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Taping Police Interrogations in the 20th Precinct, N.Y.P.D.

The Purpose of the Experiment

In April, 1967 the New York City Police Department in conjunction with the Vera Institute of Justice began a six-months experiment in sound recording police interrogations in the 20th precinct of New York City. The main purpose of the project was to test the feasibility and usefulness of creating an objective record of what happenes at police interrogations following arrests for serious crimes. Secondarily it was thought that a substantial bank of taped interrogations would provide valuable insight into the key questions about present interrogation practices, namely whether the Miranda warnings are in fact adhered to and whether they provide real protection against involuntary self incrimination; whether police use coercive tactics in questioning suspects with any frequency; whether interrogations regularly provide necessary information to the police for use in screening charges?, and finally how the results of these interrogations affect the outcome of the cases.

Sound recording of interrogations has long been advocated as an aid to the suspect and to the trial court. The latest study draft of the American Law Institute's, Model Code of Pre-Arraignment Procedure[1] would require such a recording of all interrogations including the giving of warnings and any waiver by the suspect. It would also require that the suspect be told such a recording was being made and access be given to it by himself or his counsel on "reasonable request".

1. Study Draft No. 1 (1968) Sec. A 406 and Note

Vera Institute Of Justice

Taping Police Interrogations In The 20th Precinct, NY Police Dept. - A Six-Month Experiment To Test The Possibility Of Increasing The Objectivity Of The Record Of What Happens At Interrogations Following Arrests For Serious Crimes. (New York, Vera, n.d.) Experiment Began In April, 1967.

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The drafters called the sound recording provision "central to the Code's attempt to provide clear (1 Study Draft No. 1 (1968) Sec: A 406 and Note) and enforceable rules governing the period between arrest and judicial appearance. The keeping of such records will assist in a subsequent reconstruction of what took place. And the process of making the record will serve to focus the attention of law enforcement officers on the importance of compliance with the Code's provisions".

Later on in their section dealing with Unfair Inducement of Statements[2], "This section depends heavily for its implementation on the section relating to written and sound records. The courts should be able, if presented with a picture of what took place during custody, to make the determination called for by this section, not withstanding that there will be many cases where the characterization of what took place and the surrounding circumstances will be most difficult".

?

The Miranda case itself [3] pointed out the unavailability of direct evidence of what goes on in police interrogations and drew its conclusions on the subject largely from manuals by law enforcement officers and the testimony of suspects and police officers in trial records.[4]

"Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms."

2. Sec. A 5.04

3. Miranda v Arizona, -84 US 440 (1966)

4. Id at 448

The Manhattan Interrogation Project set out basically to find the advantages and limitations of sound recording in police interrogation. The first part of its report will accordingly discuss its findings in in relation to the following questions.

1. Is sound recording technically and economically feasible.
2. Does sound recording inhibit suspects from making statements.
3. What is the potential usefulness of such recordings and what are the inherent limitations on the use of such recordings in the criminal process.

The second portion of the report will deal with the findings of the city wide survey of interrogations to determine the success of questioning under Miranda and the importance of questioning in urban police work. Comparison with the results of the earlier New Haven* survey on these issues will be made.

The Methodology of the Experiment

Sound recording was chosen as the means of maintaining a permanent record of the interrogations because it offered the most potentially wide usage. Neutral observers had been used in the New Haven study but both manpower considerations and judgement and subjectivity limit their practicability as an integrated component of police administration. Audio-visual taping would of course be wuperior to sound recordings alone in that it would show any nonverbal happenings in the room but its expense made it highly unlikely most police departments could afford it.*

* cite

* (statement of cost)

The 20th precinct was chosen as the site of the 6 month taping experiment because it was a high frequency crime precinct and also because it had been used as a "model precinct" in other experiments and its personnel were adaptable and cooperative. The charges brought in the 20th precinct with minor exceptions duplicate proportionately those of the city as a whole. The population mixture is also approximate to the total city's. The precinct is located................ and has a population of .... Its crime rate in 1967 was......

Under the rules of the experiment, all interrogations of felony or fingerprintable misdemeanors would be recorded * and all suspects accused of these crimes would be brought into the interrogation room and given the warnings whether or not questioning was seriously contemplated, and whether or not it was known in advance that the suspect would refuse to speak.* In normal police operation not all such suspects are interrogated or warned as a prelude to interrogation. No station house interrogations were to take place outside the room where the recording equipment was installed.* All arrested persons after "pedigree" processing 5 were to be taken to the room, warned, and if they waived their rights, questioned. The suspect was to be told of the recording process immediately after the warnings were given, and given a written notice at the conclusion of any interrogation. A copy of the notice was also sent

* 8552, ccp requires frequenty ? of defendants arrested for.....

* In normal police operation not all such suspects are interrogated or warned as a prelude to interrogation. ? Source ?

* (Note problem of threshhold questioning)

5. Legal Aid represents virtually all defendants at arraignment. ?

to Legal Aid Society which undertook to send it to any private counsel who entered the case at a later time. The taped recordings were available to the Vera Institute for study and to the District Attorney's Office, which was also notified in every case.

Initially, it was hoped to conduct supplementary interviews of the interrogating officers and the suspects immediately preceding and following the interrogations to gain insights into such matters as the suspects understanding of the warnings, the police's need for additional evidence in the case and the existence of objective evidence, any prior questioning at the scene or on the way to the station, and the amount of information learned by the interrogation. The police and the District Attorney, however, objected to such procedures as interfering with pending cases. For the same reason it was impossible to determine what use, if any, was made of the tapes. Moreover, precinct records did not indicate what kind of evidence was present in the project cases in addition to statements made in plea negotiations. A record was kept, however, of the alternate dispositions of all cases in which sound recordings were made. In addition, three lawyers on the Institute's staff listened to 275 of the 316 statements[6] made and analyzed their content.

From April to October almost 800 persons went through the 20th precinct's interrogation room. 1600 more were involved in the city wide interrogation study of one month duration under nonmonitored conditions. Accepting the less than perfect conditions of the study and the less than total information about particular cases it could disclose, the project

6. The remaining tapes were unavailable for analysis because............

we believe, nevertheless produced several interesting and supportable conclusions about taping and the interrogation process.

Part I - Sound Recording on Interrogations

1. Is Sound Recording of Police Interrogations Technically and Economically Feasible for Police Departments?

   a. Information on technical problems encountered

   b. Availability and cost of equipment

   c. Maintenance

   d. Reliability

Out of approximately 275 interrogations listened to, 30 or 11 % had substantial defects. Either they contained static in portions which made it impossible to hear parts of the tape, or the tape itself was empty in spots. There were about a half dozen totally empty tapes indicating that somehow the recording had not taken place or the tape had been erased. In the early days of the project the sounds of the air conditioner and a nearby toilet flushing often caused temporary inaudibility. Suspects who spoke softly, muttered, or had heavy accents were often difficult to understand on tape.

2. Does Sound Recording Inhibit Suspects from Making Statements?

The results of the project indicate that the answer is No. The basis for the conclusion comes from two sources; analysis of the tapes themselves and comparison of the statement rate of the 20th precinct with the record of other precincts in the city.

The project rules required that each suspect be told of the taping arrangements after he had indicated that he would waive his rights to silence and agree to be questioned. He would be told prior to any actual questioning and would be given a written notice at the end of the interrogation. This procedure was followed however in only 70 % of the cases heard on tape. In 76 there was no oral notice given of the taping; in two it was given halfway through the questioning and in two at the end only.[7] Because microphones were visible in the interrogation room it is quite possible other suspects were aware of the taping. It is also possible the suspects were told before they went into the room.[8]

Among those 70 % (196) informed before questioning of the taping, only 4 or 2 % raised any question about it. One female defendant who had been told of the taping initially later objected that she hadn't understood that she was being recorded, that they were trying "to put her in jail". She had to be reassured that the monitoring notice she signed at the end was only to signify that she knew of the taping. Another asked who would listen to the tapes and was told no one could play them unless the defendant allowed it (not an accurate answer). In a third case although the suspect made no initial comment on the taping,

7. It is assumed here that the interrogations conducted entirely in a foreign language contained such a warning.
8. The A.L.I. draft would require that a suspect be told of the taping.

Also note that detectives in adjoining rooms could hear the interrogation as it was going on.

when asked about his source of drugs he displayed a reluctance to answer. The interrogator asked him why he was looking at the microphone and whether he was "afraid to talk in this room". The officer then offered to take him outside "to straighten this out" and they left. A fourth suspect asked who was listening and had to be assured no one at the moment; the taping was merely to preserve a record of what he said.

Discussions with personnel of the 20th squad however disclosed that several detectives felt that the presence of the tape recorder greatly inhibited their own behavior and oversensitized them to possible challenges of overbearing. They were more careful about the phrasing of questions and about the "sanitization" of their language. They also felt, contrary to the listener's impression, that many defendants would have spoken more openly about the offense without a microphone present. They also felt others would not have claimed their privilege not to speak at all if they had not seen the microphone apparatus on entering the room.

The comparison of statement results in the monitoring experiment with other nonmonitored precincts tends to contradict this notion, however. During the 6 months of monitoring, 41.1 % of all suspects interrogated in the project made statements of some sort; 58.9 % declined. Of the 41.1 % who talked, 57.6 % made admissions and 37 % denied. (5.4 were unclassifiable due to an administrative error). This is a higher statement rate than the 31.7 rate for the city's 22 remaining precincts during the

the following offenses: homicide, felonious assault, possession of a dangerous weapon, burglary, attempted burglary, unlawful entry, possession of burglar's tools, statutory rape, assault and robbery, robbery, grand larceny, grand larceny - auto, endangering the welfare of a child, sodomy and indecent exposure. Statement-rates for the 20th Precinct and the Manhattan Survey interrogations were approximately the same (within three percentage points of each other) in interrogations for: the multiple charge of felonious assault and possession of a dangerous weapon, forcible rape and narcotics misdemeanors. Manhattan Survey interrogations had statement-rates higher than 20th Precinct interrogations in questioning for: attempted robbery, possession of stolen goods, narcotics felonies and arson.

A comparison of admission rates among those making statements in different crime categories disclosed the following: (Table II)

ADMISSION-RATES FOR SPECIFIC OFFENSES COMPARED: MANHATTAN SURVEY AND 20 th PRECINCT INTERROGATIONS

Offenses in which Admission-Rates Higher in Manhattan Survey than in 20th Precinct	Offenses in which Admission-Rates Higher in 20th Precinct than in Manhattan Survey	Offenses in which Admission-Rates in Manhattan Survey and 20th Precinct the same
Possession-Weapon	Homicide	Assault & Robbery
Unlawful Entry	Felonious Assault	Grand Larceny
Possession-burglar's tools	Burglary	Possession-stolen goods
	Forcible Rape	

Robbery   Statutory Rape   Felonious Assault

Grand Larceny-Auto   Dangerous Weapon

Narcotics felonies

Narcotics Misdemeanors

Overall, however, the 20th precinct obtained more admissions than the city wide survey in homicide, felonious assault, possession dangerous weapon, burglary; possession burglars tools, forcible and statutory rape, assault and robbery; attempted robbery; grand larceny; grand larceny (auto). Rates were approximately the same for robbery (13 % city wide and 12 % in the 20th precinct) and lower in the 20th precinct in assault with a dangerous weapon; attempted burglary; unlawful entry; possession of stolen goods; drug offenses; indecent exposure and arson.

These results raise some important questions about widespread use of taping in the stationhouse.

First, consideration should be given to a more detailed explanation of the use of the sound recording for the suspect. On the few occasions the subject asked, the answers were not always accurate. He should be told that if any question arises as to what he said during the questioning, the tape can be listened to by the prosecutor or his defense counsel and may be introduced in court.

Secondly, it may be advisable to tell the suspect about the recording before he decides whether to talk or not. In the 20th precinct experiment he was not told until after the waiver, so it is impossible to

tell whether visible indications had any influence on refusals to talk. Indeed, a full explanation of the reasons for taping might allay the unverbalized fears of anyone.

Thirdly, the significant percentage of tapes in which notice of the recording was not given pinpoints the need for internal controls assuring that it is in fact given.[9] The ALI Draft would enforce such a requirement through its special section dealing with disputes concerning violation of the Code. That section (9.12) says in any proceeding where there is conflict about compliance with the Code and "law enforcement officers in the particular case have failed to comply diligently and in good faith with (the sound recording provision) and as a result unexplained gaps or inconsistencies appear in such records, the burden shall be on the prosecution to establish that there has been compliance". Because however, so few cases come to the court stage, the principal responsibility for adherence must stay with the police department itself.

3. What is the Potential Usefulness and Limitations of Sound Recording in the Criminal Justice System?

The answer to this question has two distinct aspects. The first involves an evaluation of how important a record of any interrogation- or even the interrogation itself-appears to be to the outcome of a particular case. On a first glance the experiment would seem to have proved

9. The ALI Study Draft requires that the notice be on the sound recording. See a.b.c. "Such disclosure is consistent with the Code's recognition of the importance of an arrested person's being made aware of the significance of his position" Note Tent. Draft No. 1, Sec. 4.09 (1966)

Text to explain what NACC is & what procedures are employed.

that taped interrogations have next to no usefulness for the participants in the process. Despite written notices of monitoring sent to Legal Aid Society and passed on by them to private counsel, not one request was made to hear any tapes of the 316 by a defendants lawyer. In only one case did a prosecutor ask to hear the tape.[11] When Legal Aid lawyers were interviewed to find the reason why, they said (can't we get any sort of general reply here). Not one tape was introduced at a trial, and, if not requested, could hardly have been significant in any plea negotiations.

This is wholly inaccurate figures.

276 of the 316 cases in which statements were made were followed through to disposition.(45 were still pending at the time). Of the remaining 231, 78 or 34 % went to trial resulting in convictions in all but 4. The rest either pled guilty, were dismissed by the ______, or held for the Narcotics Addiction Control Commission. Of the convictions after trial, 53 had made admissions during the interrogations, and 25 denials. Among the 4 acquittals, 3 had denied implication in the interrogation and one made a partial admission. The trials involved chiefly burglary cases (14) assault and robbery (11) weapon (6) grand larceny (12) and drugs (6). ___ of the 8 homicide cases were convicted after trial. (N.B. Am I correct in assuming Code No. 2 means conviction after trial as opposed to 2 A Pleading Guilty? I am suspicious because of the discrepency between the 20th and city wide figures if this is so, yet only the 2 code categories otherwise.

11. In ___ of the homicide interrogations, assistant d.a.-. did the questioning and ___ of these listened to the tapes.

Disposition rates were also compiled for 1026 of the non monitored interrogations involved in the city wide survey. Among this group, 67.8 % had refused to talk, 17.8 % made admissions, and 14.4 % denied implication of the crime. For the total group, 50.3 % had their cases dismissed, certified to NACC, or otherwise removed from the criminal process. Another 8 % were transferred to other courts, and 30.3 % were convicted. Only 6.2 % of the cases went to trial and only 1.9 % on the original charge. 91.2 % of all convictions were on reduced charges. 81 % of all convictions were by plea and only 4.2 % by plea to the original charge. Less than 2 % of the total 1026 cases ended in acquittal.

Given such a small trial forum where the admissibility of statements is likely to be involved, the potential of sound recording from the police or prosecution point of view would appear limited. In important cases that are expected to go to trial it could be valuable indeed. Its potential in negotiation is unfortunately unknown. But we do have gross indications from the city wide survey that the differences in treatment of defendants who do not talk, admit, or deny are not awesome.

A slightly higher percentage of nonwaiver cases proceed to trial (8.4 % of nonwaivers compared to 5.6 % of admission and 4 % of denials). At the same time a slightly higher percentage of the nonwaiver cases go to trial on the original charge than of the admissions or denials (2.2 %-1. 7 %-1.3 %). Among the trial cases, more of the nonwaivers apparently also result in convictions. Only 1.4 % of all nonwaivers end in acquittal compared to 1.7 % of all admission cases and 2 % of all denials. In the

area of dismissals, 47.1 % of nonwaiver cases are dismissed, 44.8 % of admission cases, and 57.7 % of denial cases. 23.1 % of nonwaiver cases end in guilty pleas; 30.9 % of admission cases, and 20.1 % of denial cases. The rate of pleas to the original charge among those who admitted during interrogation (3.3 %) was higher than the nonwaivers (1 %) or the denials (0%). More nonwaiver cases on the other hand are denied initial plea reduction and sent to the grand jury. (16.5 % compared to 13.8 % of admissions and 10.8 % of denials). The few station house releases recorded are all denials (4 %). In general, those who deny appear to come off statistically the best (perhaps because they are in many cases telling the truth); the ones who refuse to talk the next best, and those who admit (perhaps because they are guilty or have the most evidence against them) trail behind.[12]

Despite this evidence of limited overall evidentiary or strategic use of sound recordings, those who listened to the tapes were asked to evaluate the potential value of the tapes in cases where an admission or denial might be of significance. It may be not impossible that the novelty and short term duration of the experiment did not disclose the full potential of the tapes for creative defense lawyers and prosecutors, especially where volume considerations do not dominate the criminal justice system. In the so called "big cases" these advantages or limitations of taping may prove decisive. If this did not however, prove to be the case during the 20th precinct experiment. In the 8 homicide charges that arose during the 6 month period, all defendants made statements; 6 of the 8 admitted essential elements of the crime. All but one of these was

12. They may of course receive compensation at sentencing time.

convicted, __ by trial and 2 by plea. One who relied on self defense during questioning was dismissed by the grand jury. Of the two homicide suspects who denied that they struck the fatal blow; one was released at the station house and one was___. (#286). In the 8 forcible rape cases, who made statements every suspect denied the essential part of the offense, i.e. involuntary intercourse. Not one was convicted, and only one had to secure his freedom by an acquittal after trial. In the single arson case, a complete confession was followed by a conviction.

A. Competency and Voluntariness

In cases where a question is raised whether the suspect made admissions voluntarily or was competent to understand warnings and to waive his rights, a sound recording should be extremely valuable in assessing his mental or emotional condition at the time of his interrogation. Certainly it is far superior to any written transcript or even a third party witness evaluation. ? it is ?
Admittedly however, there could be cases where a suspects appearance or actions would belie a competent voice or at least confirm or refute a suspicion raised by the sound of his voice or his words alone.

Other limitations are also apparent. Threats or promises can be made outside of the interrogation room to produce a confession inside. Audio tape can record all goings on in the room but conceivably non-verbal pressures can be applied even within the room. The large number of interrogations that occurred outside the monitoring room in this 6 month sample (20 %) and (54-276) and the number of tapes that sounded rehearsed (an additional 15 %) emphasize this first limitation. The fact

This is a presumption not solidly based. We cannot say that interrogations took place — at best that there were indications of prior discussions.

remains, however, that these same dangers attend any written statement to an even greater degree since there is no record of the suspects condition or the exact words of the interrogator and the interrogated.

Some controls might be dept on the situation outside the monitored interrogation room by a best evidence rule admitting only a tape recorded confession where one exists rather than any other evidence of a confession such as a written summary statement or dictated confession or even the officer's testimony. Where, however, the suspect has allegedly made supplementary or contradictory statements at other times it would be impossible to exclude theem. Conversely where the suspect wishes to exclude the confession by alleging it was not voluntarily made because of happenings outside the room, he must surely be allowed to do so. The judge or jury will however have the benefit of the recording in making up its mind. And where a suspect denies on a tape, the defense counsel can use that to contradict any other alleged confession, at the scene or later. Also where a tape raises a serious question of the suspect's comprehension or capability at the time of the recording, it would be difficult to establish he was more capable earlier.

A further control might be to include on the tape direct questions pertaining to whether a prior questioning or statement had been made, when it was made, where, and whether required warnings were given.[13]

13. The regulations for this project required that warnings delivered at any earlier time or place be stated on the record and the subject asked to repeat the statements. T.O.P. 160 April 25, 1967. However, this does not appear to have been done in all of the cases where there were indications of earlier questioning.

Where there was earlier questioning, the results should be summarized in the tape and verified by the suspect. In that case, the listener could know if the matters on the tape had already been gone over and evaluated the present answers accordingly under such a procedure. If no such prior questioning was noted on the tape, its results could not be introduced without satisfactory explanation in court.

During the 20th precinct experiment, individual instances became known to the staff where suspects were extensively interrogated outside the monitored room before being brought in, on one occasion over an 11 hour period. Yet in only 3 of the 54 cases where prior interrogation was indicated was it possible to tell if warnings had been required, because of the custodial context and because questioning had been initated by the police not the suspecy. In three other instances there were indications the suspect had been taken other places first, such as to the hospital for victim identification and in 5, the tapes contained a statement that warnings had been given earlier.

To be most effective then as an indicator of suspect voluntariness, taping should be required in every case (or at least for serious crimes) rather than being optional with the police and there should be a strict time log showing what happens to the suspect between arrest and monitored questioning. If he has initiated discussion of the charges or if on the scene questioning has taken place that should be stated, on the tape, as well as the time of such questioning and whether warnings were given.[13a]

13a See ALI Study Draft, Sec. A 4.06

Since, in addition, so few cases go to court the taping should be enforced by internal police sanctions, and it should be viewed as a protection for the suspect rather than solely an aid to fact finding at trial.

Some idea of the scope of the problem of voluntariness in routine police interrogations, however, arises from the large number which troubled the listeners.

There were 72 interrogations taped (26 %) in which the listener had serious doubts about the mental or physical state of the suspect. There was another 29 (10 %) in which it was noted that the suspect was an addict, had notable difficulties with expressing himself in English, or both.[14] Together this group makes up over a third of all defendants who waived in the 6 month period.

Certainly not every such case is clear that the defendant was not in a sufficiently stable frame of mind to comprehend what he was saying. The contrary is probably true, but there were enough contra indications to raise a substantial doubt in the listener's mind that he was capable of protecting his own interests. Sometimes the doubt was as to whether he was sufficiently in possession of his wits to make a knowledgeable waiver; in others it was whether he comprehended fully the questions asked him and could express his answers intelligently or articulately. The large numbers of Puerto Rican suspects in the survey who spoke broken English and the large number brought in on drug related crimes evidentally swelled the ranks of the questionable cases in this survey. It would of course be ridiculous to claim that the police should not question any Puerto Rican addict. On the other hand, there were so many such people in

14. This includes 3 cases where the suspect's responses were partially or totally inaudible, for whatever reason.

the survey whose voices sounded so drowsy, incoherent, and who were so ill adept at expressing themselves that it was hard to imagine a jury admitting the confessions as voluntary ones. And there were others who admitted to a $50-70 narcotics habit a day who must have been either under the influence of drugs or in urgent need of drugs at the time. The question of admissability is a theoretical one in most such cases; the police have sound physical evidence consisting of confiscated drugs on which to base a conviction and, were interested largely only in implicating others in the trade. An addict who confesses even under drugs, is not likely to go to trial but rather to plead or to seek civil commitment alternatives. A not yet answered question however is whether the police should try to question persons physically ill or under the influence of drugs regardless of whether or not the confession will be admissable and, if not, how such a prohibition could be enforced.

No

The types of physical or mental aberrations encountered on the tapes were:

1. <u>Evidences of Mental Aberrations</u>

   a. homicide suspect confessed to sex murder, said voices told him to do it. He was also an addict and spoke little English.

   b. a robbery suspect, speaking incoherently throughout the tape, refused to answer whether he had ever been in a mental institution, alluded to the fact he was "not all there" and said he drank 1 1/2 pints of liquor a day. (This same suspect alleged on tape that he had been physically beaten by the officer).

c. a drug case was an epileptic, shivering throughout the questioning.

d. a weapons suspect accused of shooting holes in the door of his apartment kept on saying he needed the gun to protect himself "because they are after me."

2. Evidences of Alcoholic Inebriation

a. 15 suspects sounded drunk, they mumbled, rambled, spoke incoherently or unresponsively and there were indications in the narrative they had been drinking recently. 12 were accused of assaults, five of burglary, 1 of possessing weapons, 1 said he was drunk but the detective answered "you don't talk like you're drunk to me - you may have been drinking." A female suspect was given to hysterical outbursts during the questioning and asked why she hadn't been taken to a hospital, she was so sick on wine and beer. She also admitted to using drugs.

b. A Puerto Rican with serious language problems accused of a break in to a girl's apartment and an assault on her person said he had been drinking heavily before the crime. The detective asked him many leading questions, suggesting details of what occurred to which he would assent monosyllabically.

15. cf Miranda v Arizona, p.

475 - "If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self incrimination and his right to retained or appointed counsel. (cites) This Court has always set high standards of

proof for the waiver of constitutional rights, (cite) and we reassert these standards as applied to in custody interrogation.

cf. ALI Study Draft A 4.01 "In any case where an arrested person is in such condition on account of illness, injury, drink or drugs, that in the judgement of the station officer, he is incapable of understanding the warning, such warning shall be given as soon as such person is able to understand it".

c. One homicide suspect involved in a knife fight sounded drunk although no allusion was made to drinking on the tape.

d. A suspect accused of driving under the influence and given a sobriety test sounded drunk as well as hysterical during the questioning. He kept lamenting "Look what you did to me" (never explained).

e. One suspect accused of a break in couldn't remember anything about the incident, thought he had just been looking for a place to go to the bathroom, rambled incoherently. This loss of memory syndrome also appeared in another case. ?

f. Another weapons defendant admitted to drinking for 10 straight hours before the incident and kept asking for a doctor, was told he would get one at the end of the interrogation.

3. Evidence of Narcotic Influence.

a. 26 suspects showed signs of being currently under the influence of narcotics or in withdrawal. The most characteristic sign was

a slurring, drowsy, sleepy, slow speech pattern in a suspect who admitted to drug use. Confusion, garbling, or even hysteria was present in others. In 6 cases the suspect also had extreme linguistic difficulties in expressing himself in English so that the listeners' impression was of a slow-witted, unresponsive, wandering and unfocused suspect. Several (9) openly admitted they were in need of a shot, and/or had just had one a few hours ago. A few pleaded and cajoled that they were "sick" and in desperate need of a fix or otherwise acted hysterically. 13 were up on drug charges, the others were accused of grand larceny (1), weapons (2), burglary (5) assault (4), and robbery (1).

b. One addict, used to taking 10 bags of herion daily, kept saying how "confused" he was.

c. There was reference in one tape to the suspect's collapse at an earlier interrogation session. At this one she appeared not to understand everything going on and could not apparently stand by herself.

d. One robbery defendant who wouldn't answer any of the previous questions and was markedly irrational and noncomprehending also claimed mishandling at the hands of the police.

e. One addict talking in a woozy, rambling fashion admitted he had just been "shot up" and changed his mind twice on whether to waive, finally agreeing to talk.

f. One of the most extreme cases was a man accused of burglary who was literally falling asleep throughout the interrogation. He admitted to just having taken a large dose of barbituates. The detective had to yell at him constantly to keep his head up, to pound on the table to get his attention, to make him stand up to keep him awake.

g. One assault suspect who declared plaintively how "sick" he was also recited how he had not been mistreated by the police. Another female addict who sounded quite incoherent admitted fiving up her bag willingly for the search which produced the reefer.

4. General Hysteria and Confusion

7 defendants were so emotionally disturbed during the interrogations they engaged in hysterical outbursts or sobbed uncontrollably. Four were women accused of stabbing or assaulting boyfriends or common law husbands or female rivals. Although the police were typically sympathetic and friendly toward them, the listener's impression was that they were incapable of making rational judgements in their own self interest. 3 men were also emotionally upset but usually from anger at the accusation and much more aggressively hysterical than the females.[16]

16. Except for one man who kept crying "I should be in jail because I loved 2 women".

[This Δ did not cry this. His statement was plaintive & somewhat tongue-in-cheek.]

They were involved in 1 rape case; 1 assault case; 1 burglary case.

In 4 cases the defendants seemed generally confused or disoriented but it was not possible to tell why. In 2 of these it was almost impossible to conclude they understood the warnings.

5. Language Difficulties

In some half dozen cases the suspects' English was so limited, the listener could not understand him or make a rational judgement of his faculties. Such cases raise 2 problems: (1) it is impossible to tell whether the suspect comprehends what is going on, and (2) the detectives do much more in the way of suggesting language or ideas to him, raising doubts about the spontanaiety of his responses. Often the language problem is involved with possible alcoholic or narcotics influence. In only 6 cases was the suspect totally lacking in English so that an interpreter was used and the questions asked solely in a foreign language. When that does happen, however, it is impossible to judge how accurately the warnings or responses to questions are conveyed to the suspect. Usually the interpreter is a Spanish speaking police office. In the other cases, there were often signs of non-comprehension; one man shifted several times on the waiver question; one was audibly disturbed until an interpreter arrived, then he settled down. One such case declared the police hadn't hurt or threatened him; another alleged that they had hit him. In this type of case, the strongest doubts are whether there was even minimal comprehension of the Miranda warnings and a valid waiver.

Improvement should be possible in such cases if there were on tap Spanish speaking detectives to conduct the interrogations. If the tapes become involved in the trial, an impartial translator would of course be necessary.

The most urgent overall need, however, would seem to be a formulation of more precise rules governing the questioning of drunk, drugged, or mentally confused suspects. Were the Miranda cases' presumption against uncounseled waivers to be invoked in these questionable cases, 1/5 of all interrogations might be invalidated.

B. Compliance with Warnings

The tape recording provides proof as to whether the Miranda warnings or any other required cautions have been given before the questioning is recorded. As the earlier discussion shows, however, it does not in the absence of special measures provide proof that prior questioning—with or without warnings—took place or whether warnings were given and/or given. Requiring a combination of written records to show up such questioning along with a recap on the tape would reduce such possibilities or at least alert the listener to them.

In all but 4 of the 276 cases where questioning was recorded the warnings required by New York Police Department regulations were given. 2 of the 4 involved "witnesses" not yet finally arrested but who for

all other purposes were being treated as suspects.

However, further examination of the tapes reveal many troublesome problems about the comprehension of the suspects as to what the warnings meant, the responses of the police to their questions or comments, the speed with which a decision about a waiver is demanded, and the initiation of dialogue about the charge before warnings are formally given. They raise furthermore fundamental questions about the voluntariness of any waiver of counsel when there is in fact no counsel available and about the efficacy of the right to terminate questioning once allowed to begin.

The standard Miranda warnings were read to the subject, in the following form, almost without variation.

(a) You have the right to remain silent and to refuse to answer questions.
Do you understand?

(b) Anything you do say may be used against you in a court of law.
Do you understand?

(c) You have the right to consult an attorney before speaking to the police and to have an attorney present during any questioning now or in the future.
Do you understand?

(d) If you cannot afford an attorney, one will be provided for you without cost.

Do you understand?

(e) If you do not have an attorney available, you have the right to remain silent until you have had an opportunity to consult with one.

Do you understand?

(f) Now that I have advised you of your rights, are you willing to answer questions without an attorney present?

The general procedure was to announce the charge and then read the warnings and for the suspect to answer "Yes", signifying that he understood, to the 5 first parts of the warning, and finally either "Yes" or "No" to the final and decisive question of whether he would agree to talk without a lawyer. If the suspect signified that he did not understand any of the preliminary warnings, the officer would repeat them or put them in more colloquial language. Many suspects apparently stayed mute or merely nodded for the tapes contained a large number of promptings to "speak up", answer "yes or no" or "don't cover your face with your hand". This was apparently necessary to record a verbal answer on the tape.

1. Waiver of Counsel

94 in 121 out of 276 (43 %) cases suspects raised questions about the

warnings themselves (94) on the charge (27). By far the greatest number concerned the warning on the right to counsel (27) and the waiver question itself (49). When they finally came to make the waiver decision, many of these suspects sounded startled and indecisive. They paused uncertainly or asked questions or made statements as if to elicit advice or more guidance from the officer. The police response was usually to press for an answer to the waiver question or simply to repeat the warning verbatim again. The following colloques are illustrative of what happened in such cases after the waiver question had been put to the suspect.

Ex: 1

Suspect: "I don't have a lawyer"

Officer: "I realize, do you still want to answer"

Ex: 2

Officer: (after suspect paused) "What do you want to do? Answer questions and tell the whole truth?"

Ex:3

Officer: (after pause) "yes or no"

Ex: 4

Suspect: "When can I get a lawyer?"

Officer: We give you one in court. Now, are you willing to talk to me?"

Ex: 5

Suspect: "I'm not sure" "Well, I have nothing to hide"

Officer: "You want to answer, yes?"

Ex: 6

Suspect: "I can't afford a lawyer"

Officer: "You want to answer, yes?"

Ex: 7

Officer: (After pause) "Well, what are you going to do?

"Well, what do you have to say?"

Ex: 8

Suspect: "I have to answer, don't I?"

Officer: "No", (then repeats waiver question)

Ex: 9:

Suspect: "Do I have to"

Officer: "No", (then repeats waiver question)

Ex: 10

Suspect: "I don't have a lawyer"

Officer: "Well, yes, let's go on" - (Repeats waiver question)

Ex: 11

Suspect: "Would it make any difference if I had a lawyer?"

Officer: Repeats waiver question

Ex: 12

Suspect: "I don't think I should"

Officer: Repeats waiver question

Ex: 13

Suspect: "I don't think I should answer because I am confused"

Officer: "There's no reason to be confused"(Goes on to say he was found in possesion narcotics, advises him to get a lawyer, but questioning continues)

Ex: 14

Suspect: "Do I need a lawyer"

Officer: repeats waiver question

Ex: 15

Suspect: I think I should call my husband first. What about bail if I have no lawyer?"

Ex: 16

Suspect: "I have no money for a lawyer"

Officer: Repeats waiver question

Ex: 17

Suspect: "I don't care"

Officer: "You want an attorney or not"

Suspect: "I don't need one, I'm innocent"

Ex: 18

Suspect: "I have no money for a lawyer"

Officer: Repeats waiver question

Ex: 14

Suspect: "Do I need a lawyer"

Officer: repeats waiver question

Ex: 15

Suspect: "I think I should call my husband first. What about bail if I have no lawyer?"

Officer: Insists on answer to waiver question and repeats question.

Ex: 16

Suspect: "I have no money for a lawyer"

Officer: Repeats waiver question.

Ex:17

Suspect: "I don't care"

Officer: "you want an attorney or not"

Suspect: "I don't need one, I'm innocent"

Ex: 18

Suspect: "I have no money for a lawyer"

Officer: Repeats waiver question

Ex: 19

Suspect: "How long will it take to get a lawyer"

Officer: "I don't know"

Ex: 20

Suspect: (pause) "Can I have a light?"

Officer: "Answer and I'll give you a light later".

Ex: 21

Suspect: "Can I have a lawyer at the stationhouse?" The officers said they would call Legal Aid to see if one would come down. The suspect then backed off said he just wanted to see if he could get one here - he knew he would get one in court.

In every one of these cases the ultimate result was a waiver of silence. The listeners impressions were that these suspects would have liked to think about the question of waiver longer or to consult someone for advice on it, and were often unsure of how a refusal to talk would affect delays, bail, interim lockups. It was their impression tha- this important decision would be far more meaningful if the defendant were allowed to take 5 minutes to make it away from the interrogator. The police frequently pressed for an immediate answer and the atmosphere was one of the suspect holding up the preceding by not answering. 10 suspects gave evidence of obvious indecision, although always culminating in an agreement to talk. First they said No then Yes and in some cases "Yes" than "No" than"Yes" again. One after agreeing asked if he could change his mind and keep quiet. Another who seesawed twice finally replied when the officer said "you do not wish to make a statement" - "the only statement I wish to make is" and began talking. One woman said no then when the charges were belatedly told to her began emphatically denying them to tell her side of the story. One suspect refused to answer the waiver question itself. He was told he must and went on to waive his rights altogether.

This is obvious since all that is being analyzed here are waiver cases - analysis is inadequate for that reason

Another refused to say if she understood any of the warnings - complained she couldn't see a lawyer sooner or have contact with the outside world said "I don't know" to the waiver questions then went on to talk. One man would only nod to the preliminary parts but waived at the end of the warnings. Another tried to refuse to identify himself prior to any warnings but was told he must answer ID questions. Another didn't want to give his address but was told that he might affect his right to bail. A disoriented female defendant with a gun asked to call her lawyer. Gave his name, address and phone. She said she wouldn't answer anything, but then proceeded to say spontaneously that she could have shot the cops if she wanted to and had had a motive too since her brother had been sent up for 5 years, but she had voluntarily surrendered the gun in the police car. She then repeated she wanted to call her lawyer. When the officers started to take her outside and warned her not to say anything till she spoke to him, she wanted to know what kind of questions they would ask. They told her they would ask "Where she got the gun and who was she hauling it for." Whe then went into a discussion of the gun, what kind it was, where she got it. Then she about faced again - "I shouldn't have answered any questions before talking to my lawyer". They said -
"We didn't ask you any." Subsequently she returned to the taping room, apparently on her own request to say only that she had given up the gun voluntarily. They asked no questions. The suspect was pretty clearly addled.

Apart from the 18 % of the defendants who showed this hesitation at the waiver question, there was another 10 % who asked questions or made comments about the right to counsel when they were informed of that right in the earlier part of the warnings. Often the impression was that the

replies to their questions or comments may have affected their later decision to waive. The New York Police Department did not in fact have any way to provide counsel at the stationhouse in fact and not a single suspect in the survey was accompanied by counsel. In that sense, the New York warning in its present form may be misleading to suspects. There are indications this is so.

3 suspects wanted to know if they got an attorney, how long it would take and would they be locked up in the meantime. Another commented it would "take too long". Another wanted to know "if one was in the building".

One said that he wanted a lawyer but would answer questions until he got there. When told they couldn't get one at the present, he went on to answer anyway.

Several asked if the warning meant "Legal Aid" and indicated they were familiar with the agency representation in court. A female drug addict, hysterical through the warnings, asked, "You mean Legal Aid? Then I don't have a lawyer. The officers said, "Of course, I realize that", "Do you still want to answer", to which she agreed.

2 asked the officer if he thought they needed one or if it would make any difference. Another asked "aren't you as good as an attorney" (the officer explained that he prosecuted and a lawyer would defend).

Several made fatalistic remarks such as "what the hell are my rights, I'm guilty, everyone knows that" or "its too late now, I've already been questioned without any warning" or "I don't have no rights" or "An attorney won't do me any good, what's the use of fighting it."

Others appeared confident they didn't need a lawyer. "If I need

one, I can get one" - "I'll get my lawyer tomorrow" or "I have a lawyer" or "I know my rights" and "The advise is just a waste of time".

There was reference in 4 tapes to an earlier request from the suspect for an attorney although he now agreed to waive. In 3 cases the suspects answer was inaudible altogether.

There appeared to be mush less confusion about the other part of the warning such as the right to remain silent, although one suspect thought it meant he must keep quiet unless the police asked him a direct question. Another asked - "Do I have to tell the jury?"

In Miranda the Court said this about the right to counsel: (473) - "In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is an indigent a lawyer will be appointed to represent him. Without this additional warning, the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one. The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent- the person most often subjected to interrogation - the knowledge that he too has a right to have counsel present. As with the warnings of the right to remain silent and of the general right to counsel, only if that is an effective and express explanation to the indigent of this right can there be assurance that he was truly in a position to exercise it." "This does not mean, as some have suggested, that each police station must have a

"station house lawyer" present at all times to advise prisoners. It does mean, however, that if police propose to interrogate a person they must make known to him that he is entitled to a lawyer and that if he cannot afford his own, a lawyer will be provided for him prior to any interrogation. If authorities conclude that they will not provide counsel during a reasonable period of time in which investigation in the field is carried out, they may refrain from doing so without violating the persons Fifth Amendment privilege so long as they do not question him during this period.

The ALI draft would include in any warning notice of the arrangements for providing counsel to the suspect. The note attached to the draft says:

A difficult policy question is presented where no arrangements are in existence to make counsel available at the stationhouse. It could be argued that in such a jurisdiction it would be improper ever to seek a waiver of the right to counsel from indigents in the stationhouse. The argument would be that it is coercive to say to the prisoner that he has a right to an appointed lawyer, but none can be provided for him, so does he wish to waive that right and answer some questions. If that argument is accepted, the waiver provision of the statute shoud provide that no waiver can be sought in any jurisdiction unless appointed counsel can in fact be made available in the stationhouse. On the other hand, it may be argued that an uncoerced waiver should be obtainable from indigents even if the alternative is no questioning because no stationhouse legal aid is available. By requiring that the arrested person be told what arrangements exist for appointment of counsel and when he is likely to receive counsel under such

arrangements, any coercion might at least be minimized. Thus even if counsel cannot be made available in the stationhouse at all, the prisoner would have that if he wishes to consult a lawyer, one will be appointed for him when he is taken to court, thus alleviating the sense that a failure to waive will somehow freeze the process or lengthen his confinement".

By any reasonable standard the New York warnings seem patently defective in telling a suspect just what his right to counsel is and as a result appear to throw suspects off base unfairly.[16]

Moreover, the Supreme Courts' admonition that:

(476) - "Any evidence that the accused was threatened, tricked or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege".

Only 25 of 118 suspects in New Haven were given complete warnings. The study also reputed "hedging" on the warnings in most cases or inconsistent qualifying remarks designed to undercut them. They also commented on the "formalized bureaucratic tone" in which the warnings were given and the detectives unwillingness to help a suspect locate a lawyer

16. The Georgetown Institute study showed only 7 % of felon . or serious misdemeanor suspects availed themselves of counsel where it was available not only the premises but through a switchboard operation. The same study found 18-24 % of Washington D.C. suspects did not understand the right to counsel.

8 suspects gave what might be considered a "conditional waiver". Some cautiously asked "what kind of questions" or said "depends on the kind of questions". The officer generally said the questions would refer to the arrest or incident only and the subject agreed. One said he would only answer questions about "what happened to him," personally, another laconically agreed to answer only "Some", one reluctant women said "If I'm willing to answer, I will".

One said he would answer only if they told the DA he was an addict, another on condition they call the local narcotics agent. A third "if I don't get in trouble for it. "Will it help me, this is my first time and I'm scared". A fourth asked if he talked could he go home tonight and was told no promises would be made.

2. Statement of the Charge

The statement of the charge that precedes the warning caused a fair amount of confusion among many suspects (27) . The argument might be made that a knowledgeable waiver cannot be made until the suspect knows what he is charged with.[17] Yet in 15 cases ( ) the suspect was not told anything about what he was charged with prior to the waiver, including a "witness" in a homicide case; in 4 others the suspect declared that he didn't know or understand the charge. In 4 others, the Penal Code section only was mentioned with no explanation. Still other interrogations were prefaced only with

17. Of ALI Code, Study Draft, § A 4.01 - "the station officer shall immediately inform the arrested person of the crime for which he has been arrested and how long he may be held prior to the time he is to be released or charged.

"You had a little trouble?" or "You know what your'e arrested for, right?" or This is a criminal investigation" or An investigation of an incident at x address." Sometimes a few facts were stated, not amounting to a criminal charge "You were seen in an auto not yours" or "Your'e here because x was shot in the leg" or Your friend took a loaded gun out of the car and your'e accused of the same thing." Two suspects asked what formal allegations such as "sodomy" or "impairing the morals of a minor" meant. Twenty six suspects were told it was an "investigation into the stabbing or robbing or assault of x." A total of 70 or 25% waived rights without having been told directly of the specific criminal act they were charged with. Albeit many if not most would be aware of the general nature of the charge, several seemed honestly at sea as to the precise crime they were accused of. Their intelligent waiver might well depned on what the charges were. A precise narative explanation of the grounds of the arrest would seem in order before the warnings are given, even if subsequent development require changes in those charges.

27 of the 276 tapes (107) suspects asked questions about the charge or engaged in discusssions of the charges prior to any warnings. In the main such statments were denials, partial or complete, often accompanied by details of the incident. The officer often had to tell the suspect to keep quiet until the warnings. In several cases, however, the officer himself initiated discussions of some substance before the warnings were given or a waiver made. It would seem that preparatory to stating the charge the officer might admonish the suspect to withhold comments until after the warnings. On the other hand such comments might qualify as threshold voluntary comments.

A listening to such prewarning discussions immediately raises questions however as to whether the line between "threshhold" admissions and interrogation has not been over simplified by the Supreme Court's announcement in Miranda.

(474) "there is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today.

In many cases encountered the suspect did not seem to realize he was volunteering incriminating material. He was responding to

to the charge as stated by the officer, or in some cases to a seemingly routine question. For instance in several cases the suspect objected immediately that only 1 check not "checks" was involved or that he was not found "in possesion" of any burglar tools but only near the scene or that the officer hadn't found any drugs on his "possesion" but only seen him throw them away. In another case the suspect volunteered that the alleged robbery had not taken place at the stated address but at another location as well as the he "knew the routine" because he had spent 10 years in jail.

On the other hand, officers initiated the following kinds of questions before giving the warnings.

a. Statutory rape - suspect asked if he had sex with complainant while she was 15.

b. forgery - officer asked if suspect arrested before, remarked he had "lots of ID cards here."

c. hit and run - officer asked "where were you tonight."

d. assault - officer asked suspect if he knew name of man he assaulted

In the normal course the suspect and the arresting officer may have been in a dialogue since the arrest, on the way to the station, and during the "pedigree" ID process. Inevitably the suspect will be anxious to find out what his charge is, what will happen to him, and to give his version. He may not realize this if formal questioning. On the other hand the officer when faced with a suspect who is about to talk extempraneously about the offense and perhaps without realizing he is giving away important information has a difficult job in

deciding to listen or to cut him off. An unaware suspect can be easily enticed into admissions by statements of officers as by formal questions. This area of informal dialogue between officer and suspect is a grey area uncovered by either the case itself or police regulations.[18]

3. Requests to make Calls

The warnings given in the monitored rroom did not include the right to make phone calls to realtives or friends.[19] There were indications on several of the tapes that the suspects had been told of this right before entering the room and given the opportunity to make the calls. (any police regs on this?). The question of calls arose during only 7 interrogations. One woman was told she had already called her husband but finally allowed to do it again; in another the request ended the interrogation; another was told he could call after the questioning was over. A request for a doctor met with the reply that he could see one "following this stage in the investigation". One suspect asked to be interviewed with his brother (who was also a suspect) but this was denied outright.

18. The ALI Study Draft requires a warning of rights "immediately upon being taken into the stationhouse before any other processing. Sec. 4.01 "As applied to persons who will not be questioned such a warning is necessary to safeguard the admissibility of any statements volunteered without questioning". (Note)

19. Of ALI Study Draft Sec. A 4.0. which includes this right in the warnings.

4. Requests to Terminate Questioning[20]

The right to terminate questioning at any time, although emphasized by the Supreme Court in Miranda[21] was not included in the New York warnings.[21a] On a few occasions the detectives volunteered the information. Only 5 suspects demanded that the questioning stop, and in 3 cases they were successful.

One involved a girl accused of stabbing her common law husband but not yet under arrest who had come in "voluntarily" and was subsequently released at the stationhouse. She was questioned for 2 1/5 hour periods and kepy hysterically trying to leave. The detective would agree to take her home, acknowledging her right, then keep on questioning her or play on her sympathies that he too was tired, overworked, wanted to get the questioning over with at one time. No warnings al all were given this "witness". A second man accused of assault and robbery also said he didn't want to talk any more but the officer continued questioning. Another wanted to call his wife and was told "in a minute" followed by more questioning. Still another after a relatively long questioning period (13 minutes) announced he would tell the rest next day in court and the questioning ended. And one ended when the suspect said he wanted to make a phone call now.

20. The New Have study showed tha of 118 interrogations 43 tried to end it in some way, " a very few" by specific and determined requests; most "halfheartedly". Questioning was stopped in 17 cases, usually the less serious ones, or ones where enough evidence existed to convict anyway or where the questioner was not hostile.

21. (304 US at 373 - "If the individual indicates in any manner, at any time during questioning, that he wishes to remain silent, the interrogation must cease".

21a. ALI Code draft includes the right to revoke in the basic warning.

In addition 13 defendants balked at answering specific questions during the interrogation. Such questions included mainly the source of their supply of narcotics and the identity of others involved in their alleged misdeeds. One would not say if he had ever been in a mental institution. Another refused to talk about "jobs" while admitting this one. The officer's response to an initial refusal varied. In several cases the officer tried to dissuade the refusal, especially if the suspect seemed uncertain. In others he accepted the refusal.

Ex: 1 S: (refusing to name man she said put reefers in her purse) I don't want to answer that. What good would it do.

O: It might help others, he's the man who caused you to get arrested in the first place. (She did identify him)

Ex: 2 S: (refusing to say if he and cohort were "__?__" drugs "Will it do any good to answer that?"

O: "It won't do any harm, although I can't promise any special treatment". (He did answer)

Ex: 3 S: "I don't know if I should answer that"

O: It's up to you. You don't have to" (He didn't answer)

On adamant suspect insisted that a certain question was not part of the original charge he'd agreed to answer questions about. Although the question was repeated 3 times, he refused to answer.

Another initially refused to say why he had a gun, then said well its only "heresay" anyway and went on to discuss a plan to revenge the beating of his girl friend by some junkies.

It appears from these tapes that few defendants once they waive take advantage of a continuing right to end the interrogation or refuse particular questions. It also appears that tentative or indecisive refusals are countered, quite understandably, with persuasive reasons by the police why they should answer. But an emphatic refusal was usually respected, the only exception being the homicide witness who pleaded unsuccesfully several times to end the questioning and go home. Requests to make phone calls by themselves were not interpreted as demands to end the questioning unless the suspect refused outright to go on. In all about 7 such requests to call someone - a lawyer, girl friend, bondsman, doctor etc. were made during questioning. The usual response was "in a minute" or "when we finish the interrogation" and the suspect usually complied. One adamant suspect however ended the questioning by such a request.

It would seem a suspect should be told as part of the warnings that he can refuse specific questions even if he waives his right to silence generally he can end the questioning whenever he pleases.

Whether that would especially increase exercise of such a right however is problematical for once questioning begins and the suspect tells part of his story, it is more difficult for him to separate out the incriminating parts; it also makes him look more guilty, uncooperative if he is protesting innocence. The impression is unmistakeable that most suspects evade such a dilema by being vague or evasive about certain questions. The numbers of dope sellers, and companions in crime without last names, or what addresses the suspect did not know were legion.

Some preliminary conclusions drawn about the effect of Miranda warnings from this sample of waivers:

1. The warnings are not self-explanatory to a sizeable group or defendants.
2. A large number who ultimately waive their rights are indecisive about it at the time.
3. The New York warning on the right to counsel is misleading since no system of counsel is in fact provided at the stationhouse.
4. Few suspects appear to realize that once begun the interrogation process can still be controlled by them as far as length and individual questions are concerned.

5. The more adamant and assured the suspect is about what he will or won't do, the more likely the police will be to go along with him, except perhaps in a very serious crime. Uncertain responses invite persuasion to waive or to answer particular questions.
6. Had a lawyer been immediately available many more suspects would have taken advantage of their right. Immediate availability seemed important to many who feared delays and interim lockups while one was being called.

D. Interrogation Tactics

Sound recording guarantees an accurate replay of the dialogue between interrogator and interogated, a record far superior to any signed and dictated confession at the close of a questioning session. It enables the listener to make his own judgement whether over-acting or abusive tactics have been used to elicit such a confession or admission. What no sound recording can do however is draw the ephemeral line between legitimate questioning techniques and taking unfair advantage of suspect. That, the Supreme Court seemed to be saying in Miranda, is the chief reason for the suspect's having his own advocate present. The mere fact that a precise recording is being made can of course inhibit police from trying any extreme tactics; it can also strengthen the suspect's confidence by knowledge that the proceedings are being monitored and so nothing out of line will happen. The Supreme Court in Miranda pointed out that "the principal psychological factor contributing to a successful interrogation is privacy being alone with the person under interrogation". The monitoring acts as the third party intruder into that privacy.[21]

A review of the 276 interrogations however points out the extreme difficulty in drawing the line between legitimate and illegitimate tactics, for police officer, judge, or jury.

21. Sound recording also helps to fill other "subsidary" functions in the Court attributed a a lawyer at the station house. (470) "The presence of counsel at the interrogation may serve several significant subsidiary functions as well. With a lawyer present the likelihood that the police will practice coercion is reduced, and if coercion is nevertheless exercised the lawyer can testify to it in court. The presence of a lawyer can also help to guarantee that the accused gives a fully accurate statement to the police and that the statement is rightly reported by the prosecution at trial".

Length of Interrogation

The one obvious tactic of interrogation would be persistent and lengthly questioning. This was very rarely found in the Manhattan survey.

95% of all the monitored interrogations took less than 20 minutes. Only 3 instances were encountered of interrupted

Length of Interrogation* Table 1

Minutes	Number	Percentage
0-5	79	33%
6-10	88	37%
11-20	59	25%
21-30	6	2%
31-60	7	3%
over 60	1	.004%
	240	99%

*Duration was not recorded for 36 of the tapes.

interrogations, although the large number of tapes (20%) indicating that prior interrogations had taken place there was some doubt on these findings.

The 14 cases in which interrogations of over 20 minutes occured involved 6 homicides of 21, 31, 37, 40 and 140 minutes. There were also 3 assault and robbery cases lasting 25, 33, 58 minutes; 2 drug cases lasting 21 and 33 minutes; 1 burglary at 24 minutes; 1 forgery at 34 minutes and 1 grand larceny at 22 minutes.

An effort was made to see if there was a patternof longer interrogations for some crimes then others, aside from homicide.

Table 2 (Duration of Interrogations)

Minutes	Assaults (incl. assault & robbery) number	percentage	Minutes	Robbery
0-5	17		0-5	1
6-10	23		6-10	3
11-20	17		11-20	-
over 20	3		over 20	-
	60			4

Minutes	drugs	Minutes	Burglary
0-5	24	0-5	8
6-10	14	6-10	7
11-20	11	11-20	13
over 20	2	over 20	1
	61		29

Table 2 (Duration of Interrogations) continued

Minutes	Grand Larceny		Burglary Tools
0-5	9	0-5	5
6-10	16	6-10	4
11-20	6	11-20	5
over 20	-	over 20	-
	31		14

	Rape (inclu. statutory rape)		Weapons Possession
0-5	5	0-5	5
6-10	8	6-10	6
11-20	2	11-20	5
over 20	-	over 20	-
	15		14

	Forgery	Misc.		Morals Offense
0-5	1	arson 18(1)	0-5	1
6-10	3	abandonment 6 (1)	6-10	2
11-20	2	Traffic 12 (1)	11-20	1
over 20	1	13 (1)		
	7			4

From these tabulations it appears that burglaries are the most heavily weighted toward longer interrogations. Drug charges are the most heavily weighted toward short interrogations. Assaults (the longest category) are evenly spread but have a sizeable number in the 11-20 minute category. Most categories of crime keep the largest number of interrogations in the 6-10 minute interlude.

In a smaller sample of 34 cases there appeared no consistent correlation between length of interrogation and confession or admission and denials.

drug cases (9) 4 admissions (7 min. 8 min. 10 min. 14 min.) 5 denials (5 min. 5 min. 5 min. 8 min. 14 min.)

forgery cases (5) 4 admissions (7 min. 8 min. 10 min. 14 min.) 1 denial (10 min.)

assaults (5) 3 admissions (13 min. 16 min. 33 min.) 1 denial (9 min.) 1 unknown (11 min.)

robberies (3) 2 admissions (12 min. 13 min.) 1 denial (5 min.)

car thefts (3) 3 denials (7 min. 9 min. 13 min.)

gambling (1) 1 denial (11 min.)

morals (1) 1 admission (20 min.)

rape (2) 1 admission (6 min.) 1 denial (19 min.)

weapons (2) 2 admission (9 min.) (11 min.)

homicide (3) 2 admissions (21 min.) (40 min.) 1 denial (80 min.)

Range and Concentration of Tactics

What constitutes a "tactic" during interrogation of a suspect is of course a question of definition. Whenever any 2 persons conduct a conversation - particularly when they are not intimately sympathetic to one another or when the stakes at issue are crucial - each employs tactics. In every interrogation, both the interrogator and the interrogated are using tactics, if they in fact care about the result. There is nonetheless an overriding interest in the tactics used by the questioner because of his assumed upper hand in being the captor and controlling the where, when, and how of the session, within the limits of prevailing laws and procedures on prompt arraignment, warnings, etc.

Certain techniques of the questioner occurred with great frequency throughout the 276 interrogations listened to. The first of these was to confront the suspect with any existing evidence contrary to the story he is telling. This was usually either direct observation by the arresting officer, or the complainant's version of what happened, or tangivle evidence found on his person or at the scene. The second most frequent technique was to point out as the suspect goes along any inconsistencies in his own story. Except where the interrogator is clearly not interested in the questioning at all - as occurred in 13 of the 276 cases, and was going through

the motions at least one solely because it was required by the procedures of the project, these 2 techniques were used in a majority of interrogations.

The following other tactics occurred in 1/3 of all interrogations.

Open skepticism was a frequently employed technique. REmarks like "youre lying"; "That's a silly story"; "Come on tell the truth"; "You must be kidding us";"Youre making a fool of us"; Now tell us the truth"; "We don't believe you"; "Youre not that stupid" were common. Sarcasm was also used frequently, such as (to a suspec ted addict) "I suppose you just went up to any old passerby and said, "Are you a pusher" or (to aman accused of molesting a girl) "Just trying to help the poor girl, huh?" or (to a suspected burglar) "Just happened to have a razor blade on you?"

A variation of this technique was to proclaim belief in the victim or complainants story and to ask the suspect for a reason why they should lie, "Why would a woman in such pain lie?" "Why would the officer say he saw you throw the envelope away?" Often the officers said the judge would believe the complainant not the suspect or alluded to the fact the complainant could testify to the contrary in court.

Ex: 1. O: you knew it was stolen?

S: No

S: Yes

O: Then you knew it had to be stolen?

S: Yes

Ex: 2. O: (on silence of defendant) You refuse to deny that, in other words, you admit it?

In a dozen or so cases, attention was drawn to incriminating physical conditions of the defendant and he was asked to explain how he got them. Scratches, dirty hands, blood on shirt, needle marks on the arms led the list. In one case the lack of black and blue marks on the face of a woman who claimed her husband had beaten her before she stabbed him was cited. Sometimes too, the physical marks were on the victim, blow marks on a girls face and body. In one dramatic encounter the victim was brought in and the accused told to look her in the bruised face and deny he hit her. It was however quite rare (6 cases) to have an actual confrontation in the interrogation room.

In 3 cases the victim's critical condition or his demise was cited to the suspect in dramatic fashion. In several the suspect was talked to in loud, angry, or hostile tones and told to tell the truth since the police already had the facts.

Frequently, suspects arrested together were played off against each other. The object of such questioning was often a legitimate one - to find out who did what, where several parties were involved. In one incident the byproduct of such questioning however was often to produce inconsistencies which the officers could use to break down one suspects story as well as to highten his distrust of and antipathy toward his cohort. The familiar approach is to let one suspect believe the other was trying to pan off the whole crime on him or that since his buddy had already

confessed and it was useless for this suspect to deny. This technique was observed in 15 cases. It was used not only for co-defendants but also to get addicts to identify their source of drugs or other suspects to identify parties to crimes who had not yet been arrested. They generally implied that the suspect was taking the rap for the absent parties and that their part in the crime may have been far more grave than the suspect's participation.

Exs: (a) "He's the guy who has been forging the checks, not you"

(b) "It's Louis's fault if he put the reefers in your purse, why do you want to protect him."

(c) "Your brother told the truth, we advise you to do the same" "He's made a fool of you"

(d) "If you'd known he had a loaded gun, you'd jave been scared"

(e) "Unless you come up with another boy, you'll take the whole rap"

(f) "Your friend better tell the same story", we told him not to dump it all on you"

(g) "The others have admitted having drugs in the car"

(h) "Your friend made up some story, then broke down and told what really happened."

(i) "Your girlfriend is going to be arrested if you don't cooererate."

(j) "We wont tell the others you are singing and you deny it if they accuse you."

In only one tape was the co-defendant's testimony actually reported falsely. (One suspect asked to be interrogated with his co-defendant but was denied). And in only one case were co-defendants actually confronted with each other in the interrogation room. In a third case the defendant agreed to talk

only if the officers promised not to put him in the same cell in the Tombs as his co-defendant who the police agreed would "kick his ass off."

In a few instances (4) suspects were accused of crimes other than the one they were arrested for despite denials of the present offense, in a seeming effort to get them to confess to the instant crime as a lesser

Promises or intinations of intercession with the DA figured as an interrogation tactic in 6 tapes. In one serious case involving an attack on a young woman, the offcer said the reason why the suspects last charge had been broken down was because he cooperated. In another case, the officer said that if the suspect made a statement, they would tell the DA and it might go easier in court. In drug cases, the suspect was sometimes told he could get treatment for his addiction if he cooperated . In one case the DA was mentioned 4 times in 13 minutes: the officers promising to tell the DA that the suspect "wasn't stupid" or didn't have a big mouth like his co-defendant."

Relays of questioners (usually 2) were used in 10 cases. The usual procedure in the other cases was for one detective to question although the arresting officer would usually be present. The assistant DA did the questioning in all homicide cases although police questioning usually proceeded it. Relay questioning occured in the most serious cases (4 homicides, 3 assaults, 1 forgery, 1 narcotics, and 1 weapons) and in longer than usual interrogations. Where more than one police officer questioned the defendant, there were indications of a "Mutt and Jeff" approach in 3 cases, with one officer hostile or persistent and the other placating, cordial, offering assistance and sympathy.

On the other hand, a distinctly sympathetic and friendly attitude characterized 33 interrogations, if this can be called a "tactic." This was particularly true where young first offenders were involved or women defendants. But even oldtimers such as the one who admitted being arrested 11 times for car

--"Why wait for the lab report. You know what it'll say"

--"Do you want to go through life with that on your conscience?"

--"There are different degrees of homicide, you know"

--"You're sure that he (the victime) wasn't a disappointed lover"

--"This is the room where you get everything off your chest"

--"You're a champion, Julio, c'mon sit up"

--"You're 78 and you still like chippies. I hope I'm that good when I'm your age"

--"We're trying to help you folks"

Cigarettes or water were offered in less than a half dozen cases.[22]

In 32 interrogations (11%) the combination of tactics appeared sufficiently concentrated to label it an aggressive interrogation. These also tended to be the longest interrogations and are set out

22. The New Haven study pictured a relaxed and easygoing atmosphere as the norm for interrogations. Hostilitiy was displayed toward less than a third of the suspects. Half the suspects were questioned between 16 minutes and one hour, a third for less than 15 minutes, and only 15% for over an hour. The average period was 30 minutes (including typing of statements at the end of questioning). In 44 of the 127 interrogations no tactics were observed; only one or two in 36 and over 3 in 38. They found threats, promises, trickery, or pleading in one third of the interrogations. The most common tactics were confronting a suspect with evidence against him; telling him of witnesses; playing off cosuspects against each other; attacking internal inconsistencies in the suspects storyp promises or threats. Eight were accused of other crimes. No physical brutality was encountered. Only 17 interrogations were labelled "most coercive". They involved in the main serious crimes where evidence was needed to insure conviction, or where information about accomplices or other crimes was needed. 11 of these interrogations were successful (70%) as compared to a general success rate of 25%.

in Appendix A. 13 or 40% succeeded in changing the suspects original story. Two of the most vigorous interrogations were of witnesses not formally charged with crimes. In both cases interrogations were lengthly, many tactics were employed including outright accusations of the crime, yet no warnings were given.[23] One suspect had come voluntarily but was not allowed to leave when she asked to do so several times during the questioning.

Changes in Story

Only 18 suspects in the entire 276 changed their initial stories during interrogations (6%). 13 of these were in the group of serious interrogations.

In one homicide case the suspect (a sniper) first denied shooting at people and claimed to have fired only one round at birds. In the course of the intrrogation he admitted shooting at the street, and more than once, and finally that he knew he had "hit" the victim. A burglary suspect first claimed that he was in a building looking for a place to sleep; he later admitted that his purpose was theft of property, and still later he knew the occupant was "a pretty girl". Another burglary suspect claimed to be looking for a friend in a building, then admitted breaking in for purposes of theft. Two

23. Miranda v._____(477) "The principles announced today deal with the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any significant way".TheALI draft does not require that he__________ warnings be given to anyone voluntarily offering.

Two narcotics suspects first denied then acknowledged presence of drugs in an automobile in which they were riding. Conversely in an assault case the suspect first repeatedly admitted guilt and then later denied it.

In the rest the changes consisted of collateral details rather than basic innocence or guilt. These low change rates must be evaluated in light of theoverall admission rate of 58% among suspects making statements.

The tactics encountered on the tapes point out the difficulty of deciding where legitimate techniques end and overreaching begins. No threats were encountered; no strongarm tactics; only one mis-statement of a codefendants confession. Except for some locker-room jokes or allusions about sex and possibly some shouting or accusations that the suspect was lying, all the techniques would probably be allowed in a courtroom. The decisive difference would be that the suspect would have counsel there to act as a shield or to point out the pitfalls. For this reason general prohibitions against abusive tactics are of scant value; one listener might well disagree with the next on where the suspect was taken advantage of.[24]

24. See, e.g., the ALI Code's prohibition against "subjecting, or threatening to subject, such person, or any person in whom such person is interested to any form of abuse, including any practice designed to unsettle, frighten, or degrade.." (Sec. A 5.03); also against "questioning of such unfair frequency, length or persistence as to constitute harassment of such person;" or "any other method which, in light of such persons age, intelligence and mental and physical conditions, unfairly under mines his ability to make a choice whether to make a statement..." This is the section so dependent according to its drafters on sound recordings for enforcement. (Sec. A 5.04)

Except in the cases discussed infra where the suspects competence was in doubt, none of the statments made in the interrogations could have been said to be "involuntary".

The impression was nevertheless almost a universal one that the interrogations were "cat and mouse affairs" and seldom did the suspect come off the better. This was especially true in the large number of cases in this survey where the suspects comprehension and command of the English language was not formidable. Even in denying, most suspects gave away seemingly valuable leads and impeachment material, or tied themselves to an unlikely story. The one exception seemed to be assaults where the blow usually culminated a long prelude of mutual provacation.

It might of course be theoretically possible to lay down a set of fair play guidelines to interrogation - no sarcasm - no offers of intercession - no excess familiarity - no outright allegations of liar etc. or even to say that the interrogator can only ask straight questions and record answers of the suspect, if he is not represented, rather than attempt to break down a story or point out inconsistencies. Such an approach rejects the fact-finding function of the police through what is essentially an adversary process of confrontation and cross examination. Such rules are not likely to find favor in the current climate. The

presence of a magistrate at such questioning sessions is another popular proposal.[25]

Recording Prior Treatment

Another possible advantage of taped interrogations for the police is to record at a time roughly contemporaneous with the arrest that the suspects rights have been accorded hime and that no irregularities have occured. Thus in several of the tapes (10) there were discussions of how searches had been conducted, whether evidence had been voluntarily handed over, and whether the suspect had been physically abused in any way. Such a record would be evidence in refutation or in support of any later claim made by the suspect that his rights had not been honored. Typical of the situations covered were reiterations by a homicide suspect that he had invited the police in to search his room; by a woman suspect accused of illegal weapons possession that she had handed over the gun voluntarily; by a drug suspect that she too had given the purse to the policeman on request; Conversely one suspect said he thought he had been illegally searched because there was no probably cause for arrest; and allegations by three suspects that they had been

25. See ALI Study Draft, Model B. In serious crimes the magistrate would give warnings and take all waivers, also preside at or supervise any subsequent questioning.

attacked physically by the police (plus an ambigious reference by another "Look what you did to me"). Four suspects reaffirmed they had not been maltreated. Although obviously such pronouncements on tape could be purposeful on the part of the suspect or induced by fear, they do provide statements closer in time to the actual events than court testimony, and some evaluation can be made of the suspects condition when he makes the statement. In that sense they provide some protection against "afterthoughts: in reality or unfair accusations of "afterthoughts" where the abuse is real.

Part II - Interrogations under Miranda

1. What is the Statement RAte in New York City Since Miranda?

A one month survey of 22 Manhattan precincts August 15 - September 15, 1967 disclosed 1460 interrogations of felonies and serious (sec. 552) misdemeanors.

The survey revealed that, of 1,460 interrogations, 68.3 percent of the subjects refused to make statements after receiving their *Miranda* warnings. (Table II) Of the 31.7 percent that did make statements, 44.5 percent of these made denials and 55.5 percent made either confessions, admissions to the crime charged, or admissions to other uncleared crimes. (Table IV) It must be noted that, of the 1,460 suspects interrogated, only 12, or 00.8 percent, made statement of admission connecting them to other uncleared crimes.

TABLE II
MANHATTAN SURVEY OF INTERROGATIONS: CLASSIFICATION OF INTERROGATIONS BY WILLINGNESS OF SUBJECTS TO MAKE STATEMENTS

	Absolute	Percentage
Total Number of Interrogations Reported	1460	100.0%
Total Number Making Statements	463	31.7%
Total Number Refusing to Make Statements	997	68.3%

TABLE III
MANHATTAN SURVEY OF INTERROGATIONS: CLASSIFICATION OF INTERROGATIONS BY NATURE OF SUBJECT'S RESPONSE

	Absolute	Percentage
Total Number of Interrogations Reported	1460	100.0%
Total Number Refusing to Make Statements	997	68.3%
Total Number Making Confessions	45	03.1%
Total Number Making Admissions	200	13.7%
Total Number Making Admissions Re: Other Crimes	12	00.8%
Total Number Making Denials	206	14.1%

A breakdown of the statement rate by crime charged showed the highest statement rates for homicide, forcible rape, unlawful entry, attempted robbery, forgery, assault, arson (all over 50%). Those in which fewer than dangerous weapon one third gave statements were possession of dangerous weapons, possession burglary tools, attempted rape, assault and robbery, forgery, grand larceny, grand larceny (auto) felony drug cases.

Statement rates varied among precincts. A special study was made in three different types of precincts. The 14th Precinct, embracing the Times Square area and south; the 17th Precinct, encompassing the East 30s, 40s and 50s; and the 28th Precinct embracing central Harlem. The population that has intercourse with the police in the 14th Precinct is generally a non-resident population; the 14th Precinct embraces an area where people "go" as well as one where people live. The 17th Precinct embraces both a middle-income resident population and a population that is attracted to its businesses and places of entertainment from other parts of the city. The 28th Precinct is a lower income residential area.

The statement rates in the 14th and 17th Precincts were approximately the same (roughly 33%); the statement rate in the Harlem precinct was a high 63.8%.

MANHATTAN SURVEY OF INTERROGATIONS: COMPARISON OF NATURE OF STATEMENTS BY PRECINCT IN WHICH MADE

Precinct	Total	No Statement		Confession		Admission		Admission to Other Crimes		Denial	
		Abs	Per	Abs	Per	Abs	Per	Abs	Per	Abs	Per
14th	128	85	66.4%	0	00.0%	17	13.3%	2	01.5%	24	18.8%
17th	25	17	68.0%	3	12.0%	1	04.0%	0	00.0%	4	16.0%
28th	130	47	36.2%	1	00.7%	33	25.4%	4	03.1%	45	34.6%

As indicated previously the statement rate for monitored interrogations over a 6 month period tended to run slightly higher in all except drug offenses. Only 58.9 of all suspects refused to talk; 23.7 made admissions of some sort; 15.2% made denials.

Although no accurate figures were available on the rate of statement making pre-Miranda throughout the city, a one month comparison of conviction rates for felony and 552 misdemeanor cases in July 1965 and July 1967 showed a higher conviction rate in the earlier year (admittedly a very rough index). The two rates were: based on 110 cases in 1965 and 159 in 1967 that proceeded to court.

Type of Dispo-sition	Percentage of 1965 cases	Percentage of 1967 cases	
Conviction	57.3%	35.2%	(45.2%)*
Non-Conviction	40.9%	35.2%	(45.2%)*
To Other Jurisdictions; Warrants	01.8%	07.6%	(09.6%)*
Unknown	———	22.0%	(———)

*NOte: Figures in parentheses represent percentages if unknown cases are excluded from the study.

2. How Useful are Interrogations in Processing Arrests and Solving Crimes

Only a very rough assessment can be made of the value of the statements made during the monitoring experiment. We know on an empirical level that no tapes of those statements were used in court, or with the possible exception of the homicide cases, used in any plea negotiation. At best we can make only a partial evaluation of what other evidence was available in the cases from the tapes themselves, and the outcome of the cases. Nevertheless these very rough indicia do provide some new insights into the usefulness of interrogations in various types of cases.[26]

As for the value of talking to the suspects themselves is concerned, since only 3 defendants among the 276 (1%) in the tapes analyzed were released by the police subsequent to talking[27] (and one of these came in voluntarily) it can safely be daid that the suspect has little immediate gain from talking and there are very few cases where the police can or will dispose of the case on the spot.

26. The New Haven survey found that in only 12 out of 90 cases was there an "important" or "essential" need for interrogation to obtain a conviction. In only 4 of these was it successful. In 16 other cases questioning was deemed important to implicate co-defendants in group arrests and produced successful results in 10 of these. In 49 out of the 90 questioned did produce previously unknown information not otherwise obtainable. The detectives themselves rated interrogation important in only 13 out of 70 cases. There was questioning about other crimes in 8 cases, and admissions of other crimes in 3 cases amounting to one dozen clearances.

27. The rate of stationhouse release among monitored interrogations was 4%.

The suspect might better save his explanations and alibis for the prosecutor where a considerable number are dismissed, or charges reduced.

Notations were made of all extrinsic evidence mentioned during the interrogations. In most cases the questioning did cover the circumstances of the arrest and the listener was able to discern certain basic items such as what the officer observed, if the complainant identified the suspect, or whether he was found with stolen goods. Although obviously incomplete, perceptible patterns appear in several types of crimes.

Grand Larceny (including auto theft) (50 cases)

Out of 50 interrogations only 15 suspects admitted the theft. In every one of these cases there was extrinsic evidence of the theft; either the stolen goods were found on the person or in the apartment of the suspect or handwritten receipts were available in the case of cash withdrawals from employers. In some cases the suspect had been apprehended while fleeing the scene and identified by the victim. In the case of stolen cars, the suspects were found driving them or exiting from them. Somethimes they had burglar tools on them, screwdrivers, etc.

In the cases of the 35 suspects who denied the theft, the evidence was generally of about the same caliber. Usually, however, the suspects proffered some explanation for why they were in the stolen car or had the stolen goods. These ranged from friends letting

them dirve the car, getting inthe wrong car by mistake, being only a passenger and not knowing the car was stolen, buying the stolen goods from a friend, or merely holding them for a friend. In joint arrests, they sometimes blamed the companion, claiming no knowledge of the theft themselves or named new suspects.

The ultimate rate of dismissals or no complaints among the denials however was 14 out of 35, as compared to 1 out of 15 in the admissions cases (6 grand larceny cases had no dispositions available) suspects who denied were released at the stationhouse, after naming the driver of the car. One who denied was ultimately acquitted in court. This half of the denials escaped conviction.

Most of the alibis could easily have been checked out (i.e. the suspect had an "arrangement" with the car owner to park it). (i.e. a janitor found on the stairs with a TV said he was returning it to a tenant). It would seem that a suspect who tells such a story which does not check out would be in a worse conditions than one who says nothing, but, if proven true, would hasten his release at the prosecutor stage by professing the alibi.

<u>Forgery and False Credit Cards, Licenses,</u>

Five of these suspects admitted passing false checks or using false ID in transactions. And 3 denied implication. In every case the police had the forged checks uttered or signed receipts or the false driving license or credit cards found on the suspect.

Handwriting samples of the suspects were also presumably available. Of the 3 suspects who denied, one was dismissed (he said his room-mate not he used the false credit cards). Another suspect admitted passing the checks but said she didn't know they were forged because she had been given them in payment by her employer (a story easily checked). The third denial sounded highly implausible, ie. that the suspect had found a drug prescription on the street and was giving it to the druggist. (Two of the five admitting suspects also had their cases dismissed)(Two cases are still pending) Two of them admitting also confessed to other transactions which they were not originally charged with.

Assault and Robbery (Including Single Charges of Assault or Robbery)(80)

These crimes against the person invariably had a victim identification. Stolen property however was found in only three of the cases. A weapon was found in twelve cases on the person of the suspect. Third party witnesses were mentioned in eight cases, police officer observation in four cases. Among the suspects, only 16 denied any participation whatsoever in the incident which gave rise to the alleged assault and/or robbery. Of these 16, only 3 were convicted. The rest had their casesdismissed or no charges

filed. In 2 of these cases, the suspect named another as the real culprit and all but 3 there was only complainant identification. In these 3 there was also stolen property or the suspect was found at the scene.

In all of the other cases (64) the suspect would admit being on the scene but would give a different version of what happened. In the assault cases this was invariably that the victim was the instigator of a fight in which the defendant acted in self defense, or that although the suspect was with the victim, no assault or robbery took place. In several instances group fights were involved and the suspect claimed that he intervened to stop the fight. The suspects who actually admitted cutting or stabbing the victim all had self defense or provacation defenses (i.e. he caught victim raping his wife; or the victim made improper advances on female suspects). In 2 cases they blamed others present as the real perpetrators. Among the group that offered their versions of what happened, 27 had their cases dismissed (42%) and 10 are still pending.

In only 9 cases did the suspect admit a criminal assault or a robbery and offer no excuses. Except for the pending cases, all but one of these confessions were connected. In one the stolen goods were found on the suspect; in 3 there was evidence only of routine identification; in 2 there were weapons founds on the suspect

and in 3 there were codefendants testimony. Assault and robbery cases mostly involved disputes of fact only as to what happened, not the identity of the culprit. The police and the suspect both appeared to benefit by brining forth all the versions of what occurred during the incident. By far the greatest number of such cases were between relatives or acquaintances not strangers; in less than a half dozen was a cold assault or robbery on a stranger involved. It is difficult to see how precise charges could be decided upon or sustained in court in the majority of these altercations until the different stories had been put on the table.

Burglaries and Possession of Burglars Tools (43)

Among burglary suspects there were 24 denials or almost 50%. Yet the dismissal rate was only 8 or 20% (9 cases are still pending). 15 suspects were found with the stolen goods on their person or in theri apartments; these included 8 who denied and 7 who admitted the break-in. Victims of witnesses identified the alleged burglar in 17 cases (11 denials; 6 admissions). The suspect was apprehended in the building or next to the car, on the fire escape or roof, or running from the scene in 15 cases (7 admissions; 8 denials). Burglars tools were found on him in 9 cases (screwdrivers, crowbars, pliers, wirehangers). In only 6 burglary cases there appeared to be no extrinsic evidence (2 admissions; 4 denials). All of these but one were convicted anyway.

The alibis or stories most frequently encountered were: the suspect was repossessing his own property from a friend; he was just resting on a fire escape or knocked on wrong door; the door was open to the apartment and he went in to tell owners; he unplugged a radio in friend's room to preserve quiet; he was girl watching on roof; the tools were to fix girl friend's recording machine; he wandered into wrong room to go the toilet.

There were 14 outright confessions to burglary, most giving the need for drug money as their motivation. In every one of these cases but 2 there was other evidence connecting the suspect to the crime: 7 in possession of stolen goods; 2 apprehensions in building, or on the roof, or fire escape, etc; 2 observations by witness; 2 possession of weapons.

Weapons offenses (15)

In every weapons offense, the suspect had been found in possession of or in the company of an unlicensed gun, or other illegal weapon. 12 of the charges involved guns and 3 knives. There were, nonetheless, 6 denials of the offense. These denials often involved group situations, such as one case where the suspect's friend was seen exiting from the cab in which both rode with a gun. The suspect claimed he never saw the gun and his case was ultimately dismissed. In another case 2 suspects

tried to pin ownership of a gun in a car on a third. Another suspect said someone put a knife in his shoe during a fight he was trying to cool. (He ultimately had his case dimissed also). The fith apprehended with a friend in a car said the friend had the knife, not he. (He was also dismissed). The sixth, also dismissed, admitted he left a gun in his apartment that he had bought in California. The other nine admitted owning guns after the weapons charge was combined with other serious ones of attempted robbery or burglary. There were 6 dismissals; 4 in denial cases, 2 in admission cases. (4 are still pending).

Rape (11)

8 out of 11 rape charges were ultimately dismissed and 1 was acquitted. 2 are still pending. Only one conviction has been reached, although in each case there was a complainant and in 2 medical tests to show intercourse had taken place. In 2 of the 4 statutory rape there were also witnesses to the couples living together; and 2 statutory rape suspects admitted having consensual realtions with a minor. The defense in all the 7 forcible rape cases was the victims consent to relations. The single conviction involved a juvenile rape case with 2 suspects and no apparent evidence other then the witness story.

(was a confession made? if not, there could not legally have been a conviction (absent plea))

building near/door

Homicide (8)

Five of the homicide defendants admitted striking the fatal blow, although one claimed it was accidental and another in self defense and a third sniper said he was shooting at pigeons in midtown Manhattan. All of the homicide _________ cases were convicted except for the self defense case. In each case except one there was either at least one outside witness and/or the weapon recovered. In 2 cases the suspect had turned himself in. The exception where there was no apparent evidence had scratches and lived in the same building as his victim (his confession told where he threw other itmes of bloody clothing). In the sniper case there had already been a recovery of the gun from his room plus a ballistics and bullet transfiguration test to show it was fired from his room, as well as an identification by the men who sold him the gun. It might be said that the confession appeared vital in the single case with no other evidence.

Three of the homicide suspects denied the killing. One said the victim fell during the fight striking his head on the walk and cited 4 witnesses to the fight (his case is still pending). Another denied the stabbing of her living companion. There were 2 other witnesses in this case and her case is also pending. Finally, a third acknowledged a fight with the victim but denied stabbing her although he identified the knife as his. He was convicted.

Morals (4)

3 out of 4 of morals cases were dismissed; all of whom had denied implication. The victims in each case were willing to charge the defendants but the suspects claimed consent or nothing illicit had taken place. The one who admitted the offense was acquitted. He had been observed by a police officer in a public toilet engaging in manual sex with another male.

Miscellaneous (5)

1) Policy case - denied - observed by police officer writing numbers - convicted.
2) Abandonment - denied - baby left at complainants house - transferred to Family Court.
3) Arson - Confession - found at scene of fires - conviction.
4) Drunk driving - denial - sobriety test + observation by police officer - conviction.
5) Stolen license - confession - stopped by police officer - conviction.

Drug Offenses (55)

Among the alleged drug offenders, 30 admitted and 23 denied possesion and/or use of drugs or "the works". No suspect among the 4 accused admitted a drug sale. Even among the denials however,

5 admitted being addicts or using drugs even though they denied possession on this occasion (having the man show his arm for needlemarks was a common interrogation tactic). There was direct police observation ("throwaways" etc.) in 13 cases (7 denials; 6 admissions). There were drugs found on the person or in the residence or at the scene in every case. The cases where interrogation appeared useful or necessary were the group arrests where and apartment was raided and drugs, etc. found but they could not be tied to the specific persons of several occupants. For instance, 7 suspects were found asleep in a parked car with drugs in it and each initially denied ownership; finally two admitted taking a pill or knowledge of the drugs. 27 cases or 50% were ultimately dismissed (13 of them denials and 14 admissions) (8 are still pending).

The excuses given by those denying the drug count included: someone putting the reefers in her handbag; suspect didn't know they were taking pot or that the pills were narcotics; companions had drugs unbeknownst to the suspect; he found the works in the hospital garbage can or on the street; he was picking up drugs for a friend; a man gave him a package to hold. In several of the interrogations the suspect was quizzed with apparent success on the

source of his drugs; in others he was never asked. In one case he would not discuss it in front of the monitor and was taken outside. A few times particular locations of drug traffic were discussed.

VI. Clearance of Other Crimes

The usefulness of interrogation as a method of clearing crimes other than the one instigating the arrest has been widely challenged. From listening to the tapes it would appear to depend on the definition of "clearing" a crime and on the initiative of the interrogator in pursuing this line. Suspects often admit past criminal acts but these may never have been reported to the police in the first place or be on the books as an unsolved crime. With the volume of crime in a metropolitan area, the individual interrogator is unlikely to have a catalogue of past unsolved crimes in his mind except for the most notorious or recent ones. Eight instances were noted in the 276 tapes (3%) of suspects who admitted 1) passing stolen checks other than the ones in question; 2) using false credit cards for transactions other than the ones in question 3) committing numerous but unstaked thefts; robberies and burglaries for money for drugs (3 instances); 4) committing a burglary like the instant one a year ago; 5)routinely taking coins out of certain telephone boxes; 6) picking up and taking money from "fags" by impersonating a police officer. The rate of solution of unsolved crimes in the city wide survey was 1008% (12 out of 1,460 interrogations).[27]

27. In New Haven this was 3 out of 127 suspects who have accounted for 12 unsolved crimes.

what about burglar's tools?

Tentative Conclusion on the Taping Projects

1. Interrogation does appear to be useful to the police in straightening out stories for proper charging, not for immediate release, but probably for ultimate dismissal. In almost no case is it necessary in order to make the charge.

2. From the suspects point of view unrepresentated, he is at a distinct disadvantage in any verbal encounters with the interrogators. He is almost never released, anything he says can be used to impeach him later. Where he denies implication or has a sound alibi, strategically he is better off negotiating the the D.A.. at a later time for dismissal.

3. The Miranda warnings are not fully clear to a large percentage of defendants who ultimately waive their right to silence. They are not afforded sufficient time to make a careful choice. The warnings in their present form are basically fraudulent where there is actually no lawyer available to counsel them.

4. Few defendants are told or seem to understand or exercise their right to terminate the interrogation, once begun.

5. Many defendants who appear unable to make an intelligent waiver or watch out for their own interests either because of hysteria, drugs, or intoxication are interrogated anyway.

6. Almost none of the tactics observed during interrogation are reprehensible or constitute falsification of any sort. They more merely parallel those anyone engaged in an adversary preceeding - in or out of the courtroom - would use to expose a witness or to _______ his reliability. The difference is the suspects lack of representation and the fact he is in the physical control of his interrogators.

7. Taping interrogations acts as a p_______ ~~central~~ on the tactics used, the condition of the person interrogated, the giving of proper warnings. In these respects it is superior to a mere summary statement of a confession or even to a stenographic transcript. These advantages, however, occure only if the confession or statement is ultimately introduced and challenged in court. The results of this project indicate that this will happen rarely.

8. If the taping is to be used for central purposes, a rule could be necessary that where a tape exists, that must be introduced. In at least 1/6 of the taped interrogations there was evidence of prior questioning not on tape. Such prior questioning lessens the value of the tape as an indicator of the conditions of interrogation. Where it has taken place, the tapes should indicate it and summarize the results. Otherwise prior admissions should not be allowed in court.

9. From the police point of view, taping would be most useful only in serious cases where a plea of guilty cannot be anticipated as a matter of course and the confession may be challenged. From the point of view of insuring adherence to rules of fair interrogation, cases where the police intend to interrogate or have already interrogated, all should be taped since some of the most vigorous or boerdline interrogations occur in seemingly routine cases with drug addicts, assaults on police officers, etc.

10. Taping officers not to inhibit suspects from talking. From witnesses it appears the police resent it more then the suspects. ?

11. (Finding on expense, inconvenience of taping)

12. Where taping exists prosecutors and Legal Aid or public defenders should be instructed on its usefulness and the tapes made freely available in advance of trial. – presupposes there are trials

13. An effort should be made to collect at least a representative number of taped interrogations from various parts of the country for study by legislators, judges, and rule making bodies who seek to formulate standars for interrogation. The cumulative impression received from listening to a large number of these tapes is markedly different from that received from reading standard text books or judicial rulings on the subject. They should also prove useful as a training tool in the skills of interrogation.

(should be expanded upon.

Appendix A

Crime	Length of Questioning	Tactics	Confession or Denial	Change in Story
1 Homicide	40 min.	-Relay & D.A. questioning -reference to scratches	conf.	no
2 Homicide	21	-Relays & D.A.questioning -told of victims death -confrontation with gun seller -DA said path of bullet showed must have been aimed toward street - reference to guns found in suspects room -reference to past criminal record.	~~partial conf.~~ admission	yes
3 Homicide	30	-Relays & DA questioning -leading questions -persistent and repetitious questioning	admitted	no
4 Homicide	31	-DA questioning . -contradictory witness brought in -persistent questioning	admission	no
5 Homicide (witness)	2hrs.20 min.	-they thought he did it -do you want to go through life with that on your conscience - sympathy - different kinds of homicide -reference to her swollen face -agreements to let her go home, -then continued questioning -Mutt and Jeff routine -pleas to finish questioning so officer could go home	denial	no
6 Homicide	37	-Relays and DA questioning -reference to knife taken from him	denial	no

Crime	Length of Questioning	Tactics	Confession or Denial	Change in Story
7 Forgery	14	-chatty, informal manner -playoff against co-defendant -promise not to put him in same cell as co-defendant -relay questioning	admitted	no
8 Assault on girl in apartment	33	-locker room joking about desires for sex with party girls -minimizing seriousness accusation -relay questioning -suggesting details of how it happened -get it off your chest -reference to contradiction in story -reference to bruises on girls face -said judge would believe girl not suspect -threat to bring second girl in -accused of other sex offenses in precinct -why would complainant make up story		yes
9 Drug possession	8	=said they believed her, noone would leave reefers lying around -fault was man who put them in her purse -not here to prosecute you	denial	no
10 Drug possession	5	-play off co-defendants -reference to cop seeing him throw away drug -sarcasm - "Did I imagine it? -relay questioning -Mutt and Jeff technique -accused him of selling heroin as well as possesing it	admitted	no

Crime	Length of Questioning	Tactics	Confession or Denial	Change in Story
11 Grand Larceny	13	-play off co-defendants -said friend broke down and told story -confronted him with friends -mentioned they would speak to DA about him 4 times.	admission	yes
12 Weapons	16	-"only tyring to help you" -will have to arrest your girlfriend if you don't cooperate -wont tell others you are singing	admission	no
13 Unlawful entry	7	-thats a silly story -if you tell the truth we'll tell the DA you cooperated -sarcastic -other defendant said what happened	admission	yes
14 Burlary	7	-friendly and sympathetic -accused of other crimes -wifes in hospital & you're screwing around	admission	yes
15 Assault & robbery	8	-implied victim a "disappointed lover" with homosexual attraction to suspect -said judge would believe other man not him. -is this how you pulled the knife on him? (after denials) -why would complainant lie?	denial	yes
16 Grand Larceny	24	-said owner ~~to~~ was at precinct to confront him -you're bullshitting us -inconsistencies pointed out	denies	no
17 Burglary	13	-get if off your chest, tell the truth -trick questions -disbelief of his original story -insisted he show arms to see needlemarks	admission	yes

Crime	Length of Questioning	Tactics	Confessions or Denial	Change in Story
18 Burglary	12	-reference to inconsistent version of witness -trick questions -reference to cut and bloody shirt	denies	no
19 Felonious Assault	14	-asked repeatedly if he pushed victim out window -reference to cut on shoulder -inconsistent witness statement cited -joking references to friends homosexual attraction to him -why would women in pain lie about this?	denies	no
20 Weapons	5	-why did you hit her? (after denied it) -reference to ID by complainant -Mutt-Jeff technique -inconsistent statement at time arrest	denies	no
21 Felonious Assault	8	-questioning by 2 officers -your brother told the truth, advise you to do the same	denies	no
22 Robbery & Assault	58	-openly skeptical, -relay questions -victims brought in for confrontation -said co-defendant made a fool of him -said he must be stupid if story true -insisted he look at victims black and blue marks and deny he hit her. -you're lying -reason last charge dropped must be he cooperated with detectives.	denies	yes

Crime	Length of Questioning	Tactics	Confession or Denial	Change in Story
23 Burlary tools	5	-openly skeptical -you must be kidding us -had to show needle-marks -unless you come up with another boy, you'll take the whole rap	partial admission	yes
24 Indecency	10	-you're 78 and you still like chippies -reference to sex films found in room -reference to black & blue marks on girl -sarcasm - "you were just trying to help poor girl?"	denied	no
25 Burglary	15	-you're lying, making a fool of us =you stole it, right? -if you make a statement, we'll tell the DA and it'll go easy in court	admission	yes
26 Drugs	18	-joking about Italians (suspect Italian) -officer said he knew what was ~~using~~ going to find out and suspect better not lie -asked if suspect wanted to go for a cure -references to needlemarks and stuff found in her apartment.	admission	no
27 Drugs	8	-persistent questioning -showed needlemarks -trick questions	partial admission	yes

Crime	Length of Questioning	Tactics	Confession or Denial	Change in Story
28 Weapons	11	-shouted at suspect -relay questioning -your friend better tell same story. Play-off of co-defendants -you're lying -contradictory observations by arresting officer -he knew you did it -co-defendants admission mis-stated	denial	no
29 Burglary	5	-Sarcastic -accusatory: you went in to steal anything.	denies	no
30 Robbery	10	-set off co-defendants -tell us the truth	admission	yes
31 Drug possesion	7	-said her eyes didn't look normal -they had all facts, she better tell truth -others had admitted possession drugs in car.	denies	no
32 Assault (witness)	-	-you haven't told us a word of truth -friends testimony contradicted yours -internal inconsistencies in own story -you're a good looking guy. all good looking guys have that trouble - implying homosexual attraction of 3rd party -attempt to discredit friends testimony - he could have pretended he was asleep - you're lying for this guy -accused him of doing assault himself	denial	yes

(cut down to 6b to checked categories?)

TABLE 14

MANHATTAN SURVEY OF INTERROGATIONS: CLASSIFICATION OF NATURE OF STATEMENTS BY SPECIFIC OFFENSE CHARGED

Crime Charged	Total	Nonstatement		Confession		Admission		Admission-OC		Denial	
		Abs	Per	Abs	Per	Abs	Per	Abs	Per	Abs	Per
Homicide	16	3	18.8%	2	12.5%	5	31.2%	0	00.0%	6	37.5%
Felonious Assault	236	152	64.4%	8	03.4%	30	12.8%	2	00.8%	44	18.6%
Fel. Asslt/Dangerous Weap.	22	10	45.5%	1	04.5%	5	22.8%	2	09.0%	4	18.2%
Poss. of Dangerous Weapon	73	55	75.3%	0	00.0%	12	16.4%	2	02.7%	4	05.6%
Burglary	157	103	65.6%	6	03.8%	27	17.2%	0	00.0%	21	13.4%
Attempted Burglary	5	4	80.0%	1	20.0%	0	00.0%	0	00.0%	0	00.0%
Unlawful Entry	12	6	50.0%	0	00.0%	6	50.0%	0	00.0%	0	00.0%
Possession: Burglary tools	34	28	82.4%	0	00.0%	4	11.8%	0	00.0%	2	05.8%
Forcible Rape	37	18	48.6%	1	02.7%	8	21.7%	0	00.0%	10	27.0%
Attempted Rape	3	3	100.0%	0	00.0%	0	00.0%	0	00.0%	0	00.0%
Statutory Rape	6	4	66.7%	1	16.65%	0	00.0%	0	00.0%	1	16.65%
Sexual Abuse	1	1	100.0%	0	00.0%	0	00.0%	0	00.0%	0	00.0%
Sexual Misconduct	2	1	50.0%	0	00.0%	1	50.0%	0	00.0%	0	00.0%
Sodomy	7	7	100.0%	0	00.0%	0	00.0%	0	00.0%	0	00.0%
Assault & Robbery	64	50	78.1%	2	03.1%	3	04.7%	1	01.6%	8	12.5%
Attempted Asslt & Robbery	3	3	100.0%	0	00.0%	0	00.0%	0	00.0%	0	00.0%
Robbery	77	54	70.0%	1	01.3%	9	11.8%	0	00.0%	13	16.9%
Attempted Robbery	5	2	40.0%	0	00.0%	0	00.0%	0	00.0%	3	60.0%
Forgery	28	21	75.0%	1	03.6%	2	07.1%	1	03.6%	3	10.7%
Uttering Forged Instruments	8	3	37.5%	2	25.0%	2	25.0%	0	00.0%	1	12.5%
Grand Larceny	132	98	74.3%	5	03.8%	13	09.8%	0	00.0%	16	12.1%
Attempted Grand Larceny	6	6	100.0%	0	00.0%	0	00.0%	0	00.0%	0	00.0%
Grand Larceny-Auto	21	19	90.0%	1	05.0%	0	00.0%	0	00.0%	1	05.0%
Poss./Rec. Stolen Goods	86	39	45.3%	7	08.1%	19	22.2%	0	00.0%	21	24.4%
Bringing stolen goods into the state	2	2	100.0%	0	00.0%	0	00.0%	0	00.0%	0	00.0%
Incite Riot	3	1	33.3%	0	00.0%	2	66.7%	0	00.0%	0	00.0%
Riot	1	0	00.0%	0	00.0%	1	100.0%	0	00.0%	0	00.0%
Abandonment	2	0	00.0%	0	00.0%	0	00.0%	0	00.0%	2	100.0%
Endanger child's welfare	7	4	57.1%	1	14.3%	0	00.0%	1	14.3%	1	14.3%
Drugs-Felony	190	144	75.8%	4	02.1%	19	10.0%	2	01.0%	21	11.1%
Drugs-Misdemeanor	141	97	68.8%	1	00.7%	23	16.3%	1	00.7%	19	13.5%
Promoting Prostitution	3	3	100.0%	0	00.0%	0	00.0%	0	00.0%	0	00.0%
Indecent Exposure	8	8	100.0%	0	00.0%	0	00.0%	0	00.0%	0	00.0%
Extortion	2	0	00.0%	0	00.0%	0	00.0%	0	00.0%	2	100.0%
Arson	10	3	30.0%	0	00.0%	6	60.0%	0	00.0%	1	10.0%
Loitering	7	7	100.0%	0	00.0%	0	00.0%	0	00.0%	0	00.0%
Jostling	24	22	91.7%	0	00.0%	0	00.0%	0	00.0%	2	08.3%
Reckless Endangerment	4	2	50.0%	0	00.0%	2	50.0%	0	00.0%	0	00.0%
Fraudulent Accosting	3	3	100.0%	0	00.0%	0	00.0%	0	00.0%	0	00.0%