

February 13, 1984

2 Representatives from the City Administration -

Jill Herold  
Carol Cornelison

2 Representatives from the Community -

To be selected from a list of nominations of  
Cambridge residents to be submitted to the City  
Manager no later than Friday, February 24, 1984.

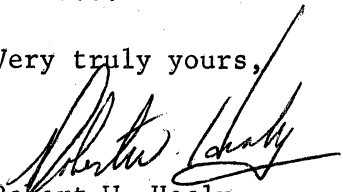
Representative of the City Council -

To be the Chairperson of the Public Safety  
Committee of the City Council as appointed by  
the Mayor.

In addition, I have received a commitment from Attorney Joseph Amoroso, who has ten years of experience as a juvenile probation officer, to provide pro bono services to the Committee for technical assistance and legal interpretations as appropriate.

As the City Council can interpret from this report, this is not a simple matter, and the broad purpose to be served for the Community and the Department is achieving the longer range objectives stated in this report. In order to accomplish our goals, this office and the Chief of Police are committed to an ongoing process.

Very truly yours,



Robert W. Healy  
City Manager

RWH/mbf  
Enc.

## ARREST

### I. WHAT IS AN "ARREST"?

The legal definition of an arrest is the exercise of custody over a person by depriving him of his freedom of action for a period longer than is required for the officer to briefly question the person for his identity and business abroad (no more than several minutes). (Custody for only several minutes - called a "stop" - is also subject to strict legal standards: see the "Stops" section in this chapter.)

The definition given above is not the usual definition of an arrest. Ordinarily, when people think of an arrest, they think of it as being the taking of a person into custody to answer for a crime. The taking into custody to answer for a crime is certainly an arrest. But arrest is a broad concept, and just because a man is not brought in or "placed under arrest" doesn't mean that a judge will later find the person was not "arrested".

The distinction here is a narrow one, but a very significant one because it's a violation of law for a police officer to deprive a person of his freedom of movement for an extended period of time without grounds for arrest. Civil liability against the officer and the admissibility of evidence often ride on whether an officer had "arrest" grounds for holding a person longer than was necessary to briefly question him.

The amount of evidence an officer must have in order to justify any detainment longer than a "stop" is the same amount that is needed to uphold a man's being brought in and booked. Although "arrest" used here will usually imply the taking of a man into custody for booking, standards required to make such arrests lawfully are also required to validate all but limited street detentions.

that the officer should arrest only when he is reasonably sure that at the moment of arrest he could point to a sufficient number of hard facts to convince a skeptical judge that it was reasonable to believe a crime was committed or was being committed by the person to be arrested.

The second point to be emphasized is that the facts upon which the belief is based must have been known at the time of arrest. What the arrested person said or did or what other circumstances happened after the arrest took place are irrelevant to the question of the arrest's lawfulness.

2. On what kind of facts may probable cause be based?

There is almost no limit to the kinds of information that can be used to support probable cause, provided such information is not vague and can be reasonably well documented. Among the types of information the officer can rely on are these:

a. Observed facts surrounding the incident:

- Behavior of the suspect: expression, speech, movements, flight
- Appearance of suspect: clothing, grooming, etc.
- Personal characteristics: size, height, race, sex
- Account given prior to arrest, if stopped (but if the person remains silent you may imply nothing from that silence.)
- Location
- Possessions

b. Familiarity with the suspect:

- Suspect's prior record
- Prior observation of the suspect
- Earlier contacts with the suspect

c. Reports from others:

- Accounts given by victims or witnesses

II. REQUIREMENTS OF A LAWFUL ARREST

In order to make a lawful arrest, the officer must:

First, at the time arrest is made, have probable cause to believe that a particular crime is being or has been committed by a particular person,

Second, with misdemeanors be present when the acts are committed, and

Third, in certain cases have an arrest warrant.

A. The Probable Cause Requirement

1. What does "probable cause" mean?

"Probable cause to believe" is a phrase that describes the amount of evidence -- facts observed, information from others, personal knowledge, lessons from police experience -- that would be sufficient to lead an ordinary and prudent man to reasonably believe that a crime is occurring or has occurred and that the person to be arrested committed such crime or is committing it.

Probable cause is not a complex formula understandable only by those trained in law. The Supreme Court has said that, "In dealing with probable cause as the very name implies we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men not legal technicians act." Brinegar v. U. S., 338 U. S. 160 (1949).

Probable cause for belief of guilt is arrived at by the same process used by rational persons to arrive at an ordinary conclusion. It is done by collecting facts of such quality that in all logic and common sense they point with reasonable certainty in the direction of guilt.

Several other points are important to emphasize: the first is that the belief must be supported by facts. Vague "hunches" or suspicions are not enough. But one's experience as a police officer is definitely a fact which can be relied upon to support probable cause provided you are able to document it. The rule

--Informants (But the officer must be able to testify to the reliability of the informant by pointing to such things as prior information gained from him, his reputation; his character, the corroboration of other facts about the suspect given by the informants, e.g. description and whereabouts; and the number of other informants giving similar information. The rule is that the more reliance is placed upon another's story to justify probable cause, the more the officer will be required to come forward with proof of the other's reliability.)

d. His own police experience:

--How criminals act, modus operandi; how they appear  
--What's normal for the neighborhood where the incidence occurs  
--The sum total of information and lessons he has gained during his years on the Force. (But as said before, he must be able to break down and explain this experience. Otherwise, it won't be accepted as a valid ground for probable cause: a "hunch" standing alone is no good. An example of the kind of experience that probable cause can be based upon is the narcotics officer's familiarity with the smell of burning marijuana or opium.)

e. Any other reasonably reliable facts.

All these sources of information can lead to probable cause but a number of them must be corroborated by other facts if they are to be given weight. For example, tips from anonymous informants, prior criminal record, the suspect's race, personal police experience, cannot stand by themselves and validate an arrest: if one relies upon them, he must make sure that he has other facts to bolster his belief.

3. How much certainty is required?

~~It is not necessary to believe beyond a reasonable doubt. Rather, the standard is simply reasonable belief.~~ The degree of certainty needed can perhaps be understood from an example of an incident outside the police context. Suppose a man is seen:

- a. Coming out of a restaurant
- b. at 12:30 in the afternoon
- c. with a toothpick in his mouth
- d. belching happily
- e. counting some change in his hand.

The observed facts, taken together, would give a reasonable basis for assuming that the man just had eaten his lunch in the restaurant. There is "probable cause" for a person to believe that the man had just had a meal, despite the fact that the person did not see the man eat and nobody told him he did. Probable cause for belief of responsibility for a crime is arrived at by using the same reasoning process.

ILLUSTRATIVE CASE AND COMMENT

The following is an example of a borderline case where the police officer's decision to arrest was later upheld by the court's conclusion that there had been probable cause. It is also intended to show what the limits of probable cause are since circumstances less convincing than presented here would in all likelihood be insufficient to sustain a lawful arrest.

Facts: An off duty police officer heard a suspicious noise at his door which sounded as if someone was trying to enter. He looked through the peephole and saw two unfamiliar men tip-toeing in the corridor outside his door. It was a large apartment house, but the officer had been a resident for 12 years. After getting his service revolver, he went out after the

two men. As he stepped out, he slammed the door. Upon hearing the door slam, the two men started to run down the stairs. The officer chased them, caught up with one and grabbed him by the collar. The officer asked what he was doing in the building, and the suspect said he was visiting a girlfriend. But he declined to identify her on the grounds that she was a married woman. At this point, the officer placed him under arrest. The subsequent search showed that the man was in possession of burglar's tools.

Held: The officer had probable cause to arrest.

Let's examine the elements in this case which supported probable cause:

1. The noise at the door. But standing alone, this does not signify much. Someone could have innocently tried the wrong door or brushed up against it.
2. The police officer sees two men tiptoeing in the hall. Now the sound at the door assumes new meaning because it was apparently made by two men who don't want to be heard. If they had simply made a mistake in hitting the door, they wouldn't be tiptoeing. But if they were burglars or up to other wrong-doing, it is very likely they would be acting like this.
3. The officer, a 12 year tenant of the building, did not recognize either man. From this the police officer concluded that the men were not residents, which heightened the suspicion already built up because of the sound at the door and their tiptoeing.
4. When he slammed the door, both men immediately bolted and ran down the stairs. When there is other evidence to suspect a person of a crime and he flees when an innocent person would not have, the fact of his flight may be considered to be evidence of his wrong-doing. Here suspicion had already built up because of the men's conduct, and their flight gave emphatic cause to believe some wrong-doing was going on.

5. The suspect gave an unlikely story. Any suspicion which the police officer had was increased when the story was given. Of course, it was not the story by itself which was implausible, but the story seemed unlikely considering that the two men had made noise at the officer's door for no apparent reason, that they were tiptoeing, that the officer recognized neither of them, and that they ran.

This incident was found by the Supreme Court of the United States to have presented probable cause for the police officer to believe that an attempted burglary was in progress. The court held that the police had the required grounds of reasonable belief even before the suspect gave his story and so found that the search of the man was legal because incident to a lawful arrest. Peters v. New York 392, U. S. 40 (1968)

It should be apparent that there is no secret formula for determining probable cause. But if a potential arrest situation is approached in the manner that the above example was broken down to consider each element, conclusions will more likely be found valid.

And whenever an arrest is challenged in court, before testifying, the officer should review the circumstances surrounding the arrest and break them down as was done here. Then when called to testify, he should: 1) Mention each individual factor which led him to believe probable cause existed and explain how each factor contributed to his decision; 2) Whenever the lessons of his police experience was a factor, state that fact clearly and show the specific ways his experience led him to conclude as he did.

#### B. The Presence Requirement for Misdemeanors

To arrest a person for a misdemeanor, the officer must be "present" when the misdemeanor was committed, in addition to having the needed probable cause and sometimes having a warrant.

Being "present" is a concept that is easily understandable, and for the purposes of the Massachusetts law of arrest, it includes situations where the officer sees, hears or smells the offense being committed.

C. The Warrant Requirement

As a general constitutional principle, an officer must have an arrest warrant if he is to make a legal arrest. Over the years, however, the legislature of the Commonwealth has made broad exceptions to the warrant requirement for arrest, to the point that today, such exceptions cover the majority of arrest situations which concern the police.

1. Offenses for which arrest without warrant can be made

A police officer can arrest a person without a warrant if he has probable cause to believe that the person has committed or is committing the following offenses:

- a. All felonies whether in the officer's presence or not.
- b. Misdemeanors occurring in his presence which cause, may cause or threaten a breach of the peace. Breach of peace means that which causes direct harm (usually physical harm) to the public.
- c. Certain other misdemeanors occurring in his presence when a specific statute so authorizes. For example:

--Theft of property regardless of value (MGL c. 276 § 28)

--Illegal sale of liquor (MGL ch. 138 § 56)

--Violation of statutes or ordinances concerning operation or control of motor vehicles but only where driver does not have a valid driver's license in his possession. The statute authorizing these arrests also permits arrest without a warrant for refusal to identify self or to produce license and registration or operating under the influence of intoxicating liquor and others. (MGL c. 90 § 21).

d. Most gambling offenses. (MGL c, 271 §10A)

2. The preference for arrests with warrant.

It is important to keep in mind that warrants are always preferred when making any arrest including arrests for offenses listed above in (1). This is because, as a matter of law, arrests without warrants are still considered to be the exception to the rule. The exception of warrantless arrests is justified on the ground that if such arrests were not immediately made, the offender may cause harm to others or flee the jurisdiction.

Consequently, it is good police practice when the offender does not pose a significant threat to the community and when he is not likely to flee to get a warrant prior to arrest. This rule should be followed especially with the less serious offenses.

Also, it is a good tactic where the evidence of the person's wrong-doing is not conclusive. The issuance of a warrant means that an independent judicial officer agreed with the officer's finding of probable cause. If the lawfulness of the arrest is later challenged, it is more likely to stand because the officer's judgement has the independent support of a judicial officer. It is a well known fact that arrests pursuant to a judge's warrant are less vulnerable to defense attack than an arrest, based on the same factual information, made by a police officer without a warrant.

Moreover, it is often difficult for a police officer to determine whether a misdemeanor committed in his presence involves a "breach of the peace". If it does not, unless there is a special statute, an arrest without a warrant is illegal. By having a warrant the arrest stands.

The repercussions can be great when an illegal arrest is thrown out. The case is usually dismissed. Any evidence seized incident to the arrest will be suppressed. Also, any confessions or admissions made after the unlawful arrest will be excluded. There is also the possibility of a civil suit for false arrest. Therefore, if there is doubt in the officer's mind whether he has the needed probable cause

and/or the harm threatened by a temporary delay in arrest is not great, he should get a warrant first.

### III. USE OF FORCE TO MAKE AN ARREST

For a detailed presentation of Departmental Policies and Procedures concerning the use of force, see the "Use of Force" section in this chapter. Because the subject is so important, the rules surrounding the use of force to make an arrest will be repeated here in summary fashion.

The basic rule is that in all cases use only so much force as is necessary to make the arrest. There are situations when the officer is not allowed to use all the force that would be necessary to make an arrest - for example, to catch a misdemeanor, a firearm may not be used. Moreover, there is never an excuse, and it is always against the law and a violation of Departmental policy to use more force than is necessary.

The following rules clarifying permissible limits of the use of force that may cause serious injury during arrest must be followed by the police officer:

- A. Do not use blackjacks, nightsticks, similar equipment or Mace unless it is absolutely necessary to subdue a person physically resisting arrest. Never continue using such equipment after the suspect stops resisting.
- B. To apprehend a suspect, use a firearm only if:
  1. A felony has been committed, and
  2. The felony involved an actual or threatened attack which there is reasonable cause to believe could result in death or serious bodily injury.
- C. If the felony as described in "2" was not committed in his presence, use a firearm to apprehend the suspect only if he has sufficient information to know, AS A VIRTUAL CERTAINTY, that the suspect has committed the felony.

It is obviously one thing to have sufficient probable cause to arrest a suspect. It is quite another to have sufficient basis to risk killing him.

Whenever force is used to make an arrest, enter a complete account in the Memo Book of the circumstances surrounding and justifying the use of force. Where a club, Mace, or a firearm is used, submit reports as required by current Departmental procedures.

IV. ENTRY INTO A BUILDING OR AN APARTMENT TO MAKE AN ARREST

If an officer has probable cause for arrest, was present in misdemeanor cases and has a warrant (if necessary for the offense), that is sufficient as far as the law is concerned to allow the officer to enter a building or apartment to make the arrest, provided he has reason to believe that the suspect is there. However, when making the entry he must follow certain special procedures if the entry is to be legal:

- A. Knock on the door and announce he is a police officer there to make an arrest, and demand that the person inside open the door. (Note: the only exception to the rule that a knock and an announcement of police identity are necessary is when he has substantial and readily verifiable reasons to believe that if he did so:
  - 1. The suspect would try to escape, or
  - 2. The suspect would be of danger to other persons within, such as hostages, or to the arresting officer, or
  - 3. The suspect would attempt to destroy evidence.)
- B. Except for situations as described in the note in (A), force open a door only if there is a refusal to open such or no answer after a reasonable wait.
- C. If an entry is made without knocking, announcement and demand, carefully record in the Memo Book the details of the surrounding circumstances.

V. NIGHT AND EARLY MORNING ARRESTS

When a crime of great seriousness has been committed, make an arrest immediately, regardless the time of day or night, or the place where the suspect is located.

However, when the crime which has occurred is not one of great seriousness, do not enter private premise to make the arrest between 10 P.M. and 7 A.M. unless:

- 1) Acting under a warrant of arrest and the warrant authorizes its execution during such hours; or
- 2) There is reason to believe that such action is necessary to prevent the escape of the person to be arrested or to prevent his harming any person, destroying evidence, or damaging or taking property.

VI. PROCEDURE TO BE FOLLOWED AFTER ARREST

Whenever a person has been arrested he should be given the Miranda warnings. If the person arrested does not understand English, the warnings must be given in a language the person understands. These are:

1. That he has a right to remain silent,
2. That anything he says may be used against him in court,
3. That he has a right to talk to a lawyer at once and to have him present during any questioning, and
4. That if he cannot afford a lawyer, the state will provide one at state expense.

Although these warnings must be given only before interrogation takes place, it is good practice to give them immediately after arrest. In this way any offhand remarks or other voluntary comments by the offender will be admissible against him in court. (See the "Questioning" section in this chapter for details as to policies and procedures in this

sensitive area of police work.)

Where an arrest has been made and the Miranda warnings given, and the officer intends to transport the person to the Station House, he should immediately take the following steps.

1. Inform the person of the arrest and the charge.
2. Frisk him to insure the officer's and others' safety.
3. Handcuff the offender behind his back if there is a danger he may escape or if he poses a danger to the officer's or other's safety. (In all cases, the arresting officer is accountable for any harm or disorder caused by the prisoner which would have been avoided had he been properly handcuffed.)
4. Search the area within the person's immediate reach. (For guidelines on search incident to arrest see the section in this chapter titled "Search and Seizure.")
5. Transport him to the Station House for booking.
6. After arrival at the Station House and after the offender has left the vehicle used for transportation, thoroughly search the vehicle in case evidence or weapons have been discarded by the prisoner during transportation.

#### VII. THE DECISION NOT TO ARREST.

There are circumstances where although there are grounds for a lawful arrest, better police practice dictates that the offender not be arrested. However, in most cases, it is not the role of a police officer to decide whether an offense should be prosecuted: that is the responsibility of the court prosecutor. So any decision not to arrest must be reached only after the officer has carefully weighed the following guidelines:

It is acceptable police practice not to arrest only:

1. When the arrest would cause a greater risk of harm to the general public than the offending conduct did and than the offender's remaining on the street would. For example, in crowd situations a police officer's decision to arrest may aggravate tension and lead to a riot or other serious disorder. There are situations where police resources are stretched to their limit, e.g., on a particularly busy night, arrests for minor offenses would take up officers' time to the point that they could not respond to really serious crimes. Remember that even though there is no arrest at the time the offense is committed, at a later date the officer may go to court and swear out a complaint against the offender.
2. When the arrest would cause harm or embarrassment to an offender who poses no threat of danger to the public. The following are examples of this kind of situation:
  - The minor family dispute where tempers will pass by morning.
  - The intoxicated person who is harmless and at most needs a little assistance home.
  - The juvenile offender whose wrong doing would best be handled through informal warnings, advice, etc., and a talk with the parents. In this way, getting a record of any kind can be avoided.

As mentioned above, a decision not to arrest when there are grounds for arrest is considered good police practice only in the special circumstances given. Consequently, if there is doubt that those circumstances exist and if a supervisory officer is not readily available, arrest.

## QUESTIONING

### I. POLICY

The police officer should always be alert to gather information from suspects or arrestees which will help in the solution of crime. But it is necessary to be equally alert to ensure that the questioning of persons conforms to legal standards. Carelessness in such can very easily result in otherwise good testimonial evidence being declared inadmissible.

### II. THE CONSTITUTIONAL BASIS FOR RESTRICTIONS ON QUESTIONING

The basic interest which legal restraints on police questioning seeks to protect is the Constitutional right against self-incrimination. This is embodied in the 5th Amendment, which states that no person "shall be compelled in a criminal case to be witness against himself." The principle which this gives rise to is that where a man is accused of a crime, it is the government which must come forward and supply the proof of its own case. The suspect is under no obligation to cooperate or to divulge information. In effect, what each accused is given the right to do is to stand and say: "Prove it." Although sometimes inconvenient for the police officer, this right has for centuries been considered one of the basic protections against arbitrary power.

The 6th Amendment right to the assistance of counsel is another right which the restrictions on questioning are designed to protect. Actually, the interests the two rights protect are closely related in that the opportunity to have a lawyer present is believed essential if the right against self-incrimination is to be intelligently exercised and respected.

These interests should be kept in mind because they make the restraints the law places on questioning more understandable.

### III. QUESTIONING PROCEDURES: THE NON-CUSTODIAL SITUATION

Restraint on police questioning is actually the exception

rather than the rule if the whole range of circumstances where inquiries made by police officers are taken into account. It is only where a person is asked questions while in some degree of police custody that the law raises limits and demands that certain steps protective of the rights described above be taken.

Therefore, in those situations where a police officer has not "stopped" or arrested a person or otherwise indicated to the person being questioned that he cannot go as he pleases because he is suspected of a crime, the police officer may ask whatever questions he wishes. The key here is custody, and where there is no custody the law places no limits on questioning.

Common examples of such unrestricted situations are when a police officer talks in a voluntary non-custodial setting with people about crime conditions or leads or when arriving at the scene of a crime before any suspects are identified, he asks general questions such as "What happened?", "Who did it?"

#### IV. QUESTIONING PROCEDURES: THE CUSTODIAL SITUATIONS OF STOPS AND ARRESTS

It is when the police officer acts to exert authority over a suspect by requiring him to stay put or to go with him to the Station House that legal restraints on questioning arise to protect the person's rights against self-incrimination and to the assistance of counsel.

##### A. Stop Situation

1. Scope of Questioning; Under the police authority to stop suspicious persons, the officer is entitled to make a "threshold inquiry" of the subject asking him his name, address and what he is doing. No Miranda warnings have to be given. However, prior to the inquiry, the police officer is to:
  - a. Identify himself as a police officer;
  - b. Inform the suspect he is not under arrest but that he is under suspicion, and

- c. Indicate to him that it's likely he will be free to go once he has been asked a few questions.

2. Warnings

But when questions go beyond the "threshold" items of identity and business abroad, the police officer is to warn the suspect that he is under no obligation to answer. If at that time the officer intends to arrest the person, he is to give the suspect the full Miranda warnings which are set out below, and then proceed accordingly. (For detailed legal and procedural guidelines pertaining to Stops, see the section in this chapter entitled "Stops.")

B. Arrest Situation

1. Warnings Following Arrest. As soon as possible after arrest consistent with the safety of himself and others, the police officer is to:

- a. Give the person the Miranda warnings. Know these by heart. (Cases have been lost when at trial the arresting police officer was unable to recite them.) The Miranda warnings are:

- 1) You (the suspect) have a right to remain silent.
- 2) Anything you say may be used against you in court.
- 3) You have a right to talk to a lawyer at once and have him present during any questioning.
- 4) If you cannot afford to hire a lawyer, the state will provide one for you at state expense.

Give the Miranda warnings immediately, because once a formal arrest has been made all statements, whether given in answer to questions or

simply blurted out, are likely to be successfully challenged unless the Miranda warnings had been given before.

Important: Give the warnings regardless of how sure he is that the person knows his rights. The man being questioned may be a professional criminal or one otherwise fully familiar with the law and undoubtedly aware of what his rights are; nevertheless, give the warnings. Courts have ruled that all persons must be given the warnings.

- b. Recite the warnings slowly and clearly so there can be no doubt that the person has heard them.
  - c. If the suspect does not speak English, give the warnings in a language the suspect understands. If possible, show him a card with the warnings printed in that language. If unable to give the warnings in a language the suspect understands and if there is no card readily available with the warnings in that language, ask no further questions.
2. Questioning after the warnings: waiver. After the warnings have been given, the suspect can waive his rights to silence and to the assistance of a lawyer. If he does so, any incriminating statements made can be later used as evidence against him. But there must be clear evidence that he did so with knowledge of his rights and voluntarily.
- a. Procedures to demonstrate waiver.

To prove knowledge and voluntariness, courts require, first, that the subject has been informed of his rights as outlined above, and, second, that it be demonstrated that the suspect willingly decided to forego his rights to silence and counsel. Because of judicial coolness to a police officer's reliance upon waiver, the following Departmental procedures have been established in order to ensure that allegations of waiver can satisfy the most stringent tests. If an officer wishes to question a person in custody,

first give the person the Miranda warnings, then proceed:

- 1) Ask the person: Do you understand each of these rights I have explained to you? If he doesn't understand, explain them; if he does, continue.
- 2) Ask the person: Having these rights in mind, do you wish to talk?
- 3) If after this the person indicates that he does want to talk, ask him if he is willing to sign a written waiver of his rights. If he is willing, have him sign the waiver.
- 4) The person may not want to sign a waiver and yet may be willing to talk and answer questions. In that case, questioning is allowed, but if possible, see that witnesses are present who can testify to the voluntary willingness of the person to talk and to the fact that he did this after having been informed of his rights and questioned as to his understanding of them.

b. Presence of witnesses: the problem of too many.

As indicated, one way to support a case of intelligent and voluntary waiver is to have witnesses present. But be careful: having a large number of police officer witnesses is not advisable. Some courts have implied from the presence of an unnecessarily large number of officers that although the person questioned was outwardly willing to answer questions, he was afraid to do anything else because of the display of police authority. In such cases the incriminating statements were held "involuntary," and, therefore, invalid.

c. Effect of retraction of waiver.

If questioning is proceeding after a valid waiver is made and the person being questioned

changes his mind about the waiver or in any other way indicates he no longer wants to talk, interrogation should cease if any subsequent statements by the suspect are to be later used in court to incriminate him.

If the police officer wishes to ask further questions, the person must again knowingly and voluntarily waive his rights. The steps enumerated above should be repeated to ensure an effective waiver.

EYEWITNESS AND OTHER IDENTIFICATIONSI. LAW

Concern for the fairness of eyewitness identifications arises from their potential impact upon the outcome of a trial. To promote the reliability and fairness of such identification when actually made, the rule has been established that when a suspect in custody is compelled to participate in a line-up, he must be informed of his right to have a lawyer present at the line-up, and of his right to be provided with counsel for such purpose if he is unable to afford it. U.S. v. Wade, 388 U.S. 218 (1967); Gilbert v. California, 388 U.S. 263 (1967).

Since 1967, this rule has been affirmed repeatedly by the U.S. Supreme Court and the Massachusetts Supreme Judicial Court. The doctrine has even been expanded since then to cover types of "confrontations" between suspect and witnesses other than formal line-ups. The general rule which has developed over time to cover these situations is the following:

Whenever a crime has occurred and there are persons who allege they saw the perpetrator and a suspect is apprehended, before that suspect can be shown to those witnesses either in a line-up, "show up" or other setting for possible identification, the suspect must be informed of his right to have counsel present and of his right to be provided a lawyer without cost if he is unable to afford one. Unless a valid waiver is executed, no identification may proceed without the presence of counsel.

This rule does not cover all identifications, and equally frequently since 1967 the courts have held that there is no obligation to provide counsel in the following situation:

~~When a suspect is apprehended in the immediate aftermath of a crime, and an on-the-street identification can be arranged, the suspect can be viewed by the eye-witness. In such circumstances, there is no right to provision of counsel, although, of course, the manner in which the identification is carried out is subject to requirements of fairness.~~

II. PROCEDURES

The following procedures are promulgated to facilitate eyewitness identifications and to ensure that such identifications are upheld in court.

A. ON THE STREET IDENTIFICATIONS

1. When allowed without counsel warnings

- a. Situation: Suspect not apprehended and identity of suspect not yet determined.

When, after a crime, a suspect is neither apprehended nor his identity known, it is proper and advisable police procedure to transport victims and eye-witnesses in police vehicles and to cruise the area in which a crime has occurred in order for them to point out the perpetrator of the offense. But when doing so, the officer must be careful not to implicate anyone on the street whom he thinks may look suspicious. When such a person is seen, the most an officer is permitted to do is to point him out in order to draw the victims' and witnesses' attention to him for their reaction.

- b. Situation: Suspect arrested or stopped within two hours of a crime and within reasonable proximity of available witnesses.

There is no counsel requirement when an on-the-street identification is made of a suspect who has been apprehended in the immediate aftermath of a crime. "Immediate aftermath" may extend up to but not beyond two hours.

## (Identifications)

Note: Whenever is doubt as to whether an on-the-street identification is lawful because of the lapse of time or any other reason, an officer should request advice from his immediate superior or the Patrol Supervisor. Specific procedures:

1. If there are witnesses to a crime who allege that they observed the perpetrator, and if an investigation of the crime is in process and if a suspect is arrested within two hours of an alleged offense and within an area reasonably proximate to the scene of the crime, return the suspect to the scene of the offense or transport the eyewitnesses to the scene of the arrest for identification of the suspect.
2. If, however, a person is detained subject to a "stop" and probable cause to arrest does not yet exist, bring the witnesses to the place of the stop. Do not bring the suspect to the witnesses. If transporting the witnesses to the crime scene would take more than 20 minutes, release the suspect unless probable cause for arrest develops. (For legal and procedural guidelines on "Arrest" and "Stops" see the sections dealing with these subjects in this chapter.)
3. Conducting the on-the-street identification.

Even though an on-the-street identification takes place within minutes after a crime occurs and therefore is indisputably carried out "in the immediate aftermath" of the crime, it is still subject to later attack if it was executed in an unfair manner. To avoid that, the officer must observe the following guidelines:

  - a.) Maintain neutrality. When presenting a suspect to an eyewitness for identification, remain as neutral as possible, consistent with the continued secure custody of the suspect.

- b.) Avoid suggestiveness. Neither say nor do anything which will convey to the witness that the suspect has admitted guilt, that property similar to that stolen was recovered, that weapons similar to those used have been seized, or that he believes the suspect is guilty. If possible, have other persons around the suspect when he is viewed on the street to reduce the impression that he alone could be the guilty party. For example, prior to the identification, do not tell the witness, "He's given us a full confession but we still want your identification." Also, in such situations, do not display the proceeds of the crime by holding up the stolen wallet and saying, "He had your wallet."
- c.) If several witnesses are present, see that each witness views the suspect independently, out of the immediate presence or earshot of the other witnesses.
4. Record statements in Memo Book. Make written notes in the Memo Book or otherwise record:
- a.) Any statements made by each witness viewing the suspect. In presenting a suspect to a victim or eyewitness, be alert for spontaneous exclamations or excited utterances or other reactions by the witness since these can be testified to in court and such testimony may enhance a subsequent in-court identification. Incorporate these in the statement of facts of the case in the Police Report.

Example: Upon viewing the suspect, the victim of a rape exclaims, "That's him! See the scar on his neck."

Action: Record this statement in your Memo Book and later in the Police Report.

- b.) All significant circumstances surrounding the on-the-street identification. For instance, time, location of arrest and of the identification, persons present, how the identification was executed, and the duration of the identification.

B. EMERGENCY IDENTIFICATIONS

When either a suspect or a witness is in imminent danger of death such as when he is on the "critical list" in a hospital, an identification can take place without counsel provided:

1. All possible good faith efforts are made to provide, contact and have counsel present, if requested after the suspect has been informed of his regular right to the presence of counsel, and
2. Affirmative steps are taken to minimize any prejudice to the suspect by circumstances of the identification.

C. STATION HOUSE IDENTIFICATIONS; IDENTIFICATION WHEN SUSPECT HAS BEEN ARRESTED MORE THAN TWO HOURS AFTER THE CRIME OR WHENEVER SUSPECT IS IN CUSTODY AT THE STATION HOUSE.

Except in special circumstances approved by a Commanding Officer or the Patrol Supervisor, if a suspect is arrested more than two hours after a crime occurred, and if no emergency circumstances exist, the arrested person is to be brought to the Station House. Any subsequent identification is to be carried out in accordance with the procedures listed below.

These procedures establish the rules for any identifications involving a person held in custody at the Station, regardless how soon after the commission of the crime.

Example: Officers investigating a burglary have broadcast a look out and have requested the complainant to accompany them to the Station to view photographs of persons suspected of other burglaries in the neighborhood. While they are at the Station, an arrest is made by

another unit one-half hour after the offense was committed, and only three blocks from the scene and the suspect is brought in.

Action: There should be no identification made at the Station unless the suspect is told of his right to counsel and other procedures set out below are followed.

1. General supervisory responsibility. The Commanding Officer of the Bureau of Operations is to have general responsibility for the proper execution of line-ups and other identifications at the Station House. He, or in his absence, the Officer in Charge of the Desk, is to review the plans of officers of rank intending to conduct Station House identifications. Such officers of rank are to be advised of the requirements of law and Departmental procedures surrounding Station House identification. Furthermore, the Commanding Officer of the Operations Bureau is to periodically assess the working of the Department's Station House identification procedures and make recommendations for any needed changes to the Chief.
2. Responsibility for direction. Station House identifications are to be directed by officers of rank. A sergeant directing such shall contact his immediate superior, if possible, beforehand, informing the superior of his intention. Any officer of rank planning a Station House identification is to report beforehand his intentions and his plan for proceeding to the Commanding Officer of the Bureau of Operations or, in his absence, to the Officer in Charge of the Desk.
3. Informing the suspect. Before the identification, whether if be by line-up or other means by which the suspect is physically observed by eyewitnesses, inform the suspect:
  - a. That an identification proceeding is going to take place;
  - b. That he has a right to have a lawyer present before the identification proceeds and during the identification; and
  - c. That if he cannot afford a lawyer, one will be provided for him free of expense and that the proceeding will be delayed until such lawyer is present.

4. Obtaining a waiver. If the suspect is willing to take part in the line-up without the presence of counsel, get his written and signed voluntary waiver. Take the same precautions to assure that the waiver is knowing and voluntary as are required to do when Miranda rights are waived during questioning. (See the paragraphs dealing with this in the "Questioning" section of this chapter and follow the guidelines given there.)
5. Obtaining an oral waiver; Precautions. If the suspect refuses to sign a waiver but, nevertheless, indicates that he does not wish to exercise his right to counsel, take the waiver orally. But take care to have others present who will attest to the suspect's knowing and voluntary choice not to have counsel. At the same time, avoid having too many police officers present because a court may conclude that with so many police officers present, the suspect was too frightened to make a truly voluntary waiver.
6. Notifying counsel. If counsel has been retained or provided prior to the identification, notify counsel for the suspect of the time of the identification and of the date, time, place and nature of the offense.
7. Type of identification. Except in unusual circumstances, conduct identification at the Station House by line-up.
8. Cooperating with defense counsel. When defense counsel is present, accept his suggestions as to the manner of conducting the line-up or other identification unless, if by doing so, the Commonwealth would be prejudiced. However, remember that the police are ultimately responsible for the proceeding and that defense counsel have no right or power to prevent an identification altogether.
9. Suggestiveness prohibited. Whether or not defense counsel is present, all suggestions to witnesses are prohibited, whether they be by casual offhand comments or by the manner in which the suspect is made to stand out from the other persons in the identification array.

To this end:

- a. Have a sufficient number of persons in the array. If there is to be a mistake, make it by having too many people.
  - b. If a witness has described the man he or she saw, make sure the suspect does not stand out in the line-up. Be certain, in such cases, that others in the array fit the description.
10. What persons in the line-up can be made to do. During a line-up persons in the line-up may be compelled to wear certain clothes, to put on or take off certain clothes, to take certain positions or stances or to walk or move in certain ways. The suspect may also be compelled to speak for voice identification purposes, but special precautions of fairness should be taken before doing so.
11. Witnesses shall view the line-up or other array one at a time. If more than one witness to a particular crime is present, make certain that each views the array separately and independently. Until the last witness in the case has viewed the line-up, prohibit the witnesses from conversing or otherwise communicating with other witnesses after having viewed the line-up.
12. Photographs of the array. See to it that several photographs are taken of the whole array to document how it was constituted.
13. Post-view questioning of witnesses. If counsel was present at the identification, inform him of and give him an opportunity to be present at any questioning of the witnesses by any police officer, that occurs soon after the identification proceeding.
14. Suspect's refusal to participate. When suspect refuses to participate in line-up or other proper identification procedure at the Station House:
- a. Advise him:
    - 1.) He has no right to refuse.
    - 2.) His refusal can be used as evidence against him at trial.

- b. Ask him the following questions and record the responses in your Memo Book or on a 650 for later use as evidence against the suspect:
  - 1.) "Do you refuse to participate in the identification proceeding?"
  - 2.) "Do you understand that you do not have a Constitutional or other right to refuse?"
- c. Inform the suspect's attorney, if present, that the suspect refused to participate.
- d. Arrange alternative identification procedures, for example, by photograph.

D. IDENTIFICATIONS THROUGH THE USE OF PHOTOGRAPHS

1. The use of photographs for identification purposes prior to an arrest is permissible provided the suspect's photograph is grouped with at least eight (8) other photographs of the same general description. If any police identification numbers appear on the photographs, the numbers are to be covered.
2. Adequate records of the photographs shown to each witness are to be kept so that the exact group of photographs from which an identification was made can be presented in court at a later date to counter any claim of undue suggestion and enhance the reliability of the in-court identification. This information is to be recorded in the statement of facts of the case.
3. Each witness is to view the photographs independently, out of the immediate presence of the other witnesses.
4. When an arrest is made following a photographic identification, the officer handling the case in court is to arrange for a line-up to test the identification.
5. Photographic identifications are not to be made once arrest has occurred. In such cases identifications are to be by line-up in accordance with section (C.) above.

## HANDLING OF JUVENILES

A "juvenile" is defined in Massachusetts criminal law as anyone between the ages of 7 and 17. Children younger than seven are considered beneath the age of criminal responsibility, and persons who commit crimes when they are seventeen and over are treated as adults.

In Massachusetts juvenile offenders are treated specially because of the feeling that since their characters are not yet completely formed, they can be influenced to lead law-abiding lives more easily than adult offenders.

Special juvenile procedures are also provided because of the belief that since young offenders are not capable of being fully responsible for their acts in the adult sense, those acts are less blameworthy.

Handling juveniles poses particular challenges for the police because of the law's requiring certain special procedures and, furthermore, because of the sensitivity of the relationship between young people and police and the stakes that ride upon that relationship's being a constructive one. This section concerns the laws, policies, procedures and guidelines that are to be followed when members of the Force deal with juveniles.

### I. GENERAL POLICY CONSIDERATIONS AND GUIDELINES

#### A. The Reaction to Authority

Police officers symbolize authority to the public. Whether or not he wears a uniform and a badge, others view him as the law, and because of this, frequently see him as a living reminder that they shouldn't do certain things.

For most people, the presence of authority poses no problem. They see law and authority as a necessary fact of life. But for a number of people the mere existence of authority makes them act in strange, frequently deviant ways. Some feel the need to test that authority and rebel against it. Others defy authority as a means of drawing attention to themselves and feeling important and powerful.

## HANDLING OF JUVENILES

A "juvenile" is defined in Massachusetts criminal law as anyone between the ages of 7 and 17. Children younger than seven are considered beneath the age of criminal responsibility, and persons who commit crimes when they are seventeen and over are treated as adults.

In Massachusetts juvenile offenders are treated specially because of the feeling that since their characters are not yet completely formed, they can be influenced to lead law-abiding lives more easily than adult offenders.

Special juvenile procedures are also provided because of the belief that since young offenders are not capable of being fully responsible for their acts in the adult sense, those acts are less blameworthy.

Handling juveniles poses particular challenges for the police because of the law's requiring certain special procedures and, furthermore, because of the sensitivity of the relationship between young people and police and the stakes that ride upon that relationship's being a constructive one. This section concerns the laws, policies, procedures and guidelines that are to be followed when members of the Force deal with juveniles.

### I. GENERAL POLICY CONSIDERATIONS AND GUIDELINES

#### A. The Reaction to Authority

Police officers symbolize authority to the public. Whether or not he wears a uniform and a badge, others view him as the law, and because of this, frequently see him as a living reminder that they shouldn't do certain things.

For most people, the presence of authority poses no problems. They see law and authority as a necessary fact of life. But for a number of people the mere existence of authority makes them act in strange, frequently deviant ways. Some feel the need to test that authority and rebel against it. Others defy authority as a means of drawing attention to themselves and feeling important and powerful.

Juveniles often exhibit such traits. This is because, after about age twelve, children generally begin to feel independent and want to assert themselves from dependence on their parents or others and yet at the same time often have real doubts about their ability to get on. This is the period when the familiar family problems develop between father and son, mother and daughter. The disrespectful teenager and the frustrated, worried parent is a scene as old as time.

The police are affected by this problem because, outside of the home, it is the police, along with perhaps the teachers, who are seen by young teenagers as stand-ins for their parents. Not surprisingly, the police share the uncomfortable experience of frequently having a very hard time with the juvenile who wants to defy authority or for some other reason to draw attention to himself by challenging the law.

#### B. Groups and Gangs

This common tendency of teenagers to resist authority is made more difficult for the police officer by the fact that youths frequently associate together in groups. When among their own friends, young people may become even more independent and assertive and less concerned with conforming their behavior to a standard set by others. It often seems that within a group each member tries to out-do the others in displaying his independence and strength. And not infrequently this leads to breaking the law. The defiant fifteen year old who warns his father "You can't tell me what to do!", will smash a store window when with a gang of his friends just to show them that not only his father but also the police can't tell him what to do.

#### C. Reforming the Juvenile Offender

It is early participation in crime which usually leads to the acquaintances and experiences that form the basis for a hardened criminal career. Today's surly fourteen year old petty offender too frequently becomes the armed felon of five years from now -- indeed, with few exceptions, every inmate of Walpole was once a juvenile offender.

(Juveniles)

Most of the initial crime committed by juveniles is a result of children learning the habits of those around them -- their fathers, older brothers, friends, etc. At such an age, any real commitment or deep psychological inclination to criminal activity is rare. Rather, the youth is responding to the situation in which he finds himself in the ways he has either been taught or which he has personally observed and imitated.

Usually a youth at this stage is fully capable of changing his ways and becoming a law abiding man or woman. What is required is for the youth to be shown and understand that, literally, "crime doesn't pay." In other words, that the happiness and satisfaction that he hopes for in his present and future life will be much harder, if not impossible, to achieve if he continues to break the law.

To do this is a big task, of course, and taking all things into consideration, the police can only contribute so much. The crucial influences are beyond police control, namely the youth's family, his circle of friends, his teachers and the others with whom he has everyday contact. But the police do have some impact, and this impact can sometimes be the critical factor in leading a once or twice offending juvenile away from his habit of crime.

#### D. Specific Guidelines

From what has been said above some general guidelines can be given for police conduct. Although easy to put down in print or to say, they can be difficult to carry out on the street:

1. Don't play the juveniles' game of setting the policeman up as the rigid and unreasonable agent of authority. Be diligent in the apprehension of juvenile offenders, of course, but in all other dealings with juveniles, discriminate between the actually dangerous and perhaps sick offenders and those youths who are testing you either because they want to display their strength and manliness or because they are following the example of others.

Never take personal offense and react simply because a youth or group of youths defies or ridicules police authority.

Above all, remember what it was like to be at that age and show that the law isn't inflexible and unsympathetic as some would like to think.

2. If a juvenile has been caught for having committed an offense and he's been released whether on his own recognizance, on probation, from DYS, or whatever, avoid the temptation to single him out for suspicion whenever a later criminal incident occurs, unless, of course, there is real evidence against him.

The juvenile at that point can easily go one way or the other to a further criminal career or to a law abiding one. The police response to him can be very influential in determining which way, and it is said frequently that if you treat someone as a criminal, before long he'll act like a criminal.

3. Don't treat juveniles as "second class citizens." Of course, young persons must be handled differently than forty year olds, but they are entitled to the same respect and restraint as adults. The major Constitutional and civil rights of free speech, assembly and association and protections against arbitrary searches or arrests are held by juveniles as well as by older people.

Nothing humiliates and angers a young person more than being treated "like a kid." But on the other hand, nothing will contribute more to good will between a young person and a police officer than the officer's respectful conduct towards him.

4. Remember that the contacts and experiences which a juvenile has with the police importantly influence how that juvenile will later view the police, and to a significant degree, all other lawful authority.

## II. MASSACHUSETTS JUVENILE LAW

In Massachusetts as in most other states, separate system of dispensing justice is established for juveniles. This system, including the rules and procedures which govern police handling of juveniles and judicial proceedings for juveniles is set out in M.G.L. chapter 119.

The philosophy behind Chapter 119 is that juvenile offenders can and ought to be helped and guided and that adult criminal proceedings and sanctions in most cases are inappropriate for this purpose. Of course, those parts of the adult criminal law which protect the interests of the offender, such as the Constitutional rights to silence, the provision of counsel, a fair trial and notice of specific charges upon arrest are applicable to juveniles also.

### A. The Delinquent Child

There is no such thing as a separate category of juvenile offenses. However, Chapter 119 §52 provides that one "between seven and seventeen years of age who violates any city ordinance or town by-law or who commits any offense against the Commonwealth is to be classified as being delinquent."

As can be seen, this is a very broad definition and on the face of it subjects a juvenile who committed a parking offense to the same label of being "delinquent" as one who stabbed a man. The latitude of the law is intended to allow a judge after a finding of a delinquency to focus on the juvenile himself -- his problems, his strengths and his chances of going straight -- rather than on details of his offense. By doing this the intention is to mold the court's disposition to the needs of the juvenile.

But with this latitude comes a danger. The danger is that juveniles may be brought in or found delinquent for minor infractions because the youth is a trouble-maker and there is not enough proof to convict him of a serious offense. This kind of abuse is contrary to the purpose of Chapter 119. Police officers must not bring in a juvenile

(Juveniles)

for such minor offenses which amount to "technical" delinquencies only.

Regardless of the type of offense which is behind the allegation of delinquency, it must be proved beyond a reasonable doubt. This is the same standard that governs adult criminal convictions (Ch. 119 § 58).

## B. Rights and Procedural Protections of Juveniles

### 1. Constitutional Rights

As said before, juveniles share the same Constitutional protections as adults. What this means is that the restraints and obligations upon police action which are set out in the sections of this Chapter on Stops, Arrests, Frisks, Searches and Seizures, Questioning and Identification must be followed with juveniles, too. The only difference between field procedure with juveniles and adults is that juveniles are protected even more. For instance, take the situation where a juvenile, after being arrested, is handled exactly as required by Departmental procedures surrounding questioning. He makes a willing waiver and incriminates himself by what he says. If, however, his parents or a probation officer are not present at the time he makes the waiver, it is likely that a court would find the waiver of his rights to silence and to the presence of a lawyer to have been ineffective. Later in this section a specific procedure pertaining to juvenile questioning will be given.

The operational guideline for juveniles, therefore, it to handle them in the same way as adults are handled, except to be even more careful.

### 2. Special State Procedures

Section 67 of Chapter 119 establishes several specific procedures which police officers must follow after the arrest of a youth less than seventeen years of age. These have been incorporated in to the Departmental procedures set out later in this chapter.

### III. PROCEDURES

#### A. Investigations

1. Preliminary investigations. The age of the suspect does not affect the requirement that a complete preliminary investigation should be made at the scene of a crime in accordance with regular crime scene procedures. (See the "Crime Scene" section in this chapter.)
2. Follow-up investigations.
  - a. Under most circumstances when a preliminary investigation indicates that the offender is a juvenile, detectives assigned to the Juvenile Unit will carry on subsequent investigation.
  - b. When a member of the B.C.I. is investigating a crime on a follow-up, and it becomes apparent that the perpetrator was a juvenile, the B.C.I. detective shall follow the investigation to its conclusion rather than transfer the case to the Juvenile Unit. Exceptions may be made, but only if the Officer in Charge of the Juvenile Unit approves the transfer.

#### B. Arrests

1. Decision to Arrest. The legal requirements of a valid juvenile arrest are the same as for adults. The same amount of proof to establish probable cause is needed. (See the "Arrest" section in this chapter.)
2. After Arrest: Duties of Arresting Officer.
  - a. As soon as a juvenile is arrested, give him his Miranda warnings. (See the section in this chapter on "Questioning" for details.)
  - b. Unless the office is closed, contact the Juvenile Unit in CPB immediately upon arrival with the juvenile at the Station House.

(Juveniles)

c. Make Out:

- A complaint File Card
- A Juvenile Card

fully describing the circumstances surrounding the offense and the arrest. Write any additional information on a 650, and relay such to the Juvenile Unit. Also, see to it that an appropriate entry is made in the Journal.

d. See to it that the arrested juvenile is fingerprinted, palm printed and photographed in accordance with adult procedures.

e. Immediately notify of the arrest the parent, or if there is no parent, the guardian of the juvenile or the person with whom it is stated that the child resides, and the Probation Officer. (Note: The Officer in Charge of the Desk is responsible to see that such notification is made.) If it is necessary to return to the street before the notifications can be made, the Officer in Charge of the Desk shall do so himself or order another member of the Force to do so. In addition to providing for notification, the Officer in Charge is to make an immediate inquiry into the case to ensure that there was proper cause for arrest and that the juvenile has been treated in accordance with the law.

f. Even after giving the Miranda warnings, do not question a juvenile under arrest unless either his parent/guardian/person with whom he resides is present.

g. The formal decision to detain an arrested juvenile pending his hearing should in most cases be made by the Probation Officer. Clear any decision to request the Probation Officer to make such a decision or to seek detention by court warrant through the Juvenile Unit, or, if that is impossible given the time of arrest, through the Officer in Charge of the Desk.

### 3. Preparation of the Case for Trial; Trial

The arresting officer is responsible for the preparation of the juvenile case and must be present at trial. While a juvenile proceeding is somewhat different from an adult trial, it is still essentially a criminal trial demanding proof beyond a reasonable doubt. Consequently, efforts to secure the presence of witnesses and to prepare testimony must be the same as for an adult proceeding.

#### C. Decision Not to Arrest, Although Grounds for It Existed

In all such cases, complete a Juvenile Card (and a 650, if necessary to include all the facts,) giving details surrounding the incident. Communicate such report to the Juvenile Unit. Make certain that the Juvenile Card and the 650 contain enough information to allow the Juvenile Unit to swear out a complaint against the juvenile should the Unit at a future time decide that it is necessary to bring the juvenile to trial for the offense for which he was not arrested. (Note: Under no circumstances are cases to be "dumped" on the Juvenile Unit by officers referring them to the Unit when it is clear that arrest by the on-the-street officer is called for.)

Example: Two youths are observed in suspicious circumstances carrying a stereo set and television down the street. The police officer stops them. They identify themselves and admit to having stolen the goods.

Action: The youths should be arrested and taken to the Station House by the officer. As arresting officer, he is responsible for carrying out the procedures given in other parts of this section. If instead of arresting the youths the officer merely returned the goods and filed a Juvenile Card and a 650 with the Juvenile Unit, he would be guilty of neglect of duty.

#### D. Other Incidents Where a Juvenile Has Acted in a Manner Deserving Police Attention.

These incidents vary in kind from a youth's continued

association with serious offenders to being a named suspect in a crime. In all such cases, fill out a Juvenile Card on the youth, describing the circumstances which warrant police attention and immediately forward such to the Juvenile Unit. (A note of warning: do not fill out a card on a youth unless there are hard facts which indicate that he deserves police attention. A mere rumor implicating a juvenile is not enough, and the Department wants to avoid the unnecessary labelling of a young person as a potential or actual delinquent.)

E. Referrals to the Youth Resource Bureau

The Youth Resource Bureau was established by the City to provide special non-custodial help and guidance to young people who have caused trouble, committed offenses or otherwise indicated that they are potential delinquents. For a certain kind of young offender the Youth Resource Bureau is designed to be an alternative to court. All referrals to the Bureau from the Police Department must be made exclusively through the Crime Prevention Bureau. If a member of the Force concludes that a juvenile who has come to his attention would benefit from the Youth Resource Bureau, he should submit to the Juvenile Unit a Juvenile Card with a 650 attached suggesting such a referral and stating his reasons for it.

CITY MANAGER  
OFFICE OF THE

JUN 31 4 41 PM '84

RECEIVED

members of the Internal Affairs Unit in order to discuss the event and review the written reports submitted by them.

2. Reviewed all written policies and procedures pertaining to juveniles and arrests in the Cambridge Police Policies and Procedures Manual (copies attached).
3. Reviewed all written reports of the officers involved in the incident including booking sheets, release sheets and the arrest and incident report filed the night of the incident.
4. Reviewed and compared the roster and police journal of January 1/2 with the prior reports.
5. Reviewed a complete transcription of all Police radio and telephone communication between 11:00 P.M. and 12:30 A.M. on January 1/2.
6. Thoroughly reviewed the complete tape recording of a telephone conversation between the victim and Captain Joseph Grainger in charge of the Internal Affairs Division.
7. Reviewed the special assignment investigation from Detective Franklin to the Chief of Police.
8. Received a report from the Director of Security at Cambridge Rindge and Latin School regarding an incident on January 3rd involving two youths that allegedly participated in the incident of January 1st.

Using all of the above information, I personally reconstructed the chronology of events and diagrammed them. With this information, I have been able to compare my findings with those of the preliminary Internal Affairs report.

During my review, Detective Franklin's special report, which was ordered by the Chief of Police after meeting with the parents, indicated that some of the youths arrested may not have been involved in the incident. After receiving this report of January 31st and discussing it with Chief Paolillo and appropriate police officials, it was my decision to submit it directly to the District Attorney as information which will be important to the case. At the same time, I contacted District Attorney Scott Harshbarger and requested that he keep me up-dated on any decision or action by the District Attorney's office relative to the information in Detective Franklin's report.

It should be clearly understood that the sole jurisdiction for determining the legal options available as a result of the information and conclusions of Detective Franklin's report rests solely with the District Attorney's office and the judicial process.

In both City Council hearings, allegations have been made

regarding a widespread "sweep" or "dragnet" to arrest all black youths in a wide radius of this incident. In reviewing all of the above-mentioned information and material, there does not appear to be evidence to substantiate those allegations. In this case, although the evidence appears to support that there was valid reason to stop, detain, and/or arrest a number of black youths, it is not conclusive as to whether or not any or all of these youths were guilty of the crime. The final outcome of this matter will be determined, properly so, through the judicial process. However, I feel confident that the City has fully cooperated and provided the District Attorney's office with all information and evidence available to the City in a timely fashion so that the outcome will be fair to all those involved. I met as recently as yesterday with the Assistant District Attorney in charge of Criminal Investigation and will be in contact with her through Tuesday regarding any developments in this case.

In compliance with the City Council order of January 30, 1984, this is to inform you that a recommendation will be forthcoming for the Fiscal Year 1985 budget which will contain an allocation of funds enabling the City to establish a Youth Bureau within the Police Department. These staffing recommendations will enable this Youth Bureau to operate seven days a week from 8:00 A.M. to Midnight and will include holiday coverage. The staffing of this expanded unit will be accomplished by the anticipated hiring of 15 new officers to take place in the late Spring of 1984 and re-deployment of existing personnel. This matter has been reviewed with the Chief and will be included in my recommendation to the City Council in the FY85 Budget submission.

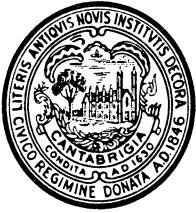
With the implementation of this expanded Youth Bureau, the officers assigned will participate in a thorough training program relative to the rules, regulations, and procedures regarding the appropriate handling of all juvenile matters. The District Attorney's office has agreed to review, in conjunction with the City Solicitor, any changes in written procedures concerning how juveniles are dealt with for compliance with existing statutes and judicial procedures.

This training will also be made available for all police personnel over a period of time. Additionally, I will bring into the City structure consultants to assist in training in negotiations, conciliation and racial awareness.

In response to the City Council order, this is to inform you that I have taken the following actions relative to the appointment of a committee to review the policies and procedures of the Police Department as related to juvenile matters. The committee will be comprised as follows:

2 Representatives of the Police Department -

Chief Anthony Paolillo  
Lt. Calvin Kantor



# CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139  
Tel. 498-9011

EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

February 13, 1984

To the Honorable, the City Council:

In response to Awaiting Report Items No. 3 and No. 4, the following is a detailed report on my review of the events which have occurred relative to the incident of January 1-2, 1984.

Initially, the City Council requested a report by January 23rd from the City Manager to provide them with information, as a result of questions that were raised by the community regarding the arrests of eight youths on the evening of January 1, 1984.

The only information available to me in that time frame was the preliminary internal affairs report submitted to me through the Chief of Police on Friday, January 20th. Given the request of the City Council to report back in that time frame, only two options were available. First, it was the advice of the City Solicitor that I not provide any details until such time as the judicial process had been completed and a comprehensive report and investigation could be conducted. My second option was to release the preliminary Internal Affairs investigation which was the only information available to me at that time.

Knowing full well that the report was preliminary and that it spoke only to the detention and arrest of the juveniles and not as to whether they were guilty or innocent, it was my best judgment to release the report.

My understanding of the request made to the City Council by the parents was their desire to have the matter reviewed and discussed publicly. After reviewing the preliminary report and discussing the matter with the Chief of Police, I issued this report to the City Council. That report to the City Council spoke only to the detention and/or the arrest of juveniles, not to their guilt or innocence.

At the City Council meeting of January 30th, the Council voted to reject the initial report and to have the City Manager conduct an independent investigation of the incident and report back at the meeting of February 13th, the eve of the trial.

As a result of this request, I have undertaken the following actions in preparing a detailed review of what transpired:

1. Interviewed the Chief of Police, juvenile officers and

Agenda Item Number Six

5-86

Re: response to Awaiting Report Item No.'s  
3 & 4, relative to the arrest of several  
black youths on January 1, 1984.

In City Council,

February 13, 1984

2/13/84

Placed on File

See Order #

Adopted with Reference  
to this subject