THE UNIVERSITY OF CAPE TOWN
DEPARTMENT OF SOCIOLOGY

THE POLICE AND THEIR IMAGE:
A COMPARATIVE STUDY OF THE AMERICAN AND CAPE TOWN POLICEMAN

BY

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Submitted for the Requirement
for the Degree of

Master of Social Science

March 1978

University of Cape Town

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TABLE OF CONTENTS

PAGE:

ACKNOWLEDGEMENTS

CHAPTER I : INTRODUCTION. 1
Methodology 6

CHAPTER II : THE POLITICAL IMAGE OF THE POLICE 11
Democracy and the Understanding of Law. 12
The Understanding of Law in South Africa. . . . 17

CHAPTER III : THE OCCUPATIONAL IMAGE OF THE POLICE. 22
Occupational Elements 24
Authority. 24
Danger. 29
Efficiency. 31
Summary 32
Police Methods. 33
Brutality 33
Arbitrary Power and Taking of Law into Their Own Hands 35
Summary 37

CHAPTER IV : OPERATIONAL IMAGE OF THE POLICE - METHODS AND PRACTICES OF THE PATROL 39

Patrol Work 39
Citizen Initiated Encounters in the United States - Non-Legal 41
Citizen Initiated Encounters in Cape Town - Non-Legal 46
Summary 55
Citizen Initiated Encounters in the United States - Legal 58
Citizen Initiated Encounters in Cape Town - Legal 61
Summary 68
Patrol Initiated Encounters in the United States 69

University of Cape Town

PAGE:

Patrol Initiated Encounters in Cape Town. 79
Summary 85

CHAPTER V : OPERATIONAL IMAGE OF THE POLICE - METHODS AND PRACTICES OF THE DETECTIVE 90

Detective Work. 90
Vice Detectives. 92
United States Detective in Gathering Information - The Art of Being Efficient . . 94
Informers. 94
Searches 101
Interrogations 103
Traps. 107
Cape Town Detective in Gathering Information - The Art of Being Efficient . . 110
Informers. 112
Searches 118
Interrogations 124
Traps. 129
Summary. 135

CHAPTER VI : CONCLUSIONS. 140

REFERENCES. 142

University of Cape Town

ACKNOWLEDGEMENTS

The author wishes to acknowledge the assistance and guidance of Dr. Max von Broembsen as thesis adviser. Acknowledgement is also due to Dr. Gerd Wiendieck of the Sociology Department for counsel, suggestions and criticisms of this research.

Acknowledgement is due to the South African Police Force for without their aid this thesis would never have been possible. I would personally like to thank General Crous for his permission to do this study and to thank Colonel Grobelaar for his guidance, information and patience throughout my time spent with the Cape Town police. I would also like to thank the individual members of the police force for permitting me to accompany then during their working hours. I must also extend my gratitude to the Cape Town Senior Prosecutor, Mr. Barlow, for his invaluable information.

Financial assistance is gratefully acknowledged from the Human Science Research Council and the University of Cape Town.

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CHAPTER I

INTRODUCTION

This thesis attempts to understand and compare urban police methods between two fundamentally different legal systems: The United States and South Africa. To do so, I found it imperative to analyze the police systems on three different levels. This first level, presented in Chapter II, is the political level. Here I attempt to show that the image of the police in political terms categorized on a continuum anchored with the polar adjective pair "democracy-totalitarianism", is dependent on the quality of laws legislated in a country. Chapter II does not in any way attempt to be an in-depth political analysis of the two mentioned political systems. Instead, the Chapter limits the political discussion to a theoretical discourse on the concept of justice and law. There are two main reasons for this limitation. To do justice to such a broad political analysis would be another project in itself and is outside the scope of my present concern. Secondly, the main theme I wish to present in Cahpter II is simply that the police as enforcers of laws can present an image no better than the laws which they enforce. Consequently, I accept that the forms of power structures designated by the terms 'democracy' and 'totalitarianism' exist as ideal constructs and, within these systems, law and justice assumes a meaning. Hence, criteria of democratic laws are first discussed. When laws fulfil the criteria of democracy, police power is curtailed and the political image of the police is one of protection. Since America's laws meet such criteria, the police force fits into a democratic framework.

Next, a comparison is drawn with South Africa's laws. An analysis on this level shows that some legislation does not meet the requirements for democratic law. Consequently, as enforcers of some laws that are considered unjust (definition of the term is discussed in

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Chapter II) the total image of the police system falls on a continuum more towards totalitarianism.

Establishing a political image, however, does not necessarily explain police methods and practices. One can perhaps induce that in countries where legal systems are more authoritarian (and hence veer more towards a totalitarian system), police methods and practices would be more repressive. In such countries the potential for police abuses to exist is indeed more marked, but this does not necessarily follow. Brian Chapman (1970:93) states:

> "It can then be remarked that the full blossoming of police powers and abuses can only occur in authoritarian regimes, and it is clear that authoritarian regimes run much greater dangers in this direction than liberal democratic regimes. But the curious fact is that several types of authoritarian regimes also manage to keep them under control".

So, when Adam (1971:81) concludes (rightly or wrongly) that a Black man in South Africa has a greater chance of being correctly treated by the police than a Black in Chicago, he describes police behaviour that is not only descriptive of a country's political system; but instead, also has meaning on a different level of analysis. Consequently, Chapter III discusses police practices independent of political criteria. Instead, police work is viewed from an occupational perspective. Bayley and Mendelsohn (1969:106) note that:

> "... policemen live in a particular perceptual world - a cop's world.... Policemen share a set of expectations about human behaviour which they carry into professional contacts, precisely because they are policemen. Their occupation engenders a particular way of looking at their environment".

In Chapter III, it is argued that the very nature of police work creates as Skolnick (1966) says "a policeman's personality" which then paves the way open for certain police practices which Chapman (1970:93) claims are "inherent in every police system".

University of Cape Town

The occupational elements found in a policeman's milieu are first examined. These elements, outlined by Skolnick (1966) as authority, danger and efficiency contribute to form a police personality which then, I induce, leads to certain police methods described by Chapman (1970) as brutality, arbitrary use of power, and the taking of laws into their own hands.

On this level of analysis, presented in Chapter III, a general occupational image of the policeman is established. This image then provides the background material for the comparative examination of the South African and American police methods which is presented in Chapters IV and V. These Chapters analyze the operational factors of law enforcement and aim to demonstrate that the policeman's working personality develops within his specified area of law enforcement. Consequently, the operative aspects of the job which distinguish the patrolman from the detective are discussed. First, the comparative operational problems of the patrolman in America and Cape Town are discussed. The main distinguishing features of the patrolman is that he is a uniformed person, working with very little hierarchical directives or supervision, under the ambiguous title of "peace officer" who has vast contact with the public. The particular manner in which the patrolman comes into contact with the citizens emphasizes certain elements in the policeman's milieu over others. Hence citizen-initiated encounters, whether they are for legal or for social services, present different problems and elicit different reactions than police-initiated encounters. Each encounter categorized as citizen-initiated or police-initiated is discussed and the general factors that contribute to patrol methods are examined and are compared with circumstances for the Cape Town patrolman.

Chapter V then examines the operational features of the detective. The distinguishing features of the detective is that he is a plain clothes man with limited contact with the public and is designated as a "law officer". Being a "law officer", the detective's occupational "raison d' etre" is to develop and clear criminal cases. This means that the detective is much more interested in arrest and prose-

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cution than the patrolman who is more concerned with the maintenance of order. The detective is after information to secure criminal prosecution. Because of this, the element which proves most problematic in the detective's milieu is efficiency. How the detectives prove to be efficient in gathering criminal information while upholding (or getting around) court restrictions is the subject matter of Chapter V.

Since detectives are placed in specialized areas of law enforcement, Chapter V concentrates mostly on the methods and practices of the vice detectives in their process of criminal investigation. This specific area of detective work was chosen because the consensual nature of vice crimes means that vice detectives have to be more ingenious at devising methods to capture criminals. Hence it is the vice detective who usually comes into the most direct conflict with court-imposed restrictions on the use of informers, traps, searches and interrogations. The methods and practices developed by the American vice detective are compared to those used by the Cape Town detective.

Because this study attempts to compare urban police behaviour of two different countries, in its most ideal form it is a generalization. Consequently, in trying to present a broad picture of police behaviour, I have ignored individual differences. Flesh and blood policemen are as real as the next person and as completely individual; yet, these differences are more or less ignored to present a more uniform working image of the man "on the job".

This study is also partial in that it examines only the police and limits its attention to police treatment accorded citizens while only giving cursory attention to the treatment accorded citizens by other criminal agencies. Therefore, though this study is presented generally, it is not comprehensive. Furthermore, it must be stressed that this study is an exploratory one. Being the first student to conduct such a sociological investigations of the Cape Town police, I found myself in a new field, uninvestigated with little to no academic information to assist me. Consequently, I am of the opinion that

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this thesis will provide a good general background for students wishing to continue a more in-depth study of the police, their methods and behaviour.

The value of a comparative study on police methods provides a systematic framework as a basis for role performance. From such a sociological approach, the traditional legal explanations of police behaviour in terms of a veneer as "law enforcers" full and police practices are seen as a product of an occupational ideology and operational factors. This debunking aspect presents the reality of police behaviour in a different perspective, thus shedding new light on certain concepts such as law, order, and justice.

Though this study has intellectual rather than practical objectives, it is not without policy implications. For a society to influence its police behaviour, to restructure it, or to change it, one must first understand the reasons police act or react in a particular manner. Experiments conducted on one police force can have meaning for another country. A type of intellectual exchange can occur where police practices are viewed on a broader perspective.

Also, at this time, I would like to clarify my terms used to distinguish members of the police force. There are certain words which refer to members of both branches of the force collectively - i.e., detectives and patrolmen. They are: cops, policemen and officers; whereas the terms patrolman and detective refer only to those members distinguished as detectives or patrolmen. Furthermore, I would like to explain my usage of terms referring to the South African racial groups. The choice of names (White, Coloured, Bantu) have been chosen according to the official designed political classification and is not representative of my own identification with such terms. Also, it is commonly accepted to use the word Black or African instead of the word Bantu. Hence these words will be used interchangeably in the thesis.

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Methodology

The empirical data for this thesis, which began in October 1975, was based on the observational research of the Cape Town patrol and detective division. With the patrol division, I spent one week travelling the assigned territory as specified by the map on page 7. I was assigned to travel the 14h00 to 22h00 shift. In this way I was informed that I would cover some afternoon as well as evening activity. I was prohibited from viewing the 22h00 to 06h00 shift, which would probably have introduced me to the most police activity. The reasons given were that of safety considerations for even women police officers were not allowed to take that shift. While on patrol observation, I was always accompanied by a female officer as well as a male officer who did the driving.

With the detective division I spent one week, accompanying the detectives from the fraud division, one week with the house-breaking division, one week with the vice and liquor division, and the last week with the narcotics division. The hours I travelled with the detectives were by no means routine. If the officers were conducting some night activities - laying traps, visiting bars and places of nightly entertainment, making arrests, I accompanied them at times to suit their own requirements - sometimes arriving home in the early hours of the morning.

I also spent a two-week period viewing the "on the job" duties of the Cape Town's Senior Prosecutor. Though I did not attempt to combine his function in influencing and being influenced by the police, I found these two weeks invaluable in furthering my knowledge of detective behaviour as it is they who have the most working contact with other judicial agencies. In addition, I interviewed various Cape Town prosecutors and defense attorneys and also viewed judicial proceedings on the magisterial and regional level.

A question that must be asked is: How representative of South Africa is Cape Town? First I was viewing the behaviours of basically an Afrikaans police force, nationally controlled and trained in Pretoria.

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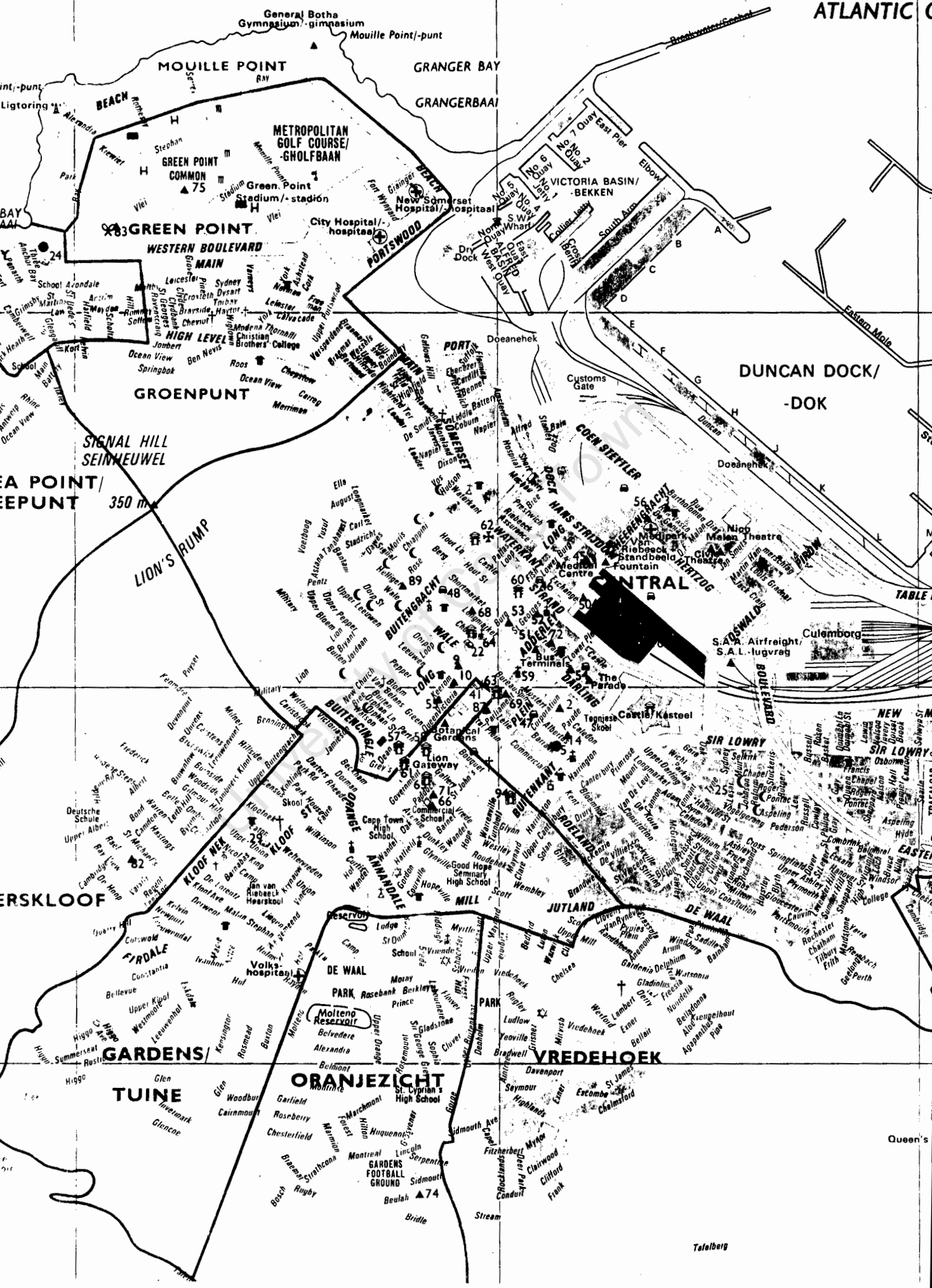
ATLANTIC
General Botha Gymnasium/-gimnasium
Mouille Point/-punt
MOUILLE POINT
GRANGER BAY
GRANGERBAAI
BEACH
METROPOLITAN GOLF COURSE/ -GHOLFBAAN
GREEN POINT COMMON
Green Point Stadium/-stadion
New Somerset Hospital/-hospitaal
City Hospital/-hospitaal
GREEN POINT
WESTERN BOULEVARD
MAIN
HIGH LEVEL
PORTSWOOD
VICTORIA BASIN/ -BEKKEN
No 7 Quay
East Pier
No 6 Quay
No 5 Quay
No 4 Quay
No 3 Quay
No 2 Quay
No 1 Jetty
S.W. Wharf
North Quay
Dry Dock
Collier Jetty
South Arm
Cross Berth
Breakwater/Seehek
Elbow
Eastern Mole
DUNCAN DOCK/ -DOK
Customs Gate
Doeanehek
GROENPUNT
SIGNAL HILL
SEINHEUWEL
LION'S RUMP
350 m
PORT
SOMERSET
COEN STEYLER
DOCK
HANS STRIJDOM
LONG
WATERKANT
BUITENGRACHT
WALE
ADDERLEY
STRAND
HERTZOG
CENTRAL
Medical Centre
Bus Terminals
Nico Malan Theatre
Van Riebeeck Standbeeld Fountain
S.A.A.R. Airfreight/ S.A.L.-lugvrag
Culemborg
BOULEVARD
TABLE
The Parade
Castle/Kasteel
Tegnjese Skool
DARLING
BUITENKANT
PLEIN
ROELAND
JUTLAND
DE WAAL
SIR LOWRY
NEW
EASTER
Botanical Gardens
Lion Gateway
Commercial School
Good Hope Seminary High School
Cape Town High School
Deutsche Schule
Jan van Riebeeck Hoerskool
ORANGE
KLOOF
KLOOF NEK
ARMANDALE
MILL
ERSKLOOF
FIRDALE
Volks-hospitaal
DE WAAL PARK
Molteno Reservoir
GARDENS/ TUINE
VREDEHOEK
ORANJEZICHT
St. Cyprian's High School
GARDENS FOOTBALL GROUND
Tafelberg
Queen's

Colonel Grobelaar (member of the Cape Town Police) informed me that what the police do in Cape Town they do in any other city in South Africa. This is so because the laws and the methods of enforcing these laws are the same. Taken as a strict legalistic view, holding all other variables constant, he may be correct. However, these other variables are not held constant - expecially for the patrolman. A factor greatly influencing patrol behaviour - especially in an "apartheid" society - is the composition of the population patrolled. Taken from the 1970 census on the population figures for the area patrolled by the Cape Town police, there are 28 368 Whites, 15 882 Coloureds, 1834 Asians and 658 Bantu residing in the area. The patrolmen in Cape Town mainly come into contact with the English speaking Whites and Coloureds. Since "apartheid" laws are more stringent for the Bantu population - most notably the dreaded Pass Law regulations - I did not view police behaviour in this respect. Since I did not view police interaction with the Bantu and since numerically the African population is by far the greatest in South Africa, I cannot say police behaviour in Cape Town is typical of police behavious throughout the country. Also, since Cape Town is a port city, harbouring international ships and attracting a large portion of the tourist trade, the police tend to take a different view of what is "acceptable" behaviour. This will be discussed in Chapter IV, which describes Cape patrol activities. Hence patrolmen allow, or ignore certain behaviours that they might not in other areas. This difference may reflect nothing more than an urban/rural dichotomy and in this respect Cape Town may have more in common with Durban, Johannesburg, Port Elizabeth and with other urban areas of the States. Though I present a general image of the policeman's personality, certain manifestations of it are only relevant to Cape Town and most certainly cannot be taken as practices typical of the South African police force.

The same question must be asked of my comparative sources of information. In the United States each governmental unit, under the American constitution, may have its own police force. The city has a municipal police force, the small town a marshall and the township has a constable. The country may have an organized, uniformed

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police force, but usually it has only a sheriff and deputies. Also, States employ their own uniformed police, some of whom are limited to traffic control. In attempting to describe and explain behaviour and practices, I have compacted and compiled examples from various sources which will be referenced throughout the thesis. One thing all these studies have in common is that they were conducted in large, urban areas of the United States. I have also found the Report by The President's Commission on Law Enforcement (1967) (henceforth known as The President's Report) to be extremely useful in that it presents an observational account of police behaviour researched throughout the United States. It then presents a comprehensive picture of the United States police forces discussing both aspects - that of the patrol and that of the detective divisions. Though certain methods and practices vary from area to area, The President's Report shows that it is only to a degree. What the President's team researched, seems to be high substantiated (though somewhat modified by the times) by other authors' more recent accounts. Also, I tried to modify any city differences by concentrating on Federal regulations. Since the Supreme Court has increasingly been subjecting courts to uphold constitutional demands, especially in matters of search, seizure, interrogations and presentation of evidence, variations from city to city are (and continue to be) reduced. Hence, I believe I present a more representative image of American urban police behaviour than of South African.

University of Cape Town

It must also be mentioned that, as with some of the other American authors (Skolnick, 1966; Whyte, 1943; Reiss, 1971; Rubenstein, 1973) whose research was based on observational techniques, I faced certain problems. First of all, a participant-observer constantly finds himself involved in the business of interpreting the meaning of behaviour of the actors whom one is observing. None of us are free from biases and hence judge incidents from a subjective perspective. To avoid this as much as possible, I constantly queried the actions of my subjects. I would ask "why didn't you do this?", or "what would you have done if this happened?", or "why did you do this?", or "what do you think about this?". Most of my subjects were most willing to discuss their actions, sometimes adding a new

perspective to their behaviour. When an officer did not discuss his actions, as did happen with a patrolman, I based my conclusions from a totality of events, but ultimately the reasons for his behaviour would have to be speculative.

I would like to note that all names of persons observed - citizens and police - have been omitted to preserve their anonymity and privacy. I have not hesitated to omit these names since they have no bearing on the validity of the evidence presented. Also, I employed no recording devices and took no notes during working hours, but instead wrote out my observations at the conclusion of each day's work. Unless otherwise specified, every quotation is taken directly from my field notes and it as accurate as my memory and ear allowed. The reason for such field methods was that I found that taking notes during encounters proved to be most disconcerting to the police. Questions such as "what are you writing?" and "why are you taking notes?" were asked when I tried to record incidents and conversations. The policemen seemed to feel very adverse to any written account being taken and I immediately ceased such an attempt when I noticed its affects.

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CHAPTER II

THE POLITICAL IMAGE OF THE POLICE

One often hears the police force of a country described in such negative terms as repressive, authoritarian, or the ultimate description - totalitarian. How does the police force gain its image? How is one justified in calling one police force totalitarian and another democratic? This Chapter sets out to provide some answers to these and related questions.

Since this is a comparative study in police practices between the American and South African political systems, what must first be discussed is the concept of legal power and its relationship in a social structure. It will be shown that the political image of the police can only be understood in the ideological premises on which the law is based.

The police in the first place exist only in view of the fact that communities and/or states are legally organized (Bordau, 1967:26). Part of the concept of legality for Weber (Beetham, 1974) defined the concept of authority in modern institutions as existing in procedural correctness. What characterizes legal authority is its impersonality and allegiance to rules and written procedures. Hence it is only through the legality of the state that an organization created to exercise potentially violent supervision over the population can exist.

We see then that the reason of being for the police lies in the concept of the state. Weber (Gerth and Mills, 1953:78) also points out that: "If no social institution existed which knew the use of violence then this concept of 'state' would be eliminated". This also implies that the existence of the police is both because of the state and also for its preservation. The police, perhpas, as no other legal agency can be seen as an appendage of the state for the

University of Cape Town

enforcement of its laws, and hence to protect its power to govern.

The policeman standing in his uniform is the most obvious and observable representative of the legal power of the state. And, as d'Entreves (1970:183) points out that when one speaks of the power of the police one does so in the same way as when one speaks of the power of the state. "Both are made possible by the existence of laws. They are creations of the law".

To understand the police and their political image in a particular society, one must first ask: What is the purpose of law for that society? What are the ideals that form the basis on which laws are established and hence distinguich a state's political outlook and their police power as repressive or protective?

The ideals that form the basis of democratic law will be discussed because of the general recognition that America is representative of a political democracy and South Africa claims to have ideological commitments to the Western Democracies.

Democracy and the Understanding of Law

The development of the ideals of law in democracies has shown that there are no absolutes and that laws reflect the views of a generation. However, there is a common ideology on which democratic law is based and the evolution of natural law which provides the philosophy for democracies has motivated the American Declaration of Independence, the French Declaration of the Rights of Man, and in the twentieth century came to be interpreted in the United Nations' Charter and in the European Convention for the Protection of Human Rights and Freedoms (Randall, 1972:21). It is from these present day examples that the idea of law for democracies will be based.

The apparent common ideology of a democracy is founded on the importance of the individual. Dugard, quoting Friedmann (1972:19), has written:

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> "The evolution of the individual as the ultimate measure of things, and the consideration of government and authority not as a divine right or an end in itself but as a means to achieve the development of the individual, can be described as the basic political and legal ideal of modern Western society, and as a universally accepted standard of democratic society".

From this idea of the supremacy of the individual, law has come to have a particular meaning in a democracy. On this topic Korn and McCorkle (1959:52) say: "Those lying at the basis of democracy affirm the ineffable value of the individual human being. No person is regarded as good enough or wise enough to dominate any normal human being or to dispose of his person or property arbitrarily".

It is interesting to note that the state can dispose of a person or his property as long as it is not done in an arbitrary manner. The state (any state) must protect itself from individuals who can do it harm and undermine its sovereignty. The attainment of some measure of state stability is essential if it is to protect the freedoms of its citizens, but where state security becomes exaggerated the liberty and freedoms of the individuals diminish. How the state then disposes of the person or the property of one who is considered harmful determines whether its actions are arbitrary or not.

When or when not is a state acting arbitrarily? In a democratic society the distinctive feature of law to control the arbitrary power of the state is based on the notion of justice. The meaning of justice is of course most difficult to define. However, in Western Democracies today there is a certain notion of justice which is used to describe laws and their administration. First, let us look at this notion of justice in relation to the administration of laws. This notion incorporates the concept of "due process of law". Speaking on this topic, Kadish (1962:904-905) writes:

> ".... The cognate principal of procedural regularity and fairness, in short due process of law, commands that the legal standard be applied to the individual with scrupulous fairness in order to minimize the chances of convicting the innocent, protect against abuse of official power, and generate an atmosphere of impartial justice. As a consequence, a complex network of procedural requirements

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> embodied variously in constitutional, statutor, or judge-made law is imposed upon the criminal adjudicatory process - public trial, unbiased tribunal, legal representation, open hearing, confutation, and related commitments of procedural justice".

But impartiality in administering law is only a start in the description of the democratic ideal of law. The next question to be asked is: Is it democratic to apply unjust rules fairly and precisely? Surely a law which states that no Coloured person may use a certain beach, may be justly applied to an offender, in that only persons genuinely guilty of breaking the law are punished, by the correct legal agents, informed of his rights, and then tried in a fair court with recourse to legal counsel. The agents of the state do not act "arbitrarily" and act with the intention of doing justice. Hart (1961:155) takes the concept of justice a step further when he states: "The general principle in these diverse applications of the idea of justice is that individuals are entitled in respect to each other a certain relative position of equality or inequality".

It is in this case that we can look to the justice of law itself. According to many prominent authors, Hart (1961), Benn and Peters (9166) and Rawls (1972), a law is just when it treats like cases alike and different cases differently. When a law is considered just or unjust depends upon "relevant" grounds that people be treated the same or differently. This term "relevant" is obviously cloaked in ambiguity; yet Benn and Peters (1966:133) say that progress has been made in establishing new and justifiable distinctions as well as eliminating irrelevant inequalities. What characteristics of human beings are to be taken as "irrelevant" for the criticism of law as unjust can only be accepted by the decisions of the day. To repeat, these decisions for democracies have been motivated by the American Declaration of Independence, the French Declaration of the Rights of Man and more recently have been enshrined in the charter in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1953. Dugard (Conversation: Dec.14, 1977) also mentions the fact that democracies have been influenced and are influenced by decisions of the American Supreme Court which has increased the awareness of "irrelevant" differences. One monumental

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decision made by the Supreme Court in this regard was Brown vs Board of Education of Topeka 347 U.S. 483 (1954). Here it was argued that separate facilities for different racial groups could never be equal (Dugard, 1972:23).

Based upon the decisions of the above, today it is accepted (if only by lip service) that discrimination based on colour, sex, income, religion, is "irrelevant" for judging sane adults and making distinctions in law. That distinctions in laws are provided for the young, the insane, the metally ill and for relevant sexual differences are just either because the capacity to form a rational decision is lacking (or believed to be lacking) for the former groups or because other needs are relevant in constituting for distinctions in law for the latter group. Hence, separate toilets for men and women is just in that these amenities provide for the relevant different (psychological/social) needs of the two sexual groups. However, where laws make distinctions between the sexes where sex has nothing to do with the actual fact - such as in judging working performance or in intellectual capacity - then the law would be unjust.

This notion of justice of laws and their administration is a fundamental principle in a democratic society. When justice exists in both aspects, the arbitrary power of the state is curtailed and the rights of the individual are protected. This is not to say that a law cannot be issued that is morally wrong. For it could happen that a law, which is just in applying equally to all (rulers included), and is administered justly may be judged as morally wrong or a bad law. Prohibition in the 1920's in the United States, might be such an example of a just law, the morality of which is questioned. Perhaps other laws - homosexuality laws, marijuana laws, prostitution laws, etc. - could be placed in the same category. The author recognizes this fact - that a "bad" law can exist in a democracy - but my premise is that an unjust one (as described by the attributes stated in this chapter) cannot.

What morality is as an expression of right or wrong is difficult to ascertain. It is essentially hoped that, through the system of

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universal suffrage (an idea that has originated through the concept of the importance of the individual - again restricted to sane adults) which is the foundation of a democracy, the population's wants will be reflected in the law and hence establish morality for that society. This is an ideal - probably rarely achieved because if democracy means majority rule, what could then happen is majority will over the minority. That the law applies to all might make little difference because the majority's life style may not be affected by it. Laws passed of this type are usually ones dealing with vice or drugs. When one looks into the development of many laws what one sees is not even the will of the majority, but the will of a few elite interest groups who, because of power either through money, status, or political sway, come to have their opinions represented through the law. William Chamblis (1969:17) believes that the model which most approximates reality in the creation of laws is the one which recognizes the critical role played by social conflict. After tracing through the history of such laws as vagrancy, pure food and drug laws, narcotics and anti-trust laws, Chamblis concludes:

> "In the end the mobilization of bias accounts for the emergence and focus of much of the criminal laws in ways that are compatible with the dominant economic interests of the society. Even the structure of criminal law process is influenced by the structural bias inherent in the operation and functioning of the law in a class-structured society".

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It is for this reason that the laws for a democratic society will be distinguished by their quality of justice and not morality - for morality is a relative concept that surely cannot even be decided on by the majority, or does not represent the majority's will. On the other hand, there is some consensus on what constitutes a just law in democracies (see Hart, 1961 and Randall, 1972).

In summary, one finds that the ideological premise on which a democracy is based is on the "rights of the individual". The laws reflect this value for they are based on the quality of justice in administration (due process of law) and in application of laws, i.e., laws

apply to all, rulers included. The legal powers of the police are consequently curtailed and hence the political image of the police becomes one of protection instead of fear.

The next section will apply the criteria of democratic law to South African legislation to see if such laws truly fit such a model and hence establish the political image of the police.

The Understanding of Law in South Africa

In tracing the history of South African Roman-Dutch law one finds that it has its philosophical roots in Western democratic ideals (Conversation, Dugard: Dec. 14, 1977). Speaking on this topic Dugard (1972:20) says: "What is claimed is that the philosophers and jurists who were responsible for the creation of our legal tradition, advocated the ideals of individual liberty and equality before the law; ... which is part of our Western heritage". However, Dugard and others (Mathews, 1971, and Unterhalter, 1972) believe that this basic premise of South African law has been fundamentally disregarded and even blatantly abused. Mathews (1971:242) writes: "The capture of power by the Nationalist rulers in South Africa and the subordination of the legal system to their political ends have severely limited, if not ended, the beneficient influence of the Roman-Dutch law". Whereas, at present, when other Western democracies are becoming increasingly aware of their duty in upholding procedural safeguards (the pronounced example of this as noted by the abovementioned authors, is with some of the recent spectacular decisions of the American Supreme Court), South Africa is turning her back on her liberal past and is becoming more repressive. Dugard (1972:24) says that recently "our legislature... has built upon a totalitarian foundation which has more in common with the Communist regimes of Eastern Europe of the Fascist system of Nazi Germany than with our own liberal Roman-Dutch heritage".

To say that South Africa is tending more towards totalitarianism is, according to above authors, because many of South Africa's laws are

University of Cape Town

not based on the democratic criteria of justice. Let us review some of South African legislation in relationship of law to justice. Though even a sketchy analysis of the laws responsible for the present situation is not possible, as this section sets out to present a brief overview of the South African law, a cursory reference to some major changes will be presented.

With regard to the element of fair process, or more commonly known as due process of law, the bases of South African criminal law enriched by English law has embodied safeguards to protect the individual from arbitrary arrest and detention. In theory, and individual has the right to know what he is being arrested for, he has the right to remain silent, the right from self-incrimination, the right to be presented with 48 hours to a magistrate, the right after being charged to legal counsel, and the right to be tried in a court of law. In other words, when a man is deprived of his liberty (according to the Criminal Procedure Act and English Common Law) it shall only be done in precisely defined terms and his fate shall be administered by an impartial tribunal. However, since 1948, detention without due process of law has become a permanent feature of South African law. Consider some of the following acts:

> In 1950, the Supression of Communism Act, No. 44, was passed. This Act enabled the executive or Minister to suppress organizations, newspapers and the expression of opinions and to ban or house arrest individuals without the regulation by courts. In 1976, this Act was changed to the Internal Security Amendment Act, No. 79. The new Act further widened the State's power for, where under the Suppression of Communism Act there usually had to be some pretence that the opponent was furthering the airs of Communism (no matter how ambiguously defined), this now disappeared. Under the Internal Security Amendment Act the executive has the right to ban individuals, newspapers, organizations, etc., who prove a threat to the State with no right to court review.

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Unlawful Organization Act, No. 75 of 1959: This Act gives the executive outside the sphere of judicial control the right to ban political organizations.

Section 6 of the Terrorism Act, No. 83 of 1967, permits the arrest and detention of a person for interrogation in regard to what the person may know of acts of "terrorism" and this detention may continue until the interrogator is satisfied that all questions have been satisfactorily answered or until the Minister of Justice orders release. The courts have no powers to direct or request a release.

Likewise, Section 215 bis of the Criminal Procedure Act, No. 56 of 1955, permits the Attorney General to detain a person as a witness in criminal proceedings in respect of certain offenses, for a period terminating on the day on which the criminal proceedings are concluded or for a period of six months after the arrest, whichever may be the shorter. A court has no jurisdiction to order the release of such a person.

Along the same lines, the Dependence Producing Substances and Rehabilitation Centres Act, No. 41 of 1971, Section 13, allows the detention of persons for interrogation under warrant to be held until the police feel that such person has replied to all questions or until no useful purpose will be served by his further detention. No court of law may pronounce upon the validity of any action taken under this section or order the release of any person detained.

These are only some of the Acts where "due process" is legislated against and hence does not allow an individual his rightful guarantees to what is considered justice in a democratic society.

With regard to the second element of justice in law, namely fair application and equal treatment of all under law, rulers included, again South African laws fall short of this guarantee. Consider the following:

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The Bantu (Abolition of Passes and Co-ordination of Documents) Act requires an African to carry his reference book on his person and must produce it on demand to an authorized officer. If he cannot do so, he may be arrested immediately. However, the Population Registration Act, No. 30 of 1950, requires that identity cards on other groups be produced within seven days.

Bantu Laws Amendment Act, No. 42 of 1964, governs the right of an African to be in a prescribed area and the conditions under which he may remain there.

The Industrial Councilation Act, No. 28 of 1956, excludes Africans from taking part in proceedings in Industrial Councils.

The Natives Land Act, No. 27 of 1913 and the Natives Trust and Land Act, No. 18 of 1936, prohibit the purchase of land outside certain restricted areas. This meaning in effect that most land in South Africa cannot be bought by Africans.

Again, these are only some of the laws, outside of the petty "apartheid" and curfew laws restricting everyday actions and movements of the "non-White" population, which legislates for differences that are considered irrelevant by today's democratic standards. In this respect, justice under law where all people are entitled to the same treatment and respect by reason of the dignity that they enjoy as human beings is lacking.

In terms of some of South African legislation neither requirement of democratic legal justice is met and, on this level of analysis, this places South African legal systems outside the realm of democracy.

As South Africa has pandeered her rich and liberal legal heritage to other ideals, the image of law as the protector of individuals from the arbitrary nature of the state is diminished. On this topic,

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Mathews (1971:240) writes: "To many South Africans and especially to many non-White South Africans, the rule of law must appear indistinguishable from the rule of force, and justice no more than the right of the stronger".

As the image of law reflects more the ideal of totalitarianism, in that it aims at the subservience of the individual to the State, the political image of the police can be no better. And truly, this image is more pronounced in the duties of the security branch whose sole purpose is to uphold the power of the State. However, the ordinary patrolman and detective, try as he might, cannot escape from this image. For the police, personifying the power of the State, symbolize the law.

University of Cape Town

CHAPTER III

THE OCCUPATIONAL IMAGE OF THE POLICE

Though the political image of the American and South African police differ, this Chapter sets out to describe and explain why police methods and practices from varying political systems can be compared. This Chapter looks at the "universality" of police behaviour as a result of an occupational ideology developing from common attributes unique to the policeman's occupational role.

Discussing police methods, Brian Chapman (1970:81) states: "The trouble is...that brutality, the arbitrary use of power, and preparedness to take the law into their own hands is an integral part of the nature of any police system...".

What is this nature of police systems that causes such methods? One could look for an answer to this question in the study of occupations where one finds a recurrent theme which is that a man's outlook on the world is affected by his particular occupation - i.e., one develops through his occupation a particular way of perceiving and responding to the environment (Chinoy, 1955). That there are distinctive cognitive and behavioural responses to be expected, in greater or lesser degree from all police officers, is a recent theme expounded on by Skolnick (1966) and expressed by Chapman (1970) and Milner (1974) and others concerned with the continual dilemma of police power and individual rights. Skolnick, in analyzing the causal factors of these distinctive police responses, believes them to be rooted in the basic nature of the police milieu which contains three working elements and hence generates a "police working personality". These elements found in a policeman's occupation are authority, danger, and efficiency. It is not to deny that these same elements are to be found to some degree in other occupations, but it is their presence which is arranged in such a manner as to

University of Cape Town

generate a police personality and hance lead to such working methods as described by Chapman. Skolnick (1966:12) states:

> "The combination of these elements, however, is unique to the policeman. Thus the police, as a result of combined features of their social situation tend to develop ways of looking at the world distinctive to themselves, cognitive lenses through which to see situations and events. The strength of the lenses may be weaker or stronger depending on certain conditions, but they are ground on a similar axis".

The unique combination of these occupational elements as presented in Skolnick's study will form the foundation on which this comparative study will be based. An attempt will be made to show that these elements to a greater or lesser degree are found in the milieu of all policemen's occupations and hence form a police personality the qualities of which generated are: suspicion, a feeling of social isolation, and intense ingroup loyalty. The conclusion to be reached is that these qualities of the working personality lead the policeman to respond in a certain manner using methods that appear to be common in application. Common in this study refers to typical or widespread.

Can one really expect a common police response? Speaking to a South African officer (Colonel) on this topic, he said: "You will find all police work around the world is alike. On the job we all act the same" (Conversation, Oct. 6, 1975). Yet, another question that arises is: since the criminal law forms the boundary within which the police act, would not police methods differ accordingly? Though this is true to some extent, the importance of legal differences is superceded by the fact that the basic premise for the establishment of any police agency is based upon the fact that the state has appropriated the power of the individual both to punish and to protect himself and has placed this power in a formal agency. Chapman's study (1970) indicates that once an agency to which the legal use of force is delegated is created and individuals surrender a certain portion of their personal initiative and power to them, this particular apparatus tends almost invariably to expand itself. This attempted or realized expanded power combined with the elements

University of Cape Town

found in the police occupation seems to create a standard for working conduct. When a legal system through the procedural section of the criminal law restricts police power, it is in the nature of the police system to battle against these restrictions. Korn and McCorkle (1959:91) state: "...(this) tendency is universal. Efficient police officers, intent on apprehending criminals, are always pressing for expanded police power". This drive for expansion of power can lead to abuses, but it is characteristic of democratic regimes to try to keep this potential under control. Nevertheless, Chapman claims that this potential for abuses is inherent and found in all police systems. In some legal systems, the police responsible only to the executive branch of the government will be given almost uncurtailed freedom, hence in this social system most police methods will be considered legal or at the most, acceptable to those in power. In other legal systems, the police, though agents of the executive, are responsible to the judiciary and much freedom will be restricted and hence many police methods will be frowned upon and considered illegal. Objective studies (by Skolnick, 1966; Alex, 1969; Wilson, 1970; Bowes, 1966) find that even where certain police methods are illegal, the police will still subscribe to them by conducting illegal searches, questionings, arrests, etc., but they will attempt to disguise this illegality in an aura of legality. This will be discussed in a latter section that deals with comparative methods of search and arrest. Though legal systems may be different in their restrictions on police behaviour, the actual reality of police conduct strives for ever-increasing power, resulting in greater or lesser degree to common police methods.

In the following section the elements which are found in the policeman's occupation will be discussed. It will be shown how they combine to generate a "police personality" which then leads to a "greater or lesser degree", to common police practices.

Occupational Elements:

Authority

One would perhaps think that in a democracy the issue of police authority would not be problematic - that it would not generate

University of Cape Town

a feeling of hostility in its citizens, isolate the police and public and cause suspicion between the two. However, in reality, police in democratic societies are not exempt from the negative attributes that are associated with the more totalitarian concept of police power. Let us look into this concept of authority and its real implications to police officers.

In a democracy the authority of the police is based on the Weberian concept of legitimate power. Hence, police authority, i.e., their right to use force to execute laws, lies in the fact that members of society grant this power to the police. It is both rational and correct for the community to invest their private power to use coercion in a public agency (see Reiman, 1974). Through this investment, one sees the presumed gain in security and liberty for all which results from removing the use of dangerous force from the judgement of private individuals. Reiman (1974:229) states: "Hence the authority of the police can be viewed as a perpetual loan of the community's own power to the agents of law enforcement - a loan which pays a dividend in increased freedom". One can then assume that, in a democracy amongst fairminded people, respect for police authority would be the norm, and there would be minimal use of force since he is upholding laws which reflect the will of the people. This is most certainly an ideal situation that tends more or less to differ from reality. This is so for two reasons: first, the amount of power invested in the police by the public is not a clear issue and, secondly, the policeman's authority lies in his right to enforce the "law" and in a heterogeneous, urban society, law rarely reflects total consensus. So the authority of the police is in many instances questioned and in some met with hostility. Since the authority of the police is backed by the legal use of force, this authority lacks the redeeming characteristics of certain other occupational authority. Brian Chapman (1970:95) states: "The policemen's authority is in the tradition of the school teacher, the parent, and military officer, but it lacks the improving quality of the first, the love of the second, and the glamour of the third".

Ideally, police authority should be assured in a democratic society, but paradoxically it seems to be one of the most confusing issues

University of Cape Town

for the officer. In a totalitarian regime, authority, as defined by Weber, is lacking, but the police are assured of their power and hence avoid some of the conflicts faced by policemen in democracies.

Authority proves confusing for the officers because of its relationship to law. It is the law that delegates the policeman's authority, and it is the law that restricts his authority. He is to enforce law using law. Yet for the officer the law is only one resource in which to deal with situations and perhaps the least helpful in defining his authority. Wilson (1970:31) in depicting this predicament writes: "The law is a constraint that tells him what he must not do, but that is peculiarly unhelpful in telling him what he should do". Consider the following cases where the law is less than a guide in aiding the officer.

In some instances the law itself is vague in meaning. Consider disorderly conduct, disturbing the peace, loitering or public intoxication laws. All urban communities have such laws. What is interesting about these laws is that they lack explicitness. Most criminal laws (rape, murder, theft, etc.) define certain acts which are held to be illegal and the behaviour they describe as illegal is clear. This is not the case with the abovementioned laws. Wilson (1970:21-22) states:

> "Laws regarding disorderly conduct and the like assert, usually by implication, that there is a condition (public order) that can be diminished by various actions. The difficulty, of course, is that public order is nowhere defined and can never be defined unambiguously because what constitutes order is a matter of opinion and convention, not a state of nature".

The decision as to what constitutes "disorder" is left in the hands of the police. This certainly increases their discretionary powers, but might on the other hand undermine their authority. Certain segments of the population may disagree with the officer on what constitutes a breach of public order and hence the police have to rely on other devices (illegal use of force or illegal arrests, blackmail, etc.) other than their legitimate authority to obtain obedience.

University of Cape Town

In other cases even when the law is clear, the community (or segments of it) do not wish the law to be enforced. Many an idealistic rookie has found himself reprimanded by a superior officer for enforcing a law that is to be "overlooked". In every urban society, police are faced with this decision - when or when not to enforce laws. This decision may be harder or easier, depending on certain factors: the composition of the society, and the ability for differing groups to express their wants. In culturally pluralistic societies, the influence of the cultural setting can present diverse and frequently conflicting expections for the police. The ability of police department to orchestrate their operations between the dictates of the law and the particularisms of cultural differences is a common test of police effectiveness. Their task is made even more difficult when these differing sub-cultural groups have some access to the power structure (a vote, a community newspaper, block pressure, etc.). The policeman representing the values of the dominant society must tred a careful path in not overly upsetting the minority group and still appearing to carry out the law. William Whyte (1943:138-139) describes how such a situation is handled:

> "Under the circumstances the smoothest course for the officer is to conform to the social organization with which he is in direct contact and at the same time to try to give the impression to the outside world that he is enforcing the law. He must play an elaborate role of make-believe and, in so doing, he serves as a buffer between divergent social organizations with their conflicting standards of conduct.... By regulating (rackets) the officer can satisfy the demands for law enforcement with a number of token arrests and be free to make his adjustments to the local situation".

In still other cases even where the law is clear and there are no pressures from the community not to enforce, the officer finds the impersonal qualities of the law unsuitable in certain instances. Family beatings and juvenile cases are two universal examples. Making arrests in these situations, the officer feels only adds more burden to the family in the first instance and can at times be more harmful to the youngster in the second place.

What it amounts to, is this: there is a good deal of time where police cannot rely on the letter of the law for defining the para-

University of Cape Town

meters of their authority. The presence of a badge and/or uniform as symbolic representatives of the legitimate authority of the law loses some of its credibility when laws are ambiguous, when laws are rejected by certain sections of the population, and when laws are believed too impersonal to handle an emotional situation. The policeman can hardly expect to command obedience by his mere presence. When he is unsure of how his authority will be accepted, the policeman will come to view the community suspiciously and, as he does so, he increasingly comes to rely on other devices to obtain obedience. Many times the community (or certain segments) will query the officer's actions or even openly condemn them. When they do, they put the officer on the defensive, and in each case the officer and citizen become bonded in an ascending spiral of antagonisms. On the other hand, police in more authorative countries do not face (on the surface) open questioning of their power. However, resentment will still be there and officers cannot help but to feel it.

What is apparent from studies conducted on the police (Alex, 1969; Hahn, 1971; Niederhoff, 1967) is that policemen come to believe that their official authority causes the community to be antagonistic towards them. A policeman in any society seldom meets the community at their best. He sees their acts of foolishness, evil, sorrow, or degradation and they seldom welcome him; for, even when they need him sometimes the officer's presence is a reminder of their embarrassing situation. That policemen believe certain segments of the community to be more hostile than others, seems to be apparent but what appears to be closer to reality, is that police view community hostility in degrees - that is, some hate us more than others, but no one really likes us. That this problem is unique only to the American police force is most unlikely. The British Bobby, portrayed as the world's most liked cop also perceives a community hostility. Skolnick (1966:49) cites an example of this from Colin MacInnes' book which concerns itself with the life of an English policeman:

> "The story is all coppers are just civilians like anyone else, living among them not in barracks like on the Continent, but you and I know that's just a legend for mugs. We are cut off: we're not like everyone else. Some civilians fear us and play up to us, some dislike us and

University of Cape Town

> keep out of our way but no one - well, very few indeed - accept us as just ordinary like them. In one sense, dear, we're just like hostile troops occupying an enemy country. And say what you like, at times that makes us lonely".

This personal account is substantiated by Michael Baton's (1964) comparative study of the British and American policeman. He found that in both countries, officers expressed their feeling of perceived community hostility and their sense of isolation. Surprisingly, Baton found the English cop to feel a greater sense of isolation from the public. This feeling of isolation he attributes in both instances to the policeman's authorative role. But the difference Baton found between the two countries was that the British cop tended to internalize his position of authority more so than the American cop. The British officer cannot don and duff his uniform, changing roles with it as the American cop can.

It may be suggested from MacInnes' and Baton's observations, that urban policemen everywhere feel that their occupational authority isolates them and causes the public to be hostile towards them. Skolnick (1966:50) points out that this sense of isolation and hostility is felt from the "public on the whole" and not just from certain segments of it.

But added to this one working element, are two others that further isolate the police from the public - thus creating a stronger police solidarity and a higher degree of suspicion. These are danger and efficiency.

University of Cape Town

Danger

There is little doubt that in urban societies, police work anywhere is dangerous. Thieves, rapists, murders, warring gang members, etc., are traditionally the principal police clientele, and police training is geared to the physical abilities needed (shooting, running, fighting, etc.) and to the legal knowledge required for their apprehension. The structure of the police organization stresses the importance of getting the hard-core criminals; police internalize this role and so does the public. Consider the cop and robber movies and books with their clear cut issues of wrong and right - the chase, the shoot-out, and finally the apprehension and conviction of the criminal. The scene has not changed much from Balzac's romantic, master policeman,

Vautrin to Dick Tracy to Dirty Harry. It is no wonder that when the police officially interfere (for various reasons other than the traditional) in the lives of the public, the citizen's cry is: "Why aren't you out catching criminals instead of bothering me". In fact, in the majority of cases, police are not arresting or chasing the traditional criminal, though they perceive this to be their main task. Wilson (1970:6), in studying the Uniform Crime Report of 1965, found that only 0,2 per cent of all persons arrested are charged with homicide and only a small fraction (less than 10 per cent) are charged with any of the seven serious offenses that make up the FBI Crime Index. The vast majority of arrests are for such matters as drunkenness, disorderly conduct, assault, driving while intoxicated, gambling, vandalism and the like. That police do come into contact with the traditional criminal, is beyond any doubt and more so in some societies where the violent crime rate is higher than others. It is the overemphasis on this duty that is out of all proportion with reality. Nevertheless, the perceptual threat of unexpected physical injury or even death is part of the police working conditions. The truth is, police do get hurt or die while performing their duties. That some die while in pursuit of dangerous criminals, is also true, but most physical risks for the officer come from the unexpected or routine cases such as domestic quarrels, chasing a speeding motorist, questioning a suspect, entering a bar, etc.[1]. (cf. Wilson, 1970; Weistart, 1974). Danger is not a clear cut issue for the policeman. The division of the population into bad guys and good guys where the officer is ready for violence is a rare situation. Any situation for a policeman could be dangerous and these possibilities makes the officer suspicious and apprehensive. Added to this element of danger is the officer's perceived notion of community isolation. Hence, if anything happens, he believes he must handle it himself. The South African policemen I travelled with also expressed this same opinion.

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[1]Raymond Parnas (1974:99) reports: ".... That more officers have been killed or injured responding to domestic disputes during the ten years (1959-69) than in responding to any other traditional call for service".

University of Cape Town

One officer told me: "You know I could be fighting with four fellows and no one will help me. I am allowed by law to command a man to assist me, but if he does not come, what can I do?". This feeling of isolation when in times of trouble causes the officer to believe the only one he can really rely upon is his fellow officers, and hence increases the feeling of in-group solidarity.

To obtain a total picture of the policeman's milieu, the working elements of authority and danger must be interpreted in the light of a constant pressure to be efficient.

Efficiency

In the day-to-day efforts to protect citizens from crime and the threat of crime, the policeman occupies the frontline. The public looks to him for safety and the public places pressure on him to do his job. When a hideous crime occurs, or when violent crime rate rises, the public cries for more effective and efficient police protection. The police feel this need and try their best to respond, for this is their profession. It can be said that they respond too zealously. But once again the policeman finds himself in a dilemma - for the public (or certain segments of it, and against some crimes nearly the whole public) demand efficiency and the law restricts them. The amount of restriction depends upon the political structure of the society with democratic countries placing the most restrictions. William Seagle (1952:102) mockingly states that: "The inefficiency of the criminal law is indeed the pride of a democracy". He points out that in a democracy, and most notably in the United States, there are so many obstacles placed in the way of the police that law enforcement is near impossible and inefficiency has become an "inalienable right of man".

As Brian Chapman (1970) pointed out, there is not a police system anywhere that does not demand more power to increase their efficiency. Though the cry for efficiency is much abused and is used as an excuse for more power, the fact is that in democratic countries it is difficult for the police to be efficient. Sutherland and Cressey (1970:377) point out that the only way police can be efficient is for them to adopt more power than the law and the formal organization of

University of Cape Town

his department permits. The police also adopt more power by developing a set of informal practices to hedge around these restrictions. Richard Ward (1971:580-586) describes this:

> "There is within a system, a given culture which defines, for the most part, the manner in which police operate. These are not necessarily written rules, but rather 'unwritten' expectations for a particular action. Often they are in conflict with other rules or laws".

These informal practices provide a way for the policeman "to get things done". Through them a police rookie is socialized in how best to operate in his working environment. He soon learns to form a set of perceptual cues common to his working mates, and common to all police, differing only with the environment, which allows them to size up situations so they can react immediately. Decisions of what to do, how to act, and whether force will be necessary are based more on this learned police code than on legal principles. Hence the way a person walks, pecularity in dress, insolence in manner or demeanor, women alone at night - all signify that police action may be necessary.

It is not only the art of being efficient that leads the policeman to develop a set of working cues, but also the potential threat of violence causes him to develop a perceptual shorthand to identify, as Skolnick (1966) states: "the symbolic assailants". He comes to recognize a certain set of postures, gestures, looks, and language that may mean potential danger. When a policeman comes in contact with someone he believes is dangerous, he will generally come on tough. He believes that these type of people only understand force.

These tactics relied upon by the police come to further isolate the police from the public. They believe him to be too suspicious and at times unnecessarily harsh.

Summary

Empirical research has indicated that the working elements of authority, danger, and efficiency result in similar consequences for all policemen. It is the unique combination of these elements which

University of Cape Town

stimulates the public to respond in a certain manner which becomes a stimuli to further negative actions by the police. The policeman's authority alienates him from the community. Not only because it is an uncertain authority, but also because it is based on legal force and adds the extra element of fear. This alienation causes the policeman to feel isolated from the community. The element of danger causes the policeman to become suspicious and further isolates him. As he becomes increasingly isolated, a deep sense of solidarity forms with the other officers - after all it is "us against them" attitude emerges; and the community demands efficiency at all times. The public expects protection and fast service. The policeman, overworked and to various degrees, legally restricted, must fight crime at unfair odds. A shorthand code develops where "extra legal" police practices become the departmental norm. These practices provide a shared bond of secrecy between the members and hence enhance a strong ingroup feeling. This further alienates the public who, at times, come to resent the policeman's suspicious character and who become angered by some of his methods.

And what methods develop? Those described by Chapman as being in the nature of any police system: brutality, arbitrary use of power, and taking the law into their own hands.

University of Cape Town

Police Methods:

Brutality

First let us look briefly at the question of police brutality. As was mentioned before, police power rests on the legal use of force. Chapman (1970:85) points out this fact when he states: "Physical coercion is one of the special attributes of the state, and police forces are its agents in this respect". Charges of police brutality are made against the police when they exceed their legal powers to achieve their purposes. The public spectre of police brutality is never quite clear and always is interpreted in conflicting ways. Is it exceeding the policeman's limits of legal force to draw a gun when approaching a group of angry citizens? Is it brutality to shove a man when he refuses to leave a scene of an accident? What about measures in controlling a demonstration? When is the critical moment

to attack to maintain order? Will an attack cause the crowd to become a mob with a single motive? These judgements have to be made under growing tension, and the officers feel themselves to be in a minority. They cannot run because their uniforms single them out. Their orders are to keep the crowd under control and the policeman knows that certain segments of the population want them to be harsh on demonstrators; whereas other segments of the population will view their actions critically. The public use of force always brings the officer under the critical eye of the community. Too little use of force will also bring just as much condemnation as too much.

The private use of force is that which is most often associated with unorthodox police practices. An example is the so-called "third degree" which is the use of force during interrogation. Another example is police punishment accorded to suspects for acts for which officers feel the courts will not or are not capable to punish, or for which courts will give too lenient a punishment. A friend of mine, a policeman in Cleveland, Ohio, described such a situation (Richard MacIntosh, May, 1971):

> "We were driving by this bus stop one night and saw this lady lying on the ground. She was badly beaten. She told us a young fellow took her purse and then beat her up. My buddy called an ambulance and stayed with her. I went through a back alley to look for him. I heard some noise and went towards it, as sure as hell here is this teenager (16 or 17) rummaging through her purse. He ran as soon as he saw me. I chased him and jumped on him". He yells: "Easy man, I did not mean anything". "Hell, I just beat the crap out of him and told him if he makes a complaint, next time I would kill him. Why the hell did he have to beat up that old lady? Take the purse, okay, but beating her up? No sense arresting him. He'd just say he found the purse in some garbage can, and she couldn't give identification that would hold up in a court. Anyway, a teenager - shit, he would just get a slap on the wrist and told to go home".

Liberal democratic countries over the years have developed legal guarantees to restrict such police practices. The right to legal counsel, to medical examination, from self-incrimination and prompt presentation to a court of justice, have been guarantees that have found their way into the criminal procedure. In addition, there has

University of Cape Town

been such a mandate (found only in the United States), known as the exclusionary rule, where courts are forbidden to use any evidence that has been appropriated through illegal means no matter how useful or relevant to incriminating the accused. Perhaps one could reason that the more legal restrictions placed upon the police, the less will be the use of violent methods. This would be difficult to prove and outside the scope of this thesis. But suffice it to say that the American police are one of the most legally restricted police forces in the world and charges of brutality, spying and graft are not uncommon. This may well be due to other factors such as the heterogenity of the society with the political means for minority groups to voice their grievances, the violent background of America's heritage, the widespread nature of the mass media, the development of radical theories of confrontation with the authorities and, most important of all, the rights to civil investigations and probes into police practices. Known grievances of police mispractices do not mean that one police system is more notorious than others. Unreported mispractices do not mean that none occur. Even in systems where the police are investigated, many illegal practices go unreported. The temptation is always there for policeman to extort confessions or needed information. The demand is on efficiency in solving cases before more harm is done. Due process of law can be so easily forgotten when viewing ugly, morbid behaviours of men. The expediency gained in cutting corners to obtain evidence by unorthodix or illegal means will always be strong, particularly when the police are dealing with known criminals. The emphasis of police work is on force - get your man and maintain order. The policeman's appearance suggests force - his military-like dress, his helmet, baton and/or gun. His job is dangerous and the demands are heavy. It is no wonder brutality as a practice becomes associated with all police systems.

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Arbitrary Power and Taking of Law into their Own Hands

Let us now look at the arbitrary nature of power and the act of taking the law into their own hands. The criminal law as defined by Sutherland and Cressey (1970:4) is seen conventionally as "a body of specific rules regarding human conduct which have been promulgated by political authority, which apply uniformly to all members of the

classes to which the rules refer....". Ideally, those involved in law enforcement should apply exact rules in an evenhanded manner to all persons who come before them. However, police soon learn that the law is far from exact and sometimes unhelpful in dealing with human predicaments. Police perceptual cues developed from a police socialization process and on the job experience, provides a shorthand code on how to act which results in certain police attitudes. These attitudes differ only as cultural circumstances and demands differ, e.g., blacks are more dangerous than whites, long-haired men are more belligerent and hostile to authority, kids in black leather jackets are always trouble makers, etc.. Police do not dispense justice in an evenhanded manner for some people are to be treated in one manner and some in another. Furthermore, the situation often defines the tactics to be used. Thus the policeman describes his activity as "playing it by ear" and not in terms of enforcing the law equally to all. Egon Bittner (1969:152) describes such a situation in his study of police work on Skid Row. From his observations he reports one incident:

> "Thus when a patrolman ran into a group of four men sharing a bottle of wine in an alley, he emptied the remaining contents of the bottle into the gutter, arrested one man - who was no more and no less drunk than the others - and let the others disperse in various directions".

According to Bittner, the officer felt that the situation could have led to a brawl and perhaps a robbery. Thus, for their own benefit, he must break up the situation. The determination by the policeman as to which of the four he should arrest to quell the situation, was not important. Alternatively, which one gets arrested is all important to the courts. The policeman's orientation is different from that of the other agencies involved in law enforcement - notably the prosecutor, defense attorneys, and judges. Wilson (1970:32) argues that:

> ".... to the judge, defense attorneys and the legal scholar, the issue is whether a given individual was legally culpable as defined by a written rule. The individualistic, rule-oriented perspective of the courtroom is at variance with the sitational, order maintance perspective of the policemen. The policeman senses this conflict without quite understanding it and this contributes to his unease at having his judgement tested in a courtroom".

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This criticism that comes from the other legal professions reinforces the policeman's notion that the courts do not really know or understand the realities of law enforcement. The police come to believe that the prosecutor is too preoccupied with technicalities and too close professionally to the defense. They see the courts wrapped in a cloak of idealistic, legal jargon protected from the mundane reality of the streets. Therefore, the police come to parade the banners of crime-stoppers, crook-catchers, and maintainers of law and order. The others are there to coddle criminals and hamper his work. In his own mind he becomes the law - and he comes to define the working parameters of the law. This is not to say that he does not need the support of the prosecutor or courts for he is responsible to both. But when both interpret the law and define the illegal in a way that is at odds with his operation or conceptions of morality - he will make attempts in his own manner to upsurp the law. Reiss (1971:132) makes this issue clearer when he writes:

> "What is especially important is that, since the police occupy the crucial position for any case entering the legal system, they are most capable of subverting the system of justice. When the police are denied professional autonomy in decisions, they employ their own terms. What is more, this opens the way for officers to individually and collectively define justice".

No matter how much police powers are formally controlled by insistence on due process, their application is essentially arbitrary. This obviously has its advantages as well as disadvantages, but as police come to apply the law in a relativistic manner, they come to define themselves as "the law". Hence in their minds, a sufficient reply to a citizen's query of why he should or should not do something is: "Because I said so". It is very easy for the law to become what the policeman says it is.

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Summary

This section was an attempt to find the similarities that exist in all police systems that form a police working personality and lead to common police methods. This does not negate the fact that there are dissimilarities between police forces that are obviously due to differences in cultures, community demands and pressures, and legal systems. Also that dissimilarities exist within the force itself

between individuals or specialized groups is not denied. However, the perceived general resemblances due to similar working conditions do contribute to a similar police personality and ultimately lead to common police techniques. It is these similarities, which are far more significant than any difference, that help one to understand how and why the police act in a particular way. The issue then becomes to what degree and kind these methods are employed.

This Chapter concentrated mostly on the negative aspects that emerge from police work. Again the author does not deny that there exists reported and unreported actions of kindness and even heroic acts. I have witnessed myself some praiseworthy acts from a police department that does not have an international reputation for kindness. Yet, I believe that these are examples of personality differences and do not contribute to a general picture of police work. For a man that gives an ice cream cone to a child is quite capable of giving a beating to a man he believes deserves it. The first incident is an example of a policeman's personality as "Tom Smith" or whoever and the second is the working personality of the "cop" which develops from his working conditions and demands.

The following Chapter will describe police methods as used in the United States and South Africa. An attempt will be made to describe the similarities in attitudes and conduct where appropriate and dissimilarities that originate from the differences in character of the community policed and the criminal law. The preceding material will provide the background from which to analyze this study. The development of the policeman's personality will be viewed in relationship to his working environment. Hence the degree and kind of police methods will differ from detective work to patrol work as the operational problems of law enforcement differ.

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CHAPTER IV

THE OPERATIONAL IMAGE OF THE POLICE

METHODS AND PRACTICES OF THE PATROL

Patrol Work

Patrol work is the backbone of the police force. The man in the uniform, walking his beat, or patrolling his area, can be seen as the common denominator of the system. Both in the United States and in South Africa every member must serve an apprenticeship as a patrolman. A brochure advertising a career in the South African Police Force (The South Africa Police:10) states: "To become a detective two things are required: Training at the college, followed by service in the Uniform Branch to gain experience". Speaking on the United States system, Skolnick (1966:44) states: "That whatever the special requirements of roles in enforcement specialities, they are carried out with a common background of constabulary experience". It is in the role of a patrolman where the socialization process begins and the working personality develops.

The heart of the police law enforcement is in its patrol. In the United States, in every city at least, one half of the sworn personnel are in uniform (President's Report, 1967:95). In South Africa the majority of police members also serve in the uniform branch (The Organization and Function of the South African Police:3). In both countries, the emphasis is on "deterrence" and the number of visible policemen on the streets is believed to discourage would-be criminals. Therefore, both the community and police department agree that the essential activity of the police force lies in its patrol to deter crime.

Deterrence of crime is a vague concept that can neither tell the patrolman how well he is doing his job, i.e., how effective he is, nor how to be effective. In deterring crime he is to prevent crime from happening and maintain a semblance of order. The patrolman

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unlike the detective has his duties defined for him in the most ambiguous way. How does one prevent crime? His presence cannot be ubiquitous so, where he decides to be (or where he is told to be) can determine what kind of crime he is trying to prevent and who he is trying to protect. Also, he is to maintain order. As the previous Chapter noted, laws that pertain to the maintenance of order are the least precise and the application of them is the most sensitive to the community. Since the patrolman and not the detective is authorized to invoke the power of the state in social situations that are not clearly defined, it is their actions that reflect and personify abstract societal values and signify a direct connection between the public and political leaders. The examination of police practices, especially those of the patrol, provides another approach to the perennial political problems of identifying the relationship between elites and the masses. In this sense, both what the patrolman does - how he attends to the community's needs, how he effects an arrest, who he arrests, who he does not, etc. - and how he is reacted to, is more political in nature than what the detective does. The detective (except for vice and narcotics) is more involved in the investigation of crimes already committed. The author recognizes that what is designated as illegal is also political in nature. Nevertheless, the work of the detective is more objective involving investigative procedures against one, two, or a small group of people. He does not involve himself subjectively in defining community norms, nor in making on the view arrests of drunks, brawdy juveniles, etc.. In effect, he is more involved in the technical aspects of the law - the order section is left to the uniformed cop to cope with, define and carry out.

The following section will describe the Cape Town and American urban patrolman in his professional role. First methods and techniques used by the urban, American cop, based upon numerous studies, will be discussed, followed by on the spot observations of the activities of the Cape Town patrol force. Comparisons and contrasts will be drawn.

The term 'interaction' in this section is meant to designate the behaviour of either a verbal or non-verbal kind directed by the police and policed towards each other in a face-to-face situation. In police studies this is usually referred to as a police-citizen encounter.

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Encounters are usually brought about in two ways: those initiated by the public and those initiated by the police. Citizen initiated encounters are further subdivided into calls to the police for legal services and those of a non-legal nature. The source of initiation and reason does influence the manner in which the encounter is conducted and the methods the police use.

Citizen Initiated Encounters in the United States - Non-Legal

In the United States, the uniformed patrol division is essentially a reactive force. That is to say one of their main duties is to react to citizens' calls of complaints or assistance (Clark and Sykes, 1974; Wilson, 1970; Reiss, 1971). What is interesting to note is that in American urban centers, the uniformed police are used much more extensively for other causes than those termed as "criminal". A study conducted by Thomal Bercal (1971) reports that police in large American cities receive well over a million calls per year. New York city received the most calls of over five million. Of these calls received by various departments, i.e., Chicago, St. Louis, New York, only about 16 per cent of all calls were construed as "crime" related. Crime, according to Bercla's study (1971:276-277) is meant to be "acts consisting of predatory crimes which have a definite and intended victim". Included in these acts are crimes designated as Part I by the FBI list which include homicide, man slaughter, rape, robbery, assault, etc., and Part II crime - forgery, sex offenses, disorderly conduct, destruction of property and other minor offenses. Bercal's study indicated that law enforcement plays a minor part in patrol work. This theme is also supported by Stecher (1966), Cummins (1971), Bayley and Mendelsohn (1969), and the President's Report (1967). Instead much of the urban American policeman's activity is spent in some type of social service. Much of his time is spent in assisting stranded motorists, taking people to and from the hospitals, rescuing animals, helping people who have lost their keys to unlock doors, fixing blown light fuses, responding to medical emergencies, working with troubled youths, intervening in family and neighbour quarrels when it is a civil matter, and a large variety of other such activities. The President's Report (1967:97) puts it this way:

University of Cape Town

> "It is easy to understand why the police traditionally perform such services. They are services somebody must perform and policemen, being ever present and mobile, are logical candidates. Since much of a uniformed patrolman's time is spent on simply moving around his beat on preventive patrol, it is natural for the public to believe that he has the time to perform services. Moreover, it is natural to interpret the police role of protection as meaning protection not only against crime but against other hazards, accidents or even discomforts of life".

It is interesting to note that the role of the patrolman as a social worker places him in close contact with mostly lower class peoples - especially the minority groups, i.e., Blakcs, Puerto Ricans, and Mexican Americans. In fact, police provide more essential services to lower class citizers than most other governmental service organizations (Edwards, 1968; and Mendelsohn, 1971). One would perhaps think that this would counteract the negative feelings expressed by these same peoples towards the police in their role as law enforcers. Numerous studies (Hahn, 1971; Bayley and Mendelsohn, 1969; Whittemore and Cleaver, 1971) have indicated that public hostility towards police activities in urban ghetto areas is a real phenomenon. Why then, does this apparent ironic situation exist when police spend much of their time in an aiding function. This inconsistency can be explained in the very nature of police work. Firstly, as was mentioned in the previous Chapter, the police department has formed a self-conception of itself that their role is one of apprehending criminals. Their training, their military style of dress, and promotions and recognition is based on this premise. All other work is incidental and tedious. Cummins (1971:281) sums up police attitudes towards social services as follows:

> "At the most practical level the police officers themselves consider service work as essentially 'knit-shit' stuff. Officers, individually and within their groups discuss service calls as an added burden they are called upon to perform, added precisely because such calls go beyond the generalized definition of what they perceive a policeman should do - namely enforce the law".

The approach then taken towards service calls can alienate the initiator who feels that his needs or troubles are far from insignificant.

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This inconsistency in role expectation between police and policed causes for furstrations on both parts. The American public anticipates a willing public servant who will attend to their immediate needs in a concerned manner. The police, on the other hand, though handling the matter efficiently, view calls for service as a waste of their time, energy, and training.

Secondly, the nature of police authority itself contributes to the tension between police and initiator. Involving the police even in events of a non-criminal nature still signals to participants and on-lookers that they are involved in a more than casual affair. The police, as representatives of the legal power of the State, symbolize an official concern that places a barrier between the officer and citizen. Because of what his authority symbolizes (potential coercion) he cannot enter a situation without evoking a feeling of threat, fear, or hesitancy in the recipient. To call the police, even in times of need, indicates something wrong is happening. The event causes a surge of excitement and inquisition from friends, neighbours, and on-lookers.

Patrolmen are aware that their appearance evokes an authoritative image and promotes a negative feeling in those they serve. One New York officer describes how his official identity causes public rejection (Alex, 1969:173): "... the uniform represents authority on the whole and this is a limitation to the public to what they can do. Because of (this).... there is a gap between the public and the policeman". Even in performing a service function, the uniform still symbolizes authority. One patrolman who works with youths describes his reasons for not wanting to wear a uniform while on duty (Alex, 1969:173): "It makes the job more pleasant when you are not wearing a 'monkey suit'. If you are working with youths, it looks like hell if you go up to Mrs. Jones in a monkey suit. This would alarm the neighbours".

From the above account it appears that the personal affects of an encounter with a man in a uniform is lacking and lower class people, who must resort to the police for aid, feel in some inexplicable way that their lives are being officially manipulated.

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Not only is the nature of police authority problematic in causing tension, but the scope of the policeman's authority is also cause for problems. Outside of the criminal procedures acts, the policeman has no official legal power. Although a citizen in need of help may give the policeman the legitimate authority to act and to control, this is a whimsical legitimacy that may just as easily be taken away. Alternatively, there may be a conflict in granting this legitimacy in a non-legal case, especially where one party requests the policeman's aid and another does not. This is especially the case in marital disputes, neighbourhood disputes, or child-parent relations. In the latter situation the parent expects the police to discipline a hard to handle youngster. The same situation occurs in a variety of other cases where the initiator has "changed" his mind and now wants the officer to go away.

The patrolman is always conscious of his authority. From the time he puts on his uniform he is constantly reminded of it. He likes to be sure of his authority and not be dependent on it from others. When a situation arises where he knows he has no official authority or where he anticipates his authority will be challenged, he will either try to dissociate himself from that event (which is most difficult to do) or he will rely on his unofficial powers to control the situation.

Hence there is a strong desire to control a service encounter and this will most likely happen with lower class citizens. Such control results from the lact of political, social, and economic status which permits the officer to interfere further in their lives than he would ever conceive of doing when aiding a middle or upper class citizen. The interference may result from either the officer believing, and perhaps rightly so, that lower class peoples do not have the capabilities to help themselves or because the danger and violence which often surround such people as a way of life, can be directed at the officer. For these reasons the officer's approach is often authoritative. Even in cases where the initiator removes the right for the officer to carry on, the officer often continues on his own initiative. Consider the following example (Wilson, 1970:165-166) where a Negro attorney related an incident that occurred to his client:

University of Cape Town

> "I remember a case in which a boy-friend and girl-friend were having a fight. The girl-friend called the police. By the time they got there, they'd made up again and the girl told the police they were no longer needed. The man was told by the police to leave the apartment anyway. When he got down to his car, a policeman hurled an insult at him and he hurled one right back. By this time there were several police officers there, maybe five or six, and they grabbed him and threw him up against the car and started beating on him".

From the above incident it is significant to realize, for this section, that the officer had no authority to ask the man to leave. His right to intervene in a personal affair was dismissed by the initiator. Yet, the officer on his own personal power carried on as if he had full legitimacy to do so. Perhaps his actions could be explained by a desire to protect the woman whose boy-friend may "act up again" when he leaves, by a desire to punish the man who may have from the beginning been insolent to the officer, or both.

This latter incident only shows one outcome, while the President's Report (1967) and other studies discuss other situations where the officer is a source of emotional and physical comfort. Yet for the reasons discussed in this section, the patrolman through his service functions can never close the gap of hostility that exists between lower class citizens and the police. And truly, the officer most likely cannot grasp the reason why. This frustrates him and he comes to resent more the people who show him little gratitude for so much that he has done. This police attitude is expressed in Cummings and Cummings and Edell's study (1969:158-159) concerning the service function of one metropolitan police force. The patrolmen's bitterness aroused by the "ingratitude of the public" was made known by the department's catch phrase "I hate citizens". James Bladwin (1954:60-61) describes this conflict in these terms:

> "None of the Police Commissioner's men, even with the best will in the world, have any way of understanding the lives led by the people they swagger about in two and threes controlling. Their very presence is an insult, and it would be, even if they spent their entire day feeding gumdrops to children.....
>
> It is hard on the other hand, to blame the policeman, blank, good natured, thoughtless, and insuperably innocent for being

University of Cape Town

> such a perfect representative of the people he serves. He, too, believes in good intentions and is astounded and offended when they are not taken for the deed".

This situation has somewhat changed over the decades since Baldwin wrote this message through the passage of civil rights bills, political socialization of the Blacks, and increased membership of Blacks and other minority members on the force. Nevertheless, those living in poverty and crime ridden thetto areas will always view the police suspiciously.

Citizen Initiated Encounters in Capw Town - Non-Legal

Where the majority of calls made to the police in the United States urban areas are requests for services and aid, my limited time spent with the Cape Town patrol would say that this is not the case in South Africa. Various other factors substantiate this assumption: The South African political ideology, the formal organization of the police force, the number of available men, and an article from a Cape Town newspaper ascertaining the number of police calls received.

First the 'apartheid' system, expressed through a battery of laws, keeps all 'non-white' people both politically and economically subordinated. Since it is the police force who come to personify the State by being the enforcers of its laws, the various Coloured minorities could only come to regard, to a greater of lesser extent, the actions of the police as being repressive and essentially repugnant to their interests. This statement has been made without polling the various Coloured peoples in South Africa, but has been based on studies of others, Mathews (1971) and Van Niekerk (1972), as well as varified by discussions with Coloured leaders in Manenberg. These particular leaders to whom I spoke were all members of the Manenberg Vigilante Movement. I had met with them at five consecutive meetings where we discussed the Committee's goals to that of working with the police. The men were vociferously adamant that their group could not and must not be part of the South African police force though they have been approached by the police to become citizen members. Though co-operation on this level would mean legalizing their activities by giving them official approval, the men felt that

University of Cape Town

such collaboration would alienate them and their activities from the community. The men were of the opinion that there was a strong feeling of alienation felt by the Coloured community towards the police which was a direct result of the 'apartheid' system. As one man said "all Blacks are the lackeys of the Whites and the policeman epitomizes this 'baasskap' image".

The men said that the community wants protection from the criminal elements that continually plague their lives and that police protection on this level was most inadequate. Consequently they formed a 'self-help' service whereby the viligante members patrol the neighbourhood offering citizen protection while still dissociating themselves with the negative police image.

This dialogue is not presented to discuss the merits or demerits of a vigilante force which could turn to brutality and thuggery in its efforts to eliminate crime. Instead it is presented to display the dilemma which exists for the Coloured community in its reaction to the police. In other words, in as much as the police are seen as protectors of life and property in general (which is a function of the South African police), then one could expect among fair-minded people a willingness to co-operate with the police and thus legitimize their activities in this area. The major clamour against the police in this respect is "not enough police protection"[2]. Therefore, since the police force represent a group's political and social ills, that portion of the population will shy away from them. This seems to be the case. Outside of the demands to be protected, the non-white population come to expect little more of the police.

Secondly, the number of calls various urban centers receive per year, is another indicator that the American urban police are used much more extensively. As was mentioned previously, Bercal's study (1971)

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[2] This complaint has been reported in two Argus newspaper articles - June 31, 1975, and May 25, 1975. Also this same complaint was mentioned by Coloured Community leaders at the April 1975 Conference on Crime and the Community.

University of Cape Town

indicates that most large cities receive about a million calls per year. According to an article in the October 3, 1975, edition of the Argus, the Cape police receive over 800 calls per day which implies approximately 300 000 calls per year. The difference could be explained by population differences if it were not for the fact that the police radio control in Pinelands receives calls for the whole of the western Cape, whereas Bercal's study was assessing the number of calls for the city center proper. Consequently, the Cape police are receiving calls for a much vaster and perhaps more populous area than for any of the American cities studies. Also, one cannot explain away the difference by the amount of crime for two reasons:

(1) Studies indicate (Argus articles - May 26, 1975, and June 22, 1975) that violent crime rates between urban areas of the States and South Africa are approximately the same, i.e., both are high.

(2) Bercal's study indicates that most of the calls made to the police were not for criminal matters. In fact, only 16 per cent of all calls were crime related, 84 per cent represented "other calls". These other calls are an indication that the American public anticipates much more from its police department than just the strict conception of law enforcement.

The Argus study did not categorize the type of calls made to the police. However, the article made it quite clear that the police perceive that too many calls "unrelated to crime" are being made. In weeding out the significant crime related calls, according to the article, the South African police for the Cape area responded to only 18 000 calls during that year. In other words, a patrol car is dispatched to approximately 6 per cent of all calls! On the other hand, a patrol was sent to 65 per cent of the one million calls in each of the American cities studied.

What is significant about the Argus article is that even though the Cape police receive fewer calls from a vaster and perhaps more populous area than the American cities studies, they are apt to respond to fewer calls still. This 6 per cent respondence rate may, however, reflect more than sheer unwillingness to attend to "other" community needs.

University of Cape Town

The availability of men is probably the major deterrent. I have no actual numbers from which to make such a statement as I was not permitted to know how many patrolmen serviced any of the areas in the Cape. This was considered "confidential" for security reasons. After enquiring about this matter from an Argus crime reporter (John Beyer, March, 1976), the reporter stated: "I am also unaware as to how many patrolmen there are in the Cape area. I believe they refuse to give this information because they are embarrassed to admit how few people they really have". An article in "To the Point" (Vol.4, August, 1975) resounded this same theme that the "South African police are seriously below strength" and that they are making an intensive recruiting campaign aimed at getting "more men". Surely the availability of personnel is exceedingly important in determining priorities. Yet, from my week with the patrol, I cannot say that the men appeared overworked. This statement is not based on the amount of time the officers cruised their areas - which to some people appears as if they are "doing nothing" - but on the length of time spent parked, conversing with other officers, the length of time spent for dinners, and the general sometimes quiescent atmosphere. This is far from saying that the patrolmen did not do an adequate job, or by enjoying moments of conviviality that the officers are lazy. The time any man actually spends performing his specific working duties would most likely reflect that much time is "wasted". The expectations that the police should constantly be "busy" is perhaps unfair when the normative pattern for most other jobs is two to three tea breaks, a leisurely lunch hour, and time to discuss issues with working mates.

Perhaps a more important issue determining police priorities is the formal organization of the police which reflects a political power structure. Societies such as South Africa, France, U.S.S.R., and Japan with strong central political identities organize their police under a strong governmental control. On the other hand, societies that place a high value on local autonomy tend to emphasize local police organizations as in the United States and Britain (Clark and Sykes, 1974:466). Hence police priorities and objectives in South Africa are controlled through a national head quarters and are more universally applied throughout the Republic. The influence and

University of Cape Town

pressure on what these policy objectives are, comes mostly from the White franchized sector. Since this White population group reflects a higher income bracket, they have no immediate need for police services as lower income groups would. Thus police duties are more precisely spelled out. What to exclude from a working agenda is easier to establish. However, in the United States, with local community control over the police and the police chief being a political appointee, there is more pressure on the police department to acquiesce to community needs, norms, and values. Therefore, since American cities rarely reflect homogeneous interests, patrol objectives are more confusing and demanding.

This however does not preclude the fact that the South African police do receive and handle service calls. Mostly this is so because it is difficult at times to define when a situation is criminal and when it is a call for service. Most of the times it is both. Nevertheless, perhaps the best way to categorize a situation as criminal or non-criminal is from the desires of the initiator. A woman who has been beaten up by her husband clearly can initiate a criminal case against him. But in most cases refuses to do so and calls the police to complain about her circumstances, to ask for protection, and/or to make her husband "be good". The initiator wants services from the police outside of his legal jurisdiction. In such an event where perhaps some alleged violation of the criminal law has occurred, but the initiator wants services other than legal, I have designated as a service call. Though speculating, I believe it is for this reason that some calls for service are accommodated. What appears over the telephone as a request for legal help, turns out, when the police arrive, as a request for social services. During my tour with the Cape patrol, I witnessed three such situations. The first concerned a family quarrel where a relative (brother-in-law) telephoned the police. The incident went as follows:

> We arrived at a lower income Coloured home and we were greeted by the brother-in-law who was waiting outside for us. When entering the house the wife ran forward holding her baby to tell the officer her grievances. Soon three other adults appeared from the room next door - the woman's mother, sister and another man. All started talking to us at once.

University of Cape Town

> When addressing us they referred to us as "Meneer" or "Juffrou". They also only used the formal "u". It was clear we were the focal point of concern and that we were there to settle the argument. It was mostly the wife and mother who were trying to express their grievances. From their story it seems as if the husband threatened to kill his wife and he often threatened her this way. She was in no way physically harmed nor from what I understood had he ever really beat her - it just seems that every once in a while (when drinking) he threatens to do so. The man tried to get in a few words, but he was rather unsuccessful. The officer asked for silence, then proceeded to lecture the man on the virtues of being a good husband. Meanwhile, the brother-in-law was consorting in the corner with the female officer. He wanted us to arrange a mock arrest on him because his brother-in-law and sister fought too much. The female officer informed her colleague of this and he agreed. So, unbeknowned to the other there, the officer announced that he was going to arrest their brother because "they fight too much and they must stop it". This way they would learn their lesson. On that note we left, locked the man in the van and drove off. About two corners down we stopped and the officer let the man out of the wagon. The man thanked us and we drove off. The officer commented that though he yelled at the husband, he pitied him because he had to live with two nagging women.

Though family disputes can be criminal in nature, i.e., when an assault is made on one of the parties, this dispute was clearly outside of the police legal realm. The parties involved did not want to issue a complaint or have an arrest affectuated. They just wanted a personal disagreement settled. The officer seemed little concerned about his authority to intervene nor was his authority even questioned. In fact, all disputants in the family argument vied for his attention and approval. When he spoke they were silent and the family only addressed the officers with terms of respect.

When questioning the officers if this was the usual way most family arguments were sorted out, he said that most were handled so, but some did give more trouble. After a bit of probing, it was discovered that those which "gave problems" were mostly lower class Whites or Coloured families where the disputants were drunk. With lower class Whites, the authority of the police to intervene, even when called, can, as in the United States, easily be challenged. I witnessed a case myself where a White family living in a boarding house in the downtown district of Cape Town telephoned the police because the hus-

University of Cape Town

band alleged he was robbed. When we arrived, the man gave very confusing evidence of just what happened. The officer said he could not take a statement from him because he had been drinking and that the man was to call him back when he was sober. The man became angry at this reply and started to shout at the officer. The officer told the man to watch his language - at which time the wife interferred yelling at her husband to listen to the policeman for he is "the law". The man yelled back something to the effect that in his house he is the law and he will use any language he chooses. He then ordered the policeman out of the room. A few remarks and insults were exchanged and the officer left.

One cannot easily imagine this happening in a Coloured home with a White officer. The social barriers erected by the 'apartheid' system always places the White in a superior position and where the police epitomize the White power structure, it is no wonder that the non-white will almost instantly defer. This deference to police power was illustrated by the mock arrest performed on the brother-in-law. I was astounded that no one questioned the legality of this arrest. The family just watched as the brother-in-law trotted off with the police as a punishment for their misconduct. I am not condemning the officer who performed this act in good faith and on request with the hope that it might help settle a family dispute. However, the very fact that he could get away with such an act without even a word of protest, displays the amount of working power as opposed to legal power which is given through fear, ignorance, or otherwise to the White policeman.

The only time I witnessed an incident where Coloureds did not defer to police power was when they were drunk and in a large enough crowd to remain anonymous. One such service encounter went as follows:

> Our patrol received a call to handle a woman's complaint that her baby had been hurt. We arrived at a torn down section of District Six. The woman was waiting outside holding her child and no sooner had we pulled up when people had emerged. I am still uncertain as to where these people came from as only in some cases did walls remain of what used to be houses. Nevertheless, within minutes dozens of

University of Cape Town

children were hanging on the van and approximately twenty adults emerged - most visibly drunk.

Hooting, shouting, and shoving occurred. The situation looked chaotic. The apparent needs of the woman with the child were superceded by what appeared could result in an ugly scene. The male officer got out of the van while the female officer and I remained inside. The officer ordered people to move back. When his commands were not obeyed, he started to shove people back away from the van. As he did so, somebody from the rear started shoving back. A type of tug-of-war occurred with the officer coming out the worst. Angrily, the officer grabbed one of the men up front and proceeded to take him to the back of the van to lock him up. As he did so, some people started to shout and somebody grabbed the arm of the man arrested. The officer gave up that idea as he most probably would have to fight to get the man in the van. The next tactic tried, was to drive the van down the road hoping the crowd would not follow. Unfortunately everyone followed. The woman holding the baby was asked to continue walking down the street until the crowd dispersed and the officer could talk to her. We slowly kept following the woman until some of the crowd left and the only hangers-on were the children. The officer then took a report from the woman. From her story it seems that everyone was at a party and heavily drinking. The woman's brother (I am not sure of the exact relationship) got angry at her and threw a pot in her direction, hitting her baby instead. The baby's head was bruised and slightly swelled but not seriously hurt.

A report was taken, but no arrest were made. The officer did not ask the woman if she wanted to file a complaint against the man and the woman made no indication that she wanted him arrested. It appears she just wanted to tell the police what happened as she was angry. After speaking to the woman for about one minute, we drove off.

Again, in this call for assistance, the police were the focal point of concern for all involved, but the reactions of the participants were different. The usual deferring manner of behaviour towards the police was easily forgotten due to the influence of alcohol and a large group. Though the police were there responding to a call for assistance, it was clearly visible that the group gathered for the excitement and fun of taunting the police. This type of situation could have easily led to violence. When the officer's orders to move back were ignored, he acted by using force - first shoving and then by trying to effectuate an arrest. In both cases he was met by counter resistance. Though no one personally touched the officer,

University of Calgary

the force of the crowd was enough to stop the patrolman from completing his plans. That the officer was concerned perhaps for his own welfare and ours was displayed when he bent into the van to radio for help. He did not complete this action for he decided that by driving down the street he would lose the crowd and still handle the situation by himself. Though we had to drive a distance before we lost the adult sector of the crowd, the tactic worked.

I tried discussing the incident with the officer when we left the scene, but he only met my questions with silence or a shrug of the shoulder. My own judgement is that the officer handled the affair well. Though he first tried to use force, he quickly stopped when he perceived it was to no avail, other than to be met with resistance and perhaps more force. My own speculation is that, had there been another male officer in the van, the officer would have continued to use physical force to handle the situation. As he was with two females, even though one was an officer, he could expect no physical support. He probably even had to consider our welfare if he persisted on using force. His silence, both after we left and for a good portion of that day, indicated that he was clearly annoyed. This annoyance, I presume, was from the fact that the officer did not believe the encounter was handled to his personal satisfaction.

Another service call was initiated by a Coloured woman who telephoned the police because her husband had cut her on the head with a piece of glass. While obviously a criminal case, neither the officer nor the woman handled it in such a manner. When we arrived, the woman was waiting outside. She showed the gash on her head to the officer who called for an ambulance. A curt exchange of words occurred on how it happened. The officer then settled back in his seat, drew his cap over his eyes while the injured woman sat down on the street curb, and we proceeded to wait for the ambulance. No mention was made to actuate criminal charges against the man. The officer's only comment was: "This happens all the time, that's how they live. You get used to it. It probably wasn't even her husband that did that to her, but the man she's living with now".

University of Cape Town

We waited for approximately 30 minutes for the ambulance to come and once it did, we drove off. Why the woman called the police in the first place, again, can only be speculated. The most probable reason is that she wanted protection in case her husband returned. Since the police must stay on the premise until the ambulance arrives, she could be assured that she would reach the hospital safely. Perhaps also that was the only way to rid herself of her husband, i.e., by threatening to telephone the police. Or, perhaps in a moment of crisis, she could think of no other way to get help. Nevertheless, the whole affair was casually treated. While waiting for the ambulance, the police officer made no attempt to speak to the woman. In a like manner, the woman did not try to engage the officers in any conversation. The incident appeared to bore the officers who were "forced to wait for the ambulance".

The last call for service was a request to inform a family that an accident had occurred, resulting in the death of a relative. We drove to a White, middle class neighbourhood where the officer performed his duty with the respect and decorum that the occasion required. The officer disliked performing this task, not because he found it tedious, boring, or outside of his professional duties, but because he disliked being the bearer of bad tidings. However, he knew exactly what the call was for and what was required of him. Since the officer's only role was that of a messenger, he neither had to worry about unexpected circumstances or a challenge to his authority. This, in a most simplistic way, was a routine case.

University of Cape Town

Summary

A service encounter in the United States can be problematic and frustrating for both the patrolman and the initiator - mostly because of conflicting interests and expectations. First there may be a general disagreement as to what is the actual duty of the police. The police regard it as their duty to find criminals and prevent crime. The public considers it the duty of the police to respond to their calls and crises. Secondly, the manner in which the situation is handled may be upsetting to the initiator, who even though he called the police does not expect them to act as policemen. On the other hand, the police come only in their official capacity representing the legal power of the State. They

can come in no other way. When coming in an official capacity, the officer is faced with the basic problems that are a part of his professional role. He must establish his authority, handle the matter efficiently - both professionally and personally - and he must be alert to any impending dangers, either to himself or to others.

The issues of authority, efficiency, and danger which are the elements of the policeman's milieu, alienates the citizen. Authority is problematic for two reasons. Firstly, it is impersonal and associated with potential coercion and, secondly, the authority to intervene in service calls often rests with the permission of the citizen. From the policeman's perspective, the issue of authority remains a problem throughout the encounter. Frequently, officers are called to intervene in situations over which they do not have authorized power, but in which they appear to have substantial endorsed power. This occurs when they regulate private disturbances at the request of the citizens. Were they to refuse to do so, the officers would be viewed by the citizenry as shirking their job, so authority must therefore be improvised as the interaction proceeds. Hence, the officer may appear "pushy".

In trying to handle the encounter efficiently to arrive at an outcome that meets the requirements of his job, the citizen and officer may again have conflicting views. Efficiency in handling a situation from a policeman's view may differ from what the citizen believes is an efficient outcome. The officer is self-conscious about legal issues and strives to get information in this area. The citizen may find this exasperating when he desires moral or physical comfort. Too many needless and technical questions are asked. It is not only the fact that the officer must acquire some official information, but more importantly the officer desires to know as much as he can about the citizens he serves. Access to personal information gives the police an added coercive advantage that they may want to use now or perhaps later. Thus the officer seeks to install himself in the center of a citizen's life and the right to personal privacy becomes incidental. One articulate patrolman working in a ghetto area sums it up as such (Bittner, 1969:149):

University of Cape Town

> "If I want to be in control of my work and keep the street relatively peaceful, I have to know the people. To know them.... I have to be involved in their lives".

What is apparent for the studies mentioned previously, is that many lower class citizens resent this patronizing, interfering manner of the police and yet feel obliged to aquiesce to their inquiries.

Finally, the preoccupation with danger adds to the resentment felt between citizens and patrolmen. As indicated in the previous Chapter, patrolmen almost universally contrast the random and unexpected nature of danger involved in handling, for instance, a domestic quarrel with the routine taken-for-granted nature of danger when chasing a bank robber. Consequently the patrolman, when answering a service call, immediately sums up whether the situation may mean some risks for him. In doing so, he tends to communicate his apprehension to the citizen who may as Wilson (1970:20) says "see the patrolman as unjustifiably suspicious, hostile, or edgy. If the citizen then shows his resentment, the officer is likely to interpret it as animosity and thus to be even more on his guard. Both sides may be caught in an ascending spiral of antagonism".

For the Cape Town patrolman the elements of authority, danger, and efficiency are also part of his working milieu. Yet in handling service encounters, the Cape Town patrolman does not face the same dilemmas that the American cop does. This is so, first and foremost, because the Cape Town patrolman does not receive an abundance of service calls. The nature of his work is more explicit both to him and the citizen. He is there to catch criminals and prevent crime. He is not a social worker. Yet, at times, the Cape Town patrolman finds himself in a position of a social worker. Such a situation arises mostly because he is responding to calls that are criminal in nature, but where the initiator requires something other than legal aid. In these instances the situation is still not as problematic for the patrolman as it is for the urban American officer. In most social service cases and in the United States, the officer is working with lower class citizens (in Cape Town these people are mostly Coloureds), but unlike the States the minorities in South Africa are more apt to

University of Cape Town

accept an authorative, indifferent figure. I am not assuming that the initiator wants this type of encounter, but may instead lack the ability or the initiative to complain or resist the officer's commands. The officer, in most situations, does not find his authority challenged or his decisions met with resistance. However, nothing in police work is a surety. The officer's position sometimes is or can be challenged when serving Whites (and again mostly lower class), and when aiding Coloureds who are drunk. Not only is or can his authority be mocked or challenged, but the issue of danger becomes apparent when a crowd forms and the disputants are drunk. Efficiency also becomes problematic in how best to handle the situation for both personal and professional reasons. That is, the officer has to get certain information to make out a report, yet he may be concerned about his own safety and the safety of others. At the same time he wants to appear "to be in charge".

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Citizen Initiated Encounter in the United States - Legal

There are basically two types of citizen initiated calls for legal assistance. The first is where a victim of a crime makes a complaint to the police and the second is where a citizen calls as a witness of a crime where he is not a victim.

In the first instance, Wilson's study (1970) of eight American urban areas found that the vast majority of complaints from victimized citizens were crimes against property. Reiss' (1971) study also confirms the fact that property crimes are the major reason for a citizen as a victim to initiate a call. A second motive for a citizen to initiate a call is when he believes he is a victim of public disorder - loud parties, noisy children playing in the streets, obscene language, etc.. A third reason is for crimes against the person such as assault (Reiss, 1971:73).

A citizen wants an officer to do something about it once he has called upon him to report that he has been the victim of a crime. The citizen may want his or his money back, an arrest made of the man who broke his jaw, or a loud party stopped. However, in most situations the officer can do very little. Most crimes are against property and

there are rarely few clues and witnesses. Hence these crimes are rarely solved. The President's Report (1967:97) noted that 78 per cent of all reported crimes were never solved. All the officer can do is listen to the victim's story, write out a report to give to the detectives, and leave.

Not only does the officer appear to be unable to do anything but, what is more, he does not even seem to care. What is an emergency or crisis situation for the citizen, is a routine job for the officer. He has heard it all before - and in truth a thousand times before. Furthermore, he also comes to doubt the legitimacy of some claims to personal theft. Again he judges the situation by cues that have developed through the police socialization process and on the job experience. Hence, a lower class citizen's claim to theft is treated suspiciously: "Hell he probably could not make payments on his TV set". Middle class claims are treated more legitimately than lower class claims while upper class and business claims are treated as legitimate (Wilson, 1970:25).

A similar situation exists for crimes against the person. First, the police have seen it all before and, secondly, since crimes against the person are mostly a lower class phenomena (President's Report, 1976:35), the police come to believe it is a way of life for them and not to be taken seriously. As one patrolman, working in a lower class Black section of Albany, New York, told Wilson (1970:162) in an interview: "I'll deny I ever said this if you repeat it, but you know how this police department is run. Our motto is, let the niggers kill each other off". Hence, when the patrolman answers a call for an assault in a lower class area, he will view the victim's complaint suspiciously. There are usually other explanations for the incident that may disqualify the victim's sole right for retribution. The police come to realize that in crimes of assault, the victim and attacker are usually known to each other. In fact, Wilson's study (1970:24) points out that the victim and attacker are known to each other in 85 per cent of all assault cases. The District of Columbia Crime Commission study (President's Report, 1976:40) found that of the 131 assault victims interviewed, 81 per cent knew their assailants. For the patrolman,

University of Cape Town

this usually means that the cause for attack rests just as much in the actions of the victim as in the assailant. Even when the victim wants to initiate criminal proceedings at that particular time, the police know from experience that a day or two later the victim may ask the prosecutor to drop the charges. The officer tends then to minimize the importance of the situation by trying to "talk things over" instead of making a formal arrest. Alternatively, middle class and upper class claims for assaults are treated as legitimate and will tend to be handled with utmost urgency - for this is the real thing.

For calls relating to public disorder, again in some instances, the policeman often doubts the legitimacy of the victim's claims. A citizen's complaint about a noisy party may be viewed as a querulous person who just wants to "get back" at a neighbour with whom he recently quarrelled. A complaint concerning noisy children might be viewed by the police as just another "bitchy old woman". The patrol will sometimes stop at the party and ask them to keep it down or they will sometimes ask the children responsible for the noise to go indoors. Because they are not too emphatic about their orders or even because they may seem embarrassed about carrying them out, the party may again pick up in tempo when the police leave or the children may come back out to play. The complaintant may then believe that "nothing has been done". In many cases, this is true. According to Wilson's investigation (1970:146) of patrolmen in one large urban setting of the United States, the officers commonly handle such cases of disorder by telling the aggrieved party to "go see the judge".

University of Cape Town

Of course some complaints of disorder are met with more vigour. Citizen's calls about disorderly juveniles and calls from business districts concerning rawdy teenagers will be seen as legitimate claims for police action.

The second type of citizen's initiated call for legal service is where a citizen reports a crime of which he is not a victim. Reiss (1971:69) reports that only a minority of calls request police assistance for others or report crimes where the callers do not personally regard themselves as victims. Research indicates (President's

Report, 1967; Wilson, 1970; Reiss, 1971) that citizens call the police mostly from a personal viewpoint of self-gain. Calling the police to report an incident where they are not a victim is not in their self-interest. First, they may become involved in a lengthy process of the criminal justice system that can prove time consuming. Secondly, there is a strong norm in urban society "to mind your own business". There is also some self-doubt that what one is viewing is actually a criminal act. A man who appears to be breaking into a car may in fact be the owner who has lost his keys.

When a citizen does report such a crime, the patrolmen generally treat such a call legitimately. In fact his biggest problem is to probe deeper into the complaintant's story drawing out pertinent items and insisting on accuracy in detail. The patrolman knows that if charges are to be made or if the case if to be handed in for further investigation, the nature of the evidence must be reliable. The officer almost comes to badger the citizen for more accurate information and recall. At times the citizen finds this frustrating when he believes he has done his civic duty and now it is up to the police to do their job.

University of Cape Town

Citizen Initiated Encounters in Cape Town - Legal

The Cape Town patrol in handling citizen initiated calls for legal assistance, responds in almost identical manner as the American cop. That is, when he reacts to a victim's call he first sizes up the legitimacy of the complaintant. In crimes against property, business claims, and middle and upper class claims are treated most legitimately. Since in South Africa, one's race usually determines one's class (Adam, 1971:8), the police in South Africa can more easily determine the legitimacy of the complaint by the criterion of race. Hence a Coloured person's claims of victimization for theft, assault, or public disorder are questioned. As in the States with these types of crimes and especially property crimes, there is little the officer can do or at times will want to do.

During the week I spent with the patrol, the calls received for crimes against property were from the business sectors in the downtown area

and from middle to upper middle class Whites residing in the outlying suburbs. The officers handled such calls with routine boredom. From the business sector, the victim representing the company also handled the matter with official indifference. The usual questions concerning time of theft, valuables and amount taken, and any other details that could help the officer in apprehending the thief were asked. The report was written down to be handed into the detective division for further investigation and a few sanctimonious remarks from the representative victim were made concerning the degradation of urban morals. The officer consented and the matter was finished.

The officer's attitudes were the same towards victims of private property thefts. However, the attitude of the victim was different. The personal affects of the crime were more real and the victims usually expressed some emotions of fear or rage. Also most fulminated about the affects of the personal loss. The officers always tried to steer the victim's conversation back to the relevant issues. They were interested in getting the pertinent information and ending the particular assignment. The victims of property crimes, as in the U.S., came to believe "nothing is being done". The following incident emphasizes this dilemma:

> The officers and I were parked in the police van along a side road in a downtown Coloured district. We were waiting for an ambulance which was to pick up a Coloured woman who was slashed in the head (this incident was discussed in the previous section). The male officer was slouched down with his cap drawn over his eyes, and the female officer and I were chatting. Suddenly a volkswagen drew up alongside of our van and two young White males jumped out. They enquired of the male officer if he saw two Coloured males run into any of these side roads. The officer responded that he did not. The men claimed that as they were walking out of a store, they saw these two Coloured men break the window of their car and grab their tape recorder. The victims then said they jumped into their car (the window of which was smashed) and gave chase. It seemed as if they just lost the thieves who ran into one of the alleys near which our van was parked. The officer just nodded and told the fellows that if they would like, he would write out a report and give it in to the detective division. The owner of the car said: "Hell no, I know what those reports amount to. If you can't help us we'll just drive around here until we find those two bastards and then we'll kick their bloody balls into their teeth". The fellows jumped back into their car and took off.

University of Cape Town

The victims of the above theft appeared to be irritated. A police van was parked in the area where the two alleged thieves were and the officer appeared to be doing nothing and did not volunteer his legal help. The young men did not ask the patrolman why he was just sitting there, nor did the officer offer any explanation of why he could not help the fellows in their search.

This seems to be a common delemma. The victims believe the police are doing nothing to aid them. They see the patrol riding around or parked in an area and they wonder why they are not looking for the thief who stole their goods. The patrol are usually the first to come into contact with victims of theft, yet unless the suspect is still on the premises, the situation is outside of their concern. They are little more than note takers for the detective division who will further examine the case. Their interest, since there is little they can do, just concerns obtaining the immediate information needed by the detectives. Even in this latter area they are sometime lax. As one detective (conversation, Oct., 1975) said: "I wish these guys (the patrol) would at least get the name of the complaintant spelled right. They could at least do that".

Most people who are victims of theft to whom I spoke (conversations with victims, 1975) reported that they did not expect the police to recover their goods or find the culprit. Why then do people call the police? As in the United States the police are called for basically three reasons (Reiss, 1971:67-68):

(1) A major factor in reporting crimes against property is property insurance where some people believe that to collect on their insurance they must report losses to the police.

(2) Another reason is that by reporting the crime the victim wishes it to be known to the police that the crime happened to him, in his own neighbourhood, or on a particular street and the police must be more alert and patrol particular areas more often.

University of Cape Town

(3) There also seems to be a psychological relief in telling someone, especially authorities, of the terrible incident that has occurred. This is what often causes the frustration when the police just do not seem to be concerned with the complaintant's crisis. Perhaps if, like a doctor, the police would develop a bed-side manner (and some do) this would be more effective in remmedying citizen complaints that the police "do nothing". A manner of official concern such as a brief walk around the premises checking locks and windows, a few remarks of what further precautions could be taken, and a few words of commiseration would be extremely effective in improving victim/police relations.

During my week with the patrol, we did not answer a single call from a Coloured household pertaining to crimes against property. When I questioned the patrol about this, they replied that they do get calls from the Coloured community. As to how many and in what portion as compared to the White community, they really did not know. However, I believe that, because of the three reasons stated above, a Coloured person would be more reluctant in reporting crimes of theft. First, when a person is not insured against losses, or his losses are not covered by a policy (often the case of the poor) he fails to make a report because he sees no personal gain in doing so. Secondly, the idea that the police would then be more alert to crime in his area if he did report is also ludicrous for the Coloureds are constantly clamouring for more police protection. Thirdly, the psychological relief in making a report to the authorities is not likely to be a factor for the Coloured community who do not expect the police to be strongly interested in their personal losses and feel that many times the legitimacy of their complaints will be met with skepticism.

The only time I was able to witness a Coloured victim's complaint of theft and how it was handled was when on a Friday evening at about 19h30 our van received a call that four men had been robbed and were waiting for police attention on a certain street corner in the down-town district. When we pulled up four young Coloured men (perhaps in their twenties) were waiting. The officer sighed and made a

University of Cape Town

gesture of resignation. He yelled out the window and asked them what their story was. The conversation then took place in Afrikaans. The officer soon turned to me smiling and said that these men claimed they were robbed and assaulted by three other men who took their money. He said he did not believe them and he was ready to drive off and be done with it. I made a suggestion that perhaps it could have been true. He laughed and said that I just did not understand the situation here with these type of people. "Look", he said, "I'm not about to waste my time writing up four reports for nothing. But I'll show you what I mean. We'll take these fellows down to the detective station and let the detectives handle it right out. You must watch how their story will change". The four men got into the back of the van and we drove off. As we were driving to the station the officer explained to me how "these people" lived and how you really could not believe half the stuff they said. "I'll tell you what really happened. Those men there were probably gambling - and you can tell they were drinking - they probably lost all their money to those other fellows who they claim robbed them. Now you just watch".

When we got to the detective station the four victims had changed their story. First, all four claimed to have been robbed and three of the four claimed to have been assaulted. Then, one of the four who claimed to have been victimized of his money decided he was not. Also, the number of persons committing the assault varied between two and three men. During this rambling story the officer and the detective exchanged a few mocking comments, a few of which were directed at the four alleged victims and all would laugh. After about five minutes of this, the officer said: "Come let's go - I told you as much". As we were leaving I noticed the detective decided to open dockets for two of the fellows.

What is interesting is that upon arrival the officer summed up the legitimacy of the victim's claims. Race, sex, visible appearance, and time of day were all criteria for the judgement. It is essential for the police role to make such judgements concerning victims' legitimacy and such judgements are many times based on reasonable and empirical generalizations. However, there are times when legitimate claims are treated as illegitimate, obviously much to the annoyance

University of Cape Town

Summary

In handling citizen initiated calls for legal assistance the issues of authority and danger are generally not problematic for the patrolman in both Cape Town and the urban centers of the United States. His official authority is welcomed and in almost all cases the participants are most willing to place the matter into his hands. What is most upsetting in this regard is that most citizens come to believe that the officers' attitudes do not reflect genuine official interest. Citizen request for police intervention as well as the precipitating event itself are exceptional and often intensely personal to the citizen, whereas they are generally routine to the officer. What might be a major catastrophy in a citizen's life, an officer calmly accepts as the usual in his average working day.

Since the elements of authority and danger are usually not problematic for the police in handling citizen initiated calles for legal services, negative police practices such as brutality and arbitrary use of power are not common. However, the element of efficiency is problematic, and consequently leads the officer to be suspicious. He is not about to waste his time. He has come to develop a set of visual and auditory cues which serves as signals that the victim's interpretation of events is to be suspected. In many instances just the sight of the victim is enough of a cue to determine police suspicion. In the States, according to the President's Report (1967) police are more likely to be suspect of a victim by criteria of class rather than race. In South Africa, since one's race usually determines one's class, it is difficult to assume that the police are prejudiced against "non-whites" but may be reacting to attributes associated with a victim's lower class life style. Since the area cordoned off to the Cape Town patrol did not include any areas where one would come into contact with middle class Coloureds, I did not see the police deal with any such middle class victims and can therefore come to no conclusions in this latter regard.

One would think that the suspicious character of the police in ascertaining victim legitimacy would cause arguments which would then lead the police to use force. Arguments do insue, but they rarely

University of Cape Town

seem to lead to the use of force. If the victim does not accept the officer's suspicions that there might be differing accounts to their story, or even the officer's blatant opinion that the victim is lying, the victim does not challenge the patrolman's authority. A disagreement on this level is not a threat to the policeman's right to be involved. On the contrary, the victim is trying his best to assure the policeman that he "should be" involved for a crime has really taken place. A comment such as "what the hell's the matter with you, can't you see I've been robbed", will lead the officer to shrug his shoulders, to make a reply such as "call me again when you have a better story", and to walk away.

The element of efficiency by which patrolmen develop a set of working cues to identify the legitimacy of the victim determines whether a crime has occurred or not. In this regard the officer's orientation to resolve an encounter by means short of an arrest (in cases of assault) or by means short of an official report, result in the officer's ability to "take the law into his own hands" and define for a community (and for the country) what statistically is reported as "crime". Legitimate victims must surely feel angered by officials who come to judge their complaints as not serious or totally false, and must come to feel alienated by a system of justice in which they are disregarded. On the other hand, those whose complaints are viewed as legitimate (usually middle class or above) come to believe, by a lack of understanding of what the officer can or should do as well as from the officer's attitude itself, that the officer "does not care" and "does nothing" in his official capacity to solve or to stop crime.

University of Cape Town

Patrol Initiated Encounters in the United States

In these situations the patrolman is the complaintant and intervenes in citizen's affairs on his own initiative. Without a direct call from a citizen, the policeman most often comes to intervene in the lives of some citizens through a practice known as preventative patrol. The officer, usually in a van, drives around a specified assigned territory on the "look out" for the unusual, the disorderly, and suspicious persons or situations. Reiss' study (1971:95) found that of the total car hours assigned for duty, patrols were sent on

a particular citizen dispatch 14 per cent of the time, leaving 86 per cent of the time for routine patrol.

As was mentioned previously, in the United States police systems and the citizens place much emphasis in the preventative patrol duties of their departments. Deterrence of crime and the maintenance of order is the main reason. The second reason is to be on the watch out for criminals. Hence the officer, especially with regard to the second assignment, is the stereotype of the "cop". He is suspicious of the different and unusual and he is most sensitive to his learned perceptual cues. He is wary of dangers and risks as he seeks "criminals" in back alleys and lonely places. Furthermore, he is at all times extremely conscious of his authority for, unlike the citizen initiated calls where he at least knows someone usually wants him around, he now enters a situation on his own initiative.

Because the elements of the patrolman's working milieu are more strongly emphasized while on routine patrol, the negative methods associated with police work are more apt to be used by the patrolmen when on routine patrol than when handling citizin initiated calls. Clark and Sykes (1974:487) state: "The greatest likelihood of officer-citizen conflict appears to be in situations in which police confront the citizens without any complaintant being present". Reiss' study (1971: 145) found that though most police-citizen encounters tended to be civil, those encounters that were marked with hostility were those when a policeman entered a situation on his own initiative. It is in these encounters, marked with hostility, where police brutality is more likely to happen. Not only is brutality more marked in police initiated encounters, but it is also more likely for police to take the law in their own hands by conducting illegal arrests and frisks contrary to the Supreme Court rulings. Also, since the police officer in judging incidents as the complaintant as well as the controller has a greater amount of discretionary power than when there is a citizen victim, decisions as to how events and people will be sorted out tend to be more arbitrary in nature.

To say that police initiated encounters lead more often to negative police methods seems to place the police in the position as instigators

University of Cape Town

of brutality and misconduct. However, from past studies (Werthman and Piliavin, 1967; Clark and Sykes, 1974; Reiss, 1971) it appears that this view is too simplistic. In the urban areas of the United States most patrolmen currently tread a careful path in coming to terms with the community's norms and values. There seems to be a growing desire of minority members to gain greater control over what is happening to them and their community. The patrol officer must make himself aware of the wants and variations in the general norms to which segments of the population are committed. As one officer in the Newburgh police department is reported to have said to Wilson (1974:149-150):

> "The word sort of come down from the top that we're to lay off the coloured community. With all this Black Power talk, people are afraid of an incident. But I don't think anybody wants to make any arests in that area unless they absolutely have to..... We don't want to make them mad at us".

Another dilemma that faces the American officer is, as Gunnar Mydral (1944:20) emphasized, a strong citizen tradition of disregard for the law. He feels that Americans have an ingrained habit of regulating every detail by a new law and then just as easily expect partial enforcement, or no enforcement. A typical present day example of this is the vocal "anti-smoking" campaign that is taking place which has resulted in legislative actions throughout the country making smoking in public places illegal. Police now have the right to fine such offenders, but nobody is taking this law seriously - most notably the police.

In getting citizens to comply with laws that the police intend to either enforce of partially enforce on their own initiative, the officers have developed, as Clark and Sykes (1974:483) call it, "the art of negotiated compliance". With this technique, the officer (though never relinguishing his power) tries to <u>persuade</u> the subject to accept an alternative action or to comply with his commands because it would the "the right thing to do". Similarly, Werthman and Piliavin (1967:66-67) discuss the attributes of a good cop and state:

University of Cape Town

> "A good cop is thus a man who can successfully handle a subtle and narrowly defined moral challenge. He must try to order the life of an ethnic lower class community from within by holding people to their own ideals, however little these ideals may be reflected in behaviour".

Werthman and Piliavin go on to say that a cop functions as an arbitrator and when he intervenes in citizen affairs he does his best "not to make categorical claims to final authority". Instead he will remind the citizens of their values while also suggesting that he could claim the right to use force. They sum up by saying: "He responds to formally ambiguous legal situations with an artful ambiguity of his own, and his reward for this delicate maneuver is legitimacy".

Hence a patrolman might make concessions to a group of lower class youths who claim territory (as so often happens in the United States) to a street corner and use it as a private meeting place. Some temporary unofficial agreements might be arranged where the officers will recognize their right to gather if the boys let passers-by through and are not too unruly. Patrolman will also tolerate public drinking and gambling in such neighbourhoods as Italian, Irish, Negro, etc., where they might not tolerate such actions in other areas (Clark and Sykes, 1974:482). But under no circumstances do patrolman give away exclusive rights to interfere. They make sure the boys know who is boss and any established neighbourhood concessions can just as easily be taken away if their is trouble.

Reiss' study (1971) has shown that when police driving around on their beat notice citizens in unruly behaviour (fighting, gathering, misusing private places, dancing in streets, etc.), they will generally "talk it over" with them. More often than not the police do not go out of their way to be harsh nor do they attempt to use force to quell a situation. When police come into contact with citizens who are misbehaving in an unruly fashion, but whom police do not consider dangerous or criminals, the incidents are often resolved with little trouble. Even if the citizen gives the cop a hard time in the latter cases, the patrolman will be more apt to tolerate his authority being questioned because he known that tempers are flared and people are not their normal selves.

University of Cape Town

Generally neighbourhood citizens out "having fun" are not the most likely recipients of police brutality. Excessive force is more likely to be directed at individuals who for various reasons (and many times correctly so) the police have come to define as "punks", "suspects", or those engaged in deviant practices (homosexuals, transvestites, drug addicts). Reiss' study (1971:147-149) supported by Chevigny's research (1969:70-73) found that most victims of physical force were characterized as lower class, young males who were viewed by the police as being deviants or suspects of some crime. In these studies the authors concluded that racial prejudice is not the causal factor for the use of excessive force. Though in all studies, White officers made prejudiced statements against Negroes, in actual encounters the police did not treat Negroes more uncivilly than Whites. Reiss (1971:147-148) further points out that when excessive force did occur in 78 per cent of all instances it took place in police controlled settings where encounters were devoid of witnesses.

Why are these individuals most likely to incur the wrath of the police? It must be recalled that the perceived occupational "raison d' etre" for any policeman is to "catch criminals", the other stuff as patrolman put it is "shit work". This perceived goal heightens the patrolman's awareness to the unusual. But given the operational parameters, the patrolman must catch criminals from the front seat of a patrol car. They do not, like the detective, launch an investigation on the basis of a specific infraction. Instead they look for suspicious people who might later be linked to a specific crime. They operate, as Werthman and Piliavin (1967:75) say "in the occupational speciality of inferring the probability of criminality". In other words, they are on the alert to their perceptual cues. Past experience has led them to believe that most crimes are committed by lower class people. Hence they are generally on the look out in the poorer sections of town. They have come to conclude (and statistics prove it) that younger men between the age of eighteen and twenty-four are a greater source of trouble (see the President's Report, 1967:27) and that perverts are not only a source of irritation to respectable people but are themselves involved in crimes. A patrolman's indicators of suspicions have led him to infer moral character based on a combination of characteristics: appearance, age, sex, economic status.

University of Cape Town

He is also conscious of two main elements - potential danger and an assault to his authority. Since he believes that these people have committed or are about to commit a crime, the patrolman has good reason to believe that not only will his authority be rebuked, but he stands a good chance of getting hurt. Hence he is in a situation ready to use force and any indication (such as verbal defiance) will, as he believes, give him cause to use force.

Not only are lower class males suspected of crimes or a deviant life style the most likely targets of police brutality, but they are also targets of illegal police practices and harrassment. This is so mostly because patrol methods used to gather information that proves criminality are often contrary to Supreme Court rulings; and, due to the 1961 Supreme Court verdict in Mapp vs Ohio, 367 U.S. 643 (Sutherland and Cressey, 1970:382), all evidence illegally obtained is not admissible in a court of law. This is known as the Exclusionary Principle. The patrolmen find themselves in a bit of a bind and where the Court's ruling affects them the most is in limiting searches - most notably for the patrol, the stop and frisk method.

Legally the best guarantee to conduct a lawful search in the United States is after conducting a lawful arrest. Milner (1974:35) states: "Police officers find this rule to be a potentially severe obstacle because they typically find themselves in a situation where they believe search is "first required to gain evidence necessary to justify the arrest". A patrolman may be suspicious of a man who he then stops and searches, and even if he finds stolen goods, drugs, etc., the patrolman knows the evidence will not be acceptable in court.

The only stated purpose the Supreme Court had for devising such a rule was "to control and influence police conduct" (Griswold, 1975:52). But the question has been raised as to the ultimate effectiveness of this decision. Where police are interested in prosecution, most notably in important or serious cases, then the Court imposed rule has affected their behaviour. Milner (1974:34) states: "That rules are more likely to be followed where arrest and prosecution are desired" and, he goes on to say, "persons suspected of more serious crimes are

University of Cape Town

most notably recipients of proper police behaviour".

Since patrolmen rarely come in contact with "serious offenders" many times prosecution is not their paramount goal. To try to develop court cases against petty thieves, drug addicts, perverts, etc., is not only too time consuming but the information required by the court to prove guilt is contrary to patrol operational proof of guilt. Inferring the probability of guilt is usually at odds with court requirements of "reasonable cause". Hence a patrolman's indicators of guilt, which according to some studies (LaFave, 1965; Wilson, 1970) prove to be quite accurate and his methods used to substantiate that guilt are in most cases illegal according to the Supreme Court's requirements. So, police come to develop their own practices to administer justice. The most common of which is "arrest and release". LaFave (1965) dedicates four chapters to this practice. Though illegal, the practice continues with the silent approval of the police administration and the other agencies in the criminal justice system: the prosecutors, judges, and defence attorneys.

The LaFave (1965) and Milner (1974) studies confirm that law enforcement objectives for the patrolman can be achieved by arrest without prosecution. Successful prosecution for the patrolman is usually not the imperative goal. His working conditions undermine this objective and instead efficiency, self-protection and maintenance of authority become an end in themselves.

With regard to efficiency, the police department is sensitive to the community's wishes in establishing order. Police wish to protect the "good" citizen. Consequently, prostitutes, homosexuals, transvestites, perverts, gamblers, etc., become subjected to round-ups. Arrests are conducted not so much because these peoples are engaged in illegal activities, but because of where they are engaged in such activities. Transvestites, prostitutes, etc., are usually left alone if they conduct their business off the streets or restrict themselves to certain hang-outs catering for their occupation or life style. However they are open for arrest if police find them in the streets or other public places where the "ordinary" citizen might come

University of Cape Town

into contact with them. In this way arrest, detention overnight, and release serves the officer's goal in temporarily removing undesirables and in regulating such activities. The judicial, paramount objective of arrest - namely for prosecution, is not considered realistic by the police. First, because criminality for these cases is exceedingly difficult to prove in a court. Secondly, depending upon the community, the pressures on the police by the public are not necessarily to do away with such practices, but just to remove them from sight. Hence arrest and release is an appropriate means to meet and satisfy the community standards.

Efficiency in adjusting to community norms not only leads the police to arrest and release those with illicit life styles, but also leads the police to use this practice on those the police believe are dangerous. The community pressures on the police to remove thieves, muggers, etc., and to keep the streets safe are keenly felt by the police. Consequently when the patrolman is suspicious of a person's intentions, or if through experience he comes in contact with what he believes is a "punk", he is most unlikely to observe all the rules and procedures necessary to make a legal arrest. First, because suspicion rarely proves reasonable grounds for arrest and search and, secondly, the needed evidence to prove criminality would take too much time and within that time the suspect may "stash the goods" or do additional harm. The art of waiting and long observation is not part of the patrolman's operational milieu. Unlike the detective, he feels the urgency to act fast and to take positive steps to remove dangers. Immediate harrassment and punishment become the criteria for arrest and release in these cases. LaFave's study (1965:506) showed that police objectives are much stronger than judicial and hence "police sometims arrest and search without concern as to whether the evidence uncovered can be used to obtain a conviction".

The two other police objectives which mediate against court rulings are maintenance of authority and danger.

As was brought to the reader's attention, when the police interact with citizens, their need to establish authority and take control is paramount. Milner (1974::32) states:

University of Cape Town

> "The importance of control over the situation may mean that an officer is willing to make an arrest not so much because he believes that the demeanor of the citizen may warrant this use of police officer's power. The officer arrests a citizen to show him who is boss".

In situations requiring maintenance of authority, the patrolman is not interested in successful prosecution, but instead is more interested in punishing the offender. Arrest, detention overnight and release is an effective device in determining who is "boss" and hence meets the objective of maintaining and establishing authority.

The concern with danger also influences police behaviour. In these situations danger is not a clear cut issue for the patrolman and he has developed visual clues to weed out the "potential assailant". Though there has been little investigation in this area (to my knowledge) it is most conceivable that when the police come in contact with those they believe dangerous or in a situation which they believe is dangerous, they are not going to give much regard to legal regulations. Milner (1974:34) states: ".... that if a policeman defines a search as necessary for self-protection, he is not going to be very concerned with the legal criteria for probable cause or with the distinct possibility that the evidence might be excluded in court".

Court objectives seem to carry little weight in controlling patrol behaviour when other objectives assume top priority. Illegal practices - notably arrest and release and less often the use of brutality, are used because they meet police objectives in efficiency, in maintaining authority and in self protection, and because the police can expect little or no incrimination through their use. For apparent reasons, the use of brutality brings about greater risks that the police will be sued. Even though police usually take precautions of "who" they beat up and "where" they do it, Wilson's study (1970) confirms that police are wary of being sued for this practice. However, LaFave's study (1965) indicates that the arrest and release method rarely leads to issuing of false arrest charges against the police. LaFave attributes this to the fact that those subjected to the arrest and release process are involved in either something illegal or their life styles

University of Cape Town

are considered illegal and therefore consider their arrest and the incidental costs as one of the expenses of carrying on their activity. Any civil action taken against the police is usually taken by persons who are judged incorrectly by the police to be engaged in deviant or illegal activity. According to LaFave (1965:487) the latter cases are few.

The only group that was not mentioned that is subjected to the arrest and release practice are drunks. This category of persons deserves special attention for two reasons:

(1) Because the legislation in some States has made it legal for policemen to arrest and hold overnight those in such an intoxicated condition that they cannot care for themselves (LaFave, 1965:440-444).

(2) Because the reason for arrest and release of this group is different from that used on the other mentioned. The arrest on those who cannot care for themselves is known as the "golden rule law".

Police believe arrest and release methods used on drunks serve as a protective or humanitarian measure. Though, at times, responding to community and departmental demands to "get them off the streets", most police studies (Wilson, 1970; Reiss, 1971; President's Report, 1967) show that police pick up drunks because they are mainly concerned with their welfare. Studies (Reiss, 1971; Wilson, 1970) also show that when a man is coherent enough to give his address or has identity on him, police will either drive him home or call a cab. Homeless drunks who cannot take care of themselves are usually the ones to be arrested and held overnight. Police do not like to pick up drunks and view them as pathetic, sick people in need of care. Yet when a man is found lying in a street or is barely able to walk and police feel he is homeless, an arrest will occur "for his own good".

University of Cape Town

Patrol Initiated Encounters in Cape Town

As in the United States, the Cape Town police force place much emphasis on their patrol duties and most of the uniformed policeman's time is spent on preventative patrol. Judging from my week with the patrol unit, the vans are engaged in reactive duty (responding to calls) for about two to three hours. The vans I accompanied, received approximately 8 to 12 calls from the radio unit requesting them to check into various matters. Each investigation or complaint usually required no more than 15 minutes to handle. Though some assignments took longer, others were handled in a matter of a few minutes and some assignments proved altogether misleading - as with a complaintant that gives a wrong or false address, a traffic accident that either has not occurred or has been handled by the traffic police, etc. With approximately two to three hours daily spent on reactive duty, the patrol is left the remainder of the day, minus lunch or other social breaks, for basic patrol duties.

When we were not handling calls, I enquired from the officers what we were to do. The response was "look for criminals". I enquired as to whether there were any directives from the department or supervisors as to what the officers were to do with their patrol time, i.e., where they are to "look for criminals". The officer replied that they are on their own in patrolling their beat.

Though patrolmen were not able to verbalize which areas they patrolled more often or why, it became apparent that the areas patrolled carefully and often were: city municipal and public parking areas, open public space in the more vacant areas of the city, and White neighbourhoods outlying the city. Property and safety were the two main reasons for patrolling these specific areas. And it was mostly a concern for White property and safety. It also became obvious who was to be suspected of being a "criminal". A Coloured man (especially a younger male) who was seen occupying any time in any of the above areas whom the police believed had no reason to be there was automatically suspected, questioned, and told to move on. Police suspicion of Coloured males is probably based on three criteria:

University of Cape Town

(1) The fact that crime rates are exceedingly high for this population group (Labuschagne, 1972; Argus, 27/5/75).

(2) The Coloured people of Cape Town represent the lower class socially and economically.

(3) The police (for various reasons - some substantiated by actual incidents) have come to believe that the Coloureds have a different and a more base sense of morality and hence "cannot be trusted".

The officer on preventative patrol in Cape Town is, as in the United States, very much on the alert and very suspicious of people or situations that could indicate a crime will be or has been committed. Therefore, he develops a deep need for order. People during the day milling about stores and walking to and fro is normal. At 17h00 people rush out of the city, stores close and the officers expect a quiet town. The evening brings back a few people into the town for dinner and entertainment. Cape Town's social entertainment is designed for Whites. Hotels, movie theatres, restaurants are for Whites with only the Nico Malan Theatre catering for mixed audiences - of the upper brackets. However, there are the random night spots attracting prostitutes, sailors, homosexuals and in general those looking for the less conventional or sophisticated entertainment. These night spots cater for both Coloureds and Whites (illegally) and are tolerated by the police as long as they keep their activities within their premises.

The patrol perceive the need to protect the safety of the respectable White clientele who come into the city seeking entertainment. The Coloured male who is on the streets in the inner city after 17h00 is subjected to being stopped, questioned and generally harassed.

The Cape Town patrol indicators of suspicion are, by American standards, most unsophisticated and based more on mere speculation - hit or miss style, then on the more developed, pragmatic indicators of suspicion used by the American cop. It is not that the urban American patrolman is any brighter or moralistic, but that the legal restrictions on search

University of Cape Town

and interrogation mean much more is at stake if the officer is wrong. The American officer tries more to capture gestalt of the situation - age, sex, appearance, demeanor, manner of walking, where the suspect is, at what time, what does he appear to be carrying, bulging pockets, etc., are pieced together more carefully to construct a total picture which then makes sense for the officer to chance a search, and most likely an illegal arrest if the man appears to be guilty of something. However, known criminals or those with deviant life styles are not subjected to such careful scrutiny, but are stopped and searched at the officer's discretion. Their life styles or past is an indicator that they are vulnerable and will be most unlikely to press for civil retribution. Generally the American patrolman tends to be more cautious.

In Cape Town I have witnessed patrolmen stop Coloured men for no other apparent reason (besides sex and colour) than that they were carrying bags - something which is quite normal for a downtown pedestrian shopper. All other indicators of guilt - time of day, fugitive motions, appearance, etc. - were lacking. The man is called over to the van with the usual "you, come here" and his bags are searched. If an item appears which either seems strange or is as the officer believes "too expensive" the suspect is questioned as to where he obtained it, how it was paid for, does he have a receipt. One middle aged Coloured man walking down a main street in town during the afternoon hours was carrying a bundle of goods with a steel rod protruding through the top of one bag. The officer called him over and removed the item from the bag. The man said that it was a car antenna he picked up at the junk yard. The officer bent the antenna in half and handed it back to the fellow who looked a bit stratled but did not say anything to show anger or irritation at such an act. The officer told him to go away. As the man walked off, the officer made the comment that "he probably took it off some car".

This type of spot checking of individuals - mostly Coloured males - based on the most tenuous indicators of suspicion seems to be typical of departmental patrol practices. I am not only judging this from my brief experience with the patrol, but also from two other sources, one of which was a personal experience. This occurred while I was ob-

University of Cape Town

serving the work of the Cape Town senior prosecutor. A detective entered and said he wished to drop charges against a Coloured male suspect who was arrested for theft. The case against man was opened by the patrol who stopped the man because he was wearing a new leather jacket. The patrolman wanted to know where the suspect had obtained the jacket. The suspect refused to tell the officer anything. He was arrested and the case was handed over to the detective for further investigation. The detective also said the man refused to talk to him so he enquired at the man's residence as to where the suspect received the jacket. The detective discovered that the suspect's wife (or friend - I cannot recall the exact relationship) had the receipt from the store where her husband (friend) purchased and payed for the said jacket. Both the prosecutor and the detective chuckled over the fact that the man was stubborn enough not to provide an explanation to the police. The prosecutor said something to the effect that the suspect just wanted to make the police work for their pay. The case was dropped and the man set free. No question was made over the fact that a man wearing a new jacket was very scanty evidence on which to base suspicion of theft and hence make an arrest.

The second indication which suggests the patrol resort to this type of spot checking is based on a "Sunday Times" article of 15/2/76. The paper reported that a particular individual, Mr. Marais, who found his home burglarized of a fire-arm and some jewellery, went to report the incident to the Cape Town police station. To the victim's amazement, the detective on duty produced his stolen goods and others which he was unaware were taken. The detective explained that a patrolling policeman spotted a Coloured man strolling through central Cape Town wearing a new sports jacket and carrying a laundry bag. The man was picked up and taken to the police station. The victim thanked the police for their efficiency and the incident was reported to the press. This incident substantiates the incident which occurred in the prosecutor's office and further explains how the patrolman operates.

As in the United States, patrolmen investigate crimes from the front seat of a patrol wagon. They look for cues which arouse their suspi-

University of Cape Town

cion and they infer criminality from these cues. They rarely have a crime they are investigating, but instead they look for suspects who can be matched up with a crime that might have been committed. It so happens that in South Africa the police may hold a suspect for 48 hours. During this time they try to match him with committed crimes. If none are immediately available, the detective division will try to hunt for evidence of criminality. If they are wrong, the man is released. If they are right, the man goes to court. The manner in which the patrol obtained their evidence is incidental when they can prove criminality by producing the victim and the stolen goods. The police have really very little to lose by adopting such methods. More often than not, the suspect will be proved innocent or the detectives will not be able to gather enough evidence to prove (in a court) his guilt. However, when they are right they obtain a successful prosecution and redeem themselves in the public's eye for their efficiency. For obvious reasons, this method is only successful in capturing petty thieves but fulfils the purpose of being the patrol.

The evening patrol work is more geared for insuring street safety. In this respect then, the patrol is very suspicious of Coloured males who are not within a specific boundary or on the premises of the few places catering for them. A group of men will readily be stopped, questioned, and sent on their way out of town. Coloured men found around areas catering for Whites - such as hotels, restaurants, or theatres - will be ordered to leave immediately. The van will follow their movements to see that they actually go away and will make routine checks to ensure that they do not return. One evening our van was patrolling around a White theatre on Long Street when the following incident occurred:

> "The male officer drove up to a corner where I saw two White males (perhaps around twenty years of age) standing and talking. The officer yelled out the window "you, move along". The White fellows just looked up and continued their conversation. It was then when I noticed that the officer's attention was not on them but directed to a young Coloured male leaning against a telephone pole about three feet away from the White boys. The Coloured youth continued to rest against the pole when the patrolman drove directly up to him and told him to move - now. The boy asked why he must

University of Cape Town

> move and the officer told him because he was loitering. The young man said he was just waiting for someone and stared defiantly at the officer. The patrolman literally turned red with rage and grabbed for the door handle of the van. The boy, ascertaining the anger of the officer, started to slowly walk away. The patrolman just watched him and then followed him for a while to make certain he moved himself from the center entertainment section of the city.

This was the first incident I witnesses where a Coloured person questioned the reasons from the policeman as to why he must move. The officer regarded the question as an affront to his authority and he was most angered by the insolent manner of the youth.

I often asked the male patrolmen who I was with what they would do if, when they told someone to move on, the person refused or even argued back. It almost seemed as if they had never entertained such a thought. "Well they just would not", was one reply. I again pressed the issue and one officer responded: "I'd be out of this van so fast. I can't say what I'd do to him, but it wouldn't be pleasant". Another officer said: "We're not supposed to beat anyone up, but in a case like that, slapping a man would be okay".

The officer while on patrol is, as in the States, very conscious of his authority. He is entering situations on his own initiative and he believes it is essential to immediately establish that he is in command. This need to establish authority is even more apparent than in the States for the officer not only expects deferrence shown towards him because he is a law officer, but also because of status accorded the White population in the "apartheid" system. The police view the deferrence of the Coloured man not only as recognition of their rightful legal power, but also more importantly as recognition of the system where the White man rules. The police are extremely conscious of their authority when encountering Coloureds. Indications of arrogance is a double threat.

Because an encounter with a non-White could be more threatening, the officer initiates such an encounter with absolute control. Any defiance (no matter how slight) could lead the police to use "correc-

University of Cape Town

tive force". This punitive force does not necessarily have to be physical but more often extra-legal. For instance, when the young Coloured man violated the norms of recognizing the policeman as "boss", the officer fabricated a legal basis (loitering) on which to have him arrested. Had the young man not had the good sense to move when he did, the officer would have grabbed him and put him into the van. If the young man would have resisted, the officer would have used the force which is legally valid to effect an arrest. Whether a court of law would dismiss the case or not is incidental as the inconvenience of arrest and perhaps some physical discomfort would be punishment enough to show who is "boss" while the officer takes little or no risks for his actions. This is not to say that an officer cannot be sued for his actions. He can, and there have been successful suits filed and won against the police. However, for three reasons the chance of being sued for such a case as mentioned is negligible because:

(1) It would be difficult to prove a case of false arrest for something as ambiguously defined as loitering.

(2) To acquire a lawyer is quite an elaborate and expensive affair. The availability of civil rights and store front lawyers who take up such cases with no charge is just not a phenomenon in South Africa as it is in the States.

(3) While there are no legal deterrents from stopping a "non-White" in instigating charges against the police one could assume that the conditions are rather similar (or worse) to the pre-1960 era in the States where there was a strong feeling of futility in personal effectiveness among the black population. An attitude of "why bother" develops (Prestage, 1969).

University of Cape Town

Summary

While on preventative patrol, the elements of efficiency and danger are not as problematic for the policeman in Cape Town as they are for the American officer. Because the Cape Town patrol can divide the population in two, i.e., Coloureds and other "non-Whites" to be

suspicious of and Whites - mainly to be ignored, he can more easily direct his attentions to one group while the other portion of the population is usually reserved the indignities of being suspected by the authorities. This is not to say that a White man will not be arrested or detained for suspicion, he can and will be if there are stronger signs of criminality other than sex and colour that arouses the officer's attention.

Due to fewer legal regulations and to the political ostracism of the non-Whites, efficiency is not too problematic for the police. They stop, search, question, and detain with relative freedom. Hence, they have not developed the art of refined suspicion that is part of the American patrol's character. Also, because the South African policeman is not as legally restricted, he thinks and acts in terms of arrest for prosecution. Whether the case is dismissed or not really does not interest him. The policeman's actions that lead to arrest are rarely questioned. The court is mainly concerned about the suspect's rights after the arrest has occurred, i.e., was the suspect brought before a magistrate without unnecessary delay and was he subjected to police brutality, especially with the physical force associated with the "third degree".

Because the Cape Town patrolman is reasonably assured that those they stop to question will be subservient to them, the idea of facing danger is not a real threat. I have watched officers get out of the van to walk into a dark, deserted alley where there may be four of five Coloured men. After a few words from the officer, the men break up and disperse in various directions. I have asked the officers if they were not frightened that they may be attacked. Most shrugged off this idea, saying that there is always the possibility of this happening, but most unlikely because if they attacked a policeman "they would be in a lot of trouble". I thought perhaps that the stress on manliness would not permit the officer to admit fright. My opinion changed after observing them outnumbered in dark, vacant places, when not once did they even unstrap their holsters' covering.

University of Cape Town

This is the opposite picture of the gun wielding American cop. Though studies (Wilson, 1970; Reiss, 1971; Clark and Sykes, 1974) indicate that police do not like to draw their guns, they will do so if they suspect that others are armed. Since there is a strong value placed on toughness in lower class areas in the United States, weapons are easy to obtain and police believe that there is a good possibility that men in dark deserted areas will be armed, the officer approaches with his gun out.

On the whole, the presence of danger is more real for the police in the urban areas of the United States and this makes them more tense than their working mates in Cape Town. Hence, the Ameircan cop appears overly suspicious and in some instances more brutal than the Afrikaner policeman. The American policeman's technique of pushing a man up against a wall and patting him down is an ubiquitous urban example of this. During all the incidents in which I witnessed the Cape Town patrol stop and search, I never witnessed an officer pat down a man to search for weapons. The Cape Town police rarely have to be concerned with this aspect of potential danger.

However, if efficiency and danger are not as problematic for the Cape Town patrolman, the element of authority - especially in encounter with "non-Whites" is a sentive issue. Any slight variation in the expected norms in a Black-White relationship is liable to arouse the officer's anger. The way a non-White man even looks or carries himself is likely to arouse the officer's suspicion for no other reason than it displays "uppityness". One such incident went as follows:

> One evening we were handling a call from a White man who claimed he had been robbed by two Coloured children. The officer was standing on the street talking to him noting the particulars, after which we left. Once we got back to the van the officer asked me if I noticed that Coloured fellow who walked past us when we were talking to the complaintant. I did not. The officer told me that we would find him as he wanted a better look at him because the man was different. I asked what was different about him and the officer just replied that he was and I should have noticed him. We were driving slowly around the city streets when the officer noticed the man and drove up to him. From the window of the van the officer shouted "jy". The man

University of Cape Town

> (rather tall, dressed in denims, with an afro hair style) just looked about him as if he was not sure the officer was addressing him. This time, modifying his tone, the officer addressed the man in English and said: "Where are you from?". The man replied in a very profounded French accent that he does not speak English well. He was soon joined by another Black comrade. The officer just looked at both of them and said "okay" and drove off. "See, I told you he was different", the officer said, "I just wanted to make sure he was foreign".

Something about the man's demeanor indicated perhaps a certain amount of arrogance which annoyed the officer. However, as soon as it was confirmed that the man was foreign (a sailor from a French ship) his tension eased.

The steriotypical qualities of a patrolman are more developed in the American cop than in his South African counterpart. The art of ascertaining suspicion of guilt, the art of deception, of intrigue, the mixture of toughness and friendliness are more mature by-products of working in a stricter legal system and more importantly of working with a more varied and politically expressionable community.

Another difference, which distinguishes the American cop from the Cape Town officer, is that for the working elements that tend to isolate the American patrolman from the community there are the integrative elements that make him more responsive to the general community norms and wishes. As was mentioned previously, the local autonomy of the urban police force with a political appointee as Chief of police is one integrative element. The American patrolman is more involved in the community's infrastructures - schools, hospitals, detoxification centers, youth programmes, community programmes, PTA, business associations, church meetings, etc. He is expected to attend community meeting, sponsor youth programmes and work with other social agencies. Hence, a degree of familiarity emerges which places a burden on the officer in resolving legal conflicts with people's expectations.

For the Cape Town patrolman, work is more simplistic. His punitive attentions are directed mostly to the Coloured community while the White community's actions are largely ignored. Though his occupa-

University of Cape Town

tional authority isolates him from the "non-White" sector, he is further (and more importantly) isolated from them by the ideology of separate development.

But, as the officer is isolated from the Coloureds, so is he also estranged from the White sector. The property and lives of these people who it is his job to protect are largely an anonymous group. There still remains a historic and ideological barrier between the Afrikaner and English speaking peoples and the police force feels alienated from the largely English Cape Town population group. Except mainly as complaintants, the White sector has very little to do with the uniformed policeman. There are no integrative elements to sharpen the contact between the police and the White community. This lack of contact is not entirely the police department's fault, but can also be explained by the apathy and complacency of the White sector who make few demands on the police to be incorporated into the city's infrastructure. For whatever reason for this isolation, the consequences are that the officer can avoid entangling and conflicting relationships with a result of a more simplistic and rigid view of legal duties.

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CHAPTER V

THE OPERATIONAL IMAGE OF THE POLICE

METHODS AND PRACTICES OF THE DETECTIVE

Detective Work

The detective and the patrolman are uniquely designated as law enforcement personnel. Though the legal reasons for the existence of both are fundamentally the same, the operational milieu of each is different. Michael Baton (1964:7) observed this difference when he wrote:

> "A division is becoming apparent between specialist departments within police forces (detectives.... etc.) and the ordinary patrolman. The former are 'law officers' whose contact with the public tend to be of a punitive or inquisitory character, whereas the patrolmen.... are principally 'peace officers' ...".

Skolnick (1967:33) states:

> "I soon learned, however, that patrol work is minimally connected with legal processing. To be sure, some street behaviour is relevant to the policeman's role as legal actor. On the street, the policeman has the greatest potential for discretionary judgement not to invoke the criminal law, a decision of major legal consequences for those involved. Nevertheless, I thought that the typical activities of a patrolman were not those of a law officer but rather those of a peace officer".

What differentiates the patrolman from the detective is that the latter is clearly much more concerned with the written formal laws. The detective is concerned with developing cases for prosecution. Because of this he is more intimately involved with the other sectors of the judicial system - the prosecutors, defense attorneys, and judges; and because of this he is more intimately involved in the "underworld" - criminals and their milieu. The detective stands in "no man's land".

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If he is good, he develops the fine art of moving in and out of both worlds while maintaining a moral reference to the police system .

The determining characteristics, i.e., peace officer or law officer, structures the elements in a policeman's milieu stressing the importance of one (or the combinations) over the others. Hence for the patrolman who is basically a peace officer, the maintenance of authority is more problematic in his working environment; the presence or a fear of unpredictable danger is also a constant threat; well the element of efficiency (from the legal point of view) is the least problematic. However, for the detective, who is more of a law officer, the element of efficiency proves to be the most problematic in his working environment. He is judged by how many cases he solves or closes and consequently feels the impending force of the procedural section of the criminal law; for it is this that structures the boundaries in which he operates.

Danger is also part of the detective's working environment. But, as pointed out previously, it is not danger per se that makes the policeman tense, but the unpredictableness of it which causes him to be more suspicious. The detective, being more capable to plan his moves, has more knowledge of when a situation will be violent and plans for it accordingly. He, perhaps more so than the patrolman, enters into the really dangerous situations, but he is ready for it. The patrolman , especially in the States, has to be constantly wary.

The maintenance of authority is also problematic for the detective, but authority for him is not a public issue as it is for the patrolman. He does not have to make general commands to the citizens such as: "move on", "stop", "cut the noise", etc. The detective's authority is more private and situational oriented. When he believes he is on to something he has to let those involved know he is the "boss", and he usually does this by letting others know he has something to hold over them. Once this is recognized, authority is usually no longer an issue.

What is expected of policemen gives special meaning to the working elements in their milieu and gives rise to distinctive behavioural

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and attitudinal patterns that distinguish the patrolman from the detective.

Since efficiency is most problematic for the detective, his occupational ideology develops in close accord to how he views legal restrictions limiting his efficiency. An affirmation of the detective's image is substantiated by apprehending those who violate the law. Where courts place heavy restrictions limiting the detective's affectiveness, the detective perceives a threat to his "raison d' etre". The sense of threat increases according to the type of crimes the detective is specialized in investigating. For this reason I am limiting the scope of this Chapter to concentrate mostly on the activities of the vice detectives while giving some mention to the practices of the house-breaking division especially in their use of information.

Vice Detectives

The choosing of vice as a speciality to discuss detective behaviour and attitudes is so because vice detectives are much more entangled with restricting rules of search and interrogations, and those concerning the use of informers and traps.

The consensual character of vice crimes makes the difficulties of enforcement nearly impossible for the detective and leads to some undesirable and excessive methods in pursuit of evidence. Kadish (1971:62) reporting on vice detective methods states:

> "Legal restraints upon lawful search and seizure have largely grown out of litigation over the last five decades concerning a variety of forms of physical intrusion by police in the course of obtaining evidence of violations of these (vice) laws. The same is true with respect to the developing of laws of wire-tapping, bugging, and other forms of electronic interception. Indeed, no single phenomenon is more responsible for the whole pattern of judicial restraints upon methods of law enforcement than the unfortunate experience with enforcing these laws against vice".

Other studies (Packer, 1971; Chevin et al, 1971; Morris and Hawkins, 1971) also substantiate the fact that the greatest area of conflict in the spectra of law enforcement is that between vice detectives and the courts.

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One could probably ask two questions: Why would one want to become a vice detective and, would not detectives be anxious to have many vice laws eliminated - especially those that cause most conflicts with the courts and those which are not considered as wrong or harmful by a liberal society?

Speaking of the first question, perhaps ironically enough it is the image of the vice detective - especially the narcotics agent that is held in high esteem by members of the police force. The qualities that make for a good detective are outlined by O.W. Wilson (1959:111):

> "The good investigator usually has initiative, perserverance, and a tremendous physical and nervous vitality; he is alert, observant and inquisitive. He has an unusually retentive memory and the ability to detect fallacious reasoning. He has a practical knowledge of human beings that enables him to get along well with people. He is persuasive and convincing and is able to win the confidence and friendship of those with whom he deals. He has a wide range of acquaintances and sources of information".

These qualities of a good detective are most drawn out by investigation of crimes of vice. This is so because the officer is basically responsible for initiating his own cases. This initiative characteristic means that vice agents have to be ingenious in getting information. He must know how to use informers; he must know how to bargain; he must be skilled at interrogating; and he must be deceptive in promoting an aurora of legality. His job is more game-like and he is given more latitude and freedom in determining his own working hours, in appearance and dress and in movement. Skolnick (1967:120) states that the qualities which policemen have come to admire as real police work are to be found in the work of the vice squad - especially in the narcotics division.

The reason why the vice police do not want to have such laws limited must be considered in view of the first question. Since the vice cop meets the most requirements of a "good detective", to remove vice laws would be a threat to his working image; and, as Skolnick (1976:121) says: "... an outlet for aggressive intelligence would be closed

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if serious reforms were to be made in these laws". If anything, studies (Skolnick, 1967; Chevin et al, 1971; Argus 23/3/73) confirm the fact that police lobby for more stringent laws with harsher penalties - especially for laws concerning drugs. First more stringent penalties means a "better pinch" for the detective reinforcing his own conscience about the worth of his work and, secondly, keeping vice crimes on the statutes, even those which are petty with minor penalties gives the detective a coercive trading advantage for information - if you like, legal blackmail.

Let us view how the occupational personality of the vice detective develops in relation to the working element of efficiency. Since being efficient depends on "information" the gathering of this information will give a better picture of detective practices and attitudes.

United States Detective in Gathering Information - The Art of Being Efficient

Informers:

A good detective is judged by the extent of his informer system he has developed. This is so not only for the vice detectives, but to a lesser extent for other detectives, most notably house-breaking where investigative clues are so minimal that the detective has to rely on informers for a start in investigating.

Obviously detectives need information and to justify this J. Edgar Hoover (Skolnick, 1967:122) wrote:

> "There can be no doubt that the use of information in law enforcement is justified. The public interest and the personal safety of these helpful citizens demand the zealous protection of their confidence. Unlike the totalitarian practice, the informant in America serves of his own free will, fulfilling one of the citizenship obligations of our democratic form of government".

This blatant misrepresentation by Hoover of who and what the informer is, is not made out of naïveness but instead is a rationalization of

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a system that is essential, but at the same time can be conflicting with the rule of the law[4].

Though the average citizen at times does provide information to the detective, rarely does this information prove to be of value especially to the vice detective. Since those who have the most knowledge of criminal activities are usually involved in criminal activities themselves, one would be hard pressed to believe that these people would volunteer information "freely" as part of their civic duty. Instead informers have to be "persuaded". In order to persuade, the detective has to have something to offer. He must be in a good bargaining position and the object he is best able to bargain with is the law.

Informers are basically of two types: Those who want to avoid difficulties with the law and those who are already in difficulties with the law. In the first category are proprietors of places of entertainment - bars, hotels, night-clubs, etc., where a certain clientele frequent. These places have a tendency to be friendly with the cops. Since they need police approval for the continuation of their licenses, they are vulnerable. If the police feel that the proprietor is not dealing squarely with them there is always a way to cause trouble. Skolnick (1967:123) says:

> "If the police were to report that their places were hangouts for undesirable characters, they might be closed down.... Most proprietors prefer to keep their noses clean and run places as respectably as possible. In addition, it is not uncommon for bartenders to be fences for stolen merchandise and for the police to overlook this activity in exchange for information.... Consequently, hotel owners and bartenders are a regular source of information for the police".

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[4] The Rule of Law is very complicated; however, one requirement states that officials enforcing the law must do so within the law. The use of informers involves the police in operative conditions sometimes well outside legal boundaries, and hence police, expecially in democracies, are at times hesitant to admit openly how informers are used and for what.

The second type of individual who serves as an informer usually wants some sort of "break" in the criminal process. In this area the detective has vast bargaining powers for two reasons. Firstly, because there are so many criminal laws in the United States regulating "moral" behaviour and, secondly, because the detective has influential power in determining length of sentence, parole, and ultimately even the dropping of charges (legal or illegal) as well as the power to grant immunity for continued criminal activity.

Commenting on the United States legislation, Morris and Hawkins (1971: 303) say: "With the possible exception of sixteenth-century Geneva under John Calvin, America has the most moralistic criminal law that the world has yet witnessed". Though many of these laws are not enforced, they can be selectively drawn out when the detective believes the culprit can be useful and the abovementioned authors further point out that these laws "encourage corruption of both the police and others who discover such relationships by providing opportunities for blackmail and extortion".

Also, many of these laws, although petty, create a greater population group from whom the police can extract information. Again, speaking on this topic Morris and Hawkind (1971:306) say:

> "The prescription of a particular form of behaviour (e.g., homosexuality, prostitution, drug addiction) by the the criminal law drives those who engage or participate in it into association with those engaged in other criminal activities and leads to the growth of an extensive criminal subculture which is subversive of social order generally".

Once arrested, the offender (if the detective believes he is of value) usually comes to some type of agreement with the detective. To serve as an informer means in some instances that the case might be dropped completely or at the least, the officer will charge on a lesser offense and recommend a minimum sentence as well as parole.

Where does the detective get such bargaining powers? There are no legal provisions for a detective to bargain with the reductions or dismissal of charges. This is the discretionary and legal privilege of the prosecutor. However, the detective assumes such power because,

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firstly, he is the one to develop and pursue cases and, secondly, because of the special symbiotic working relationship with the prosecutor.

As an initiator of cases into the judicial system, the detective (any detective) has vast personal power in misusing his investigative talents. If a case is already opened against an individual with whom the detective wishes information, but at the same time the detective has reason to believe that the prosecutor will not drop charges, he can by underreporting the facts or he can report the facts in such a way that the court cannot charge for the original offense. Also, the detective can, without even opening a case, come to terms with an offender. Totally ignoring criminal activities for immediate information is probably the strongest way detectives can subvert the judicial system.

However, in most instances cases are opened against the offender. This is so because the officer has an added coercive element to weigh over the head of the offender (should he decide to cop-out), and because arrest figures are an important indication of success as a detective. Also because the prosecutor must rely on the detective for development of good cases, especially in vice where the detective is usually the complaintant as well as the investigator; the prosecutor allows the detective certain privileges and co-operates with him when the detective wants a reduction in charge or even when he wants to drop the charge.

The success of the prosecutor also rests on the ability of the detective to get information, but more so than the detective, the prosecutor is interested in successful conviction. Since the detective, when arresting a culprit, knows that if brought to court for the original charge, rarely will it hold in a court of law. So it is to the interest of both the prosecutor (for successful prosecution) and the detective (for information) to have the charges reduced. Joseph Goldstein (1960:564) reports that in a particular municipality studied, the head of the narcotic squad reported that in his opinion about 80 per cent of arrests would not hold up in a court because either the search was illegal or the evidence obtained

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was inadequate. Hence, what is then required, is a guilty plea for a lesser offense. When a person plea bargains he waives his constitutional rights to counsel and trial by jury. The State need not prove that the defendent's rights were protected and the police acted with the limits of the Supreme Court rulings concerning search and interrogation. Motley (1973:263) sums it up as follows: "In the case of a guilty plea, the judge usually hears only a brief summary of the prosecutor's version of the facts, and then sentences".

Why then would a person, especially in vice crimes where most arrests are made illegally, come to terms with a detective by offering information for a reduced charge? Newman's article (1969) offers some reasons. First, the suspect may not know that his constitutional rights have been violated and that the original charge would not hold in a court of law. Secondly, a person may know he is guilty and believe that the police have a tight case on him in which case it would then be better to co-operate with the police. Thirdly, and more often, suspects picked up for vice crimes usually have, as it is termed "an occupational relationship" with the police. The offender knows his case would never stand up in court, but the detective, if angered, could be a source of continual harrassment to him; or the detective will be out to get him next time "properly" in which case he knows that they will "throw the book" at him. So, in most instances, suspects will provide information to the officer for a reduced charge.

All round, the bargaining system proves useful. The detectives use it for information; the prosecutor for an easy assured conviction while having to spend little time or effort in preparing a trial; and, the defendant uses it to his best advantage to do as "little time" as possible and remain on the good side of the detective. Blumberg (1969:222) reports that over 90 per cent of all criminal convictions are not the product of a combative trial by jury process at all, but instead merely involve a sentencing of the individual after a process of bargaining for a guilty plea has been entered.

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Once a "deal" is made with an informer, the detective must do two things: he must protect the individual from discovery, and he must (or try to) maintain his hold over the informer.

In the first instance, the detective does not protect the informer's identity so much for altruistic motives, but instead for personal reasons. A good detective's life blood rests in a well developed informer network. If word got around that the detective (through stupidity or self-gain) revealed such identity, he would lose total credibility with the underworld. One slip could, as one might say, put the detective on "the shit list". How the informer is protected is of no concern to him. As Skolnick (1967:132) says:

> "The informer would have no objection if the policeman were to take a bribe, perjure himself in the court room, or be less than forthright about his sources of information. The trustworthiness of the policeman refers solely to the concealment of the informer's identity. Even if it sometimes means losing a 'good pinch' every effort must be made not to 'burn' the informer".

For the detective, the personal duty of protecting the informer and the occupational duty of prosecuting those who were caught because of his information, can present a problem of conflicting concerns. This is so when the court requires that the identity of the informer be revealed. Though there are local interpretations on when or when not the identity of an informer must be revealed in a court of law, basically there are four main criteria when police must disclose the name of the informer:

(1) Where the informer was a participant in the charged crime.

(2) Where he was an eyewitness.

(3) Where the informer's information was the only justification for police action.

(4) Where an informer is a material witness and non-disclosure would deprive the defendant of a fair trial (Skolnick, (1967:134).

One of the surest ways in which the detective can act on an informer's information and still safeguard his identity is to obtain a warrant for arrest from the magistrate. This warrant means that the investiga-

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tive proceedings have been examined by a higher judicial authority, and thereby relieves the officer of proving in court that he had probable cause to affect the arrest.

However there are two reasons why detectives do not obtain warrants from magistrates:

(1) When the detective wishes to act immediately upon an informers information, to obtain a warrant would be impractical.

(2) In many cases the detective knows that the magistrate would not issue a warrant.

There is another way the detective can still protect the identity of the informer and meet court requirements. Courts have maintained that where information is just the starting point and the case is built up by independent investigation by the officers, the identity of the informer need not be made known. This rule has given the detective an out; for even when they react solely on an informer's word without obtaining a search warrant, they can fabricate a story for court purposes whereby it appears that investigations were conducted independent of said information (Milner, 1974:27). Skolnick (1967:133) substantiates this: "... the police do not report as the significant events leading to arrest what an unbiased observer viewing the situation would report. Instead they compose a description that satisfies legal requirements without interfering with their organizational requirements..... More important, they will not reveal that an informant was used at all".

This appearance of compliance is not seen by the detectives as something "wrong", but instead is a game of wits where it is a good detective who can out-smart the criminal and the courts (see Molner, 1974; and LaFave, 1965). However, if the detective is in the position where the court still demands access to the informer's identity. Skolnick (1967:136) says: "The police will make a strong argument to the prosecutor to drop the case or to 'deal' it out for much less than it is worth".

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The detective's main obligation is to protect the informer, but this refers to protection of identity only. Protection from arrest is a matter of police discretion and is sometimes totally out of the detective's hands. As was mentioned previously, the detective will allow the informer to engage in illegal activities (or will even supply the informer with items to engage in such activities). Usually, detectives allow this as long as the offenses remain petty. However, informers are usually warned that their status does not give them protection to get involved in the more lucrative areas of crime (Goldstein, 1960:566). If they do, the detective will arrest him (if discovered). Also, the detective lets his informers understand that if he commits an offense outside of the detective's area of speciality, he is on his own if caught. Hence a vice detective cannot protect his informer (unless it is an extremely big case) if he gets arrested for burglary or fraud or whatever.

Also, detectives will personally arrest the informers if they feel that their informers are not co-operating or are losing interest. This way they will understand who is in control. Detectives believe that serving a bit of time does the informer good and gives the detective future bargaining power. Though no studies (to my apparent knowledge) have been conducted on this topic, one would assume that the detective plays a large part in continuing the criminal status-quo of his informers. Probably one caught in this system it would be most difficult for the informer to make a clean break.

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Searches:

Information from informers is a start for a successful prosecution. But in many instances this alone does not provide enough evidence on which to lay a charge. The detective needs to produce the evidence - the dope, the blue film, the gambling paraphernalia. One of the best methods in which to get more precise evidence on a suspect is through searching. There are for obvious purposes two types of searches - legal and illegal. The American Supreme Court restricts heavily on what is considered a legal search. Though the rules limiting legal searches may not be any more stringent than for

some other European countries, the American Court placed another variable in the path of the police known as the Exclusionary Rule. This rule was mentioned in the previous Chapter concerning patrol work where it was explained that any evidence obtained illegally must be excluded from the trial. This suppression of evidence rule means that for successful prosecution, the search must be legal.

The two safest ways to conduct a legal search is: (1) have a search warrant; or (2) conduct a search after a legal arrest (see Griswold, 1975). Studies (Milner, 1974; Skolnick, 1967; Goldstein, 1960) have shown that these two methods are rarely used by the detectives. Most situations where a detective wishes to conduct a search would neither meet the requirements for a search warrant nor for a legal arrest. However, to overcome such obstacles, the detective reconstructs the circumstances of arrest in such a way that it fulfils the criteria of legal search.

One such way is to conduct an exploratory search to see if the suspect has anything illegal in his room, house, car, etc. If he does, the police then have to figure a way in which they can arrest him legally and then conduct a legal search. Skolnick (1967:144) states:

> "The practice of making an unlawful exploratory search of the room of a suspected criminal is, so far as I could tell on several occasions accepted by both the Westville police and the state police".

Skolnick also publishes a comment by one detective:

> "Of course, it's not exactly legal to take a peek beforehand. It's not one of the things you usually talk about as a police technique. But if you find something, you back off and figure out how you can do it legal. And if you don't find anything you don't have to waste a lot of time".

Another way for the detective to give the appearance of legality to an illegal search is to claim that the suspect gave his consent. For a consensual search, freely given, a warrant is not necessary (Gardner and Manian, 1974:281-284). But to suppose that a suspect would "freely" give his consent to an officer to search his quarters when

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he knows something will be found is an insult to common intelligence. However, the police do get away with this method. Milner (1974:371) says:

> "Yet suspects frequently waive their rights because they feel they have no choice or because they do not understand the implications of doing so. In situations involving search, the police take advantage of this dependence by confidently taking initiative and giving the citizen the impression he can do nothing about it".

Skolnick (1967:146-147) relates an example of this when he was observing narcotics detectives make an arrest. They had received a "tip" that there were stolen drugs in a particular hotel room. The police knew the suspect and decided that they must act fast rather than try to obtain a search warrant. They busted into the room and encountered the suspect who was told by the detective that he must allow them to check him. They grabbed his arm and proceeded to examine him for needle marks. Though the search was illegal, the detective told Skolnick that he could reasonably claim the suspect had "volunteered" to show his arms and that no physical coercion was used.

Detectives do not expect trouble from certain suspects especially in vice crimes to contradict their interpretation of investigational events.

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Interrogations:

The attaining of further information through the art of interrogation is considered an essential element of detective work. Studies (Milner, 1974; Witt, 1973) confirm that detectives perceive this device as paramount for establishing successful cases as well as obtaining information for new cases. However, as with the use of information from informers and the rights of search, the American Supreme Court has recently placed restrictions on how and when detectives can interrogate suspects. And just as so, it will be shown how detectives overcome these obstacles to pursue the objective of efficiency.

Interrogation rights were established by the Supreme Court with the Miranda ruling and research (see Witt, 1973) has shown that detectives view this ruling as a real threat to their occupational reason of being. Before the Miranda rule was established by the Supreme Court, a suspect could be questioned over his objections. No warnings were required and a statement or confession obtained under these circumstances was admissable if the totality of circumstances indicated that confession or statement had been made voluntarily. The Court in Miranda vs Arizona, 384 U.S. 436 (1966) took the position that custodial interrogations are inherently coercive and it is now mandatory for all police officers who wish to question a suspect without his lawyer being present and after the person has been deprived of his freedom of action in any significant way to first warn him. The Miranda rules are as follows (Gardner and Manian, 1974:125-126):

(1) You have the right to remain silent.

(2) If you give up this right to remain silent, anything you say will be used against you in a court of law.

(3) You have the right to speak with an attorney and to have the attorney present during questioning.

(4) If you so desire and cannot afford one, an attorney will be appointed for you without charge before questioning.

After this the following questions shall be asked:

(1) Do you understand these rights I have explained to you?

(2) Do you wish to give up the right to remain silent?

(3) Do you wish to give up the right to speak to an attorney and have him present during questioning?

The restriction that the detectives feel is the most severe, is that which gives the suspect the right to have counsel present. This diminishes the psychological, coercive element that the police feel is so necessary for a successful interrogation. However, as with the other restrictions the detectives have found means (some illegal and some legal) in which to mitigate the Miranda ruling.

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One such means was offered by the FBI who published an article for the police suggesting how to use the Miranda ruling for interrogation purposes. Since the ruling pertains to giving a suspect "in custody" his rights, the FBI's response was to suggest to conduct a "non-custodial" interrogation. In this way, the detective must be more wily and more deceptive in performing his duties in a non-official capacity. Perhaps the psychological affects are even greater for the suspect is not on guard, and still the situation fosters dependence on the officer who has isolated the alleged offender from his peers and friends. As quoted from Milner (1974:39) the FBI pamphlet states:

> "Particular caution is necessary if the interrogation of a criminal suspect in a law enforcement office is to be kept 'noncustodial' so that Miranda warnings and waiver procedure 'need not be followed'. The invitation to the office should be handled in such a way that it clearly is an invitation not a command, order, or arrest. A true invitation can be extended by mail, telephone, or a friend. The officer can personally contact the suspect and accompany him to the office if he is willing to go... Once the invited suspect reaches the law enforcement office, the conditions of the interrogations should be kept as noncustodial as possible. Allow him all available courtesies, such as permission to use the telephone....".

Another perhaps more underhanded, yet legal means to gain interrogative information is for a detective to pose as a layman. In such a case, Hoffa vs United States, the court ruled the evidence admissable when Jimmy Hoffa volunteered some information to a then unknown detective. Hoffa claimed the evidence could not be used in court because he was not given his Miranda rights. However, the court claimed: "If a suspect does not know he is speaking to a policeman, he can hardly be said to have a reasonable belief that he is in custody" (Gardner and Manian, 1974:130).

But most detectives rely on suspects to waive their rights for presence of counsel. Again this seems ludicrous that offenders would do so, but the same factors that explain why suspects waive their rights for trial and plea bargain, and why they consent to search also explains why so few suspects do not request counsel. Most suspects feel in the position that they must accept police definitions

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of legality and that causing trouble would only do them more harm. Both Blumberg (1969) and Milner (1974) raise this point in their studies.

Then of course the detective, as with the other information gathering methods, can always resort to illegal means when he believes that restrictions are too hard and the suspect would not co-operate. Milner (1974:36) says:

> "Similarly, police officers reconstruct formal records of interrogation so that questionable techniques used to obtain waiver of Miranda rights do not appear in the formal record. The formal record will only contain the interrogator's warning and a waiver by a defendant who in fact had earlier waived his rights and had been interrogated during previous unrecorded interrogations".

When police do resort to trickery or even coercive methods to obtain information, especially with regard to interrogation one would presume that this would finally reach the ear of a defense attorney who usually comes in contact with the suspect. And in reality it does come to his attention. However, even when attorneys do discover that police resorted to illegal means, rarely do they complain. Milner (1974:41) quotes one attorney as saying:

> "Sure I could start to negotiate by saying, 'Ha, ha! You goofed. You should have given the defendant a warnning'. And I'd do fine in that case, but my other clients would pay for this isolated success. The next time the district attorney had his foot on my throat, he'd push too".

Blumberg's article (1969:224) stresses this same fact that in a system which provides counsel for every criminal case, the attorneys will rarely cause friction. He says:

> "Previous research has indicated the 'lawyer regulars' make no effort to conceal their dependence upon the police, bondsmen, jail personnel. Nor do they conceal the necessity for maintaining intimate relations with all levels of personnel in the court setting as a means of obtaining, maintaining, and building their practice...

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> The client, then, is a secondary figure in the court system as in certain other bureaucratic settings... The accused's lawyer has far greater professional, economic, intellectual and other ties to the various elements of the court system than he does to his own client".

In "big cases" the detective has to be more careful. The attorney will not be a regular and will resort to the adversary, combative methods that form the ideological, traditional concept of American criminal cases. But the ordinary cases leave the detective relatively free to ignore judicial restrictions with the working approval of prosecutor, defense attorney, and most likely even the judges who know it is happening but until it is called to their attention - let the matter slide.

Traps:

The setting of traps is probably the most notorious and known way in which the police become officially involved in crime to get their information. They serve as agents provocateurs and become entangled in the most petty to the most breathtaking schemes to catch criminals in action. Yet, it is with this method of information gathering that police conduct is so ambiguously defined and legally unrestricted. Since the Supreme Court has refused to formulate a constitutional doctrine of entrapment, the State and local courts may develop their own approach (Annual Survey of American Law, 1973/1974:376).

Basically court limitations on police trapping conduct revolve around two issues: (1) the motive and conduct of the agent and (2) the predisposition of the suspect. Concerning the first issue, where the acting agent has a suspect background, courts view the motive of the agent as pandeering to financial gain or perhaps as seeking a personal revenge upon a known acquaintance. Since testimony is believed to be based on questionable motives, judges are quick to drop the case. The character of the agent is important, so most successful traps employ a police officer.

Not only is the motive of the agent important, but also his conduct during the trapping procedure is also questioned. The courts claim

University of Cape Town

that where the agent goes "well beyond the necessary" to detect illicit happenings, the case will be dropped (Annual Survey of American Law 1973/74:371). What well beyond necessary means, the courts claim, is to be established by the general overview of the totality of circumstances. Courts also hold that when the agent engages in criminal activities himself, this might also warrant a dismissal of prosecution. But in almost all entrapment cases the agent is involved in a criminal act - if only that of aiding and abetting the crime. Yet, the courts claim that it is the extent to which the agent becomes involved that is the determining factor. In one Supreme Court ruling, United States vs Russell, the court upheld the lower court's conviction even though Russell claimed that the undercover agent supplied him with an ingredient otherwise unobtainable but essential to the manufacture of the drug for which he was charged. The court's view was that the chemical provided to the defendant was harmless by itself and perfectly legal. Furthermore, the criminal activity was already in process before the agent became involved and his participation was minimal (Annual Survey of American Law, 1973/74:371-372).

The second point of the court's concern is that those subjected to police traps must have the predisposition of criminal intent. This means that the police must prove that their trap will not encourage or create a substantial risk that the illegal conduct they are hoping to catch will not be committed by persons other than those who are "ready" to commit it. Again, it is the court's discretion to decide if the trap meets with this requirement.

With very few precise rules, the detective has almost a free reign in developing and carrying out traps. Though very little has been written about this topic, it seems from fleeting remarks (Morris and Hawkins, 1971; and Packer, 1971) that most traps are petty in nature. Petty because traps are designed to catch those whose acts are legally defined as serious, but whose criminal actions are not a serious threat to the lives and property of the population. Hence where, in some States, a homosexual act or prostitution is defined as a felony, or as Morris and Hawkins (1971:304) point out that where in some States

University of Cape Town

homosexuality can be punished by life in prison, then detectives feel it is worth their time to capture such "criminals". First, there is little risk; second, it is a bit of fun devising methods and, third, their record of arrest rates in capturing felons is increased. So police officers walk the streets trying to attract a prostitute, they sit in public toilets, and they go to homosexual bars, parties, etc. And, as they devise ever-increasing disguises, they develop a set of norms and lingo to "fit in" with the group whose actions they are trying to expose. Packer (1971:88) claims that these are notorious detective practices and condemns them by saying: "These are well-known evils, plainly degrading to the administration of criminal justice, at best undignified, at worst morally repulsive". And Morris and Hawkins (1971:305) say:

> "It seems to us that the employment of tight-panted police officers to invite homosexual advances or to spy upon public toilets in the hope of detecting deviant behaviour, at a time when police solutions of serious crimes are steadily declining and, to cite one example, less than one-third of robbery crimes are cleared by arrest, is a perversion of public policy both maleficient in itself and calculated to inspire contempt and ridicule".

University of Cape Town

And as long as the detective can prove in court that they were not involved to any great extent in criminal activities, or at least to present the circumstances of the case to show they were not involved to any great degree; and, if they can prove that the suspect had a predisposition to commit the criminal act (usually just by proving that he committed it - is enough to show that he had a criminal predisposition), then the courts must uphold the arrest and convict if all evidence proves criminality. However, when the courts do convict for vice crimes (except for crimes concerning the use of hard drugs) they generally sentence as lightly as possible. Judges tend to be more liberal in outlook and take a sympathetic view towards vice suspects; and, where they view the penalties too high for such crimes, they bend over backwards in making the prosecutor prove his case. This does not anger the detective, who paradoxically also does not believe that homosexuality, prostitution, pornography, etc., are morally wrong. In fact, Skolnick (1967) emphasized that in many situations the officer commiserates with the offender, and sometimes he does not

prosecute. But there are other objectives that may mitigate against personal feelings. Occupationally the detective is judged by his arrest record. Furthermore, there may be political and community pressures to arrest such deviants. And what also must be considered is the amount of work the detective has to do to make such arrests. Where he has to put in much effort to catch the suspect, where he has to devise wily methods to overcome court regulations - especially those pertaining to search and interrogation, and where such acts are legislated as felonies, a detective is reluctant to let "the case go".

Cape Town Detective in Gathering Information - The Art of Being Efficient

As in the United States, the qualities of a good detective are exemplified by the vice detective - especially the narcotic agent. And also as in the States, but even more so, South Africa has a very moralistic legal code. In fact some of the vice laws are the most stringent in the world. South Africa's Publication and Entertainment Act (Publication Act, 1974:7) which provides for a committee to screen all publications, objects, and films intended for the public, makes it known that the purpose of such a committee is to "uphold a Christian way of life". Hence this committee has banned Playboy Magazine and posters showing a girl's naked breasts. Also love scenes in movies (no matter how artistically portrayed) are cut. Some of the least offensive material (by international standards) is viewed as pornography. Moreover, South Africa is notoriously known for Section 16 of the Immorality Act which prohibits sex across the colour line. In no other country in the world (that I am aware of) is a private sexual act between two consenting adults of different races a crime. South Africa has furthermore taken an extremely harsh stance on drug use especially against the use of cannabis satina (dagga). Whereas other Western Countries, basing their policies on scientific research, have adopted a more tolerant stance on dagga smoking viewing it as a misdemeanor and something separate from dependent producing drugs, South Africa's move has been in the other direction by increasing penalties against the use of the plant.

University of Cape Town

Then of course there is the usual list of laws making such acts as prostitution, Sunday misobservance, homosexuality, gambling, abortion, etc., criminal. When Norval Morris claimed that America had the most moralistic criminal code in the world, he must have been totally unaware of the existence of South Africa. Professor Van der Vyver, a South African legal philosopher (Argus, 2/4/75) is quoted as saying: "... in the inter-relationship between the law and religion and morality, for example, our legal system leaves much to be desired". And at a Nicro conference Justice Steyn (Sunday Times, 6/4/75) said the Drugs Act was: "... draconian legislations that has drastically increased our prison population most significantly with dagga smokers.

As in the States, the investigation of vice crimes involves the detectives in some petty to astonishing tactics to catch criminals. His need of information leads him to employ the same methods and techniques that the American detective uses. The significant difference is that what the American detective often does illegally or restructures to fit legal restrictions, the South African officer often does with impunity. "Look", one Cape Town detective told me, "we basically can do as we please". This is not precisely quite the case, but the legislature has given the police wide powers of search and interrogation lessening many of the fundamental conflicts that exists between the Ameircan detective and the courts. However, where legislation has broadened police power, the courts have reacted by doing their utmost to place the burden of proof beyond a doubt on the State. Thus, though the South African courts do not have the power to restrict police investigative methods, one might conclude that they are more critical of incriminating evidence. Though this is partly speculative, and from Chevin et al's article (1971:82) they conclude that where courts, through legislative ruling, lack fundamental controls over the police they resort to the traditional court method of control. In other words, the more dictatorial the police powers, the more the judge insists (where possible) that the State be "exact" in its prosecution, and the more difficult it becomes to obtain a conviction. This seems to be the case in South Africa especially for dagga offenses. One narcotics officer put it this way: "When I'm 100 per cent sure of my case, I know I stand a 50-50 chance of it

University of Cape Town

being dropped in court. I have to be 200 per cent sure". Speaking to a former Cape Town magistrate on this topic, he informed me that sending someone to jail for five years (this is legislatively mandatory) for dealing in dagga was morally reprehensible to him and to many other judges he knew, and he consequently demanded that evidence be foolproof (Conversation, September 29,1975). And where judges find the criminal vice laws too harsh, and they have discretionary power in sentencing, they will give the most lenient sentence possible. This is most often the case for convictions under the Immorality Act. One judge interviewed by a Cape Time's reporter (February 17, 1974) identified himself as a "conservative Nationalist" and said that not once in his 21 years on the bench had he ever sentenced a man or a woman convicted under the Immorality Act to jail. They all received suspended sentences. This is the usual procedure for all South African judges.

We will now observe the Cape Town vice detective and to a lesser extent the housebreaking detective (especially in the use of informers) in their operational milieu. Their working environment consist of a vast moral legislative code, wide investigative powers, and a court critical of incriminating evidence. The issue of how the detective obtained the evidence (which is important in the States) is rarely a matter of judicial concern.

University of Cape Town

Informers:

As in the States, a good detective in Cape Town is judged by his network of informers. All detectives I travelled with expressed the opinion that to be a good detective one must have informers. But the use of informers is probably most necessary for vice and housebreaking detectives. Obviously the consensual nature of vice crimes demands the use of informers, and house-breaking where evidence is so scarce (in fact almost impossible to gather) the detective requires a starting point.

I was a bit hesitant to speak to the detectives concerning the use of informers, because studies have shown that in the States, detectives are reluctant to admit to their use. However, I found the Cape Town

detective not only willing to admit to their importance and their ubiquitousness, but to speak most openly of the qualities of a good informer. It appears that universally for criminal police, informers are two types: proprietors of places of entertainment and criminals. However, the Cape Town detectives also made mention of another informer used to a lesser extent by the house-breaking division. This is the person who informs for monetary reasons.

One such incident that describes how this type of informer is used is as follows:

> I was out with a finger printing expert of the Cape Town police. He was taking the prints from a cupboard in a Coloured grade school which had been burglarized the previous day. There were no clues, and all the principal knew was that someone broke into his office, ripped open the cupboard and took some school supplies. The takings were really most meagre - pencils, pens, note-books, etc. As the detective was going through the process of collecting the prints, there was a telephone call for him. The House-breaking branch reported to him that they captured the man and would return the supplies back to the school. The detective continued with the tests for prints so that they could be matched with the alleged thief. When we left, I asked the detective how they found the thief. He told me an informer reported him - in this case it was a relative of the culprit. She telephoned the police and told them where the man put the stolen merchandise. I asked the detective if the informer did this out of civic duty or did she regularly work for the police. It was neither. They did not know her, but she knew that if she gave information to the police, she would be paid. Also neither the suspect nor the courts would ever have to know. I asked what guarantee she had of obtaining the money after she gave the information. The detective told me that she would be payed. She could either come down to the station or perhaps the detective had made some arrangements where to meet her. I was informed that she would get her money because they would not want it to get around that they cheated in their bargainings. The detective told me that some of these people (Coloureds) see friends or relatives hiding stolen goods and in many cases some want to get back at a friend or relative plus they need the money - so they call. I was told that if they provide enough evidence, the detectives pay them.

I was never quite certain how much the detectives payed out, but I was told the amount varied with the importance of the information. I was also told information from this source tended to be petty.

A better source of information comes from proprietors of places of entertainment - bars, hotels, etc. When I was out with the house-breaking division, I met such an informer who was an owner of a "men's club". The incident went as follows:

> It was around midday and the two officers I was accompanying thought it would do them some good to have a game of snooker. They asked me if I played, but I told them I did not. We came to a run-down section in the northern part or town where I was told we were going to stop for a while. I followed the officers to a rather poorly kept building, the top floor of which was occupied by Coloured men sitting around talking, playing snooker, cards, etc. The detectives engaged themselves in a game of snooker while I sat there, feeling rather out of place. The proprietor (a Coloured man) came and sat down beside me and asked if I was a girl-friend of one of the detectives. I informed him that I was a student accompanying them. He began to talk to me (obviously still thinking somehow I was connected with the police) about how it was essential for "us" to work together. He said he knew it was hard for those guys (pointing to the officers) to get information. He told me that their work was hard and he wanted to keep a clean place. So he helps them out when he can. "That's only right. They (the detectives) come around here - you know and people see them and that keeps the rawdy elements away from here. So, it's good they come. I get to hear a lot that happens and they help me and I help them".

Though this proprietor only spoke of altruistic and civic-minded reasons for providing information to the police, this is far from the total picture. A proprietor who is able to provide "good" information to the police (and I was told that he is a reliable source) is going to cater to a clientele who, so to speak, "get around". This then means that the men who frequent such a place will most likely gamble, drink, and perhaps "smoke a little". It is necessary for the police to have a hold over an informer so he does not lose interest. In this case turning a blind eye to other illegal happenings provides an incentive for the proprietor to help the police. It may even be that the officers have never formally caught any of the clientele in such activities, but the proprietor knows that if he angers the police a trap could be set or they could just wait until they do find something illegal occurring. An owner or manager of such an enterprise learns to come to terms with the police, and finds it more profitable to do so.

University of Cape Town

However, I learned from the detectives that as in the States, the best type of informer is the criminal. Once vice detective told me "you've always got a hold over him - you got him right where you want him". The reasons for this are the same as in the States: power in influencing and recommending bail, parole, and length of sentence. And perhaps even more so, South African judges would be willing to accommodate detective recommendations especially when they believe that the criminal code is too harsh. And ultimately, the detective can always come to some unofficial agreement with the informer even to the extent of agreeing to totally ignore his criminal activities.

One of the best sources of information comes from the person who operates a shebeen (a place where liquor is illegally sold). An individual who engages in this activity is involved in a criminal activity requiring a sizeable clientele who will frequent his establishment. This type of clientele are usually aware of surreptitious happenings in the community. The operator is a knowlegable person, and he is always willing to come to terms with detectives. Detectives who rely upon information from shebeens are obviously ignoring criminal activities; however, they claim that shebeens are essential for them to discover "other criminal" activities. I was quite surprised that they were that open with me. In fact, one evening, about 23h30, when I was with the house-breaking division, we stopped at a residence in the downtown Coloured section. The detective asked me if I knew what the place was. I had a vague idea, but I did not want to make any insinuations, so I told the officer that I was not sure. The officer replied that I was stupid and that this was a shebeen. He told me that he was known here, but tonight he only wanted a torch from them as he might need one for the night's activities. He got out of the car and walked over to the residence and knocked on the door. Someone inside asked who was there. The officer replied "jou baas". I heard some scuffling inside and about fifteen seconds later the door opened and a man thrust a brown paper bag at the officer. Before the man could close the door again, the officer told him he also wanted a torch. Another fifteen second lapse occurred whereupon a torch was produced and handed over to the detective.

University of Cape Town

Once back in the car, the detective asked me if I knew what was in the bag. I told him that I guess it was liquor. He replied that I was finally getting smarter. It appears that a proprietor of a shebeen is in such a vulnerable position that the costs of running such an establishment means that he is obliged to supply more than just information.

However, when using those engaged in criminal activities outside the detective's own speciality, some conflict might occur. Divisions that use shebeens and condone their activities will be gaining information at the expense of the vice and liquor staff whose duty is to bust shebeens. Hence an unwritten police rule for acquiring information is: a detective can benefit from the criminal activities of another division's concern as long as it is necessary to secure evidence for crimes he is investigating. Extra personal favours are frowned upon but tolerated to a certain extent. However a detective (unless it is for a very important case) cannot or should not try to protect an informer from arrest. When this rule is broken it causes for inter-division hostility which can obviously be counter productive. In two circumstances, officers made it known to me when this rule was violated. In one incident, a vice detective told me that he received leads on a couple of shebeens and when they were going to make a bust, someone tipped them off. That someone, I was informed was a detective from another division who was using these shebeens for information and wanted to protect the proprietors. The detective told me he would not name the man, but if it happened again, he would make this other detective's work harder for him. This was a clear violation of operating norms. The second incident was more of a violation of interdepartmental courtesy which the detective felt was compromising to her position. In this incident, a narcotics officer arrested a woman on the charges of dealing, and another detective from the vice squad asked her to reduce the charge because the suspect (a prostitute) was an informer of his. The narcotics officer told the other detective that she had no intention of ruining her case, which in terms of penalty (five years) was a "big one". The narcotics officer felt that this was an unreasonable request and one which a good detective would not ask of a working mate.

University of Cape Town

The basic attitude among the detectives on this issue is recognition of the fact that an officer cannot protect his informer outside of the crimes he himself ignores or permits the informer to engage in. One detective told me: "If a guy is stupid enough to get caught, that is his problem, anyway doing a little time never hurts an informer. In fact it does them some good. "Every once in a while, I will bust one of my own guys if I thing he needs it, just to show him who is boss".

The main duty of the detective to his informer is, as in the States, to protect his identity from the courts and others who could do him harm. Here all the officers agreed that this was their main duty - one they cannot be lax about. But in South Africa the task is made easier for the detective. I asked the detectives how they protect the informer's identity when presenting their case to the court. I was told that under no circumstances do they have to reveal (unless they choose to) who provided them with the incriminating evidence against the accused. "Look", one officer said, "we don't take cases to court until we have enough evidence - once we get such evidence it is none of the court's concern of our sources. That is what we call privileged information". I enquired of a prosecutor (J.G.L. Nil, Assistant Public Prosecutor, Johannesburg, June 1976) from the Supreme Court whether the judge can demand the detective to reveal his source of information. He replied: "As long as I have been prosecuting in the Supreme Court and, in fact, as long as I have been prosecuting (eight years), I have never once witnessed a case where a policeman had to reveal his source. If the defense inquired as to who led him to this information, the detective most often would claim that it was privileged information and I have never seen a judge press the issue. Although once, a detective revealed his source, but he did so freely without demand from the judge". Section 233 (300) of the Criminal Procedure Act, 56 of 1955, offers the informer protection from disclosure (Landsdown and Van der Riet, 1956:189).

This means that the detective is not, as in the States, caught in a quandry of how to preserve the identity of his informer and still present his case for successful prosecution. Nor does the South

University of Cape Town

African detective develop "extra legal" methods to present his case in such a manner as to "get around" court restrictions concerning the presentation of evidence. Mr. Voster (Torture in South Africa, 1972: 14) in 1957 is quoted as saying "protection of the police informer ran like a golden thread through South African law".

Searches:

The South African Criminal and Procedure Act of 1955, Section 43(1) states that a policeman may search any person, premise, vehicle, or receptacle and any person found in or upon such premises without a search warrant if he has reasonable grounds that the delay in obtaining a search warrant would defeat the object of the search. Also, as far as possible, such a search should be made during the day in front of two witnesses. To prove reasonable grounds in South African courts it is enough to produce the evidence obtained during the search. Hence if a detective believes that there is narcotics, pornography, stolen goods, etc., in a person's home, room, or whatever, by searching and producing some evidence of illegal activity is enough proof of "reasonable grounds". On the other hand, in the States, producing evidence of the occurrence of illegal activity is not sufficient grounds to prove that the search was reasonable. This makes the South African detective's job much easier. I was told that a detective in South Africa basically needs a search warrant for two reasons: (1) If he is not quite sure that the search will produce the desired goods or (2) if he wants to protect himself when the case involves an important or powerful suspect. "Other than that", a detective said, "I am free to search where I want. I don't go busting down anyone's door. We have a pretty good idea of what's happening and nine times out of ten, we find something - and well that tenth time, usually the suspect won't press charges and if he does the Attorney General does his best to try and drop the charges".

Searches in South Africa are usually made "prior" to an arrest. This is the opposite of the proposed American ideal which states that searches should be conducted "after" a legal arrest, which thereby creates another obstacle for the detective to gain evidence. Conse-

University of Cape Town

quently, the Cape Town detective does not come to develop "intricate" mechanisms to get around court restrictions or to search and arrest illegally.

I shall present an example of how detectives use the method of search to get incriminating evidence on the suspect:

> The first day that I was introduced to the vice and liquor squad, a detective asked me if I would like to see how arrests were conducted. Of course my response was affirmative and the officer told me he was going to lay a charge against a man for being in possession of pornographic material. I asked if we were to pick up the man, but the officer told me that he had made arrangements over the telephone to have the suspect come to the office. Meanwhile, the detective showed me the evidence he had against the man. A bundle of magazines, pictures, and photos of nude men in various positions were produced. The officer took some photos from the top of the pile. He pointed to one of the men in the photograph and asked me how old I thought he was. I said I was not sure but he appears to be around twenty years of age. I was informed that I was looking at a fifteen year old kid. The officer said: "This guy sleeps with school boys. However, I checked all the kids out and they know what they are doing. It seems that they told the suspect that they were nineteen and they came freely to his place". "So", the detective said, "I'll just charge him with possession of undesirable material. I could get him for sodomy and child abuse, but I'll let that go". I asked the detective where and how he obtained all his evidence, and he told me that he had just finished searching the man's flat that morning. I asked if this was legal and he said: "Of course it was, look what I found". The detective informed me that he was onto the man for a while because he knew he was receiving pornography from the States and Holland. He said: "We know the names of places that send the stuff and we just have a peek at the mail every once in a while. That's not quite legal, but it's something we do. We also got onto it that he was sleeping with kids. This we checked out right away, but those kids really know what they are doing so he is not exactly corrupting anyone".
>
> Soon there was a knock on the door and two men appeared. The officer greeted the suspect and asked who the other fellow was. The suspect said he brought a friend who was also his landlord. The officer said that the other man could just wait outside until he was done with him. The detective then showed the evidence to the man and asked if it was his. Before he could answer, the detective said that it would be no use lying because they could prove it was his. The suspect agreed that the material was his. Then the officer asked the suspect how old the fellow in the picture was. The sus-

> pect replied "nineteen". The detective informed him that the boy was fifteen. This shocked the suspect who became visibly frightened and adamantly claimed he had no idea and that the boy lied to him. The officer calmly informed the suspect that he knew this and was consequently not going to charge him for that. He then warned the suspect that if he wants to lead that kind of life that it was fine with him, but if he ever caught him sleeping with kids again he would get him for the full rap. After the brief warning, the officer curtly informed the man that he was being charged with possession of undesirable material and that he should appear in court on such and such a date, and that after conviction he would receive a fine of a couple hundred rand. The officer then walked out of the room letting in the suspect's friend. I just sat there listening while both men were engaged in a conversation. The suspect told his friend how nice the officer was and that he was just being charged for pornography and that the officer was not holding him but letting him out on his own recognizance. The suspect did not seem to be upset by the search tactics and was only too pleased that his camera and some other incidentals that would not be required for evidence would be returned to him. Shortly the officer returned and told both men to go and that he would see the suspect in court.

This example of search and charge would have been illegal in the States and any evidence obtained in the search would have been excluded from the trial. Consequently the American detective could do two things: Employ other wily tactics to get the necessary evidence and present his case in such a manner as to give the appearance of legality to the methods used; or to arrest illegally and plea bargain. If the first method is used, Skolnick (1967), Wilson (1970) and LaFave (1965), studies indicate that the officer is not likely to let the suspect off for humanitarian reasons. Thus, for the example above, the officer would charge for all counts (sodomy, child abuse, etc.). When a detective has to put much effort into a case, he feels his work should be rewarded even if the detective feels no moral indignation towards the offense. If the second tactic is used, the detective will come on as "hard as possible" to try and increase his bargaining position. He will inform the suspect that if he does not bargain with him now, he will get him the next time for the full rap. Most likely the suspect will plea bargain. This makes the American detective generally appear more harsh and stringent towards the offender. When an officer has an arrest, so to speak "in his pocket", he has the social situation under control and his conduct may be tempered.

University of Cape Town

Since there are very few legal restrictions imposed upon the South African detective, he need not work as hard to obtain the necessary information for arrests. Therefore, they may be more apt to under-prosecute where personal, community, or departmental opinion believe that certain offenses are not morally wrong. Most officers I spoke to felt that homosexuality was a "sickness" and that as long as a man does not publicize his actions, he should be left alone.

For this reason, very few cases of homosexuality come to the court's attention. I queried a Cape Town senior prosecutor (Conversation, September, 1975) about this and he said that according to his personal experience of working in the judicial system he has never seen a case of homosexuality prosecuted in the courts. This is an example of where written laws go unenforced even when the police know or have proof of their happenings.

However, when officers have to "work" for their incriminating evidence they are not apt to be lenient with the offender. To describe this, one such incident went as follows:

> The vice detectives informed me that we were going down to a particular company to charge a man for possession of pornography. While we were travelling to our destination, the officers explained the details of the case to me. When they were checking the mail, the detectives discovered that the suspect (a man who held a rather prominent position in an international company) was receiving blue films through his office mailing system. The detectives intercepted one such film, marked it, and put it back in the mail. The detective knew when the suspect was to receive his morning mail, shortly thereafter we were to arrive, confiscate it and charge him. When we arrived at the firm, the officers went in while I waited in the car. The detectives thought it would appear suspicious to the secretaries if I came with them. With just two men walking in, it would appear as a business appointment and their objective was not to embarrass the suspect, but to make a nice "quiet" charge which, if all went well, the man would appear in court and his professional standing would not be jeopardized.
>
> About twenty minutes later, the detectives came back to the car with the suspect. As soon as everyone was in the car, one detective asked the suspect where the film was. The man replied that he did not know what they were talking about and

University of Cape Town

that since they searched his office they should know that he did not have anything. The officers told him to stop lying and that if he does not hand over the film to them, they could make life very miserable for him. One officer said: "Come on Mr-------, you play ball with us and I'll play with you. We can keep this whole thing quiet, in which case you will just get fined and nobody has to know. You don't want your company to know that you're receiving pornography through their mail". The suspect kept insisting that he did not know what the detectives were talking about.

The detective then told the suspect that he should inform his secretary that he will be away for the morning because they were going to his home to search it. During the drive to the man's house, the suspect insisted that he knew of no such films being sent through his office mail. The detectives on the other hand, insisted that he was lying and that he was just making matters difficult for now they would have to search his house. The suspect pleaded with the detectives not to search his house as it would be an embarrassment to his wife and children. He informed the detectives that he was having marital difficulties and he would not know how to explain this to his wife. Again the detectives told him that they would protect him as much as possible if he handed over the film and again the man persisted that he had no such film. When we arrived at the suspect's home, the detectives said: "Okay, let's to". The suspect again pleaded with them, whereupon a deal was made that if the suspect would go into the house himself and gather any material which he possessed which would be of interest to them, then they would not search the house themselves. It was agreed upon.

When the man was in his house, the detectives asked me if I believed him. I told them that since the suspect seemed so adamant about his innocence, then I guess I believed him. I was told that I was naïve and that he was lying. They also informed me that at this particular time they had no intention of searching his house and that they were just frightening him into doing just what he did. The officers told me that if they searched his residence and found nothing, they could be sued for an illegal search. They had no tangible evidence against him and the suspect may in fact have nothing pornographic in his house. However, since he made the agreement, the detectives knew he had something in his house and by giving over the stuff he would incriminate himself.

We waited about fifteen minutes when the suspect returned with a box of materials. We drove the suspect back to his office and the detectives talked to his boss informing him that they had reasons to believe that blue films were being sent through the company's mail addressed to the suspect. They did not implicate the suspect, but implied to his boss that someone may be using his name.

When we left, the detectives told me that they did not want to make any open accusations until they went through the

> suspect's material. After the detectives studies the goods, they informed me that they had enough on the man to charge him with possession of undesirable material and that they were going to openly inform his company of this and implicate him (if only verbally) of using the office mailing system for illegal purposes. "Well, that's the price he pays for not co-operating with us. He'll lose his job now and things could have gone smoothly".

Here is a case where the detectives were frustrated in gathering their incriminating evidence. Where the suspect is seen as not co-operating the detectives take a more punitive approach. Perhaps one can assume that because the American detective "always" expects some form of frustration in gathering evidence, his general approach to the suspect is therefore harsh, but perhaps not as harsh as when the South African detective becomes frustrated. The American detective has learned to operate in a system which places obstacles in his way and has developed a more mature attitude of give an take. However, the Cape Town detective immediately takes offense at being thwarted and may be seen as over-reacting punitively. The detectives, therefore, not only intended to legally punish the suspect states in the above example, but also intended to socially punish him by making his crime common knowledge to his co-workers and to implicate him in using the office mailing system when they had no tangible proof of this. They assured me that the man would lose his job. Also, perhaps my presence even caused them to be more tolerant than they would have normally been, because one of the detectives told me: "It's a good thing for this guy that you were around, otherwise I would not have been so patient".

Let us imagine for one moment that the police did use physical coercion in extracting the necessary information from the suspect. What effects would such methods have on the court case? One advocate (Conversation, August 1976) explained it to me this way: "Let us say the police beat up a suspect to get incriminating evidence. The court would accept this evidence because you cannot force someone to hand over something he does not have. The judge might morally condemn the police for using such methods, but that does not mean he would not accept the evidence". Sections 218(2) and 225 of the Criminal Procedure Act, No. 56 of 1955, make provision for the reten-

University of Cape Town

tion of evidence illegally obtained to be included in the trial (Dugard, 1977:100).

For obvious reasons, it is outside the scope of this study to say whether this method occurs more often in South Africa than in the States. However, while there is documented proof of its occurrence in South Africa (Torture in South Africa, 1972; The Star 11/6/76; Rand Daily Mail 28/8/76) the President's Commission (1967:93) reports that the use of physical violence in extracting information and confessions is a thing of the past. The exclusionary principle, which has not stopped other unorthodox police practices, is considered responsible for this (Milner, 1974; President's Report, 1967).

It would appear, though, that where a policeman feels frustrated, the use of physical coercion might appear appealing especially where, in the proverbial sense of the word, "he can have his cake and eat it too".

Interrogations:

Interrogation in South Africa (with respect to most criminal cases) is similar to America's pre-Miranda ruling. This means that suspects do not have to be warned of their rights, that presence of counsel during interrogation is not required and that a suspect can be questioned over his objections. What concerns the South African courts is that a confession or statement be made voluntarily. The rights of the accused in this respect were first introduced into South African law by Ordinance No. 72, Section 28 of 1830 (Dugard, 1977:26). Concerning the admissibility of evidence with respect to confessions, the accused was now to be warned that he was not obliged to make a statement which might incriminate him, and no confession was admissible in evidence against him unless it was shown to have been freely and voluntarily made. Section 244 of the 1955 Act, furthermore stated that a confession made freely and voluntarily to a peace officer was not admissible in evidence against the confessor-accused unless it was confirmed and reduced to writing in the presence of a magistrate or justice. Act No. 50 of 1977 expanded upon this rule by now declaring that such a confession in writing made to a magistrate shall "be

University of Cape Town

presumed", unless the contrary is proved, to have been freely and voluntarily made by such a person in his sound and sober senses and without having been unduly influenced thereto (Sec. 217 (1) (b) (ii)). This now places the onus upon the accused to prove that the confession was not freely and voluntarily made. Voluntary in this sense has a rather limited meaning in that a suspect must not be physically coerced into making a confession.

After a suspect is arrested and taken into custody, the police can hold him for 48 hours, after which he is to be brought before a magistrate. The magistrate then informs the accused of his rights.

It is this 48 hour period which the police view as their own for interrogation purposes. Strictly speaking, for most ordinary criminal cases there is no statute which prohibits defense counsel from access to the accused immediately upon arrest. Dugard (1977:77) points out that: "In terms of common law and the Criminal Procedure Act a person is entitled to legal assistance at the time of his arrest and detention - subject to the important exceptions in the case of the 'drastic process' - and at his trial". One South African lawyer (Paul Avenant, January 1976) said that the police cannot stop him from speaking to a client upon his arrest, and that the police have placed their own interpretation on the 48 hour ruling. "However", Mr. Avenant said, "I guess it is silly to claim I have legal rights to speak to a client if he is not permitted to call me, or if I do not know where he is being detained". Dugard (1977:77) points out, however, that this right to counsel is a mere formal right and is not legally binding.

The detectives to whom I spoke, were all adamant that the 48 hour ruling legislatively precludes the suspect from having a lawyer present. Repeatedly I was told that no lawyer would ever be allowed to be present during an interrogation. All the detectives felt that this was an exclusive police privilege necessary to carry out their criminal investigations. As one detective expressed it: "Under no circumstances would I allow a lawyer present while questioning a suspect. That is all we would need, is to have someone messing up our case and

University of Cape Town

making things difficult". And one Colonel of the South African police force said: "I was in the States viewing the American police in operation and I saw how the criminals were pampered. As soon as a man is brought in some lawyer comes along and the police cannot do a thing. No, it would not happen here".

Detectives perceive interrogation as an essential method for solving crimes and for obtaining information concerning new cases. Where courts interfere (as they do in the States), police feel this as a real threat to their efficiency and ultimately to their occupational "raison d' etre". Studies mentioned previously described this feeling of hostility of the United States detective towards the courts. This has led to the development of some normative operational patterns to mitigate court rulings so as to come to some acceptable broader terms of action concurred (if only be silence) by other judicial agencies who ultimately need the co-operation of the detective.

Yet, where the United States had ideally moved towards greater police control in the interests of individual rights, South African legislation has granted more power to the police precisely with respect to interrogation. Excessive police powers are usually granted by legislation for security reasons. It is notably in this area where South African law defies individual rights by negating "due process of law". But it is interesting to note that, outside of security rulings, there are two statutes which give the criminal police such wide interrogation powers that this police method has become associated with the more negative methods used in totalitarian countries. These are section 215 of the Criminal Procedures Act, No. 56 of 1955 and section 13 of the Abuse of Dependence Substances Act, No. 41, 1971. In both of these acts a person may be held if it is believed that he has further criminal information with respect to certain offenses. No court has jurisdiction to release such a person.

Why South African legislation has granted police such wide powers for investigation can perhaps be viewed in the perspective in which police believe this method to be essential for work productivity. Since police feel that interrogation is an essential or a "mark of their trade", they will pressure where they can to increase this power. I

University of Cape Town

queried the detectives as to if there were any judicial or legislative controls that interfered with their working efficiency. Most expressed satisfaction with conditions and one detective replied: "If something really stood in our way, we would complain to the Commissioner of Police and he would see to it that the Minister had it changed in parliament".

Though speculating, the wide powers of interrogation can be construed as police interest and concern which has resulted in pressure on the legislation to formulate certain laws restricting judicial interference in an area perceived as a "police privilege". With such wide interrogative powers, South African police do not have to resort to trickery or illegal means to obtain either confessions or other criminal information. The only interrogative method that is clearly illegal is the use of physical force.

With respect to admissions of guilt, the court will dismiss any confession where it is proved that such a confession was not "freely" made. Where violations come to the court's attention, the court will reject such statements and the suspect can sue the offending officer both civilly and criminally - and there have been documented cases of successful suits (Rand Daily Mail, 28/8/76).

Hence with regard to one aspect of the third degrre (torture in obtaining confessions of guilt) the practice is probably not ascribed to. But it is perhaps the physical violence used on suspects during interrogation to gain information concerning the criminal involvement of others, further incriminating evidence, and to gain knowledge of other clandestine acts that is the more common practice. This is so because the police are more interested in obtaining the necessary evidence to prove their case in court as well as securing more information for other criminal cases. When the police can place the evidence in front of the court, proving that the suspect had in fact committed the crime, a confession is not necessary. Also, even when a suspect claims that the police resorted to brutality to obtain their evidence, the incriminating evidence can still be used against him. The Suspect can sue the police for this method, but it becomes

University of Cape Town

increasingly more difficult to prove such allegations after a criminal conviction has been pronounced; the victim's moral credibility is impaired. But suffice it to say that torture in South Africa is not a State policy[5] and its use by the criminal police is probably no greater than for some other Western countries. The reasons for this are three-fold:

(1) The criminal police are very sensitive to foreign public opinion. They are aware of the fact that South Africa is referred to as a "police state", and notoriety on the issue of "police brutality" brings further international criticism against their government's "apartheid" system.

(2) The police take some risks (though minimal) of being both criminally and civilly sued.

(3) The greatest (perhaps) incentive for dispensing with brutality as a common tactic is the expressed attitude that a good interrogator does not have to use such means to gain his information.

I was told that a good detective is a skilled interrogator who develops a sensitivity to the personality of the suspect. The art of extracting information then becomes a game of wits where the detective deploys a variety of approaches so that the suspect comes to psychologically rely upon the detective and accept his definition of reality. Sometimes the interrogator plays the role of a friend or protector; sometimes as a stern but forgiving father; sometimes as a person to be feared; and sometimes a combination of all roles are used. And, if all else fails, with some offenses the detective can use (with either the permission of the magistrate or attorney general) the specified sections of the criminal laws to hold the suspect "until he does talk".

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[5] Amnesty International reported (Time, 16/8/76:11-14) that in the last decade sixty countries practiced torture as an official state policy. South Africa was not mentioned in that list.

University of Cape Town

Traps:

Perhaps the best way for vice detectives anywhere to obtain incriminating evidence is through the use of traps. And with this method comes the usual condemnation from the public and other judicial agencies. The public's stereotypic image of detective methods visualizes a man who investigates a crime through a process of induction, building up evidence until he finds the guilty party. A man who solicits women in the hope of discovering a prostitute, a man hiding in a tree with a camera hoping to obtain a picture of a couple having sexual intercourse, or a man dressed up as a hippie frequenting hang-outs in the hope of buying dagga does not meet with this traditional image and the public becomes outraged at such unprofessional (and most undignified) methods. The paradox of people's expectations and actual detective methods has its basis in the type of laws to be enforced. Most members of a community do not consider what the investigative procedures of vice laws entail - what in fact detectives must do to enforce drug laws, prostitution, the immorality act, etc.

On the other hand, judges frown upon traps because of the legal difficulties involved. The actions of the agent provocateur incite others to commit crimes and at the same time the agent (to some degree) is always involved in the same criminal activity for which he is prosecuting. Because of this, South African courts tend to be as critical of traps as the American courts (Argus, 2/4/75; The Star, 21/10/76). The courts also generally accept incriminating evidence using the same criteria that the American courts use, i.e., they consider the extent of involvement of the agent as well as his motive and they also require that traps be directed towards those with criminal predispositions and not be flagrantly abused to incite ordinary members of the community. In South Africa there is no legislative guidance as to what methods may or may not be used and judges are free to make their own decisions according to the totality of events (Argus, 2/4/75). Such a situation means that there will be variations as to what is or what is not accepted according to (within reason) the personal dictates of judges. However, where legislative guidance (in South Africa) usually grants police more powers, judicial control means that courts will scrutinize police

University of Cape Town

behaviour more carefully. Hence it is precisely in the use of traps that South African police are the most restricted. This is the opposite to the United States policy where because the Supreme Court has made no rule binding police behaviour, the police find themselves the least restricted in this information gathering method. Cape Town vice and narcotics detectives were of the opinion that courts are very strict in their acceptance of incriminating evidence when it comes to the use of traps; and where something is amiss, judges are quick to drop cases. A detective told me: "We have to be precise with our evidence. Also it is best to use another policeman in a trap because judges suspect the motive of a civilian agent. Not only that, but many times civilians mess up while testifying and sometimes do not do well under cross examination. We have lost cases because of a slight variation in testimony". To varify this detective's statement, Judge McEwan in S vs Chsane 1975 (3) SA 172 (T) said that "persons used as traps may have a motive in giving evidence which may outweigh their regard for the truth" and that these motives "may include the earning of a monetary reward.... or the desire to please their employers by securing a conviction..." (at 173G-H). The Judge went on to say: "These considerations normally will not apply where the "traps" are reputable Government officials carrying out their duties" (R v Omar 1948(1) SA 76(T) 60) (Annual Survey of South African Law, 1975: 413).

Also, as in the States, most of the traps are designed to catch the petty offender. Petty in this sense means that these crimes are not detrimental to the lives and property of others. Petty does not refer to legislative seriousness. Because of South Africa's harsh stance on dagga smoking, the dealer of this drug is a much sought after person. The heavy legislative penalties towards this plant must be viewed on two levels: The first is police influence on legislation and the second is an interest in maintaining an Afrikaner morality. Regarding the first stance, it must be mentioned that South Africa does not suffer a serious problem with hard drugs (heroine, cocaine, etc.) (Theron, 1972:44), consequently the pressure to include dagga as a dependent producing drug can be seen as a police effort to give credibility to their law enforcement endeavours. Contrary to

University of Cape Town

the more recent scientific research into dagga smoking which purports that marijuana does not cause physical dependence and which furthermore states that there is no evidence that it leads to the use of dangerous narcotics, it has been the South African police who have recommended and vocally supported the merits of the new drug act to include dagga with the other dependence producing drugs (Rand Daily Mail, 27/4/76). Skolnick (1969) points out that this is the usual and must be viewed in the very nature of the policeman's work which helps to explain the tenacity of law enforcements constant demand for higher penalties.

Secondly, and perhaps more importantly, it appears legislating against dagga is legislating against the morality and life styles that clash with Afrikaner interests. Traditionally it has been the Black and Coloured populations who have smoked the plant. And, although the use and sale of dagga has been illegal in South Africa for many years, the enforcement and the penalties were comparatively lax. However, as some of the White, English speaking university students (as their counterparts in Europe and America) have come to accept the use of dagga, the government felt a more serious threat. Historically it has been the English speaking universities that have opposed the ideological commitments of the "apartheid" system and consequently the smoking of dagga has come to be associated with a subversive life style.

To demonstrate this, I was informed by the Cape Town police that they are suspicious of the University of Cape Town students. One detective summed it up by saying: "I can honestly say that most of the policemen think every Cape Town University student is a communist".

Because of both the heavy penalty and the deviant life style attached to smoking dagga, the capture of the person who sells the plant is highly prized and the narcotics officers pursue this goal with almost missionary zeal.

Hence dagga traps are given top priority and the department will spend more time and effort for these traps than for other vice crimes.

University of Cape Town

Because of this the narcotics unit was most favourably disposed to my observational presence. They had just purchased a new motor cycle for their trapping endeavours and I was to accompany the officer, seated on the back of the vehicle. They perceived that my presence would give more credibility to the detective's disguise. The detective was to give the appearance of a university student. Though he was in his late twenties or early thirties, he gave a youthful appearance. He wore jeans, an American army jacket, his hair was near shoulder length and he spoke only English, using the correct 'lingo' which displayed a familiarity with the underworld of dagga smokers. This detective informed me that he was the only one in the division suitable to trap dagga dealers. The other officers, I was told, were disqualified either because of age or mostly because their Afrikaner background clashed with the desired English image that was required. He said: "Some of these other fellows just could not play the part. The seller would smell a trap. It is because of their accent, but mostly because they do not know how to act".

The trapping procedure was relatively simple. Based upon information from various sources, we were to visit certain places where the detective had reason to believe that he could "score". First, the numbers of the money which was to be used to make the buy, were written down. Then the trapping detective and I headed out to the assigned area. Three other detectives, travelling in a department car, were to wait for us at a decided upon location near the area where we were to trap.

The week that I spent trapping with the detectives, our chosen areas were always in the Coloured districts. All visits were to run-down sections where the seller was clearly living in what appeared to be near poverty. We usually made about five stops in a designated area and the usual rate of success was two to three arrests for an afternoon's work.

The trapping detective's approach was direct and confident. He knew precisely where he was going and when we arrived in a neighbourhood, he went straight to a particular dwelling with no hesitation or queries. When the occupant asked us what we wanted the officer replied "that

University of Cape Town

he was here to buy some stuff". We were always carefully scrutinized by the occupants who assessed us by our clothes, age, and general appearance. If the occupant said "not today", "I don't have anything", or more often "come back tonight"[6], the officer always accepted that as final. He never attempted to persuade the occupant to sell. Instead he just nodded and we left. When the occupant was willing to sell, the transaction was rapid. The seller asked how much he wanted, and the detective never bought for more than two rand (and usually just a rand). We were either told to come in or to wait outside. The detective never attempted to enter a premise unless he knew he was welcomed. The marked notes were then exchanged for the bag of dagga, the officer thanked the seller, and we left.

The casual attitude of the officer changed once we reached the bike. He was eager to rondevous with the other detectives who were never more than a few minutes drive away - and from there on we moved fast. By our approach, the other officers knew when the trap had been successful. The bike was left parked and all jumped into the car and sped off to make the arrest.

In all the trap incidents, only one person was arrested even though in all instances, there were others in the dwelling both at the time of procuring the dagga and at the time of the formal arrest. The trapping officer was only interested in the person who took the money and he knew precisely who that was. Others were dismissed. Next, it was necessary to recover the market notes as this was also needed as evidence in court. It was very interesting to note that during the short time of the actual entrapment encounter, the detective was very aware of his total surroundings. He not only knew who was to be

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[6] Many of these small-time dealers have come to realize that selling in the evening offers them more protection in case there is a trap. Because conditions are more crowded in the evening (more buyers around) if the police make a raid, the helter and skelter of buyers sometimes provides enough confusion whereby the seller can stash the money and dagga. Officers informed me "it was more messy in the evenings".

University of Cape Town

arrested (a fact I did not know as I purposely looked about during the transaction so as to protect myself from being called as a State witness), but he had an idea of where the money was put and from where the dagga came. I was amazed at his recall because during the transaction he appeared to be totally indifferent.

Once the marked money was recovered, the detectives searched the dwelling for more dagga and other evidence of other illegal activities. The seller and evidence were taken to the nearest police station where he or she was booked and photos were taken of the suspect and all the incriminating evidence.

The capture of these small-time dagga sellers is a sure bet for the narcotics unit. The need for extra cash and the ample market makes it look rather appealing for these unsophisticated individuals. These sellers are not in the lucrative area of drug dealing but instead their actual cash intake is minimal. They are dime-store sellers to students and neighbours who usually buy no more than a rand or two worth of the goods. This is why the detective in his purchases never spent more than two rand. He did not want to appear conspicious as most small time buyers just want enough stuff for their immediate needs as well as purchasing well within the safety of the 115 grams limit. To be caught with more than 115 grams of dagga legally implies that one is dealing and hence is subjected to the mandatory five year jail sentence if caught. Word easily gets around as to who is selling and the cops are on to it. The petty one-rand dagga seller is easy prey for the police and his capture provides an impressive record of arrest and convictions for the indidivual officer and for the enforcement unit as a whole. The detective informed me that those individuals caught in the trap would get five year jail sentences as it was almost a fool-proof case against each of them. They were caught in the actual act of selling, the marked money was recovered, identification of the seller was certain, and the method and involvement of the trapping agent was well within the limits of respectability.

Nevertheless, the easy capture of these small-time sellers resulting from traps would only last for a while. The motor cycle, disguised detective knew he was good for only a couple of weeks before the word

University of Cape Town

went round, making him a marked man. The unit would have to resort to other methods - other traps using another man, or most notably they can always resort to the search and seizure method. The powers of search are even further widened for narcotics agents. Whereas previously the Criminal Act "cautioned" that police should make due effort to obtain a search warrant and that they should search "as far as possible" during the day and in the presence of two or more witnesses, the Drug Act (Sec. 43(1) and (2)) totally dispenses with these "cautions". Concerning search, the Drug Act (Sec. 11(1)) states that: "Any police officer may at any time without a warrant enter and search such place.... and seize such drug or plant, or may search and interrogate any person whom he may find on or in such place...". Yet even with these wide powers of search and interrogation, trapping proves to be the more successful method. Upon searching a dwelling the police may not find the needed 115 grams to prove dealing (something which they do not need when they have caught the suspect in the act of selling), and even if discovering it, there may be come discrepancy as to who the actual possessor is. The police are now involved in the sometimes long and arduous task of interrogation, and stories may differ as well as change during the court proceedings. On the other hand, entrapment of the small-time dealer provides the police with an open and shut case with minimum work. Searching is not fool-proof, and where the judge perceives flaws in the evidence he is more apt to drop the case or convict on a lesser charge. Traps prove to be a necessary and fundamental method method for vice detectives.

University of Cape Town

Summary

The operational milieu of the detective (especially the vice detective) in both the United States and South Africa foster similar working practices. This milieu, more so than for the patrol mitigates against the cultural and especially the legal differences resulting in similar methods. This is most interesting as it is the detectives who are more involved with legal processing and the criminal code especially pertaining to such processes is different for the two countries. One would expect that this would produce significant

differences in the detective's behaviour. But this perspective can be misleading for it over-emphasizes the effectiveness of formal legal rules as binding behaviour. Let us review why legal restrictions on the American detective has not successfully curtailed many undesirable working procedures.

First, it was mentioned that the legal objective for the detective is limited to closing cases for prosecution. This means that since the Supreme Court rulings controlling detective methods, especially in the areas of search and interrogation, affect more the outcome of successful conviction such rules do little to circumvent unorthodox practices - except for important cases.

Secondly, because the detective is held responsible and judged in efficiency for the number of cases closed and arrests made and not held responsible for the number of cases successfully convicted, the departmental pressure on him to "close cases" induces him to look for short-cuts in obtaining evidence and thereby ignoring court rulings.

Thirdly, the other members of the judicial agencies working within the detective's milieu confirm that rules are not to be followed exactly but to be circumvented when necessary. The prosecutor, defense attorneys, and even judges all close a blind eye to certain malpractices. The detective then comes to regard what cases the prosecutor will prosecute, what circumstances the courts will ignore, and what defense attorneys will allow. He comes to accept a system where plea bargaining is the usual and in fact sometimes the only way to get a case into court. And, if the court ultimately dismisses the case because of illegal methods or technicalities, this imposes no direct sanction on the detective whose main departmental objective has still been achieved. He may feel personally wronged by the court decision, but the department will back him up morally by condemning the system and not the unorthodox methods of the detective. The detective comes to understand precisely how the Supreme Court rulings are to be applied; and that is so as not to seriously disrupt the system's tendency towards mass produced justice in unimportant cases involving the poor.

University of Cape Town

The American detective working in an environment of deception, comes to learn how to give the appearance of legality to investigative procedures while still upholding his primary objective of "being efficient" as judged by police standards. However, if one term more successfully describes the American detective's attitude than any other, it is cynical. In all studies referrenced in this study, the detective is contemptuously critical of court-imposed rules which he believes constantly hinder his performance. Also because professionally he does not feel these court restrictions are justified and because he is aware of other judicial agencies' manipulations to accommodate stated rules to their own convenience, he learns to operate to circumvent them when he can, in order to obtain reliable probative evidence.

On the other hand, the South African detective with wide legislative powers of investigation especially in the areas of search and interrogation find their task relatively simple. They are judged by the same standards of efficiency as the American detective, i.e., numbers of cases closed in respect to prosecution. Because they do not feel thwarted in their attempts to gather incriminating evidence, and because they are more assured not only of successful prosecution but also of successful conviction, the South African detective is professionally and personally more satisfied than his American counterpart. However, with such powers an attitude of professional isolation forms where police come to believe their actions are immune to scrutiny. This is revealed by such statements as: "We can basically do what we want"; "no lawyer will ever get near a suspect of mine unless I say so"; and "if someone does press charges against us, the attorney general will do his best not to bring charges against us".

For the South African detective, there is little conflict between legal ideals and legal processing. The court's restrictions mainly concern the preciseness of incriminating evidence to prove beyond a resonable doubt that the suspect is guilty, the manner in which the detective obtains evidence is superficially scrutinized and largely for physical abuse in obtaining confessions.

University of Cape Town

However, a more conflict-free operative environment is far from the ideal and can be most dangerous. Brian Chapman (1970) explains the impending danger that may result from an autonomous police force. He reasons that when a police apparat challenges the other state institutions which limit their freedom of action, most notably the judiciary, and when this apparat obtains sufficient judicial powers in its own right to operate independently in areas which have been defined as matters of criminal procedure, then the government is moving towards a police state. The situation in South Africa has been to increase police powers at the expense of the judiciary. This is most notably the case with the security police, but also the criminal police have benefitted in increased powers especially with regard to interrogation and to a lesser extent search.

Yet, it would be too simplistic and politically erroneous to call South Africa a police state. If one defines a police state as a condition where power is concentrated in the hands of the police for the purpose of subjecting and controlling the masses to accept an established political, economic, and social system, then South Africa does not fit such a description. Adam (1971a) points out that the "apartheid" policy has not resulted in a government dedicated to a fixed ideology. It has not been necessary for the government to secure its rule through the forced and active collaboration of the masses. No one is doubting that the Black populations are not intimidated. However, the form and technique of Afrikaner domination has not resulted in rule by fear alone. Some of the equalitarian aspects of the settler's past have survived and South Africa today claims an ideological commitment with Western democracies. For a more meaningful insight into the social and historical conditions which have contributed to South Africa's unique power structure, I refer the reader to Adam (1971a) and more specifically to chapter three in which the author compares and contrasts South Africa's power structure to other totalitarian States.

Nevertheless, in the realm of security, no matter how the government claims ideological commitments to Western democracies, the increase of police powers, especially those of security, produces a negative

University of Cape Town

image of the police as an offensive weapon of the State rather than a protective force for society. Also, since police powers are so wide, even if the government tries to portray their police image as "friends and protectors", they cannot effectively control the police apparat from using such methods as torture or even killings. Since, in many circumstances the judiciary is not allowed to rule, the government is paving the way for police abuse to exist and grow.

The working demands and expectations for the detective are such that in order to be efficient he must rely upon certain methods and practices to obtain information (especially for vice detectives) for prosecution and hopefully for conviction. The dilemma results in the conflict between police over-zealousness and individual citizen rights from undue State interference. Democratic countries must control the police because the very nature of their work will overstep bounds to seek knowledge. It becomes a question of precisely how the police should be able to be efficient and yet controlled. The American answer has been to unrealistically control police methods to such an extent that no one really expects the police to obey all such rules, even though others may pay lip service to such rules. Sutherland and Cressey (1970:377) claim that for the American police to operate they must adopt more power than the law permits. Yet the irony is that little judicial control results in a police apparat which becomes too independent and who consequently believes its actions do not have to be judged or reviewed by a superior outside agency. Between the areas of unreasonable judicial control and too little judicial control, perhaps lie some other alternatives. It is far beyond the scope of this thesis to develop such a workable alternative. However, if one assumes that judicial review of police actions is necessary for assuring citizen protection, then it is indispensable for a democratic structure. But just as necessary is an adoption of a plan to encourage police restraint. Such a plan would have to concentrate upon departmental and police objectives governing efficiency. Also such a plan must consider the factors which contribute to an occupational personality, mistrustful and at times openly hostile to intervention. Ultimately therefore there must be a restructuring of police priorities whereby police perceive that they are an institution dedicated to the achievement of legality.

University of Cape Town

CHAPTER VI

CONCLUSIONS

The conclusions reached by this thesis are that police methods from two fundamentally different legal systems can be compared. Though, to my knowledge, this comparison has never been attempted, my thesis provides such a structure. By first exploring the legal differences of the systems, one ascertains that there is a different political image of the two forces. The importance of this image is not ignored; yet a political analysis only offers a static picture of police systems and typifies police forces by placing them in structured categories. At the same time, though this description might offer one some ideas of how police operate, this perspective is misleading and most certainly incomplete.

Consequently, police work was analyzed in an occupational perspective. It was argued here that unique characteristics of the job create a police personality and lead the police to employ common methods. Yet this perspective was again mostly descriptive, stating reasons as to why one can expect police to react "in greater or lesser degree" in a similar manner. On this level, a psychological portrait of the police image was drawn - the image every policeman portrays.

Chapters IV and V then placed the policeman in his working environment and analyzed how the occupational and legal factors unite while in a real situation to form the operational image. This image of the police is action-oriented. Here contrasts and comparisons between the Cape Town and American urban policemen were made.

First the milieu of the patrolman was discussed, followed by that of the detective. It was shown that though there seems to be more similarities in performance than differences, it is the detective

University of Cape Town

work which produces the most similar operative methods. This is so because the organizational and operational demands on efficiency induce detectives to use common methods whether these methods are legislated against or not. By this one sees that actual bahaviour (to degrees) is not so much regulated by rules or laws but must be viewed in its total environment.

On the other hand, organizational and operational demands on the patrolman are not as directive. Being a "peace officer" is an ambiguous directive. This means the political/social system is more real and binding for the patrolman. By looking at patrol methods divided into citizen-initiated encounters and patrol-initiated encounters, one can see similarities in methods used. There are also differences. These differences come about because the policeman is responding to cues socially/politically conditioned. Hence the Afrikaner officer's methods must be viewed in the total consequences of the "apartheid" system while the American officer responds to and is conditioned by American norms and standards. From this one can induce that though all policemen are law officers, it is social differences and not legal differences that will most affect a policeman's performance.

University of Cape Town

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University of Cape Town

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