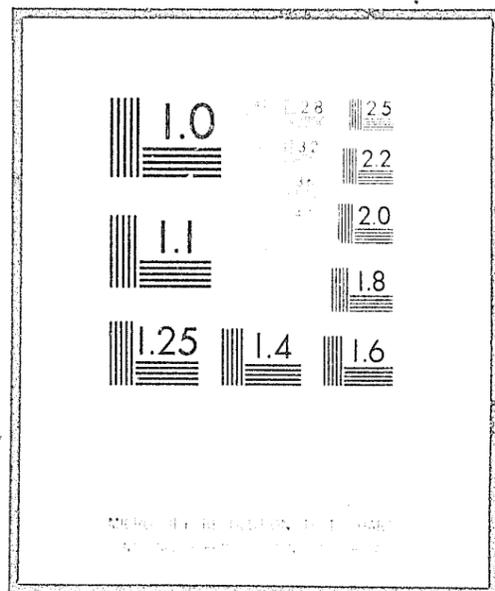


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POLICE POLICYMAKING:
THE STRUCTURING OF DISCRETION
IN THE USE OF CRIMINAL INVESTIGATIVE PROCEDURES

A Final Report: Phase One
Prepared for the National Institute of Law
Enforcement and Criminal Justice

NCJRS

JUN 24 1977

ACQUISITIONS

By
The Boston Police Department
and
The Boston University Center
for Criminal Justice

March, 1977

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I. Introduction and Summary of Preliminary Findings

Those actively involved in observing police work have long known that police officers exercise broad discretion in a wide variety of important matters. But it has been only in about the past 15 years that a number of studies have brought the existence of police discretion into the open. Those studies focused on police enforcement of the criminal law, especially on the decision to make -- or not to make -- an arrest.¹

Prior to that time, most people believed that police officers exercised no discretion. Their job, as they and others saw it, was to do what the law dictated. If they observed an offense, they made an arrest. If the law gave no guidance on a situation they confronted, they should not get involved in that situation. The concept that police officers make individual choices was intimidating, implying as it did that the quality of police performance was so heavily dependent on the skills, understandings, intuitions, and even the caprice of individual officers.

Because the existence of discretion was denied, it was not regulated.

And as one important study observed:

In the absence of adequate guidance from his supervisors, the tendency of an individual police officer is to attempt to meet the varied demands made upon him through a very personal form of improvisation...The individual officer succeeds, to an amazing degree, in muddling his way through: disputes are resolved; dangerous persons are disarmed; 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.²

¹W. LaFave, Arrest: The Decision to Take a Suspect into Custody (1965); Goldstein, H., Police Discretion: The Ideal Versus the Real, 23 *Pub. Admis. Rev.* 140 (1963); Goldstein, Police Discretion Not to Involve the Criminal Process, 69 *Yale L.J.* 543 (1960).

²American Bar Association, Standards Relating to the Urban Police Function 123 (1973).

While perhaps more difficult, policy guidance in a police department is at least as important as policy in other agencies. For in a police department, far more than in other administrative agencies, the lowest level person in the organization, the patrol officer, exercises the broadest discretion and makes the most complex choices. As Kenneth Culp Davis writes: "No other federal, state, or local agency, so far as I know, delegates so much power to subordinates. No other agency, so far as I know, does so little supervising of vital policy determination which directly involve justice or injustice to individuals."¹

As this situation came to be acknowledged, so did the importance of regulating or "structuring" discretion. The President's Commission on Law Enforcement and the Administration of Justice observed:

Many police departments have published "general order" or "duty" or "rules, regulations, and procedures" manuals running to several hundred pages. They deal extensively and quite properly, with the personal contact of officers on and off duty, with uniform and firearms regulations, with the use of departmental property, with court appearances by officers, with the correct techniques of approaching a building in which a burglary may be in progress... What such manuals almost never discuss are the hard choices policemen must make every day: whether or not to break up a sidewalk gathering, whether or not to intervene in a domestic dispute, whether or not to silence a street-corner speaker, whether or not to stop and frisk, whether or not to arrest...²

Although a number of proposals have been made to deal with police discretion, the most common ones have involved administrative policymaking.³

¹K.C. Davis, Discretionary Justice 88 (1969).

²President's Commission on Law Enforcement and the Administration of Justice, Challenge of Crime in a Free Society 103 (1967).

³See, e.g., President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police 25-35 (); American Bar Association Standards for Criminal Justice Relating to the Urban Police Function 121-133 (1973); National Advisory Commission on Criminal Justice Standards and Goals, Police 53-55 (1973).

At the same time that policymaking was being urged on police departments, many courts were acknowledging that they often did not have sufficient expertise to provide useful guidance to or restrictions upon police officers in the performance of their duties. Again and again, the United States Supreme Court,¹ and the federal and state courts invited police departments to draft statements of procedures that could be applied by courts assessing the reasonableness of the actions of individual officers in individual cases.²

The problem with much of the theoretical discussion about policymaking has been that it is too general to be very useful to criminal justice administrators. Anyone attempting to apply policymaking within a police agency (or any other criminal justice agency) soon learns how complicated and multifaceted it can be. First of all, it is not at all clear what "policymaking" means or should mean. To some, a "policy" is the equivalent of a "rule" or "regulation" that therefore must be adhered to. To others, a policy is more like a guideline which indicates what options may be available to deal with certain types of situations. To still others, a policy represents a departmental judgment about the handling of a matter, thus eliminating any discretion about it at lower levels.

Second, aside from definitional problems, it is also unclear in what areas "policies" are really needed to structure or eliminate discretion or even whose discretion is being structured or eliminated. Some commentators have discussed areas in which policymaking may be needed. These include policies on: 1) when and how to use various types of investigative strategies (e.g.,

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

²E.g., People v. DeBour, No. 212, p. 1 N. 2 (N.Y. Ct. App., 1976), and United States ex rel Guy v. McCauley, 385 F. Supp. 193 (E.D. Wis. 1973).

stop and frisk, eyewitness identifications, search warrants); 2) how to handle certain types of sensitive social problems (e.g., crowd control, demonstrations, domestic disputes, landlord-tenant disputes); 3) whether and how to enforce the law or to use the arrest power selectively (e.g., narrowing discretion on enforcement of certain types of crimes such as vice crimes); 4) when and where to divert matters away from the criminal justice system; 5) what to charge after decisions to arrest are made; and 6) at the management level, how to select enforcement objectives and priorities and how to allocate resources.¹

Third, the authority of the police to promulgate policies in some areas is uncertain, as is the "status" of such policies once they are promulgated. There has been some debate, for example, over whether police agencies can narrow the scope of criminal statutes administratively on their own or whether such action must be preceded by legislative delegation to police agencies of such authority.² Questions have also been raised about the authority of courts either to require policymaking or to "enforce" policies once police departments have promulgated them.³

Fourth, a myriad of complex questions surrounds the issue of how policies should be developed. In the opinion of some, policies in certain areas can be developed simply by having police departments adopt model rules such as those formulated by Arizona State University.⁴ Others contend that policies

¹For some discussion of these different types and levels of policymaking, see H. Goldstein, Policing a Free Society 93-130 (1977); ABA, Standards for Criminal Justice Relating to the Urban Police Function 116-144 (1973); IJA-ABA, Standards for Juvenile Justice Relating to Police Handling of Juvenile Problems 31-51 (Tentative Draft 1977).

²See K.C. Davis, Police Discretion (1975).

³See Urban Police Function 133-139.

⁴Arizona State University and Police Foundation, Model Rules for Law Enforcement (1974).

must be developed at the local level with input from one or more of the following: the mayor or other locally elected officials; officers at all levels of the department; representative cross-section of citizens.¹

Finally, once policies are formulated, it is uncertain what should be done to stimulate compliance with promulgated policies and to learn whether policymaking really can "structure discretion." Until recently, there has been considerable faith in the notion that certain sanctions such as the exclusionary rule and tort liability effectively deter police deviations from the norm. The recognition that this is not the case has played a major role in stimulating police policymaking.² Without some clear incentives, however, it is doubtful that policymaking will stimulate compliance with norms any more than judicial rules or tort liability. Theoretically, it appears possible to stimulate compliance either by positive incentives or negative sanctions. Both have been widely discussed,³ but with little testing. Commentators currently are left to accepting the importance of policymaking largely on faith. Thus, ways must be developed to determine just what value policymaking will have in structuring discretion and in providing valuable guidance to police officers. It is possible such analysis will reveal that policymaking may have great value in some areas and far more limited value in others.

There has been limited research or development on any of these questions to date. Aside from some of the work described earlier, only a few projects covering some of the concerns addressed above have been reported. In 1972, on a grant from the Police Foundation, the Arizona State University Law School

¹See, e.g., Urban Police Function at 78-87; 139-144; 173-174.

²See, e.g., Amsterdam, The Supreme Court and the Rights of Suspects in Criminal Cases, 45 N.Y.U.L. Rev. 785 (1970).

³See, e.g., Urban Police Function 147-149; 163-167.

developed model rules for eyewitness identification, search warrant execution, stop and frisk, and a number of other criminal enforcement activities of police.¹ Efforts were made to disseminate those rules and to persuade police departments of their relevance. Little effort was made, however, to provide guidance on how to adapt them to the needs of individual agencies, how to develop a policymaking process which could be used by police departments to develop their own policies suiting their own local needs, or how to find means of evaluating the effectiveness of the rules in assisting individual officers. Some attempts have also been made to involve citizens in police policymaking, apparently with limited success.² A few departments, such as Los Angeles, have also attempted to formulate rules on selective enforcement in areas such as gambling. In general, however, it is fair to say that we are in a very elementary stage of transferring academic notions of police policymaking into operational settings.

Even though there has apparently been such limited success in implementing the concept of police policymaking nationally, the push for it continue unabated.³ And the push for administrative policymaking has not been focused exclusively on the police, by any means. Within the past few years, all criminal justice agencies have been urged to promulgate administrative policies to structure the discretion of their personnel.⁴

¹Arizona State University and Police Foundation, Model Rules for Law Enforcement (1974).

²One of these efforts was attempted in Dayton, Ohio. A recent evaluation of this project by Richard Denzig for the Police Foundation, suggested the project was not at all successful.

³See, e.g., IJA-ABA, Standards for Juvenile Justice Relating to Police Handling of Juvenile Problems (Tentative Draft 1977).

⁴See, e.g., Vorenberg, Narrowing the Discretion of Criminal Justice Officials, 1976 Duke L.J. 651.

It is with this background that the Boston University Center for Criminal Justice began looking at policymaking in conjunction with the Boston Police Department. Based upon preliminary analysis, interest emerged on three of the areas just described. These were: 1) in what areas policies are needed to structure or eliminate discretion; 2) how policies should be developed; and 3) what can be done to stimulate compliance with promulgated policies and to learn whether policymaking can actually structure discretion.

On the first issue, the Boston Police Department and the Center were primarily interested in determining whether the Model Rules for Law Enforcement prepared by Arizona State University adequately defined and responded to criminal investigative problems and policymaking needs of an urban police department like Boston.

On the issue related to how policies should be developed, Boston Police and the Center were most interested in determining how police personnel can be involved in the policymaking process. Section 6.2 of the ABA Standards Relating to the Urban Police Function provides:

Policemen, as individuals and as a group, have a proper interest in and can make significant contributions to the formulation and continuing review of local law enforcement policies within individual communities. Methods should be developed by police administrators, therefore, to ensure effective participation in the policymaking process by all ranks including the patrolman who, because of his daily contact with operational problems and needs, has unique expertise to provide on law enforcement policy issues.

As a key aspect of this policymaking project, an effort was to be made to determine both the feasibility and worth of such involvement.

Finally, the Department and the Center were interested in examining questions relating to encouraging compliance with policies and evaluating their impact. The ABA Standards suggest that positive rather than negative

inducements should be used to stimulate compliance with norms. Section 5.2 of the Standards provides, in part, as follows:

- ...Control over police practice should, insofar as possible, be positive, creating inducements to perform properly rather than concentrating solely upon penalizing improper police conduct. Among the ways this can be accomplished are:
- (i) Education and training oriented to the development of professional pride in conforming to the requirements of law and maximizing the values of a democratic society;
 - (ii) Inducements to police officers in terms of status, compensation, and promotion, on the basis of criteria that are related as directly as possible to the police function and police goals;...
 - (iv) Systematic efforts by prosecutors and judges to encourage conforming police behavior through: (a) more careful review of applications for warrants and (b) formulation of new procedures to simplify and otherwise provide easy access for judicial review of applications for warrants, thereby encouraging maximum use of the formal warrant process.

Both the Department and the Center were interested in determining whether positive incentives, such as training, can effectively be used to stimulate compliance with police policies. Finally, at a more fundamental level, the Department and the Center wanted to analyze whether policymaking is as important a concept as commentators and Presidential Commissions seem to indicate. Section 4.3 of the ABA Standards, for example, provides:

Police discretion can best be structured and controlled through the process of administrative rule-making by police agencies. Police administrators should, therefore, give the highest priority to the formulation of administrative rules governing the exercise of discretion, participation in areas of selective enforcement, investigative techniques and enforcement methods.

No effort has yet been made, however, to determine whether, once promulgated, police policies can "structure discretion" or whether there are even ways to determine the impact of policymaking.

With this expression of interest, Boston Police Department and the Center were then funded by the National Institute to respond to the following questions during the initial research period:

- 1) Do the Model Rules of Law Enforcement prepared by Arizona State University adequately define and respond to criminal investigative problems and policymaking needs of the Boston Police Department?
- 2) Can a process be devised which effectively involves police personnel of all ranks in policymaking?
- 3) Can positive incentives such as training be used effectively to stimulate compliance with police policies?
- 4) Are there ways to measure whether promulgated police policies actually "structure discretion," or change behavior, or bring about greater conformity among police officers?

As the final report for the initial phase of the project which follows indicates, our preliminary conclusions indicate that each of these research questions can be answered in the affirmative.

FINDINGS

After the initial phase of this project, we have found that:

(1) The model police administrative policies on criminal investigation prepared by Arizona State University are generally responsive to the concerns and needs of the Boston Police Department. Numerous modifications to the model policies were necessary, however, to meet the unique requirements of Massachusetts law and the developments in constitutional law since the model policies were formulated. (Section III)

(2) The Boston Police Department's own priorities for policies in criminal investigation were, in some instances, different than the priorities selected by Arizona State University. Further, practices and procedures which departmental personnel favored were sometimes more restrictive than either caselaw or the Model Rules require. Model policies should not be adopted by a police agency, therefore, without careful analysis of local problems and needs. (Section III)

(3) In order to learn about local problems and needs for policymaking purposes, a variety of research techniques must be utilized. Aside from legal research, these must include data derived from sources such as court and police records research, interviews with personnel within and outside the police department, and field observations. During the initial phase of this project, it was ascertained that hard data were not readily available to provide useful assistance in most of the areas where policymaking was needed. This was true, for example, in the areas of searches incident to arrest and car searches. The one exception was the area of search warrants where relevant material was available in court records. Given the limitations in hard data currently available for factfinding purposes, emphasis had to be given to other information sources such as interviews and field observations. (Section II)

(4) For guidelines on criminal investigation to relate directly and accurately to the particularized problems and needs of a given police agency and to be acceptable to personnel within that agency, they should be developed with the active involvement of a broad cross-section of department personnel. If they are, guidelines will then reflect the practical concerns and expertise of the officers who will eventually utilize them. (Section II)

(5) It is possible to involve personnel of all ranks in identifying both the substantive areas in greatest need of policy development and in formulating the policies themselves. In addition, it is possible to involve an academic research center in such a task. Active participation of department personnel can be accomplished, among other ways, through the use of departmental task forces, responses to simulated situations in a training setting, field observations and formal and informal interviews. (Section II)

(6) In some departments like Boston, which have strong patrol officer unions, it may not be possible formally to involve patrol officers in policymaking. It appears, however, that the views and concerns of patrol officers can be obtained informally in settings such as inservice training sessions without jeopardizing union-management relations. (Section II)

(7) Based upon the experimental evaluation methodology tested during the initial stage of this project, it appears that effective evaluation strategies can be developed to measure the impact of some guidelines in structuring discretion. Data sources which may be used for evaluations include: 1) court and police records; 2) questionnaire responses to simulated street situations; 3) field observations; and 4) interviews of police officers and others such as prosecutors and judges. During the initial stage, as noted above, quantitative data in many areas were scanty at best and, therefore, of limited value

in any formal evaluation effort. The data collection and evaluation techniques tested during the initial project period appear to offer considerable promise, and experimentation in these areas should be pursued. Future projects should also place increased emphasis on improving the availability and reliability of statistical data for policy formulation and evaluation purposes and on utilizing carefully designed field and observation evaluation methods as well. (Section IV)

(8) Project work to date indicates that evaluation experiments utilizing control and experimental groups are difficult to administer within police departments. Given the importance of measuring the impact of policies in structuring discretion, efforts to identify and test less rigid and less expansive evaluation methodologies should be undertaken. (Section IV)

SOME ASSUMPTIONS BASED UPON WORK COMPLETED THUS FAR

Based upon work done to date, certain assumptions are emerging which should be tested in the future. The first is that it is preferable to provide affirmative as opposed to negative guidance. This means officers should be told, to the extent possible, what they can do instead of what they should not do. Negative guidance is the kind normally provided in most judicial opinions and departmental rules. In addition, primary emphasis for stimulating compliance with guidelines should be focused on positive incentives instead of negative sanctions. Particular attention should be given to: 1) ensuring a commitment to guidelines by superior officers and supervisory personnel; 2) formulating creative training programs; 3) involving supervisory personnel in such programs; 4) using the guidelines in promotional examinations and as criteria for measuring performance; and 5) informing judges and prosecutors about the guidelines and encouraging use of them in defining the reasonableness of police action in individual cases.

FUTURE PLANS

This Report represents our progress in the initial 15-month period of the project. The work has been largely exploratory in nature and was undertaken primarily to assess the potential for a collaborative policymaking endeavor between an urban police department and a university research center. We are encouraged by our preliminary findings and were pleased that the National Institute of Law Enforcement and Criminal Justice has re-funded the project for an additional 21-month period. This initial report should be read with an understanding that followup work is now underway. The objectives of the new project are:

- (1) To develop guidelines in sensitive areas affecting both the detective and patrol function, including selective enforcement of the criminal law;
- (2) To evaluate the impact of guidelines in structuring police discretion;
- (3) To assess and document the project's guideline development process and to institutionalize policymaking within the Boston Police Department; and
- (4) To develop national recommendations following an examination of the applicability of this policymaking process to other police agencies.

To date, guideline development has occurred primarily in selected areas of criminal investigative procedure addressed by the Arizona State University Rules and the Model Pre-Arrest Code. Some of these areas, search warrants, for example, have concerned the detective function almost exclusively and therefore the policymaking process undertaken by the project has been focused within a Task Force and four selected detective units.

Sufficient groundwork has now been laid to expand policymaking to sensitive areas not covered by the model codes. Specifically, work will be undertaken on the development and implementation of police policies related to selective

enforcement of the criminal law. Preliminary work was started in the development of guidelines on selective use of the arrest power. Patrol officers were brought into the Training Academy to discuss selective enforcement of various types of offenses. A very preliminary guideline was developed which can be found in the appendices materials on arrest. It became clear from this experience that selective enforcement had to be dealt with in the context of specific offenses or categories of offenses, such as drug enforcement. An excellent opportunity in the area of drug enforcement now exists within the Boston Police Department. The Drug Control Unit has requested assistance in establishing such priorities and in testing their impact. Preparatory work for this effort has begun, and work will be expanded during the next phase.

A second task of overriding importance to the ultimate success of the project is the development and utilization of effective strategies to evaluate the impact of guidelines in structuring police discretion in selected areas of criminal investigative procedure and selective enforcement. Several strategies were designed during the initial grant period for this purpose. Comprehensive evaluations will now be undertaken to determine the actual effect of selected policies including stop and frisk, search warrants, and priorities for drug law enforcement.

During the initial grant period, project staff, working in conjunction with Boston Police Department personnel, developed a policymaking process involving a broad segment of the police force in the formulation of guidelines that affect their daily activities. A third major task to be undertaken during the continuation grant period includes an assessment and documentation of this process. This work will serve as a basis for the development and implementation of a plan providing for the Center's withdrawal and institutionalization of the policymaking and evaluation process within the Department

before completion of the final project phase. As part of this process, efforts will be made to implement and test some of the positive incentives referred to on page 13. It will also serve as the basis for the development of a manual which will provide guidance to other departments interested in establishing a policymaking process.

The last major task that remains to be accomplished is the development of national recommendations on police policymaking following an examination of the applicability of the process developed in Boston to other law enforcement agencies. Project staff and Task Force members will make field visits to selected police departments interested in undertaking policymaking efforts of their own. Personnel in these departments will be asked to interpret the project's experience in light of their own particular situation. Policymaking process recommendations will then be developed and available to assist other police agencies nationally that wish to engage in guideline development.

II. Identifying Criminal Investigative Policy Needs of A Police Agency: The Process

It is possible to force people to do things by the imposition of authority. But it never works very long. In the first place, there are so many ways in which people determined to resist can do so that the resisters of change nearly always win. In the second place, it requires the imposition of so much authority that you inevitably have unanticipated consequences elsewhere in the organization.

So getting participation really is worth the extra time and effort. Because it means the people inside the organization become committed to the change, and will become responsible for implementing it. And they will see that the organization doesn't ultimately reject the change after the consultants have gone, and the chief's attention has been diverted.¹

-- Robert J. diGrazia

A. Introduction

During his first two years in the Boston Police Department, Commissioner Robert di Grazia applied the participative model to a number of Department problems ranging from reform of the field reporting system to revision of the police manual to design specifications for automobiles to development of drug enforcement projects. In doing so, the Commissioner was following the legacy of others who have tried to change police departments -- and, for that matter, many other sorts of organizations.

The participatory model is based on a simple premise: People do not like having things done to them. If their lives or their organization or their working environment is going to change, that change will threaten and annoy them -- unless they have participated in making the change. For at least fifteen years, that simple notion has been applied in making changes in a wide variety

¹Collaboration between Law Enforcement Executives and Social Scientists: Principles Which Govern Effective Collaboration. Report of Proceedings of a Conference for Law Enforcement Executives and Social Science Practitioners. Berkeley, California: April, 1975, p. 112.

That was the organizational context into which this effort had to be fitted. The project was begun with the underlying belief that it had to be sensitive to these realities. It was not, therefore, possible to develop a theoretical process model. It was necessary instead to listen, to be cautious and sensitive, and to be flexible enough to take advantage of invitations by Department personnel to assist them.

B. Preliminary Steps

1. Early Meetings with Key Personnel

At the beginning of the project, the Commissioner appointed the Superintendent of Field Services to serve as the Department's liaison with the project, and to provide staff from his bureau to assist the project. The proposal called for creation of a task force representing vice, narcotics, organized crime, the legal advisor, the training academy, and two police district detective units. The nature of the liaison and staff assistance to be provided by the Bureau of Field Services and the role of the task force, however, were left over for later development.

Working first with a staff assistant to the Commissioner, Center staff held a series of meetings with Department personnel.¹ While the specific subjects of these meetings varied, all of them had the same two objectives: Development of a process which would structure and define the collaboration between the Department and the Center, and familiarization of Center staff with the Boston Police Department.

¹Meetings were held with Gary Hayes, Administrative Assistant to the Commissioner; Lt. Joseph Sheridan, Administrative Assistant to the Superintendent; Joseph Jordan, Superintendent of the Bureau of Field Services; Nicholas Foundas, Departmental Legal Advisor; Joseph Lambert, Acting Director of Planning and Research; Patrolman Paul Johnston, then from Planning and Research; Mark Furstenberg, then Director of the Personnel Division; Lt. Edward Connolly, then head of the narcotics squad; former Deputy John Doyle, then head of Intelligence; Det. Sgt. Frank Coleman of District 4; Detective Jack Farrell, also of District 4; Det. Sgt. Frank Mulvey, and Patrolman Steve DeLoach of District 2; William Mahoney, assistant clerk of Roxbury District Court; Robert Wasserman, Director of Boston Police Department Training Academy; and Captain William Hogan, Commanding Officer of the Training Academy.

Each meeting began with a general explanation of the project; its objective was described as helping the Department use its administrative rulemaking authority to establish criminal investigative procedures. Center staff repeatedly emphasized that the Supreme Court -- which many police officers believe has deprived them of essential flexibility -- has in fact left considerable latitude to individual departments to define reasonable criminal investigative procedures. Department officials raised in these meetings some of their concerns, including access to warrants during odd hours, searching, impounding, and inventorying cars, searches incident to arrest, development of telephonic warrant procedures, limitations on oral testimony in support of affidavits, emergency searches, stop and frisk, pretrial identification procedures, and selective enforcement.. Although these concerns were noted and discussed, establishing priorities in these problem areas was left until the task force was created.

2. Formation and Early Work of the Task Force

In the grant proposal, it was indicated that the formation of a task force would be central to the policymaking process. The task force, to be composed of key superior officers, was to participate directly in developing and implementing guidelines governing criminal investigation. After the initial series of meetings with departmental personnel, the specific task force structure and process began to emerge.

As established by the grant proposal, the project, during its experimental phases, would primarily work with two centralized investigative units and the detective units in the city's busier districts. Since task force members were initially to be drawn from these units, it was important to the Center and the Department, that the units selected have superior officers who were respected within the Department for their work on the street, their understanding of the problems of daily police work, and their candor. The detective units chosen were

drug control and intelligence,¹ District 2 (Roxbury) and District 4 (Back Bay).

As of July 1, 1975, the task force included:

Detective Sergeant Frank Coleman (in charge of District 4 detectives)
 Lieutenant Edward Connolly (in charge of Drug Control)
 Deputy Superintendent John Doyle (in charge of Intelligence and Vice)
 Detective Sergeant Anthony Leone (in charge of Vice)
 Detective Sergeant Frank Mulvey (in charge of District 2 detectives)
 Lieutenant Joseph Sheridan (department liaison) [representing Supt. Jordan]

After the first two meetings of the task force, it was agreed that Captain William Hogan of the Department's Training Academy, who is responsible for police training in criminal procedure, would be added to the task force.² Thus, the task force was composed of sworn Department personnel who would eventually have responsibility for implementation of the work.

The task force agreed to keep contact with Robert Wasserman, Director of the Training Division; Nicholas Foundas, the Police Legal Advisor; and, Joseph Lambert, Acting Director of Planning and Research. The Department also detailed Paul Johnston, a patrol officer, to work with the project at the Center.

¹The Intelligence Division of the Boston Police Department includes vice control and organized crime.

²Due to promotions and changes in assignments, the composition of the task force changed during the project period. At the time that this report is being prepared, the members of the task force are:

Deputy Superintendent Earl Bolt (in charge of division which includes District 2 and former head of Narcotics Unit)
 Lieutenant Frank Coleman (in charge of District 4 detectives)
 Captain Edward Connolly (in charge of District 13)
 Detective Sergeant John Daley (in charge of District 1 detectives)
 Lieutenant Anthony Di Natalie (in charge of Vice)
 Superintendent John Doyle (in charge of Inspectional Services)
 Captain William Hogan (Commanding Officer of Training Academy)
 Detective Sergeant Frank Mulvey (in charge of District 2 detectives)
 Deputy Superintendent Joseph Rowan (in charge of Intelligence and Vice)
 Lieutenant Joseph Sheridan (department liaison [representing Superintendent Jordan])

Although some members of the task force understood and supported the project's objectives from the beginning, others were suspicious, both of the project and the "outsiders" from the Center. This suspicion began breaking down only after several early meetings suggested to those who were suspicious that the problems being addressed by the project were important -- that policies governing criminal investigations were needed by the department, that Center staff had knowledge that could be useful in developing such policies, that Center staff did not want to dictate to the task force, and that some prestigious members of the task force were supportive and enthusiastic.

This period of trust-building was essential. Other steps in the project could not proceed until there was a generally-shared confidence that the Center was not "researching" the Boston Police Department which is one of a great number of police departments which have been the targets -- and the victims -- of academic research. Department officials had to be convinced that this project involved collaborative research by the Department and the Center on matters of importance to the Department -- being engaged in by Center staff, because the Center for its own professional reasons was genuinely intrigued by the problems.

When this initial confidence building process had begun, attention of the task force turned to two other matters. First was the exact status of what was to be produced. The task force decided that calling the policies "rules" would carry negative and punitive connotations, whereas the policies were meant to be affirmative, helpful, and to emphasize what police officers may do. So the task force decided to call its policies "guidelines", rather than "rules".

To reinforce the positive character of its work, the task force decided that violations of the guidelines should never be used as a basis for suppressing evidence in court or for disciplining officers administratively, unless a violation of the guidelines was also a violation of constitutional requirements or was, for some other reason, so serious that judicial or administrative action

necessary.¹

The second of these matters was the attitude of the Police Commissioner. Other task force efforts in other police departments had demonstrated that the posture of the police chief executive is critical in persuading task forces that their efforts are important. This would be true in any other organization, but is especially so in a police department where all formal authority is vested in the chief executive. The task force needed, therefore, to know that its work would be seen by the Commissioner, and if evaluated favorably by him, would be used. It got that assurance from the Commissioner.

After several task force meetings, an informal process for the development of guidelines was agreed upon: Initial decisions of areas in which guidelines would be written would be made jointly by the task force and project staff; priority consideration would be given to areas covered by the Arizona State University Model Rules for Law Enforcement. Necessary legal and social research would be performed by project staff, and unit commanders would help them collect information about their respective units. Proposed guidelines would be drafted by project staff, and submitted to the task force which would solicit the opinions of others in the Department. Upon approval by the task force, guidelines would be submitted to the Commissioner for review.

The task force decided that in a selected number of areas, an implementation phase would be undertaken. It would include developing, with the Training Academy, new training materials relating to the selected rules, conducting a training program for the units involved, implementing selected guidelines on an experimental

¹Action in cases of such seriousness would, of course, be required even in the absence of guidelines. The task force decided in addition to make copies of its guidelines available to prosecutors and judges in the hope that they would be used to make judgments about the appropriateness and reasonableness of police actions challenged in court.

basis in the four units, and monitoring and evaluating the effectiveness of the new guidelines. Finally, in areas in which legislation or court rules were needed to accompany police practices, proposals would be made.

Project staff and the task force agreed that three criminal investigative areas required priority attention in the formulation of guidelines. They were obtaining and executing search warrants, car searches (including impounding and inventorying cars), and searches incident to arrest. These areas were selected for a number of reasons.

Like most police departments, the Boston Police Department seems to rely only minimally on search warrants as authority for engaging in searches and seizures. Generally, authority to search or seize is derived instead from the many exceptions to search warrants, e.g., searches incident to arrest, exigent circumstances, etc. Supervisors of the Department wanted to increase use of warrants, but saw many restrictions which prevented them from doing so. These included the unavailability of magistrates during evening hours and weekends, Massachusetts caselaw,¹ and the inability of officers to obtain warrants quickly by telephone when probable cause to search arises. So the task force and the staff selected, obtaining and executing search warrants as one of the first areas to address.

Without question, the Supreme Court's decisions on car searches² are confusing to everyone who reads and attempts to interpret them. There are questions, for example, about when a warrant is needed to search a car, how extensive the search may be, and where car searches may be made. The task force agreed, therefore, that

¹This caselaw appears to prevent magistrates from taking additional statements from a police officer to determine whether or not probable cause to search exists if an affidavit is unclear.

²Cooper v. California, 386 U.S. 58 (1967); Chambers v. Maroney, 399 U.S. 42 (1970); Coolidge v. New Hampshire, 403 U.S. 443 (1971); and Cady v. Dombrowski, 413 U.S. 1074 (1973).

it would be valuable to have guidelines, which set policies in this area.

The majority of searches are now conducted incident to arrest. Considerable confusion exists between Supreme Court standards in *Chimel v. California*, 395 U.S. 752 (1969); *United States v. Robinson*, 414 U.S. 218 (1973); and *Gustafson v. Florida*, 414 U.S. 260 (1973) and the additional restrictions imposed by the Massachusetts legislature after these decisions. Given the importance of searches incident to arrest, the task force determined that this area should receive priority attention.

In working on these issues, it was agreed that project contact with the task force alone would be insufficient to obtain a comprehensive picture of the problems and needs of working detectives or the support necessary to insure compliance once the guidelines had been developed. So it modified its process to involve directly a larger number of officers. That modification became especially important as it became clearer to project staff that its research design was not going to produce the data on Department practices which had been anticipated and which was required.

C. Research Methods Used as Part of the Policymaking Process

1. Legal Research

To determine the legal framework within which policies would be developed, Center staff began by using traditional legal research techniques. Approximately two months were devoted to legal research and drafting preliminary guidelines in each of the areas (search warrants, searches incident to arrest, and car searches). After focusing initially on state-of-the-art research on police rulemaking, staff had examined:

(1) Model codes (most pertinent were the ASU Model Rules and the ALI Model Code of Pre-Arrestment Procedure);

(2) Current federal and Massachusetts court cases interpreting the Fourth Amendment, and Massachusetts cases interpreting the state

constitution and state statutes;

(3) Existing and proposed Massachusetts statutes and court rules;

(4) Innovative existing and proposed statutes and rules in other jurisdictions (e.g., California statute on telephonic warrants and proposed Rule 41 of the Federal Rules of Criminal Procedure);

(5) Existing Boston Police Department regulations, policies, legal opinions, and training materials;

(6) Regulations of other police departments (e.g., Cambridge, Kansas City, Dayton, Cincinnati, San Diego, New York, Los Angeles, Washington, D.C.);

(7) Proposals of professional organizations (e.g., IACP, Police Foundation, National Police Legal Advisors Association); and,

(8) Relevant literature in field (e.g., ABA Standards on Urban Police Function).

Legal research did not stop with the preparation of draft guidelines. Ambiguities, gaps, and impracticalities pointed out by task force members raised questions which demanded closer scrutiny of decisional and statutory law and proposed changes. Refining the guideline drafts in preparation for their introduction to the detectives involved continuing attempts to balance practical critiques and traditional sources of legal doctrine. This harmonizing effort continued as more and more input was obtained from detectives. Moreover, this process helped identify areas in which there simply was not enough known, and which might be helped by social science research.

2. Social Science Research

a. Original Data Collection Research Plan

Initially, the social science research planned for the project had anticipated substantial reliance on police and court records and formal interviews as a way of learning about Department practices and needs. The original design was to use

Department records like incident reports to get a statistical picture of the Department's handling of certain kinds of problems and to identify individual officers who could be interviewed and observed.

In addition, court records were to be used to analyze specific issues like the impact of the exclusionary rule on the suppression of evidence in certain types of cases. Thus, the initial workplan, submitted to the National Institute in July, 1975, placed heavy emphasis on Department records -- incident reports and booking sheets, and court records as primary sources of data.

Random and stratified samples were designed so that staff could review incident reports generated from Districts 2 and 4. In the area of searches incident to arrest, for example, the sample focused on weapons and narcotics arrests from District 2 and 4 for the period, January 1 through June 30, 1975. These arrests were identified by computer printouts, and student interns collected and coded data, providing preliminary information on the frequency of narcotics and weapons charges stemming from evidence found during searches incident to arrest for other crimes.

This information, however, turned out to be of negligible value when it was traced back to incident reports. The reports themselves were so sketchy, that it was impossible to determine when and if a search had been conducted, the nature and intensity of the search, or even the order in which probable cause occurred for each crime when there was more than one charge. The lack of particularity in Department records -- with the exception of those documents the officers prepared for review by court officials, such as search warrant affidavits -- left Center staff with very limited useful data. And because no real relationship had been developed yet with officers in the field, it did not appear possible for the staff to interview large numbers of detectives about what was or was not put in incident reports.

So the research methodology was changed. Collection and analysis of hard data were restricted to those areas in which accurate information was available, like use of search warrants and the exclusionary rule.¹ With these exceptions, quantitative data were replaced by information gathered from direct interaction with police officers in phased steps.

This probably was the most delicate moment of the project -- finding ways of making direct contact with large numbers of police officers. It is always difficult for outsiders to get from police officers candid statements about their actions and concerns. But it was particularly difficult in this Department at this time. The heritage of the Department encouraged many officers to believe that policies were a tool for discipline; indeed, that is the way in which they had always been used. In addition, the Boston Police Patrolmen's Association, having taken the position in an earlier department rulemaking effort, that policy is a managerial function in which patrol officers ought not to participate, could not be expected to be supportive.

b. The Questionnaire, Interviews, and Field Observation Methodology

(1) The Training Academy: In-service I

After some consideration, the task force and staff decided to integrate its own inquiry into an existing Department program which was already trusted by officers, the in-service training program of the Training Academy. Doing this would allow the staff to be identified as resource people working with a highly respected instructor, Captain William Hogan. It would enable project attorneys to get some initial acceptance, and would provide an opportunity to interview a sample of detectives and supervisors from the four units involved in the project.

¹The result of research in these areas is contained in the appendices of the report.

New materials were developed in preparation for the training program. Traditional lecture and question and answer techniques were discarded as inadequate to stimulate the kind of honest discussion the project required. Instead, law students, staff attorneys, and police officers began devising street hypothetical situations in which police officers commonly encounter problems of car searches, search warrants, and searches incident to arrests. These sketches were based on caselaw and officers' street experiences, reflecting the Center's concern with placing legal issues in a context familiar to the officers with whom we were working. The scenarios were made into script outlines which were used by the Department's Video Unit to make tapes to serve as a catalyst for officers' discussions of policy needs.

The development of working relationships with patrol officers and detectives really began with the videotape effort. Working with police officers from the Academy, staff began explaining the project to a group of officers not on the task force. Although the effort was greeted with initial skepticism, staff encouraged open discussion of reservations about the project. Then prior to each filming, officers involved as actors were given a summary of the scenario and a brief outline of the legal issues involved. They were asked to review the materials and express their opinions about the legal considerations, and, especially, to speak out if the scenes seemed artificial or strained. On the basis of their judgments, changes were made in the scenarios.

When the video sequences were finished, questionnaires were designed for use at the training session to focus attention on possible responses which the videos might generate. To illustrate: A single video depicting the execution of a search warrant raised numerous issues including: mode of entry; announcement of authority and purpose; what constitutes sufficient evidence for obtaining an arrest warrant; plain view; and safeguarding property. A copy of the questionnaire used for this episode is appended to the report.

In keeping with the project design, officers participating in the training sessions were drawn only from among the detectives of the four units involved directly in the project. To establish a control group, essential to evaluation of the training, detective partners were randomly assigned by pairs either to a control or an experimental group. The groups were of approximately equal size.¹ The 39 Detectives in the experimental group were brought to the Academy for training in four sessions. This series of sessions was designated "In-service I" to distinguish it from later training sessions.

Meeting in small groups (7 - 10 officers) with Center staff attorneys and Academy personnel the detectives at each session viewed the videotapes. At the conclusion of each taped situation, but prior to any group discussion, each officer was asked to indicate quickly, on a specially prepared form, what he would do if he were confronted with that situation. (This form is appended to this report.) For example, following a scene in which one William Oakes is arrested in his office on an arrest warrant for receiving stolen property, the officers are asked, "What would you most likely do in this situation? Would you: Search Oakes' desk drawer? / / / / /." After questionnaires were completed, Center staff and Academy personnel conducted discussions with the officers about how they decided to take a particular course of action. The points raised during these discussions were recorded by project and Academy staff. Data obtained from these instruments also aided in identifying areas where the least consensus among officers existed.

In-service I was designed to achieve three things: To get formal participation in the guideline development process by line officers of the Department; to identify other areas in which guidelines should be formulated; and to gather

¹The design is explained in detail in the evaluation section.

baseline data for use in later evaluation efforts. It does seem to have worked. Officers did help identify substantive areas in which guidelines were most required. Officers did explore not only their own processes for making decisions, but as well their views about investigative procedures.

Responses to the questionnaires were not used to evaluate knowledge of the law, but were clustered into appropriate legal categories and analyzed with a special measure of group consensus. The measure of consensus was weighted so that, on a scale of 100, a 100% score indicated complete agreement as to a course of action; and, a 0 score showed an even split. This consensus score was used to help identify particular topics for guideline development. If the score showed a great deal of disagreement or confusion about the scope of the detectives' legal discretion, guidelines would focus on educating the officers. If the scores showed that a certain course of action was a common practice in an area where the law itself was unclear, the guidelines were directed toward making a Department statement about the proper exercise of discretion.

(2) Field Observations (Ride-alongs)

Academy staff, officers who underwent training, the task force, and Center staff were enthusiastic about in-service training as a means to obtain ideas from departmental personnel. So it was decided that the project should go one step further, and arrangements were made with unit supervisors to have Center staff and law students ride regularly with detectives from District 2 and 4, Vice and Drug Control.

Ride-alongs were designed originally to give staff attorneys the opportunity to observe police encounters and responses in which guidelines were being developed. They were expected to give staff opportunities to observe police decisionmaking. The purpose of observation was not to see if officers diverge from legal rules, but rather to see the difficulties in applying legal rules to day-to-day encounters.

Ride-alongs were scheduled to begin immediately after detectives from the four selected units (Districts 2 and 4, Vice and Drugs) had completed the first in-service training session. The initial introduction of staff and detectives to each other was made at the neutral Training Academy, and this provided a strong base for creating a positive and cooperative atmosphere for ride-alongs. The patrol officer assigned to the Center provided training for the staff and law students in ride-along techniques. Observation checklists were developed to use as refreshers in evaluating each observation. (These checklists are appended to this report.) Ride-alongs were scheduled through each unit's supervisors serving on the task force.

As described earlier, not all officers from the four units participated in In-service I. Therefore, in order to control for any possible effects that participation in the training may have had, the design called for the observers to divide their riding time equally between those who had been through the training programs and officers who had not.

It was very difficult to do this. Resistance to ride-alongs, scheduling complexities, and Department regulations limited the extent of field observations prior to In-service II which brought selected detectives from District 2 and Drugs back to the Academy for intensive seminars on the draft guidelines. Even in District 2, where staff concentrated efforts to develop rapport both with supervisors and line officers, the design had to be modified.

The original plan to distribute observer time evenly between In-service I participants and nonparticipants had to be abandoned because of the differences in duties between day detectives and night detectives, which was not taken into consideration in drawing participants for In-service I. In District 2, day detectives spent a far greater percentage of time during their tours of duty working on follow-up investigations and making court appearances and, therefore,

had fewer encounters relevant to the project. So, in District 2, the design was changed to include a disproportionate number of ride-alongs with night detectives to maximize opportunities for observing contacts related to the substantive areas of our study.

All this was taken into consideration in developing the post-In-service II ride-along design. Corrections in the balance between day and night detectives were made, and ride-alongs were scheduled far in advance of the testing period. During this testing period, officers were asked to apply the guidelines, if possible. Staff and students covered District 2 and Narcotics on a nightly rotating basis for a two month period following In-service II. And, by the end of the preliminary and testing periods, Center staff and students had ridden for approximately 450 hours.

Ride-alongs also allowed Center staff to demonstrate responsiveness to line officers' practical concerns. By being able to respond honestly without arguing or judging, project staff were able to gain the officers' respect and acceptance. This encouraged the officers to respond candidly and function routinely, thereby enabling the observers to learn even more about issues the guidelines should address.

For example, following a ride-along where several on-the-street arrests were made, the observer questioned the detectives about the brevity and superficiality of street searches as compared to the intensity of the search at the station. The detectives expressed their concern about getting the arrestee off the street before a crowd gathered, and not "blowing" their cover, but the overriding issue seemed to be the 1974 amendment to M.G.L. Chapter 276 §1,¹ which has been perceived by some officers to limit the usefulness of a

¹A search conducted incident to arrest may be made only for the purposes of seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest has been made, in order to prevent its destruction or concealment; and removing any weapons that the arrestee might use to resist arrest or effect his escape. Property seized as a result of a search in violation of the provisions of this paragraph shall not be admissible in evidence in criminal proceedings."

search incident to arrest. The detectives seemed to feel that the best way to deal with c. 276 §1 was to take only those steps necessary to protect themselves, and then to follow up later with an extensive inventory so that contraband not related to the offense for which the arrest was made would still be admissible. Such ride-along conversations were of great importance in the development of guidelines. Some important research problems emerged during the ride-along program. These included the perception of citizens about the "civilian" riding with officers, the fears of police officers that their behavior might be reported to superior officers, the temptation of observers to help the officers, and the availability of observers to testify about events they had witnessed. Two examples illustrate both the problems and the attempts to resolve them.

First of all, as officer/observer relationships solidified, a greater sense of being an assistant to the officers began to develop. With this case the dual pressures to participate more actively with the officers yet maintain an observer status. It was difficult to draw these lines. Gradually, a staff consensus as to an appropriate compromise began to emerge. Passing a flashlight and carrying a walkie-talkie were seen as acts of little consequence. More troublesome, however, were questions soliciting legal judgments about a situation confronting the officers. In these instances, if pressed, observers attempted to offer alternatives without advising one course of action over another.

The issue of observer availability to testify was perhaps the most critical. Early in the project, staff made a decision not to testify voluntarily if requested by defense counsel. Yet, if a staff member were subpoenaed, he or she would have to appear and testify truthfully as to observations, to the extent such information was not privileged. It seemed unlikely, however, that this issue would emerge because of our low visibility and our presence in normally

fast-moving street situations or in warrant situations where numerous officers are present. This concern, however, led to a decision to avoid having the observer present in interrogation situations where sustained and focused contact with suspect would make it more likely that the observer's presence would be recollected. This decision was reached because interrogations were not one of the three areas initially selected for guideline development. After discussion among staff and task force members, a draft policy on the limits to staff's availability to testify in any proceeding including departmental disciplinary actions was developed, signed by the Project Director and Commissioner diGrazia, and placed on file in the department. A copy of this policy is appended to this report.

(3) Task Force Review

Draft guidelines, incorporating legal and nonlegal research were submitted to the task force for review and initial approval prior to their being presented to detectives. In a series of meetings, the task force scrutinized each proposed guideline and the factual examples illustrating the guidelines' applicability to ensure that the substance of the guidelines did address practical concerns, and to ensure that the language clearly conveyed the intended meaning. The guidelines were then revised.

For example, in discussing the guideline on searches for evidence incident to arrest, the question of searching locked or sealed possessions was raised. It was agreed that locked items should not be opened as part of an inventory because their contents were already secured; nor should they be opened in a weapons search because the arrestee could not retrieve a weapon from them. But opening them to search for evidence of the arrest crime, a permissible search purpose under Massachusetts law, presented a different problem. It was

agreed that rather than suggesting an absolute ban on opening them or complete authority to do so, the guidelines would indicate a preference for obtaining a search warrant, especially because a search warrant would permit the admissibility of evidence of a different crime. This solution, arrived at by the task force, integrated guidelines on search warrants and other sections from the searches incident to arrest guidelines.

(4) Training Academy: In-service II

The revised guidelines were the subject of a second in-service training session (In-service II) conducted by task force members and Center attorneys at the Academy. This session offered detailed instructions in the content as well as the legal and practical rationale of the guidelines. Attending the session were approximately half the detectives from Drug Control and District 2, the two investigative units which the task force and project staff had decided would adopt the guidelines on an experimental basis. This selection of officer participants permitted the project subsequently to evaluate the impact of training on the officers' understanding of and compliance with the guidelines, because all the detectives in both units received and were asked to use the guidelines during the experimental period, but only half had received training in their contents.¹

The session was introduced by Captain Hogan, who described the collaborative process in developing the guidelines. This theme of collaboration was reinforced by each of the participating task force members during introductory remarks. Each officer from the task force stressed his commitment to the Department's defining appropriate criminal investigative procedures, and discussed his role in the evolution of the guidelines. The participation of the superior officers was perceived by many of the trainees as a statement of confidence in both the Center

¹See the evaluation section.

and the materials presented during In-service II. Officers' approval of the training process and substance was bolstered even further by the day-long presence of Lt. Bolt and Sgt. Detective Mulvey, superior officers of the two units involved in In-service II.

At this session each officer received copies of the draft guidelines and, through traditional classroom lectures and discussions, supplemented with a new series of videotaped situations, the guidelines were illustrated. Scenarios for In-service II videos are appended to this report.

Within a week following the training session and distribution of the draft guidelines to all detectives in the experimental units, staff attorneys held a series of meetings with the detectives who had attended In-service II to respond to questions about the guidelines. These meetings provided opportunities to explain once again the project's purposes, the substance of the guidelines and their application, and to learn what issues officers felt were not adequately addressed. For example, while the guidelines dealing with protecting premises after completion of a search was theoretically acceptable, the absence of specific suggestions about how this could be done made it impractical. The guideline was redrafted. During the evaluation phase, the staff found that there were some deficiencies in the way in which training on the guidelines was provided. Essentially, too much material was covered too quickly and there was too little follow-up. As a result, most officers did not have a good enough grasp of the guidelines before they were asked to use them. This is discussed in more detail in the evaluation section of the report.

(5) Training Academy: In-service III

The research design provided for a two month experimental period following In-service II in which all detectives in District 2 and the Drug Control Unit

used the draft guidelines. Staff ride-alongs continued in these units, and were scheduled to reflect a balance between the detectives who had attended In-service II and those who had not. At the end of the experimental period, a third series of in-service training session (In-service III) was held for all detectives in the four units (Districts 2 and 4, Drug Control and Vice) with which the project worked. At each session, the detectives viewed the videotapes that had been presented at In-service I and were requested to respond to the same questionnaires administered previously. As will be explained in the evaluation section, infra, this design permitted an evaluation of the impact of the guidelines when accompanied by training and of the guidelines themselves without training. Moreover, those sessions provided an additional opportunity for project staff to isolate substantive areas in which there continued to be confusion over the scope of permissible police discretion.

Following the videotape presentation, officers were divided into smaller discussion groups by unit or district; each group discussion was led by a staff attorney and a task force member. The discussions with detectives from District 2 and Drug Control focused on the guidelines themselves because these officers had been using them for the preceding two months. They were encouraged to indicate specific guideline sections they had found impractical or unclear, and to present appropriate alternatives. Guidelines were distributed to detectives from District 4 and the Vice Unit as they had not previously received copies. Discussions with these officers introduced them to the guidelines and the guideline development process.

D. Continuing Guideline Development

Armed with comments and suggestions on guidelines development from detectives in Districts 2 and 4, Vice and Narcotics, specific suggestions for revisions of the guidelines, and reactions to the policymaking process itself, Center staff and the task force set about refining the drafts into final versions.

At the same time, project staff began work on guidelines development in three new areas -- arrest, eyewitness identification, and stop and frisk.

In view of the success of the research strategies which were developed for the initial set of guidelines, a similar process was used for the new areas. Key issues and preliminary approaches were formulated in conjunction with the task force; particularly, troublesome problems were identified and incorporated into videotaped simulated street situations; the Training Academy was used to obtain responses to the simulations and to other issues surrounding the new areas; and, direct insights and information were received through observations in the field.

This time, however, it was decided not to use the original four units as resource groups in order to keep them "untainted," as much as possible for a more comprehensive evaluation of guideline impact planned for a subsequent grant period. Discussions with the task force and the Commissioner's staff led to the conclusion that the various research components should be undertaken in District 1, basically the downtown section of Boston. The supervisory officers in District 1 agreed, and Detective Sergeant John Daley of District 1 joined the task force. Patrol officers were included both in in-service training sessions and as participants in the ride-along program, since the project was sufficiently established to be extended to the patrol force and because the new areas were equally relevant to the patrol function. Ride-alongs (first with detectives only and then with patrol officers as well) were begun and are continuing in District 1. The results of the three Training Academy sessions and the ride-alongs are being incorporated in the new guideline drafts in a manner similar to that used for the first set of guidelines.

In some instances, this research methodology has been supplemented by additional data collection. Questionnaires relating to eyewitness identification procedures, for example, were sent to all assistant district attorneys in Suffolk

County and to all detective sergeants of the Department to learn about the frequency of certain types of procedures and problems associated with them at trials. A special in-service session was also arranged with a group of sergeants to discuss selective use of the arrest power. More traditional data collection (examination of court and police records) continued in areas relating to search warrants and the exclusionary rule throughout the first phase of this project and is contemplated for another area in early stages of development -- drug enforcement priorities.

III. Identifying Specific Criminal Investigative Needs Within the Boston Police Department: Application of the Process

The process for developing guidelines had been analyzed in many ways during its development and use. The way in which people in the department felt about the guidelines and about the "outsiders" who were assisting was analyzed; and it appears that the reactions were strongly positive. The degree to which the guidelines will be internalized and will be used by officers in the department is, of course, the ultimate test of the project; but measurement of that will have to be made over time.

The third test of the process was the quality of the rules developed and the extent to which they were clearly oriented to Boston issues, matters which were on the minds of officers in this particular police department. What the process produced is the subject of this section. The completed guidelines in each of the areas are contained in the Appendices to this report.

Initially, to determine whether model rules, like those developed at the Arizona State University Law School, could be made responsive to the needs of one police department, we reviewed statute and case law, court rules, Boston Police Department rules, training materials, and interviewed police officers. Based upon this research, we found that the need for administrative policies was a significant one. Some of the reasons for this were: (1) The law, -- statutes and court decisions -- provides little and often conflicting guidance in the areas of criminal procedure; (2) Many important issues are unresolved; (3) Police regulations and training materials do not provide adequate guidance; (4) Police officers, prosecutors, defense attorneys and judges are confused about procedures; and (5) The police department gives little guidance to its officers.

Guidelines were needed, therefore, to focus on appropriate options that incorporate a balance between practical considerations and a concern of fairness. Many officers within the department found that policies like those prepared by ASU did respond in general to many of the concerns they had. But, as will be reflected in the material that follows, in order for policies to meet specific local needs, they had to be developed locally.

A. Examples from Final Guidelines

1. Motor Vehicle Searches

Motor vehicles present peculiar problems for the Fourth Amendment requirement that searches be reasonable. For example, even though auto-¹mobiles can be searched without a warrant, a police officer who decides in the case he is confronting that a warrant is not needed, often still faces a locked car. The ASU rules state a preference for using a key to gain entry, and suggest that officers obtain authorization from a superior before opening a locked glove compartment or trunk without a key.

Several situational videotapes were prepared for detectives from the four participating units (District 2 and 4, Vice, and Narcotics) which presented questions about locked compartments in motor vehicles. In one a woman informs two officers that her husband has threatened to kill her with a gun in his car. The officers see the car parked outside the house, and looking through a window, see a rifle laying on the back seat. The first set of questions assumes that the car doors are locked, and no key is available.

¹They generally fall within the exigent circumstances exception to the warrant requirement.

The detectives who viewed the sequence at the first session when asked if they would open the door and remove the rifle, were in complete disagreement; they scored zero. When the situation was changed, and the car doors were unlocked, there was almost complete unanimity; a score of 90%. Other situations depicting the same problem produced lesser degrees of disagreement, in the 45 to 60% range, but certainly they reinforced the need to deal with the topic in guidelines.

The video sessions were supplemented by group discussions with detectives who were concerned about being held responsible for damage they cause while forcing a lock. Specifically, they were concerned about personal liability and departmental discipline. The detectives and task force members suggested that the department routinize supervisory approval for forcing locks. And since department tow truck operators carry special tools for opening locks, the guidelines include a suggestion that tow operators be dispatched where possible.

Boston Police Department records did not reveal whether opening locked compartments in motor vehicles was a particular problem or not. But task force members, and especially those who supervise detectives in the two districts involved in the project, reported that line officers were unclear about their authority to break open a lock.

2. Search Warrants

a. Search of Unnamed Persons Present at a Search Site

The ASU rules deal with this subject in a very broad statement:

"(a)ny person on the premises may be searched if it reasonably appears that

an item listed in the warrant may be concealed on his person." The law offered little more guidance, appellate decisions having held that a case-by-case approach in determining reasonableness of a search was constitutionally sound. It remained to be learned whether Boston police officers felt they needed guidance.

A video sequence was presented to the detectives who participated in the first session. The sequence depicts the execution of a search for a stolen typewriter in Mr. Oakes' business office. At the time of the officers' arrival, an unidentified man in business clothes is seated across the desk from Mr. Oakes, holding a large briefcase in his lap. The questionnaire presented to the detectives asked several questions about what they would do at this point. The most important of these was whether they would search the visitor's briefcase. The degree of consensus on the entire episode was 34%; the range of scores for all groups of related questions was 1.4% to 79%. So, the video raised more than average uncertainty.

The single question concerning search of the briefcase was even more revealing. Detectives in Vice and DCU, the two Boston Police Department units with the most experience at executing search warrants, disagreed dramatically about whether to search, 17% and 0 respectively. On the other hand, District 4 and District 2 detectives, who execute fewer search warrants, but are more frequently engaged in stolen property investigations, were in much greater agreement: 79% and 67%, respectively, in favor of not searching.

In the discussion following the videos, nearly all of the detectives said they would have wanted to search the briefcase, whether or not they actually would have done so. Some responded by saying they would have searched the briefcase even though they were unclear about their authority to do so.

DCU and Vice officers, by virtue of their extensive experience with searches and greater familiarity with the law, were more likely to overcome their doubts. Observations made during ride-alongs revealed a similar confusion concerning the legality of searching unnamed persons at the site of warrant execution. This case, incidentally, was our example of the support found for an initial project assumption: that police officers frequently think the law is more restrictive than it actually is.

Task force meetings reflected the confusion and division about searches of unnamed persons. The captain of the Training Academy and the commander of the Vice Unit felt that no one could be searched under the authority of a warrant unless identified in the warrant. On the other hand, the commander of the Drug Unit asserted a need for broad powers to search persons present, and acknowledged that drug officers almost always will search everyone present. It was clear that the guidelines should be somewhere between a ban on the search of unidentified persons and an invitation always to search all persons present.

The ASU formulation appeared to be too broad an authorization of police discretion, so the Boston guideline advised the searching officer to have probable cause to believe that sought-after items would be found on the unidentified person. In order to control as well as assist an officer's judgment of whether probable cause exists, the guidelines list six factors for determining probable cause. Extensive examples are offered to illustrate how the guideline applies in practice.

b. 24-Hour Availability of Magistrates.

The project has recommended that the department seek implementation of a system making a magistrate available on a 24-hour basis. A closely related recommendation urges that officers be able to obtain a search warrant

through telephone communication with a magistrate.

The 24-hour availability was vigorously urged by narcotics officers who regularly need quick authorization for searches; and since 90% of the DCU works only at night, virtually all occasions requiring a prompt search arise when courts are closed. Despite having the home phone numbers and addresses of roughly 50 clerks and judges, officers find it difficult to get in contact with a cooperative magistrate on short notice. DCU personnel were asked to indicate whether any of four events occurred during their shift: Search warrant execution, search incident to an arrest, motor vehicle search, and non-court hours search warrant requests. Preliminary data indicates that off-hours search warrant requests were attempted more than once a week, while the unit executes about two search warrants a week. Follow-up interviews to determine how often magistrates were reached during nighttime hours are not yet completed. So the project plans to seek district court cooperation on an experimental project whereby a centrally located court remains available on a 24-hour basis.

The telephonic search warrant procedure also would meet a need for prompt search warrants by enabling officers to avoid the legal problems of "freezing a scene" until a warrant can be obtained. Legal research suggests that a freeze is a seizure governed by the Fourth Amendment, and must be reasonable, but a principal factor in determining the reasonableness of such a seizure is its duration. All officers consulted by the project wanted to detain briefly in situations where there is no cause to arrest. But they were very uncertain about their authority to do so.

Questionnaires and follow-up discussion indicated that when faced with a situation where evidence may be destroyed or removed before a warrant can

be obtained, most detectives would not freeze the scene until a magistrate was reached. Rather, they would arrest those present, even with very tenuous probable cause, and detain them pending further investigation. This is another example of how police officer misperception of their discretion leads them to deal with problems in an ill-suited, but more familiar mode. Guidelines were necessary, therefore, to deal with situation.

3. Searches Incident to Arrest

a. Admissibility of Object Seized

Unanticipated legal problems may become central to the rule development process in a police agency. Research into Massachusetts law revealed a 1974 amendment to the search warrant statute (drafted in response to the United States Supreme Court decisions in Robinson and Gustafson) establishing restrictions on searches incident to arrest. Early task force meetings suggested that this statute presented serious difficulties for police officers who were confused about its scope.

Legal research offered minimal guidance as to whether the statute was as restrictive as police officers thought; there were not appellate decisions and only two brief articles. Officers' interpretations and experiences with the amendment were probed during each Training Academy session and during ride-alongs. Staff attorneys, the police officer assigned to the project, and task force members contacted a number of supervising officers, detectives, and patrol officers outside the four units about the statute. No instances were discovered where the statute was considered by police officers or magistrates in a complaint decision, or by judges in a decision to exclude evidence. But still there was considerable confusion and anxiety among police officers over the statute. Indeed, there had been a statewide police lobbying effort to repeal the amendment. With this statute identified as a major problem for which there was no judicial resolution of ambiguities, guidance was sought from the legislature and participants in the criminal justice process outside the police department. Legislators, prosecutors, defense attorney, and

District Court judges were interviewed. The legislators said that although the bill had been poorly drafted, its intent was to do no more than maintain the pre-Robinson/Gustafson law on searches incident to arrest. The attorneys and judges concurred and said further that they had had no experience and had heard of no motions to suppress evidence based on the statute.

While the Arizona State University Model Rules do not directly address the admissibility of evidence seized during a search incident to arrest, task force members urged that a separate guideline be written to reduce the confusion, to clarify the department's interpretation of the statute, and to emphasize the conceptual underpinning of the guidelines on searches incident to arrest.

b. Protective Sweep

One of the Arizona State University Model Rules deals with protective sweep: The general inspection of premises without a warrant when an arrest has been made to ensure the safety of officers and of evidence that might later be seizable with a search warrant. While the importance of guidance in this area was underscored by the ASU rules and by task force members, its importance in the Boston Police context was unclear at the start of the project. The task force and center staff wanted officers to understand that this emergency procedure is not license for warrantless searches for evidence.

It was felt that Training Academy sessions would be the most direct way to assess need in this area and to determine whether a separate guideline was required. In a videotape, hot pursuit brings detectives into an apartment on the heels of a heroin deliverer. When the officers catch up with the carrier, her bag, reliably reported to contain drugs, is nowhere in sight. Noises are heard from an adjoining room in the apartment where the door is closed. Although the presence of other persons presented a threat both to the officers' safety and the rugs, the questionnaires revealed considerable confusion among the officers on what to do in the situation. There was only an 18% degree of

consensus on the question of ordering the people out of this other room, and a 40% degree of consensus concerning detention of those people. In 29% degree of consensus, officers would frisk the persons in the other room; and the officers were almost equally split -- 4.4% degree of consensus -- on whether they would undertake a search of that other room.

In discussions, two important attitudes were expressed. First, while a majority of the officers would have cleared the room, detained the occupants, and frisked them, they were unclear about their authority to do so. Second, a number of those who indicated that they would search the room felt they probably should not, but did not see any alternatives. Thus, while the phrase "protective sweep" was familiar to most officers -- the Training Academy has emphasized this language and authority -- its purposes and contours were unclear.

The videotape questionnaires and subsequent discussions clearly indicated a need for protective sweep authority and substantial confusion about its legitimacy and scope. To meet the need, a separate guideline was prepared which spells out an officer's authority to undertake a protective sweep in the absence of a search warrant and to frisk and detain persons found on the premises. It also urges that search warrants be obtained in all situations but those where the plain view doctrine clearly applies.

B. Examples from Draft Guidelines

After work on the initial three sets of guidelines was completed and approved by the task force, preliminary work was begun on other matters, some of which were covered by the ASU Model Rules and some of which were not. Draft guidelines on stop and frisk, eyewitness identification, and arrest were to be developed before the end of the initial project period. For drug enforcement priorities and responses of the department to the exclusionary rule, preliminary research was completed, and initial memoranda prepared.

¹They are included in the appendix, but are preliminary, not having yet yet been approved either by project staff or by the task force.

²This draft work is also included in the appendix.

1. Eyewitness Identification

- a. Prompt Stationhouse Identifications

A prompt confrontation between an arrested suspect and an eyewitness to a recent crime is an accepted police investigatory technique incorporated by the drafters of the Arizona State University Model Rules. Existing Boston Police Department records do not indicate the extent to which the bringback is utilized locally. Meetings with selected task force members revealed, however, that it is a frequently employed identification procedure but there are circumstances in which conducting a bringback, while legally permissible, is impractical.

Task force members wanted to develop an alternative procedure to be used when a bringback would pose a substantial risk of danger to the officer or witness or when the witness is only willing to view the suspect in the security of the station. This need was also expressed during interviews with detective-sergeants who had responded to a questionnaire probing current practices and problems with eyewitness identification procedures. Many felt that if a suspect were apprehended within a reasonable period of time after the crime, a police officer should neither be precluded from conducting an immediate identification, nor required to arrange a formal lineup. A prompt identification procedure at the station was suggested as an alternative to a bringback in specified situations.

ASU Rule 202 suggests that the officers conduct prompt confrontations between an eyewitness and arrested suspect "...at any appropriate place." The rule contains no considerations which the officer might use to determine an "appropriate" location. The commentary suggests however, that appropriate places are confined to street or on-the-scene locations. Under the ASU scheme therefore, a formal lineup would appear to be the only available alternative if a bringback were not feasible. But the complexities of arranging a lineup could result in unnecessarily prolonged detention of an innocent suspect and the loss of valuable time needed to pursue the actual perpetrator.

To determine whether the need expressed by superior officers was perceived by line officers, the issue was raised at a series of meetings at the Academy with a group of detectives and patrol officers from a downtown police district. The officers viewed a situational video showing a suspect arrested less than one hour after a reported rape. The officers were then asked to assume that the victim was unwilling to view the suspect at her location, but was willing to come to the station. Responses to questions showed that more than half would have brought the victim to the station. There was widespread uncertainty, however, about the admissibility of identification evidence obtained from a stationhouse identification procedure other than a formal lineup. Several officers said that courts look more carefully at investigatory activity occurring within a police facility.

Massachusetts appellate decisions revealed that eyewitness identification evidence derived from procedures other than lineups conducted in a police facility was invariably suppressed at trial or condemned on appeal as suggestive. In no decision, however, was there any indication that such a procedure is, by its very nature, suggestive. The defect in each case was the manner rather than the location in which the procedure was conducted. What appeared to have led the courts to determine that a procedure was "impermissibly suggestive" was conducting the procedure long after the commission of the crime; or singling out the suspect by showing him alone, among uniformed police officers, or among persons physically dissimilar; or giving the witness instructions which strongly suggested that the officer believed that the person being viewed was guilty.

So the draft guideline authorizing prompt stationhouse identifications is narrowly drawn to respond both to the investigatory needs of police officers and to the judicial concern with the fairness of the procedure and reliability of the evidence derived from it. It defines the limited circumstances in which the procedure is permissible, and instructs the

officer to conduct the procedure in a manner which avoids singling out the suspect.

b. Lineups

A survey of the literature on eyewitness identification procedures disclosed a strong preference for conducting lineups when attempting to obtain an identification of an in-custody suspect. This preference is reflected in the Arizona State University Model Rules.¹ It initially appeared reasonable to incorporate this preference in the guidelines on eyewitness identification. Extensive field research was undertaken to determine how and when lineups were being conducted, and the problems with using this procedure.

Informal interviews conducted during ride-alongs with detectives indicated that lineups were infrequently held, and that few detectives were familiar with lineup procedures. A questionnaire, focusing on lineups, was developed by Center staff and Academy personnel, and administered to all detective-sergeants in the department. Information obtained from the questionnaires echoed the concerns of task force members about the mechanical difficulties of arranging lineups. Difficulty in recruiting and paying suitable stand-ins and absence of an adequate lineup facility were obstacles repeatedly mentioned. In addition, because defendants in custody following arraignment are detained in a facility operated by the county sheriff's department, jurisdictional considerations were seen as a further obstacle to lineups.

Equally significant in explaining the limited use of lineups was the widely held belief that use of photographs rather than lineups to obtain identifications of in-custody suspects has not in itself caused the exclusion of identification evidence at trial. The department legal advisor agreed with this assessment. In fact, no case was recalled in which defense counsel even

¹The commentary to Rule 301 cites Wall, Eyewitness Identification in Criminal Cases, to support the proposition that a lineup is a more accurate technique than a photographic procedure.

challenged the admission of an identification of a suspect in-custody simply because it was obtained from photographs. Judicial receptivity to properly conducted photographic identification procedures appeared to be supported by the data gathered from a questionnaire distributed to the assistant district attorneys in the Suffolk County District Attorney's office. According to the responses of the 30 out of 100 assistant district attorneys who filled out the questionnaire, there were no successful challenges to the admission of identification evidence because it was derived from a photographic procedure even though conducting a lineup had been feasible. Analysis of Massachusetts appellate decisions further supported the view that there is no judicial preference for lineups in this jurisdiction. In only one case did the defense argue that the use of a photographic identification procedure was unnecessarily suggestive because the defendant was in custody and available for a lineup; and the court decisively rejected the argument.

For all these reasons during the year ending April 1, 1976, no more than 25 line-ups had been held by the Department. And to have written guidelines with a preference for them would have ignored both judicial realities and the preferences of Boston police officers. The draft guidelines on eyewitness identification, therefore, do not contain a general preference for lineups. They do, however, encourage the use of lineups whenever feasible and contain detailed instructions for the preparation and conduct. In addition, because of the frequent use of photographs for identification purposes, the guidelines contain extensive material to assist officers in conducting fair and non-suggestive photo procedures.

2. Arrest

a. Preference for Warrants

The ASU Model Rules do not cover arrest. It is, however, covered by the ALI Code of Prearrest Procedure and the Uniform Rules of Criminal Procedure. They suggest that warrants should be obtained when there is

sufficient time before an arrest is made in felony cases. In United States
¹
v. Watson, the Supreme Court held that a warrantless arrest made with probable
cause to believe a felony has been committed is valid even if there was ample
time to get a warrant. This decision is generally consistent with earlier
cases. Drawing from our experience with officers' general hesitancy about the
search warrant process, project staff assumed that the department would be
opposed to indicating any preference for arrest warrants in the arrest guide-
lines.

This issue was raised during three separate in-service training sessions
with detectives and patrol officers from District 1. To the surprise of project
staff, there was near consensus that it is advantageous to get arrest warrants
whenever possible, and further that it is a relatively common and uncomplicated
procedure. The primary reason is that if officers in another district of
the City (or in another jurisdiction) must be asked to make the arrest, those
officers will not act without a warrant. In addition, some officers indicated
that when a victim's testimony is essential to a case, there is value in
involving the victim in obtaining a warrant. They said the victim is then
more likely to appear in court when the trial is scheduled.

For these reasons, the initial draft of the arrest guidelines urges
that officers seeking a complaint obtain an arrest warrant whenever there
is an opportunity to do so.

b. Selective Use of the Arrest Power

Toward the end of this phase of the project, exploratory efforts were
made to determine the feasibility of developing guidelines on selective use
of the arrest power when probable cause to arrest exists. The issue of
selective enforcement is a sensitive one, and very little developmental work
has been on it. This area was not covered by the ASU Model Rules or the ALI
Code of Prearrestment Procedure.

¹ U.S. (1976)

To begin exploration, fifteen sergeants were brought to the Academy. They were shown a videotape and given hypotheticals about the apparent commission of certain offenses (e.g., smoking marijuana, minor assaultive behavior between spouses or neighbors, certain traffic offenses, disturbing the peace or drinking, violations by juveniles). Discussion then focused on the kinds of selective enforcement which are used, whether certain informal criteria are used in deciding whether to make an arrest in a given situation, and whether or not it would be useful to develop guidelines on the selective use of the arrest power.

The officers acknowledged that arrests are often not made when they could be. In fact, for minor offenses, like possession of marijuana, arrests are rarely made unless there are other reasons for doing so, like suspicion that the person is involved in more serious criminal activity, or is belligerent to the officer, or that an arrest is necessary to clear a troublesome or threatening situation. Some officers felt that leniency is particularly appropriate with juveniles. Others generally agreed with that view, but expressed concern about showing lenience for driving offenses which might jeopardize lives or for automobile theft or joy riding (given the high incidence of auto theft in Massachusetts).

In general, the sergeants saw value in establishing guidelines for selective enforcement. There was some concern that the guidelines not be so detailed as to interfere with the flexibility or commonsense of a police officer. So, preliminary guidelines on the decision to arrest were drafted, and will be used to begin a more extensive research effort on the decision to arrest and the alternatives to arrest which may be available.

3. Stop and Frisk

a. Length of Detention

In developing these guidelines, police officers were asked whether there should be an explicitly defined length of detention. The Arizona State University

Stop and Frisk Model Rule 301 on "Duration of a Stop" states that a detention should be "for a reasonable period not to exceed 20 minutes." Its commentary draws support for this time limit from the Model Code of Pre-Arrest Procedure and the Cambridge, Massachusetts Policy Manual.

To determine whether or not an explicit time period would be a help or a hinderance, we presented the problem first to the task force. Those officers felt that the potential for rigidity in a time limit -- that officers might see it as permitting stops to go too long or as requiring release of some detainees too quickly -- probably outweighed the benefits of a rule-of-thumb. But the task force agreed that this was an issue to be presented to street officers for guidance.

At the Academy, each group of officers was shown two videotapes that raised the question. In one, a person generally resembling a rape suspect was stopped. The suspect produced identification, but then refused to answer further questions with specificity, and finally simply stated that he was leaving. In the second videotape, a person again vaguely fitting the description of a robbery suspect was stopped. After an extended and unresponsive conversation, he started to walk away. One question from both films was whether the suspect could be detained forcibly for further identification and for how long, particularly, if the victim were coming to the scene. From these films, additional hypothetical situations were proposed both by Center attorneys and the task force members present and by the officers themselves. The officers were asked specifically whether they would prefer that the guidelines give exact time limits for detentions.

The initial response by the officers was that such a time limit would be quite helpful. However, as discussions progressed, our initial concerns about rigidity became reinforced. Eventually, the officers agreed that the best course was to spell out factors that would warrant detentions beyond a few minutes.

The discussions also revealed that there would likely be significant confusion between the time of detention during stops and the permissible time during which a bringback could be made for an eyewitness identification. (Current Boston Police Department policy established a two-hour time limit, beginning with the commission of the crime, in which an arrestee can be brought back to the victim for identification.) Finally, further discussions with police officers during ride-alongs confirmed the view that it was best not to establish a particular time limit for detentions.

As a result, the guideline on Duration and Location of Stops indicates that most stops will last only a few minutes and that "the longer the detention, the more justification you must have." It is anticipated that the examples will further define appropriate times and means of analyzing reasonableness of detentions.

b. Reasonable Stops

Because judicial decisions on stop and frisk take a case-by-case approach, it is extraordinarily difficult to devise easily applicable formulae for officers to apply. Major decisions do indicate that there is a parallel notion to reasonableness; that is the concept of necessity. Necessity is not articulated as a central factor in the ASU Model Rules. The ALI Model Code of Pre-Arrestment Procedure limits stops to those crimes "involving danger of forcible injury to persons or of appropriation of or damage to property," thereby eliminating the stop power in victimless crimes. It adds the proviso that "such action [be] reasonably necessary." (Section 110.1) Because neither the ASU nor the ALI approach seemed to respond to the problems of over-use of the stop power and police need to stop certain suspects, efforts to reach a mediating approach were undertaken.

The notion of necessity was first raised with the task force. They reviewed their experiences and their advice to the officers they supervise. They soon agreed that unless there is an actual need to hold someone or to frisk a suspect,

there is no need to exercise the stop power. Either a voluntary approach or alternative police investigatory procedures should be used. Thus, necessity would be a crucial factor to include. This viewpoint was buttressed to some extent during the Academy session, and more directly during ride-along conversations. The result was that necessity became a factor equal to reasonable suspicion, and a formula arose: Reasonable suspicion plus necessity. The guidelines then were written to set out the formula first in a brief statement, followed by two subsidiary sections defining reasonable suspicion and necessity.

IV. Determining Whether Guidelines Structure Discretion: Evaluation Strategies

A. Introduction

One of the persistent themes of a decade of social programs has been the importance of evaluation. In a hundred different federally supported programs from housing to education to drug control, many organizations have attempted to measure the effects of ameliorative efforts.¹ It is not easy to do so. Social phenomena do not lend themselves to good research design; they will not stop changing long enough to allow measurement; it is difficult to control one aspect of the organization when other changes keep impinging; evaluation models and tools are not yet rigorously developed or tested.

Police improvement efforts have been one object of evaluative research, and certainly police departments are one of the most difficult agencies to evaluate. The purposes of policing are complex, conflicting, and obscure. People cannot agree about what is important or what constitutes good performance -- with the exception of simple objectives like more arrests or lower rates of reported crimes. For another thing,

...maintaining experimental conditions cannot be permitted to interfere with police responsibility for life and property. For another, evaluation of an experiment by outside investigators can be threatening to police administrators. In addition, police personnel are not oriented to research. Too often, police supervisors and officers are so busy with complex, ever changing, day-to-day problems that they do not devote time to aid in experimental efforts.²

But even if police commanders are committed to evaluation -- as, in the case of this project, they were -- evaluation is difficult. One reason is that it is very hard to find usable data even in those few areas in which data are kept. Police departments keep records for their own purposes, not for those of researchers; and,

¹See, for example, Glaser, David, Routinizing Evaluation: Getting Feedback on Effectiveness of Crime and Delinquency Programs (1973).

²Kelling, George et al, The Kansas City Preventive Patrol Experiment: A Technical Report (1974) iii

their data are rarely adequate for good research.

Of all projects imaginable it is, in some respects, most difficult to measure the effects of changes in police policy. But in this effort, it was essential. The purpose of this project has not been simply development of policies; there was never any doubt that the Center for Criminal Justice -- or, for that matter any other competent legal research organization -- could write policies for a police department. What has been and continues to be in doubt is whether anybody, however competent, can write policy which is used by police officers on the streets. This has been a principal purpose of our project: To formulate and test an experimental evaluation design to see if it can measure changes in police perceptions and practices as a result of new police policy.

The Center's evaluation design first contemplated heavy reliance on Department data like incident reports and booking sheets. But the staff found that those records did not contain adequate information about the nature, scope, and outcome of investigative procedures like stop and frisk. And without making significant changes in the reporting system of the Department, those data would not have been available after the project began. And even if the reporting system was changed -- a very difficult change to make -- the data it produced would be limited to how often things happened, not the way in which they happened.

So first the Center considered designing a supplemental form on which officers would be asked to record in great detail their decisions and behaviors after relevant incidents. That method was rejected for two reasons. There was little reason to believe, at the early stages of the project, that officers would have enough stake in the project to accept this extra burden. And second, the burden would have been considerable; the form would have required a great deal of work.

Evaluators then considered observations made in the field by trained people riding with detectives. This too was rejected -- partially because at that stage

it was believed that observers would not be accepted; but also because the incidents of interest occur so rarely that observer - collected data would have consumed a great deal of time and and would have been very expensive. Observation was, however, retained as a way of validating data collected from the officers themselves.

The Center then experimented with hypotheticals. Written fact situations were distributed to a group of patrol officers who were asked to discuss how they would have responded. The hypotheticals were to be distributed at various stages of the project to measure changes in responses over time. But the questionnaire completion/interview process took 1-1/2 hours; and the officers were reminded by the hypotheticals of situations they had actually encountered. They tended to respond to those actual situations, rather than to the hypotheticals constructed for the use of the project.

Ultimately, for reasons discussed earlier in the report, the Center designed an experimental evaluation strategy with training at its core; and because training assumed such a major role both in data collection for the project and its evaluation, a second objective of the evaluation became measuring the impact of training on officers understanding and use of the new guidelines.

B. The Experimental Research Design for Evaluation

With the various constraints just mentioned to other evaluation strategies, the Center selected another approach towards preliminarily testing the impact of guidelines on structuring discretion. This was a quasi-experimental design which allowed Center staff to introduce something like experimental design into our scheduling of data collection procedures (e.g., the when and to whom of measurement), while acknowledging less than the full control over the scheduling of external stimuli.¹ The experimental evaluation design which was tested will now be described.

¹For a more detailed discussion, see Campbell and Stanley, Experimental and Quasi-Experimental Designs for Research, (1963).

Half of the officers from each of the four experimental units (Districts 2 and 4, Vice and Drug Control) attended In-service I where they were exposed to the original videotaped situations and answered the questionnaires. Following the first in-service training session, three groups were designated. Experimental group A was composed of half of the detectives from District 2 and DCU; they attended a second in-service training session and for a two month period, worked under the new guidelines. Experimental group B, composed of the remaining detectives from District 2 and DCU did not attend the second in-service training session and during the experimental period, also worked under the new guidelines. Finally, a control group composed of detectives from Vice and District 4, neither attended the second in-service training session nor worked under the new guidelines during the experimental period.

Allocating the officers in this fashion enabled the Center to establish a quasi-experimental evaluation design testing the various effects of a sequence of experimental treatments. These treatments, and the groups subject to these conditions, are as follows:

	Voluntary Adoption of New Guidelines	No Adoption of New Guidelines
Participation in In-service Training II	Experimental Group A	
No Participation in In-service Training II	Experimental Group B	Control Group

The evaluation design called for the relative effectiveness of these treatment sequences to be measured by comparing the results of the questionnaire administered during the In-service I with the results of a repeat administration during the course of a third in-service training session (In-service III).

A second in-service training session (In-service II) was timed to coincide with the voluntary adoption of the new guidelines by Drug Control and District 2.

In-service II offered training in the content and rationale of the new guidelines to experimental group A, thus permitting the Center to evaluate the impact of training on the officers' understanding of and compliance with the new guidelines. These materials were presented to the officers through traditional classroom lectures supplemented with a series of videotaped examples. The videotapes used in the second in-service training session were not the same as those used in In-service I because the Center did not want to use the videotapes used for evaluation to illustrate guideline applicability. Instead, a second series of tapes were prepared, complimenting those developed by Center staff for In-service I. In-service II was a day-long session presented jointly by Center staff and members of the task force. Approximately half the detectives from the Drug Control and District 2 attended.

Following In-service II, the guidelines were distributed to all detectives in District 2 and Drug Control. In this way, Experimental Groups A and B were now operating under the new guidelines, but only Experimental Group A had received special training in their content. Follow-up sessions, approximately one week after the distribution of guidelines, were held for individuals in Experimental Group A to clarify any questions which may have remained.

District 2 and Drug Control detectives worked with the guidelines for approximately two months. As a final step in the evaluation design, at the end of this experimental period all officers in both the experimental group and the control group were brought back to the Training Academy for a third and final in-service training session. At In-service III officers viewed the same videotapes as were presented during In-service I. As half of the officers in each of the test groups were exposed to this post-test measure for the first time, it is possible to control for the interactive effect expected from viewing the same videotapes twice.

C. Evaluation Results

Analysis of questions asked in response to a video situation is a good way to explore matters like the circumstances under which officers would seek a search warrant. Examining responses to single question items, however, is of limited value because it does not shed light on the relationships among issues. For example, one might want to know to what extent officers would search an office, but not the desk drawer or the secretary's office. If the relationships between those specific beliefs could be revealed, one would have a more comprehensive and precise understanding of officers' overall responses to situations, and a richer image of criminal investigative procedures.

Not knowing the relationship among questions severely limits the internal validity of the questionnaire. For example, if a significant change is observed in response to "Would you ask permission to search a vehicle," it is not clear whether officers are more willing to search without a warrant, or were willing to get a warrant to search. The meaning of that change can be drawn only from a group of questions which make officer attitude more precise.

To identify officers' patterns of response, a common factor analysis was made of the questionnaire responses to twelve of the 15 video situations. (Factor analysis is a method of examining the relationships among a set of questions.) For example, in the first video situation, there was a strong relationship between the questions: "Would you get a search warrant?" and "Would you search Oakes' office?" From the twelve video situations, 30 distinct patterns of response were identified.

TABLE 1

Factor Patterns From the Videotape Questionnaire1. Scene 1a - Arrest William Oakes - Stolen Goods (questions 1-6)Patterns Identified

- a. Search both Oakes' and the secretary's offices
- b. Ask the secretary to leave
- *c. Not search the desk drawer and get a search warrant

2. Scene 1b - Arrest and Search Warrant - William Oakes (questions 12-17)Pattern Identified

- a. Detain visitor, detain visitor for questioning, search visitor's briefcase

3. Scene 2 - Narcotics Suspect (questions 18-31)Patterns Identified

- *a. Get an arrest warrant for the girl and an arrest warrant for Ziggy and not proceed directly to the 1600 Block
- b. Follow girl into apartment and not wait at the door
- c. Arrest the girl
- d. Search room into which the girl fled

4. Scene 2a - Other rooms, Other people (questions 32-36)Patterns Identified

- a. Detain and frisk people from the other room
- b. Not arrest people from other room (Note: the highest factor loading on this pattern was .41 Arrest People from Other Room)

5. Scene 3 Bradford Hotel (questions 37-43)Patterns Identified

- *a. Not restrict search to room mentioned on warrant, open door to see whats behind it, and enter the next room
- b. Get search warrant for other room
- c. Ask the manager to stay at door (highest factor loading .51)

6. Scene 3a - Suitcase on fire escape (questions 44-48)Patterns Identified

- a. Not leave suitcase on fire escape alone, search it
- b. Not get a search warrant for the next room, search room #609 immediately

* Indicates patterns which demonstrate significant change.

7. Scene 4 - House search - with warrant (questions 49-55)Patterns Identified

- a. Look through the letters, use the letters to support an affidavit.
for another arrest warrant, use the letters to support an arrest,
seize the white powder
- b. Enter the house though no one home, not wait before entering

8. Scene 5a - Armed Robbery, Driver Arrested and Frisked (questions 56-76)
Scene 5b - Hit and Run PersonalPatterns Identified

- a. Force lock of the trunk without gettin a search warrant
- *b. Search the inside of the hit and run car without the driver's permission
- c. Ask arrested armed robbery driver for keys and take the keys if he
won't give them to you.
- d. Not leave the car at the scene of the hit and run arrest, seize it

9. Scene 6b - Variation on Locked Car - Wife Complains (questions 98-105)Patterns Identified

- a. Not open car door but return to house and ask husband about the rifle
- b. Take no action
- c. Ask wife consent to search the car, ask wife to search the car

10. Scene 7a - Car Search - Informant (questions 106-111)Patterns Identified

- a. Put woman in car
- b. Get a search warrant
- c. Investigate to find other witnesses

11. Scene 7b - Car Search - At the gas station (questions 112-116)Patterns Identified

- a. Get a search warrant, request backup to guard car while getting
search warrant
- b. Search car with or without the permission of the gas station attendant

12. Scene 7c - Car Search - Rope (questions 123-127)

- a. Untie rope securing trunk, you have probable cause to make search
- b. Shine flashlight into trunk, stick hand into trunk

*Indicates patterns which demonstrated significant change.

Table 1 exhibits the thirty factor patterns revealed by the factor analysis of the videotape situations. Of these thirty, ten are responses to situations addressed most directly by the guidelines. "Searching both Oakes' and the secretary's offices" and "Not searching the desk drawer" and "Getting a search warrant" are procedures covered by Guideline 301, Searches Incident to Arrest. The officers were told in both the guidelines and the second in-service training session that it is permissible to search only within the immediate reach of the suspect incident to arrest. Guidelines 302 and 303, also dealing with procedures to follow during an arrest, explain protective searches of other persons during an arrest. These guidelines would allow the officers, under certain circumstances, to detain the visitor in Oakes' office and to frisk his person, but not to search the visitor's briefcase. "Detaining and Frisking People from the Other Room", the first factor pattern in scene 2a (see Table 1) is covered by Guidelines 302 and 303, Freezing the Scene and Protective Sweep of the Premises. Under the guidelines, it would have been permissible for the officers to "detain and frisk the people from the other room." Guidelines dealing with Motor Vehicle Search Incident to Arrest and those dealing with probable cause to search a motor vehicle would allow officers to "Search portions of the inside of the vehicle stopped for hit and run" without asking the permission of the arrested driver (factor pattern b in scene 5b, see table 1) Guideline sections dealing with Probable Cause to Search a Motor Vehicle and with Locked Vehicles suggest that in Scene 6b the officers may remove a rifle observed in a car parked in a driveway following a domestic dispute. These same sections of the guidelines, however, recommend that the officers get a warrant to search the car suspected of having guns in the trunk. (Scene 7b factor pattern b, see table 1.) In the variation of that scene when the car may be moved imminently (scene 7b factor pattern b, see table 1), it would be permissible for the officers to "shine a flashlight into the trunk" or to "Stick their hand into the trunk" according to the guidelines dealing with probable cause to search a

motor vehicle (factor pattern b). In the scene where the officers have an arrest warrant for Oakes and a search warrant for his office (scene 1b) Guideline 217 applies. This guideline suggests that the officers may frisk the visitor if he looks suspicious, and detain him briefly for questioning. Guideline 214 applies to the scene at the Bradford Hotel (scene 3, pattern a) in which the officers have a search warrant for one room but may wish to search an adjoining room. In this instance, the guideline suggests that the officers should get a warrant to conduct a thorough search of the next room. The same guideline applies to a variation of that scene (scene 3a, pattern b) where a suitcase is found on a fire escape common to all rooms; again, officers should seek a search warrant for the adjoining room. Guidelines 210 and 212 apply to scene 4, pattern b in which officers have a warrant to search a private home. In this instance, the guidelines suggest that the officers should wait outside the house long enough to be admitted and enter the house with no one home only if it is determined that a waste of the department's resources to return at another time.

D. Summary of Evaluation Findings and Implications

Of the thirty procedural patterns identified in the twelve videotape situations factor analyzed, ten are situations addressed most directly by the guidelines. Four of these were "significantly" affected by the in-service training session run by the Center staff, and one was significantly affected¹ by officers seeing the video twice.

Initially, some assessment must be made as to why the guidelines and the training related to them did not affect responses more broadly. After talking to a number of officers who were exposed to either the guidelines alone or to both the guidelines and training, and after staff review of the approaches used, certain conclusions can be drawn. First, too much material was covered at one

¹ For a more detailed discussion of these results, see the Technical Appendix.

time both in the guidelines and during training -- the guidelines covered three complex areas and were over 100 pages long; the training during in-service II was a full day long and simply covered too much ground too quickly. Second, there was insufficient follow-up with the officers after in-service II to discuss the guidelines in a less structural setting -- there were only three follow-up sessions with District 2 and one with the Drug Control Unit. These sessions were valuable; but only a limited number of issues were covered during them and there was no further training. Finally, guidelines and training may not have affected responses more broadly because prosecutors and judges were not informed of the guidelines at this stage of the project, so that their actions in court could not yet be used to reinforce the importance of the guidelines.

As noted above, ten of the thirty factor patterns are responses to situations addressed most directly by the guideline and four of the ten were "significantly" affected by in-service training, three affirmatively or neutrally and one negatively. These were:

--In the situation dealing with a drug transaction described by an

informant, the tendency towards not proceeding directly to the prescribed apartment and getting arrest warr
prescribed apartment and getting arrest warrants for both the

suspects mentioned by the informant was significantly less prevalent among the officers who attended the in-service training session.

The training and guidelines indicated that corroboration of the informant's statements was needed before sufficient probable cause existed to obtain warrants. Thus, the pattern of responses which called for proceeding to look for the suspects was consistent with the training and guidelines.

--The response pattern tending towards searching the inside of a car stopped for armed robbery after the driver is arrested and frisked is consistent with the guidelines and the points covered in the second in-service training session. The response pattern was significantly more prevalent among the officers who had attended

the second in-service training session. This response to the situation is generally consistent with training and guidelines but is not necessarily the preferred method for handling this specific situation.

-- In the situation involving executing a search warrant for a hotel room with the occupant absent, the tendency towards searching the adjacent room (not mentioned in the original warrant) without obtaining an additional warrant was more prevalent among the officers who attended the second in-service training session. This response to the situation is directly contrary both to the guidelines and to the points covered in the second in-service training session.

It is difficult to generalize from these findings, but certain conclusions seem in order. First, the responses which were significantly affected by in-service training, were for the most part, in those areas which received a disproportionate amount of attention in formal in-service training or in follow-up sessions. This is particularly true of the drug transaction and car search situations, and it certainly supports the notion that effective training is a critical component in a policymaking process.

Why one response changed contrary to the guidelines is harder to explain. A possible explanation, however, is that both in-service training and the guidelines stressed greater freedom under the law in executing searches and seizures, than officers had been aware existed. In some instances, where officers' responses were affected, the change was consistent with this message. Even when officers were provided with detailed guidelines outlining the limitations of police discretion, the effect of training was not always related to an understanding of these limitations.

For example, whether to search a room adjacent to one named in a search warrant was discussed at length. Both training and the guidelines stressed that the second room could be searched only if there is probable cause to believe that the occupants regard the two rooms as one single area. It was also emphasized that it is always safer to get an additional warrant for the adjacent room. Yet, when the same problem was presented in videotape, officers showed more willingness to search the adjacent room without seeking an additional warrant. They appear to have responded to the implied greater freedom to search, ignoring the recommendation that additional warrants always be sought.

The scope and intensity of searches incident to arrest were also discussed at length, particularly of areas where the arrestee has a reasonable expectation of privacy (like an office desk). Officers were told that they could search any place or object which the suspect is able to reach at the moment of arrest. It was specified that "moment of arrest" means that short period of time during which the officers are securing control over the arrestee. To search beyond this limited space, guidelines and training stressed, a search warrant is required. When presented with this problem in a video sequence, the control group was more likely than the experimental group to refrain from searching the desk drawer and getting a search warrant. Again, the officers appear to have responded to the greater freedom implied by the guidelines than to the limitations the law places on their discretion.

While all this suggests that perhaps a little knowledge is a dangerous thing, the little change which occurred suggests that officers were presented with too much information at one time, and had difficulty in assimilating more than the superficial points. Indeed, at the conclusion of the second in-service training session, several of the officers informally commented that the amount of information presented was too much to learn in a short period. They suggested that the material be broken into more manageable units, and covered in a series of one hour sessions. A similar recommendation was made about the printed guidelines and

recommendations. The evaluation supports those recommendations.

There is an alternative hypothesis: That changes in the officers are due to greater candor; but this is not supported by the data. If the officers were being more candid as a result of contact with the Center staff during the third in-service training session, the effects of In-service I would have been more prominent in the final analysis of variance where the effect was tested.

E. Future Evaluation Strategies

1. Greater Separation of Input and Evaluation

In the course of this project the Center used the results of the video questionnaire both for officer input and for evaluation. Concern has been expressed about whether the video questionnaire can adequately fulfill both functions simultaneously.

The Video Questionnaire As A Source for Officer Input. Because the officers themselves often are not aware of how they will react to a situation until confronted with it, the video questionnaire can provide a richer image of how officers might react to a series of situations than can open-ended interviews. When it is not possible to observe the officers' procedures firsthand in the field, or when it is necessary to compare the reactions of different officers to the same situation, the video questionnaire can provide a cost-effective and relatively efficient means of obtaining this information. As discussed previously, the Center experimented with written questionnaires where the fact situations were read to the officers and they were asked a series of questions on how they would react to the situation described. This technique proved to be a less satisfactory method of obtaining officer input than the video questionnaire for several reasons. First, the officers tended to interpret the described situations in terms of their previous experiences. Often times, even before the Center staff had finished reading the fact situation to the officers, they would comment that it sounded just like a particular situation that they had

been confronted with in the past. They would recall the previous experience, and all subsequent questions regarding what they would do in the situation described by the fact situations were answered in terms of what they had done in the past on that particular occasion. This raises the very serious problem of validity. Even though the officers may have been read the same fact situation, they were all responding to different fact situations. This makes comparing the responses of the officer to the interviews exceedingly difficult. This problem was not encountered with the video questionnaires.

A second problem with the previous technique was boredom. This problem was not encountered with the video questionnaire which seemed to hold the officers' attention to the fact situations much more successfully than was the case with the written questionnaire.

Using the video questionnaire for officer input has limitations in that it does not provide any information on why the officers would take a particular course of action under the circumstances. It should not serve as the only mechanism for officer input, but should be supplemented with open-ended interviews and field observations.

The Video Questionnaire as a Method for Evaluation. Since the video questionnaire provides quantitative data on the officers' reactions to a standardized series of situations the method has much to offer as an evaluation tool. However, if the video questionnaire is also used as a vehicle for obtaining officer input, there is some risk that responses on the second post-test administration of the questionnaire might be affected by the open-ended interview during the first administration. An analysis of variance of the results of the second administration of the questionnaire during the third in-service training session did not indicate that this was a significant effect. Officers who attended In-service I did not for the most part differ significantly from those who had seen the videotapes during In-Service III. The exception to this was the pattern of responses to the domestic dispute situation where the fact situation in the videotape is somewhat confused, and the

officer may have benefited from having had the situation clarified for them during the first in-service training session.

2. Building On the Factor-Analyzed Questionnaire

In the initial fifteen months of this project, questionnaire responses to videotapes were the primary evaluation tools. This evaluation was an exploratory process. The viability of the approach has been demonstrated, and will be refined in the future. Future results will be used to create hypothetical situations to present in questionnaire form. Responses to them should indicate the level of understanding of the guidelines, and will be analyzed to isolate subsets of items which empirically cluster together. The responses to these items can then be combined to produce scales, which can be correlated with performance data to begin building indicators of actual behavior. Based upon the results of the analysis of the questionnaire data, certain important situations can be portrayed on videotape, and officers asked to indicate how they would deal with each situation. To better assess the validity of these responses, correlations between the questionnaire responses and available performance data can be analyzed. Observation schedules and self-reporting techniques can then be devised to record information about detectives' use of guidelines. Results of the analysis of questionnaires video situations can be used, in conjunction with data from police records and observations, to assess the impact of guidelines on police behavior. The evaluation efforts during the project's continuation phase will use these approaches.

F. Assessment of Officer Response to the Guidelines and the Policymaking Process

Aside from the experimental evaluation strategies which were developed and tested, the project wanted to obtain a less formal assessment to the guidelines and the policymaking process which had been devised. It did this in many ways.

First, during IS-III, the officers present were divided into small work groups. Specific time periods were allocated to discuss the policymaking process. Along with the work group approach, officers were asked for candid reactions during ride-alongs and in other settings. Finally, feedback was obtained by task force members both in their capacity on the task force and in their role of supervisors. The response has been exceedingly favorable. The initial reaction to the project was a cynical one. As contact with the project grew and as its objectives became clearer, support expanded. Nearly all the officers we have worked with now understand the need for guidelines and support their development. Most officers also support the involvement of officers at all levels in the policymaking process. They also feel that the use of hypothetical problems in a training setting is an excellent way of getting the active involvement of the rank and file. Most officers also recognize the importance of observations in the field and do not object to ride-alongs if they are related to this project. A high percentage of officers feel that this project will even obtain a wider support once it becomes evident that judges and prosecutors will utilize departmental guidelines in defining reasonable police practices. The assessment of the Commissioner, his staff, the task force, and the Training Academy staff is that guidelines, such as those already developed, (as long as they are closely related to training and are used by courts and prosecutors) will become the most significant technique for structuring the discretion of police officers in the area of criminal investigation. As can be seen from this report, however, much research and development remains to be done in the area of policymaking. Based upon the assessments which has been made by departmental personnel and project staff, additional work in this area should pay significant dividends to the law enforcement community in the years ahead.

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