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REPORT ON DEVELOPMENT OF A PILOT SCHEME FOR ADVANCE DISCLOSURE
OF THE PROSECUTION CASE IN THE METROPOLITAN POLICE DISTRICT

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P R E F A C E

After the enactment of section 48 of the Criminal Law Act 1977 regarding advance disclosure of the prosecution case, the Home Office established a Working Party to consider approaches for implementing the section. In 1981 the Working Party recommended creation of a pilot disclosure scheme as a means of examining the practicalities and costs of various methods of providing advance disclosure and for assessing their effects on elections for jury trial, rates of guilty pleas, waiting times and related issues. In response to this recommendation two pilot disclosure schemes were developed: one in the Newcastle Division of the Northumbria Police and the other in the Metropolitan Police. This report discusses the planning and design of the Metropolitan Police scheme. As the one year trial period involved in the scheme did not begin until 1 August 1983, the final results of the pilot scheme will not be available until mid-year 1984.

Many agencies and individuals have contributed to making the pilot scheme and this report possible. Foremost among these were the commitments of Sir David McNee and Sir Kenneth Newman, Commissioners of the Metropolitan Police, who authorised development of the scheme and made it possible. This commitment resulted in an excellent plan which has been well implemented. The enthusiasm and support of the Force for the pilot scheme have been exemplary and many members of the Force have had a hand in its implementation.

The planning and implementation process was ably directed by R. Steventon, Deputy Assistant Commissioner (Crime Support), since retired, and Commanders P.J. Carson (A-2/3 Division), C.B. Wood (C-2/5 Division) and M.A. Ferguson (H District). Detective Inspector A. McNicol (C-5) and Inspector P. Dowse (A-2) have been responsible for the detailed work of planning and bringing

the scheme into being. Their thoughtful, systematic approach has carefully identified the many problems involved in implementing a disclosure scheme in a police force with a high volume of cases and has resulted in an exceptionally well developed plan. Much assistance was rendered throughout the planning process by the Detective Chief Inspectors in H District, L.M. Williams (Bethnal Green), H. Wilkins (Leman Street) and A. Lewis (Limehouse). The Court Inspector, N. Smith, and the Court Presenting Officers at Thames Magistrates' Court also made many helpful suggestions.

Planning for the evaluation has been supervised by Chief Superintendent D. Attril of the Management Services Department. The difficult task of developing the evaluation plan has been undertaken by Inspector R. Johnson. Mr. G. Winston, Deputy Solicitor of the Metropolitan Police, has also made important contributions to the development of the plan.

Much of the credit for development of the pilot scheme is also due Mr. J. Pulford, Clerk to the Justices at Thames Magistrates' Court. Mr. Pulford made many valuable suggestions during the planning process and has assisted greatly in its implementation.

The major Home Office arrangements for the scheme were made by Mrs. B.H. Fair, Assistant Secretary, and Mr. B. Gange, of the C-2 Division. Their continued interest and guidance has been critical to the development of a scheme capable of faithfully testing disclosure based on statements and has helped to make our work enjoyable throughout. Mr. D. Moxon has provided liaison with the Home Office Research and Planning Unit and much essential advice and assistance.

Needless to say this paper is the responsibility of the authors and does not necessarily reflect the views of the agencies or individuals associated with the scheme.

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REPORT ON DEVELOPMENT OF A PILOT SCHEME FOR ADVANCE DISCLOSURE
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I. INTRODUCTION

On 1 August 1983, the Metropolitan Police commenced operation of a pilot scheme for advance disclosure of the prosecution case in magistrates' court proceedings. The scheme applies to charges preferred at police stations in H District (East London), all of which are initially heard in the Thames Magistrates' Court.

The pilot scheme has been designed to test one possible approach to implementation of Section 48 of the Criminal Law Act 1977. That statute, which is consistent with a recommendation in the 1975 Report of the James Committee,¹ authorises the Lord Chancellor to make rules governing advance disclosure in magistrates' court proceedings. The statute is very broadly drafted, enabling the prescription by rule of the offence or classes of offences to which the disclosure requirement would apply, as well as of the method (or methods) of disclosure to be followed.²

At the time that Section 48 was enacted, it was recognised that there could be substantial costs involved in implementing it, and a Home Office Working Party was established to consider ways in which implementation might best be accomplished. One of the major problems was that procedures for investigating cases and preparing them for prosecution varied widely among the 43 police forces in the country. Some of the forces took witness statements routinely at the outset of a prosecution, but in others some or all of the prosecution evidence would generally be in the form of notes in a police officer's note-book or in a summary prepared by the officer handling

the case. Estimates of the costs of various approaches to disclosure (which would be based upon these differing case preparation practices) varied widely. There was also concern about the impact on existing organisational practices that would result from adoption of a single standard requirement.

In view of the potentially significant cost implications and the uncertainty about how specific types of approaches to disclosure might operate in practice, the Working Party concluded that it would be desirable to undertake two pilot schemes that would experiment with different approaches to disclosure. From such experiments, it would be possible to learn about the problems involved in implementing a disclosure scheme and to obtain a better sense of the costs and impacts of the different approaches. One pilot scheme would be located in Newcastle-upon-Tyne, and would involve disclosure of a summary of the prosecution case, building upon procedures already in existence in the Northumbria Police Force. Because the Metropolitan Police have a unique role and range of responsibilities, and because they follow procedures that are in many ways different from other forces, it was thought especially desirable that the other pilot scheme be located in the Met. Both schemes would be limited to cases involving either-way offences--i.e., cases triable either in magistrates' court or in Crown Court.³

After initially considering an approach to disclosure based on use of a summary, the Metropolitan Police concluded that a scheme based on disclosure of witness statements would be more feasible and more cost effective. Under the scheme that got underway in H District and Thames Magistrates' Court on 1 August, the police will provide the defence with statements of the principal prosecution witnesses at an early stage of the proceedings. These statements will be made available upon request, prior to the time the

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defendant is asked to choose whether to be tried in magistrates' court or in Crown Court. In cases where a defendant pleads not guilty and elects a summary trial in the magistrates' court, the prosecution will also provide the statements of any other witnesses it may wish to use at trial.⁴

The pilot scheme emphasises obtaining witness statements quickly, and seeks to test the feasibility of their early disclosure, particularly with respect to effects upon police case investigation procedures and police and court costs. With such disclosure, it is thought that the defence should be able to make an early decision as to whether to be tried in the magistrates' court or the Crown Court and as to what plea will be entered. It is also hoped that the scheme will contribute to a reduction in the length of time (and number of court appearances) required to reach those decisions. To help achieve this end, the length of time an accused person is on police bail prior to his first court appearance has been reduced from an average of three weeks to a maximum of 7 days.

This report describes the development of the pilot scheme in H District and Thames Magistrates' Court, focusing principally on the operational issues that have been addressed in the planning process and on questions that we believe should be addressed in monitoring and evaluating the scheme. It is intended to serve several purposes: (1) to identify the problems that have been encountered in designing the scheme, many of which are likely to arise in connection with any effort to provide disclosure in magistrates' courts; (2) to indicate the ways in which these problems have been dealt with in designing the pilot scheme and the reasons for particular decisions; and (3) more generally, to provide information about policy and operational questions that are likely to arise in connection with broad implementation of any type of approach to disclosure under Section 48 of the Criminal Law Act 1977.

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II. BACKGROUND - CONSIDERATION OF ALTERNATIVE APPROACHES
TO AN EXPERIMENTAL DISCLOSURE SCHEME

A. Disclosure by Summary - Advantages and Disadvantages

Preliminary exploration of the feasibility of different approaches to disclosure in the Metropolitan Police District took place in the closing months of 1982. During this period, consideration was given to experimenting with a pilot scheme for disclosure via summary, following an approach that had been suggested by the Police Federation in evidence submitted to the James Committee in 1974. Under this model there would be initial disclosure of a summary of the prosecution case prior to the time the defendant is asked to make a choice of mode of trial. Thereafter, if the defendant elected summary trial and pleaded not guilty, he would be provided with full statements of the prosecution witnesses. This "two-stage" approach to disclosure would ensure that the defendant had some knowledge of the case against him before being asked to choose a mode of trial and to enter a plea to the charges. And, since full statements would be served in any case where a not guilty plea was made, it would mean that defendants in either-way cases had essentially the same opportunity to obtain disclosure prior to trial in magistrates' court that they would have if they elected trial in Crown Court. One apparent advantage of this approach, from the police perspective, was that it would limit the number of cases in which full witness statements would have to be taken, prepared, and served.⁵ However, senior officers in the Met also saw several important disadvantages to an approach that relied heavily on summaries.

If a scheme for disclosure using a summary were to be introduced in the Met, it would have to build upon an already existing system for summarising the facts of the case. Under existing procedures, the

officer in the case (usually the arresting officer) routinely fills out a "Case History Folder" which serves as the principal file folder holding the relevant case papers for the duration of the case. This folder (Form 611) includes a half-page space headed "Brief Facts of Case", as well as space for numerous other items of information. One possibility would have been to photocopy the "Brief Facts" section of Form 611, and use this to provide a summary for disclosure prior to the mode of trial decision. Alternatively, a separate form incorporating the concept of a case summary could have been devised.

Upon careful consideration of the possibility of implementing a scheme for disclosure by summary, several problems emerged. They included the following:

- (i) The "Brief Facts" prepared under current procedures appeared to vary widely in quality. Some of them did an excellent job of "telling the story" and outlining the prosecution case in a succinct but thorough fashion. Others, however, were very sketchy and unclear, and did not provide a good sense of the prosecution evidence.
- (ii) There were no clear guidelines concerning what ought to be in a summary. Because cases can vary widely in their facts and circumstances, and in what is required to sustain a charge, it would be difficult to develop such guidelines and to train officers to prepare the summaries in a form suitable for disclosure.
- (iii) Even assuming that guidelines for the contents of a summary could be prepared, it was felt that they should be based upon statements to the extent possible. A

supervising officer, reviewing a summary to ensure that it presented an adequate precis of the prosecution case, would often want to check the summary against what was in a statement. Additionally, the hasty preparation of a summary, without a witness statement having been taken, could later leave the police in an awkward position if the witness' statement--when subsequently taken and reduced to written form--did not coincide with the summary.

- (iv) It was thought likely that, even if a summary was prepared, defence solicitors would want to see the statements before making a decision about mode of trial or plea.

- (v) In a significant percentage of cases (how many was not known), witness statements were already being taken before or shortly after the time a defendant was charged. In other cases (again, the percentage was not known), it would ultimately be necessary to take statements anyway, either because the defendant elected Crown Court trial or because he entered a not guilty plea and a contest was scheduled for magistrates' court. At least in these cases, the careful preparation and vetting of a summary would require additional work not now being done.

In view of this set of problems with using a summary for disclosure, and taking account of the fact that witness statements would ultimately

be required in a significant number of cases in any event, the Met concluded that a scheme for disclosure by summary would be less satisfactory than one which involved disclosure of witness statements.

B. Disclosure of Statements - Initial Plans

The general outlines of a pilot scheme for disclosure of witness statements were set forth by representatives of the Metropolitan Police at a meeting at the Home Office on 21 January 1983. The preliminary plan sketched out at this time called for an experimental project, to be located in a single magistrates' court, which would incorporate the two-stage disclosure concept originally suggested by the Police Federation. Instead of disclosing a summary at the initial stage, however, the police would disclose the statements of key witnesses. These statements, which would be disclosed upon request prior to a mode of trial decision, would be the ones upon which the decision to charge the defendant had been made. Typically (although not invariably), they would include the statements of the arresting officer and the complaining witness. Although the statements might sometimes be in typed form (and might sometimes have been edited), it was expected that they would often be photocopies of unedited handwritten statements. If a defendant elected summary trial and pleaded not guilty, full statements of all witnesses would be disclosed prior to the contest.

The approach to disclosure that was outlined at the January meeting had three critical components. First, it incorporated a firm conviction that a disclosure scheme (and, implicitly, an overall approach to prosecution) should be based on statements rather than case summaries, because the use of statements was sounder from an evidential standpoint and because in the long run reliance upon statements was likely to be less

expensive, less disruptive, and more consistent with sound police practice. Second, it recognised the desirability of obtaining witness statements in a form suitable for prompt review and disclosure at an early point in the magistrates' court process. Third, it adopted a pragmatic approach to disclosure that was similar to what the James Committee had recommended: it sought to minimise delay in the magistrates' court process, to provide adequate information (via statements) so that the defence could make an informed choice of mode of trial, and to ensure that a defendant who pleaded not guilty in magistrates' court had as full a sense of the prosecution case as one who elected trial on indictment.

III. IMPLEMENTING THE DECISION TO DISCLOSE WITNESS STATEMENTS: ISSUES ADDRESSED IN THE PLANNING PROCESS

Once the basic decision had been made to go forward with a pilot scheme for disclosure of prosecution witness statements, a great deal of detailed planning had to be done. Some of the decisions made during the planning process had to do mainly with the experimental nature of the project--e.g., where it should be located, what types of cases should be included, how it should be monitored and evaluated. Others, however, dealt with substantive operational matters--e.g., police procedures for taking statements, systems for review of case files by supervising officers, length of police bail, timing and contents of actual disclosure. This section of the report discusses the problems that were encountered in the planning process and describes how they were dealt with. It has two main objectives: (1) to provide a background against which to set the evaluation of the pilot scheme that will be done during the coming months; and (2) to provide information about policy issues and operational questions that are likely to arise in connection with future efforts to implement Section 48.

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A. Location of the Pilot Scheme

One of the primary reasons for conducting a pilot scheme is to develop an understanding of the range and specific types of operational problems that might arise if the scheme were to be extended more widely. It thus seemed desirable to locate the pilot scheme in a police district and court area that had a reasonably high volume of different types of crime cases. H District and Thames Magistrates' Court located in East London meet this criterion. Thames is a small Inner London Court (three courtrooms), but is relatively busy. On a typical morning there will be 15-20 new either-way cases coming before the court. The court has two stipendiary magistrates, who share the handling of crime cases with lay justices. All of the crime cases in the Thames Court involve defendants arrested and charged in H District.

The fact that the court's catchment area is co-extensive with the boundaries of a single police district is another reason for locating the pilot scheme there, since it avoids complications that would exist if the police district fed cases into two or more courts or if the court drew its cases from more than one police district. The new operational procedures established by the scheme will apply throughout H District, and the court (and defence solicitors) will not be faced with a situation where eligibility for disclosure under the scheme would vary depending upon the police station at which the defendant is charged. There are three police stations in H District at which defendants may be charged (Leman Street, Bethnal Green and Limehouse), and all three should be following the same general approach to disclosure.

B. Cases Included in the Scheme

In accordance with the James Committee's view that the highest priority for disclosure in magistrates' court should be given to cases triable either-

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way,⁶ it was agreed from the outset that only either-way cases would be included in the pilot scheme. Additionally, because the primary concerns about the feasibility of disclosure related to operational problems that might be posed for police in the arrest and prosecution of crime cases, several further limitations were developed during the planning process, as follows:

(a) Motoring cases are excluded. Although some motoring offences are triable either-way, they will not come within the scheme unless the defendant is also charged (as part of the same set of events) with a non-motoring offence that is covered by the scheme. For example, a defendant charged solely with driving whilst disqualified, which is an either-way offence, will not be eligible to obtain prosecution witness statements. However, if he is also charged with theft or unauthorised taking of a motor vehicle ("TDA"), the scheme will apply to both offences.

(b) Only cases initiated by a charge are included. These are almost always crime cases and are the ones that come before the court most quickly. It is in these cases that the pressures on police to take statements and prepare them for disclosure are most acute, and it was felt that they should be the primary focus of attention.

(c) The scheme is limited to cases in which the Metropolitan Police—either through one of its officers or through a solicitor or barrister it employs—conduct the prosecution. If the prosecution is being handled by another organisation (e.g., a shoplifting case where the store's own solicitor serves as prosecutor; prosecutions handled by Customs and

Excise or by British Transport police), the scheme will not apply. It is recognised that any institutionalised system of disclosure cannot make this distinction, but the central purpose of this pilot scheme is to learn how disclosure affects the operations of the Metropolitan Police.

(d) If an accused person is charged with both an either-way offence and a purely indictable offence, the scheme will not apply. In this situation, there is a high likelihood that both charges will be dealt with together, and the defendant will get disclosure on both at the time of the committal proceedings. On the other hand, if the defendant is charged with both an either-way offence and a summary offence, the scheme will apply to both offences.

(e) Juvenile cases are not included. However, if a juvenile is charged jointly with an adult, the scheme will apply to both defendants in order to avoid the anomaly of one co-defendant but not the other getting copies of the prosecution statements.

C. Necessity of a Request for Disclosure from the Defendant or his Legal Representative

Section 48(2)(a) of the Criminal Law Act 1977 provides that rules made thereunder can provide for disclosure to be made in all cases or only if requested by or on behalf of the accused. It was decided that, in the pilot scheme, disclosure would be made only on request, but without regard to whether the request was made by an unrepresented defendant or by one who had a solicitor acting for him. The principal reason for limiting disclosure to cases in which there was a request is that this would provide an indication of the proportion

of cases and types of cases in which defendants or their solicitors would seek disclosure when it was available.⁷ Unrepresented defendants would be included in the scheme for several reasons: (1) as a matter of basic fairness; (2) to avoid the possibility that, by limiting disclosure to represented defendants, the scheme would increase the pressure to grant Legal Aid; and (3) to help identify problems that might arise if they were to be eligible for disclosure under rules implementing Section 48.

D. Length of Police Bail

Under the extended bail system previously in effect in H District, defendants not held in overnight custody by the police would be bailed to make their first court appearance two to three weeks after the charge. One reason for this relatively lengthy period of police bail is to give the defendant an opportunity to obtain a lawyer prior to his first appearance in court. If this were done, it should increase the likelihood that the first appearance would result either in a guilty plea or in a firm date being fixed for a contest.⁸ However, interviews with police and court officials confirmed that what actually happens at first appearance in Thames Magistrates' Court is similar to what happens in a great many other magistrates courts: in a high proportion of cases, the defendant turns up for first appearance without a lawyer. And, if he does have a solicitor at first appearance, the solicitor has often been obtained only a day or two before the court appearance and has not had an opportunity to take instructions. Although a few cases are dealt with at this time (almost invariably via guilty plea, by a defendant who wants to have the case over and done with), the most common action is for the case to be adjourned for a second appearance, usually approximately three weeks later. If the defendant is unrepresented, he will be given help in applying for Legal Aid, and probably will have a

lawyer at second appearance. It would thus typically be 35-42 days after the charge before any significant action could be taken on the case in court.

One possible approach to disclosure would have left the extended bail system unchanged, and would have required the police to prepare statements of key witnesses in all cases prior to first appearance. There seemed to be two difficulties with this approach. First, in the cases where a defendant clearly wanted to plead guilty at first appearance and get the case over with, a lot of unnecessary work would be done. Second, although the police would be working hard to get statements quickly under this system, there would be little or no impact on the speed with which cases would be dealt with in magistrates' court. Even if the statements were requested and disclosed at first appearance, there would probably still be an adjournment until a second appearance. And, if a solicitor did not get into the case until just before the second appearance, there could be a need for a further adjournment in order to enable him to obtain the statements and take full instructions prior to a mode of trial decision and possible plea.

The approach devised to address these problems was two-fold. First, under the pilot scheme the terms of extended bail are changed: police bail will normally be for a maximum of seven days. Second, as outlined below, the police will not be required to have prosecution witness statements prepared for disclosure at first appearance. Instead, defendants who wish to plead guilty at first appearance will be able to do so. This will mean a reduction of 7-14 days in the time from charge to first court appearance, will enable the court and the police to have early knowledge of which cases will result in an immediate guilty plea and which will require additional appearances, and should reduce the total number of cases in which statements will have to be prepared and vetted for disclosure.

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In anticipation of the start-up of the pilot scheme, for which defendants charged on or after 1 August 1983 are eligible, the seven-day police bail policy was put into effect on 18 July. This was done in order to avoid a large increase in the number of first appearances at the court during the first few weeks of the scheme.

E. Notice to Defendant Concerning Disclosure

Since unrepresented defendants will be eligible for disclosure, it was felt that some sort of notice about the pilot scheme should be given to defendants eligible for disclosure under it. In consultation with the Chief Clerk of the Court, a form for such a notice was devised (see Appendix C). It was agreed that, in cases where a defendant does not plead guilty at first appearance and is remanded, the court's usher will hand this notice to the defendant or, if the defendant is represented, to his solicitor or counsel. In addition, the usher will mark the court's case folder to indicate that the notice has been served and will enter the defendant's name, with the adjourned date, in a diary specially provided for this purpose.

One possible criticism of the procedure for providing notice is that, because the notice is not given to defendants who plead guilty at first appearance, those defendants may be unaware of their right to obtain the statements. In actuality, however, it is doubtful that this will produce injustice. First, many defendants who plead guilty at first appearance will have had an opportunity to consult with a solicitor, and solicitors who practice at Thames Court should all be aware of the pilot scheme. Second, it is standard practice at the court, when a defendant has pleaded guilty, for the prosecutor to present a short summary of the facts of the case. If after hearing that version of the facts, an unrepresented defendant indicates any material disagreement with them, the plea will be viewed as equivocal and

will not be accepted. In that event, the defendant will typically be advised to have a word with the duty solicitor or to obtain his own lawyer.

F. Police Procedures for Obtaining and Preparing Statements

It was recognised from the outset that, in order for a disclosure scheme to work effectively and without adding to delays in magistrates' court, it would be essential for the police to obtain written statements from civilian witnesses as rapidly as possible. In a significant proportion of cases this was already being done. In shoplifting cases, for example, it has long been a common practice in the Met to obtain the statement of the store detective prior to charging the defendant. Similarly, in assault cases, a statement is usually obtained from the victim at or before the time of charging. In some other types of situations, however, it can be more difficult to obtain the statements of all key witnesses at the time of charge. In some cases of theft or handling of stolen goods, for instance, it may be necessary to locate the victims of the theft and have them identify the stolen property; this can take considerable time. Cases involving fraud or deception may require extensive review of ledgers or analysis of handwriting, and this can not be done instantaneously.

Rapid preparation of the statements of police officers presents special problems, because there are strong pressures on the police officers involved in an arrest to minimise the amount of time spent on paperwork at the station. Especially during peak hours of criminal activity, supervising officers tend to feel that officers should be returning to patrol duties as rapidly as possible, rather than taking the time to prepare statements describing their involvement in the case. Notes of their involvement are required to be made in Incident Report Books (uniformed officers) or notebooks (CID officers), but the preparation of written statements---in a form suitable for review and

possible disclosure to a defendant or his solicitor—will require additional time.

The pilot scheme attempts to accommodate the need of the police for some flexibility in the time that statements are prepared, whilst at the same time placing emphasis on obtaining them quickly and, where defendants do not plead guilty at first appearance, on ensuring that they are reviewed rapidly by a senior officer. The police in H District are instructed that, where possible, the officer-in-case is to obtain written statements from all available witnesses before or soon after the accused is formally charged with an either-way offence. In particular, the statements of the principal witness (e.g., victim of an assault, loser in a theft or fraud case) and of any other civilian witness whose evidence is essential to prove the case should be prepared in written form at this time. In some cases, there are witnesses whose testimony is essentially corroborative or cumulative. Whilst it is desirable that statements of these witnesses be obtained as rapidly as possible, it is not required by the pilot scheme. Further, in recognition of the interest in avoiding the expenditure of police officers' time on paperwork during hours when it is most desirable that they be on patrol, police officers statements are not required to be prepared at the time of charging. However, their notes will be in their Incident Report Books and notebooks, and it is expected that in many instances these will be transferred to statement form before the officer goes off duty or within the next several days. In any event, however, if the defendant does not plead guilty at first appearance, police officers involved in the case will be expected to prepare written statements within 7 days after that first appearance, for review by the Detective Chief Inspector at the station. The statements may be either handwritten or in typed form, and the importance of legible handwriting is emphasised.

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It is important to note that, although disclosure is to be made only on request, the preparation of statements for disclosure is not contingent on a request for disclosure having been received. Instead, the pilot scheme anticipates that disclosure will be requested in a high percentage of cases that go beyond first appearance. It provides for the process of statement preparation and review to begin at an early point, while the events are still fresh in everyone's mind.

G. Police Supervision of Case Preparation and Prosecution: Procedures for Reviewing Case Files Prior to Disclosure

Historically, the process of case preparation and prosecution in the Metropolitan Police District has been very decentralised, except where the offence is especially serious or there are other special circumstances involved. In most either-way cases, the prosecution is ordinarily one of three persons: (1) the officer-in-case (usually the arresting officer; sometimes a CID officer); (2) the court presenting officer (usually a sergeant, but sometimes a constable); or (3) a solicitor in the Met's Solicitors Department. The basic responsibility generally resides with the officer-in-case. If he perceives difficulties in the case, he may request legal aid from the Solicitors Department. This generally happens when a not guilty plea has been entered and it is clear that there will be a contest, and it occurs in some other situations where the officer feels that there are problems that require legal advice. The Solicitors Department does not handle all contested cases, however, and some proceedings and contested summary trials are handled by the officer-in-case. Depending on the circumstances, a senior officer such as the Detective Superintendent or Detective Chief Inspector may become involved at a particular stage, but there is no comprehensive system for supervising the prosecution of cases.

As planning for the pilot scheme progressed, it became apparent that effective implementation of a disclosure scheme required effective supervision of the prosecution of either-way cases. Someone with experience and authority would have to be in a position to make judgements, at an early stage, concerning what could be disclosed to the defence. In order to do so, the person in this supervisory position would have to know what the charges were; what statements and other evidence were available to the police; and what problems (if any) might be presented by disclosure of unedited statements.

After consideration of several alternatives, it was decided that the supervisory responsibility should be centered on the Detective Chief Inspector (DCI) at each station. To enable him to carry out this function, a system for identifying cases eligible for disclosure and ensuring that the files in these cases reach the DCI promptly had to be established. In its present form (and it is understood that this system may need revision in the light of actual experience) this system will work as follows:

- (a) At the end of each court day, the Court Inspector at Thames Magistrates' Court will review the court lists and the usher's diary (Section E Above) to identify all first appearance cases that are eligible for the scheme. On the form that is routinely used to inform each police station of the results in the cases that come before the court that day (Form 68), he will indicate the cases in which a defendant eligible for disclosure made his first appearance and the case was adjourned to a future date. The form will be taken back to the station the next day, by the court presenting officer, usually at the close of the morning session, and given to the Detective Chief Inspector. The Court Presenting Officer will also let the officer in the case know whether statements must be prepared for disclosure.

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- (b) Working from the list of eligible cases indicated on Form 68, the DCI will log the triable either-way cases in a special log book. Within six days thereafter he should expect to receive the statements of key witnesses in all of the cases on the list.
- (c) The officer-in-case has the responsibility for ensuring that the statements--his own, the statement of any other police officer in the case, and any other witnesses--are prepared for review by the DCI, together with the rest of the file. Ordinarily, all of the statements and other documents will be contained in Form 611 (the Case History Folder). The files will be submitted through the appropriate supervising officer (e.g., the inspector in charge of the relief on which the officer serves, in the case of a uniformed constable or sergeant), thus providing opportunity for review and comment by the inspector. The time limit for submission of the file to the DCI is seven days from the date of first appearance.
- (d) The Detective Chief Inspector, in reviewing the file, must decide whether legal aid (i.e., the assistance of the Met's Solicitors Department) is required. If so, he will instruct the officer in the case to prepare a report (including all the necessary witness statements) requesting such assistance and will forward the report to the Solicitors Department. If not, then he returns the paper to the officer in the case, together with instructions about further case preparation--including, of course, instructions about what is to be disclosed to a defendant or his legal representative if a request for disclosure is received.

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H. Timing and Contents of Disclosure to the Defence

As indicated above, one of the important considerations in planning the scheme was a desire to have the scheme expedite the handling of cases in magistrates' court. At the very least it would be important to avoid adding to delay. Thus, the police do not wait for a request for disclosure to be made before preparing files. Often, all or some of the statements of key witnesses will have been prepared at the time of the charge; at the latest, they should, except in unusual circumstances, be prepared for review by the DCI within two weeks thereafter. At this stage, however, it will often not be possible to have the statements of every witness. For example, reports of laboratory tests involving certain kinds of evidence sometimes take several weeks to complete. Some civilian or police witnesses may be unavailable, in hospital or away on business or holidays. Sometimes the evidence may consist in part of voluminous documents which will take time to wade through. Furthermore, the significance of a particular piece of evidence may not be appreciated at the very outset of a case, when the pieces are still being put together. And, in some situations, statements may be lengthy and may refer to matters that are extraneous to the charge or that for other reasons require careful editing prior to disclosure. The pilot scheme's two-stage approach to disclosure process is intended to provide some flexibility to the police in these circumstances, while still ensuring that the basic objectives of disclosure are met and that the case is not delayed in the process.

In order to make an intelligent decision concerning mode of trial and type of plea, the defence should have a good sense of the nature and strength of the prosecution case. To meet this need, the pilot scheme calls for disclosure upon request, prior to the time a defendant is asked to make a mode of trial decision, of the following:-

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- (a) Copies of the statements of police officers and/or other witnesses whose evidence "constitutes a substantial basis for proving the charge".
- (b) A copy of any statement under caution made by the accused in connection with the offence charged.

Although the notice handed to defendants at first appearance tells them to write to the Detective Chief Inspector to request disclosure, the police will also be prepared to respond to oral requests. It is expected that the police will be prepared to serve disclosure statements in eligible cases at or before the defendant's second appearance if he is on bail. Since cases involving defendants on bail are ordinarily adjourned for about three weeks when not completed at first appearance, this would mean that the statements would be ready for disclosure in four weeks or less after the charge. If a solicitor is brought into the case promptly, there should be ample time for him to write for and receive the statements prior to second appearance. Thus, it should at least theoretically be possible to have a well-informed mode of trial decision, a plea, and (if the defence elects summary trial and pleads not guilty) a contest date set at the second appearance, only four weeks after arrest. In cases where the defendant is in custody, the aim is to do this even more quickly: within a maximum of 21 days after the first appearance. There will doubtless be some cases in which the defence wants additional time to consider the case and take further instructions. However, both the prosecution and the defence should be in a position to assess the case and make effective decisions about further action at this point.

In a large proportion of cases, the statements served at the time of initial disclosure will probably be all that would be taken by the police even if the defendant elects Crown Court trial or pleads not guilty in magistrates' court. However, if the defendant elects summary trial and pleads

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not guilty, the second stage of the pilot disclosure scheme comes into effect. The police will then, prior to the date fixed for trial, serve the following on the defendant or his solicitor:

- (a) Copies of the statements of any witness whose evidence the prosecution may wish to introduce at trial.
- (b) A list of exhibits that the prosecutor may produce at trial.

No formal request for disclosure is necessary for second-stage disclosure; in effect, a not guilty plea will be treated as a request for disclosure. If statements have been served prior to the mode of trial decision, the police will not re-serve the same statements. Any statements not previously served will, after vetting by the Detective Chief Inspector, be served as soon as practicable—ordinarily at least two weeks prior to trial. Thus, defendants who elect summary trial in magistrates' court will have essentially the same advance disclosure as defendants who elect the more expensive and time-consuming procedure of trial in Crown Court.

One objective of pretrial disclosure is to avoid the unnecessary attendance of witnesses, and in this connection the pilot scheme explicitly encourages use of the procedures established by Section 9 of the Criminal Justice Act 1967. Under Section 9, the recipient of witness statements has seven days in which to object to the tendering of written statements as evidence. With a 14-day lead time prior to the date fixed for a contest, that leaves 7 days for the prosecutor to let witnesses know whether or not they should attend court on the trial date.

Consideration was given, during the planning process, to whether information concerning the defendant's prior criminal record should be subject to disclosure under the pilot scheme. It was finally decided not to bring prior convictions under the scheme, for two reasons: (1) the defendant him-

self should be aware of his prior record; and (2) the defendant's prior record is not ordinarily a matter with respect to which the prosecutor will adduce evidence. However, it is recognised that prior record information is highly relevant to the question of sentence and to arguments in mitigation of punishment, and may also be a factor affecting a defendant's choice between summary trial and trial in Crown Court. At the present time, informal disclosure of this information occurs frequently, and it is expected that such informal disclosure will continue.

I. Provision for Non-Disclosure in Certain Circumstances

One of the risks inherent in a scheme for broad disclosure of the prosecution case is that such disclosure may result in intimidation or harassment of prosecution witnesses. Other risks are less obvious and may be less directly related to the pending prosecution. For example, it is possible that a witness statement may indicate the identity of an informant; may include information that would alert someone to the fact that other investigations were in progress; may contain allegations against a third party; or may include details of a personal or private nature unrelated to the offence charged.

For cases being tried in Crown Court--where disclosure does not have to be made until the committal stage at the earliest--the Attorney General's Guidelines on Disclosure of Evidence to the Defence in Cases to be Tried on Indictment take account of problems of this nature. They give the prosecution discretion not to make disclosure--at least until counsel has considered and advised on the matter--in a rather wide range of such situations. The problem is, in some ways, even more acute with respect to disclosure in magistrates' court--particularly with respect to disclosure prior to the mode of trial decision. Here the time frame is much shorter--it is surely desirable to have disclosure made as early as possible but the risk of damage

from disclosure is especially great where a case is in a very early stage of development, and where other investigations involving the same defendant (or close associates) are still in progress.

Given the uncertainties and the complete paucity of practical experience with respect to the problems of early disclosure, it seemed desirable to avoid placing the prosecution under an overly rigid obligation to disclose the contents of statements. At the same time, however, it also seemed sensible to use the pilot scheme as a vehicle for acquiring knowledge about the practical problems encountered in disclosing statements. The approach adopted to deal with this set of issues utilises a rather broadly worded exception to the disclosure requirements established by the scheme. It provides that disclosure need not be made by the police in the following circumstances:

- (a) All of the circumstances listed in paragraph 6 of the Attorney General's Guidelines concerning disclosure of information to the defence in cases to be tried on indictment.
- (b) Any case which is to be dealt with by the Director of Public Prosecutions or by the Met's own Solicitors Department, where statements will not be served without reference to the DPP or Solicitors Department. (However, where the Solicitors Department handles the prosecution, disclosure will be made unless the statement involves sensitive matters within the meaning of the Attorney General's Guidelines).
- (c) Any other case considered by the supervising officer (i.e., the Detective Chief Inspector, in most cases) to be unsuitable for disclosure within this scheme.

It is recognised that this exception is worded very broadly, and that it could be subject to abuse. To help prevent such abuse, and also to help develop information about the types of situations in which disclosure appears to present problems, in any case where disclosure is not made when requested the prosecutor must (1) provide the defendant or his solicitor with

written notice of the fact that certain information is not being disclosed and (briefly) of the reason(s) for non-disclosure; and (2) prepare a more detailed note, for police records, of the reason(s) for non-disclosure.

J. Role of the Met's Solicitors Department

As indicated above, the Solicitors Department of the Metropolitan Police has in the past become involved in the early stages of an either-way case relatively infrequently. If they become involved at all, it is likely to be only when a not guilty plea has been made or is anticipated, although a member of the Department's staff may sometimes provide informal advice in response via telephone on questions that arise at an earlier stage. One of the questions that arose during the planning process was whether--in light of the fact that legal advice concerning the appropriateness of disclosure might be required in a large number of cases under this scheme--there should be special arrangements established for Solicitors Department to deal with cases originating in H District. It was decided that no special arrangements would be made, on the theory that it would be useful to see what happens naturally--what sort of problems arise, how frequently and for what reasons police seek legal aid, and so forth. The extent to which the advice or involvement of Solicitors Department is sought, and the nature of this involvement and actions in response to a disclosure request, will be monitored in the evaluation. Cases which are handled by the Met's Solicitors Department will, of course, be subject to the same disclosure requirements as those handled by officers based at the station.

K. Police Instructions and Forms

The primary means of communicating information about the pilot scheme to police officers in H District has been a Force Instruction, issued in July 1983. During the February-June period, the instruction went through

numerous drafts, as the planners sought to address the issues outlined in this report and to make revisions in light of comments from police officers and others dealing with operational issues on a daily basis. As finally issued, after having been reviewed and approved by senior officials in the CID, the uniformed force, Solicitors Department, and the Number Three Area, as well as the Commander of H District, the Instruction is thirteen typed pages in length. It contains an introduction explaining that the purpose of the pilot scheme is to test one possible approach to implementing Section 48 of the Criminal Law Act 1977; eighteen paragraphs setting forth the procedures for operating the scheme; and the following appendices:

- A) A list of offences triable either-way.
- B) A copy of the notice that will be given to defendants who are remanded at first appearance (see Section E above).
- C) A copy of the log sheet to be used by the Detective Chief Inspector for keeping track of the status of either-way cases which are not dealt with at first appearance (see Section G above).
- D) A newly-devised form--Form PS48-1--which is intended to serve both as a "cover-sheet" for statements disclosed prior to the mode of trial decision and as a record for the police of what is disclosed by the police to the defendnat or his solicitor.
- E) A copy of the form routinely used by police for serving statements under Section 9 of the Criminal Justice Act 1967.
- F) A copy of paragraph 6 of the Attorney General's Guidelines concerning disclosure in cases to be tried on indictment, which sets forth a list of circumstances in which non-disclosure may be warranted (see Section I above).

L. Police Training

The Force Instruction concerning the pilot scheme was approved in final form in mid-July. Copies were distributed to the stations in H District, where the Detective Chief Inspector had principal responsibility for reviewing the contents with officers at the station.

Given the short period of time between the publication of the instruction and the planned starting date of the project, it would not have been feasible to attempt to provide extensive formal training in the operation of the scheme to all of the officers in H District prior to the 1st August start-up. This problem was anticipated in advance, and an alternative strategy—focusing on intensive discussions about the pilot scheme with personnel who would have key roles in its implementation—was followed, beginning while the scheme was still in the planning stage. The persons principally involved in these discussions included the Commander of the District, the Detective Chief Superintendent, the Superintendents at each of the three charging stations, the Detective Chief Inspectors at each station, the Court Presenting Officer from each station, the staff of the District Training Unit, and the Court Inspector at Thames Magistrates' Court. The discussions were initiated by the representatives of the C5 Branch (Detective Inspector McNichol) and the A2 Branch (Inspector Dowse), and were conducted informally at stations in H District. They had two basic objectives: (1) to let these officers familiarise themselves with the general outlines of the proposed scheme; and (2) to obtain their advice and comments with respect to operational issues. Numerous revisions were made in the plans (and in the draft of the Force Instruction) on the basis of problems identified and suggestions made by these operational officers. The visits and discussions also helped make the supervising officers aware of the pilot scheme and of ways in which procedures at the station (especially procedures regarding length of police bail and the taking, preparation, and review of witness statements) would change as the scheme was implemented.

At each of the three stations in H District where charges are preferred, the Detective Chief Inspector at the station has initiated further discussions about the scheme with other officers. The final signed version of the

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Instruction was delivered to the stations on 20 July, thus allowing 11 days of final preparation in advance of the starting date.

M. Liaison with the Court

During the planning process, several meetings were held with the Chief Clerk of the 'Thames Magistrates' Court, Mr. J. Pulford. Mr. Pulford, on behalf of the court, expressed a willingness to co-operate fully with the scheme, and contributed a number of helpful suggestions that were incorporated in the final plans. The court will participate actively in the scheme, with the usher providing copies of the notice to the defendant (see Section E above) and making appropriate entries on the court's case folder and in diaries specially maintained for purposes of the pilot scheme. Additionally Mr. Pulford arranged for dissemination of a summary of the scheme to defence solicitors practising in the court.

N. Involvement of Defence Solicitors

The Law Society has consistently taken the view that implementation of Section 48 is desirable, and that disclosure of written statements is vastly preferable to disclosure via summary. Once the decision had been made to develop a pilot scheme in the Met area that would be based on disclosure of witness statements, the operational questions involved primarily the police and (to a much lesser extent) the court. Accordingly, those institutions have been the ones principally involved in the planning process. It is recognised, however, that the responses of defence solicitors to the pilot scheme are of critical importance in assessing its feasibility and impact, and in considering possible revisions and extension of it. It is important that defence solicitors be fully aware of the pilot scheme and the opportunities for obtaining advance disclosure that it provides. This objective has been sought in two principal ways: (1) by arranging for a printed notice

concerning the scheme to be given to the defendant (or if he is already represented, to his solicitor) at the time of first appearance, in either-way cases eligible for the scheme (see Section E above and Appendix C); (2) by the advance distribution of copies of the summary to solicitors and the interested press. During the first several weeks of the project, the take-up rate at the court will be monitored closely, and further publicity about the scheme will be arranged if this seems desirable.

0. Legal Status of the Scheme

From the outset, it was recognised that a pilot scheme for advance disclosure should--ideally--operate within some sort of legal framework that would be similar to a set of rules promulgated under Section 48. However, there was doubt as to whether legally enforceable rules could be promulgated for purposes of a pilot scheme that was sharply limited in geographic scope. Additionally, it was thought desirable to have some flexibility here; rules formally promulgated could be difficult to change if they proved impractical once the pilot scheme got underway.

The approach that finally evolved was to prepare a short summary setting forth the way in which the scheme will operate. This summary (Appendix B) has no force in law, but may serve as a reference in the event that questions arise concerning the operation of the scheme. It should be noted that the Thames Court has taken the position that magistrates will not become involved in disputes over whether or not particular statements or other information should be disclosed. If a defendant or his solicitor has a question or complaint concerning disclosure in a particular case, this is a matter which should be taken up with the police. The extent to which such disputes arise, and the nature of the matter in dispute, are, of course, subjects which will be considered in the evaluation.

P. Resources

H District has been given no additional resources, in terms of personnel or equipment, with which to operate the pilot scheme. In designing the scheme, it was felt that it was important to determine what would happen when a disclosure requirement is imposed upon ongoing police operations without provision of additional resources. In particular, what type strains are placed upon existing resources? What (if any) re-allocations of time and functions take place? These are among the questions to be addressed in the evaluation of the scheme.

IV. MONITORING AND EVALUATION

The pilot scheme will be evaluated by the Met's Management Services Department (MSD) and by the Vera Institute of Justice. Representatives of both MSD and Vera have been involved in planning the pilot scheme and in developing an approach to the evaluation. Whilst the precise details of the evaluation are not yet in final form, the basic approach can be described.

Three sets of questions are regarded as being central to the evaluation:-

- 1) Feasibility. Is it feasible, from the standpoint of the police, to provide disclosure of prosecution witness statements as contemplated by the pilot scheme?
 - a) Can the scheme be made to work, without causing major disruption to on-going police operations and without causing major problems in the prosecution of particular cases or categories of cases?

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- b) What problems are encountered in the start-up and on-going operation of the scheme? How are these dealt with?
 - c) What factors (if any) might make it difficult to adapt this scheme to other districts in the M.P.D.? What changes/adjustments would be desirable?
2. Costs. What are the costs of (a) initial introduction of this pilot scheme; and (b) on-going operation of the scheme? What are the quantifiable savings/benefits?
3. Impacts. What are the impacts of the scheme upon the following:
- a) Police operational practices
 - b) Defence tactics and strategies
 - c) Prosecution practices
 - d) Court operations/case outcomes (especially guilty plea-rates, rates of election of Crown Court trial, number of appearances, waiting times)
 - e) Participant's perceptions of the quality of justice.

A. Feasibility Questions

For purposes of planning for the implementation of Section 48 of the Criminal Law Act 1977, it is important to assess the feasibility of this sort of scheme--principally in terms of the extent to which it fits into on-going police operations and the problems it causes--as rapidly as possible. If major problems become apparent, it is important to identify them and to consider possible variations in the operation of the scheme which will resolve the problems without undermining the objectives of disclosure.

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The feasibility questions are very basic: Is the scheme working? What problems are encountered? In particular, what problems occur with respect to (a) officers taking time to prepare statements; (b) use of supervisor's time; (c) decision-making concerning disclosure of statements; (d) typing and other clerical work; and (e) communication and paper-flow. How are such problems dealt with? If necessary, would the Met (or any other police force that does not now routinely prepare witness statements shortly after charge) operate effectively under a disclosure system similar to the one being tried here? What adjustments would be necessary or desirable? From the standpoint of practising solicitors, how well does the disclosure system work? What problems do they perceive? What changes would they recommend?

Some of these questions can be answered very quickly; others will require time for the new practices to settle into normal routines. Several primary sources of data on questions of feasibility can be readily identified:-

- (i) Interviews with police officers - especially the Detective Chief Inspectors, inspectors in charge of the reliefs, Court Presenting Officers, and officers involved in the prosecution of either-way cases that come within the scheme.
- (ii) Interviews with other participants in the system--especially solicitors practising at the Thames Court (for both defence and prosecution), magistrates and court clerks.
- (iii) Monitoring of specific documents - in particular, the completed Form 68's, the log books used by the DCI's and the completed Form PS48-1's.

B. Cost Questions

One of the major concerns of successive governments with respect to Section 48 has been the potential costs of implementation. The evaluation will

seek to get a sense of the costs (and savings) both to the police and to other elements of the system (e.g., courts, Legal Aid Fund), from this type of disclosure scheme.

Some types of costs can be readily identified. For example, the police will incur costs in at least the following categories:

- 1) Time spent by police officers taking statements from witnesses
- 2) Time spent by police officers preparing statements for review by Detective Chief Inspector
 - Police officers' own statements
 - Statements of other witnesses
- 3) Time spent by supervising officers in reviewing statements
 - Relief Inspector
 - Detective Chief Inspector
 - Other senior officers
- 4) Typing of statements (some cases)
- 5) Photocopying of statements

Measurement of these costs and identification of other kinds of costs may prove more difficult, but it should be possible to develop adequate estimates of the effect of the scheme on allocation of police time. The primary source of information about costs will be interviews, observation, and examination of records that will indicate the time spent on specific functions.

C. Impact Questions

Some questions related to the impact of the scheme will be answerable within a relatively short time after its commencement. For example, effects upon police operational practices--particularly with respect to taking statements and reviewing them--should become apparent fairly rapidly, through interviews, observation, and analysis of case files (see Section B above).

Similarly, the extent to which defendants and their solicitors actually request the statements can be measured on an on-going basis.

Other types of impact questions, such as the scheme's impact upon defence tactics and strategies, prosecution practices, and participants perception of the quality of justice will require longer to answer. Questions concerning the scheme's impact upon court operations and case outcomes will be especially tricky. There are two main problems here. First, it takes a long time for many cases to go through the magistrates' court process (and even longer to go through the Crown Court process). Second, it is impossible to control for some variables, apart from the introduction of the disclosure scheme, that might affect measures of effectiveness such as guilty plea rates, rates of election for Crown Court trial, and time from charge to disposal. For example, the adoption of new Force policies implementing the Attorney General's guidelines concerning the institution and continuation of a prosecution may conceivably lead to statements being taken in more cases (and at an earlier point in time, in relation to the charge) than in the past.

Nevertheless, a before-after comparison of either-way cases started by charge in H District is the most obvious strategy to pursue. It may also be desirable to supplement this by a before-after comparison (covering the same time periods) of cases from another district in the Met that had a roughly comparable mix of cases.

Key impact questions to be addressed through the analysis of quantitative data drawn from case records include the following:-

Utilisation Rates - How frequently does the defence request disclosure prior to the mode of trial decision?

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How do rates of request differ depending upon (a) type of charge; and (b) whether the defendant is represented or not? How frequently is summary trial elected and the automatic "second stage" disclosure required?

Disposal Patterns - What impact does the scheme have upon the percentage of defendants who (a) plead guilty in magistrates' court; (b) plead not guilty and contest the charge; or (c) elect Crown Court trial? To what extent are there changes in the percentage of cases where police offer no evidence?

Waiting Times - What impact does the scheme have upon the overall time required for cases to proceed from charge to disposal, and to go through the various stages?

In order to undertake this type of impact analysis, it will be important to obtain data on as large a sample of cases as possible. A data collection instrument (similar to the one used in Newcastle) has been designed, and will be field-tested during the first months of the project. The principal problem here involves obtaining data on the "before" group of cases, since these files may be in any of several different locations.

V. CONCLUSIONS

The pilot scheme now underway in H District and Thames Magistrates' Court is the most comprehensive approach to advance disclosure of the prosecution case in the Magistrates Court now in existence in the country. Several aspects of it are of particular interest in connection with development of plans for implementation of Section 48 of the Criminal Law Act 1977:-

- Disclosure under the scheme will be based on statements rather than summaries. Disclosure of statements prior to the mode of trial decision is expected to be extensive, as any defendant in an either-way case who is in doubt about how to proceed will be able to request statements of the principal prosecution witnesses prior to the mode of trial decision. In addition, defendants who elect summary trial will be able to have an advance view of all of the prosecution witness statements and exhibits.

- The two stage approach to disclosure responds to several central concerns of the James Committee and the Royal Commission on Criminal Procedure: (1) ensuring that the defendant in an either-way case has adequate information on which to make a mode trial decision; (2) putting a defendant who elects summary trial in essentially the same position, with respect to obtaining advance information about a case, as one who elects trial in Crown Court; and (3) expediting the resolution of cases in magistrates' courts. At both stages of the process--prior to mode of trial decision and prior to trial when a not guilty plea has been entered--the scheme aims at

expeditious disclosure of available prosecution evidence. At the same time, it seeks to avoid unnecessary delay at the mode of trial stage, by requiring that the prosecution disclose the essence of its case but not insisting on disclosure of full statements of all potential witnesses.

- The scheme's provisions for early disclosure of statements assume that police will obtain witness statements at an early stage--sometimes in circumstances where this would not have been done before and sometimes when it would have been done at a later stage in the arrest-prosecution process. These provisions should help to improve the accuracy and availability of statements. It is less clear whether the early recording of statements will turn out to be economical as well. Although more statements will almost surely be required, witnesses are easier to locate early in the process and the costs of each statement may well be less. Evaluation of the scheme should provide useful information about the feasibility and benefits of this approach to disclosure, as well as about the costs of introducing such a plan.

- In providing for disclosure to unrepresented defendants, upon request, the scheme goes into an area not reached either by the pilot scheme for disclosure of summaries in Newcastle or by the pre-trial review schemes now operating in Nottingham, Leeds and elsewhere. All of these involve only represented defendants. It is possible that disclosure to unrepresented defendants may present special problems, and the pilot scheme should help to identify these.

- The pilot scheme's provisions allowing non-disclosure under certain circumstances but requiring the reasons for non-disclosure to be recorded by the police (see Part III, Section I) should be valuable in identifying the types of situations in which early disclosure of prosecution witness statements presents real risks to the witnesses themselves, to third parties, or to other societal interests. It will be important to take account of such situations in drafting rules implementing Section 48.

- Under the scheme, disclosure by the prosecution will take place regardless of whether there is any reciprocal disclosure by the defence. By contrast, in the various pre-trial review schemes, defence solicitors are expected to provide some types of information about the defence case. The H District scheme should produce information about ways in which unilateral prosecutorial disclosure may affect defence solicitors' willingness to exchange information about aspects of their case (e.g., intention of presenting an alibi defence, challenging police testimony concerning alleged admission, introducing scientific evidence, etc.).

It should be noted that the scheme is intended to be flexible and adjustable. If some operational problems come to the surface in the first several months of the scheme, appropriate changes will be made within the general framework of a commitment to advance disclosure of prosecution witness statements. The evaluation design is sufficiently flexible to adapt to such a change if necessary.

Within a few months of the commencement of the scheme it should be possible to have a good sense of the practical problems involved in a disclosure plan based on statements. Information about the costs of disclosure and the effects of a disclosure scheme upon rates of guilty pleas, rates of election for trial, waiting times, and costs to the Legal Aid Fund will require considerably more time to develop. The evaluation will address these issues, too, and should be helpful in formulating long-term policies regarding procedures for investigation, case preparation, and disclosure of evidence to the defence.

F O O T N O T E S

1. Report of the Interdepartmental Committee on the Distribution of Criminal Business Between the Crown Court and Magistrates' Courts, Cmnd. 6323 (HMSO, November 1975) paras. 212-228; 230.
2. The full text of Section 48 is shown in Appendix A.
3. The James Committee recommended that advance disclosure be limited initially to either-way cases, and that the possibility of extending the requirement to certain summary offences be kept under review in the light of experience with disclosure in the either-way cases (para. 219).
4. A summary of the pilot scheme is set forth in Appendix B.
5. See the discussion of the Police Federation proposal in the James Committee Report, para. 225.
6. James Committee Report, para. 219.
7. The James Committee recommended that disclosure be provided only when requested by the defence (para. 222). There are, of course, issues with respect to how a defendant (especially an unrepresented defendant) is made aware that he can request the statements. These issues are discussed in Section E, infra.
8. When extended bail was first started in London in 1974, there were also two operational reasons why it seemed advantageous to the police: (1) the accused person could be bailed to appear on a date when the officer in the case would be on regular daytime duty, thus minimising overtime costs for the police; and (2) the two to three week bail period would give the police sufficient time to obtain information about the defendant's prior criminal record. In recent years, however, the proportion of cases in which the officer in the case must be at court for the defendant's first appearance has dropped substantially as the use of court presenting officers has increased. Additionally, development of computerised criminal history files enables more rapid retrieval of information on a defendant's prior record.

SECTION 48: CRIMINAL LAW ACT 1977

c. 45

Criminal Law Act 1977

48.—(1) The power to make rules conferred by section 15 of the Justices of the Peace Act 1949 shall, without prejudice to the generality of subsection (1) of that section, include power to make, with respect to proceedings against any person for a prescribed offence or an offence of any prescribed class, provision—

Power to make rules as to furnishing of information by prosecutor in criminal proceedings.
1949 c. 101.

- (a) for requiring the prosecutor to do such things as may be prescribed for the purpose of securing that the accused or a person representing him is furnished with, or can obtain, advance information concerning all, or any prescribed class of, the facts and matters of which the prosecutor proposes to adduce evidence; and
- (b) for requiring a magistrates' court, if satisfied that any requirement imposed by virtue of paragraph (a) above has not been complied with, to adjourn the proceedings pending compliance with that requirement unless the court is satisfied that the conduct of the case for the accused will not be substantially prejudiced by non-compliance with the requirement.

(2) Rules made by virtue of subsection (1)(a) above—

- (a) may require the prosecutor to do as provided in the rules either—
 - (i) in all cases; or
 - (ii) only if so requested by or on behalf of the accused;
- (b) may exempt facts and matters of any prescribed description from any requirement imposed by the rules, and may make the opinion of the prosecutor material for the purposes of any such exemption; and
- (c) may make different provision with respect to different offences or offences of different classes.

(3) It shall not be open to a person convicted of an offence to appeal against the conviction on the ground that a requirement imposed by virtue of subsection (1) above was not complied with by the prosecutor.

ADVANCE DISCLOSURE OF THE PROSECUTION CASE - SUMMARY OF
PILOT SCHEME AT THAMES MAGISTRATES' COURT

1. Subject to the limitations and exclusions set forth in paragraph 6, the pilot scheme will apply in all proceedings in which the accused has been charged with an either-way offence at a police station in H District of the Metropolitan Police, in which the Metropolitan Police are prosecuting, and in which proceedings are conducted at Thames Magistrates' Court.
2. Police bail in cases eligible for the scheme will ordinarily be for a period of not more than 7 days.
3. Except as provided in paragraph 5 below, the prosecution will, upon request, furnish the accused or his solicitor with the following information prior to a mode of trial or plea decision being requested:-
 - (a) Copies of the statements of police officers and/or other witnesses whose evidence constitutes a substantial basis for proving the charge.
 - (b) A copy of any statement under caution made by the accused in connection with the charge.

Police will not be expected to have statements prepared for disclosure at first appearance. They will ordinarily be served on the accused or his solicitor, following receipt of a request for them, within 21 days following the accused's first appearance. If a request for disclosure is made promptly following first appearance, it should thus be possible for the defence to receive and consider the statements—and thus be prepared to make a decision concerning mode of trial—at the second appearance. The statements served at this time will be photocopies of originals, which may be either handwritten or typed.

4. Except as provided in paragraph 5 below, in cases where an accused has elected summary trial and pleaded not guilty, the following will be served on the accused (or his solicitor, if he is legally represented) prior to the date fixed for trial:-

(a) Copies of the statements of any witnesses whose evidence the prosecution may wish to introduce at trial.

(b) A list of exhibits that the prosecution may produce at trial.

Where feasible, photocopies of documentary evidence will be provided.

However, in cases involving voluminous documents the evidence may be made available for inspection.

5. There are certain circumstances in which disclosure need not be made in the pilot scheme. These circumstances include the following:-

(a) All of those listed in paragraph 6 of the Attorney General's Guidelines concerning disclosure in cases to be tried on indictment. (Copy attached)

(b) Any other case which is considered by the supervising police officer to be unsuitable for disclosure within this scheme.

In cases in which the prosecution is to be handled by the Solicitors Department of the Metropolitan Police or by the Director of Public Prosecutions, statements will not be served without reference to the Solicitors Department or the D.P.P.

In any case where, following a request for disclosure, disclosure is not made as provided in paragraphs 3 and 4, or is made only in part, the prosecutor must provide the accused or his solicitor with written notice of that

fact and of the reason(s) for declining to make such disclosure.

6. The scheme is expressly limited to either-way cases in which the charge is made at a police station in H District and in which the Metropolitan Police are prosecuting. It includes cases in which a juvenile is charged jointly with an adult, but does not apply to cases involving only juveniles. If an accused is charged with both an either-way offence and a purely summary offence, the scheme will apply to both offences. The following types of cases are specifically excluded from the coverage of the scheme:- .

- (a) Cases in which an accused is charged with both an either-way offence and a purely indictable offence.
- (b) Motoring cases (e.g. reckless driving, driving whilst disqualified) except where an accused is also charged with an either-way offence that is covered by the scheme. (For example, if an accused is charged with both the unauthorised taking of a motor vehicle and driving whilst disqualified, the scheme would apply to both offences.)
- (c) Private prosecutions (e.g., shoplifting cases in which the store is the prosecutor; prosecutions dealt with by any agencies other than the Metropolitan Police).
- (d) Any case initiated by summons.

CIRCUMSTANCES IN WHICH DISCLOSURE MAY NOT BE REQUIRED

(Source: Attorney General's Guidelines on Disclosure of Evidence to the Defence in Cases to be tried on Indictment, para 6).

6. There is a discretion not to make disclosure - at least until Counsel has considered and advised on the matter - in the following circumstances:

- i) There are grounds for fearing that disclosing a statement might lead to an attempt being made to persuade a witness to make a statement retracting his original one, to change his story, not to appear at Court or otherwise to intimidate him.

- ii) The statement (e.g. from a relative or close friend of the accused) is believed to be wholly or partially untrue and might be of use in cross-examination if the witness should be called by the defence.

- iii) The statement is favourable to the prosecution and believed to be substantially true but there are grounds for fearing that the witness, due to feelings of loyalty or fear, might give the defence solicitor a quite different, and false, story favourable to the defendant. If called as a defence witness upon the basis of this second account, the statement to the police can be of use in cross-examination.

Thames Magistrates' Court

EXPERIMENTAL SCHEME
(SECTION 48, CRIMINAL LAW ACT, 1977)
(NOT YET IN FORCE)

Under a pilot scheme being conducted at this court, advance disclosure of prosecution witness statements may be made in certain cases where an accused is charged with an offence triable either in Magistrates' Court or in the Crown Court.

You have been charged with such an offence. If you or your solicitor wishes disclosure of prosecution witness statements, a written request should be made without delay to the Detective Chief Inspector at the police station indicated below.

Leman Street Police Station
74 Leman Street
London E1 8EU

Bethnal Green Police Station
458 Bethnal Green Road
London E2 0ED

Limehouse Police Station
29 West India Dock Road
London E14 8EZ

IMPORTANT NOTICE

It should be noted that, as Section 48 of the Criminal Law Act is not yet in force, this experimental scheme has no standing in law and the Magistrates dealing with your case will accordingly not be involved in any enquiry resulting therefrom.