# POLICE COMPLAINTS

## A HANDBOOK

BY PAUL G. CHEVIGNY

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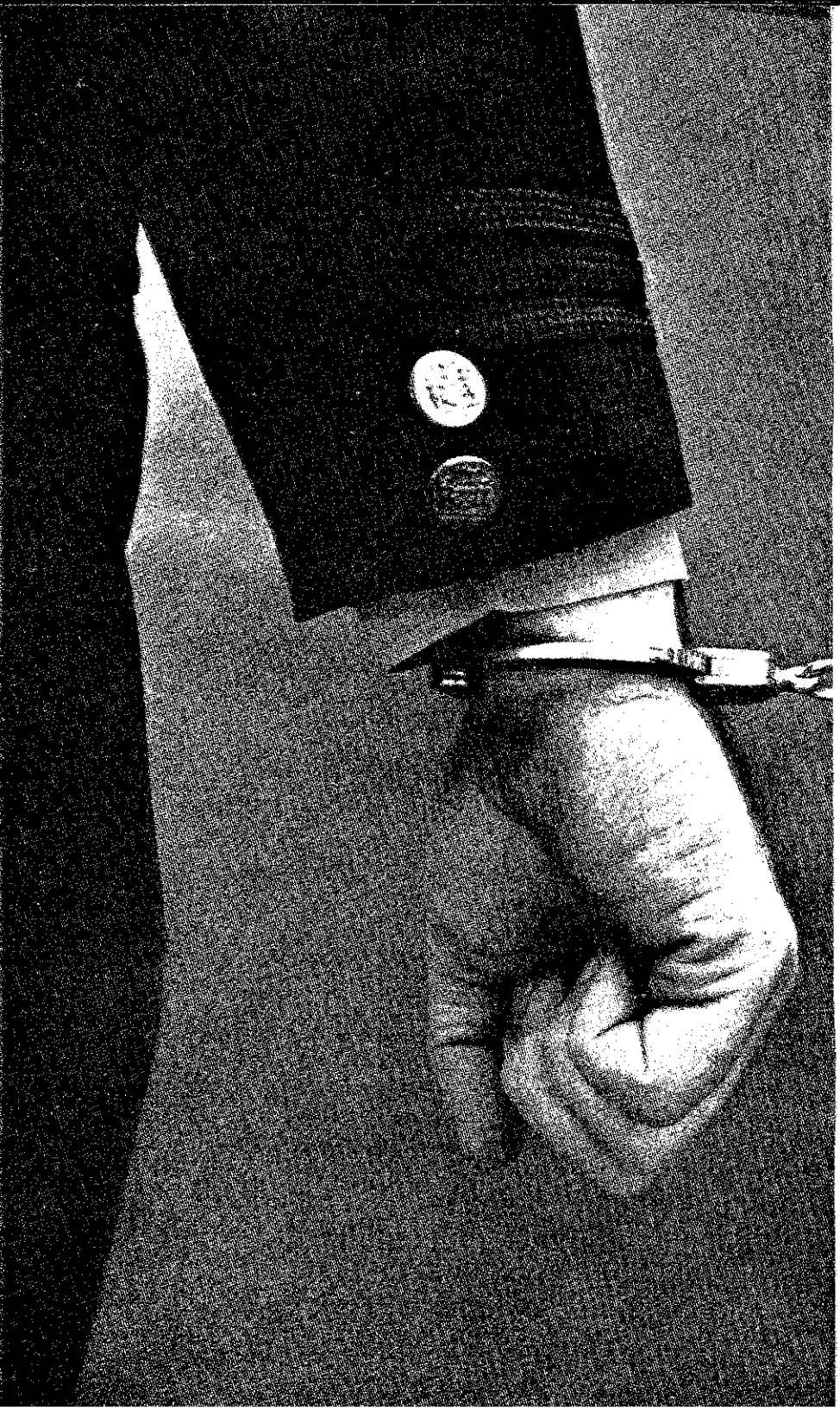

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## BY PAUL G. CHEVIGNY

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## JUDGING THE COMPLAINT

Some general observations about typical police conduct should help you judge the credibility of civilian complaints:

1. The policeman conceives his job to be that of keeping society free of threats to good order. To him, this is the meaning of law enforcement.

2. The policeman feels that he personifies the authority of law and order in the neighborhood. A threat to him is a threat to order—as concrete a crime as theft. Every person who threatens order is a criminal and should be convicted.

3. It follows that the policeman is likely to invoke legal sanction against any person—however respectable—who defies his authority. Defiance makes the policeman lose his head.

4. People who are not respectable are in themselves threats to good order. The more deliberately they affront respectability, the more the policeman resents them (e.g. student revolutionaries are resented more than alcoholics).

5. Legal rules that protect citizens from police excesses are seen by the policeman as protection for the guilty. Such rules are ignored without compunction because they conflict with the policeman's ethic. The policeman can cover his violation by perjury.

6. The policeman does not abuse citizens in front of witnesses unless he cannot be identified or unless he loses his head. Almost all cases of brutality in front of witnesses occur either in confused civil disturbances or as a result of citizen defiance.

7. Testimony which tends to convict the arrestee and to protect the policeman from criticism is always considered by the policeman to be justified.

The most obvious consequences of these observations are:

1. Nearly all complaints are going to come to you in a defensive posture. The person who claims to have been abused by the police will probably have been arrested and charged, usually with disturbing the peace and resisting arrest. The more serious his injuries are, the more serious the charges are likely to be.

2. Allegations of police brutality in public are to be viewed with suspicion if the victim claims there was no defiant conduct on his part. There are exceptions to the rule, of course. Some people, like derelicts, are victimized solely because of their status. In most cases, however, investigation will reveal that there has been defiance. (There may still have been an unlawful use of force, but it is important to know all the circumstances surrounding a case.)



## CRIMINAL DEFENSE

Defense of criminal charges is the first step in handling most police complaints. By filing criminal charges against the victim, the police will have largely destroyed his credibility in the eyes of the courts and review boards, and a conviction on the cover charge (e.g. resisting arrest) will generally destroy all hope of redress for the police abuse.

### INVESTIGATION

The first job, then, is to try to prevent conviction by finding corroboration for the police abuse complaint. This may take the form of documents, photographs or eyewitnesses. (Unfortunately, in some cases there is no corroborating evidence to be found.)

#### Documents

In cases of false arrest the statement of charges may in itself be so inadequate as to show there has been police abuse. This is a relatively rare occurrence, but in loitering and vagrancy cases such inadequate charges are sometimes made.

Hospital records may be used to corroborate injuries by the police. A victim should always be sent to a hospital if he has injuries and has not been examined. Hospital records are more useful than a doctor's records because they can be introduced into evidence very easily, without obliging the doctor to come to court. However, records of injury alone are rather neutral evidence because if the police have charged the victim with resisting arrest, it is logical for him to have received some injuries. (Injury is frequently one of the reasons the resisting charge is made.) Unless the police deny having used force on the victim, hospital records are not especially helpful.

#### Photographs

Still photographs of the victim's injuries are about as useful as hospital records.

Similarly, still photographs of the events at issue in the complaint, which are often available in cases arising from demonstrations or civil disorders, are not so helpful as one would at first expect. They may show the police bearing down on the victim, but they cannot usually prove either that the police struck him or that he was not resisting. Sometimes, however, they do show a state of facts utterly at variance with police testimony. For example, they may show that the officers involved were not those who testify in court. Or they may help in identifying witnesses. In cases where an unlawful search is alleged, pictures of the scene may be useful in other ways, described in more detail later (see page 9).

Moving pictures do not suffer from the defects of stills and are frequently a conclusive item of defense. If the victim or witnesses remember seeing television photographers at the scene, the films should be subpoenaed immediately.

### Witnesses

In most cases neither films nor documents are available. One must rely on eyewitnesses. Often the defendant is arrested with or near people he knows and can easily find.

Furthermore, in many neighborhoods there is a great deal of street life. If the defendant returns with an investigator on another day at the same hour he was arrested, in an astonishing number of cases witnesses to the incident will be present. It is obvious that community action agencies can be a great help in these investigations because organizations that have the confidence of the community can find and interview witnesses. The witnesses, moreover, feel more committed and confident and are likelier to stay with the case to the end. It has been my experience that the best cases, from a legal point of view, come from communities that are aware of the political issues and have strong organizational ties. The most discouraging cases come from neighborhoods that are apathetic and disorganized—there the witnesses either cannot be found or, worse, run away from the case. (There is no more apathetic community than a middle-class "bedroom" suburb, and none more aware than an aroused ghetto.)

It is important to question all witnesses with a view to their credibility for purposes of testimony. It is essential to know whether they have criminal records and how closely related to or acquainted with the defendant they are. For any promising case in which the witnesses are not friends of the defendant, get signed statements from all of them. If any witness should become intimidated and reluctant later on, his statement can be used to impeach him on the witness stand.

At the close of your preliminary investigation (which may take much less than a day, if there are no witnesses) evaluate your chances of success in the criminal case. It is important to be hard-headed about this because if the defense has small chance of success, it is a bad mistake to take a case, push it to trial, and attempt to establish a defense which is, in effect, an attack on the veracity and competence of the police. An almost sure loser is the case where there is no independent corroboration and where it is the defendant's word against the officer's. See the defense as the judge or the public will. The defendant, after all, may not be telling the truth—many a blow struck by a policeman *is* legally justified. Without some corroboration, it is dangerous *to the defendant* for you to treat his case as though his story can be definitely established when, in fact, it cannot. Conversely, if his story can be established, it is incumbent upon you to help him establish it. These questions, of course, do not change the fact that every accused needs to be defended, whether or not his case is hopeless. Whether you seek a disposition or go to trial, however, must depend partly on your view of the defendant's credibility.

## LITIGATION

This is not the place for a detailed precis of the defense of criminal cases.* Here we shall discuss only certain aspects that are of special importance for cases in which police abuse is a defense.

### Preliminary Hearing

It is most important in any case where police abuse may be alleged to have a preliminary hearing and to have it immediately. Be sure to order a transcript of the minutes to use for cross-examination. At the hearing, the following questions are important:

1. What officers were present? By having them identi-

**The reader is referred to Mendelson,* Defending Criminal Cases *(New York, Practising Law Inst. 1967).*

fied you may eliminate the addition of "witnesses" later. Conversely, at trial you may want to consider calling *as your witnesses* any officers named at the preliminary hearing but not called by the prosecution. If they have not been prepared to testify, their statements may vary wildly with those of the self-appointed witnesses. However, this is a tactic of desperation, to be used sparingly.

2. Do the officers claim they used necessary force to arrest the defendant, or do they deny having injured him? The usefulness of medical records may be determined by the answer to this question.

3. Do the police claim to have been injured? In what manner were they injured and where were they treated?

4. Exactly what did the defendant do? How many times did he allegedly strike an officer? What words did he use? In cases of search on the street, questions of where and how the search was made may be important. The answers to these questions lock the prosecution into a particular version of the facts that they may find difficult to adhere to at the trial. Cross-examination will frequently reveal any inconsistencies.

5. Were citizens watching? To eliminate witnesses the police may deny that citizens were present. But if they do, probably they will also eliminate any charge of a breach of the peace.

**Preliminary Motions**

Rulings of the U. S. Supreme Court require hearings to determine the admissibility of evidence obtained by search and interrogation. Where abuses are claimed with respect to either of these, you automatically demand such a hearing (which is independent of the preliminary hearing).

*Search*

Techniques in the so-called "motion to suppress evidence" are determined by whether there was a search warrant and whether the search occurred outdoors or indoors.*

1. *Outdoors.* Searches in the street are hardly ever made with a warrant. Almost all such searches are theoretically incident to an arrest, and the officer will claim that he made the arrest because he saw a crime being committed. The crime will be the possession of contraband, and the arrestee will supposedly be caught in the act of either concealing it or throwing it away. It is important to get a photograph of the doorway, car, or other place where the search was allegedly made because it may show that the acts recounted by the officer could not have been seen by him.

In many cities the police have a "field interrogation program"—a polite phrase for systematic stop and frisk. Occasionally the police find contraband in such a stop and make an arrest. In moving to suppress the evidence, it may be wise to collect incidents of persons frisked in the same neighborhood and not arrested. This will tend to show that there was neither probable cause nor reasonable suspicion for the arrest in your case.

2. *Indoors.* Searches are frequently made in the hallways of buildings. A photograph of the premises is once again essential in order to cross-examine the officer. In one case, for example, the officer said he was standing on the sidewalk and saw "two Negro males" smoking marijuana at the end of a hall at a certain address. A photo of the doorway, however, showed there was a seven-foot stoop—the hall could not be seen from the street.

Without a warrant a search of an apartment will not usually be lawful because the police cannot witness a crime being committed unless they obtain access unlawfully. Evidence seized inside an apartment will usually be rejected by the District Attorney himself if the police admit that the arrest was made in private premises.

*Confession*

Volumes have been written concerning efforts to prove coercion. Hearings on the admissibility of confessions are held every day, and they are generally quite discouraging—it is usually impossible to prove that a confession was involuntary. The effort should not be undertaken *as a civil liberties matter* except in the clearest cases, though it is required as an ordinary defense in many serious criminal cases.

Under present law the inquiry is divided into two parts, the determination of admissibility under *Miranda v. Arizona,*

*The details of the law of search, including the matter of warrants, are well summarized in the U. S. Justice Department's* Handbook on the Law of Search and Seizure *(1968), available for thirty cents from the Government Printing Office.*

384 U. S. 436 (1966) and *Escobedo v. Illinois*, 378 U. S. 478 (1964), and the determination of voluntariness under older law.

*Miranda v. Arizona* requires that four warnings be given before interrogating a suspect. They are:

1. You have a right to keep silent.
2. Anything you say may be used against you.
3. You may have an attorney before and during the questioning.
4. If you cannot afford an attorney, one will be provided for you.

It appears that the police, at least in major urban centers, have been giving these warnings, though a hearing should be held to make sure. The fact that the warnings were given does not end the inquiry, however, because defendants frequently claim that the police ignored their refusal to waive their rights. In establishing this, the length of detention is very important—a long detention tends to negate any inference that rights were waived. Records of the precinct should show when the defendant was brought into the precinct, and the confession will show when he confessed. A subpoena for precinct records usually must be directed to the commander of the precinct rather than to the police department.

*Escobedo v. Illinois* casts doubt on the validity of any confession obtained from a defendant once he is represented by counsel. If an attorney has any reason to believe a confession may be taken from his client in the precinct, he should visit or at least telephone the station to inform the police of his retainer and warn them not to interrogate. He should try to see that the blotter shows the time when he called or appeared.

The lack of voluntary waiver is slightly easier to establish, in theory, than the actual coercion of a confession. It should be pointed out that *physical* coercion is not so common as it once was, partly because prolonged questioning by experts will usually be just as effective as force. In attacking a confession obtained by prolonged interrogation without physical force, the defendant's education, age, intelligence, the length of his detention, and frequently his race, are all relevant. You should study the police methods described in Inbau and Reed's *Criminal Interrogation*. Be prepared at



the hearing to ask the officers whether any of the methods were used.

Physical force in obtaining a confession is still used occasionally, especially in cases where the police are looking for the assailant or killer of a policeman. Be prepared for beatings in connection with such investigations. If a beating is alleged and medical records show no injuries to the defendant, it may be of some use to find out if another prisoner saw the blows or the injuries or heard the cries. A list of prisoners on a given day can be obtained by a subpoena.

*Jury Trial*

The "political" nature of cases in which police abuse is a defense will frequently affect the determination of whether to ask for a jury trial. The public tends to be somewhat more receptive than the judiciary to allegations of abuse in law enforcement. Judges commonly have an "official bias" in favor of the police. However, if the defendant is a dissenter, that is, if he has been arrested at a protest demonstration or other overtly political action, the public may be prejudiced because he is a "radical." The same kinds of considerations apply to black defendants. In general, when an ordinary citizen is roughed up by the police, it may be well to take his case to a jury, which has no vested interest in law enforcement; but the case of an "unsympathetic" defendant is often better presented to a judge alone. The balance of factors must, of course, be determined on the basis of one's knowledge of the judges and the community.

**Publicity**

Should you seek to publicize the case? The answer must depend on your estimate of the effect on the criminal case and the prevailing rules in your jurisdiction governing pretrial publicity. As long as you are defending a man, nothing but his defense is a legitimate concern. At least two factors will enter into the estimate:

1. The viability of the criminal trial process. In some jurisdictions, particularly southern towns and medium sized cities with ironclad political machines, it is notorious that no judge will hear criticism of the police. In such a situation public pressure or federal litigation is often the only tool available. If the local judges can be expected at least to listen

to your defense, however, it is usually better to keep all external pressures out of the case until they have decided it.

2. The clamor to convict. Some cases are famous when they get to you. The charges are as high as possible (e.g. riot, felonious assault), the District Attorney wants a conviction, and there is no choice but to use every available resource. Most cases in large cities, however, are "sleepers"—the District Attorney has no particular axe to grind, and even the police may have no testimony but that of a single officer. Such cases should be allowed to slumber until the prosecution has rested and the defense is ready.

## SAMPLE CRIMINAL CASES

### CASE I

Four plainclothes policemen of the narcotics squad have searched an apartment pursuant to a valid warrant and have arrested the occupant for possession of narcotics. As they are taking him down the street, two Puerto Rican teenagers are standing on the sidewalk. One mutters to the other, "F—ing flatfoot," supposing his words to be inaudible to the police. One of the plainclothesmen, however, hears the phrase, stops, and grabs one of the boys by his shirt front. When the boy yells, "Hey, let go," the officer slaps him. He protests more loudly, and the policeman drags him into a hallway, punches him in the head and kicks his shins. The other boy protests, and another officer punches him in the mouth.

The second boy goes for help from a social worker in a nearby office. Two social workers come running into the street to find the first boy standing by a doorway with his nose bleeding, while the plainclothesmen, being unidentifiable and wishing to avoid trouble, are hustling their bewildered original prisoner around the corner.

The social workers and the teenagers follow the plainclothesmen warily until they see a uniformed officer some blocks away. They rush up and ask him to arrest the assailants. The uniformed officer stops the plainclothesmen, but he, of course, refuses to make the arrest when the plainclothesmen show their badges.

The second boy heads for the precinct to make a complaint, while the first boy and the social workers stand arguing with the police. The plainclothesmen shortly arrest



the first boy and warn the social workers not to be "wise guys" and to "beat it." One of them does go away, looking for help, but the other follows the group to the precinct. The plainclothesmen warn him not to come in. When he insists, he is arrested. Inside the precinct, the police find the second boy having the blood washed off his face by a sergeant. The second boy is arrested right in the precinct.

The two teenagers and the social worker are charged with disorderly conduct, assault and interfering with an officer. It is charged that the teenagers interfered with the arrest of the original prisoner, and that the social worker interfered in turn with their arrest. The three are bailed from the precinct, and the two teenagers are taken to the hospital the same night.

At the preliminary hearing two policemen testify that the two boys ran up and attempted by physical force to separate them from their original prisoner, while yelling, "F—ing flatfoot." The police further testify that they arrested the first boy on the spot (i.e. that they did not flee without him) and that the second boy ran away. On the other hand, they admit that they encountered a patrolman around the corner, and that the defendants insisted that they (the plainclothesmen) be arrested. They also admit that the second boy was arrested inside the precinct. They deny beating the first boy but admit punching the second "because he interfered."

#### Defense

This case at the outset presents certain problems—and certain advantages. No witness who was not arrested actually saw the fracas between the police and the two teenagers (though the original prisoner is a nearly neutral witness). On the other hand, it appears from the observations of the social workers that the boys could hardly have been guilty of a crime because the police let them go and themselves attempted to escape from the neighborhood. At the least, any inference that the defendants were conscious of having committed criminal acts is negated by the fact that all defendants followed the police and that one of them actually ran to the precinct.

The hearing testimony is extremely valuable because a lot of it is easily contradicted. The fact that the three de-

fendants demanded the arrest of the plainclothesmen, and that one of them went to the precinct, is inconsistent with consciousness of guilt. It can be proved by an independent witness (second social worker) that the police did not arrest the first boy until he demanded their arrest. The first boy's injuries can be established from the hospital records.

The following points of law and fact are important for the trial:

1. A court order to bring the original prisoner from prison should be obtained, or a subpoena issued if he is on bail. He is likely to be a somewhat friendly witness because he is not friendly to the police, and, after all, he cannot say he saw nothing. The police may try to coerce him to back up their story and save his own skin. He should be interviewed with care before the trial. If he tells the truth, he is invaluable because whatever his past record, he has no personal interest in helping these defendants.

2. In most jurisdictions disorderly conduct is equivalent to a breach of the peace. It requires that some portion of the public be disturbed. If the police do not allege that a crowd or at least passersby were present, the charge should be dismissed. Cross-examine carefully on this point because the police frequently forget it. If the police claim the presence of a crowd, the witnesses can be used to negate the claim.

3. This case presents a special twist because the interference charged is with the arrest of a third person, the original prisoner. Ordinarily interference concerns the defendant's own arrest. In either case, however, one basic legal question is whether the initial actions of the officers were lawful. In most jurisdictions reasonable resistance to an unlawful arrest is permitted. When a defendant is charged with resisting his own disorderly conduct arrest in such a jurisdiction, to defeat the disorderly conduct charge is to defeat the whole case: If the defendant has not been lawfully arrested on the original charge, he has a right to resist.

The right to resist unlawful official action is one of the cornerstones of a defense to a criminal case based upon a police abuse. In jurisdictions where the right is abolished (e.g. New York, New Jersey, Illinois) it will inevitably be harder to win such cases because loss of the right very nearly shifts the burden of proof. In jurisdictions where the right exists, judges can gracefully dismiss a charge of resisting arrest on "legal" grounds—that the underlying charge was not proved. But once the right is abolished, they cannot dismiss such a charge except by calling the policeman a liar. Politically and psychologically this is hard for a judge to do. (Therefore, in jurisdictions where the right is abolished, there is another factor in favor of demanding a jury trial.) Any statute forbidding resistance to an unlawful act should be attacked on constitutional grounds.

The case under discussion here is not easily resolved even in a state which permits resistance to an unlawful arrest. Even if the defendants win their disorderly conduct case, they will not necessarily win the case for interference with an officer. Interference can be justified only if the arrest of the *original prisoner* was unlawful and the defendants had reason to know that it was unlawful. In practice, most courts will dispose of this line of argument on a showing that the defendants knew nothing of the original arrest. Therefore, you will have to argue that there was no interference, offering a clear choice between the defense and prosecution versions of the facts.

4. Someone, perhaps the defendants, ought to go with the attorney to the scene of the events and try to interview the people in apartments and stores facing the street. Occasionally a willing witness can be found in this way.

## CASE II

A large demonstration against the Vietnam war, involving several hundred people, is scheduled for a spring Saturday afternoon. The demonstrators apply for a parade permit but do not get one. They agree, therefore, to confine their marching to the sidewalk. The demonstration forms in a small park and proceeds peacefully along a sidewalk. The commander of the detachment of police speaks through a bull horn, ordering the crowd to disperse or be arrested. When the march leaders refuse to disperse, the police charge, clubbing the marchers in front and seizing their banners. A few are arrested, but most of the group simply about-face through the park and flee out the back streets. Most of them are arrested by policemen stationed at the ends of the blocks on the other side of the park.

You have two clients. One was holding a banner; he was clubbed and arrested. That night he was taken to the hospital. He is charged with disorderly conduct and resisting arrest. The second was fleeing and ran right into the arms of a policeman nearly two blocks from the scene. He is charged with disorderly conduct. The complaints purport to show that both were arrested marching from the park. The first client is supposed to have hit his arresting officer. The second client says that he never saw his "arresting officer" before the man was assigned to him at the precinct.

**Defense**

This type of mass demonstration case calls for a number of standard measures:

1. Get the names and addresses of everyone arrested and ask the march leaders to give you the names of everyone not arrested. All these defendants and potential witnesses should be called to a meeting with a view to finding out who saw which arrests. You may find someone who saw either of your two clients arrested. It may prove advantageous, in fact, to defend a large number of the demonstrators so that inconsistencies in various police stories can be collected and presented for purposes of cross-examination.

2. Subpoena still and moving pictures from all news media and any private sources you can discover. If the local papers are friendly, ask them to print a request for witnesses, with your telephone number. If you have word of the demonstration beforehand, try to send your own witnesses and cameramen to the scene.

Your films may help you prove that the march was peaceful and restricted to the sidewalk, as well as the fact that Client I did not resist and Client II was not present. (Do not rely on the film alone, however; try to impeach the officer's testimony in your cross-examination and establish firmly that Client II was arrested elsewhere. It will help the case as a whole.)

In introducing the film into evidence, use the cameraman to identify it if possible. If he is not available, any witness who can say he saw the scenes as shown on the screen may identify the film.

3. As in Case I, you should pay particular attention to the disorderly conduct charge. It is doubtful that a peaceful march for political purposes is ever a disorderly conduct, particularly when it is conducted on a sidewalk. The case is strengthened by the fact that a permit was refused.



## AFFIRMATIVE REMEDIES

To this point we have discussed police complaints entirely in a defensive posture. Let us assume now that we are on the offensive, seeking affirmative redress. Sometimes this will occur only after the criminal charges are disposed of. Often, however, you will find that a witness or an irate victim of police abuse has complained to the authorities before bringing his case to you and before criminal charges are disposed of. You may want to delay action on the complaint until the criminal case is finished, and you will usually have no trouble doing so.

Some abuses, such as those which result in permanent injury, are so serious or obvious that there can be no delay. You must complain immediately to the authorities. In some jurisdictions the criminal courts can be predicted to be so unfriendly to your defense that you must seek affirmative help before the trial. (The considerations are the same as those that apply in deciding whether to seek pre-trial publicity —see page 11.) Then you will need help not from such local officials as the police commissioner but rather from federal sources, the federal courts and the U. S. Justice Department.

### POLICE REVIEW BOARDS

These bodies are so various in form that it is hard to offer a summary approach to them. In general, review boards fall into two large groups, those that have independent investigative staffs and those that do not. If independent investigators are assigned to work on your case, it will be easy to follow. If it is simply given to the local commander to investigate, it may get lost.

In either event insist on learning the name of the man assigned to look into your case and give him all the help you can. Even if he is not in good faith with you, it will be harder for him to excuse his failure to find support for your complaint if you have given him concrete evidence.

If there is any suggestion that *any* investigator has *ever* tried to browbeat a witness in previous cases, accompany your witnesses to all interviews. Any attempt to browbeat should bring a second complaint, against the investigator.

If a hearing is provided for, demand one until either you get it or the authorities are forced to say they will not give you one.

Reviewing procedures are frequently cumbersome, often divided into an investigation and then (rarely) a trial. Be prepared for a long pull.

At the close of each case, if there are procedural failings in the reviewing process, you should bring them to the attention of the mayor and the press. This is the time for publicity to try to get better procedures. If you think the officer has committed a crime and the department has failed to discipline him, complain to the District Attorney. If it is a federal crime, complain to the Justice Department. Sometimes these complaints get results, especially if the community is up in arms.

### STATE ACTIONS*

The problems of proof in a state action for tort against the officer or his employer are much like those in the defense of the criminal action. In general, such a tort action is rooted in assault, false arrest and malicious prosecution. Without an acquittal on the criminal "cover" charge, the civil action is doomed. Once there is an acquittal, however, such an action is not too difficult *providing* you can prove that it was a policeman who administered the blows.

In cases where injuries were received inside the precinct, if you can show that your client was unscathed *at the time he was arrested* and that he subsequently came from the hands of the police with injuries, you may have a case for damages. Witnesses frequently can testify to the complainant's condition at the time of the arrest. Also, prisoners are frequently delivered by the police to another precinct or to court or to corrections authorities. Receivers are always afraid of being blamed for injuries to a prisoner, and they will in most cases faithfully record any injuries, just to cover themselves. Prison

*See Ginger and Bell,* Police Misconduct Litigation, *15 Am. Jur. Trials 555 (1968).*



authorities, moreover, routinely give medical examinations to all prisoners. Be prepared in civil actions to make use of these transfers from place to place by subpoenaing the records of the place to which the prisoner was first brought (which will usually show him unscathed, even if he was not), and of the place to which he was later taken (which will usually record any injuries).

### FEDERAL ACTIONS

As far as police abuses are concerned, it is nearly as easy to sue in the federal court, under the Civil Rights Act, as in the state courts. The chief difference is that recovery can be had in federal court *only* against the individual officer, not against the state, county or city. Nevertheless, in small towns, rural areas and heavily machine-controlled cities, you may want to sue in federal court to avoid the prejudices of state court judges and juries.

Federal actions are most useful to enjoin unconstitutional patterns or practices. The classic example is *Lankford v. Gelsten,* 364 F. 2d 197 (4 cir. 1966), which enjoined a pattern of unlawful searches of homes in Baltimore.* Other typical examples are cases of seeking injunctions against harassment of the press and observers at demonstrations, or against deliberately injuring demonstrators (the latter requires especially strong proof of a pattern).

## GENERAL RECOMMENDATIONS

### COMMUNITY ACTION

Community action is the key to a good defense, as well as to the improvement of police-citizen relations. As the civil rights and riot experience in the ghettos shows, constant surveillance by the community does gradually lead to more careful police work. Furthermore, when police abuses occur, community action groups give the witnesses a sense of commitment and a sense of personal protection which makes them more willing to help in the defense of criminal charges and

*See also Note:* Federal Injunction as a Remedy for Unconstitutional Police Conduct, *78 Yale L. J. 100 (1968).*

in pressing for action against the police. Try to encourage and work with community action groups in police abuse cases.

## OBSERVERS

Witnesses may be assigned to an area where trouble is expected, such as a demonstration or an incipient riot. It is a simple and invaluable tool of defense to send these observers. Affidavits should be taken from them after each incident. Humane city administrations, where they exist, should be asked to send their own official observers. New York's Mayor Lindsay, for example, for some time sent his aides to all demonstrations. Finally, send movie cameramen if possible.

Sometimes a neighborhood is so heavily policed that it is possible to observe abuses simply by being present. In a classic experiment by Professor Herman Schwartz, two law students went into the ghetto in Buffalo and were stopped, questioned, and in some cases roughed up, *eight times* in a single evening. This sort of observation is best conducted in a medium sized city with an old-fashioned administration.

Observers should be advised to avoid arrest themselves unless absolutely necessary. They are more valuable as witnesses than as victims. Tell them to keep their opinions of the incidents to themselves and record the offending officer's badge number, or, if that cannot be gotten, his squad car number. Ask them to take photographs if they can, and to try not to be seen doing it—they may be beaten or arrested if caught. Ask them to turn in their reports to you immediately.

## POLICE PROJECTS

Successful projects to investigate and process complaints have been established all over the country. A complaint collection office may be staffed by lay people or law students, but the project should be prepared to offer defense in credible cases. Police complaints should not be handled at all unless you are prepared to help the victims.



## COMPLAINT FORMS

### General Form

Name:

Address: Home Phone:

Age: Work Phone:

Occupation and Work Address:

1. General nature of complaint (e.g. police brutality):
2. Where did it occur?
3. What date and time?
4. What were you doing immediately prior to and at the time of the events? Were you in a group? Were there other people immediately around you?
5. What did the police do?
6. Were there witnesses (other than yourself)? If so, give names, addresses and telephone numbers. Do you know of any photographs or films of the incident?
7. Was there any mistreatment between arrest and arraignment?
8. Do you require legal representation? If so, what charges are there against you? If you have an attorney, what is his name and address?
9. What is the date of your next court appearance?
10. Were you a witness to the arrest or abuse of any other person? If so, give the name, if known, of each person you saw arrested or abused and a description of the incident and, if known, the names or badge numbers of the police involved. (Use the other side of this sheet and other sheets if necessary.)
11. Do you know of other witnesses to the incidents you described in answering question 10? If you do, please provide their names, addresses, and telephone numbers and indicate which incidents they witnessed.
12. Previous conflicts with the law (optional).

**Demonstration Form**

Name:

Address: Home Phone:

Age: Work Phone:

1. Were you arrested? Where and what time? If you were arrested please answer questions 2-9.
2. Name and badge number of arresting officer, if known:
3. Officer who testified as arresting officer:
4. What were you doing immediately prior to and at the time of your arrest? Were you in a group? Were others arrested with you? Were there other people immediately around you?
5. What did the police do? Did they give any orders?
6. Were there witnesses to your arrest? If so, give names, addresses and telephone numbers. Do you know of any photographs or films of the incident?
7. Was there any mistreatment between arrest and arraignment?
8. Do you require legal representation? What are your charges?
9. What is the date of your next court appearance?
10. Were you a witness to the arrest or abuse of any other person? If so, give the name, if known, of each person you saw arrested or abused and a description of the incident and, if known, the names or badge numbers of the police involved. (Use the other side of this sheet and the other sheets if necessary.)
11. Do you know of other witnesses to the incidents you described in answering question 10? If you do, please provide their names, addresses, and telephone numbers and indicate which incidents they witnessed.