to apprehend dangerous offenders grew out of a situation at a very rough downtown bar. The situation first came to the attention of officers when a man phoned in that he had been robbed. He said that he had met a girl he knew who had asked him to walk her home through a dark park. He said that midway through the park two men approached and robbed him at knifepoint, one of the men seeming to take sadistic pleasure in pointing the knife at his eye and saying that he was going to put it out. He was able to identify the girl, and the girl was one with whom the officers were familiar. They located her later in the evening at another bar and talked to the two men who were with her. Neither seemed to fit the description that the victim had given. The next night, while patrolling the area behind the bar, officers saw a man on the ground. When they were able to talk to him, they learned that he had met a girl who gave the name of "Mona," the same name as the girl from the preceding evening. She had suggested that he buy her a drink, and he had acquiesced. When he was to take her home, he was approached by two men in the parking lot and beaten and robbed. He asked the officers to make certain that the detectives came to see him at his place of employment so that

his wife would not learn of his nocturnal wanderings. Later that night, another squad car saw the two men who worked as a team with Mona, jaywalking. They immediately arrested them and took them downtown for booking. Their purpose in doing this was to obtain mug shots so that future victims would be able to identify the assailants. The next night the same pattern repeated itself, and the victim was taken to General Hospital after being brutally robbed. Several nights later, a victim was able to identify the two men, and the crimes were solved.

On another evening, officers were called to the scene of a purse snatching on Plymouth Avenue, the street on which racial incidents had occurred in recent years. The victim was a middle aged White woman, the proprietor of a small gift shop on Plymouth Avenue. Her husband had taken a shot at the fleeing robbers, but claimed that he had missed. Almost immediately after making this robbery report, the officers were called to the scene of a "shooting." The victim was a Black boy of about 17 who claimed that he had been hit by one of the shots fired by the male owner of the gift shop. The officers immediately assumed that he had been one of the robbers and seemed unwilling to believe his story that he was just a bystander. The officers talked to their superiors, and it was decided that, after the Black boy had received medical attention at General Hospital, he ought to be booked as a robbery suspect. I suggested that this course seemed unwise since it amounted to "White shoots Negro, Negro arrested." The officers finally agreed and decided instead simply to make a report of the incident to the robbery detectives.

Of all calls involving crime or potential danger, the most serious to the police are those in which there is a gang fight, or a near-riot or potential riot situation. Whenever these arise, officers from all over the precinct drop everything they are doing and rush to the scene, hoping to stop a serious situation in its incipency. Thus, overwhelming force responded to a call of a gang fight at a country and western bar. Even so, the officers had to fight several of the participants in order to bring the situation under control.

The threat of a riot made a difficult situation even more explosive in the Black area on the near north side. Officers were always fearful that some small situation would grow into something bigger. There were reasons for such fears. One evening a squad car saw groups of teenagers having a rock fight in a service station on Plymouth Avenue. They stopped, got out of their car and tried to persuade the youths to stop. Instead, the officers

were assaulted by a group of about fifteen. One consequence of this type of assault is that in all future situations of that sort officers would always arrive in larger groups and arrive armed with nightsticks. To Black residents this might seem unduly provocative, but to the officers it would simply be a matter of self defense. In another incident, Black teenagers had turned on all the fire hydrants along Plymouth Avenue. When city employees tried to turn them off, they were stoned. An officer with whom I was riding became so incensed that he went out personally and turned them off. Although crowds of teenagers watched him, none of them did anything. It may be that they recognized the officer, realized that he was furious and feared, probably with reason, that if they stoned him he might fire a few shots in return. On another occasion, in the same area, two policemen were held at gunpoint for awhile and then beaten by a crowd. Cars from all over the city came to Plymouth Avenue and prepared to do battle with a large and unruly crowd. The inspector on duty, however, persuaded the leader of the local citizen's community center to urge the crowd to go home in return for the inspector's telling the police to return to duty. The officers, of course, were incensed that some of their colleagues could be beaten without fear of reprisal. The officers did not seem to be able to recognize that everyone on the street cannot be arrested in such a situation merely to apprehend two unidentifiable felons.

IV. ANALYSIS OF POLICE PRACTICES

I began this article by stating that many people believe that the police are generally brutal, insensitive and prejudiced. From most of the situations I have described, those charges could not be substantiated. It would be fair to conclude that the evils perceived by some are not nearly as widespread as they believe. Nonetheless, individual police officers at times are callous, rude, secretive or overly intrusive, on occasion do use excessive force and sometimes do use improper criteria in making decisions. These problems pervade all police departments and can affect any citizen. They are not, however, pervasive in the sense that any of them is likely to be present in any particular police transaction. It is fair to say, however, that society and police authority have been more tolerant of these failings than they ought or need to be. Much of the remainder of this article will be devoted to exploring means of minimizing police misconduct.

Before doing that, however, further examination of the precise nature of the problems must be undertaken.

A. THE USE OF FORCE

By universal consensus, the law is and ought to be that no more force may be used than is necessary to accomplish a legitimate police objective.⁴⁵ Improper use of force arises in at least three overlapping ways.⁴⁶ It may be used to accomplish a police purpose, the legitimacy of which is not clear. It may be used under provocation in the heat of the moment. It may be used without any shred of justification or excuse.

An example of the unclearness of the legitimacy of the police purpose is provided by the case mentioned earlier where the squad car received a radio complaint that a man in a white wind-breaker was ringing doorbells in a residential neighborhood at 2:00 a.m. On entering the neighborhood the only person on the street met that description. The officers circled the block, noticed that the man was approaching the front porch of the house, and stopped to question him. He ran. The officers pursued and caught him. Were they justified in holding him? Had he fought, would they have been justified in using force to subdue him? While this is not an obvious case of brutality, if the officers had no authority to hold him, they had no right to use force, however mild, to prevent his flight. And, in fact, they had no authority to hold him. The crime for which the officers had probable cause to believe him guilty was disturbing the peace, a misdemeanor for which an arrest is justified only if committed in the presence of the person arresting. Thus, while what the officers did seems perfectly reasonable from a common sense point of view, it went well beyond their legal mandate.⁴⁷ The solution to this misuse of force could take several forms. Assuming the law remains unchanged, officers must be informed that what seems to them to be the natural course of action is forbidden. Alternatively, the law could be changed to give police the right to question in certain circumstances and to make it a crime to flee

45. See, e.g., MINN. STAT. §§ 609.06 & 609.065 (1969).

46. See generally Westley, *Violence and the Police*, 49 AM. J. SOC. 34 (1953).

47. Having no right to arrest for disturbing the peace, yet feeling the need to arrest because force had been used to apprehend, the officers arrested the disturber as a public drunk. This is another example of the present usefulness of the public drunkenness ordinance as a means of providing power in circumstances where it has not been expressly granted yet is needed.

when requested to answer questions. Still another change would be to allow police to arrest on probable cause in the case of misdemeanors as well as felonies.⁴⁸ The effort should be made to legitimize police conduct either by conforming that conduct to the law or by conforming the law to the conduct.

Provoked overuse of force is most familiar in mob situations such as the disorders associated with the Democratic National Convention in Chicago in 1968.⁴⁹ It occurs in a host of other situations as well, including situations much less susceptible of control. Most observers believe that in the crowd situation avoidance of a "police riot" requires only training in unit-type action, something foreign to most police officers, and the presence of adequate supervisory personnel themselves committed to avoiding abusive use of force. From what little I have seen of such confrontations in Minneapolis, I have no reason to doubt the wisdom of those proposals. But the solutions for the crowd situation will not work in the case of provocation of an individual officer. On-the-spot routine supervision of such individual episodes is by definition impossible and the control exerted by conformity to a unit mission is likewise precluded. There are three provoking

48. The need for a citizen's arrest when a misdemeanor has been committed out of the officer's presence creates a problem. It makes enforcement hinge on the willingness of a citizen to "become involved." Since conviction may depend on that citizen's testimony, it may not be unwise to make arrest hinge on his willingness to give an assurance of commitment to ultimate prosecution. Still, given an unwillingness, the police are sometimes unable to do anything in circumstances where the prior act is suggestive of immediate future misconduct. Absent the drunk rationale in the case described in the text, the officers would have had to allow continued doorbell ringing either until they witnessed it or until a citizen managed to apprehend. If, as later suggested, pages 719-25 *infra*, police power is geared to immediate need rather than conformance to criminal law theory, citizen commitment to prosecution would cease to be a significant arrest criterion.

An unrelated problem with citizen arrests is that they, far more than police arrests, create a substantial problem of discretion. Theoretically police must honor a citizen arrest. Practically, if officers believe that the citizen wishes to make a "bad pinch," they will simply refuse to aid him. Since the arresting citizen is usually the victim, it is obvious that he is unlikely to be motivated by criminological or order-maintenance considerations. Rather, retaliation for real or imagined harm will be uppermost in his mind. This can sometimes lead to the dubious spectacle of each participant in an automobile accident or a fight wishing to arrest the other. If citizen arrest powers are to be maintained, surely some formal discretion ought to be given officers to refuse to book either by allowing the citizen to issue a summons instead or by requiring him to file a complaint with the city attorney.

49. See RIGHTS IN CONFLICT ("The Walker Report"), AN INVESTIGATIVE REPORT SUBMITTED TO THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE (1968).

situations in which the use of excessive force is likely in Minneapolis. If a man uses force against a police officer, runs when under arrest or tries to elude a squad car in a high speed chase, the odds are that excessive force will be used against him. The case of force overcoming force is the easiest to understand. The almost instinctive reaction when hit is to attack and not to make nice calculations about how much force is legally permitted. Less familiar are the emotions surrounding a foot or automobile chase. I was involved in only one foot chase, and I ended up angry at the man seeking to escape. Given anger, violence is understandable if not excusable. Similarly, in an automobile chase the tensions associated with high speed, extremely dangerous driving cause many officers to be literally furious at the pursued driver.⁵⁰ That force should sometimes be used is again understandable.

The trouble with these cases is that an understandable anger becomes almost an institutionalized response. During my second summer, after witnessing some gratuitous punching after a foot chase, I was taken aside by a rookie and told that it was department policy (although of course it is not) to work over those who flee so that they would not again be so rash. I am sure much the same rationale is used by some officers to justify a serious mauling of those foolish enough to resist arrest. Part of the explanation for this vigilante justice lies in the fact that here offenses are committed directly against the police. Another part is that the police believe that no penalty will be given by the courts. Minnesota has no offense of resisting arrest for either flight or the use of force. In these circumstances, police seem to feel a need to create a deterrent sanction of their own.⁵¹ Solutions to such problems could take two directions. One is to criminalize conduct which is offensive and dangerous to police so that the need for vigilante tactics will diminish.⁵² The second is for the su-

50. One especially perceptive officer, aware of his anger, made a point of calling in another squad car to make the arrest after a high speed chase.

51. One officer, on apprehending someone fleeing, severely cut him with one punch. I asked why he did that. He said that it was his theory that anytime force was necessary, the police should use enough force at once to deter the person being arrested from any further resistance. While this rationale is not plainly wrong, it invites the use of force, as at the completion of a foot chase, when usually no force at all is necessary.

52. To the extent that police sometimes use their power only because someone has used obscenities toward them, another form of vigilanteism, a similar cure could be effected. Since verbal abuse is at best a minor crime, the criminal remedy might be a summons satisfiable by a small fine to be paid by mail if there is no desire to contest the matter.

pervisory personnel to walk that tight line between being willing to understand provoked abuses and being willing to condone them.

The third kind of excessive force, that used maliciously or even sadistically by an officer without any real provocation, is surely the easiest to deal with. No department should countenance it. No rationale can justify it. Strong discipline is essential, as is the inculcation of the belief among all officers that such conduct is inexcusable. Given police comaraderie,⁵³ only that conduct plainly perceived to be outrageous will be reported by the police themselves. And, such reporting is essential to insure discipline.

B. CALLOUSNESS, RUDENESS AND SECRECY

Callousness and insensitivity to the problems of other people is the most intractable of these minor vices. The policeman's steady diet of filth, degradation and misery works against any sense of involvement or empathy with the problems with which he is faced. An ability not to be affected by what he sees is an almost indispensable part of a policeman's armor. Society can hardly ask a policeman to experience with them the miseries of his patrons, but it can certainly ask him to recognize that the problems presented to him are very real and painful to those who have called him. Perhaps then he can avoid needless affronts, and, while his advice may be no better, it may be more sympathetically received.

In a sense, callousness, rudeness and secrecy all emanate from the false perception of the policeman's job that many people in police work have. Policemen believe themselves to be crime fighters, not social workers. In fact, their job is more social work than crime fighting.⁵⁴ So long, however, as the present perception is maintained, police will continue to believe that many tasks are not rightly "police work" at all and to believe that good performance in social work tasks is of low priority. Insensitivity and rudeness will inevitably follow.⁵⁵ The penchant for

53. See Westley, *Secrecy and the Police*, 34 *SOCIAL FORCES* 254 (1956). See also P. CHEVIGNY, *POLICE POWER* 248-49 (1969).

54. See, e.g., J.Q. WILSON, *VARIETIES OF POLICE BEHAVIOR* (1969); Cumming, Cumming & Edell, *Policeman as Philosopher, Guide and Friend*, 12 *SOC. PROB.* 277 (1965).

55. See J.Q. WILSON, *supra* note 54, at 25. There may be occasions in which callousness and rudeness ought to be used for tactical reasons. An example would be in those circumstances where the caller

secrecy is also inflamed from this same perception. If the police are really crime fighters, then questions directed to them can more easily be ignored as simply the requests of those seeking vicarious excitement. If police work, on the other hand, is seen as public service of a high order, citizen interest may more readily be understood as legitimate. In any event, there is rarely any reason for police to be unwilling to explain what they are doing and why they are doing it. In the case of one who is the subject of police action such an unwillingness is inexcusable.⁵⁶ When a man's freedom is in question, surely it is not too indulgent to answer his questions. Even where the questioner is merely curious, the wiser course is to satisfy his curiosity. Openness breeds trust, and trust of police is not notably great.⁵⁷

C. USE OF IMPROPER DECISION-MAKING CRITERIA

It is more widely understood today than it once was that police have substantial discretion to refuse to invoke the criminal process.⁵⁸ This new understanding, however, has led many people to fear that the criteria by which the decision to arrest or to take other police action is made are often illegitimate if not outrageous. The most frequently advanced charge is that police let racial prejudice influence their decisions. The verbal output of most police officers with respect to Black citizens would make a liberal academic's hair stand on end. But this racist talk seems to have little impact on the conduct of the officers toward Blacks with whom they have to deal.⁵⁹ While it is well recognized that

has magnified his problem and needs to have perspective restored. Such occasions are infrequent.

56. One of the more irritating police practices is to refuse to give information or to give misinformation to a person arrested so that he will not become upset and thus increase the difficulty of booking him. While it is understandable that police want to keep their job as easy as possible, given the significance of an arrest to the person arrested, police ease ought to be overcome by his right to a truthful statement of his situation. Thus, he should be told what his bail is likely to be and how long it will probably be before he can be released. Parenthetically, there seems to be no substantial reason for the jailers to demand cash bail. Allowing use of personal checks would eliminate the need for a friend of the prisoner to hunt for cash in the middle of the night.

57. H. Goldstein, *Police Discretion: The Ideal Versus the Real*, 23 PUB. ADMIN. REV. 140, 146 (1963).

58. See, e.g., J. Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543 (1960). See also W. LAFAVE, *ARREST* (1965).

59. See Black & Reiss, *Patterns of Behavior in Police and Citizen Transactions*, in PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, III FIELD SURVEYS, vol. 2, at 132-39 (1967); J. SKOLNICK, *JUSTICE WITHOUT TRIAL* 80-86 (1966).

the impact of belief on action is incredibly complex and subtle, it is fair to conclude that the impact most feared—that police intentionally harass, beat and improperly arrest Blacks—is not present to a substantial extent in Minneapolis.⁶⁰

To say that the most familiar charge made against the improper use of discretion is false is not to say that improper criteria are never used. Nor is it to say that criteria for which there is rational support are beyond question. A familiar example of an improper criterion is the influence on an officer's decision of the probability that he will have to spend off-duty hours testifying in court. The substantive criminal law ought not to be under-enforced for this reason. Removing the influence ought, however, to involve more than exhorting the officer to remember that testifying is part of his job. It ought also to take the form of reducing the inconvenience of testifying.⁶¹ Another questionable criterion is that a man will be arrested or tagged when he would otherwise not be if he is tendentious or abusive. Removing this criterion again should involve more than telling officers that they ought to smile through a torrent of verbal abuse. It might also involve the minor criminalization—as by a ten dollar misdemeanor ticket—of that abuse.

Decision-making criteria which are rationally supportable may still not be optimal.⁶² For example, a disturber of the peace is usually warned and sent on his way if it appears that the

60. One officer gave a traffic ticket to the Black driver of a car, the other occupant being a White woman, solely because it was an interracial couple. I saw only one such incident and the ticketing officer was chastised by his cohorts for such behavior.

61. Understandably, officers are upset at having off-duty plans interfered with by the need to testify. This upset is greatly magnified when, after an officer appears pursuant to a subpoena, the case is continued. This can happen four or five times, the defense lawyer waiting for police exasperation to reach a point where they fail to appear, at which point he can move for a dismissal. Officers also become furious when the case is scheduled during their vacation. A sympathetic court administrator, staff of the city attorney, and judiciary could easily devise means of reducing this burden on the officer.

62. Indeed, needed criteria may not even exist. Two summers ago Negro residents of the near north side were bothered by Whites driving into the neighborhood and propositioning Black women. Naturally, many of these women were offended. So far as I could ascertain, however, there was no policy as to whether such behavior was to be treated as disturbing the peace. At one community meeting, a high ranking police officer suggested that it was. That decision, if made at command levels, had not reached the patrolman on the street. It does not matter a great deal whether this conduct is or is not treated as criminal. It does matter, though, that it be treated uniformly and that its means of treatment be established and generally known.

warning will end the disturbance. As against booking every noisemaker, this seems entirely sensible. On the other hand, it may create the impression that so long as one abates the noise when requested, he has a free hand. It might be wise to provide for a small fine for such misconduct enforced by a summons similar to a traffic ticket.⁶³

D. OVER-INTRUSIVENESS

Some observers feel that police intrude into matters not properly their concern. To a large extent this is a criticism of the content of the substantive criminal law. To some extent it is a criticism of police priorities of enforcement. To a much lesser extent it is a criticism of the practices of individual policemen. An example of the first criticism is the furor over undercover police work in narcotics enforcement. That objection almost certainly emanates from widespread disapproval of present laws relating to marijuana. Identical enforcement practices would be far less suspect if directed solely to heroin pushers. The second criticism is exemplified by the not infrequent plaint of some that the police must have more important laws to enforce than those relating to the exhibition and distribution of pornographic material. Both of these criticisms suffer from the fact that they are minority positions. It is one thing to say that the narcotics and pornography laws are unwise. It is another to rail against the police for enforcing them when there seems to be overwhelming public support for such enforcement. It is not legitimate to criticize the police for refusing to subvert the wishes of the majority.

Still there are situations in which some policemen are overly intrusive, becoming suspicious on inadequate grounds or

63. Most officers operate, apart from traffic, on the notion that if an offense is not grounds for booking, it is not criminal. This is hardly self-evident. One can easily decide that a man should not be taken to jail without necessarily deciding that some deterrent sanction is inappropriate. Fortunately a mechanism exists to remedy this situation. Minneapolis officers may issue a summons for a misdemeanor rather than booking the individual. The summons book was created to provide the officer a way of charging a man short of booking. For reasons discussed below, since bookings for minor crimes usually involve a need to get the arrestee off the street, summons are rarely used. The summons focus ought to be enlarged to include, in addition to an alternative to booking, a supplemental means of enforcement where booking is inappropriate. To encourage use of summons in these circumstances of minor criminality, a schedule for payment by mail ought to be created so that officers would know that full scale prosecution was not envisioned.

harassing, lecturing or otherwise using authority for conduct which is, although distasteful to them, not criminal. In a sense this is another case of the use of improper decision-making criteria, differing from the other only in that the consequence of arrest is not usually present. Examples are most easily found in the traffic enforcement area. Some officers make a habit of stopping older cars, when operated by young people late at night, because they believe that they have a higher likelihood of finding certain violations such as underage drinking or possession of an open liquor bottle in the vehicle. While I do not doubt that there is truth in that proposition, it is clear as a matter of law that there is inadequate cause for such action. Similarly, it is improper to stop long-haired male drivers simply as a means of harassing people who are distasteful to some officers.⁶⁴ Eliminating these practices requires at a minimum that they be made visible. Beyond that, greater supervision offers the best hope of reform.

E. PREVENTION OF MISUSE OF POWER

With these few examples I have tried to outline the major perceived areas of improper policing. In the process I have offered, often with a good deal more assurance than I feel, tentative solutions to these problems. It is now necessary to deal more systematically with the question of how misuse of police power can be prevented and how the level of policing can be improved. Again I fear that I must be only tentative. The proposals I will make will suffer from not being thoroughly analyzed. In addition any proposal on policing immediately raises for many people difficult questions of value that are sure to be the subject of great concern. Consequently, I can only try to offer some illumination on questions I hope will be the subject of more careful debate in the future.

The primary requirement is that policy, both explicit and habitual, and practice be made visible. If reasoned discussion is to proceed, what police do must be known. One of the most encouraging portents toward that end is the ride-along program

64. While I am generally dubious about the claim that a college education will make policemen invariably "sweet," "sensitive" and "humanistic," it is known that the process of higher education, for reasons not entirely apparent, makes its recipients more tolerant and less easily upset by different "life styles." To the extent then that some police misconduct involves improperly inferring from the fact that someone is different the conclusion that he is bad or criminal, it might well be eliminated by higher education. It might also be eliminated by means far less expensive than a college education.

existing in the Minneapolis department. During the last year, about 1000 people spent all or part of a shift observing officers doing their job. This cannot help but foster understanding of the difficulties of the job, and the fresh perspective of many of these observers ought to result in suggestions for improvements. To the extent that the program can be extended and some formal means devised to take advantage of citizen suggestions, it should be. Not only does riding along increase the visibility of police practices, it creates a mutuality of purpose leading to greater acceptability of those practices. Moreover, to the extent that the law on the books varies from the law as applied, a vehicle will exist for making the real norms known.

1. *The Need for Intermediate Authority*

Beyond knowing what police do, it is important to reconsider what we *want* police to do and whether we have chosen the best means for the accomplishment of the goals we have set. The almost overwhelming feeling one gets from an examination of what the average patrolman does is that most of the situations with which he deals are ones in which application of the criminal law is inappropriate. This observation can lead to two different conclusions. The conclusion most frequently advanced is that such situations ought to be removed from police jurisdiction so that police officers might concentrate their attention on "real crime."⁶⁵ The alternative conclusion, one that I will seek to explicate and defend, is that police powers ought to be defined with reference to the jobs they presently are performing rather than with respect to a fictional model of criminality applicable in only rare circumstances. Before making that argument, however, it is important to consider why simply refusing to deal with "non-criminal" behavior is unwise.

A call to the police department is a call for help. Regardless of whether an observer would characterize the situation as one in which police ought to be involved, to the caller, help is essen-

65. See, e.g., F. ALLEN, *THE BORDERLAND OF CRIMINAL JUSTICE* 4-5 (1964):

Whenever penal sanctions are employed to deal with problems of social service, two things are almost certain to happen and a third result may often occur. First, the social services will not be effectively rendered. Second, the diversion of personnel, resources, and energy required in the effort will adversely affect the ability of a system of criminal justice to fulfill these functions that it can perform. Finally, the effort may sometimes result in the corruption and demoralization of the agencies of criminal justice.

tial. It might be that a specialized service could better perform some of the tasks police now engage in. Until, however, such services are available, removing police help is to remove the only help available. And while police help is often inexpert, it is usually at least comforting. To the woman who has locked herself out of her house, it is less important that police be expert locksmiths than that some agency be available to offer help when a felt need arises. Similar situations are the complaints relating to a drunk asleep on one's front lawn or a noisy party next door. If there is no one to turn to because criminal sanctions are thought to be inappropriate, then a good many human problems which deserve attention will instead be ignored. Further, the lack of any official means of problem-solving would necessarily invite nonofficial solutions which would likely create worse problems.⁶⁶

There are practical as well as philosophical objections to creating other more specialized agencies for the handling of "non-criminal" police problems. They are exemplified in the case of a domestic disturbance. Before they arrive at such a call, the policemen have no way of knowing how serious it is. It is sufficient to know, however, that physical force might well be used. If the task of solving these disputes is to be left to social workers, then, either they must be able to defend themselves or to have police there in case defense is needed. Probable duplication seems inevitable. Even apart from that, however—and this may be a wholly personal reaction—sending social workers seems to me overly intrusive. The state is simply getting too nosy when it says to its citizens, "If you want to complain about your husband beating you, we will send out marriage counselors." There ought to be some means short of that to solve a temporary problem.⁶⁷

66. Of course, simply because someone needs something doesn't mean that the government ought to provide it. With respect to most calls for police help, however, it seems to me wise to offer some aid. In a society as complex as ours, it is inevitable that many people will be ill-equipped to deal with non-recurring problems that arise. To the extent that the police can directly help or refer the individual to an agency or business that can help, there seems little reason to deny assistance on the ground that the police aesthetic does not include such help. While middle-class people do not usually seek police aid, an example of a time when they might is when the need arises to find an all-night pharmacy. Beyond the rationale that offering such help is useful and inexpensive, there is also the fact that refusal to offer help might invite behavior that will require later police presence. The attempt by an unhappy homeowner, for example, to terminate the loud party next door may only magnify the problem ultimately presented to the police.

67. Again, when the government is asked to assist, it seems proper

The difficulty with the peacekeeping function is that the officer is expected to perform it without either training in what should be accomplished or power to accomplish that which is most appropriate. This leads generally to a desire to get away from the situation or to wait until it produces an offense for which an arrest can be made. Neither solution is optimal. The problem of training is a difficult one to which we will have to return. Situations facing patrolmen are not easily categorized. Nor, given the diversity of human subjects, is there likely to be found a "standard" solution to domestic or noise problems. About all that is now done is that the patrolman is informed that his job is best performed when a peaceful solution without arrest can be achieved. Much more training on methods of cooling down upset individuals is obviously desirable, as is close supervision of actual performance. What is to be inculcated is an ability to defuse any explosive situation and this depends more on a sense of the situation than on book learned rules of protocol.

Regardless, however, of how able we ultimately are to teach "defusing techniques," the legal rules under which police operate ought to be changed so that their powers are more directly related to the job they perform. Police now may only choose to arrest or not to arrest. What is needed is a set of more discriminating responses to unruly behavior. If some formal action seems necessary today, it can only take the form of arrest. But that decision is often not taken on the appropriate ground that an offense warranting prosecution and conviction has occurred but on the far less defensible ground that peace can only be restored or the complainant satisfied by removing the arrestee from the scene.⁶⁸ It is not that these latter grounds would not logically support some police action, but rather that they do not usually support invocation of the criminal process, the only action formally open to the police. The argument, in short, is that some legal means short of beginning the road to conviction and sentence ought to be available to police in their order maintenance or peacekeeping role.

for it to establish that form of assistance which is most useful, not just the form the parties want. But, if I perceive the situation correctly, those now calling the police might not call the social worker and the consequences of no intervention might well be worse. An intermediate solution, appearing to hold much promise, is to provide police with better training in handling domestic disputes. See M. BARD, *TRAINING POLICE AS SPECIALISTS IN FAMILY CRISIS INTERVENTION* (1970); Sullivan, *Violence Like Charity Begins at Home*, N.Y. Times, November 24, 1968, magazine section, at 59.

68. See T. ARNOLD, *THE SYMBOLS OF GOVERNMENT* 153 (1935).

Examples of the problem are easy to find. The classic is the public drunk. It is not wrong to find a passed-out drunk on your lawn or sidewalk offensive. It is not wrong for a legislature to believe that such conduct should be considered wrong and subject to some deterrent sanction. What is wrong, in my view, is to say that the only thing police may do when confronted with a problem is to arrest and thus begin a proceeding which often leads to 30 days in jail. If the reason for acting in many of these circumstances is based largely on the need to remove something offensive from public view and to protect the drunk from exposure or physical attack, the response should be tailored to these needs rather than to some desire to conform to a model of criminality that has little application to the facts.

Indeed, some criminal statutes exist, not for criminological purposes but simply as a means of giving police power to act. From 1967 to 1969 there was a Minnesota statute making attempted suicide a crime punishable by three days in jail.⁶⁹ Transparently, this was meant to give police power to "arrest" the person attempting suicide so as to permit summary forced psychiatric attention in circumstances where formal commitment proceedings were thought to be too time-consuming. It is easy to understand the legislative goal. What is not so easy to comprehend, however, is the implicit proposition that the only way to grant power is to create crimes. Another example of this propensity to create criminal solutions is the Minneapolis ordinance making presence at a loud party a crime.⁷⁰ The ordinance was passed to give the police power to arrest everyone at a loud party rather than to attempt the hopeless task of isolating those making the noise. Its passage was a response to a judicial determination that in order to arrest for disturbing the peace the officers must see the person to be arrested actually disturbing the peace. Since it was impossible at a large party to pinpoint those particularly responsible for the neighborhood disturbance, the ruling made termination of loud parties extremely difficult. Again it is easy to understand the purpose of the new ordinance, but it remains just as difficult to see why accomplishment of that purpose requires a new crime. The same may be said with respect to disturbing the peace generally.

A more discriminating approach to the use of police would be to isolate in each instance the particular need being served and

69. MINN. STAT. § 609.72 (1969).

70. MINNEAPOLIS, MINN., ORDINANCES § 870.061 (1970).

then to create a power limited to satisfaction of the need. In the case of the derelict drunk, this might involve overnight care, whether custodial at the jail or medical at some non-penal center.⁷¹ In the case of the disturber, it might take the form of simply arresting, booking and releasing but without ensuing prosecution. This would effectively terminate a loud party. In the case of one threatening assaultive behavior, overnight detention at the jail might be necessary to provide a cooling off period.⁷² But in very few cases would full invocation of the criminal process be essential.⁷³

The big objection voiced to such a proposal is that it seems to give the police summary power of punishment. While that is, of course, true in the sense that any limitation on freedom, however slight, due to conduct viewed as socially undesirable may properly be termed punitive, the objection assumes that the proposal works some great change in the existing scheme of things. Nothing could be further from the truth. The proposal plainly ameliorates the present state of minor criminal law in that it terminates the criminal process after a minor restraint. To argue that probable conviction must be risked in order to justify a prior arrest is to exalt theory over real impact on human lives.

A more discriminating objection is that, if probable conviction and sentencing no longer obtain, police will be inclined to use the power of detention much more often. This argument is premised on the supposition that because officers perceive correctly that conviction has awful consequences, they tend to invoke the process only in the most flagrant cases. If that psychic limitation is removed, so the argument goes, police will act unrestrainedly in incarcerating distasteful individuals secure in the knowledge that the minor "punishment" imposed will make protest unlikely or at a minimum unlikely to be attended to. Obviously, there is some truth in this argument. Police are some-

71. Detroit handles many drunks this way, although there is no legal authorization for such detention. See *LAW ENFORCEMENT IN THE METROPOLIS* 94 (McIntyre ed. 1967).

72. Alternatively police might be authorized to order the threatening individual, often the husband in a domestic quarrel, to leave the premises for the night. Only if he refused to do so, then, would detention be necessary.

73. See CAL. PENAL CODE § 849b (West 1970): "Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever: (1) He is satisfied that there is no ground for making a criminal complaint against the person arrested. . . . (2) The person arrested was arrested for intoxication only, and no further proceedings are desirable."

times hesitant to invoke the process because of awareness of consequences to the individual. That may be good or bad depending on the consequences of leaving the man unarrested. But it is also true that police arrest when the practical need seems great even though the criminological consequences may be unwarranted. And when police act out of personal pique at an individual, they would be delighted if all the bad consequences befall him. For the argument to be successful, then, it must be found that the evil flowing from additional arrests, with only temporary detention as a consequence, outweighs the gain from relieving those presently arrested from the inappropriate consequences that now accrue from pursuing the process to justify the arrest. Since close to 75 percent of arrests are for the minor crimes that would no longer carry jail time, the factual premises of that argument are not likely to be established. In addition, even if the risk of widespread detentions were great, it would be more sensible to create mechanisms to avoid the danger rather than to send people to jail to maintain the psychic limitation.

The proposal might be thought of as a means of institutionalizing a prosecutorial discretion not now exercised. In theory, it is hoped and expected that the prosecutor will consider each case brought before him to assess whether use of the criminal sanction is appropriate. In practice, however, to a greater or lesser degree the press of business, the assembly line of justice, makes such assessment rare even given the best intentions. If, in fact, the exercise of wise prosecutorial discretion resulted in aborting the criminal process for most offenders, many critics would be pleased. If the same result is achieved by permitting overnight detention, why is it more open to criticism?

In the ensuing discussion of police discretion particular attention will be paid to means of insuring its wise exercise. As a conclusion, though, to the argument for providing police intermediate powers, it should be noticed that many conventional safeguards against abuse could be imposed. The foremost of these is to give the power of arrest for detention only in those circumstances now the subject of defined crimes. Public drunkenness, disturbing the peace and minor assaultive behavior are broad crimes, of course, but they are not wholly open-ended. Widespread abuse of the power of arrest would remain the subject of internal discipline and external control through false arrest suits.⁷⁴ These are far from perfect remedies but they are

74. See Foote, *Tort Remedies for Police Violations of Individual*

not without effect. In any event, it remains foolish to insist on substantial punishment as the only means of social control.

2. Discretion

The problem of discretion is one that has increasingly bothered thoughtful commentators. Everyone agrees that means must be devised to insure that discretion is generally wisely exercised. Few wish to eliminate discretion entirely since rigid rules necessarily create some injustices.⁷⁵ What is desired are rules that create fewer injustices than the exercise of discretion on the same fact circumstances and well informed discretionary judgments in areas where rules cannot be devised.

Attempts to formulate solutions for the exercise of police discretion not to arrest are particularly difficult because either departmental policy or individual decision is a legally unauthorized rejection of legislative mandate. It takes a gutty administrator to say the law is foolish in its entirety or in some of its applications, and no matter how sensible that judgment or how much in accord with contemporary societal views, he will be fortunate to succeed in maintaining that policy. Since such policies are nonetheless plainly necessary, the inevitable consequence is a good deal of dissimulation coupled with the hope that individual officers, undirected, will act sensibly on the street.⁷⁶

Rights, 39 MINN. L. REV. 493 (1955), for a perceptive analysis of the existing failure of these remedies and proposals for a more efficacious set of remedies.

75. The question to be asked, of course, is "whether it is worth the cost of adding to police discretion to save the stigma, embarrassment, and general destructiveness to a man's life often entailed in the very preliminary act of arresting." Kadish, *Legal Norm and Discretion in the Police and Sentencing Process*, 75 HARV. L. REV. 904, 913 (1962). See generally Abernathy, *Police Discretion and Equal Protection*, 14 SO. CARO. L. REV. 472 (1962); Breitel, *Controls in Criminal Law Enforcement*, 27 U. CHI. L. REV. 427 (1960); H. Goldstein, *Police Discretion: The Ideal Versus the Real*, 23 PUB. ADMIN. REV. 140 (1963); J. Goldstein, *Police Discretion Not to Invoke The Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543 (1960).

76. Confronted each day by frequently recurring situations for which no guidance is provided, the individual officer either develops his own informal criteria for disposing of matters which come to his attention—a kind of pattern of improvisation—or employs informal criteria which have, over a period of years, developed within the agency of which he is a part. While such criteria are neither articulated nor officially recognized, they tend to take on some of the characteristics of officially promulgated policies. Functioning in this manner and employing their own imagination and resourcefulness, individual police officers often succeed to an amazing degree in muddling their way through: disputes are resolved; dangerous persons are dis-

Examples are easy to find. The most common discretionary judgment at a command level is how scarce resources are to be deployed. However wise that judgment, few commanders are able to stand up to concerted pressure, often involving a distinctly minority sentiment, for the enforcement of certain laws ignored in the original policy as of less significance than other areas of enforcement. Devoting men to morals enforcement is the classic instance of this sort of pressure. However much some may believe that this is of far less significance than violent crime, the laws will be enforced if the public outcry is strong enough. It is hard to fault a department for being responsive to its constituency, and perhaps there is no solution short of legislative reform of the criminal law.⁷⁷ The same kind of problem arises in the case of individual requests for police action. How can the department say it is not enforcing that law today? It is not surprising then that the department looks to external sources to provide more sensible guidelines for police action.

While there is obvious need for legislative removal of penal deadwood, there also remains the need for departmental policy, however much political flak it engenders. One must be almost conspiratorial about this; it will not do to let the public hear that laws are being administratively repealed. Nonetheless, some mechanisms are needed to insure a bare minimum enforcement of senseless laws and nonenforcement of some laws in those circumstances literally criminal but where no good purpose would be served by enforcement. Such mechanisms may be found in formal policy statements, in training and in supervision.⁷⁸ Needed, too, is some means of remedying mistakes in the exercise of discretion.

armed; people not in control of their capacities are protected, and many individuals are spared what, under some circumstances, would appear to be the undue harshness of the criminal process.

H. Goldstein, *Police Policy Formulation: A Proposal for Improving Police Performance*, 65 MICH. L. REV. 1123, 1127 (1967).

77. Another possibility would be the creation of a group designed to formulate enforcement priorities and to narrow broad laws to guide discretionary judgments. This would, however, simply displace the target of citizen disapproval. A wiser course of action might be for the police to involve citizens substantially in these judgments so that they might be perceived as sufficiently representative to be legitimate. To put it another way, since police are expected to operate "within the moral consensus of the community" (M. BANTON, *THE POLICEMAN IN THE COMMUNITY* 7 (1964)), there ought to be some mechanism to isolate and legitimate the consensus which is to guide the police.

78. See TASK FORCE REPORT: THE POLICE 13-38 (1967). See generally K. DAVIS, *DISCRETIONARY JUSTICE* (1969).

Formal policy statements, because visible, are the most subject to public outrage. As a result, they are unlikely to be used to state that certain laws should not be enforced. By indirection, though, they may be used to suggest nonpenal solutions to the immediate problem with the probable effect of absence of arrest or prosecution. For example, in Minneapolis it is illegal to drink in public. The practice of one squad with which I rode was to force violators to pour the wine or liquor out and to tell them that such drinking was illegal. That seems a sensible way to deal with the problem, one that could be the subject of department policy. Similar individual street policies that could be the subject of departmental formulation are the rules of thumb followed by some officers that if a man can walk he won't be booked as a drunk and if a disturber can be persuaded to leave he will be allowed to do so. The advantage of these formulations is that they provide a basis for explaining police leniency and they themselves can be defended without an open disavowal of the law. It is far easier to say that we try to solve problems without arrest than to say we do not enforce certain laws.

A second means of insuring wise exercise of discretion is through training in the goals to be accomplished and how they can best be accomplished in given fact situations.⁷⁹ In the past, training has taken the form of an admission that since no two fact situations are alike, nothing beyond the admonition that a large element of common sense is involved is possible. Much more than that is necessary even if absolute precision is impossible. As an example of what could be done, consider the following log of some of the calls for one night on a squad car and the questions that might be legitimately raised in a training dialogue:

7:15 Check a hippie at a high-rise welfare apartment for the elderly. Is this a matter for the police? Would the complainant have called if a non-hippie stranger had been seen? What are you going to do if you find the hippie? What if he has no explanation for being there? What if he refuses to leave when you ask him to?

9:50 Check damage resulting from a domestic. On arrival the husband is gone, though the wreckage remains. What do you tell the wife?

10:07 Assist a man. On arrival the man informs you that his sister-in-law has died while on a vacation, that he has no key to her apartment, the address to which you were called, and that he wants your help in getting into the apartment so that he may get her address book for pur-

79. See Ruth, *Promoting Consistent Policy in the Criminal Justice Process*, 53 U. VA. L. REV. 1489, 1491-92 (1967).

poses of notifying her friends of the funeral. Should you help by breaking down the door?

10:50 Drunk disturbing. What will you be looking for to determine whether to book? What actions can you take short of arrest?

12:40 While driving by a park you see a man and two girls seated on a bench. From prior patrolling you know that they have just arrived. This park has been the scene of many muggings and it is also frequented by derelict alcoholics. You approach and discover the man is about 30 and the girls are both 18. All have cans of beer in their hands. What action do you take? Why?

The incidents described in the early part of this article provide many more questions for training.

However well defined a department's policy and initially well-trained its personnel, the wise exercise of discretion requires constant supervision. By supervision, I do not mean sneaking around to see that caps are on, officers are awake or shoes are shined. Nor do I mean the regular imposition of days off or other discipline for every misstep.⁸⁰ The kind of supervision necessary is the regular assessment of performance and the continued teaching of better techniques. At the present time no one evaluates the patrolman's work. The only supervision that exists occurs if a complaint is filed. So long as an officer makes no flagrant mistakes, he receives no supervision. Obviously this will not do.

What ought to occur is that an immediate superior, a sergeant, should regularly ride with the officers under his command. As he views their performance, he ought to comment on it, suggest alternative ways of better handling situations and carry on a continuing training dialogue designed to increase knowledge and improve performance. Each squad car should have the sergeant along at least once a week. Only if supervision becomes routine will officers accept it as such rather than as an examination to be endured and then forgotten.⁸¹

80. There is an inclination among those urging greater control over the police to assume that guidelines for the exercise of discretion and supervision to insure that guidelines are followed will allow superiors to punish every misstep. I believe it unwise to think always in terms of pillorying the offending officer. What is needed is wiser police performance and for this, using mistakes as a means of training is more likely to be productive than using them as bases for discipline. Of course, major discipline will sometimes be necessary. See W. GELLHORN, *WHEN AMERICANS COMPLAIN* 182-95 (1966); Goldstein, *supra* note 76, at 1133.

81. Since present sergeants are not accustomed to supervision of

Finally, some mechanism must be devised to insure that when discretion is unwisely exercised a speedy remedy exists. Today there is little, if any, review of an officer's booking decision prior to trial. Since officers do make mistakes, this can result in terrible imposition on the individual affected. Moreover, since releasing an individual uncharged after an arrest suggests possible civil liability for false arrest, the police inclination is to bend every effort to insure conviction as a means of proving the officer faultless.⁸² This creates a rigidity working against minimal interference with a citizen's rights. To avoid it, a department should be able to say, within some time period after the arrest, that the officer had erred without at the same time exposing him to civil liability. And, of course, some supervisory review of every booking ought to exist.

V. CONCLUSION

Two primary tasks confront those concerned about policing. The first, and much the most difficult job, is to identify the situations with which we want the police to deal and to establish means for dealing with these situations capable of resolving them. It is neither wise nor healthy to continue the present system of expressly providing limited means to deal with certain problems while covertly requiring the police to resolve many other problems without any specification of the means to be used for that purpose. The second task, one that cannot meaningfully be accomplished until some consensus is arrived at as to police role, is to devise methods of insuring that police comply with an established role. To date far too much attention has been directed at alleged abuses and too little at creating a standard by which abuses can be defined. While I have attempted to suggest answers to both of the primary policing problems, my intent is less to urge adoption of these answers than to invite others to engage in a fuller debate of the issues underlying any answer.

the sort I suggest, some difficulty will be encountered in beginning such a program. At a minimum, training for the sergeants as to the kinds of questions that ought to be raised is essential. Some forum will also be necessary to debate questions, and to formulate solutions, for street problems not yet the subject of departmental policy. But by a gradual process of accretion most street situations should be analyzed and basic judgments about the best way to handle them should be made.

82. See generally Edwards, *Order and Civil Liberties: A Complex Role for the Police*, 64 MICH. L. REV. 47 (1965); H. Goldstein, *Administrative Problems in Controlling the Exercise of Police Discretion*, 58 J. CRIM. L., C., & P.S. 160, 165 (1967); H. Goldstein, *supra* note 76, at 1133.

