

Reprinted from:

THE JOURNAL OF CRIMINAL LAW, CRIMINOLOGY AND POLICE SCIENCE
Copyright © 1987 by Northwestern University School of Law
Vol. 58, No. 3

This article was originally published as the Appendix to Chapter 3 of Task Force Report: The Police, by the President's Commission on Law Enforcement and Administration of Justice.



U. S. DEPARTMENT OF JUSTICE
OFFICE OF LAW ENFORCEMENT
ASSISTANCE

LEAA DISSEMINATION MATERIALS

* * *

SELECTED REPRINTS

THE POLICE LEGAL ADVISOR

GERALD M. CAPLAN

The present article was prepared by the author while he was a member of the Staff of the President's Commission on Law Enforcement and Administration of Justice. Although it is already in print in the form of a position paper in the Commission's Task Force Report on The Police, we are pleased to present it to the *Journal's* readers, only a few of whom may have access to the Commission's report itself.

Mr. Caplan received his J.D. degree from Northwestern University School of Law in 1963, after which he received a Falk Fellowship from Yale University. He later served as an Assistant United States Attorney for the District of Columbia. He is now Chief of Planning and Research for the Legal Services Program of the Office of Economic Opportunity.

In recent years the criminal law has become increasingly complex. The appellate courts have dramatically enlarged their supervision over law enforcement agencies in opinions that reflect a heightened concern with the detail and routine of policing.¹ These opinions have narrowed the range of police behavior and demanded more refined judgments at the earliest stages of an investigation. More and more, these initial judgments—especially regarding admissions, confessions, and searches—serve to determine the ultimate disposition of the case. A mistaken conclusion by a patrolman, usually the first officer on the scene, is often irremediable, dooming an entire investigation, particularly if the error invokes one of the exclusionary rules. The short story is that today cases are "harder to make."

A necessary response, now more than ever before, is police departments and policemen that are better trained in the law and more sensitive to current judicial pronouncements. Such sensitivity will mean that the enormous power and responsibility entrusted to the police will be exercised more discriminately and effectively. Cases will be more expertly screened, and those cases which ultimately go forward will have a sounder evidentiary foundation.

A major instrument for insuring this increased effectiveness is the introduction of lawyers into the law enforcement process, particularly in the areas of planning and investigation. Even the best police-

¹ One appellate court even made findings on the permissible length of an undercover narcotics investigation, concluding that the officer remained "undercover" too long. *Ross v. United States*, 349 F.2d 210 (D.C. Cir. 1965). The dissent criticized the majority for undertaking to "supervise the police in their conduct of an investigation." *Id.* at 126.

man and the best police administrator will, at times, need the advice of a lawyer who is knowledgeable in administrative and criminal law. In fact, the better the officer and the department, the more sensitive they will be to the complexity of the law, and the more likely to test their judgments against those of the legal advisor.

Many police executives and police studies have recognized the value of a legal advisor unit. As long ago as 1934, a study of police administration in Boston recommended that "a staff of lawyers be included in the police organization."² Nearly 30 years later, then Chicago Police Superintendent O. W. Wilson reemphasized the need for a legal unit to furnish advice to staff and field personnel and to survey departmental orders and practices in the light of actual or proposed changes in the law.³ Most recently, the Report of the President's Commission on Crime in the District of Columbia called for a permanent legal advisor for the Metropolitan Police Department.⁴

Despite these repeated expressions of need, few departments today employ legal advisors. A recent, nationwide survey of police departments conducted by the National League of Cities revealed that only 14 of 276 respondents employed lawyers, and

² HARRISON, *POLICE ADMINISTRATION IN BOSTON* (1934).

³ O. W. WILSON, *POLICE PLANNING* 11 (2d ed. 1962); cf. WILSON, *POLICE ADMINISTRATION* 60 (2d ed. 1963).

⁴ Report of the President's Commission on Crime in the District of Columbia 173-174 (1966). See also the remarks of former New York Police Commissioner Michael J. Murphy, *Courts Must Be Told What Law Needed To Halt Crime Trend*, *TRIAL* 17 (Dec.-Jan. 1965-1966): "The police *** need competent advice as to how best to proceed to protect the rights of all" and "this professional assistance is not usually available."

0366
DUP

of these, six were part-time employees.⁵ The Commission's own research, particularly in the study of municipal court systems in Baltimore, Detroit, Denver, and the District of Columbia, supports the view that police legal services today are inadequate at best and often nonexistent. The fact is that with few exceptions State and municipal governments have not recognized the importance of staffing law enforcement agencies with law-trained personnel.

DUTIES OF THE LEGAL ADVISOR

It is neither possible nor desirable to blueprint here the precise functions a legal advisor or legal unit should perform. These will necessarily vary from department to department. It is useful, however, to provide a catalog of the types of duties that a lawyer is especially capable of performing. These include: training and continuing education; policy planning, liaison with the legislature and the community; liaison with prosecution and courts; civil suits against individual officers; and problems arising out of specific investigations. From this catalog, individual police agencies can provide for assignments that best reflect their own special needs.

TRAINING AND CONTINUING EDUCATION

The legal advisor could assume a large, perhaps a primary, role in recruit and in service training; or he could limit himself to preparing specific aids such as an annotated manual on the criminal code or rollcall training bulletins on recent judicial decisions and legislative enactments. In addition, he could prepare materials on courtroom procedures, including brief explanations of the most frequently encountered rules of evidence, and courtroom manners and decorum.

More generally, a need exists to anticipate trends in the law and develop operating procedures to cope with them. By alerting officers to current trends, it may be possible to initiate innovative

⁵ Full-time attorneys: Boston, New York, Syracuse, Memphis, San Antonio, Kansas City, Missouri, and Portland, Oreg. Part-time assistants: New Haven, Ann Arbor, Tampa, Scotts Bluff, Nebr., and Odina, Minn. Oklahoma City employs both a full-time and a part-time legal advisor.

Chief Hilton Geer of the Oklahoma City Police comments that "the value of policemen-lawyers has been so amply demonstrated that this department waives the usual rules to permit officers to attend law school by preferred shift assignments." (Letter to the author, Mar. 17, 1966.)

Since the Survey was taken, several other departments have retained legal advisors.

administrative procedures that will ward off overly restrictive court decisions.

In performing these various training tasks, the legal advisor can help line officers achieve a better understanding of their complex role in society. For example, in attempting to understand judicial decisions, most officers have little to draw upon except a thorough awareness of the day-to-day problems of battling crime. When explanations of complex legal procedures are cast only against this narrow backdrop, it becomes difficult for the individual officer to develop more than a superficial understanding of the case law. A legal advisor has the background to construct broader gauged training programs, programs that will heighten sensitivity to the competing goals underlying judicial decisions and provide a better foundation for assessing them.

POLICY PLANNING

Because total enforcement of the criminal laws is—for reasons given earlier in this report—neither practical nor desirable, discretion in the enforcement of the laws has to be exercised. Generally, the police have been hesitant to articulate or record for either internal use or public information the criteria upon which enforcement decisions are made. The difficulty is that although wide areas of flexibility are now left to police agencies without even general policy guidance from the legislature or the courts, police agencies have not considered it their task to develop and articulate their own policies. As a result, important policy decisions affecting such problem areas as undercover investigations, informants, and alcoholic offenders tend to vary from precinct to precinct and often from officer to officer. Uniformity is lacking and decisions are seldom clear cut within the department itself.

Here, in the development of policies, and particularly those arising from the necessity for selective enforcement, the legal advisor can aid uncertain police executives. According to one former police executive, Herman Goldstein, "the greatest potential and need is in the use of the law-trained man to assist the police administrator in the formulation of policies relating to enforcement and to the processing of the offender."⁶

Another series of tasks concerns the review of cases under investigation, particularly in organized

⁶ Letter to the author, Feb. 23, 1966.

DO NOT WRITE IN THESE SPACES

crime. These would include unsolved cases as well as those cleared by arrest, and cases "lost" in court or "dumped" by the prosecutor or grand jury.⁷ The goal would be to identify and evaluate current department, squad, and precinct practices in a critical manner, and then to suggest remedies. Some department or squad practices have survived over time only because of insufficient familiarity with the case law. For example, one prosecutor who became familiar with police practices identified several standard procedures that unnecessarily weakened enforcement. One related to enforcement of the laws prohibiting the sale of whisky after hours. In Washington, cases against liquor establishments are made by sending an undercover man inside the premises to make a purchase. The undercover man then swears to a search warrant and a raid is made on the warrant. Under current law, however, it is not necessary to have the undercover man himself sign the warrant, and thereby reveal his identity when a motion to suppress is made in court. The detective in charge of the raid could swear to the warrant on the basis of the information given to him by a reliable informant, the undercover agent.⁸ Another example, far more serious in its consequences, "concerns the practice of the homicide squad of rounding up all witnesses to a case and taking them to headquarters to sort out the case. That procedure is potentially defective if one of the witnesses turns out to be the defendant and then confesses or incriminates himself while at headquarters."⁹

LIAISON WITH THE LEGISLATURE AND THE COMMUNITY

Typically, police agencies are remote from the legislative process. When law enforcement officials do recite grievances, they commonly do so without consideration of possible governmental remedies. Consequently, areas which are subject to legislative solutions often remain ignored. A legal advisor could draft needed statutes and evaluate the legislation proposed by others. He could establish com-

⁷ A legal advisor is suited for this continuing review function, in part because "in many cases the officer will not discuss the problem with the prosecutor because he feels the arrest was good but the prosecutor 'lost' the case in court." Letter from Walter H. Guibbini, chief trial attorney, San Francisco district attorney's office (Mar. 8, 1966).

⁸ Memorandum from Theodore Wieseman, assistant United States Attorney, District of Columbia (Mar. 14, 1966).

⁹ *Ibid.*

munications with the various legislative committees concerned with enforcement and utilize them as a routine forum for the airing of police problems. In addition, the legal advisor could help prepare the testimony of the chief and other officials before legislative committees and, on occasion, could himself represent the department. Unlike the city attorney who presents a package of legislation, some of which may have to be sacrificed, the legal advisor's only task is to make police needs known to the legislature.

Associated with these functions would be various community relations efforts aimed at winning support for law enforcement positions. These could be directed not only to the general public, but also to special governmental agencies, such as the public school and housing authorities, or the local poverty program, with whom information and ideas could usefully be exchanged.

In particular, a need exists for cooperation between the police and the antipoverty programs. There is a common untapped interest in the elimination of crime and poverty. Police agencies could be incorporated into efforts to improve housing, recreation, and mental health facilities, among others. Too often, however, no communication exists between the police and antipoverty workers. A legal unit within the police department could be the means for the identification of common problems.

LIAISON WITH PROSECUTION AND COURTS

Excepting those few departments which employ legal advisors, most police forces receive only sporadic counsel from the prosecutor's office or from individual prosecutors who have developed a special relationship with certain squads or officers.¹⁰ The American Bar Foundation researchers paint a black picture: "While private counsel representing a business client would believe it to be of the utmost importance to consult fully with his client, prosecutors commonly proceed on the assumption that the police need not be consulted. A prosecutor who understood the problems of the police * * * could better decide what issues are in greatest need of clarification." Commonly, "communications

¹⁰ There may be a few model cities, such as San Francisco, where each of the specialized squads has a prosecutor assigned to it, and where the police also have lawyers on the force. Interviews with Attorney General Thomas C. Lynch and Chief of Police Thomas J. Cahill (January 1966).

between the prosecutor and the police chief are virtually nonexistent."¹¹

Perhaps the primary explanation for this lack of coordination is that most prosecutor's offices are understaffed, sometimes severely so, and cannot spare additional manpower for needed consultations with the police. Here the legal advisor could act as liaison officer translating, articulating, and implementing the policies of each agency. He could channel the complaints of the prosecutor and propose remedies for legitimate grievances. He could also maintain communications with sections such as the appellate division, which rarely consult the police, even when issues vital to law enforcement are being litigated. In this way conflict would be minimized and understanding and cooperation increased, not only among local agencies but with Federal investigators and prosecutors as well. In addition, appellate courts would be better informed, since more enforcement data would filter up to them.

Equally important is the need to translate judicial decisions into standard operating procedures. The recent *Miranda* decision,¹² for example, requires that substantial time and skill be devoted to the preparation of orders detailing interrogation policy. Since most prosecutors' offices do not consider it their responsibility to translate appellate decisions into operating procedures, the task falls to police agencies themselves who typically perform this considerable task without legal assistance, or abandon the effort entirely.

The legal advisor could also serve as an informal liaison with the trial courts, discussing with them police practices that concern or trouble them. In New York City, for example, police executives routinely visit certain courts.

NONCRIMINAL ADVERSARY PROCEEDINGS

Typically, the responsibility for defending civil suits against policemen arising out of official action belongs to the city attorney's office. Sometimes, however, these offices are so overloaded with other cases that they are unable to perform well. And sometimes the lawyers are unfamiliar with the legal issues involved. A legal advisor could assist, or even assume primary responsibility, for defending police officers in false arrest and other suits.

Policemen should not live in fear of civil suit; they should know that they will be supported by

¹¹ LAFAYE, *ARREST: THE DECISION TO TAKE A SUSPECT INTO CUSTODY*, 515-516 (1965).

¹² *Miranda v. Arizona*, 384 U.S. 436 (1966).

able counsel if they are accused of wrongdoing. Otherwise, an officer may become unsure, excessively timid, or lack the incentive to initiate imaginative and vigorous investigations.¹³

PROBLEMS ARISING OUT OF SPECIFIC CASES

Much police work consists of making legal decisions in complicated fact situations with minimal time for deliberation or discussion. An erroneous decision may produce an illegal search or an inadmissible confession that will condemn the investigation to failure and result in the guilty escaping prosecution and remaining free in the community. In these situations where there are few minutes to spare, a phone call to the legal advisor could prove invaluable. If the legal advisor were at headquarters, the precinct, in the cruiser, or otherwise readily available on an around-the-clock basis for visits to the scene, he would be even more effective.¹⁴ Even a telephone conversation, however, would permit key questions to be posed and answered. The routine use of a legal advisor in this capacity would also aid in the identification of practices which are contrary to law or inefficient, or both.

The legal advisor could also, in conjunction with the district attorney, prepare warrants and supporting affidavits, especially those which, due to the danger of destruction or disappearance of the evidence, are needed at once. His routine availability could increase compliance with the judicial preference for arrests and searches on a warrant. In those jurisdictions where the police themselves draw up the information, he could draft the forms and aid in filling them out.

DEPARTMENTAL LEGAL PROBLEMS

The multitude of legal problems affecting the police department as an entity is omitted from discussion here. Many of these legal problems are not

¹³ In this connection, Superintendent O. W. Wilson, in a departmentwide memorandum, wrote: "I will always support the police officer who, in the performance of his assigned tasks, exercises what he believes to be his legal authority in a reasonable manner. Such an officer need not fear complaints filed against him. He need not fear the threat of a lawsuit. The department and the city will defend the officer against any legal action brought against him and, by statute, will assume liability for any damages which might be assessed" p. 501 (Feb. 5, 1963).

¹⁴ The Corpus Christi, Texas police legal advisor, a product of the Northwestern University program, patrols the city in a radio-equipped squad car from approximately 8:00 p.m. to 2:00 a.m. and is available for immediate, on-the-spot legal advice.

unique to the police, but affect governmental agencies generally. Moreover, they are not directly related to crime-combatting activity and are presently handled—on at least a semi-systematic basis—by the corporation counsel or city attorney.

A CIVILIAN LEGAL ADVISOR

As indicated earlier, most police departments, including those in large metropolitan centers, have no legal counsel, and only a few police agencies in the entire country have adequate legal assistance programs. Consequently, opportunities for empirical evaluation of the performance of the legal advisor are minimal, and conclusions about the status of the advisor within the department and the qualifications of the advisor must be drawn cautiously.

Three distinct ways of providing counsel exist, each of which offers special benefits and drawbacks: a civilian employee; a policeman-lawyer; a prosecutor, assigned either on a rotation or permanent basis.

A civilian advisor holds the greatest promise. Unlike the prosecutor, who must to some degree serve two masters—the district attorney and the chief of police—or the policeman-lawyer, who may reflect narrow agency perspectives, the civilian employee is most likely to represent the fullest range of police needs while at the same time reducing police isolation from other municipal agencies and the public. Free from any particular institutional ties, the civilian advisor is likely to be more responsive both to civilians outside of law enforcement and to agencies, such as welfare, education, and housing, which communicate routinely with police agencies. A prosecutor-advisor may be insensitive to policing not geared exclusively to prosecution as, for example, in the handling of the prostitute, the drunk, and the intrafamily assault.

Of course, a legal advisor who is responsible to the police commissioner and not to an outside agency, such as the prosecutor, might lead the department down a legal path different from that charted by the district attorney. Such divergence could produce uncoordinated activity. It could also reflect legitimate police interests, and thus serve to preserve organizational integrity by surfacing important differences in approach. In any event, the relationship between prosecution and police should be no different—and no more difficult—than that existing between trial counsel and house counsel.

If the legal advisor is detailed from the prosecutor's office, there is more likelihood that police and prosecution will travel similar tracks, and that

investigations will be prosecution oriented rather than directed to clearance by arrest or to peace-keeping functions. But there is also a greater possibility that the prosecutor-advisor will be overly sensitive to the policies of the district attorney, and comparatively insensitive to possible areas of difference. In some areas, the prosecutor will belong to a different political party than that of the mayor who appoints the police chief. If political rivalry exists, the effectiveness of the prosecutor-advisor will be impaired.

Of course, in a very small department where it is not feasible, financially or otherwise, to employ a civilian, a prosecutor-advisor may be preferable. If the legal advisor is on the staff of the prosecutor, he should have substantial experience in that office, since senior police officers often know more law than junior trial attorneys and so may avoid the errors and omissions which inexperienced prosecutors often make.

Regarding the prior experience of the legal advisor, it is difficult to list specifically any special set of background skills. Presumably there are many career tracks that would adequately prepare one to be an advisor. These include: experience as a prosecutor; private practice, particularly in the criminal field; law enforcement experience, such as with the Federal Bureau of Investigation or the Treasury Department; a police intern program (discussed *infra*).

MANPOWER NEEDS

It is impossible to calculate with confidence the number of advisors needed now by police agencies across the country. An estimate of the outer limits of manpower needs is dependent upon knowledge of what functions the legal advisor will perform, and these will necessarily vary, often substantially, from department to department. In some places, the advisor will be responsible for training, or legislative relations, or policy planning; in others he will perform none or all of these duties. A reasonable estimate of minimum needs, however, may be made, even though it is difficult to specify underlying criteria. The following estimates represent the best guess of those most experienced.

There are five police departments servicing cities in excess of 1 million population. At least five legal advisors may be needed to meet minimum needs of these departments and even this figure is probably very conservative. Based on his experience as deputy commissioner for legal matters of the New York Police Department, Franklin Thomas feels

that "twice the number recommended would be the absolute minimum to fulfill properly the functions required of such advisors."¹⁵

Approximately 17 cities range in population between 500,000 and 1 million. At least three advisors should be available. There are about 33 cities within the 250,000 to 500,000 population range. At least two advisors should be budgeted. There are nearly 80 cities under 250,000 and over 100,000 population. At least one advisor would fulfill minimum standards.

In smaller cities, such as those below 100,000 or 50,000 which may not need or be able to afford a full-time legal advisor, pooling arrangements—by which several police agencies in a given area would share a legal advisor—should be made. Fragmentation of police services is notorious and the common use of a legal advisor could be a device not only for acquiring counsel, but of achieving greater coordination among separate police departments.

All of the States, except Hawaii, maintain police or highway patrol organizations. These departments range in sworn membership from 50 men in Nevada to 2,795 men in California. Total personnel as of December 31, 1964, was 26,784 men. At least one advisor should be budgeted for each State, and the largest States, such as New York (2,464 men) and Pennsylvania (2,015 men), should employ several law-trained men. In addition, there are 773 counties which operate road patrols, about 100 of which have uniformed forces of over 100 men. Each of these should employ a full- or part-time advisor.

Totaling these figures, the manpower needed to supply minimum needs ranges from 250 to 400 men skilled in criminal law, administrative law, and police science.

RECRUITING LEGAL ADVISORS

Two innovative programs, one of which is specifically aimed at producing legal advisors, have recently been initiated pursuant to Ford Foundation grants. The program at the Northwestern University Law School is "directed primarily toward the development of police legal advisors."¹⁶ It provides for a 2-year training program for graduate students. The first year is spent in residence at the law school with part-time training in the Chicago Police Department. The second is spent

¹⁵ Letter to the author, Nov. 16, 1966.

¹⁶ Revised Proposal to the Ford Foundation (April 1964), p. 2.

actually working in a police department. The police department receives the services of the intern free of charge under the terms of the fellowship.¹⁷ At the end of the second year—by which time a thesis must be completed—the trainee receives a master of law degree.

Unlike the Northwestern University program, the "police internship program" at the University of Wisconsin Law School is not "committed to the training of lawyers specifically for assignment in a police agency," but rather to expanding the opportunities for "interested students to become familiar with the major issues confronting the police and other agencies in the criminal justice system."¹⁸ Under the terms of a \$260,000 grant, a program for law students to intern with police agencies has been developed. During the summer of 1966, five specially selected students were placed with the Chicago Police Department, and a sixth with a Wisconsin police agency.¹⁹

Both the Northwestern and Wisconsin programs are imaginative and promising. In particular, the

¹⁷ Young lawyers, who have 1 or more years' experience, are given annual stipends of \$8,500, from which is deducted approximately \$2,000 in tuition over the 2-year period. Recent law graduates without experience receive \$5,000 for the first year and \$7,000 the second. All stipends are tax exempt. The grant to Northwestern, made in 1964, was for \$300,000 extending over 5 years. To date, thirteen fellowships have been awarded.

Under the Northwestern program, a police legal advisor intern was placed with the Portland, Oregon police department in 1965. After he served a year, the program was discontinued for want of sufficient city funds to make the position permanent. A legal advisor also served with the Oakland, California department for six months and was then placed with the Institute for Community Development of Michigan State University where he is directing a state-wide telephonic training program for Michigan police on the law of arrest, search and seizure. Another graduate of the program was placed as an Aide to Superintendent O. W. Wilson of the Chicago police department, and the two interns most recently placed will serve as permanent police legal advisors to the Corpus Christi, Texas, and Pittsburgh, Pennsylvania police departments. Intern advisors have been assigned to Phoenix, Arizona; San Jose, California; and Charlotte, North Carolina, for the year 1967-68.

For a general review of the Northwestern program, see *A Report To The American Police Community On The Police Legal Advisor Program*, by Northwestern University School of Law (1967).

¹⁸ Letter from Prof. Herman Goldstein to the Commission, Feb. 23, 1966.

¹⁹ Prior to the summer internship, the students were given a special seminar to orient them toward police work. Seminar topics included: the police patrol function, aggressive preventive patrol, ferreting out vice activities, policing at the operating level, role of the lawyers in the police agency, and investigating crime.

structuring of the Northwestern internship, which gives a lawyer to the police department for a full year, acts as an inducement to the city authorities to retain an advisor on a permanent basis.²⁰

Both programs, however, represent only small steps forward in meeting manpower needs. If the necessary pool of talent is to be created within the next 5 years, it is essential now to finance both new training programs, expand existing ones, develop plans for the involvement of more lawyers generally in the police process,²¹ and, most important of all, recruit skilled lawyers from the outside.

RESISTANCE TO EMPLOYING LAWYERS IN LAW ENFORCEMENT

Despite the long recognized need for law-trained personnel in police work, there has been over the years only a handful of lawyers working in local law enforcement. While the need has been great, the demand has been low, and the obstacles to employment often overwhelming.

One major source of resistance to the hiring of legal advisors is the city attorney or corporation counsel. Police departments which have retained a legal advisor, as well as those who have unsuccessfully attempted to do so, report strong re-

²⁰ One set of plans demands greater involvement of the bar associations. Typically, the local bar association has one committee, often several, dealing with the important problems of defendants' rights and the defense of a criminal case. Few have a single committee aiding law enforcement in a comparable manner. Recently, former New York Police Commissioner Michael J. Murphy wrote that "each Bar Association should consider a Legal Advisory Committee to Law Enforcement as part of its community responsibilities". Murphy, *supra*, note 5. Such committees may accomplish little that demonstrably aids law enforcement, but their mere existence could serve to boost morale, decrease isolation, and set the framework for continuing interchange. The Philadelphia Bar Association recently began a program aimed at training officers to make a pinch that sticks. "Bar To Teach Police New Arrest Wrinkles," Philadelphia Inquirer, April 18, 1966.

Another approach involves the establishment of courses in the law school curriculums that focus on enforcement problems. These could include periods of field observation, and could be elective or required, as is the case at Willamette Law School in Salem, Oregon. There, David Geary, then chief of police, permitted law students to ride in squad cars and observe the complaint desk, radio room, and jails. It may be that municipal governments could subsidize the legal education of students interested in law enforcement, students who would eventually serve as legal advisors.

sistance from the city attorney who commonly claims that servicing the police is his exclusive province. Such a position reflects too narrow a view of what it is the legal advisor does; most of the duties of the legal advisor—outlined earlier in this paper—do not fall within the scope of responsibility of the city attorney's office, nor are they matters that he is especially equipped to handle. In areas where there is overlapping responsibility, as, for example, defending suits for false arrest, a record of vigorous performance by the city attorney could relieve the legal advisor of all responsibility. Too often, however, the city attorney, although unwilling or unable to do the job himself, is also unwilling to permit others to do it.

As a result of opposition from the city attorney, several departments have camouflaged their legal advisor with such titles as "research analyst" or "research director," and generally kept his status unofficial.

Another source of resistance has been paradoxically the police executive himself. The reasons for this resistance are harder to identify since they are rarely made explicit. No doubt they emerge from a general reluctance to hire civilians or change the status quo. To some extent, they derive from ignorance about what it is a legal advisor can do. In addition, in many departments, particularly the more professionalized ones, civil service restrictions combine to prevent the retaining of a lawyer.

A final factor inhibiting recruitment is that attorneys who would be best qualified to serve as legal advisors have access to more attractive career opportunities. Both in terms of prestige and salary the talented prosecutor or private practitioner is unlikely to leave to serve as a police legal advisor. But the gains to the community and the police—measured in more effective and fair law enforcement—are so essential that efforts to establish the position of police legal advisor and to make it an attractive one for skilled attorneys must begin immediately. If salary and career opportunities were at least competitive with other legal positions within the criminal justice system, competent lawyers could be hired. Without question, the position of police legal advisor for a busy department could become one of the most challenging positions in government.

END