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STOP AND FRISK OR ARREST AND SEARCH—THE USE AND MISUSE OF EUPHEMISMS

(Comments upon *The Courts, the Police, and the Rest of Us*, by Professor Herbert L. Packer)

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"Ways and means will be suggested for resolving the conflict that now seems to exist between the interests of individual civil liberties and the interests of effective law enforcement." So announces the program for this Conference. Professor Packer, in his presentation today, has suggested that such a conflict does not actually exist; that the recent Supreme Court decisions, particularly with regard to confessions, represent an historical trend within the Court to pay that regard to an individual's liberty which once was paid only to an individual's property;[1] and that those decisions, while they frequently and emotionally have been denounced as a death blow to effective law enforcement,[2] will, in the long run, be no more so than was the decision to exclude confessions obtained by physical torture. My agreement upon these points is complete.

Today I shall explore one proposal currently being advanced by some in our midst and which others among us abhor, but which all thoughtful citizens must concede presents a conflict between individual liberty and effective police procedures.

The proposal of which I speak is that euphemistically labeled "stop and frisk". I plan first to note briefly current police practices of field interrogations and searches. Then I shall discuss the most recent proposal for legitimatizing, in only scantly modified form, these existing procedures—the first Tentative Draft of the American Law Institute's Model Code of Pre-Arraignment Procedure. In examining the draft, I shall give some consideration to the argument that stop and frisk authority is essential to the functioning of the police. Primary emphasis, however, will be placed upon an analysis of the legal basis advanced by the draftsmen in support of the proposed model code, so that a judgment may be made whether the proposals of the code realistically can be expected to pass muster with recent United States Supreme Court decisions and the underlying principles thereof.

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[1] The first provision of the Bill of Rights to be held applicable to the states was the fifth amendment's prohibition against taking private property for public use without just compensation. Chicago B. & Q. R. Co. v. City of Chicago, 166 U.S. 226 (1897).

[2] In a recent discussion of court decisions concerning criminal law we find the following statements:

"We cannot have 'domestic tranquility' and 'promote the general welfare' as prescribed in the Preamble to the Constitution when all the concern is upon 'individual civil liberties.' . . .

"In our efforts to preserve individual civil liberties, we cannot abolish the police and other law enforcement agencies and still survive as an orderly society. Nor can we impose so many restrictions upon them that they will be practically powerless to prevent crime and apprehend criminals. . . ." Inbau, *Law Enforcement, the Courts, and Individual Civil Liberties* in CRIMINAL JUSTICE IN OUR TIME 134–135 (1965).

I.

What actually occurs, typically, today when the police stop a person on the street in suspicious circumstances less than sufficient to justify legally an arrest? For our answer, several sources, in addition, perhaps, to our own experiences, may be examined. First, from Detroit, we have available the published observations of a highly respected and skilled reporter, Mr. John Millhone, chief editorial writer for The Detroit Free Press, who recently described an evening spent in a police patrol car thusly:

> It was nearly midnight and I didn't see the dark figure scurrying across the boulevard in front of us until the police sergeant asked:
>
> "Why's he running?"
>
> We were cruising west on Boston Blvd. near Woodward—an area tormented by break-ins and strong-arm robberies—so it wasn't an idle question.
>
> The sergeant accelerated the blue and white Tactical Mobile Unit ahead to the corner and back on the other side of the boulevard where the man was scurrying along the sidewalk.
>
> "Hold on there," the officer ordered. The

figure stopped. The two sergeants and a curious editorial writer climbed out of the TMU.

The figure was a Negro youth who gave his name, his age (17) and his address (some 12 blocks away on the west side of the Lodge Freeway). He said he had been to a party, was supposed to be home by midnight and was running to get there.

He tried to look unemotional, but he was scared. Beads of perspiration started forming on his forehead and his hands shook.

He didn't have any identification, he said, but when the sergeant patted him down he found a billfold in a hip pocket. The billfold was almost empty except for a draft card. The age on the card was crudely altered and it gave a different name from that given by the youth.

"Where'd you get this?" the officer asked.

"I found it in the street."

"What have you got in your pocket?"

The youth took his hand out of his coat pocket and the policeman fished inside and pulled out the head of a mason's hammer—one with a sharp wedge where most hammers have claws.

"Where'd you get this?"

"I made it in shop class at Northwestern (High School). I had it earlier . . . just left it in my pocket."

Off to one side, one of the sergeants demonstrated the hammerhead's usefulness as a weapon. How, clenched in your fist, it would be like a horseshoe in a boxer's glove and how the sharp wedge, jutting down from your fist, was like a small ax.

There were more questions.

"Why are you so nervous?"

"I'm just cold."

The youth was frisked more thoroughly. Identification was found in his inside coat pocket. He had "forgotten" it was there.

After 10 minutes of this, the two policemen advised him to get rid of his false identification, leave the hammerhead at home and then they let him go.

There was no law they could hold him under. The billfold—it would be hard to shake his story. Carrying a concealed weapon—hardly. Obstructing a police officer—not likely.

In fact, there was little reason not to believe the youth's story.

As we got back into the TMU, the police sergeant commented casually: "That was a 'stop and frisk.'[3]

That such practices are not confined to the City of Detroit is shown by this recent description of activities in Chicago:

> . . . Most of the Task Force on a typical night is working random stop-and-quiz missions in high-crime districts. A car with a tail light out gives the police an excuse to stop and question the driver; they find a .32-caliber revolver in the glove compartment. A motorist looks as i [f] he 'just doesn't fit' the expensive car he's driving; they've recovered another stolen auto.
>
> By conducting more than a quarter million such 'field interrogations' in the course of a year, the Task Force will find more than a thousand illegal guns, recover seven hundred stolen autos, and make almost eight thousand arrests. Those concerned with civil liberties argue that despite these results, the Task Force stop-and-quiz operation skirts the thin edge of police harassment. Wilson replies by saying, 'Law enforcement necessarily restricts the liberty and freedom of movement of those persons who, by engaging in criminal activity, interfere with the rights of others.' Translated, this means that only criminals have to worry about harassment.[4]

Unfortunately, it is not at all true that only those engaged in criminal activity need worry about police harassment. An instance comes to mind from my own city of Detroit. An eminent jurist, a Negro, was stopped by a police officer allegedly for having made a "rolling stop" while driving home at night after visiting his fiancee in a fashionable residential neighborhood. The judge, at the police officer's request, handed over his driver's license and automobile registration and informed the officer that he had been visiting a friend in the neighborhood. However, he refused to identify his fiancee and was thereupon taken to

[3] The Detroit Free Press, January 9, 1966, §B, p. 2. While frisking apparently occurred in this incident, there was, as well, a search, even as defined by the draftsmen, as a sequela of the frisk, a consequence I believe we are entitled to assume almost always follows frisking.

[4] The Reporter, March 24, 1966, p 31. The interrogation and frisking of mere suspects in the field, at least as of several years ago was "a fairly common practice in Kansas, Michigan and Wisconsin, especially at night", we are told by Professor LaFave. See LAFAVE, ARREST 344–347 (1965).

police headquarters where he was immediately recognized by the lieutenant on duty and released with appropriate apologies.[5] That judge's experience, except for the apology, is not unique even in my own city of Detroit.

If such events as this do happen in Detroit, which since 1943 has had an enviable record in race relations and which has escaped the riots which have wracked every other major city of this country, and if such events do happen to individuals who possess every indicia of clean-shaven middle-class respectability except that of skin color, what must be the treatment accorded to the ordinary, law-abiding Negro in less "enlightened" cities?

As Professor Packer observed today: "This attitude [that the police are suspect] will not be changed by words. It will take deeds."[6] The field interrogations and searches which occur today are deeds; judicial sanction of stop and frisk also is a deed, and can be expected to influence our citizens' attitudes toward the police, but hardly in the direction of increasing respect for and trust in them.

II.

A.

As has been noted *supra*, police now are, and have been, utilizing field interrogation and search techniques in their efforts to combat crime. It is only in the past several years, however, that these practices have received the attention they deserve in view of the important constitutional issues raised by them. Unfortunately, with increasing frequency our thoughtful attention has been diverted from the constitutional issues involved by the discordant sounds of verbal combat from two warring camps of usually reasonable citizens. The shrill, near-hysterical pitch of the sounds of battle affirms the fear that both forces have taken leave of reason. One of the warring camps accuses police and prosecuting authorities of blatant disregard of our land's law in their ruthless pursuit of criminals and, as well, of contempt for the rights of others, particularly the Negro, in the performance of their duties. The other warring camp, not content simply to defend the police and prosecutors on the basis of their records of performance, has launched an offensive aimed at federal and state appellate courts for placing "judicial handcuffs" on law enforcement officers. It is against this disturbing background that the draftsmen of the ALI's proposed Model Code of Pre-Arraignment Procedure advocate placing an imprimatur of legality upon stop and frisk practices.

The tentative draft of the code authorizes an officer to stop persons in "suspicious circumstances", and to detain them for 20 minutes, during which time they may be questioned and searched or, as defined by the draftsmen's commentary accompanying the proposal, frisked, for dangerous weapons. The officer is further authorized to use reasonable force, less than deadly, to obtain these objectives.[7]

The Note and Commentary on §2.02 try to distinguish between an arrest and the "authority to detain briefly" authorized by §2.02. The reasoning of the draftsmen is that, before a valid arrest can be made for a crime not committed in the officer's presence, the officer must have reasonable cause to believe that the person arrested has committed or is committing a felony; but a brief detention is not an arrest, so it is argued, and, therefore, may validly be made upon grounds of mere suspicion which would not authorize an arrest.

I submit that the draftsmen are toying with words when they say that a "brief detention" for purposes of interrogation and with the right to search is not an arrest, and that they are doing so in a patent attempt to circumvent the presently well-established and familiar judicial standards by which it is determined whether an arrest has occurred. They say:

> Detention under this section is not called an arrest, since in the draft "arrest" is used in the conventional sense to authorize the far more onerous interference of removal to a police station and eventually to court.

They then continue:

> But, inasmuch as this section authorizes a "seizure" of the person, it must be reasonable if it is to satisfy the requirements of the Fourth Amendment.

So here in essence is how the draftsmen have argued:

To make a valid arrest without a warrant for a crime not committed in the officer's presence, the officer must have reasonable cause to believe that the person arrested has committed or is committing a felony because under the fourth amendment an arrest is a seizure of the person. Since in the stop and frisk situation the officer does not have reasonable cause to stop the person, if a stop and

[5] The Detroit Free Press, June 17, 1964, §A, p 1.

[6] Packer, *The Courts, the Police, and the Rest of Us*, 57 J. CRIM. L., C. & P.S. 238, 241 (1966).

[7] §2.02.

frisk were an arrest it would be prohibited by the fourth amendment. To avoid the stultifying effect of that amendment, we hereby define a stop and frisk so that it is something other than an arrest. Therefore, court decisions requiring reasonable cause for an arrest have no application to a stop and frisk, even though a stop and frisk is a seizure which must be reasonable if it is to satisfy the requirements of the fourth amendment.[8]

It is rather disturbing, to say the least, that a distinguished group of lawyers should embark upon a course of semantic gymnastics in order to justify that which they should know cannot be justified under existing judicial precedent. Both a "conventional arrest" and a "brief detention" are seizures, they say, which must be reasonable to comply with the strictures of the fourth amendment but, for some unexplained reason, those strictures are less strict when the seizure of the person is by means of "brief detention" than when the seizure is by means of "conventional arrest".

Perhaps "unexplained" is unfair to the draftsmen. When we turn to the Commentary on §2.02, we find this illuminating statement concerning possible constitutional objections to stop and frisk:

> It might, of course, still be argued that the power granted in this section is, in principle, unreasonable, and therefore violative of the Fourth Amendment. This constitutional objection can best be met by an exposition of the effect and purposes of the provision and the need for it. If the case for such a provision is a convincing one, it would seem to follow that the provision should not be condemned as unreasonable. (pp 94–95.)

While such a statement would not have been surprising had it come from the pen of Lewis Carroll, it is somewhat disconcerting to find it in a draft of a pre-arraignment code which is to be presented to the American Law Institute for its approval. Seldom has it been put more bluntly that the end justifies the means. The draftsmen here tell us that constitutional objections that a stop and frisk without reasonable cause is violative of the fourth amendment may be met, not by demonstrating on the contrary that such a procedure is countenanced by the fourth amendment but, instead, by demonstrating that the officially bestowed power to stop and frisk allegedly would make the task of law enforcement easier.

Logical extrapolations of such a novel constitutional doctrine are somewhat disquieting. For example, it would justify overturning the *Mapp*[9] exclusionary rule. For while constitutional obstacles have been raised to admission of evidence seized in a search not based upon probable cause, certainly such evidence is trustworthy, and, it might be argued, should be admissible in evidence because the right or power to do so is "indispensable in a rational scheme of police activity".[10]

Rather than elaborating on the ramifications of the "good end justifies means which, were it not for the good end, would be unconstitutional" argument, let us consider briefly the draftsmen's argument that stop and frisk authority is "indispensable in a rational scheme of police activity".

One might begin by noting that this certainly is not the first time that a particular police practice, when assailed as violative of constitutional guarantees, has been defended on the gound that it is indispensable to effective law enforcement. That argument was made in the *Escobedo* case,[11] the meaning of which, as I read it, is that a suspect in police custody, before he is questioned for the purpose of obtaining a confession from him, must be accorded the absolute right to remain silent and to consult with counsel.[12]

We have been told, without reference to any authority but only by reference to hypothetical criminal situations, that "The only course open to the police in the overwhelming majority of these cases [of robbery, rape and others of a similar nature] is to look for probable suspects and question them as to their possible guilt."[13] And we have been told that in *Escobedo* the reason the police refused to permit the defendant's lawyer to see him before they had finished questioning him and ob-

[8] One is reminded of the colloquy between Alice and Humpty Dumpty:
"'I don't know what you mean by "glory", Alice said.
"Humpty Dumpty smiled contemptuously. 'Of course you don't—till I tell you. I meant "there's a nice knock-down argument for you."'
"'But "glory" doesn't mean "a nice knock-down argument"', Alice objected.
"'When *I* use a word,' Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean—neither more nor less.'
"'The question is,' said Alice, 'whether you *can* make words mean so many different things.'" CARROLL, THROUGH THE LOOKING GLASS, ch. 6.
Indeed, that is the question.

[9] 367 U.S. 643 (1961).
[10] §2.02, p 95.
[11] Escobedo v. Illinois, 378 U.S. 478 (1964).
[12] See People v. Dorado, 42 Cal. Rptr. 169, 398 P.2d 361 (1965).
[13] Inbau, *op. cit. supra* note 2 at 100.

taining his confession was because "the standard advice lawyers give to their clients in such situations is 'Keep your mouth shut.' "[14] The whole tenor of the article from which these quotations are taken is that if persons in custody are told of their constitutional rights to remain silent and to consult an attorney, or, even worse, if they actually are permitted to talk to a devilish advocate, whole hordes of robbers and rapists will swarm through the land undetected.

Now as I noted, these *ad hominems* were unsupported by any studies made regarding the essentiallity of confessions in criminal prosecutions. As Professor Packer has noted, such studies have been made. I should like to refer to the report compiled by Chief of Detectives Vincent W. Piersante of the Detroit Police Department mentioned by Professor Packer. Chief Piersante compiled statistics of confessions and their use by several specialized bureaus of the Detroit Police Department for the year 1961 and for a nine-month period in 1965, that period commencing upon the date when the department began effective notification of criminal suspects of their absolute right to remain silent and their right to legal counsel.[15]

[14] *Id.* at 107.

[15] On January 20, 1965, the following letter was sent to all commanding officers in the criminal investigation division:

"In view of the recent United States Supreme Court decision in the Case of Escobedo vs Illinois, which reversed a conviction on a murder charge by declaring a confession inadmissible, and then proceeded to set some definite guidelines for prisoner interrogation, the following is submitted as a procedure which we will follow:

"When an investigation is no longer a general inquiry into an unsolved crime, but has begun to focus on a particular suspect and the suspect has been taken into police custody, he must be effectively warned of his absolute constitutional right to remain silent. In addition, he must be provided with an opportunity to consult with his lawyer if he so requests.

"The following statement will be made by interrogating officers to the suspect at the beginning of the questioning: 'I am Detective (the officer should state his name), and I wish to advise you that you have a constitutional right to refuse to make any statement. You do not have to answer any questions which are put to you, and anything you do say may be used against you in a Court of Law in the event of prosecution. You are further advised that you have a right to counsel.'

"This notification of constitutional rights will be noted in the remarks section of the interrogation sheet, or some other appropriate place. It is also suggested that the suspect be requested to sign this section of the interrogation sheet, as further proof of the fact that he was informed of his rights under the Law. (A separate form to be signed by the suspect is being considered and may be issued in the near future.)

"Certain statements by suspects are still admissible without the prescribed notification of their constitutional rights. These include 'threshold' statements which take place at the time of arrest and while the suspect is being transported to the Station. Thus it is imperative that arresting officers and officers at the scene of a crime make very specific and detailed reports of their actions and conversations with suspects prior to turning them over to Detectives for final investigation."

Officers involved in the cases were interviewed and the files were reviewed to determine in what percentage of the prosecutions confessions were essential.

In robberies, in 1961, confessions were obtained in 81.8% of the cases, and they were deemed essential in 26% of the cases; in 1965, confessions were obtained in 83% of the cases and deemed essential in 29%. In forcible rapes, in 1961, confessions were obtained in 24.3% of the cases, and in 1965, in 19% of the cases; none of the confessions was deemed essential, because it is the policy of the department not to issue warrants in such cases upon the basis of a confession without extrinsic evidentiary support. Lumping all categories of crime surveyed, we find that in 1961 confessions were obtained in 60.8% of the cases, and were deemed essential in 13.1% of the cases; in 1965, confessions were obtained in 58% of the cases, but were deemed essential in only 11.3% of the cases.[16]

What, then, were the results of "stripping the police of essential investigative procedures"[17] by requiring, in the spirit of *Escobedo*, that suspects be informed of their rights to remain silent and to counsel? At the very least, improved police efficiency, as evidenced by the fact that reliance upon confessions, as the basis for convictions, decreased. Moreover, except in one category, burglary, there was no significant decrease in the number of confessions obtained after the department began effectively to notify prisoners of their rights, and in that category the decrease in the number of confessions obtained was more than offset by a greater decrease in the number of cases in which confessions were deemed essential, this fact attributable, no doubt, to a rising level of efficiency and competency among the officers of the department.

If, then, the power to question a suspect without advising him of his rights to remain silent and to counsel has not proved indispensable to a rational system of justice, what basis have we for assuming that the granted power forcibly to detain citizens

[16] Because of its factual pertinency, the complete chart is included as an appendix.

[17] Inbau, *op. cit. supra* note 2 at 117.

upon mere suspicion is indispensable? The draftsmen of the code say this in the commentary:

> It has been argued by some that in all such cases, where reasonable cause for an arrest does not exist, the police must rely on voluntary cooperation to achieve their purposes, and if they cannot, it is only because society is reluctant to go to the trouble and expense of hiring more and better police. But this argument disposes too easily of the case for a power to stop. No police force can be large enough to allow officers to follow and observe every suspicious person they encounter. (p 96.)

Once again the draftsmen have overstated the problem and have reached a conclusion based upon an unvoiced assumption of questionable validity. They say, "No police force can be large enough to allow officers to follow and observe every suspicious person they encounter". Granted, *arquendo*. But this presupposes that none of the suspicious persons encountered, and who the police question, will cooperate voluntarily with the police. Yet in the Note on §2.01, Voluntary Cooperation with Law Enforcement Officers, the draftsmen note that "many persons accord inherent respect"[18] to a request for cooperation from a law enforcement officer. And they are right, as is demonstrated by the number of confessions obtained even from those who are informed of their rights to remain silent and to counsel. It is not, then, a case of the police having to follow every suspicious person they see. Some, probably most, will be innocent of wrongdoing and will respond to questioning without coercion.

But let us assume that §2.02 becomes the law. What will it accomplish? I think we can agree that presently most people asked questions by the police on the street respond voluntarily. Section 2.02 is designed to permit an officer to compel by force a suspicious person to remain in his presence who otherwise would not. Once having this unwilling suspect in custody, what may the officer do? He may, during a period not to exceed 20 minutes, obtain the suspect's identification and verify it. The officer also may request the suspect's cooperation but, as the Note warns, "an officer is forbidden falsely to imply an obligation to cooperate with him, and . . . where the officer engages in sustained questioning, he must warn such person that there is no obligation to respond." (p 9.) Finally, he may search the suspect to the extent necessary to discover dangerous weapons if he reasonably believes his safety so requires.

What, then, do we gain from a person who otherwise would not voluntarily cooperate? His identification. What price do we pay? We grant the police a power, unprecedented in our republic, to take into custody and question and search on bare suspicion not rising to the dignity of probable cause, citizens lawfully going about their private affairs.[19] There can be no doubt who would bear the brunt of this new power; it would be those members of our cities' minority groups—those citizens who frequently are excoriated for holding in contempt the processes of a legal system which traditionally has treated them with contempt if not outright abuse. The eloquent statement by Chief Judge Bazelon of the Court of Appeals for the District of Columbia bears repetition:

> So the issue really comes down to whether we should further whittle away the protections of the very people who most need them—the people who are too ignorant, too poor, too ill-educated to defend themselves. Can we expect to induce a spirit of respect for law in the people who constitute our crime problem by treating them as beyond the pale of the Constitution? Though the direct effect of restricting constitutional guarantees would at first be limited to these people, indirectly and eventually we should all be affected. Initially the tentacles of incipient totalitarianism seize only the scapegoats of society, but over time they may weaken the moral fibre of society to the point where none of us will remain secure.[20]

Thus, I think the draftsmen abdicated their responsibility when they accepted uncritically the proposition that an absolute power to stop and question suspicious citizens is indispensable to a rational scheme of law enforcement. Having discussed the speciousness of disposing of the constitutionality of such a procedure by deciding whether there is a need for it, let me now turn to the draftsmen's cursory discussion of the case law on this subject.

[18] Note on §2.01, p 5.

[19] An aversion to searches based upon suspicion is not new to this country. One of the most damning charges that James Otis leveled agaist the odious writs of assistance in 1761 was that they permitted an officer to search upon "Bare suspicion without oath . . . ." Documents of American History 46 (Commager ed. 1958).

[20] Bazelon, *Law, Morality, and Civil Liberties*, 12 U.C.L.A. L. Rev. 13, 28 (1964).

B.

In the Commentary on §2.02, the draftsmen say:

> There appear to be no compelling constitutional objections to an authority to stop persons briefly for purposes of criminal investigation. In the single case that squarely raised before the Supreme Court the issue of the constitutionality of such an exercise of power, *Rios v. United States*, 364 U.S. 253 (1960), the Court declined to decide the question. (p 94.)

In a footnote to this passage, it is said:

> *Henry v. United States*, 361 U.S. 98 (1959), is not authoritative, since the government explicitly conceded that an arrest was made at the moment the car in which the defendants were traveling was stopped by FBI agents, and sought only to argue that the information in possession of the agents justified the arrest. The Court held that an arrest on such information was illegal, a conclusion from which this Code does not differ.

Speaking gently, I say this is an unwarranted denigration of the *Henry* case. The opinion of the Court, written by Mr. Justice Douglas, is devoted to the issue of arrest, specifically the circumstances in which an arrest without a warrant validly may be made.

> The statutory authority of FBI officers and agents to make felony arrests without a warrant is restricted to offenses committed "in their presence" or to instances where they have "reasonable grounds to believe that the person to be arrested has committed or is committing" a felony. 18 USC §3052. The statute states the constitutional standard, for it is the command of the Fourth Amendment that no warrants for either searches or arrests shall issue except "upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."
>
> * * *
>
> That philosophy [in opposition to general warrants] later was reflected in the Fourth Amendment. And as the early American decisions both before and immediately after its adoption show, common rumor or report, suspicion, or even "strong reason to suspect" was not adequate to support a warrant for arrest.[21]

Later in the opinion appears the discussion of the government's concession that the stopping of defendants' automobile was an arrest:

> The prosecution conceded below, and adheres to the concession here, that the arrest took place when the federal agents stopped the car. *That is our view on the facts of this particular case. When the officers interrupted the two men and restricted their liberty of movement, the arrest, for purposes of this case, was complete.* It is, therefore, necessary to determine whether at or before that time they had reasonable cause to believe that a crime had been committed. (Emphasis added.)[22]

The government conceded that an arrest had taken place, and the Court agreed but went on to identify the elements of the arrest, namely, the interruption of the two men and the restriction of their liberty of movement. If anyone doubts that the Court held that the stoppage of the car was an arrest, he should refer to the persuasive interpretation of the Court's holding in the dissenting opinion of Mr. Justice Clark, with whom the Chief Justice joined: "The Court seems to say that the mere stopping of the car amounted to an arrest of the petitioner. I cannot agree."[23]

This, then, is the case which the draftsmen dismissed in a footnote as "not authoritative". Yet, until the Court itself reconsiders the issue, *Henry* means to me that police interruption of a citizen's progress and restriction of his liberty of movement constitutes an arrest within the purview of the fourth amendment's ban against unreasonable seizures of our citizens' persons, the validity of which must be judged by the fourth amendment's requirement of probable cause, not by a standard of mere suspicion. Since §2.02 permits an officer to restrict a citizen's liberty of movement upon suspicion, it is small wonder that the draftsmen, deciding, in this instance, at least, that discreet silence is better than untenable distinguishment, relegated *Henry* to a cryptic footnote.

The draftsmen further comment:

> Some authority to interfere with liberty on less than reasonable cause has been explicitly recognized even in the absence of statute by the courts in a number of jurisdictions, including one Federal Court of Appeals. (p. 93.)

This statement is buttressed by a footnote wherein this reference occurs:

> *United States v. Vita*, 294 F. 2d 524, 529–30

[21] 361 U.S. 98, 100, 101.

[22] 361 U.S. at 103.

[23] *Id.* at 106.

(2d Cir. 1961), *cert. denied*, 369 U.S. 823 (1962) ('The rule [of Federal R. Crim. Proc. 5(a)] does not apply to a case in which federal officers detain a suspect for a short and reasonable period in order to question him.').

But the quoted material is *dictum*, pure and simple, and, at the very least, of questionable validity at that. Judge Lumbard's opinion, speaking for two members of the three-judge panel, stated:

> Moreover, we find ample support for the trial judge's finding that Vita was not under detention during his questioning between the time of his arrival at F.B.I. headquarters at about 10:25 a. m. and his formal arrest at 6:52 p. m., following his confession. . . . We find no reason not to accept the trial judge's conclusion that Vita's presence prior to his arrest was not coerced.[24]

Judge Lumbard then went on gratuitously to discuss what would have been the situation had Vita not voluntarily cooperated with the officers. It was this discussion which prompted Judge Waterman's eminently correct concurrence:

> . . . [T]hough I most assuredly concur in affirming Vita's conviction, I wish to make it clear that I disassociate myself from concurring in any portion of the opinion in which, *arquendo*, as an alternative ground to support an affirmance, it is sought to solve *in vacuo* the rights of a hypothetical Vita, unwilling to cooperate with the Bureau step by step as Vita cooperated.[25]

I submit that it is *Vita*, and not *Henry*, which deserves to be called "not authoritative" for the proposition for which it is cited.

The District of Columbia Court of Appeals, sitting *en banc*, more carefully considered the definition of "arrest" in *Coleman v. United States*,[26] than did the Second Circuit Court of Appeals in *Vita*. The court in *Coleman* held that the jury had been instructed properly as to what constitutes an arrest, and quoted the following, with approval, from *Long v. Ansell*:[27]

> "Thus it appears that the word 'arrest' has a well-defined meaning. *There must be some detention of the person to constitute arrest.* This of course would mean any arrest made or detention in a criminal proceeding. . . . 'An arrest is the seizing of a person and *detaining him in the custody of the law.*' From these authorities, it may be concluded, we think, that the term arrest may be applied to any case *where a person is taken into custody or restrained of his full liberty*, or where the detention of a person in custody is continued for even a short period of time. People [ex rel. Taranto] v. Erlanger (D.C.) 132 F. 883."[28]

Under the definition approved in *Coleman*, a stop and frisk would be an arrest and, if made on suspicion only and not on probable cause, it would be illegal.

Other cases relied upon by the draftsmen are no more persuasive than *Vita's dictum*. In *State v. Goss*,[29] the Alaska court attempted to distinguish *Henry* on the ground that under the statute law of Alaska, "An arrest does not take place . . . until a person has been taken into custody in order that he may be held for the commission of a crime." The Alaska court presumed, erroneously in my view, that the states may take operative facts which would constitute an illegal arrest under the fourth amendment as construed by the Supreme Court in *Henry*, and by labeling those facts other than an arrest make legal the subsequent proceedings.

The issue was considered by Mr. Justice Traynor in *People v. Mickelson*,[30] also relied upon by the draftsmen. He there stated that "A state rule governing police procedure is not unconstitutional merely because it permits conduct in which a federal officer may not lawfully engage" and concluded: "We do not believe our rule permitting temporary detention for questioning conflicts with the Fourth Amendment." I cannot agree.

Justice Traynor predicted his conclusion upon his belief that the Supreme Court's definition of arrest in Henry was not "constitutionally compelled" and in this I believe him to be wrong. The fourth amendment bans unreasonable seizures without defining either unreasonable or seizures. The task of definition, perforce, becomes the Court's, a task which it has steadily engaged in

[24] 294 F.2d at 528, 529.

[25] *Id.* at 535.

[26] 295 F.2d 555 (D.C. Cir. 1961), *cert. denied*, 369 U.S. 813 (1962).

[27] 63 D.C. App. 68, 71, 69 F2d 386 (1934), *affirmed* 293 U.S. 76 (1934). Long was a civil case involving an attempt to serve a United States Senator with process.

[28] 295 F.2d at 563–564. Four judges of the nine-judge panel concurred only in part, agreeing that the issue of arrest was properly before the jury but disagreeing that the prosecution was entitled to drop from the ndictment a count charging defendant with first degr ee murder.

[29] 390 P.2d 220, 224 (Alaska. 1964), *cert. denied*, 379 U.S. 859 (1964).

[30] 59 Cal.2d 448, 380 P.2d 658 (1964).

performing since the fourth amendment's adoption, on a case-by-case basis in the common law tradition, with reference to what is unreasonable. Not until *Henry v. United States*, however, did the Supreme Court undertake to define the fourth amendment's use of the term seizure or, in common parlance as applied to the seizure of a person, arrest. Whether "constitutionally compelled" to do so, in view of the government's concession in the *Henry* case that the arrest occurred when the federal agents stopped the automobile in which *Henry* was riding, the fact is that the Court did define the term and in doing so it certainly did nothing to suggest that state courts are left free to apply a different definition of seizure or arrest when a state police officer's conduct is challenged on fourth amendment grounds.

Justice Traynor argued in *Mickelson* that, absent a decision of the Supreme Court of the United States establishing under the fourth amendment rules governing the conduct of state as well as federal police officers in making an arrest, that state rules may be applied. Having read *Henry v. United States* far more restrictively than do I, as a decision not "constitutionally compelled", Justice Traynor cites *Johnson v. United States*,[31] and *United States v. Di Re*,[32] in support of his contention that reference may be made to state law to determine whether the police conduct considered in *Mickelson* constituted an arrest. If my reading of *Henry* is correct, however, then certainly *Elkins v. United States*,[33] a case Justice Traynor merely cites and limits to its peculiar facts, disipates the weight of *Johnson* and *Di Re* marshalled in support of *Mickelson*. So does *Ker v. California*,[34] decided just one month after *Mickelson*. In *Elkins*, the Supreme Court said:

> We hold that evidence obtained by state officers during a search which, if conducted by federal officers, would have violated the defendant's immunity from unreasonable searches and seizures under the Fourth Amendment is inadmissible over the defendant's timely objection in a federal criminal trial. In determining whether there has been an unreasonable search and seizure by state officers, a federal court must make an independent inquiry, whether or not there has been such an inquiry by a state court, and irrespective of how any such inquiry may have turned out. The test is one of federal law, neither enlarged by what one state court may have countenanced, nor diminished by what another may have colorably suppressed.[35]

The right to be free of unreasonable search and seizure is secured by the federal constitution and is binding upon the states. An arrest is a seizure, as the draftsmen concede. If the validity of a citizen's arrest is to be determined by whether what was done to him constitutes an arrest within the local definition of the term, the scope of a citizen's protection under the fourth amendment would vary according to the jurisdiction in which he finds himself. But, the Court stated in Elkins, "The test [as to whether a search and seizure are unreasonable] is one of federal law, neither enlarged by what one state court may have countenanced, nor diminished by what another may colorably have suppressed."

In *Ker v. California*, the decision announced one month after Justice Traynor's decision in *Mickelson*, the Supreme Court said:

> We reiterate that the reasonableness of a search is in the first instance a substantive determination to be made by the trial court from the facts and circumstances of the case and in the light of the "fundamental criteria" laid down by the Fourth Amendment and in opinions of this Court applying that Amendment. Findings of reasonableness, of course, are respected only insofar as consistent with federal constitutional guarantees. As we have stated above and in other cases involving federal constitutional rights, findings of state courts are by no means insulated against examination here. . . . While this Court does not sit as in nisi prius to appraise contradictory factual questions, it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the decision as to reasonableness the fundamental—i.e., constitutional—criteria established by this Court have been respected.[36]

I see no justification in logic nor in law to insist upon judicial uniformity in determining reasonableness of a seizure while permitting the states to define variously just what it is that constitutes a

[31] 333 U.S. 10 (1948).
[32] 332 U.S. 581 (1948).
[33] 364 U.S. 206 (1960).
[34] 374 U.S. 23 (1963).
[35] Elkins v. United States, 364 U.S. 206, 223–224 (1960).
[36] 374 U.S. at 33–34.

seizure or an arrest which must meet the uniform federal standard, "constitutionally compelled", of reasonableness. I submit that in reaching its decision in *Henry* v. *United States*, the Supreme Court saw no such justification either.

In the light of all this, *Johnson* and *Di Re* are of little precedential worth in support of the *Mickelson* decision. However, we might profitably note the Supreme Court's answer in *Di Re* to the prosecution's argument that arrests upon suspicion are necessary to effective law enforcement, an argument advanced now by the draftsmen in favor of their proposals:

> We meet in this case, as in many, the appeal to necessity. It is said that if such arrests and searches cannot be made, law enforcement will be more difficult and uncertain. But the forefathers, after consulting the lessons of history, designed our Constitution to place obstacles in the way of a too permeating police surveillance, which they seemed to think was a greater danger to a free people than the escape of some criminals from punishment. Taking the law as it has been given to us, this arrest and search were beyond the lawful authority of those who executed them. The conviction based on evidence so obtained cannot stand.[37]

The verbal juggling in which the draftsmen engaged in saying that a stop is not an arrest also is reflected in *People* v. *Rivera*.[38] That case was cited by the draftsmen in support of their thesis that the police have a right forcibly to detain and question suspicious persons. In *Rivera*, the court decided that a frisk was not a search, and so held admissible in evidence a weapon found in the course of a stop and frisk.

The facts of the *Rivera* case occurred before the effective date of the present New York stop and frisk law. The police stopped defendant because he acted suspiciously.[39] Without discussion the Court concluded:

> The stopping of the indivudual to inquire is not an arrest and the ground upon which the police may make the inquiry may be less incriminating than the ground for an arrest for a crime known to have been committed.[40]

Having already labeled as specious the assertion that an enforced detention of a citizen by police is something other than an arrest, let us turn to the manner in which the New York court decided that a frisk is not a search:

> The frisk as it is described in the actual events that occurred in this case, however, and as it is generally understood in police usage, is a contact or patting of the outer clothing of a person to detect by the sense of touch if a concealed weapon is being carried.
>
> It is something of an invasion of privacy; but so is the stopping of the person on the street in the first place something of an invasion of privacy. The frisk is less such invasion in degree than an initial full search of the person would be. It ought to be distinguishable also on pragmatic grounds from the degree of constitutional protection that would surround a full-blown search of the person.[41]

Justice Fuld, in dissent, commented thusly:

> This is nothing but an exercise in semantics; a search by any other name is still a search. Viewed in the perspective of constitutionally protected interests, a police tactic—call it a search or, more euphemistically, a "frisk"—which leads to discovery of a gun in an individual's pocket by trespassing on his person is indisputably an invasion of privacy. A "frisk" is a species of search and, in point of fact, both decisions and dictionaries so define it. . . .
>
> For myself, I am not persuaded that a frisk is as slight an affront to privacy and liberty as my brethren make it out to be. Free men should no more be subject to having the police run their hands over their pockets than through them. Neither the Fourth Amendment nor, for that matter, the common law of tort distinguishes, as does the majority, between a cursory search and a more elaborate one. In both instances, it is the slightest touching which is condemned, and the reason for this is that the insult to individuality, to in-

[37] 332 U.S. 581, 595 (1948).

[38] 14 N.Y. 2d 441, 201 N.E. 2d 32 (1964).

[39] The suspicious circumstances were:

"On May 25, 1962 at 1:30 in the morning, Detective Bennett and two other detectives were on motor patrol near 7th Street and Avenue C in Manhattan. All were in plain clothes; the car was unmarked. Detective Bennett observed two men for about five minutes. They 'walked up in front, outside a bar and grill, stopped, looked in the window, continued to walk a few steps, came back, and looked in the window again'.

"The detective further testified: 'At that time the defendant looked in my direction, towards the car, said something to his friend, and they both started walking rapidly north on Avenue C.' He described the area as a neighborhood in which 'We have quite a bit of crime . . . Muggings, stick-ups, assaults, larcenies, burglaries'." (201 N.E. 2d at 33.)

[40] *Id.* at 34.

[41] *Id.* at 35.

dividual liberty, is as grave and as objectionable in the one case as in the other.[42]

Indicative of the lack of thoughtful consideration given the constitutional issues involved is the majority's statement that "[a full-blown search of the person] would *usually* require sufficient evidence of a committed crime to justify an arrest or be an incident to a lawful arrest." (Emphasis added.) The qualification "usually" is particularly distressing, since I know of no exceptions to the rule. It is from such innocuous beginning that spring the tentacles of incipient totalitarianism. In that light one should refer to *People* v. *Pugach*,[43] wherein the New York Court of Appeals held that a search upon suspicion of defendant's brief case was not a search but a "frisk" and so permissible. The court commented: "Under all the circumstances the inclusion of the brief case in the 'frisk' was not *so* unreasonable as to be constitutionally illegal." (Emphasis added.) I had always believed that an unreasonable search was *per se* illegal; now, however, we are told, apparently that there are degrees of unreasonableness, and that a search must be "so" unreasonable, not just "unreasonable" before it is invalid.

Other cases from various states are cited by the draftsmen in support of their assertion that "authority to interfere with liberty on less than reasonable cause has been explicitly recognized even in the absence of statute". (p 93.) None merits discussion; the issue was stated and decided in each, *ipse dixit*, even in circumstances suggesting that the interference with defendant's liberty may not have been coerced.[44]

[42] *Id.* at 37.

[43] 15 N.Y. 2d 65, 204 N.E. 2d 176 (1965).

[44] State v. Hatfield, 122 W.Va. 424, 164 S.E. 518 (1932); State v. Zupan, 155 Wash. 80, 283 P. 671 (1929); People v. Faginkrantz, 21 Ill.2d 75, 171 N.E. 2d 5 (1960); and People v. Henneman, 367 Ill. 151, 10 N.E. 2d 649 (1937).

The only exception to the statement in the text is the opinion of Judge Irvin R. Kaufman, then a federal district judge, in United States v. Bonanno (S.D. N.Y. 1960), 180 F. Supp. 71, rev'd for insufficiency of evidence *sub nom.* Bufalino v. United States, 285 F.2d 408 (2d Cir. 1960). The case arose out of the prosecution of those who attended the celebrated "Apalachin Conference". Judge Kaufman discussed the issue whether one stopped for questioning is arrested, but his negative conclusion is unpersuasive. For example, one of the reasons he gave for deciding that a field interrogation is not an arrest is that a layman "would not be likely to describe situations where he had been stopped by a police officer, or situations where his car had been stopped, or even situations where his questioning has been continued at a police station, as arrests." (180 F. Supp. at 78.) He also appears to distinguish the *Henry* case on the ground that in the case before him there was not "probable cause for an arrest for purposes of seizure when the cars were stopped at the checkpoint" and concluded therefrom that there was no arrest and that, therefore, stopping of the cars was not illegal. 180 F. Supp. at 85.

C.

Finally, the draftsmen cite five states which have statutory provisions authorizing some form of stop and frisk, and note that "such provisions have antecedents in statutes and doctrines going back to the thirteenth century," with a supporting footnote referring to, *inter alia*, the Statute of Winchester.[45] It is to be hoped that the draftsmen do not advocate the adoption of that statute in its full vigor, for it instructed a town's watchmen that "if any stranger do pass by them, he shall be arrested until morning; and if no suspicion be found, he shall go quit; and if they find cause of suspicion, they shall forthwith deliver him to the sheriff. . . ." The watchmen, then, need not even have suspected to arrest; the mere fact that one was a stranger abroad authorized detention.

It is not clear to me what precedential worth this statute merits, in the context of the United States Constitution and the fourth amendment thereto. The fact that in the thirteenth century a statute authorized an arrest, that is, a seizure of the person, without probable cause or even suspicion, is not persuasive that such a seizure may be made in the twentieth century without violating the requirements of the fourth amendment that, absent a warrant, there be probable cause before a valid arrest can be made.

I suspect that the draftsmen were so taken by the appearance in the same statute of "arrest" and "suspicion" that they simply could not resist citing it as authority for permitting arrests upon mere suspicion. If that be so, they need not have confined themselves to the Statute of Winchester. As authority for arrests upon suspicion they could, for example, have cited the Statute *De Haeretico Comburendo*,[46] which provided that anyone "suspected" of preaching without a license might be "arrested" and, if found guilty, "before the people in an high place . . . be burnt".

But the Statute of Winchester is interesting for another reason: it serves to document that the "crime crisis" and public indifference thereto is not a latter-day phenomenon. The Statute begins:

> *FORASMUCH* as from day to day, robberies, murders, and arsons be more often used than they have been heretofore, and felons cannot be attainted by the oath of jurors which

[45] 13 Edw. 1 c. 4 (1285).

[46] 2 Henry 4 (1401).

had rather suffer felonies done to strangers to pass without pain, than to indite the offenders of whom great part be people of the same country. . . .

The Statute of Winchester apparently was not overly effective, for we find in 4 Henry 8, c. 2 (1512), dealing with the denial of benefit of clergy to murderers, the following language:

WHEREAS robberies, murders and felonies daily increase more and more, and are committed and done in more heinous, open and detestable wise than hath been often seen in times past, and the persons so offending little regard the punishment thereof by the course of the common law nor by reason of any statute heretofore made. . . .

I noted earlier Judge Bazelon's conclusion that the tentacles of incipient totalitarianism are not content to strangle only the "undesirable" element upon whom they are unleashed, but eventually will seek out "respectable" citizens also. The history of the Court of Star Chamber proves the truth of this statement. One of the reasons given for the establishment of that court in 1487 was "the increase of murders, robberies, perjuries, and unsureties of all men living and the losses of their lands and goods, to the great displeasure of Almighty God. . . ." [47] The extraordinary departure from the usual course of the law which this statute authorized was thought necessary because justice could not be had otherwise. The court was, then, designed as a means of benefiting the citizen by checking lawless elements. Yet in 1641 we find on the statute books an "Act for the Abolition of the Court of Star Chamber" in which the citizens of the realm thus succinctly distill the results of the experiment:

The proceedings, censures and decrees of that Court have by experience been found to be an intolerable burden to the subjects, and the means to introduce an arbitrary power and government. . . .[48]

While discussing these early statutes one might note that the theory that felons are encouraged to commit crimes by judicial and administrative decisions which allegedly "coddle criminals" is not a new one, either. Thus in the Statute of Northampton, we find:

Whereas offenders have been greatly encouraged, because that charters of pardon have been so easily granted in times past, of manslaughters, robberies, felonies, and other trespasses against the peace; it is ordained and enacted, that such charter shall not be granted, but only where the king may do it by his oath, that is to say, where a man slayeth another in his own defence, or by misfortune. . . .[49]

Conclusion

The Supreme Court's present docket of argued but undecided criminal cases considered,[50] the rather precipitous haste to publish the tentative draft of the Model Code of Pre-Arraignment Procedures suggests to me that its sponsors may be seeking thereby to be heard in the chambers of the Justices as well as in the councils of the American Law Institute. As one whose official duties recently have included the obligation of decision in a spate of reapportionment cases, involving both state and local legislative bodies, I am acquainted with the familiar and well developed practice of extrajudicial scholarship *pendente lite*. Ethical considerations aside, it will be interesting to observe what use, if any, the Justices make of the draftsmen's efforts.

This much, however, can be said of those efforts, even by one such as I who has been somewhat critical of them: The tentative draft's field interrogation section offers all of us an opportunity, indeed a challenge, to examine stop and frisk proposals in a more scholarly atmosphere than that which to date has permeated the current debate over crime and its suppression. Only when we are prepared to strip away the emotional and analysis-crippling rhetoric of the current debate will we be enabled to discuss rationally and, hopefully, productively, the merits of such proposals. And only then can we direct our attention, as we must, to other available weapons against the spectre of increasing crime which do not require that we tamper with the most fundamental of our constitutional rights as citizens, our right to be free.

[47] 3 Henry 7 c. 1 (1487).

[48] 16 Charles 1 c. 10. The act of 1487 was commonly regarded as establishing the Star Chamber, particularly since the statutute roll shows its title as *Pro Camera Stellata*, and the abolishment act of 1641 specifically refers to the act of 1487. See, however, the discussion in Taswell-Langmead, English Constitutional History 254, n. (u) (Plucknett ed.).

[49] 3 Edw. 3 (1328). For a discussion of similar charges raised sporadically throughout the first half of the present century, see Kamisar, When The Cops Were Not Handcuffed, The New York Times Magazine, November 7, 1965, p. 34.

[50] See Miranda v. Arizona, 86 S.Ct. 1602 (1966).

APPENDIX

DETROIT POLICE DEPARTMENT

Criminal Investigation Division

December 13, 1965

Confessions in Felony Prosecutions for the Year of 1961 as Compared to January 20, 1965 Through October 31, 1965

Unlawful Driving Away Auto and Possession of Stolen Motor Vehicle

	1961	Percentage	1-20-65 to 10-31-65	Percentage
Prosecutions	392	—	534	—
Convictions	270	68.9	384	71.9
Pending	0	—	113	21.2
Confessions	233	59.4	345	64.6
Confessions Essential	72	18.4	99	18.5

In the majority of UDAA prosecutions the arresting officer's testimony made the confession supplementary. Confession was of primary importance in cases charging Possession of Stolen Motor Vehicle where guilty knowledge is necessary element.

Uttering & Publishing and Larceny over $100.00 (Shoplifting)

	1961	Percentage	1-20-65 to 10-31-65	Percentage
Prosecutions	337	—	223	—
Convictions	331	98.2	128	57.4
Pending	0	—	95	42.6
Confessions	241	71.5	144	64.6
Confessions Essential	2	.06	1	.05

It is the policy of the Wayne County Prosecutor's Office not to issue warrants in Uttering & Publishing Cases on confessions alone, but on the identification of defendant by complainant. Confessions shown as essential in above figures were the result of reverse show-ups where the defendant identified the complainant.

Homicide Cases

	1961	Percentage	1-20-65 to 10-31-65	Percentage
Prosecutions	115	—	107	—
Convictions	105	91.3	36	33.6
Pending	0	—	68	63.6
Confessions	61	53.0	60	56.1
Confessions Essential	24	20.9	10	9.3

Narcotic violations

	1961	Percentage	1-20-65 to 10-31-65	Percentage
Prosecutions	240	—	205	—
Convictions	197	82.1	69	33.7
Pending	3	1.3	119	59.0
Confessions	124	51.7	107	52.2

Confessions were not essential in any court case.

Kidnapping—Extortion—Arson—Larceny by Trick

	1961	Percentage	1-20-65 to 10-31-65	Percentage
Prosecutions	24	—	51	—
Convictions	9	37.5	25	49.0
Pending	0	—	24	47.1
Confessions	7	29.2	16	31.4
Confessions Essential	3	12.5	0	—

Robberies

	1961	Percentage	1-20-65 to 10-31-65	Percentage
Prosecutions	181	—	112	—
Convictions	170	93.9	56	50.0
Pending	—	—	54	48.2
Confessions	148	81.8	83	74.1
Confessions Essential	47	26.0	29	25.9

Burglaries

	1961	Percentage	1-20-65 to 10-31-65	Percentage
Prosecutions	62	—	37	—
Convictions	60	96.8	27	73.0
Pending	0	—	8	21.6
Confessions	40	64.5	12	32.4
Confessions Essential	33	53.2	9	24.3

Carrying Concealed Weapons—Possession of Burglar Tools—Receiving and Concealing Stolen Property over $100.00

	1961	Percentage	1-20-65 to 10-31-65	Percentage
Prosecutions	20	—	26	—
Convictions	18	90.0	14	53.8
Pending	0	—	13	50.0
Confessions	7	35.0	8	30.8
Confessions Essential	8	40.0	5	19.2

Forcible Rape

	1961	Percentage	1-20-65 to 10-31-65	Percentage
Prosecutions	74	—	63	—
Convictions	56	75.7	29	46.0
Pending	—	—	25	39.6
Confessions	18	24.3	12	19.0
Confessions Essential	0	—	0	—

It is the policy of the Wayne County Prosecutor's Office not to issue a warrant on confession alone.

Grand Total

	1961	Percentage	1-20-65 to 10-31-65	Percentage
Prosecutions	1445	—	1358	—
Convictions	1216	84.2	768	56.6
Pending	3	.2	519	38.2
Confessions	879	60.8	787	58.0
Confessions Essential	189	13.1	153	11.3

The above figures are felony prosecutions handled by the Specialized Bureaus of the Criminal Investigation Division during the periods specified.

VINCENT W. PIERSANTE
Chief of Detectives