physically restrain or subdue unruly citizens.

A common kind of situation that illustrates the complexity, delicacy—and frustration—of much police work is the matrimonial dispute, which police experts estimate consumes as much time as any other single kind of situation. These family altercations often occur late at night, when the only agency available to people in trouble is the police. Because they occur late at night, they can disturb the peace of a whole neighborhood. And, of course, they can lead to crime; in fact, they are probably the single greatest cause of homicides. Yet the capacity of the police to deal effectively with such a highly personal matter as conjugal disharmony is, to say the least, limited. Arresting one party or both is unlikely to result in either a prosecution or a reconciliation. Removing one of the parties from the scene, an expedient the police often resort to, sometimes by using force, may create temporary peace, but it scarcely solves the problem. An order to see a family counselor in the morning is unenforceable and more likely to be ignored than obeyed. And mediating the difficulty of enraged husbands and wives ad hoc is an activity for which few policemen—or people in any other profession—are qualified by temperament or by training. Again no statistics are available, but there is a strong impression in police circles that intervention in these disputes causes more assaults on policemen than any other kind of encounter.

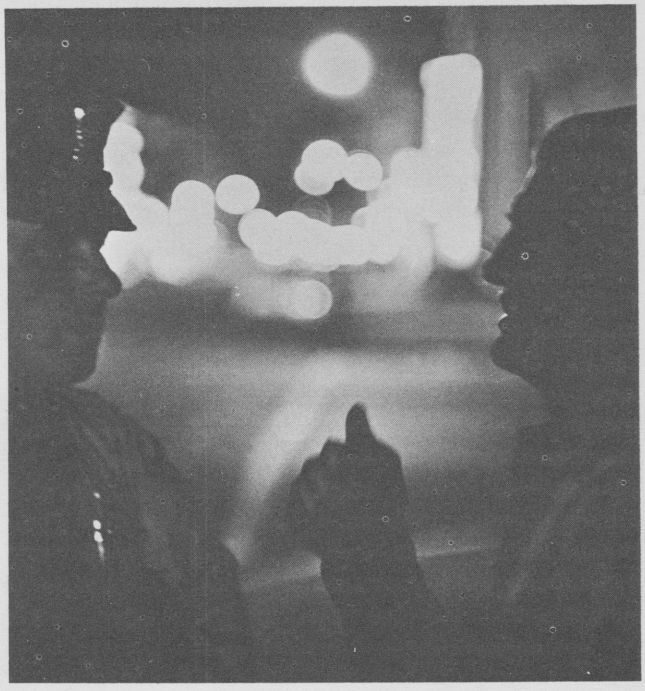
Since police action is so often so personal, it is inevitable that the public is of two minds about the police: Most men both welcome official protection and resent official interference. Upon the way the police perform their duties depends to a large extent which state of mind predominates, whether the police are thought of as protectors or oppressors, as friends or enemies. Yet policemen, who as a rule have been well trained to perform such procedures as searching a person for weapons, transporting a suspect to the stationhouse, taking fingerprints, writing arrest reports, and testifying in court, have received little guidance from legislatures, city administrations, or their own superiors, in handling these intricate, intimate human situations. The organization of police departments and the training of policemen are focused almost entirely on the apprehension and prosecution of criminals. What a policeman does, or should do, instead of making an arrest or in order to avoid making an arrest, or in a situation in which he may not make an arrest, is rarely discussed. The peacekeeping and service activities, which consume the majority of police time, receive too little consideration.

Finally, more than public attitudes toward the police and, by extension, toward the law, are influenced by the way any given policeman performs his duties. Every Supreme Court decision that has redefined or limited such important and universal police procedures as search and seizure, interrogation of suspects, arrest, and the use of informants has been a decision about the way a specific policeman or group of policemen handled a specific situation. Most of the recent big-city riots were touched off by commonplace street encounters between policemen and citizens. In short, the way any policeman exercises the personal discretion that is an inescapable part of his job can, and occasionally does, have an immediate bearing on the peace and safety of an entire community, or a long-range bearing on the work of all policemen everywhere.

THE LAW ENFORCEMENT FUNCTION OF THE POLICE

In society's day-to-day efforts to protect its citizens from the suffering, fear, and property loss produced by crime and the threat of crime, the policeman occupies the front line. It is he who directly confronts criminal situations, and it is to him that the public looks for personal safety. The freedom of Americans to walk their streets and be secure in their homes—in fact, to do what they want when they want—depends to a great extent on their policemen.

But the fact that the police deal daily with crime does not mean that they have unlimited power to prevent it, or reduce it, or deter it. The police did not create and cannot resolve the social conditions that stimulate crime. They did not start and cannot stop the convulsive social changes that are taking place in America. They do not enact the laws that they are required to enforce, nor do they dispose of the criminals they arrest. The police are only one part of the criminal justice system; the criminal justice system is only one part of the government; and the government is only one part of society. Insofar as crime is a social phenomenon, crime prevention is the responsibility of every part of society. The criminal process is limited to case by case operations, one criminal or one crime at a time.



But in order to work effectively, the police should—and all too often do not—recognize crime as a broader phenomenon. They should—and sometimes do—observe its ebbs and flows, accumulate information about what crimes most commonly occur where and when, what kinds of people are most likely to be criminals or victims of crime, or how criminals of different sorts go about their business. However, when that has been said, the fact remains that the mission of the police is not to remove the causes of crime, but to deter crime, and to deal with specific criminals whoever they are, and with specific crimes whenever, wherever and however they occur. Moreover, they perform this mission under a variety of restrictions, some of them within their power to alter, some of them not.

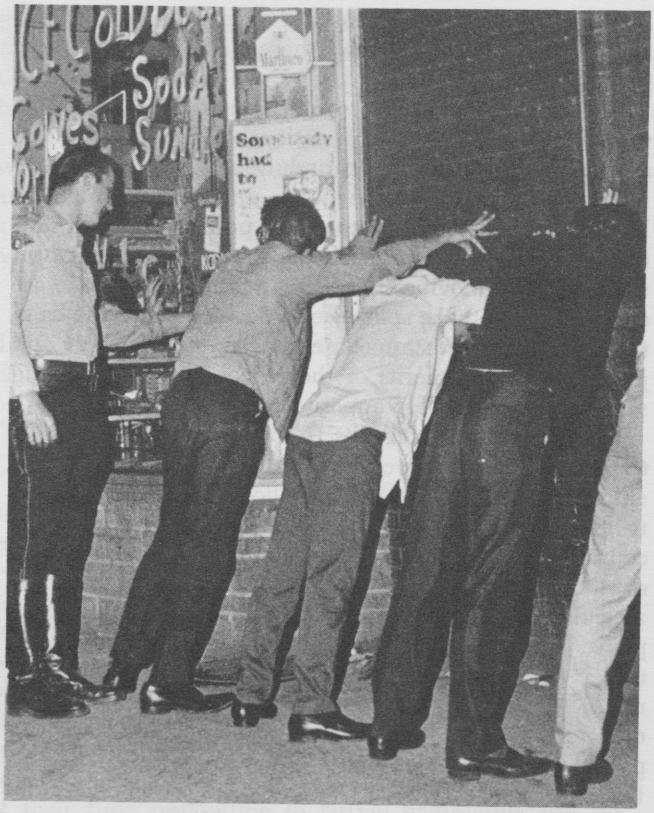
THE LEGAL POWERS OF THE POLICE

The struggle to maintain a proper balance between effective law enforcement and fairness to individuals pervades the entire criminal justice system. It is particularly crucial and apparent in police work because, as has been noted, every police action can impinge directly, and perhaps hurtfully, on a citizen's freedom of action.

To maintain public order, policemen, as a matter of routine, issue such orders as "cut down the noise" and "stand back." Such exercise of police power offers no fundamental threat to individual freedom, and is accepted as reasonable by the public and the courts alike. Policemen, as a part of their crime prevention and solution duties, stop citizens on the street, inquire into their business and, if necessary, detain them for brief questioning. The police consider this power to be essential, and they assume that they have the legal right to exercise it.

But standard police procedures that are more intrusive have, during the last 30 years, been increasingly circumscribed by court rulings. Personal and property searches and the seizure of the evidence they yield, the use of informants, the arrest of demonstrators, and stationhouse detention and questioning of suspects have been more and more rigorously measured by the courts against the constitutional standards of due process, right to counsel, probable cause, privilege against self-incrimination, prompt presentment in court, and the rights of free speech and peaceable assembly. Issues that are now under court review, and probably will be for many years to come, are the temporary detention of suspects for questioning on the street, the entry of undercover policemen in suspect premises and electronic surveillance—all of which are practices the police consider essential as either general or specific law enforcement techniques.

It is evident that every restriction that is placed on police procedures by the courts—or anyone else—makes deterring or solving crimes more difficult. However, it is also evident that police procedures must be controlled somehow. In 1931, the Wickersham Commission reported that the extraction of confessions through physical



Police search youths who crashed road block during riot.

brutality was a widespread, almost universal, police practice. During the next several years the Supreme Court issued a number of rulings that excluded such confessions as admissible evidence in court. There can be no doubt that these rulings had much to do with the fact that today the third degree is almost nonexistent. No one can say just how much the third degree helped law enforcement in deterring or solving crimes, but even if it helped considerably few Americans regret its virtual abandonment by the police.

America's form of government, its laws and its Constitution, all express the desire to maintain the maximum degree of individual liberty consistent with maintenance of social order. The process of striking this balance is complex and delicate. An example is the "probable cause" standard that governs arrest. Probable cause does not insure that no innocent man ever will be arrested, but it does restrict police actions that are arbitrary or discriminatory or intuitive. At the same time, it is far less restrictive than the standard that governs conviction in court—"proof beyond a reasonable doubt." If the police had to abide by that standard before making an arrest, law enforcement would be an all but impossible job.

In any case, although the courts can review police actions, and do review them more than they once did, most police actions are not so reviewed. Those that do not lead to arrest and prosecution almost never are

reviewed for the simple reason that, short of a civil suit against the police by a citizen, there is no court machinery for reviewing them.

Nevertheless many police officers and citizens believe that recent judicial interpretations of the Constitution and various statutes have unduly and inappropriately inhibited the work of the police and so have made it harder for police to protect the public. Part of this feeling stems, no doubt, from the sharp contrast between the tense, fast-moving situations in which policemen are called upon to make split-second decisions, and the calm that prevails in the appellate courts while lawyers and judges argue the merits of those decisions, after having searched lawbooks for apposite precedents.

Another part of it results from the fact that many of those court decisions were made without the needs of law enforcement, and the police policies that are designed to meet those needs, being effectively presented to the court. If judges are to balance accurately law enforcement needs against human rights, the former must be articulated. They seldom are. Few legislatures and police administrators have defined in detail how and under what conditions certain police practices are to be used. As a result, the courts often must rely exclusively on intuition and common sense in judging what kinds of police action are reasonable or necessary, even though their decisions about the actions of one police officer can restrict police activity in the entire Nation.

These problems are illustrated by the recent U.S. Supreme Court decision in the case of *Miranda* v. *Arizona,* which prohibited, by a 5-to-4 decision, the questioning of a suspect in custody unless counsel is present, or the suspect expressly waives his right to counsel. The majority of the Court, after studying police manuals and textbooks that describe how confessions are best obtained, concluded that interrogation in the isolated setting of a police station constituted informal compulsion to confess. It concluded further that the need for confessions is overestimated by the police. The minority felt that a good many guilty defendants would never be convicted because of the Court's decision voiding police practices, which only 8 years previously had been found constitutional by the Court. Neither the majority nor the minority had much solid data to go on. Only recently has research commenced to assess the police need for confessions and the possibilities of establishing rules under which stationhouse questioning would be permissible.

The Commission believes that it is too early to assess the effect of the *Miranda* decision on law enforcement's ability to secure confessions and to solve crimes. But this and other decisions do represent a trend toward findings by the judiciary that previously permitted police practices are unconstitutionally offensive to the dignity and integrity of private citizens. The need for legislative and administrative policies to guide police through the changing world of permissible activity is pressing. Even such a detailed, prescriptive opinion as *Miranda* failed to provide the police with a complete set of rules governing in-custody interrogation. As noted in Justice White's dissenting opinion:

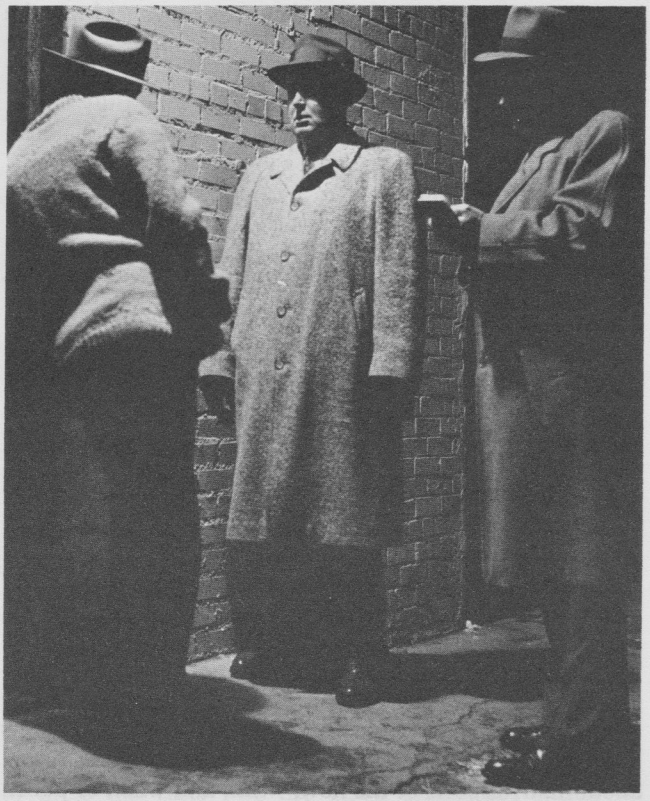
> *[The] decision leaves open such questions as whether the accused was in custody, whether his statements were spontaneous or the product of interrogation, whether the accused has effectively waived his rights, and whether nontestimonial evidence introduced at trial is the fruit of statements made during a prohibited interrogation, all of which are certain to prove productive of uncertainty during investigation and litigation during prosecution* * * *

The majority of the Court did note that the interrogation methods prescribed in the decision could be replaced by others devised by legislators and administrators as long as each accused was apprised of his right to silence and afforded continuous opportunity to exercise that right. Courts always will have the final word as to constitutional limitations upon police action, of course. But legislators, and the police themselves, by not waiting for judicial prodding, can affect the nature and result of court review. They can establish through empirical research what the needs of law enforcement are, and they can enumerate policies and prescribe practices that meet those needs.

If the present trend continues, it is quite likely that some current investigative practices and procedures thought by police to be proper and effective will be held to be unconstitutional or subjected to restrictive rules. Whether this happens will depend in some measure upon whether the police, first, can develop policies that differentiate the proper from the improper use of particular investigative practices, and whether, second, they can insure through proper supervision that individual officers are held to those policies. In an equally large measure. State legislatures are responsible for establishing police policy. As the New Republic recently observed: "The community acting through its elected representatives must decide and state precisely what it wants the police to do, not simply admonishing them for disobeying indistinct or nonexistent commands."

The Commission feels compelled to comment upon two investigative practices that are particularly clouded in controversy and that law enforcement officials believe are crucial. One of them is wiretapping and electronic eavesdropping. The state of the law in this field is so thoroughly confused that no policeman, except in States that forbid both practices totally, can be sure about what he is allowed to do. This situation, and the Commission's proposals for clarifying it, are discussed at some length in Chapter 7.

The other issue involves the basic police practice of stopping suspects, detaining them for brief questioning on the street and, for the policeman's self-protection, "frisking" them for weapons. Commission observers of police streetwork in high-crime neighborhoods of some large cities report that 10 percent of those frisked were found to be carrying guns, and another 10 percent were



Plainclothes detectives question suspect.

carrying knives. If the police were forbidden to stop persons at the scene of a crime, or in situations that strongly suggest criminality, investigative leads could be lost as persons disappeared into the massive impersonality of an urban environment. Yet police practice must distinguish carefully between legitimate field interrogations and indiscriminate detention and street searches of persons and vehicles.

The Commission recommends:

State legislatures should enact statutory provisions with respect to the authority of law enforcement officers to stop persons for brief questioning, including specifications of the circumstances and limitations under which stops are permissible.

Such authority would cover situations in which, because of the limited knowledge of a policeman just arriving at the scene, there is not sufficient basis for arrest. Specific limitations on the circumstances of a stop, the length of the questioning, and the grounds for a frisk would prevent the kind of misuse of field interrogation that, the Commission study also indicated, occurs today in a substantial number of street incidents in some cities. As discussed in a later section, such statutes should be implemented by the creation by police administrators of specific guidelines for police action on the street. A balance between individual rights and society's need for protection from crimes can be struck most properly through this combination of legislative and administrative action. Court review then proceeds under more enlightening circumstances.

The Commission notes that the U.S. Supreme Court will review this term at least two cases bearing on police authority to stop persons. Of course, any legislation and administrative rules must be consistent with court rulings on this issue.

THE OPERATIONAL PROBLEMS OF LAW ENFORCEMENT

PATROL

The heart of the police law enforcement effort is patrol, the movement around an assigned area, on foot or by vehicle, of uniformed policemen. In practically every city police department at least one-half of the sworn personnel perform their duties in uniform on the street. Patrol officers are not, of course, mere sentries who make their rounds at a fixed pace on a fixed schedule. They stop to check buildings, to investigate out-of-the-way occurrences, to question suspected persons, to converse with citizens familiar with local events and personalities. If they are motorized, they spend much of their time responding to citizen complaints and the reports of crime that are relayed to them over their radios.

There can be no doubt that large numbers of visible policemen are needed on the streets. For example, a Commission analysis showed that 61.5 percent of over 9,000 major crimes against the person—including rapes, robberies, and assaults—in Chicago over a 6-month period occurred on the streets or in other public premises. Moreover, there have been a number of demonstrations that increasing the patrol force in an area, through use of special tactical patrols, causes a decline in crimes directed at citizens walking the streets in the heavily patrolled area. The number of crimes committed in the New York subways also declined by 36.1 percent last year after a uniformed transit patrolman was assigned to every train during the late night hours.

Although all police experts agree that patrol is an essential police activity, the problem of how many policemen, under what orders and using what techniques, should patrol which beats and when, is a complicated, highly technical one. A principal purpose of patrol is "deterrence": discouraging people who are inclined to commit crimes from following their inclinations. Presumably, deterrence would best be served by placing a policeman on every corner. Street crimes would be reduced because of the potential criminal's fear of immediate apprehension. Even indoor crimes, such as burglary, might be lessened by the increased likelihood of detection through a massive police presence. But few Americans would tolerate living under police scrutiny that intense, and in any case few cities could afford to provide it.