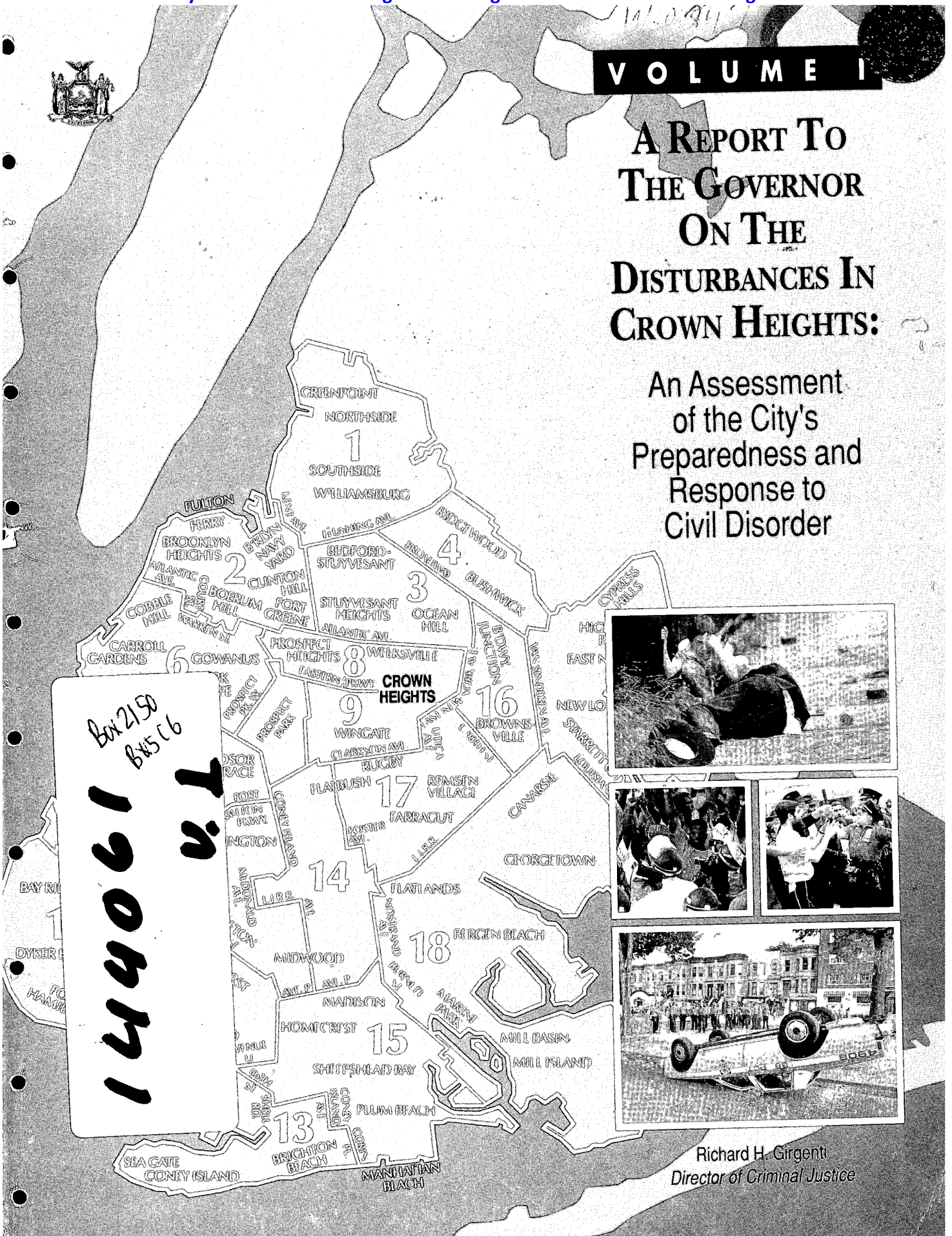


VOLUME I

A REPORT TO THE GOVERNOR ON THE DISTURBANCES IN CROWN HEIGHTS:

An Assessment
of the City's
Preparedness and
Response to
Civil Disorder



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Richard H. Girgenti
Director of Criminal Justice

A REPORT TO THE GOVERNOR ON THE
DISTURBANCES IN CROWN HEIGHTS

Consists of Two Volumes

*Volume I: An Assessment of the City's Preparedness and
Response to Civil Disorder*

*Volume II: A Review of the Circumstances Surrounding the
Death of Yankel Rosenbaum and the
Resulting Prosecution*

Copies are available from:

New York State Division of Criminal Justice Services
Office of Justice Systems Analysis
Executive Park Tower, 10th Floor
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Vol. 1

V O L U M E I

**A REPORT TO
THE GOVERNOR
ON THE
DISTURBANCES IN
CROWN HEIGHTS:**

An Assessment of
the City's Preparedness
and Response to
Civil Disorder



Richard H. Girgenti
*State Director of Criminal Justice
and Commissioner
Division of Criminal Justice Services*

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STATE OF NEW YORK
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RICHARD H. GIRGENTI
DIRECTOR OF CRIMINAL JUSTICE
AND
COMMISSIONER
DIVISION OF CRIMINAL JUSTICE SERVICES

July, 1993

EXECUTIVE CHAMBER
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The Honorable Mario M. Cuomo
Governor
Executive Chamber
Albany, New York 12224

Dear Governor Cuomo:

Pursuant to Executive Order Number One-Hundred Sixty, I respectfully submit a two-volume report on the August, 1991 disturbances in Crown Heights. Volume One is subtitled: *An Assessment of the City's Preparedness and Response to Civil Disorder*. Volume Two is subtitled: *A Review of the Circumstances Surrounding the Death of Yankel Rosenbaum and the Resulting Prosecution*.

We undertook an exhaustive analysis to document what occurred during the most extensive racial unrest New York City has experienced in over twenty years. In addition, we reviewed the investigation and prosecution of the murder of Yankel Rosenbaum which resulted from the disturbance. We sought to identify the factors which led to an acquittal and attempted to explain why no one has been held accountable for this crime.

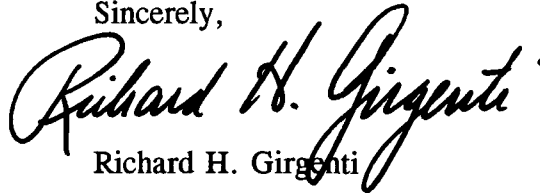
The preparation of this report involved numerous individuals, including nationally recognized policing and forensic experts. We reviewed all relevant materials and interviewed all of the key participants. New York City government officials and agencies cooperated completely.

The report reflects our genuine commitment not only to discover the truth, but also to learn the lessons to be derived from these most unfortunate events. We evaluated the performance of public officials based upon the reasonableness of difficult decisions that they were required to make. Although it was not our intention to assign blame, we have uncovered deficiencies, mistakes, and problems. Therefore, we have not avoided identifying accountability where we thought it appropriate.

We have made findings which attempt to answer most of the questions that have been asked about what happened in Crown Heights. It is our hope that, by answering these questions, we will bring closure to the concerns of many. This will enable the process of healing wounds, which still exist nearly two years after the disturbance, to begin.

Our recommendations identify opportunities for improvement. We hope that City government, community organizations, and concerned citizens will build upon the findings of this report to develop an agenda for action that will prevent similar situations from arising in the future. We believe that this report will help to overcome the feelings of mistrust and suspicion in the Crown Heights community, and begin to restore confidence in the criminal justice system and in our government.

Sincerely,

A handwritten signature in black ink that reads "Richard H. Girgenti". The signature is written in a cursive, flowing style with a prominent initial "R".

Richard H. Girgenti

ERRATA

While the mission statement gives officers a broad overview of their job during a disturbance, Departmental policy is more specific and is a critical part of the officers' training. The NYPD has recently rewritten its policy toward responding to civil disturbances. It provides direction for police officers to work within the framework of the law, but to restore a lawful safe environment as expeditiously as possible. The policy specifically gives direction to supervising and command level officers regarding the rapid mobilization and deployment of police resources, the containment, isolation, and dispersement of the disorder, weakening the crowd's will to resist, providing protection to City agencies or utilities in the area of the disorder, securing critical or sensitive locations and coordinating a return to normalcy in the affected area of the City.

In addition to a Civil Disorder Mission Statement and Civil Disorder Policy Statement, the New York City Police Department has also incorporated into the training process a statement of values which is emphasized to all of the participants. It is as follows:

In partnership to the community we pledge to:

- Protect the lives and property of our fellow citizens and impartially enforce the law.
- Fight crime both by preventing it and by aggressively pursuing violators of the law.
- Maintain a higher standard of integrity than is generally expected of others because so much more is expected of us.
- Value human life, respect the dignity of each individual and render our services with courtesy and civility.

NYPD is taking progressive approach to train its officers to respond to civil disturbance. This approach can serve only to enhance the ability of the NYPD to respond effectively to civil disturbances and ensure the protection of the people of the City of New York.

SUMMARY

NYPD has taken significant steps to improve its ability to control disorders since the Crown Heights disturbance of August, 1991. The steps taken in less than two years include the designation of a Deputy Chief to coordinate the Department's planning efforts, the formation of a special Disorder Control Staff to take command during future unrest, the acquisition of special equipment, and the implementation of new procedures that should enhance the quality of major tactical operations. The Department has also devoted substantial time and resources to train officers in numerous field exercises and simulated riot situations. Looking ahead, the completion of a new citywide plan later this year should also contribute to the NYPD's ability to control future disorders effectively.

RICHARD H. GIRGENTI

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The Police Foundation of Washington, D.C., provided invaluable advice and the full support of their outstanding organization. The Police Foundation examined the standards developed by the report's authors for evaluating the police response to the civil disturbances in Crown Heights and found that they appeared reasonable. In addition, the Foundation found that, on the whole, we applied these standards appropriately in assessing the Police Department's preparedness and response to the disorder.

We benefited greatly from the sage comments and suggestions of Francis B. Looney. Mr. Looney has served as Commissioner of the Nassau County Police Department and as a Deputy Commissioner of the New York City Police Department. In addition, he has held the office of President in the International Association of Chiefs of Police, as well as in the New York State Association of Chiefs of Police.

We extend particular thanks to Thomas Donovan and the Division of Management Planning & Information Systems of the Department of Environmental Conservation. The talented staff working in the Geographic Information Systems (GIS) Unit assisted us in analyzing the scope of the disorder by preparing color maps presenting the location of disturbance-related activity.

The contributions of Elizabeth Czaban and Bill Finnerty of the Publications Unit at the Department of Economic Development deservedly receive our praise and recognition. Without their assistance, production of the report would not have been possible.

Lastly, we wish to express our sincere appreciation to the staff of the Division of Criminal Justice Services. From the police training technicians to the accreditation program manager, the professionals in the Bureau for Municipal Police repeatedly showed their dedication to effective law enforcement. Policy analysts and researchers from the Office of Justice Systems Analysis developed clever and innovative ways to interpret and present the extensive data and information. Everyone worked vigorously and in a spirit of collaboration to meet the challenges posed by this complex project.

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Executive Summary

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EXECUTIVE SUMMARY

For four days following the tragic death of a black child, Crown Heights slipped into violence.

Seven-year-old Gavin Cato was struck by a car driven by a member of the Crown Heights Hasidic community. This spurred angry outbursts, and fueled pre-existing frustration and prejudices. During the ensuing disturbance, Yankel Rosenbaum, a 29-year-old Hasidic man, was fatally stabbed.

Other Hasidim were harassed and assaulted. Rocks were thrown through windows of homes; police, civilians, and motorists were attacked; stores were looted; and fires were set. The disturbance continued unabated for three nights.

Even before the violence ended, people began to question the effectiveness of the City government's response. New Yorkers demanded to know why the violence was allowed to continue for so long. They asked whether the Police Department and City Hall did everything possible to end the disorder. Some even claimed that police protection was deliberately withheld. When the man accused of murdering Yankel Rosenbaum was acquitted in October 1992, many lost faith in the criminal justice system.

In response to these lingering issues, Governor Mario M. Cuomo ordered Richard H. Girgenti, the Director of Criminal Justice for the State of New York, to review the City's response to the disturbance and the circumstances surrounding the criminal investigation and prosecution of the Rosenbaum homicide.

This review focused on several key questions. Among them were:

- **How extensive was the violence throughout the four-day period?**
- **How prepared was the Police Department to respond to the disturbance?**
- **Were the responses of the police and City Hall to the disturbance adequate and, if not, in what ways were they deficient?**
- **How effectively did the 911 emergency system serve the public?**
- **What recommendations can be made regarding future preparations for responding to civil unrest?**

In addressing these questions, we confronted painful realities of the Hasidic and black communities, the police, and City government. Our aim was not to assign blame, but, through a clear understanding of what happened, to build a foundation for a more effective governmental response to any future disturbances.

THE COMMUNITY OF CROWN HEIGHTS

Crown Heights is a central Brooklyn neighborhood populated by approximately 207,000 people. Bordered by Bedford-Stuyvesant, Brownsville, Flatbush, and Prospect Park, it is comprised of three distinct groups: African-Americans, Caribbean-Americans, and Lubavitch Hasidim.

The first residents of Crown Heights were freed black farmers and craftsmen in the early nineteenth century. They were supplanted over time by middle class whites and then by Irish, Jewish, and Italian immigrants. In the 1950s and 1960s African-American blacks replaced these later groups. At the same time, there was an influx of Caribbean blacks. During this period, the Lubavitch Hasidim, an orthodox Jewish group, also settled in Crown Heights.

Though blacks and Hasidim live side-by-side in Crown Heights, deep-seated tensions exist between many blacks and Hasidim. Many blacks believe the Hasidim have garnered disproportionate political clout and thus receive preferential treatment from the City government. Exacerbating this resentment is the fact that the Hasidim are highly insular, which limits dialogue. The Hasidim, in turn, believe their distinctive appearance and reticence to interact with others make them targets of robbery, bias crimes, and other forms of anti-semitism.

THE DISTURBANCE

Significant Events — August 19-22, 1991

The disturbances began at 8:20 p.m. on August 19, 1991. An Hasidic driver, part of a procession escorting the Lubavitcher Grand Rebbe, struck and killed seven-year-old Gavin Cato at President Street and Utica Avenue. Gavin's cousin Angela Cato was seriously injured. People on the street reacted by attacking the car's occupants. The police, an Hasidic-sponsored ambulance, and a City ambulance responded. The police ordered the Hasidic ambulance to carry away the car's Jewish occupants. This spurred a rumor that the Hasidic ambulance helped the Jews, and left the injured black children to die. That rumor, and others, fueled the disturbance for three days.

Violence erupted almost immediately. For two-and-a-half hours bottles and rocks flew at the accident scene, with blacks and Hasidim arguing fiercely

and shouting racial epithets at each other. As tensions rose, objects were thrown from nearby roof tops. At one point, gunshots were fired.

At about 11:00 p.m., the disturbance spread. Roving bands of black youths left the intersection and wandered through the neighborhood stoning homes and assaulting people. One group attacked Yankel Rosenbaum, a 29-year-old Hasidic man, stabbing him four times. He later died. Because of the speed with which the disturbance spread, the police could not prevent these occurrences. On Monday night, just six arrests were made.

After learning of the disturbance, Mayor David N. Dinkins went to Crown Heights. He arrived at Kings County Hospital where both Gavin Cato and Yankel Rosenbaum had been taken around midnight. Cato was pronounced dead shortly after he reached the hospital. Rosenbaum died hours later, following a visit by the Mayor.

After meeting with Cato's family and visiting Rosenbaum, the Mayor went to the 71st Precinct. There, he met with the police and black and Jewish leaders. He ordered his aides to set up headquarters at P.S. 167, a local school, to provide information about what happened and begin community outreach efforts. This would be the focus of City Hall's efforts to restore order for the next two days.

Tuesday morning, Mayor Dinkins met with his staff to devise a way to deal with the disturbance. They decided to focus on the dissemination of information and community outreach. In keeping with this approach, Deputy Mayor Bill Lynch convened a meeting at 11:00 a.m. at P.S. 167. Although the session was intended to dispel rumors and bring the two sides together, the meeting became a forum for expressions of anger by members of the black community.

Also on Tuesday morning, members of the Hasidic community called their leaders and City officials to tell them about the inadequate police response and to demand protection. Herbert Block, the Mayor's liaison to the Jewish community, visited Crown Heights and met with Hasidic leaders. He also received many phone calls from Hasidim, as did Deputy Mayor for Public Safety Milton Mollen.

During the early afternoon, a crowd gathered at President and Utica. At about 3:00 p.m., this group marched to the 71st Precinct. At the same time, Hasidim demonstrated at Eastern Parkway and Kingston Avenue over the perceived lack of police protection. When the black marchers reached Kingston Avenue, the two groups clashed, throwing rocks and bottles at each other. The police, outnumbered, could not prevent the confrontation.

Some of the marchers split off and roamed nearby streets. They threw rocks at cars and homes and chanted "death to the Jews." The police, because they were assigned to fixed posts, were ineffective.

The march continued to the Precinct, where its leaders demanded the arrest of the Hasidic man whose car struck the Cato children, and the suspension of a police officer who allegedly shoved the boy's father. The police refused these demands, so the marchers demonstrated outside and returned to President and Utica. On the way back, there was another confrontation between blacks and Hasidim. Twelve police officers and a civilian were injured. Two people were arrested.

When the marchers returned to President and Utica, the violence intensified. Demonstrators blocked the intersection and threw rocks and bottles at a 100-person police detail. Others scattered, throwing objects at Jewish residents.

The police at President and Utica were not prepared for this. At first, they stood in formation, ordered to stand fast and hold the line. Ultimately, they were forced to withdraw. Assistant Chief Thomas Gallagher, Commander of the Brooklyn South Patrol Borough, later stated that he decided to exercise restraint because he believed aggressive police action would worsen the situation. This posture, and the ineffective fixed post deployment strategy, continued through Wednesday evening.

As the disturbance flared up at President and Utica and on the surrounding streets, many people called 911. Some calls were mishandled, improperly prioritized or incorrectly categorized as duplicates of other calls. Consequently, the police responded slowly or not at all. The Hasidim later complained bitterly about the inadequate response to these calls and lack of police protection in general.

Four businesses were looted Tuesday night, a number of police cars were damaged, and several individuals were assaulted on the streets. These violent outbursts ended around midnight when a heavy rain drove people from the streets. The police made just twelve arrests Tuesday, including four for looting.

Wednesday morning, the Mayor again met with his advisers. He decided to go to Crown Heights later that day to meet with area residents at P.S. 167 and help restore peace. Meanwhile, Hasidic residents were calling their leaders to plead for police protection. These leaders, in turn, called high-ranking mayoral appointees and again demanded protection.

There was much activity during the day. At 2:00 p.m., Herbert Block, Deputy Mayor Mollen, and high-ranking police officials, including Commissioner Lee P. Brown, Chief of Patrol Mario Selvaggi, and Chief Gallagher, met with the *ad hoc* Crown Heights Emergency Committee. Committee members expressed outrage at police ineffectiveness and demanded greater protection. Mollen and Brown assured the gathering that the police would restore order.

Later, Block and Mollen met with the Jewish Community Relations Council (JCRC) in Manhattan, where similar complaints were voiced. JCRC representatives raised the possibility of bringing in the National Guard. Mollen assured them that the City would respond effectively.

Shortly after 4:00 p.m., a large group of black demonstrators marched to Lubavitcher Headquarters at 770 Eastern Parkway. As on Tuesday, the police could not control the marchers, many of whom pelted the building with rocks and bottles and chanted anti-semitic slogans.

After leaving Lubavitcher Headquarters, the march reached Eastern Parkway and Schenectady Avenue at about 5:00 p.m. Commissioner Brown was arriving at the same time in preparation for the Mayor's visit to P.S. 167. The Commissioner's car came under attack. He and some of the police had to go into the school to elude the crowd as a 10-13 for "Car One," the Commissioner's vehicle, was broadcast.

The police were outnumbered. As more officers raced to the scene, the mob spread out into the surrounding streets. Assaults were reported, and police officers were injured by bottles and bricks. Again, a number of police cars were damaged.

When the Mayor reached the school, he met with about fifty black teenagers. Meanwhile, unruly mobs were rampaging on surrounding streets. An eyewitness said the police were disorganized and scared, and that there appeared to be chaos in the ranks.

When the Mayor left the school, he tried to address the crowd, but was greeted by jeers and bottles. More objects were thrown at him as he entered the Cato home. Later, he addressed the Crown Heights Emergency Committee, where he was told by Hasidic community leaders that the police were not controlling the violence. He heard pleas for greater police protection.

Commissioner Brown did not go with the Mayor. He briefly toured the neighborhood before returning to the 71st Precinct. He said he saw the police poorly deployed and not positioned to pursue roving bands. He realized at that

point that tactical changes were necessary. He began to discuss such changes with First Deputy Commissioner Raymond Kelly at the Precinct.

As the Mayor conducted his meetings, the violence on the streets spread. In the nearby 77th Precinct, people were assaulted in cars. Two individuals were shot and a firehouse was attacked.

In the 71st Precinct, a crowd of 500 to 600 demonstrators caused destruction on Utica Avenue from Eastern Parkway to President Street. Mobs of people attacked five police cars, including one that was overturned. Three civilian vehicles were also attacked. At about 9:45 p.m., a sniper wounded eight officers with a shotgun blast from a Schenectady Avenue roof top.

Additional police officers were mobilized to handle the disturbance. Initially, a large contingent of police formed a square in the intersection of President Street and Utica Avenue. This, however, only served to force the unruly demonstrators elsewhere. Later, at about 10:00 p.m., about 100 police officers marched down Utica Avenue to restore order. For the first time since the disturbances began, a significant number of arrests were made.

By now, not only the community was enraged by the continuing violence, but some police were as well. At the 71st Precinct, a Patrolmen's Benevolent Association delegate threatened a job action. The next day the PBA issued a letter urging police officers to use their nightsticks and firearms if attacked.

The Mayor visited the eight wounded officers at Kings County Hospital around midnight. There, he and Deputy Mayor Mollen met with Commissioner Brown. They questioned Brown about the "effectiveness of the tactics," and told him that further steps had to be considered. They asked Brown what he intended to do to "immediately end" the violence. The Mayor, in his own words, issued a "clear directive to take all steps necessary to end the violence."

Mayor Dinkins later acknowledged that the police had been using techniques appropriate for a peaceful demonstration, but not for violent civil unrest. First Deputy Commissioner Raymond Kelly, not previously involved, assumed responsibility for devising more appropriate tactics.

Thursday morning, Kelly met with Chiefs Borrelli, Selvaggi, Gallagher, and others to devise a new strategy. They decided to divide the disturbance area into four zones, each under a hand-picked commander, and to use more aggressive tactics.

Eighteen hundred officers were assigned to the disturbance detail, many more than on Tuesday and Wednesday. Mobile arrest teams were formed and a

significant number of officers were held in reserve. Selvaggi told them to saturate the area with mobile patrols and to escort roving bands of youths. Perhaps more importantly, the police were told, in no uncertain terms, to make arrests. They were told to use the unlawful assembly law to disperse crowds at the first sign of trouble.

These tactics were successful. The police moved quickly against unruly groups of people, arresting those who refused to disperse. More arrests were made on Thursday than the total for the previous three days and relative order was restored to the neighborhood.

Scope and Nature of the Disturbance

The Crown Heights disturbance represented the most extensive racial unrest in New York City in over twenty years. It differed from most disturbances throughout the turbulent 1960s, however, as the violence was directed at one segment of the population.

During the Crown Heights disturbance, unlawful activity centered within a square mile section overlapping the 71st and 77th Precincts. This "affected area" included thirty square blocks (the "initial deployment area") within which most of the injuries and property damage, as well as most of the police activity, occurred.

There was a substantial increase in criminal activity, as represented by 911 calls and criminal complaint activity, in the affected area during the disturbance. Much of the disturbance activity occurred in clusters associated with the marches and demonstrations and the migration of roving bands.

A review of 911 jobs shows a substantial increase in criminal activity. The volume of 911 calls quadrupled in the 30-block area and nearly doubled throughout the entire affected area. Over the four-day period, the affected area produced 780 more 911 jobs than in the same four days of the previous week. The number of 911 jobs increased from Monday through Wednesday and dropped off precipitously on Thursday, when a new police response plan was implemented.

The 911 data portrayed a disturbance characterized by street assaults, disorderly groups, disputes outside, vehicle fires, and commercial burglaries. Complaints were dominated by reports of assaults against police officers and, to a lesser extent, reports of criminal mischief.

Much of the disturbance-related activity occurred episodically in clusters. The clusters were frequently associated with rioting in the area of President Street and Utica Avenue and the movement of roving bands through the surrounding neighborhood.

The timing and location of these activities clearly indicates that it was much more than sporadic violence. The concentrated unrest in the area of President Street and Utica Avenue Tuesday night represented a riot situation. On Wednesday, roving bands victimized many streets for prolonged periods. The aggression was systematic, intense, and injurious.

The disturbance resulted in a substantial number of injuries and bias-related crimes.

Over 150 police officers and at least thirty-eight civilians were injured during the disturbance. Most of the injuries resulted from assaults.

Twenty-seven bias crimes were identified in the 71st Precinct, including twenty-one anti-semitic, three anti-black, and three anti-white incidents. The underlying crimes included one homicide, fourteen robberies and assaults, seven instances of harassment or menacing, and five involving criminal mischief. Twelve other assaults and forty crimes involving property damage by groups were identified, but did not meet the Department's criteria for classification as bias-related.

THE POLICE

Planning

Twenty-five years ago, the *Kerner Commission* recognized that a police department's ability to control civil disorders "depends essentially on two factors: proper planning and competent performance." This is as true today as it was twenty-five years ago. Thus, it is essential to examine the plans and procedures that the New York City Police Department had in effect during August 1991.

The Department's *Disorder Control Plans* provided a solid basis for guiding its response to the disturbance. However, the plans were not updated annually as required, did not provide an explicit mission statement, nor make clear when they were to be invoked. These plans were not used until Thursday, when the strategy adopted mirrored the principles of the Patrol Borough Brooklyn South *Unusual Disorder Plan*.

At the time of the disturbance, the 71st Precinct was covered by two *Unusual Disorder Plans*. One plan — the 71st Precinct Plan — covered unusual disorders within the bounds of the 71st Precinct. A second plan — the Brooklyn South *Plan* — covered unusual disorders in the Patrol Borough requiring the resources of more than one precinct.

These *Disorder Plans* and other supporting documents in place in August 1991 adequately addressed almost all essential elements recommended by national standards and other authoritative sources. They provided a solid basis for responding to civil unrest, defining specific staff responsibilities, establishing a clear command structure, and containing detailed Command Post instructions. Nevertheless, several aspects of these plans warrant further comment.

Borough *Unusual Disorder Plans* are required to be reviewed and updated annually. The Brooklyn South *Plan* was issued in 1982 and reviewed only four times prior to the disturbance. Both the Brooklyn South and 71st Precinct plans were last reviewed in early 1989, two and one-half years before the disturbance. Neither were modified at that time.

While the NYPD *Administrative Guide* and both the Borough and 71st Precinct *Disorder Plans* establish specific procedures for policing disturbances, they do not define "unusual disorders" or establish firm criteria for invoking the plans.

Also absent is a clear mission statement. Without a clear mission statement defining the Department's overriding philosophy and approach to handling civil disturbances, it may be difficult for police commanders to formulate a strategy.

The *Disorder Plans* also lacked detail regarding tactics. The plans provided some direction, but were less specific than the plans used by some other police departments. However, such key tactics as containment, isolation, and dispersal are addressed specifically in the *Borough Plan*.

Training

The Department enhanced in-service training in disorder control following the incident at Tompkins Square Park, but did not fully implement new training with regard to executive level officers.

The Police Academy developed a new in-service training program related to policing civil disorders for first responders who would be summoned at the onset of a disturbance. This one-day course consisted of three hours of academic classroom training and four hours of tactical training. Our analysis of records provided by NYPD indicates that approximately half of the sworn personnel attended this in-service program. In addition, fourteen mobilization exercises involving about 1,300 officers were also conducted during this time.

While the training of the lower ranks in the department dealt with teamwork and practical exercises for squad and platoon size detachments, command level officers received classroom theory and limited practice. And, training provided to captains and higher ranking officers offered little on deployment, containment, sectoring, and other tactical responses. Experiential command post exercises were planned, but never conducted prior to the disturbance.

The stated objectives of the training for first responders appear too numerous for the one-day time frame allotted to the course. In addition, the *Instructor's Resource Guide* lacked sufficient information on the responsibilities and discretion applicable to officers of different ranks.

The time allotted to classroom instruction was just three and three-quarters hours, while the practical instruction was three hours long. The objective of one lesson — to enable officers to, “understand, identify and utilize proper professional response tactics at demonstrations and disorders,” could easily be the overall objective of a course that lasts several days.

The training materials fail to differentiate roles and responsibilities assigned to different ranks. The *Unusual Disorder Plan* for Patrol Borough Brooklyn South assigns specific and distinct responsibilities for officers of various rank. However, little of this information was apparently conveyed in the training that these officers received.

Finally, it does not appear that the training clearly indicated when an officer can take action without specific authorization or direction from his or her supervisor. The lesson plans state that such action by patrol officers is only appropriate in cases of "extreme emergency," but offers no guidance as to what constitutes such an emergency.

Mobilization and Tactics

The mobilization and deployment of officers to the accident scene occurred too slowly to prevent the spread of the disturbance.

Violence erupted at President Street and Utica Avenue soon after the 8:20 p.m. accident. By 9:00 p.m., 911 callers had reported a riot in the area and the police began to mobilize. However, at first, the response was limited to officers responding to radio calls, about thirty officers stationed at a nearby concert, and the Brooklyn South Task Force. However, 270 of the approximately 400 officers ultimately assigned did not arrive until after 11:30 p.m., and full mobilization was not completed until between 1:00 a.m. and 2:40 a.m.

Because of the slow pace of mobilization, the officers were not in position to control the unruly mob at the accident scene. The mob began to stream down President Street at 11:00 p.m., shattering windows and damaging cars. Lemrick Nelson, who was acquitted of murdering Yankel Rosenbaum, told detectives he was part of that crowd. Deployment was not completed until sometime between 1:00 a.m. and 2:40 a.m. — at least four hours after the police saw the disturbance at the intersection of President and Utica escalate into violence.

Part of the delay in mobilization was due to the failure to fully employ the NYPD *Rapid Mobilization* procedure. The procedure was not used to mobilize non-Task Force officers from outside the Borough. The commanders believed that officers were unfamiliar with the radio codes and that reliance on this mobilization procedure might have resulted in confusion.

The officers in Crown Heights lacked a clear understanding of their mission. While the Field Commander initially ordered officers to exercise restraint, he was unprepared to alter their tactics when that approach failed.

Initially, Chief Gallagher emphasized restraint, fearing that aggressive action would exacerbate already-strong feelings and make the police the focus of the crowds' anger. This approach failed to spell out proactive steps. Containment and dispersal were not consistently implemented, and no other tactical options were substituted.

As a result, field supervisors were forced to improvise or remain passive when restraint failed. The Department's response to the first three nights of violence was, consequently, uncoordinated and ineffective.

The police were unable to maintain control of the marches and demonstrations which frequently resulted in group conflicts and criminal activity.

On Tuesday afternoon, demonstrators marched from President Street and Utica Avenue to the 71st Precinct and back. On both legs of the march, the police permitted marchers to come in contact with Hasidic counterdemonstrators. This led to violent confrontations in which many police officers were injured. In addition, roving bands split off, throwing objects at homes and assaulting people.

This occurred because the detail assigned to escort the march was too small. The detail originally assigned to the march might have been large enough to handle a peaceful demonstration under normal circumstances, but not several hundred angry protestors and counter protestors. The police also failed to control the route of the march.

On Wednesday, a police detail escorted a group of black marchers past Lubavitcher Headquarters. Again violence erupted. The marchers burned an Israeli flag and pelted the building with rocks. Approximately 100 Hasidim returned the barrage.

When the marchers reached Eastern Parkway and Schenectady Avenue, where Mayor Dinkins was scheduled to speak, a group broke off and attacked Commissioner Brown's car. An insufficient number of police were present to prevent this from happening and additional officers had to be summoned.

On Tuesday and Wednesday the police permitted large unruly crowds to form at President Street and Utica Avenue. When violence erupted, they were unable to control it. Attempts late on Wednesday to disperse mobs on Utica Avenue merely drove those groups into nearby areas.

On Tuesday evening, mob violence erupted at President Street and Utica Avenue. The police did not attempt to disperse the crowd, even after residences were pelted with rocks and the police came under a hail of thrown objects. Ultimately, the police were forced to withdraw from the area.

Had entry to the area been restricted, the crowd would not have grown so large and unruly that the police were forced to flee. The police were, however, reluctant to do so. The intersection of President Street and Utica Avenue had become a symbolic shrine for the black community and the police feared that restricting access or dispersing the crowd would exacerbate already-intense feelings.

On Wednesday, violence erupted at President and Utica and on nearby streets at about 5:30 p.m. Although the police attempted to clear the area, they merely pushed the unruly demonstrators onto the adjacent streets. At approximately 10:00 p.m., a 100-officer detail cleared Utica Avenue of demonstrators. When they met resistance at Montgomery Street, officers in patrol wagons penetrated the crowd, trapping rock and bottle throwers from behind.

This response to lawlessness demonstrated that aggressive tactics could be effective, that they would not lead to further violence, and that a specific tactical plan stressing dispersal could work. However, an effective, coordinated police response to large, unruly crowds was generally lacking through Wednesday. The field command should have realized, based on the prior two nights of violence, that there was a substantial possibility of continuing unrest and planned accordingly. They should not have waited for violence to erupt before acting.

On Thursday, the Department increased the size of its force and adopted aggressive tactics from the start. Supervisors were told explicitly to "take back the streets" and to arrest anyone violating the law. Crowds were dispersed at the first sign of trouble and mass arrests were made for unlawful assembly. As a result, order was restored.

Prior to Thursday, most of the police were deployed to fixed posts, an ineffective way to prevent illegal activity by roving bands.

Because the police were deployed at fixed posts, roving bands were able to move through the neighborhood. These roving bands committed violent acts and moved elsewhere before the police could respond. The Police Department's failure to control roving bands contributed significantly to the riotous character of the disturbance.

On Thursday, the Department supplemented its fixed-post strategy with mobile patrols assigned to cover these roving bands. Exhibiting a high degree of coordination, the police ordered these bands to disperse when they became unruly and to arrest people who refused to comply. This approach was successful.

Until a proactive arrest policy was announced and the unlawful assembly statute was used, the police did not effectively prevent disorderly crowds from forming and engaging in acts of violence.

Although Crown Heights was the site of significant criminal activity prior to Thursday, just forty-eight disturbance-related arrests were made: six Monday; twelve Tuesday; and thirty Wednesday. Furthermore, in the area affected by the disturbance, more than one-half of the arrests on Wednesday occurred at the intersection of Utica Avenue and President Street. Relatively few arrests were made in relation to the roving bands.

On Thursday, a firm arrest policy — no tolerance for illegality — was articulated and appropriate measures were devised to carry it out. That day, sixty-one arrests were made, almost twice as many as the previous day.

A key change in arrest policy involved the order to invoke the unlawful assembly statute. Instead of waiting for groups to become disorderly and then commit violent acts, the police reacted at the first sign of trouble. This proactive approach succeeded in controlling violent outbursts by groups.

NYPD undertook extensive community intervention efforts to mediate hostilities and to thwart rumors contributing to the unrest in Crown Heights.

Community intervention was a significant aspect of the Police Department's response to the Crown Heights disturbance. Several rumors spread throughout the community shortly after the fatal accident. They helped to fuel

the anger and deepen the division between blacks and Hasidim. The police repeatedly attempted to dispel the rumors through public meetings and press conferences.

Efforts were made at all levels, from Police Commissioner to the Borough Commander to Community Affairs Officers, to communicate with the black and Hasidic communities, starting Monday evening. Commissioner Brown, the Mayor and Deputy Mayors, and leaders of the community quickly gathered that night at the 71st Precinct. They saw the need to work together to try to calm the situation. Brown requested that community leaders be briefed to help them quell rumors and encourage public order.

Deputy Commissioner Wilhelmina Holliday worked continually throughout the disturbance period to improve the situation. She met with public officials, elected leaders, citizen groups of the 71st and neighboring precincts, community organizations, and circulated a "sheet" to provide information to the public. Numerous formal and informal meetings in the community were held or attended by NYPD officials, to provide a place for airing rumors and grievances as well as to hear complaints about the Police Department.

The Police Department made timely and visible attempts to listen to concerns, calm the community, and control rumors. However, the hostilities built upon long-perceived injustices made it impossible to dispel the rumors completely. The police had a responsibility to try, though, and their efforts were extensive.

Command and Control

There was no evidence of an affirmative order by the Police Commissioner to prevent the police from responding to criminal incidents in Crown Heights.

The Police Commissioner and other members of the command structure stated that at no time did they order officers not to make arrests. Commissioner Brown stated: "I know there was no policy from my level, and I haven't heard anyone below me say that they may have ordered a no-arrest policy." Assistant Chief Gallagher, Deputy Chief Gussman, and other commanding officers echoed this contention.

Commissioner Brown said his expectation was that arrests would be made for violations of the law where the police were capable of doing so. Assistant

Chief Gallagher said police officers were instructed not to take independent action and to stay on their posts to protect the assigned areas. The assignment of most officers to fixed posts and the relative absence of mobile patrols, however, made it more difficult to effectuate arrests.

Personnel changes within the Department in early August, 1991, placed two key officials in positions and weakened the command structure.

Effective August 15, 1991, the Chief of Department, Robert Johnston, retired. On Monday, August 19, the new Chief of Department, David W. Scott, went on a previously scheduled vacation. Chief of Detectives, Joseph Borrelli, was named to assume interim duties as Acting Chief of Department. Mario Selvaggi was appointed that day to be Chief of Patrol. With Selvaggi and Borrelli serving in less than familiar roles, the command structure was weakened. They were inclined to accept the information and plans they received rather than adopting more assertive roles.

A collective failure by top-ranking NYPD officials delayed the implementation of appropriate tactics to control this disorder.

Many of our criticisms of the police response to the disturbances are negative judgements about the performance of high-level NYPD officials. The Police Department clearly had sufficient resources and know-how to deal more swiftly and effectively with the disturbance. The individuals who occupied the highest positions in the Department must share accountability for its failure to do so before Thursday.

Effective supervision requires that the Headquarters Command staff insist upon the development of sound tactical objectives, monitor the actions taken by the Field Commander, and judge the effectiveness of those efforts. Commissioner Brown and others should have intervened when a change in tactics was warranted. Instead, the Department's oversight of field operations was inadequate.

After each of the first two nights of rioting, there was no meeting of the Headquarters Executive Staff with Chief Gallagher to critique how the police had handled the events. This kind of assessment is essential for the police executive to obtain the collective wisdom of principal advisers. Neither Commissioner Brown nor any member of the Executive Staff assembled the Department's

management team to examine this urgent situation, review police performance, and determine appropriate police action.

Any member of the Headquarters Command staff could have initiated such a session. In a sense, a leadership vacuum existed at the highest levels of the Department. Without a meeting of this kind, the Department lacked a critical analysis of what was happening in the streets and whether the police response to these events was effective.

The Police Commissioner did not effectively fulfill his ultimate responsibility for managing the Department's activities to suppress rioting and preserve the public peace.

The Police Commissioner's fundamental responsibility is to manage the Department to meet the public need for police services. Brown asserted that his job was to make sure that his uniformed commanders had the support they needed. He said the decision how to use the police officers, once they were on the scene, was to be made by the those in the field. The Commissioner, himself, told us that he thought the commanders handling the situation had sufficient experience and knew what to do. He considered it the responsibility of his staff to identify problems of resources or tactics and bring them to his attention. He did not closely oversee the police response to the disturbance.

In times of emergency, the public can reasonably expect the Police Commissioner to ask probing questions of key aides on the scene, as well as monitor ongoing developments. The Commissioner should assess operational effectiveness and demand changes where needed. There is no evidence that Lee P. Brown provided this kind of leadership during the first three days of disturbances in Crown Heights. Evaluated against these standards, the Commissioner's leadership and performance were inadequate.

Given the seriousness of the disturbances, it is unfortunate that the First Deputy did not assume a role in coordinating the development and implementation of a different strategy sooner.

As an executive aide to the Commissioner, First Deputy Raymond Kelly was assigned various administrative functions. In an interview, now-Commissioner Kelly said it was made clear to him following his appointment that he was to have no role in operations and that the Chief of Department would report directly to the Commissioner.

Kelly had the authority to intervene in emergency incidents according to the Patrol Guide procedures. However, because he was not formally in the direct chain of command, Kelly had no responsibility for patrol services. Watching events on television Wednesday, Kelly decided on his own initiative to go to Crown Heights. After meeting with Commissioner Brown, a decision was made that tactical changes were needed. Kelly assumed responsibility for devising the new strategy that ultimately restored calm to the area.

It proved to be a critical shortcoming that Commissioner Brown did not call upon Kelly to assume his ultimate role in coordinating the development and implementation of a new strategy. It is regrettable that, under the circumstances, Kelly did not deem it appropriate to seek an active role prior to late Wednesday.

The Acting Chief of Department viewed his role as limited and did not formulate plans to coordinate the Department's response to the unusual disorder in accordance with the normal responsibilities of that office.

The highest-ranking uniformed member of the NYPD, the Chief of Department, is responsible for supervising police performance and directing all the activities of the uniformed and detective services. Other important duties include maintaining a dialogue with community and religious leaders, as well as formulating plans that coordinate activities during unusual occurrences.

As Acting Chief of Department, Borrelli left it to experienced patrol commanders to operate as they saw fit, explaining that decisions regarding the strategy and tactics to be used in particular situations normally "are left to the uniformed command." In a sworn statement, Borrelli said he assured his subordinates at every possible step that he would "make any amount of additional police resources available to them if it became necessary." Throughout the days of the disturbance, Borrelli neither involved in critically assessing the adequacy of the police response, nor in devising the strategy and tactics to handle the disturbance. If he had been functioning as Chief of Department, that would have been one of Borrelli's principal responsibilities.

The Chief of Patrol did not ensure that sufficient police resources were deployed and that appropriate tactics were used to control the disturbance in Crown Heights.

As Chief of Patrol, Mario Selvaggi was primarily responsible for assuring that the Department provided uniformed patrol officers to respond to emergencies, minimize harm, maintain order, and protect individual rights. In the chain of command, first line supervisory responsibility for oversight of the operations in Crown Heights belonged to Chief Selvaggi. Because of limited familiarity with either Brooklyn or key figures in the community, Selvaggi said he deferred decisions to the Borough Commander.

Nevertheless, by virtue of his position as Gallagher's immediate supervisor, Selvaggi was probably better suited than any other Headquarters commander to determine that the Department's response to the disturbance was largely ineffective. However, until his experience with Commissioner Brown outside P.S. 167 on Wednesday afternoon, Selvaggi did not reach that conclusion.

Chief Selvaggi acknowledged that the Department did not react quickly enough to the violence in Crown Heights. He said an insufficient number of police were deployed and there was no coherent plan to deal with the disturbance.

Gaps in communication blocked the flow of critical information through the chain of command.

When asked who would have been reporting directly to him about what was going on in Crown Heights, Brown stated that it was Acting Chief of Department Borrelli. Brown said that he received information from whoever had it during the disturbance, but viewed Borrelli as "the person there who was in charge of everything." However, Chief Borrelli said he had little contact with the Commissioner, except for conversations regarding the Rosenbaum homicide and their mutual presence at meetings with the Mayor.

It appears Brown did not receive a comprehensive account of the events on the streets, nor of the tactics used. For instance, when we spoke with him, the former Commissioner was unaware that on Tuesday Chief Gallagher had ordered his officers to take cover for their safety along the building line because they were outnumbered when crowds began throwing rocks and bottles. When we informed Brown about this crucial incident, he agreed that based upon this information, unknown to him at the time, it would have been appropriate for those at the scene to request reinforcements or devise new tactics.

The Borough Commander spent considerable effort performing community intervention and mediation. He engaged in appropriate rumor control efforts but failed to communicate tactical objectives to end the disorder.

Borough Commander Thomas Gallagher acted as the Field Commander throughout the disturbance period. The Field Commander is responsible for mobilizing police personnel, directing tactical field operations, keeping superiors abreast of progress, and conferring with and enlisting the aid of public officials and community leaders.

Assistant Chief Gallagher spent a significant amount of time meeting with community leaders, mediating their concerns and attempting to dispel the rumors which had contributed to the unrest. He provided less direction, however, regarding the tactical measures needed to end the disorder. He continued to employ a containment and restraint approach even when the measures were shown to be ineffective. Once the disturbance became violent, more forceful tactics were needed to disperse unruly crowds and arrest lawbreakers. Chief Gallagher did not make this shift until it was imposed by Headquarters on Thursday.

Although Chief Gallagher maintained contact with his direct superior, he failed to systematically convene his field commanders to critique the effectiveness of the police response and plan new tactics.

The Field Commander did not activate the Borough's *Unusual Disorder Plan* nor implement alternative arrangements to assure that a functional staff organization was in place to aid him in quelling the disturbance.

A streamlined, clearly-defined command structure is vital to the control of civil disorder. Orders must flow from the top down and be implemented without delay. Officers in the field need to act in a decisive, coordinated fashion.

The *Plan* recognizes this need and defines roles for a Field Commander, Command Post staff, and zone commanders. It was not until Thursday, however, that actions resembling those recommended by the plan were implemented. Although some field supervisors achieved isolated instances of effectiveness, the absence of a coordinated strategy prior to Thursday minimized those gains.

Moreover, there appears to have been some confusion over which officers were filling what positions. While Gallagher stated that support functions were filled by Patrol Borough staff under the direction of Chief Gussman, his Executive Officer, Gussman believed they were handled by Captain Kennedy's staff at the 71st Precinct.

Some specialized support functions vital to disorder control went unfilled during the course of the disturbance. Deputy Chief Gussman should have operated the Command Post, but other responsibilities resulted in his absence from it on Tuesday. Meanwhile, Inspector Kennedy had resumed his role as Precinct Commander and had little to do with the disturbance control detail.

According to Deputy Chief Gussman, the intelligence function was the responsibility of two sergeants who were also involved in community affairs. Finally, many of the sergeants and patrol officers reported that riot shields were in short supply. This suggests a void in the execution of the equipment supply function.

The use of the 71st Precinct Station House as the command post during the first three days of the disturbance hindered the police response as it was too near the location of the unrest and was not adequately equipped.

The field command post serves as the nerve center of the police response to civil disorder. Its design and placement must be conducive to the transfer and assessment of vital information. Thus, it must be accessible and contain the personnel and technology needed to evaluate tactical options and to implement decisions.

Prior to Wednesday night, the 71st Precinct Station House served as the command post. During that time, it was the focal point of a demonstration and experienced numerous other problems, including inadequate telephonic communication and the absence of tactical aids such as incident and deployment maps.

911

During the disturbance, Crown Heights residents relied on the 911 system to alert the police to imminent danger. Callers reported attacks on their homes, unruly mobs on the street, and assaults in progress. Many of these callers were not well-served by the system.

Many 911 calls reporting large bands of angry demonstrators threatening or engaging in property and personal offenses were erroneously incident-coded as "disorderly group" or "criminal mischief." Consequently, they were handled as low priority calls.

When a call is made to the 911 system, the operator classifies the reported incident. This generates a priority level, which influences the speed with which the police respond. In many cases, calls reporting large angry bands of people were incorrectly coded as "disorderly groups," or "criminal mischief." These calls receive a relatively low priority rating. A more appropriate classification would have been "roving band," which receives a high priority classification. Despite intense roving band activity, just two calls received that classification.

The erroneous classification of 911 jobs as duplicates denied police services to some callers.

Many calls were also classified as duplicates even though they reported incidents at different locations. This violated Departmental guidelines, which require that calls specify the exact same incident in order to be considered duplicated. The heavy use of duplicate classifications prevented some calls from receiving a police response.

911 jobs received significantly slower assignment of police resources during the disturbance than during the preceding week.

During the Crown Heights disturbance, 911 jobs resulted in a significantly slower assignment of patrol resources than the week before. The previous week, ninety-five percent of all priority 3 jobs were assigned patrol resources within twenty minutes. During the week of the disturbance, only half of the priority 3 jobs were assigned to a patrol car within that time period. Moreover, during the week of the disturbance, a larger portion of 911 jobs were assigned no police resources.

The Aftermath

The Department has improved its planning and training for future disturbances.

Significant improvements include designating a Deputy Chief to coordinate the Department's planning efforts, the designation of an executive command staff to take charge during future disorders, the acquisition of special equipment, and

the implementation of several new procedures. The completion of a new citywide civil disorder plan later this year should also enhance the Department's ability to handle civil unrest.

The Department has either expanded or plans to expand its training in the areas of mobilization, Command Post operations, and conflict mediation and resolution, all areas we found problems in.

The Department plans to implement a new *911* system with improved operational features.

The NYPD plans to establish two new *911* centers with the first scheduled to open in June, 1995. Each center will be structured to assume responsibility for the entire City in the event of a catastrophic occurrence at the other site. The newly configured system will provide new operational features which could facilitate the special handling of *911* calls from disturbance areas. These include an automatic location identifier and the capability to discern patterns and characteristics of emergency calls.

CITY HALL: OVERSIGHT AND INTERVENTION

While much has been said and written charging that the Mayor, either personally or through others, restrained the police from taking vigorous action during the first days of the disorder, this investigation has uncovered no evidence to support such an allegation.

While a number of people have made this claim, none have offered any substantiation. Interviews were conducted, both with those who have asserted this claim, as well as City Hall and Police Department officials. We also spoke to police officers who said they were held back or restrained. We found no evidence, direct or implicit, of an order by City Hall to restrain the police.

In questioning those who put forward this claim, one sees in almost every case, a process of deductive reasoning. Establishing first that the police response was something less than vigorous, allowing the disorder to continue for three nights before order was restored; the argument then continues that a mayoral directive "must" have been given for such a circumstance to have existed. The

leap of faith required for such a conclusion is simply unsupported by the evidence.

While direct orders were given, forbidding police officers from taking actions on their own without instructions from a supervisor, such a directive, during a civil disorder, is not only standard but prudent. That orders to take action often were not given to line officers, fostered the perception that a Mayoral directive must have been given.

Much of City Hall's focus and effort was directed towards community action, with the mayor and his top staff directly involved.

The City's response was seen by many at City Hall as a bifurcated process. One aspect involved community intervention and rumor control, the other traditional police action. Mayor Dinkins' personal efforts, and those of his top staff, focused on community action.

This effort was designed to reach out to all elements of the Crown Heights community, to create dialogue, disperse rumors, and mobilize community leaders. Matters of strategy and tactics were left to Commissioner Brown and his staff. Several agencies were involved, with many dedicated people working long hours and functioning on little sleep, often at personal risk to themselves. That risk became so great that, at one point on Tuesday, the representatives of one agency were kept off the streets. Unquestionably, the Mayor and his top staff were personally involved in the most direct way.

The importance of community intervention and rumor control is evident. It has been consistently emphasized, from the *Kerner Commission* Report in the 1960s to the *Webster Report* review of the recent Los Angeles riot. The need for swift and effective community intervention, together with an effective police response, is beyond debate.

While it is not possible to demonstrate with certainty what impact these efforts may have had, they were essential. City Hall was quick to recognize this and its efforts were extensive.

City Hall did not have then, nor does it have now, an action plan setting forth the roles of each City agency and establishing a mechanism for coordinating those roles.

Having an action plan avoids the need to develop an effective strategy, for the first time, during a crisis. It is precisely at such a time that calm, reasoned, and in-depth planning is most difficult. Such an effort must clearly be made before a crisis begins if government agencies are to concentrate on effective implementation.

However, City Hall had no formal action plan. It was only after the disturbance began that key aides addressed the issue of which agencies would be mobilized and what role each would play.

Information that the disturbance was not "under control," and that the Police were not acting effectively to end the violence, was provided to top City Hall officials from early Tuesday. Yet, the Mayor asserts that he was unaware of such claims until Wednesday afternoon.

The evidence is persuasive that top City Hall officials, all of whom were in frequent contact with the Mayor, were given crucial information. They were informed by City Hall staff that the situation was not under control, and that it was not being adequately dealt with. In addition, Hasidic leaders asserted that the police were not taking action to protect their community. This information was conveyed well before the Mayor asserts that he was made aware of these circumstances.

The Mayor was clearly receiving accounts of events in Crown Heights throughout the disturbance. However, he does not recall receiving an assessment that the police response was inadequate from either his top aides or from the Police Commissioner.

If the Mayor was told, fundamental questions would arise as to why he did not act on this information. However, if the information was not provided to the Mayor, systemic problems in City Hall's flow of information and decisionmaking process would be revealed.

Vital information calling into question Police Department assurances that the disturbance was under control was made available to the Mayor through a number of sources. This information should have caused him to closely question Police Department claims and to demand substantive responses from top police officials.

The Mayor, apart from what was conveyed to his top aides, had a number of sources of information. The City Hall Police Desk logs provided the Mayor with detailed information, including the fact that on Tuesday evening, stores were burned and looted, and that the police had been "forced out" of the area of President Street and Utica Avenue.

Television news on Tuesday evening reported that the situation was a "mess," with groups "literally fighting each other." By 10:00 p.m., a reporter described the situation by relating that the police "were being pummelled by bottles." "Those without riot gear were literally risking their lives. The police were eventually forced to pull back...." The report ended with the words, "This is as ugly as it gets.... It's escalating. There is no sign it will cool off."

Late Tuesday night or early Wednesday morning, the Mayor was told directly by one prominent Jewish leader that the situation in Crown Heights was out of control, and that the Police were not taking action to end the violence. He asked the Mayor to intervene.

This information should not necessarily have caused the Mayor to reject Police Department claims. It should, however, have spurred him to make substantive, detailed inquiries to police officials, and to demand meaningful responses.

With the information available to him, the Mayor should not have had to wait until his own visit to Crown Heights, before reaching the conclusion that the performance of the Police Department was unacceptable.

The Mayor, as the City's Chief Executive, did not act in a timely and decisive manner in requiring the Police Department to meet his own stated objectives; "to protect the lives, safety and property of the residents of Crown Heights, and to quickly restore peace and order to the community."

As the City's Chief Executive Officer, Mayor Dinkins must take ultimate responsibility for all government action. As pointed out in the *Kerner Commission* Report, in order to make this responsibility meaningful, he must be fully engaged in the entire process, not in community outreach alone, but in police efforts as well. To exercise his authority and control, he must become fully involved in disorder planning and operations. He must be informed about, and comprehend, the overall response and strategic approach adopted by the Police Department.

While there is no expectation that the Mayor be an expert in police tactics and disorder control, it is clearly his responsibility to ensure the effective functioning of the Police Department, as it is for all City agencies. This is especially true during a period in which civil order has broken down. The Mayor must ask the pertinent questions and demand substantive answers.

Among the most basic questions demanding meaningful answers were: is the Police Department doing enough; are there sufficient officers deployed; why are there so many reports of violence and property damage if the situation is "under control;" why has the violence not stopped; and what steps will be taken to ensure that it does?

There is no evidence to indicate that the Mayor was asking these questions prior to his own experience in the streets of Crown Heights Wednesday evening. Only when the Mayor experienced the actual level of tension and hostility, and became, himself, a victim of that hostility, did he realize the "apparent ineffectiveness of the police response in controlling the violence," and that "a lack of confidence in the police response was quickly spreading through the community."

The Mayor clearly understood his authority to question police officials and to provide them with direction. He, in fact, exercised that very authority after returning from Crown Heights Wednesday night, having been shouted down, having his route obstructed on the streets and having been the target of surging crowds, bottles, and rocks. It is unfortunate that this exercise of Mayoral authority did not come sooner.

Part I
Overview

- ▶ Chapter 1: Introduction
- ▶ Chapter 2: The Community of Crown Heights

INTRODUCTION

August, 1991 will long be remembered by the residents of Crown Heights. For four days, this central Brooklyn neighborhood was a community under siege, suffering New York City's worst outbreak of racial violence in more than twenty years. Unlike other episodes in recent history, much of the violence during this civil disturbance was targeted against one segment of the community by another.

Crown Heights is not a typical neighborhood. Black and Hasidic residents live side-by-side, but many harbor feelings of mutual distrust and suspicion.

The unrest was sparked by a fatal automobile accident, and by rumors alleging that medical attention was denied to the victims. On Monday night, August 19, 1991, a car struck two seven-year-old cousins. Gavin Cato died immediately and Angela Cato suffered severe injuries.

Ordinarily, an accident, even one as tragic as this one, does not trigger a riot. In this instance, however, the driver was an Hasidic man in the motorcade of Menachem Schneerson, Grand Rebbe and world leader of Lubavitcher Judaism. As a result, this accident turned deep-seated resentment into rage. When a police officer ordered an Hasidic-sponsored ambulance to remove the Jewish occupants of the car because they were being attacked, while two black children lay bleeding, that rage turned to violence.

In apparent retaliation for the accident, a twenty-nine year old Orthodox Jewish man, Yankel Rosenbaum, was attacked three hours later and subsequently died from stab wounds.

The disturbance continued for three days before relative order was restored. Members of the Jewish community were harassed and assaulted as roving bands of black youths traveled through the neighborhood, sometimes shouting anti-semitic slurs. Rocks were thrown through windows and passing motorists were attacked. Several stores were looted and numerous cars were damaged. Buildings, vehicles, and debris were set afire. Approximately forty civilians and 150 police officers were injured.

On Thursday, the fourth day of the disturbance, the police mounted a concerted effort to restore order. It succeeded.

Even before the violence abated, New Yorkers raised many questions about the City's response. They demanded to know how such violence could continue for three days without effective police intervention. They questioned whether the police and City Hall did everything possible to stop the violence. Some even claimed that police protection was deliberately withheld by Mayor David N. Dinkins and Police Commissioner Lee P. Brown.

When the youth accused of murdering Yankel Rosenbaum was acquitted in October, 1992, many expressed a loss of faith in the criminal justice system.

In response to these issues, Governor Mario M. Cuomo ordered Richard H. Girgenti, the State Director of Criminal Justice, to review the City's response to the disturbance in Crown Heights. The Governor also ordered an investigation into the circumstances surrounding the criminal investigation of the Rosenbaum homicide and the subsequent prosecution.

To conduct these inquiries, two teams of attorneys, investigators, analysts, and researchers were assembled. Nationally recognized police experts assisted as consultants.

The challenges faced were considerable. There were thousands of pages of documents to read and scores of witnesses to interview. It was necessary to develop a comprehensive understanding of the events — more than a year after the disturbance — and to devise criteria for assessing how well government agencies and public officials discharged their responsibilities.

Questions had been raised by various segments of the community. Among those we have attempted to answer are:

- **How extensive was the violence throughout the four-day period?**
- **How prepared was the Police Department to respond to the civil disturbance?**
- **Did the Police Department and City Hall respond adequately to the disturbance? If not, why not, and in what ways were their actions deficient?**
- **How effectively did the 911 emergency system serve the public?**
- **What recommendations can be made regarding future preparation for responding to civil unrest?**

The task of reviewing and assessing the response of City government to the civil disturbance in Crown Heights is a difficult one. With the benefit of hindsight, it would be easy to harshly judge the actions of others. We have sought not to do this. Rather, we have attempted to evaluate the performance of public officials, not solely by the consequences of their actions, but more importantly by the reasonableness of their efforts at the time. We tried to identify the lessons to be learned from the mistakes of the past, in the hope of avoiding those mistakes in the future.

Our goal was to confront the painful realities of the event for the Hasidic and black communities, as well as for the Police and City government. We sought not to blame, but did not avoid holding individuals accountable where accountability was appropriate. In attempting to identify opportunities for change and improvement, it is our hope that others will build upon this effort. Ultimately, it is for the community, government, and all responsible citizens to ensure that the events of August, 1991 are not repeated, and that the causes of the disturbance are remedied.

Part I describes the nature of the tensions between neighboring groups within Crown Heights. It establishes the need to both anticipate the potential for unrest and to begin to resolve the inter-group rivalries and conflicts.

Part II describes the disturbances in narrative and quantitative fashion. Chapter Three provides an account of the events which occurred, attempting to describe the actions of individuals, as well as the response made by governmental agencies on each day of the disturbance. Chapter Four gauges the scope and nature of the disturbance using maps and statistics, and also contrasts the disturbance in Crown Heights with other major civil disturbances in New York City and throughout the county.

Part III, "The Police," begins with an organizational overview of the NYPD, and provides a comprehensive description and assessment of police preparedness through planning and training in Chapters 6 and 7 respectively. Chapter 9 examines the police tactical response to the disturbance, followed by an assessment of how well police commanders fulfilled their responsibilities in Chapter 10. Chapter 11 discusses the police response to *911* calls. Recent improvements in NYPD's disorder-related planning and training are also reviewed in Chapter 12.

Part IV examines the response of City Hall. It examines the decisions and actions of City Hall officials in attempting to bring the disturbance to an end.

Part V summarizes the most important findings of the review and, after taking into account changes which have already been made, recommends further actions to effectively respond to future civil disturbances. The recommendations are specific and lend themselves to practical implementation.

Chapter 2
The Community of Crown Heights

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- ▶ The Community and Its Residents
- ▶ Underlying Tensions in the Community
- ▶ Understanding the Violence

THE COMMUNITY OF CROWN HEIGHTS

THE CROWN HEIGHTS COMMUNITY

The community of Crown Heights is a mosaic of peoples from several cultures co-existing within a section of central Brooklyn. Ethnically and racially mixed communities are common to New York City. Historically, this diversity has helped the City grow strong and tolerant, profiting from the shared richness, values and wisdom of many cultures.

Few communities in New York City today, however, display the tensions found in Crown Heights. These tensions were the precursors to the violence witnessed in August 1991.

The first section in this chapter offers a brief description of Crown Heights, its development and change, and the diversity of culture and creed among the peoples who live there. The second section focuses on perceptions of the underlying tensions in the Crown Heights community. A final section suggests a way of understanding the violence which erupted in the August 1991 disturbances. This chapter is designed to answer the following questions.

- Where is Crown Heights? How has the community developed? Who are the peoples living there?
- What tensions affect relations in the community? How are these tensions perceived within the community?
- How can we understand the violence that occurred there?

Demographic Profile of Crown Heights ¹		
	Number	Percent
Total Population	207,341	100.0
Race & Hispanic Origin		
White Nonhispanic	17,117	8.3
Black Nonhispanic	167,055	80.6
Hispanic Origin	20,335	9.8
Other Nonhispanic ²	2,834	1.4
Persons Under 18 Years	63,838	30.8
Education		
Grade School or less	24,301	11.7
Some High School	45,967	22.2
High School Graduate	56,083	27.0
Some College	44,476	21.5
College Graduate	27,656	13.3
Foreign-born	79,412	38.3
Not a citizen	53,523	25.8
Unemployment Rate		
Males		12.6
Females		9.6
Median Household Income		
Community District 8	\$21,295	
Community District 9	\$25,855	
Income Support Rate³		22.6

¹ Includes Community Districts 8 and 9.

² Includes Asian, Pacific Islander, American Indian, Eskimo, Aleut and others of nonHispanic origin.

³ Percent of population receiving Aid to Dependent Children, Home Relief, SSI, and Medicaid.

The Community and its Residents

The section of central Brooklyn known as Crown Heights is an ethnically and racially diverse community of approximately 207,000 people. It is bordered by Bedford-Stuyvesant to the north, Brownsville to the east, and Flatbush to the south, with Prospect Park as its western boundary. Crown Heights encompasses roughly 400 blocks, with a land area of approximately 3.2 square miles.



Figure 2.1. Brooklyn and its Communities.

The development of Crown Heights parallels that of many other New York City communities. In the early nineteenth century, Crow Hill—as Crown Heights was called then—was a rural village settlement of freed black farmers and craftsmen. Farmland gave way to real estate. Blocks of rowhouses, interspersed

with churches and hospitals, were built to accommodate the large influx of mostly white, Protestant middle-class immigrants from Western Europe in the early decades of this century. The fine masonry and architecture of its homes, its many churches and museums, its verdant parks, pleasant parkways and tree-lined boulevards made Crown Heights a highly desirable place to live for New York's growing urban middle class.

The opening of a subway line to Crown Heights in 1920 generated an apartment building boom, ushering over the next two decades a new wave of immigrants into area neighborhoods. The largest of the immigrant groups were Jewish, Irish, and Italian.

From World War II through the 1980s, however, the community experienced a complete transformation in its racial composition. Many whites moved to newly developing suburbs in the 1950s and early 1960s. African-Americans moved in, mainly from elsewhere in the City and the South. A sizeable immigration of Caribbean blacks to the area, mostly from the English-speaking countries of the West Indies and Guyana, began in the 1950s and continues today. Of the remaining whites who stayed throughout this era, almost all belonged to a community of Lubavitch Hasidim, whose followers had emigrated from Eastern Europe to Crown Heights in the 1940s. These three population groups, described below, constitute the plurality of Crown Heights today.¹

The Lubavitchers. The Lubavitch are orthodox Jews of the Hasidic community called *Chabad Lubavitch*. One of several rabbinical dynastic movements in Eastern Europe, the Lubavitchers emigrated to the United States fleeing the anti-semitic persecution of the Nazi holocaust.² The community settled in Crown Heights, Brooklyn, where leaders of the movement established a worldwide religious headquarters at 770 Eastern Parkway.

Today, approximately 10,000 to 16,000 Lubavitchers reside in Crown Heights. They make up about ten percent of the population.³ Because their religion strictly prohibits the use of motorized transport on Sabbath and Holy Days, it is necessary for the Lubavitch to live within walking distance of their center of religious and social activities on Eastern Parkway. Consequently, their population has become concentrated in the section of Crown Heights that lies below Eastern Parkway and above Empire Boulevard, between New York Avenue on the west and Rochester Avenue on the east—an area of about forty-two blocks.⁴

The Lubavitchers view themselves as leaders of an historic and divinely mandated mission on behalf of all Jewry.⁵ Their worldwide leader is Grand Rebbe Menachem M. Schneerson. In his capacity as spiritual leader and wise

elder, the Rebbe sets the direction for the Lubavitch community and its dealings with the secular world.

Devotion to the Torah and strict adherence to Jewish law are at the core of daily life for the Lubavitchers. They have developed into an enclave community, insular and self-sufficient in many ways. Their children are educated in their own religious schools and Yeshivas. Contact with the secular world is actively discouraged until adulthood. The community also provides for many of its own social service needs and has its own publishing and real estate businesses.

The Lubavitchers remained in Crown Heights, despite the transition in the surrounding community. Blending moral precepts with principles of social solidarity and economic pragmatism, Rabbi Schneerson announced in April 1969 that Jewish law prohibited neighborhood flight. He admonished his followers to act responsibly toward one another, to maintain the integrity of the community they had built and not destroy the fabric of the Lubavitcher community by letting their property fall into the hands of outsiders.

The Black Community. Four out of five residents of Crown Heights are black. Persons of African-American and of Caribbean descent comprise the largest population groups in the community. Although of differing cultures and traditions, these two groups share many needs and desires in common.

The African-American segment of the community in Crown Heights has a sizeable middle- and upper-middle class, largely comprised of physicians, attorneys, business persons and educators. Many have resided for years in the community and invested their time and energies in community and church-related organizations. There is, however, a substantial proportion of the African-American community which suffers from high unemployment and overcrowded housing conditions.

There has been a Caribbean presence in Crown Heights since the 1920s. The influx of Caribbean peoples to the area in the 1950s began to accelerate in the mid-1960s, with the easing of immigration restrictions. The Caribbeans continue to be the most rapidly growing segment of the Crown Heights population, and constitute a significant proportion of the black community there.⁶ There are high rates of unemployment in the Caribbean community, especially among the young. In addition, many residents from the Caribbean segment of the community have not acquired citizenship. About one-quarter of the Crown Heights population is foreign-born; of those, only one in three is a U.S. citizen.⁷

The majority of the Caribbean community works in blue-collar and service industry positions, including the health professions, retail businesses, and civil service. Many hold down more than one job. The rate of homeownership is

high. Caribbean parents, in common with many first and second-generation immigrants, have an intense interest in seeing that their children are provided with a quality education.

While these three segments of the Crown Heights community have many differences, they also share many problems and, hence, have many common needs. An inadequate housing stock has helped to create conditions of overcrowding experienced by many households in each segment of the community. High unemployment combined with a growing population of young persons, and a low rate of citizenship among immigrants have limited the opportunity for many to fully participate in the community. Conditions like these are also frequently associated with other types of social problems, like crime and drug use.

Differing perspectives on these and other problems, along with what had been done about them in the past, engendered a certain amount of tension within the community. It is to the perceptions of these common issues and tensions dividing the black and Lubavitch segments of the Crown Heights community that we now direct our attention.

Underlying Tensions in the Community

“When you start talking about perception, well if you live around here, perception is all you’re left with.”⁸

*Thad Owens, Crown Heights
community organizer*

At the core of the Crown Heights community is a deep-seated conflict between blacks and Lubavitchers which is imbued with racial prejudice, anti-semitism and religious intolerance. Some of the more divisive issues arising from this conflict are described below in terms of the perceptions each side has publicly expressed. We neither assess these issues on their merits, nor sanction the perceptions of either side. Rather, our aim is to arrive at an understanding of how, in the wake of a fatal traffic accident, the embers of discontent already smoldering in the community could ignite in sudden violence and set off a community-wide disturbance which persisted over the next three days.

The Creation of Community Board 9. A central issue in Crown Heights involves perceived parity and fairness in the distribution of community resources. Many concerns between the black and Hasidic communities appear to have their genesis in the redistricting of the community that took place in the mid-1970s.

New York City's community boards provide citizens with the opportunity to influence policies and resource decisions that affect their lives. The present board structure was devised in 1977 under the mayoral leadership of Abraham Beame. Black leaders in Crown Heights anticipated that this community board would be coterminous with the former "community advisory board."⁹ The Lubavitchers, seeking to consolidate their political power, advocated for a redistricting into two community boards. The interest of the Lubavitchers prevailed, and Crown Heights was divided into Community Boards 8 and 9 with Eastern Parkway as the common boundary. Perceiving this as a payoff for the voting support that the Lubavitcher community delivered to Mayor Beame, a coalition of black leaders challenged the fairness of the redistricting in federal court. That case was dismissed.

Since then, the view that the Lubavitchers have dominated and controlled Community Board 9 has influenced many of the perceptions in the black community. Originally, four of the board's nine members were Lubavitchers, who traditionally vote as a bloc. More recently, though, the Lubavitcher presence on the board has been limited to the chairmanship.

The Lubavitchers view themselves as the minority in the Crown Heights community. They contend that they must organize to obtain whatever resources they can, and see nothing wrong in developing effective political organizations to do so.

Many observers believe that the Lubavitchers do not currently wield the political power attributed to them in the late 1970s and early 1980s. Still, the conflict stemming from the division of the community pervades many issues and continues to haunt relations between the Lubavitchers and their black neighbors.

Housing. Black leaders maintain that the majority of housing resources, dating back to the 1970s, have gone to the Lubavitchers. This claim is rejected by the Lubavitchers. They argue that over the past twelve years most housing subsidies dispensed in Crown Heights—including Community District 9—have gone to black families.

Currently, the majority of the membership on Community Board 9 is black, as are all members of the Area Policy Board, which oversees the community's social service and housing agencies. After their recent efforts to obtain three vacant City-owned buildings for subsidized housing proved unsuccessful, a Lubavitcher leader criticized the City for trying to "drive the Jewish community out of Crown Heights."¹⁰

The Lubavitchers insist that it is *they* who suffer most from the severe housing shortage. They contend many within their community must meet the

special needs that result from having large families. In addition, religious restrictions regarding the use of vehicles has resulted in the need for them to live in close proximity to their place of worship.

Black homeowners in the vicinity of the Eastern Parkway headquarters are especially antagonized by Lubavitcher efforts to acquire their property. They complain that they are the targets of unsolicited, persistent and aggressive campaigns by Lubavitchers who offer to buy their homes for exorbitant sums. They claim this practice is an attempt to "push" black people out of the neighborhood. While a 1987 investigation by the City's Human Rights Commission found no evidence of "blockbusting," it did criticize the practice for increasing community tensions. Mayor Koch, in a letter to the Lubavitcher leadership, called it a "form of harassment."

Police Accommodations to the Lubavitchers. There is deep resentment in the black community over what many consider a conspicuous pattern of "preferential treatment" of the Lubavitchers by the Police Department and the City. The most common example of this involves the practice of closing public streets and barricading a service road during the Jewish Sabbath, as well as on other Holy Days of religious observance.¹¹ Buses and other traffic are rerouted and, at times, black residents have been required to identify themselves to gain access to the streets. Neighborhood blacks perceive this as an inequity. "What other religion," asks the Rev. Herbert Daughtry, a outspoken critic of this practice, "consistently takes over the street on their Sabbath and holidays, with the cooperation of the City?"¹²

The Lubavitchers call the street closings a "small accommodation" to the exercise of their religious freedoms, one borne out of genuine concerns for the safety of the thousands of pedestrians in the streets. They note, too, that since the Koch administration, street closings for religious observance have been limited to certain hours, and do not last all day.

Another accommodation accorded the Lubavitchers by the police and City officials has been the police escort of Rebbe Schneerson on his weekly visit to the graves of his wife and father-in-law. Many blacks found it questionable to grant an American cleric the kind of service ordinarily reserved for foreign dignitaries and heads of state. The Lubavitchers contend, however, that the escort was well within the bounds of diplomatic protocol, since the position of the Grand Rebbe, as leader of a global religious movement, is comparable to that of the Pope as head of the Catholic church. Rebbe Schneerson discontinued these weekly visits after suffering a stroke in March 1992.

The "Double Standard" of the Police. A perception embraced by many in the black community alleges that the police are quick to react negatively, and often

with force, to potential law violations that involve black men. This is an ordeal, they maintain, that is rarely experienced by the Hasidic community.

An example of excessive force that blacks still point to is the strangulation death in 1978 of Arthur Miller, a prominent businessman and Crown Heights civic leader. He died while struggling with police in an attempt to intervene in the arrest of his brother for a traffic violation. His death was viewed by the black community as indicative of the limited value placed on black lives.

The Hasidic Anti-crime Patrol. Crime is one of the chief fears in the Lubavitcher community, especially in view of the rise in crime and drug use in recent decades. They assert that the distinctiveness of their appearance and their reticence to interact with the black community make them inviting targets for robbery, bias crimes and other forms of anti-semitic harassment. They assert that the police do not provide them with adequate protection. As recently as January 1988, a group of 200 Lubavitchers "stormed" the 71st Precinct to protest the failure of the police to investigate a fight between black youths and Yeshiva students and to demand increased police protection.¹³

As a defensive action, the Lubavitchers operate civilian anti-crime patrols to increase the level of safety and security.¹⁴ At the inception of the anti-crime patrols in 1977, the black community protested their existence. These patrols, they maintain, are little more than a vigilante group set up to harass black men. They point to their exclusively Jewish membership and cater only to the security needs of the Lubavitch community.¹⁵

The Lubavitchers counter that the patrols provide protection to the entire community, not just themselves, and that membership has always been open to blacks, but none apply. They contend that the patrols stop only people who seem "suspicious" or appear to be coming from outside the neighborhood. Nearly all the crime against both Jews and blacks in the neighborhood, the Hasidim say, is committed by persons from outside Crown Heights.

In June 1978, members of a Hasidic anti-crime patrol beat a sixteen-year old black youth and he fell into a coma.¹⁶ This incident, especially after the unrelated Miller tragedy two days earlier, sparked a storm of protest within the black community. It culminated in a march of two thousand blacks through Crown Heights, flanked by the newly formed black citizens' patrol.¹⁷ Although leaders of both communities pledged their cooperation to integrate the two patrols, their efforts never materialized. The black citizens' patrol soon folded.

The Hatzoloh Ambulance Service. Another issue involving allegations of preferential treatment concerns the Hatzoloh ambulance service. Hatzoloh is a privately funded, all-volunteer service started by the Hasidic community in New

York City. Some leaders in the black community maintain that the ambulance service caters exclusively to the Jewish community.¹⁸ This widespread perception gave credence to the violence-inciting rumor that the Hasidic ambulance service failed to treat the young black accident victims while rushing the Hasidic driver and his passengers from the scene instead.

Understanding the Violence

The conflict dividing blacks and Lubavitchers in the community of Crown Heights has been simmering for years and is rooted in the many differences between them. The Lubavitcher community is ethnically homogeneous, for the most part, with Judaism as the nucleus of its daily life and culture. The black community is more eclectic with many traditions rooted in a diversity of cultures.

Living side by side for decades in this strained coexistence, the subcommunities of Crown Heights have infrequently engaged in overt conflict. The climate of contentiousness which charged relations between these two groups was conducive to the disturbance and contributed to its persistence.

The demographic transition of Crown Heights and the conscious decision of the Lubavitchers to stay increased the competition for government-funded resources, especially for housing. This competition was intensified by the creation of Community Board 9, and the resulting rivalry fueled the conflict between blacks and Lubavitchers. Structuring the perceptions on both sides were charges and counter charges of preferential treatment and inequity in City services, a “double standard” in law enforcement, and an intense fear of crime and resentment of defensive actions against it. Over the years, the ethnic and cultural tensions between the black and Lubavitcher communities became further strained.

The accident on the evening of August 19, 1991 was the catalyst for a disturbance largely because it epitomized many of the perceptions pre-existing in the black community about the Lubavitchers, the police, and the Hatzoloh ambulance service. The police escort was perceived by many blacks as illustrative of the accommodations that the Police Department and the City routinely make to the Lubavitchers. That police did not arrest the Hasidic driver was regarded by many in the black community as yet another application of a “double standard” in law enforcement. Finally—what many that night found most outrageous—the first-responding Hatzoloh ambulance was rumored to have refused to treat the black victims in favor of the Hasidic driver and his passengers.

All of these sentiments could be heard in the violent rage that accompanied the first night of rioting. And all of them echoed throughout the marches and demonstrations during the rest of the week.

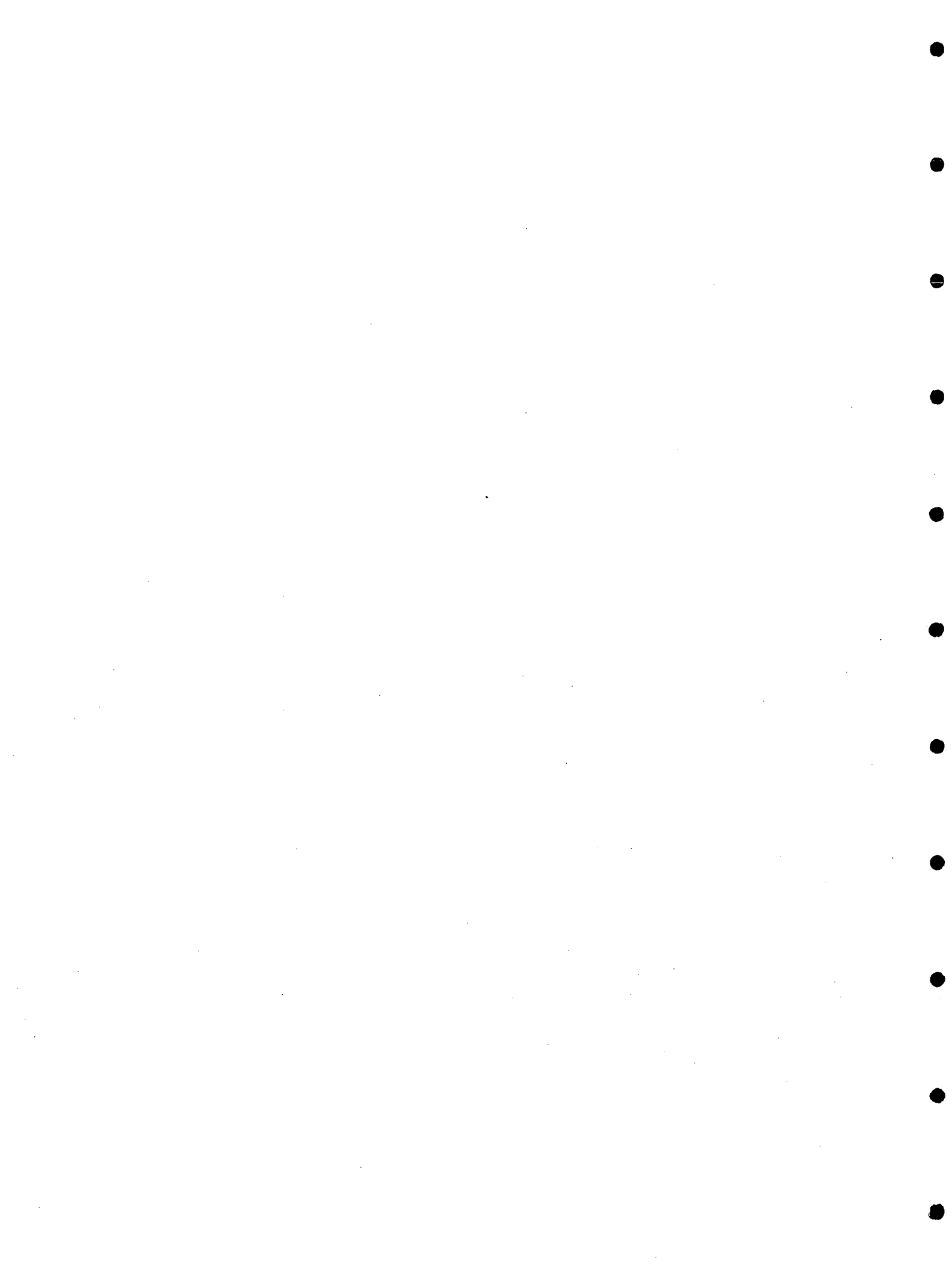
ENDNOTES

1. Since 1950, whites dropped from 85 percent of the Crown Heights population to about eight percent in 1980; the decline was greatest in the ten-year period from 1960 to 1970. Despite a doubling in the number of white non-Hispanics during the 1980s in Crown Heights, their proportion in the population remains at a similar level through 1990. In contrast, African-American and Caribbean-American blacks presently comprise more than 80 percent of the Crown Heights population. New York City Department of Planning, Population Division.
2. *Lubavitch* is taken from the name of the Russian town which was the center of the movement's activities in the mid-1800s. The term *Chabad* is an acronym derived from the Hebrew words *chochmah*, the higher faculties of wisdom, *binah*, understanding, and *daath*, knowledge. It refers to a system of thought, moral teachings, and codes of behavior, which followers believe will promote spiritual growth throughout one's life. The ultimate aim of these teachings is to help bring each person's soul to an ultimate merger with the "Infinite of God," and thereby unify with its origin and source. Like many totalistic religions, *Chabad Lubavitch* regulates a wide range of human activities, both public and private.
3. This range is based from 1990 Census data for the number of white non-Hispanics in Community Districts 8 and 9; the exact population of the Lubavitchers is not known.
4. The majority of the Hasidic Lubavitchers in Crown Heights are concentrated in three census tracts, numbered 333, 335 and 337. In the area where the majority of the Lubavitchers live, they are outnumbered nearly two to one by blacks.
5. The Lubavitch movement is now located in thirty-seven states in this country and twenty-nine countries around the world, and claims a worldwide membership of 100,000. Annual expenditures for the movement's global operations are estimated at \$150 to \$250 million. *Jewish Forward*, April 9, 1993.
6. More than 18,000 persons who immigrated from Caribbean countries between 1983 and 1989—most from Jamaica, Haiti, Guyana, Trinidad, and Tobago—chose to live in Crown Heights. They represented eighty-two percent of all immigrants to the community during that period. *The Newest New Yorkers: An Analysis of Immigration into New York City during the 1980s*, Department of City Planning. New York City, June 1992, pp. 102-103, and Appendix Table 5-7 at p. 199.
7. *Community District Fiscal Needs, Fiscal Year 1993*. City of New York. Office of Management and Budget, Department of City Planning, pp. 168, 174.
8. Michael Powell and Jennifer Preston, "Little Proof Inequity Exists," *Newsday*, September 3, 1991.
9. The new community boards were legislatively required to maintain the boundaries of traditional communities and to consist of no fewer than 100,000 people.
10. Michael Powell and Jennifer Preston, "Little Proof Inequity Persists," *Newsday*. September 3, 1991, p. 21. The statement is attributed to Rabbi Joseph Spielman, Chairman of the Crown Heights Jewish Community Council, in a 1990 letter to Mayor Dinkins.
11. Examples of these practices were described by Captain William Kenny, Executive Officer in the 71st Precinct in August 1991, during an interview.

12. Daughtry, Rev. Herbert, "Inside the Storm: My Role in Crown Heights, August 19-26, 1991," p. 31 (undated).
13. "Fights Prompts Hasidic Protest," *Newsday*, January 19, 1988.
14. The patrol was formed by a Lubavitcher rabbi whose son was killed in a knife attack in June 1976.
15. Five hundred black residents of Crown Heights protested peacefully in front of the 71st Precinct station house and later in front of the Lubavitcher Worldwide Headquarters on Eastern Parkway. "Jewish Anticrime Patrol Brings Protest by Blacks," *New York Times*, July 10, 1977.
16. Two Hasidic men from the patrol were indicted on murder charges, but later acquitted. Joseph P. Fried, "2 Hasidim in Crown Heights cleared in Assault on Black," *New York Times*, February 28, 1978, p. B1.
17. Kiess, Peter, "2,000 Assail Police at Black Rally as Off-Duty Officers Meet Nearby," *New York Times*, July 17, 1978.
18. Started in 1969 in Williamsburg by the Hasidic and Orthodox Jewish communities, the Hatzolah ambulance service has since expanded to 35 ambulances that provide services City-wide, as well as in Orange and Rockland counties. The service is operated entirely on funds raised in synagogues and from private donations; all medical staff work on a voluntary basis. (Rabbi Edgar Gluck, personal communication).

Part II
The Disturbance

- ▶ Chapter 3: Significant Events — August 19-22, 1991
- ▶ Chapter 4: Scope and Nature of the Disturbance



Chapter 3

Significant Events — August 19-22, 1991

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- ▶ Day One: Monday, August 19, 1991
- ▶ Day Two: Tuesday, August 20, 1991
- ▶ Day Three: Wednesday, August 21, 1991
- ▶ Day Four: Thursday, August 22, 1991

SIGNIFICANT EVENTS

AUGUST 19-22, 1991

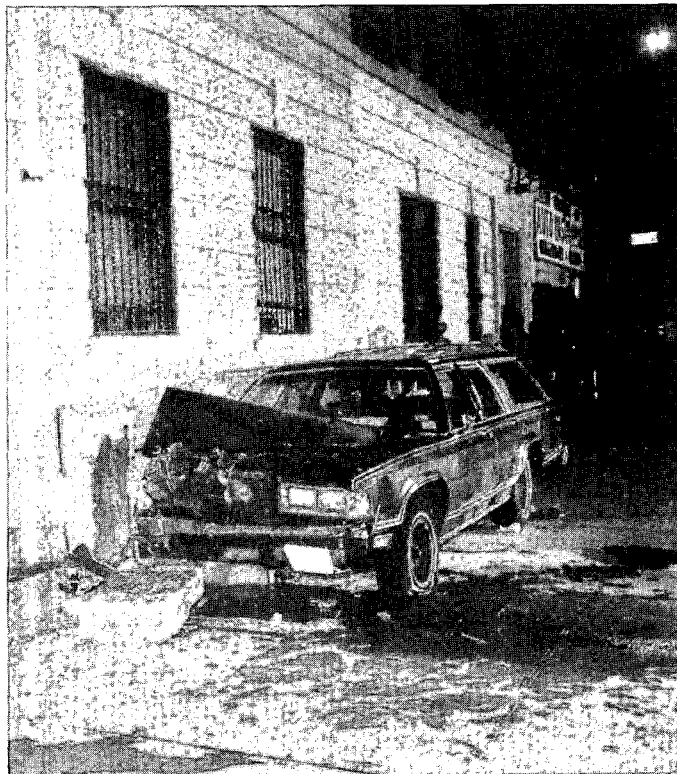
DAY ONE: MONDAY, AUGUST 19, 1991

The Precipitating Accident

On Monday evening, August 19, 1991, a three-car motorcade was carrying Rebbe Menachem Schneerson, Grand Rebbe of the Lubavitch Hasidic community, home from a visit to the graves of his wife and the former Grand Rebbe. Leading the procession was a 71st Precinct police car. The second car carried Rabbi Schneerson. The third car, a 1984 Mercury Grand Marquis station wagon driven by Yosef Lifsch carried three additional occupants, including twin brothers Levi and Yaakov Spielman.

At about 8:20 p.m., the motorcade turned from Rochester Avenue onto President Street, and continued west. The first two cars crossed Utica Avenue, a commercial north-south street, without incident at what witnesses described as "an average city speed." As the station wagon entered the intersection going west, a 1981 Chevrolet Malibu also entered going north. The station wagon collided with the other vehicle, which spun around and came to rest near the northwest corner of President Street.

The station wagon veered out of control and onto the northwest sidewalk. There, it struck two young black children — seven-year-old cousins Gavin and Angela Cato — pinning them beneath it. Eyewitness estimates of the station wagon's speed ranged from 25 to 65 miles per hour. An accident reconstruction specialist hired by the Office of the Kings County District Attorney later estimated the car was traveling at 45 to 55 miles per hour. An expert hired by Lifsch estimated the speed as 30 to 35 miles per hour.



Witnesses reported that it passed a red light. The station wagon's occupants said the light was yellow.

A crowd gathered almost immediately as Lifsch and the others left the station wagon. Bystanders attempted to extricate the children. Lifsch tried to help, but was attacked by the crowd.

Levi Spielman later told detectives that after the accident he tried to call 911 on a portable phone, but was attacked before he could complete the call. Then, he said, a black man pulled him away from the crowd, announcing that: "He's mine and I'm going to have him arrested." That unidentified black man led Spielman to safety, telling Spielman he owed him one.

At 8:22 p.m., Officers Mark Hoppe and John Marinos of the 71st Precinct were dispatched to the accident. At about the same time, the City's Emergency Medical Service (EMS) sent an ambulance. Chiam Blachman, an emergency medical technician for Hatzoloh, a voluntary Hasidic-run ambulance service, heard his dispatcher send an ambulance to President Street and Utica Avenue. He got into his car, which contained emergency equipment, and drove to that location.

Within minutes of the accident, the Hatzoloh ambulance arrived at President Street and Utica Avenue. Moments later, at 8:25 p.m., Hoppe and Marinos reached the site of the accident. An EMS ambulance driven by Anthony Murawski and Kyle Wigglesworth also arrived at 8:25 p.m. According to Officers Hoppe and Marinos, some individuals among the crowd of about 150 people were beating occupants of the station wagon. The two officers radioed for assistance and tried to move the crowd back. Murawski and Wigglesworth called for a paramedic unit and went to the two injured children. An unidentified black man was already giving Gavin Cato cardiopulmonary resuscitation. According to Murawski, the Hatzoloh ambulance was on the scene when he got there. It left moments later.

Police Officers Nona Capace and Richard Colonna responded to the call for assistance. Officer Capace brought the three assault victims to the Hatzoloh ambulance. Hoping to avoid further trouble, she told the ambulance crew to remove them from the scene immediately. The ambulance went to Methodist Hospital. There, Lifsch was given a breath alcohol test by the police. The test results were negative.

Two more EMS ambulances, a paramedic crew, and an EMS captain arrived between 8:25 p.m. and 8:40 p.m. One of these ambulances, driven by Felipe Roman with Paul Radenburg, arrived at 8:28 p.m., as the crew of the first ambulance treated the injured boy. Roman and Murawski began to help the

injured girl, assisted, according to Roman, by a Hasidic man (apparently Chiam Blachman of Hatzoloh) carrying a "tech/trauma bag."

At 8:32 p.m., as Roman and Murawski attended to Angela Cato, Gavin Cato was placed in Roman's ambulance. Accompanied by two paramedics, Wigglesworth, and the unidentified man performing CPR, the boy was taken to Kings County Hospital. Shortly after they arrived at the hospital, Gavin Cato was pronounced dead. A few minutes later, Angela Cato was placed in another ambulance and taken to Kings County Hospital. During the confusion, Carmel Cato, Gavin Cato's father, said he was pushed by a police officer.

At about 9:00 p.m., the Police Department Accident Investigation Squad arrived. They set up floodlights which attracted additional people. A rumor that the Hatzoloh ambulance crew ignored the critically injured children and helped the occupants of the car was already spreading. Spurred on by this rumor, people on the street began to vent their anger. At 9:07 p.m., 911 callers began to report a riot at President Street and Utica Avenue. Blacks and Hasidim were shouting racial epithets at each other and arguing fiercely. Some people were assaulted and groups of black youths were throwing objects at homes and people.

One Jewish resident of President Street told us she was returning home at about 9:15 p.m., accompanied by a black friend. She saw a "huge crowd of black people" between fifteen and thirty years old, but mostly young, throwing bottles and screaming that "the Jews killed the kids." She said that her friend was taunted for accompanying a Jewish woman. As they dodged objects thrown in their direction, police officers stood nearby but did not help. About an hour later, she looked out her window and saw people throwing objects. She said there were relatively few police officers present on the street and that they were not doing anything to control the crowd.

Within the next hour, the crowd grew larger and she described the street "filled with people," screaming and throwing objects right in front of the police. She said that the police were doing nothing, just standing around. Some members of the crowd were trying to tackle police officers as objects were thrown at houses, passing cars, and people.

Robert Brennan, a member of City Hall's Community Assistance Unit, was sent to Crown Heights shortly after the disturbance began. He told a similar story. He said that by 10:30 p.m., rocks and bottles were raining down at the scene of the accident. As he got into his car, it was pelted. He characterized the situation as mass confusion. It was his judgment that a "big problem" was brewing, and that it was not about to end. He said he conveyed his observations to the City Hall Police Desk and his own supervisor, Joseph Gonzalez, telling them that "the [expletive deleted] is hitting the fan."

What started as an accident had grown into a serious disturbance. The Reverend Herbert Daughtry later explained how that could happen. Citing his own perception, mirrored by many members of the black Community, that the Hasidim in Crown Heights received “preferential treatment” in “everything from immigration laws and services to special treatment by law enforcement,” he stated that an “incident that was no more than an accident and which should have been treated as such, because of the years of built-up rage, derived from a double standard and preferential treatment accorded the Hasidim...caused the community to explode.”

Dr. Rufus A. Nichols, a black physician who has practiced in Crown Heights since 1965, expressed similar views. He lives and practices medicine on the same block as Lubavitcher Headquarters. He said the problems between the black and Hasidic communities started in 1969, when his block on Eastern Parkway began to be closed to traffic every Saturday, the Jewish Sabbath. As a result, many of his patients, including the sick and elderly, have been forced to park blocks from his office and walk to see him. He also asserted that the Hasidim have received preferential treatment from the City in the areas of housing and schools.

Dr. Vernal G. Cave, another black physician who practices in Crown Heights, concurred with these views. He told us that the fatal accident alone would not normally have ignited a disorder as intense as the August 1991 Crown Heights disturbance. Rather, the conditions that led to it started many years before. He cited the division of Crown Heights into two community boards to give the Hasidim greater political clout, the street closings, Rabbi Schneerson’s police escort, and better police protection for the Hasidim.

It is beyond the scope of this report to determine whether such assertions are true. However, the perception of preferential treatment is certainly real. It was this perception that fed four days of rioting.

Police Response

Captain Vincent Kennedy was completing his first day as Commanding Officer of the 71st Precinct. At the time of the accident, he was supervising ten sergeants and 100 police officers assigned to a B.B. King concert at nearby Wingate Field, at about 9:00 p.m. Captain Kennedy learned of the disturbance and proceeded to the scene with his Executive Officer, Captain William Kenney. As they arrived, people were throwing debris, bottles, and rocks at the police from the street and roof tops. Kennedy said he ordered three sergeants and thirty officers from the concert detail to report immediately to the scene. He returned

to the 71st Precinct to help coordinate the police response to the escalating disturbance.

At the same time, Captain Gerald McNamara, Brooklyn South Duty Captain, heard a radio code 10-13 broadcasting that a police officer needed assistance, and headed for President Street and Utica Avenue. He, too, arrived at about 9:00 p.m. and found that an unruly crowd of about 200 people had gathered. As he exited the car, a bottle shattered on the roof, cutting the bridge of his nose. Captain McNamara returned to the 71st Precinct. Captain Kenny remained on the scene to supervise the detail.

Between 9:30 p.m. and 9:45 p.m., McNamara telephoned Deputy Chief Kenneth Gussman, Executive Officer for the Brooklyn South Patrol Borough, from the Station House. Chief Gussman mobilized the Brooklyn South Task Force. Chief Gussman, at home in Brooklyn following an 8:00 a.m. to 4:00 p.m. tour, called his superior, Assistant Chief Thomas Gallagher, who was also at home. As Commanding Officer of the Brooklyn South Patrol Borough, Chief Gallagher was responsible for all patrol operations in the 13 precincts comprising that command. He commanded the police response to the disturbances. Chief Gussman then drove to the 71st Precinct. Chief Gallagher drove to Borough Headquarters in the 67th Precinct. From there, Gallagher went to the 71st Precinct, arriving at about 11:35 p.m.

At the Precinct, Gussman said, he ordered seven sergeants and 70 police officers still at Wingate Field to report to the 71st Precinct at the conclusion of the concert. Gussman added that Deputy Chief James McCabe, the Citywide Duty Chief who was also present, suggested using additional Task Forces. Following that suggestion, the Manhattan South, Brooklyn North, and Queens Task Forces were mobilized.

Several high ranking police officials were in unfamiliar positions on August 19, 1991. With the retirement of Robert Johnston as Chief of Department, David Scott had recently been promoted to the position. When Scott began a previously scheduled vacation, Chief of Detectives Joseph Borrelli was designated Acting Chief of Department. Mario Selvaggi, a former Manhattan Borough commander, was appointed that day as Chief of Patrol. Inspector Wilbur Chapman was working his first tour as Commanding Officer of the 12th Division, which includes the 71st Precinct.

Gussman spoke to Borrelli several times during the evening of August 19. During the first call, Gussman briefed him on the situation and told him what staffing had been assigned to the disturbance. A short time later, at about 11:00 p.m., Gussman called Borrelli again for authorization to hold the third platoon (i.e., the 4 p.m. to midnight tour) throughout the Brooklyn South Patrol Borough.

Borrelli gave his approval; and between 11:00 p.m. and 11:30 p.m., Gussman ordered the Brooklyn South Third Platoon mobilized, bringing about 200 officers to the 71st Precinct when their regular tour of duty ended.

These steps summoned about 350 police officers. Many of these officers were not ordered to report to the 71st Precinct until after 10:30 p.m. Moreover, the largest group, the Brooklyn South Third Platoon, was not available until about midnight. Thus, the full compliment was not deployed until sometime between 1:00 a.m. and 2:40 a.m.

As forces arrived, Kennedy, who had set up a temporary headquarters at Eastern Parkway and New York Avenue, assigned them to posts, first at the Lubavitcher Headquarters at 770 Eastern Parkway between Brooklyn and Kingston Avenues, then along the commercial blocks on Utica Avenue and President Street. After staffing these locations, he systematically deployed officers within the 30-block area bounded by Brooklyn and Utica Avenues to the west and east, and Eastern Parkway and Empire Boulevard to the north and south. This fixed-post deployment scheme remained the norm through Wednesday night.

City Hall

The City Hall police desk receives reports from various sources on a twenty-four-hour basis and keeps the appropriate officials informed. The Police Desk began calling key Mayoral personnel within two hours of the accident. Mayor David N. Dinkins was notified at about 10:25 p.m. Herbert Block, the Mayor's Assistant for Constituency Services, and his liaison to the Jewish Community, was notified as he drove home. Upon arriving there, he called Mayor Dinkins, Deputy Mayor William Lynch, and other staff members.

The Police Desk also notified Michael Kharfen, Director of the Mayor's Community Assistance Unit. Joseph Gonzalez, Director of the Emergency Unit, and Robert Brennan, his assistant, were in Crown Heights. Brennan initially went to Crown Heights on his own after hearing what was happening on a radio. He left because the situation was dangerous, but Kharfen ordered him to return. Gonzalez and Brennan drove around Crown Heights observing what was happening and went to the 71st Precinct at about 10:30 p.m. Brennan recalls briefing the Police Desk on the situation and giving them a "blow by blow" description of the scene. Gonzalez stayed in contact with Lynch and Kharfen. Gonzalez explained that they depended on him to get "the pulse of the street." Gonzalez kept them apprised of the severity and danger of the situation. The Police Desk log confirms that Brennan and Gonzalez regularly reported on the events in Crown Heights.

At about 12:30 a.m., Mayor Dinkins went to Kings County Hospital. There, he met Police Commissioner Lee P. Brown and Deputy Mayor Milton Mollen. During this meeting, Brown and other police personnel briefed the Mayor on the facts of the accident and the resulting disturbance. Mayor Dinkins spoke to Gavin and Angela Cato's fathers. The Mayor, Brown, and Mollen also visited Yankel Rosenbaum. They were told by doctors that Rosenbaum was expected to recover. At the hospital Mayor Dinkins spoke with Rabbi Joseph Spielman, Chairman of the Crown Heights Jewish Community Council. Spielman said he asked the Mayor for more police to protect the Hasidic community from acts of violence.

At about 1:00 a.m., Mayor Dinkins, his aides and, Commissioner Brown went to the 71st Precinct. Mayor Dinkins met with Assembly Members Clarence Norman, Jr., Al Vann, and William Boyland. Green, Brennan, and Spielman were also present. Chief Borrelli was asked to address these community leaders; so, for more than an hour, they discussed the accident and the rumors contributing to the rising tensions. In describing the meeting, Brown said: "Our objective was to get the [community leaders] to go out and spread the truth, try to keep things calm...."

During this visit to the 71st Precinct, Mayor Dinkins said he wanted a City Hall headquarters set up in Crown Heights. Since school was not in session, Green suggested P.S. 167. At around 2:00 a.m., the Mayor returned to Gracie Mansion.

Rabbi Spielman said he spoke to Lynch at the Station House describing a confrontation between blacks and Hasidim that he had witnessed at a nearby Yeshiva. He demanded that the City provide adequate security to ensure the safety of the Jewish community. The Rabbi was told that the police were aware of the situation and would do what they could.

Lynch returned to City Hall. He said he met with his staff to discuss how to defuse the situation. They decided to hold a meeting at P.S. 167 the next day in an attempt to establish a dialogue between blacks and Hasidim and to dispel rumors.

The Disturbance Grows

The disturbance grew even as additional police officers arrived on the scene. Although radio cars responded between 9:00 p.m. and 11:00 p.m., too few police officers were present to control the growing crowd. According to Captain McNamara, not enough officers were present to secure the roof tops, hindering operations. At 9:00 p.m., the fifteen to twenty officers at the scene

were trying to hold back the crowd so that the Accident Squad could work. When bottles were thrown at them and the situation could not be controlled, Captain McNamara was forced to order them to withdraw for their own safety.

Shortly after 9:00 p.m., shots were fired at Utica Avenue and Union Street. At 9:45 p.m., a group of people assaulted an officer, punching and kicking him. At about the same time, another officer was attacked while trying to disperse a group of people. At about 10:30 p.m., a third officer was assaulted as several members of the crowd restrained him.

After learning of the accident, Rabbi Spielman, the father of two of the men in the car that struck the Cato children, went to President Street and Utica Avenue. He said there were approximately 500 blacks and Jews in the area and that a police officer told him that the police could not "hold the street and [or] guarantee the safety of the Jews in the area." She advised him to urge the Jews to leave which he did. Then, Spielman went to Methodist Hospital, where Lifsch had been taken.

At 11:00 p.m., a large crowd was still at President Street and Utica Avenue. A tall black man stood on a car and began to excite the crowd. An eyewitness reported that the man shouted: "Do you feel what I feel? Do you feel the pain? What are you going to do about it? Let's take Kingston Avenue!" The crowd streamed down President Street, breaking windows and overturning a car. Between 11:00 p.m. and 11:15 p.m., the 911 system received reports of a crowd shattering windows and damaging cars on President between Utica and Albany Avenues (see Figure 3.1). About 11:10 p.m., a car was burned at Albany Avenue and Union Street.

As the mob travelled west, groups splintered off. One group headed north on Troy Avenue toward Eastern Parkway. Another went south on Albany Avenue to Carroll Street. Between 11:15 p.m. and 4:00 a.m., 911 operators repeatedly received calls about the group on Eastern Parkway. The callers reported fires and large unruly groups destroying property. Four of the calls sought assistance for police officers.

At 11:17 p.m., the group on Carroll Street overturned a car between Kingston and Albany Avenues, threw rocks and bottles at the windows of homes, and assaulted several people. A 32-year-old Jewish man was surrounded by a group of approximately fifteen black males on Carroll Street between Brooklyn and Kingston Avenues, struck by bottles and rocks, and kicked as his assailants chanted "Jews get out of here." Another Jewish man was beaten and robbed on Kingston Avenue at Carroll Street.

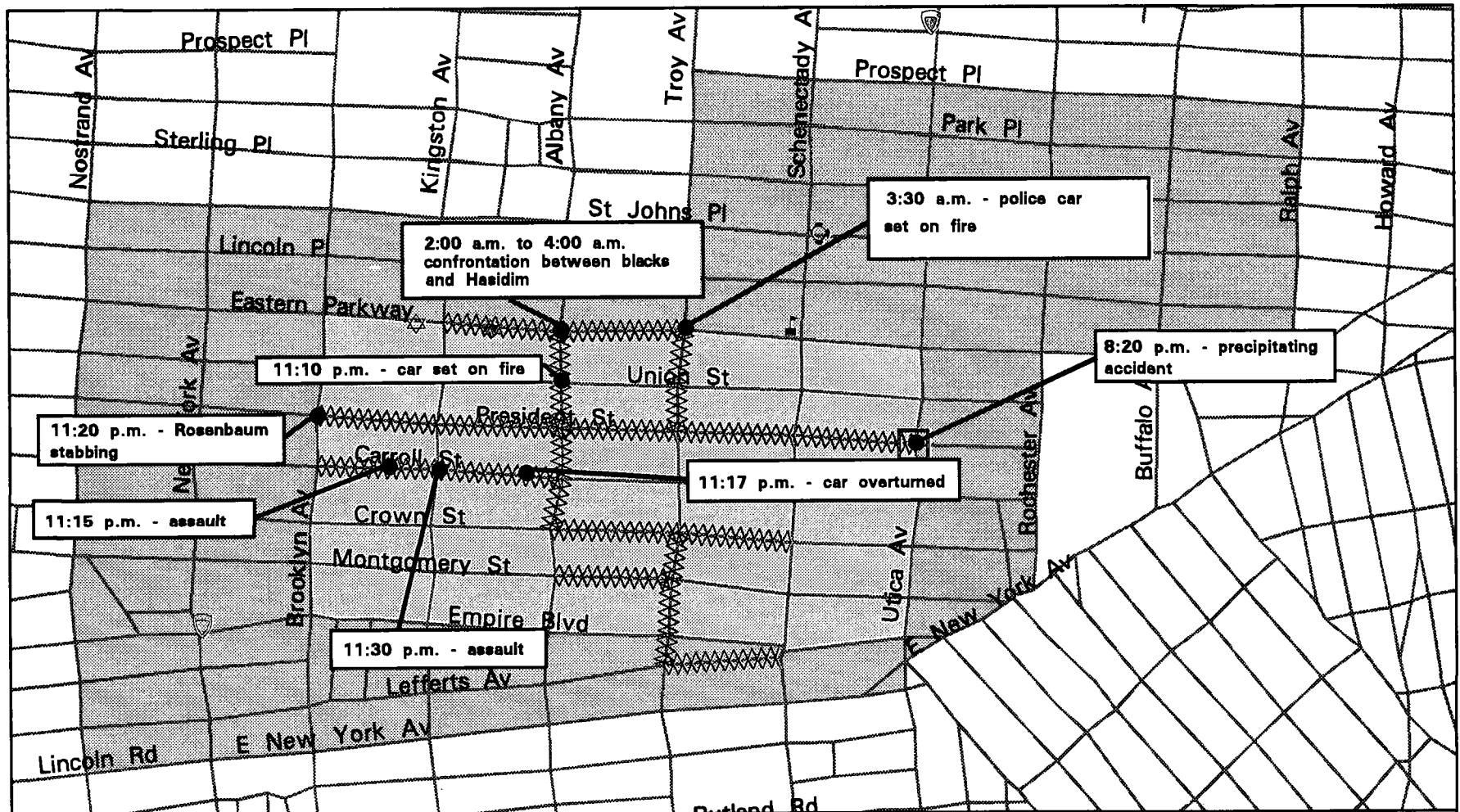


Figure 3.1. Selected Events on the Evening of Monday, August 19, 1991

- | | | | |
|----------------|--|-------------------------------|----------------------------|
| ● Incident | □ Accident Scene | 🏠 71st Precinct Station House | ▨ Original Deployment Area |
| ⊘ Roving Bands | ⊛ World Lubavitcher Headquarters | 🏠 77th Precinct Station House | ▩ Remaining Affected Area |
| | ⊛ Headquarters, National Committee for Furthurance of Jewish Education | 🏫 Public School 167 | |
| | | 🚒 Engine Company 234 | |
- Map provided by DECGIS

Meanwhile, violence continued on President Street. At 11:20 p.m., ten to fifteen youths assaulted Yankel Rosenbaum, a twenty-nine-year-old Hasidic man, at President Street and Brooklyn Avenue. He was stabbed four times. The mob fled as the police arrived. Within minutes, Lemrick Nelson, a sixteen-year-old, was apprehended and brought back to the scene. A fifteen-year-old youth was also apprehended, but later released. Rosenbaum was taken to Kings County Hospital, where he died three hours later. At 11:35 p.m., Brennan called City Hall to tell the Police Desk about the roving bands and the stabbing.

At roughly the same time, Rabbi Spielman was at Methodist Hospital with Lifsch. In touch with Lubavitcher headquarters, he learned of Rosenbaum's stabbing. He said he called Herbert Block, the Mayor's Assistant for Constituent Services and liaison with the Jewish Community. Spielman told Block that small groups were running rampant through the streets, committing acts of violence against Jews and their property. He demanded adequate police protection.

By midnight, a large unruly crowd gathered at Albany Avenue from Carroll to Crown Streets. Within minutes, the group surged east on Crown Street toward Troy and Schenectady Avenues, breaking windows. They veered south on Troy Avenue to Empire Boulevard and set fire to cars and smashed car windows. From 12:25 a.m. to 12:35 a.m., rocks were thrown at homes on Lefferts Avenue between Troy and Schenectady Avenues.

Sometime after midnight at the 71st Precinct, Chief Borrelli told us he gave Commissioner Brown a general briefing. He said he described the accidental death of Gavin Cato, NYPD's mobilization and response to the disturbance, and the rumors circulating in the area.

At about 2:00 a.m., between seventy-five and 250 black youths occupied Yeshiva Chanoch Lenaar's courtyard on Albany Avenue at Eastern Parkway and the Yeshiva's van was set on fire. One hundred to 150 Hasidim gathered across the street. A line of police officers, most without helmets, stood between the groups to keep them apart.

Sergeant Joseph Caramonica, Community Affairs Officer for the Patrol Borough, recalled that Richard Green of the Crown Heights Youth Collective and Assembly Member Clarence Norman, Jr. tried to disperse the black youths. At about 3:30 a.m., the youths in the Yeshiva courtyard began throwing bottles, injuring several police officers. While this incident was taking place, a police car burned a block away at Troy Avenue and Eastern Parkway. The groups began to dissipate at approximately 4:00 a.m.

Monday Night's Assessment

As the situation stabilized, police commanders gathered at the 71st Precinct Station House to plan for the next day. According to Chief Borrelli, the consensus of the police hierarchy present was that there had been a spontaneous eruption in response to the accident, and that it would wind down the next day. He said the police had shown sufficient force, and it was felt they had broken the back of the demonstration. Incidents of this nature were not altogether unusual in that area, and it was decided that proper tactics had been employed.

As early as 10:00 p.m. on Monday night, the media had begun to cover the events in Crown Heights. The *Channel 5 News* at 10:00 p.m. reported that, in the disturbance following the accident, the police arrested a man for firing a .357 magnum and another for shooting a slingshot into the crowd. The reporter on the scene at the 71st Precinct Station House said that police efforts to "calm things down" in the neighborhood were "successful" so far. The *Channel 4 News* at 11:00 p.m. characterized the evening's incidents as "near riot" in which a "wild mob" had beaten the driver of the accident car and shots had been fired at the police.

The accounts in the media the next day were equally dramatic. The *New York Times* on Tuesday morning reported:

Scores of police, some in riot helmets, surrounded the accident scene as more than 250 neighborhood residents, mostly black teenagers shouting "Jews! Jews! Jews!" jeered the driver of the car, a Hasidic man, and then turned their anger on the police.

Some youths threw bottles. A 17-year-old fired a gun at a police officer, without hitting him, and another youth drove his car at a group of officers but did not injure them, the police said.

Tuesday's *Daily News* estimated the size of the crowd at the accident at 500, "some firing weapons, while others pelted cops with rocks, bottles, and refuse from nearby rooftops. Four officers were injured." It also reported on the overturning of two cars, mob attacks on *Channel 5* and *Channel 9* television vans, the firing of a .357 magnum at police officers, the barricading of Lubavitcher Headquarters by police, and the stabbing of Yankel Rosenbaum. The article concluded by quoting Police Commissioner Brown, who said he was "beef[ing] up...police presence in the neighborhood."

Calling the evening's incidents a "race riot," the *New York Post* concluded its account by referring to the last eruption of tensions between blacks and the Hasidim in Crown Heights (the April 1988 march of 300 Hasidim on the 71st Precinct Station House over the beating of a Hasidic man by two blacks).

DAY TWO: TUESDAY, AUGUST 20, 1991

City Hall

The Mayor's staff convened early Tuesday morning at City Hall to sort through information and devise a strategy. According to Michael Kharfen, they focused on measures to disseminate information that would combat the rumors circulating through the neighborhood, and address the conditions underlying community tensions.

Attending this hour-long meeting, in addition to Mayor Dinkins and Kharfen, were Deputy Mayors Lynch and Mollen, Block, Abd'Allah Adesanya, Assistant to the Director of African-American/Caribbean Affairs, Press Secretary Leland Jones, and Richard Green. The Mayor said he instructed several city agencies, including the City Hall Community Assistance Unit, Human Rights Commission, and Department of Juvenile Justice to set up headquarters in P.S. 167. They were to work with community leaders and organizations to restore calm.

Later Tuesday morning, Commissioner Brown and other police officials briefed Mayor Dinkins at City Hall on the previous night's disturbances. At about 1:45 p.m., the Mayor conducted a press conference with Mollen, Brown, and Borrelli. They reported on the situation in Crown Heights and indicated what City agencies, elected officials, and community leaders were doing to restore calm to the area.

During the press conference Mayor Dinkins commented on the Rosenbaum homicide, saying: "Whether that's related, whether that's retaliatory, I don't know. Nor do I know how many other incidents occurred. But I think we need to be very candid. We are in a very tense situation." In discussing this press conference afterward, the Mayor said:

We primarily focused on the facts of the automobile accident that injured and killed the Cato children, and the grand jury investigation of possible criminal liability. The police reported that an accident reconstructionist had been retained and they were engaged in ongoing discussions with

District Attorney Hynes' office regarding the investigation. District Attorney Hynes was out of the country and Deputy Mayor Mollen was in touch with Assistant District Attorneys concerning their investigation. At the press conference, I also identified some of the city agencies, elected officials and community leaders who were attempting to restore calm to the area.

The Mayor did not visit Crown Heights on Tuesday. Deputy Mayor Lynch told us that the Mayor and his advisors felt his presence might exacerbate the disturbance. The Mayor said he remained abreast of what was happening through briefings by Brown and others. Mayor Dinkins said he was informed of a Tuesday afternoon march, and that sporadic disturbances erupted in various parts of the area following that demonstration. He was also told about several more confrontations between groups of black and Hasidic youths.

During the day, Herbert Block served as a communications hub. Block said that he spoke with members of the Jewish community to get information that would give him a sense of what was happening. He went to Crown Heights, where he met with Rabbis Spielman and Hecht, Hatzoloh's staff, and representatives of the Jewish Community Council. During the evening, he met with Jewish leaders at Lubavitcher Headquarters and with the police at the 71st Precinct. On Tuesday, Block took many phone calls from members of the Crown Heights Jewish community. Representatives of Jewish organizations and prominent secular Jewish leaders also spoke to Block. All expressed their concerns about the level of violence and their dissatisfaction with the police response.

Michael Kharfen also spent much of Tuesday in Crown Heights. He said that from 11:00 a.m. until about 3:00 p.m., he attended a meeting at P.S. 167 which was organized by Deputy Mayor Lynch. After that, Kharfen and his staff worked with Richard Green to enlist the assistance of local youths in restoring calm to the area. Kharfen said he and his staff also spent much of their time eliciting information from the police and reporting back to City Hall on what was happening.

Crown Heights was relatively calm Tuesday morning. Traffic moved freely through the streets. P.S. 167 was set up as the headquarters for City Hall operations. Additional police officers were sent to Crown Heights from other areas of the City. At 9:00 a.m., Richard Green arrived at P.S. 167. Fax and telephone lines were installed. Green recalled seeing police horses and motorcycles in the school yard, but there is no indication that the police used these units that day.

City Council Member Mary Pinkett told us that there was a heavy police presence in Crown Heights on Tuesday. She said it looked like five police academies had all graduated that day. Many officers were clustered along Eastern Parkway and at the site of Monday's accident. She said that, unlike the Hasidim in Crown Heights, some black residents complained that there were too many police officers in Crown Heights. Some area residents felt like they were under siege in a police state.

At 11:00 a.m., Deputy Mayor Lynch convened a community meeting at P.S. 167. Clarence Norman, Jr. was there with Lynch, Block, and Kharfen. The meeting, attended by approximately 150 members of the black community and Rabbis Joseph Spielman, Shea Hecht, and Jacob Goldstein, Chairman of Community Board 9, was heated and did not end until 3:00 p.m.

While the purpose of this meeting was to dispel rumors and bring the two sides together, it turned into a forum for grievances. Many of those present viewed the fact that Lifsch had not been arrested as evidence of a double standard. This complaint was voiced repeatedly by many in the black community. Others complained about housing, jobs, and social issues in general. The Rabbis were angry that no attempt was made to dispel the rumors about Hatzolah, one of the purposes, they were told, for the meeting. They also alleged that anti-semitic and threatening statements were made during the meeting and that Lynch did nothing in response. This is a charge Lynch denied.

Members of the Jewish community were calling their leaders. Rabbi Abba Paltiel was a member of the Vaad Hakohol, a community organization that handles secular administration matters for Jewish residents of Crown Heights. He told us that by 11:00 a.m. he was receiving many telephone calls about the violence in the streets the night before. Rabbi Sholom Ber Hecht also reported receiving such phone calls throughout the day. Members of the Hasidic community were terrified and alerted their leaders that protection was needed.

The Afternoon March

Between noon and 1:00 p.m., a crowd formed at President Street and Utica Avenue. Deputy Chief Elson Gelfand, in charge of the detail at that location, said thirty-five to forty demonstrators were at the northwest corner of the intersection. The Reverend Albert Sharpton arrived around 2:00 p.m. and addressed the group, which had grown to about 150 people.

By this time, approximately 400 police officers were deployed in Crown Heights. Chief Gelfand said forty to fifty of these officers were assigned to the intersection at President Street and Utica Avenue.

Fifty or more Yeshiva students were demonstrating in front of 770 Eastern Parkway, demanding increased police protection. They dragged benches from a Synagogue into the street and staged a sit-down at the intersection of Eastern Parkway and Kingston Avenue. This demonstration later grew to about 200 people.

Rabbi Paltiel approached Captain Kennedy in front of 770 Eastern Parkway around 2:00 p.m. Paltiel said he "begged" the Precinct Commander to provide a greater police presence and asked for police officers to be stationed on every corner. He told Captain Kennedy that if such protection were promised, the protesting students would go home. Captain Kennedy said he would consult his superiors. According to Paltiel, Kennedy never responded.

Between 2:30 and 3:00 p.m., a group of approximately 250 black demonstrators at the accident site marched across President Street and toward the 71st Precinct (see Figure 3.2). The police had cordoned off Kingston Avenue between President and Union Streets with barricades to keep the black marchers and Jewish demonstrators separated. Some of the marchers, shouting racial epithets, threw rocks and bottles in the direction of the Jewish demonstrators and the police. The Jewish demonstrators returned the volley and surged forward, but were held back by the police as the barrage of rocks and bottles continued.



The two groups significantly outnumbered the police. At 3:18 p.m., the police broadcast an urgent call for assistance at Kingston Avenue between

President and Union Streets. Numerous callers phoned *911* to report a violent confrontation. Some said that the police were under attack. Others said that there were not enough police to handle the confrontation. Before additional forces arrived, one witness stated, the police ran from the scene. During the confrontation, one officer was injured when she was struck in the head by a bottle. Another was trampled by the crowd.

Dr. Nichols said he saw some of the things that happened on Eastern Parkway. He said he saw the police retreating, but that it seemed to him that this happened because they were outnumbered at the time. From his point of view, it appeared the police were not kept properly informed of what was going on. There was confusion, he said, but he believes the police did the best they could under the circumstances.

Boruch Bush, a professor at Hofstra Law School, told us that he witnessed this confrontation. He said there was much confusion and at one point a group of Hasidim raced past him shouting "they're throwing things, the cops aren't doing anything." Later, he asked Chief Gelfand why the police had no helmets or shields. The answer, Bush said, was: "That's not our style of policing in New York City. We don't use clubs or horses."

Some of the marchers continued to the 71st Precinct. Others spread around the area. At about 4:05 p.m., a *911* caller reported a mob marching up Kingston Avenue near Montgomery Street shouting "death to the Jews." A few minutes later, approximately fifteen youths threw rocks at cars on President Street between New York and Brooklyn Avenues. A similar incident occurred at Montgomery Street and Nostrand Avenue, and again, at approximately 4:20 p.m., near Crown Street and New York Avenue.

While this was going on, the Reverends Daughtry and Sharpton, Alton Maddox, Sonny Carson and Colin Moore met with Chief Gallagher and representatives of the District Attorney's office at the Precinct. They again demanded Lifsch's arrest and the suspension of the police officer who allegedly shoved Gavin Cato's father. When their demands were refused, they staged a demonstration in front of the Precinct for about thirty minutes.

During the evening news, *Channel 4's* Perri Peltz reported that black leaders threatened to "take justice into their own hands" if the driver of the car involved in Monday night's deadly accident was not arrested. The accompanying video footage showed Sonny Carson addressing a crowd outside the 71st Precinct. Demanding that "somebody's got to pay" for the tragic death and injury of the accident victims, Carson appealed to the crowd to take action, saying: "You know, we do a lot of talk. We ain't talking no more." Several voices raised above the crowd cried out: "No more!" "Yeah!" and "Action!"

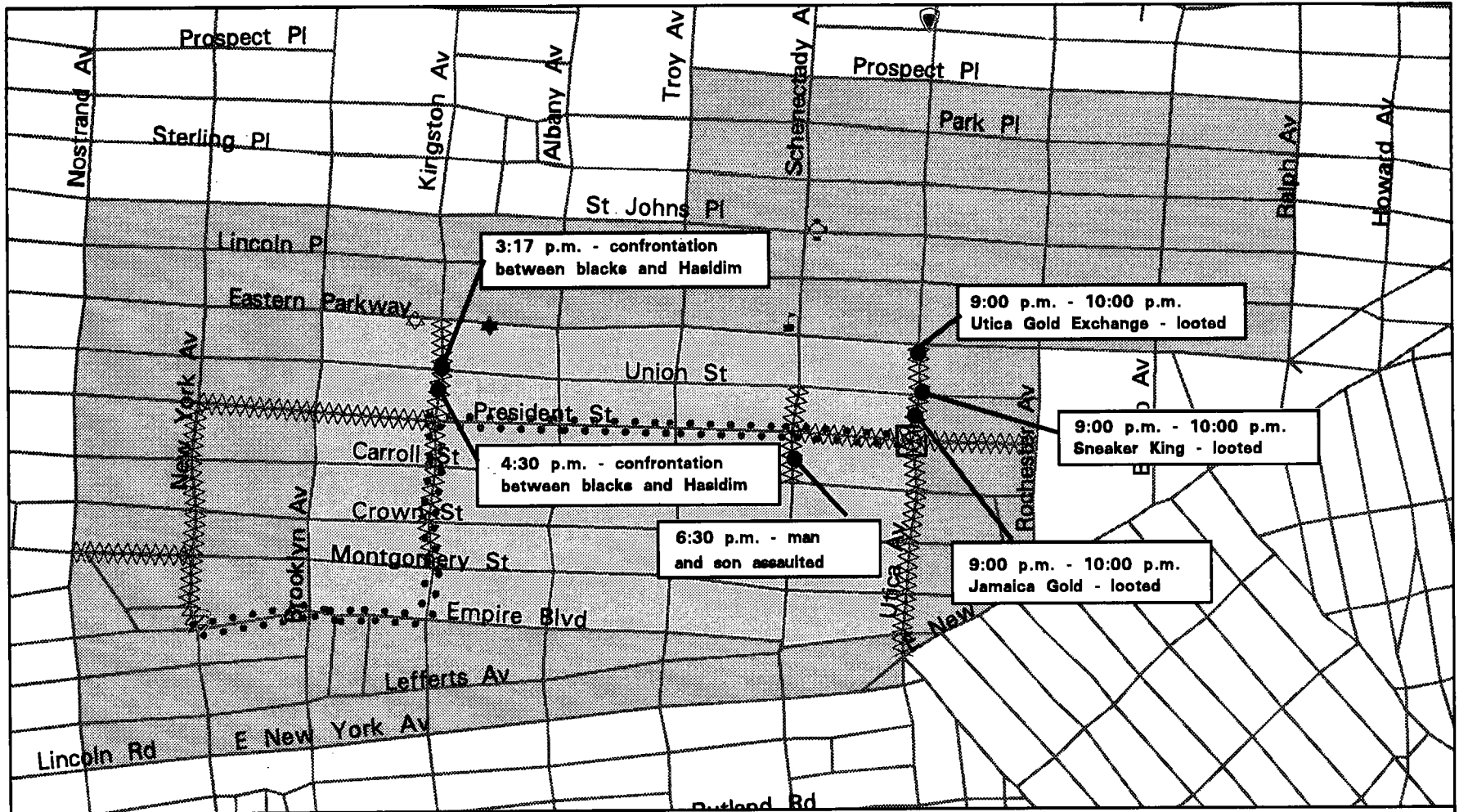


Figure 3.2. Selected Events on the Afternoon and Evening of Tuesday, August 20, 1991

- | | | | |
|-------------------------------|--|--------------------------------|----------------------------|
| ● Incident | □ Accident Scene | 🛡️ 71st Precinct Station House | ◻ Original Deployment Area |
| ⚡ Mob Violence / Roving Bands | ☆ World Lubavitcher Headquarters | 🛡️ 77th Precinct Station House | ◻ Remaining Affected Area |
| ⋯ Route of afternoon march | ⚡ Headquarters, National Committee for Furthurance of Jewish Education | 🏫 Public School 167 | |
| | | 🚒 Engine Company 234 | |
- Map provided by DECGIS

Following this demonstration, the marchers headed back to President Street and Utica Avenue. Again, violence erupted. The demonstrators, accompanied by a police escort, went north on Kingston Avenue toward Eastern Parkway, where they encountered about 200 Hasidim. Reporter Peter Noel of the *Amsterdam News* observed that on the way back to President Street and Utica Avenue the "crowd of teenagers pelted the Hasidim one more time. This time the Jews retaliated with a fusillade of projectiles." Reverend Sharpton recalled that rocks flew, but he was unsure who started it. He saw black youths throw bricks through windows and he ran for cover. Sharpton said that the leaders of the march were caught off guard.

Reverend Herbert Daughtry was present as this was occurring. He was not as certain as Noel about who threw the first rock, but stated that the police took stronger action against the black marchers than the Hasidim.

As the rocks and bottles were flying, the police waded into the marchers, beating and cursing them even as the marchers fled. I saw several Hasidim with what appeared to be broomhandles chasing and beating the marchers. The Hasidim's bottles and rocks were thrown from behind police lines and there was little or no police action to prevent them. While blacks were arrested, not a single Hasid met the same fate. . .

The *Amsterdam News* later reported that as the marchers approached Kingston Avenue, they faced a barrage of rocks from Hasidic store owners. Reverend Sharpton was quoted as saying: "Bricks were coming out of the sky like raindrops."

A police officer sent to the area told us what happened after the marchers left the 71st Precinct. When he and the officers with him saw two officers run toward a large crowd at Eastern Parkway, they followed. He said they had no idea what was happening, but saw about fifty officers were trying to control about 300 people throwing rocks and bottles. He said that no white shirts, that is, officers of the rank of captain or above, were present. Twelve police officers and a civilian were injured during the melee. Two arrests were made.

Gonzalez called the City Hall Police Desk twice to report on the confrontation at Kingston Avenue. Block and Lynch were notified.

The Hasidic Community Organizes

On Tuesday, representatives of various Crown Heights Jewish organizations gathered in Rabbi Sholom Ber Hecht's office. They received reports of what was happening in the neighborhood and organized the Crown Heights Emergency Committee. Throughout the day, members of the Committee made repeated calls to City and State officials to inform them of what was happening in Crown Heights and to ask for protection.

Hecht stated in a sworn affidavit that community leaders called Deputy Mayor Mollen, Block, and Brooklyn South Community Affairs Officers Sergeant Joseph Caramonica and Sergeant Steve Epstein. Hecht asserted that everyone contacted was told that the Jews in Crown Heights were under siege by roving bands destroying property and assaulting individuals. He added that the police were not reacting.

The Committee also contacted the Governor's Office. When the Governor's representatives were asked to send in the National Guard, they said that they could not unless an emergency was declared and Mayor Dinkins requested the Guard's assistance.

Hecht said that he and other community leaders received further reports of violence and continued to call Mollen and Block. "We reminded them," he said, "that our community was under siege, and they continued to respond that the City was doing everything it could." Block estimated he was getting about seventy-five phone calls a day from community members during the disturbance.

Evening on Tuesday

By about 5:00 p.m. the crowd at President Street and Utica Avenue was becoming increasingly violent. Demonstrators blocked the intersection and threw bottles and other debris at the besieged 100-person police detail. Confronted with flying objects, Chief Gallagher ordered the police to withdraw to the building line for their safety. Reverend Herbert Daughtry would later observe, "in Crown Heights, there was as much anger, if not more, directed toward the police as towards the Hasidim."

Between 5:00 p.m. and 5:20 p.m., people hurled rocks and bottles through windows on President Street from Schenectady to Rochester Avenues. The 911 system received more than twenty phone calls urgently demanding police protection. At least seven callers complained that there were few or no police in the area.

One individual described her experience returning home at about this time Tuesday night with three small children. She explained that they were surrounded by a group of youths who blocked the way chanting "heil Hitler," and "kill the Jews" as she tried to enter her building. She claims several police officers standing around did not come to her aid. Shortly after she entered her home on President Street near Utica Avenue, bricks and bottles burst through her windows. She was hit by a rock and showered by shards of glass. She heard the mob outside banging on her door, trying to get in. Afraid they were about to enter, she called 911. She said she was told that the police were in the vicinity and would respond. They did not come despite repeated calls. When her father returned home, the door fell off its hinges. It was held on by only the deadbolt. The crowd had almost broken it down.

The 911 system provided a record of her calls. The transcript conveys the sense of the panic that she and other local residents felt.

At 5:05 p.m., she called 911 for the first time:

....
 Caller: *They're headin' down to my house. They're breaking the windows. Utica and President, please come! Utica and President, please come! They're in front of my house! Get'em here!*
 911 Operator: *What is your address, ma'am?*
 Caller: *Utica and President. [---] President. Please they're breaking my windows. (screams)*
 911 Operator: *Alright, miss.*

She called twice more between 5:06 p.m. and 5:07 p.m. and, panic stricken, again at 5:08 p.m.:

Caller: *Where are they at my...They're going in my...the blacks, they're on my neighbor — my block. [---] President. They're breakin' all the windows on my block.*
 911 Operator: *[---] President?*
 Caller: *Rochester and Utica. Please! Where are the police?!*
 911 Operator: *[---] President?*
 Caller: *Yes!*
 911 Operator: *They're breaking all your windows?*
 Caller: *They're just walking around breaking all the damn windows!*
 911 Operator: *What's your last name, ma'am?*
 Caller: *[Name!] Why aren't they here? Why are they stalling — I'm sick of this!*
 911 Operator: *Police are on the way, ma'am.*
 Caller: *No, they're not, I don't see them!*
 911 Operator: *OK, ma'am, the police are on the way.*

Caller: I am sick of living like this....
911 Operator: Ok, ma'am, calm down.
Caller: What are you doing to us?
911 Operator: Calm down, ma'am, the police....(end message)

At 5:09 p.m. she again called, this time reporting that shots were being fired:

....
Caller: Yes. They are...the black are rioting. They're on my street. They gotta gun. They shot two shots. I am not gonna live like this. Please get the police here.
911 Operator: What's the address there?
Caller: ---...it's corner of Utica and President. We're in between Rochester and Utica.
911 Operator: What's your last name?
Caller: I am not gonna say.
911 Operator: Ok. Anybody hurt?
Caller: No, I don't know. There's breaking glass, I got two shots — two gun shots.
911 Operator: Two gun shots are flying?
Caller: What? I gotta houseful of children, ma'am. I am shaking. What d'you want from me. Just please send the police here, it's a riot.
911 Operator: OK, the police are on the way, OK?

In all, she called 911 six times between 5:05 p.m. and 5:12 p.m., but the police did not come.

By 7:00 p.m., there were at least 350 rioters in the area. Again, the police again came under attack, but did not react.

Between 7:00 p.m. and 8:00 p.m., according to eyewitness accounts, the police came under an intense barrage of rocks and bottles, some coming from the roof tops. The police stood in a line across President Street off Utica Avenue as the rocks and bottles were thrown.

The woman from President Street called 911 again at 7:40 p.m.:

911 Operator: Police Operator. Where's the emergency?
Caller: Listen, I'm on the corner of President and Utica. There is a major riot going on. Are you gonna? You gotta send in the

911 Operator: President Street and Utica Avenue?
Caller: Yes. You've gotta send in the National Guard. They are going. They're throwing things at police, there were gun shots. They are going crazy ma'am. It's out of control and I'm telling

you, you've got to get the National Guard. I don't know what you can do, but its...I've tried to get back to my house. I can't get out of here. I'm on that corner. It's going nuts. O.K. It's just out of control. I don't know what it takes to get the National Guard, but they are

911 Operator: Hello, ma'am. Ma'am slow it down. You've got people out there fighting with bottles and things?

Caller: Bottles are thrown at police! They're throwing it at the van, they're breaking stores! It's a pogrom! You know what that means?! It is bad. If we have to wait for the killings, we're finished. If we have to wait...my door's broken. I'm not safe in my house anymore. I want to get out. How am I gonna get out of here? When are they going to send the National Guard? This is out of control ma'am. Do you know...who do I speak to? Where is the Mayor now?

911 Operator: Ma'am, this is the police emergency line...

Caller: This is an emergency. This is major.

911 Operator: We get the police over there. O.K. You said President Street and Utica Avenue? They're fighting out there with bottles and they're breaking store windows and things like that?

Caller: That's right....

An officer assigned to President Street and Utica Avenue said that the police were like “sitting ducks, targets” for the brick and bottle throwers. He said the bosses, from sergeants on up, kept ordering them to stand fast and not take any action. The officers stood in rows. Some of the officers in the first row had shields, which they used to protect the officers behind them. At one point, he said, the officers in the front had to give up the shields because they were needed elsewhere, leaving them virtually unprotected. Several officers heard shots fired.

Another officer said that about 200 officers were present at President and Utica. He said the crowd started throwing “everything at us,” and that he heard something he would never forget. A “white shirt” (i.e., an officer of the rank of captain or above) told them over a megaphone to “retreat back to the precinct.” He was asked if that was the term actually used; he said he was sure it was and that “everybody ran.” Asked if the officers literally ran, he said they started to walk fast, but were hit with so many bottles and bricks that they began to run.

Robert Brennan was at President Street and Utica Avenue as this was happening. He characterized the situation as totally out of control and said that police officers were going down all over the street. He ran for cover. Then, he saw the police retreating. “They gave up their positions,” he said, “and ran.” Even when the police ran, Brennan said, it was not done in an organized manner. Most ran, but many remained, continuing to be bombarded by projectiles.

Brennan said that he and several police officers commandeered a car and told the driver to leave. As they left, they heard a 10-13 on a police radio and returned. Rocks and bricks were raining down from the roof tops. Brennan was struck in the face and knocked unconscious. The police dragged him into a building. A few minutes later, after regaining consciousness, Brennan said, he got into his own car and drove to the 71st Precinct. The car's windows were shattered and its tires were flat, so he drove on the rims. He saw patrol cars leaving the area, as others were driving back.

Brennan said that he then called Deputy Mayor Lynch at City Hall. He told Lynch what happened, noting that the police were forced to run. Brennan recalled telling Lynch that all hell was breaking loose, with chaos in the police ranks. Brennan told us he emphasized the seriousness of the situation and said it was not safe for his unit to be on the streets. Brennan also reported that he had a similar conversation with Kharfen.

On the 10:00 p.m. news, *Channel 11* reporter Tim Malloy said that "things did not calm down much." He said the police used "great restraint" in separating blacks from Hasidim "until they [the police] were pummelled by bottles." Videotape of the police running was accompanied by the following voice-over commentary: "Those without riot gear were literally risking their lives. The police eventually were forced to pull back."

On the 11:00 p.m. news that night, *Channel 4* reporter Lou Young said, over scenes of young black men throwing rocks and bottles at the police on Utica Avenue, that the violence did not escalate at that time because "the police backed away."

As this incident was occurring, *911* received many calls asking for protection. One such call came at 7:52 p.m. from a woman living on President Street between Schenectady and Utica Avenues. It was initially mischaracterized by the *911* operator as a "disorderly person inside," a low priority call. Then, the call was matched up with another call at a different address. It was assigned to a patrol car at 8:07 p.m. and disposed of as "unfounded." The transcript of this call is reproduced below:

911 Operator: Police operator ---, where is your emergency?
Caller: What? Hello?
911 Operator: Yes, do you need the police?
Caller: What? Hello?
911 Operator: Do you need the police?
Caller: Yes, I need them now — President Street?
911 Operator: What is the address?
Caller: [---] President Street.
911 Operator: [---] President Street?

Caller: [---], right. The guys are throwing rocks through my window?
 911 Operator: Are you between Schenectady and Utica?
 Caller: What?
 911 Operator: Are you between Schenectady and Utica?
 Caller: Yes, yes.
 911 Operator: And someone is selling drugs?
 Caller: Yes.
 911 Operator: What type of drugs?
 Caller: Big rocks, I don't know, they're picking them up in the street and they're throwing them through our windows.
 911 Operator: They're throwing rocks?
 Caller: Yes, they're throwing rocks through the windows.
 911 Operator: Hold on, O.K. what is your name?
 Caller: [Name.] [Name spelled out.]
 911 Operator: What's the telephone number there?
 Caller: [Phone number.]
 911 Operator: [Phone number repeated.]
 911 Operator: What apartment are you in?
 Caller: Downstairs.
 911 Operator: Basement, private house?
 Caller: Private house. First floor.
 911 Operator: Alright, the police will be there as soon as possible.
 Caller: Alright, please I have little children, this is not a joke.
 911 Operator: The police will be there as soon as possible

The woman called back at 8:10 p.m., three minutes after the prior call was disposed of as "unfounded." The 911 operator said that the police would be sent to the location, but no patrol car was assigned.

At 8:33 p.m., another woman on President Street called 911 to report that people, one of whom had a gun, were breaking her windows.

She called again at 8:36 p.m.:

911 Operator: Police operator --- where is the emergency?
 Caller: Yes, they're breaking windows in my house -- a whole bunch of people breaking windows -- throwing stones all the time -- every window in my house is broken already.
 911 Operator: What's your address?
 Caller: [---] President.
 911 Operator: [---] President?
 Caller: My house, it's going to be.... They're breaking all the windows! Are you going to come here.
 911 Operator: [---] President?
 Caller: [---] President.
 911 Operator: [---] President.
 Caller: [---] President (screamed).
 911 Operator: OK here, well you told me someone was there with gun miss.

Caller: Yes, there was a gun there outside. But I can't see who has it.
911 Operator: But now they're breaking your window?
Caller: Huh?
911 Operator: Now they're breaking your window? They don't have the gun no more?
Caller: They have the gun but I can't see who it is.
911 Operator: Alright, I'll send the police as soon as possible. As soon as possible, ma'am.

This woman's calls were characterized by the 911 operator as a "possible crime, firearm, outside," and given a high priority. Nevertheless, the call was not assigned to a patrol car until 10:18 p.m., approximately one hour and forty-five minutes later.

President Street and Utica Avenue was not the only site of significant violence. Smaller groups also spread out into nearby streets throwing rocks at the police, civilians, homes, automobiles, and police cars. A total of ninety-four calls were made to 911 from President Street, Union Street, and Eastern Parkway between Schenectady and Utica Avenues from 7:00 p.m. to midnight. Many people complained that they were harassed or assaulted as the police stood by doing nothing.

One Hasidic man stated that he was returning home from work at about 6:00 p.m. Tuesday night. While stopped at a traffic light at the intersection of Utica Avenue and Eastern Parkway, his car was surrounded by about fifteen youths. Across the intersection, he said, were about 30 police officers. As the police stood by, the youths shouted racial epithets and threw objects at the car. When the light changed, he stopped his car on the other side of the intersection to ask the police why they did not do anything. One officer reportedly just shrugged his shoulders.

Isaac Bitton told us he was assaulted as police stood by doing nothing. He said he was coming home from work with his twelve-year old son. His wife warned him about the disturbance, so he called a car service. The car could not get onto his block, so the driver dropped Bitton off at Carroll and Schenectady. Police vans were parked along Carroll Street, and police officers were standing at both ends of Schenectady at Carroll and President Streets. Bitton asked a police officer if it was safe to walk down the street. He said the officer told him that it was.



About fifty people were on the other side of Schenectady Avenue. When they saw Bitton, they walked around the police and down Schenectady. Bitton said the people were "warmed up and aggressive," and had bricks, belts, and stones. As they approached him and his son, they threw things at them from twenty or twenty-five feet. Someone tried to hit Bitton in the head with a bat, but missed. Then, a brick struck his head and he fell on top of his son, trying to protect him. The mob swarmed around Bitton and tried to pull the child out from under him. He said they beat his son. Someone tried to cut Bitton with a razor, but only his shirt was cut.



While this went on, Bitton said, police officers stood on the corners of Carroll and Schenectady and President and Schenectady. The only people on Schenectady between Carroll and President were the mob and the father and son. One resident on the street saw the incident from her window and screamed for the police to help them. The police, he said, did not come to their assistance. Bitton and his son were rescued by black newspaper reporter Peter Noel. The reporter rushed over and shielded his prostrate body. "Look, stop this [expletive deleted]," said one, "the man is down already."

At 6:25 p.m. an officer at Schenectady Avenue and Carroll Street telephoned 911 to request a code 10-85, an urgent call for additional police to meet an officer or officers already at the scene of an incident. He said that about seventy people were throwing bottles and that he had used the phone because he did not have a radio. A civilian called 911 at 6:30 p.m., saying that "the cops told me their radios are too crowded ...they're not waiting...They need to get more men out here." In response to these calls and several others, a 10-13 was broadcast. The police came, but not soon enough. At 6:32 p.m., a police officer requested an ambulance to help a man whose head was "bashed in."

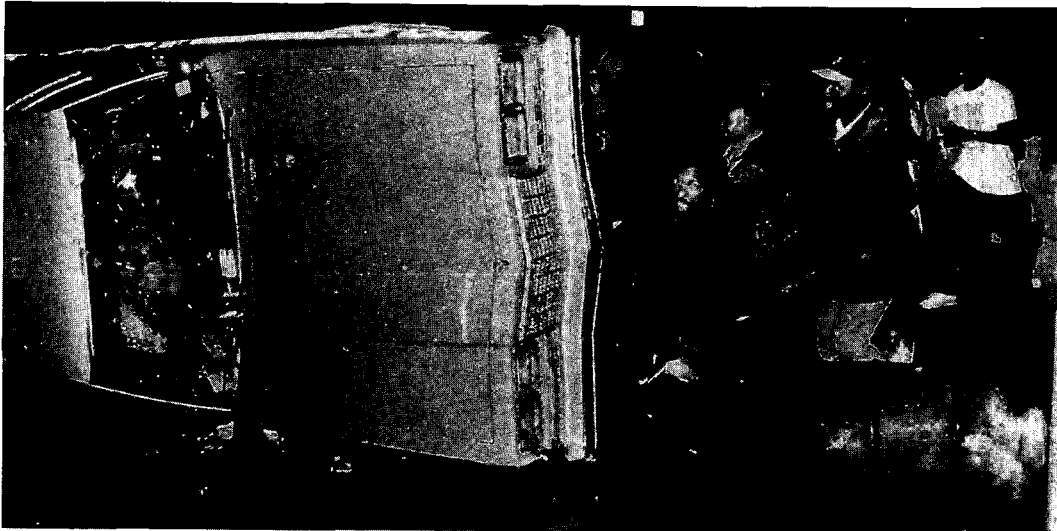
Similar incidents occurred along Utica Avenue from Eastern Parkway to Montgomery Street. At 8:00 p.m., ABC-TV reporter James Dolan and his cameraman were assaulted by a group of male blacks at Utica Avenue and Union Street. An individual approached them, demanding that they turn off the camera. Dolan said the camera was off, but his assailant picked up a bicycle and struck

him with it several times. Then, as the assailant shouted "kill him," fifteen to twenty people chased Dolan and, when he fell, beat him. He suffered broken ribs and someone removed his wallet during the assault. Dolan's cameraman was also assaulted.

The disturbance was spreading. Reports of violence came in from several blocks further west, including Albany and Troy Avenues. At 9:30 p.m., a 45-year-old cab driver was pulled from his vehicle and robbed at Union Street and Schenectady Avenue. Other vehicles were attacked as well, and a car was burned on President between Utica and Schenectady Avenues. At 11:30 p.m., a 46-year-old man was beaten by about ten assailants after he pulled into his driveway at Montgomery Street and Albany Avenue.

Professor Bush told us that upon returning home from evening prayers a black man approached him on President Street between Schenectady and Troy Avenues. He screamed at Bush and threatened to shoot him. Bush said that police officers stood no more than fifteen feet away, but did not come to his assistance. As Bush walked toward the police, the man ran into a building.

The mob targeted police vehicles. At 7:40 p.m., a group of people surrounded a patrol car at Union Street and Utica Avenue. They tried unsuccessfully to overturn the car, damaging it extensively. At about 7:50 p.m., a patrol car was overturned at President Street and Utica Avenue. At 8:00 p.m., a patrol car's windshield was smashed. At 8:10 p.m. and 8:37 p.m., the windows of police vans were smashed. In all, eight police vehicles were damaged Tuesday night, including two set on fire.



Emergency 911 calls were made not only by members of the Hasidic community, but by members of other ethnic groups as well. The following calls were made reporting incidents which occurred between approximately 7:00 p.m. and 9:00 p.m. on Tuesday night:

911 Operator: *Police 884. What is your emergency?*
 Caller: *Yeah, um, there are some guys... stoning Jews on the corner of Lexington?... stoning the Jews!*
 911 Operator: *What are they doing? They're stoning the Jews?*
 Caller: *Yes! They're throwing alot of stones at the Jews.*
 911 Operator: *This is on Lexington? And what?*
 Caller: *Lexington between Troy and Albany?*
 911 Operator: *Do you have an address?*
 Caller: *No. I ain't giving you my address... flinging all the stones in the Jews windows. That's you know...*
 911 Operator: *So you don't want to give your telephone number or nothing?*
 Caller: *No. I just...*
 911 Operator: *Anyone injured though?*
 Caller: *Ma'am, they been throwing big stones and shit!*
 911 Operator: *I'm asking you is anyone...*
 Caller: *No. I, no.*
 911 Operator: *How many people are there?*
 Caller: *Huh?*
 911 Operator: *How many people are there?*
 Caller: *Five.*
 911 Operator: *Black, white or Hispanic?*
 Caller: *Black, okay?*
 911 Operator: *Okay, sir.*

At 8:26 p.m., a man made the following call:

911 Operator: *Police operator, what is the emergency?*
 Caller: *Yeah, listen, behind [----] Crown Street.*
 911 Operator: *What's the address?*
 Caller: *[----] Crown.*
 911 Operator: *You're between Brooklyn Avenue and Kingston Avenue?*
 Caller: *Yeah, and back in the community driveway. These guys are beating up this Jewish lady.*
 911 Operator: *In the back of the community center?*
 Caller: *No, it's the community driveway.*
 911 Operator: *About how many males?*
 Caller: *I don't know — there's about five of 'em.*
 911 Operator: *Five male black?*
 Caller: *Uh huh.*
 911 Operator: *Okay. And this is in the back of the community center driveway?*
 Caller: *No, in the community driveway. The community driveway goes through like the back of the houses.*

911 Operator: Oh.
 Caller: It goes like from like Brooklyn to Kingston.
 911 Operator: Do you know if they have any weapons?
 Caller: Um, I hear the lady screaming.
 911 Operator: You don't know if she's hurt, right?
 Caller: No.
 911 Operator: Do you have any descriptions of the persons who are — you know — beating her up?
 Caller: There's five black males. I don't know, they probably using (inaudible).
 911 Operator: Okay ma'am, do you care to leave your name or phone number?
 Caller: No I don't.
 911 Operator: Okay, the police are over there.
 Caller: Okay.
 911 Operator: Bye, bye.

At 8:39 p.m., a woman reported the following:

911 Operator: Police operator. What is the emergency?
 Caller: They're tearing up on Utica Avenue behind... and they're tearing up the stores!
 911 Operator: Utica Avenue and what, miss?
 Caller: Utica Avenue and Union Street.
 911 Operator: Hold on please. And what'd you say they're doing, miss?
 Caller: They're tearing up the stores. Tearing 'em off. And they're starting a fire in the middle of the street and everything. Do you hear the noise?
 911 Operator: Yeah. They're tearing up the stores?
 Caller: Yeah. They're tearing up the stores and there's fire in the street! They starting fire in the street!
 911 Operator: How many people are out there miss?
 Caller: How many people?
 911 Operator: Yes.
 Caller: Maybe a thousand.
 911 Operator: One thousand, right?
 Caller: Probably a thousand people out here. A thousand. They tearing up... starting a fire!
 911 Operator: Your last name, miss?
 Caller: Huh?
 911 Operator: Your last name, miss?
 Caller: [Name].
 911 Operator: Miss [Name], what's your phone number, please?
 Caller: Huh? I don't want to give up my telephone number cause I don't want to get involved.
 911 Operator: I see. Oh, let me give ya the fire department. Hold on ...
 FD: Fire Department
 Caller: Hello.
 FD: Hello, Fire Department.

Caller: *They're starting a fire over here on Utica Avenue, behind the riots.*
 FD: *Yeah, well... we're unable to come there.*
 Caller: *You're unable to come?*
 FD: *That's right. That's on President and Utica right?*
 Caller: *Yeah.*
 FD: *Unable to respond right now, but we will get there as soon as we can.*
 Caller: *Okay, thank you.*
 FD: *You're welcome.*

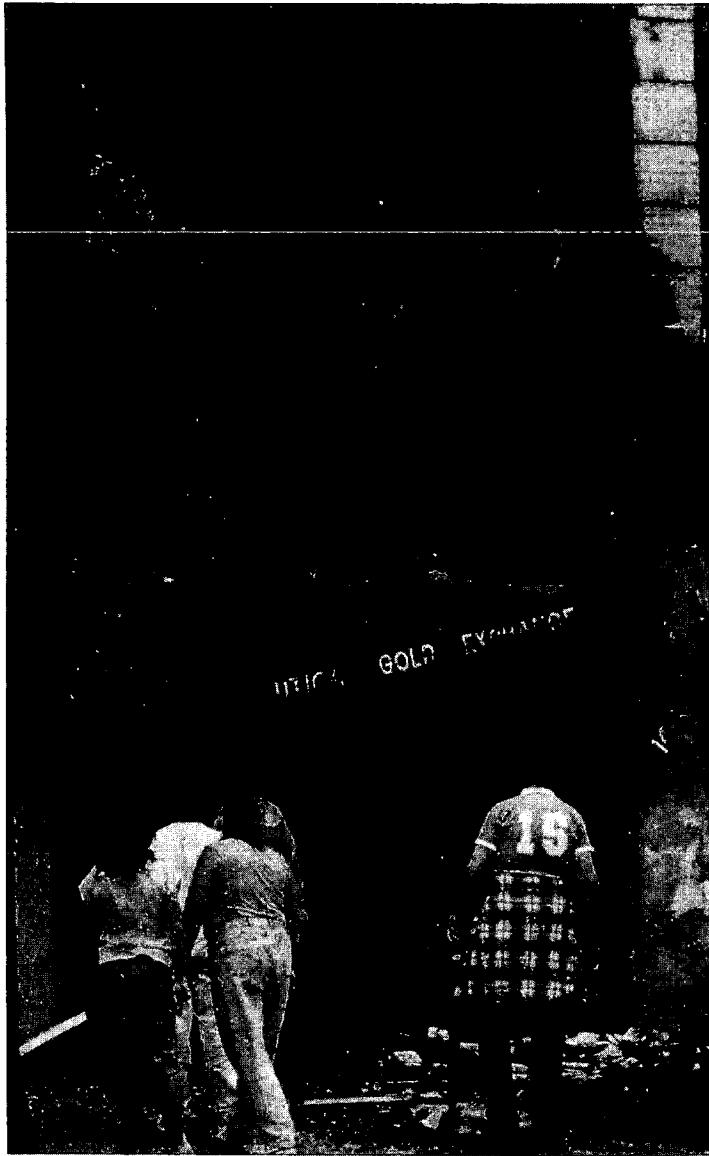
And at 8:52 p.m., a female made the following call:

911 Operator: *... need assistance?*
 Caller: *You need to send some police back around Union and Utica, 'cause these people are going crazy out there!*
 911 Operator: *A unit for Union and Utica Avenue?*
 Caller: *Yes. Every car that comes down the block — they bombing 'em — they, they've got this one man down — there pulling him out of his car!*
 911 Operator: *Union and Utica? And what they doing with the car?*
 Caller: *They're pulling the people out of the cars. All the Jews that come down the block, they take them out of the car and beating 'em up.*
 911 Operator: *Miss, anyone injured?*
 Caller: *Excuse me?*
 911 Operator: *Is there anyone injured?*
 Caller: *I don't know. I just ran in my house and I said it don't make no damn sense. All these people they don't even know what the [expletive] they out there for.*
 911 Operator: *How many people are out there now?*
 Caller: *I don't know, miss, it's a whole crowd of people out there! It's a army of people! You need to send somebody back around.*
 911 Operator: *Listen, ma'am. We have police out there, okay?*
 Caller: *Okay.*
 911 Operator: *It's alot of police out there. Why don't you go and speak to one of the police? It's police out there ma'am.*
 Caller: *I just came from outside!*
 911 Operator: *Ma'am, as you say, it's alot of crowd out there. It's police out there at the location. Anyone out there got injured?*
 Caller: *I don't know.*
 911 Operator: *Okay, bye.*

Accounts of Looting

The mob looted and burned local stores. Between 9:00 p.m. and 10:00 p.m., looters struck the Utica Gold Exchange. This jewelry store was also firebombed. New York Fried Chicken, Sneaker King, and Eli Jamaica Gold, another jewelry store, were also looted. Joseph Gonzalez called City Hall at 10:20 p.m. to report on these incidents.

In the case of at least one store, the Sneaker King, the police stood by for a number of hours without intervening as the store was looted. A nearby storekeeper said in a written statement that:



I was at Utica and President by the restaurant. Everybody just [ran] to Sneaker King trying to pull the gate up. The New York City Police [were] at the next corner. They did not move so the youngsters continued to try to get the gate open. After about an hour they finally opened it, running in and out with jeans, sneakers, etc., and the police just watch [ed] until the crowd grew smaller and smaller. They finally came over....

Another merchant also watched the looters break into the store “while the police just stood by...the cops watched them try to pry open the gate for nearly three hours....”

An officer confirmed these accounts. He was near the Sneaker King store and saw a group of youths breaking into it. He said the superior officers at the scene told their subordinates to stand fast and not break ranks. He believed there were more than enough police to form arrest teams, but any officer who moved, he said, was threatened with suspension. As a result, he said, they stood by and watched the store get looted.

These accounts are supported by 911 calls. At 5:16 p.m. a caller reported that the Sneaker King store was being broken into. Others called about the looting at 5:38 p.m., 8:53 p.m., 8:54 p.m., 8:57 p.m., 9:35 p.m. and 9:45 p.m. Four people were finally arrested at 10:15 p.m. for looting the store, a full five hours after the first call. Three other stores on the same block — New York Fried Chicken, the Utica Avenue Gold Exchange, and Eli Jamaica Gold — were looted during this period of time. No one was arrested for breaking into or robbing any of those stores.

Many of the officers we spoke to said that during the disorder their superiors ordered them to “hold the line” or “stand fast,” and prohibited them from making arrests. Chief Gallagher denied that officers were told not to make arrests, but acknowledged that “officers were told not to take independent actions.”

Tuesday Night's Assessment

A heavy rain helped to clear the streets of demonstrators by midnight and there were no further reported incidents Tuesday night. According to Chief Borrelli, during the evening the streets began to heat up with activity; but when it rained, things quieted down. Borrelli went home convinced that it was all over, but would continue the details on Wednesday as a precaution.

The neighborhood had clearly been the scene of significant destruction and lawlessness. Twelve arrests were made: six for assaulting police officers, four for looting, and two for refusing to disperse.

At 7:00 p.m., Pablo Guzman of *Channel 5* news reported live from Crown Heights. He said: “What we have here is a mess. It's a dangerous situation. The groups are literally fighting each other. It's enough to make you sick.”

Tim Malloy of *Channel 11* news had a similar comment at 10:00 p.m. Also reporting live, he said: "This is as ugly as it gets... It's escalating. There is no sign it will cool off."

Brennan remembered an overwhelming feeling on Tuesday, as he drove around Crown Heights, that the neighborhood was a "tinderbox." He said he conveyed this feeling to Gonzalez and Kharfen throughout the day. Given the situation on the streets, and the extent of criminal activity taking place, he said he could not understand why so few arrests were made.

Gonzalez expressed similar views. He said that when he left Crown Heights at midnight, he believed that the situation was out of control, and that nothing would change until the police "took back the streets." He was "horrified" by what he was witnessing. That civilians and police could be injured, windows broken, and patrol cars burned in the streets with almost no police response shocked him. It was apparent, he said, that the police were held back and even they were complaining that their "hands were tied." Brennan heard similar complaints from the police.

Gonzalez said he told Kharfen and Lynch many times that the situation was out of control and that the police were not reacting. He also told Kharfen and Lynch that he believed the rioting would continue until the police shut it down.

Brennan and Gonzalez were not the only ones who realized that the police response to the growing disorders had been ineffective. Howard Rubenstein, a prominent secular Jewish leader, received many calls during the day telling him that the situation was out of control and that the police were not acting to end the violence. He told us that he first called Mayor Dinkins to tell him this late Tuesday evening or early Wednesday morning, and then made a number of additional calls to the Mayor raising the same issue.

Deputy Mayor Lynch also realized that the situation was out of control. Tuesday night, weary from long hours without sleep, he sat on a bench in City Hall and spoke to a *New York Daily News* reporter. He said he hoped aides on the street, talking, would cool things off. The following account of Lynch's comments appeared in Wednesday's *Daily News*:

"We're not sitting here wringing our hands" he said. He added, "its not easy. Where there are people who are hell-bent on confrontation, the thing is quote-unquote out of control."¹

The reporter ended the story by noting that as Lynch talked about dealing with the root causes of the anger, he was interrupted by a call from the Mayor.

DAY THREE: WEDNESDAY, AUGUST 21, 1991

Morning and Early Afternoon

At City Hall, Mayor Dinkins met with his advisors. He elicited suggestions from Lynch, and Mollen, Kharfen, and others on how to deal with the situation. According to Kharfen, the Mayor repeatedly asked "where do I come in to help the situation?" Mollen said it was decided that the Mayor would go to P.S. 167 to meet with community members, visit the Cato residence, and then speak to leaders of the Jewish community. Chief Gussman told us that the police handling the disturbance were unaware of this meeting until late in the day.

Dennis de Leon, Commissioner for the New York City Human Rights Commission, told us that early Wednesday he decided to have his staff of about 15 people wear their red Human Rights Commission jackets and walk the streets with volunteers from other agencies. They were to tell people that P.S. 167 was open for use in obtaining information about people who had been arrested and to pass out "Increase the Peace" flyers.

Mayor Dinkins stated that Commissioner Brown briefed him on the situation in Crown Heights before a 1:00 p.m. press conference. At that press conference, Commissioner Brown reported that thirty-five officers had been injured and that the police had made several arrests. The Mayor recounted that both he and the Police Commissioner had responded to charges that the police had been overly aggressive in handling Tuesday's demonstration. Brown praised the police for showing "great restraint" when rocks and bottles were thrown at them.

The Reverend Al Sharpton and Attorney Alton Maddox also held a press conference on the steps of City Hall. They gave the City seventy-two hours to arrest the driver of the car that struck Gavin Cato. If that was not done, they said, they would mobilize their forces to make a citizens' arrest.

Herbert Block continued to receive complaints from the Hasidic community. At about 8:00 a.m., funeral services for Rosenbaum were held in front of 770 Eastern Parkway. Block was there. An estimated 1,000 to 2,000 Hasidim attended, which, according to Block, caught both City Hall and the police by surprise. He said that what was supposed to be a simple drive-by of the funeral cortege past 770 Eastern Parkway turned out to be much more. The Hasidim set up microphones outside of the Lubavitcher Headquarters after prayers

were said and made speeches. Approximately 500 Hasidim followed the hearse South on Kingston Avenue, past the 71st Precinct en route to Kennedy Airport.

Block followed the procession to the 71st Precinct. Several people asked him why the City allowed the rioting to continue and why the Mayor was not at the funeral. Block said the Hasidim told him that the police were not protecting them and were not taking any action. When he went into the 71st Precinct, Block conveyed these concerns to Captain Kennedy who had heard similar complaints.



On Wednesday morning, Rabbi Sholom Ber Hecht, leader of the National Committee for the Furtherance of Jewish Education, spoke again to the Mayor's office and members of the Police Department. He told them that the violence was not going to end and that he feared it would intensify. He said a crowd was already forming at President Street and Utica Avenue and he was afraid that area would erupt in violence again.

At 2:00 p.m., the Crown Heights Emergency Committee met at 824 Eastern Parkway, the National Headquarters for the Furtherance of Jewish Education. Rabbis Hecht, Paltiel, and Butman attended. Block, Mollen, Brown, Borrelli, Selvaggi, and Gallagher were also there. Brown was told that a crowd was gathering and would march on Eastern Parkway. The community feared there would be more violence. Hecht said that committee members asked why the police were not making arrests and demanded increased protection. He also

said that the committee identified specific streets where violence against Jews was particularly intense and asked for twenty-four-hour police protection there.

Mollen and Brown assured the gathering that the City would restore peace to the area. They did not, however, describe what specific steps the City would take, and asserted that no one had ordered the police to refrain from making arrests. Block said that he called the Mayor and told him about the situation after this meeting.

Police Department officials independently interviewed said that during this meeting a man burst in saying that 100 blacks were at President Street and Utica Avenue with baseball bats. However, when a temporary headquarters vehicle in the area was called, the situation was said to be calm. Later, Borrelli added, they received a report that a Hasidic women had been raped. When he called the 71st Precinct, though, he was told that no such complaint had been filed. Borrelli said that he considered such reports to be examples of the rumors and half-truths that were circulating.

At 4:00 p.m., Mollen went with Block to a meeting of the Jewish Community Relations Council in Manhattan. Rabbi Paltiel said he told Mollen that "Jews, because they were Jews, were being physically attacked and that their property was being destroyed." He also said that he told Mollen the police were not intervening and asked him to bring in the National Guard. Mollen said the City knew what was going on and would act accordingly.

The Afternoon March

After leaving 824 Eastern Parkway, Commissioner Brown went to the 71st Precinct, the Command Post for the Crown Heights detail. While there, he met with elected officials, religious and community leaders. He was aware that a march was planned for that afternoon. Police Operations Unit logs show the march was scheduled for 4:00 p.m.

Deputy Chief Elson Gelfand, assigned to Patrol Borough Brooklyn South, stated that between 3:00 p.m. and 4:00 p.m. a large group of demonstrators gathered at President Street and Utica Avenue. Numbering 300 to 400 people, they marched west on President Street shortly after 4:00 p.m. (see Figure 3.3). The march proceeded through the streets arriving at Lubavitcher Headquarters at approximately 4:50 p.m.

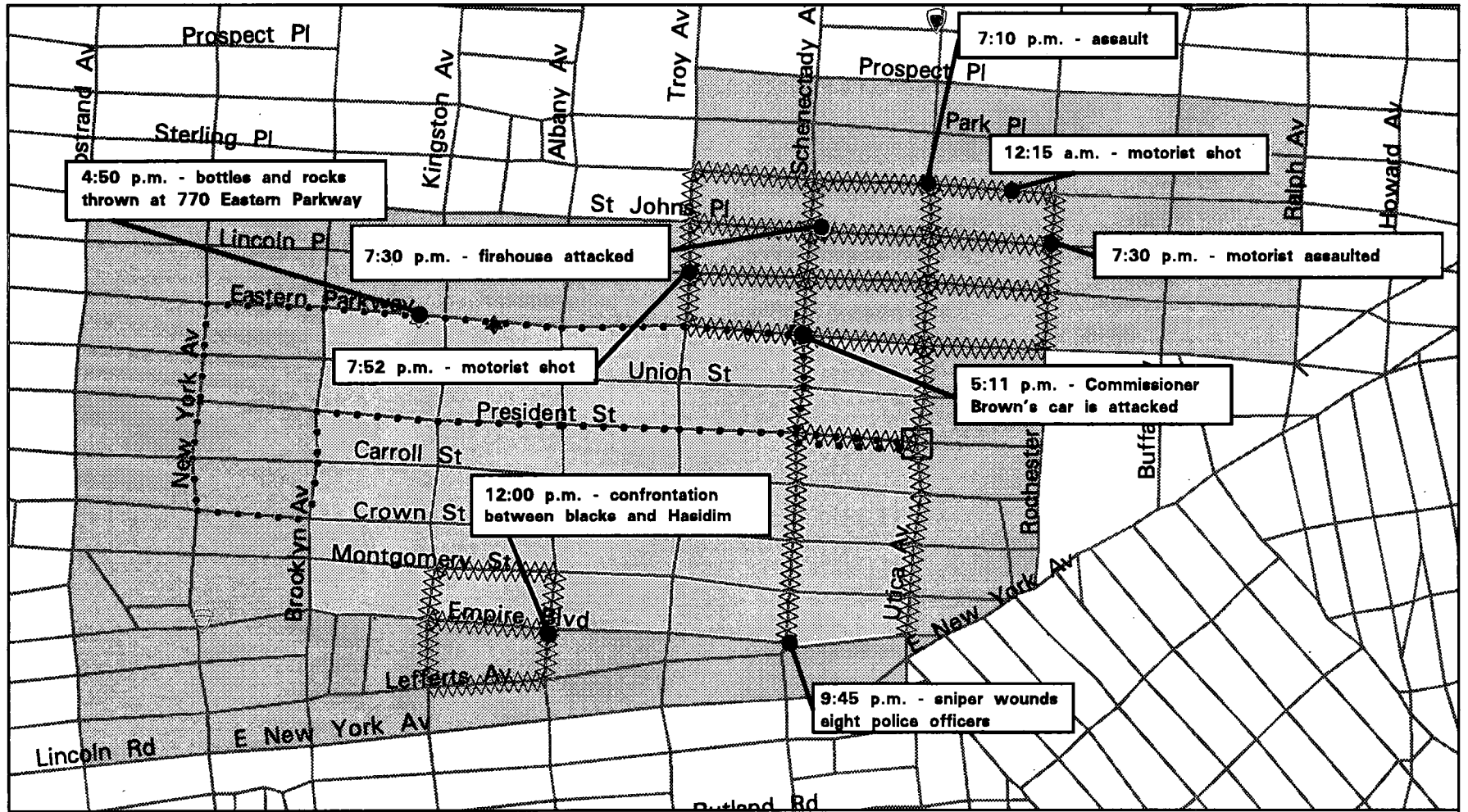


Figure 3.3. Selected Events on the Afternoon and Evening of Wednesday, August 21, 1991

- | | | | |
|----------------------------|--|--------------------------------|----------------------------|
| ● Incident | □ Accident Scene | 🛡️ 71st Precinct Station House | ▭ Original Deployment Area |
| ⚡ Mob Violence | ⚡ World Lubavitcher Headquarters | 🛡️ 77th Precinct Station House | ▭ Remaining Affected Area |
| ⋯ Route of afternoon march | ⚡ Headquarters, National Committee for Furtherance of Jewish Education | 🏫 Public School 167 | |
| | | 🚒 Engine Company 234 | |
- Map provided by DECGIS

Violence erupted. People in the rear pelted the building with rocks and bottles, shouted "heil Hitler," and burned an Israeli flag. About 100 Hasidim gathered and responded by also throwing rocks and bottles. Riot-equipped police kept the groups separated. Four assaults were reported and an eighteen-year-old man was arrested for throwing a rock at a police officer. At Carroll Street, bottles were thrown at the police from a roof top. On the corner of Eastern Parkway and Utica Avenue, a group of people overturned a patrol car.



At 5:11 p.m., the march reached Schenectady Street and Eastern Parkway just as Commissioner Brown arrived at the intersection for Mayor Dinkins' visit to P.S. 167. The Mayor had not yet arrived. A group broke away from the crowd and converged on Commissioner Brown's car, pelting it with rocks. So few officers were in front of the school that they had to retreat through the gates and into the school itself. A 10-13 for "Car One" (i.e., the Commissioner's car) was broadcast and additional police officers came streaming in. At least nine police officers were injured during the disturbance.

Brown had told reporters less than a half-hour earlier that everything was under control.

As the police responded to Schenectady Avenue and Eastern Parkway, some demonstrators moved to President Street and Schenectady and Utica Avenues. Assaults and incidents of bottle throwing were reported. Several police

officers were injured by thrown bottles and bricks and someone shattered a bus window. A number of police cars were also damaged. Again, the record of calls for assistance suggests that the police were outnumbered.



Reporting live from the street outside the school, Chris Borgen of *Channel 2 News*, who witnessed the attack and whose cameraman sustained a head injury from a rioter's brick, gave this account:

What happened was a group which began about three blocks away, about 150 strong, began to march down Eastern Parkway. They swelled to about 400. As they approached the school itself, and this phalanx of media vans, they began to unleash rocks, bottles, and bricks — an arsenal came out of that crowd — began to bang against the trucks, began to hit the cameramen and the cameras, of course, and the police officers themselves. Everyone took safety inside of the schoolhouse until they passed.

The Mayor's Visit

The driver of Mayor Dinkins' car had difficulty getting onto the block. Deputy Mayor Lynch described how "a group of kids" came running past the school throwing rocks and bottles at reporters gathered there.

...On the way out, I'm in the car, I'm on the phone and we get on Eastern Parkway and the place is blocked off. To me police [were] everywhere. I'm wondering what's happening and what has happened is a group of kids had come through past the school running, threw rocks, bottles at reporters that were at the school and they wouldn't let the Mayor through. In fact, the police would not let the Mayor through. That's....That concerned me deeply. I...They held the Mayor up. I went through, down to the school and, you know, there had been some reporters who had been hit by rocks and bottles and to me that took it to a whole 'nother level. I had now, you know, seen this thing. It's Wednesday that gets me really in focus....

The police detained the Mayor's car until the situation was stabilized. Mayor Dinkins arrived at P.S. 167 at about 5:30 p.m. Once inside the school, the Mayor met with about fifty black teenagers. The Commissioner of the Division of Youth Services, Richard Murphy, described what had taken place outside the school. He said he had a "vivid recollection" of a police officer running away from a group of youths, and that the police "did not know what to do." They were disorganized and scared and, he said, there seemed to be chaos in the police ranks.

When the police moved in to restore order at Eastern Parkway and Schenectady Avenue, the rioters moved elsewhere. At Utica Avenue from Eastern Parkway to President Street, at about 5:30 p.m., between 500 and 600 demonstrators were on a rampage. Five police cars were attacked, including one that was overturned. Over the next hour, along Eastern Parkway and down Utica Avenue at least ten police officers were injured by bottles and bricks. Three other civilian vehicles were attacked.

To restore order at President and Utica, the police formed a large square from building line to building line, facing outward with their backs to each other. This appeared to have succeeded in restoring order at that location. But again, the rioters moved elsewhere. At 6:30 p.m., a 31-year-old man was dragged from his car at Utica Avenue and Eastern Parkway and beaten by a band of twenty to thirty people. At that same spot, a patrol car was attacked by a large group, pelting it with rocks and bottles, breaking its windows.

At 6:55 p.m., police reported that the demonstration at President Street and Utica Avenue split into two large groups. One group was located at Utica and Eastern Parkway, and the other at Utica and Union Street. At Eastern Parkway two police cars were overturned.



Leaving the school at 7:10 p.m., Mayor Dinkins tried to address the crowd through a bullhorn. The crowd, according to the Mayor, was "hostile." A brief excerpt of Dinkins' attempt to address the crowd aired on *Channel 7 News* that night. The Mayor asked the crowd, "Will you listen to me, please?" The crowd shouted back, "No!" The Mayor continued, "We will have justice, but we will not get it through violence." The crowd booed.

As he left, bottles were thrown. The Mayor wanted to walk the four blocks to the Cato residence at President Street, but his advisors persuaded him that it would not be wise. The police arranged a detail to escort him to the Cato residence by car.

When Mayor Dinkins arrived at the Cato residence, the situation was tense. As Deputy Mayor Lynch described it:

...[there] were a lot of police out there that Wednesday night, kind of monitoring that crowd. We pull up. Security jumps out of their cars and starts scurrying to get into position. The crowd starts running towards the Cato house. And I'm told by some of the guys I talked to later...that "some knuckleheads" in the crowd started throwing stuff at the Mayor and [security] made them stop....

Deputy Mayor Mollen provided a similar account:

When we got there, there were police officers in front of the Cato building. It was a tenement building. There was a large number of African-American people there. It was a very hostile attitude. The Mayor and I got out of the car and we started to walk with bodyguards — the Mayor's bodyguards, I don't have any bodyguards — to the building...as we were walking...to the building, we walked probably a distance of approximately fifty feet or thereabout. There were bottles being hurled. One went right through. I was walking right alongside the Mayor, [and] one went right between us.

At about 8:30 p.m., the Mayor left the Cato residence to visit 824 Eastern Parkway. He again tried to address the crowd from the stoop of the residence with a bullhorn. The crowd surged toward the Mayor, according to Lynch, which caused some concern, and more bottles were thrown. The Mayor was not hit.

At 824 Eastern Parkway, Mayor Dinkins met with the Crown Heights Emergency Committee. Mollen, Kharfen, Chief Selvaggi, and Assistant Chief Gallagher were present. Members of the committee voiced their concerns that the situation was out of control and that the police were not protecting them. They asked for the National Guard. Deputy Mayor Lynch said, "The one thing I remember, they wanted the National Guard to come in. They wanted more police protection."

Rabbi Sholom Ber Hecht told the Mayor that he heard police officers say that they were instructed not to make arrests. The Mayor denied this, according to Hecht, saying the police would do what was necessary. Deputy Mayor Lynch recalled that "the Mayor, the Commissioner, and [Deputy Mayor] Mollen assured them that there would be adequate police protection and that would happen." At approximately 9:30 p.m., Mayor Dinkins left.

While the Mayor was at the Cato residence, Police Commissioner Brown had gone to the 71st Precinct. There, he met with First Deputy Police Commissioner Raymond W. Kelly and Chief Selvaggi. Kelly stated that he had been watching the events in Crown Heights on television and decided to go there. It was his first visit there since the violence began. A decision was made that tactical changes were necessary and that Kelly would assume responsibility for developing this new strategy.

Later that evening, at about 11:00 p.m., Mary Civiello of *Channel 4 News* interviewed the Mayor live from Gracie Mansion. During that interview, the Mayor emphasized that violence and lawlessness would not be tolerated:

Dinkins: Along with calling for calm and patience on the part of both communities, let me say that what's also important is to understand that this administration will not tolerate lawlessness and violence, under any circumstances.

Civiello: What can you do?

Dinkins: Well, I'm going to instruct the Police Commissioner — not that he needs instructions along these lines — to enforce the law. People who peacefully demonstrate, ...obviously that can be done, but people seeking to carry out their will with violence, that can't be tolerated under any circumstances.

Civiello: What do you mean by enforcing law?

Dinkins: I mean that they will enforce the law. People who break the law will be apprehended and prosecuted.

Civiello: [Are] you going to increase the police presence out there?

Dinkins: The police presence will be at a level that the Police Commissioner deems to be necessary in the circumstances.

* * * * *

Civiello: So you think we have the resources?

Dinkins: There's no question that we have the resources, and we have the know-how. What's important is for all people in our City to understand that we are in a tense and difficult circumstance. And the answer to it, however, is not violence. The answer is patience and understanding. And we gotta get the correct message out. There are a lot of people who are suffering under illusions, who think that one set of facts is the case when it's not....

At 11:30 p.m., Mayor Dinkins and Deputy Mayor Mollen left for Kings County Hospital after being told that eight officers had been shot. After visiting the injured officers, Mayor Dinkins met with Brown and Mollen in a conference room at the hospital. Deputy Mayors Lynch and Steisel were also present. At the hospital, the Mayor said, he emphasized that they should employ every appropriate police tactic available for riot control and determine what further steps were necessary to quell the violence. The police had apparently reached that conclusion earlier and were already planning a new strategy.

The Violence Continues

During the early evening, violence spilled over into the neighboring 77th Precinct. Crimes, including violent felonies — shootings, robberies, arson, assaults, and car fires — continued into the early morning. An EMS paramedic, interviewed on the 11:00 news, described the area as looking like a “war zone.”

At 7:00 p.m., about forty people attacked a cab driver at St. Johns Avenue and Utica Avenue. At 7:10 p.m., columnist Jimmy Breslin was riding on Utica Avenue in a cab to hear the Mayor speak at P.S. 167. When Breslin’s cab reached Sterling Place, a group of youths blocked its path and demanded money. Breslin would not give them money, so they smashed the vehicle’s windows. He was dragged out and beaten.

At 7:30 p.m., a mob attacked a firehouse at the corner of St. Johns Place and Schenectady Avenue, showering the building with bottles, rocks, and debris. At least a half dozen windows were broken and one firefighter was injured. The fire chief’s car was badly damaged.

A mob assaulted a woman in a car at St. Johns Avenue and Rochester Avenue. At 7:52 p.m., a motorist was shot several times while driving along Troy Avenue near Lincoln Place. At 8:00 p.m., a motorist was beaten at St. Johns Place and Buffalo Street. At 12:15 a.m., a motorist was shot while driving along Sterling Place between Rochester and Utica Avenues.

The violence also continued in the 71st Precinct, especially along Utica Avenue. At 7:30 p.m., a number of police officers were assaulted, and police vehicles attacked. At about 8:15 p.m., a patrol car was set on fire. Between 8:15 and 9:00 p.m., the situation deteriorated at President and Utica as a mob pelted the police with rocks and bottles.

Reverend Herbert Daughtry stated that around this time “police officers with riot gear came up President Street *en masse*, beating their sticks on the street. It was a very provocative act.”

At about 9:45 p.m., in one of the most serious incidents of the disturbance, a sniper wounded eight police officers with a shotgun blast from the roof of 455 Schenectady Avenue at Lefferts Avenue. The officers were taken to Kings County Hospital, where they received treatment. None of the wounds were life threatening and all but one were quickly released.

At about 10:00 p.m., the police took steps to regain control of Utica Avenue. A detail of 100 officers commanded by Captain Joseph Esposito was brought to President Street and Utica Avenue. A sergeant assigned to that detail described how Captain Esposito lined them up, three deep, across the width of Utica Avenue. They marched south on Utica Avenue, clearing the street of demonstrators. As order was restored, police officers were dropped off at each intersection to prevent further rioting.

According to the sergeant, the detail met fierce resistance at Montgomery Street and Utica Avenue. Captain Esposito responded by driving patrol wagons into the crowd, which parted to allow the wagons through and then closed up behind them. Barriers had been set up at Utica Avenue and the crowd was caught between the barricades and the patrol wagons. The police jumped out of the wagons and began to make arrests. After the crowd at Montgomery Street was dispersed, the detail continued down Utica Avenue.

The rioting continued elsewhere into the night. Shortly after midnight, more than 100 Hasidim poured onto the street at Albany Avenue and Empire Boulevard after a Hasidic man was struck by a rock. They beat down the door to one building with a bat and reportedly congregated in the intersection. This drew a crowd of about fifty blacks and the two groups faced off across the intersection with the police in the middle. Police Sergeant Steve Epstein summoned Rabbi Sholom Ber Hecht, who tried to push the Hasidim back.

A veteran police officer told us that he responded to a 10-13 at that location. Large crowds of Hasidim and blacks confronted each other. He said that rocks were thrown and one officer's weapon was taken from him. The officer maintained that the supervisors on the scene were not doing anything. Finally, he said, he took it upon himself to take charge.

A sergeant came over, he said, and challenged him. The officer told us that he replied that the bosses had sold out, so he was taking charge. Many officers were getting injured and some were going into the crowd, endangering themselves, while most others were doing nothing. Then, a lieutenant came over and took charge. The officer said he told the lieutenant, "good, all I want is for someone to take charge."

While members of the community were enraged by the Police Department's failure to put an end to the rioting, rank and file police officers were also angry at the Department's failure to permit them to take aggressive action. They were vulnerable to injury and not permitted to take the kind of aggressive action needed to protect themselves or the community.

At about 2:00 a.m., a Patrolmen's Benevolent Association delegate confronted Captain Kenny and Inspector Chapman in the Station House. He said that he told them that the police were "disgusted" at being "handcuffed," and threatened a job action. He said that the Department's passive stance was putting officers in jeopardy. Inspector Chapman assured him the situation would change and convinced him to wait.

Wednesday Night's Assessment

The Patrolmen's Benevolent Association prepared a letter to all delegates and members which was posted on bulletin boards the following day. It stated:

Over the last three nights, New York's finest have been transformed into New York's "Lamest." Lame — not only because of the severe nature of the injuries sustained — but because of the response that police officers under an actual state of siege have been allowed to put forth.

The PBA has a basic responsibility to protect the life and lives [sic] of police officers, and will not shirk that responsibility. I therefore am urging all PBA delegates to instruct their members that they are not to serve as lame sitting ducks; they need not retreat and cower in fear. . . *If police officers are placed under a life-threatening attack, they should use their nightsticks or firearms to fend against such attacks* (emphasis in original).

Restraint in the face of danger is admirable. But too much restraint has a tendency to be deadly. We don't want any dead cops out there.

The Mayor told us that up until Wednesday night, the police had primarily been performing demonstration control. The Police Department, he said, had not been following a comprehensive riot control plan that utilized the maximum police resources and tactics available for responding to a major disturbance.

In summing up the day's events, Tim Malloy of *Channel 11 News*, reporting live from Crown Heights, said:

In years of covering New York City, I've never seen so many police in one spot. I've also never seen so many people with Community Relations jackets on. They've brought in just about everybody to have clear, cool-headed voices trying to calm everybody down. So there's a lot of effort going on, but so far it isn't bearing much fruit.

DAY FOUR: THURSDAY, AUGUST 22, 1991

The Change in Strategy

At 7:00 a.m., First Deputy Commissioner Kelly chaired a meeting with Chiefs Borrelli, Selvaggi, Gallagher, and others. A new strategy to deal with the disturbances was finalized and approved by the Police Commissioner at 10:00 a.m. The neighborhood would be divided into four sectors, each with its own Command Post under an inspector or deputy chief. Staffing would be as follows:

<u>Sector</u>	<u>Captains</u>	<u>Lieutenants</u>	<u>Sergeants</u>	<u>Patrol Officers</u>
A (71 Pct.)	8	15	65	550
B (71 Pct.)	4	9	50	350
C (71 Pct.)	6	13	60	450
D (77 Pct.)	--	--	--	450
TOTAL				<u>1,800</u>

Sectors A, B, C included 150 police officers each to act as mobile arrest teams, with 100 officers for each sector in reserve. In addition, fifty motorcycles, fifty mounted officers, and police helicopters were available.

Each sector would be saturated with foot patrols supported by mobile response units. A police escort was to accompany groups moving through the area to keep them under control. The reserve detail was intended to give the sector commanders the ability to cover demonstrations without depleting foot coverage.

Following the meeting with Kelly, Selvaggi assembled Gallagher and his zone and sectors commanders in the 67th Precinct. Borrelli also attended.

Inspector Thomas Lawless, the Commanding Officer of the NYPD Police Academy, who was at that meeting, recalled being told that if "anyone does anything, arrest them." In response, Lawless addressed his detail later and told them to "take collars" for rock and bottle throwing or any other illegal acts. Inspector Michael Julian, also at the briefing, remembers being told to "do whatever is necessary" to take back the streets. This statement of the Department's arrest policy was, perhaps, the single most important development on Thursday.

This arrest policy was announced by Commissioner Brown at a press conference early Thursday. That afternoon, Chris Borgen of *Channel 2 News* ended his report by stating: "Tonight the Department's riot and crowd control training will be put to the test. More than 2,000 riot-clad police will flood into the area and decisively move to clear the streets of the young rampaging mobs and to bring calm back to Crown Heights." In effect, the police would make arrests when crowds became unruly. They would not wait for assaults or the destruction of property to take place.

On Thursday, City Hall continued to disseminate information. Herbert Block said that he spent most of the day at 824 Eastern Parkway making phone calls and telling the Hasidic community about the Police Department's intended tactical changes. He discussed police coverage during a march planned for Saturday, the Jewish sabbath, with members of the Jewish Community. He also attempted to get information about the rumored presence of the Jewish Defense League.

Mayor Dinkins, Brooklyn Borough President Howard Golden, and forty community leaders met at P.S. 167. They issued a joint press statement condemning violence and announcing the formation of a committee to deal with racial problems.

At approximately 3:00 p.m., people assembled at the corner of President Street and Utica Avenue. At that same time, riot-equipped police officers assembled at that location. Although the crowd continued to grow throughout the afternoon, the situation remained calm. There were, however, indications that the disturbance was about to reach new levels of violence. At 2:30 p.m., an anonymous male caller told a 911 operator that there would be firebombings later in the day on Utica Avenue and Empire Boulevard. At 5:25 p.m., another anonymous caller told the Police Department Community Affairs Office that the Jewish Defense League was roaming the precinct carrying explosive devices.

By mid-afternoon a crowd again gathered at President Street and Utica Avenue. This crowd swelled from about thirty demonstrators at 3:15 p.m. to over 200 demonstrators at 6:00 p.m. Unlike the previous two days, though, the police were present in force. For the first time in three days the intersection at President Street and Utica Avenue remained peaceful.



Roving bands still formed in nearby areas. Between 5:00 p.m. and 8:00 p.m., the police dispersed several roving bands. At about 7:00 p.m., a large group of 200 to 300 young blacks marched to the Lubavitcher Headquarters at 770 Eastern Parkway. This time the march past the building did not result in rocks and bottles being thrown. Surrounded by a large number of police officers, the protesters shouted anti-semitic slurs for about twenty minutes and then left.

Elements of the group traveled north into the 77th Precinct, and at about 8:00 p.m., were throwing rocks and bottles on Albany Avenue from St. Johns to Lincoln Streets. The police responded quickly. Nine arrests were made at Albany Avenue and Lincoln Place for throwing bottles and bricks at the police. Between 8:45 and 10:40 p.m., thirteen arrests were made at St. Johns Place and Rochester Avenue for similar offenses.

At 8:30 p.m. a sergeant from the 71st Precinct noticed that his patrol car was being followed by a car with four Hasidic men in it. When he stopped the car to question them, he found a pellet gun, knives, and homemade incendiary

devices made out of cans of insecticide with candles attached. The four men were arrested.

Reverend Herbert Daughtry described the scene at President Street and Utica Avenue at about 10:30 p.m. He said that he saw what appeared to be a confrontation between the police and marchers several blocks ahead. "The marchers," he said, "were driven back by the police... The police were pushing, shoving, cursing, and swinging their sticks.... The police officers seemed particularly focused on black journalists. Mr. Chris Griffith, a free-lance photographer and brother of Michael Griffith, who was killed in Howard Beach by a white mob, Mr. Vinette Price of the *Amsterdam News*, and Mr. Curtis Taylor of *Newsday* were all victims of police violence..."

At about 11:00 p.m., two Molotov cocktails were thrown from the roof of a building at Montgomery Street and Schenectady Avenue. An officer was injured when he was struck by the device, which exploded under a car. When the police went to the roof to investigate, they found a milk crate with five more Molotov cocktails, empty bottles, and bricks.

The most serious clash that night occurred between 11:30 p.m. and 12:15 a.m. along Eastern Parkway. A disorderly group of up to 150 people converged on the Lubavitcher headquarters. Hecht said that the police appeared to be more organized than they had been to that point. Mounted police officers were brought in to suppress the disturbance. The mounted officers pushed the demonstrators across Eastern Parkway. As soon as the first rock was thrown, the horses moved in and the crowd was dispersed. At least twenty-five arrests were made.

At about 11:40 p.m., two officers stopped a car. As they left the patrol car six shots were fired from the roof of a building. Three shots hit the patrol car. Neither of the officers was injured.

Thursday Night's Assessment

Thursday threatened to be a day of intensified violence and, indeed, there were still potentially dangerous situations to be handled. The increased police presence and different tactics, coupled with a new get-tough approach, let area residents know that rioting and lawlessness would not be tolerated. The police arrested sixty-one people Thursday night, more than the combined total during the first three nights.

EPILOGUE

While scattered outbreaks of violence continued for several more days, the disturbance was effectively over.

On Friday, Crown Heights settled into an "uneasy calm," interspersed with only a few rock and bottle throwing episodes, though no arrests were made. The police continued with the disorder control plan they had implemented the day before, assigning more than 1,660 police officer, sergeants and lieutenants to the disturbance area. The strength of police deployment remained at this level through the following Tuesday, August 27.

In general, the media reacted favorably to this turn of events. Chief of Patrol Mario Selvaggi was reported in the *New York Times* as saying that the police did not have enough manpower on the streets early in the week and that there was no coherent plan to contain the disturbance until Thursday. Mayor Dinkins and top administration officials met for three hours during the evening with Rev. Sharpton and other black activists in a futile attempt to call off a planned march for Saturday.

By Saturday, the violence had completely subsided. Mayor Dinkins and Police Commissioner Brown toured the neighborhood in the morning and laid wreathes at the sites where Gavin Cato died and Yankel Rosenbaum fell victim. During the afternoon, 500 to 600 black protesters, led by Reverend Sharpton and flanked by a police cordon, marched along Eastern Parkway from Utica Avenue, past the Lubavitcher Headquarters to a nearby service road. The march disbanded around 4:30 p.m., without significant incident. A total of four arrests were made on Saturday.

The following afternoon the memorial service and wake for Gavin Cato were held at St. Anthony's Baptist Church on Utica Avenue. That evening 150 proceeded from the church to the Cato residence for a vigil. No arrests were made.

On Monday morning, 2,500 people attended the funeral for Gavin Cato, Mayor Dinkins, Police Commissioner Brown and other top city officials were also present. At 10:00 p.m. that night, three Hasidic men were assaulted by blacks. Eight arrests were made.

On Wednesday, August 28, the deployment strength was cut in half, and halved again on the following day, where it remained through September 6th. The annual West Indian-American Day Parade was held Monday, September 2,

in Crown Heights. The festivities were unmarred by violence, and no arrests were made.

On October 22, the Field Command Post was decommissioned and deployment levels maintained by the 71st and 77th Precincts returned to the normal strength.

ENDNOTES

1. Ellen Tumposky, *New York Daily News*, "Dinkins Watches, Waits," August 21, 1991.

Chapter 4

Scope and Nature of the Disturbance

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- ▶ Affected Area
- ▶ Progression of the Disturbance
- ▶ Impact of the Disturbance
- ▶ Crown Heights in Context
- ▶ Summary

SCOPE AND NATURE OF THE DISTURBANCE

The preceding chapter described in narrative form the sequence of significant events which occurred over the four days of disturbances in Crown Heights. This chapter explores the scope and nature of the disturbance by examining information derived from police data. Together, these two perspectives provide a comprehensive account of the disturbance and its impact on the community. This chapter addresses the following questions:

- **Affected Area.** What area was affected by the disturbance? Where was disturbance-related activity most concentrated?
- **Progression of the disturbance.** How long did the disturbance last?
- **Impact of the disturbance.** What was the estimated volume of disturbance-related activity? What types of incidents occurred? How much personal injury and property damage resulted?
- **Crown Heights in context.** How did the events in Crown Heights compare with other civil disturbances?

To estimate the amount, location and duration of the disturbance activity, we relied on two principal sources of information: emergency calls to *911* which resulted in the creation of *911* jobs,¹ and complaint reports of alleged crimes filed with the NYPD.² The analysis was also guided by the incident descriptions and a chronology of events constructed by investigative staff from interviews, memoranda, and other documentary data.

Our findings about the scope and nature of the disturbance are based, in large part, on comparisons between *911* and complaint activity during the four days of the disturbance and activity during the same four days of the prior week.³ Clusters of *911* and complaint activity were also identified to document the locations and intervals of intensive disturbance-related activity.

AFFECTED AREA

What area was affected by the disturbances?

The disturbances affected parts of two adjacent police precincts and covered an area totaling approximately one square mile.

Over the four-day period, the disturbance was concentrated in a ninety-four block area referred to in the report as the “affected area.” This area included parts of the 71st and 77th Precincts. We determined that most of the disturbance-related activity occurred within the initial thirty block area of police deployment, a two-block wide border around the deployment area, plus a fifteen block area northeast of the initial deployment area.

Compared to the prior week, the number of 911 jobs and complaints quadrupled in the initial deployment area and nearly doubled in a two-block wide border surrounding the area. The number of 911 jobs also increased in a smaller, but significant, amount within an area northeast of the two-block border.⁴ None of the remaining areas within the 71st and 77th Precincts showed any significant increases in 911 jobs or complaints.






The maps displayed in figures 4.1 and 4.2 depict the locations of all 911 jobs and complaints during the week before the disturbance and the week of the disturbance. They also identify the three areas showing significant increases in activity.

Clearly, not all 911 jobs and complaints in what we have defined as the affected area were related to the disturbance, and some disturbance-related events may have occurred outside the defined area. However, the affected area encompassed those locations with significantly increased activity in 911 jobs and complaints and excluded large areas in both precincts which did not.

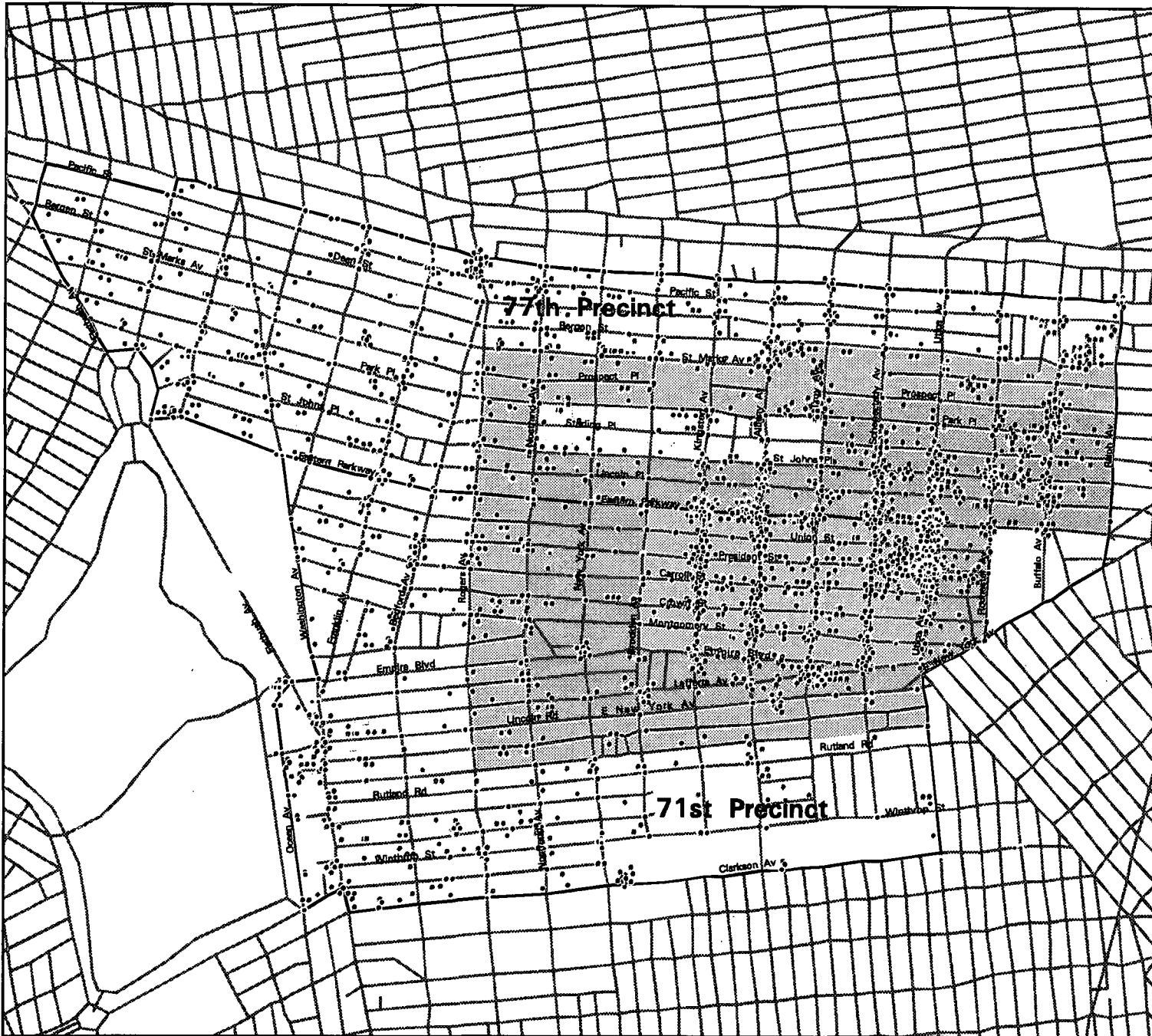


Figure 4.2.
Affected Area
Analysis
Week of
Disturbance

• SPRINT Jobs
• Complaints
• Arrests

-  Original Deployment
-  2-Block Border
-  Northeast Area
-  Northwest Area
-  Outer Area

Map provided by DECGIS



Where was disturbance-related activity most concentrated?

On each day of the disturbance, several locations within the affected area experienced intensive 911 and complaint activity. These focused mainly around the accident site and other prominent events, as well as along the paths of roving bands.

Fifteen clusters of 911 and complaint activity were identified throughout the affected area during the four days of the disturbance. These cluster areas were initially located through a visual scan of the daily maps of 911 and complaint activity. The times of the 911 jobs and complaints were then examined to insure the grouping of events by time period. In addition, the clusters were compared to the locations of several flashpoints identified in the preceding chapter. Compared to the same areas in the prior week, the fifteen cluster areas averaged a 900 percent increase in 911 jobs.

The locations of the clusters are indicated by the numbered boxes overlaid on the maps in figures 4.3 through 4.6. Sixty-seven percent of the overall increase in 911 jobs in the affected area between the four days of the disturbance and the four days of the prior week was accounted for by the fifteen day-specific cluster areas.

Much of the clustered activity occurred around prominent events or locations in the affected area, such as the accident site, marches and demonstrations, as well as the public appearances of city officials. Roving bands were also associated with clusters of 911 and complaint activity. Table 4.1 provides information on the type of disturbance-related activity in each cluster, the dominant time period of that activity and the total number of 911 jobs.⁵

On Day 1 (figure 4.3), events were concentrated near the site of the accident (cluster 1), along the paths of roving bands (clusters 2 - 4), and near the site of an early morning standoff between blacks and Hasidim on Eastern Parkway (cluster 2).

On Day 2 (figure 4.4), much of the reported activity was again concentrated near the accident scene (cluster 2) and at two other locations: north of the deployment area along St. Johns Place, where roving bands were reported (cluster 3); and along Kingston Avenue between President Street and Union Street near the route of Tuesday's march (cluster 1).

On Day 3 (figure 4.5), the disturbance spread and intensified. Some incidents continued to cluster around the marches (clusters 1 and 2), in the vicinity of personal appearances by the Mayor (cluster 2), and near the accident site (cluster 1). However, many other outbreaks occurred at locations throughout the affected area due to the extensive presence of roving bands (clusters 3 - 7).

On Day 4 (figure 4.6), the level of disturbance-related activity decreased markedly throughout the affected area. The only large cluster of 911 and complaint activity that occurred was in the northeast area at the corner of Park Place and Buffalo Avenue (cluster 1). For the first time no unusual activity was reported near Monday night's accident scene.

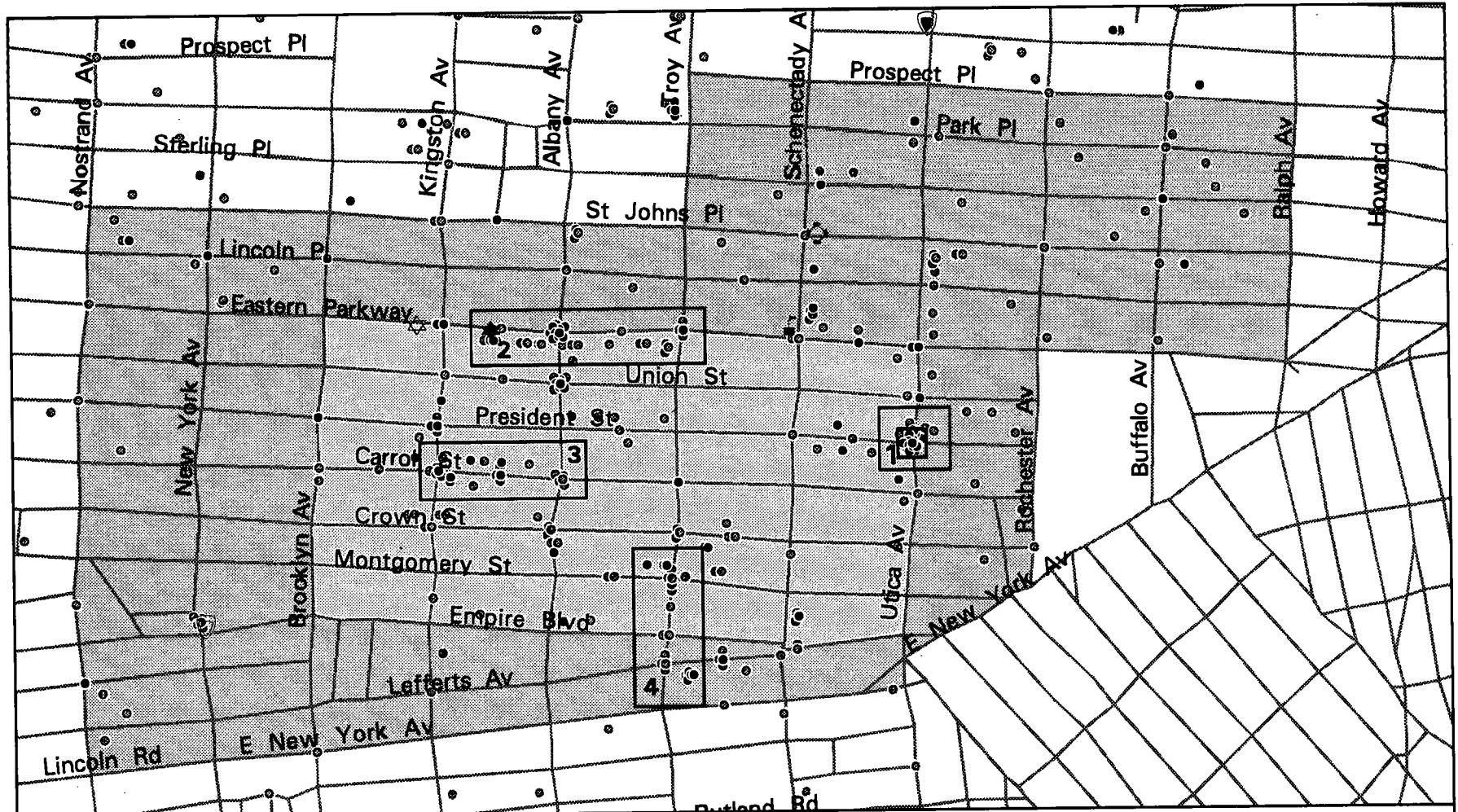


Figure 4.3. Incident Reports on Day 1 of the Disturbance
 (8 a.m. Monday, 8/19/91 - 8 a.m. Tuesday, 8/20/91)

- | | | | |
|---------------|--|--------------------------------|-----------------------------|
| • SPRINT Jobs | □ Accident Scene | 🛡️ 71st Precinct Station House | ◻️ Original Deployment Area |
| • Complaints | ☆ World Lubavitch Headquarters | 🛡️ 77th Precinct Station House | ◻️ Remaining Affected Area |
| | ★ Headquarters, National Committee for Furthance of Jewish Education | 🏫 Public School 167 | |
| | | 🚒 Engine Company 234 | |
- Map provided by DECGIS

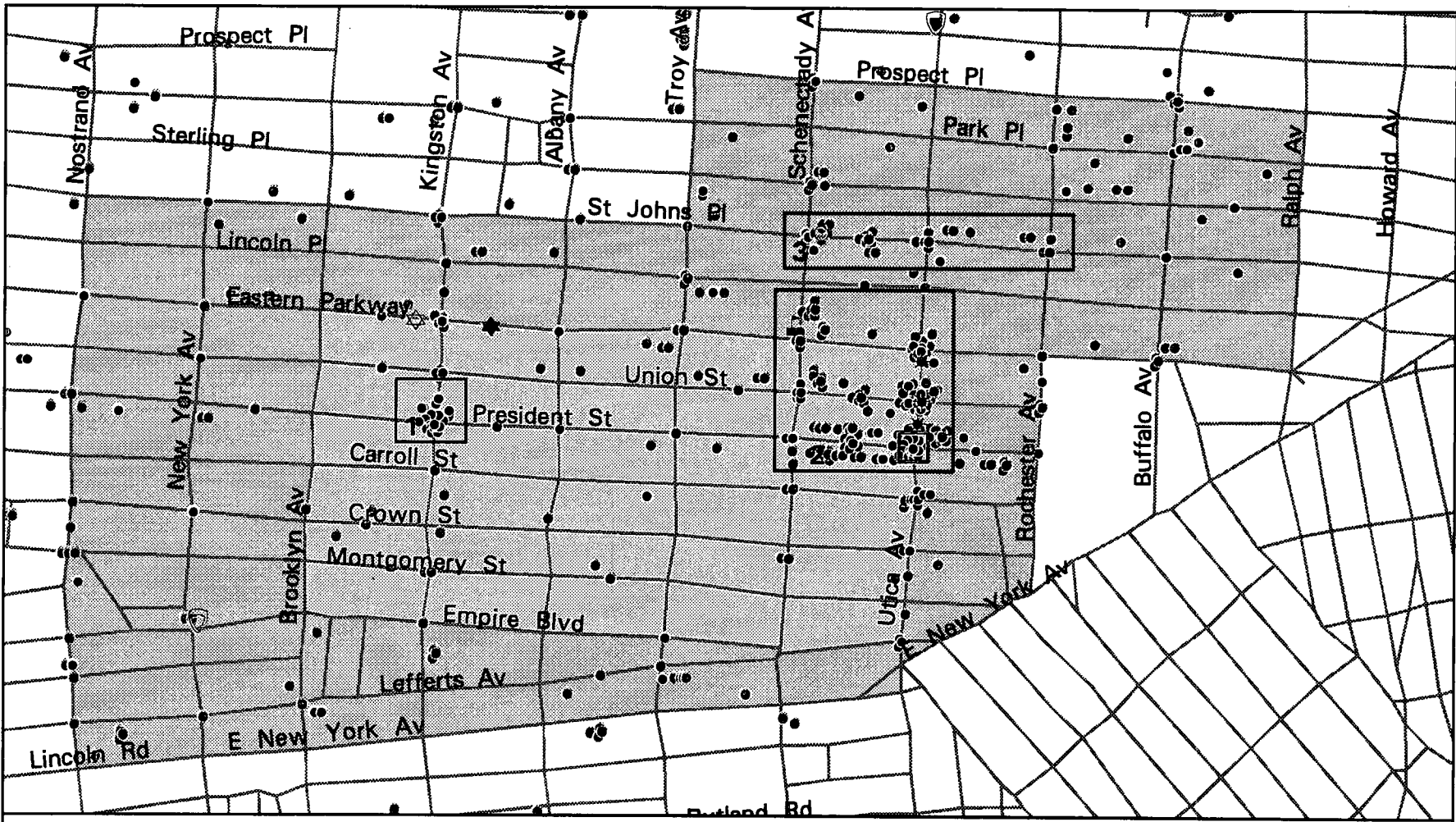


Figure 4.4. Incident Reports on Day 2 of the Disturbance
 (8 a.m. Tuesday, 8/20/91 - 8 a.m. Wednesday, 8/21/91)

- SPRINT Jobs
- Complaints

- Accident Scene
- ☆ World Lubavitch Headquarters
- ★ Headquarters, National Committee for Furtherance of Jewish Education

- 🏠 71st Precinct Station House
- 🏠 77th Precinct Station House
- 🏫 Public School 167
- 🚒 Engine Company 234
- ★ Looted Stores

- ▨ Original Deployment Area
- ▨ Remaining Affected Area

Map provided by DECGIS

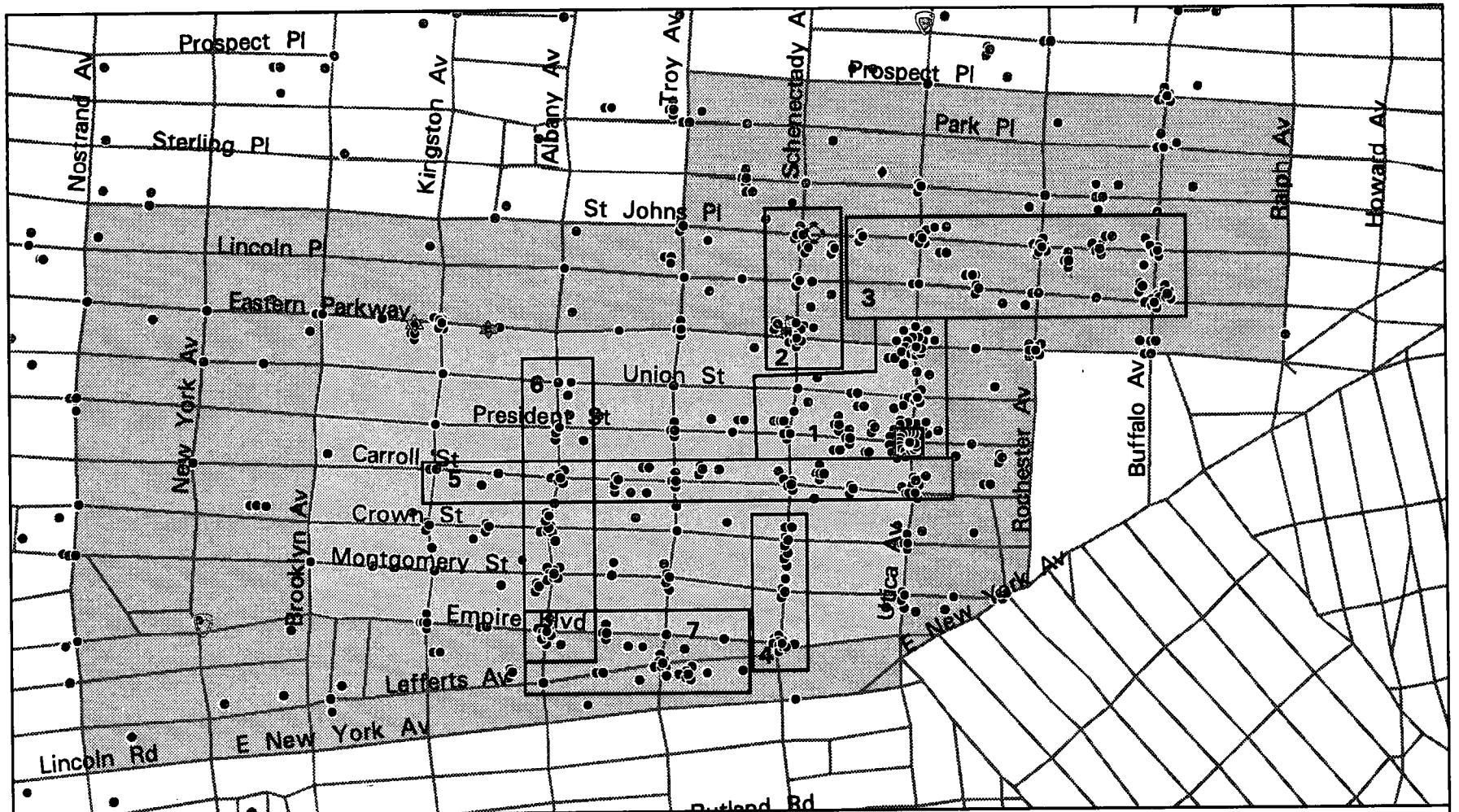


Figure 4.5. Incident Reports on Day 3 of the Disturbance
 (8 a.m. Wednesday, 8/21/91 - 8 a.m. Thursday, 8/22/91)

- SPRINT Jobs
- Complaints

- Accident Scene
- ◇ World Lubavitcher Headquarters
- ☆ Headquarters, National Committee for Furtherance of Jewish Education

- 🛡️ 71st Precinct Station House
- 🛡️ 77th Precinct Station House
- 🏫 Public School 167
- 🚒 Engine Company 234

- ▭ Original Deployment Area
- ▭ Remaining Affected Area

Map provided by DECGIS

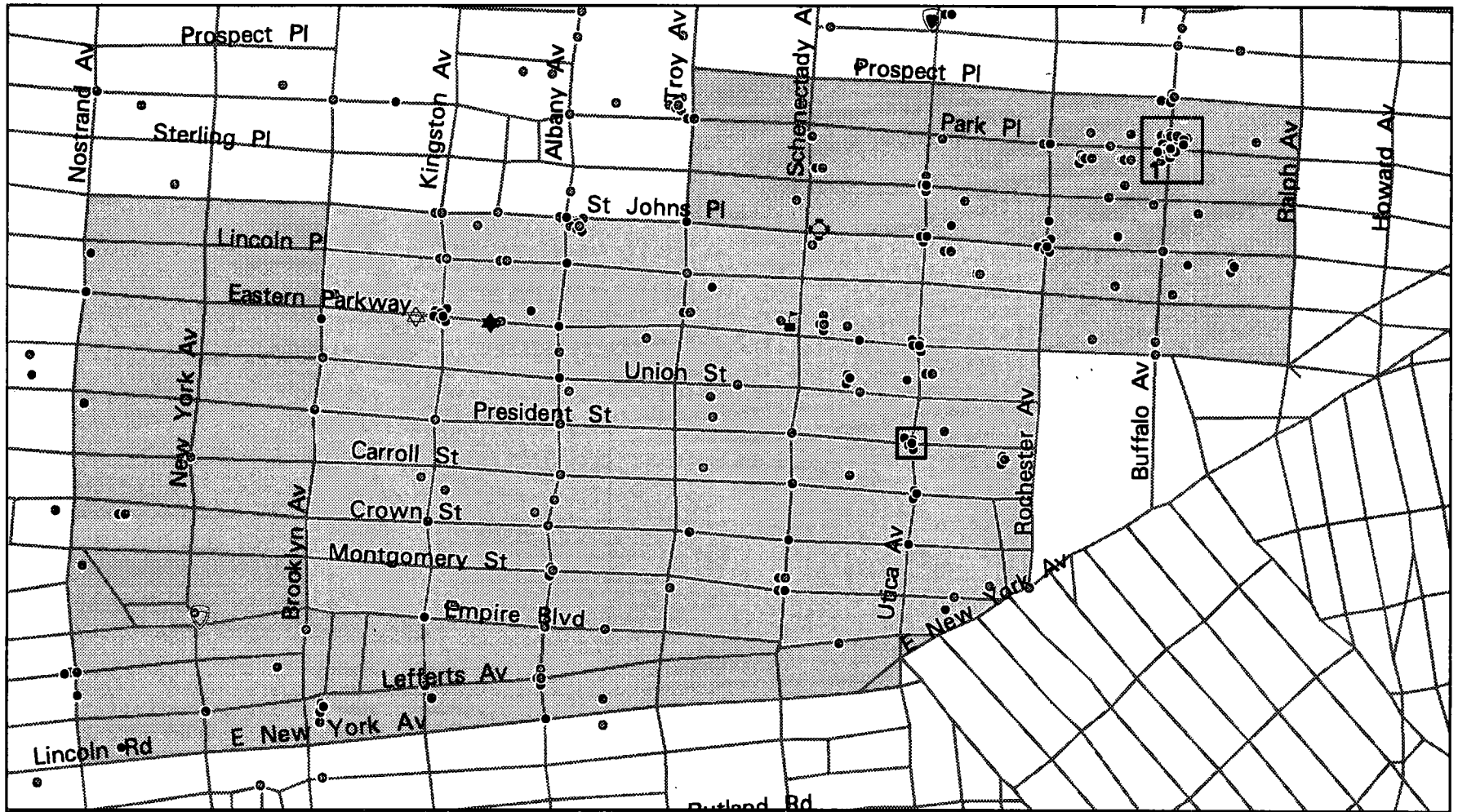


Figure 4.6. Incident Reports on Day 4 of the Disturbance
 (8 a.m. Thursday, 8/22/91 - 8 a.m. Friday, 8/23/91)

- SPRINT Jobs
- Complaints

- Accident Scene
- ☆ World Lubavitcher Headquarters
- ★ Headquarters, National Committee for Furtherance of Jewish Education

- 🛡️ 71st Precinct Station House
- 🏠 77th Precinct Station House
- 🏫 Public School 167
- 🚒 Engine Company 234

- ◻️ Revised Deployment Area
- ◻️ Remaining Affected Area

Map provided by DECGIS

Day	Cluster ^a	Total 911 Jobs in Cluster	Dominant Time Period(s)	% of Jobs in Cluster Accounted for by Dominant Time Period	Disturbance Activity
1	1	17	8:21 - 10:36 p.m.	88.2	Fallout from Cato accident at 8:20 p.m. confined to general area around intersection. Growing crowd.
	2	33	11:22 p.m. - 2:05 a.m. 3:00 a.m. - 4:00 a.m.	69.7 18.2	Roving band causing property destruction, fires. Confrontation between blacks and Hasidim near 770 Eastern Pkwy.
	3	21	11:17 p.m. - 11:45 p.m.	85.7	Roving band assaulting people, overturning vehicles.
	4	18	12:19 a.m. - 12:40 a.m.	88.8	Roving band vehicle fires, breaking car windows, house windows.
2	1	7	3:18 p.m. - 3:24 p.m.	42.9	Confrontation between splinter group from march and Hasidim. Later, at 5 p.m., confrontation between counter demonstrators.
	2	137	7:18 p.m. - 9:52 p.m.	58.4	Objects thrown at police, assaults of motorists, news media, overturning police vehicles, stores looted.
	3	26	10:31 p.m. - 11:53 p.m.	46.2	Roving band causing property destruction, physical assaults.
3	1	63	5:13 p.m. - 6:05 p.m.	17.3	End of second march (after Commissioner Brown threatened). Large crowd. Police controlled intersection from about 6 to 8 p.m.
			8:08 p.m. - 8:58 p.m.	28.6	
	2	25	5:11 p.m. - 6:21 p.m.	28.0	Mayor's appearance at P.S. 167; Commissioner Brown's car attacked by marchers. Precursor to mob attack on firehouse causing property destruction.
			7:08 p.m. - 7:13 p.m.	20.0	
3	68	6:50 p.m. - 8:18 p.m.	52.9	Roving band assaulting people and setting vehicles on fire. Disorderly group complaints, commercial burglary.	
		10:31 p.m. - 11:14 p.m.	17.5		
4-7	140	8:15 p.m. - 10:02 p.m.	30.0	Eight officers struck by shotgun blast. Roving bands causing property destruction and assaults. Confrontation between blacks and Hasidim after midnight.	
		10:19 p.m. - 2:37 a.m.	59.3		
4	1	18	10:46 p.m. - 11:34 p.m. 12:33 a.m. - 12:42 a.m.	27.7 44.4	Reports of commercial burglary, fire and other possible crimes.

^a Locations of the daily clusters are indicated on the maps in figures 4.3 through 4.6.

PROGRESSION OF THE DISTURBANCE

How long did the disturbance last?

The disturbances began on Monday evening, August 19, 1991 following the automobile accident. Relative calm was restored in Crown Heights by Thursday night, August 22, 1991.

Prior to the accident on Monday evening, there was no evidence from either the 911 jobs or the complaint reports indicating an unusual build-up of activity with the potential to escalate into a civil disturbance.⁶ By Thursday of the disturbance week, the volume of complaint reports had returned to a normal level. The daily number of 911 jobs returned to normal by midnight Thursday and remained at normal levels throughout the weekend following the disturbance.

On Day 1, there were 255 911 jobs throughout the affected area. This number rose to 367 on Day 2 and peaked at 481 on Day 3. The number of complaints climbed steadily from 66 on Day 1, to 113 on Day 2 and 172 on Day 3. Both 911 jobs and complaints decreased significantly on Day 4 and returned to normal levels by Friday (see table 4.2).

DAY	911 Jobs	Complaints of Assault on Police ^a	Complaints by Civilians
1	255	11	55
2	367 ^b	44	69
3	481	74	98
4	189	14	42
Total	1,292	143	264

^a First offense mentioned in complaint is an assault.
^b Excludes 50 jobs for alarms originating from a single store.

An hourly breakdown of 911 jobs is displayed in figure 4.7 and summarized below.

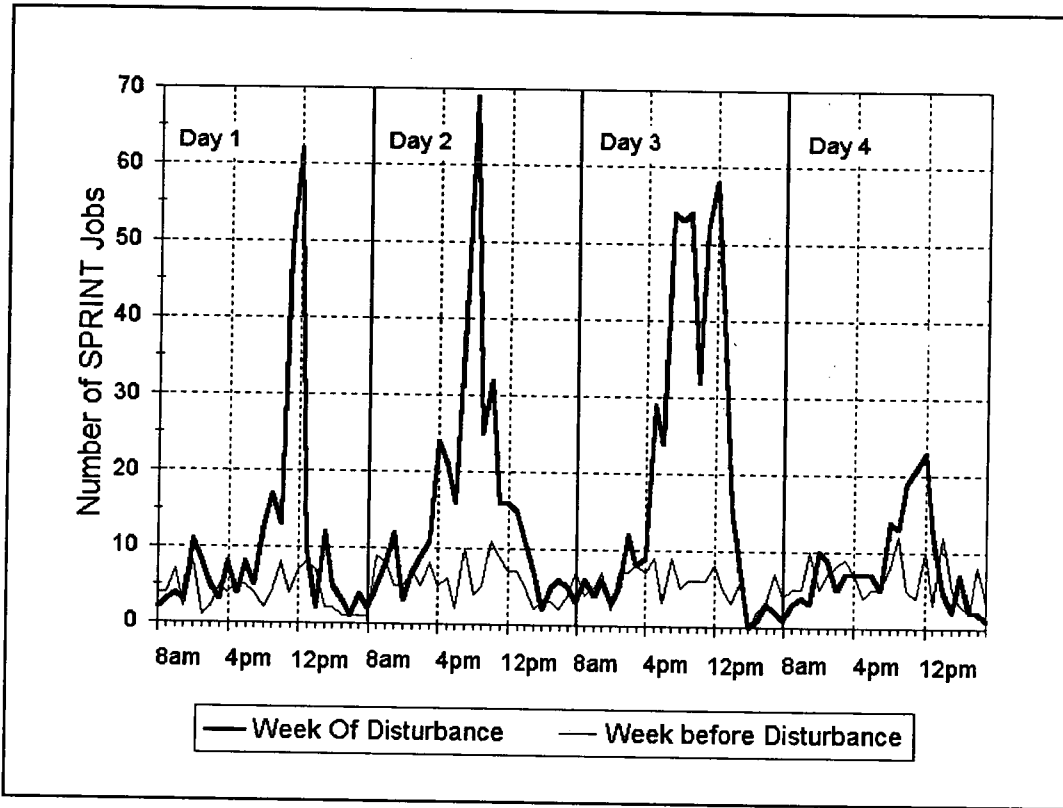
Day 1. The initial burst of *911* activity following the accident on Monday night, decreased slightly around 10 p.m., then peaked sharply between 11 p.m. and midnight. An abrupt decline in activity after midnight was followed by another short but intense period of activity around 3 a.m. Tuesday morning when blacks clashed with Hasidim.

Day 2. The *911* activity began to build steadily early Tuesday afternoon until about 4 p.m. After a brief decline, *911* activity climbed to a peak at approximately 8:00 p.m. Eighty *911* jobs were created over a two and one-half hour period, between 7:18 p.m. and 9:52 p.m., for incidents occurring within a two-block area near the accident site. The incidents reportedly involved vandalism, looting, arson, assaults, overturning police vehicles, and objects thrown at police. Attacks on police officers were so severe during this period that they had to retreat out of the area. Afterwards, the heavy rains beginning around midnight prompted the sharp reduction in *911* activity.

Day 3. The highest daily total of *911* jobs occurred on the third day of the disturbance. A significant increase in *911* jobs began shortly after 4 p.m., Wednesday and continued through midnight, after which the number of *911* jobs declined precipitously. Intense disturbance activity occurred in a number of cluster locations depicted previously in figure 4.5. Initially, the *911* and complaint activity clustered around P.S. 167 and the intersection of President Street and Utica Avenue. Later, the activity spread west and south.

Day 4. There was little clustered *911* or complaint activity on Thursday. The only substantial cluster occurred at the intersection of Park Place and Buffalo Avenue, when *911* calls recorded the reports of property crimes between 9:30 p.m. and 1:00 a.m.

Figure 4.7. Number of 911 Jobs by Hour in the Affected Area During Comparison 4-day Weeks



	Day 1	Day 2	Day 3	Day 4	Total
Week Before Disturbance	98	133	132	149	512
Week of Disturbance	255	367	481	189	1,292

IMPACT OF THE DISTURBANCE

What was the estimated volume of disturbance-related activity?

It is estimated that approximately 780 911 jobs and 260 complaints were attributable to the disturbances.

When analyzing events in a civil disturbance, it cannot always be determined with certainty which individual incidents were “disturbance-related” and which would have occurred even in the absence of a disturbance. In order to estimate the amount of criminal activity associated with the disturbance, we compared the number of 911 jobs and complaint reports during the four days of the disturbance with activity from the same time period in the prior week.⁷ While we rely on these indicators to provide a rough measure of the impact of the disturbances, we recognize that a substantial amount of criminal activity goes unreported. The difference in the number of incidents between the two periods was used to estimate the total amount of disturbance-related activity.

As expected, much more activity occurred during the four days of the disturbance than the prior week. Throughout the affected area, the number of 911 jobs increased more than 150 percent, from 512 jobs the week before to 1,292 during the week of the disturbance. Complaints rose 178 percent, from 148 to 411 during the week of the disturbance. The differences of 780 911 jobs and of 233 complaints represented the best estimates of the overall volume of disturbance-related activity.

What types of incidents occurred during the disturbance?

The 911 jobs indicate that the disturbance was characterized by street assaults, police officers in need of assistance, disorderly groups, disputes outside, vehicle fires, and commercial burglaries. Complaints were dominated by reports of assaults against police officers and, to a lesser extent, the property crime of criminal mischief.

When disturbance-related activity was estimated in terms of the increase in activity between the two time periods, the *911* data present a picture of a disturbance heavily composed of crimes against persons involving assaults (outside), public order offenses involving disorderly groups and disputes (outside), property offenses involving burglaries and criminal mischief, non-commercial fires and calls for assistance to police officers (see table 4.3). Together, these categories of offenses accounted for sixty-three percent of all disturbance-related *911* jobs. In the prior week, they comprised only fifteen percent of all *911* jobs.

INCIDENT TYPE	Four Days of Prior Week		Four Days of Disturbance Week		Disturbance-related Estimates	
	(N)	(% Total)	(N)	(% Total)	(N)	(% Total)
PROPERTY TOTAL	110	21.5%	259	20.0%	149	19.1%
Alarms (not fire)	27	5.3%	59	4.6%	32	4.1%
Commercial Burglary in Progress	3	0.6%	47	3.6%	44	5.6%
Residence Burglary in Progress	17	3.3%	35	2.7%	18	2.3%
Criminal Mischief in Progress, Inside	1	0.2%	16	1.2%	15	1.9%
Criminal Mischief in Progress, Outside	7	1.4%	34	2.6%	27	3.5%
Larceny and Other	55	10.7%	68	5.3%	13	1.7%
PERSONAL TOTAL	72	14.1%	192	14.9%	120	15.4%
Assault in Past	9	1.8%	19	1.5%	10	1.3%
Robbery in Progress	13	2.5%	15	1.2%	2	0.3%
Assault in Progress, Inside	16	3.1%	39	3.0%	23	3.0%
Assault in Progress, Outside	7	1.4%	91	7.0%	84	10.8%
Other Personal	27	5.3%	28	2.2%	1	0.1%
DISTURBANCE TOTAL	68	13.3%	233	18.0%	165	21.2%
Disorderly Grp/Pers, Outside	11	2.1%	118	9.1%	107	13.7%
Dispute, Inside	28	5.5%	32	2.5%	4	0.5%
Dispute, Outside	23	4.5%	72	5.6%	49	6.3%
Other Disturbance	6	1.2%	11	0.9%	5	0.6%

INCIDENT TYPE	Four Days of Prior Week		Four Days of Disturbance Week		Disturbance-related Estimates	
	(N)	(% Total)	(N)	(% Total)	(N)	(% Total)
FIRE ALARM TOTAL	8	1.6%	94	7.3%	86	11.3%
Commercial Fire Alarm	0	0.0%	12	0.9%	12	1.5%
Vehicle Fire Alarm	0	0.0%	43	3.3%	43	5.5%
Other Fire Alarm	8	1.6%	39	3.0%	31	4.0%
ASSIST POLICE OFFICER TOTAL	11	2.1%	87	6.7%	76	9.7%
Assist P.O., Outside	2	0.4%	72	5.6%	70	9.0%
Other Assist P.O.	9	1.8%	15	1.2%	6	0.8%
POSSIBLE CRIME TOTAL	111	21.7%	162	12.5%	51	6.5%
Poss. Crime - Firearm, Outside	15	2.9%	21	1.6%	6	0.8%
Poss. Crime - Shots Fired, Outside	15	2.9%	50	3.9%	35	4.5%
Other Possible Crime	81	15.8%	91	7.0%	10	1.3%
AMBULANCE CASE TOTAL	65	12.7%	96	7.4%	31	4.0%
MISCELLANEOUS TOTAL	67	13.1%	169	13.1%	102	13.1%
Other Crime in Progress	5	1.0%	47	3.6%	42	5.4%
85-MOS (meet unit), Outside	6	1.2%	33	2.6%	27	3.5%
Other Miscellaneous	56	10.9%	89	6.9%	33	4.2%
TOTAL	512	100.0%	1292	100.0%	780	100.0%

The estimates of complaint activity due to the disturbance portrays a somewhat different picture. More than one-half of the reported complaints during the disturbance week involved assaults on police officers. There were four and one-half times more complaints filed for criminal mischief during the disturbance than the week before, representing approximately one-fourth of the total estimated number of disturbance-related complaints.

Offense	Four Days of Prior Week ^a		Four Days of Disturbance Week ^a		Disturbance-related Estimates	
	(N)	(% Total)	(N)	(% Total)	(N)	(% Total)
PROPERTY TOTAL	70	47.3%	134	32.6%	64	24.3%
Arson	0	0.0%	7	1.7%	7	2.7%
Burglary	23	15.5%	16	3.9%	-7	-2.7% ^b
Criminal Mischief	20	13.5%	90	21.9%	70	26.6%
Larceny/Theft	27	18.2%	21	5.1%	-6	-2.3%
PERSONAL TOTAL	46	31.1%	225	54.7%	179	68.1%
Assault on Police	0	0.0%	141	34.3%	141	53.6%
Assault - Other	9	6.1%	26	6.3%	17	6.5%
Harassment	19	12.8%	16	3.9%	-3	-1.1%
Menacing	2	1.4%	2	0.5%	0	0.0%
Reck. Endangerment	1	0.7%	12	2.9%	11	4.2%
Robbery	15	10.1%	28	6.8%	13	4.9%
DISTURBANCE TOTAL	0	0.0%	6	1.5%	6	2.3%
Disorderly Conduct	0	0.0%	2	0.5%	2	0.8%
Riot	0	0.0%	4	1.0%	4	1.5%
OTHER TOTAL	32	21.6%	46	11.2%	14	5.3%
Resisting Arrest	0	0.0%	4	1.0%	4	1.5%
Weapon Possession	3	2.0%	4	1.0%	1	0.4%
Other Misc.	29	19.6%	38	9.2%	9	3.4%
Totals	148	100.0%	411	100.0%	263	100.0%

^a Counts in this table are based on the filing date rather than the incident date because incident dates were not available for the prior week.

^b A negative value appears as the estimate represents a difference between the two time periods.

The difference in the types of incidents reflected in *911* jobs as compared to complaint reports is largely due to the way in which *911* jobs are processed. While *911* jobs are intended to reflect unique incidents, *911* operators are not always successful in linking duplicate jobs, so the total number of unique incidents is undoubtedly less than the total number of *911* jobs.⁸ (See Part III, Chapter 10 for a more complete discussion and analysis of the *911* system.)

Complaints, on the other hand, clearly underrepresent the number of incidents. Typically, two-thirds of all victimizations are not reported to the police,⁹ and reporting rates vary widely by crime type. Those for which complaints were filed tended to be more serious, resulting in a greater degree of injury or property loss. Furthermore, because the data used in this analysis was limited to complaints filed during the disturbance week, it is likely that delays in filing also contributed to the small number and unique composition of “disturbance-related” complaints. Consequently, a reasonable assumption is that the *911* data yield a better estimate of the volume of all incidents during the disturbance, while the complaint data provide a more conservative estimate of the volume of incidents resulting in serious injury or significant property damage.¹⁰

Bias-Related Incidents

Another way of classifying disturbance-related incidents is to determine whether they are bias-related. There was an explicit element of bias in the many marches, demonstrations, and criminal activity which occurred throughout the four-day period. On Tuesday afternoon, marchers went through Crown Heights neighborhoods shouting, “Death to Jews.” On Tuesday night, youths in the area were chanting “Heil Hitler” and “Kill the Jews.” Many callers to *911* stated that *Jewish* homes were under attack by rioters and that roving bands were targeting *Jewish* persons.

The NYPD reviewed all complaints filed in the 71st Precinct during the disturbance period and identified twenty-seven bias-related incidents. Twenty-one were classified as anti-semitic, three were classified as anti-black, and three were classified as anti-white. The underlying crimes included one homicide, fourteen robberies and/or assaults, seven instances of harassment or menacing, and five of criminal mischief. In addition, the NYPD identified twelve other assaults and forty other property damage offenses which were committed by groups. However, those cases failed to meet the criteria for bias-related classification.

These data and the events associated with them clearly support the view that much of the violence and property damage was targeted at persons who were identified as members of the Hasidic community.

How much personal injury and property damage resulted from the disturbance?

An estimated 152 police officers sustained injuries during the course of the disturbance. At least 38 civilians were injured. Almost all injuries stemmed from assaults. In addition, 27 police vehicles were damaged or destroyed and at least six businesses suffered significant losses due to looting and arson.

NYPD Injuries and Losses

There was no single source of information from which to estimate the amount of personal injury and property damage resulting from the Crown Heights disturbance. NYPD critiques of the disturbance only counted injuries and property damages sustained by the police. While estimates varied, according to the critique which appeared most complete, the four days of disturbances resulted in 109 police officer injuries,¹¹ and twenty-seven damaged police vehicles within the 71st Precinct.¹² However, our review of police aided reports for the affected areas within both precincts suggested that a total of 152 officers were injured in disturbance-related incidents.

Civilian Injuries and Losses

Civilian losses and injuries are more difficult to estimate. Complaint reports were filed for only a fraction of the crimes which occurred and few detailed the amount of property damage or injury involved. Efforts were made to review hospital and EMS records for the purpose of identifying disturbance-related injuries. Many of these records were not made available for our review, due to the confidential nature of the information they contained.

The only available means of measuring civilian injuries was through police "aided" reports, and the class action lawsuit filed against the City of New York. The "aided" index showed thirty incidents involving civilian injuries within the affected area during the disturbance. A review of complaint reports indicated that twenty of the injuries were clearly disturbance-related, five were clearly not disturbance-related and the remaining five were unknown (no complaint report was filed). In addition, eighteen of the assault victims cited in the lawsuit did not appear among the "aided" and complaint records reviewed. Thus, we estimate that between thirty-eight and forty-three civilians were injured during the civil

disturbance in Crown Heights. All but one of the thirty-eight documented civilian injuries stemmed from assaults.

Business Losses

Much of the documented property damage occurred on Tuesday during the disturbance and involved businesses located on Utica Avenue.

Several businesses estimated their damages and losses in hundreds of thousands of dollars. Some closed temporarily, while others went out of business.

Damages and Losses Sustained by Selected Businesses

Union Sneaker King

The store was looted for an extensive period of time. The owner estimated merchandise losses of approximately \$150,000. The store had to remain closed for 17 days while repairs and restocking took place. The temporary closure was particularly costly as it occurred prior to the reopening of schools -- a time of high-volume business for the store.

New York Fried Chicken

The store was looted and set on fire by rioters. The owner estimated that his business sustained \$140 to \$170 thousand in property losses and over \$100,000 in loss of business.

Utica Gold Exchange

The business was vandalized by rioters who stole a heavy safe and burned the store down.

Ajax Handbag Stores

The business was closed during the disturbance but suffered smoke and water damage resulting from the burning of Utica Gold Exchange.

Eli Jamaica Gold

The business was vandalized and sustained an undetermined loss. Another jewelry business has since been opened at that location.

Lewmark Haberdashers

The business received only minor property damage. However, the owner claims that his sales dropped significantly after the disturbance. The store recently went out of business.

Utica I. Company

The company owns the buildings in which many of the vandalized stores were located. It sustained \$186,800 in losses stemming from property damage and the loss of rental income.

CROWN HEIGHTS IN CONTEXT

How did the events in Crown Heights compare with other civil disturbances?

The disturbances in Crown Heights represent the most widespread racial unrest to occur in New York City in more than twenty years. Nevertheless, the disorder was much more limited in scope and caused less harm than the other highly publicized large-scale riots recently experienced around the country. Compared to other disturbances in New York City's recent past, the events in Crown Heights resulted in at least as much personal injury, but significantly less property damage. Unlike those other civil disturbances, much of the violence in Crown Heights was directed against one segment of the community — the Hasidim — rather than being primarily targeted at the police.

A number of factors make it difficult to draw comparisons between the Crown Heights disturbance and other civil disturbance. Most notably, the available statistics differ and affected areas vary substantially with respect to population density. Nonetheless, patterns which systematically distinguish Crown Heights from other incidents of civil disturbance can be tentatively identified.

Compared to some of the nation's most widely publicized civil disorders, the Crown Heights disturbance affected a small geographical area. The disturbance affected approximately one square mile and was concentrated within thirty blocks covering approximately one-third square mile.

In contrast, the highly publicized civil disorder in Dade County, Florida, in May 1980 affected a total area of forty-five to fifty square miles. It was concentrated most heavily within a fourteen square mile area in Miami.¹³ The widespread civil disorder in Los Angeles in 1992 engulfed nearly one hundred square miles within seven police areas of South Central Los Angeles.¹⁴

The Crown Heights disturbance was also slightly shorter in duration than either the Dade County or the Los Angeles disorders. The disturbance began on Monday night and was under control by Thursday night. The civil disorder in Los Angeles lasted nearly six days. The disorder in Dade County was not brought under control by authorities, but "burned itself out" after nine days.

Because the Crown Heights disturbance affected a small area, the overall number of incidents was comparatively small. It was estimated that the Dade

County disorder resulted in eighteen riot-related deaths, 300 assaults, sixteen homes destroyed, seventy-one businesses destroyed, and 238 businesses damaged.¹⁵ In the Los Angeles rioting, at least forty-two people died; 700 of businesses were burned; \$1 billion in property was damaged or destroyed; entire regions were left without electricity, mail service or public transportation; and over 10,000 *911* calls were made reporting serious incidents of personal or property crime.¹⁶ During the Crown Heights disturbance, there were approximately six businesses looted or damaged, an estimated 780 *911* jobs relating to all types of reported disturbance-related incidents, thirty-eight to forty-three injuries to civilians, and one death.¹⁷

The civil disturbance in Crown Heights represented the most widespread racial unrest to occur in New York City in more than a twenty-year period.¹⁸ It differed from most others in New York City history, because it involved the aggression of one group against another. Most civil disturbances throughout the turbulent 1960s involved some form of protest against police or other forms of authority.¹⁹ The inter-group nature of the disturbance in Crown Heights was reminiscent of the racial disturbances occurring in various cities between the 1920s and 1940s.²⁰ This distinction is important, as racial conflicts between communities tend to result in more civilian injuries than do disturbances targeted at the police or other instruments of authority.²¹

Widespread civil disturbances occurred in Harlem and the Bedford-Stuyvesant section of Brooklyn in July of 1964. These riots were precipitated by the fatal shooting of a fifteen-year-old black youth by a police officer.²² The riots involved over a thousand demonstrators and lasted for approximately three days.

The riots were characterized by extensive looting and burning of area businesses. At least 200 stores were damaged or destroyed. Over the course of a single night, the police expended over 2000 rounds of ammunition and were later heavily criticized for their extensive gunfire.²³ One civilian was killed during the disturbance. And, in the Bedford-Stuyvesant area, alone, at least eighteen civilians were injured, 342 arrests were made and there were 405 reports of broken windows.²⁴ Throughout both areas, there were 465 arrests.

In July of 1967, disturbances in East Harlem and the South Bronx were prompted by the shooting death of an Hispanic man by an off-duty police officer who intervened in a knife fight involving the victim.²⁵ As in 1964, the riots of 1967 lasted approximately three days and resulted in extensive property damage. Over 2,000 people were involved in the rioting, and over 1,000 police officers were deployed.²⁶

On the first night of rioting, twenty-five stores were looted.²⁷ By the third night, the rioters were shooting at the police, looting and burning innumerable businesses and attacking autos and other targets on the streets.²⁸ Trains passing through the area were doing so without lights.²⁹ Three civilians were killed in the gunfire and at least thirty civilians were injured.³⁰

From 1964 through 1971, there were at least five other substantial civil disturbances in New York City. Two 1968 riots in the Lower East Side of Manhattan and Coney Island were precipitated by conflicts with police. They lasted three days or more and resulted in limited injuries and property damage.³¹

Another riot occurred in the Brownsville section of Brooklyn in May 1971. It was sparked by protest against impoverishment in the area. It lasted only one day, but resulted in over 100 structural fires, injuries to thirteen firemen, fourteen police officers, and six civilians and twenty-five arrests.³²

A fifth riot occurred in Lower East Side Manhattan in August of 1964. Similar to the Crown Heights disturbance, it involved the clash of two groups following the shooting of an Hispanic by a black.³³ Several hundred demonstrators were involved in the disturbance. The rioting was concentrated in a black neighborhood where two large tenement houses were struck with firebombs. By the end of the two-day period, twenty-three arrests were made.

Since the 1970s, there have been few notable civil disturbances in New York City. In August 1988, a disturbance was sparked in Lower East Side Manhattan, when police attempted to clear Tompkins Square Park of the homeless. Following an evening rally in the park to protest the curfew, spontaneous demonstrations began in the surrounding streets. Bottles and fireworks were thrown at the police and some passing vehicles were attacked. There were also minor fires. The disturbance lasted for approximately five hours and resulted in nine arrests and injuries to eighteen officers.³⁴ Approximately 100 complaints were filed against police officers alleging police brutality.

The most recent civil disturbance of significance in New York City occurred in July, 1992. Residents of the largely Dominican community of Washington Heights (Manhattan) rioted sporadically over a five-day period following the police shooting of Jose Garcia, an alleged narcotics dealer. Over 1,000 residents were involved in the unrest which resulted in the deployment of 2,000 police officers to the area. The disturbance was characterized by confrontations with police and numerous fires. It resulted in ninety-six arrests, one death, sixteen civilian injuries, seventy-two police officers injured, fourteen building fires, 121 vehicle fires and damage to twenty-two police vehicles.³⁵

There are a number of important parallels and contrasts between the events in Crown Heights, other New York City disturbances, and riots throughout the country. Much of the criminal activity in Crown Heights was targeted against the Hasidic community in a way rarely witnessed in recent New York City history. At least as much injury to civilians resulted as during the urban riots of the 1960s. However, residential property rather than businesses was the target of most property offenses.

SUMMARY

New York City is a racially, ethnically, and religiously mixed urban area. The civil disturbance in Crown Heights represented the most widespread racial unrest in New York City in more than twenty years.³⁶ Unlike racial unrest in recent history, the civil disturbance in Crown Heights involved aggression against a segment of the community, as well as the police. The targeted nature of the aggression in Crown Heights heightened the seriousness of the disturbance.

The disturbance began following a automobile accident on Monday evening, August 19th. The disorders peaked on Wednesday, and relative calm was restored by Thursday night.

The impact of the disturbance was limited to a relatively small geographical area, totalling approximately one square mile. The strongest impact was felt within the original thirty-block police deployment area in the 71st Precinct. Large areas in both precincts experienced no impact.

The magnitude of the disturbance was reflected in almost every category of recorded incident. According to *911* reports, the disturbance was characterized by assaults and disputes in the streets, disorderly groups, police officers in need of assistance, vehicle fires, and commercial burglaries.

Overall, we estimate that nearly 800 of the approximately 1300 *911* jobs generated that week were attributable to the disturbance. Much of the activity during the disturbance week followed on the heels of marches and other significant events. Although the unrest remained geographically limited prior to Wednesday, portions of the neighborhood where people and homes were targeted experienced prolonged periods of unrest during the four days.

Most of the disturbance-related activity each day was concentrated between the hours of 4 p.m. and midnight. The timing and location of the activity clearly indicated that it was much more than mere sporadic violence. The concentrated *911* activity in the area of President Street and Utica Avenue on Tuesday night

represented a riot situation. On Wednesday, roving bands terrorized parts of the neighborhood for prolonged periods. The aggression was systematic, intense, and injurious.

On Tuesday night, between 7 p.m. and 10 p.m., there was an intense period of activity involving incidents within a two-block area near the scene of the accident. Incidents included vandalism, looting, arson, assaults of motorists and news media, overturning police vehicles, and objects thrown at police. Attacks on police officers were so severe that the police had to retreat to Lincoln Terrace Park.

On Wednesday, the area surrounding the accident scene continued to be badly victimized. Rioting also spread to other neighborhoods beyond the boundaries of the initial deployment area. There were reports of roving bands and mob violence throughout the affected area, accompanied by property destruction, arson, commercial burglaries, assaults, and confrontations between groups of blacks and Hasidim.

On Thursday, disturbance-related activity decreased significantly. Reports of serious crime returned to normal levels. Reports of property crimes and unspecified "disturbance" also decreased substantially from the levels of the previous three days, but remained slightly above the average for the prior week. By Friday, reported activity had returned to normal levels.

The police and, to a lesser extent, the citizenry experienced a significant amount of injury during the course of the disturbance. Several businesses sustained significant losses from which a few failed to recover.

When compared to other major civil disturbance in New York City's history, the Crown Heights disturbance resulted in at least as many injuries to civilians, but less commercial property damage. Moreover, the disturbance exhibited a kind of violence rarely witnessed in New York City, since much of the aggression was directed against one segment of the community.

ENDNOTES

1. The 911 data base is officially termed the SPRINT data base, an acronym for Special Police Radio Inquiry Network. For a description of how SPRINT relates to the 911 process, see Chapter 10.
2. Complaint reports normally underestimate the amount of criminal victimization. Typically, about two-thirds of criminal victimizations go unreported. This underreporting was exacerbated because our analysis did not include complaints alleging crimes during the week of disturbance but filed at a later date.
3. Preliminary analyses demonstrated that the prior week was a valid comparison period for assessing the impact of the disturbances.
4. The northeast area was not significantly affected until the third day of the disturbance. There was no statistically significant difference in the number of complaints in this area.
5. The procedures we used in identifying and validating these clusters are explained in Appendix B, Methods.
6. From Monday through Friday of the prior week, 911 activity was about average in the 77th Precinct and slightly below average in the 71st Precinct. The number of 911 jobs was a little higher than normal on the preceding Saturday in the 71st, but was lower again on Sunday. The number of complaint reports filed in both precincts was fairly steady throughout the prior week, and decreased somewhat over the weekend.
7. The rationale for the first approach is that the volume of reported activity during the prior week provides a reasonable estimate of the volume of activity which might have occurred during the disturbance week, if the disturbance had not taken place.
8. We estimated that the number of 911 jobs underrepresented the number of unique incidents by approximately twenty percent.
9. Timothy J. Flanagan and Kathleen Maguire, eds., *Sourcebook of Criminal Justice Statistics 1991*. U.S. Department of Criminal Justice, Bureau of Justice Statistics. Washington, D.C.: U.S. Government Printing Office, 1992, Table 3.11.
10. A clear exception to this generalization occurs with regard to assaults on police officers which may be filed irrespective of the extent of the injury.
11. Memorandum from Assistant Chief Thomas Gallagher to the Chief of Patrol, dated October 24, 1991.
12. Memo from Assistant Chief William J. O'Sullivan to the Chief of Patrol, dated November 8, 1991.
13. Miron, H. Jerome, and Robert Wasserman. *Prevention and Control of Urban Disorders: Issues for the 1980's Law Enforcement Assistance Administration*, U.S. Department of Justice, August, 1980.
14. Area estimated from maps presented in Webster, William H. and Hubert Williams. *The City in Crisis, A Report by the Special Advisor to the Board of Police Commissioners on the Civil Disorder in Los Angeles*, Los Angeles, CA: October 21, 1992.

15. Miron and Wasserman, n. 13.
16. Webster and Williams, n. 14.
17. Because of duplicate records in NYPD's SPRINT system, the number of reports overestimates the number of reported incidents. A review of SPRINT records with radio codes indicating assaults in progress suggests the number of distinct incidents was approximately three-fourths the number of SPRINT records. The number of assault victims could be higher, however, because some incidents may have multiple victims.
18. For a listing of major incidents involving racial and religious violence throughout the United States, see, Michael Newton and Judy Ann Newton, *Racial and Religious Violence in America: A Chronology*, Garland Publishers: New York, 1991.
19. Fogelson, Robert. "Violence as Protest," in Robert Lane and John Turner, *Riot, Rout and Tumult*. Greenwood Press: Connecticut, 1978, pp. 325-348.
20. Ibid.
21. Ibid.
22. Shapiro, Fred and Sullivan, James. *Race Riots: New York 1964*, Crowell Company: New York, 1964.
23. Apple, Jr., R.W. "Police Defend the Use of Gunfire in Controlling Riots in Harlem," *New York Times*, July 21, 1964, 1:7; "Violence Erupts for Third Night," *New York Times*, July 21, 1964, 1:7.
24. Ibid., Shapiro and Sullivan.
25. Bigart, Homer. "Two Killed, Twelve Hurt in Violence," *New York Times*, July 26, 1967, 1:5.
26. Ibid.
27. Bigart, Homer. "Disorders Erupt in East Harlem, Mobs Dispersed," *New York Times*, July 24, 1967, 1:6.
28. "Renewed Violence Erupts in Two Puerto Rican Areas," *New York Times*, July 26, 1967, 1:7.
29. Ibid.
30. Ibid.
31. "Two Patrolmen Beaten at Coney," *New York Times*, July 22, 1968, 32:1; "Lower East Side has a Calm Night," *New York Times*, July 27, 1968, 25:4.
32. Johnson, Thomas A. "Large Blazes Rage in Brooklyn Area," *New York Times*, May 6, 1971, 1:5.
33. "Racial Outbreaks Flare on E. 10th," *New York Times*, August 31, 1964, 11:1.
34. NYPD Memorandum from Chief of Department to the Police Commissioner, dated August 23, 1988.

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35. Memorandum from Assistant Chief Michael J. Philbin to the Chief of Patrol, dated July 23, 1992.
36. For a comprehensive listing of race-related disturbances throughout the United States, see, Newton, Michael and Newton, Judy Ann (1991). *Racial and Religious Violence in America: A Chronology* (New York: Garland Publishers).

Part III

The Police

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- ▶ Chapter 5: The Department
- ▶ Chapter 6: Planning
- ▶ Chapter 7: Training
- ▶ Chapter 8: Mobilization and Tactics
- ▶ Chapter 9: Command and Control
- ▶ Chapter 10: *911*
- ▶ Chapter 11: The Aftermath

INTRODUCTION

The preceding chapters recount the disturbance, establish its dimensions and depict its progression over each of the four days. Much of the mayhem was caused by riotous crowds and roving bands that splintered off from large groups of demonstrators. A unique characteristic of the disturbance was that much of the violence was directed against one segment of the community. Hasidic Jews often were targeted by the crowds, who pursued and assaulted them in the streets and attacked their residences with rocks and bottles.

The Police Department had both the duty and obligation to respond to the disorder, and did so. How effective the police were in responding to the challenge of the disturbance is the central question for this report and, ultimately, the mandate for this inquiry.

To evaluate the effectiveness of the police response required us first to assess the continuity of the Department's organization and the adequacy of its preparedness. To do so, we examined the civil disorder planning and related training for police supervisors and officers.

Chapter 5 of this part of the report opens with a brief description of the NYPD, keynoting the philosophy of community policing adopted in 1990 by the Department under the direction of Commissioner Lee P. Brown. We then examine the core command structure of the Department, summarizing the essential responsibilities vested in the principal positions at each level of command, from Precinct Commander through Police Commissioner.

The issue of contingency planning for civil disorders is taken up in Chapter 6. A review of professional law enforcement standards and other authoritative sources identifies essential elements that should be addressed in a comprehensive disorder plan. These standards provide the evaluative criteria on which we assess the general adequacy of the Department's plans and related procedures. Selected provisions of the Precinct *Unusual Disorder Plan* and the Patrol Borough Brooklyn South *Unusual Disorder Plan* are assessed including activation and rapid mobilization; procedures relating to staff responsibilities and command post operations; and suggested strategy and tactics. Elements of the NYPD *Administrative* and *Patrol Guides* are also evaluated because they set forth essential rules and directives related to mobilization and operations during a disorder. The chapter concludes with overall assessment of the plans and the extent to which they address the recommendations set forth in widely accepted law enforcement standards for the policing civil disturbances.

Chapter 7 is devoted to the topic of police officer training for demonstrations and civil disorders. Police training is intended to develop the special skills

necessary to perform one of society's more demanding professions. However specialized these skills, the Department's mission requires consistency in the approach to training across all ranks. Our review begins with a brief description of demonstration and disorder training supplied to recruits at the Academy. Promotional training provided to sergeants, lieutenants and captains upon career advancement is also described. Special consideration is given to the content of the "first responder" in-service training program developed and implemented to redress the deficiencies in the police response to a 1988 incident. An assessment of the NYPD training in disturbance control is given.

Our analysis of police preparedness and training for civil disorder establishes a framework for our assessment of the police response to the disturbances in Crown Heights. Our evaluation of how well the police handled the disorder is based, to a great extent, on the performance standards for police personnel specified in official NYPD documents.

In Chapter 8, we examine the measures the police used to restore and maintain order throughout the four days of the disturbance. This assessment is divided into four areas: (1) the mobilization of police on the initial night of the unrest and their response to the violence; (2) the tactical approaches used and command's assessment of their effectiveness on successive days of the disturbance; (3) the issue of arrest policy and strategy; and, (4) the practice of community intervention and rumor control.

In Chapter 9, we analyze the NYPD's command and control functions over four critical days of the August, 1991 disturbance. Attention is focused upon how effectively police commanders discharged their responsibilities. In particular, we ask whether the strategy and tactics adopted were appropriate, and whether deployment of resources was sufficient to respond to the variety of situations the police encountered. We also examine whether the Headquarters command exercised proper oversight of field operations.

In Chapter 10, we assess the Police Department's handling of emergency calls to *911* during the disturbance. The *911* system is a lifeline linking the community and its police force — directing defense and aid to victims, while reassuring other residents that their lives and property will be protected. It can also be a useful aid in tactical planning, providing information about the nature and course of a disorder.

In the aftermath of a large-scale disorder, the NYPD requires the commanding officer concerned to prepare an official critique of all relevant decisions and actions taken. In Chapter 11, we review the conclusions to the

critique of the Crown Heights disturbance, as well as the recommendations of senior NYPD staff who analyzed the Department's response. We also present information on the improvements that the Department has initiated since August, 1991, to improve its capabilities for handling future disorders.

Chapter 5

The Department

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- ▶ The Police Commissioner
- ▶ First Deputy Commissioner
- ▶ Chief of Department
- ▶ Chief of Patrol
- ▶ Patrol Borough Commander
- ▶ Division Commander
- ▶ Precinct Commander

THE DEPARTMENT

The New York City Police Department (NYPD) is one of the largest municipal law enforcement organizations in the world. More than 32,000 uniformed and civilian personnel provide policing services throughout seventy-five precincts strategically located across its jurisdiction which spans all five New York City boroughs.

The mandate for the Department, set forth in the City Charter, is broad in scope but also specifies certain duties. It authorizes the NYPD to preserve the public peace, prevent crime, protect the rights of persons and their property, and detect and arrest offenders. Moreover, the Charter empowers the police to "to suppress riots, mobs and insurrections, disperse unlawful or dangerous assemblages".¹

With the rise of modern police professionalism in the 1960s, the Department actively pursued progressive police management practices and innovative service programming. But the organization of the Department remained "traditionally paramilitary with strong central control over most activities."²

In 1990, under the leadership of Police Commissioner Lee P. Brown, the Department re-evaluated its mission and organization to determine how best to carry out its mandate. Based upon this assessment, community policing was formally adopted as the Department's dominant operational philosophy. Under the community policing model, most policing activity would be decentralized to the precinct level. Police officers would increase their visibility in neighborhoods, interact more with community residents and business people, and be empowered to engage in more problem-solving activities within the community. In addition, response to work demands generated through the 911 system would also be integrated with community policing assignments.

The Department reorganized to meet the demands and requirements of community policing. The need to increase the availability of police officers for patrol duty was accommodated, in part, through new hires and by "civilianizing" certain support and technical services. Several bureaus were also streamlined by consolidating their functions.

When the Crown Heights disturbances occurred in August 1991, some of these staffing changes had been made, but the reorientation of the Department into an organization centered on community policing principles was by no means complete. None of the changes significantly altered the existing command structure and reporting responsibilities.

The command structure of the Department is based on rank, with the Police Commissioner at the apex of its hierarchy, followed by the Chief of Department. For provision of uniform patrol services, the Chief of Patrol is next, followed by the Patrol Borough Commander, the Division Inspector and the Precinct Commander. The following briefly describes the six levels of this core command structure and the fundamental duties of each position.³

THE POLICE COMMISSIONER

The Police Commissioner is a civilian, appointed to a five-year term by the Mayor. As chief executive officer of the Department, the Commissioner is charged with “the execution of all laws and the rules and regulations of the department”, and is responsible for the “government, administration, disposition and discipline” of the police force.⁴ The role of the Police Commissioner is to manage the Department to meet the public need for police services. The incumbent is expected to provide leadership and to exercise direction and control over the activities of the Department.

The City Charter grants the Police Commissioner power to appoint Deputy Commissioners, including a First Deputy Commissioner, all of whom serve at the pleasure of the Commissioner. These civilian Deputy Commissioners, together with the uniformed chiefs, form the Executive Staff of the Department.

In addition to the First Deputy, the Department had seven Deputy Commissioners in 1991. They held positions in Management and Budget, Public Information, Legal Matters, Equal Employment Opportunity, Trials, Community Affairs and Civilian Complaints. (See NYPD Organizational Chart in Appendix E).

FIRST DEPUTY COMMISSIONER

The First Deputy Commissioner serves as an advisor and executive aide to the Police Commissioner, administering the management, budget, and personnel functions of the Department, and supervising the disciplinary system. In the absence or disability of the Commissioner, the First Deputy conducts all affairs of the Department except appointments and transfers.⁵ The First Deputy Commissioner is not directly in the chain of command. However, unlike other Deputy Commissioners who may only offer advice to the patrol supervisor at the scene of a large-scale incident, the First Deputy may assume command.

CHIEF OF DEPARTMENT

As the highest ranking uniformed member of the NYPD, the Chief of Department is subordinate only to the Police Commissioner. The functions of this position involve supervising police performance and directing all the activities of the uniformed and detective services. Important responsibilities include maintaining an ongoing dialogue and interaction with community organizations, religious leaders and government agencies, and formulating plans that coordinate activities during special or unusual occurrences. The Chief of Department oversees key divisions which constantly monitor police operations and administer the agency's communication systems. The Operations Unit is a 24-hour center used for gathering and disseminating information and assigning personnel to major events such as organized demonstrations.

CHIEF OF PATROL

The Chief of Patrol reports to the Chief of Department and commands the Patrol Services Bureau, "the foundation of the Department." The person occupying this position coordinates and controls the efforts of the seven Patrol Borough Commands and the Traffic Division, plus supplementary units including Emergency Services, Aviation and Mounted Police. The Chief of Patrol is responsible for providing uniformed patrol officers to respond to emergencies, minimize harm, maintain order and protect individual rights. It is the duty of the Chief of patrol to deploy resources to effectively combat crime and respond to community needs.

PATROL BOROUGH COMMANDER

The NYPD divides its jurisdiction into seven Patrol Borough Commands: Manhattan South, Manhattan North, Bronx, Brooklyn South, Brooklyn North, Queens, and Staten Island. Every Patrol Borough is commanded by an Assistant Chief, who is subordinate to the Chief of Patrol. Each Patrol Borough Commander is assisted by one or more Executive Officers, generally in the rank of Deputy Chief. It is the Borough Commander's responsibility to oversee division and precinct commands, and to confer with them regarding prevailing conditions and the deployment of personnel. For operations that go beyond the boundaries of individual precincts, the Borough Commander must arrange additional resources.

DIVISION COMMANDER

Each Patrol Borough, except for Staten Island, is partitioned into three Divisions. The Division Commander holds the rank of Inspector and supervises the several precincts that comprise the Division. The Division Commander reports to the Patrol Borough Commander.

PRECINCT COMMANDER

The Precinct Commander holds the rank of Deputy Inspector or Captain. He is assisted by an Executive Officer, also a Captain. Because the precinct is the primary service delivery unit for the Department, the Precinct Commander's first responsibilities concern the deployment of twenty-four-hour patrol coverage and the assurance of prompt response to citizen calls for service. The mission of the precinct has expanded under the community policing strategy to embrace a greater emphasis on addressing community concerns and in helping the community identify and solve local crime and quality of life problems.

The New York City Police Department is an immense and complex organization functioning in an urban environment that is racially, ethnically, and culturally diverse. To cope with the wide array of problems it faces, the Department has developed numerous discrete units with responsibilities in every aspect of policing. In the event of civil disorder, NYPD commanders have these specialized services at their disposal to meet tactical and operational needs. As a result, a major challenge for police commanders involves how best to coordinate the vast resources and special assets available to them.

While there can be no substitute for practical experience, planning and training are important in developing the capabilities of the entire police force. Proper planning and adequate training play an essential role in enabling superior officers to make sound decisions and readying line officers to execute them effectively. Attention to these fundamental needs is especially important in preparing to handle civil disturbances. To these primary functions, we now direct our attention.

ENDNOTES

1. New York City Charter, Chap. 18, §435. a.
2. *Policing New York in the 1990s: the Strategy for Community Policing*. New York City Police Department. January, 1991, p. 21. Community policing is also a central component in the City's comprehensive program of criminal justice. See *Safe Streets, Safe City: Cops and Kids*, City of New York. August, 1991.
3. Information on the organization and structure of the NYPD, as well as that pertaining to the responsibilities of those in the command structure, was taken from the Department's *Organization Guide*, its *Patrol Guide*, and the *Report to the Mayor: New York City Police Department Staffing Needs*. New York City Police Department. October 1, 1990.
4. New York City Charter, Chap. 18, §§431 and 434.
5. *Ibid.*, Chap. 18, §432.

Chapter 6

Planning

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- ▶ Components of a Comprehensive Civil Disturbance Plan
- ▶ NYPD Plans and Procedure Manuals
- ▶ Assessment
- ▶ Summary

PLANNING

Contingency planning for civil disorders is a critical aspect of professional law enforcement management. Twenty-five years ago, the National Advisory Commission on Civil Disorders (hereafter referred to as the *Kerner Commission*) recognized that the ability of a police department to control a civil disorder “depends essentially on two factors: proper planning and competent performance.”¹ This chapter describes the plans and procedures the NYPD had in place during August, 1991, and assesses the extent to which they were adequate. More specifically, the chapter will address four principal sets of questions:

- What are the key components that comprehensive disorder control plans ought to address?
- How were NYPD’s plans and procedures relating to unusual disorders organized?
- Did NYPD’s plans and procedures address all of the components recommended by professional standards? In general, did the plans and procedures provide a solid basis for responding to unusual disorders in an effective manner?
- What are the key provisions of the NYPD *Unusual Disorder Plans*? What criteria existed to help superior officers determine when the plans should be implemented? What did the plans recommend concerning deployment, tactics and, the arrest of lawbreakers? Did special provisions exist concerning the management of *911* calls during a disturbance?

COMPONENTS OF A COMPREHENSIVE CIVIL DISTURBANCE PLAN

We reviewed several sources in an effort to identify the full range of topics that should be addressed in a disorder control plan. Professional standards developed by the *Commission on Accreditation for Law Enforcement Agencies* (1989) provided the best single point of reference for this analysis. Other sources included professional standards developed by the *National Advisory Commission on Criminal Justice Standards and Goals* (1976) and the recommendations of the International Association of Chiefs of Police (1992), California’s *Emergency Planning Guidelines for Local Law Enforcement* (1989), the *Webster Report* (1992) and a detailed report prepared by experienced commanders from twenty large law enforcement agencies (1992).²

The analysis identified forty-nine core elements that should be included in a comprehensive plan. Although these elements are not equally important, all should be addressed in some fashion. To facilitate a clear conceptualization, we have grouped the elements into seven major categories: Planning, Operations, Communications, Public Information, Emergency Mobilization, Mass Arrests, and Post-Operational Review. The categories and component parts are listed in Table 6.1.

TABLE 6.1. ELEMENTS OF A COMPREHENSIVE CIVIL DISTURBANCE PLAN

- A. **PLANNING**
1. Legislation permits special preventive action in emergency situations (e.g., curfews, restriction of liquor sales, control over marches, and demonstrations).
 2. A designated position within the agency is responsible for civil disorder planning.
 3. Agency disorder control plans are reviewed and updated annually.
 4. Command staff have an emergency operations manual that is reviewed and updated annually.
 5. Equipment designated for use in civil disturbances is inspected monthly for operational effectiveness.
- B. **OPERATIONS - Agency Disturbance Plans Include Provisions for:**
1. A mission statement.
 2. Objectives and directives to guide the tactical response.
 3. Legal considerations.
 4. Command structure.
 5. Control center.
 6. Security of public facilities and potential targets (e.g., gun stores).
 7. Traffic control.
 8. Intelligence.
 9. Logistics (equipment, transportation, meals, etc.)
 10. The availability of situation maps to plot operational commitments.
 11. The arrest/confinement of detainees in situations that do not involve special mass arrest operations; special procedures govern the handling of juveniles.
 12. Assistance from other law enforcement agencies.
 13. Military support.
 14. Civil defense.
 15. De-escalation.
 16. Aftermath duties.
- C. **COMMUNICATIONS - Agency Disturbance Plans Include Provisions for:**
1. Establishing and maintaining communication between field officers and headquarters.
 2. Establishing and maintaining communication among various field units.
 3. Establishing and maintaining communication between the police and key non-police agencies such as the Fire Department.
 4. Receiving and managing emergency calls.
- D. **PUBLIC INFORMATION - Agency Disturbance Plans Include Provisions for:**
1. Rumor control.
 2. The collection and dissemination of casualty information.
 3. Media relations.
- E. **EMERGENCY MOBILIZATION - The Agency has a Written Emergency Mobilization Plan that Includes Provisions for:**
1. Communications.
 2. Alert stages.
 3. Primary and alternate assembly areas.
 4. Equipment distribution.
 5. Special task force activation.
 6. Key personnel designations.
 7. Transportation requirements.
 8. Management control measures.
- F. **MASS ARRESTS - Agency Disturbance Plans Include Provisions for the Following to Carry Out Mass Arrests:**
1. Processing (to include booking).
 2. Transportation.
 3. Detention.
 4. Evidence collection.
 5. Security.
 6. Identification.
 7. Interagency agreements.
 8. Defense counsel visits.
 9. Court and prosecutorial liaison.
 10. Media relations/public information.
 11. Food, water, and sanitation.
 12. Medical treatment.
- G. **POST-OPERATIONAL REVIEW - Agency Procedures Require the Preparation of a Written Post-Operational Review Each Time that the Agency Responds to a Civil Disturbance.**

The information provided in Table 6.1 establishes broad criteria for evaluating the scope of a given civil disturbance plan. The table identifies what topics should be addressed, but offers little direction concerning how police officials ought to address them. This limitation is unavoidable because no single approach can serve as a definitive model or template for every jurisdiction.

NYPD PLANS AND PROCEDURE MANUALS

Several NYPD documents set forth how police personnel should respond to civil disorders. Essential information for the police force to handle most circumstances that might arise is contained in official *Guides* which are distributed throughout the Department. Specific recommended procedures are outlined in precinct and borough level disorder plans. In addition, a separate manual for supervisory personnel explains the agency's response to disasters. The NYPD did not have an integrated citywide disorder control plan under one cover in 1991. Other documents that influence the police response include interim orders and memos from the Chief of Patrol and Chief of Department.

NYPD procedures are organized by topic within appropriate guides. These include the *Administrative Guide*, the *Patrol Guide*, the *Detective Guide*, an *Organization Guide*, and the *Community Policing Guide*. Proposed changes in the procedures contained within these guides are reviewed at several levels. The Office of Management, Analysis and Planning is ultimately responsible for coordinating this process.

Relevant procedures from the *Administrative Guide* describe the Mayor's Plan for Coordinated Action at Emergencies, emergency arrest processing during unusual disorders and a format for the critique of large scale disorders or unusual occurrences. Relevant procedures from the *Patrol Guide* include rapid mobilization, the emergency mobilization of off-duty officers and emergency incidents. These provisions are the equivalent of rules and directives governing the members of the Department.

In contrast, NYPD plans outline recommended procedures which reflect the best thinking of the Department. While compliance with the requirements of the *Patrol* and *Administrative Guides* is expected, police commanders can exercise discretion in deciding how closely to adhere to a plan's provisions.

The *Administrative Guide* and the *Patrol Guide* identify topics that must be included in these plans and the ways in which they should be addressed.

The precinct plan provides the first line of defense when a disturbance begins to threaten public order. The *71st Precinct Plan* at the time of the Crown Heights disturbance provides a framework for doing so. It had last been reviewed in January 1989. The plan is organized into topical areas which cover the duties of key personnel, rapid mobilization, instructions for police officers, and arrests. The main body of the plan is twenty-five pages long, while ten appendices total sixty pages. The appendices present the names and addresses of community leaders, procedures to be utilized in the event of a bomb threat or blackout, the locations of subways and vulnerable locations, and other information relevant to the precinct level. The plan also incorporates citywide procedures pertaining to mass arrests.

If the police cannot suppress a disturbance by implementing a plan designed for use at the precinct level, officials can activate a plan that covers the entire patrol borough. Borough plans build on the foundation provided by the relevant precinct plan and operationalize citywide directives in ways that are appropriate for the particular borough.

The Patrol Borough Brooklyn South *Unusual Disorder Plan* in 1991 was seventy-one pages long and began with three pages of definitions. The rest of the plan can be divided into four principal parts: Activation/Mobilization, Operational Procedures, Return to Normalcy, and Critique. The Table of Contents lists forty-nine separate sections.³

Another document relevant in a disorder situation is a 130-page manual entitled *Staff Organization and Procedures for Command Post Operations*. The manual is undated, but is approximately twenty years old, issued while Patrick Murphy was serving as the Police Commissioner (1970 - 1973). The first part of the manual covers the organization, staff responsibilities, and other issues essential to operating a Command Post. Part II deals with requirements regarding joint police - National Guard operations. The third and final part is a general guide for the Field Commander and his/her staff in making decisions and problem solving. The manual is applicable to "riots, unusual disorders, large demonstrations, natural disasters and crowd control (parades, rallies, etc.)."⁴

Finally, the NYPD has a *Disaster Manual* to help manage the City's response to various catastrophes. The relevant edition of this manual was printed in November 1988. Its purpose is "to provide a guide for Commanding Officers and other supervisory personnel in facilitating the actions of the Police Department and the coordination of police efforts with the activities of other departments and agencies responding to a disaster."⁵

The *Disaster Manual* describes the functions of the Mayor's Emergency Control Board (ECB). The Board was created in 1961 to ensure the effective use of all available City resources during an emergency. Board members include the

Mayor, Police Commissioner, the Mayor's Director of Operations, Deputy Mayors, Commissioners from "appropriate agencies," and executives from private and voluntary organizations such as Con Edison and the American Red Cross.

The content of the *Disaster Manual* was derived from department procedures and the recommendations of all commands having a mission during disaster. Consequently, most of the police activities described are the same as those that are established in the *NYPD Guides*.

The *Disorder Plans* and the *Disaster Manual* collectively present the NYPD's perspective regarding how the Department can best respond to a civil disturbance. The plans address important logistical and tactical issues in ways that are consistent with the Department's resources and philosophical orientation. These documents are intended to assist Field Commanders by prescribing a preferred organizational structure and list specific responsibilities for personnel of all ranks.

The plans state what officers serving in particular roles "shall" do. The plans do not authorize commanders to disregard key elements of the Department's established strategy, nor do they describe the circumstances under which commanders may wish to consider doing so. NYPD personnel interviewed for this report were nevertheless unanimous in reporting that senior officers have the discretion to handle disorders in the ways that they consider to be most appropriate. We believe, however, that if the patrol supervisor departs from the standardized procedures thought to be desirable and most effective, the justification for that decision might be legitimately questioned by higher ranking members of the Department.

ASSESSMENT

Project staff analyzed the Brooklyn South and 71st Precinct *Unusual Disorder Plans* to determine whether or not they addressed all of the elements identified in Table 6.1. Several factors were considered when making the determination of whether or not the plans addressed a particular element in a substantive manner. Of particular importance were the intent and scope of the element as established by the literature and explanatory commentaries that accompany many of the professional standards. Other relevant variables included the clarity of Departmental procedures, the context in which they appeared, and the extent to which they provided meaningful guidance for affected personnel. Finally, and where applicable, it was noted whether or not the procedures took

foreseeable emergencies into account and incorporated provisions that could counter potential problems.

Our review of the disturbance plans and other supporting documents that were in place during August, 1991 indicates that the NYPD adequately addressed nearly all of the necessary elements. The review, nevertheless, identified several issues that warrant further discussion.

Planning

The relevant procedures were issued in the 1970s and 1980s. Given the age of these materials, it is critical that they be reviewed periodically to assure the content is current and that individual procedures contribute to a unified and well-integrated plan.

The manual pertaining to *Staff Organization and Procedures for Command Post Operations* is twenty years old and should also be updated where necessary. The manual indicates, moreover, that City and State officials will renew the Memorandum of Understanding concerning the use of the National Guard prior to April 1 of each year. The manual that the NYPD provided to us does not indicate whether or not this agreement has been modified during the last two decades. This oversight is potentially very serious because the Memorandum was in draft form and had not been finalized when the manual was printed.

Consistent with national standards, annual updates are required for each *Borough Unusual Disorder Plan*. Patrol Borough Commanders must submit an annual report to the Operations Division certifying that "*Unusual Disorder Plan* files, lists, and charts have been inspected and brought up-to-date."⁶ Information provided by the NYPD, however, indicates that the *Unusual Disorder Plan* for Patrol Borough Brooklyn South was reviewed four times from its issuance in 1982 until the time of the Crown Heights disturbance in 1991. The last documented review occurred in February of 1989.

Likewise, precinct staff is required to "study and update existing disorder, disaster or other plans affecting the Command."⁷ Records indicate that the plan for the 71st Precinct was "extensively reviewed and updated in January of 1984." It was subsequently reviewed on an annual basis through January of 1989, and the memoranda produced during those years report that no changes were necessary.

We find it surprising that the NYPD did not modify its disorder plans during the three years that passed between the disturbance in Tompkins Square Park and the outbreak of violence in Crown Heights. The police experienced

significant problems during its operations in Tompkins Square, and new procedures may have been warranted in certain topical areas.

Activation

Administrative Guide procedure #316-31 and the *Unusual Disorder Plans* for both the 71st Precinct and Patrol Borough Brooklyn South all establish specific procedures for police personnel to follow. The *Borough Plan* even goes so far as to state that, "In the event this plan is not activated, but a civil disorder does occur, the theories and principles expressed herein may be utilized to expedite the operation."⁸

Neither plan defines "unusual disorder," nor establishes firm criteria regarding when the plans must be invoked. However, both provide guidance by defining the larger phenomenon of an "unusual occurrence." As reported in the *Borough Plan*,⁹

An unusual occurrence is an incident that is substantially more than an ordinary occurrence. It relates to an incident in which circumstances or facts vary from the norm, involving a situation, condition or hazard requiring police action. An occurrence is "unusual" in most instances, because of its seriousness, peculiarities, sensationalism, proportion, difference or newsworthiness. The main criteria which shall determine its classification as an unusual occurrence is the Police Commissioner's, Chief of Operations' or Chief of Field Services' NEED TO KNOW (capitals in the original).

The *Plan* goes on to define a "serious unusual occurrence" as "an unusual occurrence of such proportion that the manpower and equipment of one patrol area is inadequate to establish and maintain control." One could infer that commanders should seriously consider implementing the *Unusual Disorder Plan* when resources from multiple patrol areas are needed to restore order.

Both the Commanding Officer and the Executive Officer of the precinct where the disturbance occurs have the authority to activate the Patrol Borough Brooklyn South (P.B.B.S.) *Unusual Disorder Plan*. If these individuals are absent, the *Plan* can also be activated by the Captain assigned to the day or night duty.

Mobilization

If a law enforcement agency mobilizes because of an anticipated event such as a planned demonstration, it has ample time to schedule, notify, and assign the necessary numbers of police personnel. If, on the other hand, a civil disturbance erupts unexpectedly, the ability to summon additional personnel to the scene quickly becomes crucial so that order can be restored before the violence escalates.

The *Patrol Guide* procedure on Rapid Mobilization identifies action to be taken in accordance with the "*Local Mobilization Plan*." The *Local Mobilization Plan* for Patrol Borough Brooklyn South was enacted in 1980. The plan indicates how many officers and supervisors should respond to an emergency under various conditions and lists in priority order the locations from where they are to come. The *Local Mobilization Plan* is incorporated into both the Borough and Precinct *Unusual Disorder Plans*. As part of the overall strategy, the plans identify emergency response routes, predetermined connecting routes, a mobilization point, and a staging area.

If the Task Forces are unable to restore order, local mobilization may be required. The *Local Mobilization Plan* provides two levels of response, Phase I and Phase II. When Phase I goes into effect, nine to twelve patrol cars with fifteen to twenty police officers and three or four sergeants from the precinct where the emergency exists respond to a staging area. If a Phase II mobilization is implemented, an additional twenty-seven to thirty patrol cars with forty-five to fifty police officers and nine or ten supervisors respond.

If more officers are required, the *City Rapid Mobilization Plan* can be put into effect. A Deputy Inspector or higher ranking officer at the scene of the incident can request that any number of personnel be sent to the area affected. If no one of this rank is on the scene, a captain can submit such a request to the ranking officer at the Operations Division. This officer will confer with a supervisor in charge at the Communications Division and then order the assignment of more officers.

When a citywide mobilization is called, all appropriate off-duty personnel report to their permanent commands unless otherwise directed. The Commanding Officer of the Operations Division is responsible for devising procedures to be followed whenever off-duty members are recalled.

Command and Control

Command Responsibility

Procedures used by the New York City Police Department establish two distinct types of command. Under normal conditions, this structure provides a multi-layered, para-military hierarchy, with numerous levels of supervisory officers. In addition, many technical, administrative, and support service units are positioned in lateral relationships in the overall hierarchy.

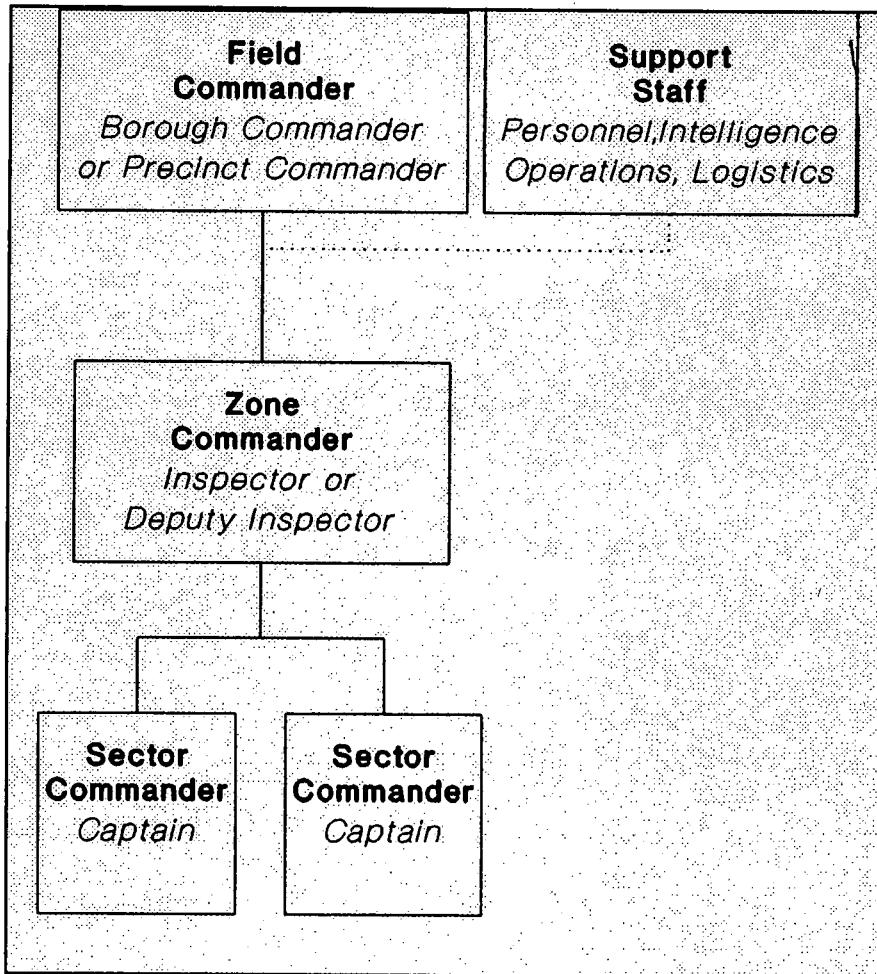
During emergencies, a second type of command structure is used to enhance flexibility and the ability of the Department to deal quickly with both natural and man-made events. For the events taking place in Crown Heights in late August 1991, this special command structure was established in the Patrol Borough Brooklyn South *Unusual Disorder Plan*. It is important to note, however, at the scene of an incident involving a citywide response, the highest ranking Patrol Services Bureau supervisor is in command and coordinates police operations. "The Patrol Bureau Services Commander may only be superseded by the Police Commissioner, First Deputy Commissioner, or Chief of Operations. Any other Deputy Commissioner may render advice and assistance to the Patrol Services Bureau Supervisor in charge of the incident but may not assume command of the incident."¹⁰

Command responsibility can shift as the nature of the disturbance is assessed and responding personnel arrive. The first field supervisor, station commander, or staff officer arriving may subsequently assume command, but there must be a clear shift of authority. The mere presence of a higher ranking law enforcement official does not equate to a transfer of command by that person. That person may act in an advisory capacity or need to collect more information prior to assuming command.

The incident commander (regardless of rank) should have complete authority and responsibility for conducting operations within the involved area. There can only be one person in charge.

The P.B.B.S. *Disorder Plan's* command structure is shown in Figure 6.1. It assigns primary responsibility for directing the Department's response to the Field Commander. This individual is usually the Borough Commander in the jurisdiction the disturbance begins. If the Borough Commander is not in a position to assume command, the superior officer at the scene, usually the Precinct Commander, assumes the role of Acting Field Commander and is responsible for activating and assigning personnel. The Field Commander is

Figure 6.1 P.B.B.S. *Disorder Plan* Command Structure



responsible for mobilizing police personnel; establishing and maintaining liaison with key police officials including the Chief of Operations, the Chief of Field Services, the Chief of Detectives, and the Commanding Officer of the Operations Section; conferring with and enlisting the aid of public officials and community leaders; and maintaining a liaison with the Fire Department.

To facilitate a smooth operation, the P.B.B.S. *Disorder Plan* identifies a support staff to assist the Field Commander. Support staff handle the many logistical needs which are necessary for the efficient functioning of massive

deployments of people, vehicles, and equipment, and the coordination of auxiliary services such as fire fighters, mass transit, medical resources, and utility crews. Key staff members include officers who will be responsible for Personnel, Intelligence, Operations, and Logistics. The plan also calls for officers to be designated to take charge of mobilization points, the Communications and Message Center, the Press and Information Center, rumor control, and to act as liaisons with City departments and specialized police units.

The Field Commander also supervises Zone Commanders. The Zone Commander is the Commanding Officer of a major geographical area into which the affected area is segmented. An Inspector or Deputy Inspector serves as the Commanding Officer of a zone. The Zone Commanders are responsible for assigning forces to critical areas, distributing written instructions, deploying forces and employing appropriate tactics, and keeping the Command Post informed of the developing situation. The Zone Commander controls the situation by directing the next level of authority, the Sector Commander, and by feeding information back up to the Field Commander.

The Sector Commander is ordinarily a captain who controls the movements of subordinates within a portion of the zone. The Sector Commander supervises the actions of the lieutenants and sergeants who are assigned to posts within the sector. The Sector Commander also sends field intelligence back up through the chain of command.

Command Posts and Control Centers

The NYPD utilizes three types of facilities to manage disorders: the Field Command Post, the Fixed Command Post and the Command and Control Center maintained by the Operations Division. The P.B.B.S. *Disorder Plan* defines a Command Post as "the physical headquarters of command in a tactical area of responsibility which provides administrative facilities for the utilization of the Field Commanders." Its purpose is to help the Field Commander and his staff to effectively gather information, assess the situation, prepare recommendations, implement orders, and monitor the operations of forces within the Patrol Borough Brooklyn South area.

Once the first mobilization code has been broadcast, the requesting supervisor will select a location for a "Temporary Headquarters" or Field Command Post. In a minor occurrence, the Field Command Post may be situated near the scene of the occurrence, even close enough to observe the activity. A

more severe occurrence will require the selection of a site that is secure from danger and protected from public view.

A Mobile Command Post vehicle will be dispatched to arrive with the responding Task Force and will be set up for the Field Commander. The Field Command Post vehicle can be a van or wagon outfitted with a minimum amount of equipment and communications ability. This will enable it to function immediately upon arrival at the site.

A regular temporary headquarters vehicle will be dispatched as soon as possible after notification. Once together, the Command Post vehicle will serve as a tactical operations center while the temporary headquarters vehicle will be used as a working and briefing area for the Field Commander and his staff.

The Fixed (Permanent) Command Post is an installation whose location has been predetermined, usually at the patrol borough headquarters. Its function is to coordinate and ensure adequate police coverage of all operations within the borough, the accurate transmission of the incident commanders' instructions to the Field Commander, and transmit information from the field to the Operations Division. A permanent Command Post is generally not practical at levels below the borough.

A Departmental level Command Center is typically activated when an unusual occurrence is likely to reach extremely serious proportions. According to the National Advisory Commission on Criminal Justice Standards and Goals, the center should "coordinate all agency control activities. It should serve the field Command Post by fulfilling requests for personnel, equipment, supplies, and information. Operating in this manner, the field Command Post is able to devote all its resources to applying control measures."¹¹

In New York City, the Operations Division Command and Control Center monitors incident developments once a citywide readiness alert is transmitted. The Center coordinates and ensures adequate police coverage of all operations, the accurate transmission of the Chief of Department's instructions to the incident commander, and information from the incident commander to the Chief of Department. The Center also ensures that proper lines of communication are maintained among all Command Posts and coordinates the mobilization and transportation of all out-of-borough personnel and equipment to the area of operations. Finally, the command center serves as the interagency liaison and keeps all city agencies informed of the situation in the incident area of operations.

Deployment and Tactics

Deployment of Personnel

The optimal deployment of personnel during a disturbance will depend on many factors. According to a national task force of experienced law enforcement officials, deployment situations should be mission oriented. More specifically, officers must be told what to do and how to go about doing it. Officers sent into areas without specific instructions tend to congregate and "become increasingly likely to act as a leaderless group."¹²

It is better to deploy by foot, van or, bus than by individual patrol cars. Parked patrol cars can congest streets used for other emergency equipment (e.g., fire and medical), and personnel will have to stay behind to provide security because unsecured vehicles may be set on fire. Rioters may also take equipment stored within the vehicles to use for their own purposes.

The deployment of personnel in the *Precinct Plan* is coordinated by the Sector Commander. Officers are assigned to vulnerable points listed in Detail Roster Assignment sheets and the appendices of the *Precinct Plan*. In addition, the plan divides the precinct into five zones in priority order. A captain is placed in charge of each zone and oversees several squads of officers who are assigned to specific posts within the zones.

Mobile units consisting of one sergeant and five police officers assigned to a Radio Motor Patrol (patrol car) (RMP) are the basic unit of personnel deployment within the P.B.B.S. *Unusual Disorder Plan*. These units are under the direct control of the zone commanders. RMP units can be used individually or in groups to respond to and control disturbances within the zone.

A second unit of deployment identified in the plan is the post. A post is a specific area of responsibility within a sector. The minimum staffing on a post is two police officers supervised by a sergeant or lieutenant.

Securing Vulnerable Locations and Emergency Vehicles

One of the issues that commanders must consider when deploying personnel is the protection of vital facilities. This task requires coordination not only among the various City departments, but also between the City and other public and private agencies. Many experts believe that the highest priority should

be given to remote components of the communications system.¹³ Other key installations that may need to be protected include public utilities, banks, hospitals, fuel storage areas, armories, pharmacies, businesses that sell weapons and alcoholic beverages, and Command Post sites.

Administrative Guide procedure #316-20 directs precinct commanders to maintain an "up-to-date file of important vulnerable installations within command." Accordingly, an appendix of the *71st Precinct Plan* lists a number of posts, each with a Captain in charge, that need to be covered in priority order. In addition, the plan includes the names and addresses of hospitals, schools, banks, jewelry stores, and other vulnerable locations. The plan specifically directs the Sector Commander to assign officers to protect vulnerable locations.

Mission and Tactical Objectives

It is essential that a clearly articulated mission statement be available to guide the police response to an unusual disorder. The statement should have the explicit support of agency chief executive officer and be incorporated as a formal part of staff training.

The mission statement is significant because it establishes specific agency values and principles concerning the way in which officers will be expected to handle a disorder. A good mission statement gives the Field Commander clear direction when establishing specific objectives, selecting tactics, and prioritizing activities.

The selection of specific tactical options in a disturbance situation will be greatly influenced by the professional judgement of responsible agency officials. The *Kerner Commission* studied twenty-four disorders in twenty-three cities and concluded that the disorders of 1967 were "unusual, irregular, complex and unpredictable..."¹⁴ The *Kerner Commission* went on to state: "No particular control tactic was successful in every situation. The varied effectiveness of control techniques emphasizes the need for advance training, planning, adequate intelligence systems, and knowledge of the ghetto community."¹⁵ Thus, flexibility is essential.

Law enforcement agencies should identify broad objectives that field commanders should pursue when formulating their tactics. The *Webster Report* states that a Department's tactical plans "should begin with prioritized objectives of the Department's overall response to the emergency."¹⁶ According to the

National Advisory Committee on Criminal Justice Standards and Goals,¹⁷ the objectives and the order of their importance are clear:

1. Protecting persons -- including nonparticipants and participants alike -- and property at risk;
2. Dispersing disorderly or threatening crowds in order to eliminate the immediate risks of continued escalation and further violence; and
3. Arresting individual law violators with a view to their subsequent prosecution and penalization.

The *Webster Report* is less dogmatic on the issue of prioritizing objectives and identified several possibilities without suggesting a specific order. Objectives listed in the report include rescuing victims, helping to fight fires, arresting looters, containing a rioting crowd, and securing important facilities.

Noticeably absent from the NYPD's *Unusual Disorder Plans* was a clear mission statement to guide agency operations. Without a statement of purpose communicating the Department's overriding philosophy and approach to handling civil disturbances, it may be difficult for police commanders to formulate a strategy for action. This kind of theme, if stressed in the training that officers receive, can send a strong message throughout the ranks regarding how the agency should respond to a disturbance.

The *71st Precinct Plan* does not specifically address tactical issues other than to state that the Sector Commander shall assign officers to vulnerable locations. Tactical guidelines for police officers assigned to a disorder suggest that officers operate in groups of three to five and use wedge-shaped formations.

Tactical objectives in the P.B.B.S. *Unusual Disorder Plan* specify that the Zone Commander shall likewise safeguard vulnerable locations and businesses that are subject to looting, vandalism, or arson. In addition, the affected zone should be divided into sectors and roving patrols should be sent into the sector to deal with hostile groups.

The lack of detail pertaining to tactics is a matter of some concern. For example, agency disturbance plans should include directions to guide the tactical response. The plans provide direction but tend to be less specific than plans used

by some other major cities. Miami's *Civil Disorder Plan*, for example, is very detailed in its description of the formations and assignments that are employed by eight officer "Field Force Squads." The *Special Response Plans* of the Chicago Police Department identify nine key operational principles, techniques employed by rioters and dissident leaders, and strategies available to the police to counter these techniques.

Containment, Sectoring and Dispersal

The International Association of Chiefs of Police (IACP)¹⁸ places containment first on its list of guidelines for responding to a riot situation. If a disturbance is to be controlled, it is essential that perimeters be established as quickly as possible to prevent expansion of the incident and the ability of persons outside the area to join the violence. Depending upon the scope and temperament of the crowd, officers must be prepared to secure anything from small neighborhoods to entire city blocks. It is important to note, however, that containment must never be used as the sole means of dealing with a riot. It is purely defensive and must be recognized as a temporary measure.¹⁹

Dispersing large crowds is another important tactical objective. Some persons hesitate to join disturbances until they feel that it is safe to do so because the involvement of many others leads them to believe that they will not be individually identifiable.

The *71st Precinct Plan* instructs police officers to remain outside of crowds for their own safety. The police are to operate in groups using wedge-shaped formations to disperse hostile crowds, while allowing them an orderly means of egress. The *Plan* does not discuss containment or isolation tactics.

The P.B.B.S. *Unusual Disorder Plan* addresses containment and isolation tactics very specifically. The Zone Commander, usually an Inspector or Deputy Inspector, is responsible for establishing an isolated area around the disturbance, for controlling avenues of egress, and for protecting vulnerable businesses and locations. The *Plan* also calls on the Zone Commander to subdivide the zone into sectors as soon as possible and to send roving patrol units with one sergeant and five police officers into each sector. These units are instructed to "employ tactics best suited to contain, isolate and disperse the rioters and other groups in the area." Individual police officers are instructed to disperse crowds, confiscate any type of weapon, and to make arrests for any violent act.²⁰

The *Plan* does not address other types of tactical formations or their uses in crowd control situations. Formations are, however, discussed in the lesson plans that are used to instruct officers in civil disturbance procedures.

Arrest Tactics

National Advisory Commission on Criminal Justice Standards and Goals described three philosophies concerning the tactical response to civil unrest. The first approach assumes that during disorders, "a strong visible police presence is more likely to prove provocative than positively influential."²¹ The use and display of force should thus be deferred until persuasive techniques have proved unavailing. The second approach involves an early display of force to symbolize official authority, while the actual use of force is delayed. The third approach emphasizes the immediate use of force, not so much because it is believed to be highly effective in controlling disorder, but because of skepticism about the effectiveness of other methods. According to this philosophy, mass arrests should be used early in the police strategy.

Whatever a department's underlying philosophy, there is a strong professional consensus that the police must intervene once crimes are committed. Experienced commanders from twenty large law enforcement agencies recently stated that "There should be little tolerance for those who perpetuate riotous activity...anything less will reap increased property loss and injury to citizens and police alike."²² The *Webster Report* likewise urged the adoption of a firm arrest policy to give violators and bystanders "an unambiguous message that the rule of law will be enforced" and to "let people know that violence will not be tolerated."²³ The IACP concurs: "If an incident develops and a crowd begins to threaten lawlessness and acts of violence, the police must act promptly and with a sufficient display of force to make clear their intent and capacity to suppress disorder and ensure the public safety."²⁴

It is important to note that officers who are assigned to the area of a disturbance do not function with the autonomy and discretion that they would normally have when deciding whether or not to make an arrest. It is imperative, both for the safety of the officer and the execution of the disturbance plan, that responding officers function as a unit under the direction of a supervisor. "No matter how well trained and skilled a police officer may be, he will be relatively ineffectual to deal with civil disturbance so long as he functions as an individual."²⁵

In the *71st Precinct Plan*, police officers are instructed to disperse crowds and to direct persons who are assembling to leave the street. Those who commit violent acts shall be promptly arrested, and officers are required to confiscate weapons of any type. The procedures and responsibilities of police officers for processing arrestees are detailed, as are the instructions to the Precinct Commander and Station House Supervisor.

Arrest tactics are not specifically discussed in the *P.B.B.S. Plan*. The plan simply states that police officers will protect life and property, will not tolerate violence and will arrest violators promptly.

911

The outbreak of a major civil disturbance requires a police department to use a significant part of its resources for the purpose of restoring order. It is thus unlikely that officials will have the ability to respond to all emergency requests from within the riot area as well as from neighborhoods not affected by the disturbance. Police departments should thus prioritize the demand for patrol services to match the reduced level of response capability created by the emergency. To do so, the *Webster Report* suggests that an agency's response to 911 calls may have to be restricted to only the "clearest cases of life threatening emergency according to a detailed triage scheme."²⁶ The report prepared by commanders of large law enforcement agencies similarly states that "alternatives for handling non-emergency calls for service and for prioritizing emergency calls for service must be in place."²⁷

The NYPD *Unusual Disorder Plans* do not describe how the Department handles 911 calls during times of civil unrest or other widespread emergencies. The Department does, however, have detailed protocols pertaining to the management of 911 calls generally.

All call codes carry a priority ranking from one (highest) to eight (lowest). As exhibited in Table 6.2, a priority one call, for example, involves the report of a police officer in need of assistance.

Table 6.2. Selected Radio Call Codes by Incident Type and Priority Level

Radio Code	Incident Type	Priority Level
10-10	Possible Crime	2, 3, 5, 7
10-13	Assist Police Officer	1
10-20	Robbery (past)	2
10-21	Burglary (past)	5
10-24	Assault (past)	
	Knife or shots involved	2
	Other weapon	3
	Other	5
10-29	Other Crimes (past)	
	Criminal Mischief	7
10-30	Robbery (in progress)	2
10-31	Burglary (in progress)	3
10-32	Larceny (in progress)	3
10-34	Assault (in progress)	2
10-39	Other Crimes (in progress)	
	Criminal Mischief	5
10-50	Disorderly Person/Group/Noise	
	Group	5
	Person or Noise	7
10-51	Roving Band	2
10-52	Dispute	
	Firearm or Knife	2
	Other	5

Rumor Control

The *National Advisory Commission on Civil Disorders* recommended that in making plans for civil disturbances agencies develop a mechanism to address "the ever present problems of rumors. A rumor collection center will enable police and other officials to counter false and inflammatory reports by giving accurate information rapidly to community leaders and others in troubled areas."²⁸

One way of publicizing the existence of this center is to request media officials to broadcast the telephone number of the rumor control center via a banner continuously running across the television screen. Agencies that have used this concept report that it helps stop false rumors and provides an extremely valuable source of intelligence information. Law enforcement agencies should also ask the media to contact the center to verify their stories before reporting them.²⁹

There are no provisions in the *Precinct Plan* for rumor control. The *P.B.B.S Plan* does, however, make provisions for the command officer to designate and staff a rumor control center. Members of this staff may include representatives of the Human Rights Commission, Community Councils, Press Personnel, Civil Leaders, and members of the clergy. Staff at the control center also transmit a request that all rumors and inflammatory reports be immediately sent to the rumor control center.

The *P.B.B.S. Plan* further indicates that the media will be kept abreast of the situation and will be given factual information to disseminate to the public. In addition, the Command Post returns factual information down the chain of command to its officers in the area affected by the rumor with instructions to dispel the false information and to make factual announcements over their public address systems. Volunteers from the affected neighborhood are also used to dispel rumors if officials believe that it would be helpful to do so. It is the responsibility of the Field Commander to confer with and enlist the aid of public officials and community leaders in the affected area.

Finally, the Mayor's Plan for Coordinated Action at Citywide Emergencies (*Administrative Guide* 316-6) coordinates activities of City departments and agencies other than City Hall at the scene of a disaster or serious emergency. To facilitate rumor control, the plan requires the Coordinating Officer to establish an Information and Press Center. The Center responds to inquiries from relatives,

officials, and press and gathers information concerning the incident for dissemination to field units.

Mutual Aid

Details concerning liaisons with Civil Defense and City law enforcement agencies that can supplement departmental forces during a major disturbance are noticeably lacking. The P.B.B.S. *Plan* indicates, for example, that the Operations Officer has primary staff responsibility for "integrating support from other agencies (National Guard, Army, City, State and Federal)." ³⁰ By contrast, most experts recommend that mutual aid considerations be addressed first by a multi-agency working group that is convened prior to the disturbance. It is nevertheless important to note that the size of the NYPD renders most concerns of this nature moot. The department has approximately 30,000 sworn personnel and is one of the largest police forces in the world.

SUMMARY

The NYPD did make provisions for nearly all of the elements that comprise a comprehensive civil disturbance plan. *Unusual Disorder Plans* at the time of the Crown Heights disturbance lacked a clear mission statement, however, and could have addressed certain administrative and operational issues in a more detailed fashion. Procedures define specific staff responsibilities, establish a clear command structure, and contain detailed instructions for the operation of field Command Posts. In addition, the *Disaster Manual* provides direction for the Department's response to disorders of truly major proportions. On balance, the civil disorder plans in place at the time of the Crown Heights disturbance provided a solid basis for responding to unusual disorders in an effective manner.

ENDNOTES

1. National Advisory Commission on Civil Disorders, *Report*, Washington, D.C.: U.S. Government Printing Office, 1968:484.
2. The documents stress different issues and offer recommendations that vary significantly in the amount of detail that they provide. On balance, however, there is strong consensus concerning the most important elements of a comprehensive civil disturbance plan.
3. The Patrol Borough Brooklyn South *Disorder Plan* is organized in a way that does not consolidate all relevant information to a particular topic under a single heading. The Table of Contents indicates, for example, that mobilization procedures appear between pages 5 and 12-E, but the duties of the superior officer at the mobilization point are presented on page 55. Similarly, staff assignments to the Communications and Message Centers are listed on page 30, while the duties of the superior officer at the Communications Center appear on page 56. We believe that at a minimum, future versions of the plan should include an index to facilitate cross-referencing. An index would also enable the reader to find specific topics that are addressed within broader headings. By contrast, the Department's Disaster Manual has an extremely detailed Table of Contents. This Table makes the document very easy to use.
4. NYPD, *Staff Organization and Procedures for Command Post Operations*, p. 1.
5. NYPD, *Disaster Manual*, p. 3.
6. NYPD, *Administrative Guide*, Procedure 316-30.
7. NYPD, *Patrol Guide*, Procedure 103-2.
8. NYPD, *Unusual Disorder Plan*, Patrol Borough Brooklyn South, p. 58.
9. *Ibid.*, p. 1.
10. NYPD, *Patrol Guide*, Procedure 117-9.
11. National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Disorders and Terrorism*, Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, 1976:174.
12. Derico, Julius, et. al., *Prevention and Control of Civil Disturbance: Time for Review*, U.S. Department of Justice, Federal Bureau of Investigation, Quantico, VA: October 1992:139.
13. *Ibid.*, 1992.
14. *Kerner Commission*, p. 5.
15. *Ibid.*, p. 6.

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16. Webster, William, et al., *The City in Crisis, A report by the Special Advisor to the Board of Police Commissioners on the Civil Disorder in Los Angeles*, Los Angeles, CA: October 21, 1992, p. 78.
 17. National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Disorders and Terrorism*, Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, 1976: standard 6.8.
 18. International Association of Chiefs of Police, *Areas of Concern in Addressing Contemporary Civil Disorders*, Arlington, VA. July 1992.
 19. International City Manager's Association, *Tactical Planning for Crowd and Riot Control*, Report No. 271. Chicago, IL: 1966.
 20. *Ibid.*, pp. 21-24.
 21. National Advisory Commission on Criminal Justice Standards and Goals, 1976.
 22. Derico, et. al., 1992:21.
 23. Webster, William, et al., *The City in Crisis, A Report by the Special Advisor to the Board of Police Commissioners on the Civil Disorder in Los Angeles*, Los Angeles, CA: October 21, 1992, pp. 130-131.
 24. International Association of Chiefs of Police, p. 9.
 25. *Kerner Commission*, p. 485.
 26. Webster, William, et al., *The City in Crisis, A Report by the Special Advisor to the Board of Police Commissioners on the Civil Disorder in Los Angeles*, Los Angeles, CA: October 21, 1992, p. 135.
 27. Derico, et. al., 1992: 102.
 28. *Kerner Commission*, p. 487.
 29. Derico, et. al., 1992.
 30. *Unusual Disorder Plan*, Patrol Borough Brooklyn South, p. 36.

Chapter 7

Training

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- ▶ Police Department Training
- ▶ Civil Disorder Training by Rank
- ▶ In-Service Training
- ▶ Assessment
- ▶ Summary

TRAINING

Training is provided to enhance a police officer's ability to function in one of society's most demanding roles. The primary objective of training is the development of skills necessary for the accomplishment of the Department's mission. A sound training program must offer a consistent approach to all ranks, reflecting the central aims of the organization.

Neither experience nor routine on-the-job training is an adequate vehicle for training officers to deal with the chaotic events in a civil disorder. Nor is it prudent to rely exclusively on training which may have been received upon entering the Police Academy years before. The situations -- even emergencies -- faced by police officers on routine patrol do not fully prepare them for the unique actions required in a large-scale civil disturbance. Police departments must prepare well in advance for civil disorder situations through extensive planning and training.

The *Kerner Commission*¹ recommended that basic riot control techniques be taught to new recruits and that regular unit training be conducted. In addition, the Commission stated that training at the supervisory and command levels should be a continuing process.

The *Webster Report* on the Los Angeles riots (issued after the events in Crown Heights) reaffirmed the importance of preparatory training for the police to respond effectively to civil disorder. It emphasized the need to simulate the command and control structure and the process of implementing the plan that the police would use during an actual disturbance. Police commanders should be trained in mobilization procedures, establishing command and control, coordination with other agencies, gathering and evaluating intelligence, and dealing with the media.

In order to understand the training that NYPD officers and commanders received, our review examined aspects of the New York City Police Department's training program delivered prior to the disturbance in Crown Heights. This chapter covers NYPD's training process, the curriculum for civil disturbance instruction provided to officers of various ranks, and in-service training undertaken following the 1988 Tompkins Square Park unrest. The following questions are addressed:

- What training did NYPD provide relevant to policing demonstrations and civil disorders prior to the disturbances in Crown Heights?
- What guidance did the training provide police officers, supervisors, and commanders regarding key functions and responsibilities during such events?

- Were there any notable gaps in implementing appropriate training throughout the ranks?

POLICE DEPARTMENT TRAINING

In the New York City Police Department, overall responsibility for training rests with the Police Academy, though much training is conducted at other locations than the Academy. At the time of the Crown Heights disturbance, the Academy was part of the Personnel Bureau under the Deputy Commissioner for Management and Budget, who in turn, reported to the First Deputy Commissioner. Three of the Academy's seven units — the Recruit Training Unit, the Firearms and Tactics Unit, and the Post Entry Level Training Section (PELT) — furnished most of the curricula required for patrol services training. PELT was charged with providing in-service, advanced, and specialized training for uniformed and civilian members of the Department in all ranks and titles.²

In addition to the Academy units, the Program Liaison Section in the Office of Patrol Services disseminates training materials and ensures that training requirements are met by borough and precinct training units. Community Police Training Units, under the direction and control of Precinct Commanders, train officers in community-oriented policing techniques.³

NYPD training programs offer instruction related to Departmental policies, procedures, rules, and regulations. Basic and promotional training are targeted to each rank in the organization. As they are promoted, members of the Department are required to attend training programs designed to prepare them for their new positions.

The following chart depicts the required sequence of training that officers receive as they progress through the rank structure of the NYPD.

NYPD TRAINING PROGRAMS BY RANK

<u>Position</u>	<u>Course Title</u>	<u>Length</u>
Police Officer	Recruit Training Program	5½ mos.
Sergeant	Basic Management Orientation Course	4 weeks
Lieutenant	Lieutenants' Orientation Course	7 days
Captain	Orientation Course for Captains	20 days

The officers and supervisors assigned to the Crown Heights disturbance had completed recruit or promotional training at different times over the previous 30 years. Instructional objectives and emphasis, as well as the time allotted to

training, may have varied considerably during that span of time. The lesson plans and course guides reviewed for this analysis reflect the training administered to most of the NYPD officers on duty at the time of the Crown Heights disturbance.

In addition to the pre-service basic instruction and promotional training programs, the Department offers a number of specialized in-service training courses at the Academy. Among these are executive-level training for officers at the rank of captain and above.

In-service and roll-call training covering such topics as recent court decisions, new technology and Departmental procedures are coordinated at the Borough level for delivery by precinct training officers and video instruction.

CIVIL DISORDER TRAINING BY RANK

Police Officers (Recruits)

Recruits received a nine-hour block of civil disorder training during the basic course. The overall goal was to provide officers with a fundamental understanding of demonstrations and disorders and to teach them to operate as a team rather than as individual decision makers.

Officers received instruction in the various types of groups and crowd behaviors they may encounter and the response strategies that are appropriate to each group. They were instructed in basic crowd psychology and various tactics for dealing with incidents of looting, snipers and fires. They were taught the purpose and structure of the various formations that their squad or platoon might take, and how to establish tactical formations such as the line, wedge, and arrest teams. They also received instruction in the constitutional rights of demonstrators and in how to respond to harassment and verbal abuse with restraint.

For the *Webster Report*, a survey was conducted of major police agencies regarding disturbance-related training issues. The initial question in the training survey asked: "How many instructional hours are allotted to civil disturbance riot control issues in the basic recruit/pre-service program?" The following table lists the responses of nine of the largest police agencies in the country.⁴

NYPD, providing nine hours of civil disturbance instruction to recruits, ranks fourth behind Boston, Philadelphia, and Chicago. Most other major cities reported that they offer new officers a similar amount of instruction. Miami, which allocates only one hour to recruits, does most of its disorder control

training on an in-service basis, rather than at recruit school.

Recruit officers in the NYPD training program received about 80 additional hours of instruction which could be applied directly or indirectly to civil unrest. For example, officers received instruction in police discretion and community relations. The recruits were also instructed how to apply and enforce the laws against riot, disorderly conduct, assault and obstructing governmental administration. One-and-one-half hours were devoted to understanding the various ethnic cultures found in New York City.

Substantial additional time was devoted to skill areas such as arrest techniques, use of the baton, and handcuffing procedures.

**HOURS OF BASIC RECRUIT
TRAINING IN CIVIL
DISTURBANCE ISSUES FOR LARGE
POLICE DEPARTMENTS**

Boston	16 hrs.
Philadelphia	12 hrs.
Chicago	10 hrs.
New York	9 hrs.
Los Angeles	8 hrs.
San Francisco	8 hrs.
Wash., D.C.	8 hrs.
Dallas	5 hrs.
Miami	1 hr.

Sergeants

Sergeants, upon promotion, were required to complete a four-week *Basic Management Orientation Course* at the Police Academy. Four hours of this 105-hour program were devoted to disorder control and focused on the sergeant's role of squad leader in responding to a civil disorder. A squad is the smallest group organization in the NYPD. It usually consists of a sergeant and nine police officers. Five squads make up a platoon, which is commanded by a lieutenant.

A major goal of the four-hour instructional block was to provide instruction in the tactical use of, and hands-on practice with, specific formations such as the line and wedge. Trainees received an 18-page instructional handout concerning the specific responsibilities of the sergeant as squad leader. The team approach in responding to the disturbance was emphasized.

The instruction provided strategies to employ when facing different types of crowds, and described the circumstances when arrests might not be made. Specific tactics were taught explaining the use of formations for dispersing groups and securing rooftops. The sergeants were also cautioned not to overreact and to maintain the integrity of tactical formations.

Lieutenants

Under normal circumstances, a uniformed lieutenant functions in the NYPD as the shift commander or the precinct desk officer. During civil disturbance operations, the lieutenant acts as a platoon commander and supervises approximately four sergeants and thirty-six police officers.

All new lieutenants in the NYPD are required to attend the *Lieutenants' Orientation Course* conducted by the staff of the Police Academy. This seven-day training program consists of forty-nine hours of instruction. Prior to Crown Heights, one hour of this time was devoted to disorder control.

This one-hour block of instruction addressed the proper use of formations in various circumstances, as well as crowd psychology, mobilization procedures and supervision of personnel. Much of this training summarized information that the lieutenants were taught upon their appointment as sergeants.

Captains

NYPD captains frequently serve as precinct commanders, executive officers, or duty captains. A duty captain has line supervision responsibility over patrol functions of several precincts. If a major incident occurs, the duty captain will respond to the scene. In larger precincts, a captain may also function as an executive officer to a deputy inspector.

Newly promoted captains were required to attend a seventy-seven-hour training program entitled *Orientation Course for Captains*. A three-and-one-half-hour segment dealing with disorder control reviewed the material presented to sergeants and lieutenants, including crowd psychology, constitutional safeguards, and the types of demonstrations. Tactics and strategies the Department uses at planned and spontaneous demonstrations, and the NYPD's rapid mobilization procedures were also addressed. The course outline focused upon the operational responsibilities of captains and the proper supervision of personnel in a civil disorder.

IN-SERVICE TRAINING

In August of 1988, then-Chief of the Department, Robert J. Johnston, Jr., examined the NYPD's response to a disorder in Tompkins Square Park on August 6-7, 1988. The NYPD had been criticized for its uncoordinated response to this

incident, as well as for using excessive force in quelling the disturbance. Chief Johnston's report included the following observation:

The intensity of the demonstration — the bricks, bottles, fireworks and the atmosphere of mayhem — were a new and alarming experience to many of our younger officers. With few exceptions, demonstrations such as this have not been seen in the City in 20 years. Since we have hired almost seventeen thousand police officers since 1980, only our most seasoned veterans have experienced anything of a similar nature. The problem therefore requires a major training effort at all levels to see to it that such a response does not recur. We have put less emphasis on disorder control training in the 1980's than we did in the sixties and seventies. This was done because the number of large scale demonstrations have decreased and those which have taken place have often been controlled through a collaborative effort between the police and the organizers. We can no longer rely solely on this approach.⁵

Johnston recommended extensive training in policing civil disorders for executive-level staff and for the first responders to be summoned at the onset of a disorder. These first responders would be officers and supervisors specifically selected for their maturity, experience, and good judgment.

NYPD developed a long-range training plan following the submission of Chief Johnston's recommendations. Because of its particular relevance to the events in Crown Heights, an examination of this training program follows.

While Johnston's memorandum provided a comprehensive outline of disorder control training needs, one key element was not implemented. That piece called for training executive-level staff in Command Post exercises involving simulated disorder situations. This proposed training was to address Departmental policy and legal considerations; planning; mobilization; crowd control, containment and dispersal; team tactics; utilization of plainclothes officers; support; and arrests.

First Responder Training

In 1988, the NYPD developed a one-day course on "Crowds/Demonstrations and Disorder Control" for first responders. The training was conducted during three cycles between September of 1988 and March of 1990. Over 14,000 officers from the rank of Police Officer to Deputy

Inspector and above completed this course, which was "Phase II" of the Department's Civil Disorder Training Plan. Additionally, approximately 18,000 officers received "Phase I" training -- two forty-five minute sessions at precinct level training. Included in this number would have been many of the officers who completed "Phase II" of the training. Thus, over 18,000 officers received some kind of disorder control training during the three years immediately preceding the disturbances in Crown Heights.

Objectives

The *Instructor Resource Guide* for the course states that at the conclusion of the training, officers will be able to complete four principal objectives: (emphasis in original)

1. Describe how the First Amendment right of *Freedom of Speech* will guide your actions at the scene of a crowd/demonstration, or public disorder.
2. List and describe the *four (4) types of crowds* (casual, cohesive, expressive, aggressive) and explain the *specific police actions to be taken in each situation*.
3. Describe how current *Department Policies* will guide your decisions and actions in crowd/demonstration/ public disorder situations.
4. List and describe specific *tactical crowd control techniques* which may be employed at the scene of such disorders.

Half of the one-day course consists of classroom instruction, while the other half is spent doing practical field exercises. The first ninety minutes of classroom instruction focus on civil liability and the use of force at demonstrations. A significant portion of this module is spent discussing First Amendment rights and the need for officers to exercise self-restraint despite demonstrators who taunt them.

The second component is forty-five minutes on "Command Responsibility and Accountability/Rapid Mobilization." At the end of the lesson, supervisors are expected to be able to describe the responsibility of the police at a demonstration, the supervisor's role during demonstrations and rapid mobilizations, and the procedures to be followed in establishing and discontinuing a Temporary Headquarters.

The third and final ninety-minute segment of classroom instruction addresses “crowd sensitivity” to “improve the ability of police officers to deal effectively with situations involving crowds and disorders.” Specific objectives of this module include enabling officers to “understand the need for self-control measures when interacting with demonstrators” and improving the officers’ understanding of “the different types of crowds and the possibility of emotional escalation that can arise from police over-reaction.” Finally, there is a quiz on understanding, identifying and using proper response tactics at demonstrations and disorders, followed by a group discussion and review of the answers.

Crowds and Demonstrations

The course defines four types of crowds that officers are likely to confront: casual, cohesive, expressive, and aggressive. Examples are given of each type and guidance is offered regarding appropriate and inappropriate police responses.

CASUAL CROWDS: These are congregations of people with no common purpose of interest such as beach or park crowds, rush hour, or holiday shopping crowds. Here the role of police is primarily one of providing direction and assistance (e.g., traffic control) and in watching for pickpockets and purse snatchers.

COHESIVE CROWDS: These are crowds that might be found at a fire scene or a concert, for example. They come together for a specific purpose and have a tendency to converge on focal points of interest with apparent disregard for personal and group safety. The recommended response to such crowds is somewhat more active than for casual crowds: barriers may be required, and clear, courteous, and uniformly applied instructions and directives may be necessary to maintain order. This section notes that roving bands may emerge from cohesive crowds and become involved in criminal activity, and even become “large-scale *Aggressive Crowds*.” Officers are advised to take action quickly “under proper supervision” and to request adequate backup when doing so.⁶

EXPRESSIVE CROWDS/DEMONSTRATIONS: This third type of crowd is seen as having the common purpose of expressing “an attitude for or against someone or something.”⁷ Examples include strikes, sit-ins, demonstrations, and rallies. Guidance here is somewhat cautionary. Police are advised to resist baiting by agitators, avoid overreacting, and enhance their peace-keeping ability “by exercising self-control and remaining impartial.”⁸ The *Instructor Resource Guide* notes that crowds can evolve and that “aggressive police action can change a non-violent crowd into a violent one.”⁹

AGGRESSIVE CROWDS: In the escalating typology of crowds, this one adds the element of recognized or organized leadership and emotionality to the expressive crowd or demonstration. Violent labor disputes and the street riots of the 1960s are given as examples.

Among the responses available to the police for aggressive crowds are the use of specific crowd control tactical formations to disperse crowds and techniques for affecting necessary arrests. In this section, too, the plan is somewhat cautionary, noting that crowds may be triggered into violence by a variety of "unacceptable" actions of individual officers, including the use of ethnic slurs and excessive force.

Arrest Policy

The first responder course addresses several aspects of the NYPD's arrest policy in demonstration and disorder situations. One basic premise is, "while acts which constitute *serious* violations of law are generally the focus of arrest team personnel, professional police response to large scale public disorders or demonstrations precludes application of rigid, hard and fast rules relative to arrests."¹⁰

Another operating premise is that officers should function in teams rather than as individuals. Most police work is done alone or with a partner. The police response to demonstrations and disorders, however, involves large numbers and all ranks of officers. In order to establish the necessary coordination and control, therefore, it is important that officers not act independently. The lesson plans thus state that arrests should be made only "at the direction of a *supervisor*, absent extreme emergencies," which are not further described.¹¹ As an offshoot of this premise, officers were instructed in the dangers of entering a crowd and in the preference for maintaining observation of a suspect until anti-crime or arrest teams can take him or her into custody, rather than effecting an immediate arrest.¹²

The *Instructor Resource Guide* advises officers that, "[a]ny serious threat to public safety must be dealt with *quickly* and *decisively* to protect all involved."¹³ In addition, the training guide includes an essay on civil liability which discusses the legal limits to the constitutional rights of assembly and protest. According to the author, "these rights cannot be used as an excuse for violence nor may the exercise of these rights unnecessarily interfere with other important rights, such as those of non-demonstrators to have safe movement in public streets."¹⁴

The *Instructor Resource Guide* also states that at the scene of large-scale public disorders,

“minor violations of the law may be overlooked. In order to ensure public safety, arrests should only be made for acts constituting *serious criminal conduct*. If the officers were to attempt to enforce *the letter of the law* at such disturbances, manpower would quickly be depleted and the safety of fellow officers would be jeopardized.”¹⁵

A lack of discretion regarding non-priority arrests might result in a “violent crowd reaction that will endanger the personal *safety of all* officers at the scene.”¹⁶

While the *Instructor Resource Guide* acknowledges the need to make arrests, a strong emphasis is placed on the need for restraint and discretion. Officers are advised, for example, that the offense of harassment does not apply to the mere verbal abuse of a police officer. Officers are advised to avoid conversation when confronted by an agitator and to change positions with another officer if necessary. They are further advised: “[D]on’t be baited into *overreaction*. Maintain police lines” and that “Verbal abuses *must be ignored* no matter how offensive they may be.”¹⁷

In addition, as part of an effort to provide periodic refresher training, NYPD developed and conducted a series of rapid responses to simulated disorder or riot situations. These mobilization exercises (referred to as MOBEXs) required response personnel from various Patrol Boroughs and specialized units, such as the bomb squad and emergency service, to respond to a particular location upon receiving radio instructions. Each exercise involved between fifty to 150 police officers and supervisors responding to a pre-planned scenario. The Department conducted fourteen MOBEX drills throughout the boroughs between 1989 and mid-1991.

ASSESSMENT

The NYPD has traditionally provided civil disorder training to all ranks from recruits through captains. However, following the Tompkins Square Park disorder in 1988, the Department realized that the disorder training was deficient. Subsequently, the training was revised and a significant effort was undertaken to train or retrain the members.

Our analysis of the revised NYPD training is based almost entirely on the lesson plans that Department officials made available to us. Although we did not observe what was actually taught in the face-to-face interaction between instructor and student, we believe that it is doubtful that even the best trainers would be able to meet all of the stated course objectives in the time allotted.

The total amount of time allotted to classroom instruction is just three-and-three-quarters hours. This appears inadequate, even allowing for the fact that the classroom instruction is supplemented by exercises in the field. One of the lessons, titled "Crowd Sensitivity", allows for ninety minutes of instruction time. The object of the lesson is to improve the ability of police officers to deal effectively with situations involving crowds and disorders. This lesson could be the subject of a course that lasts several days.

Time constraints would have, in all probability, forced the trainers to use their best professional judgment to identify which issues could be addressed in depth and which would receive less emphasis. Their decisions had the potential to alter both the spirit and content of the course in ways that this analysis cannot adequately assess.

Questions about the uniformity of instruction are also raised. The Department might have specifically targeted training for different levels of the command structure. However, the training materials do not differentiate roles and responsibilities assigned to each rank. Titles such as "supervisor," "ranking officer," "command officer," and "superior officer" seem to be used interchangeably at different points in the text. For example, the *Unusual Disorder Plan* for Patrol Borough Brooklyn South assigns specific and distinct responsibilities for officers of various ranks. None of this information was apparently conveyed in the first responder training that these officers received.

The training also leaves open questions regarding the Department's arrest policy during disorder situations. While an officer can take action without specific authorization or direction from his or her supervisor, the lesson plan states that such action is only appropriate in cases of "extreme emergency." It offers no guidance as to what constitutes such an emergency.

A key objective of this training is to have supervisory officers clearly understand the boundaries of their actions and the implications of the decisions that they make. An individual supervisor's level of comfort with options open to him or her, when to exercise decision-making authority, how to exercise options with subordinates and when to defer to a higher authority could shape ensuing events.

Finally, there is a question about the underlying values that the officers were encouraged to embrace as a result of the training. The *Instructor Resource Guide* appears to emphasize strongly the First Amendment rights of demonstrators, police restraint, and actions that will minimize situations of legal liability. Officers were apparently repeatedly instructed that their actions could be closely scrutinized and may be recorded by video cameras. Supervisors were told to restate to officers the importance of maintaining control and that they would be held accountable for their actions.

All of these topics are relevant and are a valid part of comprehensive disorder control training. It is also important, however, to balance the discussion of these issues with a candid assessment of the police obligation to protect lives and property during disturbances. NYPD instructors may, in fact, have achieved this balance when they presented the course material. The emphasis in the *Instructor Resource Guide*, nevertheless, seems to encourage the police to take a somewhat more passive role during disorders than may actually be warranted.

SUMMARY

The NYPD made a significant effort to train police officers in appropriate ways of responding to civil disorders between the 1988 disturbance in Tompkins Square Park and the events in Crown Heights during August of 1991. In just three years, approximately 18,000 officers were trained. This effort represents a significant investment of both money and manpower. The instruction addressed the problems of police violence and overreaction that reportedly occurred during the Tompkins Square Park incident.

However, in spite of this significant effort, the Department did not fully implement all of the recommendations made by then-Chief of the Department, Robert J. Johnston Jr. A key element that called for the training of executive-level staff in Command Post exercises involving simulated disorder situations was never conducted. The Department's course for the first responders did not clearly differentiate the specific responsibilities of various ranks. In addition, the time allotted was apparently insufficient to achieve all of the course's stated objectives.

Finally, it appears that the efforts to address the valid concerns of the police response to the Tompkins Square Park incident may not have been balanced with a firm emphasis on the police responsibility to restore order as well as to protect lives and property during civil disturbances.

ENDNOTES

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2. Brown, Lee P, *Staffing Needs of the New York City Police Department*, October, 1990, pp. 463-469.
3. *Ibid.*, pp. 249-51, 263-64.
4. Webster, William, et al., *The City in Crisis, A Report by the Special Advisor to the Board of Police Commissioners on the Civil Disorder in Los Angeles*, Los Angeles, CA: October 21, 1992, Appendix 15-7.
5. NYPD Memorandum from Chief of Department Robert Johnston, Jr. to the Police Commissioner, August 23, 1988, p. 15.
6. NYPD Instructor Resource Guide, *Crowds/Demonstrations and Disorder Control*, 1988, p. 9.
7. *Ibid.*, p. 10.
8. *Ibid.*, p. 10.
9. *Ibid.*, p. 10.
10. New York City Police Department, *First Responders Course Instructor Guide*, New York City Police Academy, 1988, Crowd Sensitivity Module, p. 20. Emphasis in original.
11. Crowd Sensitivity Module, pp. 18-20.
12. New York City Police Department, *First Responders Course Instructor Guide*, New York City Police Academy, 1988.
13. _____, Crowd Sensitivity Module, p. 25.
14. _____, Civil Liability and the Use of Force at Demonstrations, p. 1.
15. _____, Command Responsibility and Accountability/Rapid Mobilization Module, p.4.
16. _____, Crowd Sensitivity Module, p.21.
17. _____, Crowd Sensitivity Module, p. 18.

Chapter 8

Mobilization and Tactics

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- ▶ Mobilization/Initial Response
- ▶ Disorder Control Tactics
- ▶ Arrest Policy and Strategy
- ▶ Community Intervention and Rumor Control
- ▶ Summary

MOBILIZATION AND TACTICS

The civil disturbance in Crown Heights assumed many forms throughout the four-day period. Initially, it was characterized by roving bands and spontaneous eruptions associated with the crowd at the accident scene. Marches and group protests began on Tuesday. That evening, the disturbance had degenerated into a riot.

On Wednesday, police commanders perceived a shift in the nature of the disturbance, as it appeared to be more planned and organized. By Wednesday evening, the violence became even more pervasive.

The fluid nature of the disturbance demanded police action that was flexible and responsive to change. To achieve this, the police needed to monitor closely the tenor of the crowds, prepare for potential violence, and revise their tactics as the situation demanded.

This section discusses the response of the Police Department to the disturbances in Crown Heights. It describes the measures used to maintain and restore order throughout the four days of civil unrest. In doing so, it addresses the following questions:

- What steps were taken to mobilize police resources following the accident? How did the police respond to spontaneous violence on Monday night?
- What were the Department's tactical approaches to controlling lawlessness and establishing order after the initial night of unrest? How effective were these approaches? Did the Department modify its tactics based upon the changing course of events?
- Did police commanders articulate an appropriate arrest policy and implement a strategy for carrying it out? What could, or should, have been done differently?
- What steps were taken by the police to intervene in the community to reduce tensions and dispel rumors which contributed to the civil unrest?

MOBILIZATION/INITIAL RESPONSE

Authoritative sources, from the *Kerner Commission* in 1968 to the *Webster Report* issued after the 1992 Los Angeles riots, agree that it is easier to suppress a riot when it is limited to a relatively small area than after it has spread. Therefore, the swift mobilization of police resources is essential to contain a disturbance and prevent lawlessness.

The NYPD Rapid Mobilization Procedure

In the event of an unanticipated need to deploy personnel quickly, NYPD training materials specify that adherence to the Department's *Rapid Mobilization* procedure is essential. As described in the *Patrol Guide*, there are three levels of response: (1) Task Force response; (2) local mobilization; and (3) mobilization of additional forces.

To supplement local precinct operations on two shifts each day, there are Task Forces in each Patrol Borough. The Task Forces provide a mobile resource for responding to emergencies and public events. Should the Task Forces citywide prove insufficient to handle a disorder, then local mobilization, the second level of response, is appropriate.

Local Mobilization has two phases. When Phase I is activated, nine to twelve patrol cars with fifteen to twenty police officers and three or four sergeants respond from the Patrol Borough where the incident occurs. When Phase II is implemented, an additional twenty-seven to thirty patrol cars with forty-five to fifty police officers and nine or ten supervisors from that Borough respond.

If even more personnel are required, they can be requested by a Deputy Inspector or higher ranking officer at the scene by using radio codes 10-45 to 10-47. Depending upon the perceived need and the message transmitted, a fixed number of personnel will respond in accordance with a predetermined schedule.

The *Rapid Mobilization* procedure also permits a controlled response of additional police officers as directed by the radio dispatcher (radio code 10-48), but only under exigent circumstances. This option may be used when "(t)wo or more incidents occur simultaneously and predetermined response patterns require the same personnel to respond to both incidents," when an event "cannot be handled by precinct personnel and time does not permit requesting a detail in the usual manner," and when "(p)ersonnel exceeding that provided by other code signals is required."¹

The effect of the various types of mobilization is shown in Table 8.1. Depending on the radio codes employed, up to two lieutenants, fifty sergeants, and 321 police officers can be systematically requested to handle a civil disturbance. The Police Department used some elements of its *Rapid Mobilization* procedure on Monday night in Crown Heights.

TABLE 8.1. NUMBER OF OFFICERS SCHEDULED TO RESPOND UNDER VARIOUS MOBILIZATION LEVELS

Type of Mobilization	Lts.		Sgts.		Officers	
	Under Code	Cumulative Number	Under Code	Cumulative Number	Under Code	Cumulative Number
Local Borough Task Force	-	-	3	3	30	30
Additional Task Forces	-	-	13	16	121	151
Local Radio Mobilization (Phase I)	-	-	4	20	20	171
(Phase II)	-	-	10	30	50	221
Additional Mobilization Code 10-45	-	-	4	34	20	241
Code 10-46	1	1	8	42	40	281
Code 10-47	1	2	8	50	40	321

Assembling Monday Night's Detail

Following the accident at 8:20 p.m., the initial response came from police officers in patrol cars who heard radio codes signaling that officers needed assistance (10-13) and that additional units were needed (10-85). These radio codes are used when more police officers are needed to handle a situation. It is difficult to determine exactly how many police officers responded. However, at least twelve patrol cars reached the accident scene by 9:00 p.m., including those of Captain Vincent Kennedy, Commanding Officer of the 71st Precinct, his

Executive Officer, and the Duty Captain from Patrol Borough Brooklyn South. At that time, the crowd numbered about 200 people.

In the event of an unusual disorder, Departmental procedures call for a superior officer on-site to assess the situation, decide whether additional personnel are needed, and, if necessary, mobilize an appropriate response force. Realizing more officers were needed, Captain Kennedy ordered three sergeants and thirty police officers assigned to a concert at Wingate Field to report immediately to the accident scene. Between 9:30 p.m. and 9:45 p.m., approximately fifteen officers of the Brooklyn South Task Force were notified to respond to the same location. Records do not state exactly when these officers arrived.

At 9:50 p.m., a signal for more officers to respond to the scene was broadcast, and at 10:16 p.m. and 10:42 p.m. urgent calls for assistance were transmitted. In an interview, Deputy Chief Kenneth Gussman acknowledged that because the police presence was insufficient, he took steps to increase the size of the detail.

At about 10:00 p.m., seven sergeants and seventy police officers were ordered to report to the 71st Precinct at the conclusion of the concert. At approximately 10:30 p.m., the Manhattan South, Queens, and Brooklyn North Task Forces were summoned. After 11:00 p.m., Gussman ordered the 200-officer Brooklyn South third platoon to report to the 71st Precinct when their scheduled tour of duty ended at 11:35 p.m.

These steps eventually brought several hundred officers to Crown Heights. Police log entries record that they began to be deployed at about 11:20 p.m. Sergeants and Police Officers were sent to posts along Kingston and Utica Avenues, while others were assigned to safeguard the Station House. The remainder of the detail was assigned to posts between about 1:00 a.m. and 2:40 a.m.

Assessment of Monday's Mobilization

We examined the extent to which the Department's *Rapid Mobilization* procedure was used. This analysis was undertaken to determine whether the detail could have been assembled and deployed more quickly. We found that some aspects of the procedure were implemented. Other parts were not. Table 8.2 shows the results of the mobilization process. Despite the best efforts of the commanding officers on the scene, key mobilization and deployment activities were not accomplished until after the disturbance had spread from its origin at the accident scene.

An hour or so after the accident occurred, the Brooklyn South Task Force was activated. Within another hour, three additional Borough Task Forces were mobilized. However, it would have been advisable to mobilize all available Task Forces. This probably would have assembled some of the needed manpower faster. First

Deputy Police Commissioner Raymond Kelly later indicated his support for this approach in a written critique of the Department's response in Crown Heights. He stated that in the initial hours of a disturbance "it is best to utilize all Borough Task Forces as quickly as possible, rather than to rely on an initial Borough mobilization."²

While the additional Borough Task Forces were not summoned immediately, the time it would have taken for officers to reach the 71st Precinct renders it questionable that the course of events Monday night would have changed even if they had been requested sooner.

While the first level of rapid response was accomplished reasonably quickly, and in a manner paralleling the *Rapid Mobilization* procedure, it was apparent to police commanders by about 9:30 p.m. that additional forces were needed to quell the growing disturbance. The next step, *Local Mobilization*, would have activated up to seventy police officers in nearby precincts and brought them to a staging area. However, this was impracticable according to Chief Gussman because Brooklyn South personnel levels were depleted by several special details. A sizeable force was responsible for the concert at the Wingate Field, while many additional officers were assigned to summer recreation areas at Coney Island and Prospect Park.

As a result of these special assignments, redeploying the police officers working throughout Brooklyn South to the 71st Precinct would have stripped patrol coverage. In addition, many of the officers in the Borough who would have responded under *Local Mobilization* were already on the scene in response to previous radio codes. Consequently, few officers were available for use under *Local Mobilization*.

Table 8.2. Mobilization on Monday Night, August 19

<u>Detail</u>	<u>Time Mobilized</u>	<u>Force</u>
Initial Response	8:20 - 9:00 p.m.	12 patrol cars
Wingate Field Detail I	9:15 p.m.	3 Sgts., 30 Officers
Brooklyn South Task Force	9:30 - 9:45 p.m.	15 Officers
Wingate Field Detail II	10:00 p.m.	7 Sgts., 70 Officers
Other Borough Task Forces	10:30 p.m.	50 - 75 Officers
Third Platoon, Brooklyn South	11:00 p.m.	200 Officers
Total		Approx. 400 Officers and Sgts.

The next option indicated in the *Rapid Mobilization* procedure would be to request personnel from outside the Borough. This would seem appropriate since the *Patrol Guide* explicitly states that this alternative is to be used when two or more incidents occur simultaneously and the *Mobilization Plan* requires the same officers to respond to both.

In the opinion of the commanders, there were apparently good reasons for not using these provisions of the *Rapid Mobilization Plan*. Captain Kennedy characterized the mobilization codes as "not clearly understood by most police officers," and unfamiliar to them. Gussman further noted that *Rapid Mobilization* had not been used in the twenty years prior to Crown Heights. While the Department began to conduct mobilization drills in April 1989, following a disturbance in Tompkins Square Park, these exercises primarily involved the Borough Task Forces and other specialized units. Thus, attempting to mobilize patrol forces from outside the Borough, in Gussman's view, might have resulted in confusion.

The local commanders managed with the resources at hand and acted reasonably under the circumstances. They brought the rest of the Wingate Field detail to the 71st Precinct when the concert ended and called in the 200 officers of the third platoon after their regular tour of duty. These steps added a significant number of officers to the disturbance detail, while maintaining coverage by the incoming platoon.

However, the process of mobilization and deployment proved to be slow. Of approximately 400 officers ultimately assigned to the disturbance detail Monday night, 270 did not arrive until after 11:30 p.m. After reporting to the 71st Precinct for instructions, the officers were sent in groups to a field headquarters where they were assigned to posts. This, too, took time.

The deployment was not completed until more than four hours after the police saw the disturbance escalate into violence. While the accident which precipitated Monday night's unrest occurred at 8:20 p.m., the police detail did not reach its full strength until sometime between 1:00 a.m. and 2:40 a.m. Tuesday.³

The growing seriousness of the situation was not anticipated and the initial police detail summoned to the scene was too small. An initial delay in mobilizing a larger number of officers resulted because the ranking officers on the scene viewed the situation at President Street and Utica Avenue as similar to other incidents which did not spiral out of control. Crowds often gathered at accident scenes, according to Gussman, and while local disturbances were fairly common, they did not usually get out of hand.

To avert a major disturbance requires timely and accurate recognition that conditions may escalate into violence, and the rapid deployment of sufficient personnel to restore order. Departments that have dealt most successfully with civil unrest have "almost always responded quickly with sufficient manpower and deployed rapidly into troubled areas."⁴ Police agencies should not hesitate to commit resources to the scene of a possible disturbance. The *Webster Report* notes that:

Civil disorders since the 1960's have proven to be fast-moving, violence-prone and likely to encompass large areas of a city. Hence, law enforcement authorities agree that a "wait and see" stance is not wise. The police must act quickly with strength in response to a potential disorder at the outset...⁵

The fact that the police were not fully deployed until well after midnight had significant consequences. From 8:20 p.m. to 11:00 p.m. Monday night, the disturbance, though significant, was essentially limited to the intersection of President Street and Utica Avenue. The rest of the neighborhood remained relatively calm. This changed when a crowd streamed onto President Street. Roving bands formed and moved through the neighborhood, destroying property and assaulting individuals. Lemrick Nelson, later acquitted of murder charges stemming from the Rosenbaum homicide, told detectives that he was part of that crowd.

Once these groups began roaming the neighborhood, not enough officers were present to deal with them. Insufficient personnel also prevented the Department from assigning officers to roof tops around President Street and Utica Avenue, exposing the forces on the street to a barrage of rocks and bottles.

Early and accurate recognition of the seriousness of the Crown Heights situation, however, would not necessarily have prevented the disturbance from continuing Monday night. Mobilization is inherently time consuming, no matter how efficient. A call for additional forces must be made and officers must respond to a staging area. Once there, they must be briefed on the situation and instructed on what is expected before being deployed.

It is difficult to determine how long mobilization should take. The *Kerner Commission* report suggests that mobilization can be completed in an hour and a half to two hours, but this may not apply to all situations. A better measure may be the New York City Police Department's response to riots in Washington Heights a year after the Crown Heights disturbance. On July 4, 1992, it took two hours and fifteen minutes to mobilize and deploy 280 police officers. This figure, however, is based on a different incident in a different location.

Thus, even if the potential for violence had been understood at 9:00 p.m., there is no assurance that the police could have deployed personnel quickly enough to contain the disturbance before it spread at 11:00 p.m. However, a prompt assessment of the situation, followed by a rapid mobilization, would have improved the prospects of controlling the disorder.

DISORDER CONTROL TACTICS

The police response following the initial night of unrest was inadequate. It failed to achieve two tactical objectives. First, it failed to control unlawful actions within large crowds. It also failed to stem the criminality of roving bands which broke off from the large groups. Both tasks are vital to the restoration of public order.

The demands placed on the police were significant. They were responsible for maintaining peace without exacerbating community tensions. They also had to ensure the safety of protesters and the community at large, while dealing with lawlessness by some demonstrators and roving bands.

This section of the report reviews operational problems and their effects on the achievement of critical tactical objectives.

Uncertain Tactical Mission

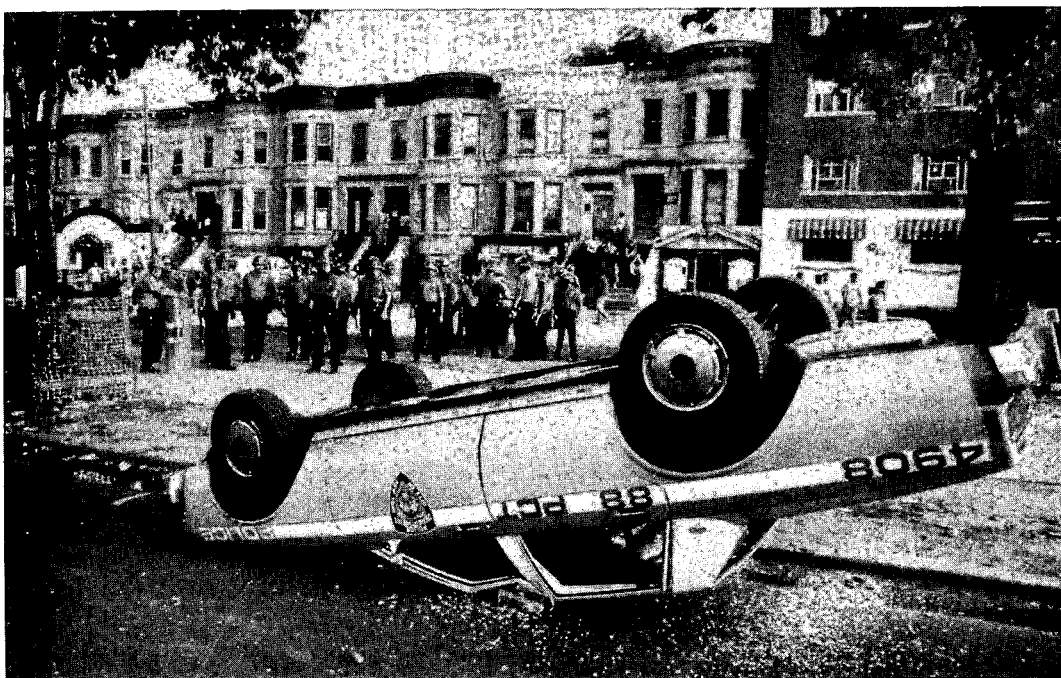
An effective framework for a police department's response to civil disorder requires a clearly defined and articulated mission. The mission incorporates the department's fundamental principles and its overall philosophy or approach to disorder control.

From the mission, the Field Commander and his superiors can develop their objectives and the tactics necessary to achieve those objectives. The specific tactics employed will vary, depending upon the particular circumstances faced.

NYPD did not have a clear mission statement as part of its *Disorder Plans* at the time of the Crown Heights disturbance. Without a well-defined mission, the Field Commander was forced either to function without such a framework or to develop his own. Gallagher chose restraint and non-confrontation. In adopting this approach, he hoped to limit violence and prevent the police from becoming the focus of the crowds' hostility. This strategy was significantly changed by his superiors after the third night of violence.

While Gallagher may have had his own sense of mission, it was not without its problems. His approach failed to spell out proactive steps. Containment and dispersal were not part of Gallagher's basic approach, and it appears that no other tactical options were implemented to take their place. Some captains were told to take appropriate police action, but no tactical strategy flowed from Gallagher's mission on how or when to effectuate arrests.

As a result, field supervisors were either forced to improvise in order to deal with the specific problems confronting them, or simply remained passive. The Department's response to the first three nights of violence was, consequently, uncoordinated and ineffective.



In short, the approach followed during the first three days of the disturbance was one of restraint, predicated upon the desire not to make things worse. What it failed to do was provide a tactical response for ending the violence.

On Thursday, the approach of the first three days was abandoned. The new mission was simple and clear: bring the disturbance to an end. It was distinctly articulated by senior commanders, and a tactical framework was created to implement this new approach. Crowd dispersal, mobility, and a new arrest policy defined that framework.

The events of Monday through Thursday became an object lesson in the importance of a clearly articulated mission and a tactical plan to achieve its objectives. The formulation of such a mission and the implementation of such tactics were instrumental in bringing the disorder in Crown Heights to an end.

The Management of Marches and Large Crowds

The right to demonstrate is fundamental. While freedom of speech and peaceful demonstrations are protected under the Constitution, lawless outbursts are not. To protect demonstrators while maintaining public order, the police must take steps to control events and prevent them from turning into violence. Such steps include coordinating with the leaders of the demonstration, escorting marches, and separating demonstrators from counterdemonstrators gathered to express alternate viewpoints. Sufficient patrol forces must be present and the police must be prepared for all reasonable contingencies.

Marches and demonstrations have traditionally been handled by the NYPD with significant restraint. This approach is reinforced throughout the Department's demonstration and disorder control training. NYPD training guides state, for example:

It is important in our democratic society that the right of assembly and protest be freely exercised by the people and both protected and respected by public officials.⁶

The most desirable method of handling most demonstrations is with *REASONABLENESS* rather than confrontation.⁷

AVOIDING HARM TO ALL INNOCENT PERSONS IS A GENERAL RULE IN ALL POLICE WORK; it is very important in demonstrations, where emotions are likely to be strong and where unfairness, or apparent unfairness, *CAN CONVERT A LARGELY PEACEFUL GROUP INTO A HOSTILE MOB.*⁸

Policing civil disturbances differs significantly from policing peaceful demonstrations. Typically, the first police tactical objective is to establish a perimeter around the disturbance area to contain the disorder and limit outside access to the area. Containment, however, is only a temporary means of control. The police must move quickly to restore order, usually by dispersing unruly crowds and arresting lawbreakers. Crowd dispersal eliminates the group psyche

which promotes criminality and facilitates the apprehension of persons who refuse to comply with the law.

The demarcation between a large crowd of angry demonstrators and a civil disturbance is never clear. The transition from peaceful protest to collective violence can occur quickly. The tactics assumed by the police must shift accordingly, while keeping in mind potential risks associated with both action and inaction in response to minor incidents of lawlessness.

Therefore, when policing a demonstration, the police must be ready to handle confrontations. A sufficient number of police officers must be deployed. Additional officers should be on reserve at a nearby location. The nature of the demonstration determines the appropriate placement and degree of mobility of the officers.

March and Crowd Control on Tuesday

On Tuesday, most of the officers in Crown Heights were deployed to fixed posts throughout a thirty-block area. Others escorted marches through the area. Importantly, there is no evidence that mobile arrest teams were organized.

Tuesday's march originated at President Street and Utica Avenue at approximately 3:00 p.m. The police knew, as early as 11:30 a.m., that a demonstration was planned there. By 2:20 p.m., they were aware that there would be a march and that its destination was the 71st Precinct. Once it began, sixty to seventy police officers flanked the demonstrators. In all, there were approximately 400 officers assigned to the disturbance detail prior to 4:00 p.m., and approximately 800 to 900 thereafter.⁹

At 3:15 p.m., the marchers reached President Street and Kingston Avenue, two blocks from a Hasidic counterdemonstration. Some marchers split off and headed toward Eastern Parkway as the main group continued to the 71st Precinct. The splinter group broke windows and clashed with Hasidim at Eastern Parkway and Kingston Avenue. Two police officers and a civilian were assaulted during the encounter. No arrests were made.

After a brief demonstration in front of the 71st Precinct Station House, the marchers headed back to President Street and Utica Avenue with their police escort. During the return trip, the demonstrators marched up Kingston Avenue, the heart of the Hasidic section, and clashed with 200 Hasidim protesting between Eastern Parkway and Carroll Street.



The Police Department's tactical approach to handling the march was marred by several shortcomings. The detail assigned to escort the march was too small to control the clash between the Hasidim and the black demonstrators. While the number of police officers originally assigned might have been enough to control a peaceful march under normal circumstances, they could not handle several hundred angry protesters and counterprotesters. As a result, reinforcements had to be requested.

Finally, the police also did not control the route. NYPD training materials specify that demonstrators be permitted to group reasonably close to the target of their criticism. However, the documents add that, "in the interests of public safety, where it is clear that violence or even a riot will occur if the demonstration is located in a particular place, then the police must designate another safer area."¹⁰

The police did set up barricades on Kingston Avenue. They did not redirect the marchers. Apparently, expecting to escort a peaceful demonstration, they were unprepared for what happened. During the confrontation between the two angry groups, sixteen police officers were assaulted. Twelve police officers and one civilian were injured. Two arrests were made.

Eventually, the marchers returned to the accident scene at President Street and Utica Avenue, where they were joined by others. The area immediately began to produce 911 calls for emergency assistance. At 5:00 p.m., callers complained of rocks hurled through the windows of Jewish homes in the vicinity. As early as 5:15 p.m., stores in the area were the target of looting. The police

made no attempt to limit the size of the crowd congregating in the area of the growing unrest or to disperse it.

Chief Gallagher told us he decided against using aggressive tactics to disperse the crowd on President Street and Utica Avenue. He based his decision on the belief that it would lead to numerous injuries. Women and children were part of the crowd; furthermore, he felt a moving crowd would be more difficult to control.

However, the large crowd became even more unruly, breaking windows of Jewish homes and committing other offenses throughout the area. Between 7:00 p.m. and 8:00 p.m., the police withdrew from President Street and Utica Avenue. The violence continued until about midnight, when a heavy rain drove the crowds from the street.

The presence of a large, disorderly crowd is obviously problematic. Had access to the intersection been restricted upon the first indication of unruliness and criminal behavior, the crowd would not have grown to that size. The police, however, were reluctant to prevent entry to the area as the accident scene had become a symbolic shrine for the black community. The *Disorder Plan*, which was not implemented, recommends the dispersal of unruly crowds.

March and Crowd Control on Wednesday

Police reports indicate that, on Wednesday, approximately 400 to 600 officers were assigned to Crown Heights that afternoon and 800 that evening. Detail rosters indicate that as many as 900 officers may have been deployed. It appears, then, that more officers were deployed during the day on Wednesday than on Tuesday. Evening deployment, however, remained the same.

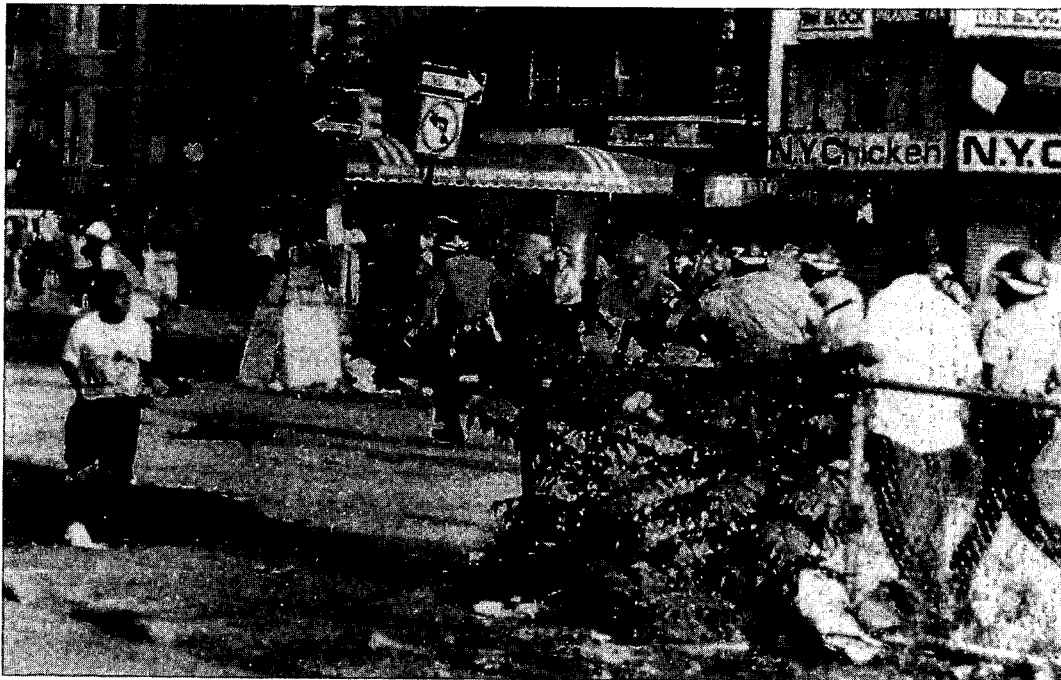
Gallagher and others have commented on the change in tenor of the demonstrators between Tuesday and Wednesday. On Tuesday, they felt many demonstrators were angered by the death of Gavin Cato. On Wednesday, police officials perceived that the spontaneous anger had been replaced by organized violence.

The police again became aware of plans for an afternoon march through the neighborhood. As early as 11:45 a.m., the police received reports that a 4:00 p.m. march would occur. Thus, there was ample time to prepare. When the march began, police vans were present to precede the 300 to 400 marchers. Riot-equipped officers flanked the remaining three sides of the marchers. In spite of unlawfulness the previous evening, the police allowed the marchers to pass by Lubavitcher Headquarters at 770 Eastern Parkway. The Headquarters was pelted with rocks and an Israeli flag was burned.

Approximately 100 Hasidim returned the barrage, but the police detail managed to keep the groups separated. Unlike the previous day's encounter, few officers were injured.

The march then proceeded to P.S. 167, where the Mayor was scheduled to appear. Police Commissioner Brown was in his car at this location. The main group of marchers remained flanked by a large contingent of police officers. However, some of the marchers broke away and converged on the Commissioner's car. The police detail at P.S. 167 was small and the few officers present could not control the situation. They had to withdraw through the gates of the school for safety. A 10-13 for "Car One" went out over the air and many patrols responded to the area.

As the marchers returned to the Utica Avenue area, many among the 500 to 600 demonstrators became violent. Four police cars were attacked and three officers were injured by bottles and bricks. Again, additional officers had to be marshalled to help regain control of the area.



At about 6:00 p.m., the police cleared the intersection by forming a square from building line to building line, facing away from the intersection with their backs to each other. Using this formation, they managed to move the demonstrators back.

While this at least temporarily restored order to the intersection, the absence of a coordinated approach was evident as violent outbursts occurred on nearby blocks. At that time, 911 callers from the President Street area, between Utica and Schenectady Avenues, reported numerous incidents of rock throwing. One caller stated: "The police moved a mob right in front of my house. There's no police in sight. They're throwing rocks through my windows."

At 6:55 p.m., police at the scene reported that the demonstrators previously at President Street and Utica Avenue had split into two large groups. One was at Eastern Parkway, the other at Union Street. At Eastern Parkway, two police cars were overturned. Thus, although the mob was pushed from the intersection, it was not dispersed, but simply inflicted violence on adjacent streets.

By 8:00 p.m., the intersection of President Street and Utica Avenue again became a focal point for the violence. Over the next two hours, nearly twenty complaints of criminal activity were filed. Several police officers were assaulted.

At approximately 10:00 p.m., another approach was used to gain control of Utica Avenue. A detail of 100 police officers marched down the avenue and cleared it of demonstrators. When the police met with resistance at Montgomery Street, officers in patrol vans penetrated the crowd, trapping rock and bottle throwers from behind. On this occasion, several arrests were made.

This response to the lawlessness on Utica Avenue was significant for several reasons. First, it demonstrated that aggressive police action could be effective. Second, it did not lead to further violence as Chief Gallagher had feared it would. Third, it showed the importance of mobility. Finally, it showed that a specific tactical plan stressing the dispersal of disorderly groups was essential.

While aggressive tactics were employed late on Wednesday, an affirmative police response was generally lacking. The field commanders should have realized based on the previous day's violence that there was a substantial possibility of continuing unrest. Too few officers were present at P.S. 167. The fixed-post approach to deployment and reliance upon tactics more appropriate for peaceful demonstrations failed to restore order.

March and Crowd Control on Thursday

On Thursday, the number of officers assigned to the area increased to approximately 1,800. Between 100 and 300 officers were assigned to fixed posts in each of four deployment zones. In addition, 150 officers in each zone were assigned to mobile arrest teams. Another 100 officers in each zone were

available on reserve. In essence, the NYPD maintained its fixed-post deployment strategy on Thursday and supplemented it with numerous mobile arrests teams, mounted units, motorcycle patrols and aviation services.

Each of the four deployment zones was supervised by a hand-picked commander. This ensured better operational coordination and facilitated the aggressive action about to be taken. Deputy Chief James McCabe, Executive Officer of Patrol Borough Manhattan South; Inspector Thomas Lawless, Commander of the Police Academy; and Inspector Michael Julian, of the Department's Office of Management Analysis and Planning were placed in command of these zones within the 71st Precinct. Assistant Chief Thomas Hill, the commanding officer of the Brooklyn North Patrol Borough, supervised the fourth zone within the 77th Precinct.

Had the Patrol Borough Brooklyn South *Disorder Plan* been implemented from the beginning, this essentially would have been the approach taken. It requires the field commander to "delineate [the] involved area and area contiguous thereto," and to designate superior officers to be in charge of the zones established. This step appears to have facilitated the dissemination of operational orders and control of units in the field.

Chief of Patrol Selvaggi also ordered his commanders to adopt a different approach to controlling disorders on the streets. Inspector Julian recalled being told to do "whatever is necessary" to take back the streets. Inspector Lawless, another zone commander, was told that if "anyone does anything [wrong], arrest them." This new approach to the disorders was explicitly conveyed to the officers in the field. Indeed, Chief Hill provided his officers with written instructions.

Armed with explicit orders, and bolstered by additional officers, the detail was now ready to handle effectively the disorders confronting them. Thus, when demonstrators again formed at the intersection of President Street and Utica Avenue, the police were prepared.

From 3:15 p.m. until 6:00 p.m., the crowd grew in size until an estimated 200 demonstrators were present. However, the police responded quickly and in an efficient, organized manner. Approximately 150 officers were initially deployed at President and Utica, but at 5:05 p.m., almost 100 more were sent there. Consequently, this area, a focal point of the violence of the prior three nights, remained relatively peaceful throughout the evening.

A potentially serious situation occurred at about 11:00 p.m., when a disorderly group of about 150 people converged on the Lubavitcher Headquarters at Eastern Parkway and Kingston Avenue. Mounted units, used for the first time,

pushed the crowd across Eastern Parkway. When a rock was thrown, the mounted officers moved in and dispersed the crowd. Other officers then arrested twenty-six people for unlawful assembly. In this way, a potentially explosive situation, similar to ones that had gotten out of control previously, was defused.

The Response to Roving Bands

Roving bands during times of civil unrest have long been recognized as especially problematic. In 1968, the *Kerner Commission* noted that traditional riot control tactics -- using various squad formations to disperse crowds -- were "... of little or no value in some recent disorders marked by roving bands of rioters engaged in window breaking, looting, and firebombing."¹¹ The problems associated with highly mobile groups of rioters have been described by the International Association of Chief of Police (IACP):

...as the crowd scatters, participants recognize that the police -- if they are operating in traditional squad and platoon riot formations -- are unable to keep up with them. This creates a feeling among participants that the police are essentially helpless and empowers rioters to additional acts of violence and damage in other areas...¹²

During the disturbances in Crown Heights, there were many instances in which bands of demonstrators broke off from the larger crowds. They roamed throughout neighborhoods, creating disturbances, and engaging in personal and property offenses.

Monday Night

On Monday, some members of the crowd at the accident site spawned groups which left the area. Once they began to travel through the neighborhood, too few officers were present to deal with them.

At approximately 11:20 p.m., near President Street and Brooklyn Avenue, police officers saw a large group of people kicking and punching someone. Among them, a black male in a red shirt was leaning over the victim and apparently hitting him with his hands. The siren of the police car caused the crowd to disperse. The police officers pursued the assailants and made two arrests. The person who was attacked, Yankel Rosenbaum, later died and was the only homicide victim during the four days of disorder.

Areas receiving the brunt of the crowd's violence included Eastern Parkway between Troy and Kingston Avenues, Carroll Street between Kingston and Albany Avenues, and Troy Avenue between Crown Street and Empire

Boulevard. Between 11:15 p.m. and 2:00 a.m., these areas produced approximately sixty 911 jobs. Many 911 calls reported the overturning of cars, breaking of windows, igniting of fires, and assault of citizens and police officers.

One Jewish man was assaulted by approximately fifteen black youths on Carroll Street between Brooklyn and Kingston Avenues as his assailants chanted "Jews get out of here." Another Jewish man was robbed at Kingston Avenue and Carroll Street.

The police faced three problems in handling violence by roving bands on Monday night. First, roving band activity started before the full detail was deployed, which meant that there were not enough officers around to deal with them effectively. Second, the police were primarily assigned to fixed posts, while the roving bands were mobile. The police were instructed not to leave their posts because that would have left those places unprotected. Finally, the police had not yet coordinated the mobile capability needed to track roving bands and react immediately in case of lawlessness.

Tuesday

On Tuesday, the police confronted roving bands and, again, were unprepared to deal with them systematically. This time, the genesis of the roving bands was the afternoon march. At approximately 3:15 p.m., some marchers split off and headed toward Eastern Parkway. This splinter group broke windows and clashed with Hasidim at Eastern Parkway and Kingston Avenue. An hour later, other roving bands were sighted.

At about 4:05 p.m., a 911 caller reported a mob marching up Kingston Avenue near Montgomery Street shouting "death to the Jews." A few minutes later, about fifteen youths threw rocks at cars on President Street between Brooklyn and New York Avenues. Others threw rocks at Montgomery Street and Nostrand Avenue and at Crown Street and New York Avenue.

The evening's events initially centered around the intersection of President Street and Utica Avenue. However, by 7:00 p.m., roving bands spread to other parts of Utica Avenue, President Street, Schenectady Avenue, and Eastern Parkway. At approximately 10:30 p.m., 911 callers began to report property offenses and assaults by roving bands in the area of St. Johns Place, between Schenectady and Rochester Avenues. No arrests were made.



Roving band activity lasted until approximately midnight. According to the police, it was a heavy rain rather than determined police action, that drove these groups from the streets. Figure 8.1 depicts the 911 (SPRINT) jobs, criminal complaints, and arrests associated with these disturbances.

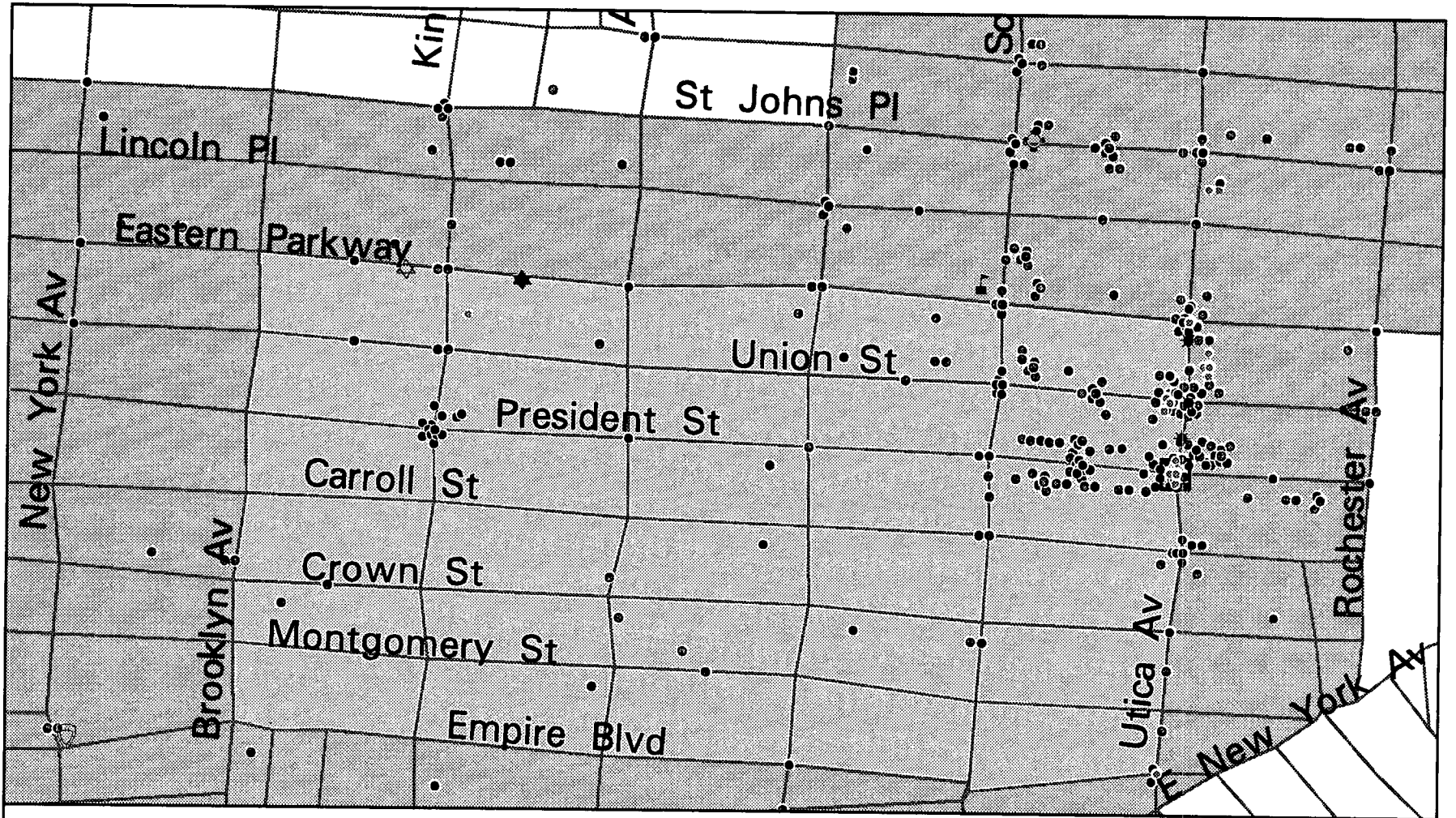


Figure 8.1. Incident Reports and Arrests
 (5 p.m. Tuesday, 8/20/91 - 12 p.m. (midnight) Wednesday, 8/21/91)

- | | | | |
|---------------|--|-------------------------------|----------------------------|
| ● SPRINT Jobs | □ Accident Scene | 🚒 71st Precinct Station House | ▫ Original Deployment Area |
| ● Complaints | ☆ World Lubavitcher Headquarters | 🚒 77th Precinct Station House | ▫ Remaining Affected Area |
| ● Arrests | ★ Headquarters, National Committee for Furthance of Jewish Education | 🏫 Public School 167 | |
| | | 🚒 Engine Company 234 | |
| | | ★ Looted Stores | |

Map provided by DECGIS

Wednesday

The situation worsened on Wednesday. The police were still primarily assigned to fixed posts and did not have tactics in place to respond effectively to roving bands. Normal patrol resources were insufficient to prevent groups of youth from committing crimes in the neighborhood.

During the late afternoon, disturbances began along the march route and continued at the intersection of President Street and Utica Avenue. As rioters were cleared from that area, roving bands spread through adjacent streets.



At approximately 7:00 p.m., roving bands moved north to St. Johns and Lincoln Places, and between Schenectady and Buffalo Avenues. There, some of the worst violence of the four days of disorders occurred. Over thirty 911 calls were made from this area between 7:00 and 8:30 p.m., reporting assaults, arson and other property offenses. Several people were dragged from their cars and assaulted. At least two individuals suffered gun shot wounds, neither of which was fatal.

A second group of 911 calls occurred between 10:30 and 11:15 p.m. Reports of disorderly groups and commercial burglaries occurred at that time. Only two arrests resulted from this flurry of activity.

From 8:00 p.m., violence also spread to the west and south of Monday's accident scene. Roving bands hit Carroll Street between Kingston and Utica Avenues; Schenectady Avenue between Carroll Street and Empire Boulevard; Albany Avenue between Union Street and Empire Boulevard; and Empire Boulevard and Lefferts Avenue between Albany and Schenectady Avenues. Approximately 130 911 calls came from these areas between 8:00 p.m. and 2:30 a.m. The callers reported property offenses, assaults, arson, and police officers in need of assistance. Only two arrests were made throughout the evening. Figure 8.2 shows the location of the reported crimes committed by these roving bands.

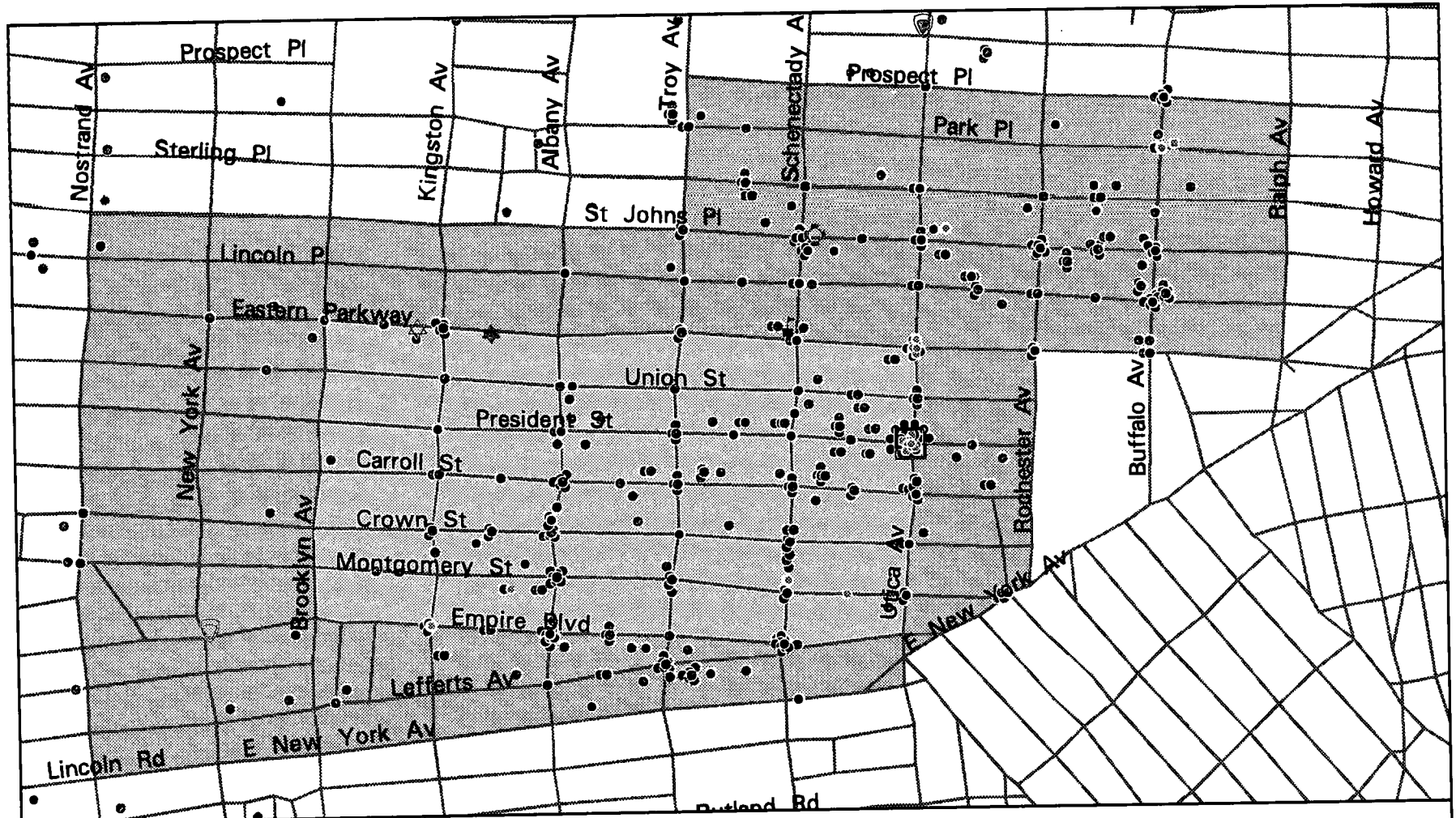


Figure 8.2. Incident Reports and Arrests
 (7 p.m. Wednesday, 8/21/91 - 8 a.m. Thursday, 8/22/91)

- SPRINT Jobs
- Complaints
- * Arrests

- Accident Scene
- ☆ World Lubavitcher Headquarters
- ☆ Headquarters, National Committee for Furtherance of Jewish Education

- 71 71st Precinct Station House
- 77 77th Precinct Station House
- 167 Public School 167
- 234 Engine Company 234

- Original Deployment Area
- Remaining Affected Area

Map provided by DECGIS

Thursday

On Thursday, roving bands formed again and began to engage in lawlessness. This time, mobile arrest teams and the motorcycle, mounted, and aviation units were prepared for them. One group started to move south on Utica Avenue. The police dispersed them without incident. At 6:30 p.m., another group of approximately fifty people was dispersed. The police were now intervening at the first hint of trouble. That approach continued through the evening.

About 7:30 p.m., the police demonstrated how firm action by mobile units, operating under close supervision and with a high degree of coordination, could be effective against an unruly crowd. A large group, thought to be armed with rocks and bottles, was reported heading toward the Lubavitcher Headquarters at Kingston Avenue. The police responded quickly. At about 7:35 p.m., forty-five mobile reserve officers were dispatched to cover the group, and motorcycle units responded. At 7:47 p.m., a 100-officer detail was sent to the Lubavitcher Headquarters. At 8:00 p.m., another thirty-four officers were assigned to cover the group. A patrol wagon followed it.

After 8:00 p.m., the band split in two, with one group heading north on Albany Avenue. By 8:15 p.m., that group started to throw rocks and bottles on Albany Avenue from St. Johns to Lincoln Streets within the 77th Precinct. The police responded immediately. First, they ordered the group to disperse, and then arrested fifteen people who refused to comply.

In summary, the criminal activity of roving bands was largely uncontrolled until Thursday. This failure, perhaps more than any other, resulted in the riotous nature of the disturbance and exposed the inadequacy of the police response.

It was not that the police were incapable of handling the problems confronting them. Their success Thursday demonstrates that. Rather, tactics specific to the complex situations that they faced were not implemented. This may have been understandable on Tuesday, before the nature of the disturbance revealed itself. However, by Wednesday, the police should have planned and should have responded accordingly. That they did not was the central failure of the police response.

ARREST POLICY AND STRATEGY

The consensus in the professional literature on civil demonstrations and disorders is that once crimes are committed, the police should intervene. This

makes clear their intent and ability to suppress unlawful conduct and preserve order. Serious violations of the law cannot be tolerated, and potential violators must understand that if they break the law they will be arrested. Departures from this approach serve only to encourage further lawlessness and jeopardize public safety.

During a recent symposium, the commanders of twenty large law enforcement departments indicated that: "There should be little tolerance for those who perpetrate riotous activity. . . [A]nything less will reap increased property loss and injury to citizens and police alike."¹³ Similarly, the *Webster Report* states that a firm arrest policy is needed to provide "an unambiguous message that the rule of law will be enforced."¹⁴

The Patrol Borough Brooklyn South *Unusual Disorder Plan* outlines a policy in which the first duty of police officers listed in the *Disorder Plan* is to: "Perform duty impartially, protect life and property, enforce the law, prevent crime and arrest violators. . . ." The *Disorder Plan* also states that: "Violence will not be tolerated. Those involved shall be promptly arrested."

The Police Academy's *Instructor Resource Guide* on Crowds/Demonstrations and Disorder Control describes how Departmental policies should guide decisions and actions in these situations. For non-violent demonstrations, the *Instructor Guide* states that arrests are advisable when a crowd inconveniences or endangers the public. After issuing an appropriate warning, the ranking supervisor on the scene determines whether arrests will be made and who will be arrested.

In a civil disorder, the Department's recommended approach depends on the seriousness of the violations and the implications of the overall circumstances for public safety.

At the scene of large scale public disorders, *minor* violations of the law may be overlooked. In order to ensure public safety, arrests should only be made for acts constituting *serious criminal conduct*. If the officers were to attempt to enforce *the letter of the law* at such disturbances, manpower would quickly be depleted and the safety of fellow officers would be jeopardized.¹⁵

The instructional material states unequivocally, however, that there is no excuse for violence by demonstrators against other individuals or property. While the primary role of the police at a demonstration is to maintain order, the curriculum indicates that "a demonstration which becomes violent and disorderly becomes an enforcement problem and should be handled as such."¹⁶ Strategies

for making arrests must be decided by supervisory personnel. Options available to them include using designated arrest teams and plainclothes personnel rather than relying solely upon uniformed officers.

Because the determination of proper police action depends upon observation and evaluation of the circumstances, the superior officer responsible for making this decision must be at the scene. The following excerpts are taken from a lesson plan in the training document for all personnel. The same message is also delivered in another lesson plan designed specifically for supervisors:

Where a demonstrator uses physical violence upon another person or property, an arrest should be made promptly except in the circumstance where the *SUPERVISING OFFICER IN CHARGE DECIDES THAT MAKING THE ARREST* would tie up limited manpower or be *UNNECESSARILY RISKY* and therefore reduce the ability of the police to perform their duties most effectively. If this is the case, the police officer can make the arrest for any crime at a later time.¹⁷

The policy reflected in these training materials was in effect during the Crown Heights disturbance. Police Commissioner Brown told us that if the law was violated, arrests should have been made where the police were capable of doing so. He said: "I know there was no policy from my level and I haven't heard anyone below me say that they may have ordered a no arrest policy." Chief Gallagher, Field Commander of the details assigned to the disturbance, confirmed that the policy of arresting lawbreakers was not countermanded. He stated that, "at no time were any officers ever under any directions to do otherwise than to fully enforce the law." Captains assigned to the field informed us that they were instructed to take appropriate police action and make arrests as necessary.

Despite such assertions, a review of the arrest statistics presented in table 8.3, accounts of the disturbance, and statements by police officers suggest that the police were not aggressive in making arrests during the disturbance. Indeed, from Monday through Wednesday, much of the lawlessness was not addressed. Only forty-eight individuals were arrested within the affected area.

The operational and tactical problems discussed earlier seem to have limited the number of arrests during the first three days of the disturbance. The officers were provided little sense of mission and were not told how to react as the situation worsened.

Most Serious Arrest Charge	Day 1	Day 2	Day 3	Day 4	Subsequent Days	Total
Personal Crimes: Total	3	6	22	6	2	39
Murder	1	0	0	0	0	1
Assault	1	5	11	4	0	21
Reckless Endangerment	1	1	11	2	2	17
Crimes Against Public Order: Total	0	1	5	54	9	69
Riot	0	1	3	12	1	17
Inciting to Riot	0	0	1	0	0	1
Disorderly Conduct	0	0	1	1	0	2
Unlawful Assembly	0	0	0	41	8	49
Criminal Mischief	1	4	3	0	0	8
Other	2	1	0	1	4	8
TOTAL ARRESTS^b	6	12	30	61	15	124

^aDay 1, here, represents the period from 8:30 p.m. Monday, through 7:59 a.m. Tuesday. The remaining three days represent 24-hour periods beginning at 8:00 a.m. and ending at 7:59 the following morning.

^bThe police reported 129 arrests. Of these, 5 were deleted from our sample because the arrest was voided, it occurred outside of the area of the disturbance, or it was for a non-disturbance-related crime.

Another factor also militated against the police making arrests. During the course of normal police operations, officers often operate alone or in pairs and have wide discretion. In a riot situation, this is not the case. Individual officers are discouraged from taking independent action. No matter how well trained and skilled a police officer is, he or she will be relatively ineffectual functioning as an individual in the midst of a disorder. It is imperative both for the safety of the officer and their operational effectiveness for officers to function as a unit under the direction of a supervisor.

Consequently, supervisory officers must devise an arrest strategy, communicate this strategy, form arrest teams, and supervise them as they carry out their assigned duties. However, we found no indication that specific orders were transmitted by the Field Commander regarding appropriate arrest tactics.

In some cases, supervisors, acting on their own initiative, ordered police officers to make arrests. This often proved difficult or impossible because the persons to be arrested were hiding within a crowd and no tactics had been developed to address that problem. In other cases, though, supervisory officers simply ordered the police to stand fast and refrain from attempting to make arrests. Thus, the absence of defined tactics and specific orders may have inhibited the police from making arrests.

Figure 8.3 displays the location of the arrests made on each day of the disturbances.

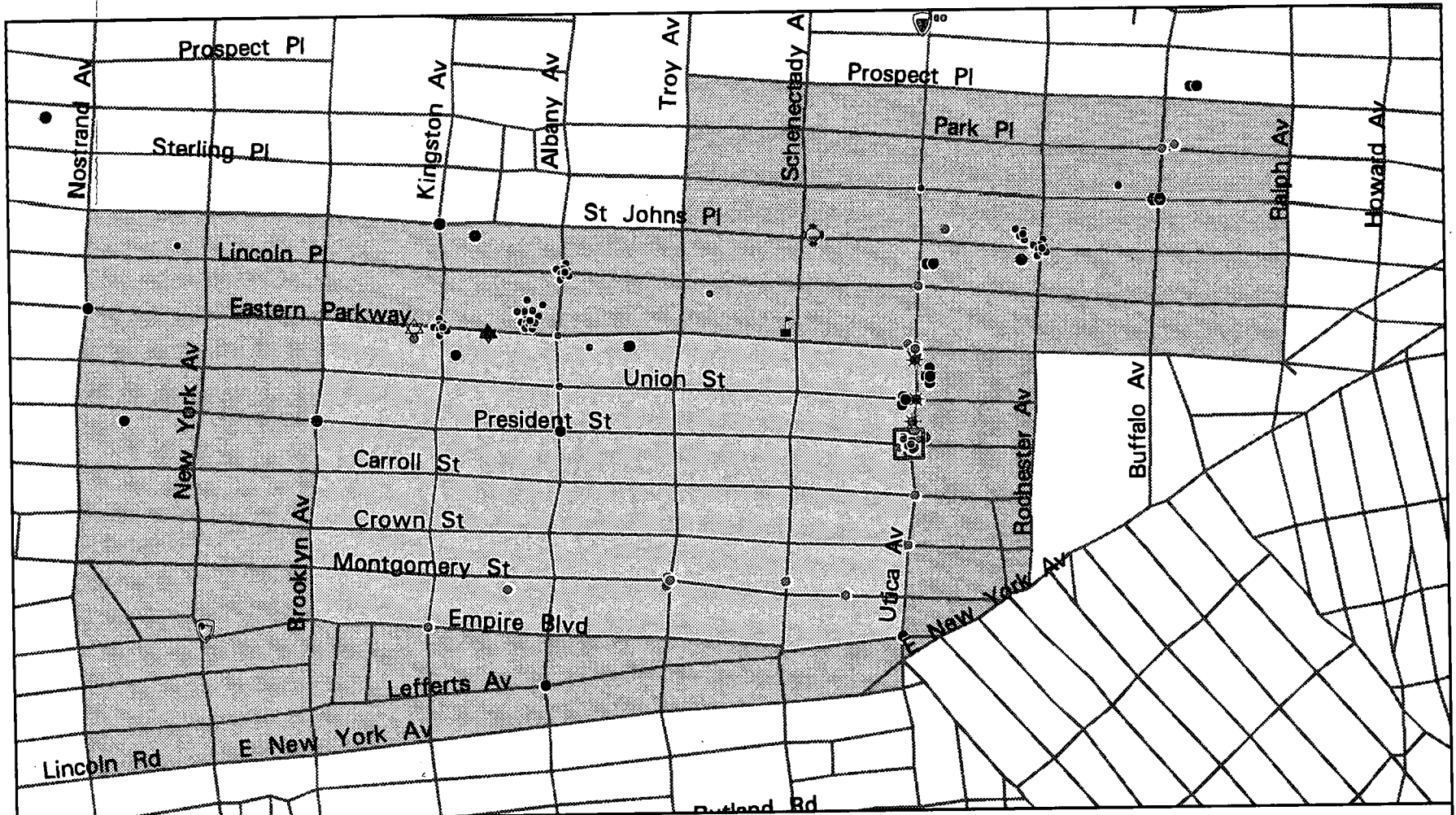


Figure 8.3. Arrests by Day (8:00 a.m. - 8:00 a.m. next morning)

- Mon.-Tues., 8/19-20
- Tues.-Wed., 8/20-21
- Wed.-Thurs., 8/21-22
- Thurs.-Fri., 8/22-23

- Accident Scene
- ☆ World Lubavitcher Headquarters
- ★ Headquarters, National Committee for Furtherance of Jewish Education

- ⬠ 71st Precinct Station House
- ⬠ 77th Precinct Station House
- 🏠 Public School 167
- 🚒 Engine Company 234
- ☀ Looted Stores

- ▨ Original Deployment Area
- ▨ Remaining Affected Area

Map provided by DECGIS

Arrests for Property Offenses

Analysis of *911* calls shows that youths broke the windows of at least thirty-five residences on Monday and Tuesday nights.¹⁸ These figures undoubtedly underestimate the total number of residences vandalized, since some callers described the block on which windows were broken, but did not give an address. Despite this vandalism, only eight arrests were made for criminal mischief — the charge brought for damaging private property.

One reason so few arrests were made for destroying private property was that much of this damage was caused by roving bands and the police were ill-equipped to handle that problem. The absence of a clearly articulated arrest strategy was also a contributing factor.

Arrests for Assault

There were only five arrests for assault on Tuesday and eleven on Wednesday. These figures are surprisingly low, given the over 140 complaints of assaults filed by police officers and over twenty complaints of assaults filed by civilians. The manner in which the crimes were committed, as well as tactical mistakes, reduced the ability of the police to identify and apprehend offenders. Many of the assaults, for example, resulted from thrown bottles and rocks. The assailants were often hidden within large crowds which were not dispersed, or located within roving bands which continually alluded the police.

The number of arrests for assault dropped to four on Thursday. On Tuesday and Wednesday, assaults occurred after crowds formed, became increasingly unruly, and then began to assault people. On Thursday, however, the police dispersed such groups at the first hint of trouble. This prevented situations that facilitated the throwing of rocks and bottles and other types of assaults from occurring. Thus, there were more arrests for unlawful assembly and fewer for assault.

Arrests for Looting

Statements by storekeepers indicate that the police did not attempt to arrest some individuals engaged in looting. In the case of the Sneaker King store, the police stood by for a number of hours without intervening while the store was looted. A nearby storekeeper said in a written statement:

I was at Utica and President by the restaurant. Everybody just ran to Sneaker King trying to pull the gate up. The New York City Police was at the next corner. They did not move so the youngsters continued to try to get the gate open. After about an hour they finally opened it, running in and out with jeans, sneakers, etc., and the police just watch until the crowd grew smaller and smaller. They finally came over . . .

Apparently, attempts were made to break in over an extended period. Another merchant reported that, "the police just stood by . . . the cops watched them try to pry open the gate for nearly three hours. . . ."

An officer confirmed these accounts. He was near the Sneaker King and saw a group of youths breaking into it. He said the superior officers at the scene told their subordinates to stand fast and not break rank, and any officer who moved was threatened with suspension. As a result, he said, they stood by and watched as the store was looted.

These accounts are also verified by our review of *911* calls. At 5:16 p.m., a *911* caller reported that the Sneaker King store was being broken into. A second call for the location was taken at 5:38 p.m. Then, beginning at 8:53 p.m., four additional *911* calls related to that location came in less an hour. One of the callers complained: "I called you before and nobody never came up here. They done broke in the sneaker store across the street here." In response to another call, the *911* operator told the caller that, "they had numerous calls on this."

Finally, at 10:15 p.m., four people looting the store were arrested. Three other businesses on the same block — Utica Gold Exchange, New York Fried Chicken, and Eli Jamaica Gold — were looted during this period of time. The Utica Gold Exchange was the target of arson, and adjacent establishments suffered smoke and water damage. No one was arrested for these crimes.

Change in Arrest Policy

On Thursday, the Department formally announced that anyone breaking the law would be arrested. The police also began to arrest people for unlawful assembly.¹⁹ This resulted in sixty-one arrests made on Thursday, exceeding the combined total number of arrests for the prior three days. The locations of arrests for unlawful assembly and other offenses are displayed in figure 8.4.

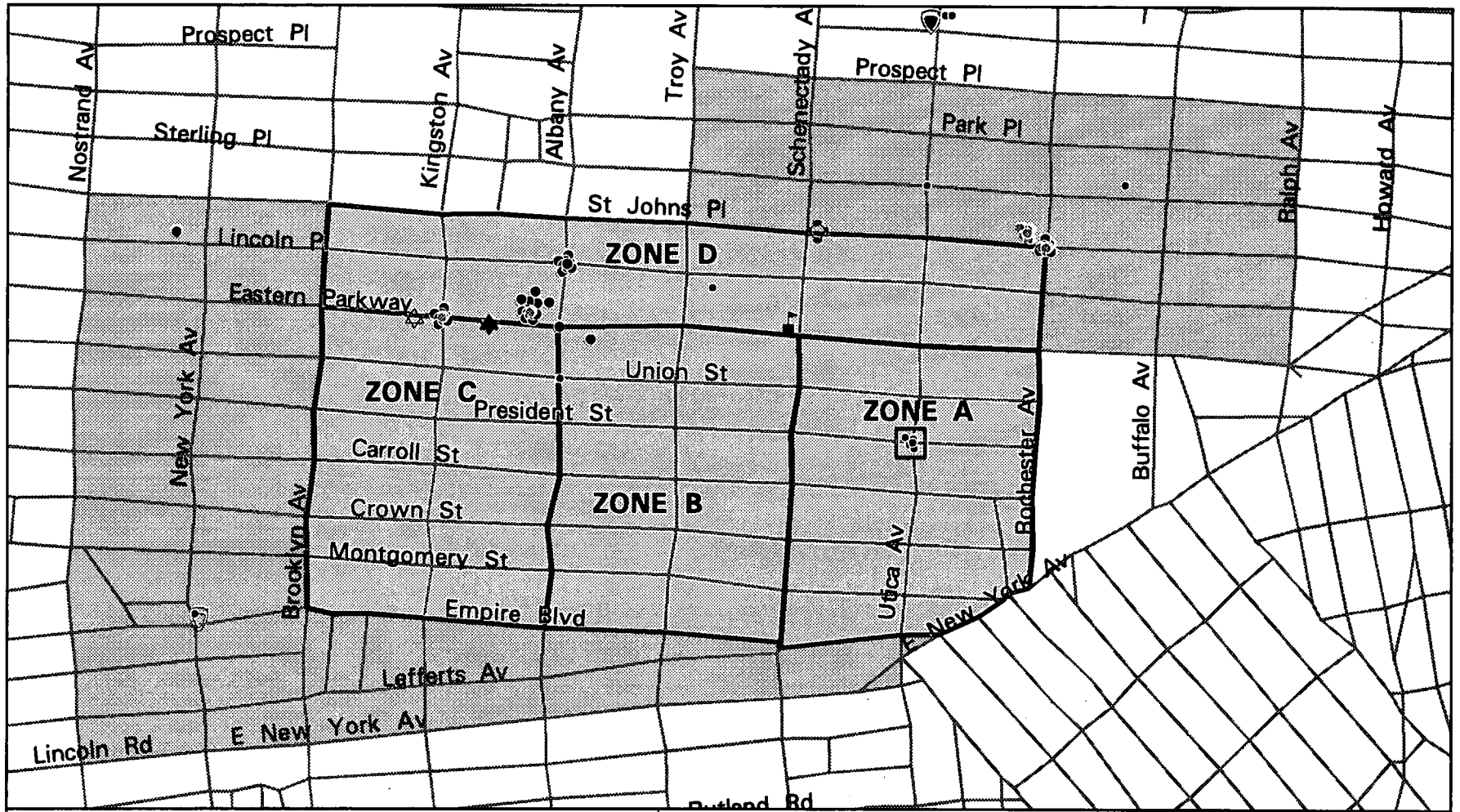


Figure 8.4. Type of Arrest by Zone on Day 4 of the Disturbance
 (8 a.m. Thursday, 8/22/91 - 8 a.m. Friday, 8/23/91)

Arrest Offense

- Unlawful Assembly
- Other Public Order
- Personal Crime

□ Accident Scene

- ☆ World Lubavitcher Headquarters
- ★ Headquarters, National Committee for Furtherance of Jewish Education

- 🏠 71st Precinct Station House
- 🏠 77th Precinct Station House
- 🏫 Public School 167
- ⚙️ Engine Company 234

- ◻ Revised Deployment Area
- ◻ Remaining Affected Area

Map provided by DECGIS

Use of the unlawful assembly statute likely prevented crimes from occurring. Prior to Thursday, crimes were committed by large, disorderly crowds and by roving bands which broke windows or assaulted people on the street. Arrests made for violation of the unlawful assembly and riot provisions of the Penal Law helped to disperse groups, before they could commit more serious crimes. No unlawful assembly arrests were made until Thursday, when forty-one offenders were taken into custody. Riot arrests increased from three on Wednesday to twelve on Thursday. Arrests for personal crimes, such as assault, dropped from twenty-two to six.

When faced with civil unrest, a clear-cut arrest policy is essential. Such a policy requires close coordination and the use of specific tactics. It must come from the highest levels of the command structure and be precisely articulated to field supervisors. Without a clearly defined and articulated arrest policy, individual officers may engage in ineffective and potentially dangerous independent action or, equally harmful, do nothing at all.

COMMUNITY INTERVENTION AND RUMOR CONTROL

The police intervened immediately and throughout the disorder to hear the concerns of the communities; negotiate the groups toward public order; to address rumors; and enlist the aid of leaders in urging calm. This endeavor involved all levels of the Department, from the Police Commissioner and Deputy Commissioners to Borough Commander and Community Affairs Officers. They called meetings, appeared as requested at others, and spoke with many individuals. Police listened and responded to a number of leaders from both groups. In so doing, they found two sets of issues; longstanding grievances and misunderstandings between blacks and Hasidics, and the rumors, allegations, and countercharges flung back and forth from the time of the Cato accident onward.

It is not uncommon for rumors to emerge during a civil disturbance. Many rumors are spawned by half-truths and, lacking authenticity, eventually dissipate when corrected. Others are more dangerous because their "ring of truth" echoes the pre-existing sentiments of perceived injustice and mistreatment. These rumors arouse passions, stir emotions, and sometimes incite violent acts. The *Kerner Commission* found that rumors precipitated or contributed to violent acts in nearly two-thirds of the civil disorders it examined.²⁰

While acknowledging that rumors make the job of police and community leaders "more difficult," the *Kerner Commission* also advised that their potential for exacerbating violence in a disorder can usually be offset by "quickly and

effectively circulat(ing) the facts.”²¹ More recently, the International Association of Chiefs of Police identified rumor control as a key component in its comprehensive approach to communications during a civil disorder.²²

Unquestionably, rumors played an important role in triggering Monday night’s violence. Tapping old and deep hostilities in Crown Heights, their emotional intensity helped fuel the disturbance.

Shortly after the fatal automobile accident on Monday night, several rumors spread throughout the crowd at the site and the surrounding neighborhood. Many people were incensed by what was said to be a refusal of the Hatzoloh ambulance crew to treat the seriously injured children in favor of transporting the Hasidic driver and his passengers to safety.

The community also directed its anger at the police for not arresting the Hasidic driver. They believed that the driver would have been arrested if he had been black. It was also rumored that the driver was drunk and that the police knew this, but put off administering a breathalyzer test. The crowd was further outraged by the allegation that the police callously shoved Gavin Cato’s father aside when he attempted to come to the aid of his stricken son. Later that night, another rumor asserted that the injuries to the second accident victim were also fatal, but that the police and City officials withheld the release of this information for fear of inciting further violence.

Community intervention was a significant aspect of the Police Department’s response to the Crown Heights disturbance. Police officials were on the scene continually for the purposes of communicating with citizen groups and hearing their concerns, persuading local leadership to assist in defusing tensions, and returning order to the streets. They also recognized immediately that unchallenged rumors carried huge potential for damage, and they attached great importance to addressing them. To do all of these things, they used personal and public contact with both the citizenry and their leadership.

Monday

After visiting the Cato family at the hospital, and speaking with Yankel Rosenbaum when he was brought in, Commissioner Brown, the Mayor and Deputy Mayors, and leaders of the community quickly gathered Monday night at the 71st Precinct. From the beginning, they saw the need to work together to try to calm the situation. The Commissioner spoke to us of his specific concern that community leaders be provided with briefings to help them quell rumors and encourage a return to order.

Just hours after the tragic accident at President Street and Utica Avenue, and the ensuing disorders, Brooklyn South Community Affairs Officer Sergeant Joseph Caramonica was on the street. His purpose was two-fold: to obtain first-hand information from the community on what was happening and how people were reacting, and to disseminate information. The following day, local Community Affairs personnel on the streets were supplemented by between five and 20 members of the Department's Community Affairs Division.

Tuesday

Then, starting Tuesday, Community Affairs Deputy Commissioner Wilhelmina Holliday was in Crown Heights to improve the situation through meetings with police and government officials, religious leaders, citizens, and members of black and Hasidic communities. Both she and her officers attended community meetings about the disturbances throughout the next several days. Holliday reported meetings and conversations with Susan Alter, Laura Blackburne, William Boyland, Roscoe Brown, Sonny Carson, Hazel Dukes, Howard Golden, Joseph Gonzalez, Richard Green, Gail Hammerman, Jennifer Joseph, Rev. A.D. Lyons, Alton Maddox, David Nebitt, Clarence Norman, Clarence Norman, Jr., Mary Pinkett, Annette Robinson, Rev. Hardy Smallwood, Margaret Vinson, and Priscilla Wooten during the period. In addition, a "sheet" was circulated almost immediately after the car accident to provide information to the public.

Commissioner Brown briefed the Mayor for his press conference that day, and attended it with him. Then, he returned his attention to the march slated to be led by Rev. Al Sharpton that afternoon. He wanted to be sure that safety would be provided for both marchers and onlookers.

Chief Gallagher attended the meeting chaired by Deputy Mayor Lynch at P.S. 167, in order to listen to citizen concerns and help counter rumors. The meeting, attended by blacks and Hasidics, was contentious. Gallagher listened to demands of black leaders that the driver in the fatal accident be arrested. Later, he met with religious leaders to ask their assistance in calming the neighborhood.

At 4:00 p.m., Gallagher joined a District Attorney's Office representative and black-community activists at the 71st Precinct. He explained to the activists that the driver of the car that had killed Gavin Cato could not be arrested. They left and began a march to the accident scene with demonstrators who had gathered in the area. Gallagher followed. When some of the marchers became aggressive, Gallagher tried to persuade the leadership to disperse the crowd. They could not, and more police had to be moved in.

Wednesday

Wednesday, August 21st, brought continued effort by the police to listen and speak to the public. Commissioner Brown updated the Mayor before joining him in a press conference. With Deputy Commissioner Holliday and Community Affairs Officers attending and speaking at other community meetings at the 71st and surrounding precincts, Brown and Gallagher met with the Crown Heights Emergency Council. Rumors of crowds armed with baseball bats, and riot fears brought to the room as the group was meeting, were investigated and found to be unsubstantiated. The Hasidim voiced considerable concern — even written demands — about the adequacy of police protection for the neighborhood. Afterward, Brown, Gallagher, and other police went to meet with elected officials and black community leaders to dispel rumors by providing accurate information, and to seek common priorities in encouraging the restoration of order. Even later, Chief Gallagher attended the Mayor's meeting with the public at P.S. 167.

The police did make efforts at rumor control. The activities of high-ranking officers in meetings with community leaders were timely and visible. The problem was that the hostilities built upon long-perceived injustices among both major groups in Crown Heights were what gave the rumors their potency. Even the most accurate and timely information would have had little effect on a course of events whose direction had already been cast by that much anger. Irrespective of the effectiveness of their efforts, though, the police had a duty to try, and we found that what they did was adequate to the circumstances they faced.

SUMMARY

Civil unrest often does not result from a single precipitating event. Rather, it grows out of an increasingly tense social milieu which, over time, creates a growing reservoir of underlying grievances. Because of these underlying grievances, even a single incident can precipitate significant violence.

The New York City Police Department has recognized this since Crown Heights. In a November 1991 assessment of the Department's response to the Crown Heights disturbance, Assistant Chief William O'Sullivan stated:

... I feel the situation is still extremely volatile and could explode again if an event such as the auto accident of August 19, 1991 were to occur. Both Jewish and Black leaders interviewed concur with this conclusion....The issues involved have been building for years and do not lend themselves to any quick resolution....I feel the police

response to similar incidents must be based on an immediate recognition that a precipitating incident has occurred and getting adequate police manpower on the street as expeditiously as possible to address the situation which is likely to follow....

This continuing situation makes it imperative to understand the dynamics of what happened in Crown Heights, what went wrong, and what was effective in restoring order to the neighborhood.

There was a delay in realizing the seriousness of the situation on Monday night following the accident. Although the disturbance spread quickly, a prompt assessment of the situation, followed by a rapid mobilization of sufficient forces, would have provided a better opportunity to end or limit the disorder.

After Monday night, the priorities of the police response changed. The key was no longer to mobilize quickly, but to devise a reasonable strategy for maintaining order. This was poorly accomplished.

On Tuesday and Wednesday, the strategy decided upon by the police command was not a decisive plan outlining how to handle the various disturbance situations which might confront the police. Rather, it merely emphasized police restraint. The emphasis on restraint grew out of fear that aggressive police action would make matters worse. Chief Gallagher believed, for example, that aggressive action would have caused a major confrontation.

However, by Tuesday evening, the police should have realized that restraint was not achieving the desired results. But instead of modifying their approach, they maintained it until Thursday. Even if exercising restraint — for example, refraining from dispersing crowds — was initially justifiable, the failure to modify that approach once it became obvious that it was not succeeding allowed the disorder to continue unabated.

Another problem was that while police officers were ordered to exercise restraint, there was no plan stating what to do if restraint failed. Chief of Patrol Mario A. Selvaggi acknowledged this problem when he told reporters that “there was no coherent plan to contain the disturbance until Thursday.”

While added mobility and revised tactics undoubtedly contributed to the Department's success Thursday night, another significant change was that the police were more aggressive about making arrests. Indeed, an explicit policy of arresting anyone who broke the law was announced and conveyed to ranking and supervisory officers for the first time. As a result, the sixty-one arrests made

Thursday exceeded the total of forty-eight over the previous three days. We believe this served as a deterrent to unlawful activity.

Equally important was the police use of the unlawful assembly law to prevent the formation of violent bands in the first place. That kept potential problems from growing to the point where the police faced more serious crimes.

The Police Department repeatedly made timely and visible attempts to listen to concerns, calm the community, and control rumors. However, the hostilities built upon long-perceived injustices made it impossible to dispel the rumors completely. The police had a responsibility to try, though, and we found their efforts extensive.

If there is a lesson to be learned from these observations — and we believe there is — it is this: A police department must employ a well-thought-out plan and must implement it if it is to respond to civil unrest effectively. The chaotic conditions created by a disturbance, compounded by the complexity and uniqueness of the tasks that must be performed, preclude the development of a plan after a disturbance begins. And without such a plan, even the most extensive and well-received community interventions will fall short of their potential to promote calm.

In implementing its plan, the police must be prepared for all foreseeable contingencies. Moreover, they must be sensitive to changes in circumstances and flexible enough to react accordingly. While an initial policy of restraint might be appropriate, the police must be prepared to change their strategy if restraint proves ineffective. That does not appear to have been the case in Crown Heights.

ENDNOTES

1. NYPD, *Patrol Guide*, Procedure 117-10 (12-20-76).
2. Memorandum from Kelly, Raymond W. New York City Police Department, dated December 13, 1991.
3. Police Department logs show a time of 2:40 a.m. for the last group of officers deployed. Chief Gussman and then-Captain Kennedy stated that there might have been a delay in recording this information on official logs. According to their recollections, deployment was completed between 1:00 a.m. and 1:30 a.m., about an hour earlier.
4. Derico, Julius, et. al., *Prevention and Control of Civil Disturbance: Time for Review*, U.S. Department of Justice, Federal Bureau of Investigation, Quantico, VA: October 1992.
5. Webster, William, et al., *The City in Crisis, A Report by the Special Advisor to the Board of Police Commissioners on the Civil Disorder in Los Angeles*, Los Angeles, CA: October 21, 1992.
6. NYPD, Instructor Resource Guide: Crowds/Demonstrations and Disorder Control, 1988, p. 1.
7. Ibid. p. 7.
8. Ibid. p. 7.
9. The precise number of officers assigned to the deployment area on Tuesday and Wednesday is uncertain. Neither operational critiques prepared by Chief Gallagher nor NYPD detail rosters provides a wholly accurate portrayal of the number of deployed officers. The roster data show fewer officers deployed on Tuesday than reported by Chief Gallagher. It appears that either the rosters on Tuesday were very incomplete or some of them were lost altogether. Chief Gallagher's data, however, do not account for tours being held over beyond their normal time of dismissal. Because Chief Gallagher's data represent NYPD's official information regarding deployment, they are used as the primary source of estimate. When detail rosters indicate a higher level of deployment (possibly due to overtime), the roster figure is noted as well.
10. NYPD, Instructor Resource Guide: Crowds/Demonstrations and Disorder Control, 1988, p. 8.
11. National Advisory Commission on Civil Disorders, *Report*, Washington, D.C.: U.S. Government Printing Office, 1968.
12. International Associations of Chiefs of Police, *Civil Disturbances, Concepts and Issues Paper*, Arlington, VA: October, 1992, p. 4.
13. Derico, et. al., 1992, p. 21.
14. Op cit., Webster, p. 130.
15. Lesson Plan for "Command Responsibility and Accountability/Rapid Mobilization," p. 4. In the Police Academy's *First Responder In-Service Training Program*.
16. Ibid., p. 1.

17. Lesson Plan entitled "Civil Liability and the Use of Force at Demonstration." In NYPD Police Academy In-Service Training Program, Instructor Resource Guide, Crowds/Demonstrations and Disorder Control, 1988, p.6.

18. No analysis is possible for Wednesday night because the 911 audio tapes for that day were destroyed.

19. Section 240.10 of the New York State Penal Law states: "A person is guilty of unlawful assembly when he assembles with four or more other persons for the purpose of engaging or preparing to engage with them in tumultuous and violent conduct likely to cause public alarm, or when, being present at an assembly which either has or develops such purpose, he remains there with intent to advance that purpose." Unlawful assembly is a class B misdemeanor.

20. *Kerner Commission*, pp. 326-327.

21. *Kerner Commission*.

22. International Association of Chiefs of Police. "Areas of Concern in Addressing Contemporary Civil Disorders," July, 1992.

Chapter 9

Command and Control

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COMMAND AND CONTROL

Command and control are central concerns in responding to civil disorder. Command authority is vested in the various ranks of the Police Department from top officials down to the sergeants supervising patrol officers on the street. For the organization to carry out its mission successfully, personnel must interact among these levels, exchanging and assessing information, evaluating options, and deciding upon appropriate action.

A commander sends orders and questions to the field and, in turn, information and advice are passed up through the command structure. Without effective command and control during a crisis, the Department cannot direct police actions to achieve desired results.

While it is essential that a single commander assume responsibility for field operations, it is also important for the Field Commander's superiors — the Headquarters command staff from the Chief of Patrol, through the Chief of Department and the Police Commissioner — to fulfill their roles. The Department's chief executive and top aides must adequately support and properly supervise the Field Commander.

This section of the report examines how well the executives of the New York Police Department exercised leadership during four critical days in August of 1991. Our assessment relies upon the responsibilities ascribed in the official NYPD documents previously reviewed. In addition, we base our analysis on studies by law enforcement experts, as well as a professional standard of what constitutes a reasonable and appropriate degree of supervision under the circumstances. We focus on answering two fundamental questions:

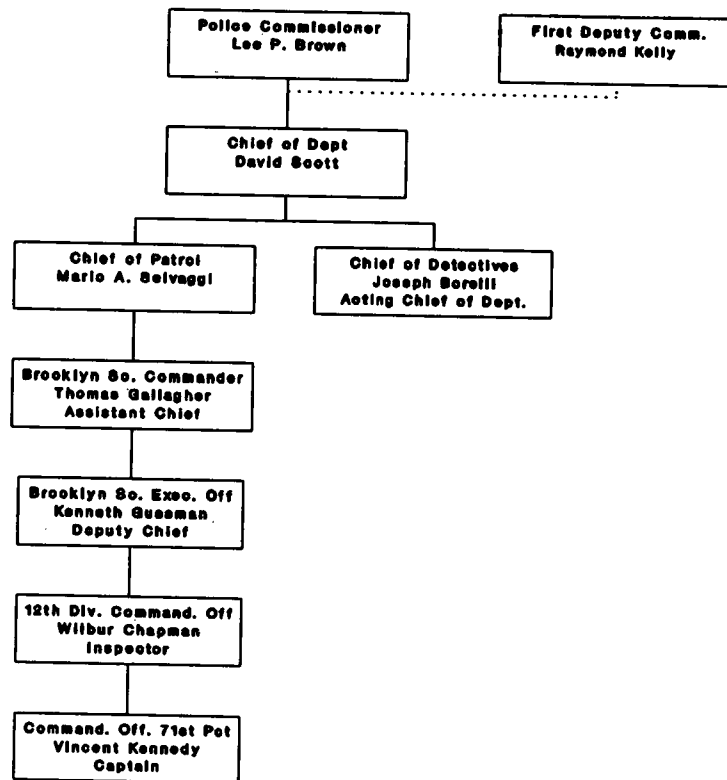
- How effectively did top-ranking NYPD officials fulfill their responsibilities?
- Did the Field Commander activate the Borough's *Unusual Disorder Plan* or implement alternative arrangements to assure that a functional Command Post and staff organization were available to aid him in quelling the disturbance?

THE HEADQUARTERS COMMAND STAFF

Many of our criticisms of the police response to the disturbances are negative judgements about the performance of high-level NYPD officials. The spontaneous outburst of violence Monday night was unpredictable and difficult to control. However, the Police Department clearly had sufficient resources and

know-how to deal more swiftly and effectively with disturbances of the magnitude experienced in Crown Heights on Tuesday and Wednesday. The individuals who occupied the highest positions in the Department must share accountability for the failure to do so.

Figure 9.1. NYPD Command Structure, August 19, 1991



Source: NYPD

The command structure of the Police Department facilitates and, in fact, requires participative decision making. According to a sworn statement made by Assistant Chief Thomas Gallagher, the Commander of Patrol Borough Brooklyn South, rather than acting alone at any time, he was in constant communication with his superiors and subordinates. Chief of Patrol Mario Selvaggi said he endorsed the plans that Chief Gallagher made in the field and that Joseph Borrelli, the Acting Chief of Department, approved them. Borrelli acknowledged that he accepted the plans formulated by Gallagher and affirmed by Selvaggi. Commissioner Lee Brown viewed Borrelli as the person who was "in charge of everything." Each of these officials, though in different words, indicated to us that they felt at the time that adequate steps were taken to control the disturbance.

Personnel changes implemented within the Department in early August, 1991, left two key officials unaccustomed to their positions. With Selvaggi, the Chief of Patrol, and Borrelli, the Acting Chief of Department, serving in less than familiar roles, the command structure was weakened. These two individuals were inclined to accept the information they received and the plans proposed to them, rather than adopting more assertive roles.

With this background, we turn to an examination of the actions of the Headquarters command staff.

The Police Commissioner

Dr. Lee P. Brown became Commissioner of the New York City Police Department on January 22, 1990. Before that, he served as Chief of Police in Houston for eight years and as Public Safety Commissioner in Atlanta for four years.

The Police Commissioner's fundamental responsibility is to manage the Department to meet the public need for police services. He is expected to provide leadership, as well as to exercise direction and control over the activities of the Department. The Police Commissioner is also responsible for keeping the Mayor informed of developments before, during, and after an emergency. Mayor Dinkins explained his perspective on the role of the Police Commissioner.

The Police Commissioner and his department exercised their professional police judgment regarding the deployment of police personnel and developed specific police tactics to respond to the ever changing circumstances on the streets of Crown Heights.

A group of law enforcement professionals has commented on the particular responsibilities of the top police executive during a civil disturbance. Twenty experienced police commanders at a symposium sponsored by the Major City Chiefs Association described the role as that of a facilitator.

He must call upon the political structure for support, must appeal to the public for support and calm, must obtain vital resources from other agencies, must appeal to community leaders for support and assistance, must be seen by the community and the force as being in charge, must provide briefings to government officials, and must make decisions based upon a broad knowledge of occurring events.¹

Commissioner Brown concentrated on a number of these important responsibilities.

Mayor Dinkins said that while the police determined and carried out specific strategies, they kept him briefed and updated about their activities. Brown told us that he routinely spoke directly with the Mayor by telephone and also briefed him in-person.

Brown was notified of the situation in Crown Heights while at home on the evening of August 19. After a brief look at the disturbance area, he was driven to Kings County Hospital. Together with Mayor Dinkins, Brown visited the Cato family, and Yankel Rosenbaum after he was transported to the hospital for treatment of his stab wounds.

Although he had been receiving reports that the situation was under control, Brown rode through the Crown Heights neighborhood to assess conditions there for himself. He then went to the 71st Precinct station house to receive a briefing from police personnel. His priorities at that time were appropriate. He said they were to get the disorder under control, investigate the stabbing of Yankel Rosenbaum, and keep local leadership abreast of developments while seeking their support in calming the area.

Brown spent most of Tuesday, August 20, at Police Headquarters where he was briefed by appropriate police personnel. It appears he did not return to Crown Heights this day. Brown participated in updating Mayor Dinkins before joining him at a press conference that afternoon. Facts regarding the automobile accident were presented. The focus of Brown's concern on Tuesday was to ensure that there were no problems associated with a demonstration led by Rev. Al Sharpton. Brown told us he asked routinely how things were going and the answer was always that they were under control.

The Police Department devoted significant efforts to working in partnership with the community to restore peace. Brown personally attempted to address prevailing concerns that he thought had the potential for causing further disorder in the community. Thus, on Wednesday, August 21, Brown explained that he cancelled his schedule to attend meetings requested by members of the community. In sitting down with religious leaders, elected officials, and residents of Crown Heights his goal was to get "the right information out," and dispel unsubstantiated rumors that were fueling the tensions underlying the disturbance on the streets.

On Wednesday, Brown again reported to the Mayor on the previous night's disturbances before joining the Mayor for a 1:00 p.m. press conference at City Hall. Mayor Dinkins indicated to us that he did not receive any reports

that the situation in Crown Heights was out of control on Tuesday night, or beyond the capacity of the Police Department to manage effectively. Indeed, there is nothing to suggest that any of the communications from the Police Commissioner to the Mayor before late Wednesday indicated that conditions on the streets had gotten out of hand.

At the press conference, Brown acknowledged that some looting had occurred Tuesday night. He said, "we obviously are not going to let that happen. We are not going to tolerate lawlessness. And, thus, we started making arrests."

Brown also responded to a question about charges that the police were overly aggressive in handling the demonstration. Brown noted that the police used "great restraint" when they became targets for rocks and bottles. He said that the police officers "operated as a team ... they did not have individuals running off and doing their own policing, but rather they held together under difficult circumstances."

In an interview, Brown asserted that his job was to make sure that his uniformed commanders had the support they needed. The Commissioner indicated he would generally inquire about how things were going and whether additional resources were necessary. For instance, he recalled asking his commanders specifically whether there were enough police assigned to Crown Heights on the night the looting occurred.

Brown commented on the importance of giving police commanders the capacity to deal with the ongoing disturbances. He said the decision regarding how to use the police officers, once they were on the scene, was to be made by the those in the field. In the Commissioner's words, "One can't sit at Police Headquarters and make those kinds of [decisions]...It just doesn't work like that."

According to several Department officials, Commissioner Brown did not actively influence operational decisions. The Commissioner, himself, told us that he thought the commanders handling the situation had sufficient experience and knew what to do.

Brown considered it the responsibility of his staff to identify problems of resources or tactics and bring them to his attention. He said he did not hear about any such problems prior to Wednesday. The general nature of the questions he asked indicates that Brown did not direct, closely oversee, or monitor the police response to the disturbance. He apparently accepted assurances received through the chain of command that everything was under control.

As chief executive of the Department, the Commissioner was ultimately responsible for managing its activities to suppress rioting and preserve the public peace. In times of emergency, the public can reasonably expect that the Police Commissioner will ask probing questions of key aides on the scene. The Commissioner should monitor ongoing developments and convey to the Mayor an accurate assessment of the problems. The Commissioner should not only assess operational effectiveness, but demand changes where needed.

Lee P. Brown did not meet these expectations and failed to fulfill his ultimate responsibility for managing the Department's activities to suppress rioting and preserve the public peace. Evaluated against these standards, the Commissioner's leadership and performance during the first three days of disturbances in Crown Heights were less than satisfactory.

First Deputy Commissioner

The First Deputy serves as an executive aide to the Commissioner. Traditionally, the First Deputy's role depends upon how the Police Commissioner defines it. Under the Brown administration, the First Deputy's position was assigned various administrative functions. Raymond W. Kelly accepted those duties in February of 1990. Commissioner Brown selected Ray Kelly as his First Deputy over several commanders of higher rank, elevating him from a position heading the Department's Office of Management Analysis and Planning.

In an interview, now-Commissioner Kelly said it was made clear to him following his appointment that he was to have no role in operations and that the Chief of Department would report directly to the Commissioner. According to Kelly, "[t]he First Deputy Commissioner has no operational role in this department." He said that is the way it was then, and that is the way it is now. As First Deputy Commissioner, Raymond Kelly was not formally in the direct chain of command and not responsible for patrol services. Police commanders and patrol supervisors throughout the City were accountable to the Chief of Patrol, Chief of Department, and ultimately, to the Police Commissioner.

Although he did not have the responsibility for patrol services, Kelly had the authority to intervene during serious accidents, explosions, demonstrations, and civil disorders. The NYPD's Patrol Guide procedure for handling major emergency incidents places the highest-ranking patrol supervisor on the scene in command. That individual, however, can be superseded by the Police Commissioner, First Deputy Commissioner or Chief of Department. Indeed, these are the only Department executives permitted to supersede the patrol services commander on the scene during an emergency.

Kelly told us he was not involved in handling the disturbances until Wednesday evening. He said he was not present in Crown Heights and did not attend any meetings on the subject before that time. Chiefs Borrelli and Selvaggi confirmed that they had no contact with First Deputy Kelly regarding the events in Crown Heights before late Wednesday. Asked for an explanation, Kelly said he had no reason to question the capabilities of experienced commanders and felt that his intrusion would be unwelcome. He added, it would have been "inappropriate" to have interjected himself into Crown Heights police operations, since to do so would have "undercut" his boss, the Police Commissioner.

Brown did not ask Kelly to intervene and his first active involvement came on Wednesday evening. Then, watching television footage of objects thrown at police officers, Kelly told us that he decided on his own initiative to go to Crown Heights. In subsequent interviews with newspaper reporters, Kelly explained he did not recognize the severity of the riots until that time. He added: "I think in retrospect I should have been there."² Kelly also stated that, "in hindsight, yes, I probably could have been helpful on the first and second night.... But, I wasn't requested to go."³

Kelly had valuable experience as a former commander of the 71st Precinct in Crown Heights. Given the seriousness of the disorder, it proved to be a critical shortcoming that Commissioner Brown did not call upon Kelly to assume his ultimate role in coordinating the development and implementation of a new strategy. It is regrettable that, under the circumstances, Kelly did not deem it appropriate to seek an active role prior to late Wednesday.

Chief of Department

As the highest ranking uniformed member of the NYPD, the Chief of Department is responsible for supervising police performance and directing all the activities of the uniformed and detective services. Important duties include maintaining an ongoing dialogue and interaction with community organizations, religious leaders and government agencies, and formulating plans that coordinate activities during special or unusual occurrences.

The Chief of Department oversees divisions within the agency which perform critical functions. The Operations Unit is a twenty-four-hour center used for gathering and disseminating information and assigning personnel to major events such as organized demonstrations. The Communications Division operates the 911 emergency telephone and radio communications system.

Effective August 15, 1991, Chief of Department Robert Johnston retired. On Monday, August 19, the new Chief of Department, David W. Scott, attended

promotional ceremonies where other appointments were made. He then went on a previously scheduled vacation. According to Scott, ordinarily the Chief of Patrol was named Acting Chief of Department when that office was temporarily vacated. However, it was Selvaggi's first day in rank. Consequently, Joseph Borrelli, Chief of Detectives since November of 1989, was tapped to assume those interim duties.

A thirty-two-year veteran of the Department, Chief Borrelli spent much of his career in the Detective Bureau. However, from August, 1988 through March, 1989, Borrelli was assigned as Executive Officer in Patrol Borough Brooklyn North. For those seven months, he served under Commanding Officer Thomas Gallagher. That relationship was reversed during the events in Crown Heights.

Borrelli said his designation was needed because Departmental procedures require the approval of the Chief of Department for many operational matters, without any provision for delegating that responsibility. Borrelli confirmed that he had functioned in this capacity before, but could not recall how many times.

As Acting Chief of Department, Borrelli viewed his role as a limited one. He stated that had he been the actual Chief of Department, he would have been more involved in operations. Instead, he left it to experienced patrol commanders to operate as they saw fit, explaining that decisions regarding the strategy and tactics to be used in particular situations normally "are left to the uniformed command." In a sworn statement, Borrelli said he assured his subordinates at every possible step that he would "make any amount of additional police resources available to them if it became necessary."

At home Monday night, Borrelli said he received notification of an unusual situation at the accident scene. After speaking with Deputy Chief Gussman, Borrelli, at Gussman's request, said he authorized all officers citywide to be held on overtime, if necessary. When Gussman reported to him that a large-scale disorder was getting worse, Borrelli responded to the 71st Precinct. After taking stock of the situation, Borrelli said he gave a general briefing to the Police Commissioner and spoke with community leaders about what had happened in an effort to dispel rumors.

Borrelli told us that, at about 3:00 a.m., he received reports that things were calming down. In his view, the consensus of the police hierarchy present was that this spontaneous eruption would die out the next day. According to Borrelli, Selvaggi and Gallagher were told to plan for the following day.

On Tuesday,⁴ Borrelli said he stopped at the 71st Precinct on his way to work and again while returning home. He stated that his chief concern that day

was controlling the rumor that the Hatzoloh ambulance had abandoned Gavin Cato. He also remembered being very involved with the investigation into the car accident that caused the child's death. While there were no meetings on strategy, Borrelli informed us that he conferred throughout the day with Selvaggi and Gallagher. At Police Headquarters, Borrelli said that he devoted several hours planning for the needs of the Crown Heights detail with the Commanding Officer of the Operations Unit.

On Wednesday,⁵ Borrelli reported devoting much of his time to overseeing the investigations into the automobile accident and the Rosenbaum homicide. A key issue to him was why the driver involved in the fatal automobile accident had not been arrested. Borrelli said he believes that he accompanied the Commissioner to meet with some Lubavitcher leaders at 824 Eastern Parkway, before attending another meeting at the 71st Precinct Station House involving black representatives of the community.

Borrelli states that he was at Police Headquarters when Commissioner Brown's car was attacked near P.S. 167 late Wednesday afternoon. This event brought him back to Crown Heights where he remained until about 9:45 p.m. when he was sent to open the Headquarters Command Center.

Throughout the days of the disturbance, Borrelli's role was limited. He was neither involved in critically assessing the adequacy of the police response, nor in devising the strategy and tactics needed to handle the disturbance. Borrelli said he did not participate in formulating the Department's revised strategy for handling the disorder, and learned about it on Thursday morning. If he were functioning as Chief of Department, those would have been Borrelli's principal responsibilities.

As Acting Chief of Department, Borrelli had the authority and the duty to redirect the Department's ineffective response to the disturbances, but he failed to perform the responsibilities of the office he was designated to fulfill.

Chief of Patrol

Mario A. Selvaggi was appointed Chief of Patrol on Monday, August 19, the day the disturbances began. Selvaggi rose from Precinct Commander in 1973 to Assistant Chief in charge of commanding the Manhattan North Patrol Borough in 1988.

As Chief of Patrol, Selvaggi was primarily responsible for assuring that the Department provided uniformed patrol officers to respond to emergencies, minimize harm, maintain order, and protect individual rights. He reported to the

Acting Chief of Department and received reports directly from Borough Commanders on conditions on the streets. It was his duty to deploy resources effectively to combat crime and respond to community needs.

In the chain of command, first line supervisory responsibility for oversight of the operations in Crown Heights belonged to Chief Selvaggi. Despite over thirty-five years of NYPD experience, Chief Selvaggi told us he had little familiarity with either Brooklyn or key figures in the community. Consequently, he said policy decisions were made by the responsible Borough Commander, Chief Gallagher.

Selvaggi was notified of the accident and the subsequent disturbance at 10:30 p.m. on Monday night. He responded to the 71st Precinct where he met with other police officials. Selvaggi accompanied the Mayor and the Police Commissioner to Kings County Hospital, then returned to the Station House. Regarding the police response that evening, Selvaggi told us he believes that every reasonable action was taken.

Chief Selvaggi informed us that following Monday night's disturbance, he went to his office in Police Headquarters at about noon. From there, he said that he stayed in touch with Chief Gallagher most of the day. Gallagher reported to him about the group which presented its demands at the 71st Precinct, the subsequent march led by Sharpton, and occasional flare-ups at the accident site. Selvaggi recalled that these incidents were reportedly contained within a six-block area. He indicated the Department's approach was intended to control confrontations between groups, while avoiding a reaction directed against the police. With respect to Tuesday, Selvaggi said it seemed they were achieving this aim.

On Wednesday, Chief Selvaggi continued to maintain contact with Gallagher. However, like the two other top-ranking police officials, he spent much of his time in meetings with members of both the black and Hasidic communities. Waiting with Commissioner Brown at P.S. 167 for the Mayor to arrive, Selvaggi said that he realized that the tactics that had seemed adequate on Monday and Tuesday were not working.

In response to a question, Selvaggi indicated that he would discuss the information he received from Gallagher and Gussman with Borrelli. These briefings were handled as daily telephone conversations. According to Selvaggi, the mornings were spent discussing the disturbance-related activities of the previous evening and the afternoons were devoted to assuring that the detail was adequately staffed with personnel.

Chief Selvaggi spoke regularly by telephone with Field Commander Gallagher. He said that they primarily discussed manpower, but also covered tactics for arresting participants of roving bands. By virtue of his position as Gallagher's immediate supervisor, Selvaggi was probably better situated than any other Headquarters commander to determine that the Department's response to the disturbance was largely ineffective. However, until his experience with Commissioner Brown outside P.S. 167 on Wednesday afternoon, Selvaggi did not reach that conclusion.

As a result, Chief of Patrol Selvaggi did not assure that sufficient police resources were deployed and that appropriate tactics were used to control the disturbances in Crown Heights.

Breakdowns in Communication Delay a Change in Tactics

The earlier description of a top police executive's role during civil disorder noted that he "must make decisions based upon a broad knowledge of occurring events." We asked Commissioner Brown whether the Department should have known earlier, based upon the information available, that a stronger response to the disturbances was needed. He responded "I knew what was going on, and there was nothing that suggested to me that we should have done anything different at the time because the problem wasn't there at the time."

However, our analysis suggests that gaps in communication blocked the flow of critical information through the chain of command. When asked who would have been reporting directly to him about what was going on in Crown Heights, Brown stated that it was Acting Chief of Department Borrelli.

Brown said that he received information from whoever had it during the disturbance, but viewed Borrelli as the person "who was in charge of everything." However, Chief Borrelli said he had little contact with the Commissioner, except for conversations regarding the Rosenbaum homicide and their mutual presence at meetings with the Mayor. This stark contrast in perspectives leads us to conclude that there was a breakdown in communication between Brown and Borrelli.

The Field Commander, Chief Gallagher, said that he reported regularly to Chief Selvaggi, adding that he "assumed" Selvaggi updated Commissioner Brown. Selvaggi indicated that the information provided by Gallagher was forwarded to the Commissioner, as well as to Chief Borrelli. Selvaggi told us that he believed that all were fairly well briefed on the situation during the nights of disorder.

Selvaggi added that Commissioner Brown consistently asked if there were enough personnel in Crown Heights and if things were under control. According to Borrelli, Commissioner Brown wanted to know if everything that could be done was being done, but did not ask much beyond that.

Nevertheless, it appears Brown did not receive a comprehensive account of the events on the streets, nor of the tactics used. For instance, when we spoke with him, the former Commissioner was unaware of an incident Chief Gallagher related to us in an interview. Chief Gallagher told us that on Tuesday he had ordered his officers to take cover for their safety along the building line because they were outnumbered when crowds began throwing rocks and bottles. When we informed Brown about this crucial incident, he agreed that based upon this information, unknown to him at the time, it would have been appropriate for those at the scene to request reinforcements or devise new tactics.

Brown told us it was not until late Wednesday afternoon that he began to realize that there were problems with the Department's tactics. While in Crown Heights for the Mayor's visit to P.S. 167, the Commissioner's car was pelted by rocks and his driver radioed a request for assistance for "Car One." He experienced first-hand the seriousness of the situation on the streets and the apparent ineffectiveness of the Department's response.

The Commissioner recounted for us personal observations which he said he recalled "very vividly." Outside the school, a number of marchers broke off from the demonstration and started running, throwing rocks and breaking into cars. Brown saw four officers injured on the scene. These officers and others nearby were unprepared to deal with the actions of a disorderly group that had separated from the marchers.

Brown related that he saw instances where police officers "couldn't make an arrest because we didn't have the resources [there] to make the arrest." He said the manner in which police resources were allocated prevented personnel from making arrests.

Afterward, Brown drove through the area on his way to the 71st Precinct. He saw more problems with the way police were deployed. During a meeting at the Station House, it was determined that a change in the Department's strategy was needed.

Brown stated he concluded that assigning officers solely to fixed posts was inappropriate. Police officers were needed to follow demonstrators and to deal with the unpredictability of marchers by pursuing violators using tactics eventually employed on Thursday.

We asked if this type of strategy — sectoring, with fixed posts, and mobile patrols to follow groups — could have been used Wednesday night. Brown answered that it would certainly have been possible, but that Gallagher's people in the field did not feel it was needed at that time.

We cannot describe with certainty the nature of the information which reached Brown before late Wednesday afternoon. However, indications that a change in the policing strategy was needed were pervasive. As Commissioner, all the data possessed by the Department was available to him. This included official reports about the disorder, intelligence assessments relating to planned protest marches, 911 emergency calls for service, and anecdotal accounts from Community Affairs staff. Combined with media coverage of the disorder showing violence in the streets, it should have been apparent that the police presence was not quelling the disturbance.

Lack of Strong Leadership and Oversight

For the police to respond effectively to a civil disturbance, they must be guided by a tactical mission. Openly supported by the chief executive of the Department, the mission explains the way in which officers are expected to handle the disorder. A strong mission statement gives the Field Commander clear direction when establishing specific objectives, selecting tactics and prioritizing activities. It is properly the function of a police chief or commissioner to endorse that mission and modify it as necessary.

When asked to describe the purpose or focus of police activities each day, Commissioner Brown cited few specifics. For instance, with respect to Monday night, he said it was important to get everything in order to take care of the problem and make sure leaders in the community were briefed with the information available to the Department. The focus on Tuesday was on preventing problems associated with the march. By Wednesday evening, however, attention shifted to controlling the disorder and preventing its spread to other parts of the City. Brown ordered the opening of the Headquarters Command Center and the development of a new strategy to take back control of the streets.

As noted in Chapter 5, the *Patrol Borough Brooklyn South Unusual Disorder Plan* lacked a coherent mission statement. While that may be a minor criticism, the failure of the Department's leadership to ensure that a coherent tactical mission was communicated during the first three nights of disturbances in Crown Heights had more far-reaching consequences.

Part of the reason the police response was ineffective is that it was not linked to appropriate goals. NYPD seems to have safeguarded the right of protesters to demonstrate. However, the Department did not react appropriately as events evolved, by dispersing unruly crowds and making arrests where necessary.

Once a mission is determined and conveyed through the ranks, it is reasonable to expect the Police Commissioner and the chiefs in the chain of command to oversee its execution. To do so, they would have to remain informed of changing conditions, understand the police tactics chosen, and continuously reassess whether the tactics employed achieve the desired objectives. If these objectives are not met, the Headquarters command staff must ensure that more effective measures are implemented.

By insisting upon the development of sound tactical objectives, monitoring the actions taken by the Field Commander, and judging the effectiveness of those efforts, Commissioner Brown and others could have intervened when a change in tactics was warranted. A review of the available evidence suggests that the Department's oversight and supervision function was not performed adequately.

Top police officials should not have to observe a crisis situation in person before taking decisive action. They should ask personnel on the scene probing questions to ascertain whether the measures taken are reasonable and prudent. By engaging in this type of dialogue, supervisory personnel serve as a sounding board for the decisions that must be made by the Field Commander. There is no evidence of such leadership emanating from the highest levels of the Department until late Wednesday.

After each of the first two nights of rioting, there was no meeting of the Headquarters Executive Staff with Chief Gallagher to critique how the police had handled the events. This kind of review in a structured setting, is an essential practice so that the police executive can obtain the collective wisdom of principal advisers. Neither Commissioner Brown nor any member of the Executive Staff assembled the Department's management team to examine this urgent situation, review police performance, and determine appropriate police action.

In an interview with the *New York Times*⁶ on Friday, August 24, Selvaggi admitted that the Department did not react quickly enough to the violence in Crown Heights. He said an insufficient number of police were deployed and there was no coherent plan to deal with the disturbance. He added that NYPD commanders were unprepared for an outbreak of violence and they did not expect it to continue. A review of his comments suggests that an initial policy of restraint was imposed to avoid causing a violent reaction by the protesters against the police.

The leadership of the Headquarters command staff left much to be desired during the first three days of the disturbance. For varying reasons — unfamiliarity with the locale, newness to the position, and Departmental protocol — field operations were left up to the Borough Commander. None of the Headquarter's command staff took decisive action to control the disturbance until Wednesday evening. None interceded, despite repeated indications that the police strategy was not working.

THE BOROUGH FIELD COMMAND AND SUPPORT STAFF

The Field Commander

During times of crisis, a police department with many organizational levels is likely to find that its chain of command is not flexible enough or responsive enough to meet urgent demands. A specifically focused and streamlined command structure is needed to handle rapidly changing field conditions during a civil disturbance. The minute-by-minute hands-on management of the crisis must rest primarily with one individual.

Proper command and control requires one person to take charge of directing overall field operations. Having more than one commander can lead to poor communication, duplicate efforts, and a lack of coordination. Law enforcement officials agree that it is the Field Commander closest to the problem who must have the authority to respond to tactical situations as they arise.

The Field Commander must perform many functions during a civil disorder. The P.B.B.S. *Disorder Plan* states that the Field Commander is responsible for tactical operations. He must coordinate and control the police assigned to the disturbance. He is also responsible for mobilizing police personnel; establishing and maintaining liaison with key police officials; and conferring with and enlisting the aid of public officials and community leaders.

A specialized support staff working out of the Command Post is recommended to provide the Field Commander with assistance in handling logistical, communications, personnel, intelligence, community relations, and liaison functions. Likewise, a specially assembled staff of zone and sector commanders, reporting directly to the Field Commander, is recommended in the *Disorder Plan*.

Assistant Chief Thomas Gallagher served as Field Commander during the disturbances in Crown Heights. At that time, he was the Commanding Officer

of the Patrol Borough Brooklyn South, having held that position for eight months. Previously, he was assigned to the Patrol Borough Brooklyn North, where he first served as Executive Officer and later as Commanding Officer. Gallagher joined the NYPD in 1957 and, at the time, was a thirty-four-year veteran of the Department.

Gallagher responded to the disturbance at approximately 11:00 p.m., Monday night. He arrived at Borough Headquarters and was briefed on deployment before proceeding to 71st Precinct to monitor the situation. Later, Gallagher went to Kings County Hospital where he briefed the Police Commissioner on the disturbance and the nature of the police response.

Thereafter, Gallagher resumed direct command of the detail. He went to the location of a confrontation between blacks and Hasidim on Eastern Parkway at approximately 3:00 a.m. This was a very difficult and sensitive situation, according to Gallagher, which required extreme patience and most of the night to resolve. Gallagher said he was not involved that night in planning for Tuesday. Instead, he said he approved the plans developed by his Executive Officer, Deputy Chief Kenneth Gussman.

Gallagher spent most of Tuesday meeting with representatives of the black and Hasidic communities. He attended a meeting chaired by Deputy Mayor Lynch with local residents at P.S. 167. The objective of this session was to dispel rumors surrounding the accident and restore calm to the community. In the early afternoon, Gallagher met with various religious leaders to seek their assistance in efforts to defuse the tensions. At 4:00 p.m., he met with representatives of the District Attorney's office to inform demonstrators that demands for the arrest of the driver involved in the fatal accident could not be met.

After the meeting at the 71st Precinct, the demonstrators marched to the accident scene where they became disruptive. Gallagher went to the intersection of President Street and Utica Avenue. There, he attempted to control the unrest through negotiation and restraint, but the demonstration quickly degenerated into a civil disturbance. Gallagher told us he decided against dispersing the crowd to avoid causing injuries to police and civilians. When objects were thrown from roof tops, he directed the police to withdraw to the building line for shelter. By midnight, a heavy rain cleared the streets of demonstrators.

On Wednesday, Gallagher monitored the memorial for Yankel Rosenbaum and attended a mid-day press conference with community leaders. That afternoon, Gallagher joined Commissioner Brown and other officials meeting with the Crown Heights Emergency Council at 824 Eastern Parkway where concerns were expressed regarding the need for greater police protection. He then accompanied them to a meeting with elected officials and black leaders at the 71st

Precinct in yet another effort to dispel rumors and improve relations within the community. Later, Gallagher was present for Mayor Dinkins' visit to P.S. 167. That evening, he continued to actively direct police field operations.

Gallagher noted that the situation in Crown Heights was perceived as worsening Wednesday night, not subsiding. He said that the atmosphere changed when leaderless groups became organized by outsiders more intent on rioting. Therefore, Gallagher said, a revised tactical plan was developed by other senior police commanders for Thursday. When he responded to Police Headquarters that morning as requested, he was instructed on the new plan.

Gallagher told us that he commanded the police force according to his personal style. He indicated that unless life and property is clearly in peril, it is preferable to allow the situation to vent itself, rather than fuel it through aggressive police action. Gallagher's participation in numerous meetings with community leaders to engage in rumor control efforts reflected his preferred approach.

Gallagher said that he received no direction from his superiors, which he interpreted to mean that they agreed with his approach. When interviewed, he insisted his strategy was successful based upon the size of the area affected, the number of stores looted and that there were few serious injuries. In a sworn statement, he has said that "the situation was chaotic," but not "wholly out of control or beyond the capacity of the available police resources."

Gallagher's involvement in efforts at community intervention was time well spent. However, he should have provided better direction for the police operations and communicated tactical objectives to end the disorder. While containment and restraint are appropriate for handling peaceful demonstrations, they are ill-suited to a disorder situation. Gallagher should have recognized that the Department's response was ineffective and instituted proactive tactics sooner. Once the disturbance became violent, more forceful tactics were needed to disperse unruly crowds and arrest lawbreakers. This kind of command decision was warranted before Thursday.

Gallagher also inadequately supervised the management of the disturbance detail. In his absence, the Command Post was to be staffed by Deputy Chief Gussman. Gussman, however, was not consistently present at the Command Post on Tuesday and Captain Kennedy had resumed his role as Precinct Commander. This issue is explored in greater detail, below, in regard to the absence of well-defined Command Post support staff during the disturbance.

Field Headquarters Support Staff

As stated in the *Webster Report*, "No single person...alone, can do everything necessary to respond to civil disorder....The bigger the problem, the more help that is required."⁷ Consequently, the Field Commander must have a support staff to provide that assistance. Each member of that support staff must have a well-defined role and close coordination is essential.

To facilitate the smooth operation of all aspects of field operations, the *Disorder Plan* recommends that the Field Commander establish a support staff. This support staff should include individuals serving as Executive Officer, Personnel Officer, Intelligence Officer, Operations Officer, Communications Officer, and Services Officer. Superior officers should also be placed in charge of mobilization points, the Communications and Message Center, the Press and Information Center, rumor control, and as liaisons with City departments and specialized police units. The *Plan* lists the persons by rank who are to fill these positions.

The support staff perform vital tasks during a disturbance. The Operations Officer, for example, among other duties must: organize and equip units in the field; mobilize and assign such units; set priorities for allocating "critical resources"; prepare operational plans and orders; and evaluate "the situation continuously in coordination with all other staff and special staff officers."

As another example, the Services Officer assists the Field Commander by coordinating all logistical support for field operations, including supplies and equipment, maintenance and repair, and transportation used in support of the operation. The Intelligence Officer directs the collection and interpretation of information and advises the Field Commander.

Chief Gallagher did not set up the formal support staff described in the *Disorder Plan*. He stated that no one was actually assigned to support roles, but that "people fell into these positions; there is a borough structure and people know what to do." For example, he said that while no ranking officers were formally assigned to the roles of Intelligence and Communications Officers, these functions were handled by the Brooklyn South Operations Desk. Similarly, Inspector Wilbur Chapman was put in charge of coordinating escorts for the Fire Department and EMS Tuesday night and continued that function on Wednesday.

However, while Gallagher stated that support functions were filled by Patrol Borough staff under the direction of Chief Gussman, his Executive Officer, Gussman believed they were handled by Captain Kennedy's staff at the 71st Precinct.

The fact that people "fell into positions" created a number of problems. Certain individuals, according to Gallagher, filled several positions each. Sergeant Joseph Caramonica, for example, handled community relations, but also provided intelligence. This created obvious difficulties. It is necessary for Community Affairs personnel to spend much of their time on the streets and at meetings. In contrast, the Intelligence Officer must spend most of his time in the Command Post if he or she is to compile raw information obtained from diverse sources and present it to the Field Commander for operational decision making.

The role of the Services Officer was also inadequately fulfilled. Many of the patrol officers and sergeants interviewed noted the absence of riot control shields. As the crowds were throwing rocks, bricks, and bottles at the officers, the few with riot control gear tried to block the missiles.

Gussman needed to be at the Command Post at the 71st Precinct to function effectively. However, he spent Tuesday at Borough Headquarters preparing staff assignments. When an individual fills more than one role, each role may suffer. Despite the dedication and hard work of many, the absence of a proper support structure makes it likely that some responsibilities will be overlooked or only partly fulfilled.

This situation created what then-First Deputy Commissioner Raymond Kelly referred to in his December 1991 critique of the police response as "the potential for a leadership vacuum." According to Kelly, while the Field Commander needs to maintain a street presence and dialogue, this means that he is often removed from many of the operational decisions made.

The International Association of Chiefs of Police found that during the outbreak of a disturbance many police departments in the 1960s were plagued by inadequate logistical support of officers engaged in control activities. More than two decades later, we found a similar situation during the Crown Heights disturbances. Since Chief Gallagher did not set up the support staff set forth in the *Disorder Plan*, it appears that critical functions detailed there were unmet.

This is especially true with regard to the establishment of a support staff during a civil disturbance. There are many complex tasks to be performed and little time to prepare a list of what these tasks are, and what each entails. Moreover, the nature of the situation requires the performance of tasks which are not required at other times. Thus, assigning support functions in an *ad hoc* or informal manner is not sufficient.

One reason that Gallagher did not set up the command and control structure described in the *Disorder Plan* is that he was largely unfamiliar with it. He was not alone. Our interviews with Captain Kennedy indicate that he also did

not fully grasp the content of the plans. For example, when asked about establishing zones, a key provision of the *Disorder Plan*, Kennedy replied that he had established a zone, namely one zone six blocks by six blocks, indicating what he characterized as the entire area affected by the disorder.

This lack of familiarity with a document which collects the Department's best thinking on how to deal with civil unrest and other major disorders and emergencies was problematic. As NYPD commanders lacked sufficient knowledge of the *Plan* and, of equal importance, regular training to implement it, the advice contained in the document was of little benefit.

Zone and Sector Commanders

Similar to the Command Post support staff, law enforcement authorities stress the need for a special field command structure during civil disturbances. The special command structure invoked during riots and other emergencies typically tightens the organizational chain of command and gives each link in the chain specific duties to carry out. By shortening the command hierarchy, orders flow from the top down quickly and unambiguously.

The P.B.B.S. *Disorder Plan* specifies such an approach. The *Disorder Plan* emphasizes the need for the Field Commander to divide the scene of the disorder into zones, each commanded by an Inspector. Each zone, in turn, is to be divided into sectors, each commanded by a specially designated Captain. The zone commanders receive orders from the Field Commander and convey them directly to the officers under his or her command. These commanders also serve as channels of information gathered within their zones, to pass it back to the Field Commander.

Chief Gallagher did not implement the *Disorder Plan's* detailed provisions for designating zone and sector commanders during the first three days of the disorder. Instead of dividing the disorder area into zones, captains, and in some cases deputy chiefs, supervised details assigned to specific functions or locations.

On Tuesday, for example, Captains Powers and Esposito supervised details assigned to marches during the afternoon. Later, they supervised details assigned to specific locations. Deputy Chiefs Gelfand and Murphy supervised details on Utica Avenue. On Wednesday, Captains Kenny and Powers, and Deputy Chief Murphy supervised details assigned to P.S. 167 during the Mayor's visit.

While this structure provided operational supervision, it was deficient in one key respect. Rather than providing a coordinated, cohesive approach, to

establish order within a defined geographic sector, these details functioned relatively autonomously. There was no unified approach determined by one commander, and supervision was concentrated at the locations where the commanders were assigned.

Thus, when Powers and Esposito cleared Utica Avenue on Wednesday night, the disorderly demonstrators moved to nearby areas with a less substantial police presence. There, the police were less effective in controlling these groups. A command structure focusing its efforts on entire areas might have obviated this problem by implementing a more comprehensive strategy. This occurred when a formal zone structure was implemented on Thursday. Until Thursday, the advantages of the special command structure described in the *Disorder Plan* were not secured.

One important part of the policing strategy, announced Thursday morning, was the designation of four "hand-picked" zone commanders. Not only were they in charge of the officers under their command, but, equally as important, they provided a unified approach within each zone to carrying out the Department's tactical mission and arrest policy. For the first time since Monday night, the police carried out a coordinated strategy.

COMMAND POST OPERATIONS

The P.B.B.S. *Disorder Plan* defines the Command Post as the center which provides the administrative support for field commanders. Its purpose is to help the Field Commander and his staff gather information effectively, assess the situation, prepare recommendations, implement orders, and monitor operations within the disturbance area. A Field Command Post should be strategically and safely located near, but not within, the disturbance area. Moreover, the Field Command Post should have sufficient space for responding personnel, vehicles, and equipment, and communications capabilities. It must also be defensible against attack.

The 71st Precinct Station House, which was chosen as the Command Post and functioned as such until it was moved to the Borough Headquarters on Wednesday evening, was clearly not an appropriate choice. On Tuesday a demonstration was held outside the Command Post. While it was peaceful, the presence of a large crowd diverted the attention of Command Post staff.

Commissioner Brown surveyed the Crown Heights neighborhood and the operations of the Command Post on Wednesday evening. He later remarked that "the precinct could easily become a target of the demonstrations...." Chief

Gallagher's critique of the police response to the disorder stated: "the 71st Precinct proved to be too close to the scene and there was too much confusion to allow for effective command control."

First Deputy Commissioner Kelly also recognized these problems and told us that one of the first things he directed on Wednesday evening, when he became involved with police operations, was to move the Command Post to the Borough headquarters, away from the immediate area of disorder.

Brown's assessment of the Command Post focused not only on its location, but also on its capability to monitor the disorder. Brown told us that the Command Post was poorly organized. He added that he had expected to see area maps pinpointing locations of incidents and the deployment of officers hanging on the Command Post walls, but there were none.

The 71st Precinct Station House also lacked space to park and secure a large number of police vehicles. A separate mobilization point for vehicles was set up, but not always used during the first days of the rioting. Consequently, vehicles parked unsecured throughout the riot zone were damaged by vandalism or arson.

Moreover, communications were inadequate. Chief Gallagher reported that "telephone communication was difficult" during Monday night's violence. Inspector Chapman who spent most of his time during the disorder working inside the Station House, described the scene there as one of disorder, adding that the lines of communication were poor. According to Chapman, things changed on Thursday -- communications improved, people knew where to respond. In general, he said, all levels of organization improved.

Part of the communication problem stemmed from a lack of telephones for supervisors in the field to contact their superiors at the station house. It is fundamental to establish immediate lines of communication between the Command Post and the field commanders in order to ensure an adequate flow of information and operational directives.

Finally, the initial Command Post set up to monitor and control the disturbance within the 71st Precinct, was not equipped to handle activities which spilled over into other precincts. Eastern Parkway is the northern boundary of the 71st Precinct and of the Patrol Borough Brooklyn South area. The northern half of Eastern Parkway is patrolled by the 77th Precinct which is part of another command, Patrol Borough Brooklyn North. During the four days of the disturbance, Eastern Parkway was a focal point of the violence. In fact, the number of disturbance-related violent acts occurring in the 77th Precinct increased each day.

The Command and Control Center at Police Headquarters has the capability to monitor activity citywide and to provide coordination with all operational units of the Police Department and other City agencies. One of its primary functions is to allow police personnel to determine whether acts of violence are spreading to other parts of the City and, if so, to assist in coordinating the police and other emergency services response. It was not activated until Wednesday night. Had Command and Control Center been activated prior to Wednesday night, it could have coordinated the activities of the Command Post -- under the command of the Brooklyn South Field Commander -- with the commanding officer of Brooklyn North.

The Command and Control Center normally is not opened if a problem is confined to just one defined area. Brown told us that he made the decision to open the Command and Control Center because: "I wanted to make sure we monitored everything that's going on. I wanted to make sure...we didn't have problems at other precincts, we didn't have problems with any other parts of the City." Opening the Command and Control Center was an appropriate decision. However, it should have been opened sooner.

SUMMARY

Command and control are crucial aspects of a police department's capability to respond to civil disorder. In order to deal quickly and effectively, a command structure must be activated to allow clear-cut orders to flow from commanders to police on the streets. The *Disorder Plan* contained a detailed approach to such a command structure, specifically focusing on the roles of the Field Commander, zone commanders, and Command Post support staff. Equally as important, top-ranking police officials above the Field Commander play significant roles in the overall command and control structure.

During the Crown Heights disorder, systemic failures in command and control occurred at all levels. First, the highest-ranking NYPD officials failed to properly supervise the Field Commander. These officials participated in briefings, press conferences, and community meetings. It appears they did not actively seek detailed information about the disorder itself and the police response to it. Their approach was largely one of asking whether more officers were needed and whether everything was under control.

There is no evidence that Commissioner Brown convened his top advisers to critically assess the activities on the streets of Crown Heights, to discuss strategy, evaluate the effectiveness of the police response and direct the police response to some of the most extensive rioting the City had experienced in twenty

years. In fact, prior to Wednesday evening, it appears that Commissioner Brown did not have a sustained discussion concerning the actual tactics employed by his commanders.

The failure of the command staff to convene Tuesday and Wednesday was a fateful flaw in command leadership. Any member of the Headquarters Command staff could have initiated such a session. In a sense, a leadership vacuum existed at the highest levels of the Department. Without a meeting of this kind, the Department lacked a critical analysis of what was happening in the streets and whether the police response to these events was judged effective. Thus, the Field Commander was permitted to pursue the same overall strategy on Wednesday that failed on Tuesday, with no directives from his superiors to change that approach.

The Field Commander did not effectively address the fact that the course of action pursued was inadequate. As a result, he failed to develop and implement in a timely fashion an effective strategy to respond to the disorder. It was not until the Police Commissioner and the Mayor were embroiled in the conflict on Wednesday that officials sensed the need for greater resources and a different strategy.

Second, the mid-level cadre of field commanders spelled out in the *Disorder Plan* was not created until Thursday, three days after the rioting began. Had the *Plan* been followed, the disorder area would have been divided into zones and sectors, commanded by Inspectors and Captains, respectively. Sector commanders would have been in charge of the patrol forces assigned to each area and the vulnerable locations within them and would be responsible for instructing sergeants and police officers in accordance with written directives and verbal orders. Failure to use this approach resulted in a diffuse command structure and contributed to a lack of clear-cut orders to officers in the streets and confusion in the ranks. An opportunity to impose cohesion and structure to the Department's response to the disorder was lost.

Third, a poorly organized support staff hampered operations. Rather than establishing the type of formal structure called for by the *Disorder Plan*, the Field Commander and his top aides used whoever was available to perform crucial specialized functions. As a result, specialized support services, laid out in detail in the *Plan*, were not effectively managed.

Finally, using the 71st Precinct Station House as the Command Post for the first three days of the disorder led to several problems, the most serious being that it became the focus of demonstrators. It was Wednesday night before police officials transferred the Command Post to the Brooklyn South headquarters, outside the main disorder area. Wednesday night also marked the first time the

police activated the Command and Control Center at Police Headquarters, a facility specially set up to monitor and coordinate serious large scale disorders.

The police strategy implemented on Thursday morning is credited with restoring order. That strategy, which included command and control functions such as assigning zone commanders to specific locations with the disorder area, establishing a secure Command Post staffed by experienced officers, and articulating clear and explicit orders to the ranks, is in accordance with the recommendations of the Borough *Disorder Plan*. The implementation of that *Plan* could have provided the Field Commander with valuable help in quelling the disorders. The strongest evidence of this was the effectiveness of the steps taken on Thursday to respond to the disorder.

ENDNOTES

1. Derico, Julius, et al., *Prevention and Control of Civil Disturbance: Time for Review*, U.S. Department of Justice, Federal Bureau of Investigation, Quantico, VA: October 1992, pp. 23-24.
2. *New York Post*, June 23, 1993.
3. Tom Hayes, "Kelly: Bring on Crown Heights Report." Associated Press Wire Service, June 23, 1993.
4. Chief Borrelli indicated in a sworn affidavit dated January 28, 1993, that he returned to the 71st Precinct at 10:00 a.m. and spent most of the day at Crown Heights in meetings which may have included the Police Commissioner and Chief Selvaggi. He contacted us on June 24, 1993, to clarify that the events he recalled as taking place on Tuesday, August 20, actually occurred on Wednesday, August 21.
5. Acting Chief of Department Borrelli mistakenly reported in his sworn affidavit that he did not meet with the Police Commissioner at all on this, the third day of disturbances.
6. Seth Faison, Jr., "Police Official Is Critical Of Lack Of Preparation," *New York Times*, August 24, 1991.
7. Webster, William, et al., *The City in Crisis, A Report by the Special Advisor to the Board of Police Commissioners on the Civil Disorder in Los Angeles*, Los Angeles, CA: October 21, 1992.

Chapter 10

911

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- ▶ Description of the *911* System
- ▶ Call Priority
- ▶ Duplicate Classification of Calls
- ▶ Assignment Delay
- ▶ Response Delay
- ▶ Preservation of Audio Tapes
- ▶ Summary

911

During the course of the disturbance, people in Crown Heights relied on the *911* system to alert the police to riotous conditions in the streets. Many callers reported attacks on their homes or large, unruly mobs outside in the streets shouting racial and religious epithets and threatening personal injury.

The pervasiveness of the disturbance added an extra dimension to the importance of the *911* system. With the streets crowded with angry demonstrators and rioters, the *911* system became the lifeline of communication between the community and its police force. It is impossible to convey the fear in the voices of those calling *911* for assistance. Not only did they need the police to physically respond, they also needed to be provided with a sense that their lives and property would be protected.

The *911* system can also be vital to police tactical planning during a civil disturbance, since callers can provide information about the course and nature of the disorder. Thus, strong coordination is needed between the *911* service and the disorder control efforts of the police.

Some residents of Crown Heights contend that during the course of the disturbance, they received no police response to their *911* calls for assistance. The NYPD, however, claims that there was no systematic inability to respond to *911* calls.¹

What follows is a review of how the response to *911* calls was handled during the disturbance. We begin with a brief description of the *911* system in New York City, and then proceed to address the following questions:

- Were *911* calls appropriately prioritized during the disturbance?
- Did the processing of *911* calls ensure that each reported incident received a police response?
- How quickly were the calls assigned a police resource?
- How quickly did the police complete *911* assignments?
- Why were some *911* tapes that were ordered to be preserved, erased by the NYPD?

Answers to these questions rely on the analysis of data from the SPRINT (Special Police Radio Inquiry Network) system and the information retrieved from audio tapes of actual *911* calls.²

DESCRIPTION OF THE 911 SYSTEM

The 911 system in the City of New York receives approximately 23,000 calls per day.³ Calls are directed to a central communications operation at headquarters at 1 Police Plaza. Almost all 911 calls are answered within thirty seconds of origination. Not all calls require police services; callers may be seeking non-emergency information or assistance, or they may be requesting fire or emergency medical services.⁴ Even so, about half of all 911 calls result in the dispatching of emergency police services.

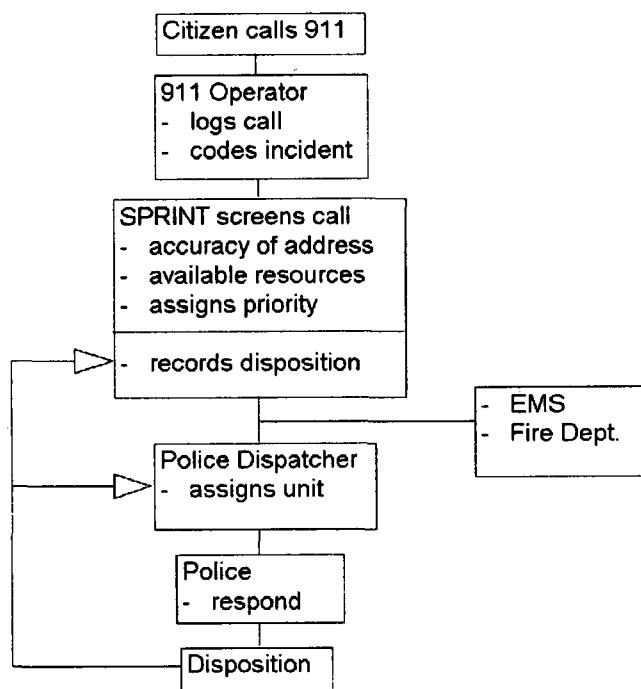
When police assistance is needed, the 911 operator records the nature of the problem, assigns an incident code to the call, and keys all relevant information into the Total Incident Display. This information is screened by the SPRINT computer system which identifies the patrol resources available for assignment. The call is prioritized automatically, based on an incident code determined by the 911 operator.⁵ Each incident code carries a priority ranking from 1 (highest) to 8 (lowest). (See Table 6.2 for priority levels associated with various incident codes.)

Operators are instructed to create unique SPRINT jobs—referred to in this discussion as 911 jobs—for each separate reported incident. If two calls report the same incident, only one 911 job is generated.

SPRINT then provides the radio dispatcher with a one-line summary of the 911 job.⁶ The radio dispatcher communicates with patrol cars and radio-equipped patrol officers in two or three precincts. When assigning a 911 job to a police unit, the dispatcher broadcasts the appropriate information recorded by the 911 operator. If ambulance or fire department services are required, the 911 operator connects the caller with the EMS or Fire Department dispatcher. At the completion of an assignment, the responding officer reports the disposition.⁷ This process is depicted in Figure 10.1.

Several jobs within the same precinct may be held, pending resources becoming available for assignment. When this occurs, the dispatcher may declare an “alert” or “backlog” and seek permission from the communications supervisor to reduce the call load by deleting assignments involving minor incidents or deferring assignments from the main screen.⁸

Figure 10.1. The Processing of 911 Calls



CALL PRIORITY

Were Calls Appropriately Prioritized During the Disturbance?

The incident code determined by a 911 operator cues the priority assignment attached to a call. The audio tapes of 911 calls provided an opportunity to compare the actual content of these calls with the incident codes selected by the operators. This comparison revealed instances in which calls made during the disturbance were erroneously incident-coded, resulting in their treatment as low priority jobs.

In particular, incident coding can be questioned in the classifications of 911 calls which involved large groups engaged in, or threatening to engage in, property offenses or crimes against persons. Our review of the audio tapes revealed that reports of such incidents were often coded either as *disorderly group - outside* or *criminal mischief - outside*: priority 5 calls. A more appropriate classification would have been *roving band*: a priority 2 call.⁹ Yet, an incident code for *roving band* appears only twice among all 911 jobs within the 71st and

77th Precincts over the four days of the disturbance. Conversely, incident codes for *disorderly group - outside* and *criminal mischief - outside* occurred in 176 SPRINT assignments during the four-day period.

If these calls had been coded as incidents involving roving bands, they would have been assigned a priority level equivalent to reports of assaults and robberies in progress. The impact of these coding decisions is difficult to assess. At a minimum, the under-use of the roving band code misrepresented the seriousness of many 911 incidents.

Three jobs involving large, riotous groups stood out as especially problematic, because they involved reports of residences under attack. The first was a call from a woman on President Street who reported that rioters were throwing rocks through her windows.¹⁰ The woman, who sounded extremely frightened, stated that she had a house-full of children and needed the police immediately. The call was incident coded as a *disorderly person - inside*, a priority 7 call.

The second 911 job suffered from multiple errors, one of which was the assignment of an inappropriate incident code.¹¹ The call was made by a man living on President Street whose residence was under attack by rioters.

Tuesday, 8:18 pm

Operator: Police . . . , where is your emergency?

Caller: Yes, I'm on President Street between Utica and Schenectady.

Operator: What's going on over there, sir?

Caller: A what?

Operator: What's going on over there, sir?

Caller: What's going on? They're, they're, they're, they're rioting. They're running wild; they're breaking, they're breaking, they're breaking my front windows ...

Operator: President Street between Union and Schenectady?

Caller: Utica, Utica and Schenectady. There's no police in sight; there's a mob of about 200 people.

Operator: Sir, we have numerous officers in that area.

Caller: There's nobody on this block! Nobody! Between Utica and Schenectady - Nobody! The police are staying away, they're afraid! We need the riot squad, damn it!

Operator: So, you want the police to come to your house?

Caller: I want the police to come to my front door!

Operator: Hold on one second. You want the police where?

Caller: [address]! [address repeated]! [address repeated]! Emergency! Emergency! Emergency!

Operator: Are they at your house now sir?

Caller: They're in front of my house.

Operator: *How many of them are there?*
 Caller: *Am I suppose to stick my head out the window to check?! (to wife) "Get in the back, get in the back with the kids." How many? From my window I can see... about twenty-five. That's from my little window because that's all I'm looking out.*
 Operator: *Sir, your telephone number?*
 Caller: *[number]*
 Operator: *[number repeated] What's your last name.*
 Caller: *[name] [name spelled]*
 Operator: *Police will be there as soon as possible.*
 Caller: *What?*
 Operator: *They'll be there as soon as possible.*
 Caller: *Hurry!*
 Operator: *They'll be there as soon as possible. Is anyone injured over there?*
 Caller: *Not yet!*
 Operator: *They'll be there as soon as possible.*
 Caller: *No, now!*
 Operator: *They'll be there.*

The call was incident coded as a *dispute - inside* and automatically assigned to priority 5. In this case, the low priority level may not have been harmful, since the call received an immediate assignment. However, the operator recorded the wrong address, so the police may have gone to the wrong location. The responding officers recorded a disposition of "unnecessary," within two minutes of the origination of the call.

The third 911 job contains a call made by a woman reporting that rioters were breaking windows in her neighbor's house and had broken through the door.¹² The call was incident coded as *criminal mischief - outside* and automatically assigned priority level 5.

In summary, extensive use of disorderly group and criminal mischief incident codes during the disturbance and infrequent use of the roving band code resulted in a lower prioritization of many calls in which large, riotous groups were reported breaking windows or threatening injury throughout entire neighborhoods. There were also instances in which calls reporting residences under attack were assigned a low priority level. Under ordinary circumstances, breaking a window with a rock might warrant a priority 5 assignment. But these callers were reporting substantial property damage and threatening mobs. These events should have warranted a more urgent response on the part of the police.

DUPLICATE CLASSIFICATION OF CALLS

Did the Processing of 911 Calls Ensure that Each Reported Incident Received a Police Response?

There are at least two situations in which a 911 call for police assistance may not be assigned dedicated police resources. First, information from the call may be attached to a previous job by the 911 operator. Second, a call may be assigned a unique 911 job, but later linked to another job as a duplicate. When this occurs, the dispatcher enters a duplicate code and one of the duplicate jobs is removed from the queue.¹³ The NYPD procedures for 911 specify that the linking of calls for emergency police services should occur only if the calls reference "exactly the same incident."¹⁴ The stringency of this decision rule mirrors the importance of ensuring that no call for assistance goes unanswered.

During the week preceding the disturbance, eight percent of all 911 jobs were linked as duplicates to one or more other jobs. During the disturbance, forty-three percent of the 911 jobs originating in the deployment area were cross-referenced as duplicates to one or more other 911 jobs. Over half of these duplicate strings involved calls which differed in terms of the address of the event, the nature of the incident—or most often, both of these factors.¹⁵

The volume of 911 jobs classified as duplicates which involved discrete incidents and locations raises the serious possibility that some calls did not receive a police response.

The problem arising from the duplicate-job classification is exemplified by a string of 911 jobs linked together as duplicates Monday night.¹⁶ The initial call was made at 8:20 p.m. and reported people screaming. Over the next six and one-half hours, another seventy-one 911 jobs were created and referenced as duplicates either to the initial call or, more often, to another call within that string. These 911 jobs originated over a 100-block area. Incident code assignments ranged in severity from criminal mischief and dispute calls, to reports of personal assaults and officers in need of assistance. Clearly, calls spanning this time interval and geographic area, and reporting of different types of incidents cannot reflect the same event.

Within this string of seventy-two duplicate 911 jobs was a configuration of seventeen consecutive jobs which illustrate the nature of the problem inherent in extensive duplicate classification. The seventeen calls in the duplicate string were logged by 911 operators within the space of one hour. The incidents occurred at a variety of locations and involved many different offenses, for

example: fights, windows breaking, mobs pounding on doors, bottles being thrown, and gun fire. Table 10.1 displays, for these jobs, the time the job originated, as well as the location and nature of the incident.

The duplicate classifications of these *911* jobs resulted in only one disposition. Nine of the seventeen jobs show no assignment of police resources. Another three jobs were not assigned, but the callers were contacted by phone approximately two hours after requesting assistance. Four jobs resulted in the assignment of police resources, but showed no disposition. The single disposition involved a report of shots fired. The job was assigned approximately three hours after its origination and resulted in a disposition of “unfounded.”

Examples of Erroneous Duplicate Classifications of *911* Jobs

The disparity in the nature of calls classified as duplicates is clearly shown through a review of the *911* tapes. The following presents a series of four examples in which *911* jobs were improperly classified as duplicates.

One example involved four *911* jobs.¹⁷ The first job was a call to *911* at 12:08 a.m., Tuesday morning, which reported gunshots in the area of Crown and Albany Streets. The second job, consisting of three calls made between 12:08 and 12:16, reported different assaults in the area of Crown Street and Troy Avenue. The last call in this job reported a large fight in the same area. The third *911* job—a single call at 12:17 a.m.—reported the assault on a motorist by a mob on Troy Avenue between Montgomery and Crown Streets. The fourth job in the duplicate string was a set of three calls made by a couple over a forty minute period between 12:40 a.m. and 1:20 a.m., requesting a police escort to their home. The husband had been attacked by a mob near his home on Crown Street and his wife ran to his aid. They were chased into a neighbor’s house, while their young children were left alone at home.

Although all four jobs in this string originated in the area of Crown and Troy Streets, they covered a broad time period and several discrete incidents which should have brought individual police responses. In the end, the first three jobs showed no resource assignment, while the fourth job was assigned at 2:49 a.m., over two hours after the police escort was requested.

A second example involved two jobs which were linked even though they entailed different incidents at separate locations. Between 5:01 and 5:18 p.m. on Tuesday evening, seven calls to *911* reported a large-scale riot on President Street, between Rochester and Utica Avenues. One caller reported that her house was under attack by a mob throwing rocks through her windows. All seven calls were subsumed under a single *911* job.¹⁸ About twenty minutes later, at 5:37

SPRINT Job	Time Originated	Location of Incident	Description of Job
T00326	12:27 a.m.	Lefferts Av btw & Troy and Schenectady Avs	Disorderly group, outside
T00328	12:27 a.m.	Lefferts Av btw & Troy and Schenectady Avs	Disorderly group, outside
T00338	12:28 a.m.	Crown St btw Albany Av & Union St	Other crime in progress, outside
T00436	12:38 a.m.	President St & Bedford	Possible crime, shots fired
T00462	12:40 a.m.	Montgomery St & Troy Av	Criminal Mischief, outside
T00527	12:48 a.m.	Albany Av btw Eastern Pkwy & Union St	Disorderly group, outside
T00536	12:49 a.m.	Albany Av & Eastern Pkwy	Other crime, in progress, outside
T00547	12:50 a.m.	Eastern Pkwy btw Kingston Av & Albany Av	Possible crime, shots fired
T00550	12:50 a.m.	Eastern Pkwy btw Kingston Av & Albany Av	Criminal mischief, inside
T00582	12:53 a.m.	Eastern Pkwy btw Kingston Av & Albany Av	Dispute, outside
T00626	12:57 a.m.	Albany Av & Eastern Pkwy	Other crime in progress, outside
T00627	12:57 a.m.	Eastern Pkwy btw Albany Av & Troy Av	Dispute, outside
T00644	12:58 a.m.	Eastern Pkwy & Troy Av	Disorderly group, outside
T00650	12:58 a.m.	Schenectady Av btw Montgomery St & Empire Blvd	Disorderly group, outside
T00673	1:01 a.m.	Eastern Pkwy btw Kingston Av & Albany Av	Disorderly group, outside
T00907	1:23 a.m.	Union St & Albany Av	Assist police officer, outside
T00921	1:24 a.m.	Union St & Albany Av	Dispute, outside

and 5:38 p.m., two other calls reported a person seriously injured after being struck with a bottle on Utica Avenue between Eastern Parkway and Union Street. Both calls were subsumed under a second 911 job.¹⁹ Despite distinct locations and disparate incidents, the two jobs were linked as duplicates. The first was disposed as “other” and referenced the disposition of the second call as controlling. The second job resulted in a “10-93Q” disposition code. This code is used when the job results in the preparation of a report involving a non-crime incident.

Two other 911 jobs later in the evening present an example in which the misidentification of the incident location resulted in improper duplicating. At 7:43 p.m., the first caller reported a residence under attack by rioters on President Street.²⁰ A few moments later, a second caller reported an apartment building being pelted by rocks on Union Street.²¹ The two residences had the same house number. Although these incidents were located two blocks apart, the jobs were linked as duplicates. No disposition was recorded for the first job. The second was disposed within forty-five minutes of its origination and resulted in a crime report.

The final example involves two duplicated jobs for which no resources were assigned. The first job was a single call at 8:32 p.m. reporting stones thrown at cars on President Street, between Rochester and Utica Avenue.²² The second—another single call at 8:34 p.m.—reported the smashing of windows in a residence on President Street, near Schenectady Avenue.²³

Clearly, many of the duplicate-classified jobs within the deployment area represented discrete incidents. The linking of the discrete jobs violates the rule that they be “exactly the same incident.” More importantly, jobs which involved discrete incidents and were disposed as duplicates may have received inadequate police attention. The 17-job string discussed earlier, exemplifies the inappropriate utilization of duplicate classifications, and calls into question the quality of the police response to these jobs.

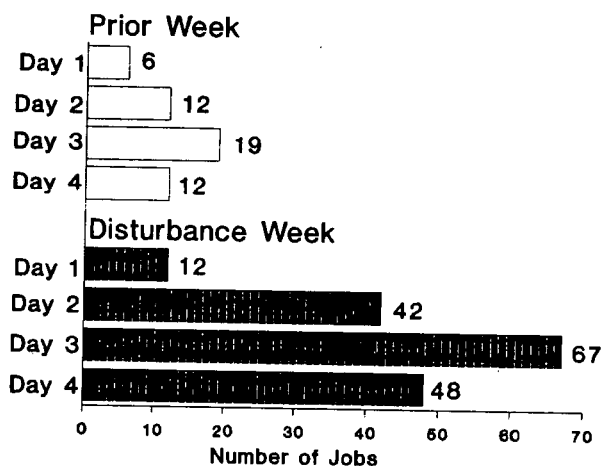
ASSIGNMENT DELAYS

How Quickly Were 911 Jobs Assigned a Police Resource?

The speed with which resources are assigned to 911 jobs is determined by the priority of the job and the availability of precinct patrol resources. SPRINT maintains complete and accurate records on assignment and response times, because this information is integral to the operation of the 911 system.

A review of 911 jobs in alert and backlog status suggested that problems existed in the assignment of resources to 911 jobs during the four days of the disturbance. As Figure 10.2 shows, there were approximately 190 calls in alert and backlog status in the 71st and 77th Precincts from the week of the disturbance. This represented a 245 percent increase over the same four-day period in the previous week.

Figure 10.2. 911 Calls in Alert and Backlog Status.



Assignment of police resources to a 911 job was determined by information in the "assignment time" field. This entry provides vital information to the dispatcher and is recorded automatically by the system when assignment is accepted by a patrol unit.

We compared 911 jobs processed during the week of disturbance to jobs in the prior week in order to establish a baseline interval from the time a call was logged to the time police resources were assigned. The sample comprised three groups of 911 jobs representing various geographical areas during the disturbance period, and one comparison group of 911 jobs from the prior week. The sample groups are defined in the box at the right. We excluded from analysis (1) all jobs attached to one or more duplicates; (2) all jobs involving calls for ambulance or EMS services; and (3) most jobs originating from alarm calls.²⁴

Prior Week

The group includes all non-duplicate 911 jobs in the 71st and 77th precincts, exclusive of ambulance, fire and most alarm calls, which originated between 8:00 a.m. on August 12, 1991 and 7:59 a.m. on August 16, 1991.

Disturbance Week

The group includes all non-duplicate 911 jobs in the 71st and 77th precincts, exclusive of ambulance, fire and most alarm calls, which originated between 8:00 a.m. on August 19, 1991 and 7:59 a.m. on August 23, 1991.

Affected Area

The group includes all non-duplicate 911 jobs, exclusive of ambulance, fire and most alarm calls, which originated between 8:00 a.m. on August 19, 1991 and 7:59 a.m. on August 23, 1991, and which report an incident occurring within the "affected" area as defined in the earlier discussion of the scope of the disturbance.

Deployment Area

The group includes all non-duplicate 911 jobs, exclusive of ambulance, fire and most alarm calls, which originated between 8:00 a.m. on August 19, 1991 and 7:59 a.m. on August 23, 1991, and which report an incident occurring within the 30-block initial deployment area.

It was necessary, first, to determine the nonresponse rate to 911 jobs. This was the percentage of jobs in which police resources were not assigned. As shown in Table 10.2, the proportion of 911 jobs to which the police did not respond was greater in the disturbance week than in the prior week. The proportion of 911 jobs with no resource assignments increased from less than two percent in the Prior Week sample to approximately ten percent in the Deployment Area sample for priority level 2, 3, and 5 jobs.²⁵

Priority Level	Precincts 71 & 77				Selected Areas			
	Prior Week		Disturbance Week		Affected Area		Deployment Area	
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.
2	3	(1.1)	14	(4.3)	11	(6.8)	6	(9.7)
3	0	(0.0)	8	(2.5)	7	(5.3)	6	(10.9)
5	7	(1.6)	39	(8.4)	22	(10.2)	10	(10.9)

Table 10.3 displays nonresponse rates for five types of incidents referenced in 911 jobs. The growth in non-response rates was greatest with regard to jobs categorized as "possible crimes," "personal," and "other".²⁶

Type of Incident Reported	Precincts 71 & 77				Selected Areas			
	Prior Week		Disturbance Week		Affected Area		Deployment Area	
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.
Property	2	(0.8)	10	(3.9)	4	(3.2)	3	(7.1)
Personal	11	(0.4)	16	(5.7)	12	(10.3)	4	(10.3)
Disturbance	0	(0.0)	12	(4.5)	9	(6.7)	4	(5.9)
Possible Crime	1	(0.3)	10	(3.2)	8	(6.5)	8	(15.8)
Other	20	(9.5)	48	(19.8)	25	(21.7)	11	(20.0)

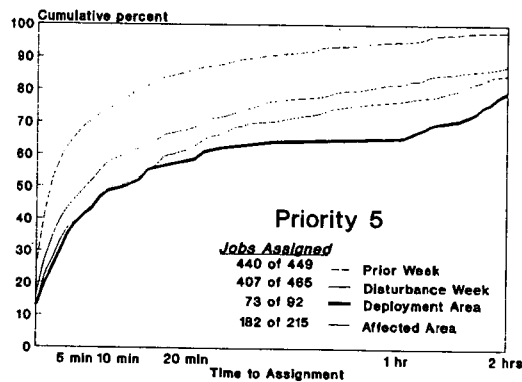
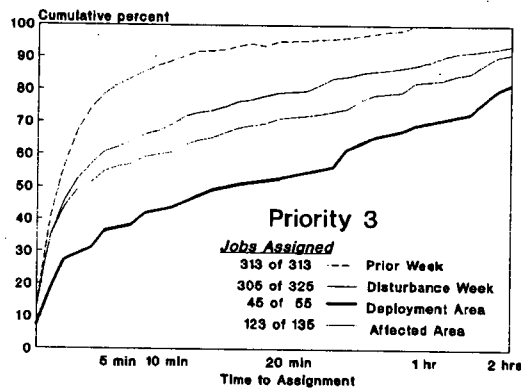
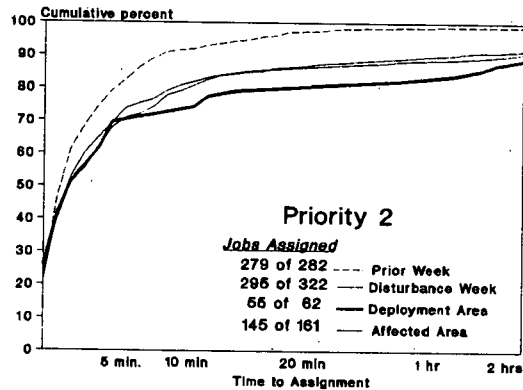
An inordinate delay in the assignment of police resources to a 911 job is likely to impede the helpfulness of the 911 response. The absence of any resource assignment represents the most extreme form of an allocation problem. Figure 10.3 displays the cumulative percentage of 911 jobs assigned within a given time period. It also includes cases in which no resource was assigned.²⁷

The time lapse represents the time between the origination of a job and the assignment of resources.²⁸ A cut-off of two hours in time-to-assignment was selected, because under normal conditions most of the higher priority calls would be disposed within that time period.

The three graphs reveal a consistent pattern. Assignments were made more quickly in the Prior Week sample, followed by the Disturbance Week sample, the Affected Area sample and, lastly, the Deployment Area sample.

The greatest disparity in the speed of assignment occurs for priority 3 and 5 jobs. A close review of the assignment practices in priority 3 jobs serves to clarify the interpretation of the graphs.

Figure 10.3. Cumulative Percentage of 911 Calls Assigned within 2 hours, by Priority of Call and Area.



The rate at which police resources were assigned to priority 3 jobs (middle chart) begins to show a visible difference across the sample groups within minutes of the origination of a job. Five minutes after the job was recorded, nearly four out of five jobs (seventy-nine percent) in the Prior Week sample were assigned a police resource, compared to slightly more than one in three (thirty-six percent) jobs in the Deployment Area sample. By twenty minutes, almost all (ninety-five percent) jobs in the Prior Week had assignments; yet, the proportion of jobs with assignments in the Deployment Area only reached fifty-three percent. After one hour, one-third of the Deployment Area jobs were still awaiting assignment of police resources, whereas in the week before, all had been assigned.

Time-to-assignment disparities between the Prior Week and Deployment Area samples for priority 5 jobs paralleled the pattern for priority 3 jobs. At twenty minutes, for instance, there were thirty percent fewer jobs with resource assignments in the Deployment Area than was the case during the Prior Week after the same period of time (fifty-six percent vs. eighty-six percent). After two hours, assignments in the Deployment Area sample still lagged behind those of the Prior Week by more than twenty percentage points.

As expected, priority 2 jobs—involving personal offenses—had resources assigned faster than either priority 3 or 5 jobs. Still, the cumulative percentage of resource assignments for priority 2 jobs in the Deployment Area sample, as well as those in the Disturbance Week and Affected Area samples, lagged behind those of the Prior Week sample over the same time period. Twenty minutes after origination, more than one out of four jobs (twenty-eight percent) remained unassigned within the Deployment Area sample, and thirteen percent still lingered more than two hours after the origination of the job.

To illustrate the frustration caused by the delay in the assignment of police resources, selected calls experiencing extensive delay are transcribed below. The first example consists of two separate calls reporting a Utica Street residence under attack. The first call was made at 8:43 p.m. on Tuesday evening.²⁹ The second call, from another person living at the same address, came in at 9:02 p.m.³⁰ The lag between the first call and the assignment of a police resource for the job was one hour and twenty minutes.

Tuesday, 8:43 p.m.

911 Operator: *Police . . . where is your emergency?*
 Caller: *Hello.*
 911 Operator: *This is the police, do you have an emergency?*
 Caller: *Yeah.*
 911 Operator: *What is the address of the building?*
 Caller: *[number] Utica Avenue.*
 911 Operator: *And what's happening there?*

Caller: They're beating the door to get into the house.
 911 Operator: Now what's that, an apartment or private house?
 Caller: A private house
 911 Operator: [name repeated] And they're trying to get into your house?
 Caller: Yeah.
 911 Operator: What is your last name please?
 Caller: [name]
 911 Operator: And your telephone number?
 Caller: [number]
 911 Operator: Are they trying to get into your apartment or the building?
 Caller: The apartment — to get us.
 911 Operator: Listen to me, what apartment are you in?
 Caller: The second and third floor.
 911 Operator: The police will be there.

Tuesday, 9:02 p.m.

911 Operator: Police . . . where is your emergency?
 Caller: Yes, police? This is [number] Utica Avenue — I've got big trouble!
 911 Operator: [number] Utica Avenue? What do you mean by big trouble?
 Caller: Big trouble! Plenty of people around the house trying to open my door — I got in — I don't know, plenty of people around the house. No police coming. Please help me! I got trouble, I've got my daughter!
 911 Operator: What are they doing? Trying to break into your house?
 Caller: They're trying to open the door. . .
 911 Operator: You live in a private house?
 Caller: Yes.
 911 Operator: How many people were they?
 Caller: [inaudible]
 911 Operator: What apartment are you in?
 Caller: The second floor and third floor. The people in the second floor are coming in the third floor because they don't have security. I don't know what I can do.
 911 Operator: You're not over there? You're not there?
 Caller: I'm in my house, but its downstairs, that's where the gun is . . . I called for help, please!
 911 Operator: Well ma'am, all I can do is put in what your saying. Are they also trying to break into the store too?
 Caller: Yes, that's right — you hear the noise downstairs?
 911 Operator: Do they have any weapons, a gun or anything like that?
 Caller: . . . Just plenty of people around the house - kill the cop, kill the people — you hear the gun!?
 911 Operator: OK, ma'am, the police will be there as soon as possible.

Another call which showed no resource assignment and no disposition was made by a man who reported that a mob had broken through his door and was attacking his wife.³¹ This incident occurred on President Street on Tuesday night.

Tuesday 9:06 p.m.

911 Operator: *Police operator . . . , where is your emergency?*
 Caller: *Yes, it's [number] President Street. My name is [name]. They have just come in through the door and they're attacking my wife!*

911 Operator: *[address repeated]*
 Caller: *What is going on!*

911 Operator: *Sir, hello.*
 Caller: *[number] President Street - [name].*

911 Operator: *Is this an apartment or a private house?*
 Caller: *Private house. They're storming in through the windows — they're breaking the windows!*

911 Operator: *How many people have broke into your house?*
 Caller: *I have a gang out here . . . my brother-in-law, would you please hurry up!*

911 Operator: *Do you need an ambulance there?*
 Caller: *I need an ambulance right away.*

911 Operator: *What is your last name.*
 Caller: *[name] [name spelled]*

911 Operator: *And the phone number your calling from?*
 Caller: *[number] Please!*

911 Operator: *They'll be there as soon as possible.*

The final call, transcribed to provide an understanding of the stress experienced by the victims whose calls showed no assignment or delayed assignment, was made on Tuesday night by a man who also lived on President Street. This call showed no resource assignment.

Tuesday 8:29 p.m.

911 Operator: *Police operator . . . , where is your emergency?*
 Caller: *An emergency on President Street between Utica and Schenectady. Several calls have gone in. They're throwing more and more rocks. More and more windows are breaking. Now it's at my house at [number] President Street. I called before, there's not a single cop in sight. How many times do we have to call before they get the cops over here?*

911 Operator: *Okay, somebody will be there as soon as possible.*
 Caller: *Not as soon as possible! Now! Now is when we need them! They're breaking windows as I'm talking to you.*

911 Operator: *Are you in a private house or an apartment?*

Caller: Private house. They're breaking the private house windows up and down the block. Right this minute as I'm talking to you.

911 Operator: What's your last name?

Caller: [name] [name spelled]. [number] President Street.

911 Operator: And your phone number?

Caller: [number]

911 Operator: Alright, the police will be there as soon as possible.

Caller: Get them here now! The cops should be here now! They're in the neighborhood! They're no more than a block away!

911 Operator: Alright, they'll be there.

Our analysis of the police response to 911 jobs suggested that callers within the Deployment Area did indeed receive a slower assignment or, in fewer instances, the police did not service their calls for help. The extensive delays in resource assignment to 911 jobs originating within the Deployment Area appears to be at least partially explained by the timing of the calls. A review of 911 jobs in the Deployment Area that experienced resource assignment delays in excess of two hours indicates that many clustered around the relatively few time periods in which serious radio run backlogs occurred in the 71st Precinct.

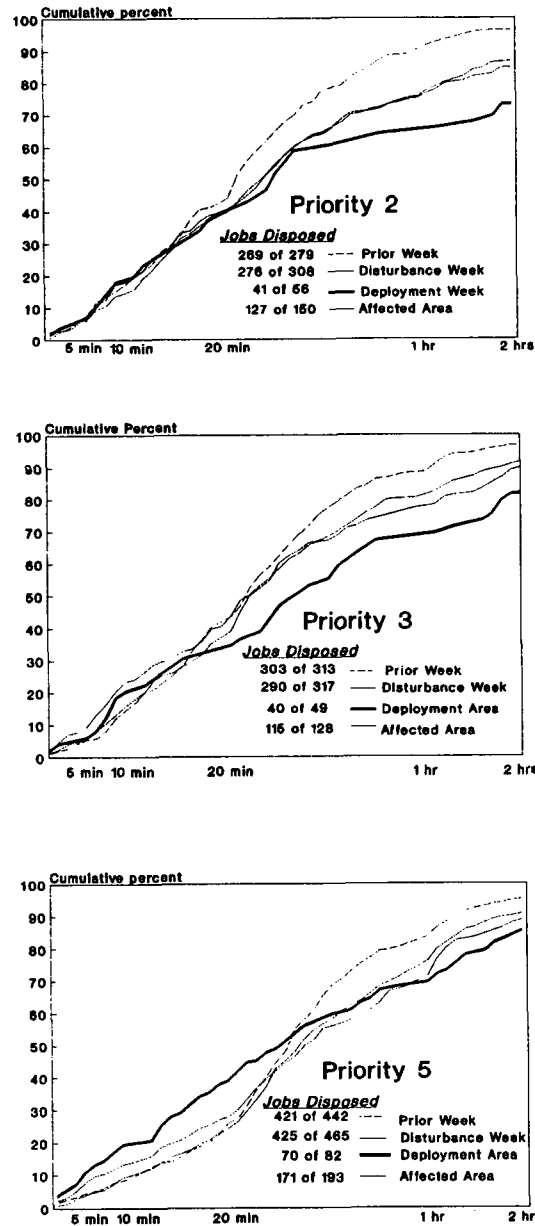
RESPONSE DELAY

How Quickly Did the Police Complete 911 Assignments?

When police are assigned a 911 job, they are to respond to the call and notify the dispatcher as soon as the condition has been addressed in order to make themselves available for another assignment.³²

The time interval from assignment to disposition of jobs at priority levels 2, 3, and 5 is shown in Figure 10.4.³³ The greatest disparity in assignment completion across the four samples occurred for priority 2 calls. Approximately forty percent of priority 2 calls in each sample were disposed within twenty minutes of their assignment. Thereafter, disposal times in the Deployment Area sample begin to slow, with seventy-three percent disposed within two hours of assignment. Approximately eighty-two percent of priority 3 calls and eighty-five percent of priority 5 calls in the Deployment Area sample were disposed within the two-hour period.

Figure 10.4. Cumulative Percentage of 911 Requests Disposed within 2 hours of Assignment, by Priority of Request and Area



Disparity disposition times between the three disturbance week samples and the prior week comparison was not nearly as great as found in the analysis of resource assignment times. Furthermore, the variation in disposition times is difficult to interpret, given the many factors which may affect police response time. It is possible, for example, that officers responding to 911 calls in the Deployment Area experienced more obstacles in getting to the incident scene. Responding police may also have become diverted in disturbance control activity or reassigned to another, higher priority, call. While a greater portion of the priority 2 and 3 calls within the Deployment Area received slower dispositions, the reasons for this disparity remain uncertain.

SPRINT Job Dispositions

In addition to the timeliness of the dispositions, another indicator of police response is the nature of the disposition. Approximately fifteen disposition codes are used by NYPD to describe how a job was handled. The codes most frequently used during the disturbance are displayed at the right.

A comparison of response codes for calls in the Deployment Area and the Prior Week samples revealed that the greatest differences occurred in the categories of "unfounded" and "report prepared." As shown in Table 10.4, one-third of the dispositions in the Prior Week sample were disposed as "unfounded," a proportion which increased to approximately half of all calls in the Deployment Area. Compared to the Prior Week sample, calls in the Deployment Area sample were half as likely to result in the preparation of a written crime report.

Disparity in the preparation of crime reports was largely attributable to property cases. Crime reports were filed in only two percent of the property-related 911 assignments in the Deployment Area (Table 10.4).

10-90X - Unfounded

"Used when an incident that was reported, or a closely related incident, never happened and the report is untrue."

10-90Y - Unnecessary

"Used when some incident did occur, but police response was not necessary."

10-90Z - Gone on Arrival

"Used when an incident did occur, but persons involved have left the scene before police arrival."

10-92C - Arrest

"C" expansion used for crime arrest"

10-93C - Report Prepared, No Arrest

"C" is used when a report of a crime . . . is prepared when there has been no arrest. For example, a 10-93 should be entered when a verified crime has been committed even though the participants have left the scene . . . 'Q' is used for non-crime reports."

Source: NYPD Radio Code Signals Guide.

Table 10.4. 911 Calls with Resource Assignments, Disposition and Area		
911 Jobs	Precincts 71 & 77	
	Prior Week	Deployment Area
	Percent	Percent
<u>Final Disposition</u>		
"Unfounded"		
Priority 1 - 5	33	47
Property	23	36
Personal	25	34
Disturbance	26	48
Possible Crime	52	56
"Crime Report"		
Priority 1 - 5	15	7
Property	22	2
Personal	24	26
Disturbance	10	3
Possible Crime	3	2

PRESERVATION OF AUDIO TAPES

Why Were Some 911 Tapes That Were Ordered to be Preserved, Erased by the NYPD?

On November 15, 1991, NYPD's Document Production Unit was served with a Court Order to Show Cause directing the preservation of "911 emergency telephone line tapes, SPRINT sheets, communications, complaints received, police reports... arising out of, relating to or concerning the commission of crimes, acts of violence, rioting and/or police surveillance and police action in the Crown Heights section of Brooklyn," for the period from August 19 through September 30, 1991. The preservation order was made pursuant to the filing of a lawsuit against the City of New York. However, the master tapes for the

period from 9:01 a.m. Wednesday, August 21 through 11:55 p.m. Wednesday, August 28, 1991 were not preserved.

The supervisor of the Document Production Unit in the Legal Bureau stated that he forwarded the Order to the NYPD Communications Division for compliance. Approximately two weeks later, the supervisor contacted the Division and was informed that it had not received a copy of that Order. By that time, fifty of the 215 tapes ordered for preservation had been erased for reuse pursuant to procedure. However, SPRINT reports which provide summary information on all *911* jobs remained available for the entire time period.

There is no evidence to suggest that any of the *911* tapes were purposely destroyed. The audio tapes of calls made on Monday and Tuesday provide a clear picture of the problems occurring in the *911* system. In addition, the SPRINT records provide sufficient information to adequately portray the nature and extent of the unrest on each day of the disturbance.

SUMMARY

The *911* system facilitates the delivery of emergency police, fire, and ambulance services throughout New York City. Under normal circumstances, the system may function adequately as a lifeline between the community and police department. However, during the disturbance in August 1991, many of the residents of Crown Heights were not well served by the *911* system.

Problems began at the front-end of the system where decisions were made regarding the incident coding of the reported emergencies and the classification of multiple SPRINT assignments as duplicates. The selection of an incident code by a *911* operator is extremely important, because it cues the priority level of the job, and thus influences the speed of police or other emergency response. It is also a decision which requires sound judgment gained through training, experience, and knowledge of the larger context of events that trigger the *911* calls. A report of rocks thrown through windows may seem minor, deserving of a priority five or seven classification, outside of the context of a riot. But riotous conditions raise the risk to another plateau, and may call for a more serious classification of the event.

It can be argued, of course, that the use of roving band and other incident codes, which carry a higher priority status, would have resulted in equally delayed assignments and responses given the amount of patrol resources and the level of disorder. Nonetheless, any adjustment of the system to the heavy

demands of a riot situation should be made purposefully by those who supervise the system.

Classification of multiple *911* jobs as duplicates may have resulted in some calls not receiving a sufficient amount of police attention. It clearly limits any meaningful review of the police response to such calls. Combining two or more calls into a single police response is an appropriate, indeed a necessary, means of conserving police resources to ensure priority service to those most in need. But definite decision rules are needed for classifying *911* jobs as duplicates, especially in situations that constitute a civil disturbance.

According to NYPD dispatcher guidelines, duplicate calls are supposed to reference *exactly the same incident*. If that rule had been adhered to during the Crown Heights disturbance, the number of duplicates would have diminished significantly. While the assignment of separate resources to closely related events would be an inefficient use of police resources, it seems appropriate to restrict the duplicate classification of *911* jobs when they contain requests for police services from callers reporting personal injury or property damage at separate addresses.

New York City's *911* system is configured to handle the routine flow of emergencies. Under normal circumstances, declared system alerts and backlogs involve four or five *911* jobs. Between Monday night of the disturbance and the early hours of Thursday morning, the number of requests involved in a single backlog exceeded ten on five occasions. On one occasion thirty-nine calls were backlogged in the system. On a second occasion, twenty-three calls were backlogged. Citywide, that may not seem significant, as there are approximately twelve thousand *911* jobs created on a daily basis in New York City. However, when those who fail to receive timely services live within close proximity of each other, a perception can develop that police protection is inadequate, leaving the community with feelings of isolation and vulnerability.

When a call generated a *911* job which was not linked as a duplicate, delay in, or absence of, a police response appears to have been related to the volume of *911* calls in the system. Since the disturbance situation created the overload, those within the affected neighborhoods were most often undeserved.

Calls within the deployment area which did result in a *911* response were more often disposed as "unfounded," when compared to *911* calls made during the prior week. Almost none of the calls reporting property offenses within the deployment area resulted in the filing of a crime report. These findings suggest that the strain placed on the patrol resources may have resulted in a less than thorough investigation of crimes reported via *911*.

Many of the discrete problems in the *911* response are inter-related with the fact that the 911 and disturbance control functions were not coordinated during the disturbance period. Responses to *911* calls were delayed even after many calls were disposed through what appear to be erroneous duplicate classifications. Meanwhile, hundreds of disturbance detail officers were deployed throughout the area from which the calls emanated. More coordination with deployed resources may have improved the quality of the *911* response.

ENDNOTES

1. The affidavits in response to the federal lawsuit include statements to this effect from Assistant Chief Thomas Gallagher, Captain Vincent Kennedy and Chief of Detectives Joseph Borrelli. Each officer states that he was not aware of problems in *911* response beyond possible delay in response to lower priority calls.

2. The SPRINT system provides data describing, among other things, the job assignment number; the incident code ("10-code") assigned to the call and the associated priority level; the times the call was made, assigned and disposed; the police resource assigned to the call; and, the nature of the disposition.

The audio tapes provide a rich source of qualitative data to supplement the SPRINT database. The tapes of *911* calls granted by court order to the plaintiffs in the federal lawsuit. They cover all *911* calls originating in the 71st and 77th Precincts during the period from 8:21 p.m. August 19, 1991 through 10:51 p.m. August 20, 1991.

3. The current *911* system became operational on October 14, 1973. Approximately 900 communication specialists make *911* operational on a 24-hour basis. Operators and dispatchers are centrally located in ACD (Automatic Caller Distributor) rooms at 1 Police Plaza. At the time of the Crown Heights disturbance, each ACD room served one of the five boroughs of New York. Beginning in July 1992, the borough-based distinction among ACD rooms was eliminated.

4. The latter are connected directly by the *911* operator to fire department or Emergency Medical Service (EMS) dispatchers.

5. SPRINT also identifies operator mistakes such as non-existent addresses and refers the information to the operator for correction.

6. The dispatcher's screen holds one-line summaries of fourteen calls, and can be switched to view up to ninety-nine calls at any given time.

7. SPRINT monitors the amount of time prescribed for the completion of a call. The time tolls from the point of dispatch and cues the operator to contact the assigned unit after thirty minutes, unless an interim report or disposition is received.

8. Dispatchers are instructed to advise a supervisor of "alert" and "backlog" conditions if one of the following occurs:

- (1) four jobs are held for a period of ten-fifteen minutes without units available to respond (alert);
- (2) five jobs are held without any unit available (backlog); or
- (3) any job is held for thirty minutes without a unit available (backlog).

If an alert or backlog is declared by the radio supervisor, the patrol supervisor must be advised over the air of the condition and the number of jobs held. If deferred, the job will remain on the deferred queue until sought by the dispatcher. If the job is not assigned within twenty-four hours of its origination, it becomes inaccessible to the dispatcher. Deleted jobs are removed entirely from the

dispatcher's queue, but remain as a record in the SPRINT data base. NYPD, *Communications Division Radio Dispatchers Guide*, 1990: procedure 426.

9. The NYPD *Radio Code Signals Guide* instructs operators to use the roving band code "for large groups moving through the streets . . . [including] youths intent on committing street crimes, (gangs, marches, protests, etc.)" (NYPD, *Radio Code Signals Guide*, 1990). The disorderly group code, in contrast, is to be used for "unusual noise and complaints and disorderly persons or groups." Criminal intent is not part of the definition of disorderly group.

10. SPRINT job T10357.

11. SPRINT job T10696.

12. SPRINT job T10221.

13. The process of removal of the duplicate from the queue is dependent on whether the dispatcher identified the duplicates by their line number on the display (automatic removal) or their job number (manual removal).

14. NYPD, *Communications Division Radio Dispatchers Guide*, 1990: procedure 446. If the information provided during a subsequent call suggests that the incident is more serious than previously believed, operators are trained to revise the incident code or priority level and route the new information to the dispatcher. In other instances, calls that are truly related may not be recognized as such and not linked within the data system.

15. Calls were considered to have the same address if they reported identical house numbers or the calls were reporting general disturbances in the same one or two-block area. They were considered to represent the same event if they involved reports of similar offenses such as criminal mischief and dispute — outside, or if one of the calls involved a request for police assistance subsequent to a response to the original call. Of the seventy-two strings of duplicates within the deployment area, twenty-one included calls reporting different incidents at different addresses, eleven involved calls reporting similar incidents at different addresses and six involved calls reporting different incidents at the same address. Of the latter six, three of the groups involved calls that spanned more than an hour from the origination of the initial call.

16. SPRINT job M10099.

17. SPRINT jobs T00130, T00133, T00209, and T00481.

18. SPRINT job T08134.

19. SPRINT job T08577.

20. SPRINT job T10221.

21. SPRINT job T10223.

22. SPRINT job T10878.

23. SPRINT job T10894.

24. The reasons for excluding these calls are discussed in Appendix B. Briefly, all cases involving a duplicate call were excluded because it was impossible to determine whether a single police response was intended to cover all jobs within a chain of duplicates. Moreover, there were many instances in which more than one job within a chain of duplicates received some type of police response. And, it was impossible to determine which response covered duplicate jobs that showed no police response. Fire, ambulance and most alarm calls were excluded as police resources are not routinely dispatched in response to fire and ambulance calls and, in 1991, were not routinely dispatched to most alarm calls. These exclusions significantly reduced the size of the samples, particularly the three samples drawn from the disturbance week. As a result of the exclusions, the analysis of police response is likely a conservative estimate of response delays during the disturbance week.

25. Priority levels 4, 6, and 7 show almost no cases due to the exclusion of fire, ambulance and most alarm calls.

26. Although there was less difference in the rate of assignment within the disturbance category, the results may be an artifact of the selection process. The exclusion of all duplicates from the samples significantly decreases the proportion of non-responses to "disturbance" calls in the Deployment Area. Virtually all of the disturbance-classified, lead duplicates from the deployment area showed no assignment time. If lead duplicates are included in the samples, the proportion of non-responses to disturbance calls for the Prior Week and Deployment Area are zero and twenty-three percent, respectively.

27. Each line on the figure represents the distribution of assignment times for one of the four groups of cases. The key at the bottom of the figure shows which group is represented by the various lines. All of the lines originate at the vertical axis indicating that a small portion of the cases within each group are assigned in less than a minute following the call.

28. Figures displaying the speed of assignment for jobs categorized as "property," "personal," "disturbance," "possible crime," and "other," appear in Appendix B.

29. SPRINT job T11031.

30. SPRINT job T11295.

31. SPRINT job T10509.

32. If the responding officer does not report to the dispatcher within thirty minutes of assignment, the dispatcher is cued by the SPRINT system to contact the officer for a progress update.

33. Only cases receiving assignment are included in the analysis.

Chapter 11

The Aftermath

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- ▶ NYPD's Critiques
- ▶ Enhancements and Improvements
- ▶ Summary

THE AFTERMATH

The NYPD *Administrative Guide* requires the "Commanding Officer Concerned" to prepare a detailed critique of large-scale disorders and unusual occurrences. The official critique concerning the events in Crown Heights was prepared by the Commanding Officer of Patrol Borough Brooklyn South. The Commander included several recommendations in his critique, and at least two other high-ranking officers independently submitted pertinent recommendations as well. The Department has since made substantial improvements in nearly all aspects of its civil disorder preparations.

This chapter will document the steps that the NYPD reports having taken since August of 1991 to prepare for future disorders. In so doing, it will answer the following questions:

- What conclusions did senior NYPD staff reach in their analyses of the Department's response to the disturbance in Crown Heights? What were the principal findings and recommendations of the Department's own personnel?
- Has the Department revised its plans for handling disorders? What procedural changes have been introduced in key areas such as command structure, mobilization, and arrest strategies?
- What equipment, if any, has the Department purchased to support the police response during future disorders?
- Has the Department provided additional training in disorder control techniques for its officers?
- What additional action, if any, does the NYPD plan to enhance the quality of its response to any future unusual disorders?

NYPD'S CRITIQUES

Police made the final arrest related to the Crown Heights disturbance on August 23, 1991. On November 8, 1991, the Commanding Officer of Patrol Borough Brooklyn South completed a formal review of the disturbance and a critique of the actions that the police took to restore order. The document was twenty-one pages long and included an additional eight pages of appendices.

The report included many positive findings about the nature of the police response. The disorder was described as successfully contained within the original six- or seven-block area. In addition, the report asserted that there was no widespread looting, and neither police officers nor prisoners experienced any serious injuries. It maintained that "police commanders exercised stringent

control, and arrest and crowd control tactics were employed from the start". The report also asserted that if mass arrests or aggressive crowd control tactics had been employed during the first few days, the strategy may have caused the Police Department to become the focal point of the demonstrators. If this had happened, "calm may not have been restored as quickly as it was."

The critique included approximately a dozen suggestions from Assistant Chief Thomas Gallagher, who was the Borough Commander at the time of the disturbance, and from Assistant Chief William O'Sullivan, who had subsequently replaced him as Borough Commander. The suggestions focused on the need for more training, the use of vans and telephones during crisis situations, the desirability of reducing the length of tours that officers serve during disorder situations, the role of community affairs personnel, and the formation of special response teams.

Additional insights and recommendations were offered by Chief of Patrol Mario Selvaggi and Raymond Kelly, who was then the First Deputy Commissioner. In a three-page memo dated December 3, 1991, Selvaggi called for more training, and procedures for better use of Community Affairs personnel. He also recommended that members of a Temporary Headquarters staff be designated prior to any future disorders because: "One of the major problems encountered in Crown Heights was the lack of Borough Operations staff with enough training and experience to effectively handle a detail of this magnitude."

Kelly's recommendations were officially presented to the Police Commissioner on December 13, 1991. The five-page memo discussed the importance of better equipment and mobilization strategies, the value of periodic Command Post exercises, and the establishment of a permanent Command and Control Center in every Borough Headquarters.

The longest part of the First Deputy Commissioner's memo concerned the need for a Tactical Operations Coordinator. The Coordinator would remain in the Command Center during a disturbance and would assume primary responsibility for directing the Department's response to the unrest. His or her responsibilities would include requesting and assigning personnel, securing all necessary equipment, developing appropriate arrest and crowd control strategies, setting up mobilization areas, providing protection for critical locations, and coordinating the assistance provided by outside agencies.

ENHANCEMENTS AND IMPROVEMENTS

According to information provided by NYPD officials, the Department has worked almost continuously to enhance its disorder control capabilities during the nearly two years that have passed since the completion of the Department's Crown Heights critique. Recent innovations have impacted its plans for civil disorders, stated mission during times of civil unrest, mobilization strategies, command and control protocols, arrest policies, use of equipment, communications, and methods of policing special events. Each of these is discussed below.

Planning

NYPD documents show that the Commander of the 71st Precinct issued a new *Disorder Plan* in January of 1992. This plan updates the list of vulnerable locations, identifies new mobilization points and modifies the responsibilities assigned to certain personnel. The Commander also deleted some material such as the appendices pertaining to bomb and fire disasters and prisoner disorders at Kings County Hospital.

Department documentation also reveals that Chief Selvaggi issued a new citywide *Disorder Control Plan* in August of 1992. The plan includes an updated mobilization strategy for Patrol Borough Brooklyn South and establishes, what would appear to be, important new procedures that are described below. It also incorporates many of the suggestions in the internal analyses following the Crown Heights critique. Selvaggi, nevertheless, notes on page 1 of the plan that: "The guide is intended to lay out *elementary procedures* to be followed in explaining and implementing *basic response* to civil disorder" [emphasis added]. While it provides a meaningful addition to the citywide procedures in place during August of 1991, the plan is perhaps best characterized as an interim document in the process of revision.

The 1992 citywide plan does not represent a totally new approach to the control of civil disorder for the NYPD. Many elements of the plan were included in earlier versions, but were not presented as clearly or as forcefully as they now are. It should be noted that relevant procedures from the Department's *Administrative* and *Patrol Guides* have not been changed in more than ten years, and modifications may be appropriate in light of the Crown Heights disturbance and events that surrounded it.

The citywide plan occasionally makes statements without indicating whether they are recommendations, departmental policies or mere observations. As an example, the plan (page 4) addresses tours of duty during a disturbance in

the following manner: "Experience indicates that the most efficient way to staff a detail of the size required by a major disorder is to assign personnel to twelve hour tours, running from 0400 to 1600 hours and from 1600 to 0400." In addition, the plan would be more useful if it mentioned key topics such as mass arrest procedures and included copies of interagency agreements on file elsewhere. Overall, the plan discusses just ten topics in as many pages, has no Table of Contents, and is not paginated. Moreover, the plan does not address all of the procedural and organizational deficiencies discussed earlier, in chapter 6.

In February of 1993, Commissioner Kelly designated a high-ranking staff member to assume responsibility for coordinating all aspects of the Department's civil disorder planning. Deputy Chief Louis Anemone has researched disorder control strategies in use in the United States and abroad and his research to date has included reviewing the civil disorder plans of nearly all major cities on the East Coast, the plans of other major cities such as Los Angeles and Las Vegas, and reports such as the *Webster Report* that have been prepared following major disturbances.

Anemone expects to issue a new citywide plan during 1993. The Department is also negotiating new Memoranda of Understanding with other City agencies and public utilities to clarify mutual responsibilities during disorder situations.

Mission

In August 1991, the NYPD did not have a clear mission statement to guide its operations during times of civil disorder. To correct this oversight, a four-page introduction has been prepared for the next citywide *Disorder Control Plan*. While still in draft form, the introduction tentatively includes a policy statement, a five-part mission statement, and several objectives designed to help the Department achieve its mission.

The first component of the mission states that the primary duty of all NYPD police officers is to preserve human life. The second mandate is to restore order "by working within the framework of the U.S. Constitution, responding promptly and decisively to all civil disorders and providing a safe environment." The third part of the mission is to protect critical locations and ensure that all basic public services operate uninterrupted. A fourth element states that the police will "arrest violators by aggressively pursuing violent offenders and others who contribute to the breakdown of law and order in the community." The fifth and final part of the mission is to "protect property by providing a strong visible presence in the community and by effecting arrests of

those who engage in crimes against property.” Taken as a whole, the mission provides specific, meaningful direction for commanders in future riot situations.

Mobilization

The Borough Commander’s critique a few months after the Crown Heights disturbance indicated that the Department had already taken steps to improve the future mobilization and use of officers in disturbance situations. The critique states, for example, that officers will henceforth respond to disturbances by van only. This modification was established as an official procedure in a new mobilization plan that the Borough Commander issued on December 27, 1991.

The 1992 citywide plan also made modifications in the Department’s mobilization strategy. It begins by stating that the “primary goal” at the outset of civil disorders is “to get a sufficient number of personnel mobilized to the scene as rapidly as possible.”

The plan makes it very clear that the Department recognized a need to improve its mobilization strategies. “A primary lesson learned during the 1988 Tompkins Square Park incident was that crowd control and disorder policing is accomplished only with cohesive, disciplined, and supervised teams of police. Responding personnel must be directed to report to a location removed from the actual disorder, where they can be grouped, listed on rosters, organized, instructed, and assigned to posts in an orderly fashion.” The plan lists the average number of officers available per tour from units generally available for rapid response, clear criteria for selecting borough mobilization points and the types of equipment to be deployed at these points.

The plan additionally makes provisions for the orderly flow of traffic and the rapid organization and deployment of personnel at the mobilization point. The plan designates ranking officers to make assignments and assume responsibility for perimeter security, traffic control, and bus control. An officer will also “be assigned to ensure that vans reporting to the Mobilization Point are accessible, that drivers are assigned and available, and that personnel assigned to Mobile Response Units are deployed in an orderly manner.”

Local mobilization plans developed by each Patrol Borough to respond to local or small-scale incidents are included in the appendix of the citywide plan and supplement the Department’s overall strategy. The mobilization plan for Patrol Borough Brooklyn South was issued on February 13, 1992. It identifies the total number of officers and vans that would be used during the Department’s initial response to a disorder. It also provides information necessary for a precinct-level secondary response and the mobilization of Task Forces at both the

citywide and borough levels. The plan was amended on February 23 to designate different primary mobilization points and to identify alternate locations that officers can use if necessary.

To facilitate the transportation of officers during future mobilizations, NYPD has increased the size of its Emergency Response Fleet from ten to thirty vans. The Department has also obtained buses that can be utilized whenever necessary.

Looking ahead, the draft objectives prepared for the citywide *Civil Disorder Plan* provide clearer direction for the field commanders who will be responsible for mobilizing and deploying police resources. "All available evidence strongly indicates that the early moments of a civil disorder are critical. The rapid mobilization and deployment of the resources of the Department is a visual representation of the commander's firm commitment to maintain the peace." [sic]. The draft goes on to say: "This display of police resolve coupled with orders for the crowd to disperse will often result in the prevention and/or quelling of the disorder without actually employing the use of force." The new plan will also include standardized mobilization procedures for all of the boroughs, to simplify the rapid deployment of personnel.

Command and Control

The Department's critique of the events in Crown Heights documents that officials began strengthening agency command and control functions soon after the disturbance. Organizational changes mentioned as accomplished include the reconfiguration of the staff at Patrol Borough Brooklyn South and the designation of a lieutenant to serve as the Operations Coordinator there. In addition, ranking officers at Brooklyn South had begun to identify "talented supervisors who excel in some skill involved in Disorder Response." (page 18) This identification was undertaken so that the supervisors could serve as a nucleus for guiding the Borough's initial response to future disturbances.

Another important development cited in the critique was that the Department made arrangements to establish a Command Control Center in the 67th Precinct in the event that another disorder erupted in the 71st. This action was taken in response to the lessons of the first two days of the Crown Heights disturbance, when the police tried to control operations from the 71st Precinct Station House. This site was very close to the scene of the disorder, and there was too much confusion to allow for effective command control.

In December, 1991, the Department issued a citywide directive to improve the coordination of police resources at Temporary Headquarters established

pursuant to an emergency. The directive establishes specific responsibilities for the Supervising Officer in Charge and his staff. In addition, the Department has ordered seven surplus military vehicles which will be redesigned to serve as Temporary Headquarters. The 1992 *Plan* specifies that the vehicles must be equipped with both cellular and hard-line telephones. The plan further specifies that other vehicles deployed to the Temporary Headquarters location must include, at a minimum, three Patrol Wagons, a Radio Emergency Patrol Truck, a Mobile Electric Light Generating Truck, and a tow truck. The Fire Department will be invited to assign a liaison to the Field Temporary Headquarters as well.

The NYPD has also made significant changes in the overall command structure. Henceforth, ranking Chiefs will replace Borough Commanders on their days off rather than the Borough Commanders' Executive Officers. In addition, the 1992 plan indicates that the initial response to a civil disorder will normally be handled by local command personnel (i.e., the Duty Captain, Duty Inspector, and Duty Chief). These officers will evaluate the situation and implement preliminary response plans.

In the event that a large-scale disorder develops, a newly formed Disorder Control Staff will be mobilized to take command. This staff is comprised of Captains, Deputy Inspectors, and Deputy Chiefs from various units throughout the Department. "Because of their training, experience or expertise, [staff members] are highly capable of responding to a major disorder, relieving the Duty Chief, Duty Inspector and Duty Captain, and quickly and efficiently bringing the situation under control." The 1992 *Plan* does not specifically refer to a Tactical Operations Coordinator as recommended by Deputy Commissioner Kelly in 1991. Command Post exercises that the NYPD has conducted in 1993 do, however, include a senior staff member who serves in this capacity.

The Disorder Control Staff includes officers who will supervise field operations during the unrest as well as officers who will command and operate the Temporary Headquarters at borough mobilization points. Other members of the Disorder Control staff will have key roles with the Operations Unit Response Team, Community Affairs, the Communications Division, Legal Bureau, and Public Information Division. The commanders of a major incident will be assisted by a Highway District Officer who will arrange police escorts for Fire Department apparatus responding to calls.

An appendix to the 1992 *Plan* identifies sixty-six officers at the rank of Captain and above who have been designated to serve on the Disorder Control Staff. The pool (which has since been updated) is described as "large enough that a sufficient number of personnel should be reachable at all times, both during business hours and non-business hours."

The designation of specially trained disorder control personnel should correct at least three problems that the NYPD experienced during its response to the Crown Heights disturbance. First, it provides an established support staff that, had it been in existence in 1991, would have been available to Chief Gallagher. Second, the officers who comprise this team will have the expertise necessary to develop appropriate tactics during all phases of the disturbance. Third, the specially designated team can facilitate the transmission of accurate and timely information to the Police Commissioner.

Finally, command functions during future disorders will be made somewhat easier by the fact that each precinct are now required to prepare ten maps as part of the overall contingency preparations. The maps will be laminated and will clearly note critical areas and other places that need protection.

Arrest Policies

We reported in our discussion of the police response that officers assigned to the Crown Heights disturbance did not consistently attempt to arrest looters. In addition, some officers alleged that they were held back from making arrests for assaults. The NYPD has since made it very clear that it will actively attempt arrests of all lawbreakers during future disorders.

The 1992 citywide *Disorder Control Plan* states that "Arrest teams should be assembled to effect arrests as soon as conditions allow. Any and all persons engaging in unlawful activity will be arrested." The draft introduction to the 1993 *Plan* expands on this directive and explicitly acknowledges the Department's obligation to restore a lawful and safe environment "as *expeditiously* as possible" (emphasis in original). Should force be necessary to achieve this goal, the policy establishes that officers must use the minimum amount of force needed. Firearms will be used only as a last resort.

The previously noted draft mission statement during times of civil unrest specifies that officers will aggressively pursue violent offenders and arrest "those who engage in crimes against property." One of the objectives established to help commanding officers accomplish this mission directs officers to weaken the crowd's will to resist. This will require "an unwavering commitment by the police commander to restore order and arrest violators." Large disorderly groups will be broken into smaller groups through the "proper use of tactics and arrest strategies." Unlawful groups will not be permitted to regroup unchallenged. The Department has purchased fifty lightweight megaphones that officers can use in

their efforts to disperse unruly crowds, and new vehicles will make officers more mobile in their pursuit of individuals who break the law.

Equipment

The NYPD is field testing several types of riot helmets to determine if any model is superior to the one now used. In addition, the Department has acquired several types of equipment in preparation for any future disturbances. Some of these items, such as Temporary Headquarter Vehicles, phones, and megaphones have already been mentioned.

Officers in the street will henceforth be issued clear three-foot shields that are lighter and less cumbersome than the four-foot shields used previously. The Department has purchased 400 three-foot shields with protective covers to prevent scratches and other damage that would make it difficult for officers to see through them.

Other purchases include arm bands that clearly identify the role of key officers at field and borough Command Posts, and flame-resistant nylon netting to protect the windows of patrol cars from objects thrown at them. In a related effort to keep patrol cars operational, Roadside Repair Vehicles will be on hand to expedite the repair of damaged or disabled police vehicles. Finally, the Department has purchased orange mesh barriers that can be extended across streets with bungee cords to cordon off riot areas.

According to the NYPD, they have spent over \$80,000 on new equipment since February of 1993, and have requested an additional \$700,000 appropriation to complete its stockpile of civil disorder equipment. Upon approval and receipt of the requested funds the Department plans to purchase fireproof gloves and jumpsuits, gel blankets to aid burn victims, and portable water pumps to extinguish small fires, heavy ballistic vests for Emergency Service personnel, duffel bags for Task Force Officers' equipment, flexible handcuffs, flash sound diversionary devices, smoke canisters, and filters for gas masks. The money would also enable the NYPD to buy emergency mesh barriers, magnetic boards for Temporary Headquarter vehicles, computer programs capable of showing live maps on the wall, hoof pads for mounted units, and additional ammunition for training. Finally, the NYPD will use part of the money to obtain pepper spray for all Task Force officers, instead of just those assigned to the Emergency Services Unit. The appropriation also would enable to repair the Department's decontamination truck.

Communications

Several Police Department critiques referred to problems in communications at the 71st Precinct Command Post. Part of the difficulty stemmed from a lack of cellular telephones for field supervisors to contact their superiors at the Station House.

The communications network supporting all aspects of police operations at future disturbances should be considerably better. According to the 1992 *Plan*, a Temporary Headquarters Vehicle with cellular and hard-line telephones will henceforth be deployed to each satellite Temporary Headquarters. The plan further requires that telephone lines be installed at the predetermined mobilization points to facilitate quick installation of hard-line telephones upon the arrival of a Temporary Headquarters Vehicle. By comparison, the *Plan* in place for Patrol Borough Brooklyn South during August of 1991 makes no references to cellular telephones, satellite Temporary Headquarters, or the types of communications equipment that must be available at mobilization points. The *Plan* also tended to use the phrases "if possible" and "if available" when referring to the use of walkie-talkies.

The Disorder Control staff includes a supervisor on each tour "to assist in establishing special radio communications frequency arrangements and in troubleshooting any problems which arise." In addition, officers at the rank of Captain and above will be assigned their own radio frequency to facilitate the timely exchange of information at the highest levels. To restrict the use of available radio air time for only the most important purposes, officers will be ordered to turn off their radios except for sergeants, operators of patrol cars, and possibly officers assigned to rooftops. Finally, the Department is updating its code signals and exploring new options for processing 911 calls during major disturbances.

Methods of Policing Special Events

In February of 1992, Chief of Patrol Mario Selvaggi issued a citywide memorandum to assist in planning and handling special events that are likely to attract large crowds. Guidelines in the memorandum will probably be used most frequently for peaceful gatherings, but they also apply to handling marches and demonstrations that are organized in times of ongoing or potential civil disorder.

The memo states that police commanders “must plan thoroughly in advance, and must take prompt action to neutralize any threats to life or property which may occur.” To help commanders realize these objectives, the memo first focuses on general planning considerations to establish a basic framework for the police response at public events. Routine operations will henceforth include becoming familiar with locations where large events are held (capacity, entrances and exits, parking, etc.), tactical planning for possible disturbances at these sites, maintaining an ongoing liaison with management officials at the sites, and having the Borough Operations Unit gather appropriate intelligence.

The memo also identifies several activities that commanders should undertake when planning for specific events. These activities include obtaining background information on the event, ensuring that all necessary permits have been obtained, and notifying other City agencies such as the Fire Department. The memo is specific in directing commanders to provide appropriate police coverage for special events. Commanders must “provide for the mobilization of additional personnel; place the Borough Task Force on alert or on patrol in the area, and be prepared to activate mobilization plans, if necessary.” They must also “ensure that an adequate number of supervisory personnel are assigned and that a member of appropriate rank and experience is in overall command.” Finally, the commanders must “provide for communication between the police detail and event organizers.”

The third and final part of the memo identifies steps for officers to take when actually policing a special event. A working premise is that “it is far more practical to establish order prior to the event than to gain control over an unruly crowd.” Related activities include keeping the Patrol Borough Office apprised of conditions so that additional resources may be deployed if necessary.

Methods of policing special events were addressed as well in the citywide plan that Chief Selvaggi issued in August of 1992. The 1992 plan states that reserve units will be used to respond to spontaneous demonstrations and to escort marches and similar protest activities. “It is essential that all organized groups are escorted by police at all times. No groups will be permitted to move through [a disorder] area unescorted.”

Training

NYPD's training for civil disorder, like that of most police departments, was conducted in various degrees among the rank structure of the Department. It is a part of the basic course for police officers at the Police Academy and builds with each level of command through in-service and executive development training. Promotional training for sergeants, lieutenants, and captains will continue.

The Police Academy has been reorganized since Crown Heights. The Academy no longer comes under the control of the Personnel Bureau. Training now comes under the purview of the Deputy Commissioner of Training, a position that did not exist at the time of the disturbance in 1991. Further, the Academy's Recruit Training Unit and Post Entry Level Training Section (PELT) have been reorganized into three sections. The Entry Level Training Section has responsibility for training all new employees, both sworn and civilian. The In-Service Training Unit develops in-service training for both sworn and civilian employees. Finally, the Management Level Training Unit conducts all pre-promotional instruction and executive level training.

The Department has organized Mobilization Drills, which have been held and are scheduled to continue indefinitely on a rotating basis. The revised one-day Mobile Exercise (MOBEX), which was first conducted on January 27, 1993, is a citywide mobilization exercise in response to a mock scenario. This exercise utilizes all appropriate personnel that would be used in an actual civil disorder.

Additionally, other aspects of NYPD's civil disorder training have been revamped utilizing the lessons learned from the disturbances in Tompkins Square Park, Washington Heights, and Crown Heights. The NYPD also consulted with and reviewed plans of other major law enforcement agencies in this country and abroad, as well as the military, in putting together the revised training.

In addition to and in conjunction with MOBEX, the following Disorder Control Training has been implemented since February 1993.

1. One-Day Command Post Exercises (CPX)

This training commenced on April 30, 1993 and is presented to personnel who will staff the Command Post during a disorder.

Its participants are selected by the Borough commanders and for the most part, they are police commanders. This is important because when a civil disturbance occurs, the initial response of the Department's resources will be directed by the Precinct Commander or the Duty Captain. The focus of the training is based on two key assumptions: (a) the Precinct Commander or Duty Captain will be, in all probability, the highest ranking member at the scene during the first sixty minutes after a critical incident that ignites a civil disturbance, and (b) the assessment and decisions made and actions taken during the initial response phase will directly affect the successful conclusion of the disorder. The training stresses the need for the Command Post staff to act as a team inasmuch as collectively they are better problem solvers than any one of them individually.

This training will continue until all selected personnel have been trained in each Borough command, and thereafter, on a continual basis. The objective of the CPX is to assess procedures, not evaluate decisions. Also planned as a second phase of the CPX are tabletop exercises for officers of the rank of captain and above. This practical instruction will be conducted on a one-instructor-per-student ratio and will focus on the specific tactics of dealing with civil disorder: sectoring, perimeter control, protection of utilities, securing critical or sensitive locations, and conducting rescue operations of police officers and citizens trapped by hostile groups.

2. One-Day Executive Development Disorder Control Course

This training is ongoing and is mandatory for all captains and ranks above. It addresses disorder control management, constitutional safeguards, tactics and strategies, formations, sensitivity to cultural group characteristics, and other pertinent issues relating to civil disorder. As of this writing, 406 personnel have received this training this year.

3. One-Day Disorder Control Course for Sergeants/Police Officers/Detectives/Lieutenants

This training began on February 17, 1993 and will continue until all patrol services and detective bureau personnel are trained. Thereafter, it will be presented on a continuing basis. This training reviews the pertinent duties and responsibilities of each of the above-listed ranks so they may safely

and effectively manage and control civil disorder situations. To date, 7,200 personnel have received this re-training.

Additionally, in June and July of 1992, three-day disorder control training was presented to 2,965 members of the Department, including fifty-seven personnel of the rank of captain and above, in preparation for the Democratic National Convention. This training dedicated one day to policing demonstrations and a half day to practical exercises.

Disorder Control Training has been institutionalized in the NYPD. The courses of instruction outlined above will now be conducted on a regular basis. All officers in the NYPD up to the rank of captain must attend disorder control training every two years. Those of the rank of captain and above must complete disorder control instruction on an annual basis. The Department will run Command Post exercises every spring in anticipation of increased public activity during warm-weather months.

The Department is also in the process of developing a Temporary Headquarters Course. The objective of the training is to improve the coordination of various NYPD commanders and units during a disturbance or like event. Mobilized officers and commanders often find themselves in areas of the City with which they are totally unfamiliar, working with officers or commanders whom they do not know. This instruction will be directed at selected lieutenants in each borough of the City to alleviate problems caused by this a lack of familiarity.

The Department is also taking steps to train executive level officers in conflict resolution and mediation techniques, beginning in the Executive Development series at the Academy in the Fall of 1993. Mission and policy are critical to the Department's performance during a disorder. In Crown Heights, it was evident that there was confusion as to the Department's overall mission during the disturbance; this permeated the ranks and allowed the disturbance to continue longer than it should have.

It is imperative that officers be thoroughly trained and knowledgeable of the Department's mission during a disturbance. In Crown Heights, once the mission was clarified (Thursday), officers were able to end the disturbance. The NYPD's new civil disorder mission statement gives officers direction.

While the mission statement gives officers a broad overview of their job during a disturbance, Departmental policy is more specific and is a critical part of the officers' training. The NYPD has recently rewritten its policy toward responding to civil disturbances. It provides direction for police officers to work within the framework of the law, but to restore a lawful safe environment as expeditiously as possible. The policy specifically gives direction to supervising and command level officers regarding the rapid mobilization and deployment of police resources, the containment, isolation, and dispersement of the disorder, weakening the crowd's will to resist, providing protection to City agencies or utilities in the area of the disorder, securing critical or sensitive locations and coordinating a return to normalcy in the affected area of the City.

In addition to a Civil Disorder Mission Statement and Civil Disorder Policy Statement, the New York City Police Department has also incorporated into the training process a statement of values which is emphasized to all of the participants. It is as follows:

NYPD is taking progressive approach to train its officers to respond to civil disturbance. This approach can serve only to enhance the ability of the NYPD to respond effectively to civil disturbances and ensure the protection of the people of the City of New York.

SUMMARY

NYPD has taken significant steps to improve its ability to control disorders since the Crown Heights disturbance of August, 1991. The steps taken in less than two years include the designation of a Deputy Chief to coordinate the Department's planning efforts, the formation of a special Disorder Control Staff to take command during future unrest, the acquisition of special equipment, and the implementation of new procedures that should enhance the quality of major tactical operations. The Department has also devoted substantial time and resources to train officers in numerous field exercises and simulated riot situations. Looking ahead, the completion of a new citywide plan later this year should also contribute to the NYPD's ability to control future disorders effectively.

Part IV
City Hall

- ▶ Chapter 12: Oversight and Intervention

OVERSIGHT AND INTERVENTION

Our focus now turns to City Hall and its role in the Crown Heights disorder. Specifically, two important questions have been raised:

- Did the Mayor direct that the police be restrained from acting vigorously and effectively to bring the disturbance to an end?
- Did City Hall meet its responsibilities in effectively managing the response to the disorder?

While much has been said and written charging that the Mayor, either personally or through others, restrained the police from taking vigorous action during the first days of the disorder, this investigation has uncovered no evidence to support such an allegation.

While a number of groups and individuals have made this claim, none have been able to offer any substantiation. To argue that the police were passive in the face of crimes committed against persons and property is far different from demonstrating that it was the Mayor's intervention that caused such passivity.

In order to resolve this issue, interviews were conducted, both with those who have asserted this claim, as well as City Hall and Police Department officials. Police officers, at all levels, who asserted to us that they were held back or restrained were also questioned. No evidence of an order by City Hall, either direct or implicit, was uncovered.

The circumstances surrounding the violence in Crown Heights might well give rise to an assumption that a City Hall directive was given. Many police officers, while being pelted with rocks and bottles, were told by their immediate supervisors to "hold the line." They were told to take no action unless given direct orders. Residents of the area watched as police officers stood passive in the face of lawlessness. They heard superior officers restrain those under their commands.

In questioning those who put forward this claim, one sees in almost every case, a process of deductive reasoning. Establishing first that the police response was something less than vigorous, allowing the disorder to continue for three nights before order was restored; the argument then continues that a mayoral directive "must" have been given for such a circumstance to have existed. The leap of faith required for such a conclusion is simply unsupported by the evidence.

The conclusion that an affirmative order to take no action must have emanated from the highest level of municipal government seems, to some, self evident. This is not the case. To begin, both those who could have given, and those who would have received such a directive, have all categorically denied that such an order was given.

The Mayor has stated that:

Contrary to any unfounded allegations concerning the actions of City Hall officials, neither First Deputy Mayor Norman Steisel, nor Deputy Mayor Milton Mollen, nor Deputy Mayor Bill Lynch, nor I, nor any other official at City Hall ever gave any direction, either express or implied, that the police department should hold back in any manner whatsoever during this period of time....

Deputy Mayors Steisel and Lynch, as well as former Deputy Mayor Mollen have all denied that such a directive was given by City Hall to the Police Department. Moreover, in the strongest terms, former Police Commissioner Brown has denied, under oath, that he received such a directive. In addition, in his sworn testimony before the United States Senate Judiciary Committee, Brown stated that had he been given such an order, he would have disobeyed it.

Finally, Chiefs Borrelli, Selvaggi and Gallagher all deny any knowledge of such an order.

Had such a direction been issued, either directly by the Mayor or by one of his top aides, it would have likely been revealed during this investigation. Such a directive would, by necessity, have to be communicated by City Hall, to police executives, then to field commanders, and ultimately to officers on the street.

While direct orders were given forbidding police officers to take action on their own without instructions from a supervisor, such a directive, during a civil disorder, is not only standard but prudent. Unilateral action might well put civilians and officers at risk. This policy is far different from a Departmental directive to stand by in the face of lawlessness.

Inaction, passivity, or lack of effectiveness in the police response, prior to Thursday's change in tactics, can be explained in a number of ways. Failures in planning and training, the substitution of *ad hoc* responses for the implementation of organized plans, and a breakdown in command and control provide possible and cumulative explanations for a passive and ineffectual police response.

There is no evidence that Mayor Dinkins directed the police not to respond to the disturbance. An order for restraint emanating from City Hall, without evidentiary support, is neither a necessary or logical conclusion. No such support for this conclusion was found.

We must, however, address the broader question regarding the extent to which City Hall fulfilled its responsibilities to effectively manage the response to the disorder. We will now examine how well these objectives were accomplished.

The *Kerner Commission* defined the role and responsibilities of a Mayor during a period of civil disorder in the following way:

As the chief elected official, the Mayor must take ultimate responsibility for all governmental action in times of disorder. To make this meaningful, he must have the corresponding authority and control. He must become fully involved in disorder planning and operations. He must understand the nature of the problems posed by a disorder, the strategy of response and the pattern of field operations.¹

The Mayor himself set out a standard of performance against which his management of the crisis should be judged when he said:

As Mayor, my objective during this crisis was to protect the lives, safety and property of the residents of Crown Heights, and to quickly restore peace and order to the community.

It must first be understood that City government's response was seen, by many at City Hall, as a bifurcated process, one involving community intervention and rumor control, the other traditional police action. As Mayor Dinkins pointed out, his personal efforts, along with those of his top staff, were concentrated on community action.

This effort was designed to reach out to all elements of the Crown Heights Community, to create dialogue, dispel rumors, and mobilize community leaders in an attempt to "increase the peace." At the same time, the Police Department, under the direction of Commissioner Brown, was relied upon to restore order. The Mayor was briefed on their activities, but as he pointed out, neither he nor his staff had knowledge of, or training in, police methods. These matters of strategy and tactics were left to Brown and his staff.

Deputy Mayor for Intergovernmental Affairs Bill Lynch stated City Hall's approach most clearly when he described it as consisting of "two different sides of the street," the community action side and the police side. While the Mayor and the City Hall staff walked down one side, the officials of the Police Department walked down the other.

Lynch acknowledged that Deputy Mayor for Public Safety, Milton Mollen, was the "conduit" between City Hall and the Police Department on "broad policy." He stated, however, that it was the Police Department that would deal with issues of strategy and tactics. The assumption was that the Police Department, having effectively handled crises such as this in the past, would do so in the present case, as the Mayor placed the utmost confidence in Commissioner Brown.

City Hall focused its efforts and energies upon mobilizing for community intervention. These efforts were extensive. After the death of Gavin Cato and the injuries to Angela Cato, and before the stabbing of Yankel Rosenbaum, members of the Mayor's Community Assistance Unit were on the streets of Crown Heights. Later that night, the Mayor, Milton Mollen and Herbert Block, the Assistant to the Mayor for Constituency Affairs, met at Kings County Hospital where they spoke with the Cato family and met with Yankel Rosenbaum.

At the Hospital, the Mayor was informed that a number of community leaders had gathered at the 71st Precinct. He decided to meet with them to provide information about the car accident. The visit by the Mayor was designed to dispel the rumors concerning the Hatzoloh ambulance and to enlist the support of community leaders to restore calm to the community. Sometime after 1:00 a.m., the Mayor and Mollen, along with Lynch, arrived at the Precinct. They remained there until sometime after 2:00 a.m.

Before meeting the community leaders, the Mayor was briefed by Chief Borrelli about the accident, the rumors, and the police response to the disturbances occurring that night. Mollen discussed the possible arrest of Joseph Lifsch with representatives of the District Attorney's Office.

On Tuesday morning, arrangements were made for representatives of the Community Assistance Unit, the Human Rights Commission, the Department of Youth Services, the Department of Juvenile Justice, and other City agencies to go to Crown Heights. They were instructed to engage the residents of the area in "dialogue" and to collect information. A headquarters was established at P.S. 167 for these agencies.

City Hall also made efforts to "develop outreach," through the neighborhood's churches; fliers were distributed informing residents of the availability of "city resources" at P.S. 167.

The Mayor did not go to Crown Heights on Tuesday. It was feared, according to Lynch, that the presence of the Mayor would attract media attention and possibly exacerbate the situation.

On Tuesday morning, Lynch chaired a meeting at P.S. 167 for community leaders and residents. According to Lynch, the purpose of the meeting was to dispel the rumors that were circulating in the community, especially about the role of Hatzoloh, and to allow people to express their feelings.

Later that day, at 1:15 p.m., Mayor Dinkins held a press conference at City Hall, during which he reported the stabbing of Yankel Rosenbaum, the injuries to Police Officers and the burning of police cars. He sought to dispel rumors and spoke of the efforts by community leaders and governmental agencies to restore peace.

Throughout the day, and well into the evening, the representatives of City agencies remained in the streets.

On Wednesday, the Mayor stepped up his own role in the community intervention effort. It was decided then that the Mayor would go to Crown Heights. The plan was to walk the streets, to meet with young people and community leaders at P.S. 167, visit the Cato family, and meet with leaders of the Hasidic community.

The Mayor held another press conference at 1:00 p.m., reviewing the events of the previous night. He stated that the situation was very tense and that he intended to go to Crown Heights later that day. He spoke of the continuing community outreach efforts and said he was satisfied with the performance of the Police Department. He pointed out that "there came a time when the police really fell back, when bottles and bricks were being thrown instead of a further or greater confrontation. I think that was probably very wise."

Prior to the Mayor's arrival in Crown Heights, Deputy Mayor Mollen, Commissioner Brown and Herbert Block met with Hasidic leaders and members of the Emergency Council. In addition, Mollen represented the Mayor at an afternoon meeting of the Jewish Community Relations Council in Manhattan.

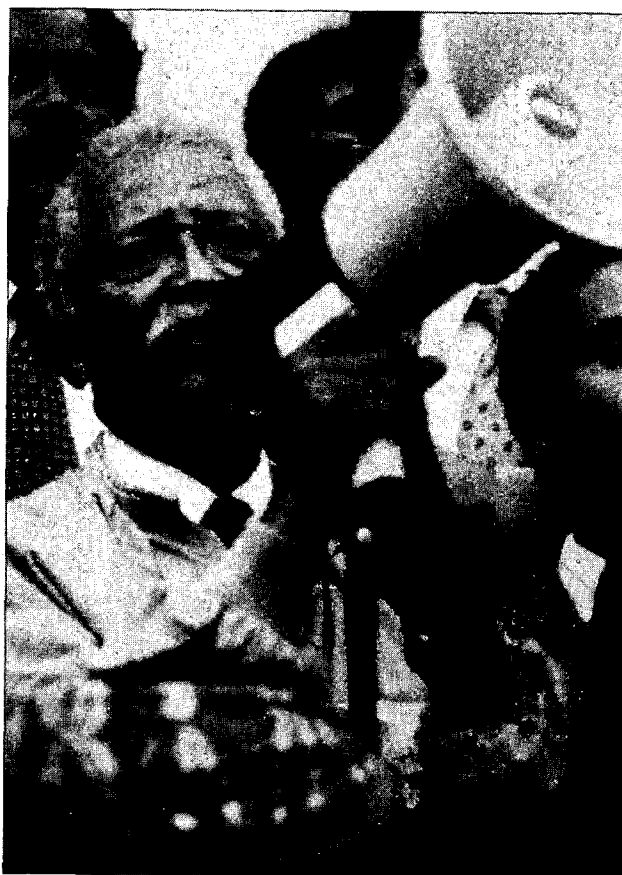
At approximately 5:00 p.m., the Mayor arrived in Crown Heights. The level of disruption that confronted the Mayor was so great that a decision was made to abandon the plan for him to walk the streets. Reports of roving bands

throwing bricks, rocks, and bottles had been received by the Mayor's security detail. It was simply not safe. As an alternative, the Mayor drove directly to P.S. 167.

For a time, his car was unable to drive through the streets because of the conditions in the area. The Mayor, however, arrived at the school and began his meeting. Although Commissioner Brown had, according to Lynch, warned the Mayor that intelligence reports indicated at least fourteen guns possessed by people in front of the school, the Mayor attempted to speak to the crowd. He was shouted down.

The next item on the Mayor's agenda was a visit to the Cato home. Although he intended to walk, the Mayor was again advised by the police not to. When he arrived by car with Deputy Mayor Mollen at the Cato home, objects were thrown at them. One object sailed between the Mayor and the Deputy Mayor who were walking side by side toward the building.

The Mayor attempted to address the crowd from a window in the Cato apartment. Once again, he was shouted down. The Mayor's security detail escorted him and Mollen back to the car through the hostile crowd.



The Mayor then attended a meeting with members of the Lubavitch community. They voiced concerns that the police were doing little in the face of criminal violence. They indicated that their community felt unprotected.

Upon his return from Crown Heights, the Mayor appeared on a number of evening news programs. He called for calm and asserted that the City would not tolerate violence and lawlessness.

At about midnight, the Mayor and Mollen drove to Kings County Hospital to visit the eight police officers who had been shot earlier that night.

The next day, Thursday, was the day a new police strategy was put into effect. Order was returned to the streets of Crown Heights.

It is apparent, from a review of all of the available evidence, that much of City Hall's focus and effort was directed toward community action. Several agencies were involved, with many dedicated people working long hours and functioning on little sleep, often at personal risk to themselves. That risk became so great that, at one point on Tuesday, the representatives of one agency were kept off the streets, as a result of gun shots in the area. Unquestionably, the Mayor and his top staff were personally involved in the most direct way.

The importance of community intervention and rumor control is evident. Again, community intervention has been consistently emphasized, from the *Kerner Commission* report in the 1960s to the *Webster Report's* review of the recent Los Angeles riot. The need for swift and effective community intervention, together with an effective police response, is beyond debate.

As just one of many examples, the International Association of Chiefs of Police, in a publication issued in July 1992, recommended a number of steps to be taken at the outset of civil unrest. Among them is that representatives of the Mayor's office should contact community and religious leaders to enlist their support in restoring peace. Another is that government officials should walk the streets with community leaders to speak with residents about their concerns. In Crown Heights, City Hall did both.

While it is not possible to demonstrate with certainty what impact these efforts may have had, they were essential, and played an indispensable role in bringing violence and disruption to an end. City Hall was quick to recognize this role, and its efforts were extensive. Even those in the press who covered events in Crown Heights noted this. As reporter Tim Malloy of *Channel 11* stated on Wednesday's news, "I've... never seen so many people with Community Relations jackets on. They've brought in just about everybody to have clear-headed voices trying to calm everybody down. So there's a lot of efforts going on. . ."

We did, however, find one aspect of the community intervention approach troubling. City Hall did not have then, nor does it have now, an action plan setting forth the roles of each City agency and establishing a mechanism for coordinating those roles. Bill Lynch and Michael Kharfen, Director of the Mayor's Community Assistance Unit, informed us that no such plan existed.

As a result, when the disorder began, Lynch, who was in charge of City Hall's community strategy, had to decide which agencies to mobilize, how best to do it and what each agency should do. Lynch said he "spoke with a couple of people to decide what to do the next day." Kharfen told us that it was after the accident, that the Community Assistance Unit began to put a strategy together.

This unstructured approach to formulating a City Hall strategy is problematic. Having an action plan in place avoids the need to develop a clearly defined mission and an effective strategy, for the first time, in the midst of a crisis. It is precisely at such a time that calm, reasoned, and in-depth planning is most difficult. Such an effort must clearly be made before a crisis begins, enabling government agencies to concentrate their efforts on effective implementation.

The absence of a plan left unaddressed the need to provide for coordination between City Hall, the Police Department, and other agencies. As Deputy Mayor Lynch admitted, no attempt was made to coordinate other agencies with the efforts of the Police. As Lynch stated, "My position was always, whether that was good or bad, was that we worked different sides of the street...."

This was confirmed by Richard Murphy, Commissioner of the Division of Youth Services. His agency was actively involved in the City Hall efforts. Commissioner Murphy stated that there was no communication between "the two sides of the street:" the Police and City Hall's Community Action effort. He characterized the lack of communication as a "huge gap," a "chasm." Deputy Mayor Mollen concurred, stating that coordination between City Hall and the Police Department was "inadequate" during the Crown Heights disorder.

In his own critique of the police response in Crown Heights, Chief Gallagher called attention to the many meetings that were held and said "I attended those I was aware of, however, many were scheduled that the Police Department was not aware of."

While the *Webster Report* criticized Los Angeles' City Hall disorder plan as overly complex and difficult to implement, it emphasized the need to have a workable plan in place. An *ad hoc* approach to crisis management was rejected by Webster as an invitation to failure. We strongly agree, and urge the immediate formulation and adoption of such a plan.

Time and attention was clearly devoted, by the Mayor and members of his top staff, to community action. Unfortunately, the emphasis devoted to the effective functioning of the Police Department was more limited. While there is no expectation that a Mayor be an expert in police tactics or disorder control, it is clearly his responsibility to assure the effective functioning of the Police

Department. He must ask the pertinent questions and demand substantive answers.

The most fundamental question is whether the Mayor had reason to know that the police response was inadequate prior to his Wednesday night visit to in Crown Heights.

Two of the main sources of information on police related matters for the Mayor were the Police Commissioner and the Deputy Mayor for Public Safety. The Commissioner, as Chief Executive of the Department, is responsible for its day-to-day operations. The Deputy Mayor oversees its operation and provides coordination with other public safety agencies. Both shared a responsibility to be fully informed and to report fully and accurately to the Mayor.

Commissioner Brown's role in managing the crisis has been discussed. It is clear that he believed the Department had the situation under control. As late as Wednesday afternoon, Brown asserted that events were under control and that the Police Department's policy of "restraint" would continue. His assessment did not change until Wednesday evening.

In his briefings to the Mayor, it was this positive assessment that was apparently conveyed. He simply repeated to the Mayor assurances that had been given to him by others. These assurances did not serve the Mayor well.

Deputy Mayor Mollen acknowledged that, with the benefit of 20/20 hindsight, his own participation could have been somewhat different. He believes that he should have gone to Crown Heights on Tuesday to assess conditions for himself. He also believes that he should have intervened on Tuesday, rather than on Wednesday, to modify the Police Department's response to the riots.

Unfortunately, Mollen was neither in Crown Heights on Tuesday nor was he speaking with Police Department officials. He stated, referring to Commissioner Brown and then First Deputy Commissioner Kelly, "I did not have any communication with them during the day. I was kept advised by the Mayor's Office as to what was going on." Mollen went on to say, "we were getting reports that the Police Department had a very large force of police officers in the area...I assumed at that point that the police had control of the situation...." Mollen did not have any conversations with Chief Borrelli, the Acting Chief of Department, or with Chief Selvaggi, the Chief of Patrol.

Despite entries made in the City Hall police desk logs, Mollen recalled that he was provided with no detailed information. He knew that there was a "certain amount of turmoil and name calling," and that cars, including a police

car, had been set on fire. He learned from watching television that rocks and bottles were being thrown.

It was not until Wednesday night, the third night of the disturbance, that Mollen recognized that there "were not adequate resources to protect the community." That night, at Kings County Hospital, in a meeting with the Mayor and Commissioner Brown, Mollen questioned Brown in detail. He impressed upon Brown the need to bring the disorder to an end.

When asked to explain why there was not closer, more effective communication between the Deputy Mayor for Public Safety and the Police Department, Mollen pointed to an "institutional problem" between the two departments. He felt that while no personal animosity existed between himself and the Police Commissioner, he was looked upon, to some extent, as a meddler in Police Department business. This dynamic, he felt, existed from the very creation of his position by the Dinkins administration, and was never effectively resolved.

Mollen went on to point out that in his view, there was "inadequate communication between the police, community action people and the Mayor" during the Crown Heights events. Many things were not known or shared. Compounding this, he believed, was "an inadequate command response to what was known." He summed it up as "a vacuum in decision making."

Thus, prior to Wednesday night, neither the Police Commissioner nor Deputy Mayor Mollen was particularly helpful in assisting the Mayor to meet his own responsibilities. Neither provided him with the critical information and analysis that was so necessary. There was, however, information coming to City Hall which should have cast doubt upon the Police Department's assurances.

Besides information that was available to the general public, such as newspaper accounts and dramatic scenes shown on television, City Hall was receiving two additional sources of information. The first came from City Hall's own "eyes and ears." While the Police Department was assuring the Mayor that things were "under control," Joseph Gonzalez, Director of the Emergency Unit of the Mayor's Community Assistance Unit, and Robert Brennan, a member of his staff, were painting a very different picture.

The Community Assistance Unit, which coordinates City Hall's response to crises, is headed by Michael Kharfen who reports directly to Deputy Mayor Bill Lynch. The Emergency Unit, headed by Gonzalez, serves as a primary source of information for City Hall. It works in close coordination with the Operations Division of the Police Department and the Police Desk at City Hall.

According to Gonzalez, it is the responsibility of his Unit to report back to City Hall on the "pulse of the street." Gonzalez and Brennan have direct access to both Michael Kharfen and Bill Lynch. This access was fully utilized during the disorder in Crown Heights.

On August 19th, Brennan, driving home from work, heard on his police scanner the circumstances of the accident involving the Cato children. He immediately headed for Crown Heights, arriving at the scene of the accident at approximately 9:00 p.m. He saw a crowd of approximately 250 people and forty or fifty police officers, and notified Gonzalez and the NYPD Communications Division of his observations. He told them that the situation looked to be "extremely serious." Later that evening, Brennan arranged to meet Gonzalez at the 71st Precinct.

As Brennan and Gonzalez arrived in Crown Heights they fully understood the gravity of the situation. Gonzalez, driving to the Precinct, saw roving bands of youths throwing objects and starting fires. Brennan saw the wounded Yankel Rosenbaum, and believed that his worst fears would be realized, a clash between the black and Hasidic communities.

Brennan states that he briefed the City Hall Police Desk, giving a "blow by blow" description and stating that the "[expletive deleted] was hitting the fan," and that the riot would not end until brought under control by the police. The Desk alerted Lynch and the Mayor's Security Detail, whose responsibility it was to brief the Mayor.

At 11:30 p.m., a meeting was held at the 71st Precinct. It was attended by the Mayor, Deputy Mayors Lynch and Mollen, the Police Commissioner, other police officials, Gonzalez, and Brennan. At the conclusion of the meeting, Gonzalez told Lynch that he would continue to gauge the severity of the situation. Gonzalez and Brennan drove around the area for about forty-five minutes and, at about 1:00 a.m., visited with the Cato family. They left Crown Heights at about 3:30 a.m., returning the next morning and remaining on the streets of Crown Heights for the duration of the crisis.

Gonzalez and Brennan continued to carry out their roles by reading the "pulse of the streets" for Lynch and Kharfen, keeping them constantly informed.

Gonzalez explained that he kept City Hall fully updated. On Monday night and Tuesday, he tried to impress upon Lynch and Kharfen the severity of the situation and that the police were not reacting in a strong and effective way. On Tuesday and Wednesday, he repeatedly told Lynch and Kharfen that the situation was "out of control," and that the police were not reacting. He told them on Tuesday and Wednesday that police "brass" were not reacting and that

the riots would continue or get worse until the police took action to "shut it down."

Brennan also spoke to Lynch and Kharfen. He conveyed the same message as Gonzalez. Throughout Tuesday and Wednesday, he told them that the situation was "out of control," and that the police were not responding effectively. He warned that until the police acted, the riot would continue.

On Tuesday evening, Brennan called Lynch and related the following events to him:

He was standing with Chief Gallagher, outside the Cato residence, when they were bombarded with rocks and bricks. He went to a telephone booth to call Lynch. The barrage became more intense. The Captain in charge of the Task Force ordered the police to "hold the line." Things were totally out of control.

Brennan described how "cops went down all over the streets" and he began to run. Then, something happened which Brennan said he had never seen before, the police ran too. He said the police were "in full retreat, they gave up their positions and ran." Even when the police ran, Brennan said, it was not done in an organized manner. Most ran, but many remained, continuing to be bombarded with projectiles.

Brennan, a police captain, and a police officer jumped into a car driven by a civilian, and ordered him to drive. As they drove down Empire Boulevard, a 10-13 came over the air. The captain ordered the car to turn around and return to the scene. They stopped one block from President and Utica. Bricks and rocks were raining down from the roof tops. Brennan was hit in the face with a brick and lost consciousness. The police dragged him into a hallway where he subsequently regained consciousness.

Brennan got to his own car which had its windows shattered and its tires blown. As he drove to the 71st Precinct, he saw police cars retreating from the location at the same time others were driving back.

Brennan immediately called Lynch at City Hall and "laid out" the entire situation to him. He believes the call was made during the early evening. He told Lynch that "all hell is breaking loose" and the situation is "totally out of control." He described how the cops ran. He described the chaos in the police ranks. He emphasized the seriousness of the situation and that it was not safe for his Unit to be on the streets. He pointed out that even the cops were getting "killed." Brennan stated the he had the same conversation with Michael Kharfen.

Gonzalez, on Tuesday evening, told Kharfen that he was angry that the disorder was being allowed to continue uncontrolled. He told Kharfen that he would not allow his staff to remain on the streets and endanger their lives. He described Brennan's injury and the circumstances surrounding it. Kharfen directed him to remain, with his staff, on the streets.

Gonzalez stated that he believed both Lynch and Kharfen were fully aware of the conditions that he was describing to them. They displayed no surprise or anger when Gonzalez told them of the Police Department's failure to act.

Deputy Mayor Lynch stated that only on Wednesday evening, when he went to meet the Mayor at P.S. 167, did he begin to understand the severity of what was happening. Nothing before that indicated that circumstances were out of control.

Lynch described Monday night as being one in which a "small group of kids" marched to the 71st Precinct and then marched back. He knew that there had been "some kind of rock throwing," and that a group of African-Americans and a group of Hasidim were "standing off with each other." Lynch stated, "it was not out of control, it was just shouting back and forth."

Things did not get worse on Tuesday night, according to Lynch. There was still, he said, no reason to question the fact that the situation was under control.

These assertions seem strange, in light of the statement Lynch made to the Press on Tuesday night at City Hall. Lynch said, "...the thing is quote-unquote out of control." After saying this, Lynch was interrupted by a call from the Mayor.

Driving to meet the Mayor at P.S. 167 on Wednesday night, Lynch saw young people running past the school, throwing rocks and bottles at reporters. The police would not let the Mayor's car through to the school, a circumstance which concerned Lynch very much. At the school, Lynch saw the reporters who had sought safety inside, and who had been injured.

As a result of these events, Lynch said, for him, it took things to "a whole other level." The intensity seemed to have escalated. As he said, perhaps because he had seen these events with his own eyes and was right in the middle of them, he "felt it a lot more."

Lynch did not recall being told by anyone on Monday or Tuesday that the police were not reacting, or that things were out of control. When asked if

anyone, members of the Police Department or City Hall's community intervention personnel, had ever told him this, his answer was "no."

Michael Kharfen, Gonzalez' and Brennan's superior, likewise denied that anyone had ever indicated that the police were ineffective, or that events were out of control.

Lynch and Kharfen indicated that had they been told such things it would have been their duty to report them to the Mayor, and they would, in fact, have done so.

In our interviewing Joseph Gonzalez and Robert Brennan, we found no reason to believe that their statements were less than truthful. In fact, many of the events they related were independently corroborated by other sources.

These statements were made in the most graphic and dramatic manner, one which would not be easily forgotten. It is difficult to imagine that either Lynch, who was in constant contact with the Mayor, or Kharfen, would have withheld this information from the Mayor.

A second line of information, calling into question the Police Department's assurances that everything was under control, came from a different source. A number of leaders of the Crown Heights Hasidic community, along with others, have stated that they informed City Hall, specifically Assistant to the Mayor Herbert Block and Deputy Mayor Milton Mollen, that the Hasidic community was under siege, and that the police were passive, leaving them unprotected. These statements, they claim, were made to City Hall on Monday night and throughout the day and night on Tuesday.

Block denied, and Mollen could not remember, having received such claims prior to Wednesday, the day Mayor Dinkins states he first learned of these charges.

According to Rabbi Joseph Spielman, the Chairman of the Crown Heights Jewish Community Council, he telephoned Herbert Block on Monday night, after Yankel Rosenbaum was stabbed. He warned Block that he believed there was a great potential for serious violence. Later that night, at Kings County Hospital, Spielman repeated his assessment to Block. He added that crowds in the street were yelling "kill the Jews." He told Block that the situation was very volatile and a large police presence was needed. Spielman, at the hospital, then gave the same assessment to Mayor Dinkins and to Bill Lynch.

After Spielman presented this general assessment, more specific statements of police inaction, and a lack of control, were made.

Mr. Issac Abraham, a leader of the Williamsburg Hasidic community and a member of the Hatzoloh Ambulance Organization, states that he telephoned Block on Monday night and told him there was chaos on the streets of Crown Heights. He indicated that Hatzoloh could not operate its ambulances since they were being attacked and, according to Abraham, that the police were present, but were not doing anything to control the violence.

Rabbi Sholom Ber Hecht, a leader of the National Committee for the furtherance of Jewish Education, stated that he telephoned Deputy Mayor Milton Mollen on Tuesday morning. According to Hecht, he told Mollen that Hasidic residents of Crown Heights were being attacked and their property damaged. He told Mollen that the police were doing nothing to control the situation. Hecht asked Mollen how, since the police themselves seemed fearful, could they say things were under control. He told Mollen that the riot was directed against both the Hasidic community and the Police. Mollen, according to Hecht, responded that he would relay these points to the Mayor, and that the police would deal with the situation.

Rabbi Hecht said that later in the day, he made another call to Mollen. He stated that he also called Block. He repeated what he had told Mollen during the earlier call and pleaded with the two of them for protection.

Rabbi Jacob Goldstein, Chairman of Community Board No. 9, stated that on Tuesday morning, after the meeting which he attended at P.S. 167, he told Block that the situation on the streets was out of control and that the police were doing absolutely nothing. Throughout Tuesday afternoon and evening, Goldstein said he spoke continually with Block, giving him the same dual message. Tuesday night, Rabbi Goldstein drove around the area with Block. He pointed out to Block that the police were taking no action in the face of violent crowds.

Rabbi Abba Paltiel, a member of the Vaad Hakhol, a community organization administering secular matters on behalf of the Crown Heights Hasidic community, stated that throughout the day on Tuesday, he was calling people in the Mayor's office to ask for help, telling them that the police were doing nothing to protect the community. Although he could not recall specifically with whom he spoke at that particular time, he was certain that he had made these calls.

Dr. Philip Abromowitz, an official of the J.C.R.C. (the Jewish Community Relations Council), a group designed to coordinate activities and events for all Jewish communities, including the Hasidim, spent the day and night on Tuesday in or near the Emergency Committee Headquarters on Eastern Parkway. Abromowitz stated that throughout Tuesday, he heard many people speaking to Herbert Block and Milton Mollen on the telephone, telling them that the situation

in Crown Heights was out of control and that the police were passive and not reacting. Among those he heard speaking on the telephone were Rabbis Hecht and Paltiel.

Finally, Mr. David Pollack, Deputy Director of the J.C.R.C., told us that he spoke with Herbert Block by telephone from Israel on Tuesday afternoon, New York time. He told Block that J.C.R.C. staff members in New York were telling him that the police were not protecting the community in Crown Heights. He informed Block that he was told the police, for whatever reason, were passive in their response.

Herbert Block states that he first learned of these concerns of the Hasidic community on Wednesday. He did recall that, in the early morning hours of Wednesday, he was driven home from Crown Heights by two police officers who, he thinks, may have told him that members of the Hasidic community were expressing these concerns.

Block recalled that he received many calls from Hasidic leaders on Tuesday, and that no concerns about the failure of the police to act were brought to his attention. He first told us that the calls were merely informational. Later, in his interviews, he acknowledged that general complaints were made about the level of violence and the need for more police protection. Block maintained that the issue of the police not taking effective action was not raised. He pointed out that, even when small incidents occur, the Hasidic leaders are always demanding increased police protection.

Block, upon being questioned about his telephone conversation with someone in Israel on Tuesday, acknowledged that the conversation was with David Pollack. He could not remember anything at all about the content of his discussion with Pollack.

Block described his position as the "communications hub" between the Jewish community and City Hall. He was asked if it would have been his responsibility to personally relay the concerns of the Hasidic community to the Mayor if they had, in fact, been made to him on Tuesday. He answered in the affirmative. Block's statement, that he had not been told, prior to Wednesday, of the Hasidic community's concerns that the situation was out of control and that the police were not reacting is simply not credible, when considered against the substantial evidence to the contrary.

The claim that neither Mollen nor Block learned of the concerns of the Hasidic community before Wednesday becomes especially important in light of Mayor Dinkins' statement that:

Prior to Wednesday afternoon, I received no specific allegations that the police were providing inadequate police protection or that the police were deliberately restraining their response.

The evidence is persuasive that top City Hall officials, all of whom were in frequent contact with the Mayor during the period of the crisis, were given crucial information. They were informed that the situation in Crown Heights was not under control, and that it was not being adequately dealt with. They knew, too, that leaders of the Hasidic community were asserting that the police were not taking action to protect the community. This information was provided, in a dramatic and sustained manner, and was conveyed well before the Mayor asserted that he was made aware of these circumstances.

If the Mayor was told, fundamental questions would arise as to why he did not act on this information. However, if the information was not provided to the Mayor, systemic problems in City Hall's flow of information and decision-making process would be revealed.

Aside from the question of whether top aids were sharing this information with the Mayor, other information was either communicated or available to him. One direct source of information was the Police Desk at City Hall. The Desk made notification of confrontations between blacks and Hasidim, police and civilians injured, police cars overturned and burned, car windows broken, and police officers shot. Two entries are of particular interest. Robert Brennan informed the Desk at 8:00 p.m. on Tuesday that rocks were being thrown from a roof at President and Utica, that ten police officers had been injured, that emergency 10-13 calls for assistance had gone out and that the police were being "forced out" of the area. Brennan also informed the Desk that a large crowd was gathered at Union and Utica, and that car windows were being broken. The logs show that, in addition to Mollen, Kharfen, and Block, the Mayor's security detail and his Press Office were informed.

At 10:20 p.m., Joseph Gonzalez informed the Desk of the looting on Utica Avenue. Burglaries at Sneaker King, two jewelry stores, New York Fried Chicken and H&R Block, and a fire set at one of the jewelry stores, were reported. The logs reflect that, along with Lynch, Mollen, Block and Brennan, Inspector Jules Martin, the Commanding Officer of the Mayor's security detail, and the individual in charge of the City Hall Police Desk, were notified.

While he had no specific recollection of what he told the Mayor during the Crown Heights events, Inspector Martin explained that the Desk Officer must make all notifications listed in the log. If a notification was not made, it would

not be entered. Moreover, he explained, it is the responsibility of the member of the security detail to pass the information to Mayor.

Martin said while relatively insignificant events might not necessarily be passed to the Mayor by his security officer, all "big ticket items" would be. Crown Heights, Martin said, was "definitely a big ticket item." If the Mayor could not be reached, the information would be given to a top aide or to the Press Office, whose responsibility it also was to notify the Mayor.

The Mayor, after being informed by us of the contents of the logs, had no specific recollection of them. He stated, however, that nothing in them indicated to him that the police could not handle the situation, or that he should have done anything himself. He said that whatever information came to him through the logs was already known by the police. It was, he said, unclear to him what he was expected to have done with such information.

Along with the Police Desk logs, the Mayor was receiving other information. As a result of interviewing a number of secular Jewish leaders, we learned that Howard Rubenstein, a prominent advisor to many political leaders, including Mayor Dinkins, had been concerned about the events in Crown Heights.

Rubenstein stated that he received many calls from residents of Crown Heights, as well as from secular Jewish leaders. He was told that the situation in Crown Heights was extremely serious. He was informed that events were out of control and that the police were not taking action to end the violence. Rubenstein stated that he called the Mayor numerous times, informing him of these circumstances and asking him to take action.

While he could not remember the precise time of his first call to the Mayor, Rubenstein said it took place either Tuesday night or Wednesday morning. Again, the timing is significant in light of the Mayor's recollection that he did not receive specific allegations that "the police were providing inadequate police protection" prior to Wednesday afternoon.

Rubenstein discussed his first call to the Mayor with others who were interviewed during the course of this investigation. They recalled Rubenstein stating that he had called the Mayor either late Tuesday night or in the early hours of Wednesday morning, telling him that the situation in Crown Heights was out of control and that the police were not taking action to end the violence.

The Mayor could not remember the call from Rubenstein. He stated, however, that "if Howard Rubenstein said he called, he did." The Mayor said that, normally, he would have passed this information to either Milton Mollen or Norman Steisel, but again, could not recall the event.

Finally, another prominent secular Jewish leader, who had some involvement in these events, is Mr. Abraham Biederman. Biederman is the former Commissioner of Housing for the City of New York. He was asked if during the events in Crown Heights, he had discussed the situation with Howard Rubenstein. He said that he had suggested to Rubenstein that someone had to contact the Mayor. According to Biederman, Rubenstein told him that he would make the call. The next day, Biederman again spoke with Rubenstein who told him he had, in fact, spoken with the Mayor. Although he could not be certain, Biederman believes that Rubenstein said the call to the Mayor took place sometime Tuesday or Wednesday.

If the Mayor was told by Rubenstein either Tuesday night or in the early hours of Wednesday morning, the question would arise as to why it took him until Wednesday night to determine that the police response was inadequate, and why it took until Thursday for an effective strategy to be implemented.

Finally, even if the Mayor had no other sources of information regarding the disturbance, media descriptions of events alone should have provided him with reason to question police assurances. Press reports and television news are closely monitored and provided to the Mayor each day. As early as Tuesday evening, as the police were assuring the Mayor that the situation was under control, the television news was describing events in quite different terms.

At 7:00 p.m., *Channel 5's* Pablo Guzman was reporting live from Crown Heights. He described the conditions in the neighborhood by saying, "What we have here is a mess. It's a dangerous situation. The groups are literally fighting each other. It's enough to make you sick."

By 10:00 p.m., *Channel 11's* Tim Malloy, reporting live as a video tape showed police running from President Street and Utica Avenue, described the situation by saying the police, "were pummelled by bottles." "Those without riot gear were literally risking their lives. The police were eventually forced to pull back." "This is as ugly as it gets... It's escalating. There is no sign it will cool off."

One half hour later, at 10:30 p.m., the *New York Post* appeared with the front page headline, "Race Riots in Brooklyn." The article below the headline characterized events as having "escalated into racial warfare." It is customary practice for the Mayor and his Press Office to receive a copy of the next day's *Post* before midnight.

Finally, on Wednesday morning, the *New York Daily News*, reported that Deputy Mayor Bill Lynch had characterized the events of Tuesday night as "quote-unquote out of control."

The Mayor stated that while he could not recall receiving this specific information, the Press Office does provide such information to him in the normal course of events.

Thus the Mayor, apart from what was conveyed to his top aides, had a number of important sources of information which should have called into question Police Department assurances that the disorder was under control.

The City Hall Police Desk logs, the call from Howard Rubenstein and the media coverage should not, necessarily, have caused the Mayor to reject Police Department claims. They should, however, have spurred him to make substantive, detailed inquiries of police officials, asking them to clarify the obvious discrepancies.

Moreover, if any of his top aides, Lynch, Mollen, Kharfen, or Block informed the Mayor of what they were told, the Mayor had even more reason to question and probe.

With the information available to him, the Mayor should not have had to wait until his own visit to Crown Heights, before reaching the conclusion that the performance of the Police Department was unacceptable.

The assurances of the Police Commissioner, continuing even into Wednesday, when he praised the police for their restraint and vowed to continue the Department's low key approach, made it more difficult for the Mayor to make an accurate assessment of the situation. As late as 5:00 p.m., Brown told reporters that everything was "under control." The Mayor was told that what was occurring in Crown Heights was not constant trouble, but simply "bursts of activity." There were, however, sufficient warnings to cause the Mayor to question what his Police Commissioner was telling him.

The fundamental question remains: did the Mayor fulfill his responsibilities in managing the crisis in Crown Heights? Did he make all efforts to know what the Police Department was doing, did he ask the tough, probing questions, and did the Mayor instruct the police, in his own words to, "quickly restore peace and order to the community?"

Critical questions needed to be asked of police officials for the Mayor to have met his responsibilities: is the Police Department doing enough, are there sufficient officers deployed and resources committed, why are there so many reports of violence and property damage if the situation is "under control," why has the violence not stopped and what steps will be taken to ensure that it does?

Answers to these questions were necessary if the Mayor was, in the words of the *Kerner Commission Report*, to “become fully involved in disorder planning and operations,” and was to “understand the nature of the problems posed by a disorder, the strategy of response, and the pattern of field operations.”

There is no evidence to indicate that the Mayor was asking these questions prior to his own experiences in the streets of Crown Heights Wednesday evening. Asked if he should have questioned the police about whether they were doing enough and whether they had sufficient numbers of officers present, the Mayor responded that there was no need to ask as “obviously they thought they were.”

The Mayor was confident in the knowledge that, as he pointed out, many reports of incidents were sent to him everyday and that the police had always been able to handle them. He had no reason to believe, he said, that they would not do so in Crown Heights.

Only when the Mayor experienced the actual level of tension and hostility, and became, himself, a victim of that hostility, did he realize the “apparent ineffectiveness of the police response in controlling the violence,” and that “a lack of confidence in the police response was quickly spreading through the community.”

The Mayor clearly understood his authority to question police officials and to provide them with direction. He, in fact, exercised that very authority after returning from Crown Heights Wednesday night, having been shouted down, having had his car prevented from passing freely on the streets and having been the target of surging crowds, bottles and rocks.

The Mayor stated that as he was returning to Gracie Mansion from Crown Heights with Deputy Mayor Mollen, “we discussed our dissatisfaction with the apparent ineffectiveness of the police response in controlling the violence.” They were disturbed that “...law enforcement efforts of the Police Department had not yet brought an end to the disorder.”

After going to Kings County Hospital to visit eight police officers who had been shot, the Mayor and Deputy Mayor Mollen met with Police Commissioner Brown at the Hospital. They questioned Brown about the “effectiveness of the police tactics” and told him that further steps had to be considered. They asked the Commissioner what steps he intended to take to “immediately end” the violence. The Mayor, in his own words, issued a “clear directive” to the Commissioner to take all steps necessary to end the violence.

What the Mayor did early Thursday morning at Kings County Hospital was appropriate. It is unfortunate that this did not occur sooner.

ENDNOTES

1. National Advisory Commission on Civil Disorders, *Report*, Washington, D.C.: U.S. Government Printing Office, 1968.

Part V
Conclusions

- ▶ Chapter 13: Findings and Recommendations

Chapter 13

Findings and Recommendations

- ▶ The Disturbance
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- ▶ The Police
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FINDINGS AND RECOMMENDATIONS

THE DISTURBANCES

Scope and Nature of the Disturbances

Finding 1: The disturbances began on Monday, August 19, 1991 and relative calm was returned by Thursday, August 22. The four days of disorder in Crown Heights represented the most extensive racial unrest occurring in New York City in over twenty years.

The disturbance in Crown Heights was the first widespread racial unrest to occur in New York City in more than twenty years. It differed from most disturbances that occurred throughout the turbulent 1960s, however, as the violence was directed at a segment of the community.

When compared to other civil disturbances in New York City, the disturbance in Crown Heights resulted in at least as much injury to civilians, but less commercial property damage. The police were also primary targets of aggression and sustained a large number of injuries.

The four days of disturbance resulted in injury to an estimated 152 officers and approximately forty civilians. Almost all injuries stemmed from assaults. While many incidents were classified as bias-related, there are no means to draw comparisons with prior time periods.

Finding 2: The disturbance resulted in a significant increase in 911 calls generating police responses. Much of the disturbance activity occurred in clusters associated with the marches and demonstrations and the migration of roving bands.

Over the four-day period, the affected area of approximately one square mile, produced 780 more 911 jobs than in the same four days of the prior week. (A 911 job represents one or more calls requesting police emergency assistance in response to a single incident.) The number of 911 jobs increased steadily from Monday through Wednesday and dropped off precipitously on Thursday, when a new police response plan was implemented.

The disturbance was characterized by 911 reports of assaults and disputes in the streets, disorderly groups, police officers in need of assistance, vehicle fires, and commercial burglaries.

Much of the disturbance-related activity occurred episodically in clusters. The clusters were frequently associated with rioting in the area of President Street and Utica Avenue and the movement of roving bands of youths throughout the surrounding neighborhoods.

The timing and location of the activity clearly indicate that it was much more than sporadic violence. The concentrated unrest in the area of President Street and Utica Avenue on Tuesday night represented a riot situation. On Wednesday, roving bands victimized many neighborhoods for prolonged periods of time. The aggression was systematic, intense, and injurious.

THE POLICE

Planning

Finding 3: Overall, the *Unusual Disorder Plans*, prepared for the 71st Precinct and Patrol Borough Brooklyn South (P.B.B.S.), provided a solid basis for guiding the Department's response.

These complementary plans addressed nearly all elements recommended by national standards and authoritative sources. The plans defined specific staff responsibilities, established a clear command structure, and contained detailed instructions for the operations of field command posts.

However, the plans did not characterize unusual disorders nor indicate the circumstances under which they should be activated. The plans also lacked a mission statement outlining the Department's philosophy and preferred approach for handling civil disturbances. In addition, they contained no special procedures for handling the increased volume of 911 calls that can be expected during disorders or other widespread emergencies.

Recommendation

- The *Unusual Disorder Plans* should be amended to give police commanders clear direction regarding the magnitude or type of disturbance that warrants implementation of the plan. An overall mission statement should be incorporated to serve as the basis for establishing tactical objectives.

Finding 4: The *Unusual Disorder Plans* did not consistently receive careful annual reviews as required by Departmental policy, nor were police commanders familiar with these documents.

The *Unusual Disorder Plans* were last reviewed prior to the Crown Heights disturbance in early 1989. This infrequent review may also explain the command's lack of familiarity with the *Plans*.

NYPD reviews of the *Unusual Disorder Plans* concluded, moreover, that no changes were necessary even though the precinct plan stated that emergency equipment had last been checked several years earlier and an appendix of the Borough plan was virtually illegible. This lack of careful review is particularly difficult to justify in light of the many problems that the Department experienced in 1988 while responding to a disturbance in Tompkins Square Park.

Recommendation

- The Department should review and, where necessary, update its *Unusual Disorder Plans*, *Disaster Manual*, and all procedures in the *Administrative* and *Patrol Guides* that affect the agency's response to disturbances. Each procedure should be reviewed to ensure that individual components are fully integrated and consistent with each other. Senior staff should ensure that careful annual reviews required by Departmental policy are completed.

Training

Finding 5: The Department enhanced in-service training in disorder control following the incident at Tompkins Square Park, but did not fully implement new training with regard to executive level officers.

The Police Academy developed a new in-service training program related to policing civil disorders for first responders who would be summoned at the onset of a disturbance. This one-day course consisted of three hours of academic classroom training and four hours of tactical training. Our analysis of records provided by NYPD indicates that approximately half of the sworn personnel attended this in-service program. In addition, fourteen mobilization exercises involving about 1,300 officers were also conducted during this time.

While the training of the lower ranks in the department dealt with teamwork and practical exercises for squad and platoon size detachments, command level officers received classroom theory and limited practice. And, training provided to captains and higher ranking officers offered little on deployment, containment, sectoring, and other tactical responses. Experiential command post exercises were planned, but never conducted prior to the disturbance.

Recommendations

- Training should provide executive level officers (captain and higher ranking officers) with tactical options for using large numbers of officers as opposed to focusing their training on the platoon level.
- Executive level officers should be provided the opportunity to practice deployment and tactical options through the use of table top exercises and computer simulations.
- Command post exercises involving simulated disorder situations should be conducted. Officers should role play the positions for which they are being trained (e.g., field commander, intelligence officer, personnel officer, or any other position designated to the command post).

Finding 6: The stated objectives of the training for first responders appear too numerous for the one-day time frame allotted to the course. In addition, the *Instructor Resource Guide* lacked sufficient information on the responsibilities and discretion applicable to officers of different rank.

The time allotted to classroom instruction was just three and three-quarters hours, while the practical instruction was three hours long. The objective of one lesson — to enable officers to, "understand, identify and utilize proper professional response tactics at demonstrations and disorders," could easily be the overall objective of a course that lasts several days.

The training materials fail to differentiate roles and responsibilities assigned to different ranks. The *Unusual Disorder Plan* for Patrol Borough Brooklyn South assigns specific and distinct responsibilities for officers of various rank. However, little of this information was apparently conveyed in the training that these officers received.

Finally, it does not appear that the training clearly indicated when an officer can take action without specific authorization or direction from his or her supervisor. The lesson plans state that such action by patrol officers is only appropriate in cases of "extreme emergency," but offers no guidance as to what constitutes such an emergency.

Recommendation

- The NYPD should reassess the objectives and structure of its first responder training. Departmental policy on key areas should be clarified during future training sessions, and the training should be lengthened.

Mobilization and Tactics

Finding 7: The mobilization and deployment of officers to the accident scene occurred too slowly after violence began to limit the spread of the disorder that night.

Violence erupted at the intersection of President Street and Utica Avenue soon after the accident at approximately 8:20 p.m. By 9:00 p.m., 911 callers began to report a riot in the area. The police began initial mobilization of personnel at that time. However, 270 of the approximately 400 officers ultimately assembled did not arrive until after 11:30 p.m.

Because of the slow pace of mobilization, the officers were not in position to control the unruly mob at the accident scene. The mob began to stream down President Street at 11:00 p.m., shattering windows and damaging cars. Lemrick Nelson, who was acquitted of murdering Yankel Rosenbaum, told detectives he was part of that crowd. Deployment was not completed until sometime between 1:00 a.m. and 2:40 a.m. — at least four hours after the police saw the disturbance at the intersection of President and Utica escalate into violence.

Part of the delay in mobilization was due to the failure to fully employ the NYPD *Rapid Mobilization* procedure. The procedure was not used to mobilize non-Task Force officers from outside the Borough. The commanders believed that officers were unfamiliar with the radio codes and that reliance on this mobilization procedure might have resulted in confusion.

Recommendations

- All high-ranking police officers, including borough commanders, should be trained in the assessment of potential civil disturbances and proper response techniques.

- When faced with a growing civil disturbance, all Borough Task Forces should be mobilized at once rather than relying on an initial borough mobilization.
- The Department should review its *Rapid Mobilization* procedures to ensure that they are adequate and make all appropriate modifications.
- Individual police officers at all levels should be trained in mobilization. Practice drills should be conducted regularly.

Findings 8: The Police Department lacked a clearly defined and articulated mission to guide its response to civil disturbances. The Field Commander chose a restraint-oriented approach, but failed to direct proactive measures to end the violence.

The NYPD did not have a clear mission statement as part of its *Disorder Plan* at the time of the Crown Heights disturbance. The Field Commander chose a restraint-oriented approach in an effort to limit the violence and prevent the police from becoming a focus of the hostility. He provided no guidance, however, regarding the tactics to employ to end the disturbance. As a result, field supervisors were forced to either improvise tactics or simply remain passive. Consequently, the Department's response to the first three nights of violence lacked overall coordination and was ineffective.

Recommendations

- The Department needs to clearly articulate a disturbance control mission and delineate the tactics to be used to implement the mission.
- The Department should establish a sequence of progressively more forceful tactical options to accommodate the fluid nature of civil disturbance situations.

Finding 9: The police were unable to maintain control of the marches and demonstrations which frequently resulted in group conflicts and criminal activity.

On Tuesday, the police adopted a passive approach to handling demonstrators, using crowd control rather than disorder control techniques. Tactics for handling possible violent outbursts were not devised and when such outbursts occurred, the police were ill-prepared to handle them.

On Tuesday evening, crowd violence occurred at the intersection of President Street and Utica Avenue. Stores were looted, residences were pelted with rocks, and police officers and civilians were assaulted. At one point, a police detail was forced to flee the intersection of President Street and Utica Avenue under a hail of rocks and bottles.

In spite of the extensive disorder on Tuesday, the police allowed 300-400 marchers to pass by the Lubavitcher World Headquarters on Wednesday. The marchers again clashed with Hasidic counterdemonstrators. Later, the march passed P.S. 167, where the Police Commissioner's car became the target of attack.

The marchers later converged on the intersection of President Street and Utica Avenue. Violence began almost immediately. Although the police made efforts to clear the demonstrators from the intersection, they merely pushed them on to other streets. The disturbance continued and spread to other neighborhoods.

On Thursday, the presence of mobile arrest teams and a large number of police officers in the area of President Street and Utica Avenue deterred further crowd violence.

Recommendations

- When an organized or spontaneous march occurs during a period of civil unrest, the police should be prepared to maintain order. An adequate number of riot-equipped officers under appropriate supervision should be assigned, and the police should control the march route to keep potentially antagonistic groups separated.
- When dispersing an unruly crowd, the police should isolate the area, control avenues of egress, protect vulnerable locations, and ensure that mobile arrest teams are available to respond to developing roving bands.

Finding 10: The police failed to control the criminality associated with roving bands.

Prior to Thursday, the disturbance area was heavily vandalized by roving bands of youths who committed property, personal, and public order offenses. The roving bands were most prevalent and destructive on Wednesday evening, two days after the police first became aware of the problem.

The police were largely deployed to, and remained at, fixed posts. Consequently, they were not in a position to pursue the roving bands. Arrest teams were not prevalent until Thursday, in spite of the fact that the P.B.B.S. *Unusual Disorder Plan* calls for the use of mobile patrols.

Recommendations

- When civil unrest occurs, the police must be prepared to handle roving bands. Mobile arrest teams and aviation and motorcycle units should be utilized.

Finding 11: Until a proactive arrest policy was announced and the unlawful assembly statute was used, the police did not effectively prevent disorderly crowds from forming and engaging in acts of violence.

Although Crown Heights was the site of significant criminal activity prior to Thursday, just forty-eight disturbance-related arrests were made: six Monday; twelve Tuesday; and thirty Wednesday. Furthermore, in the area affected by the disturbance, more than one-half of the arrests on Wednesday occurred at the intersection of Utica Avenue and President Street. Relatively few arrests were made in relation to the roving bands.

On Thursday, a firm arrest policy — no tolerance for illegality — was articulated and appropriate measures were devised to carry it out. That day, sixty-one arrests were made, almost twice as many as the previous day.

A key change in arrest policy involved the order to invoke the unlawful assembly statute. Instead of waiting for groups to become disorderly and then commit violent acts, the police reacted at the first sign of trouble. This proactive approach succeeded in controlling violent outbursts by groups.

Finding 12: NYPD undertook extensive community intervention efforts to mediate hostilities and to thwart rumors which had contributed to the unrest in Crown Heights.

Community intervention was a significant aspect of the Police Department's response to the Crown Heights disturbance. Several rumors had spread throughout the community shortly after the fatal accident. They helped to fuel the anger and deepen the division between blacks and Hasidim. The police repeatedly attempted to dispel the rumors through public meetings and press conferences.

Starting Monday evening, efforts were made at all levels, from Police Commissioner to the Borough Commander to Community Affairs Officers, to communicate with the black and Hasidic communities. Commissioner Brown, the Mayor and Deputy Mayors, and leaders of the community quickly gathered that night at the 71st Precinct. They saw the need to work together to try to calm the situation. Brown requested that community leaders be provided with briefings to help them quell rumors and encourage public order.

Deputy Commissioner Wilhelmina Holliday worked continually throughout the disturbance period to improve the situation. She met with public officials, elected leaders, citizen groups of the 71st and neighboring precincts, community organizations, and circulated a "sheet" to provide information to the public. Numerous formal and informal meetings in the community were held or attended by NYPD officials, to provide a place for airing rumors and grievances as well as to hear complaints about the Police Department.

The Police Department made timely and visible attempts to listen to concerns, calm the community, and control rumors. However, the hostilities built upon long-perceived injustices made it impossible to dispel the rumors completely. The police had a responsibility to try, though, and we found their efforts extensive.

Command and Control

Finding 13: There was no evidence of an affirmative order by the Police Commissioner to prevent the police from responding to criminal incidents in Crown Heights.

The Police Commissioner and other members of the command structure stated that at no time did they order officers not to make arrests. Commissioner Brown stated: "I know there was no policy from my level, and I haven't heard anyone below me say that they may have ordered a no arrest policy." Assistant Chief Gallagher, Deputy Chief Gussman, and other commanding officers echoed this position.

Commissioner Brown said his expectation was that arrests would be made for violations of the law where the police were capable of doing so. Assistant Chief Gallagher said police officers were instructed not to take independent action and to stay on their posts to protect that area. The assignment of most officers to fixed posts and the relative absence of mobile patrols, however, made it more difficult to effectuate arrests.

Finding 14: Personnel changes within the Department in early August, 1991, placed two key officials in unfamiliar positions and weakened the command structure.

Effective August 15, 1991, the Chief of Department, Robert Johnston, retired. On Monday, August 19, the new Chief of Department, David W. Scott, went on a previously scheduled vacation. Chief of Detectives Joseph Borrelli was named to assume interim duties as Acting Chief of Department. Mario Selvaggi was appointed that day to be Chief of Patrol. With Selvaggi and Borrelli serving in less than familiar roles, the command structure was weakened. They were inclined to accept the information and plans they received rather than adopting more assertive roles.

Finding 15: A collective failure by top-ranking NYPD officials delayed the implementation of appropriate tactics to control this disorder.

Many of our criticisms of the police response to the disturbances are negative judgements about the performance of high-level NYPD officials. The Police Department clearly had sufficient resources and know-how to deal more swiftly and effectively with the disturbance. The individuals who occupied the highest positions in the Department must share accountability for its failure to do so before Thursday.

Effective supervision requires that the Headquarters Command staff insist upon the development of sound tactical objectives, monitor the actions taken by the Field Commander, and judge the effectiveness of those efforts. Commissioner Brown and others should have intervened when a change in tactics was warranted. Instead, the Department's oversight of field operations was inadequate.

After each of the first two nights of rioting, there was no meeting of the Headquarters Executive Staff with Chief Gallagher to critique how the police had handled the events. This kind of assessment is essential for the police executive to obtain the collective wisdom of principal advisers. Neither Commissioner Brown nor any member of the Executive Staff assembled the Department's management team to examine this urgent situation, review police performance, and determine appropriate police action.

Any member of the Headquarters Command staff could have initiated such a session. In a sense, a leadership vacuum existed at the highest levels of the Department. Without a meeting of this kind, the Department lacked a critical analysis of what was happening in the streets and whether the police response to these events was judged effective.

Finding 16: The Police Commissioner did not effectively fulfill his ultimate responsibility for managing the Department's activities to suppress rioting and preserve the public peace.

The Police Commissioner's fundamental responsibility is to manage the Department to meet the public's need for police services. Brown asserted that his job was to make sure that his uniformed commanders had the support they needed. He said the decision of how to use the police officers, once they were on the scene, was to be made by the those in the field. The Commissioner, himself, told us that he thought the commanders handling the situation had sufficient experience and knew what to do. He considered it the responsibility of his staff to identify problems of resources or tactics and bring them to his attention. He did not closely oversee the police response to the disturbance.

In times of emergency, the public can reasonably expect the Police Commissioner to ask probing questions of key aides on the scene, as well as monitor ongoing developments. The Commissioner should assess operational effectiveness and demand changes where needed. There is no evidence that Lee P. Brown provided this kind of leadership during the first three days of disturbances in Crown Heights. Evaluated against these standards, the Commissioner's leadership and performance were inadequate.

Finding 17: Given the seriousness of the disturbances, it is unfortunate that the First Deputy did not assume a role in coordinating the development and implementation of a different strategy sooner.

As an executive aide to the Commissioner, First Deputy Raymond Kelly was assigned various administrative functions. In an interview, now-Commissioner Kelly said it was made clear to him following his appointment that he was to have no role in operations and that the Chief of Department would report directly to the Commissioner. Kelly had the authority to intervene during civil disorders. However, he was not formally in the direct chain of command and was not responsible for patrol services. It proved to be a critical shortcoming that Commissioner Brown did not call upon Kelly to assume his ultimate role in coordinating the development and implementation of a new strategy. It is regrettable that, under the circumstances, Kelly did not deem it appropriate to seek an active role prior to late Wednesday.

Finding 18: The Acting Chief of Department viewed his role as limited and did not formulate plans to coordinate the Department's response to the unusual disorder in accordance with the normal responsibilities of that office.

The highest ranking uniformed member of the NYPD, the Chief of Department, is responsible for supervising police performance and directing all the activities of the uniformed and detective services. Other important duties include maintaining a dialogue with community and religious leaders, as well as formulating plans that coordinate activities during unusual occurrences.

As Acting Chief of Department, Borrelli left experienced patrol commanders to operate as they saw fit, explaining that decisions regarding the strategy and tactics to be used in particular situations normally "are left to the uniformed command." In a sworn statement, Borrelli said he assured his subordinates at every possible step that he would, "make any amount of additional police resources available to them if it became necessary." Throughout the days of the disturbance, Borrelli was neither involved in critically assessing the adequacy of the police response, nor in devising the strategy and tactics to handle the disturbance. If he had been functioning as Chief of Department, that would have been one of Borrelli's principal responsibilities.

Finding 19: The Chief of Patrol did not assure that sufficient police resources were deployed and that appropriate tactics were used to control the disturbance in Crown Heights.

As Chief of Patrol, Mario Selvaggi was primarily responsible for assuring that the Department provided uniformed patrol officers to respond to emergencies, minimize harm, maintain order and protect individual rights. In the chain of command, first line supervisory responsibility for oversight of the operations in Crown Heights belonged to Chief Selvaggi. Because of limited familiarity with either Brooklyn or key figures in the community, Selvaggi said he deferred decisions to the Borough Commander. Nevertheless, by virtue of his positions as Gallagher's immediate supervisor, Selvaggi was probably better suited than any other Headquarters commander to determine that the Department's response to the disturbance was largely ineffective. However, until his experience with Commissioner Brown outside P.S. 167 on Wednesday afternoon, Selvaggi did not reach that conclusion.

Chief Selvaggi acknowledged that the Department did not react quickly enough to the violence in Crown Heights. He said an insufficient number of police were deployed and there was no coherent plan to deal with the disturbance.

Finding 20: Gaps in communication blocked the flow of critical information through the chain of command.

When asked who would have been reporting directly to him about what was going on in Crown Heights, Brown stated that it was Acting Chief of

Department Borrelli. Brown said that he received information from whoever had it during the disturbance, but viewed Borrelli as "the person there who was in charge of everything." However, Chief Borrelli said he had little contact with the Commissioner, except for conversations regarding the Rosenbaum homicide and their mutual presence at meetings with the Mayor.

It appears Brown did not receive a comprehensive account of the events on the streets, nor of the tactics used. For instance, when we spoke with him, the former Commissioner was unaware that on Tuesday Chief Gallagher had ordered his officers to take cover for their safety along the building line because they were outnumbered when crowds began throwing rocks and bottles. When we informed Brown about this crucial incident, he agreed that based upon this information, unknown to him at the time, it would have been appropriate for those at the scene to request reinforcements or devise new tactics.

Recommendation

- Although the Field Commander must retain primary control of police operations, the Police Commissioner and other high-ranking officials must provide active oversight during a civil disturbance.

Finding 21: The Borough Commander engaged in considerable efforts to perform community intervention, mediation, and rumor control. However, he did not communicate appropriate tactical objectives to end the disorder.

Borough Commander Thomas Gallagher acted as the Field Commander throughout the disturbance period. The Field Commander is responsible for mobilizing police personnel, directing tactical field operations, keeping superiors abreast of progress, and conferring with and enlisting the aid of public officials and community leaders.

Assistant Chief Gallagher spent a significant amount of time meeting with community leaders, mediating their concerns and attempting to dispel the rumors that contributed to the unrest. He provided less direction, however, regarding the tactical measures which needed to be taken to end the disorder. He continued to employ a containment and restraint approach even when the measures were shown to be ineffective. Once the disturbance became violent, more forceful tactics were needed to disperse unruly crowds and arrest lawbreakers. Chief Gallagher neglected to make a shift until it was imposed by Headquarters on Thursday.

Although Chief Gallagher maintained contact with his direct superior, he failed to systematically convene his field commanders to critique the effectiveness

of the police response and plan new tactics. And, as discussed below, he neglected to establish a field headquarters support staff to assist command operations.

Finding 22: The Field Commander did not activate the Borough's *Unusual Disorder Plan* or implement alternative arrangements to assure that a functional staff organization was in place to aid him in quelling the disturbance.

A streamlined, clearly-defined command structure is vital to the control of civil disorder. Orders must flow from the top down and be implemented without delay. Officers in the field need to act in a decisive, coordinated fashion. The *Plan* recognizes this need and defines roles for a Field Commander, Command Post staff, and zone commanders. It was not until Thursday, however, that actions resembling those recommended by the plan were implemented. Although some field supervisors achieved isolated instances of effectiveness, the absence of a coordinated strategy prior to Thursday minimized those gains.

Some specialized support functions vital to disorder control went unfilled during the course of the disturbance. Deputy Chief Gussman been present to operate the Command Post, but other responsibilities resulted in his absence from the Command Post on Tuesday. Meanwhile, Inspector Kennedy had resumed his role as Precinct Commander and had little to do with the disturbance control detail.

Other roles were also left unfulfilled. According to Deputy Chief Gussman, the intelligence function was the responsibility of two sergeants who were also involved in community affairs. The *ad hoc* nature of NYPD's community affairs function during the course of the disturbance contributed to the absence of coordination between community affairs activity carried out by the Department and City Hall. Finally, many of the sergeants and patrol officers reported that riot shields were in short supply. This suggests a void in the execution of the equipment supply function.

Recommendation

- When confronted with civil unrest, the Field Commander's delegation of duties should ensure that all vital functions are fulfilled without disrupting tactical and logistical field operations. Furthermore, the support services should be formally coordinated with complementary services provided by City Hall.

Finding 23: Use of the 71st Precinct Station House as the Command Post during the first three days of the disturbance hindered the police response as it was too near the location of the unrest and was not adequately equipped.

The field command post serves as the nerve center of the police response to civil disorder. Its design and placement must be conducive to the transfer and assessment of vital information. Thus, it must be accessible and contain the personnel and technology needed to evaluate tactical options and to implement decisions.

Prior to Wednesday night, the 71st Precinct Station House served as the command post. During that time, it was the focal point of a demonstration and experienced numerous other problems, including inadequate telephone communication and the absence of tactical aids such as incident and deployment maps.

Recommendation

- A command post should not be located within close proximity of a disturbance. The NYPD Headquarters Command and Control Center should be activated whenever a disorder has the potential to spread beyond the boundaries of a Patrol Borough.

911

Finding 24: Many 911 calls reporting large bands of angry demonstrators threatening or engaged in property and personal offenses were erroneously incident coded as "disorderly group" or "criminal mischief." Consequently, there were handled as low priority calls.

Many calls made during the disturbance reported large bands of youths moving through neighborhoods, breaking windows, and threatening residents. These calls should have been incident-classified as reports of "roving bands" ("10-51" incidents), an incident code employed only twice during the disturbance period. A roving band classification would have significantly enhanced the priority of such calls. Instead, many of these calls were incident coded as involving "disorderly groups" and "criminal mischief," and assigned a priority level equivalent to those of past larcenies, past burglaries, and reports of suspicious persons.

Recommendation

- The Police Department should assess its policies and training to ensure accurate classification of *911* calls.

Finding 25: The erroneous classification of *911* jobs as duplicates denied police services to some callers.

During the week prior to the disturbance, eight percent of *911* calls originating from the 71st and 77th precincts were classified as duplicates. Within the police deployment area during the disturbance, forty-three percent of the calls were classified as duplicates. In many cases, the duplicates involved reports of personal, property, and disturbance offenses occurring at different locations within a two or three-block area. In some cases, the erroneous duplicate classifications were made by dispatchers. In other cases, they were made by police officers. In neither situation, was there any evidence that the calls erroneously classified as duplicates received a police response.

Recommendation

- The NYPD should review its policy for classifying *911* calls as duplicates. If the rule that the calls report the "exact same incident" is not intended to be binding, then the guidelines should at least restrict classifying discrete incidents reporting personal injury or property damage as duplicates.

Finding 26: *911* jobs received significantly slower assignment of police resources during the disturbance than during the preceding week. There was also additional delay in completing the jobs once they were assigned resources.

Priority level 2, 3, and 5 *911* jobs originating from the deployment area during the disturbance were assigned police resources at a much slower pace than similar priority calls originating from the 71st and 77th precincts during the prior week. For example, ninety-five percent of the priority 3 jobs in the prior week sample were assigned resources within twenty minutes of their origination. Only half of the deployment area priority 3 calls were assigned within that time period. Moreover, approximately ten percent of the priority 2, 3, and 5 *911* jobs from the deployment area showed no assignment of resources, while less than two percent of the jobs from the prior week indicated no resource assignment.

There was less disparity in the timeliness of police response once an assignment was made. The police responding to calls from the deployment area did report slightly slower disposition of 911 jobs involving priority 2 and 3 incidents. Some delay is expected, however, given the complications arising from the disturbance.

Recommendation

- The NYPD should review its method of handling 911 calls originating from areas which are experiencing a civil disorder. The police response should be structured to ensure that patrol resources are assigned expeditiously and coordinated with the disturbance detail.

Finding 27: Almost half of all 911 jobs located in the deployment area were disposed of as "unfounded," a classification used when an incident never occurred and the report is untrue.

Forty-seven percent of all 911 jobs located in the deployment area were reported to be disposed as "unfounded." A disposition of "unfounded" is distinct from one of "gone on arrival," a code used when the incident did occur but the participants left the scene before the police arrived.

It is impossible to know whether all 911 jobs disposed as "unfounded" truly represented false reports of incidents. But, it is difficult to imagine a situation in which one-half of all 911 jobs and over one-third of all property and personal 911 jobs were premised on falsely-reported incidents. It is possible that the investigation into the alleged incidents was not as thorough, resulting in more "unfounded" dispositions.

Recommendation

- The conditions under which 911 jobs are classified as "unfounded" should be reviewed to ensure that the classification is used only after a thorough investigation reveals no evidence that the reported incident occurred.

Finding 28: There is no evidence to suggest that the destruction of the 911 tapes was purposeful. The absence of the tapes did not unduly impede our review of the 911 response.

On November 15, 1991, NYPD's Legal Bureau was served with an Order to Show Cause directing preservation of 911 tapes for the period from August 19, through September 30, 1991. The preservation order was made pursuant to the filing of a lawsuit against the City of New York. However, master tapes covering approximately a one-week period beginning at 9:01 a.m. Wednesday, August 21, were not preserved.

Although destruction of the tapes should not have occurred, there is no evidence to suggest that any of the 911 tapes were purposely destroyed. The audio tapes of calls made on Monday and Tuesday provide a clear picture of the problems occurring in the 911 system. And, the SPRINT records provide sufficient information to adequately portray the nature and extent of the unrest on each day of the disturbance.

The Aftermath

Finding 29: The NYPD has made significant improvements since August of 1991 to enhance its planning and training for future disturbances.

Significant improvements include the designation of a Deputy Chief to coordinate the Department's planning efforts, the designation of executive command staff to take command during future disorders, the acquisition of special equipment, and the implementation of several new procedures. These innovations should enhance the quality of tactical operations. The pending completion of a new citywide civil disorder plan should also improve the NYPD's ability to effectively control future disorders.

The NYPD has expanded training in the area of mobilization, command post operations and conflict resolution and mediation. The mobilization training is experiential; police officers are actually mobilized in response to a mock disorder situation. Command Post training provides commanders with information needed to effectively initiate and operate a command post and to make tactical decisions vital to disorder control.

Beginning in the Fall of 1993, the Department plans to initiate a course in conflict resolution and mediation for executive level officers. The Department is also planning a Temporary Headquarters course for selected lieutenants in each borough. The goal of this course is to improve coordination of responding units during a disorder.

Recommendation

- The NYPD should continue its recent policy of regular in-service, hands-on training for officers of all ranks in the Department. Mobilization exercises that send responding officers to mock incidents should become a regular training event in the NYPD. And, the Department should ensure the implementation of "table-top" disorder control training for commanders as well as training in dispute resolution.

Finding 30: The Department plans to implement a new 911 system with improved operational features.

The NYPD plans to establish two new 911 centers, with the first scheduled to open in June, 1995. Each center will be structured to assume responsibility for the entire City in the event of a catastrophic occurrence at the other site. The newly configured system will provide new operational features which could facilitate the special handling of 911 calls from disturbance areas. These include automatic location identification and the capability to discern patterns and characteristics of emergency calls.

CITY HALL

Oversight and Intervention

Finding 31. There is no evidence that Mayor Dinkins, or any City Hall officials, restrained the Police Department from taking aggressive action in response to the disturbance.

While a number of groups and individuals have made this claim, none have been able to offer substantiation. Top City Hall and Police Department officials all deny any knowledge of such an order.

The circumstances surrounding the violence in Crown Heights might well give rise to an assumption that a City Hall directive was given. Many police officers, while being pelted with rocks and bottles were told to "hold the line." Residents of the area watched as police officers stood passive in the face of lawlessness.

While direct orders were given forbidding police officers from taking action on their own without instructions from a supervisor, such a directive, during a civil disorder, is not only standard but prudent. That orders to take

action often were not given to line officers fostered the perception that a Mayoral directive must have been given.

However, the utilization of inappropriate tactics, the substitution of *ad hoc* responses for the implementation of organized plans, and a breakdown in command and control all provide explanations for ineffectual police response. As for a City Hall order, either direct or implicit, no evidence of such was found.

Finding 32: Much of City Hall's focus and effort was appropriately directed toward community action, with the Mayor and his top staff personally involved in the most direct way.

City Hall's effort was designed to reach out to all elements of the Crown Heights community, to create dialogue, dispel rumors, and mobilize community leaders in an attempt to "increase the peace." At the same time, the Police Department was relied upon to restore order.

The need for swift and effective community intervention, together with an effective police response, is beyond debate. Numerous studies have recommended a number of steps to be taken at the outset of civil unrest. Among them is that representatives of the Mayor's office should contact community and religious leaders to enlist their support in restoring peace. Another is that government officials should walk the streets with community leaders to speak with residents about their concerns. In Crown Heights, City Hall did both.

City Hall's efforts were extensive: with the Mayor, his top staff, and representatives of several agencies were deeply involved, often at personal risk to themselves. These efforts were essential, and played an indispensable role in bringing the disruption to an end.

Finding 33: City Hall did not have then, nor does it have now, an action plan setting forth the respective roles of relevant City agencies, and establishing a mechanism for coordinating those roles during a civil disturbance.

City Hall had no formal plan. It was only after the disturbance began that they addressed the issues of which agencies would be mobilized and what role each would fulfill. It was only then that the issue of coordination among the various agencies was addressed.

This unstructured approach to formulating a City Hall strategy is problematic. Having an action plan in place avoids the need to develop a clearly defined mission and an effective strategy, for the first time, in the midst of a

crisis. Consequently, coordination between City Hall, the Police Department, and other agencies suffered.

As past studies have shown, the absence of a formal plan, replaced by an *ad hoc* approach to crisis management is an invitation to failure.

Recommendation

- City Hall should immediately move to enact an Action Plan, defining the roles of all relevant City agencies, and establishing a mechanism for coordinating their efforts. Training and practice drills should be conducted to ensure the proper carrying-out of the Plan's mandate.

Finding 34: Information that the disturbance was not “under control,” and that the Police were not acting effectively to end the violence, was provided to top City Hall officials from early Tuesday. Yet, the Mayor asserts that he was unaware of such claims until Wednesday afternoon.

The evidence is persuasive that top City Hall officials, all of whom were in frequent contact with the Mayor, were given crucial information. They were informed by City Hall staff that the situation was not under control and that it was not being adequately dealt with. In addition, Hasidic leaders asserted that the police were not taking action to protect their community. This information was conveyed well before the Mayor says that he was made aware of these circumstances.

While the Mayor was clearly receiving, from the City Hall Police Desk as well as other sources, accounts of events in Crown Heights throughout the disturbance, he does not recall receiving an assessment that the police response was inadequate from either his top aides or from the Police Commissioner.

If the Mayor was told, fundamental questions would arise as to why he did not act on this information. However, if the information was not provided to the Mayor, systemic problems in City Hall's flow of information and decisionmaking process are revealed.

Recommendation

- Top Mayoral aides must fulfill their responsibilities in keeping the Mayor fully informed. The Mayor must rely upon them to provide him with the essential facts upon which to base his decisions.

Finding 34: Information calling into question Police Department assurances that the disturbance was under control was made available to the Mayor through a number of sources. This information should have caused him to closely question Police Department claims and to demand substantive responses from top police officials.

The Mayor, apart from what was conveyed by his top aides, had a number of sources of information. The City Hall Police Desk logs provided the Mayor with detailed information, including the fact that on Tuesday evening stores were being burned and looted, and that the police had been "forced out" of the area of President Street and Utica Avenue.

Television news on Tuesday evening reported that the situation was a "mess," with groups "literally fighting each other." By 10:00 p.m., a reporter described the situation by relating that the police, "were being pummelled by bottles." "Those without riot gear were literally risking their lives. The police were eventually forced to pull back...." The report ended with the words, "This is as ugly as it gets.... It's escalating. There is no sign it will cool off."

Late Tuesday night or early Wednesday morning, the Mayor was told directly by one prominent Jewish leader that the situation in Crown Heights was out of control, and that the police were not taking action to end the violence. He asked the Mayor to intervene.

This information should not necessarily have caused the Mayor to reject Police Department claims. It should, however, have spurred him to make substantive, detailed inquiries of police officials, and to demand informed responses.

With the information available to him, the Mayor should not have had to wait until his own visit to Crown Heights, to reach the conclusion that the performance of the Police Department was unacceptable.

Recommendation

- All information coming to the Mayor must be given careful and serious consideration, and must be fully utilized as part of his decisionmaking process.

Finding 36: The Mayor, as the City's Chief Executive, did not act in a timely and decisive manner in requiring the Police Department to meet his own stated objectives: "to protect the lives, safety and property of the residents of Crown Heights, and to quickly restore peace and order to the community."

As the City's Chief Executive Officer, he must take ultimate responsibility for all government action. As pointed out in the *Kerner Commission* Report, in order to make this responsibility meaningful, he must be fully engaged in the entire process, not in community outreach alone, but in police efforts as well. To exercise his authority and control, he must become fully involved in disorder planning and operations. He must be informed about, and comprehend, the overall response and strategic approach adopted by the Police Department.

While there is no expectation that the Mayor be an expert in police tactics and disorder control, it is clearly his responsibility to ensure the effective functioning of the Police Department, as it is for all City agencies. This is especially true during a period in which civil order has broken down. The Mayor must ask the pertinent questions and demand substantive answers.

Among the most basic questions demanding answers were: is the Police Department doing enough, are there sufficient officers deployed; why are there so many reports of violence and property damage if the situation is "under control;" why has the violence not stopped; and what steps will be taken to ensure that it does?

There is no evidence to indicate that the Mayor was asking these questions prior to his own experience in the streets of Crown Heights Wednesday evening. Only when the Mayor experienced the level of tension and hostility, and became, himself, a victim of that hostility, did he realize the "apparent ineffectiveness of the police response in controlling the violence," and that "a lack of confidence in the police response was quickly spreading through the community."

The Mayor clearly understood his authority to question police officials and to provide them with direction. He, in fact, exercised that very authority after returning from Crown Heights Wednesday night, having been shouted down, having his route obstructed on the streets and having been the target of surging crowds, bottles, and rocks. The failure was that this exercise of Mayoral authority did not come sooner.

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Assistant Chief Michael J. Philbin to the Chief of Patrol, July 23, 1992.

Appendices

Appendix A
Executive Order No. 160



No. 160

E X E C U T I V E O R D E R

DIRECTING A REVIEW OF THE CRIMINAL INVESTIGATION AND PROSECUTION ARISING FROM THE MURDER OF YANKEL ROSENBAUM

WHEREAS, the primary role of government in a civilized society is to provide for the safety and security of the people in its jurisdiction;

WHEREAS, this role of government in our society extends to ensuring that tolerance and respect for each individual is fostered throughout our system of government, including our criminal justice system;

WHEREAS, members of all communities have an expectation that the criminal justice system will function effectively to provide justice;

WHEREAS, on August 19, 1991, Yankel Rosenbaum was murdered during a disturbance in the Crown Heights section of Brooklyn, New York and accounts of the event indicate that although many individuals took part, only one individual was charged, and tried by a jury which rendered a verdict of acquittal which must be heeded;

WHEREAS, the verdict has generated a feeling of mistrust and suspicion of the criminal justice system by those who are unable to reconcile the verdict with their sense of justice;

WHEREAS, regardless of how one responds to the verdict, these events have undermined confidence in the criminal justice system resulting in a climate which has polarized communities in the City of New York and elsewhere;

WHEREAS, it is in the interest of justice that the Director of Criminal Justice and Commissioner of the Division of Criminal Justice Services for the State of New York (hereinafter the Director) review and evaluate the operation of the criminal justice system in this matter;

NOW, THEREFORE, I, MARIO M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order that Richard H. Girgenti, the Director of Criminal Justice and Commissioner of the Division of Criminal Justice Services for the State of New York, review the response of law enforcement to the August, 1991 disturbance in Crown Heights and the facts and circumstances surrounding the criminal investigation and prosecution arising from the death of Yankel Rosenbaum.

I. RESPONSIBILITIES OF THE DIRECTOR

1. To proceed in a term of the Supreme Court, to be held in and for the County of Kings, to seek such order as justice requires unsealing any and all files and records pertaining to the investigation and prosecution in the case of The People of the State of New York v. Lemrick Nelson.

2. To review, to the extent permitted by law, any and all records of the Police Departments of the City of New York pertaining to the investigation of the homicide of Yankel Rosenbaum and the Crown Heights disturbance of August, 1991.

3. To review, to the extent permitted by law, the transcripts of any and all proceedings held prior to the date of this order which relate to the murder of Yankel Rosenbaum.

4. To review, to the extent permitted by law, all of the records in the possession of the District Attorney of Kings County pertaining to the investigation and prosecution of individuals involved in the death of Yankel Rosenbaum.

5. To interview non-witness participants in the trial of the People of the State of New York v. Lemrick Nelson.

6. To review and evaluate the preparedness planning and response of the City of New York Police Department to the August, 1991 disturbance in Crown Heights.

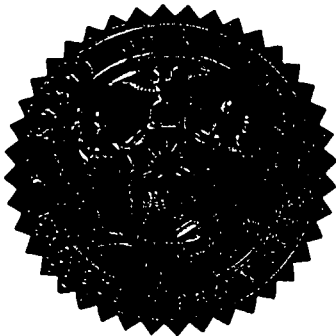
7. To offer recommendations designed to restore the public's confidence in the criminal justice system.

II. REPORT

To prepare a written report, following the review, assessing the response of law enforcement to the August, 1991 disturbance in Crown Heights and the facts and circumstances surrounding the criminal investigation and prosecution arising from the death of Yankel Rosenbaum.

III. ASSISTANCE AND COOPERATION

All departments, divisions and units of the Executive Branch of State government are directed to cooperate with the Director and to provide such assistance as he may require to fulfill his obligations. Such assistance may include the assignment of staff and the provision of support services.



BY THE GOVERNOR

Andrew J. Zambelli
Secretary to the Governor

G I V E N under my hand and the Privy
Seal of the State in the City
of Albany this seventeenth day
of November in the year one
thousand nine hundred ninety-
two.

Marie H. Brown

Appendix B **Methods**

B-1

- ▶ Documentary Data and Methods
- ▶ Interview Methods
- ▶ Methods Used in Analyzing the Scope and Nature of the Disturbance
- ▶ Methods Used in Analyzing *911* Response

METHODS

INTRODUCTION

Governor Mario M. Cuomo issued Executive Order No. 160 on November 17, 1992 directing New York State Director of Criminal Justice Richard H. Girgenti to review the criminal investigation and prosecution in the murder of Yankel Rosenbaum. This order also mandated an assessment of the New York City Police Department's preparedness for civil disturbances and an assessment of the Department's response to the August, 1991 disturbance in Crown Heights. This Volume I of the *Report to the Governor* addresses the second aspect of his directive.

Staff were assembled from the New York State Division of Criminal Justice Services and other State offices to carry out this review. The Police Foundation independently reviewed the evidence presented in the report to assess whether it constitutes a reasonable basis for the conclusions we have reached.

A key condition of the mandate shaped the methods of inquiry employed in this review: without subpoena power, most of the information collected and analyzed for this report could only be obtained through the voluntary cooperation of the New York City Police Department and City Hall. Scores of police and government officials, public employees, and private citizens agreed to share their information and insights. However, the lack of subpoena power affected the efficiency of the data collection process in terms of scheduling and conducting interviews, discovering and obtaining essential documents, and understanding and accessing computerized records.

For this review, staff examined thousands of pages of official documents, including memoranda, logs, duty rosters, plans, administrative and operational guides, training manuals, course curricula, complaints, arrest reports, and case dispositions. Hundreds of audio tapes of 911 calls made during the disturbance were analyzed, as were the computerized records of all 911 jobs originating in the two precincts affected by the disturbance. Various newspaper and magazine articles, private accounts, and videotaped television news footage of the disturbance were also examined. Staff also interviewed approximately sixty members of the Police Department, forty members of the Crown Heights community, and fifteen government officials.

The different categories of data utilized in this report, together with examples of data sources are displayed in the Table B.1, below.

Table B.1. Categories and Examples of Data Sources	
Category	Data Sources
Documentary	NYPD records and logs NYPD reports and memorandums NYPD official critiques 911 audio tapes SPRINT records City Hall documents
Statistical	SPRINT data Complaint and arrest data Demographic data
Media	Print: Citywide and Community Newspapers (New York Times, N.Y. Post, N.Y. Daily News, Newsday, Amsterdam News, City Sun, Jewish Forward, Village Voice) TV: Newscast presentations
Interview	Police Officers Frontline Supervisors (Sgts., Lts.) Mid-level Supervisor (Capts., Inspectors) Top Level Command Special Categories: Line of Duty Injuries Communications Division

DOCUMENTARY DATA AND METHODS

The inquiry utilized data obtained from documents in two ways. First, as a source of fact in the review of the disturbance as a case study. second, as a source of standards against which to evaluate the planning, training, decisions, and actions of the Police Department, its command and officers, as well as City Hall officials.

Data Sources for Inquiry of Fact

Several kinds of documentary sources were used in the exploratory process of discovering facts and in the validating process of corroborating interview and other documentary data. In general, these sources included police records, court

records, newspaper clippings printed during the week of the disturbance, and other published reports. The kinds of police records used as data sources in the inquiry of fact included complaint reports ("61" forms), investigative reports in the Rosenbaum homicide ("DD5" forms), arrests reports, aided and accident case reports, and detail rosters. We also examined various logs, including the Intelligence Division log, THV logs, Desk logs at Precincts 71 and 77, Confidential Operations log, Command Center log and the Police Desk log at City Hall, SPRINT logs, and various official reports and memoranda, including all critiques of the disturbance by police command personnel.

Court records include documentary evidence and transcripts from the Rosenbaum murder trial, the plaintiffs complaint in the *Estate of Yankel Rosenbaum, et al. v. The City of New York*, 92 Civ. 5414, and various affidavits.

Data Sources for Evaluative Review

Three types of documents were used to determine the standards which should be applied in assessing preparedness and conduct of the police with respect to civil disorders. These included policy guides, plans, and training documents. These documents provided command staff and supervisors with a wide variety of procedural, planning, and training advice in handling civil disorders. In general, policy guides presented a broad, procedural overview; plans provided the most specific and prescriptive advice; and training materials furnished a broad set of value-based principles to guide the actions of police supervisors and command staff in exercising discretion and controlling the conduct of individual police officers.

Table B.2 presents the types of documents used in this review as sources of evaluative standards, the general content of the standards contained, and their application to civil disorders.

Table B.2. Policy, Planning, and Training Standards		
Standard	Content	Civil Disorder Application
NYPD Guides: Administrative Guide Patrol Guide	Essential situation-based rules and directives.	Defines mandatory actions related to mobilization, chain of authority, etc. Defines "topics" for plan.
Precinct Disorder Plan	Key personnel, rapid mobilization, instructions for police officers, arrests.	Defines suggested policies with precinct specific resource guides, e.g., phone numbers of key community leaders.
Patrol Borough South Disorder Plan	Activation/mobilization, operational procedures, return to normalcy, critiques.	Defines borough-wide strategy, suggested tactics, and borough critique procedures.
Staff Organization and Procedures for Command Post Operations	Organization of staff responsibilities, command post operations.	City-wide police command post procedures.
Disaster Manual	City-wide, integrative, multi-agency planning mandates.	City-wide, multi-agency, Mayor's Control Board.
Basic Police Training	Tactics related to looting, crowd control, demonstrations, riots, etc.	Patrol officers: basic skill development and repertory of techniques.
First Responder In-service	Arrest procedures and tactical crowd control, diagnosis of crowd behavior, and appropriate response	Patrol through Captain: specialized skill development, repertory of techniques, and decision-making skills.
Promotional training (Sgt., Lt., Capt.)	Squad and other unit training procedures, supervision, mobilization procedures.	Sgt., Lt., Capt. level training: command decision-making skills.

INTERVIEW METHODS

Selection

Interview material was another source of data used to establish the facts of the case. A strategy was adopted to select interview candidates from the Police Department, City Hall, and the community. The initial selection of interview subjects was supplemented as additional candidates identified.

Within the Police Department, the Headquarters Executive staff and individuals in the chain of command during the disturbances were interviewed,

from the Police Commissioner to the Precinct Commander. Outside of the core command structure, candidates were selected from functional areas of the Department that had a role in the police response to the disturbance, including community affairs, communications, and patrol services. Police officers who responded to the accident scene or who handled the initial requests for assistance were also interviewed.

A sampling procedure using deployment rosters and official reports enabled us to identify officers present at locations where significant events occurred. A number of officers who were injured in the line of duty were also interviewed. The selection of additional officers for interviews was facilitated by the police officers' union (Patrolmen's Benevolent Association). Some members of the Police Department who agreed to be interviewed elected to be accompanied by an attorney or union delegate, whose presence was noted in the summary of the interview. In order to facilitate cooperation of police officers, some interviews were conducted under conditions of anonymity.

The Mayor, his Deputies, and top aides at City Hall who were directly involved in handling the disturbance were also interviewed.

Within the community, the initial sample of interview candidates was selected from media accounts of the disturbances. These individuals included community leaders, politicians, and members of the clergy. Some people approached us with information while others were referred to us by those we interviewed. Victims of disturbance-related crimes were also selected from plaintiffs in a pending federal lawsuit, as well as from those who called 911 during the disturbance. We also selectively canvassed residents of Crown Heights neighborhoods.

Procedures

All interviews were conducted by a team of experienced investigative staff. On average, each interviewer had more than twenty years of investigative experience either as prosecutor, federal agent or police detective. Two interviewers were present at each interview. The time and place of each interview was scheduled at the convenience of the subject. Some group interviews were conducted, but in most instances the interview sessions involved a single subject.

Initial interviews were exploratory and conducted in a conversational manner. Interviewers asked subjects to recount their actions, observations and experiences during the disturbance. As the review progressed, structured

questionnaires were used to focus attention on key issues. Most sessions were not tape recorded, and interviewers took notes independently of each other. After a session was completed, the interviewers collaborated in a written memorandum which summarized the contents of the interview. The words of a subject taken down verbatim by interviewers were set off in quotation marks in the interview memorandum. Subjects were not required to verify the contents of this summary for accuracy.

The events on which the report was based preceded the initiation of the review by nearly fifteen months. This inevitably contributed to inaccuracies in the recollections of some subjects and limited the absolute reliability of the interview data. While it may be less than ideal, the circumstances surrounding this review have made it impossible to corroborate all statements of fact. Interview accounts of reported events which were derived from a single source are attributed. Every effort was made to validate descriptions of events reported as facts by using documentation prepared contemporaneously or immediately subsequent to the incidents described. As a rule, follow-up interviews of most key actors were conducted for purposes of clarification, elaboration and validation. For these sessions, written lists of open-ended questions were used to structure the interviews.

When interview sources disagreed on relevant events reported as facts, the contradiction is noted in the text of the report. When congruence existed across multiple sources, the citation in the text of a single source — the most credible or centrally involved — was permitted.

METHODS USED IN ANALYZING THE SCOPE AND NATURE OF THE DISTURBANCE

Sources of Information

The term "disturbance" refers to a temporary breakdown in civil order characterized by hostile crowd incidents and collective violence, often including high rates of incidents such as assaults against police officers, shootings, interracial assaults and other bias-related crimes, random attacks against motorists, looting, vandalism, and arson.¹ "Disturbance" is often used interchangeably with terms such as "riot," "civil disturbance," "civil unrest," and "civil disorder."

Our analysis of the scope of the Crown Heights disturbance does not fully capture the dimensions implied by this definition. Most of the information cited was from two main sources: complaint reports and job entries recorded in the NYPD's Special Police Radio Inquiry Network (SPRINT) system. The information readily available from these sources lacked sufficient detail to reliably identify or fully characterize individual incidents. The types of information available from SPRINT records and complaint reports are outlined briefly below. Statistical information derived from these sources was supplemented in some cases by anecdotal accounts obtained from interviews, paper records, memoranda, audio tapes of 911 calls, and allegations listed in a class action lawsuit filed against the City of New York.

SPRINT Records

When a 911 call is deemed to require a response, a job record is created in NYPD's SPRINT system. The SPRINT system records information such as the type of incident reported, date and time of the incident, location of the incident, resources assigned to the job, and the disposition (for example, complaint taken, or report determined to be unfounded). A computer file was provided by the NYPD containing selected items of information from each of the 911 jobs initiated for the 71st and 77th Precincts during July and August of 1991.

There is no direct correspondence between 911 jobs and 911 calls or between 911 jobs and reported incidents. There are many more 911 calls than there are 911 jobs. If a 911 operator determines that no response is necessary, or if the operator determines that police resources have been assigned for the incident reported, then no new 911 job is initiated. Sometimes multiple calls reporting the same incident will not be recognized as duplicates by the 911 operator and are entered as unique 911 jobs. Duplicates are often recognized by 911 dispatchers and linked to a single police response through use of a "duplicate" code.

In many instances, however, 911 jobs linked as duplicates by the 911 dispatchers did not actually involve the same incident. A review of the strings of SPRINT duplicates occurring within the initial deployment area during the disturbance revealed that over half involved two or more 911 jobs which differed in terms of the address of the event, the nature of the incident, or, more often, both of these factors. Rather than exclude duplicate-classified jobs and grossly underrepresent the scope of 911 activity, we chose to include all 911 jobs even though a portion of the actual incidents were represented by more than one job. Throughout the report, the phrase "911 jobs" denotes SPRINT jobs initiated as a result of calls to 911.

Complaints

Complaint reports may be filed by victims or other complainants as a result of police response to *911* calls, by complainants who appear in person without having previously called *911*, or by police officers who witness crimes in progress (for example, undercover officers buying narcotics from drug dealers). Only a fraction of the *911* jobs resulting from *911* calls ultimately lead to the filing of formal complaints. Compared to *911* jobs, complaint reports provide a more selective view of the scope of criminal activity.

Complaint reports contain information such as the time, date, and location of the alleged incidents, the types of offenses alleged, characteristics of victims and alleged offenders, and very brief narratives describing the reported incidents. Paper copies of complaint reports filed in the 71st and 77th precincts were provided by the NYPD for Monday through Friday of the week of the disturbance. *Complaints pertaining to the disturbance week but filed later were not included in the analyses.* A more limited subset of complaint information for the two precincts was obtained for Monday through Sunday of the week preceding the disturbance from a listing called the "complaint index." One notable difference between these two sources was that the complaint reports included the time and date of occurrence, as well as when the report was filed. The complaint index included the time and date the report was filed, but not the time and date of occurrence.

Supplemental Information

In addition to the sources described above, information was also culled from various reports and memoranda prepared by the NYPD, and from brief descriptions of the incidents given by seventy-three individuals named as victims in a class action lawsuit filed against the City of New York by the estate of Yankel Rosenbaum and twenty-six other plaintiffs. Finally, the analysis and interpretation of data from all sources were guided by the incident descriptions and disturbance chronology constructed by investigative staff from interviews, paper records, memoranda, and audio tapes of *911* calls.

Event Categories

It was not practical to classify the types of events recorded in *911* job records and complaint reports according to a single, common set of event categories. The incidents reflected in *911* jobs are categorized according to a series of standard radio codes entered into SPRINT records (e.g., "10-30"—robbery in progress), some of which do not necessarily imply allegations of

criminal behavior (e.g., "10-53"—vehicle accident). Complaints were categorized according to Penal Law designations for the most serious crime in each event (See Table B.3).

911 Incident Types	911 Incident Types (Detailed Grouping)	Complaint Offense Types
Property	Alarms (not fire) Commercial Burglary Residence Burglary Crim. Mischief in Progress Inside Outside Larceny and Other Property	Arson Assault on MOS ^a Assault not MOS Burglary Criminal Mischief Disorderly Conduct Harassment Larceny/Theft Menacing
Personal	Assault in Past Robbery in Progress Assault in Progress, Outside Assault in Progress, Inside Other Personal	Reckless Endangerment Resisting Arrest Riot Robbery Weapon Possession Other
Disturbance	Disord. Grp./Pers. Outside Dispute Outside Other Disturbance	
Fire	Commercial Fire Alarm Vehicle Fire Alarm Other Fire Alarm	
Assist Police Officer	Ass't. Unif. P.O., Outside Other Assist Police Officer	
Possible Crime	Possible Crime: Firearm, Outside Shots Fired, Outside Other	
Ambulance Case		
Miscellaneous	Other Crime in Progress 85-MOS (meet unit), Outside Other Miscellaneous	

^a Member of (Police) Service

Analytic Strategy

Conclusions about the geographic dimensions of the disturbance and conclusions about the temporal dimensions of the disturbance are necessarily

interdependent. That is, conclusions about which geographic areas were most affected depend partly on which particular time periods are examined. Similarly, conclusions about which time periods were most affected depend partly on which geographic areas are examined.

The analysis of the scope of the disturbance started with a preliminary examination of precinct-wide data, in order to develop tentative conclusions about the time periods most affected by the disturbance. The chronological account of the disturbance was used in conjunction with the preliminary findings of precinct-wide trend analyses to identify appropriate comparison periods for assessing the intensity and geographical extent of the disturbance. Comparisons between time periods were used to identify the "affected area." Then, analyses concentrating on events in just the affected area provided an undiluted view of the intensity, character, and temporal course of the disturbance.

In order to gauge the net impact of the disturbance, we compared activity during the disturbance to the normal volume, location, and characteristics of incidents occurring during other periods in the summer of 1991. The Crown Heights disturbance began with the accident on Monday evening, August 19th, reached its peak on Wednesday, and, according to most accounts, was effectively over by Thursday night. However, for the most part, it was not possible to determine unambiguously which particular incidents during or near that time period were actually disturbance-related and which incidents might have occurred even under normal circumstances, in the absence of the disturbance.

Staff initially attempted to determine which individual complaints in the 71st and 77th precincts were "disturbance-related" by reviewing copies of the full complaint reports, relating them to other information about the development and progress of the disturbance, and taking into account the types of crimes most and least likely to be disturbance-related. Although many complaints were indisputably disturbance-related, many others had no obvious link except that they occurred in the area apparently affected by the disturbance.

A certain level of criminal activity routinely occurs in the affected area, just as in other areas of the precincts. An assault or theft might have been committed by participants of the disturbance. The same reported offense might have been committed by an individual uninvolved with the collective violence, whose actions were encouraged or facilitated indirectly by the disturbance in progress, or there may have been no connection between the offense and the disturbance, either direct or indirect. The mere fact that an incident took place in the affected area is not compelling evidence that it was disturbance-related. Because of this uncertainty, there was substantial disagreement between

independent reviewers as to the identification of particular disturbance-related events, and an alternative approach was adopted.

The alternative approach was to rely upon aggregate comparisons between the week of the disturbance and a period reflecting a normal level of activity. This made it possible to gauge the net impact of the disturbance without having to identify particular disturbance-related events. The aggregate approach was also applicable to computerized *911* job records, which contained less information than complaint reports and were too numerous to review individually in detail.

The Disturbance Week

Days Redefined

A calendar day (midnight to midnight) is an awkward time period for the purpose of analyzing activity during the disturbance. Typically, events that made up the disturbance began in late afternoon or early evening, and continued through the early hours of the morning of the next day. Beginning a new daily count of criminal complaints at midnight would interrupt the natural sequence of events, and distort the analysis of ongoing activity by artificially distributing it over two consecutive different days. Unless otherwise noted, a "day" refers to the period from 8:00 a.m. on one calendar day through 7:59 a.m. on the next. For example, "Day 1,"—or "Monday"—of the disturbance week means the period from 8:00 a.m. on Monday, August 19th through 7:59 a.m. on Tuesday, August 20th. This boundary corresponds to a change in tour of duty for police personnel, and falls in a time period during which there is normally a lull in reported activity. Similarly, "Day 2" is "Tuesday," "Day 3" is "Wednesday," and "Day 4" is "Thursday."

Before the Accident

There is little indication of a build-up in activity prior to the accident that precipitated the disturbance. During the Monday through Friday of the week before, SPRINT activity was about average in the 77th Precinct and slightly below average in the 71st Precinct (Table B.4). In the 71st, the number of *911* jobs was a little higher than normal on the preceding "Saturday" (Aug. 17th-18th), but was lower again on "Sunday." In both precincts, the number of complaint reports filed was fairly steady throughout the prior week, decreased somewhat over the weekend, and did not increase appreciably until Tuesday of the disturbance week (Table B.5).

	Date	71 st Precinct	77 th Precinct	Total
Week Before Disturbance	M 12-13	163	259	422
	T 13-14	178	232	410
	W 14-15	168	286	454
	Th 15-16	190	245	435
	F 16-17	170	251	421
Week-End	Sa 17-18	212	260	472
	Su 18-19	195	209	404
Week of Disturbance	M 19-20	289	229	518
	T 20-21	343	282	625
	W 21-22	403	313	716
	Th 22-23	202	279	481
	F 23-24	198	258	456

	Date	71 st Precinct	77 th Precinct	Total
Week Before Disturbance	M 12-13	56	63	119
	T 13-14	67	57	124
	W 14-15	72	40	112
	Th 15-16	51	57	108
	F 16-17	55	66	121
Week-End	Sa 17-18	47	48	95
	Su 18-19	22	52	74
Week of Disturbance	M 19-20	33	32	65
	T 20-21	110	70	180
	W 21-22	178	68	246
	Th 22-23	63	67	130

The End of the Disturbance

In both precincts, the daily number of complaint reports filed returned to normal by Thursday (Aug. 22nd-23rd), and the daily number of 911 jobs returned to normal by Friday. A review of 911 jobs by calendar day (Figures B.1 and B.2) further suggests that the bulk of the 911 jobs attributed to Thursday night and early Friday morning actually occurred prior to midnight. There was no unusual amount of 911 activity on either Saturday or Sunday of the weekend following the disturbance.

Figure B.1. 911 Activity in the 71st Precinct by Day

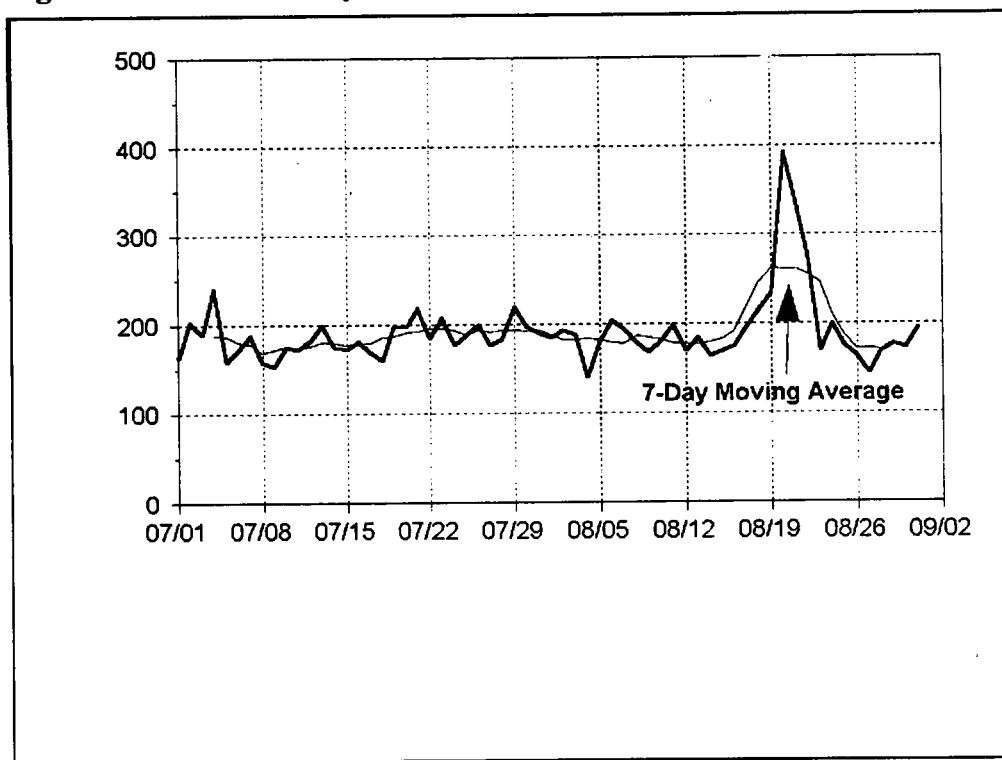
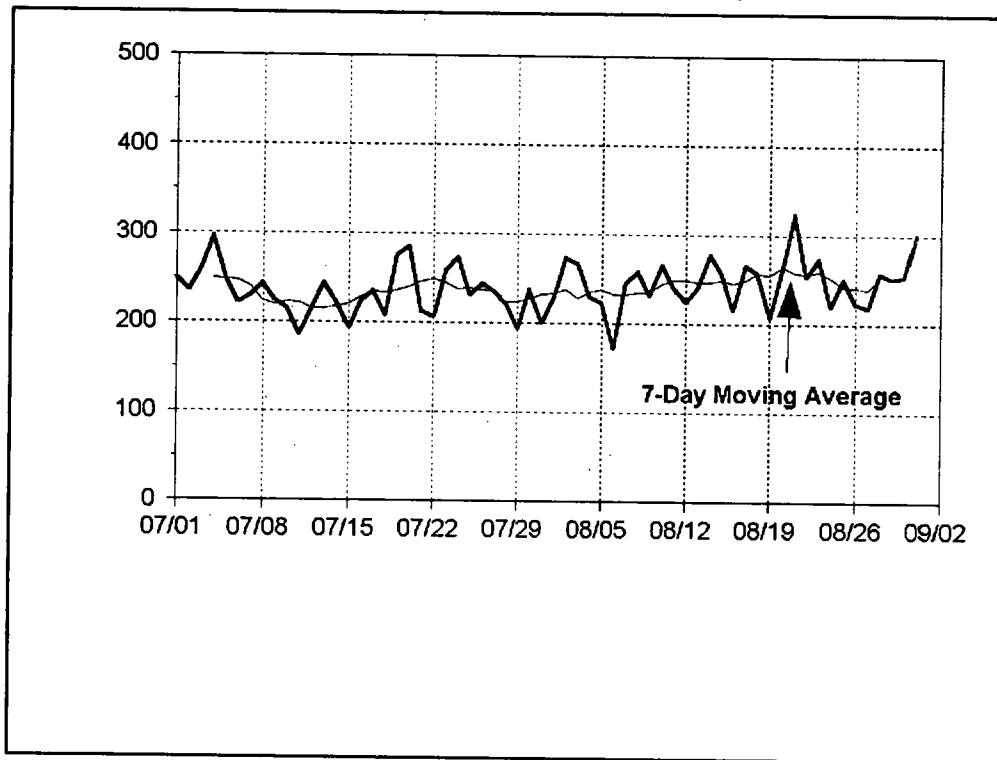


Figure B.2. 911 Activity in the 77th Precinct by Day



The Prior Week

The week prior to the disturbance was chosen as a comparison period for estimating the amount of disturbance-related activity during week of the disturbance. The prior week was close enough in time to minimize the risk that comparisons might be distorted by seasonal patterns or historical changes in the affected area. It was also a convenient choice for analysis, because it permitted display of short-term trends, from the beginning of the week before the disturbance, through the intervening weekend, and continuing through the end of the week of the disturbance.

The number of 911 jobs for the week prior to the disturbance was fairly typical of activity levels experienced throughout that summer. In the 71st Precinct, the number of 911 jobs during Monday through Friday of the week prior to the disturbance was only slightly below the average for Monday through Friday that summer, and the weekly variation was negligible compared to the sharp increase and corresponding decrease during the week of the disturbance (Figure B.3). In the 77th Precinct, the number of 911 jobs was about average in the week prior to the disturbance. The change during the week of the disturbance was less marked than in the 71st Precinct (Figure B.4), because disturbance-related activity occurred primarily later in the week and affected a much smaller fraction of the entire precinct.²

Figure B.3. 911 Activity in the 71st Precinct by Week

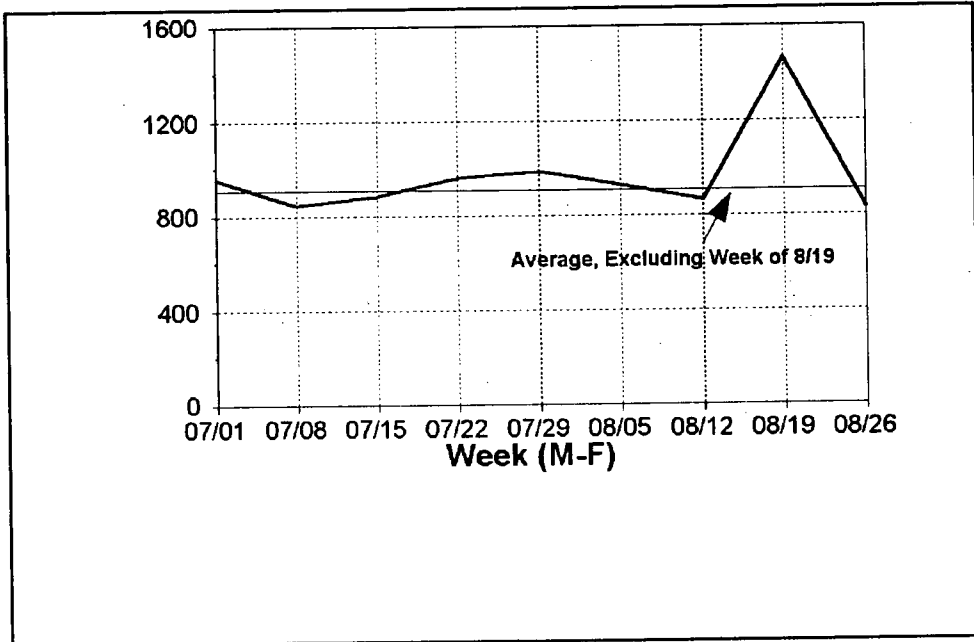
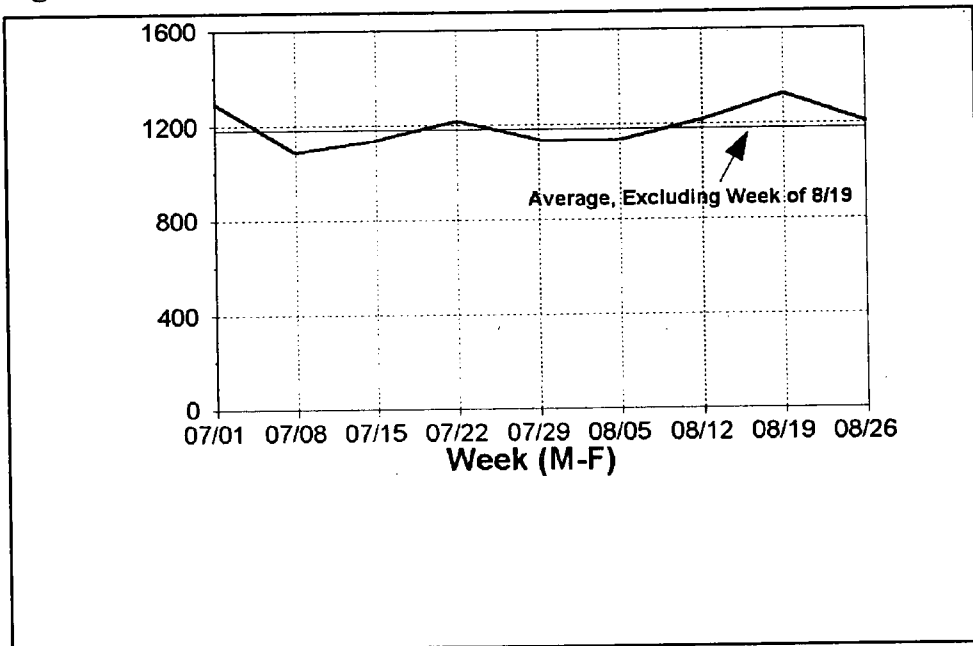


Figure B.4. 911 Activity in the 77th Precinct by Week



Precinct-Wide Comparisons Between the Disturbance Week and the Prior Week

The vast majority of the increased activity associated with the disturbance occurred within the four-day period beginning at 8:00 a.m. Monday, August 19th, and ending at 7:59 a.m. Friday, August 23rd. Using the definition of "day" adopted for these analyses, the "week of the disturbance" consists of the period from "Monday" (Aug. 19th-20th) through "Thursday" (Aug. 22nd-23rd). Many of the analyses in this report rely on comparisons between these four days and Monday through Thursday of the preceding week (that is, beginning at 8:00 a.m. Monday, August 12th, and ending at 7:59 a.m. Friday, August 16th).

The four-day totals for 911 jobs and complaint reports were substantially higher during the week of the disturbance than during the previous week, especially in the 71st precinct, where the disturbance was centered (see Table B.6). In the 71st Precinct, 911 jobs were up 77 percent, and complaint reports were up ninety-four percent. The 77th Precinct experienced a small rise in 911 jobs and a moderate increase in complaint reports.

Type of Event	4 Days of Prior Week	4 Days of Disturbance Week	Percent Change
911 Jobs			
71 st Precinct	699	1,237	72.0%
77 th Precinct	1,022	1,103	7.9%
Complaint Reports			
71 st Precinct	189	367	94.2%
77 th Precinct	217	289	33.2%
Arrests			
71 st Precinct	60	98	63.3%
77 th Precinct	36	113	211.1%

These precinct-wide comparisons dilute the measured impact of the disturbance, because they include areas not actually affected by the disturbance. This is especially true for the 77th Precinct, only a small portion of which was involved in the disturbance. In order not to understate the intensity of the disturbance, it was necessary to focus on the affected area.

The Geographic Area Affected by the Disturbance

The disturbance chronology and other anecdotal information were considered in conjunction with a visual inspection of maps depicting the geographical clustering of reported incidents in order to define several different areas that appeared to have been affected by the disturbance, as well as other areas within the 71st and 77th Precincts that did not appear to have been affected. The areas tentatively identified in this way were outlined on a map. Geographic Information System (GIS) techniques were used to identify events occurring in each area during the week of the disturbance and during the comparable four-day time period in the prior week. Statistical tests were performed for each area to determine whether the numbers of 911 jobs and complaint reports in the disturbance week were significantly greater than the numbers in the previous week.

The areas tested for inclusion in the “affected area” are indicated on the maps in Figures 4.1 and 4.2 of the chapter on the scope and nature of the disturbance. Figure 4.1 displays the locations associated with 911 jobs and complaints during the week preceding the disturbances, and Figure 4.2 displays the locations associated with 911 jobs and complaints during the disturbance week. The boundaries of the areas tested were defined so that events on both sides of the perimeter streets were included within the area inside the perimeter. Five areas were tested:

The initial deployment area. This is the area most obviously affected by the disturbance. Comparison of Figures 4.1 and 4.2 shows an obvious increase between the prior week and the week of the disturbance in the density of reported activity within this area. The area includes the location of the automobile accident that precipitated the disturbance, most of the routes taken by organized marches and roving bands, and most of the sites where large crowds gathered. It is bounded by Eastern Parkway on the north, Brooklyn Avenue on the west, Empire Boulevard on the south, and Utica Avenue on the east.

A two-block border. Because there was reason to believe the disturbance extended outside the initial deployment area, and because the police ultimately expanded their deployment, a two-block border was defined around the initial deployment area. This border is bounded by St. Johns Place on the north, Nostrand Avenue on the west, East New York Avenue on the south, and Rochester Avenue on the east.

Northeast area. During Wednesday and Thursday of the disturbance week, the violence spread to the 77th Precinct, into an area to the northeast

of the initial deployment area. Dispatcher's logs show a number of calls requiring police response as far north as Sterling Place. Inspection of the maps in Figures 4.1 and 4.2 suggests there may have been disturbance-related activity as far north as Park Place and as far east as Buffalo Avenue. The northeast area tested for inclusion in the affected area extended approximately one block further north and east, bounded by Prospect Place on the north, Troy Avenue on the west, St. Johns Place on the South, and Ralph Avenue on the east.

Northwest area. To the west of Troy Avenue, there was little reason to believe that the impact of the disturbance extended north of St. Johns Place. To test this impression, a fourth area was defined, bounded by Park Place on the north, Nostrand Avenue on the west, St. Johns Place on the south, and Troy Avenue on the east.

Outer border. In order to confirm the impression that there was no significant impact outside the areas defined above, an outer area was defined bordering the aggregate of the first four areas on the north, west, and south. (Comparable data were not obtained for the area to the east, because that area falls outside the 71st and 77th Precincts.)

Event Rates per Average Block

Geographic Information System (GIS) techniques were used to determine the number of 911 jobs and complaint reports in each area, and to estimate the size of each area in square meters. From the maps, the number of blocks was counted in each of three areas: the initial deployment area, the northeast area, and the northwest area. Blocks in the two-block border around the original deployment area and in the outer border were irregular in size and shape. Therefore, the numbers of "average blocks" in those areas were estimated by dividing the total number of square meters in each area by an estimate of the average number of square meters per block. Event rates were then calculated by dividing the number of events (911 jobs or complaint reports) by the estimated number of average blocks. The results of these calculations are displayed in Table B.7.

The initial deployment area, the two-block border around the initial deployment area, and the northeast area all experienced statistically significant increases in activity between the Monday and Thursday of the week prior to the disturbance and the comparable four days of the disturbance week. In the initial deployment area, 911 jobs per block and complaints per block quadrupled, and both indicators nearly doubled in the two-block border around the initial

deployment area. In the northeast area, there was no change in average complaints per block, but 911 jobs per block increased from 7.0 during the prior week to 11.4 during the disturbance week.

Neither the northwest area nor the outer border area experienced any significant increases in reported activity. In the northwest area, 911 jobs per block declined slightly, while complaints per block increased slightly. (The latter increase was not statistically significant.) The outer border area and the remainder of both precincts experienced moderate declines in both rates.

These analyses confirm that the area affected by the disturbance was considerably larger than the area initially saturated and cordoned off by the police. For the purposes of our analyses the "affected area" was defined to include the initial deployment area, the two-block border around the initial deployment area, and the northeast area described above. The boundaries of the northeast area were somewhat arbitrary, but certainly included most of the disturbance-related activity experienced in the 77th Precinct outside the "two-block border."

Polygon	Estimated Area (Sq. Meters)	Est. # of Average Blocks	Estimated 911 Jobs Per Average Block			Estimated Complaints Per Average Block		
			Week Before	Disturb. Week	Signif. Increase?	Week Before	Disturb. Week	Signif. Increase?
1 Initial Deployment Area	838,617	30	6.2	22.6	YES	1.7	9.1	YES
2 -Block Border Around Original Deployment Area	1,176,786	45	4.4	8.9	YES	1.4	2.1	YES
3 Northeast Area	492,057	19	7.0	11.4	YES	2.0	2.0	NO
4 Northwest Area	225,858	10	7.8	7.0	NO	.9	1.5	NO
5 Outer Border	1,138,090	43	5.9	4.8	NO	1.7	.9	NO
Affected Area (Polygons 1+2+3)	2,507,460	94	5.5	13.7	YES	1.6	4.3	YES
2 Precincts Minus Affected Area	5,939,257	226	5.3	4.6	NO	1.4	.9	NO

Clearly, not all events in the affected area were disturbance-related, and it is not necessarily the case that all disturbance-related events were included in the defined area. However, the boundaries of the affected area, as defined by this analysis, did encompass the areas most strongly affected by the disturbance, and did exclude large areas in both precincts that were not significantly affected.

Analysis of Daily Clusters

On each day of the disturbance, the incidents identified in *911* jobs and complaints tended to be concentrated at a limited number of locations associated with the accident and other significant events, as well as along the paths of roving bands. Fifteen clusters of *911* and complaint activity were identified throughout the affected area during the four days of the disturbance. These clusters were defined and validated as follows:

- geographic concentrations of activity were identified through a visual inspection of the daily maps of *911* and complaint activity (see Figures 4.3 through 4.6);
- Geographic Information System (GIS) techniques were used to outline the boundaries of each cluster and identify the specific complaint reports and *911* jobs included in each cluster;
- the time and place of occurrences were examined for each complaint report and *911* job within each cluster;
- the times and locations of clusters were compared to the times and locations of several flashpoints identified from the account of significant events during the disturbance; and
- a statistical analysis was conducted comparing the number of *911* jobs contained in the fifteen day-specific clusters during the week of the disturbance to the average daily number of *911* jobs at the corresponding locations during the prior week.

The process by which the clusters were defined was subjective; they were initially identified through a simple visual inspection of the daily maps of reported activity. However, the validity of the resulting clusters was confirmed in two ways. First, the clusters were found to correspond closely in both timing and location to important events in the affected area, such as the demonstrations at the accident site, other marches and demonstrations, public appearances by city officials, and the paths reportedly taken by roving bands. Second, statistical analyses confirmed that the clusters contained mostly disturbance-related events,

and the clusters accounted for a majority of the disturbance-related activity in the affected area. There were a total of 573 *911* jobs contained in the fifteen day-specific clusters during the disturbance week. The average daily number of *911* jobs totalled across these same areas during the prior week was 59.75. The difference, approximately 513, is an estimate of the number of disturbance-related jobs occurring within the clusters. Thus, it was estimated that approximately ninety percent of the 573 jobs in the clusters were disturbance-related, which accounted for approximately two-thirds of the total estimated number of disturbance-related jobs in the affected area.

METHODS USED IN ANALYZING *911* RESPONSE

Data Sources

The analysis of the *911* response relied on data from the SPRINT system (Special Police Radio Inquiry Network), and from audio tapes of actual *911* calls.

The SPRINT system provides computerized data describing, among other things, the job assignment number; the incident code ("10-code") assigned to the job and the associated priority level; the time each *911* call originated; the times jobs were assigned and disposed; the police resource assigned to the call; and the nature of the disposition. A *911 call* is distinguished from a *911 job* -- or SPRINT *job* -- in that, depending on the nature of the call, a job may cover multiple calls.

The *911* audio tapes contain the actual content of the *911* calls which subsequently were assigned as *911* jobs. The *911* audio tapes provided a rich source of qualitative data supplementing the computerized information from the SPRINT database. The tapes were selected and produced by the NYPD Communications Division pursuant to a court order obtained by the plaintiffs in the federal law suit. The tapes cover the period between 8:21 p.m. August 19, 1991 and 10:51 p.m. August 20, 1991. Master tapes containing additional *911* calls of requested *911* jobs were inadvertently erased by the NYPD.³

Samples

The analysis relied on four samples of *911* jobs, which were defined as follows:

Prior Week. The sample included all non-duplicate *911* jobs in the 71st and 77th precincts, exclusive of ambulance, fire and alarm calls, in which calls originated between 8:00 a.m. on August 12, 1991 and 7:59 a.m. on August 16, 1991.

Disturbance Week. The sample included all non-duplicate *911* jobs in the 71st and 77th precincts, exclusive of ambulance, fire, and alarm calls, in which calls originated between 8:00 a.m. on August 19, 1991 and 7:59 a.m. on August 23, 1991.

Affected Area. The sample included all non-duplicate *911* jobs, exclusive of ambulance, fire, and alarm calls, in which calls originated between 8:00 a.m. on August 19, 1991 and 7:59 a.m. on August 23, 1991, and which reported an incident occurring within the "affected" area as defined in the preceding section of this appendix on the scope of the disturbance.

Deployment Area. The sample includes all non-duplicate *911* jobs, exclusive of ambulance, fire and alarm calls, that originated between 8:00 a.m. on August 19, 1991 and 7:59 a.m. on August 23, 1991, and that report an incident occurring within the initial police deployment area.

The Deployment Area cases represent a subset of the Affected Area cases, and both are subsets of the Disturbance Week sample.

Exclusion of Duplicate Jobs

Duplicate jobs were excluded from the analysis of the *911* response. Clearly, some *911* jobs linked as duplicates were actually separate incidents. Furthermore, duplicates represented a larger proportion of the calls during the disturbance week (as compared to the prior week). Compared to single jobs, duplicates were also more likely to have no resource assignment.

Unfortunately, it was virtually impossible to analyze the processing and disposition of *911* jobs involving duplicate calls. The lead jobs in some strings of duplicates showed no time of assignment or time of disposition, while the duplicate job indicated both. Other cases within duplicate strings showed no assignments or dispositions. Still others showed assignment times and dispositions for two or more cases in a string of duplicates. As a result, it was

impossible to determine which jobs in a string of duplicates had no police response and which were handled by a response to another call in the chain.

Despite these disadvantages, excluding all jobs associated with a duplicate was necessary to achieve definitive results. Excluding all duplicate jobs resulted in an underestimate of the nonresponse rate to 911 jobs during the disturbance period.

Exclusion of Fire, Ambulance, and Select Alarm Cases

Fire, ambulance, and non-bank alarm cases were excluded from analysis because they did not (automatically) require responses by the police. The police respond to fire calls if requested by the fire department or if the fire department refuses to enter the area. Ambulance calls are automatically assigned a police response only if they involve burns, cardiac problems, heavy bleeding, severed limbs, unconscious persons, persons in water, or emotionally disturbed individuals. Also, at the time of the Crown Heights disturbance, NYPD officers were not automatically dispatched for calls involving automated burglary alarms. The only alarm calls automatically requiring a police response were those involving banks; non-bank alarms were filtered through a review unit which determined, on a case by case basis, whether a patrol unit should respond.⁴

Impact of Exclusions on Sample Size

The exclusions of all 911 jobs involving duplicates and those incidents coded as fire, alarm, or ambulance jobs resulted in a significant reduction in the total number of cases analyzed with each sample, particularly within the Deployment Area. Table B.8 shows the percentage of priority 2, 3, and 5 jobs and the percentages of "property,"⁵ "personal,"⁶ "disturbance,"⁷ and "possible crime"⁸ jobs excluded from the analyses, because they were linked to duplicate jobs, as well as all fire, ambulance, and non-bank alarm jobs, which were also excluded.

The Deployment Area sample was most affected by the exclusions, with more than half of the jobs excluded within most of the categories of offenses appearing in the table. The significant decrease in the Deployment Area sample, as well as the Disturbance Week and Affected Area samples, was due primarily to the exclusion of duplicates. Eight percent of the 911 jobs within the Prior Week sample and forty-three percent of those within the Deployment Area sample were duplicates to one or more jobs.

Sprint Jobs Removed	Precincts 71 & 77		Selected Areas	
	Prior Week Percent	Disturbance Week Percent	Affected Area Percent	Deployment Area Percent
Priority Level				
2	25	36	43	54
3	37	44	49	53
5	13	33	46	60
Type of Incident				
Property	25	38	59	68
Personal	8	24	39	51
Disturbance	6	28	42	55
Possible Crime	9	15	32	39

^a Includes duplicate jobs, and fire, ambulance and alarm jobs.

After the exclusion of fire, ambulance, and alarm jobs and the exclusion of all cases involving a duplicate call, the four samples appear quite similar in terms of priority levels and types of reported incidents. Tables B.9 and B.10 show the distribution of 911 jobs by priority level and by incident type across each of the four samples. Priority 1 calls involve an officer in need of assistance and comprise a greater portion of the disturbance week samples. The Deployment Area sample also includes a higher percentage of cases involving "disturbance" incidents, and a lower portion of "property" and "personal" incidents, than does the Prior Week sample.

Priority Level of Call ^a	Precincts 71 & 77				Selected Areas			
	Prior Week		Disturbance Week		Affected Area		Deployment Area	
	Num.	Pct.	Num.	Pct. ^b	Num.	Pct.	Num.	Pct. ^b
1	27	2.0	96	6.1	76	10.1	45	13.4
2	282	21.0	322	20.5	161	21.4	62	18.5
3	313	23.3	325	20.7	135	17.9	55	16.4
4	77	5.7	101	6.4	49	6.5	34	10.1
5	449	33.4	465	29.7	215	28.5	92	27.5
6	---	---	1	0.1	---	---	---	---
7	169	14.6	257	16.4	118	15.6	47	14.0
Total	1,317	100.0	1,567	100.0	754	100.0	335	100.0

^a Excludes Fire Department and ambulance calls, nonbank commercial robbery calls, and calls in which the priority level was missing.
^b Percentages do not sum to one hundred due to rounding.

Type of Incident Reported ^a	Precincts 71 & 77				Selected Areas			
	Prior Week		Disturbance Week		Affected Area		Deployment Area	
	Num.	Pct.	Num.	Pct. ^b	Num.	Pct.	Num.	Pct. ^b
Personal	240	19.0	257	18.1	125	18.9	42	14.5
Property	229	18.2	279	19.7	117	17.6	39	13.5
Disturbance	243	19.3	265	18.7	134	20.2	68	23.5
Assist Police Officer	19	1.5	60	4.2	49	7.4	34	11.8
Possible Crime	320	25.4	315	22.2	123	18.6	51	17.6
Other	210	16.7	243	17.1	115	17.3	55	19.0
Total	1,261	100.0	1,419	100.0	663	100.0	289	100.0

^a Excludes Fire Department and ambulance calls, alarms, and calls in which the incident type was missing.
^b Percentages do not sum to one hundred due to rounding.

ENDNOTES

1. cf. U.S. Department of Justice, Federal Bureau of Investigation. (October, 1992) *Prevention and Control of Civil Disturbance: Time for Review*, p. 65.
2. Unlike most of the other time series presented in this report, Figures B.3 and B.4 are based on calendar days (midnight to midnight) rather than tour-of-duty days (8 a.m. to 8 a.m.).
3. On November 15, 1991 the federal court issued a temporary restraining order directing the NYPD Document Production Unit of the Legal Bureau to preserve the 911 master tapes made between August 19 and September 30, 1991 in the 71st and 77th Precincts, and any applicable precinct relating to the Crown Heights disturbance. The unit supervisor stated, in a sworn affidavit produced in response to the federal law suit (*Estate of Yankel Rosenbaum, et al. v. The City of New York*, 92 Civ. 5414), that the order was forwarded to the NYPD Communications Division for compliance. Three weeks after forwarding the order, the supervisor stated that he was made aware that the Communications Division had not received a copy of that order. By that time, fifty of the 215 tapes identified for preservation had been erased pursuant to routine procedures.
4. NYPD, *Communications Division 911 Operator's Guide*, 1992. Procedure 516.
5. Offenses classified as property include burglary, larceny, and criminal mischief.
6. Offenses classified as personal include robbery, assault, and family disputes.
7. Offenses classified as disturbance include disorderly persons/groups/noise, roving bands and disputes, other than those classified as family disputes.
8. Offenses classified as possible crime are those incident coded as 10-10's (possible crime), which include reports of shots being fired and the presence of suspicious persons.

Appendix C

A Chronology of Events

C-1

- ▶ Monday, August 19, 1991
- ▶ Tuesday, August 20, 1991
- ▶ Wednesday, August 21, 1991
- ▶ Thursday, August 22, 1991

A CHRONOLOGY OF EVENTS

MONDAY, AUGUST 19, 1991

- 8:20 p.m. A car, part of a three-car motorcade carrying Rabbi Menachem Schneerson, collides with another vehicle at the intersection of President Street and Utica Avenue. It veers out of control and strikes two black children, Gavin and Angela Cato.
- 8:22 p.m. Police officers are dispatched to the accident. The City's Emergency Medical Service (EMS) sends an ambulance.
- 8:25 p.m. A Hatzolah ambulance arrives followed by police officers and an EMS ambulance. Members of the crowd are beating the car's occupants. Officers bring three occupants of the car to the Hatzolah ambulance and order it to leave the scene.
- 8:25 - 8:40 p.m. Two more EMS ambulances arrive. The injured children are taken to Kings County Hospital in separate EMS ambulances. Gavin Cato is pronounced dead shortly after his arrival at the hospital.
- 9:00 p.m. The Police Department's Accident Investigation Squad arrives. People begin to vent their anger over rumors that the Hatzolah ambulance crew ignored the children to help the occupants of the car that struck him.
- Captain Vincent Kennedy of the 71st Precinct reaches the scene, then returns to the Precinct to coordinate the police response. Kennedy orders three sergeants and thirty officers to the scene. Brooklyn South Deputy Captain Gerald McNamara arrives on the scene. He is injured and returns to the Precinct.
- 9:07 p.m. 911 callers first report a riot at the scene as members of the growing crowd scream and throw objects at cars, houses, and people.

-
- 9:30 - 9:45 p.m. Captain McNamara telephones Deputy Chief Kenneth Gussman who, in turn, calls Assistant Chief Thomas Gallagher. Gussman orders the Brooklyn South Task Force mobilized and orders thirty officers covering a concert at Wingate Field to report to the 71st Precinct after the concert.
- 9:45 - 10:30 p.m. Three police officers are assaulted.
- 10:00 p.m. The media begins to cover the events in Crown Heights.
- 10:00 - 10:30 p.m. Seventy officers still at the concert are ordered to report to the 71st Precinct when it ends. At the suggestion of Deputy Chief James McCabe, Kennedy requests mobilization of the Manhattan South, Brooklyn North, and Queens Task Forces.
- 10:25 p.m. Herbert Block, the Mayor's Assistant for Constituency Services and liaison to the Jewish Community, notifies Mayor David N. Dinkins, Deputy Mayor William Lynch and other staff about the disturbance. The City Hall Police Desk notifies Michael Kharfen, the Director of the Mayor's Community Assistance Unit, who sends staff to Crown Heights.
- 10:30 p.m. Robert Brennan, a member of City Hall's Community Assistance Unit is sent to Crown Heights, and conveys his observations to the Police Desk.
- 11:00 - 11:15 p.m. Some of the people at President and Utica stream down President Street, shattering windows and damaging cars. Roving bands splinter off, destroying property and starting fires.
- 11:00 - 11:30 p.m. Gussman orders the Brooklyn South Third Platoon mobilized after speaking with Acting Chief of Department Joseph Borrelli several times.
- 11:15 - 11:45 p.m. A Jewish man is assaulted by approximately fifteen black males. Another is beaten and robbed. Yankel Rosenbaum, a Hasidic man, is assaulted by ten to fifteen black youths and stabbed four times. Lemrick Nelson, age 16, is apprehended and brought back to the scene. A 15-year-old

is also apprehended but later released. Yankel Rosenbaum is taken to Kings County Hospital.

Rabbi Joseph Spielman calls Herbert Block, the Mayor's Assistant for Constituent Services, to advise him that small groups are rampaging through the streets committing acts of violence against Jews and their property. He demands adequate police protection.

11:35 p.m. Brennan calls City Hall and advises the Police Desk about the roving bands and the stabbing.

TUESDAY, AUGUST 20, 1991

12:00 - 12:35 a.m. Roving bands move through Crown Heights setting fire to cars and breaking windows in cars, homes, and businesses.

12:30 a.m. Mayor Dinkins is briefed at Kings County Hospital by Police Commissioner Lee P. Brown and Deputy Mayor Milton Mollen. They are told that Yankel Rosenbaum is expected to recover.

1:00 a.m. Mayor Dinkins, Lynch, Mollen, and Brown go to the 71st Precinct. Chief Borrelli briefs Commissioner Brown. Mayor Dinkins meets with Assembly members and others to discuss the accident and the rumors contributing to rising tensions. The Mayor says he wants a City Hall headquarters set up in Crown Heights at P.S. 167.

1:00 - 2:40 a.m. The police contingent is fully deployed.

2:00 a.m. The Mayor leaves the 71st Precinct and returns to Gracie Mansion.

2:00 a.m. Between 75 and 250 black youths occupy Yeshiva Chanock Lenaar's courtyard and burn its van as 150 Hasidim gather across the street. A line of police officers separates the groups.

2:30 a.m. Yankel Rosenbaum dies.

-
- 3:30 - 4:00 a.m. Youths in the Yeshiva courtyard begin throwing bottles, injuring several police officers. A police car burns a block away. At about 4:00 a.m., the youths in the courtyard leave.
- Early Tuesday Chief of Patrol Mario A. Selvaggi and Morning Deputy Chief Gussman decide to assign approximately 1,000 police officers to the disturbance on Tuesday.
- The Mayor and his staff convene at City Hall to sort through information and devise a strategy, focusing on dispelling rumors.
- 9:00 a.m. Richard Green arrives at P.S. 167. Fax and telephone lines are installed.
- Later Tuesday Morning Commissioner Brown and other police officials brief Mayor Dinkins at City Hall.
- 11:00 a.m. Deputy Mayor Lynch convenes a community meeting at P.S. 167. It lasts until 3:00 p.m. Many black community members repeatedly complain that the driver of the vehicle that struck Gavin Cato has not been arrested.
- 12:00 - 1:00 p.m. A crowd forms at President Street and Utica Avenue.
- 1:45 p.m. Mayor Dinkins conducts a press conference with Commissioner Brown and Chief Borrelli at City Hall. He acknowledges that the situation is very tense and describes his actions to restore calm.
- Tuesday Afternoon The Mayor remains informed through briefings by Commissioner Brown and others. He is told of a Tuesday afternoon demonstration and of sporadic disturbances, including confrontations between groups of Hasidic and black youths.
- Representatives of Crown Heights Jewish organizations gather, receive reports of events in the neighborhood, and organize the Crown Heights Emergency Committee. The Committee repeatedly calls City and State officials to tell them about the situation in Crown Heights and to ask for protection.

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- 2:00 p.m. The Reverend Albert Sharpton addresses the group of about 150 people at President Street and Utica Avenue.
- Fifty or more Yeshiva students demonstrate in front of 770 Eastern Parkway, World Lubavitcher Headquarters, demanding increased police protection.
- Rabbi Abba Paltiel "begs" the Precinct Commander for better police presence.
- 2:30 - 3:30 p.m. Some 250 black demonstrators at the accident site march toward the 71st Precinct. Some marchers shout racial epithets and throw rocks and bottles at the Jewish demonstrators and the police. The Jewish demonstrators return the volley, but are held back by police.
- Police at the scene broadcast a 10-13 call for assistance. Two officers are injured by the crowd.
- 4:05 - 4:20 p.m. Marchers on Kingston Avenue shout and throw rocks at cars.
- Reverends Daughtry and Sharpton, Alton Maddox, Sonny Carson and Colin Moore meet with Chief Gallagher at the Precinct. When their demands are refused, they stage a demonstration in front of the Precinct. Carson appeals to the crowd to take action.
- The crowd at the Precinct marches back to President and Utica. As they pass the Hasidic demonstrators at Kingston Avenue, violence erupts. Twelve police officers and a civilian are injured.
- 5:00 p.m. The crowd at President Street and Utica Avenue becomes increasingly violent. Chief Gallagher orders the police to withdraw to the building line for their safety.
- 5:10 p.m. Gonzalez calls the City Hall Police Desk to report the confrontation at Kingston Avenue. He follows up forty minutes later with another call.
- 5:00 - 5:20 p.m. Rocks and bottles are hurled through windows on President from Schenectady to Rochester Avenues. The 911 system receives more than twenty phone calls urgently demanding

- police protection. A young Jewish woman returning home with three children is surrounded and threatened by a group of youths who block her way. After entering her home, bricks and bottles shatter her windows. Calling 911 the first time at 5:05 p.m., she is told that police are in the vicinity and will respond. They do not come despite six calls.
- 6:25 p.m. An officer calls 911 to request additional police. A 10-13 is broadcast.
- 6:30 p.m. Isaac Bitton and his son are savagely beaten on Schenectady Avenue.
- 7:00 - 8:00 p.m. There are at least 350 rioters in the area of President Street and Utica Avenue. The police come under attack, but do not respond. They stand in a line as the rocks and bottles are thrown. Officers are ordered to "retreat."
- Brennan calls Deputy Mayor Lynch at City Hall, noting the police retreat, and describing the situation as out of control. Brennan emphasizes the seriousness of the situation.
- 7:50 - Midnight As the disturbance spreads, 911 receives ninety-four calls asking for protection from 7:00 p.m. to midnight. Many people complain that they were assaulted or harassed while the police stood by doing nothing. A cab driver is attacked. Cars are damaged, with police vehicles also targeted.
- A reporter is assaulted by a group of blacks. The mob vandalizes and loots local stores. Storekeepers complain the police watch the looters and do nothing to stop them.
- Midnight A heavy rain clears the streets of demonstrators by midnight. Twelve arrests are made: six for assaulting police officers, four for looting, and two for refusing to disperse.
- The news media report that the situation is a "mess," that the violence did not escalate because the police withdrew, that the police used great restraint in separating blacks from Hasidim and only pulled back after they were pummeled with bottles.

WEDNESDAY, AUGUST 21, 1991

- 6:00 a.m. After meeting with his advisors, the Mayor decides to go to P.S. 167 to meet with community members, visit the Cato residence, and then speak to leaders of the Jewish community.
- 8:00 a.m. Funeral services are held for Yankel Rosenbaum at the Lubavitcher Headquarters. An estimated 1,000 to 2,000 Hasidim attend. The Hasidim make speeches outside after prayers are said. At the service, Herbert Block again receives complaints from the Hasidic community, which he conveys to Captain Kennedy at the 71st Precinct.
- Prior to 1:00 p.m. Commissioner Brown briefs the Mayor on the situation in Crown Heights before his 1:00 p.m. press conference.
- Reverend Al Sharpton and Attorney Alton Maddox hold a press conference on the steps of City Hall. They demand the arrest of the Hasidic man whose car struck Gavin Cato and threaten to make a citizen's arrest unless the police arrest him first.
- 2:00 p.m. The Crown Heights Emergency Committee meets. Also in attendance are Block, Deputy Mayor Mollen, Commissioner Brown, Chiefs Borrelli and Selvaggi, and Assistant Chief Gallagher. Fears of more violence are expressed, and demands for increased protection are made. Mollen and Brown assure the gathering the City will restore peace. Block advises the Mayor after the meeting.
- After The Meeting Commissioner Brown goes to the 71st Precinct where he meets with religious and community leaders and elected officials.
- 3:00 - 5:00 p.m. 300 to 400 demonstrators gather at President Street and Utica Avenue and march toward the Lubavitcher Headquarters, where violence erupts at the Headquarters. Then, the marchers continue east on Eastern Parkway.
- 4:00 p.m. Mollen and Block meet with the Jewish Community Relations Council. Rabbi Paltiel tells Mollen that police

are not intervening and requests the National Guard. Mollen says the City will manage the situation.

5:11 p.m. Commissioner Brown arrives at P.S. 167 at Eastern Parkway and Schenectady Avenue to attend Mayor Dinkins visit. The marchers arrive there at that same moment. A group breaks away and converges on Brown's car. A 10-13 for "Car One" (the Commissioner's car) is broadcast and additional police arrive.

As police arrive to restore order, the rioters go elsewhere.

5:30 p.m. Mayor Dinkins arrives at P.S. 167 and meets with about fifty black teenagers.

500 to 600 demonstrators are on a rampage at Utica Avenue from Eastern Parkway to President Street. Police officers are injured by bottles and bricks.

5:35 p.m. The second platoon is mobilized to stabilize the situation. The police form a square from building line to building line, facing outward with their backs to each other. Again, the rioters move elsewhere.

7:10 p.m. The Mayor leaves P.S. 167 to pay his respects to the Cato family. As he tries to address the crowd, bottles are thrown in his direction.

Commissioner Brown goes to the 71st Precinct where he meets with First Deputy Police Commissioner Raymond W. Kelly and Chief Selvaggi. Commissioner Brown decides tactical changes are necessary and puts his First Deputy in charge of developing a new strategy.

7:00 p.m. -
1:00 a.m. Roving bands travel through the 71st Precinct. Violence spills over into the neighboring 77th Precinct. Many crimes, including violent felonies, are reported.

8:30 p.m. The Mayor leaves the Cato residence. He goes to 824 Eastern Parkway, where he meets with the Crown Heights Emergency Committee. Members voice their concern that the situation is out of control and that police are not protecting them. They request the National Guard. The

Mayor denies that police officers were instructed not to make arrests.

- 9:45 p.m. A roof-top sniper wounds eight police officers.
- 10:00 p.m. A large police detail commanded by Captain Joseph Esposito is brought to President Street and Utica Avenue. They march south on Utica, clearing the street of demonstrators. Police Officers are dropped off at each intersection to prevent further rioting. A crowd at Montgomery Street refuses to disperse. Arrests are made.
- 11:00 p.m. Reporter Mary Civiello interviews the Mayor live from Gracie Mansion. The Mayor emphasizes that violence and lawlessness will not be tolerated.
- 11:30 p.m. Mayor Dinkins is told about the eight officers who were shot. He and Deputy Mayor Mollen visit the injured officers at Kings County Hospital. At the hospital, Mayor Dinkins meets with Commissioner Brown and Deputy Mayors Mollen, Lynch, and Steisel. The Mayor emphasizes that the police should employ every appropriate tactic to control the riot and determine what further steps are needed. The police are already planning a new strategy.

THURSDAY, AUGUST 22, 1991

- Shortly after
Midnight More than 100 Hasidim pour onto the street at Albany Avenue and Empire Boulevard after a Hasidic man is struck by a rock. A large crowd of Hasidim and blacks face off.
- 2:00 a.m. A Patrolman's Benevolent Association delegate tells Captain William Kenny and Inspector Wilbur Chapman the police are "disgusted" at being "handcuffed." He threatens a job action, saying the Department's passive stance is putting officers in jeopardy. Inspector Chapman assures him that the situation will change.
- 3:00 a.m. Commissioner Brown returns to Police Headquarters for a meeting on police tactics.

-
- 7:00 a.m. At a strategy meeting chaired by First Deputy Commissioner Kelly, a new strategy is finalized.
- 10:00 a.m. Commissioner Brown approves the new strategy. Chief of Patrol Selvaggi assembles Chief Gallagher and his new operational commanders in the 67th Precinct. Attendees are told to "do whatever is necessary" to take back the streets.
- 1:00 p.m. Commissioner Brown announces the Department's arrest policy at a press conference. The police will make arrests when crowds become unruly. They will not wait for assaults or the destruction of property.
- 2:30 p.m. An anonymous male caller tells a 911 operator there will be firebombings later in the day on Utica Avenue and Empire Boulevard.
- 3:00 p.m. People assemble at the corner of President Street and Utica Avenue while riot-equipped police assemble at the location. The situation remains calm although the crowd continues to grow throughout the afternoon.
- 5:00 - 6:00 p.m. The police disperse several roving bands.
- 5:30 p.m. An anonymous caller tells the Police Department Community Affairs Office that the Jewish Defense League is roaming the precinct with explosive devices.
- 6:00 p.m. Almost 250 officers are at the President Street and Utica Avenue. It remains relatively peaceful for the first time in four days.
- 7:00 p.m. 200 to 300 young blacks march to the Lubavitcher Headquarters. The marchers shout anti-semitic slurs for about twenty minutes, but do not throw rocks and bottles.
- 8:00 p.m. Elements of the group travel north into the 77th Precinct and throw rocks and bottles. The police respond quickly, making arrests.
- 8:30 p.m. A sergeant stops a car with four Hasidic men in it. He finds a pellet gun, knives, and homemade incendiary devices. The four men are arrested.

- 11:00 p.m. An officer is injured when two molotov cocktails are thrown from a building. Upon investigation, police find more molotov cocktails, empty bottles, and bricks.
- 11:40 p.m. A patrol car is fired upon.
- 11:30 p.m. -
12:30 a.m. 150 people converge on the Lubavitcher Headquarters. Mounted police suppress the disturbance. Arrests are made.

Appendix D
Mayor Dinkins' Statement



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

**STATEMENT OF MAYOR DAVID N. DINKINS
REGARDING CROWN HEIGHTS DISTURBANCES**

On Monday, August 19, 1991 at approximately 10:25 p.m., I received a telephone call at Gracie Mansion from New York City police security. I was notified that a car driven by a Hasidic man had accidentally struck and killed seven year old Gavin Cato, and seriously injured his cousin Angela, while they played on the sidewalk at the corner of Utica Avenue and President Street in Crown Heights, Brooklyn at approximately 8:22 p.m. I was also informed that a hostile crowd had gathered at the scene of the accident resulting in a serious racial confrontation between African-Americans and Hasidic Jews. There were also reports that sporadic violence had broken out in the Crown Heights Community.

I immediately called Deputy Mayor for Public Safety Milton Mollen who had already been in contact with Police Commissioner Lee Brown. We agreed to meet at Kings County Hospital to visit Angela Cato, console the Cato family, and receive a briefing from Police Commissioner Brown. At approximately 11:35 p.m., shortly before I left for the hospital, I was also notified that a young rabbinical student named Yankel Rosenbaum had been attacked by a group of young African-Americans and stabbed by one of its members. I spoke with Deputy Mayor for Intergovernmental Affairs Bill Lynch on several occasions and directed that he immediately mobilize the relevant City agencies and coordinate their efforts in the Crown Heights community to help restore calm. I also spoke to Assistant to the

Mayor Herbert Block on several occasions regarding information he was obtaining from the Hasidic community about the automobile accident.

I arrived at Kings County Hospital at approximately 12:30 a.m., where I met with Deputy Mayor Mollen and Commissioner Brown. I was briefed by Commissioner Brown and other police personnel concerning the facts of the accident, and the resulting tensions and disturbances that followed. In response to the unrest, the Police Department had already begun reassigning on duty personnel from various police commands throughout the City to the 71st Precinct area. I visited with the Cato family and spoke with the fathers of Gavin and Angela in an attempt to comfort and console them. Deputy Mayor Mollen, Commissioner Brown, and I met Rabbi Joseph Speilman in the hospital hallway. Rabbi Speilman told Deputy Mayor Mollen that Yankel Rosenbaum was also a patient in the hospital. Commissioner Brown, Deputy Mayor Mollen and I went to visit Yankel Rosenbaum in his hospital room. I talked with Mr. Rosenbaum for several minutes, and we held each other's hand as I attempted to console him. The doctors indicated that Mr. Rosenbaum was expected to recover.

During my meeting with Commissioner Brown, he also informed me that a group of community leaders and elected officials had gathered at the 71st Precinct. I decided to go with the Police Commissioner to the Precinct to meet with them, provide them with the facts, and seek their assistance in calming the community.

I left the hospital at approximately 1:00 a.m. and went to the 71st Precinct with Commissioner Brown and Deputy Mayor Mollen. We met Assemblyman Clarence Norman,

Assemblyman Al Vann, and Assemblyman William Boyland. Richard Green of the Crown Heights Youth Collective and Rabbi Joseph Speilman were also present at the police station, as well as other community leaders. We discussed with elected officials and community leaders the facts concerning the accident, and the inaccuracy of several rumors that had contributed to the rising tensions. The primary rumor Deputy Mayor Mollen and I were trying to dispel was that a Hatzolah ambulance had treated and transported the Hasidic driver, but had left the Cato children untreated at the scene. Deputy Mayor Mollen explained that the Cato children were being treated by Emergency Medical Paramedics when a police officer ordered the Hatzolah Ambulance out of the area because the crowd was hostile and unruly. At approximately 2:00 a.m., I left the police station and returned to Gracie Mansion. I was shocked and distressed to learn of the death of Yankel Rosenbaum later that night. A sixteen year old African-American had been arrested within minutes of the attack and charged with the stabbing.

As Mayor, my objective during this crisis was to protect the lives, safety, and property of the residents of Crown Heights, and to quickly restore peace and order to the community. My actions over the next several days in response to the Crown Heights disturbances were generally guided by three principles:

- (1) The police are the professionals, with the experience and training, who direct law enforcement tactics for maintaining order. They determined and carried out specific strategies, while keeping me briefed and updated about their activities;
- (2) Intensive community outreach was essential through every possible government channel to involve responsible community leaders and young people, and enlist their support and participation in actions designed to ease tensions and restore order;

- (3) The disbursement of accurate, timely public information was crucial to dispel rumors and distortions, as well as to inform the community and the city as fully as possible about the evolving situation.

On Tuesday morning August 20, 1991, I spoke with Deputy Mayor Bill Lynch and other advisors regarding the conditions in Crown Heights. Among the individuals that I met with or spoke to on Tuesday morning were Michael Kharfen, Director of the Community Assistance Unit, Assistant to the Mayor Herbert Block, Assistant to the Director of African-American & Caribbean Affairs Add'Allah Adesanya, Press Secretary Leland Jones, Deputy Mayor for Public Safety Milton Mollen, First Deputy Mayor Norman Steisel, and Richard Green of the Crown Heights Youth Collective. I immediately began concentrating my personal efforts and the efforts of the administration on working to restore calm and peace to the community.

I instructed the Community Assistance Unit, Human Rights Commission, Department of Juvenile Justice, Department of Youth Services and several other related city agencies to set up headquarters at P.S. 167 in the Crown Heights community to work with community leaders and organizations to restore calm. Telephones and faxes were installed in P.S. 167. Teams of Human Rights Commission employees began circulating throughout the Crown Heights area from 9:00 a.m. to 9:00 p.m. engaging adults and adolescents in dialogue and collecting information. They were also encouraging teenagers to come to P.S. 167 and to become part of the Youth Peace Force. Special efforts also were made to develop outreach through area churches and the clergy. Fliers were prepared and distributed throughout the community by City agencies informing people of the availability of the command center and city resources at P.S. 167. At approximately 11:00 a.m. on Tuesday, Deputy Mayor Bill

Lynch held a meeting at P.S. 167 with community leaders and residents in Crown Heights for approximately two hours to discuss the current situation in the community.

At a Tuesday meeting with Commissioner Brown and other police officials at City Hall, I was briefed about the previous night's disturbances and informed that there were confrontations between groups of Hasidics and African-Americans, several police officers had been injured, one patrol car had been damaged, and the police made several arrests.

I decided to immediately conduct a press conference with Deputy Mayor Mollen, Commissioner Brown, and Chief of Detectives Joseph Borelli. Chief of the Department Robert J. Johnston had just retired within the last several days. Chief of Patrol David Scott had just been promoted to replace Johnston and was away on vacation. The press conference was held at City Hall at approximately 1:45 p.m. on Tuesday. We gave the public a more accurate account of the accident in order to dispel the rumors, and reported on the current situation in Crown Heights. We primarily focused on the facts of the automobile accident that injured and killed the Cato children, and the grand jury investigation of possible criminal liability. The police reported that an accident reconstructionist had been retained and they were engaged in ongoing discussions with District Attorney Charles Hynes' office regarding the investigation. District Attorney Hynes was out of the country and Deputy Mayor Mollen was in touch with Assistant District Attorneys concerning their investigation. At the press conference, I also identified some of the city agencies, elected officials and community leaders who were attempting to restore calm to the area.

During the press conference I provided information regarding Angela Cato's stable medical condition. I addressed the false rumor that the Hatzolah ambulance attendant would not treat the Cato children. I explained that the driver of the car which struck the Cato children was taken away in the Hatzolah ambulance at the direction of a police officer to ease the tension at the scene. Further, I reported that the Cato children received immediate medical treatment from the City emergency medical technicians who arrived at the scene simultaneously with the Hatzolah ambulance. I addressed the perception by some in the African-American Community that the Hasidic community consistently received preferential treatment by the police.

I was informed on Tuesday afternoon that demonstrators had marched to the 71st Precinct, where at approximately 5:00 p.m., Rev. Al Sharpton addressed about two hundred demonstrators in front of the precinct. The police department increased the police presence in Crown Heights from approximately 350 the night before to approximately 1000 by Tuesday night. The department also expected that the rain forecast for that evening might result in fewer demonstrations and provide an opportunity for the violence to subside. Police experience in the past had shown that the presence of rain usually had the effect of minimizing demonstrations and acts of violence. The police primarily concentrated on controlling and limiting the conduct of the large groups of demonstrators.

I was informed that after the march and demonstrations, sporadic disturbances erupted in various parts of the area during Tuesday evening. There were also several more confrontations between groups of Hasidic and African-American youths. The police made approximately seventeen arrests that evening. I did not attempt to direct police deployment

tactics or second guess the professional police judgment with regard to law enforcement. I instructed the Police Commissioner to keep the peace. Unfortunately, the increased police presence had not prevented Tuesday evening's sporadic violence and confrontations. The Police Department had also miscalculated the anticipated mitigating effect of the rain. Nevertheless, Police Department commanders continued to feel that the situation was neither out of control nor beyond the capacities of the Police Department to effectively respond. I continued to concentrate my individual efforts and the activities of non-law enforcement city agencies on discouraging violence and easing tensions.

On Wednesday, August 21, 1991, I had a discussion at 6:00 a.m. with Assistant to the Mayor Herbert Block regarding that morning's scheduled motorcade which planned to transport the body of Yankel Rosenbaum through the streets of Crown Heights, past Lubavitch headquarters, to the airport. I was advised that it was customary that once the body began to move to its final resting place, it would not stop. Accordingly, prior to leaving the Crown Heights neighborhood, there would be no formal occasion for Mr. Rosenbaum to be eulogized. I therefore did not attend the procession. I later learned that, contrary to earlier indications, the procession was turned into a spontaneous memorial for Mr. Rosenbaum with various speakers addressing the crowd in front of Lubavitch headquarters. Thereafter, there was a march with the casket to the precinct. My absence was unfortunately upsetting to many who participated.

Upon arriving at City Hall on Wednesday morning, I met with Deputy Mayor Bill Lynch and other advisors to discuss the current situation and further actions we could take

to restore order. I discussed the tensions in Crown Heights with Governor Cuomo by telephone. He expressed his willingness to assist the City in its efforts to bring about peace.

I decided that I should go to Crown Heights. The disturbances on Tuesday night had demonstrated that the tension had not eased. Despite the rain and the relative calm during the early part of Wednesday, the assessment of those who were doing outreach on the streets of Crown Heights was that the tension had not yet subsided. I discussed with Deputy Mayors Lynch and Mollen whether I should walk through the Crown Heights community and speak to residents to try to restore calm. Deputy Mayor Mollen indicated that we had been warned that it was too tense for me to walk through the streets. However, in order to help restore calm, I decided that I would walk through Crown Heights on Wednesday afternoon, and then meet with some of the youths of the community and community leaders at P.S. 167. Additionally, I planned to meet with the Cato family and Hasidic leaders.

I met with Police Commissioner Brown who reported on the Tuesday night disturbances and the current conditions on the streets. I then held a press conference at City Hall at approximately 1:00 p.m. where the Police Commissioner reported that thirty-five officers were injured the night before and that the police made several arrests. There had been general concerns expressed by members of the community that they felt unsafe during the disturbances. However, prior to Wednesday afternoon, I received no specific allegations that the police were providing inadequate police protection or that the police were deliberately restraining their response. In fact, during the press conference on Wednesday, both Police Commissioner Brown and I responded to charges that the police

response on Tuesday had been overly aggressive in handling demonstrators, crowds on the streets, and members of the press.

Wednesday afternoon, we received a request from Hasidic leaders to attend a meeting to discuss their concerns about inadequate police protection. I directed Deputy Mayor Mollen, Police Commissioner Brown, and Herbert Block to go to Crown Heights to discuss these concerns. At approximately 2:30 p.m., they met with the newly formed Crown Heights Emergency Council at The National Committee for the Furtherance of Jewish Education on Eastern Parkway. At approximately 3:00 p.m., Commissioner Brown met with religious and community leaders and elected officials at the 71st precinct in a further attempt to dispel rumors and elicit their assistance in easing community tensions.

At approximately 3:30 p.m. on Wednesday afternoon, I left City Hall and returned to Gracie Mansion. I left Gracie Mansion at approximately 4:30 p.m. to go to Crown Heights. When I arrived in the area, the crowds on the street were very tense. It did not seem appropriate for me to walk through the streets at that time. A demonstration had just ended, and there were reports of roving gangs of youth in the area of the school throwing bricks, bottles, and rocks. For a brief while, my car was unable to pass through the street because of the conditions in the immediate area. At approximately 5:00 p.m., I arrived at P.S. 167. I went in and met with Commissioner Brown, Deputy Mayor Mollen and Deputy Mayor Bill Lynch to discuss the present conditions. I then met with a group of young people inside the school, and subsequently with community leaders.

I wanted to address the crowd outside the school. However, Commissioner Brown and other police officials were not convinced it was a good idea for me to go outside.

However, I decided to go outside and attempt to speak to the crowd through a bullhorn. The crowd was hostile and unresponsive. I then returned back into the school.

I intended to walk from the school to the Cato home, but I was advised that I should drive instead. At approximately 7:10 p.m., I rode by car from P.S. 167 to the Cato home. The Mayor's security escorted me and Deputy Mayor Mollen into the Cato house. Crowds began to come toward the Cato home. Objects were thrown in our direction. Once in the Cato home, Mr. Cato and I went to a window, where I again unsuccessfully attempted to talk to the crowd that had gathered in front of the house. At approximately 8:30 p.m., I left the Cato residence. The Mayor's security had to physically shepherd me and Deputy Mayor Mollen through the angry crowd from the Cato home. I went to 824 Eastern Parkway at the National Committee for the Furtherance of Jewish Education. I met with Jewish Community leaders, including members of the Crown Heights Emergency Council, and discussed with them their concern about the continued violence. At this meeting, some expressed concern that the police were not providing adequate protection to the community residents and businesses. I left this meeting at approximately 9:30 p.m.

I decided to go to Crown Heights on Wednesday because tensions in that community had not eased. After I arrived in Crown Heights on Wednesday afternoon, the violence was escalating. By Wednesday evening, a lack of confidence in the police response was quickly spreading through the community.

I returned to Gracie Mansion with Deputy Mayor Mollen at about 10:00 p.m. I was scheduled for live television interviews as a further effort to calm the community. On the drive back to Gracie Mansion, we discussed our dissatisfaction with the apparent

ineffectiveness of the police response in controlling the violence. Soon after arriving at Gracie Mansion, we were notified that eight police officers were injured by shotgun fire. With the shooting of the police officers, the violence had now reached a much more dangerous level of lawlessness.

We decided to go back to Brooklyn to visit the injured officers at Kings County Hospital as soon as I had completed the television interviews. Both Deputy Mayor Mollen and I expressed concern that neither our continuous community outreach, nor the law enforcement efforts of the Police Department had yet brought an end to the disorder. We were also disturbed by the feelings expressed that day by many in the community that the police protection was inadequate. Some in the Hasidic community were also claiming that the police were deliberately holding back in responding to the violence. We agreed to convene a meeting with Commissioner Brown at Kings County Hospital. We arrived at the hospital at about 12:00 a.m. There I met with Commissioner Brown and visited the injured officers. I also visited others who had been injured including a physician who had been attacked after he left the hospital.

After visiting the injured officers, I met in a Kings County Hospital conference room with Commissioner Lee Brown, Deputy Mayor Milton Mollen, Deputy Mayor Bill Lynch and First Deputy Mayor Norman Steisel. Greater measures had to be taken to control the disorder. The purpose of the meeting was to discuss the increased violence and further actions the police might take to immediately end the violence and lawlessness.

The Police Department reported making thirty-four arrests Wednesday evening. Although the police had made numerous arrests during the previous three evenings of unrest, they primarily had been performing demonstration control and responding to the information they were receiving regarding the anticipated size and conduct of the demonstrations. Neither the ever increasing police presence, nor their concentration on large groups of demonstrators, had been effective in controlling the violence being perpetrated by smaller groups of roving youths who scattered throughout the area. The Police Department had not been following a comprehensive riot control plan that utilized the maximum police resources and tactics available for responding to a major disturbance. At this meeting, I emphasized that they should employ every appropriate police tactic available for riot control, and immediately evaluate what further steps were necessary to quell the violence.

After this meeting, the Police Commissioner met with Police Department Commanders to develop a more effective plan for riot control. Their own analysis of the pattern of the recurring disturbances also dictated a change in police tactics. The police command continued to meet well into the early morning. By Thursday, August 22, 1991, the Police Department had developed a more comprehensive plan to respond to the escalating violence. That new plan was announced during a City Hall press conference later that day.

On Thursday morning, I met with several City Hall advisors and police officials. Police Commissioner Brown outlined the new police plan which had been developed during the night. I also considered whether to impose a curfew. I ordered that preparations be

made in the event that a curfew became necessary. I decided not to impose a curfew before we could determine whether the new police plan would be effective in ending the violence. We also intensified our community outreach and communication with community leaders, residents and youth.

I met with Governor Cuomo at a public event in the Chelsea section of Manhattan. We privately discussed the unrest in Crown Heights and the City's efforts to restore calm. We agreed that despite the call by some to bring in the National Guard, that action was an unnecessary and inappropriate response to the situation.

At my request, Deputy Mayor Mollen spoke to District Attorney Charles Hynes on Thursday by telephone. He agreed to return immediately to New York to take personal charge of the Grand Jury investigations.

I held a press conference at City Hall on Thursday, August 22, 1991 at approximately 1:00 p.m. I announced that lawlessness and violence would not be tolerated and we would be intensifying the police activity in order to restore order. The Police Commissioner outlined for the public the new disorder control plan that had been developed Thursday morning by the Police Department. The new plan included:

1. sending more police in the area;
2. establishing more fixed posts;
3. placing more officers in vehicles;
4. sending in mounted patrols; and
5. sending in police on motorcycles.

The police objective was to break the area into sections and control the different small groups of rioters creating the disturbances. Further, the police intended to control demonstrations, restrict their area, and break up gatherings which appeared to form for unlawful activity and violence. The police were prepared to make mass arrests if necessary. They put together mobile arrest teams and dispatched arrest processing vehicles to the area. The Police Department coordinated with the District Attorney's office and the Courts to provide immediate processing of those arrested. A police command post was established at One Police Plaza that would centrally control police deployment.

Additionally, Deputy Mayor Lynch continued his attempts to meet with Reverend Al Sharpton and other community activists to seek a suspension of future planned demonstrations. Reverend Sharpton, however, had canceled each of three meetings previously scheduled to discuss the demonstrations.

I held a second press conference on Thursday at approximately 3:30 p.m. in Crown Heights with Brooklyn Borough President Howard Golden and 40 elected officials and community leaders. During the press conference, which was held on the street, we issued a joint statement calling for an end to the violence. At 5:00 p.m., I then appeared live on all three local evening news broadcasts to discuss the Crown Heights situation and appeal for calm.

The police presence in the Crown Heights area on Thursday afternoon was doubled to over 2000. Approximately sixty-two arrests were made that evening, many for unlawful assembly. As a result of the implementation of the new police plan, the community experienced significantly fewer violent disturbances on Thursday.

On the morning of Friday, August 23, 1991, I again met with City Hall advisors. I received a full briefing on the events of the previous evening. The new police tactical response, combined with the extensive community outreach, was beginning to restore order in the Crown Heights community. At 11:00 a.m. on Friday, August 23, 1991, I held a press conference on the steps of City Hall with a cross-section of elected officials, community leaders and a special interfaith coalition of clergy to call for peace. By Friday evening, it appeared that a fragile peace had returned to Crown Heights. We continued our community efforts to maintain that peace.

At approximately 7:00 p.m. that evening, I met Rev. Sharpton at the wake for Congressman Ed Towns' mother. We arranged to meet at Restoration Plaza on Fulton Street to discuss his demonstration planned for the next day. At approximately 8:00 p.m., we met at Restoration Plaza. In attendance were City Hall advisors, Rev. Al Sharpton, Rev. Herbert Daughtry, Attorneys Alton Maddox and Colin Moore, Chief of The Department David Scott who had returned early from his vacation, and other community activists. We listened to some of the community concerns. We attempted to persuade them to cancel the demonstration planned for the next day. They would not agree to cancel the demonstration. We emphasized the importance of not having another breakout of violence. We discussed the significant number of arrests that had already taken place and the possibility of more arrests and injuries if violence continued. Before the meeting ended, they did assure us that the demonstration would be peaceful and that they would cooperate with the directions of police officials. The meeting ended at approximately 1:00 a.m. I then returned to Gracie Mansion.

On Saturday morning, August 24, 1991, I spoke with several City Hall advisors to plan further actions that I might take to maintain the calm and peace through the weekend. At approximately 11:15 a.m. on Saturday, I again returned to the streets of Crown Heights. I placed wreaths at the Gavin Cato and Yankel Rosenbaum death sites. I then walked down Utica Avenue in the African-American community and Brooklyn Avenue in the Hasidic community of Crown Heights. At approximately 2:30 p.m., Rev. Sharpton held a march and demonstration in Crown Heights. As promised, the march and demonstration were peaceful and conducted without incident. At approximately 3:00 p.m. on Saturday, August 24, 1991, I attended the private wake for Gavin Cato. That evening, I also appeared on Talkline Jewish Radio in a call for unity.

On Sunday, August 25, 1991 at 10:30 a.m., I spoke to a predominantly African-American congregation at the First Baptist Church in Crown Heights. I called for mutual respect and an end to the violence. I went to Restoration Plaza for a second meeting which had been scheduled with Rev. Sharpton and community activists. Rev. Sharpton arrived upset about the press coverage of our meetings. He decided not to proceed with that day's scheduled meeting. At approximately 4:00 p.m., I paid a public visit to the Grand Rebbe of the Jewish Lubavitcher sect at 770 Eastern Parkway in Crown Heights.

On Monday, August 26, 1991, at 10:50 a.m., I attended and spoke at the funeral of Gavin Cato. I again called for calm and peace in the community. Later that day at City Hall, I held a press conference with Deputy Mayor For Finance and Economic Development Sally Hernandez-Pinero to announce a two-phase economic outreach to provide immediate technical and emergency economic assistance to Crown Heights businesses affected by the

violence. I also sent separate letters of condolence to both the parents and brother of Yankel Rosenbaum in Australia. I had spoken to the family directly by telephone at 6:15 a.m. that morning.

A significant police presence continued throughout the week. So did our community outreach, which continued its efforts from its resource center at P.S. 167 until Labor Day. We continued several other community based initiatives over the next several weeks and months.

Contrary to any unfounded allegations concerning the actions of City Hall officials, neither First Deputy Mayor Norman Steisel, nor Deputy Mayor Milton Mollen, nor Deputy Mayor Bill Lynch, nor I, nor any other official at City Hall ever gave any direction, either express or implied, that the police department should hold back in any manner whatsoever during this period of time, or in any way act in a manner other than to protect the lives, safety, and property of the residents of Crown Heights and quickly restore peace and order to that community. In fact, there were intensive, coordinated efforts around the clock to restore order by City Hall officials, City agencies, community leaders, elected officials, residents, youth and the police. Had this not been the case, the violence might have been greater and continued unabated for several more days with more arrests and injuries, greater damage to property, and possibly further loss of life.

The Police Commissioner and his department exercised their professional police judgment regarding the deployment of police personnel, and developed specific police tactics to respond to the ever changing circumstances on the streets of Crown Heights. Despite the success in controlling and ending the violence after the third day, clearly errors were made.

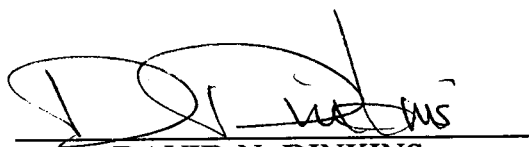
The initial police tactics proved to be an inadequate response for the magnitude and intensity of the disturbances that the Crown Heights community was experiencing.

The police misperceived that their initial tactical response could quickly end the violence. The implementation of a more comprehensive disorder control plan should have been considered sooner as an alternative to the police response initially used by the department. On Wednesday, August 22, 1991, it was clear that the police response was not effective in controlling the disturbance. This led to my late night meeting with the Police Commissioner at Kings County Hospital, where I questioned the effectiveness of the police tactics and emphasized that further steps had to be considered.

As a result of the police experience in Crown Heights, the Police Department has since developed more specific plans and strategies for improving its future disorder control capabilities in order to provide a more effective response to major disturbances.

That experience was effectively utilized during the Washington Heights disturbances and the aftermath of the Rodney King verdict. In Washington Heights, the immediate implementation of a comprehensive tactical response plan limited the violence and brought it to a swift conclusion. During the aftermath of the Rodney King verdict, a central police command and communication center was immediately established at One Police Plaza at which both police commanders and City Hall officials met daily for accurate briefings, assessments and coordinated efforts to prevent violence.

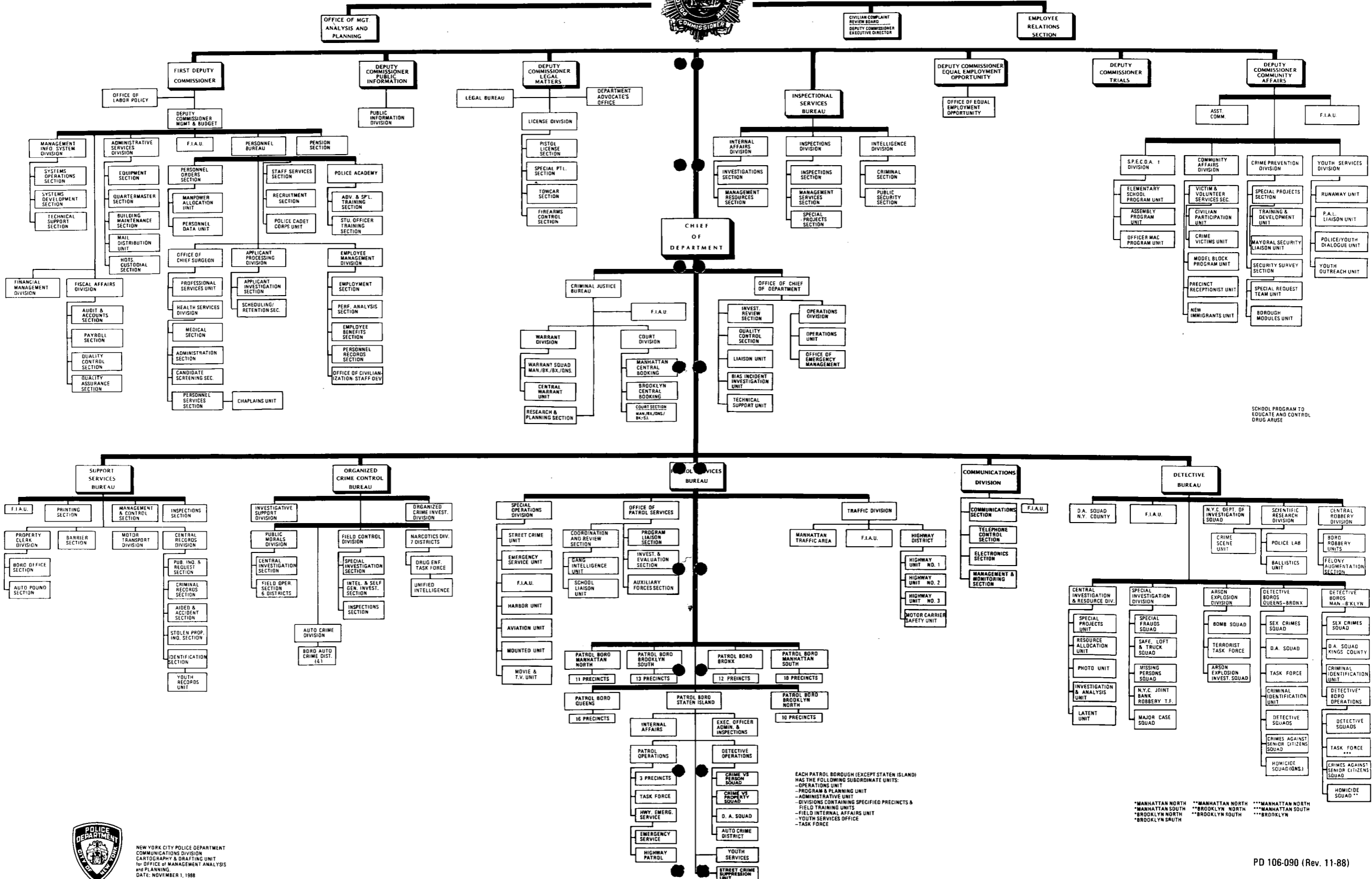
Although the Police Department has acknowledged that it was initially ill-prepared for the unanticipated level of violence that erupted in Crown Heights, current plans calling for specific and decisive early police action should ensure that the violence experienced by that community will not occur again in our City.



DAVID N. DINKINS
Mayor of the City of New York

Appendix E
NYPD Organizational Chart

ORGANIZATION CHART NEW YORK CITY POLICE DEPARTMENT



EACH PATROL BORO (EXCEPT STATEN ISLAND) HAS THE FOLLOWING SUBORDINATE UNITS:
 - OPERATIONS UNIT
 - PROGRAM & PLANNING UNIT
 - ADMINISTRATIVE UNIT
 - DIVISIONS CONTAINING SPECIFIED PRECINCTS & FIELD TRAINING UNITS
 - FIELD INTERNAL AFFAIRS UNIT
 - YOUTH SERVICES OFFICE
 - TASK FORCE

*MANHATTAN NORTH
 **MANHATTAN SOUTH
 ***BROOKLYN NORTH
 ****BROOKLYN SOUTH
 *****BROOKLYN



NEW YORK CITY POLICE DEPARTMENT
 COMMUNICATIONS DIVISION
 CARTOGRAPHY & DRAFTING UNIT
 for OFFICE OF MANAGEMENT ANALYSIS
 AND PLANNING
 DATE: NOVEMBER 1, 1988

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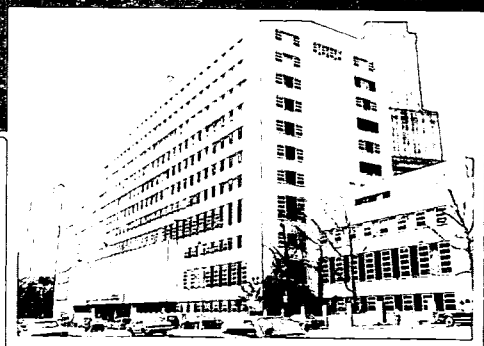
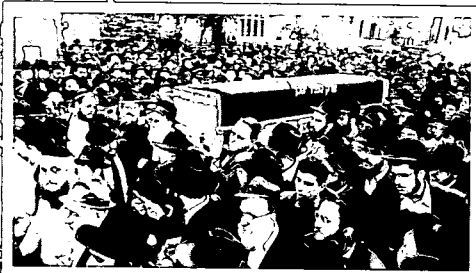
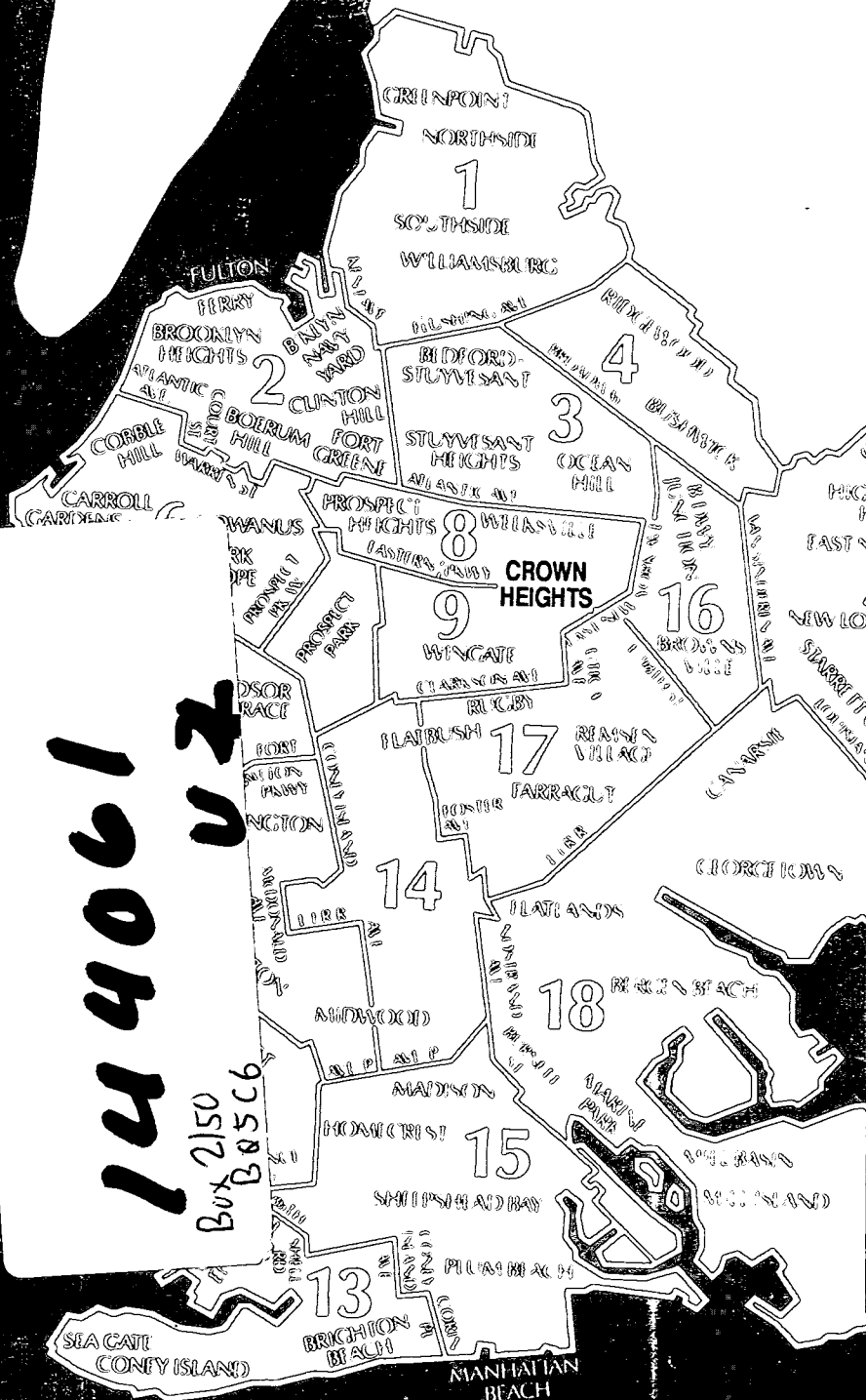
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REPORT TO THE GOVERNOR ON THE DISTURBANCES IN CROWN HEIGHTS:

A Review of the Investigation into the Death of Yankel Rosenbaum and the Resulting Prosecution



Richard H. Girgenti
Director of Criminal Justice

V O L U M E I I**A REPORT TO
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Richard H. Girgenti
*State Director of Criminal Justice
and Commissioner
Division of Criminal Justice Services*

NCJRS
SEP 14 1993
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STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

RICHARD H. GIRGENTI
DIRECTOR OF CRIMINAL JUSTICE
AND
COMMISSIONER
DIVISION OF CRIMINAL JUSTICE SERVICES

July, 1993

EXECUTIVE CHAMBER
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The Honorable Mario M. Cuomo
Governor
Executive Chamber
Albany, New York 12224

Dear Governor Cuomo:

Pursuant to Executive Order Number One-Hundred Sixty, I respectfully submit a two-volume report on the August, 1991 disturbances in Crown Heights. Volume One is subtitled: *An Assessment of the City's Preparedness and Response to Civil Disorder*. Volume Two is subtitled: *A Review of the Circumstances Surrounding the Death of Yankel Rosenbaum and the Resulting Prosecution*.

We undertook an exhaustive analysis to document what occurred during the most extensive racial unrest New York City has experienced in over twenty years. In addition, we reviewed the investigation and prosecution of the murder of Yankel Rosenbaum which resulted from the disturbance. We sought to identify the factors which led to an acquittal and attempted to explain why no one has been held accountable for this crime.

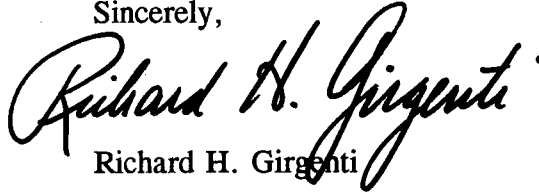
The preparation of this report involved numerous individuals, including nationally recognized policing and forensic experts. We reviewed all relevant materials and interviewed all of the key participants. New York City government officials and agencies cooperated completely.

The report reflects our genuine commitment not only to discover the truth, but also to learn the lessons to be derived from these most unfortunate events. We evaluated the performance of public officials based upon the reasonableness of difficult decisions that they were required to make. Although it was not our intention to assign blame, we have uncovered deficiencies, mistakes, and problems. Therefore, we have not avoided identifying accountability where we thought it appropriate.

We have made findings which attempt to answer most of the questions that have been asked about what happened in Crown Heights. It is our hope that, by answering these questions, we will bring closure to the concerns of many. This will enable the process of healing wounds, which still exist nearly two years after the disturbance, to begin.

Our recommendations identify opportunities for improvement. We hope that City government, community organizations, and concerned citizens will build upon the findings of this report to develop an agenda for action that will prevent similar situations from arising in the future. We believe that this report will help to overcome the feelings of mistrust and suspicion in the Crown Heights community, and begin to restore confidence in the criminal justice system and in our government.

Sincerely,

A handwritten signature in black ink that reads "Richard H. Girgenti". The signature is written in a cursive, flowing style with a prominent initial "R".

Richard H. Girgenti

RICHARD H. GIRGENTI

*State Director of Criminal Justice
and Commissioner
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Executive Summary

- ▶ The Prosecution of Lemrick Nelson
- ▶ Analysis of the Criminal Investigation
- ▶ The Jury's View of the Case

EXECUTIVE SUMMARY

On August 19, 1991, a car accident, in the Crown Heights section of Brooklyn, resulted in the death of Gavin Cato and severe injury to Angela Cato. The car was driven by an Hasidic Jew. Five blocks down the street from the accident, and a few hours later, Yankel Rosenbaum was attacked and stabbed four times. A group of young black men reportedly shouted, "There's the Jew. Get the Jew." Two of the stab wounds punctured Rosenbaum's lungs, causing him to bleed to death. The police apprehended a sixteen-year-old black man named Lemrick Nelson within moments of the crime.

THE PROSECUTION OF LEMRICK NELSON

A Kings County Grand Jury returned an indictment charging Nelson with two counts of second-degree murder and one count of unlawful possession of a knife with intent to use it against another person. Judge Edward M. Rappaport presided over the trial. Sari Kolatch and James Leeper of the Kings County District Attorney's Office were the prosecutors. Nelson was represented by Arthur Lewis, a private attorney.

The prosecution's case relied almost primarily on police officer witnesses. Ten police officers, including two detectives, testified regarding the events which led to Nelson's arrest, identification and confession. Officer Milazzo saw Nelson running from the attack. Officers Hoppe and Marinos caught him a few minutes later, one block from the scene. When apprehended, the police recovered a bloodstained knife from Nelson's pocket.

The police witnesses testified that Nelson was brought back to Rosenbaum who identified him as his attacker. Nelson was taken to the 71st Precinct upon his arrest. Three bloodstained dollar bills were found in Nelson's pocket, the same pocket in which the knife was found. While there, he suffered an asthma attack and was taken to the Kings County Hospital. When he returned to the Precinct, Nelson was advised of his constitutional rights, waived those rights and was questioned by detectives. Both detectives testified that Nelson confessed to stabbing Rosenbaum.

Testimony was given by the analyst from the Medical Examiner's Office who said that the stains on the pants were consistent with Rosenbaum's blood and inconsistent with Nelson's. A forensic expert, from the Center for Blood Research (CBR) Laboratories in Boston, testified that DNA testing showed that

blood on one of the dollar bills and on the knife was consistent with Rosenbaum's blood, but not with Nelson's.

In her arguments to the jury, the prosecutor focused on Rosenbaum's identification of Nelson and Nelson's confession to detectives as proof of his guilt beyond a reasonable doubt. She emphasized that the testimony of the police witnesses and forensic experts constituted overwhelming evidence that Nelson was responsible for Rosenbaum's death.

The defense argued that the rioting was caused by police misbehavior at the Cato accident. When the stabbing occurred, police sought to divert attention from themselves by arresting a young black man who was on the streets that night, and framing him for Rosenbaum's death. Then police forced a confession from Nelson, who could neither understand nor knowingly waive his rights.

Further, the defense contended, Rosenbaum was a member of a Jewish civilian patrol organized to protect the synagogue and religious artifacts. Since the patrol enjoyed a special relationship with the police, there was a prompt police response to the scene of the stabbing and Nelson was arrested shortly thereafter. The defense also tried to prove that Rosenbaum's death was caused by the negligence of the Kings County Hospital, and not by the stabbing.

Judge Rappaport instructed the jury that the prosecution had the burden to prove Nelson's guilt beyond a reasonable doubt. Two counts of first-degree manslaughter and one count of second-degree manslaughter were submitted to the jury. After four days of deliberations, on October 29, 1992, the jury rendered a verdict of not guilty on all counts.

The public reaction to the verdict by many, especially in the Jewish community, was immediate and angered disbelief. There were demonstrations, rallies, and demands for justice. A mistrust of the criminal justice system emerged. In response to continuing questions from those who could not reconcile their sense of justice with the verdict in this case, Governor Mario M. Cuomo ordered Richard H. Girgenti, the Director of Criminal Justice for the State of New York, to review the circumstances surrounding the investigation of the Rosenbaum homicide and prosecution of Lemrick Nelson.

Five questions were central to this review.

- Why was no one other than Lemrick Nelson arrested and prosecuted when several others were involved in the attack on Yankel Rosenbaum?

-
- Was a full and thorough investigation conducted?
 - Was the case properly prepared and tried?
 - How could the jury acquit Nelson, when it appeared that the case against him was so strong?
 - Was the jury's verdict based on racial prejudice or anti-police bias?

We explored this complex series of events with many of those involved in the case, and examined extensive records made available for our review. Our purposes were to look at the factors leading to the verdict, identify any deficiencies in the criminal justice system, and to the extent appropriate, recommend corrective action.

ANALYSIS OF THE CRIMINAL INVESTIGATION

Several people were responsible for the stabbing of Yankel Rosenbaum. Only Lemrick Nelson was indicted, tried, and acquitted. Deficiencies in the initial investigation created problems with the evidence which subsequent efforts did not overcome. Accordingly, the likelihood that other participants in the attack on Rosenbaum will be held accountable for the murder has been greatly diminished.

Although the police response to the stabbing was immediate, our review indicates that there were departures from proper investigative practices. With the passage of time, the underlying deficiencies of the initial investigation and Rosenbaum's unexpected death, the likelihood that the police will now be successful in identifying additional participants in the crime has been greatly diminished. Unless an informant or eyewitness comes forward and provides reliable facts about the attack and other possible suspects, holding someone accountable for this murder will be difficult.

Lack of prior relationship among the attackers and the victim hampered the investigation and prosecution.

One difficulty attributed to the investigation of this case has been the lack of a prior relationship among the attackers and the victim. The identification and prosecution of those responsible for Rosenbaum's murder may have been hampered by the civil disturbance in Crown Heights on the night of the attack. Unlike the killings in Bensonhurst and Howard Beach, which also involved

groups of attackers, Rosenbaum's murder occurred in the midst of a riot involving hundreds of people. The attackers appear not to have known each other and were not known by the victim or any of the witnesses.

The failure to record the names of the individuals present at the scene made it difficult to identify police and civilian witnesses.

Witnesses to the murder were not identified because, contrary to proper procedures, the police failed to record the names of everyone at the crime scene, including both civilians and police officers. This failure frustrated subsequent efforts to collect evidence. Many key witnesses to the attack on Yankel Rosenbaum were not identified prior to the presentation of the prosecution's case. Accordingly, important additional testimony regarding Nelson's culpability could not be obtained.

The recording of statements and the taking of names and addresses of eyewitnesses and bystanders are crucial first steps in an investigation. All possible witnesses were not identified by the police at the time of the stabbing. Notwithstanding the ongoing civil unrest, there were many potential witnesses to the stabbing who could have been identified. There were numerous police officers in the vicinity. There were the EMS technicians who responded to the stabbing. There were the individuals who were shown to, but not identified by, Rosenbaum. There were the civilians present at the scene and during the identification of Nelson. All of these individuals may have had information that would have assisted the investigation.

Later efforts to identify the participants were hindered by the failure to collect vital information at the scene. This deficiency was not remedied by a subsequent canvass of the area. The canvass did not begin until eight days after the stabbing. Moreover, the canvass was only conducted for a one-block area east and west of where the stabbing occurred.

Interviews with the victim and possible suspects were not conducted promptly or recorded.

Critical statements made by Yankel Rosenbaum which could have aided in the progress of the investigation and the identification of suspects were not developed so as to provide any investigatory assistance. Rosenbaum lived for three hours after the attack. During much of this period he was lucid and could have provided a detailed account of his attack and a description of his attackers. Yet, he was never questioned by police. Even when Rosenbaum identified Nelson, he was not asked about Nelson's role in the attack. As a result of this failure, the police lost valuable evidence. The victim, although seriously injured,

could have been questioned in order to ascertain a more detailed account of the attack.

Additionally, there was a significant delay in taking a statement from Nelson. The recommended investigative method is to interview the suspect as soon as possible following the incident. Here, circumstances beyond the control of the investigating detectives compelled them to move to another location while they were attempting to take a statement from Nelson. Although the detectives testified that they did obtain confessions from Nelson, the failure to properly document and record Nelson's statements affected their ultimate probative value at trial. The passage of time and, possibly, the growing demonstration outside the Precinct resulted in Nelson refusing to give a later videotaped statement to the prosecution.

The improper handling of critical physical evidence compromised its probative value at trial. The bloodstained knife discovered on Nelson, which should have provided persuasive proof in support of the prosecution's case, was not properly handled. Additionally, Nelson's pants could have provided meaningful evidence of his involvement in the attack on Rosenbaum. The stains on the pants should have been properly noted and analyzed by the police. Tests on this evidence were not sufficiently monitored by the prosecution.

The mishandling of key physical evidence compromised its probative value at trial. The bloodstained knife, the alleged murder weapon, was compelling evidence of Nelson's involvement in the attack.

There was expert testimony presented at trial that deoxyribonucleic acid (DNA) analysis of the blood on the knife taken from Nelson indicated that it was consistent with Rosenbaum's blood. The probative value of this evidence was affected, however, by the improper handling of the knife. The knife was apparently passed among several police officers, was commingled with other bloodstained evidence, and was not promptly refrigerated or vouchered.

Another important piece of physical evidence was the bloodstains found on Nelson's pants. Testimony at trial raised an issue of whether the blood on the pants came from Nelson's involvement in the attack on Rosenbaum or whether it could be attributed to Rosenbaum's spitting at Nelson when he identified him. The police did not record whether these stains were present on Nelson's clothing when he was caught. Moreover, forensic tests which could have determined if the stains contained saliva were never requested by the prosecution.

Furthermore, forensic DNA analysis performed on Nelson's pants was inconclusive, largely due to the denim fabric of the pants. The pockets of the pants, which were not denim, were never tested. Considering that the knife was found in the pocket, it was a critical omission of both the police and prosecution not to request testing of the pockets to determine whether the stain in the pocket was blood, and if so, whether it was consistent with the defendant's or the victim's blood. Evidence relating to the condition of Nelson's pants when he was apprehended and the testing of the pockets of Nelson's pants could have provided support for the prosecution's case.

THE JURY'S VIEW OF THE CASE

Considering the problems with the evidence presented by the prosecution, there was an ample basis for the jury verdict finding that the People had not proven their case beyond a reasonable doubt. The reasonable doubts articulated by the jurors arose, to a great extent, from the inconsistencies in the witnesses' testimony and deficiencies in the evidence.

If the inconsistencies in the police testimony at trial had been resolved in favor of the prosecution, and if the jury credited the testimonial and forensic evidence, then there would have been sufficient basis for the jury to convict. Based upon the available information, not all of which was before the jury, it is most probable that Lemrick Nelson participated in the attack that resulted in Yankel Rosenbaum's death.

Despite the apparent strength of the case against Lemrick Nelson, the jury acquitted him. In accordance with the Executive Order, we attempted to understand how the jurors arrived at their decision. Each of the jurors who deliberated in the Nelson case was assured anonymity before being interviewed. For the most part, we do not assess the views of the jurors on their merits. Our purpose was to attempt to understand and explain the reasons for the jury's verdict.

The jurors said that they acquitted Nelson because the prosecution failed to prove "beyond a reasonable doubt" that he had committed the crimes charged. However, the prosecution presented evidence that appeared strong on its face. Prosecution witnesses testified that Nelson fit the description of the individual fleeing the scene of the stabbing. A bloodstained knife and three bloodstained one dollar bills were recovered from Nelson's pocket. There was testimony that Nelson confessed to stabbing Rosenbaum. There was forensic testimony that all

four stab wounds were consistent with the knife taken from Nelson. The blood on the knife and on some of the dollar bills found in Nelson's pocket was consistent with the victim's blood. The arresting officer testified that the victim identified Nelson.

During the course of the interviews with the jurors, two themes emerged for why the jury determined that Nelson was not guilty. These themes can be characterized as inconsistencies in the witnesses' testimony and as deficiencies in the evidence. The many inconsistencies in the testimony of the police witnesses affected their credibility in the eyes of the jurors. This served to undermine the value of each of the major elements of the prosecution's case. Since the jurors considered much of the evidence to be unreliable, they had "reasonable doubt" regarding Nelson's guilt.

Jurors also identified numerous deficiencies in the handling of the physical evidence and in the investigation and prosecution of the case. The jurors stated that the evidence presented was not sufficient to link Nelson to the crime and prove beyond a reasonable doubt that he was responsible for Rosenbaum's murder. While many of the jurors believed that Nelson was at the scene of the crime and may have had a role in the stabbing, they were not convinced that the evidence proved, beyond a reasonable doubt, that he was responsible for Rosenbaum's murder.

The jurors found that the inconsistencies in the police officers' testimony were an overriding consideration in undermining the value of all key prosecution evidence, and in finding that Nelson was not guilty of stabbing Rosenbaum. The prosecution's late discovery of key witnesses exacerbated this problem.

Most significantly, the inconsistencies in the police officers' testimony regarding Nelson's apprehension, Rosenbaum's identification and Nelson's confession seriously compromised the value of this evidence in the eyes of the jury. The jurors had been instructed by Judge Rappaport to evaluate whether the witnesses were truthful in order to determine the facts of the case. The jurors stated that, after considering these factors, they determined that they could not reconcile the contradictory evidence and the inconsistencies in the testimony of the witnesses. As a result, they disregarded the testimony of some of the main police witnesses whose statements were crucial to proving Nelson's guilt.

Jurors found inadequacies in the manner in which the police handled the physical evidence. They said that since the knife was improperly handled, its value as evidence was compromised. They questioned why the victim's clothes were not preserved and why Nelson's pants were not thoroughly tested.

Jurors were also critical of the procedures employed by the police in conducting the identification of Nelson by Rosenbaum. They thought that it was improperly suggestive. Therefore, they gave it little weight. Moreover, since jurors questioned whether Nelson's statements to police were voluntarily made, they disregarded this evidence.

The jury was confused and troubled by the testimony of the forensic experts who testified on behalf of the prosecution. This contributed to their rejection of key forensic evidence.

Jurors also questioned the procedures utilized by the prosecution's forensic experts. They did not think that the forensic experts did everything that could have been done to ensure that the best possible evidence was discovered and analyzed. Also, the jurors said the value of the forensic evidence was discounted because they did not understand its significance. Moreover, they did not think that the prosecutors requested all the available forensic testing.

In addition to the concerns identified with respect to the evidence, the jurors also expressed concerns with other issues unrelated to the actual evidence. These issues, which were discussed during their deliberations and affected the jurors' view of the case, have been characterized as non-evidentiary considerations. These concerns include the speculation engaged in by some jurors, the sympathy expressed for Nelson by some jurors, the conduct and comments of the defense counsel and Judge, and the apparent lack of preparedness on the part of the prosecution.

The manner in which the Judge conducted the trial appeared to have influenced the jury's decision-making.

Although many of the jurors seemed to have a favorable view of the Judge, his remarks and conduct may have adversely affected their view about the credibility of the police witnesses. He was unable to control the conduct and the comments of the defense counsel, which afforded the jury an opportunity to consider information that was otherwise irrelevant or inadmissible. Further, by continuously interjecting himself in the questioning of witnesses, the jury had concerns regarding the Judge's impartiality. Most significantly, the Judge's reaction to Officer Lewis's testimony highlighted the inconsistencies between Lewis's version of the events surrounding Nelson's apprehension and the version of Officers Hoppe and Marinos and Detective Litwin. The Judge did not remain an impartial arbitrator and instead conveyed to the jury his personal opinions about the evidence.

The theory of assessorial liability or "acting in concert" was not adequately explained or argued to the jury.

Although many jurors were not convinced that Nelson inflicted the fatal stab wounds on Rosenbaum, most jurors believed that Nelson was present at the scene of the attack and that he probably was a participant. According to the jurors, if they had understood the legal principle of "acting in concert," they might have reached a different verdict.

Our interviews with the jurors did not indicate that the verdict of acquittal was premised upon a preconceived or inherent mistrust of police officers.

The jurors pointed to specific problems in the evidence presented to them that caused them to discount major portions of the police witnesses' testimony. At no time did they suggest that the witnesses were inherently untrustworthy because they were police officers. Our review of the case did not uncover any evidence to show that the verdict was premised upon, or affected by, a preconceived mistrust of police. Further, we found no evidence to indicate that the jury's verdict of acquittal was influenced by racism or anti-Semitism.

The combination of these inconsistencies in police testimony, deficiencies, in implementing proper investigative procedures, and the influences of the non-evidentiary considerations ultimately undermined the prosecution's case.

Chapter 1

Introduction

13

- ▶ Background
- ▶ Community Reaction to the Verdict
- ▶ Executive Order No. 160
- ▶ Methodology of Review
- ▶ Organization of the Report

INTRODUCTION

BACKGROUND

On the evening of August 19, 1991, a station wagon that was part of a three-car motorcade carrying the Grand Rebbe of the Lubavitch Hasidic community reportedly ran a red light at the corner of President Street and Utica Avenue and collided with another vehicle. The station wagon struck and pinned two young black children beneath its wheels. One of the youths, seven-year-old Gavin Cato, died from his injuries.

A rumor began to spread in the crowd that had gathered at the accident that a Hatzolah ambulance had ignored the two seriously injured children and instead helped the occupants of the station wagon. A person in the crowd was yelling, "We don't get any justice...we don't get any justice, they're killing our children. We have to stop this...Jews get preferential treatment, we don't get any justice." Another person reportedly said, "Let's go to Kingston Avenue and get the Jews." As the crowd grew in size, it moved down President Street, breaking windows and overturning a car along the way.

At about 11:15 p.m. Chaya Sara Popack, a resident of Crown Heights, saw Yankel Rosenbaum walking alone near the corner of President Street and Brooklyn Avenue. She heard someone shout, "There's a Jew, get the Jew," and saw a group of young black males surround Rosenbaum and attack him.

Shortly thereafter, police officers in the vicinity saw a large group of people kicking and punching someone. They saw a black male in a red shirt leaning over someone and apparently hitting him with his hands. The crowd dispersed in response to the police sirens. Other officers responding to the call for assistance immediately began a search and saw a black male in a red shirt, sixteen-year-old Lemrick Nelson.¹

Nelson was caught and frisked. A bloodstained folding knife with the word "Killer" inscribed on it was retrieved from Nelson's pants pocket.

Nelson was taken up the block to the victim, Yankel Rosenbaum, who later died. Other youths had been shown to Rosenbaum, but he had not identified any of them as his attacker. When Nelson was presented to Rosenbaum, Rosenbaum identified Nelson, cursed him and spat at him. Rosenbaum also identified a fifteen-year-old youth, "C.T."² as a member of the group that assaulted him.

Nelson was arrested and his clothes were searched. Three one dollar bills that appeared to have blood on them were discovered in the same pocket in which the knife was found.

According to the two detectives who separately questioned Nelson after advising him of his rights, Nelson described his participation in the attack of Rosenbaum and admitted that he had stabbed Rosenbaum. Nelson refused, however, to sign a written statement.

On August 26, 1991, Nelson was indicted on two counts of Murder in the Second Degree and one count of Criminal Possession of a Weapon in the Fourth Degree. Nelson was subsequently tried and acquitted of all charges relating to the murder of Yankel Rosenbaum.

There was only one other arrest in connection with the attack and that arrest was voided. To date, no one else has been arrested or charged in connection with the murder.

COMMUNITY REACTION TO THE VERDICT

Popular belief was that the case against Nelson was a strong one. Thus, the verdict surprised many New Yorkers, particularly members of the Jewish community who took to the streets in protest. "The verdict touched off an immediate and angry response from hundreds of Jewish demonstrators who closed the Brooklyn Bridge much of the evening, marching and chanting 'We want justice! We want justice!'"³

Councilwoman Mary Pinkett (D-Brooklyn), who is black, stated that she shared the sadness of the Jewish people and said "There is no pogrom in Crown Heights. We are just as dedicated to finding the murderer of Yankel Rosenbaum." Speaking at City Hall, she said, "There is a feeling that many people did not understand how the Jewish community felt about Yankel Rosenbaum — that perhaps we did not care that someone was murdered on the street. I think the fact that we gather here says we do care, that we do understand that it is wrong to take anyone's life just because of who he is — because of his religion, because of his race, creed, his sexual orientation. And we are grieved by that and know that that is wrong."⁴

A few days later, on Sunday, November 1, 1991, nearly 5,000 people gathered outside the Worldwide Lubavitch Headquarters in Crown Heights to protest the verdict. Many speakers denounced the mayor, the police, and the jury. The victim's brother, Norman Rosenbaum, declared that the murder

symbolized anti-Semitic violence permitted in Crown Heights and throughout the United States.

Defending their ruling, jurors cited inconsistencies in police testimony during the trial as a major factor in their verdict. Jurors believed that officers who testified in the trial did not tell the whole truth. One juror was quoted as saying, "I did not believe the police were honest."⁵

The jury, which included six blacks, four Hispanics, and two whites, was also criticized as not accurately reflecting the ethnic composition of Kings County. The fact that no one from the Jewish community, which comprises approximately sixteen percent of the Kings County population, was on the jury led some people to believe that anti-Semitism contributed to the verdict.

The community was further troubled when, on the evening after the verdict, eleven of the jurors went to a Brooklyn restaurant to meet with the defense counsel, Arthur Lewis. According to the jurors, Lewis invited them to join him so that he could answer their questions regarding various theories he discussed during the trial. Upon arriving, however, the jurors found not only Lewis, but also the defendant, his mother, photographers, and reporters. It appeared that the jurors were celebrating the acquittal. The prosecutors and many members of the public were deeply offended by this gathering.

The verdict also generated a feeling of mistrust and suspicion of the criminal justice system in those who were unable to reconcile the verdict with their sense of justice. To many there remained unanswered questions. These questions included:

- Why was no one other than Lemrick Nelson arrested and prosecuted when it appeared that many others were involved in the attack on Yankel Rosenbaum?
- Was a full and thorough investigation conducted?
- Was the case properly prosecuted?
- How could the jury acquit the defendant when it appeared that the case against Nelson was so strong?
- Was the jury's verdict based on racial prejudice or anti-police bias?

EXECUTIVE ORDER NO. 160

In response to requests for an investigation into this case from many different segments of the community, Governor Mario M. Cuomo issued Executive Order No. 160.⁶ This Order directed Richard H. Girgenti, the Director of Criminal Justice for the State of New York and the Commissioner of the Division of Criminal Justice Services, to conduct a review of the facts and circumstances surrounding the criminal investigation and prosecution relating to the death of Yankel Rosenbaum. This independent review was not intended to second-guess or question the jury's decision. Its purpose was to examine and report on the factors that led to the verdict, to identify any deficiencies in the criminal justice system, and to the extent appropriate, recommend corrective action.

METHODOLOGY OF THE REVIEW

A team of attorneys, research analysts, and investigators with police and prosecutorial experience was selected to gather information and prepare this report.

The initial task was to obtain an order unsealing the case files and the transcripts of the legal proceedings. These documents had been sealed, in accordance with Criminal Procedure Law 160.50, following Nelson's acquittal. Judge Edward M. Rappaport, who had presided over the case, granted the State's request on November 25, 1992, and ordered that the records be unsealed. The transcripts and records provided by the New York City Police Department and the Kings County District Attorney's Office were reviewed.

Contemporaneous with the Governor's Order for a review of the case, the federal government announced that it was conducting an investigation to determine whether a federal civil rights action could be brought against Lemrick Nelson for the murder of Yankel Rosenbaum. Consequently, the United States Attorney for the Eastern District of New York requested that we refrain from interviewing anyone who could be a potential witness in the federal case. That request was honored and, as a result, the witnesses who testified in the case of *People v. Nelson* were not interviewed in order to avoid compromising their value in a possible federal case. Instead, we relied upon the trial transcripts and supplementary documents from the Police Department and the District Attorney's Office for information.

Each juror in the Nelson case was interviewed. To preserve the integrity of the process, the jurors were interviewed separately and the substance of these

interviews was not discussed with other jurors. The jurors were also assured that they would not be referred to by name in this report.

Other officials involved in the investigation and prosecution of the case, including the presiding judge and the prosecutors, were interviewed. Arthur Lewis, the defense attorney, declined to be interviewed. Professionals with expertise in forensic and police investigative procedures were also consulted in the preparation of this report.

ORGANIZATION OF THE REPORT

The review of the criminal proceedings involving Lemrick Nelson is separated into the following four chapters: The Prosecution of Lemrick Nelson, The Analysis of the Criminal Investigation, The Jury's View of the Case, and Findings and Recommendations.

Chapter 2, The Prosecution of Lemrick Nelson, contains a description of the trial. To the extent relevant to the discussion in subsequent chapters, the testimony of thirty witnesses that occurred over a period of five weeks is summarized.

Chapter 3, The Analysis of the Criminal Investigation, examines the difficulties encountered during the investigation. The Chapter discusses the steps taken to identify possible suspects and the handling of the evidence implicating Nelson. This chapter also identifies inadequacies in the manner in which the investigation preceded.

Chapter 4, The Jury's View of the Case, explains the basis for the jury's verdict. The jurors identified numerous concerns with respect to the evidence presented. They also expressed concerns with other issues not necessarily relating to the actual evidence. In accordance with the Judge's instructions, the jurors said they acquitted Nelson because the prosecution failed to prove beyond a reasonable doubt that he had committed the crimes charged.

Chapter 5, Findings and Recommendations, contains the findings of our review and to the extent appropriate, recommendations.

ENDNOTES

1. Because of the identification of Lemrick Nelson in Governor Cuomo's Executive Order No. 160 and the fact that the sealed records relating to the case of *The People of the State of New York v. Lemrick Nelson* have been unsealed for the purposes of this review, we have not used initials but have identified Lemrick Nelson by name.
2. Because of the age of the youth, we are referring to him by the initials, C.T.
3. Powers, Associated Press, October 30, 1992.
4. McFadden, Youth Acquitted in '91 Stabbing of Hasid in Crown Heights Melee, *New York Times*, October 30, 1992, at A1, A30.
5. *New York Post*, October 30, 1992, at 4.
6. A copy of Executive Order No. 160 is included in Appendix A.

Chapter 2

The Prosecution of Lemrick Nelson

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- ▶ Arraignment and Detention
- ▶ Indictment
- ▶ Pre-Trial Motions and the Suppression Hearing
- ▶ The Trial
- ▶ The Judge's Charge
- ▶ Jury Deliberations and the Verdict

THE PROSECUTION OF LEMRICK NELSON

The following is a description of each of the major phases in the case of *People v. Lemrick Nelson*.

ARRAIGNMENT AND DETENTION

On August 20, 1991, Lemrick Nelson was arraigned in Criminal Court in Kings County on a charge of Murder in the Second Degree. He entered a plea of not guilty and the Judge ordered that he be held without bail, pending action of the grand jury.

INDICTMENT

On August 26, 1991, a Kings County Grand Jury returned an indictment charging Lemrick Nelson with two counts of Murder in the Second Degree and one count of Criminal Possession of a Weapon in the Fourth Degree.

The two murder charges were based on alternative theories of Nelson's responsibility for Yankel Rosenbaum's death. The first count charged that Nelson, acting in concert with others, intentionally caused Rosenbaum's death by stabbing him. Alternatively, the second count charged that, even if Nelson did not intend to kill Rosenbaum, he was criminally responsible because, acting in concert with others, "under circumstances evincing a depraved indifference to human life," Nelson engaged in conduct that created a grave risk to Rosenbaum by stabbing him and inflicting wounds that ultimately caused his death.

The third count charged Nelson with unlawfully possessing a knife with intent to use it against another person.

PRE-TRIAL MOTIONS AND THE SUPPRESSION HEARING

Supreme Court Justice Edward M. Rappaport was assigned to preside over the trial of Lemrick Nelson. Nelson was represented by Arthur Lewis, a private attorney. Sari Kolatch, an Assistant District Attorney with six years experience in the Kings County District Attorney's Office, was assigned as the lead prosecutor. In the summer of 1992, James Leeper, an Assistant District Attorney

with five years of prosecutorial experience, was assigned to assist Kolatch. Each prosecutor had tried more than forty felony cases, including more than twenty homicides.

While the case was pending, Nelson's attorney filed motions with the court to suppress evidence that the prosecution intended to introduce at trial. This evidence included the physical evidence recovered from Nelson at the time of his arrest, the out-of-court identification of Nelson by the victim, and Nelson's confessions. Nelson alleged that the police had violated his constitutional rights and, therefore, the prosecution should not be permitted to use this evidence against him at trial.

On September 8, 1992, the suppression hearing commenced. First, the defense alleged that the police had arrested Nelson without "probable cause," so that all of the physical evidence subsequently taken from him (the knife, dollar bills, and his clothing) was the result of an unlawful arrest and search. Second, it was alleged that the identification of Nelson by Yankel Rosenbaum was unduly suggestive and, therefore, unreliable. Third, it was alleged that the police had failed to advise Nelson of his constitutional rights; that he was not capable of understanding, and knowingly waiving, his rights; and that the police used physical force to coerce a confession.

At the suppression hearing, the prosecution called as witnesses, Sergeant Wilson; Police Officers Sanossian, Marinos, and Hoppe; and Detectives Litwin, Brown, and Abraham. Their testimony at the hearing was substantially the same as their testimony at trial. They stated that Nelson was apprehended a block from the scene of the attack on Yankel Rosenbaum. They said that when he was frisked, a bloodstained knife with the word "Killer" on the handle was taken from his pocket. They testified that Nelson was brought to Rosenbaum, who identified him as his attacker. They further testified that Nelson confessed to the crime after he was advised of, and voluntarily waived, his constitutional rights.

Nelson also testified at the suppression hearing regarding his presence at the scene of the crime and his apprehension. Nelson confirmed that Rosenbaum identified him as his attacker and that he had been advised of his constitutional rights before he made statements to the detectives. Nelson confirmed substantially all of the statements that the detectives said he related the night of his arrest, with two significant differences — Nelson said that he did not assault or stab Yankel Rosenbaum, nor did he see anyone else assault Rosenbaum. Nelson also said that the knife did not belong to him, and that keys and money were the only items taken from his pocket. According to Nelson, the first time he saw the knife was when the officers showed it to Rosenbaum. Nelson also said that he was handcuffed during the identification procedure.

After considering the hearing testimony, Judge Rappaport denied the motion to suppress. He held that Officer Hoppe had probable cause to arrest Nelson based upon the descriptions of the attacker contained in the police radio communications, Nelson's flight from the scene, and the frisk of Nelson, which yielded the knife. The Judge also found that the identification procedure was conducted in a constitutionally permissible manner and that it was not unduly suggestive. Further, Judge Rappaport found that the statements made by Nelson to the detectives were voluntarily made after Nelson was advised of, and knowingly waived, his constitutional rights.

THE TRIAL

The jury selection process, known as the "*voir dire*," began on September 10, 1992, and continued until September 22, 1992. Over 150 potential jurors were screened. Each prospective juror was interviewed separately, apart from the other jurors. The questioning of each prospective juror lasted approximately fifteen to thirty minutes.

During the jury selection process, the Judge, the prosecutor and the defense attorney asked the potential jurors questions regarding their knowledge of the case, their impressions or opinions regarding the events, and whether there were any facts about the case that they had heard and could not ignore. They were also asked about their own experiences with police officers or members of the Hasidic community. The jurors were questioned extensively about their knowledge of the case in California involving the beating of Rodney King and whether their views about that case would affect their decision. The jurors were asked if they could be fair to both the defense and the prosecution. They were directed to put any preconceived ideas about the case out of their minds.

The jurors who were selected included five men and seven women. Six were black, three were Caucasian, and three were Hispanic.¹ Most of them were employed and many had served as jurors in other cases.

The trial commenced on September 22, 1992, and continued for nineteen additional days through its conclusion on October 29, 1992.² Fourteen witnesses testified for the prosecution on its direct case and one prosecution witness testified in rebuttal. The defense called fifteen witnesses.

The Court's Preliminary Instructions to the Jury

On September 22, 1992, the court gave the jurors standard preliminary instructions. These instructions outlined the manner in which the trial would be conducted and the respective roles of the parties, and explained such applicable legal principles as the "burden of proof" and the "presumption of innocence." In addition, the court instructed the jurors not to speculate about things that were not in evidence. The only factors that they could consider in reaching their verdict were the testimony of the witnesses, stipulations, and exhibits received in evidence. The jurors were admonished not to discuss the case with anyone or read or watch any news accounts relating to the trial. The Judge also told the jurors that they were the sole judges of the facts of the case and that he had no opinion about the case.

Opening Statements

Prosecution

On September 23, Assistant District Attorney Kolatch made her opening statement outlining the People's case. She indicated that the evidence would show that Rosenbaum was attacked by a violent and angry mob and that Nelson, caught up in the frenzy, joined the mob and killed Rosenbaum by stabbing him with a knife.

Kolatch told the jurors about the fatal car accident that killed Gavin Cato and injured his cousin, and the subsequent disturbances. She said that there would be evidence about the cries of "No justice. No peace" and "Let's get a Jew. Kill the Jews." She said that a large crowd began to move west on President Street, breaking windows and turning over a car. At the corner of Brooklyn Avenue and President Street, a group of youths attacked Yankel Rosenbaum.

Kolatch said that there would be evidence regarding the apprehension of Nelson moments after the attack, the recovery of a bloodstained knife from his pocket, the identification of Nelson by Rosenbaum, and Nelson's confession to the police. She said that the evidence would show that all four stab wounds were consistent with Nelson's knife, and that the blood on the knife and on some of the dollar bills found in Nelson's pocket was consistent with Rosenbaum's blood.

Defense

Arthur Lewis, the defense attorney, in his opening statement to the jury, said that the evidence would show that people, other than Nelson, were responsible for the death of Rosenbaum and that the police had framed his client.

Lewis said that, at the time of the attack, Rosenbaum was on the street attempting to protect both the residents of Crown Heights, and the world headquarters of his religious leader to prevent articles and religious artifacts from being vandalized.

Lewis said that the case against Nelson was “a classic frame-up,” urging that the rioting was not the result of the car accident and a desire to attack a Jew. Rather, the rioting was the result of a conflict at the scene of the Cato accident between black youths and the police officers who were involved in “criminal, improper behavior.”

Lewis also said that the evidence would show that Rosenbaum was a “karate black belt holder” and that he fought off his attackers. Lewis further said that Rosenbaum would have lived were it not for the negligence of the doctors at Kings County Hospital. Although initially sustained, the prosecutor’s objection to this statement in the defense’s opening was ultimately overruled by the Judge. Lewis then noted that Rosenbaum’s family had a multi-million dollar lawsuit pending against the City as a result of the alleged negligence at the hospital.

The Prosecution’s Case

During the trial, the prosecution offered evidence to prove that Rosenbaum was an innocent victim of a violent mob that attacked him because he was Jewish. The prosecution’s case consisted primarily of police and forensic testimony.

The Identification of Yankel Rosenbaum’s Body

The first witness called by the prosecution was Esther Edelman, a cousin of Rosenbaum. She testified that Rosenbaum was an Australian who came to the United States in the beginning of August, 1991, to visit and study. On August 19, Rosenbaum visited Edelman’s home in Brooklyn and left at about 8:30 p.m. to return to his home in Crown Heights. Rosenbaum was due to return to Australia the following week. The next morning, Edelman went to the Medical Examiner’s Office to identify photographs of Rosenbaum’s body.

On cross-examination, in an attempt to place before the jury evidence regarding the negligence of the physicians at Kings County Hospital, defense counsel attempted to elicit from Edelman that her husband was an attorney and had filed a lawsuit against the city. The prosecution objected and, after a lengthy sidebar discussion out of the hearing of the jury, the court sustained the objection. The court ruled that, for the purposes of the criminal trial of Nelson, any malpractice that may have occurred when Rosenbaum was at the hospital had no legal effect upon the cause of his death. This was so because, regardless of whether there had been malpractice, Nelson would be liable for the death of Rosenbaum if he had stabbed Rosenbaum with the intent to cause his death. Despite the court's ruling, Lewis continued to ask Edelman questions designed to elicit this information.

The Police Witnesses

The prosecution called ten police witnesses to the stand: Officers Richard Sanossian and Leonard Milazzo, of the 70th Precinct; Officers Mark Hoppe and John Marinos, of the 71st Precinct; Officer Robert Lewis of the Transit Police; Sergeant Brian Wilson of the 77th Precinct; Detectives Steven Litwin and Nemesio Abraham of the 71st Precinct; Detective Edward Brown of the Brooklyn South Homicide Squad; and Detective Charles Mattera of the Kings County District Attorney's Office.

The police witnesses testified concerning the events leading to Rosenbaum's homicide, Rosenbaum's identification of Nelson, and Nelson's subsequent confession.

The Accident

At 8:30 p.m. on August 19, 1991, Police Officer Mark Hoppe and his partner, Officer John Marinos, were the first police officers to respond to the scene of a fatal car accident at the intersection of Utica Avenue and President Street in Crown Heights. Gavin Cato, a seven-year-old black child, had been killed and his cousin, Angela Cato, was seriously injured when a car driven by a member of the Hasidic community spun out of control and struck both children. A crowd gathered and the officers saw black males from the group beating some of the Hasidic men who were in the car involved in the accident.

Over the next few hours the crowd continued to grow. This escalated into a riot in which rocks and bricks were thrown and a shot was fired. A black man yelled, "We don't get any justice...they're killing our children. We have to stop this...Jews get preferential treatment, we don't get any justice." Another individual said, "Let's go to Kingston Avenue and get the Jews" and the crowd moved west on President Street.

The Stabbing of Yankel Rosenbaum

Police Officers Richard Sanossian and Leonard Milazzo, of the 70th Precinct in Crown Heights, left the scene of the accident at about 11:15 p.m. in order to return to the Precinct. When they approached the intersection of Brooklyn Avenue and President Street, they saw a group of at least ten black males attacking who they later learned was Yankel Rosenbaum, in front of St. Mark's School. Milazzo and Sanossian saw a male black teenager, wearing a red shirt and baseball cap, crouched over Rosenbaum. According to Milazzo, the teenager was hitting Rosenbaum with his hands. Milazzo could not tell if the youth had anything in his hands.

When the officers turned on the siren in their patrol car, the group dispersed. As they began their pursuit of the attackers, Milazzo broadcast over his radio that officers were "in pursuit at Brooklyn and President." Having noticed a black male, about 5'8" tall, wearing a red shirt and a baseball cap, Sanossian transmitted over his portable radio the description, "male black in a red shirt." Milazzo chased a youth in a green shirt (later identified as C.T.) who had run west on President Street. Sanossian joined in the chase.

In the meantime, Sergeant Brian Wilson, a patrol supervisor in the 77th Precinct, was in a police car with his driver, Officer Daniel Price. As they arrived at the intersection of Brooklyn Avenue and President Street, Rosenbaum was walking slowly in the street toward their car. He was hunched over with a large bloodstain on the right side of his shirt.

Rosenbaum told Wilson that he had been stabbed by a group of blacks. Wilson then walked with Rosenbaum to a car, occupied by three members of the Hasidic community, that was stopped north of President Street near Brooklyn Avenue. Wilson told Rosenbaum to stay there while he ran up Brooklyn Avenue to find another police officer. When he returned a short time later, Wilson called for an ambulance.

While waiting for the ambulance, Milazzo and Sanossian brought C.T., the black male wearing the green shirt, whom the officers had chased and apprehended, to Rosenbaum to determine if Rosenbaum could identify C.T. as one of his attackers. Rosenbaum did not identify C.T. as the stabber, although he did say that "he was one of them."

Upon Wilson's instructions, Sanossian and Milazzo arrested C.T. and then took him to Kings County Hospital for treatment of a cut he had sustained during a brief struggle with the officers. Officer Price, Wilson's driver, then brought

a "chubby kid" over to Rosenbaum for possible identification. Rosenbaum said the youth was not involved in the attack so he was released.

The Arrest of Lemrick Nelson and the Recovery of a Knife

Shortly after 11:00 p.m., Hoppe and Marinos left the scene of the Cato accident and drove back to the 71st Precinct. Upon their arrival, they were instructed to drive to 770 Eastern Parkway. While enroute, Hoppe, the driver of the patrol car, heard a radio transmission stating, "In pursuit, President and Brooklyn." This was approximately one block south of their location. Rather than continue to 770 Eastern Parkway, Hoppe decided to assist his fellow officer. Marinos, the "recorder" in the patrol car, testified that he heard a radio transmission that an officer "was in pursuit on Brooklyn and President of a male black wearing a red shirt."

After turning south on Brooklyn Avenue, Hoppe stopped just before the intersection of Union Street, because he saw a large crowd of fifteen to twenty people running from President Street toward his car on Brooklyn Avenue. Hoppe and Marinos left their car and began to chase them.

Within three to five minutes of receiving the radio transmission, Hoppe saw Lemrick Nelson, a black male wearing a red shirt and a baseball cap, climb over a fence into the front yard of a house at the corner of Brooklyn Avenue and Union Street. Hoppe saw Nelson crouch behind a bush and look toward President Street. Hoppe climbed over the fence, placed Nelson on the ground and frisked him. From Nelson's right pocket, he recovered a folding knife with blood on the blade and the word "Killer" inscribed on the handle. He displayed the knife to his partner and then placed it in his rear pocket.³

Nelson stood up and was assisted in climbing over the fence. Detective Steven Litwin told Hoppe to take Nelson to the intersection of President Street and Brooklyn Avenue where the assault had occurred.

Hoppe testified that he was the only officer in the yard with Nelson and that he was the only one who frisked him. Although he recalled that other police officers arrived at the scene, Hoppe could only recall recognizing Litwin. He could not recall the identity or description of the two or three other officers who were present at the scene of Nelson's apprehension. Nor could he recall who accompanied him when he escorted Nelson to the scene of the attack so that Rosenbaum could view Nelson.

The Show-up Identification of Lemrick Nelson

At the intersection of Brooklyn Avenue and President Street, there was a group of civilians and eight to ten police officers. A car was stopped just before the intersection and Rosenbaum was lying on its hood, bleeding profusely from his right side. As Hoppe walked in front of Rosenbaum with Nelson, Rosenbaum tried to get up. At that point, Rosenbaum said to Nelson, "Why did you stab me?" According to Sergeant Wilson, Rosenbaum then spat what appeared to be a wad of blood at Nelson. According to Hoppe, he then took Nelson by the arm, walked him five to ten feet away from Rosenbaum, and placed him in handcuffs. Wilson remembered that Hoppe also showed him a knife and told him he had recovered it from Nelson.

The prosecution then called Police Officer Robert Lewis, a Transit Police Officer. He gave an account of Nelson's apprehension, recovery of the knife and show-up identification which was, in some respects, at variance with other police testimony.

According to Lewis, on August 19, he and his partner, Officer Gerald Wheeler, were assigned to patrol duty in Crown Heights. They responded to a radio transmission that a police officer was "in pursuit" at Union Street and Brooklyn Avenue. As they arrived at the intersection, Lewis saw Hoppe jump over a fence into a small yard of the house at the corner of Union Street and Brooklyn Avenue.

In contrast to Hoppe's testimony that he alone apprehended Nelson, frisked him, and recovered the knife, Lewis testified that he also jumped over the fence and, along with Hoppe, frisked Nelson. According to Lewis, Hoppe recovered the knife from Nelson's right pants pocket and then handed Lewis the knife. Lewis noticed that it was rusty and had what appeared to be dried blood on it. Lewis also saw that the word "Killer" was written on the handle.

In contradiction to Hoppe's testimony, Lewis said that he opened the knife and, holding the tip of the blade, handed the knife to his partner, Officer Wheeler. Wheeler examined the knife and handed it back to Lewis who returned it to Hoppe. Hoppe closed it and put it in his rear pocket.

Lewis also testified that he accompanied Hoppe and Nelson up the block to President Street. As they approached the car where Rosenbaum was lying, Rosenbaum got excited, pointed at Nelson and either said, "Why did you do that to me, you in the red shirt. You are tougher with your friends. Now you ain't tough without your friends" or "You in the red shirt, why you did that to me? You tough now. But you're not tough without your friends."

During Lewis's direct testimony, Judge Rappaport often interrupted the examination and took over the questioning. Highlighting the inconsistencies between the testimony of Lewis and Hoppe, the Judge implied several times that Hoppe's credibility was questionable. At one point, the Judge said to the prosecutors, within the hearing of the jury:

Continue. I will tell you this. The court wants Hoppe and Marinos back here on Monday. Do you follow me? I want them back...We will deal with Litwin. We will have Litwin back too. This is bad.

Processing the Arrest

After the identification, Hoppe put Nelson in the back of a transit police car. Nelson was then driven to the 71st Precinct. At the Precinct, Hoppe searched Nelson's pockets. In the same pocket in which he had recovered the knife, he found three one dollar bills that appeared to be stained with blood. Hoppe did not record the serial numbers of the bills, initial them, or place them into a voucher envelope. Instead, he placed them in his own rear pocket with the knife. Later, Hoppe put the bills and knife together in a brown paper bag which he found lying on a desk in the Precinct. Hoppe also noticed that there were wet bloodstains on Nelson's pants. The stains were below the right front pocket seam and on the upper thigh of the left leg.

Hoppe put Nelson in a holding cell on the second floor of the Precinct. Approximately one hour later, Hoppe noticed Nelson lying down holding his chest. Hoppe went to the cell and saw that Nelson was having difficulty breathing. An ambulance was called and, after a brief examination by the attendants, Hoppe accompanied Nelson to Kings County Hospital for asthma treatment.

While at the hospital, Hoppe met Officers Sanossian and Milazzo. When Milazzo saw Nelson, he could not positively identify him as the person he saw hitting Rosenbaum. Nonetheless, Milazzo did testify that Nelson was wearing similar clothing and was close in stature, height, and weight to the person he saw hitting Rosenbaum.

Sergeant Wilson also went to the hospital where he instructed Sanossian and Milazzo to take custody of Nelson and process his arrest since they already had custody of C.T. Hoppe told Milazzo about Nelson's arrest and gave him the brown paper bag containing the folding knife and the three one dollar bills that he had recovered from Nelson. Milazzo put the bag in his pocket.

Nelson's Confessions

At approximately 2:25 a.m., Yankel Rosenbaum died at Kings County Hospital. He bled to death as a result of his stab wounds. The police were notified and Detectives Edward Brown and Nemesio Abraham were assigned to conduct the investigation into the homicide. At about 3:00 a.m., Milazzo brought Nelson back to the 71st Precinct where the detectives interviewed him.

As the detectives were about to begin the interview, a superior officer informed them that they would have to move the interview to another precinct. The 71st Precinct was overcrowded as a result of the investigation of the Cato accident. Abraham left the room to try and obtain permission to remain in the 71st Precinct. While Abraham was gone, Brown advised Nelson of his rights. According to Brown, Nelson said that he understood his rights and confessed that he had stabbed Rosenbaum.

Brown testified that Nelson told him that on the evening of August 19, 1991, he had been drinking beer at his friend's house at 455 Schenectady Avenue. He saw several ambulances heading towards Kings County Hospital and went to find out what had happened. When he got to Utica Avenue and President Street, a policewoman told him that a "Jewish guy" had hit a black kid with a car. Nelson then walked to President Street and Brooklyn Avenue where a crowd had gathered. Someone shouted, "There's the Jew. Let's get the Jew." Nelson said he then joined the crowd and chased "the Jew" because he was excited and a little high from the beer.

According to Brown, Nelson said that when the crowd caught Rosenbaum, he took out his knife and cut Rosenbaum once on the left side. Nelson told Brown that police officers chased the kids in the crowd. They caught him at Brooklyn Avenue and Union Street. The police found a knife in his pocket. They then brought him up the block to Rosenbaum who identified Nelson as the stabber.

Brown took no notes during the interview with Nelson. According to Brown, in his experience, suspects become "nervous" when the police take notes. Nelson refused to write or sign any statements and Brown did not have Nelson sign a form indicating that he understood his *Miranda* warnings. When Abraham returned to the interview room, Brown told him that Nelson had confessed. Then Brown left the room to speak with the superior officer who had ordered them to leave the 71st Precinct.

While Brown was gone, Abraham advised him of his constitutional rights and conducted a separate interview with Nelson. According to Abraham, Nelson gave substantially the same statement that he had given to Brown earlier.

At approximately 3:40 a.m., the detectives left the 71st Precinct with Nelson. Outside, Nelson saw that protesters had gathered. Police with riot gear were erecting barricades. Nelson stiffened, and then asked the detectives, "How much trouble am I in and what's going to happen to me?" Brown told him, "You are under arrest and everything else is up in the air right now."

Several hours later, at about 7:30 a.m., Assistant District Attorney Quentin Moore arrived at the 60th Precinct to take a videotaped statement from Nelson. After he was again advised of his rights, Nelson refused to make a statement.

The Forensic Evidence

The prosecution called three forensic witnesses at the trial. They were Ralph Ristenbatt, a Forensic Analyst in the Department of Forensic Biology in the Office of the Chief Medical Examiner for the City of New York; Dr. David Bing, Scientific Director of the Center for Blood Research (CBR) Laboratories in Boston; and Dr. Joaquin Gutierrez, an Associate Medical Examiner in the Office of the Chief Medical Examiner for the City of New York.

The prosecution sought to establish through its forensic experts that the blood from Nelson's knife and on some of the dollar bills recovered from his pocket was consistent with Rosenbaum's blood type and inconsistent with Nelson's. The prosecution also introduced evidence to show that the stab wounds were the cause of Rosenbaum's death and that the shapes of Nelson's wounds were consistent with the knife recovered from Nelson.

The Serological Evidence

The prosecution called Ralph Ristenbatt, an analyst in the Department of Forensic Biology at the Office of the Chief Medical Examiner for the City of New York, as a witness. Ristenbatt performed serological tests on various items submitted to him by the police and performed tests on blood samples taken from Yankel Rosenbaum and Lemrick Nelson. He performed these tests on the knife, the three one dollar bills recovered from Nelson, and on Nelson's shirt and pants.

Ristenbatt testified that the results of these tests demonstrated that the bloodstains on the knife, the dollar bills and the jeans were human blood. He next attempted to identify the blood type of the stains by performing an enzyme analysis. He was unable to complete this test on the dollar bills or the knife due

to the small sample size. However, in an analysis on stains randomly chosen from Nelson's pants, he was able to identify the subtype of the bloodstains. The stains were consistent with Rosenbaum's blood, and inconsistent with Nelson's blood. Ristenbatt testified that, based upon studies done at the Medical Examiner's Office, only one percent of the entire population had Rosenbaum's subtype.

Ristenbatt also randomly chose four stained areas from Nelson's shirt for testing. He determined that these stains were not blood. Explaining that the Office had a large caseload, Ristenbatt noted that no additional testing was performed on the shirt.

At the time that the evidence was submitted to the Medical Examiner's Office for testing, the Office did not have the equipment necessary to perform more sophisticated, deoxyribonucleic acid (DNA) tests on the bloodstains to determine if they were, in fact, Rosenbaum's blood. As a result, the evidence was packaged and stored until it was sent, in January, 1992, to the Center for Blood Research (CBR) Laboratories in Boston for additional analysis.

Dr. David H. Bing, Scientific Director of CBR Laboratories, testified that, in January, 1992, he received a box containing samples of Nelson's pants and the dollar bills from the New York City Medical Examiner's Office. He also received swabs prepared by Ristenbatt from the blood that was on the knife, as well as samples of Nelson's and Rosenbaum's blood. Dr. Bing performed a forensic DNA test known as "Polymerase Chain Reaction (PCR) - DQ Alpha" on the samples to determine whether the blood on the knife and dollar bills was consistent with Rosenbaum's blood.

Tests on the blood samples taken from Rosenbaum and Nelson showed that their blood types were different. Approximately eleven percent of the Caucasian population has Rosenbaum's blood type. Nelson, however, does not have this blood type. Dr. Bing testified that the blood taken from the knife and one of the dollar bills was consistent with Rosenbaum's type. The tests performed on the other dollar bills were inconclusive. Dr. Bing explained that this may have been because the sample was too small or because the blood had degraded over time and could not be tested.

Dr. Bing testified that the analysis on Nelson's pants yielded no results because they were made of denim. Denim contains a substance which interferes with the performance of PCR — DQ Alpha testing. This trait, however, does not affect the genetic marker analysis performed by Ristenbatt.

The Medical Examiner Establishes Cause of Death

Dr. Joaquin Gutierrez, an Associate Medical Examiner in the City of New York, was the last witness called on the prosecution's direct case. He testified that on August 20, 1991, at approximately 10:00 a.m., he performed an autopsy on Yankel Rosenbaum. The victim had four stab wounds in the back. Two of them penetrated Rosenbaum's lungs, causing his death from loss of blood. All of the wounds had sharp and blunt edges. The shapes of the wounds were consistent with Nelson's knife.

On cross-examination, Gutierrez testified that the cause of death was the result of the stab wounds that were "potentially lethal." Gutierrez conceded, however, that even a pinprick to a vein or an artery could cause a person to die from the loss of blood.

Other injuries that Gutierrez found on Rosenbaum were a cut on his right forehead, two small one-inch lacerations below his left eye, and bruising of the eyelids. After an internal examination, Gutierrez also found that there was a small fracture of the base of the skull at the roof of the left eye socket. This injury was caused by blunt impact.

Gutierrez acknowledged on cross-examination that there were various procedures that he did not perform at the autopsy. He did not measure the blunt edge of the wounds. He did not obtain a fingernail clipping of Rosenbaum, nor did he submit any tissues for toxicological examination. Further, he was unable to find trace evidence, such as hair or fibers, on Rosenbaum's clothing, because the clothing had been washed before it was submitted to the medical examiner.

At the conclusion of Gutierrez's testimony, the prosecution rested its case.

The Defense Case

Although the defense consisted of various theories, the central theory was that the police framed Lemrick Nelson and that he was not the person who stabbed Yankel Rosenbaum. While defense counsel extensively cross-examined the prosecution's witnesses, he also called fifteen witnesses on his direct case.

Essentially, Lewis challenged the prosecution's theory that the attack on Yankel Rosenbaum was an anti-Semitic act upon an innocent victim. He asserted that the riot that led to the attack was not caused by the anger of the black community against the Jews, but rather against the police. Lewis tried to prove that the "criminal and improper acts" of police officers earlier at the Cato

accident scene sparked the riot and, therefore, provided the officers with a motive to frame his client to divert attention from their own misconduct.

Lewis further claimed that the police had a motive to frame his client because there was a special relationship between the police and a Jewish group involved in the protection of the synagogue. Lewis argued that Rosenbaum was Jewish, and a member of a "civilian patrol." Therefore, there was pressure upon the police to make an arrest. As part of the frame, Lewis suggested that the police either coerced or fabricated Nelson's confessions. The defense called witnesses to testify that Nelson was so mentally deficient that he could not understand, and knowingly waive, his constitutional rights. Lewis also sought to show that Nelson was a peaceful youth and had no propensity for violence.

In addition, Lewis asserted that the identification procedure was so tainted that Rosenbaum only identified Nelson because he was in handcuffs and because Rosenbaum saw the knife allegedly recovered from Nelson.

The defense also attempted to show that the actual cause of Rosenbaum's death was not the stab wounds inflicted by his attackers, but the negligence of the physicians at Kings County Hospital who did not properly treat Rosenbaum. And, finally, the defense attacked the forensic evidence, casting doubt on the quality of the testing done and the validity of the conclusions of the prosecution's forensic specialists.

The Frame of Lemrick Nelson: Police Motives

The Riot was Caused by Police at the Cato Accident Scene

The first defense witness was Carmel Cato, the father of the young boy who was killed in the car accident. Cato testified that, shortly after 8:00 p.m., he was outside in front of his apartment building on President Street with his son, Gavin, and his niece, Angela. A car traveling west on President Street jumped the curb, and crashed into the building, pinning Gavin and Angela beneath it. Cato and others at the scene lifted the car and extricated the children.

The police arrived at the scene but, according to Cato, did not aid the children. Cato testified that the first ambulance on the scene was a private, Jewish ambulance that ignored the children and, instead, took the passengers and the driver of the car away from the scene.

During the course of Cato's testimony, defense counsel tried to elicit testimony that the riot, which began after the accident, was caused when the police assaulted Cato and prevented him from helping the injured children. The

Judge sustained an objection to this line of questioning, ruling that the proposed testimony was inadmissible, because it was irrelevant to Rosenbaum's murder.

Since Rosenbaum was Jewish, and a Member of a Civilian Patrol, the Police had a Motive to Frame Nelson

The defense called seven witnesses to prove the existence of a Jewish civilian patrol and Rosenbaum's participation in it.

Mildred Scott, a member of the 71st Precinct Community Council, was called by the defense. She testified only that she was familiar with the Jewish civilian patrol customs in that Precinct. The prosecution objected on the ground that Ms. Scott had no personal knowledge of Rosenbaum's participation in a Jewish civilian patrol. That objection was sustained and Scott was not permitted to answer additional questions about it.

John Anderson, a twenty-four year old black male, testified that he was at the Cato accident scene. He was upset at the scene of the accident because the driver of the car that killed seven-year-old Gavin Cato was taken away in an ambulance before the child was treated.

Anderson described the group at the Cato accident scene and the increasing agitation of the crowd. Anderson testified that he heard a man inciting the crowd and yelling, "No justice. No peace." At about 11 p.m., he and about fifty to one hundred other people headed down President Street, in the direction of Brooklyn Avenue. Anderson did not know anyone in the crowd. He said that he was just following the crowd to see what was going on.

Anderson said that he broke off from the crowd in front of St. Mark's School. At approximately 11:20 p.m., he was standing on the corner of Brooklyn Avenue and President Street with a few people whose names he could not remember. Across the street, in front of the school, there was a group of ten to fifteen people.

Anderson said that he saw Yankel Rosenbaum, a man about six feet tall, with a beard, hair, and a "thing that's on top of the head," in a car with three other men. Rosenbaum got out of the car and said something to one of the youths in the group in front of the school. Rosenbaum then threw a kick at him. The youth caught Rosenbaum's foot, threw him against a fence and began to hit him. Three other members of the group joined in this attack. Anderson saw Rosenbaum get punched, but he did not see anyone stab Rosenbaum. According to Anderson, the attack on Rosenbaum was committed by "grown" black men.

Anderson testified that police sirens sounded and people ran in different directions. Rosenbaum chased some members of the original group of ten to fifteen people. The police arrived at the scene from all directions. Although most of the group ran from the scene, Anderson said that he refused to run because he did not "do anything." He and another youth named "UT" stayed at the scene.⁴ Anderson did not know UT's full name or where he lived.

According to Anderson, the first police officers to approach him took him to Rosenbaum, who was now at the opposite corner leaning on a car north of the intersection of President Street and Brooklyn Avenue. Rosenbaum was bent over and Anderson saw blood on him. Anderson testified that another youth was being shown to Rosenbaum who spit at the youth. Anderson was wearing a red shirt that night. He was never handcuffed. When Anderson was brought to Rosenbaum, the police officer asked Rosenbaum if Anderson was one of those who attacked him. According to Anderson, Rosenbaum said, "No, he couldn't see nobody."

Two others were also shown to Rosenbaum. One was a person who had been with John Anderson at the scene. That person was wearing a red shirt and black pants.⁵ Anderson did not identify Nelson as that person. Anderson said that he would be able to recognize him if he saw him again. According to Anderson, another person wearing a red shirt and a hat was also shown to Rosenbaum. Anderson could not describe nor recognize that person. Anderson said that, while he was at the scene, he had "never seen a cop with a knife, at no time."

The defense also called as witnesses three members of the Hasidic community: Chaim Lieberman, Meyer Rivkin, and Chaya Sara Popack. Although Lewis suggested that Lieberman and Rivkin were with Rosenbaum, patrolling the street, they were never asked whether they were members of a civilian patrol.

Chaim Lieberman, an ordained rabbi, testified that he lived in Crown Heights on the east side of Eastern Parkway between Brooklyn and Kingston Avenues. On August 19, 1991, shortly after 11 p.m., he left his home with a friend, David Noll,⁶ and went to Brooklyn Avenue because he heard police sirens and a great deal of noise.

When they arrived, Lieberman saw a New York City Police Department car on Union Street. Some officers were near a house on the southwest corner of Union Street and Brooklyn Avenue. Lieberman testified that he saw a male lying face down in the garden. He went to the police car to find out what happened. An ambulance arrived at Brooklyn Avenue and President Street and

Lieberman saw another man on a stretcher. Lieberman, who had known Rosenbaum, did not immediately recognize him because of the blood on his face and beard. He testified that he only recognized Rosenbaum after he heard him speak. Lieberman testified that Rosenbaum called to him saying, "Chaim, please help me. They want to kill me." Lieberman also recalled that Rosenbaum told him that it was "twenty on one."

Lieberman stated that he noticed the stab wounds when he saw the ambulance attendants remove Rosenbaum's pants in order to put a trauma suit on him. He said that the stab wound on Rosenbaum's back was large and he could "actually see his guts hanging out." Lieberman testified that he then introduced Meyer Rivkin to Rosenbaum. He asked Rivkin to accompany Rosenbaum to the hospital, because Lieberman had to go home to check on his pregnant wife.

Lieberman testified that, after seeing the man in custody at the corner of Brooklyn and Union Street, he did not see him again. He did not see the man brought to Rosenbaum for identification, because there was commotion and noise from people screaming at the scene and he was talking to the ambulance attendants to find out where they were taking Rosenbaum.

After checking on his wife, Lieberman drove to Kings County Hospital with David Noll. There, he met Meyer Rivkin. He recalled that the Police Commissioner and Mayor Dinkins visited Rosenbaum. Lieberman did not see Rosenbaum at the hospital, but was given his clothing by a nurse. Lieberman, Noll and Rivkin went home several hours later.

At home, Lieberman put Rosenbaum's bloodstained clothing in the washing machine. Lieberman received a phone call from the police informing him that they needed Rosenbaum's clothing. Fifteen minutes later, two uniformed police officers arrived at his home and told him that Rosenbaum had died. The police asked for Rosenbaum's clothing. Lieberman took the clothing out of the washing machine, put it in a plastic bag and gave it to the police.

Meyer Rivkin, a thirty-nine-year-old general contractor who lived in Crown Heights, testified that at approximately 11:00 p.m., he was driving home from Borough Park when he turned onto Kingston Avenue and encountered groups of black youths. He testified that the youths were carrying broken bottles and coming towards his car in a threatening fashion. As a result, Rivkin detoured from his original route and turned onto President Street.

As he approached Brooklyn Avenue, he saw a blue car stopped in the middle of the street. It was just before the light at the beginning of the intersection — directly north of President Street, on Brooklyn Avenue. Yankel Rosenbaum, whom he did not know at the time, was lying on the hood of a car.

There were a number of people around the car. However, there were no police cars or ambulances. Rivkin parked his van and noticed that the man on the car was Jewish because his "tzitzis" [the fringe on his prayer shawl] was hanging out of his shirt.

On the hood of the car, Rivkin saw a pool of blood that appeared to be coming from Rosenbaum's back. Rivkin also noticed a slight gash on the top of Rosenbaum's head. Rivkin testified that Rosenbaum was trying to get up to go after the people who attacked him. Several people were trying to restrain and comfort him. An ambulance arrived before Rivkin noticed any police on the scene.

Rivkin testified that he saw two police officers, one on each side of a black male whom they seemed to push over to Rosenbaum. Rivkin could not say whether the black police officer, who was on the scene at some point, was present at the time that Rosenbaum identified Nelson. Rivkin stated that he could not tell if Nelson's hands were handcuffed. He could only recall seeing the upper parts of Nelson's arms. Although he did not remember seeing a hat on Nelson, Rivkin did notice that Nelson's shirt was red.

Rivkin testified that Nelson was brought to Yankel Rosenbaum who immediately attempted to get up. In response to a question by a police officer, Rosenbaum identified Nelson and said, "That's the one" or "Him in the red shirt." When the police asked if he was sure, Rosenbaum answered affirmatively. Rivkin said Rosenbaum also yelled, cursed, and spat at Nelson. Rivkin also recalled that another person was brought to Rosenbaum. However, he could not remember whether this was before or after Nelson was shown to Rosenbaum. Nor could he provide any other specifics about that person. Rivkin did not recall seeing or hearing anything about a knife at the scene.

Rivkin accompanied Rosenbaum in the ambulance at Lieberman's request. Rivkin stayed at Kings County Hospital for a couple of hours. He remembered the arrival of the Mayor and the Police Commissioner. He also saw a member of the hospital staff give Yankel Rosenbaum's clothing to Lieberman.

Chaya Sara Popack, an Hasidic woman, testified that on August 19, 1991, at about 11:15 p.m., she was alone in her car, driving west on President Street, coming from Troy Avenue. As she drove, she saw large groups of thirty to forty young, black people "all over the place." At the intersection of President Street and Kingston Avenue, Popack looked down the street and saw police activity in the area of Eastern Parkway. As she continued west and approached the intersection of President Street and Brooklyn Avenue, she saw another group of twenty to twenty-five black people moving in a northerly direction towards President Street.

While she stopped at the traffic light, she saw Yankel Rosenbaum. She had never seen him before. Popack said that Rosenbaum was walking alone on the southwest corner of President Street and Brooklyn Avenue towards the group, on the opposite side of the street. After he crossed President Street, as he was approaching the northwest corner, she heard someone shout, "There's a Jew, get the Jew." She testified that Rosenbaum was surrounded and attacked by ten to twelve members of the group.

Popack remained in her car at the light and noticed that there was a car to her left with a man in the driver's seat. She saw members of the group punch and kick Rosenbaum. Rosenbaum started to run away, passing in front of her car. She said that she honked her horn. The group caught Rosenbaum in front of St. Mark's School.

Popack could not say exactly how many of the group of twenty to twenty-five attacked Rosenbaum, but she thought that it was between ten and twelve. She also could not remember whether the members of the group were shouting anything as they chased Yankel Rosenbaum. She testified that when they caught him, they knocked him to the ground and "they were on top of him." Popack believed that, at least part of the time, Rosenbaum was lying on the ground on his back. She saw several people — seven or eight — jumping on top of him, leaning over him and grappling with him. He was trying to fight them off.

Popack testified that a police car drove up and stopped at St. Mark's School. As soon as the police car pulled up, the group scattered and ran off in different directions. Some ran east on President and some went south on Brooklyn.

When the traffic light changed, Popack drove on. Popack waited on Union Street at the southwest corner of Brooklyn Avenue for approximately five minutes because the police cars were blocking her way. Near the house on the corner, she saw "more than one" uniformed police officer, with a young black man whose hands were behind his back. She could not remember whether he was wearing a cap. Popack could not identify Nelson, because he had not been facing her. She also said that she could not recognize any of the others she saw attacking Rosenbaum.

Popack testified that she did not see anyone handcuffed. She acknowledged, however, that she may have told detectives in an earlier interview that the young black man was in handcuffs. During her testimony, she insisted that she had only assumed that he was in handcuffs because his hands were behind his back.

The defense contended that since the police responded immediately to the scene of the attack, this indicated that Rosenbaum, Lieberman and Rivkin were members of the civilian patrol and got prompt reaction from "the powers that be." Two other witnesses, Vernal Cave and Lorraine Gayle, were also called to support this theory.

Dr. Vernal Cave, a physician who lives on President Street, between Kingston and Brooklyn Avenues, testified that on August 19, 1991, shortly before 11:30 p.m., he was standing in the doorway of his home waiting for a cab. He heard a noise coming from the direction of Kingston Avenue. He then walked down the pathway towards the street, trying to see what was happening. He saw approximately ten to fifteen young, black people running down the street. They stopped halfway down the block, looking toward Kingston Avenue, before continuing to run west in the direction of Cave's home. When they were joined by additional people, Cave retreated up the pathway.

Cave testified that fifteen police vehicles came from every direction with their lights flashing, meeting at the intersection of President Street and Brooklyn Avenue. Although his view was somewhat limited by shrubbery along the pathway, Cave saw the arrival of two ambulances, the larger one bearing the inscription "EMS." This ambulance remained at the scene for about fifteen minutes. During this time, Cave heard "moaning" coming from the southwest corner of President and Brooklyn Avenue, diagonally across the street from St. Mark's School. He saw a person on a stretcher lifted into the ambulance. Gradually, the crowd dispersed and the police vehicles left.

Lorraine Gayle also testified about the police response to the scene of the attack. Gayle, a college graduate and a sales credit analyst for Shearson Lehman, testified that she lived near the intersection of President Street and Brooklyn Avenue. A short time after 11:00 p.m., she was sitting outside her home when she heard yelling coming from Kingston Avenue. She then saw a group of blacks coming west on President Street, yelling and jumping on cars. The shirts that they wore were different colors. She could not specifically remember seeing a red shirt.

After the group passed her residence, Gayle noticed that something was happening at the corner intersection. She saw a large group but could not tell whether they were encircling a person. She ran into her house to call the police. However, she heard police sirens even before she could make the call. She went back into the street and saw members of the group running away in all directions. One member ran into the house next door to hers.

Police cars arrived from all directions. Gayle went to see what was happening and saw Rosenbaum lying on the street. Gayle was present when the ambulance arrived. She did not notice whether anyone was brought over to Rosenbaum because her attention was focused elsewhere. Gayle testified that she met John Anderson at the scene. She recalled that he told her what happened and that she spoke with him for some time.

Inconsistencies and Contradictory Testimony to Show that the Police Lied to Frame Nelson

In addition to cross-examination of the prosecution witnesses, defense counsel offered evidence on his direct case intended to undermine the credibility of the police witnesses. Defense counsel contended that the existence of so many contradictions indicated that the police lied to frame his client.

Beverly Williams, a 911 operator and radio dispatcher for the New York City Police Department, testified that during the evening of August 19, 1991, she was working as a dispatcher at 1 Police Plaza. Williams identified an audiotape cassette as a recording of her voice and the voice of others who had broadcast over the radio on August 19, 1991. She testified that she heard a recorded message on the tape about officers "in pursuit on President and Brooklyn."

Defense counsel asked Williams whether she heard anything on the tape regarding a red shirt.⁷ Williams was not permitted to answer because the Judge sustained the prosecution's objection.

On cross-examination, Williams testified that she could not tell what was going on during the time when static and a blank space appeared on the tape. She said that, "it could be [the officers] trying to say something or someone cutting someone off."

Nelson's Statement was Coerced and He was Incapable of Understanding and Waiving His Constitutional Rights

The defense called three witnesses during the course of the trial to prove that any statements that Nelson may have made to the police after his arrest were made involuntarily. Defense counsel claimed that Nelson's statements were coerced in order to support the police frame. The defense also offered evidence to prove that Nelson did not possess the mental capacity to understand and waive his constitutional rights.

Peter Hamilton, an EMS technician, testified that, in the early morning hours of August 20, 1991, he went to the 71st Precinct. When he arrived, he saw Nelson lying face down in a cell, complaining of chest pain. Hamilton said, "It

did appear as if he was having some shortness of breath and he was drooling from the mouth.” Hamilton said that Nelson had an asthma attack and he was taken by ambulance to Kings County Hospital.

Defense counsel then asked whether Nelson said his condition was brought on by being struck. The prosecution objected. The court ruled that the evidence was inadmissible because it was hearsay. The Judge ordered that any notation in the written EMS Report about Nelson being struck by a police officer should be redacted.

To prove that Nelson did not have the mental capacity to understand and waive his constitutional rights, the defense called two witnesses from Nelson’s school.

Nancy Casella, an assistant principal of a special education program in the New York City Board of Education, testified that Lemrick Nelson attended Paul Robeson High School where she had daily contact with him for about one and one-half years. He was enrolled in a program for children with learning and behavioral problems. Casella testified that she was notified of every fight in which a student was involved. She never received any reports that Nelson had fought with another student. She further testified that he had a reputation for being peaceful.

On cross-examination, however, Casella characterized Nelson as having an “attitude problem” and being very disruptive in class. Nelson had a history of verbally abusing teachers, resisting directions and walking out of class without permission. Casella explained that Nelson was disruptive in an immature way by making the class laugh, rather than by misbehaving in a violent or malicious manner.

Casella further testified that Nelson’s comprehension was below that of a twelve-year-old child and, like most learning disabled children, he had difficulty processing information, and had to be spoken to in simple statements.

The defense also called Dr. Anthony Losardo, a clinical psychologist who tested Nelson’s intelligence quota (IQ) in August, 1989. Nelson received a score of 84 on the test, which is on the low/normal scale of intelligence. Losardo testified that, when he was under stress, Nelson tended to lose control, lose judgment, “become more impulsive, rely upon less information, and act before thinking.”

Losardo was asked whether Nelson would be able to understand the *Miranda* warnings if he had been in a stressful situation and had suffered an

asthma attack. Losardo answered that, "he (Nelson) would lose a lot of his intellectual efficiency," and that "under stressful conditions, his attention breaks down." Losardo opined that "it is possible he (Nelson) did not understand the *Miranda* [warnings]."

On cross-examination, Losardo said that he is not a forensic psychologist and has never had to determine whether a person has waived his *Miranda* rights. He then acknowledged that if Nelson initially made a statement after being given his *Miranda* warnings, and then four hours later, was given the same warnings and asserted his right to remain silent, then it was probable that Nelson understood them.

The Negligence of Kings County Hospital Caused Rosenbaum's Death

The defense offered evidence to prove that the actual cause of Rosenbaum's death was not stab wounds inflicted by his attackers, but the negligence of the physicians at Kings County Hospital who did not properly treat him. In addition to remarks in his opening statement and his cross-examination of prosecution witnesses, Lewis called Sharon Defino and Thomas Birch, the EMS technicians who treated Rosenbaum, in support of this theory. However, Lewis was precluded from eliciting testimony from them on this issue, because of the Judge's prior ruling that such evidence was inadmissible.

Birch and Defino testified that they received a call at approximately 11:15 p.m. on August 19, 1991. They were told to respond to a stabbing at President Street and Brooklyn Avenue. When they arrived, there was a crowd of people. On the northwest corner of the intersection, Rosenbaum was lying on his back on the hood of a car. He was in pain and was having difficulty breathing. Two Hasidic men were trying to calm him.

Birch testified that he saw a black male being shown to Rosenbaum. According to Birch, he was handcuffed and accompanied by a police officer. Birch said that he did not hear any of the conversation. He did not see a knife displayed. Defino testified that, shortly after their arrival, police officers brought a young black male wearing a red shirt to Rosenbaum. She thought that he was in handcuffs, but she was not sure, because his hands were behind his back.

According to Defino, Rosenbaum was very upset. He cursed and spat at the young black man. He said, "Why did you do this to me ..." and called him a coward saying that he had not done anything to the young man. Defino said she did not see anyone else brought over to Rosenbaum, nor did she see a knife.

Rosenbaum was then placed into the ambulance where his vital signs were taken and oxygen was administered. Birch and Defino saw his injuries and

noticed two wounds midway up both sides of his back. Within seven or eight minutes of its arrival, the ambulance left for Kings County Hospital. Birch said he brought Rosenbaum into the major trauma room and told the doctors that “he had a gentleman stabbed a couple of times to the back.”

The Forensic Evidence was Inconclusive

The last witness called by the defense was Dr. Mark Taff, a forensic pathologist in private practice who was formerly a Deputy Medical Examiner in Nassau County. Taff testified that the cause of Rosenbaum’s death was multiple stab wounds to his back, two of which penetrated the chest cavity, punctured the lungs, and caused extreme blood loss that led to his death. Dr. Taff stated that, where there are multiple wounds, it is important to measure the blunt edge of the wound to determine whether there was more than one assailant and whether multiple knives were used. Dr. Gutierrez’s failure to take this measurement, according to Taff, precluded an expert from determining whether Nelson’s knife caused Rosenbaum’s wounds. Taff testified that if the measurement had been made, he could say to a reasonable degree of medical certainty whether the knife recovered from Nelson caused the wounds. On cross-examination, Taff admitted that the precise measurement of the wound is very difficult to make, especially in the area of the lungs, because the lungs collapse when punctured and pull away from the chest wall.

Taff further testified that the Medical Examiner failed to perform certain standard procedures during the autopsy such as photographing the victim’s clothing or conducting trace evidence analysis. Taff explained that trace evidence meant fibers, blood, or tissue that may be transferred from one individual to another. Taff testified that in hand to hand fights, there may be scratching or clawing. He stated that it was routine to examine underneath the fingernails for trace evidence that might connect the attacker to the victim. Taff also said that the laundering of Rosenbaum’s clothes before the Medical Examiner’s Office received them, interfered with the chain of custody and destroyed possible trace evidence.

On cross-examination, Taff admitted that, regardless of whether or not certain tests, photographs, and measurements were made during the autopsy, it was clear to him that Rosenbaum died from the stab wounds. After Dr. Taff’s testimony, the defense rested its case.

The Prosecution's Rebuttal Case

To rebut the defense claim that Nelson's confessions were involuntary, the prosecution called Dr. Sanford Drob, a senior psychologist in the Forensic Psychiatry Service of Bellevue Hospital. Drob's background included the performance of psychological tests, including intellectual, social, emotional, and psychological assessments of individuals who are incarcerated. The court declared Drob an expert in the fields of forensic and clinical psychology after hearing his testimony concerning his qualifications.

Drob testified that he examined Nelson on October 21 and 22 of 1992, for three and a half hours. He tested Nelson and reviewed records. These records included Nelson's school records, the contents of the police interviews of Nelson, and the videotape prepared when the Assistant District Attorney advised Nelson of his constitutional rights.

Drob described the battery of tests that were given to Nelson to test his comprehension, intelligence, and manual dexterity. In the context of his overall performance, Drob stated that Nelson did extraordinarily well — well above what would be expected for his age group. Drob testified that Nelson was exactly average, that is, fifty percent of people his age would score better on the tests and fifty percent would score worse. Drob explained that Nelson understood and was able to define all the elements of the *Miranda* warnings.

Drob said he reviewed the school records closely because of the difference between his finding of an IQ of 100, compared to an IQ score of 85 in the school records. Drob believed that Nelson's attitude at school was not good and that he was unmotivated when tested by the school, resulting in a score of 85. In contrast, Drob believed that Nelson was very motivated when taking the tests for him and, therefore, scored well.

Drob also explained that he administered the adult version of the tests, which are slightly different and include a subsection on the ability to process information. On this section, Nelson scored 12 points, which were not included in the score developed at the school.

Drob further testified that, even with an IQ score of only 85, an individual can comprehend the *Miranda* warnings. The literature that Drob was familiar with indicated that this ability exists unless a person has an IQ below 75. In Drob's opinion, Nelson had the capacity to understand and waive his constitutional rights on August 19, 1991.

Summations

On October 26, 1992, the lawyers for both sides made their closing arguments to the jury.

Defense

The defense summation primarily focused on attacking the credibility of the police witnesses. Lewis challenged the reliability of the victim's identification of Nelson and the voluntariness of Nelson's confession. He questioned the value of the prosecution's forensic evidence. He sought to cast doubt on the prosecution's theory that the attack on Yankel Rosenbaum was unprovoked and that it occurred in the course of bias-motivated mob retaliation.

Lewis reminded the jurors that they were asked, when the case began, to watch and listen to the witnesses to determine if their testimony was truthful. He contended there was an "old saying: You lie about one thing, you lie about all." He also reminded the jurors that they had been instructed that police witnesses have no more credibility than anyone else.

Lewis went through the testimony of each police officer, questioning how the officers could be telling the truth when there were inconsistencies in their testimony. For example, he highlighted the inconsistency between Officer Lewis's and Officer Hoppe's testimony concerning the apprehension of Nelson. He urged the jurors to "[g]o to the record and check it out."

Defense counsel argued that the evidence in the case indicated that Nelson had been framed by the police for a crime that he did not commit. Lewis highlighted the contradictory testimony about the radio transmission concerning the "red shirt." Attacking the credibility of the police witnesses, he argued that Rosenbaum's identification of Nelson was unreliable because the police action of displaying the knife was the factor that caused Rosenbaum to identify Nelson as his attacker. Lewis explained that Nelson's pants became bloodstained when Rosenbaum spat at him at the show-up and not from the bloody knife or a struggle with Rosenbaum.

Defense counsel argued that Officer Lewis's testimony "blew this case out" and questioned "why didn't he hall (sic) in all these lying son of a guns (sic) for perjury...." He emphasized Lewis's testimony that he was over the fence in the yard with Officer Hoppe, that he aided in the search of Nelson, and that he was present at the show-up.

Lewis also argued that Nelson's confession was not voluntary, because Nelson was not emotionally able to understand the questions asked. He asserted that this was supported by the testimony of Nancy Casella and Dr. Losardo who said that Nelson had an emotional age of an eleven- or twelve-year-old. Lewis also asserted that the purported confession was tailored to fit what the police knew about the crime at the time that Nelson was questioned.

Defense counsel also claimed that Rosenbaum was not alone at the time that he was attacked. He implied that Rosenbaum and the other Jewish men who testified were part of the civilian patrol, pointing out that the police came from all directions in response to their call for help.

In conclusion, Lewis implied that the case against Nelson had taken on greater significance and was given more attention than it deserved. He returned to an earlier theme that "if you lie about one thing, you lie about all." He questioned why the prosecution needed to have nine police officers testify "if it was the way they said it was." Lewis noted that the "fancy experts" could not say that it was Rosenbaum's blood on the knife. He argued that the examination was "flawed" because Dr. Gutierrez failed to measure the blunt edge of the wound and, therefore, the prosecution had not established if the knife found on Nelson caused Rosenbaum's death.

In accusing the prosecution of presenting "flawed" evidence, Lewis argued that the prosecution, "in their arrogance... didn't feel that it had to be any better than it was." He concluded by asking the jury to "let them see that we're not anybody's fool, that we will fight against odds; that we will look for truth; and we want justice."

Prosecution

In her summation, the prosecutor argued that Rosenbaum's identification of Nelson and Nelson's confession to Detectives Abraham and Brown constituted proof beyond a reasonable doubt of Nelson's guilt.

The prosecutor highlighted the testimony of the police witnesses and the forensic experts. In marshaling the evidence against Nelson, she argued that, taken as a whole, there was overwhelming evidence of Nelson's guilt. Kolatch stated that Nelson was seen running from the scene by Officer Milazzo. Officers Hoppe and Marinos caught Nelson one block from the scene. Hoppe recovered a bloody knife from Nelson. The blood from Nelson's knife was later tested and found to be consistent with Rosenbaum's blood. Rosenbaum identified Nelson as one of his attackers. Nelson confessed to stabbing Rosenbaum less than three and a half hours after his arrest.

The prosecutor responded to the defense's argument concerning the inconsistencies in the police officers' testimony by explaining that the witnesses were not cameras and that it would be "unrealistic" to expect every witness to tell "exactly the same story." Kolatch asserted that the inconsistencies between Officer Lewis's testimony and the testimony of the other police witnesses were not important. The witnesses were consistent on all the significant events. For example, all the witnesses were consistent on the facts that Nelson was apprehended with a bloody knife and was identified by Rosenbaum.

Kolatch also contended that if the police witnesses had been lying, then there would not have been inconsistencies. She argued that the arrest of C.T. was evidence that the police officers were telling the truth because, if there were a "frame," the officers also would have framed C.T. The prosecutor emphasized that since the police testimony was inconsistent, it was evident that each police officer told the truth to the best of his recollection, instead of altering his testimony to make it consistent.

The prosecutor further argued that the testimony of the defense witnesses was consistent with the police testimony regarding the attack. For example, Kolatch argued that both the prosecution and defense experts testified that the knife found in Nelson's pocket was consistent with all four stab wounds.

The prosecutor contended that the show-up identification was reliable for several reasons. First, Rosenbaum did not identify every individual who was brought to him, such as Anderson and the "chubby kid." Second, Rosenbaum struggled with his attackers so he had ample time to observe them. Third, she argued that Rosenbaum picked out a face, not just a red shirt and that the testimony of John Anderson "changed the identification from a one-on-one show-up to a red-shirt line-up."

The prosecutor contended that the area was saturated with police because of the Cato accident. She also argued that on the night of the killing, the police believed that it was a simple assault. The prosecutor argued that the officers were looking to "get rid of the case." The prosecutor claimed that the police lost their opportunity for a videotaped statement by Nelson when the case was transferred. In taking him from the 71st Precinct to the 60th Precinct, Nelson saw the crowds that had begun to gather at the Precinct and was no longer willing to make a statement.

In conclusion, the prosecutor argued that the testimony of Nancy Casella and Dr. Losardo indicated that Nelson was just the type of person to join in with the mob that attacked Rosenbaum. The prosecutor told the jury that when Nelson stabbed Rosenbaum, he "was accepting responsibility...not only for his own

actions, but for the people he was acting with.” She closed by asking the jury to hold Nelson responsible for his actions.

THE JUDGE’S CHARGE

On October 26, at 2:30 p.m., Judge Rappaport charged the jury. The charge lasted approximately two hours. The Judge repeated the general instructions contained in his preliminary charge regarding the jurors’ role as the fact finders and the court’s role to make rulings on the law.

The Judge further instructed the jury that the rulings made throughout the trial were based upon his knowledge of the law and were not to be taken as an indication that he had any opinion on the guilt or innocence of the defendant. He also cautioned them not to speculate about matters not in evidence and to refrain from permitting considerations about sympathy or punishment of Nelson from entering into their deliberations.

The Judge again charged the jury on the law with respect to the presumption of innocence and the prosecution’s burden to prove Nelson’s guilt beyond a reasonable doubt. The Judge also explained to the jury how various pieces of evidence could be evaluated, including expert testimony and testimony about Nelson’s statements.

The Judge explained the circumstances under which they could find that Nelson was acting in concert with others. According to Judge Rappaport, two people are liable for the same crime when they “are acting together to accomplish a common, unlawful verdict.”⁸ Under the principle of accessorial liability, a person who assists another to commit an illegal act can be found guilty of that act. Both murder counts in the indictment, the intentional murder count and the depraved indifference murder count, charged that Nelson acted in concert in the commission of the murder.

In addition to the two counts of murder in the second degree charged in the indictment, Judge Rappaport also submitted three “lesser included offenses” — two counts of Manslaughter in the First Degree and one count of Manslaughter in the Second Degree — to the jury. The misdemeanor charge of Criminal Possession of a Weapon in the Fourth Degree was not submitted to the jury.

The court allowed the jury to consider the possibility that Nelson had committed manslaughter, rather than murder, and allowed the jury to consider three different theories. The first theory was that Nelson intended to cause *serious physical injury* to Rosenbaum and, as a result of his actions, caused

Rosenbaum's death. Were the jury to find this supported by the evidence, they could convict Nelson of Manslaughter in the First Degree.

The theory underlying the second count of Manslaughter in the First Degree was that, although Nelson intended to cause Rosenbaum's death, he acted "under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse."

The final count, Manslaughter in the Second Degree, charged that Nelson *recklessly* caused Rosenbaum's death. The Judge instructed the jury that the elements of this count required that Nelson was aware of, and consciously disregarded, a substantial and unjustifiable risk that his actions would cause Rosenbaum's death; and that the risk was of such a degree and nature that disregarding it was a gross deviation from the standard of conduct that a reasonable person would observe in the situation.⁹

JURY DELIBERATIONS AND THE VERDICT

The deliberations began on October 26, 1992, at 4:40 p.m. and lasted for four days. On October 29, 1992, the jury delivered a verdict of not guilty on all counts.

ENDNOTES

1. A white female juror was replaced on October 16, 1992, by the first alternate, an Hispanic female.
2. See Appendix B for major trial events.
3. See Appendix D for map and photos.
4. "UT" was never identified.
5. It was never asked if this was "UT".
6. David Noll lives in South Africa. He was not called as a witness at the trial.
7. Officer Sanossian had testified that he had transmitted the description "male black in red shirt" immediately after witnessing the attack on Rosenbaum and Officer Marinos testified that he heard the transmission.
8. The Judge referred to the law during his charge to the jury on the "acting in concert" theory and then instructed the jury in "simpler terminology" that "[w]hen two or more persons act with each other in pursuance of a common criminal design, with common criminal intent, each one does some act in fulfillment of that or towards that preconcerted end, then each one of these persons is an accomplice of the other and a principal in the crime, whether he takes a major or minor part in it."

The court also cautioned that "[n]o inference is to be drawn by you because only one of the alleged participants is on trial in this case. You are not to consider that at all."

9. In addition to the manslaughter charges, Assault in the First Degree could have been charged as a lesser included offense of each of the homicide charges in the indictment, however, such charge was neither requested nor submitted. As a lesser included offense of the "intentional murder" charge, Assault in the First Degree would allow the jury to consider the charge that, with intent to cause serious physical injury to Yankel Rosenbaum, Nelson caused such injury by means of a dangerous instrument. As a lesser included offense of "depraved indifference murder," Assault in the First Degree would allow the jury to consider whether, "under circumstances evincing a depraved indifference to human life," Nelson recklessly engaged in conduct that created a grave risk of death to Yankel Rosenbaum and thereby caused him serious physical injury.

Chapter 3

Analysis of the Criminal Investigation

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- ▶ Introduction
- ▶ The Investigation
- ▶ Lack of Prior Relationship Among the Attackers and the Victim
- ▶ Failure to Identify Witnesses or Suspects at the Scene
- ▶ Failures in Obtaining Critical and Timely Information from the Victim and Possible Suspects
- ▶ Improper Handling of the Physical Evidence
- ▶ Summary

ANALYSIS OF THE CRIMINAL INVESTIGATION

INTRODUCTION

A group in excess of ten people participated in the attack that resulted in the death of Yankel Rosenbaum. However, only Lemrick Nelson was arrested and charged with the murder. He was subsequently acquitted. With no one held accountable, many questions were raised about how the justice system functioned in this case.

- Why was no one other than Lemrick Nelson arrested and prosecuted when it appeared that many others were involved in the attack on Yankel Rosenbaum?
- Were proper procedures followed in the initial investigation of the case? Was the physical evidence handled properly? Were all potential witnesses identified and interviewed?
- Was the subsequent investigation diligently and thoroughly conducted?

The Governor's Executive Order directed a review of the "facts and circumstances surrounding the criminal investigation and prosecution arising from the death of Yankel Rosenbaum." This chapter examines the problems associated with the identification of the witnesses and suspects, the taking of statements from the victim and suspects, and the handling of the physical evidence.

We reviewed the actual investigation and attempted to determine what, if any, difficulties existed which resulted in no one being held accountable for the murder of Yankel Rosenbaum. We compared the investigation conducted in this case with recommended investigative practices. In doing so, we recognize that the circumstances surrounding the attack on Rosenbaum were chaotic and the circumstances under which the initial arrest and investigation took place were less than ideal. The disturbance following the death of Gavin Cato was the most widespread racial unrest to occur in New York City in more than twenty years. The four-day disturbance was characterized by street assaults, police officers in need of assistance, vehicle fires, commercial burglaries, and riotous crowds.

To accomplish this task, we sought and received the full cooperation of Charles J. Hynes, the District Attorney of Kings County, and Raymond W. Kelly, the Police Commissioner of the City of New York. We were provided with access not only to their office's files, but to staff members who were involved in the investigation and prosecution of various aspects of the case.

The files provided by the District Attorney's Office included copies of relevant police reports and memoranda, as well as an audiotape, a videotape, and photographs of the physical evidence that were introduced at trial.¹ The District Attorney and several members of his Executive Staff were interviewed. The trial prosecutors and their supervisors were also interviewed.

We also reviewed the case file of the New York City Police Department and additional summaries of the investigative efforts.² We interviewed the Chief of Detectives, Joseph Borrelli, and Lieutenant Vincent Ferrara, the Commanding Officer of the 71st Precinct Detective Unit. Detectives Edward Brown and Nemesio Abraham, the detectives assigned to the Rosenbaum homicide, were also interviewed regarding their efforts to identify additional suspects.

The files of the Medical Examiner and the Chief of Serology were examined, as well as the medical records of the victim and the suspects. Experts in the fields of forensic pathology and biology were also consulted.

It is important to note that our ability to conduct this review was limited due to the pending federal civil rights investigation. Witnesses who might testify at a federal trial were not interviewed. Moreover, although in our judgment it did not impede our review, we lacked subpoena power and, therefore, we had no ability to compel testimony under oath. Finally, we note that we are not empowered as a police investigative body, nor authorized to conduct an independent police investigation into this matter.

THE INVESTIGATION

The Arrest

The police response to the stabbing of Yankel Rosenbaum began when Police Officers Milazzo and Sanossian of the 70th Precinct saw an assault as they were returning to their precinct after responding to the Cato accident. The officers turned on their siren, causing a group of ten or more black males to disperse. As the officers got out of their patrol car, they called for additional assistance over their radio.

The police chased an individual in a green shirt, who was later identified as C.T., who had run from the scene of the assault. They caught C.T. and brought him back to Yankel Rosenbaum who lay bleeding on the hood of a car. According to one of the officers, Rosenbaum said, "There were fifteen of them. He's one of them." No further questions were asked of Rosenbaum.

C.T. was arrested and taken to Kings County Hospital for treatment of cuts he sustained during a struggle with the officers. There is no indication in the police file that a systematic search was conducted to determine whether a knife had been discarded along the route of his flight or at the scene of his apprehension.

Although at least two other young black males were shown to Yankel Rosenbaum, they were not identified by him. These two men were released without any record made of their names or their descriptions.

Officers Hoppe and Marinos, of the 71st Precinct, who were in their patrol car, heard a call for assistance and responded. As they turned onto Brooklyn Avenue, they saw a black male, Lemrick Nelson, jump over the fence surrounding the small front yard of a house at the corner of Union Street, and hide behind a bush. This was one block from the scene of the stabbing.

Hoppe jumped over the fence, frisked Nelson, and recovered a blood-stained knife from the pocket of Nelson's pants. In addition to Hoppe's partner, three other police officers were present at the scene of Nelson's capture.

Nelson was helped over the fence and all the officers walked with him and Hoppe over to Yankel Rosenbaum. Nelson was identified by Rosenbaum. According to Hoppe, there were approximately ten additional, unidentified police officers near the scene. There were also EMS technicians present, as well as a number of civilians. The names of the unidentified officers and civilians were not recorded.

Nelson was then placed under arrest. Two transit officers transported Nelson to the 71st Precinct. The names of these police officers were not recorded.

Initial and Subsequent Investigative Efforts

In our interviews, the police have said that they have taken every possible step to ensure that the investigation of the murder of Yankel Rosenbaum is as complete and thorough as possible. Among the steps taken by the police were

canvassing of the crime scene area, questioning of Nelson's friends, interviewing of arrestees, and pursuing leads and anonymous tips.

Investigation by the Crime Scene Unit

At 3:15 a.m., one hour after they were notified that Rosenbaum had died, the Crime Scene Unit responded to the scene. This was nearly four hours after the attack on Rosenbaum. Photographs and blood samples were collected from the area where Rosenbaum was stabbed and where C.T. was caught.

Canvass of the Area

In an effort to locate possible witnesses to the attack on Rosenbaum, the police conducted a canvass on President Street from Kingston Avenue to New York Avenue — one block east and west of the scene of the stabbing. There was no canvass of the houses located on the side streets north or south of the crime scene. Nor were any of the buildings on the streets around the block canvassed. The canvass began August 27, 1991, and continued through August 29, 1991. A total of thirty-five people were interviewed.

In addition, on September 7, 1991, the police canvassed passersby in the area of President Street and Brooklyn Avenue, but did not identify any witnesses. The police conducted a final canvass on September 10, 1991, and interviewed an additional seven people.

Additional Efforts to Identify Witnesses

In November, 1991, the detectives contacted Rabbi Spielman, a community leader in Crown Heights, for help in identifying civilians who may have witnessed events relevant to the case. Rabbi Spielman told them about Shaya Boymelgreen. The next day, Boymelgreen was interviewed. He said that he and his brother-in-law, Yakov Felig and his wife Gutal, were in Boymelgreen's car when they saw Rosenbaum stumbling in the street and a group of youths fleeing. The Feligs were interviewed on December 9, and 11, 1991. They said that they were present when Rosenbaum identified the youths. However, none felt that they could identify the youths.

In addition, Norman Rosenbaum, the brother of Yankel Rosenbaum and an Australian lawyer, came to New York and conducted his own investigation into the murder of his brother. As a result of these efforts, he provided the District Attorney's Office with the names of eight potential witnesses. On November 17, 1991, the prosecutor provided the names of these witnesses to the police.

Over the next few days, these individuals were interviewed. Some provided eyewitness accounts of various events surrounding the crime. They said that they could not identify anyone and the police did not show them photographs of possible suspects.

Several of these witnesses, including Meyer Rivkin, Chaya Sara Popack and Chaim Lieberman were called at the trial by the defense. These witnesses actually provided information that corroborated police accounts of Rosenbaum's identification of Nelson.

The police have also attempted to interview two witnesses, John Anderson and Lorraine Gayle, who testified as defense witnesses at the trial. These witnesses testified that they were present at the scene of the attack and the identification of Nelson by Rosenbaum. Anderson testified that he could identify other individuals at the scene. However, these witnesses have refused to speak to detectives or to federal authorities about the case. The witnesses claim that Nelson's defense counsel advised them not to speak about the case.

Friends of Nelson Located and Interviewed

The detectives located and interviewed all of those individuals who were reportedly with Nelson at 457 Schenectady Avenue on the night of the homicide. None of these individuals reported seeing Nelson with a knife, nor did anyone provide information concerning the homicide.

On November 8, 1991, "B,"³ a friend of Nelson's, told the police that he was with Nelson and other friends on Schenectady Avenue the night of the homicide, but left the group to attend a concert. He learned about Nelson's arrest and visited him about nine days after the homicide while Nelson was incarcerated on Riker's Island. According to "B", Nelson told him that he and fifteen others had beaten Rosenbaum. Several days later, "B" repeated his account to the prosecutor and he submitted to a polygraph test. The polygraph expert concluded that "B" was not criminally involved in the case.

Although the prosecutor requested that "B" repeat his statement on tape, he refused to do so. He did, however, sign a statement that the prosecutor recorded in writing. "B" said that he would not voluntarily testify against Nelson in court. Although the prosecution could have subpoenaed "B," he told them that he would claim that he was beaten and only gave the statement because he was coerced. As a result, "B's" testimony would have been of little use, because his statement could only have been used to impeach his testimony at trial and not as proof of the information it contained.⁴

Follow-up Investigations of Anonymous Calls

On August 22, 1991, the police learned that the Joy Behar *WABC* radio show had received a call at 10:25 a.m., from a man who identified himself as "Zelman." The caller claimed that he was at the scene of the crime. In an attempt to identify the caller, the detectives asked the station to make periodic announcements asking Zelman to call the police. The station agreed. The police also requested assistance from members of the community and contacted individuals with that same name listed in the telephone book.

Several weeks later, a request was made to examine the phone records of the radio station. On September 25, 1991, the call was traced to a person who bore the name Zelman as his middle name. This person, however, denied making the call and said that he could provide no helpful information about the murder of Yankel Rosenbaum.

On September 4, 1991, the police received an anonymous call from someone who claimed to be a witness to the homicide and said that two black males, "C" and "D," were involved. The caller identified the residence of these individuals. Detectives from the 71st Precinct went immediately to their residence where they spoke to the superintendent who confirmed that "C" and "D" lived in the building.

The detectives requested that investigators from the District Attorney's Office conduct photo and video surveillance of "C" and "D's" residence. This was done during September and October. The photos and tapes were later shown to others in the neighborhood who identified "C" and "D."

Subsequently, both "C" and "D" submitted to polygraph tests administered by the District Attorney's Office. The expert determined that they were not criminally involved in the homicide.

On December 8, 1991, the police received an anonymous call alleging that "E" had information about the crime. When "E" was interviewed he told the police that, on an occasion previous to the commission of the crime, he had seen Nelson with a knife. "E" provided no specific information about that knife and nothing about the Rosenbaum murder. Two other youths confirmed the story told by "E."

Interviews of Arrestees

In an attempt to develop information about additional suspects, the police conducted interviews of individuals who were arrested in Crown Heights for crimes other than the Rosenbaum attack. Detectives and police officers asked all

new arrestees where they were on August 19, 1991, and whether they had any information about the homicide of Rosenbaum. The police file indicates that the interview process began on August 24, 1991, and occurred intermittently until the trial began on September 8, 1992.

Initially, this aspect of the interview process formally occurred only in the 71st Precinct. After Nelson's acquittal, however, the Police Department expanded the interview program to include all arrestees in every precinct throughout Brooklyn. According to Lieutenant Ferrara, more than 10,000 individuals have been questioned with respect to the Rosenbaum homicide.⁵

Rewards Posted

In September, 1991, the Jewish Community Relations Council and the Crown Heights Jewish Community Council, offered a \$10,000 reward "for information leading to the arrest and conviction of the persons responsible for the murder of Yankel Rosenbaum."

The police file indicates that posters were sent to all precincts, specialty squads, and Brooklyn Central Booking, in addition to hospitals, schools, government offices and stores.⁶ Detectives Abraham and Brown also posted approximately 100 of these posters along Eastern Parkway from Kingston Avenue to Bedford Avenue, and on all side streets. An additional 500 posters were given to the Hasidic Community for their distribution.

In the 71st Precinct, a sergeant in the Community Policing Unit was assigned to distribute some of the posters. The sergeant unilaterally decided that to do so would create tension within the community and so he did not distribute them. According to the detectives, when this omission was discovered, hundreds of additional posters were printed and distributed throughout the 71st Precinct.

Following Nelson's acquittal, Mayor Dinkins announced a \$10,000 reward for information leading to the arrest and prosecution of those responsible for the murder of Rosenbaum. Some have criticized the Police Department and the Mayor for not offering a reward sooner, arguing that it was indicative of a failure to appreciate the importance of apprehending and bringing to justice all of the members of the group that attacked Rosenbaum.

According to Chief Borrelli, a reward seemed unnecessary earlier, because Nelson, who was believed to have been the only stabber, had been arrested and charged with the murder. Moreover, the reward offered by the Jewish organizations had thus far been unsuccessful in providing information about additional suspects.

Chief Borrelli noted that, despite the decision that the offer of a reward was unnecessary, the Police Department has followed all of the leads that were developed as a result of their investigative efforts. All of the calls to 911 that occurred at about the time of the attack on Yankel Rosenbaum were investigated to determine whether there was any information about the stabbing. Every individual claiming to have information relating to the crime was interviewed by the District Attorney's Office or the police.

The Police Department has indicated that the investigation into the murder of Yankel Rosenbaum is ongoing. Until recently, the assigned detectives, Abraham and Brown, worked exclusively on the Rosenbaum case. While Detective Brown remains assigned to the case on a full-time basis, Detective Abraham is now investigating other homicides as well.⁷ According to the police, additional resources have been committed as information has become available. In our interview of Chief Borrelli, he indicated that the case will remain active until all of the suspects in the homicide are identified and arrested.

LACK OF PRIOR RELATIONSHIP AMONG THE ATTACKERS AND THE VICTIM

The police have been frustrated in their efforts to identify and bring to justice additional culpable parties due, in part, to the inherent difficulty of investigating a crime involving a group when there is no prior relationship among the attackers and the victim. Not only must the participants be identified, but the prosecution must be able to prove what each participant was doing and that each participant had the requisite criminal intent.

Unlike other well-publicized racial killings in Howard Beach and Bensonhurst, which also involved groups of attackers, the murder of Rosenbaum occurred in the midst of a riot that involved hundreds of people, many of whom were not known to each other.⁸

Though the incidents in Howard Beach and Bensonhurst were also acts of gang violence, the particular circumstances surrounding those crimes facilitated the prosecution of the guilty parties. For example, in the Howard Beach case, the individuals involved in the incident were acquainted with each other and were at the same party just prior to the homicide. This fact enabled the police to quickly identify most of the participants in the crime. Also, when one of those participants agreed to cooperate with law enforcement authorities, the identification, prosecution and conviction of the remaining suspects was then possible. In the Bensonhurst case, all of the participants were friends, having grown up

together in the community where the homicide occurred, so it was easier for the police to ascertain their identities.

Among the several factors that hampered the ability of the police to identify additional suspects in the homicide of Yankel Rosenbaum was the extremely volatile situation resulting from the disturbances occurring in Crown Heights on the night that Rosenbaum was killed. There were hundreds of people running through the streets, many of whom did not live or work in the neighborhood, but came to Crown Heights for other reasons. Some were there because they had attended a concert nearby, while others came to watch, or participate, in the demonstrations that followed the Cato accident.

Considering the disturbances in Crown Heights at the time Rosenbaum was attacked, it is fortuitous that two police officers came upon the scene. These officers immediately began to pursue the fleeing assailants while calling for the assistance of other officers. Although the arrival of the police caused the crowd to disperse, two police officers responding to the call for help apprehended Nelson within one block of the scene of the assault, approximately three minutes after it occurred.

Other than Nelson and C.T., Rosenbaum did not identify any of the other young men shown to him as participants in the attack. Although C.T. admitted being present, he did not identify Nelson as one of the assailants nor has C.T. identified any other members of the group.

Nelson also said that he did not know any of the other participants in the group that attacked Rosenbaum. He told police that he was alone when he saw the crowd that gathered at President Street and Brooklyn Avenue yelling, "There's the Jew. Let's get the Jew." He said that he joined the crowd because he was excited and high from the beer he had been drinking earlier. Nelson did not live in Crown Heights at the time of the riot. He was there visiting friends. They did not accompany him when he parted from them to go to the scene of the Cato accident.

The presence that night of an anonymous group of persons largely unknown to each other made it difficult for those who saw the attack to make positive identifications. Even Officer Milazzo, a trained observer who was in the first police car that arrived at the scene of the attack, could only say that he saw a black male in a red shirt attacking Rosenbaum. Although Milazzo testified that Nelson was of the same stature and wearing the same color shirt as the attacker, he could not positively identify Nelson as that man. Other eyewitnesses who were present at the scene of the identification, Boymelgreen and Felig, told police that they would be unable to identify the participants.⁹

To arrest and successfully prosecute others who were involved in the attack, the police and prosecution must have witnesses who can identify the participants in the crime and describe the actions of each participant in the group that attacked Yankel Rosenbaum. The law requires two basic elements to hold a person criminally responsible for the acts of another in order to sustain a successful prosecution. First, there must be proof that each person charged did some deliberate act as a part of the crime. Second, there must be proof that this person shared the same state of mind as the killer.

In the case of Rosenbaum's murder, the prosecution must prove beyond a reasonable doubt that any other person who may be charged knew that Nelson was going to stab Rosenbaum. They must also prove that they shared Nelson's intent to murder Rosenbaum. A person's mere presence at the scene, without proof of deliberate action, is insufficient to warrant a criminal charge. If the law were different, C.T. would also have been charged with murder.

While there is no doubt that the attack on Rosenbaum can be distinguished from the Bensonhurst and Howard Beach cases, it is also clear that the failure to hold someone accountable for Rosenbaum's murder can also be attributed to critical deficiencies in the initial, and subsequent investigation.

FAILURE TO IDENTIFY WITNESSES OR SUSPECTS AT THE SCENE

The importance of immediacy and thoroughness in criminal investigations is universally recognized by law enforcement experts. The role of the initial officer on the scene is, therefore, critical to the future of the case. "The actions that he or she takes may well determine if the criminal investigation has a successful conclusion. The early stages of a criminal investigation are typically the most crucial and begin at the crime scene."¹⁰ For example, recording statements, listening for spontaneous remarks, and taking the names and addresses of eyewitnesses, bystanders, and participants are important initial investigative activities. Also, pursuing suspects and securing the crime scene from further intrusions are necessary first steps in an investigation.

Particularly, when the crime is a homicide, "*everything* should be investigated, even in cases where the criminal has been arrested immediately after the crime and has confessed."¹¹ [Emphasis added.] In those cases where a suspect in custody confesses, and physical evidence connects him or her to the commission of the crime, the temptation may exist to limit the investigation. The results of a thorough police investigation, however, which takes into account as

much evidence as possible to reconstruct the criminal event, can turn what appears to be strong evidence into conclusive proof.

As noted earlier, during the first few days of the investigation, Crown Heights was in the midst of an ongoing civil disturbance. This mayhem, no doubt, hampered early investigative efforts.

In this case, witnesses to the murder incident were not identified until after the initial police investigation or after the prosecution's case. This can be attributed to the departure from appropriate police practice of recording the names of all witnesses at the crime scene. Accordingly, much valuable information which could have been offered to further aid in the investigation was ultimately unattainable.

During the Initial Investigation, Crucial Information Concerning the Names of Witnesses and Possible Suspects was not Collected

It is proper procedure to record or make entries in an activity log noting the "identity of suspects, witnesses, complainants, and any statements made..."¹² This was not done.

The police never ascertained the identities of all witnesses at the time of the incident. In this case, there were relevant witnesses (John Anderson, Lorraine Gayle and Chaya Sara Popack) to the assault on Rosenbaum. They were not identified until after the initial police investigation or after the prosecution had presented its case.

Additionally, not all of the police witnesses at the scene were identified. According to Officer Hoppe, in addition to his partner, Officer Marinos, there were two transit police officers who transported Nelson to the 71st Precinct, as well as approximately ten additional police officers near the scenes of the crime and the apprehension and identification of Nelson.

Despite the number of police officers involved in the events surrounding the death of Rosenbaum, according to police files, the case detectives interviewed only six officers: Officers Milazzo and Sanossian, the first two officers on the scene; Officer Hoppe, the arresting officer, and his partner, Officer Marinos; Sergeant Wilson, the supervising patrol officer at the scene of the identification of Nelson; and Officer Halfhide, who was at the scene of the Cato accident.

Relying upon the apparent strength of its case, the prosecution apparently did not appreciate the need to aggressively pursue the identification of additional witnesses.¹³ Although the prosecutor said that she knew that other officers had transported Nelson to the 71st Precinct, she did not attempt to interview them. In fact, she did not attempt to identify them until ordered by the court to do so after Detective Litwin testified about them at the suppression hearing. These officers were not interviewed by the prosecution until after the prosecution had presented the testimony of most of the police witnesses.

Our review of the records relating to 911 calls for the night of the homicide indicates that there were numerous police officers in the vicinity of the crime and the apprehension and identification of Nelson. Although the tapes did not identify individual officers, they did identify the units (patrol cars) that responded to the radio calls for assistance at Brooklyn Avenue and President Street. The tapes indicated that in addition to Officers Sanossian, Milazzo, Hoppe and Marino, at least two patrol cars from the 69th Precinct responded to the scene, as well as four additional officers from the 71st Precinct. These individual officers can be, and should have been, identified by the roll call logs at their precincts. Neither the Police Department, nor the District Attorney's Office has done so. These officers have not yet been identified or interviewed.

At the scene of the attack, at least four black males were shown to Rosenbaum by the police. Two of the males shown to Rosenbaum were not identified by him and were, therefore, released. The investigating officers did not note their names, or their descriptions. These individuals were not questioned further about the crime.

This oversight may have affected the progress of the investigation. If routine procedures had been followed for the recording of these details, there may have been additional information available to help identify others who were involved in the attack on Rosenbaum. Moreover, additional information relating to the youths who were released would have helped the prosecution to demonstrate to the jury that Rosenbaum was able to distinguish between and among different male black youths.

Other individuals were present at the scene. They might, if interviewed, have provided additional information about the attack.¹⁴ For example, a photographer from *Newsday* was at the scene. He took photographs of Yankel Rosenbaum lying on the hood of the car. According to the District Attorney's Office, they called *Newsday* to try to interview the photographer. They were told that the photographer was "unavailable" and that, if interviewed, the photographer would say that he was busy taking pictures and did not hear or see anything. No further efforts were made by the Police Department or the District Attorney's Office to interview the photographer or examine the pictures he took at the scene.

These witnesses may have led the detectives and the prosecution to John Anderson, who testified at trial as a defense witness, and "U.T.," the individual with him who has not yet been identified.

EMS technicians were also present when Rosenbaum identified Nelson. However, their names were not recorded by any of the police officers at the scene. The identity of the EMS technicians was available from the records provided to the prosecution. The prosecution did not interview the technicians prior to trial. It was only when they learned that the technicians would be called as defense witnesses that the prosecution interviewed them. Their testimony was largely supportive of the prosecution's case.

According to Shaya Boymelgreen, a civilian witness at the scene when Rosenbaum identified Nelson, he was instructed by a police officer to go to the 71st Precinct. After waiting there for twenty-five minutes without further contact by any police officer, he departed the Precinct without leaving his name or without being interviewed.

Subsequent Investigative Efforts to Collect Information have Proven Ineffective

The failure of the officers at the scene of the attack to record the identities and statements of the witnesses present impeded subsequent investigative efforts.

The Canvass was not Completed in a Timely, nor Thorough Manner

One important investigative technique for identifying witnesses after the fact is conducting a thorough and timely canvass of the area where the crime was committed. It is fundamental to a good investigation that "an interview should take place as soon as possible after the event."¹⁵

A review of the police file indicates that the canvass was neither timely nor complete. The canvass should have been conducted as soon as possible following the commission of the crime to maximize its effectiveness as an investigative tool. In this case, eight days passed before the canvass began.

According to Lieutenant Vincent Ferrara, the Commanding Officer of the 71st Precinct Detective Unit, the canvass should have included an area two blocks square of the homicide. A review of the reports filed by the detectives who conducted the canvass, however, indicates that the canvass included only buildings that were on President Street, approximately one block east and west

of Brooklyn Avenue. The buildings located on the side streets and around the block were not canvassed.

The canvass began on August 27, 1991. On that date, only fifteen people were interviewed, because there were no answers at many houses. On August 28, 1991, seventeen people were interviewed. Many others were not home. On August 29, 1991, the police returned to the area and spoke to only three additional residents. On September 7, 1991, Detectives Brown and Abraham canvassed passersby in the vicinity of President Street and Brooklyn Avenue, but they were unsuccessful in identifying any additional witnesses. On September 10, 1991, the police conducted the final canvass on President Street and were able to interview only seven people.

A canvass should be conducted systematically to ensure that every possible witness is located. For example, although the police went to the residence of Lorraine Gayle and spoke to her mother, they did not learn that Gayle was present at the time of the homicide and that she had seen suspects flee the scene. However, Gayle was located by the defense and testified at the trial as a defense witness. The police have contacted her since the trial. However, on the advice of Nelson's defense attorney, Gayle has refused to speak to the police or provide any information about the homicide.

FAILURES IN OBTAINING CRITICAL AND TIMELY INFORMATION FROM THE VICTIM AND POSSIBLE SUSPECTS

Although identifications were made by Rosenbaum, critical questions concerning the involvement of other suspects remain unanswered. The length of time that elapsed between the attack and the questioning of other suspects may hamper the ability of the police to identify other suspects and to properly record Nelson's confession.

No Interview of Rosenbaum was Conducted

The various accounts given by police and civilian witnesses who saw Yankel Rosenbaum immediately after the attack, indicate that although he was seriously injured, he was lucid and would have been able to provide more details about the attack. John Anderson said that Rosenbaum chased some of the people who attacked him. When Sergeant Wilson first saw Rosenbaum, Rosenbaum was walking in the street. Although Rosenbaum told Wilson that he had been stabbed, Wilson did not ask him to describe the attack.

Rosenbaum was placed on the hood of a car and several civilian witnesses described him as "aggressive," and trying to break free to chase those who had attacked him. When individuals were brought to Rosenbaum for identification, he was able to distinguish between similarly dressed young black males, just as he was able to recognize his friend, Chaim Lieberman, who was walking nearby. Moreover, when Nelson was brought to Rosenbaum, Rosenbaum yelled, cursed, and spit at him, asking why Nelson had stabbed him.

Rosenbaum's statements at the scene relating to the identifications of Nelson and C.T. had limited value without further development. The proper collection and preservation of evidence requires that witnesses with information about relevant events be identified and statements be obtained. This should occur as soon as possible after the commission of the crime. Not only do these individuals provide necessary information but they provide a starting point for the developing investigation.¹⁶

Rosenbaum should have been given the opportunity to provide specific information to the police about the circumstances leading to the attack and the actions of those who participated in it. Although he lived for three hours after the crime was committed, no police officer or detective questioned him. Had questions been posed and an interview been conducted, the police may have obtained critical investigative leads from Rosenbaum for use in identifying additional suspects.

Lacking Additional Information, Rosenbaum's Ambiguous Identification of C.T. was Deemed Insufficient to Support an Arrest and Prosecution

The only evidence against C.T., other than his flight from the scene of the attack, was the statement made by Rosenbaum when he identified C.T. According to Sergeant Wilson, Rosenbaum said: "There were fifteen of them. He's one of them."

Detective Abraham interviewed C.T. in the early morning hours of August 20, 1991. After he was advised of, and waived, his rights, C.T. said that he had heard about the Cato accident and went to the scene. There, he saw the large crowd that had gathered, run down President Street. According to C.T., when he arrived at the intersection of President Street and Brooklyn Avenue, there was a group of black males assaulting a Jewish man. C.T. stated that he would be able to identify two of the men whom he saw punch and kick the victim.

C.T. denied, throughout questioning by the police, that he had participated in the assault of Rosenbaum. C.T. explained that he ran from the scene when the police arrived because everybody else ran. C.T. did not have a knife when he was arrested. Subsequent forensic tests of C.T.'s clothing indicated the presence of his own blood and not Rosenbaum's blood.

The District Attorney's Office determined that Rosenbaum's statement was ambiguous and insufficient to convict C.T. of Rosenbaum's murder. The mere presence of a person at the scene of the crime is not enough to charge that person with the commission of that crime.¹⁷ The Office, therefore, ordered the police to void C.T.'s arrest. If more information was obtained from Rosenbaum concerning C.T.'s actions, the possibility exists that there would have been adequate evidence to support an arrest and prosecution.¹⁸

The Police Delayed Taking Statements from Nelson and Other Possible Suspects

The arrests of Nelson and C.T. took place at approximately 11:30 p.m. However, no attempt was made to take statements from either suspect until after Rosenbaum died at approximately 2:25 a.m. "As a general principle, an interview should take place as soon as possible after the event...[since] the [subject would have] had little time to contemplate any untoward consequences of his giving the information."¹⁹ The arresting officer did not obtain any details other than pedigree information from Nelson while they were at the 71st Precinct.

After Rosenbaum died and the case was classified as a homicide, Detectives Edward Brown and Nemesio Abraham were assigned to the case. As the detectives prepared to interview Nelson, they were told by Detective Sergeant Thomas Redmond, that Deputy Chief Emil Ciccotelli had ordered them to move to a less crowded precinct. Since the detectives were concerned that moving Nelson would disrupt their interview, Abraham went to try to convince the supervisor to let them stay. Brown remained with Nelson and advised him of his constitutional rights. Nelson then confessed to stabbing Rosenbaum.

When Abraham returned and reported that they would have to move to another precinct, Brown went to speak to Sergeant Redmond to appeal the decision that they move. While Brown was gone, Abraham advised Nelson of his rights and Nelson repeated his confession.

Neither detective asked Nelson to initial the card printed with the *Miranda* warnings to show that he had understood and waived his rights. Brown did not take contemporaneous notes of the interview. Abraham testified that he began to

take notes when Nelson went over his statement for the second time. These notes were not introduced at trial, nor were the notes in any of the police files that we reviewed. Lastly, Brown did not write down what Nelson said until about six hours after Nelson made the statements.

The fact that each detective questioned Nelson while the other detective was out of the room not only meant that the statements were not witnessed, it also interfered with the prompt recording of the statement. To the extent practicable, confessions or statements made by suspects should be reduced to writing promptly and should be audiotaped or videotaped at the earliest opportunity. "A written or recorded statement lends considerable support to the...contention that the accused did in fact confess."²⁰

Under routine circumstances, Nelson's oral confession to the police should have been reduced to writing as soon as possible, if not contemporaneously with his admission. "Even a few hours after the oral confession may be too late. During such an interval the subject may reflect upon the legal consequences of his confession"²¹

Despite the repeated requests of the detectives, Ciccotelli ordered them to move Nelson to another precinct. When they were leaving the 71st Precinct, Nelson saw barricades and demonstrators around the Precinct. According to Brown, Nelson stiffened and asked the detectives how much trouble he was in. Nelson was told that he was under arrest and that everything else was uncertain.

Several senior assistant district attorneys were at the 71st Precinct engaged in the investigation of the fatal automobile accident. At approximately 3:30 a.m., when the detectives were leaving for the 60th Precinct, they were told that an assistant district attorney would follow them to the Precinct shortly thereafter. It was not until 7:30 a.m. — four hours after their request and eight hours after the attack — that an assistant district attorney arrived at the 60th Precinct and attempted to take a statement from Nelson.

During this interview, Nelson refused to waive his rights and to make a statement about the crime. Nelson was then transported to Central Booking for arraignment on a charge of murder in the second degree.

IMPROPER HANDLING OF THE PHYSICAL EVIDENCE

The immediacy of evidence collection affects the reliability of the evidence in court. This applies to both testimony and physical evidence.²² The farther

in time from the incident that a crime scene is searched, the less likely that evidence of any value will be found. And, if any evidence is discovered, the later the evidence is tested, the more susceptible it is to deterioration.

Similarly, the crime scene and the areas around it must be searched thoroughly and immediately for physical evidence. Any evidence found must be properly preserved and processed to maintain its integrity and evidentiary value. When such evidence is found it can be critical to understanding what happened and who may be responsible for a crime. It can also provide essential evidence necessary for a successful prosecution.²³ It is imperative, therefore, that the crime scene be preserved and that all available physical evidence be properly collected and stored to prevent its contamination.

In the course of the investigation, the police recovered physical evidence from the defendant that was probative of Nelson's guilt. The documentation, collection, and preservation of evidence is critical to retaining the value of the physical evidence.²⁴ Necessary resources were not available to the officers to properly preserve the evidence. Moreover, there was a departure from routine police procedure in the handling of the evidence. Thus, the value of the physical evidence in this case was compromised.

The Bloodstained Knife Discovered on Nelson, Which Should Have Provided a Key Piece of Proof in the Prosecution's Case, was not Properly Handled

The initial police response to the stabbing of Yankel Rosenbaum was immediate. Officers Sanossian and Milazzo came upon the scene and effectively used the police communications system to bring additional police personnel to assist in the apprehension of fleeing suspects. Officers Hoppe and Marinos responded immediately to the officers' call for assistance. They saw Nelson and apprehended him. Hoppe recovered a bloodstained knife from Nelson at the scene. At the Precinct, Hoppe found three one dollar bills that appeared to have blood on them in the same pocket of Nelson's pants in which he had earlier discovered the knife. The police also took and vouchered Nelson's bloodstained clothing.

Although these items of physical evidence should have provided strong evidence of Nelson's guilt, the police did not properly preserve their integrity. According to one of the police officers at the scene when Nelson was apprehended, the bloodstained knife taken from Nelson was handled by three police officers before Officer Hoppe placed it in his pocket.

Later at the Precinct, Hoppe placed the bloodstained dollar bills found on Nelson in his pocket where he had put the knife. He then commingled the money with the knife that was recovered from Nelson. When Hoppe later removed the bills and knife from his pocket, he placed all the items in a bag that he happened to find lying on a desk. Hoppe then placed the bag in his pocket before turning it over to Officer Milazzo who processed Nelson's arrest. Later that evening, Milazzo gave the bag to Detective Abraham who had been assigned to the case.

At the very least, the officer should have given the bag to the detective directly, since "the less people who handle the evidence, the more likely the integrity will be maintained."²⁵ Additionally, the proper evidence envelopes should have been used for the knife and the one dollar bills. More importantly, the knife and dollar bills should have been packaged separately to avoid commingling of the evidence.

When Detectives Abraham and Brown received the bag containing the knife and dollar bills, they took this evidence to the Medical Examiner's Office. They watched Dr. Gutierrez examine and measure the knife and the stab wounds on Rosenbaum. After Gutierrez performed the autopsy, he established that Rosenbaum had bled to death as a result of the stab wounds and that the knife recovered from Nelson was consistent in size and shape with all four of the wounds.

After the autopsy, the evidence was not immediately vouchered by Abraham, but rather stored in his locker at the Precinct. Proper practice for such evidence specifies that "all serological evidence...be refrigerated as soon as possible."²⁶ However, since there was no refrigerator available at the Precinct for the storage of evidence, this was impossible. More than thirty hours elapsed before the detective vouchered the evidence. Although police procedure provides that the detective should have also vouchered the paper bag in which the evidence had been kept, the bag was discarded.

The knife was crucial evidence in support of the prosecution's case. It could have provided information that connected Nelson to the attack on Rosenbaum. Because routine serological testing could not conclusively identify the blood on the knife as that of Rosenbaum's, the prosecution requested additional testing. Specifically, the prosecution decided to submit swabs of blood taken from the knife for deoxyribonucleic acid (DNA) analysis, a more sophisticated test.

The Center for Blood Research (CBR) Laboratory in Boston was asked to do Polymerase Chain Reaction (PCR - DQ Alpha) testing, a type of DNA analysis that can be done on extremely small samples, such as those on the knife and one dollar bills.²⁷ CBR Laboratories determined that the blood on the knife

and some of the one dollar bills was consistent with Rosenbaum's blood type and inconsistent with Nelson's blood.

It is clear that the integrity of the knife as physical evidence in this case was compromised by the officers' and detectives' improper handling. Not only was the knife handled unnecessarily, but it was also not properly preserved and was commingled with the three one dollar bills. The DNA analysis performed on the knife indicated that the blood on the knife was consistent with Rosenbaum's blood. Thus, had appropriate procedures been followed to ensure the integrity of this key piece of evidence, the DNA test results could have provided more persuasive evidence of Nelson's involvement in the attack on Rosenbaum.

Nelson's Pants Could Have Provided Meaningful Evidence of His Involvement in the Attack of Rosenbaum, if the Pants had been Properly Handled, and Tests on this Evidence had been Properly Monitored

At the time Nelson was apprehended, the police did not note whether there was blood on his clothing. More specifically, they did not note if there was blood on his pants. A record of blood on Nelson's clothing at the time he was caught would have been probative evidence of his involvement in the stabbing of Rosenbaum. The issue of whether the blood on Nelson's pants came from Nelson's involvement in the attack on Rosenbaum or Rosenbaum's spitting at Nelson when he identified him was critical. The failure to note whether there was blood on the pants was a serious omission.

On August 21, 1991, the police submitted Nelson's clothing to the Office of the Chief Medical Examiner for the City of New York. The serology laboratory was asked to examine Nelson's pants, shirt, and socks to determine whether the blood on Nelson's clothing was the victim's blood.

On September 4, 1991, Ralph Ristenbatt, an analyst in the Medical Examiner's lab, performed serological tests on the evidence and reported those results to the case detectives and the prosecution. According to his testimony at trial, he was not interviewed by the prosecutor until the week before he testified at the trial.

The prosecution also submitted Nelson's pants to the CBR Laboratory in Boston for PCR - DQ Alpha analysis. Because the pants were denim, a material that interferes with the test results, the tests on the pants were inconclusive.²⁸ The pockets of the pants, however, were not made of denim. The prosecution

did not ask the CBR Laboratory to test the pockets of the pants. This was a critical omission. To date, there is no indication that any tests have been conducted on this potentially probative piece of evidence.

A sample of the bloodstain from the defendant's pants also was sent to the Federal Bureau of Investigation (FBI) Laboratory for Restriction Fragment Length Polymorphism (RFLP) testing, a precise type of DNA analysis that can determine, almost conclusively, whether a bloodstain is consistent with the blood of a particular individual. This test, however, cannot be performed on very small stains such as those on the knife or one dollar bills. The FBI Laboratory tested the stain on the pants and a technician told the prosecutor that they obtained a faint reading indicating that the blood was consistent with Rosenbaum's blood. Because the result was so faint, however, the FBI Laboratory considered the test to be inconclusive.

This important evidence could have provided support for the prosecution's case if the officers had specifically noted the condition of Nelson's pants when he was caught and if the testing of the evidence had been closely supervised by a member of the police or prosecution team. According to Detective Brown, he informed the prosecutor on November 18, 1991, that Sergeant Wilson thought that Rosenbaum spat blood at Nelson. The prosecutor, however, did not request that the laboratory further test the pants. Dr. Shaler, Chief of the Department of Forensic Biology at the Medical Examiner's Office, told us that his Office could have performed tests to determine whether the blood on Nelson's pants had been deposited by Rosenbaum's spit. The Office could have performed a test for the presence of amylase, a component of saliva. Using this test, the bloodstain on the pants could have been analyzed to determine if saliva was mixed with the blood.²⁹

Finally, considering the key evidentiary importance of both the knife and Nelson's pants and the fact that the bloodstained knife was recovered from Nelson's pants pocket, there should have been an examination of the pants pockets for possible blood stains.³⁰

The Crime Scene Unit was not Notified Until Three Hours After the Crime was Committed, so it was Less Likely that Useful Evidence, if Available, Would have been Recovered

The Crime Scene Unit of the New York City Police Department participates in the investigation of homicide cases. The personnel assigned to the unit respond to the scene of a crime as soon as possible after its commission. Once at the scene, they secure it and ensure that it is not contaminated by

intruders. Photographs are taken to memorialize the scene and appropriate measurements are taken. The area around the crime scene is also searched carefully and any additional evidence that may be of use in solving the crime or prosecuting the offender is collected.

Because of limited resources, the Crime Scene Unit responds to homicide cases and generally does not respond to less serious crimes. As a result, the Unit was not notified about the Rosenbaum case until after he died — more than three hours after the crime was committed. Within an hour of notification, the unit responded to the scene of the stabbing. Photographs were taken and blood samples were collected from the corner of President Street and Brooklyn Avenue. Blood samples were also collected from the driveway at 1310 President Street where C.T. was arrested.

Clearly, because of the ongoing disturbances in Crown Heights, there was much activity at the scene of the crime during, and after, the attack on Rosenbaum. As a result, the crime scene would easily have been altered by this frenetic activity. One can only speculate whether any evidence of significant value would have been recovered, if the crime scene unit had responded earlier.

SUMMARY

Our review of the investigation in this case focused upon, what, if any, departures were made from proper investigative practices and procedures. To the extent that exigent circumstances may have prompted deviations from appropriate practices, we recognize that at the time this crime was committed, Crown Heights was in the midst of a civil disturbance.

We could not conduct our own criminal investigation into this case. Instead, we reviewed the files of the Police Department and District Attorney's Office in order to review what actually occurred and interviewed all of the key staff responsible for the investigation and prosecution.

Although the police response to the stabbing of Yankel Rosenbaum was immediate, our review indicates that there were departures from proper investigative practices. The police caught two individuals who were identified by the victim. However, a variety of circumstances have resulted in no one yet being held accountable for this murder.

One of the difficulties attributed to the investigation of this case has been the lack of a prior relationship among the attackers and the victim. The fact that the stabbing of Rosenbaum occurred during a civil disturbance, at night, involving

hundreds of people, has made it difficult for the police to identify the participants. While two individuals were identified by the victim, neither one, has identified additional participants. Moreover, even if the other participants were identified, proof would be needed to show specifically what acts were done by each participant in the attack. Finally, it would have to be shown that each participant "shared" the stabber's intent to murder Rosenbaum.

A major difficulty in the initial investigation which affected the effectiveness of subsequent efforts was the failure to identify witnesses and other possible suspects at the crime scene. Many key witnesses to the attack on Yankel Rosenbaum were not identified prior to the presentation of the prosecution's case. Accordingly, important additional testimony regarding Nelson's culpability could not be provided.

The recording of statements and the taking of names and addresses of eye-witnesses and bystanders are crucial first steps in an investigation. All possible witnesses were not identified by the police at the time of the stabbing. Even considering the on-going civil unrest, there were many potential witnesses to the stabbing who have not been, and may never be, identified. There were numerous police officers in the vicinity. There were the EMS technicians who responded to the stabbing. There were the individuals who were shown to, but not identified by, Rosenbaum. There were the civilians present at the scene and during the identification of Nelson. All of these individuals may have information to help identify other participants in the stabbing. However, the investigating officers did not record their names.

Later efforts to identify the participants were hindered by the failure to collect vital information at the scene. This deficiency was not remedied by the subsequent canvass of the area. The canvass did not begin until eight days after the stabbing. Moreover, the canvass was only conducted for a one block area east and west of where the stabbing occurred.

Critical statements made by Yankel Rosenbaum that could have aided in the progress of the investigation and the identification of suspects were not developed so as to provide any investigatory assistance. The victim, although seriously injured, could have been questioned in order to ascertain a more detailed account of the attack. Although Rosenbaum identified Nelson and C.T., these identifications proved to be of limited value especially in this type of case, which requires that the specific actions of each participant must be known and provable.

Additionally, there was a significant delay in taking a statement from Nelson. Proper investigative practice recommends interviewing the suspect as soon as possible following the incident. No attempt was made to take a statement

until after Rosenbaum died. Here, then, circumstances beyond the control of the investigating detectives compelled them to move to another location before attempting to take a videotaped statement from Nelson. Although the detectives testified that they did obtain confessions from Nelson, the failure to properly document and record Nelson's statements affected their ultimate probative value at trial. The passage of time and, possibly, the growing demonstration outside the Precinct resulted in Nelson refusing to give a later videotaped statement to the prosecution.

Furthermore, the handling and testing of the key physical evidence, the knife and Nelson's pants, compromised their probative value at trial. The bloodstained knife, the alleged murder weapon, was compelling evidence of Nelson's involvement in the attack. However, from the moment that the bloodstained knife was recovered from Nelson, it was not properly handled.

The officer who found the bloodstained knife put it in his pocket. Later, that officer put the dollar bills, found on Nelson and stained with what appeared to be blood, in the same pocket where he had placed the knife. The officer then commingled both of these items in a bag he found on a desk. The officer kept this bag of evidence until he handed it over to another officer who was to give it to the investigating detective. Once the detective received this evidence, he stored the evidence in his locker. It was not until more than thirty hours later that the detective vouchered the evidence. Had the proper procedures been followed, the fact that the DNA analysis performed on the knife indicated that the blood on the knife was consistent with Rosenbaum's blood, could have provided convincing evidence of Nelson's involvement in the stabbing.

Another important piece of physical evidence was the bloodstains found on Nelson's pants. Testimony at trial raised an issue of whether the blood on the pants came from Nelson's involvement in the attack on Rosenbaum or whether it could be attributed to Rosenbaum's spitting at Nelson when he identified him. It was a critical omission that once this issue was raised by the statement of Sergeant Wilson, the prosecution did not request further testing for saliva. Moreover, the police did not record whether these stains were present on Nelson's clothing when he was caught.

Furthermore, forensic DNA analysis performed on Nelson's pants was inconclusive, largely due to the denim fabric of the pants. However, the pockets of the pants, which were not denim, were never tested. Considering that the knife was found in the pocket, it was a critical omission of both the police and prosecution not to request testing of the pockets to determine whether the stain in the pocket was blood, and if so, whether it was the victim's. Evidence relating to the condition of Nelson's pants when he was apprehended and the testing of

the pockets of Nelson's pants could have provided support for the prosecution's case.

With the passage of time, the underlying deficiencies of the initial investigation and Rosenbaum's unexpected death, the likelihood that the police will now be successful in identifying additional participants in the crime is greatly diminished. Unless an informant or eyewitness comes forward and provides reliable facts about the attack and other possible suspects,³¹ holding someone accountable for this murder will be difficult. Any possible federal criminal civil rights prosecution would not only suffer from many of the same problems of proof as did the State case, but there is also the additional problem of establishing the requisite federal jurisdiction.³²

ENDNOTES

1. The files provided by the District Attorney's Office included copies of reports prepared by medical and forensic experts, as well as the EMS and medical records of the victim and the suspects.

The reports prepared by the Lowell Commission and the New York State Department of Health concerning the circumstances of Rosenbaum's death at Kings County Hospital were also reviewed.

We also spoke with Lieutenant Paul Kennedy and several members of his staff at the New York City Police Academy. They provided us with information about the training, and continuing education, of police personnel.

2. Appendix C is a summary of the police investigation of the case. It is based upon our review of the Detective Division file, summaries prepared by the Department and interviews of police personnel.

3. Names of witnesses and suspects have been replaced randomly by letters of the alphabet to protect their identities.

4. See Criminal Procedure Law 60.35.

5. A May, 1993, update on the investigation prepared by the New York City Police Department reports that 523 prisoner lists have been interviewed. Lieutenant Vincent Ferrara advises us that each list contains approximately twenty names.

6. The police file dated November 29, 1991, refers to these posters.

7. On June 1, 1993, Rabbis Katz and Spielman of the Crown Heights Jewish Community Council, recognized the efforts of Detectives Brown and Abraham and commended them for their attempts "to bring to justice the murderers of Yankel Rosenbaum." The commendation also recognized the "professionalism and humanity" of the detectives and "their unusual concern and sensitivity" for the Jewish community.

8. These concerns were discussed with the Office of Charles J. Hynes, the District Attorney of Kings County, and Joseph Borrelli, the Chief of Detectives for the New York City Police Department. Mr. Hynes handled the prosecution of what has become known as the "Howard Beach" case in 1986 when he was the Special Prosecutor for the State of New York. As the District Attorney of Kings County, he also prosecuted the "Bensonhurst" case. Chief Borrelli supervised the police investigation of all of these murders.

9. Because of these assertions, the police did not show photographs of suspects to these or any other witnesses. Since it is possible, despite their assertions, that they might have recognized the suspects, it may be good police practice to exhibit photos to all witnesses.

10. Division of Criminal Justice Services, Basic Criminal Investigations: Trainer's Manual, pt. 6 at 1 (1991).

11. See B. Fisher, A. Svensson and O. Wendel, *Techniques of Crime Scene Investigation*, 416 (1987).

12. See New York City Police Department, Police Science Course: Protecting The Crime Scene and Developing and Handling Physical Evidence, Lesson Plan 5 (1990).

13. See generally C. O'Hara, *Fundamentals of Criminal Investigations* 85 (1970).
14. *Id.*
15. *Id.* at 89.
16. A fundamental principle of criminal investigation provides that the names of all individuals present should be recorded, since sources of information include "those persons who may not be called as witnesses but who can provide...information that is a matter of observation" *Id.* at 85.
17. See generally *People v. Monsanto*, 73 A.D.2d 576, 423 N.Y.S.2d 476 (1st Dept. 1979); *aff'd* 52 N.Y.2d 931, 437 N.Y.S. 2d 669 (1981), *People v. Martin* 32 N.Y. 2d 123, 343 N.Y.S. 2d 343 (1973); *People v. Batista*, 68 A.D. 2d 515, 417 N.Y.S. 2d 724, *aff'd* 51 N.Y. 2d 996, 435 N.Y.S. 2d 980 (1980).
18. We note that the detectives on this case objected to the release of C.T. and argued that there was probable cause that he had participated in the attack on Rosenbaum, as well as the crimes of rioting and resisting arrest.
19. C. O'Hara, *supra*, at 89.
20. F. Inbau, and J. Reid, *Criminal Interrogation and Confessions*, 123 (1967).
21. *Id.* at 124.
22. See generally E. Imwinkelreid, *Scientific and Expert Evidence*, (1981).
23. Division of Criminal Justice Services, *supra*, pt. 6 at 1.
24. H. Lee, R. Gaensslen, P. Bigbee, and J. Kearney, *Guidelines for the Collection and Preservation of DNA Evidence*, 18 (1991).
25. New York City Police Department, *supra* at 7. See also New York City Police Department, *Police Student's Guide - Law Chapt. 14 at 4* (1985).
26. New York City Police Department, *Criminal Investigation Course: Forensic Serology, Lesson Plan 5* (1990).
27. The Polymerase Chain Reaction (PCR) test looks at a infinitesimal part of sample and by applying a chemical replicates a section of DNA over and over again. In contrast to RFLP, the PCR test requires only a small amount of sample, and it can be of lesser quality. The advantages of PCR are that it is rapid and relatively easier to do (just a few steps).

In the Restriction Fragment Length Polymorphism (RFLP) test, DNA is subjected to controlled fragmentation with restriction enzymes that cut double-stranded DNA at sequence-specific positions. One disadvantage of the RFLP technology is that a relatively large amount of sample is needed and the sample cannot be degraded. [See National Research Council, *DNA Technology in Forensic Science* 36,40 (1992).]

28. At trial, Dr. David Bing, Scientific Director at the Center for Blood Research Laboratory in Boston testified that his laboratory has found that denim interferes with the enzymes used in performing PCR - DQ Alpha analysis.

29. Dr. Shaler also noted that there were the following additional methods for determining if saliva was mixed with the blood. First, if blood was found on Nelson's shirt, it could have been compared to the pants to determine if the blood was deposited on both items at the same time. Second, an expert could have examined the pattern of the bloodstains on the clothing to determine if, considering the location and position of Nelson and Rosenbaum when he spat, whether the spit could have been deposited on Nelson.

30. We note that although the arresting officer testified that the blood on the knife was wet when he put it in his pants pocket, his pants were not taken and submitted for forensic analysis.

31. On November 24, 1992, however, the police received information that an associate of Nelson's said that Nelson admitted to him that he had killed Yankel Rosenbaum. The Detectives interviewed the associate. The police have notified the Federal authorities of this information.

32. A violation of 18 U.S.C. §245 requires proof of the following elements:

- 1) the defendant must have acted with force or threat of force;
- 2) the defendant injured, intimidated, or interfered with, or attempted to injure, intimidate or interfere with the victim;
- 3) the defendant must have acted because of the victim's race, color, religion or national origin and because the victim was participating or engaged in a federally protected activity (as enumerated in 18 U.S.C. §245(b)(2)(A)-(F); and
- 4) the defendant must have acted willfully.

See 18 U.S.C. §245(b)(2).

Chapter 4

The Jury's View of the Case

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- ▶ Non-Evidentiary Considerations
- ▶ Conclusion

THE JURY'S VIEW OF THE CASE

INTRODUCTION

The prosecution presented evidence that appeared strong on its face. If found to be credible and reliable by the jury, this evidence would have been sufficient to support a verdict convicting Nelson. Prosecution witnesses testified that Nelson fit the description of the individual who was seen crouched over the victim and fleeing the scene of the stabbing. A bloodstained knife and three bloodstained one dollar bills were recovered from Nelson's pocket. The victim identified Nelson. Nelson confessed to stabbing Rosenbaum. All four stab wounds were consistent with the knife taken from Nelson. The blood on the knife and on some of the dollar bills found in Nelson's pocket was consistent with the victim's blood.

Despite the apparent strength of the case against Lemrick Nelson, the jury acquitted him. Many in the community were surprised and claimed that justice was not served by the verdict. Several concerns were raised about how the justice system operated. In an attempt to address these concerns, this chapter seeks to answer several critical questions:

- How could the jury acquit the defendant when the evidence against him seemed so strong?
- What factors created reasonable doubt in the jurors' minds?
- Was the jury's verdict premised upon a preconceived mistrust of police officers?
- Was the jury's verdict influenced by racism or anti-Semitism?

In accordance with the Executive Order, we attempted to understand how the jurors arrived at their verdict. Each of the jurors who deliberated in the case was interviewed.¹ They were interviewed separately, and the substance of each interview was not discussed with other jurors. The jurors were also assured anonymity.

In rendering a verdict, juries in New York State have three options. They may unanimously find the defendant guilty, or not guilty, or they may be unable to reach a unanimous conclusion and declare that irreconcilable differences have resulted in a "hung" jury or mistrial.

A verdict of guilty means that the jury found that the defendant committed the crime charged. A verdict of not guilty, however, does not mean that the jury found the defendant innocent. Rather, it is the appropriate verdict when the jury finds that the prosecution did not prove “beyond a reasonable doubt” that the defendant committed the crime charged. This is true regardless of whether the jury believes that the defendant may have committed the crime.

The purpose of a criminal trial is to determine whether the prosecution has proved the guilt of the defendant “beyond a reasonable doubt.” Reasonable doubt is not defined in terms of a mathematical percentage or certainty. Rather, it is defined as a material doubt about guilt for which a reason may be articulated.

Judge Rappaport appropriately instructed the jury that Nelson was presumed innocent and that the prosecution was required to prove beyond a reasonable doubt Nelson’s guilt as to each and every element of the crime charged. The Judge also explained that a reasonable doubt was a doubt for which a reason could be given. It was doubt based on the nature and quality of the evidence, or from the lack or insufficiency of the evidence.²

Each juror said that he or she followed the Judge’s instruction on the law with respect to the presumption of innocence. They said that they acquitted Nelson because the prosecution failed to prove “beyond a reasonable doubt” that Nelson had committed the crimes charged.

The jurors identified concerns with respect to the evidence presented. They also expressed concerns with other issues not necessarily relating to the actual evidence. These issues were discussed during their deliberations and affected the jurors’ view of the case. We have characterized these other concerns as non-evidentiary considerations that may have contributed to the jury’s verdict.

This section will present the jury’s view of the case and explain the basis for the verdict. For the most part, we do not assess the views of the jurors on their merits. Our purpose was an attempt to understand how a case so apparently strong resulted in the jurors’ finding reasonable doubt. The following is a compilation of the factors noted by the jurors.

During the course of the interviews, two themes emerged for why the jury determined that Nelson was not guilty. These themes can be characterized as inconsistencies in the witnesses’ testimony and as deficiencies in the evidence. The many inconsistencies in the testimony of the police witnesses affected their credibility in the eyes of the jurors. This served to undermine the value of each of the major elements of the prosecution’s case. Since the jurors considered much of the evidence to be unreliable, they had “reasonable doubt” regarding Nelson’s guilt.

The jurors also identified numerous deficiencies in the handling of the physical evidence and in the investigation and prosecution of the case. The jurors stated that the evidence presented was not sufficient to link Nelson to the crime and prove beyond a reasonable doubt that he was responsible for Rosenbaum's murder.

THE EVIDENCE

The prosecution offered evidence about Nelson's apprehension one block from the scene of the crime. They presented evidence of Rosenbaum's identification of Nelson and Nelson's confession to the stabbing. Finally, there was physical evidence linking Nelson to the victim and to the murder weapon — the blood on his pants and the bloodstained knife and money recovered from Nelson's pocket. This evidence was central to the prosecution's case against Nelson.

As the testimony was presented, however, the jurors found deficiencies and inconsistencies in the evidence with respect to each of these major elements in the prosecution's case.

The Events Surrounding the Apprehension of Nelson

Many jurors found inconsistencies in the police officers' testimony regarding the events surrounding Nelson's arrest. This caused confusion about what actually happened and created doubts about the officers' credibility.

The Radio Transmission and the Suspect with the Red Shirt

The first officers arriving at the scene of the crime testified about what they said over their portable radios and what prompted them to pursue Nelson as a suspect. The jurors stated that the testimony relating to the radio transmission was contradictory and, therefore, "not particularly weighty."

Five police officers testified regarding the radio transmission. Two of these officers, New York City Police Officers Milazzo and Sanossian, were eyewitnesses to the attack on Yankel Rosenbaum. Milazzo testified that as they approached the scene of the attack, he saw a black male in a red shirt leaning over the victim and apparently hitting him.

When the officers began to pursue the attackers, Milazzo testified that the police used their portable radios to call for help. Milazzo said, "Pursuit President

and Brooklyn.” He also testified that he heard his partner, Officer Sanossian, give a description, “male black with red shirt.” Similarly, Sanossian testified that he gave a description of one of the males he saw running from the attack as a “male black wearing a red shirt.”

Three other officers testified regarding what they heard over the police radio. Two of them, Officers Hoppe and Marinos, were riding together in a patrol car. Marinos testified that he heard a transmission stating, “Police officers in pursuit of a black male wearing a red shirt,” while Hoppe testified that he heard only, “In pursuit, President and Brooklyn.”

Officer Robert Lewis, a transit police officer in another patrol car with his partner Gerald Wheeler, heard only the transmission regarding the officer in pursuit and did not hear anything about a black male in a red shirt.

The jurors listened to an audiotape of the radio transmissions during their deliberations. They said that they did not hear any statement regarding a male black wearing a red shirt. As a result, many of the jurors decided that the transmission describing Nelson was never made.³

The defense counsel highlighted this inconsistency in his summation and argued that the discrepancy between the testimony and the tape was powerful evidence that all of the police officers were lying. He argued further that if the police lied about one event, they would lie about everything. Therefore, he stressed that the jury should reject all of the police testimony. The defense counsel also referred to the tape in his summation. He argued that Nelson was arrested because the police were under pressure to arrest someone for killing a member of the Hasidic community.

Each of the jurors attributed great weight to the contradictions between the police officers’ testimony and the tape. To them, the contradictory evidence indicated that the police may have been lying to frame Nelson because the police needed to make an arrest in the killing of an Hasidic man.

Inconsistencies between Key Police Witnesses

Overwhelmingly, the jurors identified the many inconsistencies in the police officers’ testimony as a major issue in this case. Since the prosecution’s case relied heavily on police witnesses, the overall value of the evidence presented through these witnesses was compromised.

Most of the jurors identified the inconsistencies and contradictions between the testimony of two police officers. Those two officers were New York City Police Officer Hoppe and Transit Police Officer Lewis. Many of the jurors were

greatly troubled by what they perceived as “major inconsistencies” between the testimony of Hoppe and Lewis. They felt that, instead of attempting to reconcile the testimony, they had to choose which officer to believe. Some jurors explained that they found Lewis to be a more credible witness than Hoppe for two reasons. One was the prosecution’s late discovery of Lewis as a witness. The second was that, unlike Lewis, Hoppe had applied for a commendation for his work on the case. This action, the jurors felt, gave Hoppe a personal stake in the case.

Some jurors believed that those officers who submitted requests for commendations had reason to embellish their roles in Nelson’s apprehension. Most of the jurors decided that Hoppe had lied. They chose to believe Lewis over Hoppe, because Lewis had not submitted a Departmental Recognition Request.

On September 9, 1992, at the suppression hearing, more than a year after Rosenbaum’s murder, a prosecution witness testified that transit police officers were present at the scene of Nelson’s apprehension. Detective Litwin said that when he arrived at the scene, Hoppe was inside the fenced yard. Hoppe’s partner, Marinos, was on the sidewalk with two transit police officers who, Litwin said, were black. Litwin did not know their identities or their command. Defense counsel demanded that the prosecution identify and produce these officers.

On September 22, 1992, during the selection of the jury, the defense counsel again demanded that the prosecution identify and produce the transit police officers. The Judge directed the District Attorney’s Office to do so. Shortly thereafter, the prosecution notified the Judge and the defense counsel that they had identified the officers as Transit Police Officers Robert Lewis and Gerald Wheeler.

The jurors learned about the late discovery of Officer Lewis when he was called as a witness by the prosecution on October 2, 1992, ten days after the trial began. Several jurors said that this caused them to believe that the case had not been properly investigated and prepared. Some jurors also concluded that there must have been an attempt to “cover something up” from the manner in which it was discovered that Lewis was present at the scene of Nelson’s apprehension.

Lewis testified on cross-examination that he was first notified that the prosecutors wanted to interview him in September of 1992 — over one year after the killing. According to Lewis’s testimony, no efforts had been made by either the Police Department or the prosecution to contact him earlier.

Departmental Recognition Requests are submitted by police officers to their commanding officers to seek commendations for their work on a particular case. In this case, Officers Milazzo, Sanossian, Hoppe, and Marinos filed requests for commendation on April 22, 1992. In their letters, they each described their participation in the case. Their testimony at trial was consistent with the letters.

In his letter seeking commendation, Hoppe did not mention Police Officer Lewis. Several jurors believed that Hoppe refused to admit at trial that Lewis participated in Nelson's apprehension because he had not mentioned it in his Departmental Recognition Request. Some jurors incorrectly speculated that Hoppe feared that if he admitted at the trial that Lewis had participated in the frisk, he might be charged with the crime of "Filing a False Instrument." This possibility, the jurors theorized, gave Hoppe a reason to lie about the presence of Lewis at the scene of Nelson's apprehension.

Key evidence came from Hoppe on the issues of the arrest, the recovery of the knife and the identification of Nelson by Rosenbaum. Central to the defense strategy was to challenge the credibility of this witness. If believed, Hoppe's testimony was damning evidence against the defendant. However, the inconsistencies between Hoppe's and Lewis's testimony provided the defense with the means to cast significant doubt on the entire People's case.

Some jurors stated that the inconsistencies in the testimony among key police witnesses with respect to who actually made the arrest, who was involved in the pat-down search of Nelson, and how the knife was handled once it was recovered from the defendant, undermined the value of this evidence.

Five police officers testified about Nelson's arrest. The jurors said that they were troubled by the numerous inconsistencies in the testimony of all of the police officers. They were particularly concerned about what they perceived to be "major inconsistencies" between the testimony of Hoppe and Lewis. Many jurors said that Lewis' testimony greatly damaged the prosecution's case.

Differing Accounts Regarding the Frisk of Nelson and the Recovery of the Knife

Police witnesses testified that a bloodstained knife was recovered from the pocket of Nelson's pants within minutes of the stabbing. Since forensic tests later showed that the blood on the knife was consistent with that of Yankel Rosenbaum, this evidence, if credited by the jury, could have been persuasive proof of Nelson's guilt.

Most of the jurors, however, were troubled by what they perceived to be major inconsistencies in the testimony of the police officers concerning the frisk of Nelson, the recovery of the knife, and whether there was actually blood on the knife at the time of its recovery. Many jurors were unable to reconcile the testimony of the police officers. A few jurors even expressed doubts about whether the knife was actually recovered from Nelson.

Hoppe testified that he was the only police officer to climb over the fence into the yard at the house on the corner of Brooklyn Avenue and Union Street. According to Hoppe, he alone frisked Nelson and recovered the knife from his right front pants pocket. Hoppe also testified that he did not see any transit police officers at the scene of Nelson's apprehension.

Hoppe's testimony was corroborated by his partner, Officer Marinos. Additionally, Detective Litwin corroborated Hoppe's testimony that he was the only police officer in the yard with Nelson. Transit officers, although present at the scene, were on the other side of the fence.

On October 2, 1992, the prosecution called Officer Lewis as a witness. Lewis testified that, on August 19, 1991, he was assigned to patrol the Crown Heights area in a transit police car with his partner, Gerald Wheeler. He was at the scene of the Cato accident earlier. He resumed patrol when he heard a radio transmission that police officers were in pursuit at Union Street and Brooklyn Avenue.

When Lewis arrived on the scene, he saw Hoppe, whom he did not know at the time, jump over a fence into a yard. Lewis said that he also jumped over the fence and saw Lemrick Nelson lying on the ground. Lewis said that he and Hoppe then picked Nelson up and searched him.

In contrast to the testimony of Hoppe and the other City police officers, Lewis testified that he was in the yard with Hoppe and Nelson. Lewis contradicted Hoppe further by testifying that he participated in the frisk of Nelson, patting him down above the waist while Hoppe frisked him below the waist. Lewis agreed that Hoppe recovered the knife from Nelson's right front pants pocket.

Differing Accounts Regarding the Handling of the Knife

The testimony of Hoppe and Lewis also differed with regard to the handling of the knife after it was recovered from Nelson. Hoppe testified that he displayed the knife to Marinos, and then put it in his rear pants pocket. Marinos and Detective Litwin corroborated this account.

Lewis testified that Hoppe recovered a knife from Nelson. According to Lewis, the knife was a folding knife that was closed when he first saw it. Lewis testified that Hoppe handed the knife to him and he opened it up.

The Judge appeared to be shocked by this testimony. He repeatedly interrupted the examination to ask Lewis to repeat his testimony. As a result, the prosecutor had difficulty eliciting from Lewis how the knife was opened and how it appeared. Lewis further testified that he gave the knife to his partner, Wheeler, before he returned it to Hoppe. Hoppe closed it and placed it in his rear pocket.

Many of the jurors believed Lewis's version of the events. They said that the knife was mishandled after its recovery and asserted that, by handing it to Lewis, Hoppe violated proper police procedure and good evidence handling techniques. They viewed this as evidence of careless police work. To some of the jurors, this was a significant factor in limiting the value of the knife as evidence of Nelson's guilt.

Some jurors noted that Hoppe's credibility was further undercut when he was recalled to the witness stand during the defense case and then could not remember details about the event. This was in contrast to his initial testimony when he confidently responded to every question and seldom indicated that he could not recall a fact.

In sum, the jurors were troubled over the inconsistencies in the testimony regarding the frisking of Nelson and the recovery and handling of the knife. That Lewis had not been identified as being present at Nelson's apprehension until the trial commenced, caused several jurors to conclude that the prosecution did not prepare properly and that there was a cover-up attempt.

That most of the other police witnesses had applied for a commendation, and Lewis had not, made Lewis a more credible witness. It appeared that he did not have a personal stake in the investigation and that the other officers were motivated by their commendation requests to stick to their original stories.

That the jurors found the inconsistencies between Hoppe's and Lewis's testimony so damaging was somewhat curious. A review of the trial transcript indicates that the testimony given by Lewis actually corroborated that of Hoppe on most significant points. Moreover, it was evident from the tone and content of the cross-examination of Lewis that defense counsel initially believed his testimony to be damaging to the defense case and not the prosecution's case.

The Judge's Reaction to Officer Lewis's Testimony

Judge Rappaport's reaction to Officer Lewis's testimony highlighted the contradictory testimony of Lewis for some of the jurors. As noted earlier, this reaction was unexpected since Lewis's testimony corroborated Hoppe's testimony on most significant points.⁴ The Judge's reaction made a significant impression on some of the jurors. They interpreted his reaction as indicative of problems with the prosecution's case.

During their examination of Lewis, Judge Rappaport continually interrupted both defense counsel and the prosecutor. At times, the Judge even appeared to take over the examination of the witness. Such repeated interruptions proved detrimental to the prosecution's case. They served to highlight the apparent inconsistencies between Lewis's testimony and the testimony of the other police witnesses.

In viewing videotapes of the trial, it was evident from the Judge's tone of voice throughout the examination of Lewis that he was disturbed by Lewis's testimony. Some jurors noted that one series of statements by the Judge, in particular gave them the sense that something was terribly wrong with the prosecution's case. Judge Rappaport told the prosecutors:

I will tell you this. The Court wants Hoppe and Marinos back here on Monday. Do you follow me? I want them back...We will deal with Litwin. We will have Litwin back too. This is bad. (Emphasis added.)

This outburst caused some of the jurors to believe that the Judge thought that Hoppe, Marinos, and Litwin were lying. The Judge's comments inappropriately communicated to the jury his opinion about the veracity of the witnesses. It is the function of the jury, not the judge, to determine the credibility of witnesses.⁵

In his preliminary instructions, Judge Rappaport properly instructed the jurors that it was their duty alone to decide whether a witness was trustworthy, believable, accurate, and truthful. This preliminary instruction to the jury, however, occurred approximately ten days before Lewis testified and no further curative instruction was given. The Judge, through his demeanor and statements, conveyed to the jurors his belief that the credibility of Hoppe, Marinos, and Litwin was questionable.

The prosecution decided not to address, comment upon or seek curative instructions with respect to the Judge's reaction. This decision reinforced an impression upon the jury that the case was in trouble. The prosecution

considered the Judge's behavior in response to Lewis's testimony so detrimental to their case that they considered making a motion for a mistrial. However, they did not do so. The prosecutors reasoned that based upon their previous experiences with the Judge, he would not grant the motion. To do so would have required an admission of error by the Judge. Additionally, the prosecution noted that there is always a concern that when a mistrial is declared at the prosecution's request, the constitutional prohibition against double jeopardy might preclude a retrial.⁶

The prosecution could have requested that the Judge give a curative instruction to the jury concerning his comments during Officer Lewis's testimony. While such a direction may not have completely diminished the impact of the Judge's words on the jury, it might have minimized its effect. However, the prosecution made a strategic decision not to request a curative instruction. They reasoned that it would "further highlight" the issue and focus more attention on the inconsistencies than was warranted.

The Victim's Identification of Nelson

Central to the prosecution's case was Rosenbaum's identification of the defendant. According to the jurors, however, the evidence regarding the victim's identification of Nelson was contradictory and confusing.

Jurors viewed the identification as unreliable. Some said that the circumstances surrounding Rosenbaum's identification of Nelson were improperly suggestive. Other jurors even questioned whether Rosenbaum actually made an identification. Still others questioned Rosenbaum's ability to make an identification in view of his physical condition.

Jurors' Doubts & Questions

- * Did the police grab the first young man in a red shirt whom they saw running, then keep him in custody because he had a knife?
- * How many people were shown to Rosenbaum for identification?
- * Did Rosenbaum see the knife? If he saw it, had he already identified Nelson?
- * To whom was Rosenbaum directing his outburst — Nelson, or the assembled group?
- * Did Rosenbaum's physical condition preclude him from making a reliable identification?

The Suggestiveness of the Identification of Nelson

The Display of the Knife

The defense argued that the show-up procedure was overly suggestive because the knife was shown to Rosenbaum before he identified Nelson as his attacker. In support of this contention, the defense relied upon the testimony of Sergeant Wilson. Wilson testified that Rosenbaum was three feet away when Hoppe showed Wilson the knife in the vicinity of the victim before the identification had been made.

Based upon their comments, it is apparent that the jurors placed greater weight on Wilson's testimony than on the testimony of six other witnesses. The testimony of Hoppe, Lewis, and Litwin was that Rosenbaum identified Nelson as his attacker before Hoppe took the knife out of his pocket. This testimony was further corroborated by three civilian eyewitnesses, Meyer Rivkin, John Anderson, and EMS technician, Sharon Defino. Sergeant Wilson was the only one whose testimony suggested that the knife was exhibited in the presence of Rosenbaum at the time of the identification.

Some of the jurors believed that the showing of the knife by the police prompted Rosenbaum's identification of Nelson. They also said that the inconsistency in testimony diminished the value of this identification.

The Show-up of Nelson without a Hat

Two jurors believed that the show-up was tainted because the police officers who first arrived at the scene testified that the black male with the red shirt standing over Rosenbaum was wearing a hat. Yet, Nelson was not wearing a hat at the time he was identified by Rosenbaum.

Officer Sanossian testified that the black man with the red shirt, whom he saw running from the attack, was wearing a baseball cap. Hoppe testified that when he first saw and apprehended Nelson, he was wearing a baseball cap, but it fell off during the frisk. Although Hoppe put the hat back on Nelson as they walked toward the scene of the crime, he took it off before Nelson was shown to Rosenbaum. Hoppe testified that this was done so that the victim could get a full view of Nelson's face. Sergeant Wilson's testimony was consistent with Hoppe's. Officer Lewis, on the other hand, did not see a baseball cap on Nelson.

The jurors rejected Hoppe's explanation for why he removed Nelson's hat. They accepted the defense counsel's claim that the police were careless in conducting the identification. Several jurors agreed with defense counsel that the

show-up was another example of poor police procedure that left them with doubts about the reliability of the identification.

The Ambiguity of Rosenbaum's Statement

The Judge instructed the jury that, in considering Rosenbaum's statements identifying Nelson as the person who stabbed him, they must consider the credibility of the witnesses who testified about the statement. He further charged that if they did not find that the testimony of the witnesses who overheard Rosenbaum's statements was believable, they were to disregard the testimony. Some jurors said that they did not find the police officers' testimony regarding the victim's identification to be credible. Therefore, in light of the Judge's charge, they did not give much weight to the victim's identification.

Some jurors said that they were not persuaded by the testimony that Rosenbaum actually identified Nelson as his stabber when he said, "Why did you stab me?" They thought that the victim's statements were ambiguous. They were uncertain whether Rosenbaum intended the "you" to mean Nelson or the group as a collective "you." It was not clear to these jurors whether Nelson was the only one involved in the crime, or whether he was part of a larger group.

Also, given the number of individuals who were present at the time of the show-up, some of the jurors thought that the prosecution should have produced more witnesses to testify to the circumstances surrounding the identification.

The Victim's Physical Condition and His Identification of Nelson

In the opinion of several jurors, the reliability of Rosenbaum's identification was diminished by his physical condition. These jurors believed that Rosenbaum's injuries rendered him incapable of making a reliable identification of Nelson. However, the evidence indicated that Rosenbaum was lucid and able to make valid observations. He could recognize familiar faces and distinguish between those he recognized and those he did not.

Sergeant Wilson testified that before Rosenbaum was shown Nelson, he was shown two other suspects. When he was shown C.T., Rosenbaum said, "There were fifteen of them. He's one of them." Unlike his reaction when shown Nelson, Rosenbaum did not yell or spit at C.T. or ask why he had stabbed him. Rosenbaum was shown another suspect by the police and responded, "no, no, no" when asked if he recognized him. Moreover, Chaim Lieberman, a defense witness, testified that when he went over to the car to see what had happened, Rosenbaum recognized him and called out his name even before Lieberman was able to recognize Rosenbaum.

Rosenbaum's identification of Nelson was also corroborated by the testimony of Officers Milazzo and Sanossian. Milazzo testified that when they came upon the scene, he noticed one attacker in particular, a black male teenager with a red shirt and a baseball cap, who was behind the victim and crouched over him. Milazzo testified that when he saw Nelson at Kings County Hospital, he had the same stature and was the same height, weight, and age as the attacker. He could not, however, positively identify Nelson as the attacker.

Officer Sanossian also testified that when he saw Nelson at the hospital, he fit the description of one of the people running from the attack. He said that although he did not see the attacker's face, Nelson was the same size and was wearing the same type of clothing as the attacker. He could not, however, positively identify him. Sanossian also testified that he did not recall more than one of the attackers wearing a red shirt.⁷

Lewis's testimony also corroborated Hoppe's with respect to Rosenbaum's identification of Nelson. Lewis's description, about the manner in which the identification of Lemrick Nelson occurred, was more supportive of the prosecution's case than the testimony of the other police witnesses. His description of the identification was material, because it described Rosenbaum's spontaneous and immediate reaction when he saw Nelson. Lewis testified that Rosenbaum identified Nelson before the police even had the chance to pose a question.

Lewis's testimony was also useful to the prosecution's case on two additional issues. Defense counsel sought to show that the identification was unduly suggestive because Nelson was shown to Rosenbaum in handcuffs and that Hoppe displayed the knife before Rosenbaum identified Nelson. Lewis, however, testified that Nelson was not handcuffed until after the identification and that the knife was not displayed during the identification procedure.

The prosecution argued in summation that the identification was reliable, because Rosenbaum did not identify C.T., John Anderson, or the "chubby kid" as his attacker. This, the prosecutor said, was evidence that he was not "going to pick out any black kid that is brought to him." The prosecution also argued that Rosenbaum struggled with his attackers, and, thus, had ample opportunity to see them. Many jurors, however, did not accept these arguments and, instead, gave little weight to the victim's identification of Nelson.

Nelson's Confession

Another key component to the prosecution's case was Nelson's confession to Detectives Abraham and Brown. Notwithstanding the jurors' concerns

regarding the other evidence submitted in this case, there was sufficient evidence to convict Nelson if they believed that Nelson confessed to the stabbing. However, this evidence was disregarded by the jury.

The Judge appropriately charged the jury on the law governing the weight that they should give to statements made by Nelson. Judge Rappaport instructed the jurors that before they could consider Nelson's statements as evidence of his guilt, the prosecution had to prove beyond a reasonable doubt that the statement was voluntarily made and that it was truthful.⁸ If the prosecution failed to meet this burden, the jury was advised that they had to disregard the statements, even if they believed that the statements were truthful.

The jurors said the reliability of the confession was compromised on several grounds. Some jurors believed that Nelson was coerced into giving a confession. Some questioned whether Nelson had been advised of his constitutional rights. Others believed that the confession was fabricated. Some jurors questioned Nelson's mental capacity to give a reliable confession.

Nelson was Coerced into Making a Statement

In his charge, the Judge explained that a defendant's statement is voluntarily made when it is "knowingly, freely and willingly given by the defendant." He further charged that a defendant's statement may not be considered by the jury if the police obtained it by the use of force or by threats of the use of force.

Many of the jurors said that they disregarded Nelson's confession because they thought that it was not voluntarily made. The jurors believed that it might have been coerced. They said it was possible that the confession was "beaten out of him." They cited Nelson's medical report from Kings County Hospital as support for this belief.

During his cross-examination of the police witnesses and in his summation, defense counsel suggested that Nelson had been taken to the hospital because he was suffering from a very serious asthma attack brought on by an assault by a police officer. Officer Hoppe denied that he hit Nelson or that any other officer hit him. The officer acknowledged, however, that Nelson made this allegation to hospital personnel.

The court received into evidence Nelson's medical records. The records indicated that Nelson was brought to the hospital "on complaint of pains over chest after he complained he was hit by P.O. [police officer] on the chest." The court redacted from the records the phrase "by P.O.," but many of the jurors said they could still see the words on the records. As a result, many jurors said that,

in their view, the medical records indicated that Nelson had bruises on his chest and his throat caused by a beating by a police officer. They saw this as evidence that the police hit Nelson while he was in their custody.⁹

In summation, defense counsel emphasized the seriousness of the attack, claiming “EMS said they found him drooling...and I can only suggest to you these people didn’t want to have a second body on their hands...They took this lad to the hospital because the lad was in a bad way.” Defense counsel argued that, considering his condition, Nelson was clearly incapable of understanding and waiving his rights when questioned by the detectives within minutes after returning to the precinct from the hospital.

Several jurors accepted this argument. They rejected the explanation offered by the prosecutor in her summation that if Nelson had been in such bad condition, he would have received immediate treatment upon arrival at Kings County Hospital instead of having to wait for several hours in the Emergency Room.

Some jurors also stated that their viewing of the videotape of the assistant district attorney interviewing Nelson indicated that Nelson was sobbing and upset. Some jurors also stated that the two detectives standing in the background appeared to be laughing.¹⁰ The jurors could not reconcile what they saw on the video with the detectives’ testimony that Nelson was not crying during the interview and that he did not appear “stressed.”

Some jurors believed that the detectives lied when they testified that Nelson was not crying or upset since they were able to view Nelson’s emotional condition for themselves. They said that this apparent lie about Nelson’s emotional condition caused them to question the detectives’ credibility, particularly with respect to their testimony about Nelson’s earlier confession. The defense argued in summation that the videotape of the interview demonstrated that Nelson was so distraught that he was in no “condition to be interrogated without a lawyer, without his parent, [and] without an adult.” The jury ultimately

Jurors’ Doubts & Questions

- * Did Nelson freely confess his participation in the stabbing, without coercion by anyone?
- * Why was there no documentation of this confession — a signed *Miranda* warning card, detectives’ notes taken at the time, or a signed statement by Nelson?
- * If Nelson confessed to the detectives, why were the details inaccurate?
- * To jurors, Nelson looked very distressed, even crying, on videotape; detectives had said he was fine. Could the jurors trust the detectives’ other testimony?

accepted defense counsel's argument, and followed the Judge's charge, that if a witness lied about one thing, they could disregard all of that witness' testimony.

Since some of the jurors believed that Nelson was hit by the police, they considered any confession Nelson made to be involuntary. Therefore, in accordance with the Judge's instruction, they disregarded the confession.

The Detectives Fabricated Nelson's Statement

The defense argued that Detectives Abraham and Brown either fabricated Nelson's statement or put words into the mouth of a frightened and sick youth of below-average intelligence. Several jurors accepted this argument.

The jurors said that certain information contained in the statement was not consistent with the facts as disclosed during trial. For example, they pointed to Nelson's statement that he stabbed Rosenbaum once in the left side when, in fact, Rosenbaum had been stabbed on the right side. The jurors believed this statement corresponded with what the police knew at the time and supported their contention that Detectives Abraham and Brown tailored the statements to fit the incorrect information that they had when they questioned Nelson.

The jurors also believed that the confession was fabricated even though not all of Nelson's statements were consistent with what the police knew. For example, according to Detective Abraham, Nelson said that, after the stabbing, he put the knife in his left pocket. This is contrary to what Hoppe told the detectives and his testimony that he took the knife out of Nelson's right pocket.

Many jurors accepted the defense argument that the statement was fabricated because it contained erroneous information. They rejected the prosecutor's argument that since the statements contained incorrect details, they could find that the confession was not tailored or fabricated by the police.

Several jurors were also troubled that Nelson's confessions were not witnessed. Both detectives initially planned to be present during Nelson's questioning. Because of the increased activity at the 71st Precinct, however, a commanding officer instructed them to take Nelson to a different precinct. As a result, in their effort to make other arrangements, the detectives did not conduct their interviews together.

Detective Brown testified that he advised Nelson of his constitutional rights by reading from a *Miranda* warnings card. After doing so, Nelson told him that he had cut "the Jew" once on the left side. Nelson also indicated to him that the police chased and caught him and took his knife out of his pocket. Finally, the detective said that Nelson told him that "the Jew" identified him as

the person who stabbed him. Nelson, however, refused to write this statement out or sign it.

No effort was made by Detective Brown to record Nelson's confession contemporaneously with his making it. Detective Brown testified that he took no notes during the interview, because, in his experience, suspects became nervous when an officer begins to take notes. Even if this were true, the jurors reasoned, he could have written Nelson's statement down soon after Nelson gave it, but he did not. Indeed, Brown did not write down Nelson's statement until nine o'clock the next morning, almost six hours after it was made.

Detective Abraham testified that when he returned to the room, Brown told him that Nelson "gave it up." When Brown left the room, Abraham again advised Nelson of his constitutional rights and interviewed him. Abraham testified that Nelson gave him a statement which was identical in all material respects to the statement Brown obtained. Abraham also testified that he began to take contemporaneous notes when Nelson was repeating his statement to Abraham a second time. The defendant, however, would not sign them.

Although he did not testify at the trial, Nelson did testify at the suppression hearing held prior to the trial. In his testimony at the hearing, Nelson acknowledged that the detectives had advised him of his constitutional rights and that he made a statement to them about the events of August 19, 1991.

Nelson, at the hearing, corroborated the testimony of Brown and Abraham with respect to some of the facts in his confession. He denied, however, that he had stabbed Rosenbaum. He also denied ever telling the detectives that he did. Since this evidence was inadmissible at trial, however, the jurors did not have the benefit of hearing it.¹¹

***The Absence of Documentary Proof
that Nelson Had Been Read His Rights***

Detectives Brown and Abraham each testified that, before interviewing Nelson, they advised him of his rights, including his right to remain silent. Many of the jurors, however, did not credit this testimony. Some of the jurors said they did not believe this testimony because there was no physical evidence to corroborate it. There was no card signed by Nelson acknowledging that he had been advised of, and had waived, his rights.

Nelson's Mental Capacity and His Inability to Understand and Waive His Rights

The defense asserted that even if the detectives had advised Nelson of his constitutional rights, Nelson did not have the capacity to understand and knowingly waive those rights. Several jurors accepted this argument.

The Judge, using standard jury instruction language, told the jurors that “[p]roof that the defendant is a minor, age sixteen, or had little education or had low intelligence, could tend to establish that he did not make a knowing and intelligent waiver.” The Judge instructed further, “[o]n the other hand, proof that the defendant is an adult, of higher education or intelligence, could tend to establish that he made a knowing and intelligent waiver.”

The evidence at trial showed that Lemrick Nelson was a sixteen-year-old minor, and that he had the mental capacity of an even younger person. According to some jurors, the special applicability of this charge to the facts in this case provided them with an additional basis to disregard Nelson's confession.

The defense relied on the testimony of Dr. Losardo that Nelson had an IQ of 84 and, therefore, was incapable of understanding his rights. To counter the defense expert, the prosecution called Dr. Drob, who testified that his tests indicated that Nelson had an IQ of 100, and could understand his rights.

Dr. Losardo also conceded on cross-examination, that Nelson must have understood his rights because when he was read his rights, he exercised his right to remain silent and refused to make any statement. Despite this concession, many jurors gave great weight to the direct testimony of Dr. Losardo. The prosecution discussed this concession in summation, but to no avail.

Many jurors discounted Drob's testimony. They resolved the contradictory testimony in favor of the defense since the prosecution's expert had interviewed Nelson for only three-and-a-half hours. In contrast, the defense witness had known Nelson for a long time, although he had not tested him recently.

The Physical Evidence Linking Nelson to the Murder Weapon and the Victim

The prosecution offered two items of physical evidence as proof of Nelson's involvement in Rosenbaum's stabbing. One was the bloodstained knife recovered from Nelson. Forensic tests later showed that the blood found on the knife was consistent with the victim's blood. The second item was the

defendant's bloodstained pants that were offered to link Nelson to the victim. Many jurors, however, had doubts about the reliability of these items of evidence.

The jurors said they had serious concerns regarding the adequacy and quality of the forensic evidence introduced at the trial. Most of the jurors disregarded this evidence, because they either doubted its accuracy or did not understand its significance.

It was evident from their comments that the jurors found the testimony regarding the forensic testing confusing. One juror stated that this evidence should have been presented in a manner that the jurors could understand. Such evidence needed to be "reduced to laymen's [sic] terms."

The Knife – The Alleged Murder Weapon

The knife recovered from Nelson minutes after the stabbing was a critical part of the prosecution's case. The case was premised on the assumption that this knife was the murder weapon. Testimony showed that the blood on the knife was consistent with the victim's. Evidence also was presented that the knife was consistent with the shape and size of Rosenbaum's wounds. If this evidence had been viewed by the jury to be reliable, it was significant proof of Nelson's guilt. The jurors, however, were not persuaded.

Several jurors stated that the unprofessional manner in which the knife was handled when it was first recovered compromised its value. It was handled by too many people and the police kept it for over thirty hours before it was vouchered.

Jurors' Doubts & Questions

- * Was it blood or rust on the knife?
- * If there was as much blood on the knife as police indicated, why was there no blood on the pockets that had held it? (Nelson's and Hoppe's)
- * Why did the police handle the knife the way they did?
- * Why was no measurement taken of the blunt edge of the knife?
- * Why was the knife itself not tested, when samples of the pants and dollar bills were sent to the lab?
- * Why could the scientists not say that the blood was definitely (and not just consistent with) Rosenbaum's blood?
- * Why were the photos of the knife in black and white, when other forensic photos were taken with color film?

Many jurors also believed that the value of the blood sample on the knife was destroyed. Hoppe put the knife and the dollar bills, taken from Nelson, in a brown paper bag that he found lying on a desk at the Precinct, rather than in separate evidence envelopes.

Some jurors also said that the evidence presented did not conclusively show that there was actually blood on Nelson's knife. They were not convinced that the substance on the knife was blood and not rust.

Officer Hoppe testified that when he took the knife from Nelson's pocket, he saw blood on the portion of the blade protruding above the handle. This was interpreted by many of the jurors to mean the blunt edge of the knife. Hoppe testified that the knife was slightly bloody and that the blood had congealed on the blade. Some jurors interpreted his description to mean that the blood was wet. Consequently, some jurors questioned the truthfulness of Hoppe's testimony when he said that he did not get blood on his hands, or in his pocket, when he put the knife in his pocket.

Officer Marinos testified that he did not see blood on the knife. Sergeant Wilson, however, testified that when Hoppe showed him the knife, he saw blood on the sharp, not the blunt edge of the blade. This was contrary to Hoppe's testimony that the blood was on the blunt edge of the knife.

On direct examination, Lewis said that the knife "was rusty and it appeared to be some blood that was on it." On cross-examination, however, he said that he saw blood on the knife when it was closed. He later said, however, that he did not see any blood because it was dark that night. When questioned further, he testified that he saw blood when the knife was opened and that it appeared to be dry.

Officer Milazzo testified that when Hoppe gave him the bag with the knife at the hospital later that evening, he briefly examined the knife and did not notice blood on it. Detective Abraham testified that he looked at the knife in the bag and said that "The blade itself had some blood on it."

Dr. Joaquin Gutierrez, an associate Medical Examiner for the Office of the Chief Medical Examiner of the City of New York, testified that he examined the knife recovered from Nelson. He measured and photographed the knife before returning it to the police. Although he later admitted, on cross-examination, that it would have been important to know where on the knife the blood was located, Gutierrez could not recall this.

The photographs of the knife taken by Gutierrez were of no assistance to the jury in resolving this issue since they were in black and white. The jurors

who examined these photos during deliberations were unable to determine whether the substance on the knife was rust or blood. This aroused their suspicions, because the other photographs in evidence were in color.

A prosecution witness, Ralph Ristenbatt, an analyst in the Office of the Chief Medical Examiner of the City of New York, responsible for conducting the initial serological tests on the physical evidence, also testified about the blood on the knife. He said that he wiped the blood off the knife with cotton swabs. He then tested the swabs and dried them before storing them in the refrigerator. He eventually forwarded the swabs, but not the knife, to a lab in Boston for further testing.

The jurors noted that they did not understand why the swabs were sent for further analysis and the knife was not, particularly when actual pieces of the pants and dollar bills were sent. The prosecution offered no testimony concerning the reason for these actions. By not explaining why the evidence was treated this way, the jurors were left with doubts about whether there was actually blood on the knife.

The value of the knife as evidence of Nelson's guilt might have been enhanced if testimony had been offered to describe why certain steps were taken in the examination of the forensic evidence. During the course of our review, we discussed this issue with Dr. Robert Shaler, Chief of the Department of Forensic Biology in the Office of the Chief Medical Examiner of the City of New York.

Shaler told us that blood is normally swabbed off knives is the normal procedure when performing serological tests. According to Shaler, swabbing is necessary because knives used in stabbings normally do not have a lot of blood on them. Swabbing the knives gathers as much blood as possible to enable the performance of forensic tests. In addition, Shaler stated that it is better to store blood on swabs, rather than to leave it on the knives, because blood accelerates the rusting process.

Considering the number of times Rosenbaum was stabbed and the testimony that he was covered with blood, the jurors were also concerned that there was not more blood found on the knife. During our review, we discussed this concern with Dr. Michael Baden¹² and Dr. Shaler. Both responded that most of the blood would have been wiped off the knife when it was withdrawn — first by the skin of the body, then by the two shirts that Rosenbaum was wearing.

Moreover, according to Baden, the more a knife is inserted and withdrawn, the less blood will be found on it. Withdrawal wipes off additional blood. That is why, after a stabbing, there are usually only streaks of blood left

on the weapon. If such information had been presented to the jury, it would have explained why Ristenbatt had to swab the knife in order to get enough blood to perform the serological tests. The suspicions of the jury might have been allayed had the prosecution presented evidence more fully explaining the laboratory procedures.

The jurors also had doubts about whether the knife taken from Nelson was the knife that inflicted the fatal wounds. The testimony on this point was neither clear nor easily understood. Accordingly, the jurors' unresolved doubts regarding this pivotal piece of evidence contributed significantly to the verdict.

Dr. Gutierrez testified that Rosenbaum sustained four stab wounds, two of which penetrated his lungs and ultimately caused him to bleed to death. Gutierrez measured the knife given to him by the police and testified that the knife was "consistent" with the shape and size of Rosenbaum's wounds.

Gutierrez's testimony, however, did not persuade many jurors that the knife taken from Nelson caused Rosenbaum's death. For example, Gutierrez said that the knife given to him by the detectives had a four-inch blade. He also measured the depths of the wounds, only approximating the measurement, by inserting the handle of his scalpel into them.

According to Gutierrez, the wound on the left side of Rosenbaum's back penetrated his lung and had a depth of three-and-a-half inches. The wound also had a bruise, which he testified was most likely caused by the hilt of the knife. Defense counsel suggested, on cross-examination, that the wound should have been the same length as the blade of the knife, not one-half inch shorter. This testimony left some jurors questioning whether the knife taken from Nelson caused the fatal wounds.

According to Baden, however, a wound that measures three-and-a-half inches is entirely consistent with a knife with a four inch blade. First, the layers of clothing between the knife and the skin must be taken into account. Second, the lungs constantly move as a person breathes. An autopsy can never reconstruct the level of the lung expansion at the time the knife was inserted.

Many jurors were also troubled that Gutierrez did not measure the blunt edge of the wound and compare it to the blunt edge of the knife. Although Gutierrez testified that it was not routine procedure to do so, the defense expert, Dr. Mark Taff, testified that it was not only extremely important, but mandatory to perform these measurements.

According to Taff, it was only with this measurement that it could be determined whether Nelson's knife caused the wound. Taff insisted, therefore,

that he could not say, to a reasonable degree of medical certainty, that Nelson's knife was consistent with Rosenbaum's injuries.

Gutierrez eventually admitted that it was possible that measuring the blunt edge of the wound would have permitted a more accurate basis for determining whether the knife caused the wounds. Many jurors believed that Gutierrez's failure to make such a measurement indicated a less than thorough autopsy.

We discussed this issue with Dr. Baden and Dr. Joseph Davis.¹³ They both agreed with Dr. Gutierrez that measuring the blunt edge of a stab wound is neither required, nor standard procedure, when performing an autopsy. According to the doctors, it is impossible to determine these measurements because the skin is elastic and when cut, it tries to revert to its original shape.

According to Dr. Baden, unless a piece of the knife breaks off inside the wound and it can be matched with the broken knife, it is impossible to say whether a particular knife caused a particular wound. Moreover, the blunt edges of folding pocket knives are frequently similar in thickness. Whatever slight differences may exist, are obscured because of the elasticity of the skin. Dr. Davis said that Dr. Taff's statement that by measuring the blunt edge of Rosenbaum's wounds he could have determined whether Nelson's knife caused them, was false.

Nelson's Pants

Nelson's pants could have corroborated two key points in the prosecution's case. The knife was recovered from Nelson's pants pocket. Also, there were bloodstains on the pants legs. Tests later showed that these bloodstains were consistent with the victim's blood. The jurors said, however, that the testimony presented regarding this evidence was not conclusive. They questioned the absence of any bloodstains in the right pants pocket where the knife was found. Further, the evidence presented did not clarify for the jurors how, or when, the blood was deposited on Nelson's pants — whether it was from the stabbing or from the show-up when Rosenbaum spat at Nelson.

The jury's doubts concerning the forensic evidence were heightened by the absence of evidence of blood in Nelson's right pants pocket. Some jurors questioned whether Nelson could have put a bloody knife in his pocket without getting blood in it. Indeed, during deliberations, several jurors examined the right front pocket of the pants and found no bloodstain. This cast doubt on the testimony that the knife had blood on it.

The jurors either did not consider, or rejected, the possibility that blood from the knife came off on the three bloodstained one dollar bills Hoppe found

in the same pocket the knife was in. The jury also did not consider, or rejected, the possibility that the blood had dried before Nelson put it in his pocket. According to Dr. Shaler, blood on a knife will dry completely in less than two minutes, and even faster when the person carrying it is running.

Many jurors were further confused when they examined Nelson's pants in the jury room and saw what appeared to be bloodstains in the *left* front pants pocket. According to Detective Abraham, this was the pocket in which Nelson said that he had put the knife. There was, however, no evidence that this stain was

blood. Ristenbatt could not recall whether he examined the pants pockets for blood and could not say whether he tested that pocket. Further, the jurors noted that none of the police witnesses testified that the knife was found in the left pocket.

Many of the jurors were convinced, however, by their own examination of the pants during deliberation, that there was a bloodstain in the left front pants pocket and believed that this discovery cast further suspicions on the prosecution's case.

The forensic tests indicated that blood consistent with Rosenbaum's was on Nelson's pants. However, the value of the evidence was undermined when the testimony did not clearly establish whether there was blood on Nelson's pants from Rosenbaum spitting at him at the show-up or whether the blood was already on the pants as a result of the stabbing. Further, this evidence did not clearly establish whether Rosenbaum's saliva contained blood. Nor did it establish that the spit landed on Nelson's pants.

Hoppe was not questioned concerning whether he noticed blood on Nelson's pants before the show-up. Hoppe did testify, however, that he did not see Rosenbaum spit at Nelson. Detective Litwin testified that he saw blood on Nelson's pants before the show-up. Although Sergeant Wilson testified that at the show-up, Rosenbaum spat blood at Nelson, Wilson was not asked if it landed on Nelson, or if the pants already had blood on them. Several jurors noted that

Jurors' Doubts & Questions

- * Was there blood on the pants because Rosenbaum spat blood at Nelson at the show-up?
- * Did the DNA tests show that the blood on the pants was Rosenbaum's, or just that it was not Nelson's?
- * Why was there no blood on the pocket that allegedly held the knife?
- * Why did there appear to be blood on the pocket that allegedly had not held the knife?
- * The left pocket was not made of denim; why was its stain not tested?

Wilson was the only one who testified that Rosenbaum spat what “appeared to be a wad of blood.”

According to Dr. Baden, however, even if Rosenbaum had blood in his sputum¹⁴, the sputum would have been streaked with blood. Blood that is diluted by sputum looks different than pure blood. Defense witnesses Anderson and Rivkin testified that Rosenbaum spat at Nelson, but did not testify that the substance spat appeared to be blood.

Many jurors said that they gave great weight to Wilson’s testimony. Unlike many of the other officers who testified, he had not applied for a commendation. Thus, they believed, he had no reason to lie. Wilson’s testimony about the show-up, and the jury’s crediting of that account, further eroded the prosecution’s case.

Ristenbatt testified that his test results would have been the same, regardless of whether the bloodstain was from the stabbing or from the sputum. According to Shaler, however, other tests were available that could have established whether the blood was mixed with saliva. Although the prosecution knew, on November 18, 1991, that Wilson would testify that blood was spat at Nelson, they did not request that further laboratory tests be done to determine if saliva was mixed with blood. According to Dr. Shaler, this test could have yielded results if performed in November, 1991. At the time of trial, however, it was too late. Since these tests were not requested, they were not performed on the pants.

In summation, defense counsel argued that Nelson’s pants became bloodstained when Rosenbaum spat at him during the show-up. The prosecutor did not address this argument in her summation.

The Procedures Used by the Medical Examiner

Many of the jurors were concerned that the Medical Examiner did not conduct the autopsy in a manner that ensured that the best possible evidence was discovered and analyzed.

Dr. Gutierrez testified that he performed a limited autopsy on Rosenbaum because he was an Hasidic Jew. In a full autopsy, the medical examiner normally removes the heart, lungs, intestine, liver, pancreas and kidneys from the body. Because of the religious observations of members of the Hasidic community, however, a “limited” autopsy was conducted and the organs were examined while they remained inside Rosenbaum’s body. Dr. Gutierrez explained that, while this procedure is unusual, it had no effect on his ability to observe or examine the wounds that caused Rosenbaum’s death. He was able to measure their length and

depth, and observe their direction. He was also able to determine which edge of the stab wound was blunt or sharp.

Some jurors felt that, had the autopsy not been that limited, Gutierrez would have been better able to measure these wounds and this would have provided conclusive evidence regarding whether the knife found on Nelson had inflicted the fatal wounds. Since the stab wound had penetrated the lungs, these jurors disregarded Gutierrez's testimony that he could make meaningful measurements of the wounds without removing the lungs.

In addition, Gutierrez testified that the limited autopsy precluded him from removing tissue samples from Rosenbaum's body to send for toxicological tests. He explained that this procedure was not necessary, however, since the cause of Rosenbaum's death was clear and needed no further examination. After reviewing this case, Dr. Baden agreed that the validity of Dr. Gutierrez' autopsy was not compromised because he did not remove the organs from the body or remove samples of tissue.

Many jurors also believed that Gutierrez did not do all that he should have done in his examination of Rosenbaum. This was indicative to these jurors of carelessness in the preparation of the case. For example, defense counsel suggested that the failure to take pictures after the autopsy was a departure from normal procedures. Defense counsel also elicited from Gutierrez that he did not know that Rosenbaum had lived for three hours after he was wounded, and that it would have been "helpful," "meaningful," and "purposeful" to have known Rosenbaum's vital signs while he was at Kings County Hospital.

Defense counsel also suggested that Gutierrez failed to perform certain procedures that may have produced evidence of Nelson's innocence. For example, Gutierrez did not take fingernail clippings from Rosenbaum, and admitted that he might have found particles of the attacker's skin under Rosenbaum's nails since there were indications that there had been a struggle. Gutierrez also admitted that, in another departure from standard procedure, he did not examine Rosenbaum's jewelry to locate other possible evidence. The prosecution did not respond in summation to these contentions raised by the defense.

Defense counsel noted that trace evidence, which may include fibers and hairs of the attacker, is sometimes found on the victim's clothing. In this case, however, Rosenbaum's clothing had been washed by his friend, Chaim Lieberman. The clothing had been given to Lieberman by a member of the hospital staff before Rosenbaum died. Lieberman took the clothing home and began to wash it in his machine. Thus, any trace evidence that may have been

present on the victim's clothing was lost. Some jurors questioned why this was allowed to happen.

The jurors were disappointed with the quality of the forensic evidence provided by the Medical Examiner. They believed that he should have done more to determine conclusively whether Nelson's knife caused the death of Yankel Rosenbaum. The Medical Examiner's inability to resolve these concerns raised doubts regarding Nelson's guilt.

Concerns Regarding the Victim's Blood on the Knife and Pants

Many of the jurors had doubts about whether the blood on the knife and the defendant's pants was actually Rosenbaum's.

Ralph Ristenbatt performed the serological tests on the knife and three one dollar bills recovered from Nelson, and on Nelson's shirt and pants. He also performed tests on blood samples taken from Rosenbaum and Nelson. Ristenbatt testified that the results of these tests demonstrated that the bloodstains on the knife, the jeans, and the dollar bills were human blood. In performing the analysis on Nelson's pants, he was able to identify the subtype of the blood stains as consistent with Rosenbaum's blood, and inconsistent with Nelson's blood.

With respect to Nelson's shirt, Ristenbatt randomly chose four stained areas for testing and determined that these stains were not blood. At the prosecution's request, Ristenbatt sent the samples to another laboratory for further testing.

Dr. David H. Bing, Scientific Director of the Center for Blood Research (CBR) Laboratories in Boston, testified that he received a box containing samples of Nelson's pants and the dollar bills from the New York City Medical Examiner's Office. He also received swabs prepared by Ristenbatt from the blood that was on the knife, as well as samples of Nelson's and Rosenbaum's blood. Bing performed a forensic DNA test known as "Polymerase Chain Reaction (PCR) - DQ Alpha" on the samples. This was conducted to determine whether the blood on the knife and dollar bills was consistent with the blood of Rosenbaum.

Tests on the blood samples taken from the victim and Nelson showed that their blood types were different. Bing testified that the blood taken from the knife and one of the dollar bills was consistent with Rosenbaum's subtype.

Bing also testified that the analysis on Nelson's pants yielded no results, because the pants were made of denim, a material containing a substance that interferes with the test results. Many jurors noted that this was not true of the

pants pockets which were not made of denim. Yet, Bing did not conduct tests on the material of the pocket. The prosecution did not request that he do so.

Nelson's Involvement in Rosenbaum's Stabbing

Most of the jurors believed that Nelson was at the scene of the crime and may have had a role in the stabbing. They were not convinced, however, that the evidence proved beyond a reasonable doubt that he was responsible for Rosenbaum's murder. Further, many jurors believed that Nelson had the knife that the police recovered, but they were not convinced that the knife actually inflicted the wounds, or that the wounds inflicted by Nelson actually "caused" Rosenbaum's death.

The "Acting in Concert" Theory

An important component of the charges against Lemrick Nelson was "accessorial liability." The indictment charged that Nelson had been "acting in concert with others" when he committed the acts that caused Rosenbaum's death. Under the principle of accessorial liability, a person who, acting with the requisite intent, assists another to commit an illegal act can be found guilty of that act. Had the jury found that Nelson was part of a group that attacked Rosenbaum, that Nelson had intended to cause the death or had recklessly created a grave risk of death, and that the wounds inflicted during the attack caused Rosenbaum's death, then the jury could have found Nelson guilty of causing Rosenbaum's death, even if they did not find that Nelson had personally inflicted the fatal wound.

Although the Judge's instructions to the jury included the standard instructions on this point, most jurors said that they either did not hear or did not understand it. The charge on "acting in concert" occurred midway through two hours of legal instructions. In his instruction, the Judge attempted to put the legal definition of this theory into "simpler terminology." He stated that "when two or more persons are acting together to accomplish a common, unlawful purpose, that is, ...commit a crime, each doing acts tending to accomplish their common purpose, they are all equally guilty of the crime."

The Judge cautioned the jurors that they were not to speculate why all of the alleged participants were not on trial. He further said that whether a person commits a subordinate or a major part of the crime makes no difference. The question for the jury to determine, the Judge said, was whether Nelson participated in a common criminal purpose and design, with a common criminal intent, with others in the commission of the crimes.

When discussing the elements of the offenses charged, however, the Judge repeatedly charged that the jury had to find that *the defendant* had committed the acts charged. The instructions on the specific elements of the crimes charged did not explain that Nelson could be found guilty if the jury determined that he had, with the requisite intent, aided another person in committing the crime. The prosecutor did not object to these instructions.

During her summation, the prosecutor mentioned that when Nelson took his knife out of his pocket and “joined together” with the crowd to stab Rosenbaum, he was not only accepting responsibility for his own actions, but also for those he was acting with. Other than this reference, the theory of accessorial liability was not discussed in any further detail in her summation. The People’s theory was that Nelson was the stabber and in their view, they had a strong case. That, in part, may explain the prosecution’s decision not to concentrate on the concept of accessorial liability during her closing. According to some of the jurors, however, the result might have been different if they had understood the theory of accessorial liability and its application to Nelson and the crimes charged.

Many jurors were convinced that Nelson was part of the group that assaulted Rosenbaum, but were not convinced that he had stabbed him. While most jurors felt that Nelson was guilty of something, they said they could not vote to convict him of killing Rosenbaum, because there was insufficient evidence that he had actually inflicted one of the fatal stab wounds that caused Rosenbaum’s death.

Lesser Included Offenses

As noted above, many jurors believed that Nelson was a participant in the attack on Rosenbaum, but they were not certain that he caused Rosenbaum’s death. Therefore, they could not conclude beyond a reasonable doubt that he was guilty of any of the murder or manslaughter counts submitted for their consideration. Many jurors said, however, that during deliberations they discussed other crimes for which they might hold Nelson responsible, such as assault or criminal possession of a weapon. They noted, however, that the Judge had not submitted these offenses for their consideration.

Section 300.50 of the Criminal Procedure Law provides that, in addition to submitting to the jury the greatest offenses that are supported by legally sufficient evidence, the Court may also submit, in the alternative, any lesser included offenses if a reasonable view of the evidence would support a finding that the defendant committed the lesser, but not the greater offenses. The court may submit lesser included offenses at the request of either the defense or the prosecution.

If, on the evidence presented during trial, the court determined that the jury could find that the defendant had committed the lesser crime, but *not* the greater, the lesser included offense may be submitted, as well as those charged in the indictment. In this case, the court allowed the jury to consider the possibility that Nelson had committed Manslaughter in the First or Second Degree, rather than Murder, and allowed the jury to consider three different theories of that crime.

In addition, under the facts of this case, the court could have submitted various counts of Assault in the First and Second Degree. Assault in the First Degree could have been charged as a lesser included offense of each of the Murder charges in the indictment. As a lesser included offense of the "Intentional Murder" charge, Assault in the First Degree would allow the jury to consider whether, with intent to cause serious physical injury to Rosenbaum, Nelson caused such injury with a knife.

As a lesser included offense of "Depraved Indifference Murder," a different subsection of Assault in the First Degree, the jury could consider whether, "under circumstances evincing a depraved indifference to human life," Nelson recklessly engaged in conduct which created a grave risk of death to Rosenbaum and thereby caused him serious physical injury.

Various counts of Assault in the Second Degree could also have been submitted as lesser included charges. As a lesser included offense of Intentional Murder, Assault in the Second Degree would allow the jury to consider whether, with intent to cause physical injury to Rosenbaum, Nelson caused such injury with a dangerous instrument. Another subsection of Assault in the Second Degree would have permitted the jury to consider whether Nelson recklessly caused serious physical injury to Rosenbaum with a dangerous instrument, such as a knife.

Despite the fact that the trial evidence might have enabled the jury to find Nelson guilty of the lesser offenses of assault, the prosecution did not request the court to submit them for the jury's consideration. According to the prosecution, they intentionally did not do so. A determination was made that the submission of assault counts was inappropriate since their theory of the case was that Nelson stabbed Rosenbaum and caused his death.

According to the jurors, however, the evidence finally adduced at trial raised serious questions about the prosecution's theory and left them with reasonable doubts about whether Nelson was guilty of Murder or Manslaughter.

NON-EVIDENTIARY CONSIDERATIONS

Introduction

Criminal trials, especially high-visibility ones, do not occur in a vacuum. Although juries are instructed that they are to consider only the evidence presented at trial, it is almost certain that they will bring their general attitudes or opinions to the courtroom. “People’s attitudes are inevitably the product of their social background, education, and experiences in life. Jurors are no different.... Jurors usually think and act in ways that are consistent with their backgrounds.”¹⁵

Judge Rappaport advised the jurors in his preliminary instructions and in his charge that the evidence upon which they could base their verdict could come from only three sources — the testimony of the witnesses, the exhibits, and any stipulations between the parties. He explained that statements made by the attorneys in their opening and closing remarks did not constitute evidence in the case. He also instructed the jury that the questions asked do not constitute evidence, but that it is the question, coupled with an answer, that constitutes the evidence.

Judge Rappaport cautioned the jurors that they were not to speculate about anything that was not evidence in the case. He told them that lawyers have an obligation to make objections and that jurors should not hold that fact against the lawyers or think that the lawyers are preventing the jurors from hearing important information about the case. In his charge, the Judge also stated that the jurors should not draw any inferences from either the questions to which he had sustained an objection, or from the matters that they were told to disregard. He then specifically instructed them that “if the question is not answered, don’t start to figure out or speculate what the answer would be, or what you would like the answer to be. That question is simply no longer in the case. It is gone. Don’t even consider it.”

The jurors said that they followed the Judge’s instructions and did not allow anything other than the evidence to influence their verdict. Each juror clearly articulated issues and concerns that created reasonable doubt of Nelson’s guilt in his or her mind. Given some of the jurors’ comments, however, we cannot discount the possibility that considerations other than the evidence may have contributed to the jury’s verdict.

Juror Speculation

Based upon many of the jurors' comments, it was apparent that they did speculate about certain issues, notwithstanding the Judge's preliminary instruction and final charge to the contrary. One juror said that the case was so "bungled up" that the jury was required to theorize and guess about what actually happened. Comments regarding such speculation were made with respect to the following: why certain information was not admitted into evidence; why certain individuals named at the beginning of trial did not testify; what role the doctors at Kings County Hospital played in the death of Rosenbaum; and whether the person who stabbed Rosenbaum was a professional.

Information Not Admitted into Evidence

Notwithstanding the Judge's instructions, many jurors felt that important evidence was kept from them whenever information was not admitted into evidence. They also thought that important information regarding the case was discussed during a number of sidebars. To them, this meant that they were precluded from hearing a great deal of valuable evidence.

Some jurors were also concerned that the Judge appeared to sustain more of the prosecution's objections than those of defense counsel. Most of the jurors said that the Judge appeared to be fair to both the prosecution and the defense. However, certain jurors noted that the court continually attempted to prevent defense counsel from pursuing certain lines of questioning. This line of questioning generally focused upon theories that the defense raised in his opening statement.

All of the jurors said that it was because they wanted to learn more about those theories that they accepted the defense counsel's suggestion that they meet the evening after the verdict was rendered to discuss the case.

Failure of Certain Named Individuals to Testify

Another issue that the jurors speculated about was the possibility that there were missing witnesses. Jurors noted that, at the beginning of the case, the Judge read to them a list of names of people who, these jurors assumed, were going to be called as witnesses.

The Judge, however, specifically instructed the jurors that the names on the list were "not necessarily witnesses...these are names that just may be heard during the trial." When some of the named individuals were not called to testify, the jurors theorized that they had been threatened or were afraid to testify. Several jurors speculated that the court should have arranged to protect them or

the prosecution should have made greater efforts to ensure their attendance at the trial. To these jurors, the fact that more witnesses were not called to testify weakened the prosecution's case. The jurors were convinced that there were many eyewitnesses to Rosenbaum's murder who could have been called but did not testify.¹⁶

The Actions of the Doctors at the Kings County Hospital¹⁷

Some jurors expressed doubts about whether negligence on the part of the doctors at Kings County Hospital caused Rosenbaum's death. During trial, Judge Rappaport ruled that the defense could not introduce evidence that Rosenbaum's death was caused by the negligence of the physicians at Kings County Hospital. The Judge determined that the possible malpractice of the physicians at Kings County Hospital had no legal effect upon the cause of Rosenbaum's death for purposes of the criminal trial.

In spite of this unequivocal ruling on the issue, defense counsel persisted in trying to make this point to the jury. In fact, in his opening statement, defense counsel claimed that the jurors would learn that the hospital was responsible for Rosenbaum's death and that his family had filed a lawsuit against the City. Defense counsel questioned Rosenbaum's cousin on whether her husband, an attorney, had filed that lawsuit. In response to the prosecution's objection, the court held a lengthy sidebar discussion in which the law was explained to defense counsel. The court instructed defense counsel to stop asking questions on this issue. The defense counsel, however, persisted.

The Judge instructed the jury, in both his preliminary instructions and in his charge at the end of the case, that what the attorneys said in their opening statements was not evidence that could be considered in reaching a verdict. The Judge, however, did not explain to the jurors why they could not consider the conduct of the physicians at Kings County Hospital in determining the cause of Rosenbaum's death. Although most jurors said that they followed the Judge's instructions and did not consider the negligence issue in arriving at their verdict, it was evident from their comments that this issue troubled them.

Nelson's Ability to Inflict the Wounds

Although not raised at trial, one juror theorized, and some others agreed, that the fact that the knife, or knives, were inserted between Rosenbaum's ribs and punctured his lungs demonstrated that the stabber was a "professional." It was felt that the stabber had experience with knives and knowledge of the human anatomy. Based upon the testimony of the psychologists for the defense, this juror felt that Nelson did not possess the knowledge or intelligence to have inflicted the stab wounds. Some jurors acknowledged that this theory was

discussed during deliberations even though no evidence regarding such a theory was offered during the trial.

Dr. Baden, however, advised us that there is no basis for such a theory. He said it is impossible to determine the exact location of a clothed person's ribs by simple observation. He also stated that the circumstances of the assault indicated that Rosenbaum was probably thrashing around, so the stabber would have been unable to pick the exact spot to insert the knife. Further, very often a knife will slide, or be deflected, off a bone. Finally, Dr. Baden said that Rosenbaum's wounds were typical of the thousands of cases he has seen which involved random stabbing.

Sympathy for Nelson Expressed by Some Jurors

The Judge specifically instructed the jury, in his preliminary instructions and in his final charge, that they were not to be affected by sympathy or other considerations outside of the evidence. Some jurors said, however, that there was discussion during deliberations about the length of the sentence that Nelson faced if he were convicted of murder. The jurors assumed that such a sentence would be twenty-five years.

Other jurors noted that Nelson's youthful appearance had an impact on them. One juror said that the defendant's appearance was an obstacle that had to be put out of his or her mind. Several jurors stated Nelson's youthful and innocent appearance helped the defense case. Even the prosecutors noted that, in their collective experience, Nelson had the most sympathetic appearance of any defendant they had tried.

Many jurors said they were sympathetic to Nelson because, as the testimony showed, he was mentally younger than his sixteen years of age. According to Dr. Losardo, Nelson operated at the mental level of an eleven-year-old child. Some jurors noted that, in their view, this meant that he could not form the intent to commit the crimes with which he was charged.

The Defense Counsel as Viewed by the Jury

It was apparent from the jurors' comments that their view of the evidence was affected by the conduct of both the defense counsel and the Judge.

Most of the jurors thought that defense counsel was an effective advocate for his client and admired his aggressive behavior in the courtroom. To them,

his combative style was indicative of his strong personal belief in the innocence of his client. They felt that he needed to stand up to both the Judge and the prosecutor to ensure that his client was not unfairly convicted. The transcript of the trial, however, reflects repeated instances of disregard for, and non-compliance with, court rulings by the defense counsel.

Although the jurors praised defense counsel's advocacy style, his conduct during the trial, at times, appeared unmanageable, as evidenced by his continual rebuff of the Judge's attempts to control his behavior. Further, his repeated failure to comply with the court's rulings provided the jurors with an opportunity to consider otherwise inadmissible evidence.

In his opening statement, defense counsel outlined several theories that could not ultimately be supported by admissible evidence. He asserted to the jurors that other people were responsible for Rosenbaum's death, such as certain physicians at Kings County Hospital. He also emphasized the fact that Rosenbaum's family had brought a multi-million dollar lawsuit claiming that the City was responsible for the death of their son.

Evidence about the malpractice of the physicians at Kings County Hospital had been ruled inadmissible by the Judge.¹⁸ Despite the Judge's ruling, defense counsel continuously attempted to elicit information from witnesses about the negligence of the physicians and the lawsuit that had been filed by the Rosenbaum family.

Defense counsel noted in his opening statement that the riots which began on the night of August 19, 1991, and led to Rosenbaum's death were the result of misconduct by the police at the scene of the accident in which Gavin Cato was killed. Since events at the Cato accident were irrelevant to Nelson's stabbing of Rosenbaum, the court ruled that the defense could not introduce evidence relating to the accident. In spite of the Judge's instructions, defense counsel repeatedly asked questions of Carmel Cato, the dead child's father, regarding the accident and its aftermath. One juror commented that this witness was called to testify in order to elicit their sympathy.

Defense counsel's conduct during his examination of some witnesses prompted Judge Rappaport to reprimand him several times. For example, he attempted to elicit information from Esther Edelman, the prosecution's first witness, about the Rosenbaum's lawsuit against the City. When the prosecution objected, he made a comment that implied that the prosecution was trying to keep information from the jury.

Despite Judge Rappaport's instruction that he refrain from inappropriate comments, defense counsel continued to make them. When he cross-examined

Abraham, rather than asking him a question, he accused the detective of framing Nelson. Specifically, he said, "I'm going to have to charge you with frame-up." The defense counsel often ignored the court's rulings, despite the Judge's repeated attempts to control him whenever he sought to introduce irrelevant evidence.

The defense counsel also attempted to introduce racial or religious motives into his defense. The defense counsel submitted to the jury, in his opening statement, in his questioning of the witnesses, and in his summation, that Nelson was framed for the murder of Rosenbaum. He argued that, because Rosenbaum was Jewish, there was a great deal of pressure upon the police to effect an arrest.

In furtherance of his defense, he attempted to prove that the Police Department gave special attention to members of the Jewish community in Crown Heights. He told the jurors in his opening statement that the evidence would show that Rosenbaum was a member of a civilian patrol assigned to protect the religious articles in the synagogue. He attempted to prove that this patrol had direct access to the police and as a result, numerous police officers immediately responded to the scene of Rosenbaum's stabbing. There was no evidence of this fact, however, and despite the Judge's rulings, defense counsel persisted in attempting to introduce evidence concerning this theory. Some jurors stated that this was an unresolved issue for them, despite the fact that they should not have been considering it at all.

In his cross-examination of Hoppe, the defense counsel questioned him about a "Rabbi roll call" at the Precinct and about the Jewish civilian patrol. He also questioned him about the Cato accident and asked about the presence of Rabbi Spielman's sons at the scene. When he called Sharon Defino, an EMS technician to the stand, Lewis used certain racial slurs when he asked if she heard Rosenbaum say anything to Nelson during the identification procedure. There was, however, no evidence from any witness during the course of the trial, or from Nelson himself at the suppression hearing, that Rosenbaum used a racial epithet against Nelson. Yet, the defense counsel improperly tried to suggest this by his questions when he asked the technician if she heard Rosenbaum refer to Nelson as a "nigger."

Some jurors noted that the defense counsel's theory regarding a frame-up was supported by the presence in the courtroom of so many members of the Jewish community. Some jurors stated that in view of this apparent pressure, the police and People needed a conviction in this case. Lewis's persistent refusal to follow the Judge's rulings also led the jury to believe that important evidence was kept from them.

The Judge as Viewed by the Jury

Many of the jurors seemed to have a favorable view of the Judge. They commented that he did a good job, and that he tried to be as fair as possible. Nonetheless, the Judge's inability to control the conduct and comments of the defense counsel, as well as his own comments and behavior, had an impact on the course of the trial and the jurors.

It is the judge's responsibility to maintain an impartial and fair atmosphere in the courtroom.¹⁹ According to the jurors, the Judge himself engaged in behavior that influenced their decision-making. Judge Rappaport frequently interjected himself in the questioning of witnesses and, at one point, commented upon the credibility of several key prosecution witnesses. The Judge's active involvement in the case, and his inability to temper the defense counsel permitted the jurors to consider information that was inadmissible and may have affected their view of the case.

Throughout the trial, Judge Rappaport engaged in arguments with defense counsel. These exchanges were at times loud and heated. Some jurors noted that the confrontations between the defense counsel and the Judge were excessive and that a personality conflict was evident. Other jurors said that the interaction between the Judge and the defense counsel was "bad" and "contributed negatively to the trial."

Because he interjected himself in the questioning of witnesses, the jury had concerns relating to the Judge's impartiality. The New York State Court of Appeals has established a legal standard regarding a judge's role in the examination of witnesses in *People v. Yut Wai Tom*.²⁰ In that case, the Court concluded that "a trial judge's examination of witnesses carries with it so many risks of unfairness that it should be a rare instance when the court rather than counsel examines a witness.... There is an increased risk that the Trial Judge will inadvertently convey to the jury his disbelief of a witness, not only by his reaction to answers, but by phrasing of questions and tone of voice."²¹ In *People v. Yut Wai Tom*, the Court further noted that judges may intervene to clarify a witness's answer if he has a language difficulty or to ensure that a proper foundation is laid for the admission of evidence. "In the last analysis, however, he should be guided by the principle that his function is to protect the record, not make it."²²

Throughout the *Nelson* trial, Judge Rappaport interrupted the questioning of witnesses by the attorneys for both sides. According to the transcript, the Judge asked approximately 1,690 questions of witnesses during the trial.

Judges have a significant influence upon juries. The commentary in the *American Bar Association Standards* notes that “it is a matter of common knowledge that jurors hang tenaciously upon remarks made by the court during the progress of the trial, and if, perchance, they are enabled to discover the views of the court regarding the effect of a witness’ testimony on the merits of the case, they almost invariably follow them.”²³

A research study published in the *Stanford Law Review* documented the influence that judges have upon juries. This study correlated the verbal and body language of California Municipal Court judges with jury verdicts and concluded that in many cases a “judge’s behavior alone can predict the verdicts returned by juries.”²⁴

Judge Rappaport recognized his responsibility not to comment on the credibility of the witnesses in this case. During his preliminary instructions, the Judge advised the jury that they were the sole judges of the facts in the case and that he would have no opinion about the truthfulness of any witnesses’ testimony. Judge Rappaport then told the jurors about a judge who had committed error when he commented upon the veracity of witnesses by putting his fingers to his nose to indicate that the testimony was untruthful. He also told them about another judge who turned his back on witnesses when he doubted their credibility. In spite of these comments and his evident knowledge regarding his role, the Judge compromised his impartiality when he commented on the credibility of Hoppe, Marinos and Litwin.

The Prosecution as Viewed by the Jury

The jurors’ comments regarding the prosecution’s performance in this case were not favorable. Most jurors stated that the case appeared to be poorly prepared. They believed that it was “clear” that the prosecution should have done more investigation, research, and homework before the case went to trial. Some questioned why the case was not “more solid” before bringing it to trial.

One juror noted that the prosecution’s case did not appear complete. They left “lots of unanswered questions.” Many of the jurors believed that there were people in Crown Heights who knew the answers to those questions. They felt that it was detrimental to the prosecution’s case not to call other eye-witnesses to the stabbing or the show-up to testify. Other jurors stated that it appeared as if some of the prosecution’s witnesses did not appear to testify and those who did, were confusing and “mixed up.”

Some jurors said that the evidence, as presented by the prosecution, was not believable and that the prosecutors did not adequately deal with the doubts as they arose during the trial.

Several jurors also questioned why this particular prosecution team was selected for this trial. They felt that for a case such as this, more “high-powered and strong prosecutors” should have been used. Each of the prosecutors in this case, however, has tried in excess of forty cases, including at least twenty homicides.

Some of the jurors described the prosecutors as “laid back” and said their subdued approach was not helpful to their case. The prosecutors told us, however, that they did not behave aggressively for fear of alienating the jury.

Impact, If Any, of Public Perceptions Regarding Police on the Jury’s Verdict

Some have suggested that the acquittal of Lemrick Nelson was due, in part, to a predisposed mistrust of police officer testimony. Our review of the prosecution and acquittal of Nelson did not uncover any evidence to show that this verdict was premised upon, or affected by, a preconceived mistrust of police officers. Although there is no reliable evidence that a general mistrust of police testimony played a role in this case, the underlying contention merits review.

In recent years, many events may have affected the public’s perception of police officers, both positively and negatively. However, one incident that occurred in the midst of the trial did not place the police in the most favorable light. That was the police protest at City Hall on Wednesday, September 16, 1992. Approximately 10,000 off-duty police officers congregated in front of City Hall to protest what they perceived to be an anti-cop bias on the part of Mayor Dinkins and City Hall. These New York City police officers viewed the proposal for a civilian-controlled review process as indicative of the Mayor’s low regard for police.

Although there is no hard data, many have suggested that the unruliness of the protest had a negative impact on the public’s perception of police. One illustration of this may have been the City Council vote on the restructuring of the civilian complaint review board. At the time of the police demonstration, it was believed that the legislation to create a civilian review agency was six votes short of passage. Three months later, the civilian review agency was enacted by an overwhelming majority.

There is no public opinion information about whether the residents of Kings County have a negative view of their police officers. But some data indicate that Kings County juries are increasingly prone to acquit defendants in cases that rely primarily on police testimony, such as weapons and drug-sale cases. Jury acquittals in drug-sale trials increased steadily, from 27 percent in 1988 to 53 percent in 1992. Acquittals in cases involving gun possession charges increased from 47 percent in 1988 to 72 percent in 1992. During the same period, the percentage of other kinds of Kings County jury trials ending in acquittal has remained stable. The trend of increasing acquittals in drug cases also appears in New York and Queens counties, but no parallel trend for weapons possession acquittals in those counties is discernible.²⁵

Our review of the prosecution and acquittal of Lemrick Nelson did not uncover any evidence or implication that the verdict was premised upon, or affected by, a preconceived mistrust of the police. In fact, the *Nelson* jury expressed positive attitudes toward police in general. Several jurors said that police had to be judged as individuals. One juror mentioned having served as an auxiliary police officer, and a few jurors shared households with police officers.

Even when they criticized officers for providing inconsistent testimony, the jurors did not castigate all the officers in the case. Some jurors went on to specify officers whom they found believable. Others rejected the notion that inconsistent testimony indicated that an officer had lied. The jurors did express general dissatisfaction with police testimony at the trial, however. One juror summed up feelings on the subject by saying that the police testimony was very disappointing particularly because these were experienced officers.

Although there was no indication that the verdict was affected by a preconceived mistrust of police, the inadequacies of police efforts in gathering witnesses at critical junctures and the procedural failures in handling evidence, helped to create doubt in jurors' minds about the proof of Nelson's guilt. The importance of apparent inconsistencies in some of the police testimony — emphasized by the judge's reaction — and the defense allegations about officers' self-interest served only to harden the jurors' conclusion.

Even if the jury verdict in the case was not premised upon, or affected by, a preconceived mistrust of the police, it would be sound public policy to explore ways to enhance the image of police in the eye of the public and, ultimately, in the eyes of jurors. This may be accomplished through better relations with the community, such as the community policing efforts, or through recruitment and training programs.

SUMMARY

Our interviews with the jurors, together with our review of the case, found that the jurors were able to articulate numerous doubts to support their verdict of not guilty.

The jurors said that they followed the Judge's instructions and based their verdict solely on the evidence. They noted that while they discussed the various non-evidentiary considerations that entered into the trial, they did not allow these considerations to influence their verdict.

The evidence presented, had it been considered reliable by the jury, would have been sufficient to support a conviction. However, the jurors were troubled by the inconsistencies relating to some of this evidence, and it appeared that they resolved any questions relating to this evidence in favor of Nelson. The jurors articulated reasonable doubts regarding the evidence that were not resolved by the prosecution.

While many believed that Nelson was at the scene of the crime and may have had a role in the stabbing, they were not convinced that the evidence proved, beyond a reasonable doubt, that he was responsible for Rosenbaum's murder.

Most significantly, the inconsistencies in the police officers' testimony regarding Nelson's apprehension, Rosenbaum's identification, and Nelson's confession seriously compromised the value of this evidence in the eyes of the jury. The jurors had been instructed by Judge Rappaport to evaluate whether the witnesses were truthful in order to determine the facts of the case. The jurors said that, after considering these factors, they determined that they could not reconcile the contradictory evidence and the inconsistencies in the testimony of the witnesses. As a result, they disregarded the testimony of some of the main police witnesses whose statements were crucial to proving Nelson's guilt.

Jurors found inadequacies in the manner in which the police handled the physical evidence. They said that since the knife was improperly handled, its probative value was compromised. They questioned why the victim's clothes were not preserved and why Nelson's pants were not thoroughly tested. Jurors were also critical of the procedures employed by the police in conducting the Rosenbaum's identification of Nelson. They thought that it was improperly suggestive. Therefore, they gave it little weight. Further, since jurors questioned whether Nelson's statements to police were voluntarily made, they disregarded this evidence.

Jurors also questioned the procedures used by the Medical Examiner's Office. They did not think that the Medical Examiner did everything that could have been done to ensure that the best possible evidence was discovered and analyzed. Also, some jurors said that the value of the forensic evidence was undermined because they did not understand its significance. Moreover, they did not think that the prosecutors requested all available forensic testing.

The combination of these identified inconsistencies and deficiencies as well as the influences of the non-evidentiary considerations, such as the conduct and comments of the defense counsel and the Judge, the jury's sympathy for Nelson and the speculation engaged in by some jurors, ultimately undermined the prosecution's case.

Further, our interviews with the jurors did not reveal that their verdict was premised upon any preconceived mistrust of police officers. Finally, we found no evidence to indicate that the jury's verdict of acquittal was influenced by racism or anti-Semitism.

ENDNOTES

1. The juror who was excused for personal reasons shortly before the case concluded was also interviewed.
2. I *Criminal Jury Instructions New York*, §3.07 at 91-92 (1983).
3. In our review of the tape, we did not hear any transmissions regarding a male black wearing a red shirt.
4. The judge's reaction was somewhat difficult to understand since Nelson testified at the suppression hearing that "an" officer was in the yard with him and frisked him, thus, testifying similarly to Officer Hoppe. Judge Rappaport presided at the suppression hearing.
5. I *Criminal Jury Instructions New York*, *supra*, §3.28 at 114.
6. See *Matter of Enright v. Siedlecki*, 59 N.Y.2d 195, 464 N.Y.S.2d 418 (1983).
7. Defense counsel introduced into evidence a videotape of the disturbances in Crown Heights on August 19th. Because many people shown on the tape were wearing red shirts, some jurors did not credit Officer Sanossian's testimony. Accordingly, they did not draw the inference that Nelson was the individual in the red shirt who the police saw hitting Rosenbaum.
8. I *Criminal Jury Instructions New York*, *supra*, §11.01 at 657.
9. We were denied access to these medical records by the defense counsel.
10. We viewed the videotape and could not determine whether or not Nelson was crying or sobbing. We did not see the detectives laughing.
11. Unless the defendant testifies at the trial, the law precludes the prosecution from introducing statements made by him or her during a hearing held to suppress evidence. The rationale for this rule is that a defendant should be given the opportunity to contest the constitutionality of the procedures used to obtain evidence without endangering his right to remain silent at the trial. See *People v. Huntly*, 46 Misc.2d 209, 259 N.Y.S.2d 369, *aff'd*, 27 A.D.2d 904, 281 N.Y.S.2d 970, *aff'd*, 21 N.Y.2d 659, 287 N.Y.S.2d 90 (1965).
12. Dr. Baden, a nationally recognized forensic pathologist, is the Director of the Forensic Sciences Unit of the New York State Police and a former Chief Medical Examiner for the City of New York. He is also working as a consultant for the Rosenbaum family in connection with their civil case.
13. Dr. Davis is the Chief Medical Examiner of Dade County. Dr. Davis is a past president of the National Association of Medical Examiners and the American Academy of Forensic Sciences.
14. According to *Webster's New Collegiate Dictionary*, (9th ed. 1985), sputum is defined as expectorated matter made up of saliva and often discharges from the respiratory passages.
15. T. Mauet, *Fundamentals of Trial Techniques*, 32 (1980).

16. There was no evidence introduced at trial to support this belief. However, in the preceding chapter, we have indicated that there were a number of individuals present at the attack who have yet to be identified.

17. The actions of personnel at Kings County Hospital were beyond the scope of our review. The New York State Department of Health conducted a review of the circumstances surrounding the death of Yankel Rosenbaum at Kings County Hospital. Their investigation revealed that the major deficiency was the failure of hospital personnel to take Rosenbaum's vital signs in sufficient time to discover his internal bleeding. According to the Department of Health, the failures led to complications which caused Rosenbaum's death.

The District Attorney of Kings County also conducted an investigation and determined that there was no criminality on the part of the personnel at Kings County Hospital.

18. The Court of Appeals has held that "If a felonious assault is operative as cause of death, the causal cooperation of erroneous surgical or medical treatment does not relieve the assailant from liability for the homicide." *People v. Kane*, 213 N.Y. 260, at 270 107 N.E. 655(1915); *People v. Griffin*, 80 N.Y.2d 723, 594 N.Y.S.2d 694(1993).

19. *Special Functions of the Trial Judge, American Bar Association Standards Relating to the Administration of Criminal Justice*, Standard 6.1.1. 1978. It is the trial judge who bears the "responsibility for safeguarding both the rights of the accused and the interests of the public in the administration of criminal justice." ABA Standards Relating to the Administration of Criminal Justice, Standard 6.1.1. (1978).

20. *People v. Yut Wai Tom*, 53 N.Y.2d 44, 439 N.Y.S. 2d 896 (1981).

21. *Id.* at 57.

22. *Id.* at 58.

23. *American Bar Association on Standards Relating to the Administration of Criminal Justice*, Standard 6-3.4. 1978.

24. Black, Rosenthal, and Cordell, "The Appearance of Justice: Judges' Verbal and Nonverbal Behavior in Criminal Jury Trials," 38 *Stan. L. R.* 136 (1985).

25. In preparation of this report, the Division of Criminal Justice Services reviewed data relevant to jury acquittals. These were some of the findings.

Chapter 5

Findings and Recommendations

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- ▶ General Findings
- ▶ Analysis of the Criminal Investigation
- ▶ The Jury's View of the Case

FINDINGS AND RECOMMENDATIONS

GENERAL FINDINGS

Finding 1: Considering the problems with the evidence presented by the prosecution, there was an ample basis for the jury verdict finding that the People had not proven their case beyond a reasonable doubt. The reasonable doubts articulated by the jurors arose, to a great extent, from the inconsistencies in the witnesses' testimony and deficiencies in the evidence.

Finding 2: If the inconsistencies in the police testimony at trial had been resolved in favor of the prosecution, and if the jury credited the testimonial and forensic evidence, then there would have been sufficient basis for the jury to convict. Based upon the available information, not all of which was before the jury, it is most probable that Lemrick Nelson participated in the attack that resulted in Yankel Rosenbaum's death.

The inconsistencies in the witnesses' testimony and deficiencies in the evidence, with respect to each of the key pieces of the prosecution's case, enabled the jurors to articulate reasonable doubts regarding Nelson's guilt. The jurors identified many inconsistencies in the testimony of the police witnesses regarding Nelson's apprehension, Rosenbaum's identification of Nelson, and Nelson's confession to the police. In the eyes of the jurors, these inconsistencies seriously compromised the value of the evidence and affected the credibility of the officers. The jurors also identified inadequacies in the evidence presented. In the jury's view, the inadequacies were attributable to the actions, or inactions, of the police, the prosecutor, and the forensic experts.

The jurors noted deficiencies in the investigation of the case by the police which, in their view, compromised the critical physical evidence necessary to convict Nelson. The jurors also noted deficiencies in the prosecution's preparation for the trial. The delay in interviewing critical witnesses and the inconsistent statements made under oath, highlighted by the Judge's reaction to them, undermined the credibility of several of the police witnesses to such a great extent that several jurors attributed virtually no weight to their testimony. Moreover, the jurors were not persuaded by the forensic evidence presented by the prosecution, because they did not understand its significance.

Despite the deficiencies in the processing and trial of this case, the evidence presented at trial would also have enabled the jurors to find that Nelson

had participated in the attack on Rosenbaum, if they had reconciled the inconsistencies and resolved them in favor of the prosecution. Our review provided us with access to all information available, including the complete trial record, the testimony from the suppression hearing, and the investigation files preceding and subsequent to the trial. For example, Nelson's testimony at the suppression hearing corroborated that of the detectives with respect to almost every significant detail. The only fact he denied was telling the detectives that he had participated in the assault and stabbed Yankel Rosenbaum. Further, two of Nelson's associates have told authorities that Nelson has admitted his participation in the attack to them. And jurors explained that had they understood key legal principles, such as "acting in concert" and lesser included offenses, they might have reached a different verdict.

Finally, although questions have been raised about the possible influence of anti-Semitism or racism on the jury, our review of the case found no support for these claims. The acquittal in this case is supported by the deficiencies in the investigation and prosecution as identified by the jury.

Finding 3: Several people were responsible for the stabbing of Yankel Rosenbaum. Only Lemrick Nelson was indicted, tried, and acquitted. Deficiencies in the initial investigation created problems with the evidence that subsequent efforts did not overcome. Accordingly, the likelihood that other participants in the attack on Rosenbaum will be held accountable for the murder has been greatly diminished.

The eyewitness testimony at trial, by both police and civilians, indicated that several individuals attacked Yankel Rosenbaum. This evidence is also supported by declarations made by Rosenbaum when he identified C.T. as one of his attackers, when he identified Nelson as having stabbed him, and when he said to Nelson that he wasn't "so tough" without his friends.

Although the police response to the stabbing of Yankel Rosenbaum was immediate, our review indicates that there were departures from proper investigative practices. The police caught two individuals who were identified by the victim. However, a variety of circumstances have resulted in no one yet being held accountable for this murder.

Despite the continuing investigation by the New York City Police Department, no other participants in the stabbing have been identified. With the passage of time, the underlying deficiencies of the initial investigation, and Rosenbaum's unexpected death, the likelihood that the police will now be successful in identifying additional participants in the crime is greatly diminished. Unless an informant or eyewitness comes forward and provides reliable facts about the

attack and other possible suspects, holding someone accountable for this murder will be difficult.

ANALYSIS OF THE CRIMINAL INVESTIGATION

Finding 4: Lack of a prior relationship among the attackers and the victim hampered the investigation and prosecution.

The police have been frustrated in their efforts to identify additional participants in the stabbing of Yankel Rosenbaum. The fact that the stabbing occurred during a civil disturbance, at night, has made it difficult to identify participants. There were hundreds of people running through the streets. Many did not live or work in the neighborhood, but had come to Crown Heights for other reasons. These factors make it difficult for those who saw the attack to make identifications.

While two individuals were identified by the victim, neither one has identified additional participants. Even if other participants are identified, the prosecution must prove what each participant was doing and that each participant had the requisite criminal intent.

Finding 5: The failure to record the identities of the individuals present at the scene made it difficult to identify police and civilian witnesses.

One of the difficulties in the initial investigation that affected subsequent efforts was the failure to identify witnesses and other possible suspects at the crime scene. Some of these individuals may have information concerning the attack on Rosenbaum or could identify additional suspects.

All possible witnesses were not identified by the police at the time of the stabbing. Even considering the ongoing civil unrest, there were many potential witnesses to the stabbing who could have been identified. They were not, and may never be, identified. There were numerous police officers in the vicinity. There were the EMS technicians who responded to the stabbing. There were the individuals who were shown to, but not identified by, Rosenbaum. There were the civilians present at the scene and during the identification of Nelson. These individuals may have information to assist the police in identifying other participants in the stabbing. However, the arresting officers did not record their names.

Later efforts to identify the participants were impeded by the failure to collect vital information at the scene. This deficiency was not remedied by the later canvass of the area. It was neither timely, nor thorough. The canvass did not begin until eight days after the stabbing. Moreover, the canvass was only conducted within a one-block area east and west of where the stabbing occurred.

Recommendation

- Police officers at the scene should ascertain the names and addresses of all potential witnesses to a crime, and to the apprehension and identification of a suspect. Whenever possible, the police should conduct a timely and systematic canvass of the area where a serious crime occurs to ensure that all potential witnesses are located.
- The New York City Police Department should review its training programs and Departmental procedures to ensure that all officers are trained and aware of these critical investigative responsibilities.
- Moreover, in the preparation of a case for trial, the prosecution should ensure that the police have identified and interviewed, all of the civilian and police witnesses present at any relevant point during the commission of the crime, apprehension, search, and identification of a defendant.

Finding 6: Interviews with the victim and possible suspects were not conducted promptly or recorded.

Critical statements made by Yankel Rosenbaum, which could have aided in the progress of the investigation and the identification of suspects, were not further developed through additional inquiry by the police. The victim, although seriously injured, could have been interviewed in order to ascertain a more detailed account of the attack. Although Rosenbaum identified Nelson and C.T., these identifications proved to be of limited value. Identification is difficult, in a case involving a crime committed by numerous individuals, for it requires that the specific actions of each participant be known.

Additionally, there was a significant delay in taking a statement from Nelson. The police waited three hours before they attempted to take a statement from Nelson. While in the process of taking a statement from Nelson, the investigating detectives were compelled to go to another precinct. The additional passage of time and, possibly, Nelson's awareness of the developing demonstration outside the Precinct, resulted in his refusing to give a videotaped statement.

Although the detectives testified that they did obtain confessions from Nelson, the failure to properly document and record Nelson's statements affected the reliability of this evidence at trial.

Recommendation

- Police officers should attempt to interview suspects at the earliest opportunity.
- The suspect's statements should be recorded and reduced to writing either contemporaneously to the making of the statement or as soon thereafter as possible.
- To the extent possible, these statements should be in the witnesses' or suspects' exact words and should be reviewed and signed by the person making the statement. Whenever practicable, statements of suspects should be recorded on audiotape or videotape.

Finding 7: The improper handling of critical physical evidence compromised its probative value at trial. The bloodstained knife discovered on Nelson, which should have provided persuasive proof in support of the prosecution's case, was not properly handled. Additionally, Nelson's pants could have provided meaningful evidence of his involvement in the attack on Rosenbaum. The stains on the pants should have been properly noted and analyzed by the police. Tests on this evidence were not sufficiently monitored by the prosecution.

The bloodstained knife, the alleged murder weapon, was compelling evidence of Nelson's involvement in the attack. However, from the moment that the knife was recovered from Nelson, it was not properly handled.

The officer who found the bloodstained knife put it in his pocket. Later, that officer put the dollar bills, found on Nelson and stained with what appeared to be blood, in the same pocket where he had placed the knife. The officer then commingled both of these items in a bag he found on a desk. The officer kept this bag of evidence until he handed it over to another officer who gave it to the investigating detective. Once the detective received this evidence, he stored the evidence in his locker. The evidence was neither refrigerated, nor promptly vouchered. It was over thirty hours later that the detective vouchered the evidence. Had proper procedures been followed, the results of the DNA analysis performed on the knife indicating that the blood on the knife was consistent with

Rosenbaum's blood might have provided convincing evidence of Nelson's involvement in the stabbing.

Another important piece of physical evidence was the bloodstains found on Nelson's pants. Testimony at trial raised an issue of whether the blood on the pants came from Nelson's involvement in the attack on Rosenbaum or whether it could be attributed to Rosenbaum's spitting at Nelson when he identified him. The police did not record whether these stains were present on Nelson's clothing when he was caught. Forensic tests could have been performed to determine whether the stains were blood or spit. These tests were not requested by the prosecution.

Forensic DNA analysis performed on Nelson's pants was inconclusive due to the denim fabric of the pants. However, the pockets of the pants, which were not denim, were never tested. Considering that the knife was found in the pocket, it was a critical omission, on the part of both the police and the prosecution, not to request testing of the pockets to determine whether the stain in them was blood, and if so, whose.

Recommendation

- The New York City Police Department should review its basic and in-service training programs to ensure that officers are trained to handle physical evidence appropriately to preserve its integrity and value.
- All appropriate forensic tests should be requested by either the police or prosecution as promptly as possible.

JURY'S VIEW OF THE CASE

Finding 8: The jurors found that the inconsistencies in the police officers' testimony were an overriding consideration in undermining the value of all key prosecution evidence, and in finding that Nelson was not guilty of stabbing Rosenbaum. The prosecution's late discovery of key witnesses exacerbated this problem.

Most significantly, the inconsistencies in the police officers' testimony regarding Nelson's apprehension, Rosenbaum's identification, and Nelson's confession seriously compromised the value of this evidence in the eyes of the jury. Most of the jurors were troubled by what they perceived as major inconsistencies between the testimony of New York City Police Officer Hoppe

and Transit Police Officer Lewis. Lewis was not identified as a witness until after the trial began. Some jurors said that this caused them to believe that the case had not been properly prepared by the prosecution. The jurors had been instructed by Judge Rappaport to evaluate whether the witnesses were truthful in order to determine the facts of the case. The jurors stated that, after considering these factors, they determined that they could not reconcile the contradictory evidence and the inconsistencies in the testimony of the witnesses. As a result, they disregarded the testimony of some of the police witnesses whose statements were crucial to proving Nelson's guilt.

Finding 9: Many jurors articulated doubts regarding the evidentiary value of the knife, the alleged murder weapon, recovered from Nelson.

Despite the recovery of the knife from Nelson within minutes of the stabbing and a forensic scientist's identification of the blood on the knife as consistent with the blood type of Rosenbaum, many jurors articulated problems regarding the adequacy and quality of the evidence offered with respect to this key piece of evidence.

The jurors stated that the unprofessional manner in which the knife was handled when first recovered by police compromised its value. It was handled by too many people, commingled with other evidence, and was not vouchered in a timely manner.

The jurors also questioned whether it was blood or rust on the blade of the knife. They also questioned why the knife, rather than swabs of blood from the knife, was not sent for additional forensic testing. The photographs of the knife presented to the jury were black-and-white prints, which did not assist them in determining whether it was actually blood. These questions remained unresolved for the jury, and were not adequately explained in the prosecution's case or summation.

Further, the jurors were not persuaded by the evidence presented that the knife inflicted the fatal wounds. They attributed this doubt to inadequate procedures by the Medical Examiner's office.

Finding 10: The jury did not accept key forensic evidence regarding Nelson's pants that was offered to establish a connection between Nelson and the stabbing of Rosenbaum.

Notwithstanding the fact that the knife was recovered from Nelson's pants and there were bloodstains on the pant legs, later determined to be consistent with

Rosenbaum's blood, the jurors articulated doubts regarding the absence of blood in the right front pants pocket from which the police testified that the knife was recovered. The jurors were further troubled by the presence of what appeared to be a bloodstain in the left front pants pocket, a stain that was not discovered until jury deliberations. It was not made clear to the jurors by the prosecution whether the pants became bloodstained as a result of Nelson's involvement in the stabbing or when Rosenbaum spat at Nelson at the identification. Neither the police nor the prosecution requested testing of this stain.

Finding 11: The jurors rejected, as unreliable, the evidence regarding Yankel Rosenbaum's identification of Lemrick Nelson as the person who stabbed him.

The jurors believed that the victim's identification of Nelson as his attacker was improperly suggestive. Inconsistent testimony caused the jurors to believe that the police exhibited the knife taken from Nelson in the presence of the victim. As a result, some jurors believed that the victim did not identify Nelson as his stabber until after he saw the knife.

The jurors also stated that conducting the show-up identification procedure without a hat on Nelson was improperly suggestive. Police officers testified that Nelson was wearing a hat when apprehended. Some jurors were not persuaded by the police testimony that Rosenbaum made a definitive identification of Nelson as his attacker in view of what they perceived to be his ambiguous words.

Finding 12: The jurors rejected, as unreliable and not properly obtained, the confessions of Lemrick Nelson as the person who stabbed Yankel Rosenbaum.

The jurors disregarded Nelson's statements to the police because they questioned whether the confessions were voluntarily made and whether Nelson was capable of understanding and knowingly waiving his rights. They believed, in view of the evidence offered, that Nelson's confessions were coerced. Several jurors also believed that since Nelson's statements contained erroneous information, his statement was fabricated by the police. Further, some jurors expressed concerns regarding the absence of documentary proof that Nelson had been read his rights.

Recommendation

- After advising a suspect of her or his constitutional rights, police should obtain some written acknowledgment that she or he was advised of her or his rights.

Finding 13: The jury was confused and troubled by the testimony of the forensic experts who testified on behalf of the prosecution. This contributed to their rejection of key forensic evidence.

Forensic evidence can be extremely valuable in criminal cases because it often constitutes physical, uncontrovertible evidence that links a defendant to the commission of the crime charged. To maximize the effectiveness of forensic evidence, however, prosecutors must prepare witnesses to testify about forensic procedures and techniques in a manner that jurors are able to understand.

With respect to the forensic evidence, the jurors said its value was undermined because it was confusing to them, and, therefore, they did not understand its significance. The jurors also questioned the procedures utilized by the Medical Examiner's Office. They did not think that the Medical Examiner did everything that could have been done to ensure that the best possible evidence was discovered and analyzed.

The forensic witnesses in this case, whether from lack of preparation or due to the complexity of the subject matter, did not testify in a manner that could be understood by the jury. Further, the forensic evidence was not clearly explained during the prosecution's summation, and as a result, the jury accorded this evidence little weight.

Recommendation

- Forensic evidence that is critical to the prosecutions' case and that involves complex analyses requires thoughtful and clear explanation for it to be understood and have value. It is in the best interest of a successful prosecution that witnesses be properly prepared, visual aids be used, and that witness testimony and prosecution's arguments in summation be presented simply and clearly.

Finding 14: The manner in which the Judge conducted the trial appeared to have influenced the jury's decision-making.

Although many of the jurors seemed to have a favorable view of the Judge, his remarks and conduct may have adversely affected their view about the credibility of the police witnesses. He was unable to control the conduct and the comments of the defense counsel, which afforded the jury an opportunity to consider information that was otherwise irrelevant or inadmissible. Further, by continuously interjecting himself in the questioning of witnesses, the jury had concerns regarding the Judge's impartiality. Most significantly, the Judge's reaction to Officer Lewis's testimony highlighted the inconsistencies between Lewis's version of the events surrounding Nelson's apprehension and the version of Officers Hoppe and Marinos and Detective Litwin. The Judge did not remain an impartial arbitrator and instead conveyed to the jury his personal opinions about the evidence.

Finding 15: The theory of assessorial liability or "acting in concert" was not adequately explained or argued to the jury.

Although many jurors were not convinced that Nelson inflicted the fatal stab wounds on Rosenbaum, most jurors believed that Nelson was present at the scene of the attack and that he probably was a participant. According to the jurors, if they had understood the legal principle of "acting in concert," they might have reached a different verdict.

Although the Judge properly instructed the jury on this legal principle, no further explanation of it occurred with respect to the elements of each crime submitted for the jurors' consideration. Such an explanation might have assisted the jurors in applying that principle to the facts of this case. During her summation, the prosecutor only mentioned in a passing comment, the principle of "acting in concert," a central theory upon which the prosecution's indictment was based. She said that when Nelson took his knife out of his pocket and "joined together" with the crowd to stab Rosenbaum, he was not only accepting responsibility for his own actions, but also for those he was acting with. Other than this reference, this theory was not discussed in any further detail in her summation. In view of the prosecution's theory of the case, that Nelson was the stabber, the prosecutor may have had a valid strategic reason for not developing this theory in greater detail. However, in view of the jurors' comments that the outcome might have been different had they understood this theory, it appears that the "acting in concert" theory should have been addressed.

Finding 16: Our interviews with the jurors did not indicate that the verdict of acquittal was premised upon a preconceived or inherent mistrust of police officers.

The jurors pointed to specific problems in the evidence presented that caused them to discount major portions of the police witnesses' testimony. At no time did they suggest that the witnesses were inherently untrustworthy because they were police officers. Our review of the case did not uncover any evidence to show that the verdict was premised upon, or affected by, a preconceived mistrust of police. Although some support exists for the contention that jurors in Kings County have become increasingly prone to acquit defendants in cases that rely solely on police testimony, there is no evidence that this phenomenon occurred here. After the acquittal, the District Attorney reported that, in 1992, his Office lost sixty-seven percent of the criminal cases that depended solely on the testimony of police officers. Moreover, recent public opinion polls indicate that portions of the public have grown more negative towards the police.

Even if the jury verdict in this case was not premised upon, or affected by, a preconceived mistrust of the police, it would be sound public policy to explore ways to enhance the image of police in the eyes of the public, upgrade their training in the handling and preservation of evidence and expand current courtroom skills training program.

Recommendation

- Police officers must be aware that their role is not defined solely in terms of the arrest in, and investigation of, a case, but continues until completion of the prosecution of the case. The professionalism of the police and their perception in the eyes of the jurors are both critical to a successful prosecution.
- The City of New York and its Police Department should continue its commitment to, and expansion of, the community policing program, a primary objective of which is to improve police and community relations.
- The Police Department should continue and enhance its recruitment efforts to ensure that the composition of the Department is correspondingly representative of the City's population.

- **Finally, police training should stress the importance of proper handling and collecting of physical evidence and the prompt identifying and recording of the names of all witnesses to a crime, arrest, identification procedure or any other significant event in a criminal case.**

Appendices

- ▶ Appendix A: Executive Order No. 160
- ▶ Appendix B: Dateline: Trial Events
- ▶ Appendix C: Summary of the Police Investigation
- ▶ Appendix D: Map and Photos

Appendix A
Executive Order No. 160



No. 160

E X E C U T I V E O R D E R

DIRECTING A REVIEW OF THE CRIMINAL INVESTIGATION AND PROSECUTION ARISING FROM THE MURDER OF YANKEL ROSENBAUM

WHEREAS, the primary role of government in a civilized society is to provide for the safety and security of the people in its jurisdiction;

WHEREAS, this role of government in our society extends to ensuring that tolerance and respect for each individual is fostered throughout our system of government, including our criminal justice system;

WHEREAS, members of all communities have an expectation that the criminal justice system will function effectively to provide justice;

WHEREAS, on August 19, 1991, Yankel Rosenbaum was murdered during a disturbance in the Crown Heights section of Brooklyn, New York and accounts of the event indicate that although many individuals took part, only one individual was charged, and tried by a jury which rendered a verdict of acquittal which must be heeded;

WHEREAS, the verdict has generated a feeling of mistrust and suspicion of the criminal justice system by those who are unable to reconcile the verdict with their sense of justice;

WHEREAS, regardless of how one responds to the verdict, these events have undermined confidence in the criminal justice system resulting in a climate which has polarized communities in the City of New York and elsewhere;

WHEREAS, it is in the interest of justice that the Director of Criminal Justice and Commissioner of the Division of Criminal Justice Services for the State of New York (hereinafter the Director) review and evaluate the operation of the criminal justice system in this matter;

NOW, THEREFORE, I, MARIO M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby order that Richard H. Girgenti, the Director of Criminal Justice and Commissioner of the Division of Criminal Justice Services for the State of New York, review the response of law enforcement to the August, 1991 disturbance in Crown Heights and the facts and circumstances surrounding the criminal investigation and prosecution arising from the death of Yankel Rosenbaum.

I. RESPONSIBILITIES OF THE DIRECTOR

1. To proceed in a term of the Supreme Court, to be held in and for the County of Kings, to seek such order as justice requires unsealing any and all files and records pertaining to the investigation and prosecution in the case of The People of the State of New York v. Lemrick Nelson.

2. To review, to the extent permitted by law, any and all records of the Police Departments of the City of New York pertaining to the investigation of the homicide of Yankel Rosenbaum and the Crown Heights disturbance of August, 1991.

3. To review, to the extent permitted by law, the transcripts of any and all proceedings held prior to the date of this order which relate to the murder of Yankel Rosenbaum.

4. To review, to the extent permitted by law, all of the records in the possession of the District Attorney of Kings County pertaining to the investigation and prosecution of individuals involved in the death of Yankel Rosenbaum.

5. To interview non-witness participants in the trial of the People of the State of New York v. Lemrick Nelson.

6. To review and evaluate the preparedness planning and response of the City of New York Police Department to the August, 1991 disturbance in Crown Heights.

7. To offer recommendations designed to restore the public's confidence in the criminal justice system.

II. REPORT

To prepare a written report, following the review, assessing the response of law enforcement to the August, 1991 disturbance in Crown Heights and the facts and circumstances surrounding the criminal investigation and prosecution arising from the death of Yankel Rosenbaum.

III. ASSISTANCE AND COOPERATION

All departments, divisions and units of the Executive Branch of State government are directed to cooperate with the Director and to provide such assistance as he may require to fulfill his obligations. Such assistance may include the assignment of staff and the provision of support services.



BY THE GOVERNOR

Andrew J. Tambelli
Secretary to the Governor

G I V E N under my hand and the Privy
Seal of the State in the City
of Albany this seventeenth day
of November in the year one
thousand nine hundred ninety-
two.

Marie M. Brown

Appendix B
Dateline: Trial Events

THE PEOPLE OF THE STATE OF NEW YORK v. LEMRICK NELSON

The prosecution of Lemrick Nelson for the murder of Yankel Rosenbaum occurred in 1992. Following is a chronological list of the trial events.

September 8,9,10	PRE-TRIAL HEARINGS
September 15-22	JURY SELECTION
September 22	COURT'S PRELIMINARY INSTRUCTIONS TO THE JURY
September 23	OPENING STATEMENTS
	THE PROSECUTION'S CASE
	Esther Edelman Police Officer Richard Sanossian Police Officer Leonard Milazzo
September 24	Police Officer Milazzo (cont'd) Police Officer John Marinos Police Officer Mark Hoppe
September 25	Police Officer Mark Hoppe (cont'd)
September 30	Police Officer Mark Hoppe (cont'd) Detective Steven Litwin
October 1	Detective Steven Litwin (cont'd) Sergeant Brian Wilson
October 2	Police Officer Robert Lewis Detective Edward Brown
October 5	Detective Edward Brown (cont'd) Detective Nemesio Abraham
October 6	Detective Nemesio Abraham (cont'd)
October 8	Ralph Ristenbatt Detective Charles Mattera Dr. David Bing

October 9 Dr. Joaquin Gutierrez, Jr.

THE PROSECUTION RESTS

October 14 **THE DEFENSE CASE**

Carmel Cato
John Anderson
Peter Hamilton
Thomas Birch
Sharon Defino

October 15 Chaya Sara Popack
Chaim Lieberman
Police Officer Hoppe (cont'd cross)
Police Officer Marinos (cont'd cross)

October 16 Dr. Vernal Cave
Mildred Scott
Police Officer Milazzo (cont'd cross)
Detective Litwin (cont'd cross)

October 21 Meyer Rivkin
Lorraine Gayle
Nancy Casella

October 21 Dr. Anthony Losardo

October 22 Beverly Williams
Dr. Mark Taff

THE DEFENSE RESTS

THE PROSECUTION'S REBUTTAL

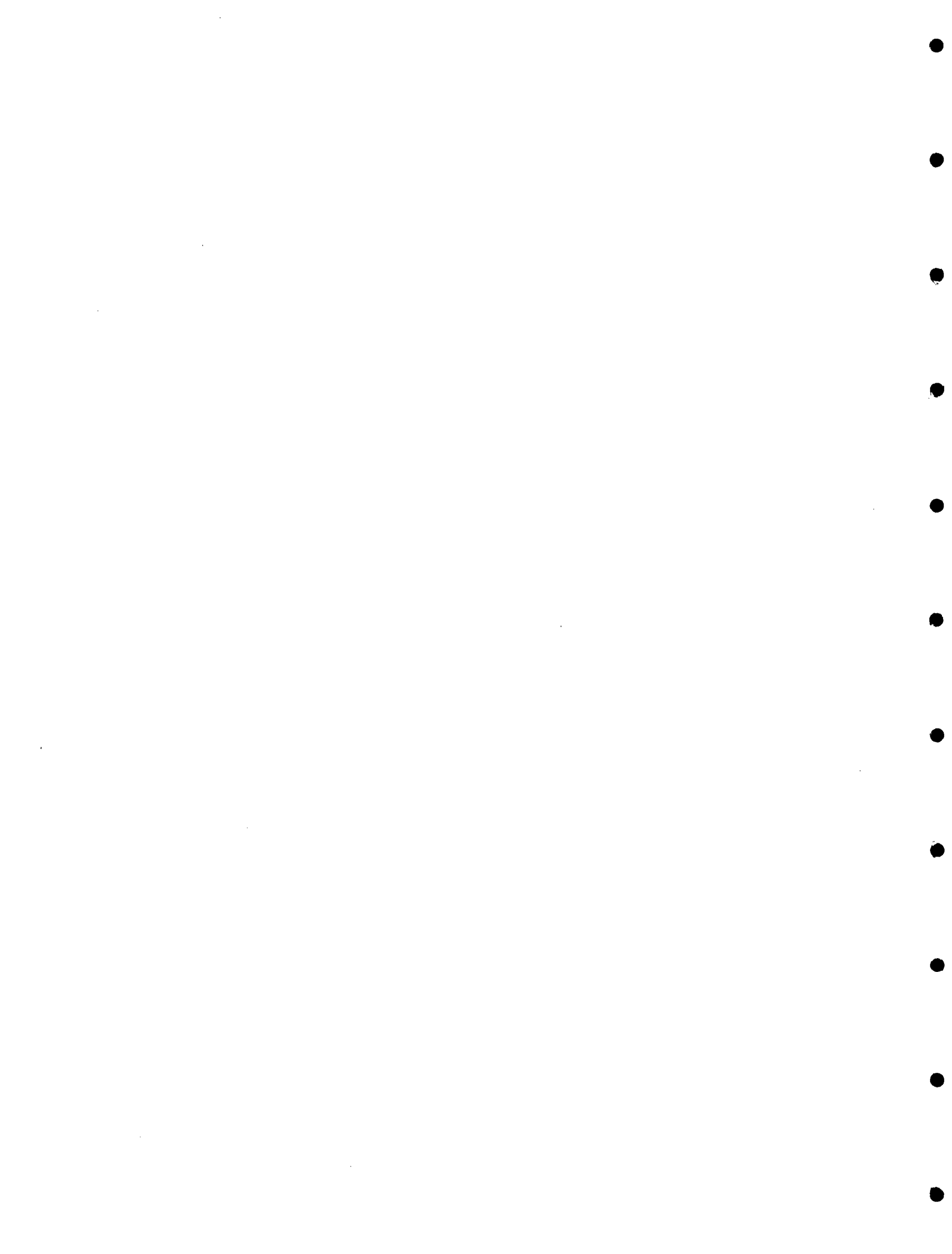
Dr. Sanford Drob

October 26 **SUMMATIONS**
COURT'S CHARGE TO THE JURY

October 26-29 **JURY DELIBERATIONS**

October 29 **THE VERDICT**

Appendix C
Summary of the Police Investigation



THE POLICE INVESTIGATION OF THE MURDER OF YANKEL ROSENBAUM

SUMMARY OF THE POLICE FILE¹

Date	Action
8-19-91	At approximately 11:20 p.m. officers observe a group of 10 black males assaulting Yankel Rosenbaum at Brooklyn and President. Officers pursue and two suspects, Nelson and "C.T." are arrested, charged with assault in the first degree and criminal possession of a weapon. Knife recovered from Nelson who is identified by the victim at the scene. Victim is declared dead at Kings County Hospital (KCH).
8-20-91	At approximately 2:00 a.m. detective interviews Officer Hoppe, the arresting officer, about the Cato accident and the Rosenbaum stabbing. Hoppe confirms that the knife was confiscated from right, front pocket of Nelson's pants; that the victim asked the suspect, "Why did you stab me?"; that he gave custody of Nelson to Officer Milazzo with a brown paper bag containing the knife and money taken from Nelson; that Nelson was taken to the hospital for asthma attack.
8-20-91	At approximately 3:10 a.m., detectives attempt to contact Nelson's parents at 912 Linden Blvd. Efforts are unsuccessful. Card left under the door, notifying them to call police.
8-20-91	At approximately 3:15 a.m. the Crime Scene Unit responds. Blood samples are taken from the south west corner of Brooklyn Avenue and President Street. Blood samples are also taken from in front of the garage at 1310 President Street. Photos taken in front of 1346 President Street.
8-20-91	At approximately 3:15 a.m. detectives interview Nelson. Nelson tells them, in separate interviews, that he had been on Schenectady Avenue with friends when he heard about the car accident. He went to President and Utica and then down President Street with the crowd. At Brooklyn and President he joined in the attack on a Jewish man and stabbed him once in the left side of his stomach. He put the knife into his pants pocket while running from the police. After he was taken into custody, Nelson said that the victim identified him as the person

¹ This summary is based upon the documents submitted to us by the New York City Police Department. Names of witnesses and suspects have been replaced randomly by letters of the alphabet to protect their identities.

Date

Action

who stabbed him.

8-20-91

At approximately 3:20 a.m. detectives go to Kings County Hospital. They are informed by a surgeon that the time of death was 2:25 a.m. Death was due to excessive bleeding from stab wounds to lungs. Detectives learn that the victim's clothing was given to Chaim Lieberman. Washed clothing was picked up from Lieberman.

8-20-91

At approximately 3:30 a.m. detective requests record check on "C.T." and Lemrick Nelson. No records present for either subject.

8-20-91

At approximately 4:30 a.m. detectives interview suspect, "C.T.", at 60th Precinct in presence of his uncle. "C.T." said that he heard that a Jew had run over two black kids. He went to the area and there was there a large crowd. The crowd ran down President Street. When he got to Brooklyn Avenue, he saw a group of black males beating a Jewish man. He said he did not do anything to the Jewish man and ran when the police came because everybody else ran.

8-20-91

At approximately 6:30 a.m. detective interviews Sergeant Wilson who reports that the victim stated that "C.T." was part of the group beating him.

8-20-91

At approximately 7:30 a.m. Assistant District Attorney (ADA) Moore attempts to take videotaped statement from Nelson at the 60th Precinct. Nelson refuses to make a statement. Detective Abraham arrests Nelson on a charge of second-degree murder. Nelson is transferred to Brooklyn Central Booking to await arraignment. ADAs Dember and Moore conclude that there is insufficient evidence to support criminal charges against "C.T." and his arrest is voided.

8-20-91

At approximately 8:00 a.m. detective interviews Police Officers (PO's) Milazzo and Sanossian about the events of 8-19-91. Detective confirms that the officers observed a group beating a man; that they chased and arrested "C.T." at 1310 President Street; that the victim made a statement to Sergeant Wilson of the 77th Precinct about "C.T.'s" involvement; that "C.T." was taken to Kings County Hospital and treated for a head injury stemming from his arrest.

8-20-91

At approximately 11:00 a.m. detectives go to the medical examiner's

Date**Action**

office and speak with Dr. Gutierrez. They observe four stab wounds. Dr. Gutierrez examines the knife and reports that it is consistent with the stab wounds.

8-20-91

At approximately 11:50 a.m. to 12:10 p.m. Nelson receives a visit from his father and brother at 60th Precinct. They bring him a change of clothes. The shirt, pants and socks worn by Nelson during the assault are taken from him.

8-22-91

Detectives begin an investigation involving WABC radio. A phone call was received from a person alleging to have been at the scene of the homicide. Contact is made with New York City Police Department (NYPD) Deputy Commissioner for Public Information in effort to gain cooperation of WABC/Joy Behar show. The producer reports that calls are not screened and that the station has no knowledge of the identities of callers. He offers to allow NYPD to listen to tapes of the show.

8-23-91

Detective interviews the producer of WABC radio talk show. He indicates that the call came from a person using the name "Zelman" and agrees to air a request that Zelman get in contact with NYPD. Detective receives a copy of a tape with the segment of the show.

8-24-91

Detectives interview individuals arrested in the 71st Precinct regarding the homicide. Negative results.

8-25-91

Detective contacts NYPD Operations Unit to obtain videos of the riot.

8-26-91

Detective again contacts Operations Unit to obtain videos of the riot.

8-27-91

Detectives conduct a canvass on President Street near Brooklyn Avenue. Ten people are contacted. Numerous other locations are unoccupied.

8-28-91

Detective again contacts the producer at WABC radio who reported that a Public Service Announcement was aired several times, asking Zelman to call. There was no response to either the radio station or NYPD.

8-28-91

Police canvass locations on President Street near Brooklyn Avenue. Numerous people report that they saw and heard nothing. There is no response at some addresses.

Date	Action
8-29-91	Detectives continue canvass on President Street. There is no response from addresses contacted.
8-29-91	Detective canvasses President Street addresses where no response had been reported during the first canvass. No one reports seeing anything or hearing anything.
8-29-91	Detective contacts Rabbi Spielman for help in identifying "Zelman." He agrees to make inquiries.
8-30-91	Detective interviews individuals arrested at the 71 st Precinct regarding the homicide. Negative results.
8-31-91	Detective contacts a witness to view photos to determine if he can identify any other participants in the crime.
9-1-91	A witness views photos and will return 9/3/91 to view additional photos.
9-2-91	Detective contacts ADA Dember regarding case.
9-3-91	Detective telephones various individuals in attempt to locate WABC caller/witness.
9-3-91	Detective continues to contact individuals with similar last names as that of WABC caller/witness.
9-4-91	Detective at the 71 st Precinct receives an anonymous phone call from male claiming to have heard from a witness to the stabbing, that two male teenagers named "C" and "D" were involved. Addresses provided for both names. Caller claimed not to be an actual witness to the crime.
9-4-91	Detective responds to a certain location looking for "C" and "D". Speaks with building superintendent who acknowledges that the named persons live in the building.

Date	Action
9-4-91	Detective requests criminal record review for "C" ² and "D". Both are negative.
9-5-91	Detective interviews individuals arrested in the 71 st Precinct regarding homicide. Negative results.
9-5-91	Detective speaks with witness about possible suspects.
9-7-91	Detectives canvass passersby in the vicinity of President Street and Brooklyn Avenue. Negative results.
9-8-91	Detectives interview "X" who provides descriptions of "C" and "D". Witness also provides background information on Nelson's activities prior to the crime.
9-9-91	An individual views photos at police headquarters with detectives. Negative results.
9-9-91	Detective confers with Medical Examiner's Office regarding forensic tests of Nelson's bloodstained clothing. The tests were conducted on 9-4-91.
9-9-91	Detectives interview "Y" who reports being with "X" and Nelson prior to the incident. "X" also interviewed regarding "C" and "D".
9-10-91	Detectives conduct photo and video surveillance of certain locations.
9-10-91	Detectives attempt to re-canvass "no-answers" from previous canvass.
9-11-91	Detectives conduct video and photo surveillance of certain location.
9-11-91	Detective confers with the Board of Education in attempt to determine enrollment status of "C" and "D".
9-11-91	Detective spoke with Sergeant from the Brooklyn District Attorney's (DA's) Office Squad about requesting a dump of WABC Talk Radio incoming telephone calls to identify caller (Zelman) who claimed to be

² Names of witnesses and suspects have been replaced randomly by letters of the alphabet to protect their identities.

Date

Action

- standing next to Rosenbaum at time of stabbing. Also speaks with Sergeant at the NYPD communications center and requests 911 tapes pertaining to the Rosenbaum homicide.
- 9-12-91 Detectives show surveillance photos to a witness with negative results.
- 9-13-91 Detectives show surveillance photos to an individual in the neighborhood. "C" is identified.
- 9-14-91 Detectives speak with the NYPD Bias Unit regarding case.
- 9-15-91 Detective speaks to a person who was reported to have provided information to the *New York Post* on 9/11/91. She says that the article was untrue.
- 9-16-91 Detective interviews individuals arrested in the 71st Precinct regarding the Rosenbaum homicide with negative results.
- 9-17-91 Detectives are advised that the Bias Unit has assigned the homicide a case number.
- 9-18-91 Detectives go to a witness's place of business. He had been named in a newspaper article as cooperating in police investigation. He is given instructions in case there are repercussions.
- 9-18-91 Case detectives reinterview Officer Hoppe. He says he was at Utica & President at the scene of the Cato accident, and observed a bald, black male, 30 years old, inciting a crowd of 200 people. The crowd moved westbound on President Street after the suspect yelled, "Let's take Kingston Avenue".
- 9-18-91 Case detectives interview Officer Halfhide at 71st Precinct. Halfhide was at Utica & President where a large crowd gathered. He removed Cato's bike and observed a bald, black male, 30 years old, inciting a crowd saying, "Let's get some Jews".
- 9-19-91 Case detectives interview "Z", who said he was with Nelson and other friends on 8/19/91 before he left to go to store. "Z" claims that no one mentioned the disturbance and he was not aware of it until he saw it later on the news. He also says he did not know if any person in the group carried a knife.

Date	Action
9-20-91	Detective interviewed "F", another individual who was with Nelson and others before the homicide. "F" left Nelson, who was with "C" and "D". When he returned to the neighborhood, he heard that Nelson was arrested.
9-20-91	Detectives confer with witness who agrees to view videotapes of the crowd at the disturbance on 9/24.
9-20-91	A photo of a bald, black man appearing in the <i>New York Post</i> is shown to Officers Hoppe and Halfhide but both state that the photo is not a picture of the individual who incited the crowd.
9-21-91	Detectives receive an anonymous call from an individual who claims to have overheard a conversation of two black males, "C" and "D", who were involved in Rosenbaum homicide. A telephone check traces the call. The person contacted denies making the call.
9-22-91	Detective interviews individuals arrested in the 71 st Precinct regarding the Rosenbaum Homicide. Negative results.
9-23-91	Detective interviews individuals arrested in the 71 st Precinct regarding the Rosenbaum homicide. Negative results.
9-24-91	Detective views a video of the Crown Heights riots with a witness. Witness is unable to identify suspects in the homicide.
9-25-91	Detectives interview Solomon Cohen, the individual from whose telephone the call was made to WABC Talk Radio. Cohen's middle name is Zelman, but he denies making the call to the radio show and has no information about the Rosenbaum homicide.
9-26-91	Detective interviews individuals arrested in the 71 st Precinct. Negative results.
9-27-91	Detective confers with unnamed person regarding the case.
9-28-91	Detective interviews individuals arrested in the 71 st Precinct. Negative results.
9-29-91	Detective interviews individuals arrested in the 71 st Precinct. Negative results.

Date	Action
9-30-91	Detective interviews individuals arrested in the 71 st Precinct. Negative result.
10-1-91	Detective interviews individuals arrested in the 71 st Precinct. Negative results.
10-2-91	Detectives conduct video and photo surveillance at a certain location.
10-3-91	Detectives meet and confer about the case.
10-5-91	Detective interviews individuals arrested in the 71 st Precinct. Negative results.
10-6-91	Detective Abraham interviews individuals arrested in the 71 st Precinct. Negative results.
10-7-91	Detectives shows photos to witness. Negative results.
10-8-91	Detective speaks to witness about case.
10-9-91	Detective shows photos to witness. Negative results.
10-11-91	Detective interviews individuals arrested in the 71 st Precinct. Negative results.
10-12-91	Detective interviews individuals arrested in the 71 st Precinct. Negative results.
10-13-91	Detective shows photos to witness. Negative results.
10-14-91	Detective receives 141 pages of 911 printouts regarding Rosenbaum case.
10-15-91	Detective contacts an individual who called 911 at about the time of the Rosenbaum homicide. Susan Bush confirms call to 911 on 8-19-91 by her husband about disorderly youths throwing rocks and bottles. They did not see the stabbing.
10-15-91	Detective interviews individuals arrested in the 71 st Precinct. Negative results.

Date	Action
10-17-91	Detective interviews individuals arrested in the 71 st Precinct regarding Rosenbaum case. Negative results.
10-24-91	Detective identifies nine calls to 911 which occurred at the approximate time of the stabbing. Calls to numbers prove unproductive.
11-7-91	Detective contacts the parents of "C" and "D" and asks that their sons come in for questioning.
11-8-91	Detectives interview "D", a 17-year-old black male who was with Nelson before the riots began on the night of the murder. "D" says he went to the store and then home for the evening, and that he was unaware of the homicide until the next day when a friend told him that Nelson had been arrested.
11-8-91	Detective interviews "B", an associate of Nelson who visited him while he was in jail. "B" said that he did not learn about the homicide until the following day when he heard Nelson was arrested.
11-12-91	Rabbi Spielman tells detectives that a man named Boymelgreen told him that Rosenbaum had identified three black males to the police. Detectives interview Shaya Boymelgreen who was with relatives, Yakov & Gutal Felig. They were driving on President Street the evening of the incident and encountered Rosenbaum. Rosenbaum was bleeding and about 15 black, male youths were running away. Boymelgreen was present during the show-ups and the medical treatment. He did not witness the stabbing and has no recollection of actual people involved in the show-ups. The Feligs live in Florida.
11-12-91	Detectives attend a meeting at the Brooklyn DA's office. They learn of the existence of a tape of participants in the riot. This tape is said to have been in the possession of the DA's office for some time.
11-12-91	A polygraph is administered to "D" at the Brooklyn DA's Office. It is the opinion of the examiner that "D" was not criminally involved in the homicide.
11-14-91	Detective interviews individuals arrested in the 71 st Precinct regarding the Rosenbaum case. Negative results.
11-14-91	"B" tells detectives that when he went to see Nelson at Rikers, Nelson

Date	Action
	confessed that he and "fifteen guys saw the Jewish guy and beat him up". A polygraph test is administered to "B". The examiner's opinion is that he was not criminally involved in the homicide. "B" tells the ADA and the detectives that he would not give an audio or videotaped statement and would refuse to testify at trial.
11-14-91	Detectives request 911 tapes. They are told it will take about three weeks.
11-14-91	Detective interviews individuals arrested in the 71 st Precinct. Negative results.
11-17-91	Detective interviews individuals arrested in the 71 st Precinct. Negative results.
11-17-91	Detective receives from ADA Kolatch the names of 8 possible witnesses which she got from the victim's brother.
11-18-91	Detective contacts Mr. Hewberger who states that he did not witness the homicide.
11-18-91	Detective reinterviews Sergeant Wilson who states that only Nelson and "C.T." were identified by Rosenbaum.
11-18-91	Detectives contact Rabbi Spielman and ask him to ask Norman Rosenbaum to get in touch with them. The Rabbi also provides the name and number of Zalman Chein, a possible witness.
11-18-91	Detectives interview Meyer Rivkin. Rivkin says he noticed a commotion at President Street and Brooklyn Avenue. He went to investigate and noticed a white male in religious garb lying on a car. Rivkin saw police bring a tall, young black male in a red shirt in front of the victim. Rivkin says the police asked, "is this one of the guys who attacked you?" Rosenbaum pointed at him saying, "Yea, Yeah, guy with red shirt. You coward. Fifteen of you attacked me." Rivkin says no other suspects were brought before victim in his presence.
11-18-91	Detectives interview Chaya Sara Popack. She recounts that on August 19 she saw the victim just prior to the attack, when he was attacked. She also saw the arrival of the first police car. Ms. Popack did not believe that she could identify any suspects.

Date	Action
11-18-91	Detectives interviewed Zalman Chein, a resident of the area. Chein reports seeing two show-ups, but did not recall or remember any individuals from that evening.
11-18-91	Detectives view a videotape of the riot in an attempt to identify the bald, black male who incited the crowd. Afterward, due to the darkness of the tape, the suspect could not be identified nor an adequate photo made.
11-19-91	A robbery suspect is interviewed. No new information is provided.
11-19-91	A suspect arrested by the Special Victims Squad is interviewed. No new information.
11-19-91	Detective attempts to contact and interview Norman Rosenbaum, the deceased's brother. Contact is made with ADA Posner and Rabbi Hecht.
11-19-91	Detective presents 911 tapes to ADA Kolatch.
11-19-91	Detective interviews Zalman Chein who claims to be the caller to the WABC radio show. He says that he spoke on WABC twice with Jimmy Breslin. Claims no further information to provide beyond that provided on 11-18-91.
11-20-91	Detective interviews Sara Lieberman by telephone. She recounts the actions of her husband, Chaim Lieberman, and his account of the evening.
11-20-91	Detectives interview Norman Rosenbaum in the presence of Rabbi Hecht, and discuss the progress of the investigation. Mr. Rosenbaum offers additional names of possible witnesses.
11-20-91	Detective confers with the Intelligence Division and requests assistance in use of informants to aid the investigation.
11-21-91	Rabbi Light of Jewish Community Council contacts the police regarding reward posters and the ability of the community to assist in the investigation. There was confusion regarding the amount of the reward.

Date	Action
11-25-91	Detective spoke with "H" regarding the homicide. He claims no knowledge due to imprisonment at the time.
11-25-91	In the course of an unrelated robbery investigation, the suspect is questioned regarding the homicide but has no knowledge of it.
11-26-91	Detective speaks with Rabbi Hecht via phone and asks him to have Norman Rosenbaum provide the names of other individuals who might have information.
11-29-91	Reward posters are sent to all precincts, specialty squads, and Brooklyn Central Booking. Posters are also sent to civilian city facilities.
12-2-91	Detective shows the video of the bald black male to a community group in Crown Heights. No identification is made.
12-2-91	Detectives view the newspaper morgue files in an attempt to locate bald, black male. Various police officers are also shown a photo of a bald black male. Negative results.
12-5-91	Detectives go the Civilian Complaint Review Board to show a video of the bald black male. No identification is made. There is too much distance between the subject and the camera.
12-5-91	Detectives receive photos of possible suspects.
12-6-91	Detective attempts to contact Yakov and Gutal Felig, the relatives of Boymelgreen who were with him in the car on the evening of the homicide. Two messages are left on the answering machine. An attempt is also made to contact Shaya Boymelgreen.
12-8-91	An anonymous male caller tells police that "E" of Intermediate School 391 claimed to have knowledge of Rosenbaum's murder. An address is provided.
12-9-91	Gutal Felig is interviewed by telephone and recalls arriving at homicide scene at the same time as the first police car. She was present during the show-up. The suspect with blood (second kid) claimed innocence at the scene.
12-11-91	Yakov Felig is interviewed via telephone. He says that he saw the

Date

Action

incident from the arrival of the first police unit and the scattering of the crowd of youths. He attempted to aid the victim. Although he was present during the show-ups, he is not able to identify the participants.

12-11-91

"E" is interviewed. He reports that, about a month prior to the riot, he and three others chased someone following the stabbing of Nelson's father. He says that he entered the hospital in pursuit and encountered Nelson there with a knife. Nelson wanted to get the guy who stabbed his father. Nelson later threw the knife away.

12-12-91

"K" gives the same information to police as "E". He also recalls that Nelson frequently carried a knife.

12-12-91

"L" is interviewed and gives the same story as "E" and "K".

12-18-91

Detective is present during the drawing of a composite drawing of bald, black male by an NYPD artist; Officer Hoppe is present.

12-19-91

Detectives go to Rikers Island with Court Order to draw blood from Nelson. Nelson refuses, and force is not permitted by court order. ADA Kolatch is notified.

12-19-91

The composite sketch of the bald black man is taken to the Community Relations Division.

12-23-91

Detectives again attempt to get a blood sample from Nelson but are informed that the doctors are not available. ADA Kolatch notified of delay.

1-7-92

Detectives interview individuals arrested in the 71st Precinct regarding the homicide. Negative results.

1-31-92

"M" is interviewed. He identifies the bald black male as Raymond Wesley. Check of records indicates this person is on parole for robbery.

2-4-92

An FBI Agent is contacted in an attempt to gain more information about Wesley.

2-5-92

Detectives interview individuals arrested in the 71st Precinct regarding the homicide. Negative results.

Date	Action
2-10-92	A witness identifies a photo of Raymond Wesley as the bald black male inciting the riot.
2-10-92	"M" informs detectives that an individual named "N" said that he hit Rosenbaum on the head with a bottle during the attack and that "P" stabbed him. Detectives locate a photo of "N" and he is identified.
2-12-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
2-17-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
2-18-92	Photo array with Wesley's photo shown to Officer who was at the scene of the car accident. He identifies three men as inciting the crowd.
3-19-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
3-25-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
4-4-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
4-12-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
4-20-92	Detectives and their commanding officers meet with ADAs and their supervisors regarding an interview of "N" who is incarcerated. DA's office agrees to contact "N's" attorney and notify him of their request to interview his client.
4-28-92	Detective calls ADA. No meeting set yet.
5-6-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
5-18-92	Detective contacts ADA to inquire about the interview of "N". ADA reports that she is still working on arranging it.

Date	Action
5-20-92	Detective is informed that ADA's supervisor had instructed a detective from his office to transport "N" from the Brooklyn House of Detention on 5/11 to DA's office for an interview. "N" again denied involvement in the homicide. The case detectives were not notified of the interview.
5-22-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
8-3-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
8-7-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
8-27-92	Blood sample is drawn from "C.T." and delivered to the Medical Examiner's office.
9-1-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
9-8-92	Detectives interview individuals arrested in the 71 st Precinct regarding the homicide. Negative results.
12-17-92	"Q", an associate of Nelson, informs authorities that Nelson acknowledged the stabbing of Rosenbaum.
12/24/92	Detectives speak with an Assistant U.S. Attorney regarding the interview of "Q".
1/4/93	Detectives fax copies of reports to the FBI at their request.
1/9/93	Detective and a witness canvass the vicinity of Lincoln Terrace Park looking for two males who may have taken part in the assault on Mr. Rosenbaum. This effort meets with negative results.
2/5/93	The composite sketch of Wesley is sent to the FBI.
2/11/93	Detectives learn that Lorraine Gayle of 1362 President Street, Brooklyn, has testified at trial that she was a witness at the homicide scene. Ms. Gayle informs the detectives that Arthur Lewis, the attorney for Lemrick Nelson, advised her not to speak to the police. Ms. Gayle further states that although Mr. Lewis was not her attorney,

Date	Action
	she still declines to be interviewed.
2/17/93	Detectives request a copy of the testimony of Lorraine Gayle and John Anderson from Court TV.
2/18/93	Detectives interview "R", an arrestee. He says that, on February 3, 1993, while in the holding pen at Brooklyn Central Booking, he spoke to an individual named "S". "S" said that on the night of the riots he and his friends were involved in the stabbing of the Jewish man and that a couple of teenagers who are part of gang known as the Low-Life Kids committed the homicide. "R" views a photo array and identifies the photo of the person known to him as "S".
2/24/93	Additional reports are provided to the FBI.
3/5/93	The U.S. Attorney interviews the detectives.
3/12/93	Subpoenas are delivered to WABC TV requesting a copy of the video interview of John Anderson by Gil Noble.
3/20/93	"T", an arrestee, is interviewed by detectives and claims that, about two weeks after the Jewish man was killed in Crown Heights, he spoke to a person named "U" who informed him that he participated in the murder of the Jewish man. "U" further said that a kid stabbed the man while "U" punched the male twice. "T" further adds that two days after the murder he spoke to an individual named "V" who indicated that he was involved in the assault on Rosenbaum.
3/22/93	ADA Kolatch informs detectives that she interviewed "T".
3/23/93	Detectives contact the New York State Department of Correctional Services and learn that "V" was in prison on the dates that "T" alleged that he spoke with him in Brooklyn.
3/25/93	Detectives go to WABC TV and picked up a videotape of the Gil Noble Show in which John Anderson was a guest.
3/26/93	A check is sent to Court TV as payment for copies of the video testimony of Lorraine Gayle and John Anderson.
3/28/93	Detectives view the Gil Noble Show videotape. John Anderson is

Date

Action

present on the show with other members of the community, but does not make any reference to his presence at the scene of this homicide.

4/6/93

Detectives receive information that "T" was in prison during 1991. This information is in direct conflict with information from his parole officer who had spoken to the detectives earlier.

4/19/93

Detectives confirm that "T" was in prison during 1991 in various correctional facilities in upstate New York.

5/7/93

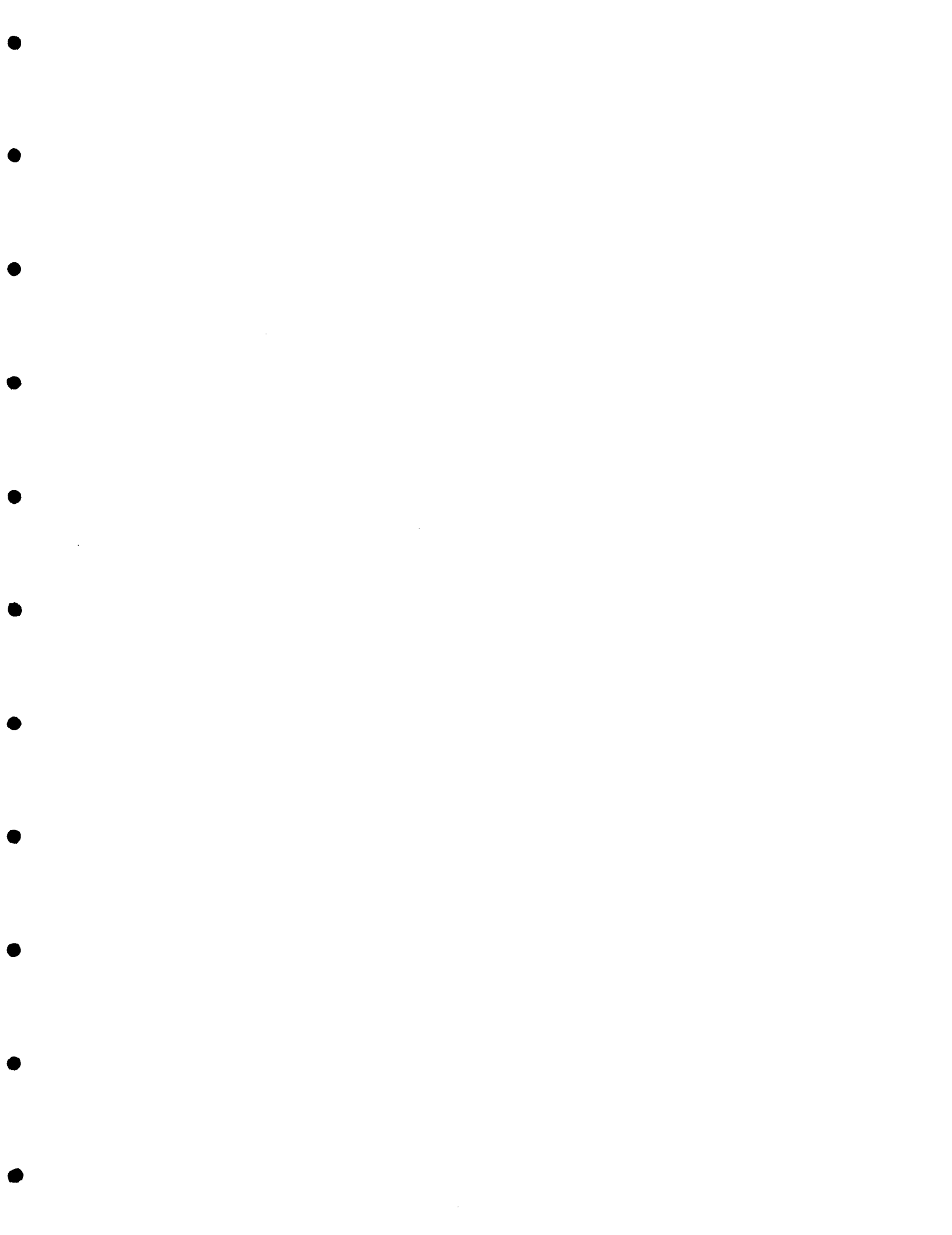
Detectives call Court TV regarding the videotaped testimony of John Anderson and Lorraine Gayle. They are informed that, when the tape was duplicated, the machine destroyed the tape and a copy, therefore, was unavailable.

5/12/93

Detectives confirm that "S" was in the custody of the New York City Department of Corrections on August 19, 1991 and was released on bail on August 20, 1991.

6/29/93

Detectives receive information that "W" had information about the homicide. When interviewed, he says that he knew Nelson from the neighborhood but that he was at the concert on August 19, 1991, and was not present at the demonstration or the homicide.

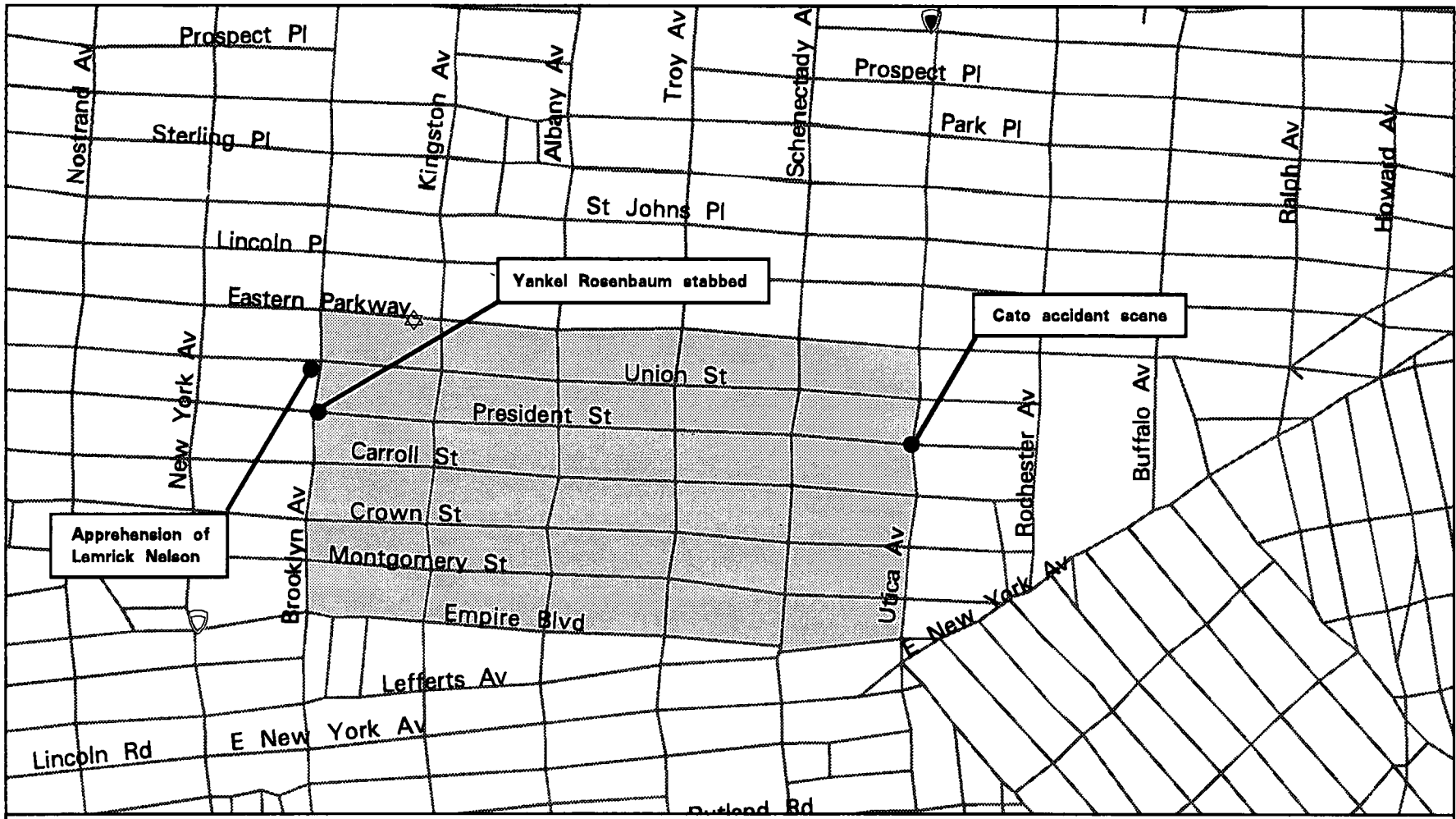


Appendix D

Map and Photos

D-1

- ▶ Location of Events
- ▶ Scene of the Attack
- ▶ Scene of the Apprehension
- ▶ Distance Between Scenes of the Attack and Apprehension
- ▶ Nelson's Knife
- ▶ Nelson's Dollar Bills
- ▶ Nelson's Shirt
- ▶ Nelson's Pants



Location of Events

- ☆ World Lubavitcher Headquarters
- 🛡️ 77th Precinct Station House
- 🛡️ 71st Precinct Station House
- ☐ Original Deployment Area



Map provided by DECGIS



Scene of the Attack on Yankel Rosenbaum
D-5

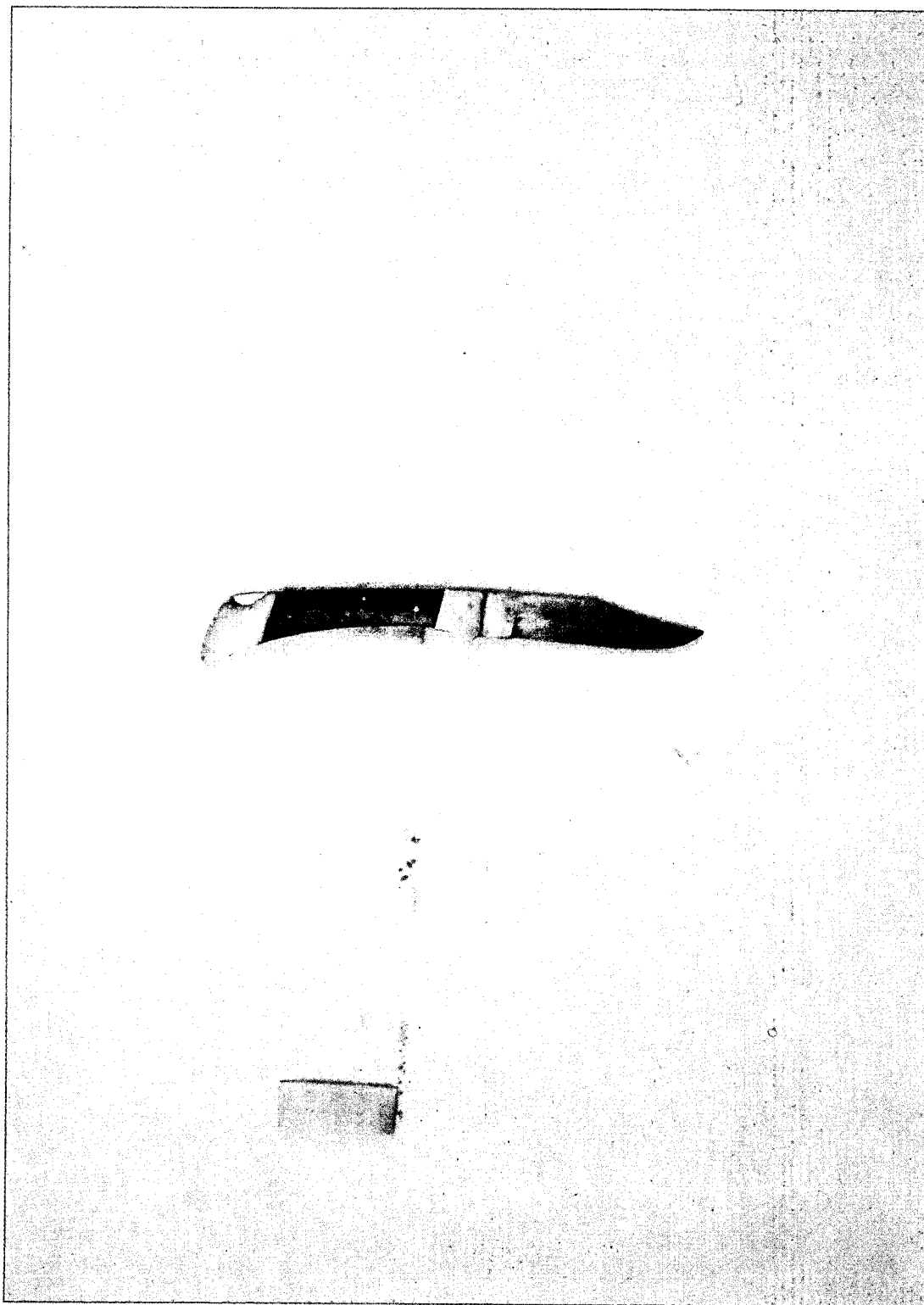


Scene of Nelson's Apprehension
Brooklyn Avenue and Union Street
D-6

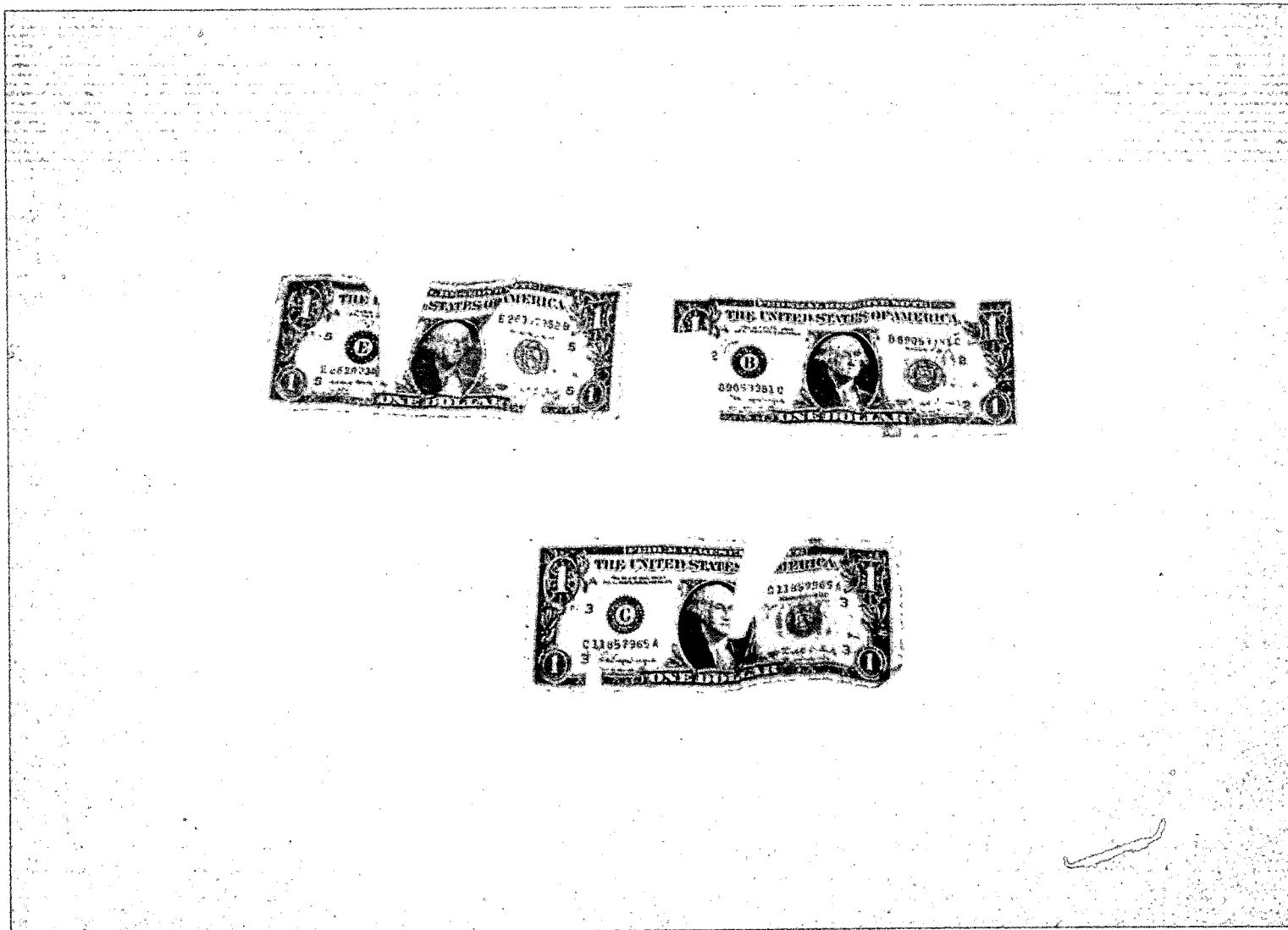


Distance Between Scenes of the Attack and Nelson's Apprehension
View from Brooklyn Avenue and Union Street

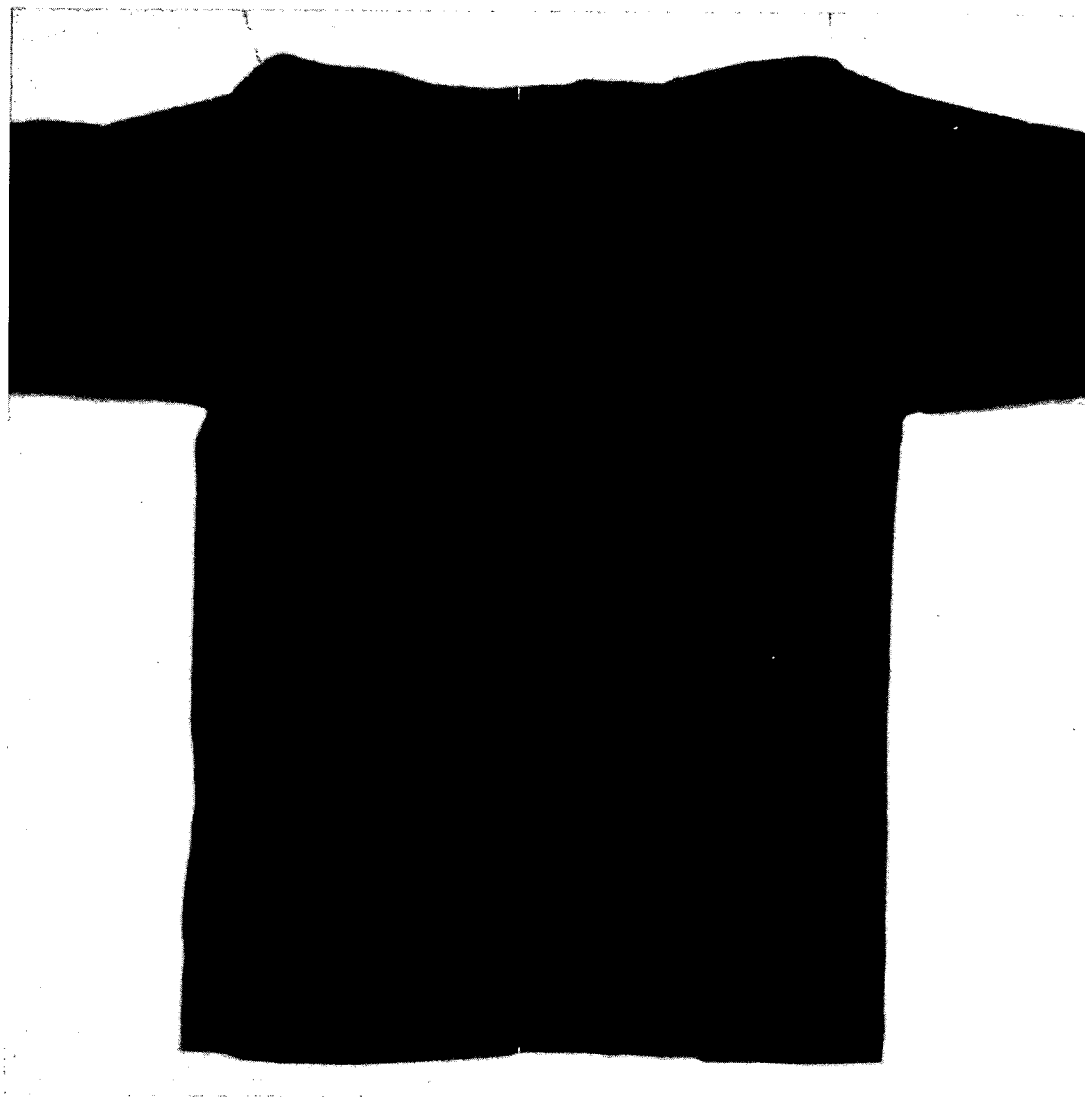
D-7



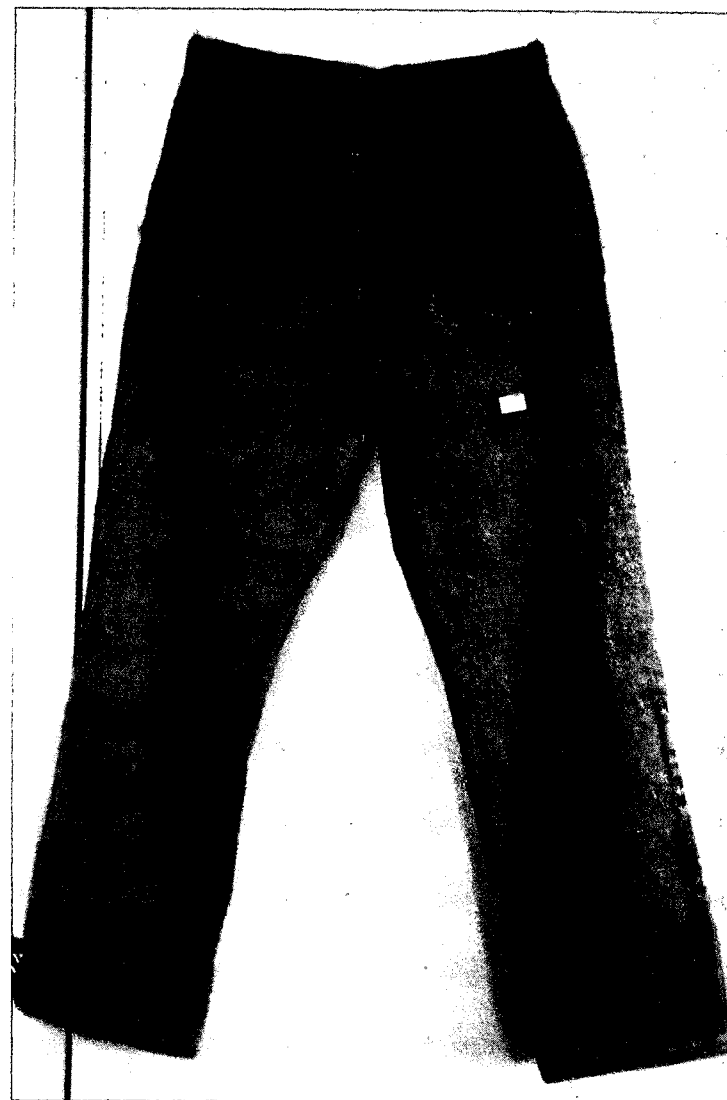
Nelson's Knife
D-8



Nelson's Dollar Bills
(Photo depicts bills after samples removed by forensic expert)
D-9



Nelson's Shirt
(Photo depicts shirt after samples removed by forensic expert)
D-10



Nelson's Pants
(Photo depicts pants after samples removed by forensic expert)
D-11