



COUNCIL FOR
COMMUNITY SERVICES, Inc.

Serving Rhode Island and Adjacent Communities

229 WATERMAN ST. PROVIDENCE, R. I. 02906



FINAL REPORT ON THE
PROVIDENCE POLICE LEGAL ADVISOR

51670

FINAL REPORT ON THE
PROVIDENCE POLICE LEGAL ADVISOR

LEAA EVALUATION TASK FORCE MEMBERS

Judge Edward V. Healey - Chairman

Mr. Desmond Camacho

Dr. Spencer DeVault

Mr. Malcolm Farmer, 3rd

Dr. Howard Foster

Mr. William Lawton

Mrs. Beverly Long

Dr. Vsevolod Sadovnikoff

Mrs. Gloria Spears

Mr. Edward Watts

Mr. Alton Wiley

Table of Contents

A. Summary	p.i
B. Conclusions	p.ii
C. Recommendations	p.iii
D. Chapter I: History and Development	p.1
E. Chapter II: Need for Legal Assistance	p.3
F. Chapter III: Analysis of Goals and Objectives	p.5
G. Appendix	
H. Footnotes	

SUMMARY

The Providence Police Legal Advisor was funded in May 1975 to provide the police department with access to legal assistance as needed. An attorney is employed on a full-time basis with an office at the police department adjacent to the Chief of Police. The major goals of the project are (1) to provide legal advice in policy development, internal administration, police procedure, case preparation and other related areas (2) to upgrade the skills of all police officers and supervisors with bulletins, memoranda and classroom training and lectures. Record keeping at the Sixth District Court does not allow for an objective assessment of the impact of the legal advisor on the quality of case preparation. There are, however, many other activities in which the legal advisor is engaged. These areas are centered in the police department and involve policy development and police procedures. Individuals interviewed in the department and in related agencies expressed confidence in the legal advisor's ability and endorsed the concept of full-time legal counsel for police departments. The legal advisor has adequately performed those tasks specified in the grant proposal and has also conformed to those standards and goals proposed by the American Bar Association and the National Advisory Commission of Criminal Justice Standards and Goals.

CONCLUSIONS

GOAL I:

The general goal of increasing the access to legal advice for police officers implies a wide range of possible activities. Given the lack of good data to measure performance, illustrations were gathered to determine the actual areas of legal advisor assistance. The legal advisor has been involved in (1) the revision of the basic police manual (2) the development of guidelines for arrest procedures (3) participation at disciplinary hearings as a neutral party (4) the investigation of major cases as requested and the (5) interpretation of court decisions for police procedures. The legal advisor is involved in all areas listed in the grant proposal as objectives.

GOAL II:

Legal training for all members of the Police Department has been provided by classroom lectures, bulletins and roll call instruction. It is difficult to measure the impact of training on police performance. Inadequacy of data to gauge the quality of case preparation makes it impossible to evaluate whether cases are being more successfully prosecuted due to increased legal awareness.

RECOMMENDATIONS

In order to determine the long range impact of legal training and access to legal counsel on police performance, it will be necessary to improve the quality of record keeping in the courts. Data should be available to evaluate how well cases are being prepared. A system could be developed by the courts and police to trace how many cases were dismissed or "lost" due to police error, non-appearance of witnesses, defense continuances and so on. The efficiency of the legal advisor might be enhanced if he were to keep a diary recording time spent in specific activities. An analysis of the log sheets might suggest a reallocation of resources. Also, to adequately and quickly respond to the demands of the police department, the legal advisor should have immediate access to digests and law books he deems important. A budget item should be included to cover this expense.

I. HISTORY AND DEVELOPMENT

The Providence Police Legal Advisor project funded in January 1975 was preceded by a project titled Expediting of Prosecution Services: Sixth District Court. This project, initiated in 1971 by the Office of the City Solicitor and Clerk of the Court, placed an attorney in Sixth District Court to screen cases, manage case flow, prepare for hearings and oversee the whole process of prosecution. Because the legal affairs of the City of Providence are handled by attorneys appointed on a part-time basis and because the Office of City Solicitor is responsible for all matters requiring legal counsel, no attorney can spend all of his time prosecuting cases in Sixth District Court. The placement of a full-time prosecutor in Sixth District Court resulted in the reduction of case backlog by approximately 1000 active pending cases in the first year of funding. This reduction continued through the life of the project.

In January 1975, the scope of the project was widened to include providing legal advice to the Providence Police Department. In addition to supervising case prosecution in the Sixth District Court, the full-time prosecutor was expected to provide the police with expert legal opinion in matters of internal affairs, disciplinary investigations, search, seizures and warrants, training and administration and policy development. At this time, the prosecutor was maintaining dual roles as legal advisor to the police and as prosecutor for the city of Providence. In May, 1975 the Supervisory Board of the Governor's Justice Commission objected to that fact believing that this arrangement constituted a conflict of interest. As a result, the attorney's prosecutorial duties were dropped and the Providence Police were assigned full-time legal counsel. With this reorganization, the project was

named Providence Police Legal Advisor and the duties and responsibilities of the Attorney employe~~s~~ were defined according to the goals and objectives discussed in Chapter III.

II. NEED FOR LEGAL ASSISTANCE

The Providence Police Department employs approximately 400 police officers to serve a population that numbers 179,000, a ratio of one officer to every 445 citizens. The need for legal counsel in a department of this size has been discussed at length by the National Advisory Commission on Criminal Justice Standards and Goals (NAC) and by the American Bar Association on Standards for Criminal Justice (ABA). The recommendations for the administrative relationships, duties, and qualifications of the legal advisor proposed by these two groups are very similar. These standards are presented by National Advisory Commission in its Police volume and by the American Bar Association in a report titled The Urban Police Function.

The NAC and ABA suggest that the legal advisor be directly responsible to the Chief of Police. The National Advisory Commission listed nine services which should be provided by the legal advisor.

- "a. Provision of legal counsel to the police chief executive in all phases of administration and operations.
- b. Liaison with the city or county attorney, the county prosecutor, the State Attorney General, the United States attorney, the courts and the local bar association.
- c. Review of general orders, training bulletins, and other directives to insure legal sufficiency.
- d. Case consultation with arresting officers and review of affidavits in support of arrest and search warrants in cooperation with the prosecutor's office.
- e. Advisory participation in operations where difficult legal problems can be anticipated.
- f. Attendance at major disturbances and an oncall status for minor ones - to permit rapid consultation regarding legal aspects of the incident.
- g. Participation in training to insure continuing legal training at all levels within the agency.
- h. Drafting of procedural guides for the implementation of recent court decisions and newly enacted legislation; and
- i. Provision of legal counsel for ad hoc projects, grant proposal development and special enforcement problems."

The National Advisory Commission goes one step further than the American Bar Association in defining areas in which a police legal advisor should not become engaged.

"Every police agency employing a legal advisor should provide in the assignment of his duties that he not:

- a. Prosecute criminal cases
 - b. Decide what cases are to be prosecuted or what charges are to be brought except by agreement with the prosecutor.
 - c. Be assigned tasks unrelated to the legal assistance function that would interfere with performance of that function nor
 - d. Either prosecute infractions of discipline before internal trial boards, or serve as a member of any trial or arbitration board."
- 2

The employment of legal counsel in a large police department can be justified on many grounds. Police officers seldom have the time or training to keep abreast of recent developments in case law and need professional guidance to insure that their daily execution of police duties does not conflict with the standing body of law. Legal opinion may be available from the offices of the city prosecutor or attorney general but these offices are often not able to provide immediate attention to police requests. A full-time attorney can assist officers who are responsible for personnel training in the preparation of course material to insure that all officers, from the candidate to the supervisory staff, are kept informed of recent legal developments. Legal advisors can accompany police officers on raids and investigations to promote the use of proper procedure. Also, the presence of a full-time attorney may enhance the credibility of the department in handling internal affairs and disciplinary matters. The need for expert legal advice in a large police department is easily documented. Comparing the standards and goals advanced by the National Advisory Commission and the American Bar Association to the stated goals and objectives of the Providence Police Legal Advisor and measuring the actual performance of the legal advisor against these should result in a useful examination of the project.

4

III. ANALYSIS OF GOALS AND OBJECTIVES

As discussed in Chapter I, the transfer of this project from the Sixth District Court to the Providence Police Department required that the project's goals and objectives be reconstructed. As will be presented in detail below, the Legal Advisor was expected to engage in a broad range of activities related to the needs of a large urban police organization. The amount of time and energy allocated to each of these duties was not clearly specified and these decisions are affected by the daily needs of the line officers, division heads and the Chief of Police.

Although not specifically stated in the grant proposal, a major aim of the project is to improve the professional performance of police officers. This will be accomplished by providing access to legal advisor and by establishing training sessions for officers at all levels. There are two goals stated in the grant application. The first goal is as follows:

GOAL I

"To establish a legal unit within the Providence Police Department staffed by one legal advisor (an attorney) to provide all departmental personnel with immediate access to professional legal advice concerning police administration, police department operations and such other matters as may relate to the enforcement of the laws of the city and state, and by his special expertise assist in the improvement of the department's operating efficiency and the attainment of its proper public safety objectives."₃

To further specify the responsibilities and roles of the legal advisor as director of the legal unit, program objectives were defined in the grant proposal. These objectives were to: (1) to provide legal advice as needed (2) to increase the availability of competent legal research in criminal law and police functions. (3) to coordinate police activity in the Sixth District Court, exclusive of actual prosecution of cases and (4) to promote and achieve close cooperation between police officers, other agencies of the criminal justice system and officials of other government agencies.

The nature of the work of the legal advisor, i.e. to respond to the police department's demands for legal advice, makes it difficult to develop measurable objectives for a third-party evaluation. For example, it is not a simple matter to ask every officer whether he or she is more confident when participating in a search or seizure or when arresting an individual because of a discussion with the legal advisor. Selected division heads were interviewed to obtain their opinions on the need for and the performance of the legal advisor. These individuals gave the legal advisor positive marks on his accessibility and his performance. The overall expression of confidence in the full-time attorney may have resulted from the supervisory staff's acquaintance with the legal advisor as assistant to the Chief of Police. No attempt was made to contact any line officers for their opinions about the legal advisor. It is impossible to learn whether the presence of legal talent in the department has affected police performance on the street.

The participation of the legal advisor in policy making can be measured to some extent by citing illustrations of his activity in actual cases. The Police Regulations Manual has been rewritten to incorporate Supreme Court decisions with the assistance of the legal advisor. Police response to demands from industries which were being picketed was guided by the legal advisor. The department will continue to provide protection for private property during employee strikes but will not intercede in civil matters. Strikers will be arrested if a crime is being committed.

The legal advisor has been involved in matters of internal administration and discipline. He has participated in a large scale investigation of a brutality charge against the department. The complaint charged that the death of a young man resulted from his mishandling by the police. The legal advisor supervised this investigation and found no evidence linking police action to the subsequent death. The legal advisor has been assigned to attend

weekly disciplinary hearings in the capacity of a neutral observer. As such, he assures that the procedures set down by federal order are followed in resolving complaints.

The interaction between the line officer and the legal advisor can be best illustrated by the attorney's presence during raids and other investigations. In a police response to a major robbery, the legal advisor accompanied police to scene of crime. A large amount of cash and valuables was left scattered about the building. To avoid allegations that policemen might have spirited away this material, the legal advisor counseled the officers on proper procedure. Following this incident, he established a procedure for making an inventory of valuables and cash at the scene of the crime to reduce the likelihood of corrupt activity on the part of the police.

A critical need for legal assistance exists in the preparation of search and arrest warrants. The legal advisor is available to help prepare affidavits and other supporting documents. To reduce unnecessary and costly filing of cases that will be dismissed due to lack of evidence or other police error, the legal advisor and Chief of Police work together to identify and screen cases that can be successfully prosecuted before they are filed at District Court. The Prosecution Bureau relies on the legal advisor for guidance in the preparation of cases. Measuring the impact of professional legal counsel on case preparation and subsequent disposition in Sixth District Court is impossible given the current system of record keeping. Ideally, a comparison of dismissals due to police error before and after project implementation could be made. If the number of cases dismissed due to lack of evidence, improper police procedure, police non-appearance and so on had decreased over a six-month period, it would be possible to trace this decline

to the increased legal know-how of the police department. However, since the District Court keeps no records on reasons for dismissals, it is impossible to extract any meaningful conclusions from the Court's data. It was learned that few dismissals are the result of policemen failing to appear at the hearings. Officers are reimbursed at the rate of four hours pay for each court appearance so there is a good incentive for their attendance.

The removal of a full-time prosecutor from District Court has placed an additional burden on the Office of City Solicitor. Responsible for prosecuting cases and for handling the legal affairs of the city, this office is staffed by part-time attorneys. The manpower needed to supervise case flow, arrange for the appearance of witnesses and follow cases through prosecution and disposition is not available through this office. Staff at Sixth District Court expressed similar opinions. The need for a full-time prosecutor to handle police cases was critical. If there is no one to supervise the prosecution of cases it doesn't matter whether the case is hastily assembled or whether it conforms to the strictest standards of legal procedure.

In terms of promoting closer cooperation with other criminal justice agencies, the legal advisor has prepared bulletins on the Attorney General's information changing system. The impact of the legal advisor cannot yet be measured at the Superior Court level. Data on reasons for case dismissal is not recorded in any easily retrievable fashion. The implementation of the PROMIS system will allow these kinds of analyses in the future.

In summary, it appears from the above illustrations that legal unit has been established in the police department and that it is achieving those objectives proposed in the grant application. While there is little objective data to document the achievements of the legal advisor, knowledgeable indivi-

duals who were contacted expressed their confidence in the legal advisor and were anxious to cite examples of his professional performance.

The second major goal of the project deals with training. The goal is stated as follows:

GOAL II

"To provide a higher quality of legal training for police personnel, thus reducing procedural errors in criminal investigations and case preparation, thereby reducing the number of conflicts which could be encountered in court in the administration of justice."

To achieve this goal, the legal advisor will assist in recruit, supervisory roll call and in-service training. The Providence Police Department maintains its own training facility and, as such, has great discretion over class schedules, curriculum design, training methods and so on. The legal advisor has prepared materials and has delivered lectures at the Academy. He has also prepared bulletins and memoranda for distribution at roll call. (See Appendix A). A paper on the state misdemeanor law was recently written and distributed. It is difficult to measure the impact of advanced legal training on the performance of police officers. Many officers are currently enrolled in college degree programs in criminal justice and separating out the effects of these programs on "professionalism" is impossible. As discussed above, the impact of legal advice and training on case preparation is impossible to determine with the present system of record keeping.

In conclusion, it appears that the Providence Police Legal Advisor has achieved the goals and objectives proposed in the grant application. The legal advisor is playing an increasingly important role in departmental affairs. He is providing most of the services suggested by the National Advisory Commission and the American Bar Association and avoiding those areas where his involvement might compromise his position as legal advisor.

Although the information needed to measure the legal advisor's impact on case preparation and dismissals in District Court is not available, it can be stated that the legal advisor is making an important contribution to the efficiency of the department. Subjective interpretations of his performance by members of the department and by persons outside the department have been positive.

In order to obtain a clearer picture of how the time of the legal advisor is spent in different activities, it is suggested that a diary be maintained. The legal advisor should record on an hourly basis time devoted to specific tasks, e.g. 9:00 - 10:15/memo to detectives, 10:15 - 11:45/staff training for drug investigation.

It is also suggested that the legal advisor be provided with a budget to cover the acquisition of law library and subscriptions to professional journals.

Finally, in terms of planning for evaluations of similar programs in the future, the funding agency should make an effort to coordinate record keeping in the District Courts Superior Courts and police departments. A model system could be developed to maintain adequate records on case flow. Such a system would contain information on reason for dismissal, number of continuances, charges dropped and so on. It seems that it will continue to be nearly impossible to measure the effectiveness of projects given the lack of emphasis on the development of adequate data bases.

FOOTNOTES

1. Police, The National Advisory Commission on Criminal Justice Standards and Goals, Washington, D.C.: January 1973. p.280

2. Ibid., p.281

3. Grant proposal for Providence Police Legal Advisor filed at Governor's Justice Commission, East Providence, Rhode Island. p.7-6

4. Ibid.

END