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OAKLAND
POLICE
COURTS

ANNOTATION:
USE IS MADE OF THE SERVICES OF AN ATTORNEY AND THE PRIVATE BAR BY THE POLICE DEPARTMENT.

ABSTRACT:
THIS PROJECT EMPLOYED LEGAL SKILLS TO REDUCE POLICE- COMMUNITY HOSTILITY. THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW HAS PROVIDED TO THE OAKLAND POLICE DEPARTMENT THE SERVICES OF AN ATTORNEY AS THE PROJECT DIRECTOR. HE HAS SERVED UNDER THIS GRANT FOR THREE DAYS EACH WEEK SINCE JUNE 15, 1969, AS STAFF ASSISTANT TO THE CHIEF OF POLICE. THE LEGAL SKILLS PROVIDED UNDER THIS GRANT HAVE BEEN THOSE OF THE PROJECT DIRECTOR, AS OFFERED DIRECTLY TO THE CHIEF, AND THOSE OF THE PRIVATE BAR, AS OFFERED THROUGH THE OAKLAND LAWYERS' COMMITTEE TO THE PROJECT DIRECTOR AND THE CHIEF OF POLICE. THIS REPORT SETS FORTH, THE ACCOMPLISHMENTS AND CURRENT ACTIVITIES OF THE PROJECT. (AUTHOR ABSTRACT MODIFIED)

Police

FINAL REPORT

SUBMITTED TO

THE NATIONAL INSTITUTE OF LAW ENFORCEMENT
AND
CRIMINAL JUSTICE

FROM

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

PROJECT TITLE:

AN EXPERIMENT IN USING LEGAL SKILLS
TO REDUCE POLICE-COMMUNITY HOSTILITY

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tained herein.

INTRODUCTION

This Project has sought to employ legal skills to reduce police-community hostility. The Lawyers' Committee for Civil Rights Under Law has provided to the Oakland Police Department the services of an attorney, Miss Linda Alden Rodgers (hereinafter referred to as the Project Director or the Director), who has served under this grant for three days each week since June 15, 1969, as Staff Assistant to the Chief of Police, Charles R. Gain. The legal skills provided under this grant have been those of the Project Director, as offered directly to the Chief, and those of the private bar, as offered through the Oakland Lawyers' Committee to the Project Director and the Chief of Police.[1]

This report will set forth, first, the accomplishments and current activities of the Project, and, second, the plans of the Project if it is refunded.

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[1] See EXERCISE ACORN PROPOSAL A-253, p. 1: "The primary goal of this project--aside from the direct assistance offered to the Chief through Miss Rodgers--is to encourage the private bar to contribute legal skills in the effort to reduce police-community hostility and to improve the criminal justice process."

PROJECT ACCOMPLISHMENTS AND CURRENT ACTIVITIES

A. THE CITATION RELEASE PROGRAM

1. Introduction. The Citation Release Program has been the Director's major project in terms of time allocation and, possibly, in terms of seminal import.[2]

Although citation release is not without precedent, the Oakland program will be innovative in several respects. First, all misdemeanants will be eligible. (Most departments limit their use of citations to specified misdemeanors.) Second, both field release and station-house release will be provided for. (Most departments use either one or the other, but not both.) The station-house release aspect of the program is, in effect, a police "own recognizance" program, and a Vera Institute-type point system will be relied upon to determine which persons, not cited in the field, will be released from the Jail. Finally, members of the Department will be required to issue the citation, except in cases falling within any of several disqualifying provisions. (Most departments give officers discretion whether to cite, with little or no guidance about when that discretion should be exercised.)

The essence of the program may be briefly described. After the arrest of any adult misdemeanant, the arresting officer is required to issue a field citation unless the person is disqualified under any one of the following "physical arrest criteria": (1) if the person requires medical examination or medical care, or if he is unable to care for his own safety; (2) if there is a reasonable likelihood that the offense would continue or resume, or that persons or property would be endangered by the arrested person; (3) if the person cannot or will not offer satisfactory evidence of identity; (4) if the prosecution of the offense for which the person was arrested, or of another offense, would be jeopardized; (5) if a reasonable likelihood exists that the arrested person will fail to appear in court; or (6) if the person demands to be taken immediately before a magistrate or refuses to sign the citation. See Draft No. 7, Paragraph (III)(A)(1-6) (APPENDIX A-1). If the misdemeanant is not cited in the field, Jail personnel are required to make a background investigation, employing an objective point system comparable to the Vera Institute approach, to determine whether the prisoner will be likely to appear in court as promised. If the prisoner "passes" the background test and if, in addition, there is no strong reason to detain him for purposes of public safety (e.g., in a riot situation), he "shall" be issued a jail citation. When filed with the court, the citation constitutes a complaint.

2. Preparation of the General Order. To impart a thorough understanding of the complexities of the citation release program, it is necessary to describe

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[2] The Davis, California Center on Administration of Criminal Justice has studied various citation programs and will release a paper on the subject in the next few months for "wide circulation" as "something for departments and district attorneys to consider." The Center's Director, Floyd Feeney, Esq., stated that the Oakland procedures "seem to me to be about the clearest and best that I have seen." Letter from Floyd Feeney, Esq. to Linda Rodgers, November 28, 1969.

its development in some detail.

In late June of 1969 Chief Gain made the decision that the Oakland Police Department would adopt field citation procedures. The task of designing a field citation program was assigned to the Project Director and then submitted to the Lawyers' Committee for its approval and suggestions. The Committee then engaged Mr. David Klein, a Hastings law student, to prepare research and a preliminary draft for the Department. Mr. Klein, after several discussions with the Project Director, prepared a preliminary draft for submission to the Lawyers' Committee. Upon Committee approval, the draft was forwarded to Chief Gain. A second preliminary draft was prepared by Mr. David Wentworth, a doctoral condidate in Political Science at the University of California. The Director relied upon portions of these drafts, as well as her extensive discussions with personnel in all the various divisions and agencies that would be affected by the new procedures, to formulate Draft No. 1 of a Departmental General Order. A decision was made at this juncture to broaden the program to include jail citations, as well as field citations.

On September 19 a four-hour meeting of administrative personnel (Deputy Chiefs, Captains, and other division heads) was held by the Chief and the Project Director to discuss Draft No. 1, word by word, issue by issue.

On September 22 the Director held a meeting with Municipal Court Clerks and a Deputy District Attorney to present and explain Draft No. 1. Problems of court calendaring, routing of documents, and the nature of the citation form were discussed and tentatively resolved.

On September 23 Chief Gain and the Director met with nine of the eleven Oakland Municipal Court Judges to present an explanation of the citation release program and to request comments from the judges. The primary questions concerned court calendaring, release criteria, and the issuance of citations after arrests pursuant to warrant.

The Director subsequently prepared a memorandum to the judges on the question of citations after warrant arrests (APPENDIX A-2), and the judges agreed (APPENDIX A-3) to change the wording of the warrant so that a citation would clearly be permissible if the person were "otherwise eligible," within the meaning of the Departmental General Order.

The suggestions made at the meetings of the police administration, of the clerks and the Deputy District Attorney, and of the judges were incorporated by the Project Director into Draft No. 2 (October 7). Draft No. 2 was presented to the Deputy District Attorney for his further suggestions. These views were presented, along with Draft No. 2, to Chief Gain for his revisions and suggestions.

Draft No. 3 was completed by the Director on October 23 to reflect the Chief's additional queries and comments.

The Director spent October 24 in the Jail (both Men's and Women's Jails) studying the jail procedures and discussing refinements of the jail citation procedures with the Jail Commander.

Draft No. 3 was then submitted to Captain Palmer Stinson, the Commander of

the Research and Development Division, for editing in accordance with general order format. The Director worked with Captain Stinson to accomplish the editing.

Draft No. 4 was discussed, in the Chief's absence, by the Deputy Chiefs, Captain Stinson, and the Project Director in a one-and-a-half day meeting, October 27 and 28. Their conclusions were reflected in Draft No. 5, which was prepared, again, by the Director and resubmitted to the Deputy Chiefs for their approval.

Draft No. 5 was then presented to all captains and division heads whose operations would be affected by the new procedures. The few additional suggestions made in this meeting on October 29 were inserted in the draft and presented to the Chief upon his return October 30.

The Chief forwarded copies to the District Attorney's office for suggestions, and on November 6 the Director met with the Chief Assistant District Attorney to resolve several details regarding routing procedures and dates of implementation. The draft was approved by the District Attorney, who gave his view that the Oakland General Order would become the model for other law enforcement agencies in Alameda County. He requested that copies of the final order be forwarded, upon completion, to all chiefs of police in Alameda County and to the Alameda County Sheriff's Department. (Already the Department has received and fulfilled requests from the following law enforcement or prosecuting agencies for information and copies of the latest general order drafts: the Albany, Berkeley, Beverley Hills, Emeryville, Fremont, Hayward, Livermore, Newark, Pleasanton, Richmond, San Leandro, San Francisco, and Union City Police Departments; the Alameda County Sheriff's Department; and the Monterey County and Sonoma County District Attorneys.)

After reviewing Draft No. 5, Chief Gain suggested that field and jail citation procedures should be separated in the Order. Thus, Draft No. 6 was written by the Director on November 19 to accomplish this revision.

Since that time, a final meeting was held by the Director with the Clerk of the Court and the Deputy District Attorney. It was there decided that a change in routing procedures would be desirable. The District Attorney also advised the Director that for all cases originated by citizen's arrest, he would require the arresting citizen to appear at his office to sign a complaint. This procedure is not legally compelled, since a citation itself constitutes a complaint, but it was favored for reasons of policy. Draft No. 7 (APPENDIX A-1) was prepared by the Director on November 21 to accomplish these final changes.

The draft is presently undergoing final revision by Chief Gain.

3. Preparation of the Citation Form. The design of the citation form was also a lengthy process. The Director was fortunate to have assistance on this aspect of the project from Officer Robert Van Nort, who is assigned to the Research and Development Division. He undertook the primary responsibilities for design of the form and upon its completion he and the Director met with attorneys from the Judicial Council of California, which is required by statute to approve the citation form. Initially, the form designed was for use strictly as a misdemeanor citation. After the design was completed and preliminary approval from the Judicial Council had been obtained, however, the decision was made by the Research and Development Division to redesign the misdemeanor citation form so that it could

be used as a traffic citation as well. The form, accordingly, was redesigned and approved by the Judicial Council on October 7, 1969. (APPENDIX A-4).

4. Revision of the Detention Form. The citation program, as it operates in the Jail, also required the revision of the Detention Form ("402 form") to include entries for information about the length of the prisoner's residence at his present address, the length of his residence within the state, his marital and family status, his employment, the length of that employment, and his prior arrest record. The form was revised and ordered by Officer Jane Duncan, whose extensive knowledge of Departmental procedures proved very helpful on other aspects of the project, as well. Until the revised form arrives on January 1, 1970, a temporary form, prepared by the Director, is being utilized.

5. The Special Jail Orders. Because the new statute affecting citation release procedures became effective on November 10, the Director prepared a Special Jail Order for purposes of compliance with the law. [CAL. PEN. CODE § 853.6(i) provides: "If the arrested person is not released pursuant to the provisions of this chapter prior to being booked by the arresting agency, then at the time of booking the arresting officer, the officer in charge of such booking or his superior officer, or any other person designated by a city or county for this purpose shall make an immediate investigation into the background of the person to determine whether he should be released pursuant to the provisions of this chapter. . . ."] Four weeks later the official Jail Division General Order was prepared by the Director for the signature of the Jail Division Commander. (APPENDIX A-5).

Thus, on November 10, the Jail began background investigations for all misdemeanants eligible for citation release. A trial period of four weeks has been designated for resolving any procedural problems in the Jail and to gain experience with the techniques and procedures of background investigations. The first citation will be issued in the Jail on December 10, 1969. (The issuance of field citations, incidentally, will begin at the first of the year. The reason for the delay was the printer's inability to produce the number of citation forms necessary for distribution to all members of the Department. The printer went to considerable lengths to produce a limited number of temporary forms for use only in the Jail.)

6. The Background Investigation Form. It was the decision of the Chief to use the Vera Institute-type point system to aid in the determination whether a person would be likely to appear in court as promised. The Director studied various own recognizance programs and drew upon several forms used in other cities to prepare "Trial Form 11/7/69." This form has been used in the Jail for two weeks and, upon the basis of that experience, has been revised to make its completion more efficient. See Trial Form 11/23/69 (APPENDIX A-6).

A minimum point attainment for release has not yet been designated, for the Chief wished to remain flexible until some experience with the point system had been gained. A low point score, moreover, establishes nothing but a presumption in favor of detention, and release is nonetheless possible if other evidence militates in its favor. Similarly, a high point score establishes only a presumption in favor of release. The reason for detention (e.g., outstanding defaulting-defendant warrant), however, must be clearly stated by the interviewing

officer.

7. Major Substantive Issues Raised in the Design of the Citation Release Program

a. Whether juvenile misdemeanants should be released pursuant to the General Order. No. A comprehensive juvenile citation program is already in effect. Combining the two programs would not be feasible because different forms are employed, different document routing procedures are followed, different courts are utilized, different pre-trial procedures are in effect, and different policy considerations are brought to bear.

b. Whether issuance of the citation should be discretionary with the officer. No. The citation should be mandatory for all persons who are eligible. The release criteria, thus, should be comprehensive, but flexible enough to allow the proper exercise of judgment by the officer. He must, for example, exercise judgment in order to determine "whether the offense would be likely to continue" if a citation were issued.

c. Whether jail release criteria should be the same as field release criteria. No. The field citation is optional by statute. A background investigation in the Jail is required, however, for any misdemeanant not released prior to booking "to determine whether he should be released pursuant to the provisions of this chapter." CAL. PEN. CODE § 853.6(i) (Supp. '69). Although the statute sets forth no release criteria, its strong implication is that the jail citation is mandatory for all those who qualify for release. It is thus the responsibility of the law enforcement agency to promulgate release standards that are lawful and reasonable. It was the Director's view that detention in the Jail would be arbitrary, and thus unlawful, unless the prisoner's background investigation or other evidence demonstrated that he would be unlikely to appear in court as promised or the circumstances of the arrest, combined with the prisoner's record, demonstrated that detention in the interests of public safety was desirable.

d. Whether specific misdemeanors should be excluded from consideration. No. The six field citation criteria are all-inclusive and easier for the officer to commit to memory than a list of excluded offenses. Some offenses, because of their nature, of course, would never be cited for (e.g., public intoxication). The guiding principle, however, is general (e.g., ". . . the person . . . is unable to care for his own safety . . . .") and does not refer to any particular offense. In short, any legitimate reason that might be advanced to exclude a particular offense would be fully reflected by the six general principles.

Specific exclusion of a given offense, moreover, might unfairly exclude the special case that arises to prove the exception to the rule. Listing offenses, finally, always leaves open the possibility that some offenses might be unintentionally omitted from the list.

e. Whether, even though other specific offenses are not excluded from citation eligibility, should resisting arrest be the one offense for which a citation is never issued. No. The same considerations govern here. Exclusion of the offense would be arbitrary. The citation decision should depend upon the circumstances of the particular case and be governed by the six general principles. Whether the person who resisted or interfered with the officer should be physically

arrested should depend upon the nature of the resistance or interference, the attendant circumstances, and the other factors relevant under the general criteria.

f. Whether a physical arrest should be mandatory whenever the conduct would, if there were prior convictions of the same offense, constitute a felony rather than a misdemeanor. No. Probably the greatest use of citations will be for shoplifting, which can constitute a felony after prior convictions. A mandatory arrest policy would be the tail that wags the dog, for most offenders are misdemeanants. If a felony charge is later determined to be in order, a warrant of arrest can then be issued.

g. Whether domestic disputes should be treated differently. No. The general principles adequately apply. Officers are advised, however, to use the citation as a device to bring troubled couples before the court so that counseling can be arranged. Such usage, of course, assumes that an offense was committed.

h. Whether a citation should issue after a citizen's arrest. Yes. Issuance is authorized by law and, as a matter of policy, will on many occasions be preferable to physical arrest.

i. Whether an arresting citizen's demand that a prisoner be physically arrested, rather than cited, should be followed. No. Such demands, usually vindictive, are irrelevant and beyond the six criteria. Physical arrest should be made only if one or more of the six criteria are applicable.

j. Whether the terms "satisfactory evidence of identity" should specifically be defined. No. After much discussion, it was concluded that an adequate definition was not possible. A driver's license, for example, might be acceptable identification in one case (e.g., disorderly conduct), but not in another (e.g., passing bad checks). The general definition was considered optimal.

k. Whether, for very minor offenses, a physical arrest should be prohibited, even when the person refuses to give his written promise to appear. This is the only substantive decision that has not yet been made. The Chief is concerned about the grandmother who has violated the dog-leash ordinance and refuses to sign the citation because she does not understand what she is signing. The difficulty here is in formulating a standard that would require the release of the grandmother, but which would be clear enough for ready comprehension by the officers. Compare Draft No. 7, Paragraph (III)(A)(6)(c) with Draft No. 7, Paragraph (III)(A)(6)(c) (alternative).

l. Whether the officer who refuses to cite in the field should be required to give his reasons in the Arrest Report. Yes. First, this information may be relevant to the Jail personnel who must later reconsider the question of release. Second, it provides a means for staff review of the field decision. Third, it will require the officer to carefully weigh his decision not to cite.

m. Whether the jail officer, before issuing a jail citation, should be required to contact the officer in the field who refused to issue a field citation. No. Such a procedure would place the jail officer in a subservient position to the arresting officer. The policy of the Department is to have a de novo review in the Jail of the release question. Because the Jail release criteria vary from the field release criteria, moreover, communication between the

Jail and the arresting officer would often be unnecessary or irrelevant. Finally, such communication would be time consuming and often impossible to accomplish.

n. Whether detention for reasons of public safety is legal and desirable. Yes. The Director did no independent research on the legality of "preventive detention," either as it relates to the setting of bail or as it might relate to the question of citation release, but relied on the recommendations of the A.B.A. PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PRETRIAL RELEASE 10-11 (1968):

> It should be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law. A law enforcement officer having grounds for making an arrest should take the accused into custody or, already having done so, detain him further only when such action is required by the need to carry out legitimate investigative functions, to protect the accused or others where his continued liberty would constitute a risk of immediate harm or when there are reasonable grounds to believe that the accused will refuse to respond to a citation. [Emphasis supplied.]

Such detention was considered desirable in unusual situations, such as riot or chronic husband-wife assaults.

o. Whether a citation could and should issue when the arrest was made pursuant to the authority of a warrant. It can, legally, in all cases, according to the Director's view. It should, as a matter of policy, however, only in limited cases. This question was hotly debated in the Department, in the Courts, and in the District Attorney's Office. The concensus finally reached is found in Draft No. 7, Paragraph (III)(A)(5)(a). See also APPENDICES A-2 and A-3.

p. Whether the District Attorney should review all citations before they are filed with the court. Yes. The citation, when filed by the officer with a magistrate, constitutes a complaint. This procedure, pro tanto, is an obvious conferral of prosecutorial power upon the police. All offenses cited for could legally fall beyond the purview of the District Attorney, except as he could move to dismiss the complaint. The Alameda County District Attorney was understandably concerned about the possibilities of police officers pre-empting the prosecutor's jurisdiction. Because of this concern, there was initial opposition to the citation program. The Director considered the legality of routing the citations through the District Attorney's Office, so that he could make the decision whether each citation should be filed. The process was deemed to be lawful, although by no means required by law. The Chief and the District Attorney then agreed that all citations would be reviewed by the District Attorney before filing. In addition to the political considerations, the strong policy reason for establishing this procedure was that "bad arrests," if any, could be screened out before the complaint was filed. The Department will be notified when citations are not filed, so that any improper arrests may be called to the attention of the arresting officer.

8. Major Procedural Issues Raised in the Design of the Citation Release Program. Whereas the matters of substance above were the most interesting to discuss and resolve, the document routing procedures were the most difficult to design. This aspect of the program required that the Director determine which divisions, sections, and units of the Department and which outside agencies receive copies of (a) arrest reports, (b) offense reports, and (c) for what purposes. This study was necessary because one proposal being considered was whether the citation form could replace either the arrest report, the offense report, or both. After detailed study, the determination was made that the field citation would replace the arrest report, but not the offense report. It then had to be determined how the various divisions that needed the citation copy would receive it. Several routing plans were workable, and various plans were considered at different stages. Often one change in the basic routing design would require numerous other changes so that the system would operate efficiently. For example, whether citation copy # 1 should be routed first to the Court or to the District Attorney is seemingly a simply decision, but the answer determines many subsidiary issues, such as where the Xeroxing of the extra form should be done, where pick-up points should be located, who should assume the responsibility for forwarding documents, and the like. There were literally hundreds of minute questions of this order that had to be resolved and re-resolved.

Another major problem was determining how to give notice to those units and agencies who had initially received a report of physical arrest, that a jail citation had been issued. According to existing procedures, when an arrest is made the arresting officer completes an arrest report, which accompanies the prisoner to the jail. The arrest report is reproduced and distributed to a number of points, both in and outside the Department. At the end of his shift, the officer then completes an offense report, which "tells the story" of the offense. This too is reproduced and distributed. In the case of a jail citation, the offense report will have been completed by the arresting officer and distributed without any indication, of course, that a citation was later issued in the Jail. In order to advise those who have received the offense reports, the Jail will hold the arrest report until the citation decision is made and then stamp the arrest report with reproducing ink "CITED" so that all points of distribution will ultimately receive notice of the jail citation.

The receipt of this information by the various divisions and agencies is necessary for various reasons too numerous to set forth. Follow-up investigators, for example, need to know the time and date of appearance. When a physical arrest is followed by continued incarceration before trial, the day of appearance is on the next judicial day. If a citation is issued, the day of appearance is at least seven days hence. Time of appearance is vital information for investigators, for they must contact witnesses in time for interviews and they themselves must often appear to testify.

B. THE LANDLORD-TENANT DISPUTE SETTLEMENT PROGRAM

1. Introduction. It has been the nature of landlord-tenant disputes to be exacerbative of police-community relations. Police departments have historically treated landlord-tenant disputes as "civil only,"[3] and often the best efforts of the best officers will serve only to accomplish a temporary truce between the parties. At worst, the officer is called to the scene and, having little or no familiarity with the complexities of landlord-tenant legislation, he simply becomes another party to the dispute. The result may be an arrest or arrests for disorderly conduct.

The Oakland Police Department's Landlord-Tenant Dispute Settlement Program is designed to mediate landlord-tenant disputes and to accomplish settlements that are both equitable and legal. An important subsiddiary goal of the program is to acquaint the poor with Small Claims Court.

The Director has found that abuses occur quite frequently--both by tenants and by landlords. The abuses by landlords fall primarily into four general categories: (1) lockout of the tenant (and the concomitant lock-in of tenant's possessions); (2) seizure of the tenant's property; (3) removal of doors and windows; and (4) moving of the tenant's possessions into the yard or street. Seizure or threatened seizure of property seems to be the most common abuse.

The most common abuses by tenants are destruction of the landlord's property and refusal to pay rent, sometimes for a period of months.

The reasons for police involvement are several. Foremost is the Director's primary goal: to demonstrate that police departments can constitute a positive agent for social change and law reform. We accomplish social change to the extent that we are able to curtail landlord and tenant abuses. Law reform is possible, but usually more difficult to achieve. Close involvement with problems of the poor often leads to suggestions for systemic change. Through the landlord-tenant program in Seattle, for example, it was determined that civil remedies were inadequate for landlords as well as for tenants, and steps are being taken now to broaden the jurisdiction of the Small Claims Court so that the reasons for unlawful evictions can be minimized. In another case, this one in Oakland, the landlord was almost as poor as the tenant. The Director has located an attorney (through the Oakland Lawyers' Committee) to represent the poor landlord in challenging the applicability of a $75 minimum fee charged by the Sheriff when he enforces an eviction order. Unless this case is mooted before it comes to trial, the police may be able to directly influence decisional law reform.

Second, we are seeking to fill, in part, the "remedy gap." Civil remedies

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[3] The Director bases this statement upon her direct experience in Oakland and Seattle and upon conversations with officers in other departments. No research, however, has been undertaken until quite recently. Mr. Jeff Allen, a senior honors student in Political Science at the University of California (Berkeley), has begun for college credit and hopeful publication a major paper focusing on Oakland's Landlord-Tenant Program. He intends to research the statutes of other states to determine whether criminal sanctions exist, and, if so, whether prosecutions have been annotated. He and the Director will also send letters to major police departments throughout the country inquiring whether landlord-tenant laws are or have ever been enforced.

for illegal lockouts and seizures of property simply are not, and probably never will be, completely effective. The threat of criminal sanction, however, virtually always accomplishes a termination of the offense. Third, we believe that any enforcement policy less vigorous than ours would constitute a "double standard." In short, the laws are on the books to protect the poor, and the police responsibility to enforce them is beyond question. Fourth, we believe--and I think we have demonstrated--that police involvement serves to accommodate competing interests in an equitable and effective way.

The Program operates essentially as follows. A complaint is taken by the Director, usually by telephone.[4] The Director then writes the landlord a letter, which can be reduced to a form, somewhat as follows:

> Dear _____:
>
> This Department has received a complaint from _____ alleging that certain property belonging to him--to wit, _____[list the property]--has been unlawfully detained in your possession.
>
> The purpose of this letter is simply to apprise you of the fact that if his allegations are true, you are in violation of Section 418 of the Penal Code, an offense which constitutes a misdemeanor.
>
> Undoubtedly, you were not aware that such a detainer of property constituted criminal conduct. Thus, it is our hope that this matter may be settled peaceably without the intervention of the police. The complainant has advised us that he will contact you in order to make arrangements to obtain his property. Incidentally, it makes no difference under this statute whether a tenant was or was not delinquent in his rental obligations.

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[4] The Program was instituted at the beginning of October. Since that time the Director has handled ten cases. The great majority have been referrals from the Legal Aid Society. One was referred from the West Oakland Legal Switchboard and one was referred by the Desk Sergeant in the Patrol Division. Thus far there has been no effort to give any greater publicity to the program for two reasons. First, because present funding terminates at the end of December, the Director considered it untimely to expand the program. When the police begin a program to aid the poor, it is far worse to hold out promises that cannot be fulfilled than never to begin at all. Second, the Director's present workload is greater than capacity. An expanded landlord-tenant program would require additional manpower in her office--hopefully, an additional attorney.

The only way to legally evict a tenant is by giving him the requisite written notice and then to proceed through the judicial process. An eviction proceeding may be brought for a very nominal filing fee in the Oakland-Piedmont Small Claims Court (Room 4000, 600 Washington Street, Oakland. Phone: 834-5151, est. 2348). Until a court has ordered that your tenant must vacate, he is legally in possession of the premises.

If the complainant's allegations are true and if a settlement cannot be accomplished without delay, then unfortunately official action of some kind will be the only alternative.

Please do not hesitate to call my office if you have any questions.

Very truly yours,

C. R. GAIN
Chief of Police

LINDA A. RODGERS
Legal Advisor

If the case is one that calls for urgent attention, as it is when the tenant is locked out, the Director places a telephone call, rather than sends a letter. If necessary, a citation would be issued, an arrest would be made, or a warrant would be sought, but as yet settlements have been accomplished without the necessity of relying on the more extreme sanctions.

The Department's Community Relations Section has assigned to the Director two New Careerists, one black and one Mexican-American, to serve as community aids in landlord-tenant cases when the need arises. In one case the landlord was a poor black lady who had never heard of the Small Claims Court. Mr. Clarence Harbison, the New Careerist, assisted this lady in locating the proper court and made certain that she understood the court procedures. Poor people, we find, are accustomed to being defendants, but hardly ever are they plaintiffs. We consider it an appropriate police function to aid the poor in locating the proper forum to vindicate their claims, for by showing a landlord the proper way to evict the tenant we are preventing the crime of illegal eviction from occurring.

2. The Cases. What follows is a description of the cases that have been handled by the Director to date in Oakland. They are arranged in chronological order. Names have been altered to protect the identity of the parties.

Smith v. Johnson. Johnson v. Smith. (Referred by A. Briggs, Esq., Legal Aid Society, October 1, 1969.) Miss Smith, a black woman on welfare, was threatened with imminent eviction by her landlady, Mrs. Johnson, also black and almost as poor. Mr. Briggs, believing the case called for urgent attention, requested the Director to telephone the landlady, rather than write a letter. The Director telephoned Mrs. Johnson and explained that the lockout of a tenant would constitute a violation of CAL. PEN. CODE § 418 ("Every person using or procuring, encouraging

or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.") It was suggested that Mrs. Johnson proceed in Small Claims Court.

Mrs. Johnson was readily compliant. She had not been aware that a lockout was illegal. The Director mailed her a "drugstore" eviction form, so that she could comply with the legal requirements of giving a written notice "to pay rent or quit." Mrs. Johnson served the notice personally on October 7, and on the following Monday she was assisted by Mr. Harbison in locating the Small Claims Court and in filing the proper papers. Her hearing was set for October 30.

On October 21 Mrs. Johnson called the Director to complain that a man named Vernon had moved in with Miss Smith. Vernon had stated to Mrs. Johnson that "he would kill her little boy" Ralph if Ralph "didn't leave his car alone." Mrs. Johnson stated that, to her knowledge, Ralph had done nothing to Vernon's car. The Director advised Mrs. Johnson that making threats did not constitute criminal conduct under California law.

The next day Mrs. Johnson telephoned again to tell the Director that Vernon had called the police and reported that Ralph had been tampering with his car. Officer Jennings from the Oakland Police Department had been to Mrs. Johnson's house earlier that morning to discuss the matter and apparently was satisfied that there was no evidence of misdeeds by Ralph. Mrs. Johnson believed that Vernon was "just making trouble for her because I'm trying to evict" Miss Smith and asked whether there was anything the police could do about Vernon.

The Director considered the question whether Vernon was guilty of trespass within the meaning of CAL. PEN. CODE § 602.5 ("Every person other than a public officer or employee acting within the course and scope of his employment in performance of a duty imposed by law, who enters or remains in any noncommercial dwelling house, apartment, or other such place without consent of the owner, his agent, or the person in lawful possession thereof, is guilty of a misdemeanor.") It was concluded that Miss Smith was "in lawful possession" until she was in violation of a court order directing her to vacate the premises. Until that time, Vernon could not be considered guilty of criminal trespass. Mrs. Johnson was so advised.

On October 30 Mrs. Johnson appeared in Small Claims Court for the hearing. While she was sitting in the courtroom waiting for her case to be called, she became ill and had to leave. When she returned, her case had already been called. The Clerk advised her to refile. (Mrs. Johnson is elderly and has a heart condition. The Director suspects that the courtroom proceedings made her exceedingly nervous.)

On November 21 Mrs. Johnson telephoned to say that she had received a letter addressed to her deceased husband from the District Attorney advising him to appear on December 4 to show cause why a warrant should not be issued for a violation of Section 1001.1 of the Oakland Housing Code. She also complained that Miss Smith and Vernon were still there and that Miss Smith had torn down the front gate. (There were no witnesses.)

The Director requested the Oakland Lawyers' Committee to provide an

attorney to represent Mrs. Johnson, and on November 24 Irwin Eskanos, Esq., agreed to represent her without charge.

In the meantime Mrs. Johnson has become quite disillusioned with the system of justice. She stated that she was thinking of "giving my house back to the man I got it from and moving to Louisiana, because it's too hard to get anything done in California." Her doctor is concerned, moreover, that the excitement of a legal proceeding might be too great a strain on her heart.

On December 1 Mrs. Johnson called again. This time Miss Smith had been dumping garbage in the back yard. Mrs. Johnson has tried persuasion to no avail and has cleaned up the garbage herself on several occasions. She asked the Director whether there was anything that the police could do. The Director determined that persons occupying any premises within the city limits are under an obligation to keep them free from the accumulation of garbage, but that the failure to fulfill such obligation is not a crime until the person has failed for 24 hours to comply with a written notice from the "health officer." OAK. MUN. CODE § 4-5.11. The Director then made several phone calls to determine who the "health officer" was. When she located him she determined from him that written notice had already been delivered to Miss Smith on October 7, 1969. If Miss Smith did dump the garbage on December 1 (and there are problems of proof), then she is guilty of a violation of § 4-5.11.

By this time, Miss Smith is eight months behind in her rent. This is a case so outrageous and so unfair to the landlord that the Director has written Miss Smith advising her that the Department will seek a warrant for her arrest for grand theft on the ground that she has defrauded Mrs. Johnson of a real property interest exceeding a value of two hundred dollars. CAL. PEN. CODE §§ 484 (theft defined), 487 (grand theft defined). The letter was mailed on the day of this writing.

Mrs. Johnson's case has been by far the most complex. We have learned from it that problems of the poor are continuous and seemingly interminable.

Corning v. Ashley. (Referred by M. Cherrin, Esq., Legal Aid Society, October 9, 1969.) Mrs. Corning complained that she had been locked out of her apartment and that all her belongings had been locked in. The Director obtained the landlord's address through the Telephone Company[5] and wrote a letter advising him that lockouts were criminal violations of § 418. Mr Ashley telephoned the Director on October 13 and agreed to unlock the door. He complained about Sheriff's expenses required when one proceeds through the courts and stated that he would never again rent to someone on welfare, since their payments could not be garnished. He was advised to seek an agreement with the welfare recipient and the Welfare Department, before renting to the recipient, that the welfare check in the amount of the rent be mailed directly to him. He was also advised that a proceeding in Small Claims Court would likely be his most expedient means to evict.

Mr. Cherrin from Legal Aid telephoned on October 23 to notify the Director that the case had been settled--Mrs. Corning had been allowed to regain entry to her apartment.

[5] Absentee landlords often maintain unlisted telephone numbers. Often

Smyth v. Rose. (Referred by S. Rosensweig, Esq., Legal Aid Society, November 3, 1969.) Mrs. Smyth, a tenant, complained that her landlords, the Roses, had removed the back and front doors from her apartment. The Director wrote a letter to the Roses, advising them that the removal of doors was a violation of § 418 and that they could proceed legally by filing in the Small Claims Court.

Mrs. Rose telephoned on November 5 to thank the Director for the letter! She explained that she had removed the doors "only to repair them" and that she would replace them without delay. Mr. Rosensweig later called to report that his client had found another place to live.

Palmer v. Simpson. (Referred by S. Rosensweig, Esq., Legal Aid Society, November 6, 1969.) Mr. Palmer complained that his landlord had removed the front door and screen and that he had threatened to remove the windows, as well. The Director wrote to Mr. and Mrs. Simpson, advising them that such conduct was a violation of § 418. Mr. Simpson telephoned the Director on November 7 and stated that the door had been replaced. He was grateful for the information that an eviction proceeding was possible in the Small Claims Court.

Cox v. Morey. (Referred by S. Rosensweig, Esq., Legal Aid Society, November 18, 1969.) Mr. Cox complained that his landlady had locked him out, detained the possessions of him and his children, and, moreover, had begun occupying the premises herself. The Director wrote a letter to Miss Morey advising her that a forcible detainer was a violation of PEN. CODE § 418 and that remaining on the premises without consent was a violation of PEN. CDOE § 602.5, and that the only way to proceed legally to evict a tenant was through the judicial process, preferably the Small Claims Court.

On November 20 Mr. Rosensweig called to report that Miss Morey continued to refuse his client access to the premises. He requested that the Director telephone Miss Morey.

Miss Morey then related to the Director that she had not received the letter (and this was later confirmed when the letter was returned in the mail). She then explained her side of the story. Mr. Cox had originally leased the house on a month-to-month basis (oral agreement). Some time thereafter Miss Morey moved in with him and lived as his wife for some five months. During this period Mr. Cox paid no rent whatsoever and Miss Morey supported both her family and his. His entire contribution was a sum of $46 for food. On one occasion Miss Morey took Cox's fourteen-year-old son with her and her children to Hawaii, paying his way.

Miss Morey finally tired of receiving no support from Mr. Cox and asked him to move out. He refused, so she had the locks changed to bar him from the premises. His belongings were still in the house, but she stated she was more

[cont'd from p. 14] attorneys representing abused tenants have great difficulty locating the landlord. The police, however, have access to confidential telephone company information, not only about numbers and addresses, but also about the occupation of the listee. This adds still another reason why police involvement in these cases can be so much more effective than the exclusively civil process.

than willing to give them up at any time, provided he came at a reasonable hour of the day. She realized that the law permitted her to hold certain of his possessions to enforce a lien for rent, but that she did not wish to do so.

Her records, she said, would support her statements. She could show the months for which the rent was paid, and she insisted that Mr. Cox would have no receipts for the subsequent months.

The Director determined that no violation of § 602.5 had occurred, since Miss Morey had clearly entered and remained in the apartment with the consent of Mr. Cox. He had, moreover, relinquished his tenancy when he allowed her to move in and ceased paying rent at the same time. Finally, no violation of § 418 had occurred, as Miss Morey was willing to relinquish the property.

The Director telephoned Mr. Rosensweig and apprised him of the facts. He agreed that the case was not a proper one for prosecution. Miss Morey later telephoned Mr. Rosensweig and made arrangements for Mr. Cox to claim his property.

Baron v. Brady. (Referred by Mr. Stan Gibson, West Oakland Legal Switchboard, November 19, 1969.) Mr. Baron complained that his landlady had locked him out of his furnished apartment and had detained certain of his possessions, namely, bedclothes, dishes, radio, clothing, and a $250 fur bedspread. The Director telephoned the landlady to explain that a lockout was illegal under § 418 and to inquire whether the apartment was furnished or unfurnished. [Landlords of furnished apartments have a right to enter peaceably and remove virtually any of the property of the tenant in order to enforce a lien for rent due. CAL. CIV. CODE § 1861 (Supp. '70).]

The landlady explained that the reasons she locked the tenant out and did not wish to allow him re-entry were as follows: that he broke three windows in the apartment; that he broke two doors in the apartment; that he scattered broken glass around the premises; that he stole a camera from the adjoining apartment; and that he threatened her and the manager with violence and with burning the building down. She further explained that her entry into his apartment had been with a key and during daylight hours. (Such entry satisfies the definition of "peaceable," within the meaning of § 1861, above.)

It was the Director's view that under general principles of criminal law the landlady would have a legitimate defense in a § 418 prosecution, for she was protecting her property and, perhaps, her own bodily safety and that of her other tenants when she locked Mr. Baron out. This defense is directly analogous to the use of force in self-defense. Indeed, it may be closer than mere analogy. The Director thus advised Mrs. Brady, the landlady, that the lockout was justifiable and that no further action would be taken by the police.

Mr. Baron was then advised similarly. His two comments were that he didn't "break those windows, my wife did," and that he "wasn't really going to burn the building down." He seemed to understand, however, why the police would take no action in his case. He was advised to work out a settlement with the landlady so that his property could be returned. He was agreeable to the suggestion. The Director also advised Mr. Gibson, who referred the case, why no action would be taken.

Godfrey v. Tate. (Referred by the Desk Sergeant, Patrol Division, November 20, 1969). Mr. Godfrey complained that during daylight hours on November 19 the landlady or her agent had entered his premises, apparently with a key, and had taken the following items: one portable television set ($100-$200), one stereo phonograph ($334; recently purchased), electric iron ($15), clothes ($1000). Mr. Godfrey was $500 behind on his rental obligations.

The Director explained that because the apartment was unfurnished, the case was governed by CAL. CIV. CODE § 1861a (Supp. '70), and that the statute allows the landlord to enter peaceably to gain control of certain items of property. The television set, the stereo and the iron could be legally held by the landlord. She was not, however, authorized to hold those clothes "used by the tenant . . . in gaining a livelihood . . . ." § 1861a, above. The Director advised Mr. Godfrey that she would attempt to persuade the landlady, who lived in San Francisco, to return some of the clothes.

The landlady's number was obtained from the Telephone Company, and when she was reached, she asked the Director to telephone her attorney, Mr. Robert James, in San Francisco. At that point, the Director received a call from Mr. Godfrey, stating that he had seen a Legal Aid attorney and requesting that the Director telephone him. Mr. Meyer from Legal Aid was hopeful of reaching a settlement and asked the Director to withhold the usual letter until it appeared necessary.

The following day Mr. Godfrey called again. He needed his clothes and was unable to reach his attorney. He requested the Director to telephone Mr. James. The call was made and Mr. James promised that his client would return "several changes of clothing" to the apartment some time that day.

On November 24 Mr. Godfrey called again and stated that the landlady "brought back rags and things we wouldn't wear." The Director promised to try again. She asked Mr. James to have his client return three suits, three shirts, three ties, and a pair of dress shoes to the apartment. Mr. James stated that this would be done, and apparently it was, for Mr. Godfrey has not called again.

Thomas v. Anderson. (Referred by S. Ronfeldt, Esq., Legal Aid Society, December 1, 1969.) Miss Thomas complained that all her furniture was unlawfully detained by her former landlord. The Director wrote the landlord advising him that if her allegations were true, his conduct was a violation of § 418.

Mr. Anderson, the landlord, accompanied by Mrs. Campbell, the manager of his boarding house, appeared in the Director's office on December 2. He stated that he did not wish to do anything that was illegal, and explained that Mrs. Thomas owed him $300 for food and lodging. The room she rented was unfurnished.

CAL. CIV. CODE § 1861 allows keepers of boardinghouses and furnished apartment houses to seize virtually all the tenants' possessions in order to enforce a lien for rent due. CAL. CIV. CODE § 1861a, which is applicable to keepers of unfurnished apartments, greatly restricts the items of property that may be seized by the landlord. It is unclear which of the two provisions apply, however, when the boardinghouse is unfurnished, although the reason for the rule would imply that unfurnished boardinghouses should be considered

unfurnished apartments under § 1861a.

The Director advised Mr. Anderson that no criminal proceedings would be sought against him, because vague criminal statutes are constitutionally unenforceable. The civil question, however, was a different matter entirely. He was advised that if Mrs. Thomas filed a civil action against him, § 1861a, rather than § 1861, would probably be held applicable. Therefore, he would be wise to return the couch, the bedroom furniture, the dinette set, and the refrigerator, although, according to the statute, he could retain the loveseat, two lamps, two end tables, a coffee table, and a color television set. He agreed that he would do this and stated that he would contact Mr. Ronfeldt that afternoon to make arrangements for the return of the property.

Quigley v. Quigley. (Referred by S. Ronfeldt, Esq., Legal Aid Society; December 1, 1969.) Mrs. Quigley moved out of the premises formerly occupied by herself and her husband. She complained that her husband refused to relinquish her personal possessions. The Director wrote Mr. Quigley advising him that if his wife's allegations were true, he would be in violation of § 418. At the time of this writing (December 3), there have been no further developments in the case.

Moore v. Watson. (Referred by A. Briggs, Esq., Legal Aid Society, December 2, 1969.) Mr. Briggs telephoned with an urgent landlord-tenant matter: his client, Mrs. Moore, a 60-year-old welfare recipient, had been locked out of her apartment. Mr. Briggs requested that a telephone call be made to the landlady.

The landlady was initially unwilling to agree to unlock the door. She claimed that Mrs. Moore had told other tenants in the building that she was going to kill Mrs. Watson, although, said Mrs. Watson, "I'm not really afraid of her. But she is a mental case." The Director advised Mrs. Watson that the only way to evict legally was through the judicial process and gave her the address and telephone number of the Small Claims Court. The Director further suggested that it would be unwise and somewhat foolish to risk a criminal record over such a minor incident. The Director promised police protection for Mrs. Watson if Mrs. Moore should appear likely to carry out her threats to kill. Finally, Mrs. Watson agreed that she would unlock the door if Mrs. Moore would return a master key that she had somehow obtained. The condition appeared reasonable, and Mr. Briggs was advised of the result. He stated that he would accompany Mrs. Moore to the apartment to ensure that she returned the key, if that course should prove necessary.

The Moore case was the closest we have come to dispatching a patrol car to the scene. We were, of course, prepared to follow that course and would have done so had the landlady not agreed to open the door.

3. Future Plans for the Landlord-Tenant Dispute Settlement Program. If the Director is able to remain in her present position in the Department, an Information Bulletin describing the program will be prepared for Departmental distribution. The Communications Section (where emergency police calls are received) will be notified to refer all landlord-tenant matters not accompanied by crimes of violence to the Director's office.

If the Director is able, in addition, to hire a second attorney, the program will be further expanded by means of greater publicity.[6] Selected police officers, moreover, will be given specialized training in the handling of landlord-tenant disputes so that emergency problems during evening and early morning hours and during week-ends may be more adequately dealt with.[7] Law students will be recruited to intervene in cases where the tenant refuses to pay rent on the ground that the building is uninhabitable or otherwise in violation of the Housing Code. They will seek to persuade the landlord to apply given portions of the rent toward property repairs and improvements and will, perhaps, act as third-party trustees by agreement of both landlord and tenant to collect the rent and apply a portion to repair bills. (California has no compulsory receivership provisions nor proceedings that permit tenants to pay their rent into court. The primary sanction for Housing Code violations is condemnation of the property when the landlord refuses or is unable to repair.) The Oakland Lawyers' Committee has already been requested to consider the third-party trustee plan.

We would hope, finally, to organize a project to educate tenants in the application of CAL. CIV. CODE § 1942, which provides: "If within a reasonable time after notice to the lessor, of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the cost of such repairs does not require an expenditure greater than one month's rent of the premises, and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he may be discharged from further payment of rent, or performance of other conditions." The cases have never made clear whether this section can be utilized only once, or whether it can be utilized from month to month, applying the rent for the particular month to a particular repair job. It is not clear, moreover, whether § 1942 rights can be waived by lease agreement. Test cases, necessary to settle both questions, could be filed at police suggestion by either the Lawyers' Committee or the Legal Aid Society.

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[6] The Director established a similar program in the Seattle Police Department when she was the Legal Advisor there. This program received wide publicity in several newspaper accounts, and the caseload in Seattle was approximately five times that in Oakland. We do not believe that the difference could be explained by the proposition that abuses are more frequent in Seattle. Rather, we believe that there were simply more people who were aware of the program.

[7] Compare the Family Crisis Intervention Unit of the New York City Police Department. See Bard, Family Intervention Police Teams as a Community Mental Health Resource, 60 J. CRIM. L., C. & P.S. 247 (1969).

C. PROJECTS TO INVOLVE THE PRIVATE BAR

Several projects and legal matters have been referred to the Oakland Lawyers' Committee for submission to individual members of the private bar.

1. The Citation Release Project. The Citation Release Project, discussed in great detail above at pages 2-9, was submitted initially to the Lawyers' Committee for its helpful suggestions and approval.

2. Instruction in constitutional and civil rights law given by attorneys to Oakland Police Recruits. On November 4 Chief Gain requested the Oakland Lawyers' Committee to provide an attorney or attorneys to prepare materials for and to instruct Oakland Police Recruits in constitutional and civil rights law. The Executive Director of the Oakland Lawyers' Committee Project, Alan Kalmanoff, Esq., has made tentative agreements with several professors at Boalt Hall (University of California Law School, at Berkeley) that the latter will prepare the materials and teach the classes.

3. Project for police-bar-community cooperation in combatting urban blight. Traditionally, the role of the police has never been to solve or even attempt to solve urban problems--with the notable exception, of course, of crime and violence. The problem of deteriorating neighborhoods, for example, does not appear to be a police problem. But to the extent that poor police-community relations stem from broader urban ills, those ills are ones that police have a direct interest in reducing.

As part of the Landlord-Tenant Dispute Settlement Program, an occasional case comes to our attention that involves a building in violation of code regulations, a tenant who refuses to pay rent because the building is uninhabitable, and a landlord whose economic position does not permit him to repair the building, especially when rent is withheld. It seems to us that it would be in the interest of both the landlord and the tenant to have the premises repaired. The problem is to bring them together in a reasonable compromise.

Chief Gain requested the Lawyers' Committee on November 4 to consider a program whereby law students or other volunteers would act as third-party trustees, who could receive the rent and apply a portion of it to repairs, with the balance going to the landlord.

Though the request has been referred to Ken Phillips, Esq., Director of the National Housing Law Institute, the Executive Director of the Lawyers' Committee, Mr. Kalmanoff, is not optimistic that interested volunteers can be enlisted. The case of Mrs. Johnson and Miss Smith, supra at 12-14, is now ripe for referral to such a program. Miss Smith has indicated a willingness to pay her rent, if she could be assured that it would go toward repairs. Mrs. Johnson has already hired someone to repair the front steps. If there were someone who could step in at this point, a great deal could be accomplished.

The role of the third-party trustee would be to receive the rent check, inspect the premises to determine priorities in the repair jobs necessary, to engage the contractor (with the landlord's consent, of course), and to pay the contractor with the rent money held in trust. In Mrs. Johnson's case, he would seek first an agreement between the parties, collect the rent check, and then

compensate the contractor already engaged. See also pages 18-19, supra.

4. Representation of Mrs. Johnson by a volunteer attorney. Because Mrs. Johnson, the landlord in the case discussed at pages 12-14, supra, could not afford an attorney, we requested the Lawyers' Committee to provide a volunteer to represent her. (The Legal Aid Society was representing the tenant.) Irwin Eskanos, Esq., agreed on November 24 to represent her.

5. Traffic Court Alert Project. Mr. Kalmanoff, of the Lawyers' Committee, offered to design a Traffic Court Alert Project, similar to the Vera Institute Project in Manhattan, for the Oakland Police Department. As the project operates in New York, it saves hundreds of hours of officers' time that would otherwise be spent waiting in court. The same goal is held for Oakland.

On November 19 the Department accepted the Lawyers' Committee offer. A law firm will be engaged, on a voluntary basis, to design and hopefully to assist in the implementation of the project.

6. Minority Recruitment Program. The Department has requested the Oakland Lawyers' Committee "to provide the Oakland Police Department with the services of both a major Oakland law firm and a public relations firm to design a minority recruitment program for the Oakland Police Department. Such representation would require a knowledge of Departmental resources and recruitment procedures and would entail a study to determine what programs have been effective in other cities and what recruitment aids are available (e.g., Early Military Release) and the design and implementation of a program for Oakland that would comport with Civil Service regulations either as they now stand or as they might be revised to accommodate a new recruitment program." Letter from Linda A. Rodgers to Alan Kalmanoff, November 21, 1969.

Mr. Kalmanoff has submitted the request to the Lawyers' Committee's Police-Community Relations Subcommittee. Our understanding is that the Lawyers' Committee is anxious to undertake this project and that present discussion is limited to the question of which firm will be approached.

7. Chronic Drunkenness Offender Problems. In mid October the Project Director requested the Lawyers' Committee to assist in obtaining a grant to provide the salary of some "qualified person" (the definition of which had not been determined) to interview chronic drunkenness offenders just after they sober up in the Jail and refer them to various agencies for treatment. Russell Bruno, Esq., a member of the Executive Committee of the Lawyers' Committee, has been actively concerned with problems of the indigent alcoholic for a number of years. He came forward to work with the police on the general problem. In the meantime, the Project Director learned that referral agencies simply do not exist, so that a referral program in the Jail would be meaningless. Mr. Bruno was quick to agree. His view is that it may be necessary for the police to force the detoxification facility issue by simply refusing to hold drunks in the Jail. This course would not be taken, of course, until it had been considered more deeply by both the Department and other agencies concerned.

In the future, the Director will work with Mr. Bruno and others to consider the possibilities of taking this and other action to support the effort to establish a detoxification center for Oakland. It is our hope that police

involvement will be reduced to the absolute minimum.

D. THE CITIZEN-POLICE ASSOCIATION

Just after the operative date of the Acorn Grant, the Project Director completed the drafting of the Articles of Association and By-Laws for The Citizen-Police Association of Oakland. The "Citizen-Police League" had been operating in the past as an informal group of police officers and citizens who sponsored baseball teams. When World Airways last spring sought to make a $10,000 charitable donation to the League, it was realized that the League had never been afforded tax-exempt status by the Internal Revenue Service. The Chief requested the Director to accomplish that end. It was then her thought to define the purposes of the "League" more broadly so that it could sponsor activities in addition to baseball, as the needs arose and as the resources became available. Thus, The Citizen-Police Association was formed to include The Citizen-Police Baseball League as one of its activities. The Association's organizational meeting was held the day after the Acorn Grant became effective and the Articles of Association and By-Laws were unanimously adopted by the Board. (APPENDICES D-1 and D-2.) A favorable letter of determination from the Internal Revenue Service was received on June 17, 1969, declaring the Association "exempt from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code."

The Association has attributes of a private charitable organization and of an informal arm of the Police Department. As is evident from the organizational documents, the Board of Directors has seven departmental members (including the Project Director) and four lay members. This ratio cannot be altered except by majority vote of the Board. In addition, no project may be sponsored by the Association without the written approval of the Chief of Police. Thus, firm control over the choice of activities sponsored is vested in the Chief and in the Department's Community Relations and Youth Division. This control, however, exists only in the determination as to which activities shall be sponsored. Once that determination is made, the "participating members,"--they are citizens or police officers who participate "in the sponsorship, direction, supervision, or organization" of any activities sponsored by the Association--assume complete control over the operations of each activity. The baseball program, accordingly, is operated by a committee of three laymen, and the team managers are the "participating members" who determine the direction in which the committee will operate. The only controls at this stage are two: (1) the Captain of the Community Relations and Youth Division, who is by definition the President of the Association, advises and consents to the particular activity's committee members and its chairman; (2) the Board of Directors of the Association determines the budget for the particular activity.

The structure of the Association was designed to meet the special needs of the baseball program. Our belief is, however, that the organizational structure will work to great advantage with other citizen-police activities because of its funding capacities and because of the wide discretion granted to the participating (citizen) members in operating the sponsored activities. This Association will obviously never become a "grass roots" organization, and the ultimate control vested in the Chief of Police may indeed hamper its general acceptance in the community. But without that control the Association could not have come

into being. The other great advantage of the organizational structure is the reason it was formed: to allow tax-exempt charitable donations to be made directly, in effect, to the Community Relations program of the Department, and it is for this reason that the organizational device should be appealing to other police departments.

This summer's baseball program included 38 teams, each with 15 youngsters, most of them from low-income families. The managers were primarily citizens from the community who served on a voluntary basis.

On October 13 the Association determined to co-sponsor with the Oakland Recreation Department a Young Adult Flag Football program. The season is now underway with eight teams, two from each "target area" of the City and consisting of 15 players, 7 of whom form the team and 8 of whom are "reserves." Thus, 120 young adults, many of whom have never before been involved in an organized recreation program, are now engaged in constructive competition. The program was designed for young men of 18 through 25 because there are no other organized activities for this age group.

The Director was concerned that no programs were underway for young women. She solicited the advice of several young people about what programs might succeed. Miss Kate Moody, then an eighth grader at a Berkeley junior high school, suggested an Afro dancing program, whereby the Association would provide the instructor, organize the program, and perhaps sponsor a benefit recital at the culmination of the season. Captain Odell Sylvester, the Commander of the Community Relations and Youth Division and also the President of The Citizen-Police Association, favored the idea and began the search for an instructor. He recently located her and announced that a program of instruction would begin next semester in three junior high schools for girls 13-15. The dance classes will be held after school on the school premises, but will not be considered a school activity.

Before the Afro dance program becomes official, of course, it will have the approval of the Chief of Police and the Board of Directors. Such approval, no doubt, will be a mere formality.

The Director, incidentally, serves as Secretary of the Association and as such is responsible for compiling the minutes and seeing that the Articles and By-Laws are complied with. She has also given informal legal opinions regarding the capacity of minors to waive claims against the Association and the necessity of insuring against injury to persons participating in the athletic programs of the Association.

E. THE CIVIL DISORDER PLANNING COMMITTEE FOR OAKLAND

1. The Committee: Its Nature and Purpose. On September 15 Chief Gain designated the Director and Deputy Chief R. Cazadd, the Bureau of Field Operations Commander, to represent the Department on the Civil Disorder Planning Committee for Oakland. The Committee consists of representatives from the Alameda County Bar Association, the Alameda County District Attorney's Office, the Alameda County Legal Aid Society, the Alameda County Public Defender's Office, the Oakland Police Department, and the community. Its catalyst and de facto chairman is Mr. Kalmanoff, Executive Director, Oakland Lawyers' Commitee Project.

Meetings are held every three weeks for the general purpose of formulating emergency procedures to be implemented in the event of civil disorder.

2. Current Issues. The two major issues currently under consideration are whether, during civil disorder, a "neutral" observer or observers should be stationed in the Oakland City Jail, and whether, during civil disorder, a special panel of defense attorneys should be called in to represent those who have been arrested.

Affirmative decisions on both issues have been reached by a unanimous committee and the procedural details are currently under negotiation.

a. The Police Position. The Department's position on both issues was presented to the Committee by the Project Director on November 17:

> (1) The Panel of Observers. Whenever 25 persons are arrested and the likelihood exists that additional arrests will be forthcoming, the Chief of Police will determine whether the Jail Observer procedure will be effectuated. The determination will be based upon his judgment that instituting the procedure would be worthwhile, taking into consideration the nature and intensity of rumors and community tensions as he perceives them. In this regard, he will welcome communication from the panel of observers or from other leaders of the community or Bar.
>
> Rather than members of the Bar, the observers should be members of the clergy attired during observations in clerical vestment. The list of ministers willing to be present in the Jail will be submitted to the Chief of Police, so that in the event the procedures are ever implemented, the clergy members can be properly identified as official observers.
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> The number of observers present in the Jail at any given time will be one or two, depending upon the degree of congestion in the Jail. If only one is to be allowed within the Jail, the second observer may be stationed outside the Jail in the parking area where prisoners are unloaded from the wagon.
>
> (2) Panel of Defense Attorneys. Mobilization of the panel of defense attorneys will be automatic upon the arrest of 25 or more persons made as a result of a civil disorder or demonstration. The Chief of Police will designate a supervising officer to notify the appropriate member of the Bar Association. Cards that provide information to prisoners about the defense attorney program will not be distributed in the Jail because of littering problems. Rather, a sheet of paper, which can be prepared by the Bar Association, will be inserted with the list of attorneys (yellow pages of the phone book) that is made available to the prisoner at the time he makes his phone calls.

b. The Committee's Reaction. There was general agreement that the above procedures were desirable and that a number of additional details were still to be determined, primarily, whether the observers should submit a report to the Chief of Police, whether the observer[s] should have unlimited access to the Jail facilities, and whether the ministers should be given a tour of the Jail

during normal operations and an explanation of normal booking procedures.

c. The Chief's Response. Chief Gain determined the following day that a report should be submitted only to him, that the observer[s] will be allowed only in authorized portions of the Jail, and that an orientation program, including a Jail tour, for the ministers will be undertaken by the Department, as requested.

3. The Committee's Future Plans. When the matters of defense attorneys and Jail observers have been fully resolved, the Committee will take up the question of establishing a Rumor Center for Oakland.

F. ADVISING THE DEPARTMENT OF CHANGES IN THE CASE LAW THAT AFFECT DEPARTMENTAL OPERATIONS

The Director is charged with the responsibility of reading advance sheets and advising the Department of recent decisions that affect Departmental operations. Cases that affect the operations of only a limited number of personnel are summarized with suggested policy changes, when appropriate, and distributed to the unit or units affected. Cases that affect the entire Department or a substantial number of personnel are given Department-wide distribution.

1. Cases Given Limited Distribution. Cases that have been summarized for limited distribution have involved issues of:

(a) protective searches of automobiles at night;

(b) misrepresentations by police to suspect that his co-conspirator had confessed;

(c) identification practices of showing the victim a single picture, rather than several, of possible suspects;

(d) breathalyzer testing procedures;

(e) "no-knock" rules;

(f) search warrant affidavits;

(g) in-custody interrogation where the suspect voluntarily came into the station and was not then considered a suspect;

(h) the right to an attorney before submission to a blood test for intoxication;

(i) information by unknown informant acting "openly in aid of law enforcement" as probable cause for arrest; and

(j) a homicide suspect's confession taped by a civilian informant at the request of police before indictment or arrest.

2. Cases Given Departmental Distribution. The Director has instituted in the Department a new series of training material for distribution to all members of the Department. The purpose of the new "Decisional Law Bulletin" is to inform all members of recent decisions by the courts and occasionally by executive officials that affect the operations of the entire Department. The bulletins will frequently contain policy statements refining the particular decision for Departmental application. The first Decisional Law Bulletin (APPENDIX F-1) discusses Chimel v. California--its rationale, its holding, and its impact on police procedures--and includes revised procedures consistent with that decision. The Bulletin was published on August 13, 1969, after approval by the Alameda County District Attorney and the Oakland City Attorney.

Two additional bulletins on the following cases are presently underway:

People v. Edwards, 71 A.C. 1141 (1969). The California Supreme Court held that the search, without a warrant, of a garbage can in defendants' back yard and a few feet from the back door was illegal because "[i]n the light of the combined facts and circumstances it appears that defendants exhibited an expectation of privacy, and we believe that expectation was reasonable under the circumstances of the case." The fact of trespass by the officers was relevant, but did not, in itself, necessarily invalidate the search. The Bulletin discusses these questions and traces the development and present state of the "open fields" and "curtilage" doctrines in California law.

Byers v. Justice Court, 71 A.C. 1083 (1969). The California Supreme Court held that an application of CAL. VEH. CODE § 20002 (requiring the driver of a vehicle involved in an accident resulting in property damage to leave certain information with the owner of the property or to leave written notice upon the property itself) constituted a denial of the privilege against self-incrimination in circumstances where such information, if it had been left by the driver, would have provided evidence of another crime, namely, the violation of VEH. CODE § 21750 (unlawful overtaking of another vehicle). The Court proceeded to pronounce the following rule: "prosecuting authorities may not use information divulged as a result of compliance with section 20002, subdivision (2), of the Vehicle Code or the fruits of such information and that in prosecutions of individuals who have complied with that section the state must establish that its evidence is not the fruit of such information." 71 A.C. at 1100. The bulletin will add that the rational of Byers extends, as well, to CAL. VEH. CODE §§ 20001, 20003 & 20004.

G. THE PROBLEM WHETHER PRIVATE WATCHMEN ARE AUTHORIZED TO CARRY FIREARMS

On October 19 Chief Gain requested an opinion on the question whether the Mulford Act (PEN. CODE § 12031) permitted private security guards to carry firearms. He was concerned that if carrying firearms were prohibited, perhaps hundreds of jobs would be lost to persons most of whom are minorities. His hope was that some provision could be found or some device created (e.g., a provisional gun permit) that would permit the practice. The Director was in the process of studying the various possibilities, when an amendment to the Mulford Act was enacted to allow the practice.

H. PROJECT TO REVISE RECORDS-KEEPING OPERATIONS

Captain Palmer Stinson, the Commander of the Research and Development Division, is embarking upon a long-range project to up-date records-keeping operations within the Department. Preliminary to his work, he requested the Director to compile an exhaustive list of statutes that govern or relate to police records. His specific questions were: (a) what records and reports is the Department required to keep; (b) what records and reports is the Department required to forward to C.I.& I.; (c) whether the value of stolen property must be included in a stolen property report; and (d) whether an abstract of any given report, rather than the report itself, may be forwarded to C.I.& I.

The Director compiled the list of statutes by searching state statutes and city ordinances.

I. ACCIDENTAL HANDLING OF COMPLAINTS

Because of her location in the Chief's Office, the Director has occasionally received complaints of varying nature from or through acquaintances in the community.

In re Clarence Penn. Several days before this complaint was received on October 31, Clarence Penn had filed a lawsuit against the Oakland Police Department and the Oakland Civil Service Commission charging job discrimination against "blacks, Mexican-Americans and other minorities." The Oakland Tribune had inadvertently printed Mr. Penn's address in an article on October 28. Mr. Penn complained to the Director through his Legal Aid Society attorney (Richard Duane, Esq.) that seven Oakland Police vehicles had cruised by his house during the day of October 30. He suspected that the frequent appearances had been occasioned by the printing of his address in the newspaper and charged that they constituted police harassment.

The Director immediately referred the complaint to the Internal Affairs Section for investigation. The first step in the investigation was to check with personnel in the radio room to determine whether anyone remembered a particular incident in the neighborhood that might have attracted more than the usual degree of police attention. No one there recalled such an incident.

Thereafter, the tapes of all radio messages for the relevant period on October 30 were played to determine what dispatches had been made to the area, and statements were taken of officers assigned to the area.

The investigation ultimately produced evidence that the "79th Avenue Improvement Committee" had called a meeting on October 29 that was attended, upon invitation, by two officers assigned to the beat that includes the area. The citizens complained about drag racing down their street and about a house nearby they suspected of harboring narcotics activity. The house was on the same street and only several houses distant from Mr. Penn's. The residents pleaded for additional patrol cars in the near future.

On the following day, which was October 30, the officers who had attended the meeting did indeed give the area extra patrolling. They had,

moreover, advised the Vice Detail of the suspected narcotics activity, and the radio tapes disclosed that a plainclothes officer from the Vice Detail had also driven down the street in question. (Mr. Penn complained that three of the cars were unmarked.)

When the Director reported to Mr. Duane the facts disclosed by the investigation, Mr. Duane was, in his own words, "completely satisfied. Thank you very much for all the time that went into it." (The estimated cost to the City of investigating this complaint was $250.)

In re Addie McKnight (Towing Problem). The Director accidentally met Mrs. Addie McKnight in the Police Department elevator on November 21. Mrs. McKnight was terribly upset because, she said, "the Sergeant wouldn't pay her for the towing charges." Because she was too upset to explain in the elevator, she was invited upstairs to tell her story. Some six months previously she had gone out to walk her dog at 6 a.m. and discovered her car missing. She telephoned the police to report it stolen. At 8 a.m. her husband returned from his night job and explained that he had come home during the night and taken the car. She immediately called the police again, spoke to the same person she had spoken to originally, and reported that the car was not stolen after all. She named a witness who had heard her make the second call.

Five months later she drove her car to Texas. When she returned to Oakland, she took a plane and had her car driven back by an automobile transport agency. When the driver reached Palm Springs, California, police there arrested him for driving a stolen car. The car was towed and the driver was incarcerated for 13 hours.

Mrs. McKnight's complaint was that the City should pay the $18 towing fee, since the information that her car was not stolen should have been disseminated by the Oakland Police Officer.

Internal Affairs investigated the complaint and established only that Mrs. McKnight's original call had been recorded. The investigating officer stated, in addition, that there was no way to prove by documentary evidence whether the second call had been made and that the officer who had taken the first call was no longer with the Department. The investigating officer, however, believed Mrs. McKnight's testimony and will recommend that her claim be paid. Mrs. McKnight was then referred to the City Claims Department, where she must file her claim.

In re Addie McKnight (Housing Discrimination Problem). Mrs. McKnight was so pleased with the attention she received that she came back the following week for assistance on another matter--a possible housing discrimination problem. When the facts were explained, it was evident that the discrimination was not on grounds of race, but on grounds that she had a dog. (The apartment manager had met Mrs. McKnight personally and on that occasion stated that the apartment was available. The manager decided to rent to another party, however, only after Mrs. McKnight disclosed that she had a dog.)

Mrs. McKnight's case prompted us to request the Law School (University

of California, at Berkeley) to post a notice seeking to interest law students in doing research on the general question of whether police might become constructively involved in cases of housing discrimination. Police involvement could be very effective if it were carried out in a manner similar to the Landlord-Tenant Dispute Settlement Program. The likelihood is, however, that none of the open housing laws have criminal sanctions enforceable by municipal law enforcement agencies. This might be a problem for which police prestige could be brought to bear in seeking legislative changes.

J. MISCELLANEOUS LEGAL OPINIONS

In response to requests from the Chief or other members of the Department, the Director has given legal opinions on various miscellaneous matters:

(a) that a violation of VEH. CODE § 10751 constitutes a misdemeanor, that officers have the authority to arrest for a violation thereof, and that officers have the authority to hold the vehicle subject to the order of the magistrate authorized to direct disposal of the vehicle;

(b) that the duplication of copyrighted material, albeit for internal distribution only, would constitute a copyright infringement;

(c) that under a new statute, a presumption that the person was under the influence of alcohol is established if the percentage of alcohol in his blood is .10 or above, that a presumption that the person was not under the influence of alcohol is established if the percentage of alcohol in his blood is below .05, and that no presumption is established either way if the percentage if from .05 to .10; and that suggested procedures should be adopted in the Jail where breathalyzer tests are administered;

(d) that a glove filled with sand constitutes a "sandbag" within the meaning of PEN. CODE § 12020 (Supp. '68).

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

DRAFT NO. 7
APPENDIX A-1

Index as:

Citations for Misdemeanors
Citation Release Program
Misdemeanors, Citations for
Notice of Violation

CITATIONS FOR ADULT MISDEMEANORS

The purpose of this order is to adopt policies and procedures implementing Penal Code section 853.6, which authorizes the issuance of a citation (notice to appear) for any misdemeanor offense in which the officer has arrested a person pursuant to Penal Code section 836 or in which he has taken custody of a person pursuant to Penal Code section 847 (citizen's arrest).

This order establishes citation guidelines that are comprehensive in scope yet flexible enough to encourage discretionary judgment by the officer. The field citation will often be more expedient than physical arrest as a means of bringing an offender before a court. However, the field citation is not to be used as a device to enable officers to effect a greater number of arrests; the citation procedures, therefore, shall not be used in situations that according to existing policies would ordinarily be handled with oral admonishment and release.

I. BACKGROUND

A citation release program in lieu of physical arrest and incarceration is familiar to the Oakland Police Department as citations are usually issued for fireworks, animal, vehicle and littering violations; further, juveniles are frequently cited for a broad range of offenses.

Field citations have been authorized, but not required, by State law for a number of years. The Legislature, however, has amended the law to encourage the increased use of citations in lieu of physical arrest. Under the new law, effective November 10, 1969, a field citation will be optional as before; but the Department will be required to investigate the community ties of every misdemeanant not released prior to booking so that a prediction can be made about the likelihood of his appearance. A Jail citation will accordingly be issued to misdemeanants who subsequently qualify for release.

The issuance of a citation whenever possible, in lieu of a physical arrest and incarceration, will be advantageous to

the police as well as to arrested persons. The advantages to the police are that arrested persons will not have to be transported to and housed in the jail; hence police man-hours will be saved and jail costs will be reduced. The obvious advantages to the arrested person are that he will be released without the expense of posting bail or being held in jail if he cannot afford bail. The underlying principle is that a person should not be required to post bail if his promise to appear and community ties cause the officer to believe the person will appear in court as promised. For these reasons, citations shall be issued in lieu of arrest and incarceration whenever it is possible to do so within the framework of this order.

Identification requirements and other standards are included in the following procedures to ensure appearance in court. The citation release program and the procedures, however, will be continuously reviewed to evaluate their impact and effectiveness, and changed as necessary.

II. DEFINITIONS

The term "physical arrest," as used in this order, shall mean the taking of a person into custody and transporting him to the Jail. An "arrest" is taking a person into custody, either by actual restraint of the person or his submission to detention. A citation may be issued only after an arrest has been accomplished; in other words, the citation does not substitute for an arrest; it is issued after an arrest. Citations may be issued in the field or in the Jail.

III. CRITERIA FOR PHYSICAL ARREST OF MISDEMEANANTS

A. Members SHALL issue citations to all adults (persons eighteen years and older) arrested for any misdemeanor offense or taken into custody after a citizen's arrest for a misdemeanor offense, UNLESS the attendant circumstances come within one or more of the physical arrest criteria which follow.

1. A citation shall not be issued in the field if the person arrested for a misdemeanor requires medical examination or medical care, or if he is unable to care for his own safety.

   a. Whenever physical force is employed in effecting an arrest (e.g., Penal Code section 148 -- resisting), a physical arrest shall be made.

   b. When it is necessary to transport the arrested person to a hospital, a citation may be issued at the hospital in accordance with the six criteria herein.

   c. A physical arrest shall be made for prostitution and related offenses which, by their nature, give rise to a reasonable belief that the offender might be infected with venereal disease.

   d. Persons too inebriated to make their way safely must be physically arrested. Because the law provides, in effect, that a person shall never be arrested for intoxication only unless his own safety or the safety of another is jeopardized, a person shall never be cited in the field for intoxication.

2. A citation shall not be issued if there is a reasonable likelihood that the misdemeanor offense would continue or resume, or that persons or property would be endangered by the arrested person.

   a. The following situations illustrate the flexibility provided by the citation-in-lieu-of-physical-arrest procedure:

   (1) Unlawful assembly, assault and battery, and disturbing the peace are examples of emotionally charged crimes that may be likely to continue or resume unless an enforced cooling-off period is accomplished by physical arrest. The same offenses, however, committed under some circumstances might be suitable for citation release: for example, if there is no apparent likelihood that the offense will continue or resume, a citation should be issued.

   (2) The manager of a filling station, twice robbed in recent months, has been arrested for carrying a concealed weapon. He is known to the arresting officer as a businessman of good repute who has managed the station for several years. Under these circumstances, a citation should be issued. The weapon shall be seized incidental to the citation and placed in evidence.

(3) During the investigation of an incident, a citizen orally obstructs an officer. As a result, the person is placed under arrest. At the conclusion of the investigation, it is determined that the offender has calmed down and is rational. If the officer believes the offenses will not resume, he should issue a citation. (Members must realize that a physical arrest, as an alternative to citation, must not be used as punishment simply because the person was abusive to the arresting officer.)

(4) Domestic disputes deserve special mention. If the complaining spouse is believed to be in danger, an arrest of the offending party shall be made. If no danger is perceived, however, a citation bearing the complainant's (arresting citizen) signature, should be issued in order to bring the matter before the court.

(5) A person arrested for shoplifting can offer satisfactory evidence of his identity, and the officer is satisfied that he will abide by his promise to appear in court. A citation should be issued, even though the owner, manager or security officer insists upon physical arrest. (Note on citizen's arrest: The same physical arrest criteria apply whether the arrest is by a police officer or by a citizen. The release decision, accordingly, is not affected by an arresting citizen's insistence upon physical arrest. It is only when the person arrested refuses to sign the citation that a physical arrest after a citizen's arrest is mandatory.)

3. <u>A citation shall not be issued if the person cannot or will not offer satisfactory evidence of identity</u>.

   a. "Satisfactory evidence of identity" can be defined as that degree of evidence required to reasonably assure the officer that the person <u>is</u> who he claims to be, taking into consideration the nature of the identity presented and the circumstances of the misdemeanor offense involved.

   b. When the person cannot offer satisfactory evidence

of his identity, members shall attempt to verify the person's identification by independent means, if it is practicable to do so.

4. <u>A citation shall not be issued if the prosecution of the offense for which the person was arrested, or of another offense, would thereby be jeopardized</u>.

   a. This criterion provides a practical device allowing physical arrest for legitimate in-investigative purposes, as illustrated by the following examples:

      (1) The person is wanted for questioning about another offense. Physical arrest may be made to allow sufficient time for interrogation, but after a reasonable period the person must be considered for citation release.

      (2) The arresting officer wishes to interrogate the person about the offense for which he was arrested. The citation decision may be delayed until a reasonable opportunity to admonish and interrogate has occurred.

      (3) Physical arrest is proper if evidence of the crime for which the person was arrested might otherwise be destroyed.

      (4) The person shall be physically arrested if a breathalyzer or other chemical test is required.

5. <u>A citation shall not be issued if a reasonable likelihood exists that the arrested person will fail to appear in court</u>.

   a. A warrant check is mandatory before citation. (The member shall use a telephone, when practicable.) If the check indicates any outstanding warrants, the person shall be physically arrested. When a misdemeanor arrest warrant, however, has been issued from the Oakland-Piedmont Judicial District, and the person voluntarily appears at the Police Administration Building to accept service, a Jail citation shall be issued after booking if the person is otherwise eligible.

b. In all arrest situations, the officer will have to judge whether there is a reasonable likelihood the person arrested would fail to appear in court, if cited. Application of this criterion is difficult, as it may involve a prediction based on scant evidence. The officer's evaluation of the person's credibility will often be the sole factor influencing the choice of citation or arrest. Good judgment in assessing the relevance and reliability of the information available will profoundly affect the court-appearance rate.

c. The following circumstances are examples that could provide reason to believe the person arrested would be unlikely to appear:

(1) The person attempted to evade arrest;

(2) The person arrested lived in a rooming house for transients;

(3) The person was a resident of distant jurisdiction;

(4) The person has failed to appear as required on a previous occasion.

6. A citation shall not be issued if the misdemeanant demands to be taken immediately before a magistrate or refuses to sign the citation.

a. State law prohibits the citation release of any person who demands to be taken before a magistrate.

b. The signature of the person arrested is required for citation release. A supervisor shall be called to the scene whenever the person arrested refuses to sign. The citizen shall be advised that signing the citation is not an admission of guilt, but only a promise to appear on the assigned date.

c. Minor offenses (e.g., having an unlicensed or unleashed dog, possession of fireworks, washing or storing a vehicle on a public street, littering, or violation of theft or burglary prevention ordinances) are ordinarily best handled by the complaint-warrant process or by citation release, EXCEPT that a physical arrest shall be made if the person refuses to give his written promise to appear.

[ALTERNATIVE] c. Minor offenses are ordinarily best handled by the complaint-warrant process, even though the person refuses to give his promise to appear.

(1) The complaint-warrant process shall be followed when a person refuses to sign a citation for a minor violation (e.g., having an unlicensed or unleashed dog, possession of fireworks, washing or storing a vehicle on a public street, littering, or violation of theft or burglary prevention ordinances), EXCEPT that a physical arrest shall be made if:

(a) the offense could be terminated and the person nevertheless continues it;

(b) the arrest was a citizen's arrest; or

(c) the person cannot or will not offer satisfactory evidence of identity.

IV. CITATION PROCEDURES

A. The arresting officer immediately after making the arrest shall determine, according to the six criteria (III, A, 1-6) whether a citation shall be issued.

V. FIELD CITATION PROCEDURES

A. The arresting officer immediately after making the arrest shall determine, according to the six criteria (III, A, 1-6) whether a citation shall be issued.

B. Offense Reports are required except for those offenses exempt by existing Report Writing Policies. An Arrest Report SHALL NOT be completed. The issuing officer shall note on the Offense Report in Box 34(2) in large letters "CITED" and shall give the citation number, and the time, date, and court of appearance.

C. Whenever a citation is not issued, a short description of the reason or reasons shall be noted in Box 49 ("Instructions") of the Arrest Report, unless such reason is self-evident (e.g., intoxication). This information is for the benefit of the Jail Division, which is required to reconsider the question of citation release. The following notations, for example should appear:

1. When the person attempted to evade arrest: "attempted to evade arrest."

2. When a warrant was outstanding: "warrant."

3. When the person was arrested for prostitution: "VD check."

4. When the person's identification was insufficient: "insuf ID."

5. When the circumstances led the officer to believe the person would be unlikely to appear: "unlikely to appear--transient," or "unlikely to appear--L.A. resident," and so on.

D. When the citation is issued after a citizen's arrest, the officer shall direct the arresting citizen that he shall appear to sign a complaint against the person arrested. Even though an Arrest Report is not completed, the reverse side of the third copy of the Arrest Report shall be checked and given to the arresting citizen, directing him when and where to appear.

VI. JAIL CITATION PROCEDURES

A. Policy

1. Whereas the field citation may be denied for a broad range of reasons, the denial of a citation in the Jail is quite narrowly circumscribed. The essential standard--like the standard for setting bail--is whether the person is likely to appear in court. In unusual circumstances, in addition, a person may be detained for reasons of public safety. Accordingly, a Jail citation SHALL be issued for adult misdemeanants who have promised to appear, UNLESS the circumstances meet one or more of the detention criteria, below (B, 1-2).

B. Detention Criteria

1. A citation shall not be issued if a reasonable likelihood exists that the person will fail to appear in court as promised.

   a. An objective point system will be employed to aid in the determination whether the person's background defines him as a good risk for citation release.

2. A citation shall not be issued if the evidence indicates that the person, if released, would commit any offense causing or threatening injury to persons or property.

   a. In the event of civil disorder, the detention of persons arrested for serious misdemeanors would be appropriate for reasons of public safety, unless the evidence indicates that the person's return to the scene would be unlikely.

   b. A person arrested for an assault against his wife, for example, may be denied citation if his prior record indicates a propensity for violence and the present circumstances indicate that his release would pose a further danger to his spouse.

C. Citation Issuance Procedures

1. The Jail Division sergeant or his superior shall, whenever practicable and desirable for purposes of avoiding the background investigation, release the prisoner prior to booking if the circumstances that prompted the initial detention have changed such that the basis for disqualification no longer exists.

2. If the misdemeanant is not released prior to booking, the Jail Division shall make an immediate investigation into the background of the person to determine whether he should be released. (Persons booked for Piedmont and the California Highway Patrol shall be included. Persons booked "en route" to other jurisdictions shall be excluded.) The background investigation shall proceed as follows:

   a. The Jail Division shall complete the Detention Record (form 336-402). (The Background Investigation Trial Form shall be used until 1 Jan 70.)

   b. The prisoner shall be photographed and fingerprinted in the normal manner.

   c. As soon as practicable after booking has been completed and results of the fingerprint check have been received, the Jail Division shall review and, if necessary, spot-verify the background information given by the prisoner.

   d. When the background check is completed and the criminal record compared with the prisoner's own statements, the Receiving Section Sergeant or his superior shall determine whether the prisoner is eligible for release.

VII. DOCUMENT ROUTING PROCEDURES

A. FIELD CITATIONS

1. Citation copy # 3 shall be given to the defendant.

2. Citation copies # 1 and 2 shall be deposited, along with the Offense Report, in the report receptacle marked "MISDEMEANOR CITATIONS" in the Patrol Division. (Traffic citations shall be deposited in a separate receptacle.)

3. The Patrol Division Watch Clerk shall gather the citation forms and the Offense Reports and forward them as follows:

   a. Citation copy # 1 to the District Attorney's Office.

   b. Citation copy # 2 to the Statistical Section.

   c. The Offense Report to the Report Review Unit.

4. The Statistical Section, after punching all necessary data, shall forward citation copy # 2 to the Identification Section.

5. The Identification Section shall follow normal procedures in forwarding dispositional information to C.I. & I. The citation shall be permanently filed in the defendant's jacket. (When a defendant reports to the Identification Section for booking, his copy [# 3] of the citation shall be stamped and returned to him for presentation to the court, so that the judge may be notified that booking has occurred.)

B. JAIL CITATIONS

1. Citation copy # 3 shall be given to the defendant.

2. Immediately after the citation has been issued, the issuing officer shall stamp in Box 49 of the Arrest Report face sheet "CITED" and shall fill in the citation number, and the time, date, and court of appearance.

3. The prisoner's arrest number shall be written at the top of the citation form so that the number will appear on citation copies # 1 and 2.

4. "CITED" shall be noted on the Arrest Log above the prisoner's name.

5. The Arrest Report shall then be forwarded to the Report Reproducing Section.

6. Citation copy # 1 shall be forwarded to the District Attorney's Office.

7. Citation copy # 2 shall be forwarded to the Identification Section for permanent filing with the Arrest Report in the defendant's jacket.

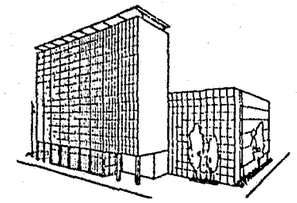
C. VOIDED CITATIONS

1. All citations are voided by deposit of the voided citation (all copies) in the report receptacle. "VOID" shall be written or stamped across the face of the citation. The Bureau of Field Operations Commander shall designate a supervising officer to review all voided citations for purposes of control.

VIII. ANIMAL CONTROL UNIT

A. The Animal Control Unit shall follow existing policies, except that the "notice to appear" citation form shall be employed. No Offense Report shall be completed. If the person refuses to give his written promise to appear, no physical arrest shall be made, but existing procedures shall be followed.

APPENDIX A-2



OAKLAND POLICE DEPARTMENT

C. R. GAIN, CHIEF OF POLICE
POLICE ADMINISTRATION BUILDING, 455 7TH ST., OAKLAND, CALIFORNIA 94607

October 7, 1969

The Honorable Stafford P. Buckley
Oakland-Piedmont Municipal Court
600 Washington Street
Oakland, California 94607

My dear Judge Buckley:

We were most grateful for the opportunity to meet with the Judges to discuss the citation release procedures. Thank you for your kind attention.

One problem we discussed but did not fully resolve was the question of whether a citation would ever be issued after an arrest pursuant to a misdemeanor warrant. Our feeling is very strong that citation would never be appropriate if the person were arrested with a warrant in the field. We do believe, however, that if the person voluntarily accepts service of an arrest warrant (as distinguished from a bench warrant) by appearing in the Warrant-Fugitive Office, he should be eligible for citation. If the judges would support such a policy, then perhaps the misdemeanor warrant could be drafted to read somewhat as follows: ". . . . Bail is set at $350, unless the person is eligible for citation release under PEN. CODE § 853.6."

Since our meeting, I have located what legislative history there is indicating the Committee's intention. In the unpublished report of the Assembly Criminal Procedure Committee, signed by a majority of the members and written in support of A.B. 939, the following statement appears at page 7: "Furthermore, the Committee believes that warrants are often issued for the arrest of persons who are, in fact, acceptable risks. Therefore, the Committee further recommends that the provisions denying a peace officer the authority to release anyone arrested pursuant to a warrant be abolished."

PEN. CODE § 853.6(h) provides: "A peace officer may use the written notice to appear procedure set forth in this section for any misdemeanor offense in which the officer has arrested a person pursuant to Section 836 or in which he has taken custody of a person pursuant to Section 847 [citizen's arrest]." Section 836, of course, provides that "A peace officer may make an arrest in obedience to a warrant, or may, without a warrant, arrest a person . . . ."

PEN. CODE § 848 sets forth the duty of an officer arresting with a warrant: "An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or

as provided by law."

Thus, it is at least arguable that a citation would be legal even though the warrant did not provide for it. If the warrant specifically provided, however, for the alternatives of bail or citation, depending upon the defendant's eligibility for the latter, then surely the question does not even arise. The only legal difficulty, I fear, might be found in Section 815a:

> Bail--reasonable--to be fixed on issuance of warrant. At the time of issuing a warrant of arrest, the magistrate shall fix the amount of bail which in his judgment in accordance with the provisions of section 1275 will be reasonable and sufficient for the appearance of the defendant following his arrest, if the offense is bailable, and said magistrate shall endorse upon said warrant a statement signed by him, with the name of his office, dated at the county, city or town where it is made to the following effect 'The defendant is to be admitted to bail in the sum of _____ dollars' (stating the amount).

I suppose a relevant question would be whether a "reasonable bail" is ever set at $00.00 (in effect, own recognizance). If so, perhaps it follows that the alternatives "bail or citation" would also be appropriate.

The new law points the way for citation release on the mere promise to appear, thus obviating the need for bail in appropriate cases. Our hope is that the Judges will be able to assist us in implementing the spirit of the law.

Would it be possible to raise this question at your next Judges Meeting and advise us of your conclusions and suggestions.

With high regard, I am

Very truly yours,

C. R. GAIN
Chief of Police

Linda A. Rodgers

Linda A. Rodgers
Staff Assistant

cc. Hon. D. W. Brobst
Hon. Allen E. Broussard
Hon. Malcolm Champlin
Hon. John S. Cooper
Hon. William F. Levins
Hon. Myron O. Martin
Hon. Lewis P. May
Hon. Winton McKibben
Hon. Martin N. Pulich
Hon. Jacqueline Taber

MUNICIPAL COURT
OAKLAND-PIEDMONT JUDICIAL DISTRICT
OAKLAND, CALIFORNIA 94604

October 15, 1969

CHAMBERS OF THE PRESIDING JUDGE

Chief C. R. Gain
Police Administration Building
455 Seventh Street
Oakland 94607
California

Atten: Linda A. Rogers
Staff Assistant

Re: Citation Release on
Misdemeanor Arrest Warrants.

Dear Chief Gain:

As requested in your letter of October 7, 1969, the judges considered the above subject at a recent meeting.

We agree that it would be in keeping with the spirit of the law to provide for citation release in the situation as set forth in your letter, and support such policy.

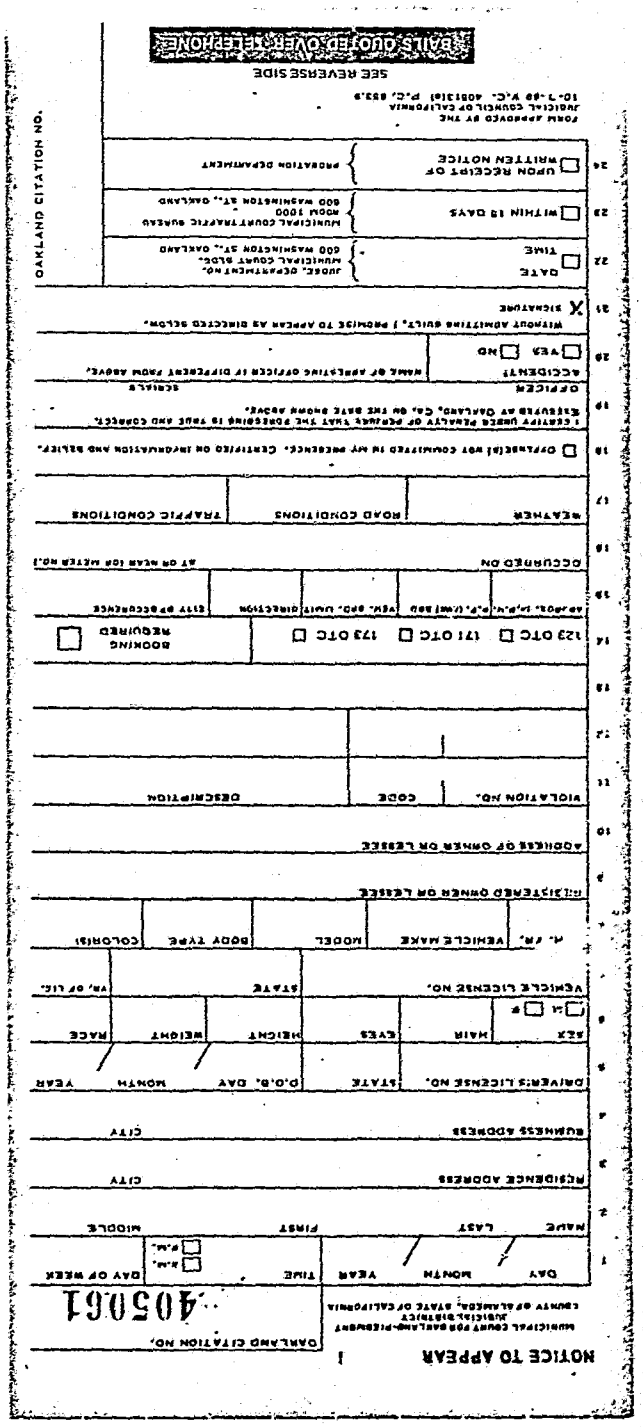
Yours very truly,

Stafford P. Buckley

SPB/o

STAFFORD P. BUCKLEY

APPENDIX A-4



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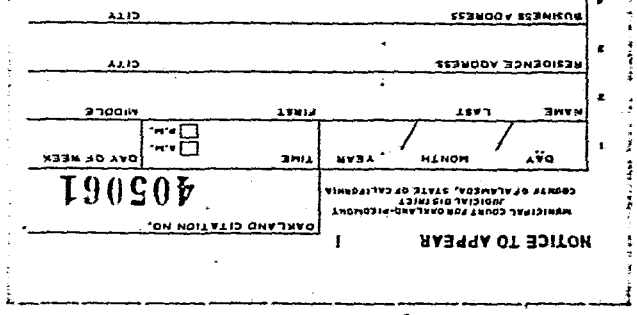

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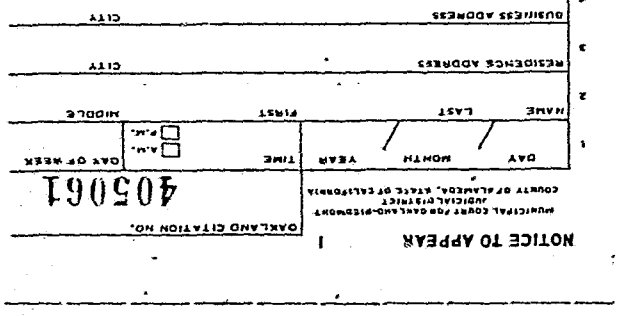

COPY #1

REVERSE SIDES

COPY #1

COPY #2

COPY #3

BAIL $ _____
The defendant is to be admitted to bail in the sum of _____ dollars.

_____ Judge

CITIZEN'S ARREST STATEMENT

I HEREBY ARREST THE ABOVE DEFENDANT ON THE CHARGE INDICATED AND REQUEST A PEACE OFFICER TO TAKE HIM INTO CUSTODY. I WILL APPEAR AS DIRECTED AND TESTIFY AGAINST THE PERSON I ARRESTED.

SIGNATURE _____

PROCESSED THRU THE I. D. BUREAU

Date	Time	Employee Serial No.

IMPORTANT - READ CAREFULLY

YOU MUST COMPLY WITH THE FOLLOWING INSTRUCTIONS

RETAIN THIS COPY FOR COURT APPEARANCE

WARNING: Willful failure to appear as provided is a separate violation for which you may be arrested and punished by 6 months IN JAIL AND/OR $2000.00 FINE, regardless of the disposition of the original charge. (V.C. 40508, P.C. 853.7). In addition, the Department of Motor Vehicles is REQUIRED TO WITHHOLD the issuance or renewal of your driver's license, and may revoke or suspend your driving privileges, if you violate your written promise to appear when a traffic offense has been charged.

BAIL INFORMATION: Bail information is available at the Municipal Court Traffic Bureau, Room 1000, 600 Washington Street, Oakland, California during the following hours:

Monday, Tuesday, Wednesday, Thursday ..... 8 am to 5 pm
Friday ..... 8 am to 7 pm
Closed Saturday, Sunday and Holidays

OR

By calling 834-5151, Ext. 2425 between 8 am and 5 pm Monday through Friday.

BOOKING REQUIRED: If an X appears in the Booking Required section of Line 14, you must, within 48 hours of this notice, then PRIOR to your appearance, the defendant is to report with this notice to the Oakland Police Department, Identification Section, Room 315, 455 - 7th St., Oakland, to be photographed and fingerprinted as required by penal code section 853.6 (g). Processing hours are Monday thru Friday, 8 am to 5 pm.

CORRECTION OF VIOLATION: Proper proof of correction of the following types of violations will be needed. Whether or not you have obtained a certificate or other evidence of correction, it is still necessary for you to report to the Municipal Court Traffic Bureau or Court within (15) days after you receive your citation.

FOR DRIVER'S LICENSE OR VEHICLE REGISTRATION VIOLATIONS: Bring a valid license or registration certificate at the time of your appearance if you have one or can lawfully obtain one.

FOR VEHICLE LICENSE PLATE VIOLATIONS: Obtain a clearance on your license plates from the Department of Motor Vehicles or have the Certificate of Correction at the bottom of this form completed. Bring your evidence of correction at the time of your appearance.

EQUIPMENT VIOLATIONS MUST BE CORRECTED IMMEDIATELY: You should make necessary repairs and produce satisfactory proof of correction at the time of your appearance as follows:

FOR DEFECTIVE HEADLIGHTS, BRAKES OR SMOG DEVICES: Submit a certificate from an Official Inspection Station or other evidence satisfactory to the Court.

FOR OTHER DEFECTS: Have the Certificate of Correction on the bottom of this form completed or submit other evidence satisfactory to the Court.

JUVENILES: Bring your evidence of corrected defect with you at the time of your scheduled hearing.

INSPECTION STATION USE

CERTIFICATE OF CORRECTION

TO ANY MEMBER OF THE CALIFORNIA HIGHWAY PATROL, A SHERIFF'S DEPARTMENT OR A POLICE DEPARTMENT: VERIFY THE CORRECTION AND COMPLETE THE SECTION BELOW.

SECTION VIOLATED	SIGNATURE OF PERSON CERTIFYING CORRECTION	NO.	AGENCY	DATE

IF YOU HAVE BEEN CITED FOR A VIOLATION OF SECTION 39.05 OR 39.06 O.M.C. (DOG LICENSE SECTIONS OF THE ANIMAL ORDINANCE) YOU MUST SHOW PROOF OF A VALID DOG LICENSE AND A RABIES CERTIFICATE AT THE OFFICE OF THE ANIMAL CONTROL DIVISION, 1101 - 2nd AVE., OAKLAND, PRIOR TO THE DATE UPON WHICH YOU PROMISED TO APPEAR. IF YOU DO NOT COMPLY, A COURT APPEARANCE IS MANDATORY.

APPENDIX A-5

JAIL DIVISION GENERAL ORDER C-9
OAKLAND POLICE DEPARTMENT

Index as:

Citation Release
Jail Citations
Notice to Appear

CITATION RELEASE OF ADULT MISDEMEANANTS

The purpose of this General Order is to set forth policies implementing (in the Jail only) Penal Code Section 853.6, which authorizes the issuance of a citation (Notice to Appear) for any misdemeanor offense in which the officer has arrested a person pursuant to Section 836 or in which he has taken custody of a person pursuant to Section 847 (citizen's arrest). Under the newly amended section, effective 10 Nov 69, a field citation will be optional as before; but the Department will be required to investigate the community ties of every misdemeanant not released prior to booking so that a prediction can be made about the likelihood of his appearance in court. A Jail citation will accordingly be issued to misdemeanants who subsequently qualify for release.

A Departmental General Order will be issued in the near future establishing policies for both field and jail citations. This divisional order is necessary for purposes of complying with the new law and is effective at 0001 hours on 10 Dec 69.

I. POLICY

A. The essential standard for determining whether a citation shall issue, like the standard for setting bail, is whether the person is likely to appear in court. In unusual circumstances, in addition, a person may be detained for reasons of public safety. Accordingly, a Jail citation SHALL be issued for adult misdemeanants who have promised to appear, UNLESS the circumstances meet one or more of the detention criteria, below.

II. DETENTION CRITERIA

A. A citation shall not be issued if a reasonable likelihood exists that the person will fail to appear in court as promised.

1. An objective point system will be employed to aid in the determination whether the person's background defines him as a good risk for citation release.

B. A citation shall not be issued if the evidence indicates that the person, if released, would commit any offense causing or threatening injury to persons or property.

1. In the event of civil disorder, the detention of persons arrested for serious misdemeanors would be appropriate for reasons of public safety, unless the evidence indicated that the person's return to the scene would be unlikely.

2. A person arrested for an assault against his wife, for example, may be denied citation if his prior record indicates a propensity for violence and the present circumstances indicate that his release would pose a further danger to his spouse.

III. CITATION ISSUANCE PROCEDURES

A. The Jail Division sergeant or his superior shall, whenever practicable and desirable for purposes of avoiding the background investigation, release the prisoner prior to booking if the circumstances that prompted the initial detention have changed such that the basis for disqualification no longer exists.

B. If the misdemeanant is not released prior to booking, the Jail Division shall make an immediate investigation into the background of the person to determine whether he should be released. (Persons booked for Piedmont and the Calif. Highway Patrol shall be included. Persons booked "en route" to other jurisdictions shall be excluded.) The background investigation shall proceed as follows:

1. The Jail Division shall complete the Detention Record (Form 336-402). (The Background Investigation Trial Form shall be used until 1 Jan 70.)

2. The prisoner shall be photographed and fingerprinted in the normal manner.

3. As soon as practicable after booking has been completed and results of the fingerprint check have been received, the Jail Division shall review and, if necessary, spot-verify the background information given by the prisoner.

4. When the background check is completed and the criminal record compared with the prisoner's own statements, the Receiving Section Sergeant or his superior shall determine whether the prisoner is eligible for release.

IV. CITATION ROUTING PROCEDURES

A. Citation copy #3 shall be given to the defendant.

B. Immediately after the citation has been issued, the issuing officer shall stamp in Box 49 of the Arrest Report face sheet "CITED" and shall fill in the citation number, and the time, date, and court of appearance.

C. The prisoner's arrest number shall be written at the top of the citation form so that the number will appear on citation copies #1 and 2.

D. "CITED" shall be noted on the Arrest Log above the prisoner's name.

E. The Arrest Report shall then be forwarded to the Report Reproducing Section.

F. Citation copy #1 shall be forwarded to the District Attorney's Office.

G. Citation copy #2 shall be forwarded to the Identification Section for permanent filing with the Arrest Report in the defendant's jacket.

By order of

JON D. ARCA
Captain, Commanding
Jail Division

PEN. CODE § 853.6--BACKGROUND INVESTIGATION

name	arr. no.	charges	OPD #
address		date & time of arrest	
alias	birthplace	location of arrest	

TWO PERSONS WHO CAN BE CALLED TO VERIFY THE INFORMATION BELOW:

_____ Phone: _____

_____ Phone: _____

IF RELEASED ON CITATION, DEFENDANT WILL LIVE AT & CAN BE REACHED AT:

_____ Phone: _____

RESIDENCE: HOW LONG AT ABOVE? _____ PRIOR RESIDENCE: _____

_____ HOW LONG? _____ HOW LONG IN STATE? _____

Present residence one year or more	3
Present residence six months, or present and prior one year	2
Present residence three months, or present and prior six months	1
Present residence and prior less than six months	0

FAMILY TIES: MARITAL STATUS: _____ CHILDREN: _____

LIVES WITH AND/OR SUPPORTS FAMILY? _____

Lives with family	3
Lives alone and has regular contact with family	2
Lives with non-family person and has regular contact with fam.	2
Lives with non-family person and has no contact with fam.	1
Lives alone and has no contact with family	0

PRESENT EMPLOYMENT: _____

HOW LONG? _____ POSITION: _____

PAST EMPLOYMENT: _____

HOW LONG? _____ POSITION: _____

Present job one year or more (include union work)	3
Present job three months, or present and prior job six months	2
Current job, or intermittant work for one year	1

IF NOT EMPLOYED, HOW SUPPORTED? _____

Receiving unemployment compensation or welfare	1
Supported by family or savings	1

MISCELLANEOUS INFORMATION: _____

_____

_____

Poor health, pregnancy, old age, disability, in school, owns or buying home, surrendered self, etc.	2
Attempted to evade arrest, resisted arrest, etc.	-2

Prior failure to appear is automatically disqualifying.

==========

PRIOR RECORD: _____

_____

_____

_____

No prior arrests, or one misdemeanor arrest	2
Two misdemeanor arrests, or one felony arrest	0
Three or more misdemeanor arrests, or two felony arrests	-1
Four or more misdemeanor arrests or three or more felony arrests	-2

OUTSTANDING WARRANTS OR HOLDS? _____

_____

==========

RECOMMENDATION: Defendant scores _____ points. _____

_____

_____

INVESTIGATOR: _____ DATE: _____

(trial form 11/23/69)

APPENDIX D-1

ARTICLES OF ASSOCIATION

OF

THE CITIZEN-POLICE ASSOCIATION

OF OAKLAND

We, the undersigned, for the purpose of forming a voluntary, non-profit association under the unincorporated association laws of California, do hereby state and certify:

FIRST: The name of this association is THE CITIZEN-POLICE ASSOCIATION OF OAKLAND.

SECOND: The specific primary charitable purposes for which this association is formed are:

(a) the lessening of neighborhood tensions;

(b) the diminishing of prejudice and discrimination;

(c) the betterment of police-community relations; and

(d) the prevention of juvenile delinquency;

all to be accomplished or sought through (i) the sponsorship of various programs, events, and projects, including The Citizen-Police Baseball League, in cooperation and in conjunction with the Community Relations and Youth Division of the Oakland Police Department [hereinafter referred to as the Department], and (ii) the assistance with programs, events, and projects sponsored and conducted by the Community Relations and Youth Division of the Department.

THIRD: The county in the State of California where the principal office for the transaction of the business of this association is located, is the County of Alameda.

FOURTH: The number of Directors of this association shall be eleven (11). The number of Directors herein provided for shall constitute the authorized number of Directors until changed by an amendment of these Articles of Association or by a by-law duly adopted by the regular members of this association. The Directors shall consist of the following:

(a) The Commanding Officer of the Community Relations and Youth Division of the Department;

(b) The Officer in charge of the Community Relations Section of the Department;

(c) Four Department members or employees of any rank, three of whom shall, if possible, be employees assigned to the Community Relations and Youth Division of the Department; the Commanding Officer of the Community Relations and Youth Division shall designate which of such eligible employees shall serve;

(d) The Staff Assistant to the Chief of Police; and

(e) Four citizens of Oakland who are not Department personnel, such Citizen-Directors to be appointed initially by majority decision of the remaining seven Directors who are determined according to their assignments within the Department. Thereafter such Citizen-Directors shall be selected at the Annual Meeting of the Regular Membership by a majority decision of a quorum of the regular members.

The names and addresses of the persons who are to act in the capacity of Directors of this Association until the appointment or selection of their successors are as follows:

Name	Address
Howard Bess	541 Rosal Avenue Oakland, California
Richard E. Castle	455 - 7th Street Oakland, California
Kent Cheeseborough	372 Euclid Avenue, Apt. 204 Oakland, California
Arthur Cravanas	455 - 7th Street Oakland, California
Father C. J. Howard	St. Patrick's Church Rectory 1023 Peralta Street Oakland, California
William Lovejoy	455 - 7th Street Oakland, California
Lawrence McKee	455 - 7th Street Oakland, California
Barry V. Moore	6185 Westover Dr[illegible] Oakland, California

Linda A. Rodgers	455 - 7th Street Oakland, California
Odell H. Sylvester	455 - 7th Street Oakland, California
William A. Thompson	455 - 7th Street Oakland, California

FIFTH: The authorized number and qualifications of members of this association, the different classes of membership, if any, and the voting and other rights and privileges of members shall be as set forth in the by-laws of this association.

SIXTH: This association is not organized, nor shall it be operated, for pecuniary gain or profit, and it does not contemplate the distribution of gains, profits or dividends to the members thereof and is organized solely for non-profit purposes. The property, assets, profits and net income of this association are irrevocably dedicated to charitable purposes and no part of the profits or net income of this association shall ever inure to the benefit of any director, officer, or member thereof or to the benefit of any private shareholder or individual. Upon the dissolution or winding up of this association, the Board of Directors, after paying or making provision for the payment of all liabilities of the association, shall dispose of all the assets of the association in accordance with the purposes of the association in such manner, or to such organization or organizations organized and operated exclusively for charitable purposes, as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any of such assets not so disposed of shall be disposed of in such a manner as may be directed by decree of the superior court of the county in which this association's principal office is located, upon petition therefor by the Attorney General or by any person concerned in the liquidation.

SEVENTH: No substantial part of the activities of this association shall consist of carrying on propaganda or otherwise attempting to influence legislation or participating in or intervening in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

IN WITNESS WHEREOF, we, the undersigned, have hereunto subscribed our names this 16th day of June, 1969.

Howard Bess	William Lovejoy
Richard E. Castle	Lawrence McKee
Kent Cheeseborough	Barry V. Moore
Arthur Cravanas	Linda A. Rodgers
Rev. C. J. Howard	Odell H. Sylvester

William A. Thompson

APPENDIX D-2

BY-LAWS

OF

THE CITIZEN-POLICE ASSOCIATION

OF OAKLAND

Article One

Membership

Section 1.1. Classes of Membership. There shall be two classes of membership: Regular Members and Participating Members.

Section 1.2. Eligibility.

(a) Regular Members. The regular members shall be those persons who are the directors of the Association as determined by the Articles of Association. There shall be no other Regular Members.

(b) Participating Members. Any person who participates in the sponsorship, direction, supervision, or organization of any project(s), event(s), or program(s) sponsored by the Citizen-Police Association [All referred to hereinafter as "the activities of the Association"] shall be eligible as a Participating Member. A regular member may be also a participating member if he wishes to engage in any particular activity of the Association.

Section 1.3. Qualification. Any eligible person shall be admitted to membership upon the filing of a membership card with the Secretary of the Association. Each participating member shall designate on his membership card the particular activity(ies) of the Association in which he is engaged.

Section 1.4. Dues and Assessments. Members shall not be liable for dues or assessments.

Section 1.5. Termination.

(a) Regular Members. Regular members whose positions as Directors of the Association are determined by their assignments within the Department shall be terminated upon any of the following circumstances: (i) transfer of the member to a non-qualifying assignment within the Department; (ii) the death of the member; (iii) a written resignation of the member submitted to the Secretary, or

(iv) the termination of the member from the Department. The membership of the remaining regular members shall terminate upon any of the following circumstances: (i) the death of the member; (ii) the written resignation of the member submitted to the Secretary; (iii) the removal of the member's residence from Oakland; or (iv) the expiration of the member's term of office as a Director of the Association, as set forth in Section 4.2 of these By-Laws.

(b) Participating Members. Membership shall terminate upon any of the following circumstances: (i) the death of the member; (ii) the written resignation of the member submitted to the Secretary; (iii) the removal of the member's residence from the City of Oakland; or (iv) the cessation of the member's participation in the activities of the Association.

Section 1.6. Voting Rights.

(a) Regular Members. Each regular member who is personally present at a meeting shall be entitled to one (1) vote upon any matter submitted to a vote of the membership at such meeting. If any matter be submitted to a vote of the membership by mail, each regular member shall be entitled to one (1) vote upon such matter. Voting shall not be cumulative.

(b) Participating Members. Each participating member who is personally present at a meeting of members who are engaged in the activity(ies) designated on such member's membership card shall be entitled to one (1) vote upon any matter pertaining to the affairs and operations of the activity. If any matter be submitted to a vote by mail, each participating member engaged in the activity shall have one (1) vote upon such matter. The voting rights of participating members shall be limited to voting upon matters pertaining to the affairs of the participating member's designated activity(ies). Voting shall not be cumulative.

Section 1.7. Privileges. Every member in good standing shall be privileged to attend any function of the Association upon payment of the established charge therefor, if any.

Section 1.8. Records. The Association shall keep a membership book containing the name and address of each member. Termination of any membership shall be recorded in the book together with the date on which the membership ceased.

Article Two

Meetings of Regular Members

Section 2.1. Annual Meeting. The annual meeting of the regular membership shall be held in Oakland, California, at 4:00 p.m.

on the first Tuesday of May in each year or at such other time or place as the Board of Directors may determine. At the annual meeting of the regular membership, the President and such other officers as he may require shall report on the affairs of the Association; the Treasurer shall make a financial report; and officers and the four Directors who are not Department personnel shall be elected by majority decision of a quorum of the regular membership.

Section 2.2. Special Meetings. Special meetings of the regular membership shall be called by the Secretary upon the request of the President or upon the written request of any three (3) regular members of the Association or upon the order of the Board of Directors.

Section 2.3. Quorum. Five (5) regular members shall constitute a quorum for the transaction of business at any meeting of the Association.

Section 2.4. Notice. Notice of any regular or special meeting of the regular membership shall be mailed to all regular members entitled to vote at such meeting at least five (5) days prior to the date of the meeting. Such notice shall contain a brief statement of the matters intended to be submitted to a vote at the meeting, including in the case of the election of officers and citizen-directors the names of each person proposed as a candidate for election.

Article Three

Activities

Section 3.1. Committees; Chairmen and Members. Each activity sponsored by the Association shall be operated by a Committee, the chairman and members of which shall be determined by the participating members engaged in the activity, with the advice and consent of the President of the Association. In the event that an activity has no participating members so engaged, the President of the Association shall appoint a Committee Chairman to direct the activity until such time as five or more participating members have designated the activity. At such time the participating members may select a new chairman and committee members, who shall serve with the advice and consent of the President of the Association.

Section 3.2. Committee Business. The business of each activity shall be conducted according to procedures that are adopted by each Committee, except that no committee chairman or participating member shall have the authority to bind the Association by contract or otherwise unless authorized to do so by these By-Laws or by the Board of Directors. Upon authorization of the Board of

Directors, the chairman of the particular activity committee shall be authorized to incur on behalf of the Association the customary obligations in connection with such activity, provided that any financial commitments do not exceed the authorized budget for the activity as determined by the Board of Directors.

Section 3.3. Committee Meetings. Committee meetings shall be called, held, and conducted in such manner as the committee members shall determine.

Section 3.4. Meetings of Participating Members. Special or regular meetings of the body of participating members engaged in any activity may be called by the committee chairman in such manner and at such time as the committee determines, except that at least one meeting of the participating membership shall be called each year, for the purpose of selecting the activity's committee members and the committee chairman, who shall serve with the advice and consent of the President of the Association.

Article Four

Directors

Section 4.1. Number. The number of directors of this Association shall be as provided in the Articles of Association unless changed by an amendment of said Articles or by a By-Law of the Association.

Section 4.2. Selection. Seven Directors are determined, as provided in the Articles of Association, according to their assignments within the Department and shall serve until their successors are determined in the same manner. The four Citizen-Directors, also provided for in the Articles of Association, shall be elected at the annual meeting of regular members and shall serve until the next annual meeting thereafter or until their successors are elected and qualified.

Section 4.3. Vacancies. In the event of the death, resignation or removal from office of any director, the remaining Directors shall appoint a qualified person to fill the vacancy and the person so appointed shall serve until the next annual meeting of the membership in the case of a Citizen-Director, or until a successor is determined by the filing of the qualifying assignment within the Department.

Section 4.4. Duties. It shall be the duty of the Board of Directors to maintain general supervision of the affairs of the Association, to establish policy and generally to see that the objectives of the Association are carried out.

Article Five

Meetings of Directors

Section 5.1. When Held. Meetings of the Board of Directors shall be held (a) upon call by the President; or (b) upon call by the Secretary, if so requested by three (3) or more directors.

Article Six

Officers

Section 6.1. Officers. The officers of the Association shall be a President, such number of Vice Presidents as the Board of Directors may designate from time to time, a Secretary and a Treasurer. The offices of Secretary and Treasurer may be held by one person. The President of the Association shall be the Commanding Officer of the Community Relations and Youth Division of the Department.

Section 6.2. Election. All officers other than the President shall be elected at the annual meeting of regular members and shall serve until the next annual meeting thereafter or until their successors are elected and qualified. Each person elected as an officer of the corporation shall be a director.

Section 6.3. President. The President shall be the chief executive officer of the Association and shall be responsible to the Board of Directors for the conduct of its affairs. He shall preside at all meetings of the Board of Directors and of the regular membership. He shall call special meetings of the Board of Directors or of the regular membership whenever in his judgment the interests of the Association require such meetings. The President shall have the power, in accordance with Section 3.1 of these By-Laws, to appoint from among the members such committees as he may deem appropriate and advisable to carry out the purposes and objectives of the Association.

Section 6.4. Vice President. The duties of the Vice President or, if there be more than one, of the several Vice Presidents shall be as assigned by the President from time to time. In case of the absence or disability of the President, the Vice President or, if there be more than one, a Vice President designated by the Board of Directors, shall perform all the duties of the office of the President.

Section 6.5. Secretary. The Secretary shall record the minutes of all meetings of the regular members of the Association and of the Board of Directors. He shall have custody of all documents, conduct such correspondence as is necessary, issue such notices as are required by these By-Laws, maintain the membership

book, keep the seal of the Association (if one be adopted) and affix the same to all instruments which may require it, and generally do and perform all such duties as pertain to his office and as may be required by the Board of Directors.

Section 6.6. Treasurer. The Treasurer shall maintain and control all of the Association's financial accounts, have custody of all funds, securities, evidences of indebtedness and other valuable documents of the Association and at his discretion cause any or all thereof to be deposited for the account of the Association with such depositary as may be designated from time to time by the Board of Directors, receive and give receipts for monies paid in for the account of the Association, disburse all funds of the Association as may be directed by the Board of Directors, render to the President and the Board of Directors, whenever they may require, accounts of all transactions of the Treasurer and of the financial condition of the Association and generally do and perform all such duties as pertain to his office and as may be required by the Board of Directors.

Section 6.7. Vacancies. In the event of the death, resignation or removal from office of any officer except the President, the Board of Directors shall appoint a qualified person to fill the vacancy and the person so appointed shall serve until the next annual meeting of the regular membership.

Article Seven

Title to Property

Section 7.1. Members Have No Interest. Legal title to and ownership in the funds and other assets paid or given to or acquired by the Association shall be in the Association. No member shall have any interest therein. Membership in the Association shall have no monetary value and upon termination or withdrawal a member shall be entitled to no payment, distribution or any rights hereunder.

Article Eight

Sundry Provisions

Section 8.1. Accounting Period. The annual accounting period of this Association shall be the calendar year.

Section 8.2. Officers, Directors and Members To Serve Without Compensation. No officer or director or other member of the Association shall receive compensation for services rendered to the Association.

Section 8.3. Location of Principal Office. The principal

office of the Association shall be located in the Community Relations and Youth Division of the Oakland Police Department in Oakland, California.

Section 8.4. Instruments in Writing.

(a) All checks, drafts, demands for money and notes of the Association and all written contracts of the Association shall be signed by such officer or officers, agent or agents, as the Board of Directors may designate from time to time by resolution or as may be authorized to do so by these By-Laws. No officer, agent or employee of the Association shall have the power to bind the Association by contract or otherwise unless authorized to do so by these By-Laws or by the Board of Directors.

(b) The chairman of any authorized activity of the Association and any officer of the Association shall be authorized to incur on behalf of the Association the customary obligations in connection with such activities.

Section 8.5. By-Laws. The Association shall keep at its principal office a book containing the original or a copy of these By-Laws, as amended or otherwise altered to date.

Section 8.6. Audit. The accounts of the Treasurer shall be examined and reported upon annually by a committee of two (2) members who shall not be officers of the Association. Such committee shall be appointed by the President and shall make its examination and report as of the close of the annual accounting period. The report of the audit committee shall be submitted to the President and the Board of Directors prior to the annual meeting of the regular membership.

Section 8.7. Accountability of Chairmen of Activities. The chairman or other representative of the Association for any activity sponsored by or participated in by the Association shall render an accounting of the results thereof to the Board of Directors as soon as convenient after the termination of the activity, or, if the activity is on-going, at the close of the annual accounting period.

Article Nine

Procedures for Nomination of Officers and Directors

Section 9.1. Nominating Committee. Prior to the annual meeting of the regular membership, the Board of Directors shall appoint a Nominating Committee, consisting of any three regular members of the Association. The Nominating Committee shall consider available qualified candidates and shall submit to the Board of Directors for approval and submission to the vote of the regular

members at the annual meeting, its recommendations for a slate of officers and directors for the ensuing year.

Section 9.2. Contested Elections. Members desiring to submit additional nominations in connection with the annual election of Citizen-Directors and officers other than the President shall make such nomination from the floor of the annual meeting of regular members.

Section 9.3. Procedures Exclusive. The procedures set forth in this Article Nine for the nomination of Citizen-Directors and of officers other than the President shall be exclusive.

Article Ten

Amendment of By-Laws

Section 10.1. Procedure. These By-Laws may be adopted, amended or repealed by any of the following:

(a) Any means provided in the Articles or By-Laws except that a by-law fixing or changing the number of directors may not be adopted, amended or repealed without the vote or written assent of regular members entitled to exercise a majority of the voting power, or the vote of a majority of a quorum at a meeting of members duly called pursuant to the Articles or By-Laws.

(b) Except as provided in subdivision (a), by a majority of a quorum at a Board of Directors meeting duly called for the purpose according to the Articles or By-Laws.

Article Eleven

Approval of the Chief of Police

Section 11.1. Approval of the Chief of Police. The President of the Association or the Staff Assistant to the Chief of Police shall submit to the Chief of Police a written description of each activity proposed for sponsorship by the Association. The Chief of Police shall thereafter determine whether such activity shall be approved, and no activity shall be sponsored by the Association without the written approval of the Chief of Police.

I hereby certify these by-laws to be the by-laws of The Citizens-Police Association of Oakland, unanimously adopted by the Board of Directors in a meeting duly held on the sixteenth day of June, nineteen hundred sixty-nine.

/a/ Linda A. Rodgers
LINDA A. RODGERS
Secretary

DECISIONAL LAW BULLETIN

BULLETIN INDEX: VII - A.1	13 Aug 69	C. R. GAIN CHIEF OF POLICE

THE PURPOSE OF THIS BULLETIN IS TO INFORM ALL MEMBERS OF RECENT DECISIONS BY THE COURTS AND OCCASIONALLY BY EXECUTIVE OFFICIALS, SUCH AS THE ATTORNEY GENERAL, THAT AFFECT THE OPERATIONS OF THIS DEPARTMENT. THE BULLETINS WILL FREQUENTLY CONTAIN POLICY STATEMENTS REFINING THE PARTICULAR DECISION FOR DEPARTMENTAL APPLICATION. SUCH POLICIES ARE BINDING ON ALL MEMBERS. THESE BULLETINS WILL BE ISSUED AS SOON AS POSSIBLE AFTER THE DECISIONS ARE HANDED DOWN, SO THAT MEMBERS CAN BE IMMEDIATELY INFORMED OF THEIR EFFECT. RETENTION OF THE BULLETINS IS MANDATORY; THEY ARE PART OF THE TRAINING MANUAL SERIES AND ARE THEREFORE INDEXED AND COLOR CODED TO FACILITATE RETENTION.

Subject: Search Incidental to Arrest
Searches and Seizures

UNITED STATES SUPREME COURT RESTRICTS SEARCHES INCIDENTAL TO ARREST

In a decision that greatly limits the scope of a search incidental to an arrest, the United States Supreme Court held in Chimel v. California, 23 L. Ed. 2d 685 (June 23, 1969), that stolen coins seized by police in a thorough search of petitioner's house and premises were illegally seized and thus inadmissible, even though the search was incidental to a valid arrest.

Petitioner had been arrested pursuant to a warrant authorizing his arrest for the burglary of a coin shop. Officers thereafter made a thorough search, lasting between forty-five minutes and an hour, of the three-bedroom house, including the attic, the garage, and a small workshop. In the master bedroom and sewing room the officers directed petitioner's wife to open drawers and "to physically move contents of the drawers from side to side so that they might view any items that would have come from the burglary."

In overruling United States v. Rabinowitz, 339 U.S. 56 (1950), described as being "hardly founded on an unimpeachable line of authority," the Court noted that the Fourth Amendment's proscription of "unreasonable searches and seizures" must be read in light of the history that gave rise to the words--"a history of abuses so deeply felt by the Colonies as to be one of the potent causes of the Revolution. The Amendment was in large part a reaction to the general warrants and warrantless searches that had so alienated the colonies and had helped speed the movement for independence. In the scheme of the Amendment, therefore, the requirement that 'no Warrants shall issue, but upon probable cause,' plays a crucial part," interposing "a magistrate between the citizen and the police." The term "unreasonable," therefore, cannot be defined in a vacuum, but only in accordance with the purposes and history of the Fourth Amendment.

This Department is governed by the Chimel decision, and members are instructed to follow the guidelines set forth by the Court in these terms:

> When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. And the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. This is ample justification, therefore, for a search of the arrestee's person and the area "within his immediate control"--construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.
>
> There is no comparable justification, however, for routinely searching rooms other than that in which an arrest occurs--or, for that matter, for searching through all the desk drawers or other closed or concealed areas in that room itself. Such searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant.

DEPARTMENTAL POLICIES

The following Departmental policies are related to the Chimel decision and shall be adhered to:

I. EMERGENCY CIRCUMSTANCES

The rule of Chimel applies to all searches conducted without a search warrant, whether the arrest was or was not pursuant to a warrant of arrest. The decision recognizes that in emergency situations, a search may be broader than the limited search incidental to arrest that is permissible under the holding of that case. "Emergency circumstances" exist when (a) a search warrant could not practicably have been obtained prior to the arrest; AND (b) there is grave danger that delay for purposes of obtaining a warrant after the arrest will result in destruction or loss of the evidence.

Thus, suppose that officers have received a radio description of a bank robber reported to be carrying a briefcase filled with currency. They spot a suspect fitting the description and carrying a briefcase. Following in hot pursuit they chase him into a dwelling, where he is arrested in the living room. If the briefcase has been secreted, officers should search other rooms for the briefcase, unless the premises can be secured to prevent the destruction or removal of the evidence during the period that a warrant is being sought. In this case it was impossible to have obtained a search warrant prior to the arrest, and if the premises cannot be secured to protect the evidence, the requisite clear danger of evidence loss would be established so as to permit the search.

The standard in cases where search is a matter of emergency, thus, is the PRACTICABILITY (in terms of possibilities, not convenience) of obtaining the search warrant, and practicability must be judged from the circumstances both prior to the arrest and after the arrest. If obtaining the warrant is impracticable after the arrest, but would have been practicable before, the search for evidence is illegal if its scope goes beyond the Chimel guidelines. The impracticability, in other words, must have existed with regard to both points in time: before and after the arrest.

II. TEMPORARY DETENTION FOR QUESTIONING

It should be noted that the Chimel decision does not affect the legality of a cursory search for weapons when the officer has reasonable suspicion to detain temporarily for questioning and has reason to believe the suspect may be armed and dangerous.

III. SEARCH AND SEIZURE WITHOUT WARRANT AND NOT INCIDENT TO AN ARREST

The Chimel decision does not affect the legality of a search and seizure of contraband or evidence of crime, even when there has been no arrest, if it is highly probable that the evidence would be destroyed during the delay required to seek the search warrant. Thus, if a vehicle is observed that is known to be carrying narcotics, a search may be made whether or not there is a suspect in the car, provided that clear danger of loss exists.

IV. THE PLAIN VIEW RULE

Chimel does not alter the rule that any contraband or evidence in the plain view of the officer may be seized, provided he was legally present at the time he observed the items seized.

V. PROCEDURES TO BE FOLLOWED IN THE INVENTORY AND THE SEARCH OF VEHICLES

A. Physical Arrests for Felonies and Misdemeanors

1. Inventory and Removal of Vehicles; The Limitations. "When an officer arrests any person driving or in control of a vehicle for an alleged offense and the officer is by this code or other law required or permitted to take and does take the person arrested before a magistrate without unnecessary delay," the officer "may remove" the vehicle from the highway. VEHICLE CODE Sec. 22651(h). An important limitation has been placed upon the interpretation of this provision, however, by Virgil v. Superior Court, 268 A.C.A. 133 (1968), which recognized the right of the police to remove the vehicle from the highway but denied police authority to impound a vehicle that could have been driven home by the passengers in the car. It was the driver's decision, said the court, whether the police should impound the car or allow his friends to drive it home. The Virgil rule would apply to all cases (a) in which the arrested driver was competent (e.g., sober) to make such a decision, and (b) the person to whom the car would be entrusted was competent to drive it (licensed to drive, sober, etc.).

2. Proper Utilization of the Inventory. In cases where removal and storage is permissible under Sec. 22651(h), officers should inventory the contents of the vehicle prior to releasing it to the towing contractor. An inventory is for the protection of the person arrested, the garagemen, and the officer. It SHALL NEVER BE USED AS AN EXCUSE TO SEARCH FOR EVIDENCE. If contraband or evidence of crime happens to be found during the inventory, it will be admissible in court only if the inventory was necessary under the circumstances and not undertaken as a guise for ferreting out evidence. Furthermore, since the inventory is not a search for evidence, the scope of an inventory is narrower than a search for evidence. In an inventory, for example, the seats of the car cannot be removed, nor the floor and upholstery vacuumed; it is only those items of property, readily obtainable, that are subject to inventory. All such items, of course, should be listed.

3. Search of a Vehicle Pursuant to Warrant. Even in a case that is proper for removal and inventory, if an evidentiary search is desired, officers must seek a search warrant, since there would be no clear danger that the evidence would be lost. Guardian seals should be placed on the vehicle and it should be otherwise secured and even guarded, if necessary, during the period that a search warrant is being sought. The inventory, if proper, should be delayed until the search is made pursuant to the warrant.

4. Warrantless Search of Vehicles Incident to Arrest. A warrantless vehicle search that is broader than the area within the immediate control of the person arrested, is permissible under Chimel, but only if the following conditions are met:

   (a) The officer must have probable cause to believe that evidence related to the offense for which the arrest was made is concealed in the vehicle; AND

   (b) There must be a "clear danger" that delay will result in the loss of the evidence.

   Whenever the driver's arrest authorizes the removal and storage of the vehicle, there would be no clear danger that delay in seeking a search warrant would result in the loss of evidence. In these circumstances, guardian seals should be placed on the vehicle and warrant should be obtained. A warrantless search for evidence would NEVER be legal in circumstances where the officer had authority to remove the vehicle pursuant to VEHICLE CODE Sec. 22651.

5. The Vehicle Itself as Evidence. If the vehicle itself constitutes evidence of the crime for which its driver was arrested, the vehicle may be seized incidental to the arrest. The search of its interior, however, would be governed by the considerations above.

6. Hit-and-Run Accidents. "When . . . any regularly employed and salaried officer of a police department . . . has reasonable cause to believe that a motor vehicle on a highway has been involved in a hit-and-run accident, and that the operator of the vehicle has failed to stop and comply with the provisions of (VEHICLE CODE) Sections 20002, through 20006, inclusive, the officer may remove the vehicle from the highway for the purpose of inspection. . . ."

B. Citations for Vehicle Code Violations. The ONLY type of search of a vehicle that is permitted when the driver is merely cited for a Vehicle Code violation is a "pat-down" of the vehicle FOR THE MEMBER'S PROTECTION. Neither evidentiary searches nor an inventory of contents of the vehicle is permissible. Thus, where the member reasonably concludes that the person cited or to be cited may be armed and dangerous, he may search ONLY that portion of the vehicle from which the person might gain possession of a weapon.

   Even so, however, evidence that is seized during a protective search will often present close questions

for the courts. A glove compartment might hold a gun and be within the suspect's reach, but if narcotics are found therein, a court would hold it inadmissible more readily than it would if the evidence had been a weapon. The lesson to be learned is that officers should search for protective purposes, but if the court believes it possible that a protective search was used as an excuse to search for evidence, the evidence will not be admitted.

C. Citations for Other Misdemeanors. If the driver is cited under PENAL CODE Sec. 853.6, inventory and removal are obviously unwarranted. A protective search is permissible, however, if the standards set forth in Paragraph B, above, are met. In addition, an evidentiary search is permissible under the provisions of Paragraph A, 4, above.

D. Removal of a Vehicle for Other Reasons. Even when no arrest has been made nor citation issued, a vehicle may be inventoried and towed in the circumstances specified in VEHICLE CODE Sec. 22651 et seq (unattended vehicles, illegally parked vehicles, and the like).

END