

**TOWN OF SWAMPSCOTT, MA**

**POLICE DEPARTMENT**

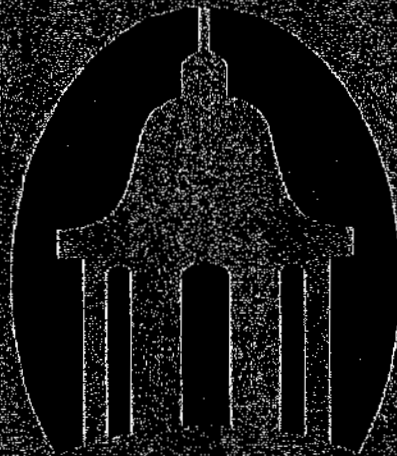
**DECEMBER 12, 2020 INCIDENT REVIEW**

**JANUARY – FEBRUARY 2021**

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# **TABLE OF CONTENTS**



**Municipal  
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# TABLE OF CONTENTS

## REPORT

Introduction .....	1
Overview of Incident.....	1
Document Analysis .....	2
Incident Review .....	3
Police Eyewitness.....	3
Videos Provided for Review.....	4
Policy Review .....	5
Actions of [REDACTED] PERSON #1 .....	7
Summary of Interviews.....	8
[REDACTED] OFFICER "A" .....	8
[REDACTED] OFFICER "B" .....	11
[REDACTED] OFF. "F" .....	12
[REDACTED] OFF. "J" .....	14
[REDACTED] OFFICER "I" .....	17
[REDACTED] OFF. "L" .....	18
[REDACTED] OFF. "C" .....	19
[REDACTED] OFFICER "N" .....	19
[REDACTED] OFF. "K" .....	20
[REDACTED] OFFICER "O" .....	22
[REDACTED] OFF. "G" .....	22
[REDACTED] OFFICER "M" .....	27
[REDACTED] OFF. "G" (2 <sup>nd</sup> interview).....	29
[REDACTED] OFF. "E" .....	30
[REDACTED] OFFICER "D" .....	32
Findings.....	34
Conclusion.....	38

**ATTACHMENTS**

**Person 2** Release Documents Lynn DC.....1

**E** Arrest Report .....2

**A** Incident Report.....3

1.11 Arrest.pdf.....4

**B** Supp. Report .....5

**F** Supp. Report.....6

**G** Supp. Report .....7

4.13 Disciplinary Procedures .....8

Dual Arrests Dom Aggressor.....9

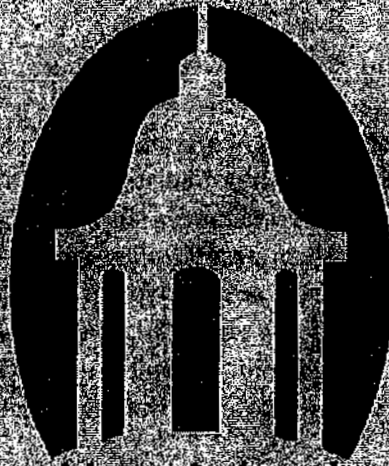
Interviewing Victims and Witnesses Policy .....10

Preliminary Investigations Policy.....11

Courtesy.....12



# **REPORT**



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**INTRODUCTION**

Municipal Resources Incorporated (MRI), of Portsmouth, New Hampshire was engaged by the Town of Swampscott, Massachusetts Town Administrator and Police Chief, to conduct an independent review of the facts and circumstances surrounding the December 12, 2020 arrest of Person B, as well as the Swampscott Police Department's subsequent investigation into the incident, and provide a written report to Attorney Darren Klein of KP Law. MRI Senior Consultants David Kurz and Andrew Lavoie were assigned to conduct the review with peer review provided by MRI President and Senior Consultant Alan Gould and Director of Services, Sean Kelly. This report represents the outcome of the investigation.

**OVERVIEW**

On December 12, 2020 (hereafter also referred to as 12/12/20), multiple officers from the Swampscott, Massachusetts Police Department were assigned to crowd control duties at a political rally/protest taking place on Humphrey Street near Monument Square in Swampscott, Massachusetts. Similar rallies had been occurring on a weekly basis in the Town of Swampscott for the past several months. The rallies/protests had initially taken place on Thursdays but had recently been rescheduled to Saturdays from approximately 10:00 am until 2:00 pm. On 12/12/20, three specific groups of protesters were identified by police. One group appeared to support President Trump; another appeared to represent the Black Lives Matter (BLM) movement. Both groups were routine participants in the rallies/protests. Witnesses reported that for the most part, both groups staged across the street from one another.

On 12/12/20, a third group arrived at the rally/protest. Most of the individuals within this group displayed stickers/buttons that read "Out Now". The Out Now group appeared to be sympathetic to the Black Lives Matter group and opposed to the group supporting Trump. All the groups included participants that were using bullhorns as well as other noise amplification devices. The Out Now group brought their protest up close to the Trump group; the two factions were literally face to face. Described in more detail below, witnesses said that the Out Now group openly admitted they were in Swampscott that day to confront the Trump supporters. Swampscott Police claimed they had no legal means to keep these two groups separated at a safe distance from one another. According to witnesses, an elderly [REDACTED] later identified as [REDACTED] #1 age 80, (Trump supporter) allegedly threw water from a water bottle onto a [REDACTED] subject, later identified as [REDACTED] #2 (Out Now supporter). According to witnesses, [REDACTED] then allegedly punched [REDACTED] #1 with a closed fist. [REDACTED] #2 punch was allegedly witnessed by Swampscott Police Officers [REDACTED] A [REDACTED] (via video livestream) and [REDACTED] E [REDACTED] (in-person). [REDACTED] #2 was arrested at the scene and charged with felony assault and battery of an elderly or disabled person. [REDACTED] #1 was not charged. [REDACTED] #2 was released on five hundred dollars cash bail. [REDACTED] first Court appearance was scheduled for 12/14/20 in Lynn District Court. On 12/14/20 The Commonwealth of Massachusetts (prosecution) requested that [REDACTED] #2 be held without bail. The Judge denied the Commonwealth's motion and ordered [REDACTED] #2 released on personal recognizance, with the only restriction that [REDACTED] have no contact with victim [REDACTED] #1 ([REDACTED] #2 release documents Lynn DC-Attachment 1)

A few days after [REDACTED] #2 arrest, [REDACTED] attorney, [REDACTED] contacted the Swampscott Police Department with alleged exculpatory evidence, including several video snippets showing different angles as well as slow motion, which allegedly dispute the police witnesses' claims to have seen [REDACTED] #2 punch, or even make physical contact with [REDACTED] #1. Attorney [REDACTED] also made claims that witnesses, including [REDACTED] #1 were untruthful and had violated [REDACTED] #2 civil rights. Swampscott Police [REDACTED] C [REDACTED] took Attorney [REDACTED] complaints and forwarded them to [REDACTED] D

### DOCUMENT ANALYSIS

Swampscott Town Administrator Sean Fitzgerald and Police [REDACTED] D [REDACTED] provided MRI with electronic copies of documents and video recordings for reference/review in this investigation. Though comprehensive, the following list is not inclusive of all documents reviewed by MRI.

- Policies/Procedures of the Swampscott Police Department
- Press Release [REDACTED] #2
- [REDACTED] A Incident Report
- [REDACTED] E Arrest Report
- [REDACTED] F Supplemental Report



- [REDACTED] B Supplemental Report
- [REDACTED] G Supplemental Report
- Link to video from Attorney [REDACTED]
- NON-ZOOMED IN ONE video
- Video.mov
- Video (1) A.mov
- Video 1.mov
- Video 2.mov
- Video 3.mov
- Video 4.mov
- Video 5.mov
- Link to entire [REDACTED] Facebook video
- ZOOMED IN ONE.mov
- Statement: [REDACTED]
- Statement: [REDACTED]
- Dual Arrest/Dominant Aggressor guidelines

## INCIDENT REVIEW

### Police Eyewitnesses

Relevant statement from report of [REDACTED] E (73) [REDACTED] E Arrest Report-Attachment 2)  
- On scene of the protesting groups:

- "I did witness a [REDACTED] party later identified as, [REDACTED] #2 [REDACTED] wind [REDACTED] arm up and strike a bystander with a closed fist punch."

Relevant statement from report of [REDACTED] [REDACTED] A (57) [REDACTED] A Incident Report-Attachment 3) - On desk duty but watching the event via Livestream on Facebook.

- "At one point, [REDACTED] #1 appeared to bend down away from the view of the video and was holding a bottle of Poland Spring water. The video shows water propel from where [REDACTED] #1 was standing and land on the sweatshirt of [REDACTED] #2. After a brief moment, [REDACTED] #2 responded by punching [REDACTED] #1 with [REDACTED] right fist, causing [REDACTED] to fall back out of the video."



## Videos Provided for Review

### Video #1

This video of the incident shows █ #2 dancing on the street side of a barricade fence to music that is playing loudly. It appears that █ may be dancing with several females who are seen on the interior of the barricade fencing. While the dancing is continuing, █ #1 is seen walking away from the dancing towards the person filming. █ is observed bending down to the ground as if to retrieve something and then turns to return to the barricade where █ was previously standing. At this point the video has been purposely slowed highlighting █ #1 throwing a liquid on █ #2

### Video #2

Begins with █ #1 stating, █ At this moment in the video, it is not clear who this statement is being conveyed to but shortly after, a █ police █ appears in the video and admonishes the person filming indicating that the filming is occurring while the █ is attempting to obtain an interview. The █ █ walks away but returns to the person filming who is asking, "Are you saying I can't film this?" Before a response is provided by the officer, the film ends.

### Video #3

This video depicts the interaction of several Swampscott police officers who are in the process of arresting █ #2. Although a number of persons around the officers and █ #2 are verbally challenging the officers with what they perceive as inappropriate action. The officers advise █ #2 why █ is being investigated and subsequently arrested while calmly and professionally speaking to the increasingly agitated bystanders.

### Video #4

This video appears to be in the aftermath of the incident. A police officer in a reflective jacket is near █ #2 who appears slightly agitated and yelling something indiscernible. There appears to be no evidentiary information on this film.

### Video #5

- At 18 seconds into the video, a liquid splashed on █ #2 face.
- At 20 seconds, █ #2 looks to █ right and then turns back and steps into the fence line raising █ right arm parallel to █ shoulder and thrusts towards the fence line. At this point in the video, a woman holding an American flag visually blocks the angle of the view and prevents a conclusion as to whether █ #2 makes contact with anything, let alone █ #1

- At 21 seconds, persons at the fence line who previously were not looking in any specific direction, diverted their attention to the location where #2 had thrust arm.
- At 22 seconds, #2 moves off camera to right with the bystanders now pointing in the direction #2 had moved and others are talking to #1
- At 52 seconds bends down to pick up a small flag from the ground.

### Video- Mov (92)

It is unknown if this video was filmed prior to or in the aftermath of the incident with #2. It depicts #1 waving a small flag in the face of a man as #2 walks by on the exterior of the barricade fencing. The man does not react to #1 other than a slight tilt of head to distance the flag from face.

### Video found at:

<https://drive.google.com/file/d/1DoGOTeA8NtGNf2xTF8sAc-esFnxAkYPg/view?pli=1>

This video displays a much more visually advantageous angle of the incident. Additionally, the video is in slow speed.

- At 38 seconds of the video, #2 feet come into view where liquid can be seen falling at feet.
- At 45 seconds of the video, liquid is prevalent at the feet of #2 and looks to right.
- At 47 seconds, #2 right arm is being brought upward above shoulder. hand is clearly open and is brought down rapidly in a slapping motion. It is unclear if made contact with #1 but hand can still be observed open handed as forearm hits the inside of the metal fence.
- At 52 seconds, hand still open, hand is now back across the fence and #2 begins to walk away from the event. The video also portrays water droplets dripping from a bullhorn that #2 is carrying.

### Policy Review: Arrest 1.11 (1.11 Arrest.pdf-Attachment 4)

Swampscott Police are a Massachusetts Police Accreditation Commission (MPAC) agency having been certified in 2016 and accredited in 2018. The MPAC process engages best practice policies



in the Commonwealth while requiring an assessment of the agency every three-years to ensure that the department adheres to applicable policies they have in place.

In reviewing the "Arrest" policy and procedures identified as 1.11 in the Swampscott Police Policy Manual, MRI determined that the policy is consistent with the standards of MPAC. Included are sections from policy that provide guidance to employees when confronted with situations similar to this event on December 12, 2020.

Section II - B states *"That officers exercise discretion and make warrantless arrests as appropriate in the performance of their duties."*

From a comprehensive review of reports submitted referencing the incident, one officer's personal viewpoint as [REDACTED] stood in close proximity to the event, stated that it was [REDACTED] conclusion that [REDACTED] observed a [REDACTED] identified later as [REDACTED] #2 strike a bystander with a closed fist punch. Another [REDACTED] who was on desk duty in the Swampscott Police Facility was watching the protests on Livestream and stated in [REDACTED] report that [REDACTED] observed #2 punching [REDACTED] #1 with [REDACTED] right fist. Both officers sufficiently established probable cause to effect an arrest via this policy where probable cause is defined as *"if, at the time of arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made."*

From the officer's vantage points, on scene and watching remotely via a live stream electronic source, both concluded independently that they had observed [REDACTED] #2 strike [REDACTED] #1. Within the seconds that it took for [REDACTED] #2 to move towards [REDACTED] #1 the officers formed a reasonable and prudent decision that an assault and battery had occurred by [REDACTED] #2 towards [REDACTED] #1. This conclusion justified an arrest by the Swampscott Police especially given the totality nature of environment consisting of disgruntled and opposing crowds.

The police, however, do not have the same luxury that football fans have grown accustomed to while watching a National Football League game on TV. After a questionable action by those playing the game or a call by officials, the game can be stopped, and the action viewed in slow motion from multiple angles while "the play is under review". In the case of police review of the 12/12/20 action in Swampscott, the ability to review video imagery in the calm of the aftermath with multiple angles and at slow and stop speeds has allowed a clearer picture of the incident to emerge. After reviewing the videos, it is evident to MRI that [REDACTED] #2 did not make a fist as [REDACTED] moved forward; and while it is not clear from any video whether [REDACTED] open hand touched [REDACTED] #1 [REDACTED] subsequent actions were indicative of an intuitive response to the stimulus of something (apparently) being thrown on [REDACTED]

## Actions of [REDACTED] #1

From the videos reviewed and [REDACTED] #1 apparent spontaneous utterance to a [REDACTED] police [REDACTED] acknowledging that #1 did throw water on [REDACTED] #2 combined with recorded images of [REDACTED] #1 movements that appear to reveal [REDACTED] retrieving what could be a water bottle, there is probable cause to believe that [REDACTED] #1 committed the offense of Assault and Battery.

What is evident from the review of videos is that [REDACTED] #1 is observing [REDACTED] #2 dancing in front of [REDACTED] as [REDACTED] stood on the inside of the barricade fencing. [REDACTED] made definitive movements away from the fence and bent down in a way that suggests [REDACTED] was retrieving something off the ground. [REDACTED] #1 is observed turning and returning to where [REDACTED] was previously standing; at this point, there is the appearance of liquid being sprayed onto [REDACTED] #2 upper torso area. As noted above [REDACTED] #2 appeared to react to being sprayed.

While not criminally relevant to this specific offense, a video taken of [REDACTED] #1 conduct earlier in the event may offer some insight to [REDACTED] #1 confrontational attitude to those not on [REDACTED] side of the barricade fencing. The video imagery depicts [REDACTED] #1 waving a flag into the face of a person simply walking by the barricade fencing. That [REDACTED] simply bent [REDACTED] head out of [REDACTED] #1 reach and continued walking away from the situation.

MRI reviewed the video link: <https://youtu.be/0eGEsTOZ-UM>. This is [REDACTED] #3 entire two-hour, thirty-four minute and two-second-long Facebook video recording of the 12/12/20 rally protest. This video is a real time view of the incident between [REDACTED] #2 and [REDACTED] #1. This video is referenced above. Upon review, the video depicts an extremely loud and chaotic scene for virtually the entire length of the video recording. The "[REDACTED] #3 Group/Trump Supporters" and the "Out Now" group were at times, face to face, screaming at one another. The Trump supporters appeared to have been situated within a "corral type" set up consisting of metal bicycle racks as outer boundaries. The Out Now group appeared to continually circle around the Trump supporters yelling slogans, using bullhorns, and initiating sirens. The Trump supporters were responding in similar fashion. At times, protesters from both sides squared up face to face, hurling profanities at one another. When this occurred, MRI observed on the video that Swampscott Police Officers physically attempted to put themselves between the opposing sides in what appeared to be an [REDACTED] to de-escalate the situation. At times, the music is blaring so loudly that it is difficult to hear non-amplified conversation.

The host of the Facebook live feed, [REDACTED] #3 can be heard multiple times disparaging the Swampscott Police Department's lack of response to perceived incidents at prior protests. [REDACTED] #3 specifically calls out [REDACTED] D for "taking a knee" in a previous Black Lives Matter protest. [REDACTED] also specifically calls out Swampscott Police [REDACTED] G on multiple occasions, claiming [REDACTED] is a member of the Black Lives Matter movement. [REDACTED] #3 claims to support the police in general, but not the previously mentioned officers. At one point, [REDACTED] #3 can be seen attempting

to move the barriers around and re-arrange them as [REDACTED] saw fit, rather than where the police had placed them.

Members of the Out Now group appear, on multiple occasions, to disregard police requests to step back and continued to engage in face-to-face confrontation with the Trump group who appeared to respond willingly. It was apparent that both sides of this protest were fully engaged in their own agenda, rather than following police requests in a timely manner, if at all. MRI observed that the police had a tenuous hold on the crowd control aspect of this protest.

### SUMMARY OF INTERVIEWS

The following are summaries of interviews conducted of all police witnesses identified as having specific information related to the allegations and investigation regarding the events of 12/12/20. In each instance, the interview was audio recorded with the full knowledge of those being interviewed and their representative, if applicable. All interviews were conducted within the classroom of the Swampscott Police Department.

**A [REDACTED] Swampscott Police Department**

**AA [REDACTED]** was interviewed on 2/2/21. [REDACTED] was accompanied by [REDACTED] union Attorney, [REDACTED] and union representative **H [REDACTED]**

**A [REDACTED]** said that [REDACTED] has been with the Swampscott Police Department [REDACTED] and is currently assigned to Uniformed Patrol. [REDACTED] listed [REDACTED] badge number as [REDACTED]. [REDACTED] was questioned regarding the events and circumstances surrounding the 12/12/20 arrest of [REDACTED]

**#2**

**AA [REDACTED]** confirmed that [REDACTED] was working on 12/12/20 and was assigned to the "front desk" position within the Swampscott Police Department. [REDACTED] said that a contingent of Swampscott Officers were assigned to what had become a weekly protest in Swampscott. A participant in the protests, **#3 [REDACTED]** records the protests and live streams them in real time on [REDACTED] Facebook channel. **A [REDACTED]** was monitoring the live feed on [REDACTED] computer from the control room of the PD. When asked what drew [REDACTED] attention to [REDACTED] **#2 [REDACTED]** stated, "I observed the defendant, now identified as **#2 [REDACTED]** reach [REDACTED] right arm back and throw a punch and ultimately hit a [REDACTED] who wound up being identified as the victim; a [REDACTED] eighty years of age". **A [REDACTED]** said that [REDACTED] informed [REDACTED] **I [REDACTED]** the Officer in Charge (OIC). **A [REDACTED]** stated that [REDACTED] rewound the live feed and was able to watch the incident again in "real time". [REDACTED] **I [REDACTED]** directed **A [REDACTED]** to go down to the scene and locate/inform [REDACTED] **J [REDACTED]** **A [REDACTED]** said that [REDACTED] drove to the scene and actually encountered **G [REDACTED]** first, so [REDACTED] told **G [REDACTED]** what [REDACTED] had witnessed.

█ A was asked if █ knew the victim, later identified as █ A or the defendant, █ #2 █ denied knowing either of them. █ A was provided with a copy of █ report for reference and review. █ A confirmed that █ had re-watched the video of the incident prior to writing █ report. █ was questioned regarding █ claim that █ saw water propel from the area where █ A was standing and land on the sweatshirt of █ #2 █ A said that the first time █ watched the video, █ did not see any water "propel". █ said that █ saw █ #2 right arm "cock back and punch forward". █ didn't know anything about water being splashed on █ #2 until █ spoke with █ #1 at the scene. █ told █ that █ didn't mean to splash water on █ ( #2 but █ has tremors. █ A said that after █ went to the scene and informed █ G █ what █ witnessed, █ observed █ #2 standing with █ E █ G █ subsequently directed █ E to arrest █ #2 for Assault and Battery of a person over the age of sixty. █ A said that █ didn't transport █ #2 to the station but took part in the booking process. During the booking process, █ A said that █ #2 █ (note: the SPD Booking Room is video, not audio recorded, and the video was overwritten by the date of this investigation). After booking, █ A re-watched the live-feed and observed the water propel from where █ #1 was standing and land on █ #2 sweatshirt. █ A said that █ view of █ #1 was partially obstructed by people and flags. When asked if it looked like █ #1 threw the water at █ #2 █ A stated "it looked like it could have been thrown, or saying █ had something called essential tremor disorder". "But water did propel on █

When asked if █ saw █ #2 actually throw a punch with a fist, █ A said that while watching the video in real time █ saw what looked like a punch and a fist going forward at █ #1 █ didn't have access to any type of slow-motion review. █ A said that the █ video in real-time is the only video that █ has seen. When asked about an alleged interaction █ may have had with witness █ #4 █ who claims █ A █ told █ #4 that █ #2 punched an █ over sixty, and said to █ #4 "how would you like to be punched", █ A didn't recall saying that to anyone. █ A said that while at the scene and attempting to obtain █ #2 name, a woman in the crowd told █ #2 █ didn't have to give █ name. █ A said that █ informed the woman that █ #2 was being investigated for Assault and Battery of a person age sixty or over. █ doesn't recall saying anything about █ being punched and didn't make any threat towards █ #4

█ A █ was asked if on the video, █ saw █ #2 make contact with █ #1 █ stated "no". █ A said that █ K █ transported █ #2 to the station. █ A assisted █ K with booking █ #2 █ A confirmed that during the booking process, █ #2 was advised of █ Miranda Rights via Departmental form. █ A said that no post arrest interview was conducted or attempted with █ #2. When asked if █ didn't attempt to interview █ #2 due to █ #2 invoking █ Miranda Rights or because █ just didn't attempt to, █ A stated "just didn't attempt to". █ A said that after the booking process, █ had no further contact with █ #2

█ A was asked about █ phone interview with possible witnesses, █ #6 and █ #7. A confirmed that █ spoke to both, together, on a conference call. When asked if █ attempted to speak with them separately, since they were both potential witnesses, A said that █ didn't make any attempt to speak with them separately. A confirmed that █ wrote in █ report that █ #6 didn't see the assault. █ also confirmed that █ didn't document anything that █ #7 said to █. When asked why █ didn't document █ #7 statement, A stated, "█ was just there to say that █ was hit, but I didn't document that part because they had also said that █ #3 had seen it and another woman, █ #8 had seen it". "So, with that information, they arranged for █ #3 to give me a call at the station". A confirmed that █ spoke with █ #3 on the phone, █ told █ █ had witnessed water splash onto █ #2 and then observed █ #2 punch █ #1. A confirmed █ did not ask █ #3 if █ saw █ #1 throw the water at █ #2. █ also confirmed that █ did not ask █ #3 where █ saw █ #2 punch land. A said that █ just said █ #2 punched █ #1 and █ didn't ask any further questions.

█ A confirmed that █ contacted █ #8 via phone call. █ said that █ #8 told █ █ observed █ #1 pointing a water bottle at █ #2 and water splashed on █ #2. █ then saw █ #2 punch █ #1. A confirmed that █ didn't ask █ #8 if █ felt that █ #1 threw the water at █ #2 nor did █ recall asking █ #8 where █ observed the punch land. █ just wrote down what █ told █.

█ A was asked why █ report only included a few lines documenting witness statements when the charge was a felony level offense. █ said that █ was simply an initial report and the case would be furthered by detectives.

█ A was asked if █ has watched any video of the incident other than the initial, real-time video █ initially watched. █ said that █ has not watched any other version of the video. When asked why █ hadn't been curious to look at other versions of the video, █ said that protesters have been in front of the station chanting █ name and calling █ a racist, so █ just wants to focus on █ job. A was asked if █ had heard from anyone that a slowed down version appears to show that █ #2 didn't throw a punch with a clenched fist. █ said that █ had heard that. When asked if that information changed █ opinion of what █ saw, █ stated, "no". When asked why, █ said because █ watched the incident unfold in real time. As a police █ falls under the "reasonableness standard" and █ asked █ if a reasonable person had watched that in real-time, █ thinks that they would feel that a punch was thrown, and so did █. A said that █ also felt that █ observations satisfied the threshold of "probable cause". A was pressed on how █ could have seen █ #2 actions as a punch when the slowed down version shows it was not. A said that, in real time, what █ saw was a punch. █ said that █ didn't see a slap or anything else. █ saw a punch in real time.

A confirmed that [redacted] didn't see #2 make contact with #1 [redacted] did see #1 reaction of "propelling away" and then holding onto other peoples' shoulders to remain upright. [redacted] then saw people yelling for the police. A confirmed that [redacted] was aware from speaking with [redacted] I that charging #1 for throwing water on #2 was discussed but that was above [redacted] paygrade. [redacted] A was asked if there were options available to the police other than immediately arresting #2 at the scene. [redacted] confirmed that there were, including summoning [redacted] [redacted] said that [redacted] G was the person who decided on the immediate arrest, and [redacted] concurs with that decision due to the "powder keg" like conditions the officers faced that day.

[redacted] A said that [redacted] had no input into the bail conditions requested for #2 A was asked if #2 race, age, or apparent political affiliation influenced [redacted] decision making on 12/12/20. [redacted] answered no to all. [redacted] was asked if race, age, or apparent political affiliation influenced the PD not charging #1 with a crime. [redacted] said [redacted] was not influenced in anyway by that, and [redacted] didn't have an opinion on what other officers may have felt. A was asked if any supervisor questioned [redacted] as to why [redacted] observed a clenched fist punch being thrown when it doesn't appear that's what happened. A stated "no".

#### B [redacted] Swampscott Police Department

[redacted] B [redacted] was interviewed on 2/2/21. [redacted] was accompanied by [redacted] union Attorney, [redacted] and [redacted] union representative, H [redacted] [redacted] B said that [redacted] has been a member of the Swampscott Police Department since [redacted]. [redacted] is currently assigned as a [redacted] B said that on 12/12/20 [redacted] was working an overtime detail at the rally/protest. [redacted] was wearing plain clothes but wore a jacket that clearly identified [redacted] as Police. [redacted] was assigned to a roving patrol to monitor the crowd. B described this particular rally/protest as being very loud, with both sides yelling at one another. B said that [redacted] was aware that #2 was arrested that day, but [redacted] was not involved with, nor did [redacted] witness, [redacted] arrest.

B said that during the rally/protest, [redacted] was approached by a woman identifying herself as #4 [redacted] said that [redacted] wanted to make a statement regarding what had "happened". B said that #4 had told [redacted] [redacted] was standing on the monument side of the metal barriers that had been set up. [redacted] observed that a [redacted] (later identified as #2) was dancing in front of a group of protesters. [redacted] wasn't doing anything other than dancing. [redacted] observed an older [redacted] (later identified as #1) in a brown jacket, throw water onto #4 [redacted] told [redacted] that [redacted] observed #2 arms come up in a defensive manner. #4 felt #2 was reacting to the water being thrown at [redacted] #4 didn't see #2 strike #1 B said that [redacted] didn't ask #4 any specific follow-up questions regarding the incident. B also said that [redacted] didn't have a notebook with [redacted] so [redacted] attempted to write some notes in [redacted] phone.



B said that when [redacted] was approached by #4 [redacted] didn't have any information about what had occurred between #2 and #1 [redacted] B had noticed a commotion down by the water side, with a large crowd gathering and several police officers present, but [redacted] had no details. [redacted] surmised that something had occurred and that is why [redacted] spoke with #4 [redacted] even though [redacted] really wasn't sure what had occurred. B confirmed that [redacted] had a radio with [redacted] but protesters were so loud, [redacted] couldn't hear a thing.

B said that on 12/12/20 [redacted] did not inform any other police [redacted] or supervisor what #4 had told [redacted] [redacted] became aware of #2 arrest, sometime later in the day on 12/12/20. B assumed this was the incident that #4 had been describing to [redacted] [redacted] still didn't inform anyone of what #4 had told [redacted] B said that 12/12/20 was a Saturday. [redacted] didn't write [redacted] report documenting #4 observations until [redacted] returned to work sometime during the week. B said that on 12/16/20, [redacted] re-contacted #4 [redacted] via telephone to verify [redacted] statement. (B Supp. Report-Attachment 5) B said that this case was "sensitive", so [redacted] wanted to make sure [redacted] wasn't "shorting" any of the facts that #4 had given [redacted] on 12/12/20. When asked, B said that [redacted] wasn't directed to re-contact #4 [redacted] did so on [redacted] own because initial contact with #4 was rushed due to the chaos of the rally/protest. [redacted] said that [redacted] had called #4 rather than meeting with [redacted] in-person due to COVID-19.

When asked if [redacted] had reached out to any other potential witnesses, B said that [redacted] contacted witness #8 [redacted] via telephone and attempted to schedule an interview. B said that #8 had initially agreed but subsequently sent [redacted] an email refusing to provide a statement without an attorney. B told #8 that would be fine, just let [redacted] know. As of this date, B has not heard back from #8 [redacted] completed a supplemental report documenting this contact as being initiated on 1/25/21; six weeks after the incident.

B was asked if [redacted] actions/inactions during this investigation were in anyway influenced by the apparent political affiliation, race or age of the subjects involved. B stated "no" to all. B also confirmed that [redacted] had no input into the bail conditions that were set on [redacted] #2

#### [redacted] F Swampscott Police Department

[redacted] F [redacted] was interviewed on 2/2/21. [redacted] was accompanied by [redacted] union Attorney, [redacted] and [redacted] union representative, [redacted] [redacted] H [redacted] F [redacted] said that [redacted] has been with the Swampscott Police Department for the past [redacted] years. [redacted] current assignment is [redacted] [redacted] F [redacted] was questioned regarding the events and circumstances surrounding the 12/12/20 arrest of [redacted] #2

F said that on 12/12/20 [redacted] was working an overtime detail at the Trump Freedom Rally. [redacted] was in plain clothes but was wearing a jacket that had clear markings that identified [redacted] as Police. F said that these rallies have been ongoing for many weeks. [redacted] described the

rally in question as very chaotic. [REDACTED] was assigned to a roving type of detail, in which [REDACTED] walked the entire area that encompassed the rally. [REDACTED] said that that rally was fairly calm until a group of "counter protesters" arrived. They were very loud. They were blowing whistles, air horns and sirens. At one point [REDACTED] F said [REDACTED] couldn't hear due to the noise.

[REDACTED] F said that [REDACTED] was aware that [REDACTED] #2 had been arrested for assault, but [REDACTED] didn't witness the incident itself. [REDACTED] had first seen [REDACTED] #2 when [REDACTED] was already in handcuffs. [REDACTED] said that [REDACTED] went to the area where other officers had [REDACTED] in custody because there was a group of [REDACTED] friends who were upset and walking around the officers. [REDACTED] walked alongside the officers until [REDACTED] #2 was secured in a cruiser for transport. When asked if [REDACTED] overheard [REDACTED] #2 tell officers that [REDACTED] was innocent, [REDACTED] said that the only thing that [REDACTED] heard specifically was just prior to [REDACTED] #2 being placed into a cruiser. [REDACTED] #2 turned, looked at [REDACTED] name on [REDACTED] jacket and said something to the effect of, ' [REDACTED] F [REDACTED]. [REDACTED] said that [REDACTED] responded to [REDACTED] that [REDACTED] wasn't there. [REDACTED] F was asked if [REDACTED] knew [REDACTED] B [REDACTED] said [REDACTED] had never met [REDACTED] When asked if [REDACTED] heard any witnesses speaking for [REDACTED] B [REDACTED] said that [REDACTED] didn't, as things were loud, with megaphones, sirens and yelling from the crowd.

[REDACTED] F identified the two main sides of the rally as rally/protesters and counter protesters. [REDACTED] said that the rally was much more chaotic than in the past as the protesters were very close to one another and yelling. [REDACTED] classified this rally/protest as "the worst of the worst". "It felt unsafe for [REDACTED] as a police [REDACTED] [REDACTED] F said that officers on scene tried to keep the two sides apart by physically placing themselves between opposing protesters. The police tried to keep people moving but these efforts were ignored. [REDACTED] F said that [REDACTED] wasn't aware of any law, ordinance, or permit that the police could have used to limit participant access or movements.

[REDACTED] F was provided with a copy of [REDACTED] report for review/reference. ([REDACTED] F Supp. Report- Attachment 6) [REDACTED] F was asked if [REDACTED] was assigned to locate and identify witnesses. [REDACTED] said "no". [REDACTED] said that subsequent to [REDACTED] B arrest, [REDACTED] was walking around the rally/protest, dealing with a group of people aligned with [REDACTED] #3 who were attempting to move around the metal barricades. Several people said to [REDACTED] that [REDACTED] #1 had been punched. Someone handed [REDACTED] a water bottle that had the top pushed down. [REDACTED] then went around the barricade and met with [REDACTED] #1. When asked, [REDACTED] said that [REDACTED] doesn't know [REDACTED] #1 other than seeing [REDACTED] at past rally/protests. [REDACTED] spoke to [REDACTED] #1 away from others. [REDACTED] said that [REDACTED] #1 wanted [REDACTED] to know that [REDACTED] shakes. [REDACTED] F said that from looking at [REDACTED] [REDACTED] always wondered if [REDACTED] #1 [REDACTED] F said that [REDACTED] #1 told [REDACTED] that [REDACTED] #2 was gyrating in front of [REDACTED] [REDACTED] got mad and said [REDACTED] did get water on [REDACTED] #2 [REDACTED] didn't want to lie. [REDACTED] F stated, "that's when I stopped talking to [REDACTED] [REDACTED] F was asked if [REDACTED] followed up [REDACTED] #1 admission of being mad and if [REDACTED] directly asked [REDACTED] #1 if [REDACTED] threw the water on [REDACTED] #2 [REDACTED] F said [REDACTED] didn't ask any of those follow-up questions.

When asked why [redacted] didn't, [redacted] F stated, "I just listened to what [redacted] said and documented it". [redacted] F also said that [redacted] didn't ask follow-up questions because they were interrupted, so [redacted] didn't finish. [redacted] F said that [redacted] didn't take any formal written or recorded statement from [redacted] #1 nor did [redacted] follow-up with [redacted] #1 at a later date. When asked, [redacted] F said that [redacted] had been interrupted while interviewing [redacted] #1 by a woman who was recording their conversation with a cellphone. This woman started commenting to [redacted] #1 while [redacted] F was attempting to speak with [redacted] #1. [redacted] F confirmed that [redacted] questioned this woman, identified as [redacted], as to why [redacted] was recording [redacted] F speaking with a victim. [redacted] F said that [redacted] was simply frustrated at the intrusion, didn't feel that it was appropriate, but was not ordering the woman to stop recording. [redacted] F said that [redacted] walked away from the woman recording.

[redacted] F didn't interview any other witnesses at the scene, or after the fact. [redacted] F was asked if the apparent political affiliation of either opposing group influenced any of [redacted] actions/inactions on 12/12/20. [redacted] stated, "never". [redacted] F denied having any contact with [redacted] #2 other than [redacted] utterance to [redacted]. [redacted] was asked if [redacted] actions/inactions while speaking with [redacted] #1 were influenced by [redacted] #1 race, apparent political affiliation, or age. [redacted] stated, "no". [redacted] F was asked if [redacted] had any input into [redacted] #2 bail condition. [redacted] stated, "none".

#### [redacted] J [redacted] Swampscott Police Department

[redacted] J was interviewed on 2/2/21. [redacted] was accompanied by [redacted] union Attorney, [redacted] and union representative, [redacted] H J said that [redacted] has been a member of the Swampscott Police Department since [redacted]. [redacted] is currently assigned to the [redacted] as the officer in charge. [redacted] J was asked to describe [redacted] knowledge of the events and circumstances surrounding the 12/12/20 arrest of [redacted] #2

[redacted] J confirmed that [redacted] was working a plain clothes detail at the rally/protest on that date. [redacted] J said that this rally/protest has been on-going for many weeks. [redacted] said that the 12/12/20 rally/protest was more "raucous" than other ones they have had. [redacted] said that the atmosphere was very loud with bullhorns, non-stop noise, repetitive chants between the "Trump situation" and the "Black Lives Matter" situation. That things were volatile this particular week because, unlike past weeks, the two groups weren't keeping any distance apart from one another. [redacted] said that a group of new people came, mixed in with the "BLM group". Trump supporters were on the water side of the street and a regular, smaller group of Black Lives Matter supporters were on the other side of the street. This new group of people came over to the Trump side.

[redacted] J confirmed that the Trump supporters were "corralled" into a space, surrounded by metal barriers to keep the opposing group from interspersing with them. Members of the opposition group continued to circle around the Trump supporters with bullhorns and loud chanting. The Trump supporters were also doing the same back towards this group. [redacted] J said that [redacted]

assignment was free roaming, and [redacted] moved about checking on officers at their positions. [redacted] said that both sides of the rally/protest, at times, were within inches of one another. [redacted] was asked if [redacted] was aware of any Town ordinance or State law that would give the Swampscott Police the legal ability to keep dueling protestors a safe distance apart. [redacted] was not aware of any.

[redacted] J said that when dueling protestors got verbally aggressive towards one another, [redacted] and other officers would attempt to step between them and de-escalate the situation. [redacted] said that despite the police efforts, there were a lot of "close contact, in your face situations". [redacted] J said that certain individuals on both sides appeared to be seeking out confrontation. [redacted] J said that there was so much noise that it was difficult for officers to communicate. [redacted] said that [redacted] couldn't hear [redacted] radio and officers had to lean in close to one another to communicate. [redacted] J said that the scene was so chaotic that [redacted] often couldn't see beyond ten feet or so due to the mass of people packed in near one another. Flags and banners were present and "walls of people".

[redacted] J was asked if [redacted] witnessed [redacted] #2 assault anyone. [redacted] said that [redacted] did not. [redacted] was first made aware of the potential assault when [redacted] observed [redacted] E speaking with a [redacted] (later identified as [redacted] #2 on the boardwalk by the water. [redacted] went to speak with [redacted] E and ask what was going on. [redacted] J said that [redacted] E was soon being surrounded by Black Lives Matter protestors as [redacted] was standing with [redacted] #2. [redacted] J said as [redacted] was walking over to contact [redacted] E [redacted] A joined [redacted] E. [redacted] J said that as [redacted] joined them, [redacted] heard [redacted] A tell [redacted] E that [redacted] saw [redacted] #2 punch an individual. [redacted] told them both to hang on and [redacted] would try and find [redacted] G to run everything through [redacted].

[redacted] J said that [redacted] located [redacted] G and briefed [redacted] G. [redacted] G appeared to already have heard about the assault and was making [redacted] way towards Officers [redacted] A and [redacted] E. [redacted] J said that multiple people were surrounding Officers [redacted] A and [redacted] E. When asked if heard any conversation between [redacted] #2 and [redacted] A and [redacted] E, [redacted] J stated, "not that I recall". [redacted] J also said that [redacted] didn't hear anyone telling [redacted] or the officers that someone threw water on [redacted] #2. [redacted] J said that after [redacted] initial interaction with [redacted] A and [redacted] E, [redacted] never got closer than forty or fifty yards to them prior to [redacted] #2 being arrested. [redacted] said that this was due to crowd control issues. [redacted] J said that [redacted] did not make the decision to arrest [redacted] #2.

When asked if [redacted] assigned anyone to locate and identify witnesses, [redacted] J said that [redacted] talked with [redacted] F and [redacted] B sometime after the fact and told them to see if we could "get some statements from anybody". [redacted] said that [redacted] F spoke with victim [redacted] #1. [redacted] said that a few days after the arrest, [redacted] became aware that [redacted] B documented the fact that witness [redacted] #4 saw [redacted] #1 throw water on [redacted] #2 and said [redacted] #2 didn't punch [redacted] #1. [redacted] J said that [redacted] became aware of that from [redacted] B report. [redacted] J said that days after the arrest, [redacted] reviewed the video taken from [redacted] #3 livestream. [redacted] was asked that after reviewing the video, did [redacted] feel that [redacted] #2 punched



#1 said that [redacted] did believe so. When asked why, [redacted] said from [redacted] #2 body motions, and the way [redacted] reared back, it appeared [redacted] threw a punch. Also, it appeared that #1 was driven back in response to #2 motion. J confirmed that [redacted] was unable to see #2 make any contact with [redacted] #1 said that [redacted] was only able to view the video in real time.

J said that [redacted] subsequently reviewed a slowed down version of the video that was supplied by #2 attorney. J was asked if upon viewing this video, it appeared that #2 had a closed fist. [redacted] stated, "in the beginning, yes and [redacted] opened it up and still made contact, appeared to make contact with [redacted] When asked where [redacted] saw #2 make contact with #1 [redacted] stated "on the upper left part of #1. When pressed if [redacted] saw contact on the video J stated, "that's what it appears to look, like I said, to a reasonable person, my opinion I have formed from seeing it".

j was asked if after seeing the slow-motion version of the video and confirming that #2 didn't throw a punch, did [redacted] ever speak with Officers A and E and ask them how they saw a punch. [redacted] said [redacted] did not speak with them about their observations. J was asked if after watching the video, it appears to [redacted] that [redacted] #1 threw water on #2 [redacted] said that [redacted] saw water appear to come out towards #2 but [redacted] can't say if [redacted] did it intentionally. [redacted] was asked if [redacted] felt that [redacted] had probable cause to charge #1 with throwing water on [redacted] [redacted] said [redacted] did not, once again due to the fact that [redacted] can't prove [redacted] threw the water.

J was asked if [redacted] discussed with anyone, the possibility of charging [redacted] #1 with any offense. [redacted] said that [redacted] thinks [redacted] had a conversation with [redacted] G about a simple assault charge. They decided not to charge #1 due to it being a simple assault not in their presence. #2 could go to the Court on [redacted] own and file a private complaint against #1. J was asked if [redacted] #1 was in any way affiliated with the Swampscott Police Department. [redacted] said not to [redacted] knowledge.

J was asked based upon [redacted] observations of officers on scene, as well as [redacted] review of all reports, if [redacted] thought any officers involved showed any bias towards #2 due to [redacted] race, age, or apparent political affiliation. [redacted] stated "no" to all. [redacted] was asked if [redacted] believed that [redacted] #1 wasn't charged with any offense because [redacted] was an 80-year-old [redacted] or because they didn't feel they had a charge. [redacted] said [redacted] wasn't charged due to the PD not having what they felt was a solid charge. The charge they had considered was simple assault outside of a police officer's presence. J said that [redacted] had no input into [redacted] #2 bail conditions. [redacted] did not write any reports. [redacted] said that [redacted] G was in charge of running the investigation and [redacted] C was the lead investigator.

Swampscott Police Department

was interviewed on 2/2/21. was accompanied by union Attorney, and union representative, H I said that has been with the Swampscott Police Department for the past years. was promoted to the rank of

was asked to describe knowledge of the events and circumstances surrounding the 12/12/20 arrest of #2 I said that on 12/12/20 was working as the day shift OIC (Officer in charge). said that was in the dispatch room. was asked when first became aware of an incident involving #2 I said that A was working inside of the station as "desk man". A was monitoring the live feed from #3 broadcast of the event. I said that wasn't monitoring this as had other duties. I said that at one point in the shift A said out loud either, "Just hit or just punched A then said to that didn't know if the officers working the rally/protest saw what happened. A asked if could go down to the scene and inform officers there. I agreed.

I was asked if then started watching the live feed. said that didn't because there were nine or so officers at the scene as well as G plus was running the station at the time. I was asked if the officers working the detail needed the assistance of other on-duty officers to help control the crowd. said that doesn't recall that. became aware of an arrest being made as heard this on the radio. I said that monitored the booking process for the defendant, later identified as #2 One task assigned to the OIC is speaking with anyone that is arrested and check on their physical well-being. said that contacted #2 in the booking area and spoke with briefly. This conversation included asking #2 if was hurt or injured as well as asking If had any medical conditions. #2 said to both questions. I said that #2 said to I said that was the extent of interaction with #2

I confirmed that #2 was informed of Miranda Rights via written form. This is standard practice with all defendants. was unaware if #2 was interviewed by officers in booking. I said that after booking #2 believes that A re-watched the video of the incident. I said that didn't have any further discussion with A about the incident. A had initially told what observed and A then wrote report. I was asked if anyone from the Police Department had any conversation with regarding additional video review that may show inconsistencies in A's observation of the "punch". stated, "no". I was asked if had any input into setting #2 bail conditions. said that did not. I said that including the booking process, believes that #2 was released on bail in no more than one hour or so from arrest. said that #2 was gone before any of the officers finished working the rally/protest. I said that did not write a report.

Swampscott Police Department

L was interviewed on 2/2/21. was accompanied by union Attorney, and union representative, H said that has been with the Swampscott Police Department for the past years. Is currently assigned to. was asked to describe any information may have regarding the 12/12/20 arrest of #2 L said that was working the rally/protest on 12/12/20. believes was ordered to work the detail. said that was assigned to the sidewalk area facing the ocean side. said that the rally/protesters were being surrounded by counter protesters and was trying to keep things "civil". L described the two main groups as Trump supporters and Black Lives Matter supporters. said that a third group showed up and they were doing most of the counter protesting towards the Trump supporters. This third group appeared to be more aligned with the Black Lives Matter side.

L said that the groups were yelling at one another and a number of protesters were getting right up close to one another. L said that the groups normally stay across the street from one another. described the scene as very loud and chaotic. and other officers were trying to speak with the sides involved to keep the peace. This wasn't working. L said that was aware that a person, later identified as #2 had been arrested at the rally/protest. was asked what knew about the incident. L said that didn't witness the assault in question. first notice of something happening was when observed Officers E and M moving #2 to the side of the rally/protest. L said that was stationed on the opposite side of the barriers and couldn't hear any of the conversations between officers and #2 L said that didn't see #2 being placed under arrest.

L said that no witnesses approached regarding the incident, and was not assigned to locate any witnesses. said that has no other information regarding #2 12/12/20 arrest from the scene. didn't write a report. L said that later, after the rally/protest detail, was curious about what had transpired at the rally/protest. watched the video that depicted the incident in real-time. When asked what observed, L stated, "I saw an individual dancing around the metal cage area, and then suddenly, stop, look away, and then with an action, throw arm towards an individual". When asked if saw if the individual threw a fist, stated, "I couldn't tell". was asked if saw the individual make contact with another person and said that didn't due to many flags and people in the way. saw the action and then the crowd's reaction to what had just happened. L was asked if what viewed was a recording, since the live feed was over. confirmed saw a recording and was unsure if viewed this on someone's (doesn't recall who's) phone or it might have been on the computer. L said that didn't notice any water being thrown on the individual #2 nor did see any water landing on L was asked if had any input into #2 bail conditions. said, "no". also confirmed that didn't write a report.

██████████ C ██████████ Swampscott Police Department

██████████ C ██████████ was interviewed on 2/3/21. ██████████ was accompanied by ██████████ union Attorney, ██████████ and union representative ██████████ H ██████████ C ██████████ said that ██████████ has been a member of the Swampscott Police Department for the past ██████████ years. ██████████ current assignment is ██████████. ██████████ also holds the collateral duty of the ██████████ ██████████

██████████ C ██████████ was asked what ██████████ involvement was in the 12/12/20 arrest of ██████████ #2 ██████████ ██████████ said that ██████████ was not working the rally/protest on that day. ██████████ said that ██████████ has been assigned to a follow-up investigation of information sent to ██████████ via email by ██████████ #2 ██████████ defense counsel. ██████████ C ██████████ said that defense counsel, Attorney ██████████ provided information and some enhanced videos of ██████████ #2 ██████████ alleged assault incident. ██████████ C ██████████ was asked if ██████████ had reviewed all reports and video available to ██████████ ██████████ said that ██████████ review was on-going.

██████████ C ██████████ confirmed that Attorney ██████████ was making multiple allegations regarding the incident. Some of the allegations were that ██████████ #1 ██████████ was the aggressor, ██████████ client acted in self-defense and committed no crime, and ██████████ wasn't satisfied with the investigation done by the Swampscott Police Department. ██████████ C ██████████ said that Attorney ██████████ made several allegations regarding the potential violation of ██████████ #2 ██████████ civil rights. As the ██████████ ██████████ C ██████████ said that ██████████ is investigating any and all information provided to ██████████ C ██████████ said that ██████████ hasn't written any reports to date. ██████████ C ██████████ said that to date ██████████ hasn't confirmed or ruled out any civil rights violations involving police or civilians. They remain under investigation. ██████████ C ██████████ said that as ██████████ ██████████ ██████████ reports directly to ██████████ J ██████████

██████████ C ██████████ said that ██████████ doesn't know ██████████ #2 ██████████ and had no input into ██████████ charges or bail conditions. ██████████ C ██████████ was asked if ██████████ had any input into charging or not charging ██████████ #1 ██████████ with a crime. ██████████ stated "no". ██████████ C ██████████ was asked if ██████████ believed that any member of the Swampscott Police Department displayed any bias towards ██████████ #2 ██████████ due to ██████████ race, age, or apparent political affiliation. ██████████ C ██████████ stated "no" to all. ██████████ added that ██████████ investigation is not yet complete, but ██████████ hasn't seen anything to date. ██████████ was asked if based upon ██████████ investigation to date, the Swampscott Police Department displayed any bias towards ██████████ #2 ██████████ due to race, gender, apparent political affiliation, or age. ██████████ stated, "no" to all.

██████████ N ██████████ Swampscott Police Department

██████████ N ██████████ was interviewed on 2/3/21. ██████████ was accompanied by ██████████ union Attorney, ██████████ and union representative, ██████████ H ██████████ N ██████████ said that ██████████ has been with the Swampscott Police Department for the past ██████████ years. ██████████ is currently assigned to ██████████ ██████████ confirmed that on 12/12/20 ██████████ was assigned to work a rally/protest in town. ██████████ was assigned to Reading St. at Humphry St., which was on the outskirts of the rally/protest. ██████████ described the rally/protest as very loud and boisterous, with both sides going back and forth.



█ described the two main sides as "Trump supporters and BLM supporters". When asked if █ became aware that an arrest had been made at the rally/protest, █ stated, "I had no idea it even happened until I turned around and see █ (later identified as █ #2 █ in cuffs going to the cruiser". █ learned later on that █ #2 █ had been arrested for Assault and Battery. █ said that █ didn't witness the assault and has no first-hand information about the incident. █ said that when █ saw █ #2 █ in handcuffs, █ was cooperating. █ said that █ did note a crowd surrounding the cruiser but observed the officers acting professionally. █ said that █ had no contact with the defendant or victim.

█ was asked if █ was assigned to locate and identify any witnesses. █ said that █ was contacted by the OIC and asked to get the defendant's name so the OIC would know who was coming in. The defendant had already been transported and █ can't recall if █ obtained the defendant's name from other officers or not. █ did get █ #1 █ name as the victim but doesn't recall if that also came from another █. █ said that █ didn't interview anyone at the scene, nor did █ write a report. █ was asked if █ had any input into █ #2 █ bail conditions. █ stated "no".

#### █ █ K █ Swampscott Police Department

█ █ K █ was interviewed on 2/3/21. █ was accompanied by █ union Attorney, █ and █ union representative, █ H █ K said that █ has been with the Swampscott Police Department █. █ was promoted to █. █ current assignment is █.

█ said that █ was working at the rally/protest on 12/12/20. █ was not assigned any specific location and was helping people cross the road and was acting as a "floater" to different locations of the rally/protest. █ described the rally/protest as very chaotic. When asked what made it chaotic, █ said that many different people with many different views that "just wanted to yell at each other, as loud as they could". █ described this rally/protest as being one of the largest ones █ has worked. █ estimated the number of people attending as between 60-80. █ said that there were approximately 12 officers working the rally/protest.

█ said that the rally/protest appeared to have two opposing sides. "One appeared to identify with Trump and the other with BLM, for the most part". █ said that in the past, the Trump supporters would set up on the ocean side of Humphrey St. and were loud and obnoxious, but small in number. █ said that lately they have drawn in the counter protesters. █ said that in the past, the two sides remained across the street from one another. On 12/12/20, both sides were face to face. They were both intermingling and attempting to agitate one another.

█ said that at some point █ became aware of an assault investigation. █ didn't witness the assault █ but █ G █ contacted █ via radio and requested █ come over to

where [REDACTED] E was standing by with a [REDACTED] later identified as #2 [REDACTED] K said that when [REDACTED] arrived at [REDACTED] E's location, #2 was already in custody and handcuffed. K was asked if #2 was denying [REDACTED] assaulted anyone and K said that [REDACTED] didn't hear #2 saying anything due to people on #2 side of the protest, trying to impede officers attempting to take #2 to a cruiser. When asked what the crowd was doing to try and impede the officers, K stated they were "standing in our way, holding phones in our faces, telling us we were on video and we were violating [REDACTED] rights". K said that [REDACTED] and other officers handled this very professionally. [REDACTED] said that they just kept walking and telling the people to get back and to not impede their progress. K said that [REDACTED] didn't hear anyone say that a lady threw water on #2 but several people in the crowd were yelling at the police, saying that "[REDACTED] didn't do anything, you're breaking the law", and similar things. [REDACTED] didn't believe that any of these people were making specific claims to have witnessed anything; they simply appeared upset that #2 was being arrested. #2 was subsequently placed in a cruiser and [REDACTED] transported #2 to Police Headquarters.

[REDACTED] K said that [REDACTED] was the only officer transporting #2 [REDACTED] said that the trip to the PD lasted approximately a minute and a half. When asked if #2 said anything to [REDACTED] in the cruiser, K stated [REDACTED] K said that [REDACTED] took #2 into booking where [REDACTED] A met [REDACTED] They "did the booking together". K said that the booking went well. [REDACTED] described #2 as "polite and compliant". K was asked if #2 made any statements during booking. [REDACTED] stated, "[REDACTED]". When asked if the booking was audio/video recorded, K modified [REDACTED] recollection to, "I don't recall if it was getting out of the cruiser, or into booking but it was prior to [REDACTED] A's arrival and [REDACTED] hadn't been Mirandized yet". K confirmed that [REDACTED] wasn't questioning #2 when [REDACTED]

[REDACTED] K confirmed that as part of the normal booking procedure, #2 was read [REDACTED] Miranda Rights. When asked if #2 invoked [REDACTED] rights and requested an Attorney, K didn't recall. K was asked if either [REDACTED] or A attempted to interview #2 [REDACTED] said they did not. When asked why they didn't interview #2 K responded that [REDACTED] felt that any direction to interview #2 would have come from [REDACTED] G [REDACTED] had no such instruction, so [REDACTED] didn't attempt to interview #2

K confirmed that [REDACTED] didn't write a report. [REDACTED] was asked if [REDACTED] informed investigating officers of the fact that [REDACTED]. K stated, "I didn't see any value in it, especially with so much evidence against [REDACTED] and eye-witness accounts of the assault". When confronted with the fact that [REDACTED] didn't document #2 [REDACTED] [REDACTED], K stated, "I figured where the entire incident was on video that a non-Mirandized statement wouldn't have much bearing". K again confirmed that [REDACTED] wasn't questioning [REDACTED]. K said that [REDACTED] had no contact with [REDACTED]

█ #1 on 12/12/20. █ also said █ has had no contact with █ regarding this investigation. █ was asked if any of █ actions towards █ #2 were based on █ race, age, or apparent political affiliation. █ stated, "no" to all. █ was asked if █ observed any officers that in █ opinion, showed any bias towards █ #2 under those same categories. █ stated, "no, █ was very respectful with us and we showed that right back to █ █ said that █ had no input into the bail conditions set for █ #2

█ O █ Swampscott Police Department

█ O █ was interviewed on 2/3/21. █ was accompanied by █ union Attorney, █ and union representative, █ H █ said that █ has been a member of the Swampscott Police Department for approximately █ yrs. █ is currently assigned to █. █ said that on 12/12/20 █ was working a patrol sector on the day shift. █ was called down to the area of the rally/protest for extra coverage and support. █ described the rally/protest atmosphere as "volatile with two different sides, counter protesting one another". █ said that at one point during the rally/protest, █ noted that several officers appeared to be escorting a █ subject away from the protest towards the police cruisers. █ didn't know what circumstances led to that.

█ O █ said that while the officers were escorting the █ subject, █ noted multiple people gathering around the officers and attempting to impede their progress. █ observed the officers handle this very professionally. █ said that █ had no contact with the █ subject, later identified as █ #2 █ also had no contact that day with █ #1 █ O █ said that █ was not directed to locate and identify any witnesses. █ did not write a report. █ had no input into █ #2 bail conditions.

█ G █, █ Swampscott Police Department

█ G █ was interviewed on 2/3/21. █ was accompanied by █ union Attorney, █ and union representatives, Officers █ H and █ O █ G said that █ has been a full-time police officer with Swampscott PD since █. █ current assignment is as █ of the police department.

█ G said that on 12/12/20 █ was the █ in charge of a rally/protest that has been ongoing in the Town since approximately early May of 2020. █ described the rally as having started out small, protesting COVID restrictions and becoming larger since the election season. Until early June of 2020, the protesters were mainly Trump supporters. After the "George Floyd" incident in Minneapolis, counter protesters, mostly representatives of the Black Lives Matter group started showing up. █ G said the "right sided" group that started the protest was led by █ #3 This group had some provocative individuals who started displaying confederate flags and used some language that some people found inflammatory. █ G believes that this behavior is also what started drawing counter protesters. █ said that even



with counter protesters, most protests were relatively peaceful. [REDACTED] said that the protests were "ramping up" during election season. [REDACTED] G said that [REDACTED] #3 would broadcast the protests live on [REDACTED] Facebook feed. [REDACTED] G said that over the weeks of protests, the department has had a few incidents of assaults between protesters. All of these were investigated by the police department. Some of these protesters would target [REDACTED] #3 and "troll" [REDACTED] trying to disrupt [REDACTED] broadcast. [REDACTED] G said that [REDACTED] #3 started implying on [REDACTED] broadcast that the police weren't protecting [REDACTED] and [REDACTED] needed bodyguards to show up at the protests and protect [REDACTED] since the police weren't doing so. [REDACTED] G said that [REDACTED] received information from [REDACTED] J that in prior broadcasts, [REDACTED] had encouraged protesters to show up with long rifles and armed. [REDACTED] G said that by the time 12/12/20 came along, [REDACTED] was very concerned with the potential for violence at the rally/protest.

[REDACTED] G said that on 12/12/20, [REDACTED] #3 arrived with a large group of [REDACTED] followers, who were also Trump supporters. A few people representing Black Lives Matter were situated across the street from the Trump group. [REDACTED] G said that the situation escalated when a new group that [REDACTED] had never seen before came marching down the street. They were carrying a large "baby Trump" and were all prominently displaying orange stickers reading, "Out Now". They had bullhorns, were very loud and "marched right up to the [REDACTED] #3 group and got right in their face". There were some metal bicycle barriers between the two groups but "they basically got right up in their face, right on them". [REDACTED] G described this new group as not really being affiliated with the BLM group that normally attends. "They seemed to sort of be an anti-fascist, particularly disliking and trolling [REDACTED] #3 type group". [REDACTED] G stated, "part of their message was certainly Black Lives Matter, but they were more".

[REDACTED] G said that including all groups, [REDACTED] would estimate that a total of 50-60 people were protesting. [REDACTED] G compared this to approximately 5 officers assigned to the detail. [REDACTED] had to eventually call members of the PD that were on-duty as well as Mass State Police and several surrounding Cities/Towns to keep control of the situation. [REDACTED] G described the atmosphere as very loud and chaotic. [REDACTED] said that many people were using bullhorns. There was shouting above the bullhorns and at least one person was walking around constantly activating a siren attached to a bullhorn. This new group was very confrontational, even when the police attempted to stand between them and the [REDACTED] #3 group.

[REDACTED] G said that the "Out Now" group and the [REDACTED] #3 group were literally face to face with simply bike racks between them. [REDACTED] G said that [REDACTED] isn't aware of any Swampscott ordinance, or permitting or any State law that would give [REDACTED] the authority to keep the two groups a certain distance from one another. [REDACTED] G said that [REDACTED] spoke with a couple of members of the "Out Now" group and asked them if they would voluntarily take the group across the street to protest. They first told [REDACTED] that it wasn't their job to make [REDACTED] job easier. If [REDACTED] felt things were going to be unsafe, to do [REDACTED] job and keep everybody safe. They told [REDACTED] G that it was their purpose to confront, to engage, to be loud, and to make things difficult for [REDACTED] #3 to get [REDACTED] podcast out. They were there to interfere with [REDACTED] message, and to be in as close

contact as possible. [redacted] was forced to simply address potential confrontations that appeared and monitor the situation. [redacted] G said that [redacted] became aware that an assault and battery had occurred at the protest. [redacted] prefaced this by first stating that [redacted] had a prior encounter that day with the defendant, later identified as [redacted] #2 [redacted] G said that [redacted] observed #2 half-dancing and shadowboxing with the person right in front of [redacted] G [redacted] #2 [redacted] didn't know what precipitated this but heard #2 say something to the effect of [redacted] G said that [redacted] leaned in and put [redacted] hand on #2 shoulder. #2 looked at [redacted] with a startled look. G surmised that #2 could have thought [redacted] was a member of the #3 group wanting to assault [redacted] G realized that [redacted] was wearing [redacted] Patriots jacket and [redacted] was in plain clothes. [redacted] had a lot of confrontation in the past with #3 and [redacted] didn't like [redacted] [redacted] was wearing plain clothes to try and keep a low profile. [redacted] told #2 to calm down or [redacted] would get locked up. Realizing that [redacted] jacket could be confusing to people, [redacted] returned to [redacted] cruiser to put on [redacted] police gear.

G said that while walking back to the protest from [redacted] cruiser, [redacted] was met by [redacted] A A told [redacted] [redacted] witnessed a [redacted] punch an 80-year-old [redacted] or something to that effect. A told [redacted] that [redacted] witnessed the assault on video and there were several witnesses. A told [redacted] that the suspect was being detained by [redacted] E G said that [redacted] walked over to where E was standing with the suspect. G said that [redacted] was told (can't recall by whom) #2 was protesting that the victim had gotten water on [redacted] G was unsure who told [redacted] but someone told [redacted] the cause of that was due to the victim having tremors. G said that based on what [redacted] had heard from [redacted] A [redacted] determined that probable cause existed to charge #2 with Assault and Battery of a person over the age of 60. [redacted] said [redacted] told [redacted] E to place #2 into custody and get [redacted] transported to the PD. G had heard that [redacted] E had also witnessed the assault and that is why E took #2 off to the side of the protest. [redacted] didn't question E at the scene. [redacted] felt confident in the probable cause based on what [redacted] had been told.

G said that [redacted] didn't speak with any witnesses at the scene. G said that [redacted] spoke with [redacted] J about assigning people to locate and identify witnesses. G was asked what probable cause [redacted] based [redacted] order to arrest on. [redacted] said that [redacted] had information that #2 assaulted a person over the age of 60 and the assault was witnessed by 2 officers and other witnesses. G said that even if [redacted] knew that the victim intentionally splashed water on the defendant, [redacted] didn't feel it was a "proportional response" to punch [redacted] G said that after the arrest, [redacted] believes [redacted] watched a video clip (from the [redacted] live feed) of the assault on [redacted] M's phone. G was asked what options were available to [redacted] other than arresting #2 on scene. [redacted] said that [redacted] had the option of summoning, or not charging #2 G stated, "either of those options would have left #2 at the scene, which was a volatile scene, where there was a strong perception through the crowd, just like I believed, that [redacted] just assaulted an 80 yr. old [redacted]". "I would have considered that certainly a very

dangerous option to leave [REDACTED] in that crowd and in that situation and appear that the police had not taken action on what at the time, appeared to be a very clear crime”.

[REDACTED] G was asked about information [REDACTED] documented in [REDACTED] report, reference to viewing a video of the incident from the angle of the [REDACTED] #3 live feed. This showed [REDACTED] #2 having water thrown on [REDACTED]. G was asked if [REDACTED] felt that [REDACTED] #1 had thrown the water on [REDACTED] #2 [REDACTED] said that [REDACTED] presumed so. [REDACTED] can't actually see [REDACTED] #1 throw the water, but [REDACTED] felt that was a logical conclusion based upon where [REDACTED] is and where the water comes from. G said that [REDACTED] believes that there is a good chance that [REDACTED] #1 did throw water on [REDACTED] #2. G was asked if, on this real time video, [REDACTED] was able to see [REDACTED] #2 make any contact with [REDACTED] #1 [REDACTED] stated, "I cannot". G was asked if [REDACTED] A told [REDACTED] saw [REDACTED] #2 make contact with [REDACTED] #1 G said that [REDACTED] believes A simply said that [REDACTED] #2 punched [REDACTED]. G documents in [REDACTED] report that since [REDACTED] #2 arrest, [REDACTED] has seen a still photo and a video clip that was dramatically slowed down and from a different angle than the [REDACTED] #3 video. (G Supp. Report-Attachment 7) This had been received from [REDACTED] #2 attorney. G confirmed that this angle showed that [REDACTED] #2 opened [REDACTED] hand into an open hand slapping motion instead of a punch. G also confirmed that this angle does not show [REDACTED] #2 making contact with [REDACTED] #1. G confirmed that this video angle does not show [REDACTED] #2 with a closed fist or a punch. G was asked if, after seeing this video, [REDACTED] still felt [REDACTED] had probable cause to arrest [REDACTED] #2 on 12/12/20? [REDACTED] stated, "yes I do". When asked why, [REDACTED] stated "the closed fist isn't necessarily relevant to the charge of assault and battery". "I have the victim's statement that [REDACTED] hit [REDACTED] to establish where the point of contact is", so the probable cause remains, a slap or a punch". G said that the observations the officers made were based upon their seeing this unfold in "real time" and without the benefit of slow motion. G said that the first time [REDACTED] watched the video on a cell phone and in real time, [REDACTED] saw what appeared to be a punch as well. "It looked like a really hard, wound up punch". G said that people and flags were also impeding the officers' view.

[REDACTED] G was asked if [REDACTED] has had conversations with anyone considering charging [REDACTED] #1 with a crime. [REDACTED] stated, "that's come up several times, yes". G said that [REDACTED] had bantered about with [REDACTED] and others, the thought of charging [REDACTED] #1 with assault and battery. To date, [REDACTED] has not been charged. G was asked why the PD didn't charge [REDACTED] #1 [REDACTED] said that after doing an investigation and receiving and documenting all information provided by Defense Counsel, it would be unusual for the police to go back and file charges against [REDACTED] #1 when [REDACTED] #2 and [REDACTED] attorney have been into Court on several occasions, have all of this information, and can simply go into the Clerk's office and file the charge. [REDACTED] #2 and [REDACTED] lawyer know they have that right. They have been advised they have that right.

With the hindsight of now having all of the video and other information, G was asked if [REDACTED] felt there was as much probable cause to charge [REDACTED] #2 as there was to charge [REDACTED] #2 [REDACTED] stated, "I would say no. I think probable cause exists; do I think it's the equivalent level of probable cause, no". [REDACTED] said that [REDACTED] #1 admits [REDACTED] got water on [REDACTED] #2 but [REDACTED] presents

the credible story that says [REDACTED] has tremors and [REDACTED] clearly does. After the fact when [REDACTED] sees the amount of water that comes out, [REDACTED] may be suspicious that isn't the case. You can't see [REDACTED] throw the water. "But I think that's a very different situation; an elderly person claiming tremors, getting water on somebody". [REDACTED] G agreed that this was a highly scrutinized and public case. [REDACTED] was asked if [REDACTED] could understand why some people fear the police showed a bias by not charging [REDACTED] #1 and/or not disclosing the fact that charges were at least discussed. [REDACTED] stated, "I certainly see where it's problematic". "I certainly see where communication is a really critical element here". [REDACTED] felt that often times police and the DA are constrained by what they can disclose to the public. [REDACTED] agreed that communication could, and should, be better.

[REDACTED] G confirmed that by watching the video, [REDACTED] would place the distance between [REDACTED] #2 and [REDACTED] #1 at 1 to 2 feet. [REDACTED] was asked if any officers/detectives looked into [REDACTED] #1 claim to have splashed water on [REDACTED] #2 simply due to tremors. If [REDACTED] was aware if [REDACTED] #1 was ever questioned as to how [REDACTED] drinks water from a bottle, if when [REDACTED] attempts to do so, the water sprays 1 to 2 feet? [REDACTED] G said that [REDACTED] is unaware what has been completed as a follow up and [REDACTED] isn't in charge of the investigation. [REDACTED] said that [REDACTED] is aware that the case is still being actively investigated by [REDACTED] C and [REDACTED] supervisor, [REDACTED] J. [REDACTED] G said that [REDACTED] did not have any input into the ball conditions that were set for [REDACTED] #2.

[REDACTED] G was asked if after reviewing the slow-motion video [REDACTED] had any conversation with the DA about dropping charges against [REDACTED] #1. [REDACTED] stated, "no". [REDACTED] was asked if [REDACTED] still felt [REDACTED] had probable cause to arrest [REDACTED] #2. [REDACTED] stated, "If you look at the video, an 80 yr. old [REDACTED] throws some water on [REDACTED] [REDACTED] stops, looks to the right where there is one of our officers to see if one of our officers is looking or not". "After [REDACTED] looks over, instead of getting the officer's attention and saying this [REDACTED] just splashed water on me, [REDACTED] takes a second to think about it and that's when [REDACTED] decides to smack the bottle". "So, I believe that the charge was good. I believe that the charge was appropriate, regardless of anything else". "I still feel that the charge is still valid". "I really wish we had characterized everything correctly in the beginning, but I do believe the charge was still valid".

[REDACTED] G again classified the groups present on 12/12/20 as [REDACTED] #3 Trump supporters; Black Lives Matter supporters; and Out Now supporters. The BLM and Out Now supporters were counter protesting the Trump supporters. [REDACTED] G was asked if [REDACTED] was a friend of the [REDACTED] #3 Trump supporters. [REDACTED] confirmed that [REDACTED] is not and also admitted that [REDACTED] #3 can be seen on the video denigrating [REDACTED] and the Swampscott Police [REDACTED] as well. [REDACTED] G said that [REDACTED] doesn't have any relationship with the other two groups either. [REDACTED] G was asked if [REDACTED] knew [REDACTED] #2 and [REDACTED] said "no". [REDACTED] G was asked if [REDACTED] actions and decision-making was in any way influenced or biased against [REDACTED] #2 due to [REDACTED] #2 race, age, apparent political affiliation, or relationship with Black Lives Matter. [REDACTED] G answered, "absolutely not" to all. [REDACTED] was asked if [REDACTED] actions or inactions were influenced or biased by [REDACTED] #1 race, apparent political affiliation, or age. [REDACTED] G answered no to [REDACTED] race and political affiliation. When asked if [REDACTED] age

played a role in [redacted] decision-making [redacted] G stated, "maybe in the vaguest way of saying it sort of lent me credibility to the idea that I knew [redacted] had tremors and maybe before I saw the video and saw the amount of water, that it was credible that [redacted] splashed water inadvertently and the relevance to the power to arrest". "So that's the two ways that it sort of impacted my decision making".

[redacted] was asked if after seeing [redacted] officers interact with #2 [redacted] felt that any of the officers were biased against #2 [redacted] due to [redacted] race, apparent political affiliation, age, or affiliation with Black Lives Matter. [redacted] G said, "no" to all. [redacted] G confirmed that [redacted] has read all approved reports to date as well as two civilian witness statements provided by defense counsel. [redacted] was asked if [redacted] was aware that [redacted] #5 witnessed [redacted] E scream, "shut the fuck up" in [redacted] #2 face prior to #2 arrest. [redacted] G confirmed that [redacted] had read that. [redacted] was asked if that was being addressed. [redacted] G stated that [redacted] certainly wasn't okay with this behavior, and it wasn't the way the department wants to communicate with the public. [redacted] was aware of the volatile scene at the protest and [redacted] has an understanding of the situation that [redacted] E was dealing with. [redacted] G said that [redacted] didn't view this as an officer simply saying that to someone but viewed it in the context of the situation that the officer was dealing with, it certainly wasn't ideal. "Given the atmosphere, the way things were going, I don't view it on its face as being, an officer being out of line, aggressive, and just grabbing somebody and telling them to shut the fuck up, I think it was in context of the overall scene and the chaos and what [redacted] was dealing with". "So am I ok with it, no. Do I view it as an officer that is somewhat aggressive and out of control, no". [redacted] G said that the same witness, [redacted] #5 has since given a more detailed statement in which [redacted] praises the officers at the scene for doing a great job de-escalating the situation. [redacted] G said that [redacted] wouldn't explain away or justify E's use of profanity, but [redacted] thinks that #5's own statement says that after that, [redacted] E did a very good job with what was a very difficult situation. [redacted] G was asked if at this point, there was an internal affairs investigation into E's use of profanity. [redacted] stated "no". [redacted] was asked if as a [redacted] is that something [redacted] thinks could be addressed with counselling. [redacted] stated, "absolutely".

[redacted] M Swampscott Police Department

[redacted] M was interviewed on 2/17/21. [redacted] was accompanied by [redacted] union attorney, [redacted] and union representatives [redacted] H and [redacted] O. [redacted] M said that [redacted] has been a member of the Swampscott Police Department for [redacted] years. [redacted] is currently assigned to [redacted].

[redacted] M said that on 12/12/20 [redacted] was working a detail at a rally/protest taking place in Swampscott. [redacted] assignment was to rove around and provide crowd control. [redacted] M confirmed that these protests had been taking place in Swampscott for many months. [redacted] described the protest as "rowdy and loud". [redacted] said that a few of the protesters were respecting the personal distance of others but the majority were not respecting one another's personal



distance. When asked to describe the main participants, [M] said that there was a pro-Trump side, with [ #3 ] a Black Lives Matter side and "Out Now", who were regular counter-protesters to the Trump side. When asked if the Out Now and Trump supporters were getting up to one another's faces, [ ] stated, "yes". When asked what if anything officers did to attempt to de-escalate the situation [M] stated, "you try to separate as best as you can, without interfering with their right to protest". "If you see something getting a little out of hand, you try to move people along".

When asked when [ ] became aware of an incident involving [ #2 ] [ ] said that [ ] heard a loud commotion, a lot of people on the Trump side were yelling for the police. Multiple people were stating, "[ ] struck [ ] struck [ ] and [ ] [E] walked over to the commotion. [M] said that [ ] did not witness the incident. When asked if [E] witnessed the incident, [M] said that [E] said to [ ] "we need to go this way", towards the commotion. [E] didn't tell [ ] specifically if [ ] had witnessed the assault.

[M] was asked what [ ] involvement was with [ #2 ] [ ] said that [ ] assisted [E] in "moving [ ] away from the crowd". [ ] said that multiple protesters followed [ ] and [E] while they were separating [ #2 ] from the crowd. [M] was asked if [ ] heard [ #2 ] denying that [ ] struck the victim, later identified as [ #1 ] [ ] said no. [ ] was asked if [ ] heard anyone in the crowd defending [ #2 ] and saying [ ] didn't do it. [ ] stated, "I didn't hear anything, no". "I was more focused on separating". [ ] said that [E] had [ #2 ] under control, so [ ] headed back to the crowd, who was becoming increasingly loud. [M] was asked if [ ] encountered [A] [ ] at the scene? [ ] said that [ ] did; [A] was looking for [ #2 ] and told [M] that [ ] had seen the "strike" on video at the station. [M] pointed [A] in the direction of [E] who had been joined by several other officers.

[M] was asked if [ ] was assigned to locate and identify witnesses. [ ] said that [ ] wasn't assigned to do that, but [ ] took it upon himself to do so. When asked if [ ] located any witnesses, [ ] said that [ ] did. [ ] talked to a witness that had a video of the incident on [ ] phone. [M] said that [ ] didn't identify this witness other than the fact the witness was from the "Trump side". [M] was asked if [ ] viewed this video. [ ] said [ ] did. The video was from the [ #3 ] live feed. [M] was asked what [ ] saw on the video. [ ] stated that [ ] saw "what [ ] believed [ #2 ] to have struck [ #1 ]". When asked if [ ] wrote a report. [ ] stated, "I did not". [M] was asked why [ ] didn't write a report and if [ ] considered himself a witness to the assault, since [ ] viewed the video at the scene. [ ] initially said that [ ] didn't consider himself a witness, then admitted that [ ] was but didn't write a report because with two other officers [A] & [E] that saw it happen, [ ] didn't feel that it was necessary. [M] said that [ ] did tell [G] about [ ] observations as they both watched the video.

M said that [redacted] didn't observe the exact moment that officers arrested #2 but [redacted] did see officers escort #2 to a cruiser. [redacted] said that many protesters were around the officers during the escort. A good many of them appeared to be "against" the police and the arrest of #2. [redacted] said that officers showed a great deal of restraint with the many people that attempted to impede their progress to the cruiser, and patience with those that stood in the way of the cruiser when they attempted to transport #2. [redacted] M was asked if [redacted] had any input whatsoever into #2 bail conditions. [redacted] stated, "no".

#### [redacted] G Swampscott Police Department (Second Interview)

[redacted] was initially interviewed by MRI on 2/3/21. [redacted] contacted MRI to advise that [redacted] wished to clarify some information [redacted] had given during [redacted] initial interview. On 2/17/21 [redacted] was re-interviewed by MRI. Also present were union attorney [redacted] and union representatives Officers [redacted] H and [redacted] O

[redacted] G was asked what [redacted] wished to clarify and/or add to [redacted] initial interview. [redacted] said that during [redacted] initial interview [redacted] was asked if the Swampscott PD had done any type of investigation or "look back" into [redacted] A and [redacted] E saying they had observed a closed fist punch when slow motion video cast doubt on that. [redacted] had initially said no. [redacted] said that within a short time after the 12/12/20 incident, there was confusion regarding if in fact an internal affairs investigation was going to be conducted by [redacted]. Then, whether an internal affairs investigation was going to be conducted by an outside agency. Lastly, that an outside agency was to conduct an overall "incident review". [redacted] G said that the confusion is why [redacted] so abruptly answered "no".

[redacted] G wanted to clarify and share with MRI what Swampscott PD had done internally to review this incident. [redacted] said that "we did view every tape that was sent, looked at all of the reports, I broke down the relevant tape that showed the perspective of [redacted] A and [redacted] E down to still images that was once every quarter second, to break down and see exactly what they were able to see". [redacted] said that the last thing that the officers were able to see from their angle was a closed fist, moving forward in a punching motion. [redacted] said that CID (Criminal Investigations Division) reached out to all of the relevant witnesses and tried to get them to come in for interviews. [redacted] G said that the PD vetted any allegation of untruthfulness against the officers. "What they said they saw is what they appeared to be able to see from their angle". [redacted] G mentioned the fact that [redacted] E's use of profanity, "shut the fuck up" towards [redacted] #2 which [redacted] E admitted, wasn't used in an aggressive manner.

[redacted] G said that during witness [redacted] #5 follow-up interview, [redacted] praised the fact that [redacted] E was able to quickly de-escalate the situation. [redacted] #5 had been the initial witness to report [redacted] E's use of profanity towards [redacted] #2. [redacted] G stated, "while we hadn't done an official investigation, I just wanted it to be clear that we looked at it enough to say that the

things you would be most concerned about, we were comfortable were not going to be there at the end of an investigation and that is why we are comfortable, even for this outside view”.

G was advised that with regard to E's use of profanity, it was MRI's understanding that after the first interview, G felt E's use of profanity could be handled with some type of a counseling form, which the Swampscott Disciplinary Policy allows. (4.13 Disciplinary Procedures-Attachment 8). G confirmed that was intention.

G also explained that academy training and recent in-service training conducted by the District Attorney's Office, as well as Swampscott PD's annual training touched upon the way to investigate potential dual arrests and dominant aggressors. provided MRI with a one-page document that had definitions and one Court decision regarding dual arrests and dominant aggressors. (Dual Arrests Dom Aggressor-Attachment 9) G said that the previously mentioned training discouraged dual arrests and treating everything equally when there was a dominant aggressor. said that this occurs most often in domestic violence cases. G discussed an analogy of a wife throws water on her husband. He retaliates by hitting her. G said that they have been trained not to treat those two actions equally. They will look towards the dominant aggressor. G believes that mind set, based upon training, is relevant in the incident.

At the bottom of the paper provided to MRI, G pointed out a recent Massachusetts Court decision confirming that "Assault and Battery on an elder or disabled person always is a felony even if there is no injury. (Comm V. Lockwood, 95 Mass. App. CT. 189 (2019)). said that this court decision was part of the Swampscott Police Department in-service training in 2020.

#### E Swampscott Police Department

E was the arresting of #2 was interviewed on 2/2/21. was accompanied by union Attorney, and union representative, H. E said that has been with the Swampscott Police Department for approximately years. current assignment is. was questioned regarding the events and circumstances surrounding the 12/12/20 arrest of #2 E was the arresting

E told MRI that on 12/12/20 was ordered to work and was assigned to the protest. E said that the protest in question consisted of pro-Trump supporters led by and those protesting against Trump. described the initial portion of the protest as normal. The protests have been occurring in Swampscott for many weeks. said that both sides remained separated and things were progressing without any trouble. said that a large crowd came from "up the beach", "chanting from a distance" and, when they got there, it just turned into "kind of chaos". E defined the chaos as the new group, possible "Out Now" members, making noise with megaphones and sirens. The new group wasn't listening to police

and were very loud and aggressive towards everyone. When asked which side the group seemed to be supporting, [REDACTED] E said that [REDACTED] didn't think they were supporting anyone. They seemed to be there simply to cause chaos.

[REDACTED] E said that this new group was getting "right up to people". The police asked them to remain separated from the other groups and they weren't listening. [REDACTED] E described the scene as the Trump supporters being in an area that was surrounded by moveable barriers. This new group kept circling the Trump group. The group was also standing by the beach side of the road and was yelling at the Trump group. The police tried to stay in the middle between the two groups. [REDACTED] E said that the new group continued to circle the Trump group with megaphones and sirens blaring. [REDACTED] said that the police at the scene, including [REDACTED] didn't know what else they could do to calm the situation as [REDACTED] wasn't given instruction on how to handle an incident like this.

Noted above, [REDACTED] E was the arresting [REDACTED] in this investigation. [REDACTED] was given a copy of [REDACTED] report for review/reference. [REDACTED] E confirmed that [REDACTED] had written [REDACTED] report on 12/12/20. [REDACTED] E recalled that [REDACTED] was standing on the beach side of the Trump people and [REDACTED] #2 was standing on the street side. The Trump supporters were between them. [REDACTED] confirmed what [REDACTED] had documented in [REDACTED] report that, while monitoring the crowd [REDACTED] observed a [REDACTED] party later identified as [REDACTED] #2 "wind [REDACTED] arm up and strike a bystander with a closed fist punch". [REDACTED] E also confirmed that [REDACTED] documented in [REDACTED] report that the alleged victim of the assault was later identified as [REDACTED] #1 [REDACTED] E was asked where on [REDACTED] #1 body [REDACTED] saw [REDACTED] #2 strike. [REDACTED] answered that [REDACTED] didn't actually see [REDACTED] #2 make contact with [REDACTED] #1 but [REDACTED] #2 punching motion combined with [REDACTED] #1 reaction of almost stumbling to the ground led [REDACTED] E to believe that [REDACTED] #2 struck [REDACTED] #1 [REDACTED] E confirmed again that [REDACTED] didn't actually observe [REDACTED] #2 make contact with [REDACTED] #1 When questioned as to why [REDACTED] wrote that [REDACTED] observed [REDACTED] #2 strike [REDACTED] #1 when [REDACTED] didn't actually observe contact, [REDACTED] stated "I think that it would be reasonable to believe that, with that motion, and the after effect of someone falling down". [REDACTED] E confirmed that there were bystanders in between [REDACTED] view of [REDACTED] #2 and [REDACTED] #1 and [REDACTED] #1 had [REDACTED] back to [REDACTED] at the time of the incident. [REDACTED] E said that [REDACTED] didn't see any water splash onto [REDACTED] #2 [REDACTED] attention was drawn to [REDACTED] #2 while [REDACTED] was dancing around and when [REDACTED] threw the punch.

[REDACTED] E said that [REDACTED] contacted [REDACTED] #2 took [REDACTED] #2 by the arm, and escorted [REDACTED] away from the crowd. [REDACTED] confirmed that [REDACTED] #2 told [REDACTED] that [REDACTED] #1 splashed water on [REDACTED] but [REDACTED] didn't investigate that information because [REDACTED] was focused on removing [REDACTED] #2 from a volatile situation. [REDACTED] E confirmed that while [REDACTED] attempted to speak with [REDACTED] #2 was continually interrupting [REDACTED] E admitted that [REDACTED] yelled at [REDACTED] to, "shut the fuck up". When asked why [REDACTED] would say that to [REDACTED] #2 [REDACTED] E stated, "I just used it as a de-escalation tactic, and to control the scene". [REDACTED] kept interrupting me and the level of stress we were at, at that time, I said it and I think [REDACTED] immediately realized that I was controlling the scene". When asked if [REDACTED] felt some witnesses could be offended by [REDACTED] yelling 'shut the fuck up', [REDACTED] stated

"possibly". E confirmed that this was not part of any de-escalation training [redacted] had ever received. E admitted that [redacted] said this because [redacted] was frustrated, and all of the chaos had built up to that moment. When asked if yelling that in public could have escalated the chaos rather than de-escalated it, E stated, "possibly".

E said that [redacted] A arrived at the scene and informed [redacted] that [redacted] had witnessed (on video) #2 throwing a punch. When asked if [redacted] interviewed #2 E said that [redacted] did not. E did say that #2 kept telling [redacted] that [redacted] E just stood by with #2 until a decision to arrest was made. [redacted] said that while waiting with [redacted] an unfriendly (to the police) crowd was around them. E said that many of these people were saying loudly that #2 didn't do anything. E said that [redacted] J told [redacted] to arrest #2 for Assault and Battery of a person age 60 and over. E confirmed that [redacted] believed [redacted] had probable cause to effect this arrest.

E confirmed that since the arrest, [redacted] has viewed a slow-motion version of the incident video. [redacted] confirmed that the slow-motion view shows that #2 hand was open, not clenched into a fist. [redacted] said that in real time [redacted] saw a closed fist. E was asked if, subsequent to the arrest, any supervisor had spoken to [redacted] about how [redacted] saw #2 fist clenched, when [redacted] hand was open. [redacted] stated, "no". E was asked if [redacted] #2 race, apparent political/group affiliation, or age influenced [redacted] decision making on 12/12/20. [redacted] said, "no" to all. E was asked if [redacted] had any input into [redacted] #2 bail conditions. [redacted] said [redacted] did not. E said that after arresting #2 and placing [redacted] into a cruiser [redacted] never saw [redacted] again.

**[redacted] D Swampscott Police Department (Not taped per interviewee request)**

[redacted] D was interviewed on 2/17/21. [redacted] D said that [redacted] has been a member of the Swampscott Police Department for [redacted] years and has spent the past [redacted]. [redacted] was questioned regarding [redacted] knowledge of the facts and circumstances surrounding the 12/12/20 arrest of [redacted] [redacted] said that [redacted] was familiar with this arrest and subsequent investigation. [redacted] D said that there have been ongoing politically related weekly protests in Swampscott for many months, dating back to the spring of 2020. [redacted] D said that one constant of these protests was a [redacted] named [redacted] is a pro-Trump supporter, but has protested in Swampscott on many topics, including COVID mask mandates, election fraud and issues with Massachusetts Governor Charlie Baker, who resides in Swampscott.

[redacted] D said that [redacted] wasn't present at the 12/12/20 protest but [redacted] had called [redacted] J who was there, for a status update. [redacted] was informed that this protest consisted of the #3 pro-Trump group, Black Lives Matter group and a group newer to Swampscott, an "Out Now" group that also appeared to support Black Lives Matter and were there to counter-protest the



Trump group. When asked if the Town of Swampscott had any rules/laws to keep protesters a safe distance from one another, [REDACTED] D stated, "not really". [REDACTED] clarified [REDACTED] response by reporting that [REDACTED] had sought the advice of Town Legal Counsel and learned [REDACTED]. [REDACTED] D said that [REDACTED] could charge protesters with blocking vehicular traffic, but [REDACTED] has stressed de-escalation tactics with [REDACTED] officers. Rather than citing people for blocking traffic and further inciting hostile crowds, [REDACTED] has chosen to close off a street to vehicular traffic for a short time to allow protesters to express themselves. [REDACTED] also has instructed [REDACTED] officers to divert traffic around any protesters that happen to spill onto the street. [REDACTED] D reiterated that [REDACTED] was very much in favor of de-escalation and allowing people to express their freedom of speech in a safe manner while in the Town of Swampscott.

[REDACTED] D said that at some point on or after 12/12/20, [REDACTED] became aware that [REDACTED] #2 had been arrested for Assault and Battery of a person over the age of 60. Victim was identified as 80-year-old [REDACTED] #1. A day or two after the arrest, [REDACTED] was notified by [REDACTED] C ([REDACTED]) that [REDACTED] #2 defense attorney had some slow-motion video of the incident that according to the attorney, apparently showed discrepancies in what Officers [REDACTED] E and [REDACTED] A had witnessed. The defense attorney, identified as [REDACTED] also alleged that Swampscott officers may have violated [REDACTED] #2 civil rights. [REDACTED] D said that [REDACTED] made Town Administrator Sean Fitzgerald and through Fitzgerald, the Board of Selectmen aware of these allegations.

[REDACTED] D said that [REDACTED] has reviewed all reports completed by [REDACTED] officers as well as written witness statements provided by defense counsel. [REDACTED] also has reviewed all videos available to [REDACTED] including the original real time video that [REDACTED] A had seen, as well as the slow-motion angle provided by defense counsel. [REDACTED] D was asked if after review, [REDACTED] believed that [REDACTED] officers had probable cause to arrest [REDACTED] #2 for the assault against [REDACTED] #1. [REDACTED] said that [REDACTED] officers did in fact have probable cause to make the arrest. [REDACTED] said that [REDACTED] E saw the incident in person and [REDACTED] A saw it in real time on a live video feed. [REDACTED] confirmed that the extremely slowed down version of the video appears to show [REDACTED] #2 opening [REDACTED] hand at the end of the action rather than throwing a closed fist punch as seen by officers, but [REDACTED] felt that [REDACTED] officers made their observations based upon what a reasonable person would perceive in real time, which is the view that [REDACTED] officers had.

[REDACTED] D was asked if [REDACTED] felt that [REDACTED] #1 threw water on [REDACTED] #2 prior to the assault. [REDACTED] said that even when viewing the slow-motion video, the entire act of [REDACTED] #1 throwing water onto [REDACTED] #2 cannot be seen. [REDACTED] did agree that it was "likely" that [REDACTED] #1 did throw water on [REDACTED] #2. When asked why Swampscott PD did not charge [REDACTED] #1 with an offense, [REDACTED] D said that charging [REDACTED] #1 was "considered and discussed". [REDACTED] officers felt based upon [REDACTED] actions, [REDACTED] #2 was the dominant aggressor. [REDACTED] said that within a day or two after receiving the slow-motion video, [REDACTED] contacted (via conference call) [REDACTED] Assistant District Attorney [REDACTED] as well as Assistant District Attorney [REDACTED] and

discussed the case at length. [REDACTED] D said that they both "challenged" [REDACTED] on the idea and "discouraged" [REDACTED] from charging #1 [REDACTED] said that [REDACTED] was told that charging #1 [REDACTED] who was the victim, could potentially raise Fifth Amendment issues if the case went to trial. They further opined that [REDACTED] officers acted appropriately upon the probable cause that they perceived at the time. That the "proportionality" of #2 [REDACTED] response to water being thrown on [REDACTED] should be considered. [REDACTED] committed a felony act in response to, at best, a misdemeanor action upon [REDACTED] D concurs with the District Attorneys' opinions.

[REDACTED] D said that [REDACTED] furthered the allegations of civil rights violations by sending the case file to the Attorney General's Office, Civil Rights Division. [REDACTED] spoke via telephone with Civil Rights Attorney [REDACTED]. [REDACTED] also spoke with Criminal Division head [REDACTED] about the allegations. Neither identified any civil rights violations to [REDACTED] Swampscott [REDACTED] C [REDACTED] and will assist if any potential violations are identified.

[REDACTED] D said that [REDACTED] has reached out to the citizens of Swampscott via ZOOM in an attempt to answer questions and concerns about the incident. [REDACTED] regrets that due to [REDACTED] inability to comment in detail on pending criminal cases, [REDACTED] cannot make the public fully aware that the Swampscott Police Department took a robust look and considered the totality of the circumstances involving [REDACTED] #1 [REDACTED] before declining to bring forth criminal charges against [REDACTED] [REDACTED] said that #2 [REDACTED] through [REDACTED] attorney, had every right to bring forth charges against #1 [REDACTED] via what amounts to a private complaint with the Court. Yet, they haven't done so against #1 [REDACTED] either. When asked if [REDACTED] officers displayed any type of bias against #2 [REDACTED] based upon [REDACTED] race, age, or apparent political affiliation, [REDACTED] D stated, "absolutely not". When asked if [REDACTED] officers displayed any type of bias against #2 [REDACTED] based upon [REDACTED] race, age or apparent political affiliation, [REDACTED] D stated, "absolutely not".

[REDACTED] D said that [REDACTED] has done [REDACTED] best to allow [REDACTED] officers to complete their investigation without undue influence from [REDACTED] or any political party. [REDACTED] D said that [REDACTED] supports this independent incident review and is confident in the actions of [REDACTED] officers.

## FINDINGS

1. MRI finds that the Swampscott Police Department's 12/12/20 arrest of [REDACTED] #2 [REDACTED] for Felony Assault and Battery of an elderly or disabled person, was supported by "probable cause". As previously described in the "INCIDENT REVIEW" section of this report: In reviewing the "Arrest" policy and procedures identified as 1.11 in the Swampscott Police Policy Manual, MRI determined that the policy reflects best practices of the profession. Included in those best practices were a number of relevant statements that were gleaned from this policy which provides lawful guidance to

employees of the agency in situations similar to this event on December 12, 2020. Section II - B states "That officers exercise discretion and make warrantless arrests as appropriate in the performance of their duties". [REDACTED] E's personal viewpoint as [REDACTED] stood in close proximity to the event, stated that it was [REDACTED] conclusion that [REDACTED] observed a [REDACTED] identified later as [REDACTED] #2 strike a bystander with a closed fist punch. [REDACTED] A who was on desk duty in the Swampscott police facility was watching the protests on Livestream and stated in [REDACTED] report that [REDACTED] observed [REDACTED] #2 punching [REDACTED] #1 with [REDACTED] right fist. Both officers sufficiently established probable cause to effect an arrest via this policy where probable cause is defined as "if, at the time of arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made."

From the officer's vantage points, on scene and watching via a live stream, they independently concluded that [REDACTED] #2 had struck [REDACTED] #1. Within the seconds that it took for [REDACTED] #2 to move towards [REDACTED] #1 the officers formed a reasonable and prudent conclusion that an assault and battery had occurred by [REDACTED] #2 towards [REDACTED] #1. This conclusion justified an arrest by the Swampscott Police. The need to take an immediate enforcement action was due, in part, to the aggressive and volatile behaviors of people in the crowd; to delay may have led to an escalation of the crowd's behaviors. The officers' probable cause was later supported while booking [REDACTED] #2 when [REDACTED] spontaneously uttered that he'd struck [REDACTED] #1.

2. MRI finds that the Swampscott Police Department acted within their statutory/policy discretion, when choosing not to charge [REDACTED] #1 with an offense for [REDACTED] actions on 12/12/20. As previously documented under the INCIDENT REVIEW section of this report, MRI finds that probable cause does exist to bring forth a charge against [REDACTED] #1 for what appears to be [REDACTED] throwing water on [REDACTED] #2. However, [REDACTED] E did not see [REDACTED] throw water and [REDACTED] A did not observe [REDACTED] throw the water in person. Therefore, any potential charge such as Assault and Battery, would be based upon a misdemeanor committed out of the presence of the police; and does not meet the category of mandatory arrest, such as a domestic violence related offense would. Similarly, because the alleged offense took place outside of the officer's presence, an immediate arrest at the time/place of the protest would not have been possible.

During [REDACTED] interview with MRI, [REDACTED] D said that [REDACTED] investigators considered the possibility of charging [REDACTED] #1 with an offense for allegedly throwing water on [REDACTED] #2 on 12/12/20. [REDACTED] D sought the guidance and opinion of the Essex County District Attorney's Office (Prosecuting Authority) in this





█ #4 told B █ that █ observed █ #1 █ throw water on █ #2 █ According to █ B █ didn't share this information with anyone at the scene and didn't document this information in a report until several days after the incident. Swampscott Police Department Policy 1.06, Interviewing Victims and Witnesses Section IV C. Report Writing reads: *All information obtained from witnesses shall be passed on to the follow-up investigator, if any. (Victims and Witnesses Policy-Attachment 10)*

- c. On 12/12/20, █ K █ transported █ #2 █ to the Swampscott Police Department for booking. During █ interview with MRI, █ K █ said that either during the transport or during the booking procedure, █ #2 █ █ This statement could not be confirmed by MRI. █ K █ confirmed that █ didn't write a report or document this information. █ also didn't tell anyone about this statement. Swampscott Police Department Policy 1.06, Interviewing Victims and Witnesses Section IV C. Report Writing reads: *All information obtained from witnesses shall be passed on to the follow-up investigator, if any.* When asked why, █ stated "I didn't see any value in it, especially with so much evidence against █ and eye-witness accounts of the assault". In proving a criminal offense, the prosecution is tasked with proving each and every element of the offense that has been charged. █ #2 █ admission that █ hit █ #1 █ as well as █ allegation that █ threw water on █ in whatever context it was made, is certainly information that requires documentation as well as notification of the investigating █
- d. On 12/12/20, █ M █ took the initiative to locate and identify potential witnesses in the immediate aftermath of █ #2 █ arrest. █ located a witness who showed █ a video of the alleged assault on █ phone (via █ live feed). █ M █ viewed the video and observed what █ believed to be █ #2 █ assaulting █ #1 █ M █ didn't document the name or any information about this witness, other than █ was a Trump supporter, nor did █ write a report documenting █ observations because █ didn't feel it was "necessary". (**Preliminary Investigations Policy-Attachment 11**) Swampscott Police Department Preliminary Investigations sec III 5. Interviewing Complainant, Witnesses and Suspects reads: *Officers shall attempt to locate, identify and interview reliable witnesses. 1) Obtain the name, address and telephone number of all witnesses.*
- e. On 12/12/20, post-arrest, █ A █ contacted potential witnesses via telephone. █ spoke to at least two witnesses via conference call rather than interviewing them separately. Preliminary Investigations sec III 5. Conducting Interviews 2) reads: *Interview each witness separately and in a quiet area if possible.* Regarding the █ #2 █ assault itself, █ writes that █ #3 █ saw █ #2 █ punch █ #1 █

Witness #8 stated saw #2 punch #1 A didn't document any additional information regarding the assault itself. No questions were documented pertaining to what part of #1 body was punched nor any questions of the witnesses' observations of injury/non-injury. A also documents that detail officers on scene evaluated #1 and offered medical assistance which declined. The (s) that evaluated and offered #1 medical assistance are unknown as they neglected to document in any report their observations of any injuries, any statements made by #1 or even any complaint as to any pain or even the location that was punched. This opportunity to gain/document information from the victim of a felony assault was not taken advantage of. F was the only one to document that #1 stated was punched in the chest.

6. MRI finds that on 12/12/20, Swampscott Police E violated Department Rule & Regulation: 6.3 COURTESY. (6.3 COURTESY-Attachment 12) On 12/12/20, while escorting #2 away from the scene of the assault incident, E reportedly yelled in #2 face, "Shut the fuck up!" This was witnessed by civilian #5. During interview with MRI, E confirmed said that to #2 but did so as a form of "de-escalation" technique. Rule 6.3 reads: *Officers shall not be discourteous or inconsiderate to the public, to their supervisory officers, fellow officers and employees of the police department. They shall refrain from the use of profanity, derogatory comments, ethnic or racial slurs or any other type of demeaning statements or conversation. They shall be tactful in the performance of their duties and are expected to exercise the utmost patience and discretion even under the most trying circumstances.* MRI is not aware of any law enforcement training or police "best practice" where profanity is taught as a de-escalation technique. E confirmed to MRI that had never received any training regarding profanity as a de-escalation technique. MRI finds that E's use of profanity towards #2 could have just as easily served to "escalate" rather than "de-escalate" an already adversarial crowd of protesters.

## CONCLUSION

E's arrested #2 based upon probable cause. If all other information learned during this investigation is excluded, *probable cause* that #2 struck #1 remains. MRI concludes that the arrest of #2 was consistent with department policy and the laws of arrest in the Commonwealth of Massachusetts.

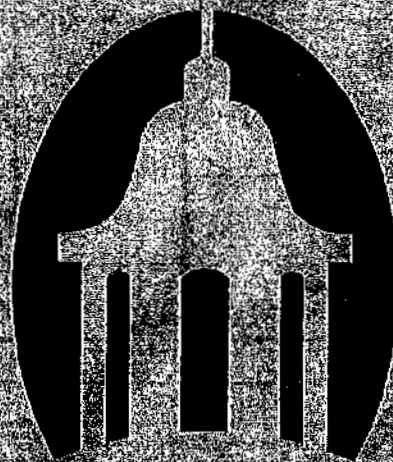
Video and testimonial evidence suggests that #2 actions were precipitated by #1 assault of in the first instance. Had #1 not sprayed #2 it is likely that this confrontation could have been avoided. Though the possibility that #2 was goaded

into assaulting [REDACTED] #1 [REDACTED] may be mitigating, that determination is a legal distinction best left for the court with jurisdiction.


Respectfully Submitted,

Municipal Resources, Inc.

# ***ATTACHMENT 1***



**Municipal  
Resources, Inc.**

<b>CRIMINAL DOCKET</b>		<b>DOCKET NUMBER</b> 2013CR003114	<b>NO. OF COUNTS</b> 1	<b>Trial Court of Massachusetts District Court Department</b>	
<b>DEFENDANT NAME AND ADDRESS</b> [REDACTED]		<b>DOB</b> [REDACTED]	<b>GENDER</b> [REDACTED]	<b>COURT NAME &amp; ADDRESS</b> Lynn District Court 580 Essex Street Lynn, MA 01901	<b>DATE RECEIVED</b> PAGE 12/12/20 <b>AMOUNT</b> \$ 500 <b>DATE RETURNED</b>
		<b>DATE COMPLAINT ISSUED</b> 12/14/2020		<b>INTERPRETER REQUIRED</b>	<b>CHECK #</b>
		<b>PRECOMPLAINT ARREST DATE</b> 12/12/2020			

<b>FIRST FIVE OFFENSE COUNTS</b>			
<b>COUNT</b>	<b>CODE</b>	<b>OFFENSE DESCRIPTION</b>	<b>OFFENSE DATE</b>
1	265/13K/F	A&B ON +60/DISABLED c265 §13K(a½)	12/12/2020

ORIGINAL

<b>DEFENSE ATTORNEY</b> Must Zekan (PVI)	<b>OFFENSE CITY/TOWN</b> Swampscott	<b>POLICE DEPARTMENT</b> Swampscott PD
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DATE & JUDGE	DOCKET ENTRY	DATE & JUDGE	FEES IMPOSED
Necton, J. 12.14.20	<input type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy  Terms of release set: <input type="checkbox"/> PR <input checked="" type="checkbox"/> Bail <i>500 previously posted @ station</i> <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (275 §56A)		Counsel Fee (211D § 2A(2)) <input type="checkbox"/> WAIVED Counsel Contribution (211D § 2) <input type="checkbox"/> WAIVED Default Warrant Fee (276 § 30(1)) <input type="checkbox"/> WAIVED Default Warrant Arrest Fee (276 § 30(2)) <input type="checkbox"/> WAIVED Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED Bail Order Forfeited  Advised of right to jury trial: <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive  Advised of trial rights as pro se (Dist. Ct. Supp. R.4)  Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 20)
Necton, J. 12.14.20	Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §58B) <input type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10) <input type="checkbox"/> Inquiry made by Court under 276 § 58A  Abuse Allegation: <input type="checkbox"/> C276 § 56A form filed by Commonwealth <input type="checkbox"/> Allegation of abuse under C276 § 56A found <input type="checkbox"/> No allegation of abuse under C276 § 56A found		

SCHEDULING HISTORY						
NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/STOP	
1	12/14/2020	Arraignment	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	Necton, J.	2/21/13 -	
2	2.24.21	PTI	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			
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**APPROVED ABBREVIATIONS**  
 ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review  
 SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate  
 ORTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVI = probation revocation hearing

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<b>CRIMINAL DOCKET - OFFENSES</b>	DEFENDANT NAME [REDACTED]	DOCKET NUMBER <b>2013CR003114</b>
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COUNT / OFFENSE <b>1 A&amp;B ON +60/DISABLED c266 §13K(a½)</b>	DISPOSITION DATE AND JUDGE
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<b>DISPOSITION METHOD</b> <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C270§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute  <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent. <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)	FINE/ASSESSMENT	SURFINE	COSTS	OUI \$24D FEE	OUI VICTIMS ASMT
	HEAD INJURY ASMT	RESTITUTION	VWASSESSMENT	BATTERER'S FEE	OTHER
<b>SENTENCE OR OTHER DISPOSITION</b> <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					

<b>FINDING</b> <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause	<b>FINAL DISPOSITION</b> <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)	<b>JUDGE</b>	<b>DATE</b>
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COUNT / OFFENSE	DISPOSITION DATE AND JUDGE
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<b>DISPOSITION METHOD</b> <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C270§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute  <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)	FINE/ASSESSMENT	SURFINE	COSTS	OUI \$24D FEE	OUI VICTIMS ASMT
	HEAD INJURY ASMT	RESTITUTION	VWASSESSMENT	BATTERER'S FEE	OTHER
<b>SENTENCE OR OTHER DISPOSITION</b> <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					

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COUNT / OFFENSE	DISPOSITION DATE AND JUDGE
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<b>DISPOSITION METHOD</b> <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C270§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute  <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)	FINE/ASSESSMENT	SURFINE	COSTS	OUI \$24D FEE	OUI VICTIMS ASMT
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CRIMINAL DOCKET  
DOCKET ENTRIES

DEFENDANT NAME



DOCKET NUMBER

2013CR003114

DATE

DOCKET ENTRIES

12.14.20 Comm Jlis 276 858A motion to hold defendant  
w/o bail. Hearing held today; after hearing,  
Comm's motion is denied. Deft released on  
PR w/ order to S/A from the victim - Nesh, J.

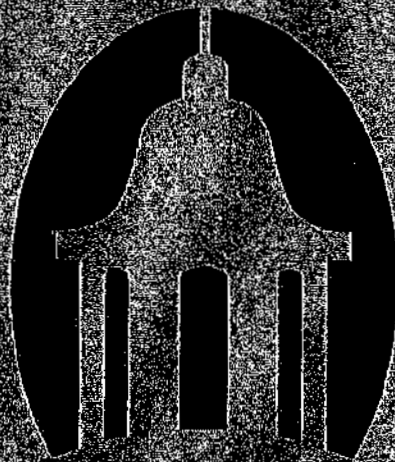
APPROVED ABBREVIATIONS

ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SR = Status review  
GRP = State review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance without finding scheduled to terminate PRO = Probation scheduled to terminate  
DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant of default warrant recalled PVH = probation revocation hearing.



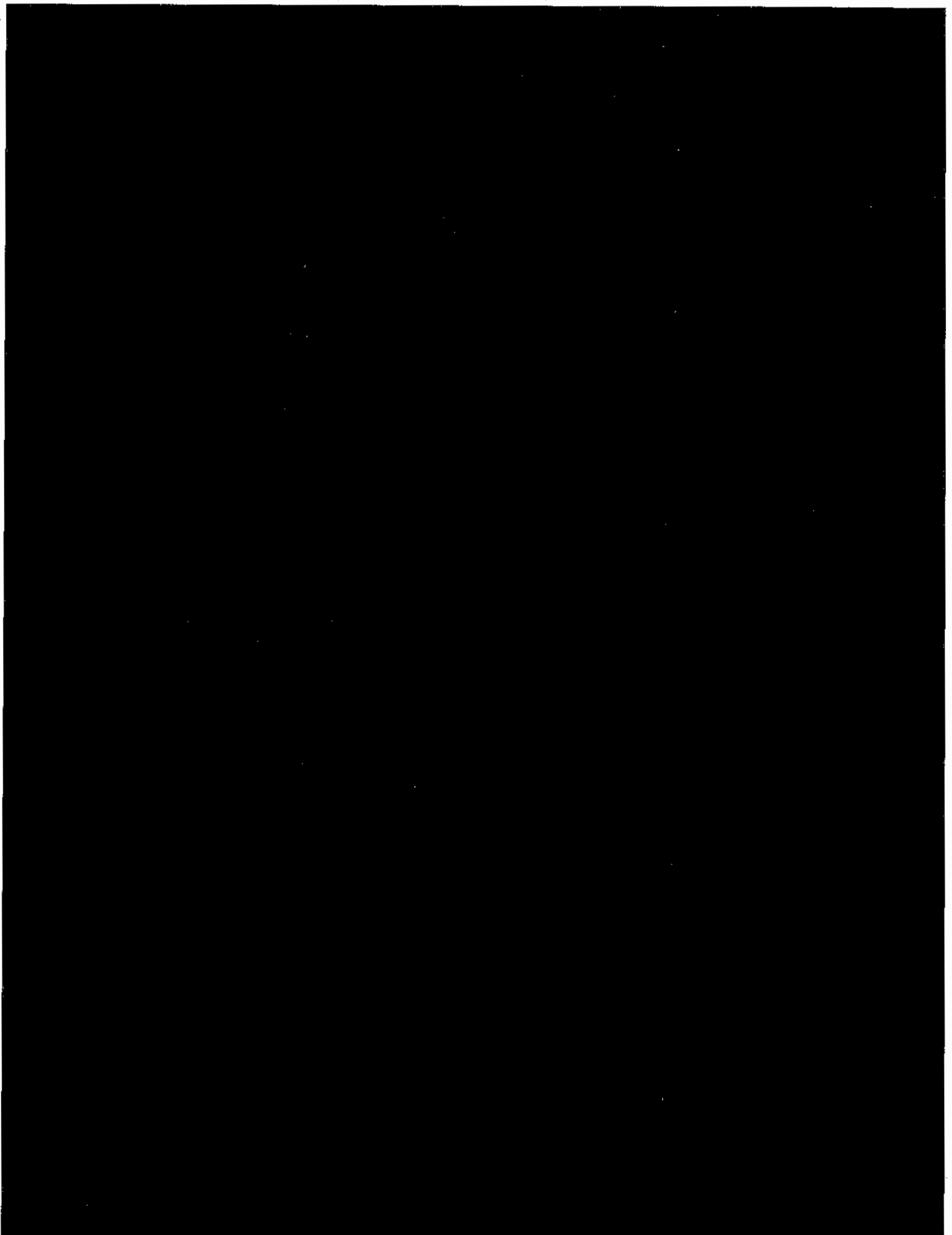


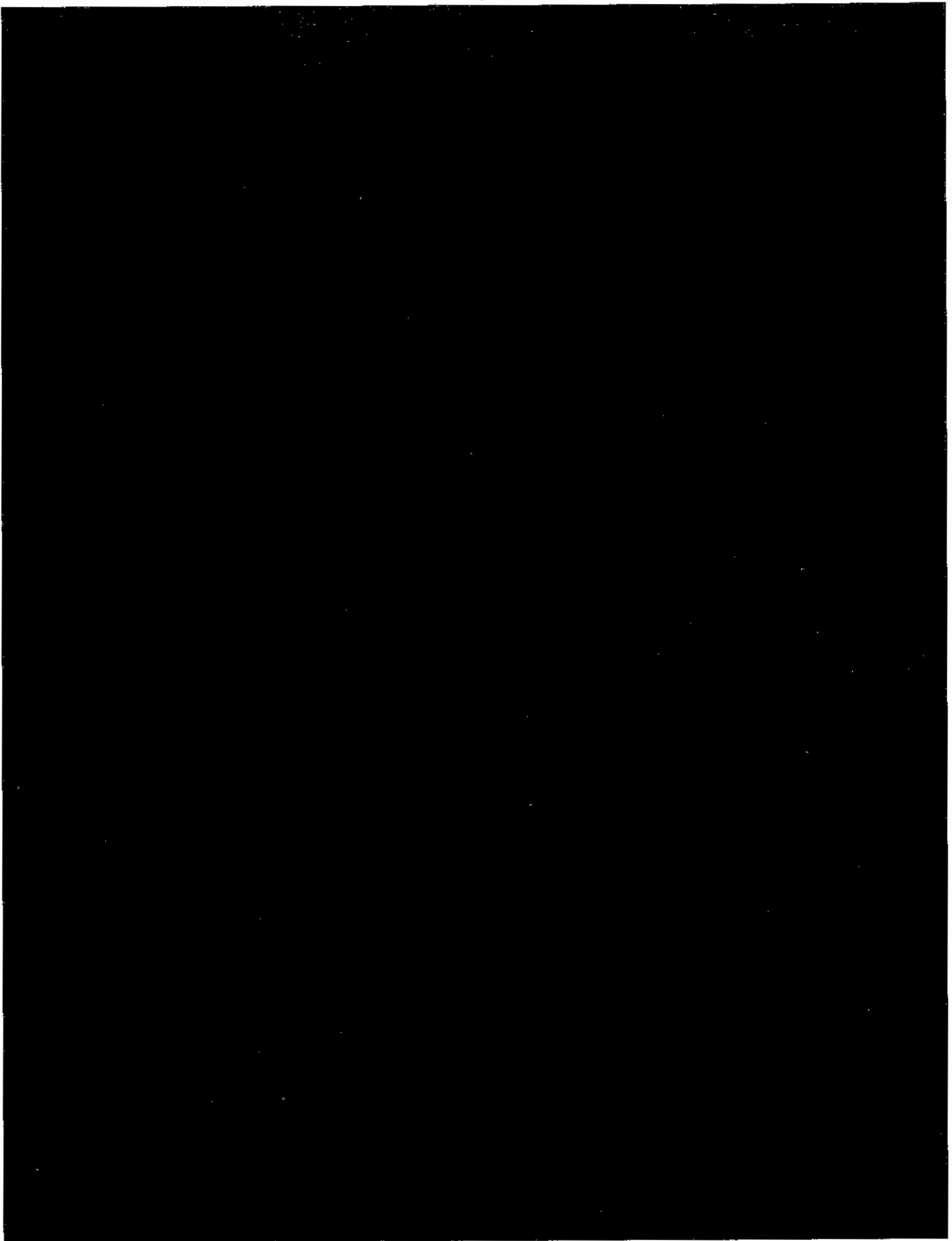
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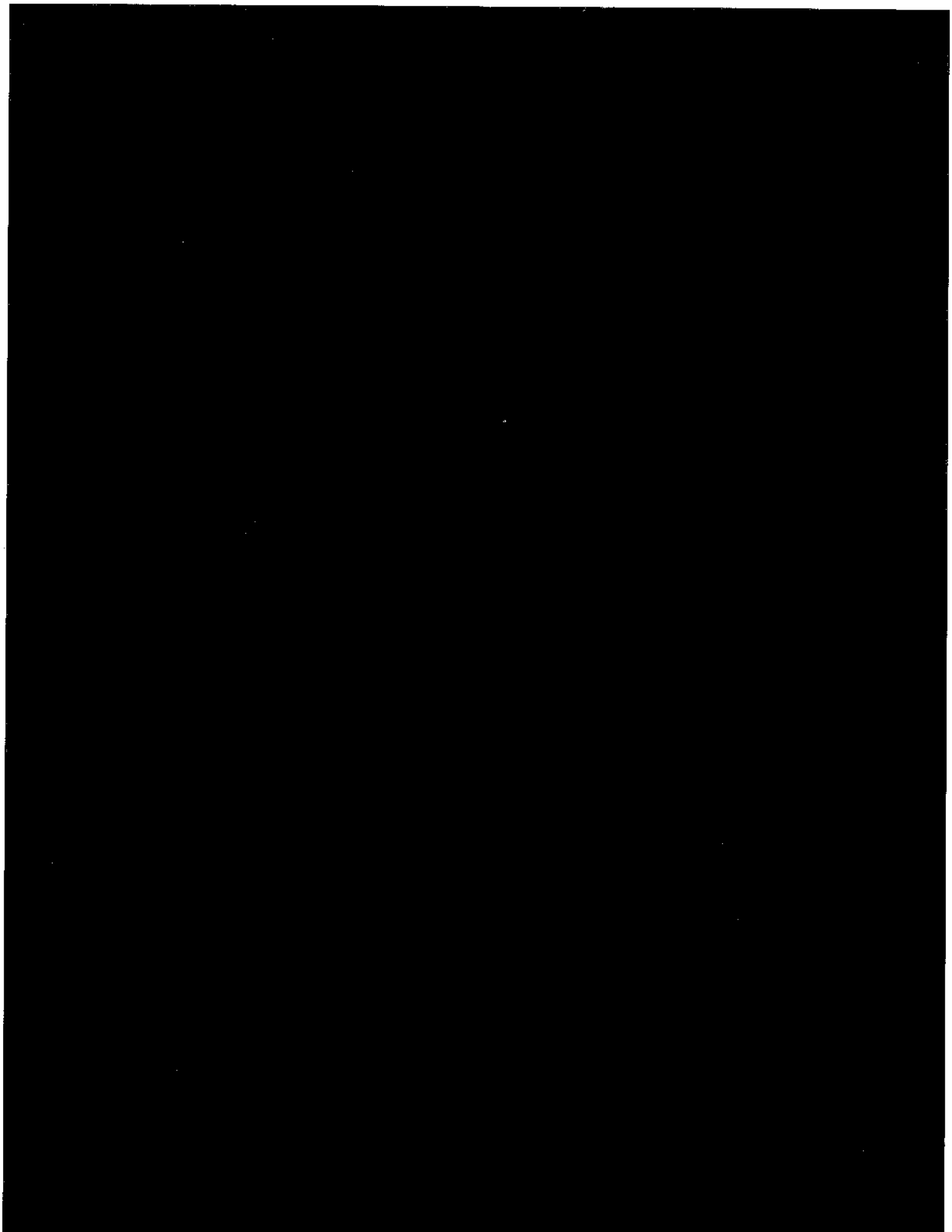


**Municipal  
Resources, Inc.**

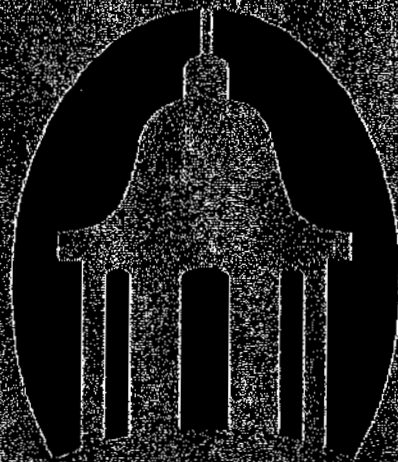




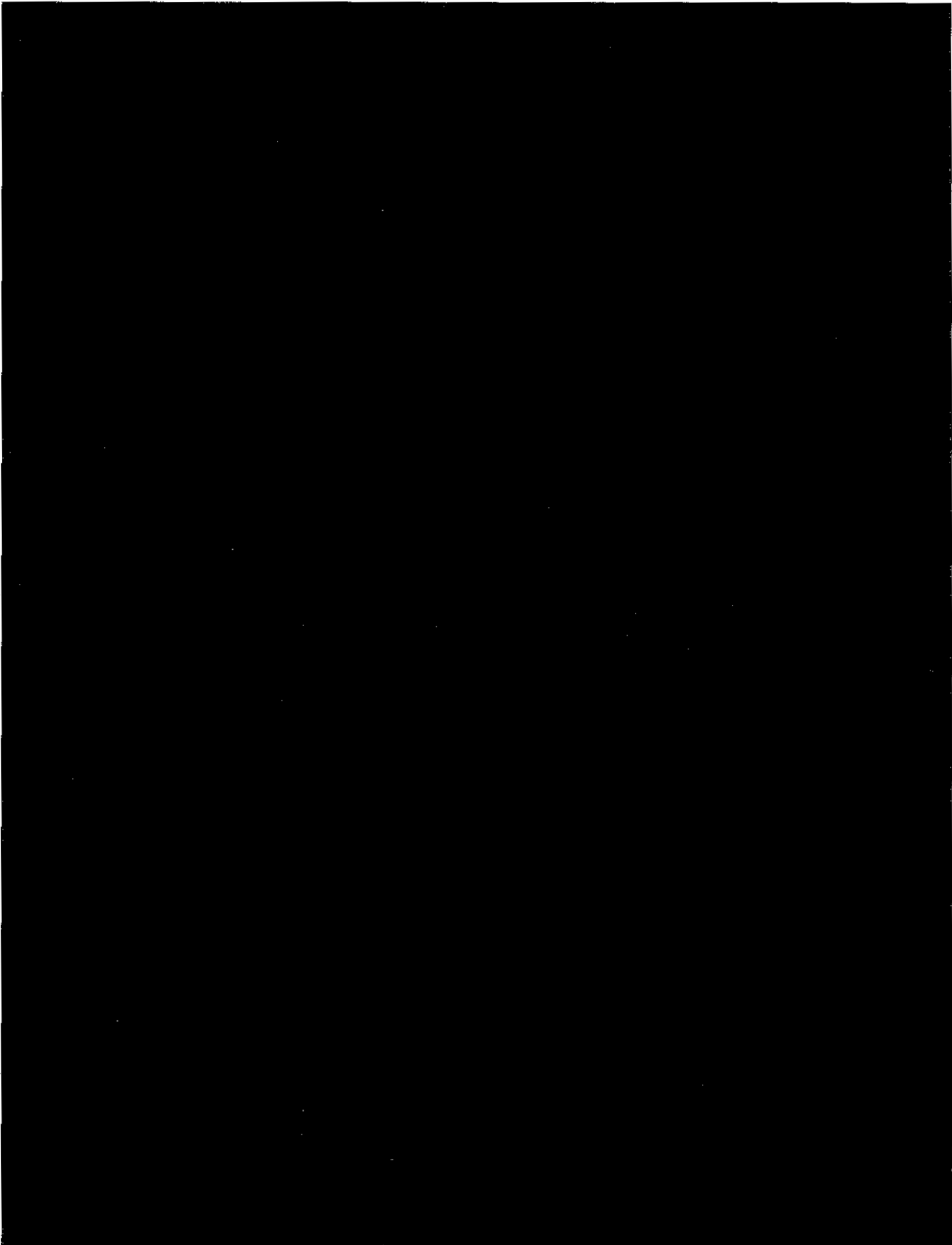


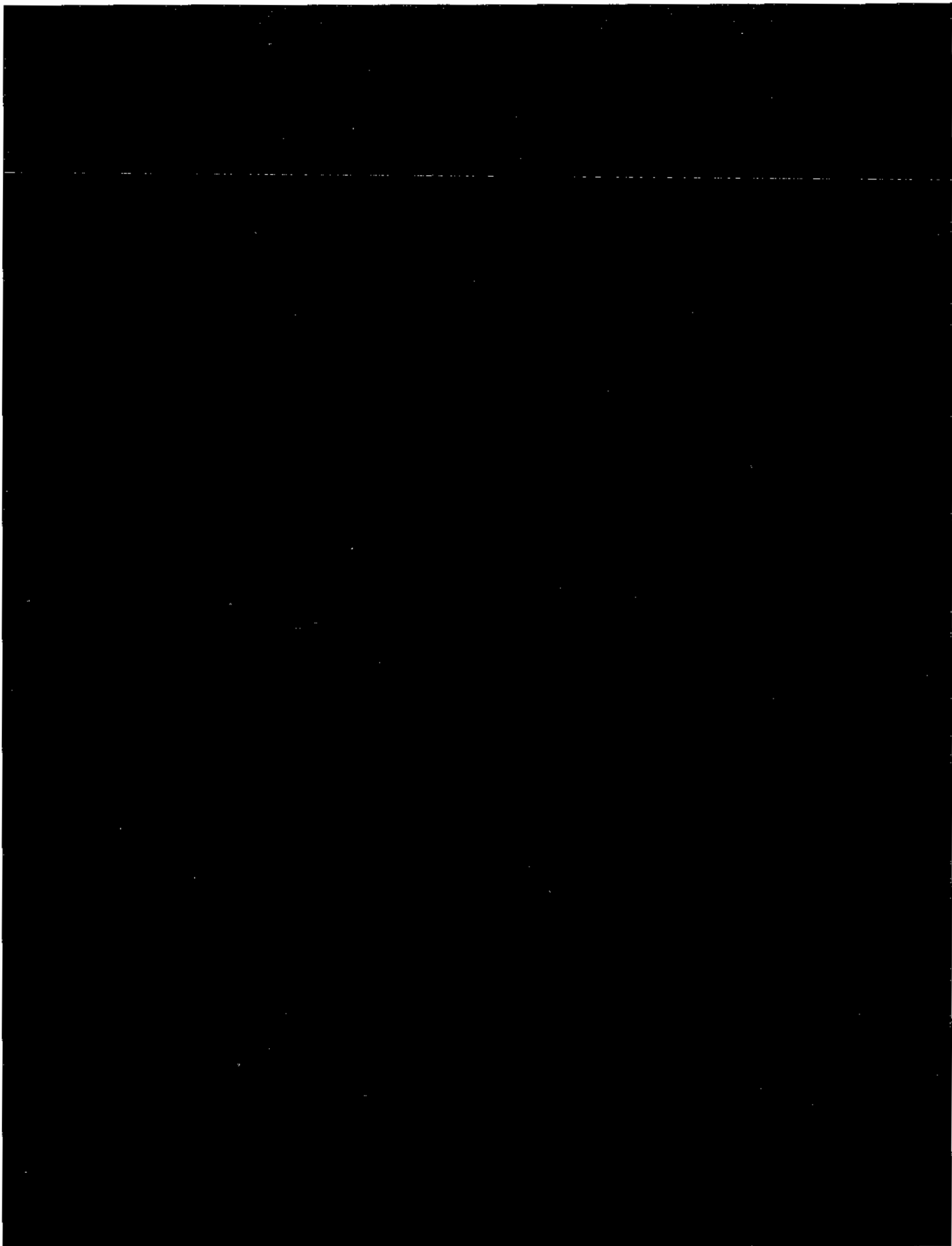


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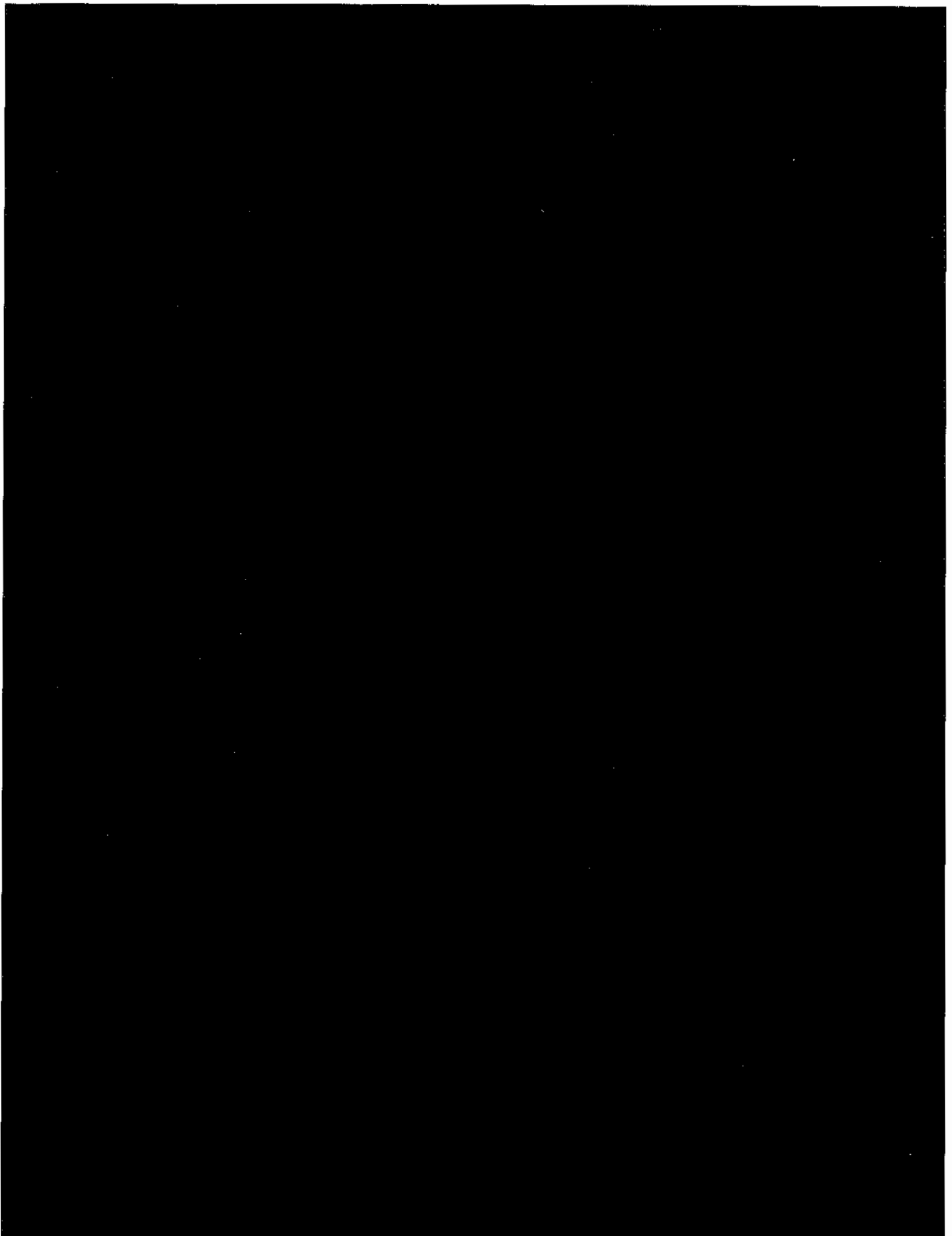


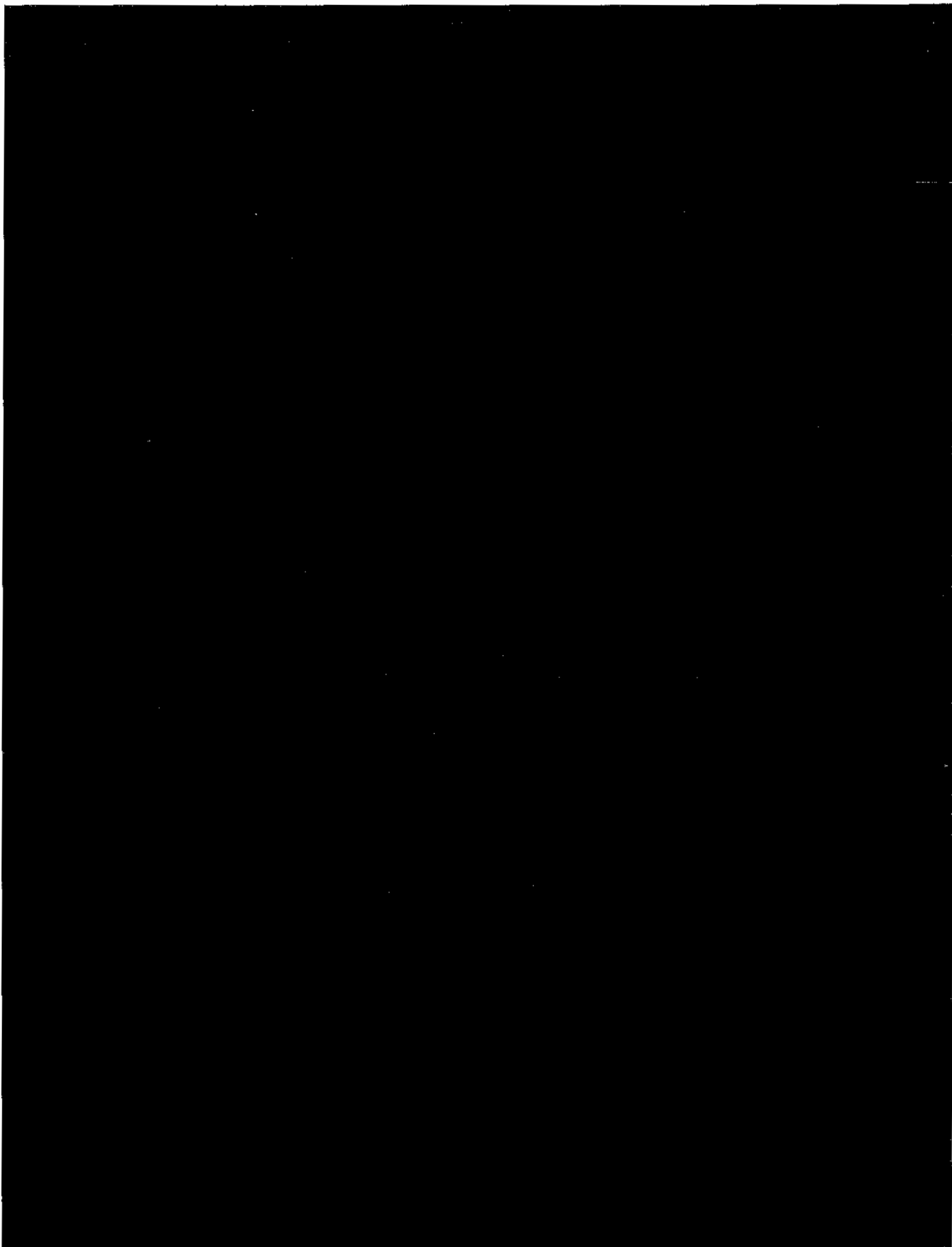
**Municipal  
Resources, Inc.**

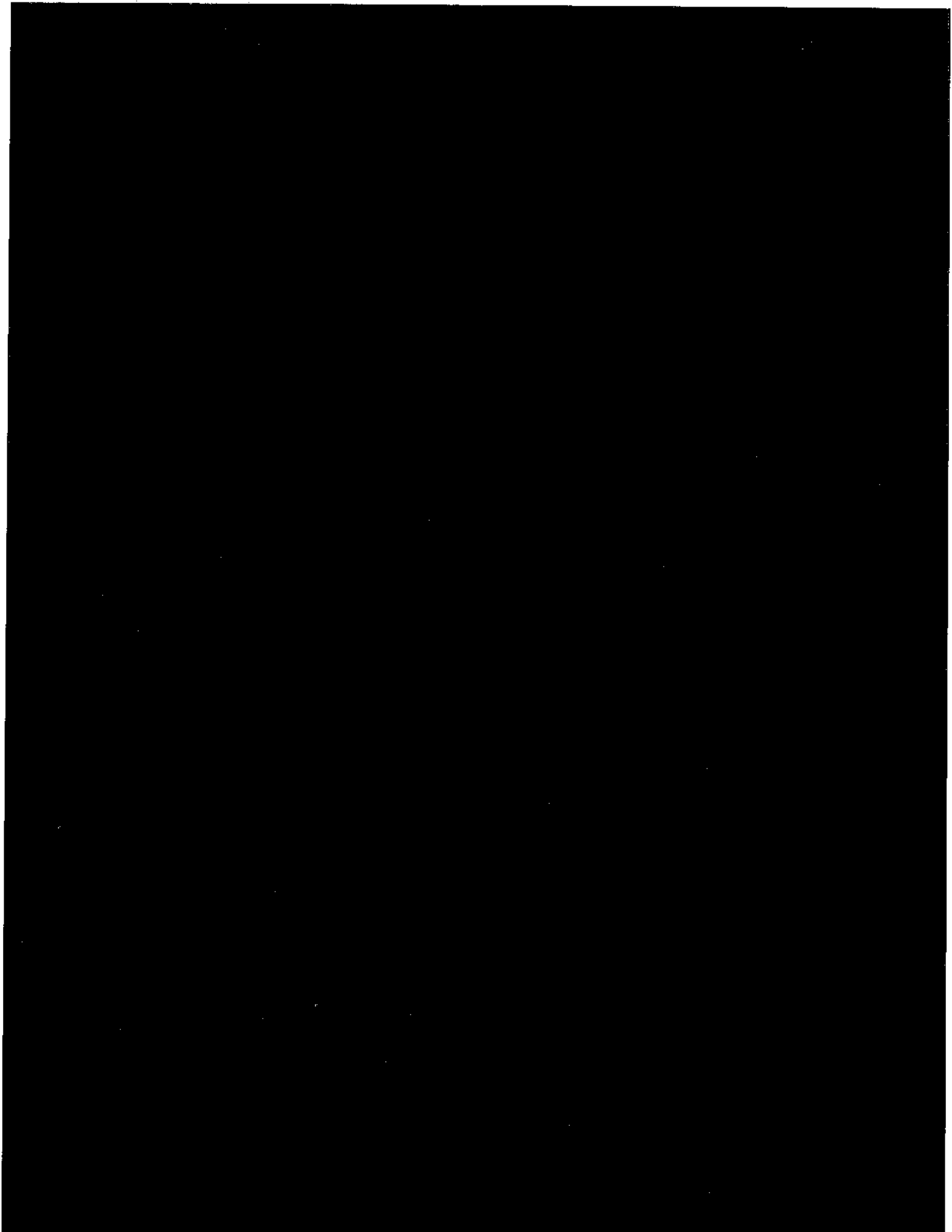


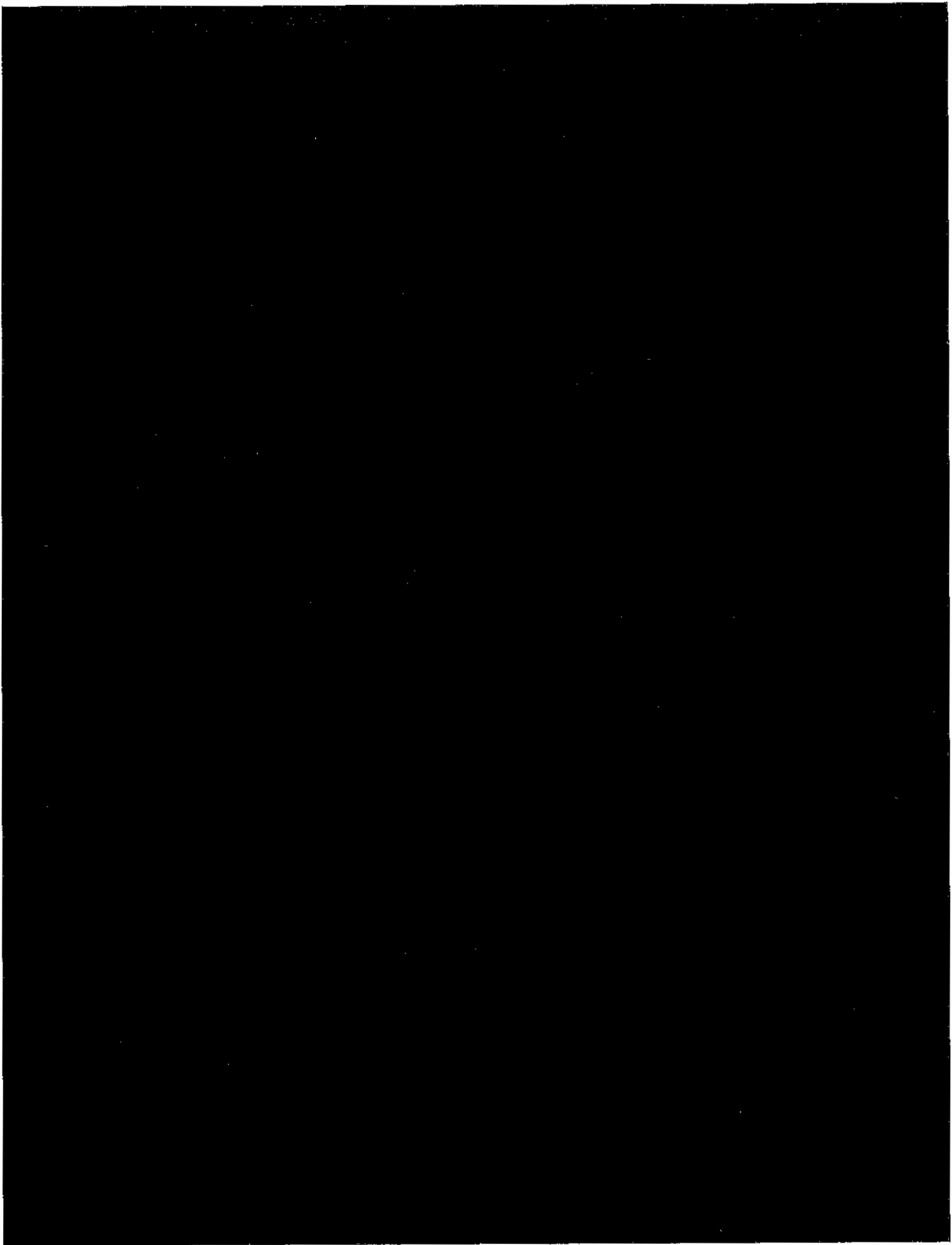




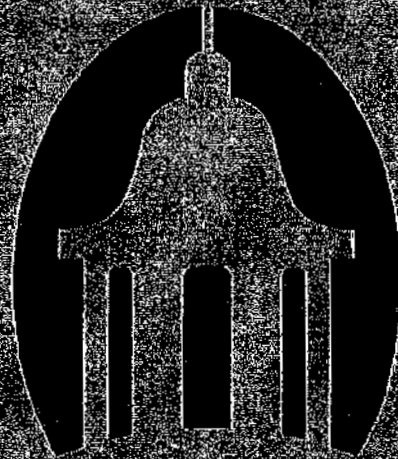








# ***ATTACHMENT 4***



**Municipal  
Resources, Inc.**

## ARREST

POLICY & PROCEDURE NO. <b>1.11</b>	EFFECTIVE DATE: July 23, 2010
	REVIEW DATE: December 1, 2022
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: <b>1.2.6; 1.2.7</b>	

### I. GENERAL CONSIDERATIONS AND GUIDELINES

The authority to arrest, thereby depriving a person of his/her liberty, is one of the most serious and sensitive duties of a police officer. Whenever there is sufficient time and opportunity to do so, a warrant should be obtained in advance of an arrest.

By the very nature of police work, however, many arrests must be made without a warrant. Police officers should have a clear understanding of their powers, duties and responsibilities under the law of arrest.

If an unlawful arrest is made, any search made incidental to that arrest may be found unlawful and any evidence seized declared inadmissible. Any confession or admissions made may also be excluded, if made after an unlawful arrest. In addition, civil liability may also result.

### II. POLICY

It is the policy of the Swampscott Police Department:

- A. That officers make mandatory arrests as required by statute or policy;
- B. That officers exercise discretion and make warrantless arrests as appropriate in the performance of their duties;
- C. That a warrant should be obtained when practical prior to making an arrest when the offender does not create a threat to the public, or is not likely to flee, and especially where less serious offenders are involved;  
and

- D. That when appropriate circumstances exist, officers may exercise discretion and not make an arrest. In such limited cases, citations, summonses, informal resolutions, warnings and referrals to other agencies may be alternatives to arrest.

### **III. DEFINITIONS**

- A. Arrest:** The taking of a person into custody and depriving him/her of his/her freedom of action, in accordance with law, in order that such person can be brought before the court to answer to a criminal charge.<sup>1</sup>
- B. Probable Cause:** Probable cause for arrest exists if, at the time of arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.<sup>2</sup>
- C. Felony:** Any crime punishable by death or imprisonment in the state prison.<sup>3</sup>
- D. Misdemeanor:** Any crime where there is no possibility of punishment by death or imprisonment in the state prison.<sup>4</sup>
- E. Breach of the Peace:** A violation of public order or decorum which disturbs the public peace and tranquillity; or any act of disorderly conduct which disrupts the public peace.<sup>5</sup>
- F. Arrest Warrant:** An order in writing, issued by an authorized court official, directed to officers authorized to serve criminal process, commanding them to arrest the person named or described therein and to bring such person before the court to answer to a charge of crime.

### **IV. PROCEDURES**

#### **A. Arrests in General**

##### 1. AUTHORITY

- a. Duly sworn police officers of cities and towns gain their authority to make arrests from G.L. c. 41, § 98.
- b. A duly authorized police officer may make a lawful arrest either with or without a warrant. However, whenever possible, arrests should be made with a warrant.
- c. To effectively and lawfully execute an arrest there must be:
  - 1) An intention on the part of the police officer to make an arrest;
  - 2) The communication of the knowledge and understanding of that intent to the person to be arrested; and

- 3) Either a physical seizure or submission to the officer by the arrested person.<sup>6</sup>
  - d. An arrest should never be made to show authority or to vent personal feelings.
    - 1) The attitude of the offender should not be the determining factor in making an arrest.
    - 2) Verbal abuse alone is not a sufficient justification for an arrest.
    - 3) An arrest should not be used to resolve a problem when other options are available.
2. FORCE
- a. Force should only be used when there is resistance or reasonable certainty of resistance.
  - b. The amount of force shall be restricted to that which is reasonable, necessary, and proper for the safe custody of the arrestee, or for overcoming any resistance that may be offered. See department policy on **Use of Force**.<sup>7</sup>
  - c. An arrestee has no right to resist arrest, lawful or unlawful, by a police officer, unless the officer uses excessive force.<sup>8</sup>

## **B. Arrests with a Warrant**

1. AUTHORITY
  - a. A police officer may make a lawful arrest with a warrant when:
    - 1) The officer making the arrest and detention has actual knowledge that a warrant then in full force and effect for the arrest of such person has in fact been issued, or
    - 2) The officer possesses a valid arrest warrant.
  - b. A warrant may be executed in any place within the Commonwealth.<sup>9</sup>
2. APPLICATION OF WARRANT
  - a. An arrest warrant issued pursuant to a complaint must be founded upon probable cause supported by oath or affirmation, but it is not necessary to recite the facts that constitute probable cause in the complaint.<sup>10</sup>
  - b. The warrant must be obtained from the proper authority. The following judicial officers have the statutory authority to issue arrest warrants:
    - 1) Justices of the Supreme Judicial Court, the Superior Court, and the District Court Departments;<sup>11</sup> and



- 2) A Clerk/Magistrate, Assistant Clerk/Magistrate, Temp Clerk/Magistrate, or Temporary Assistant Clerk/Magistrate of a District Court Department.<sup>12</sup>
  - c. The preference of the legislature is that defendants are summonsed rather than arrested. A summons shall be issued instead of a warrant unless, in the judgment of the court or justice, there is reason to believe that the defendant will not appear upon summons.<sup>13</sup>
  - d. An arrest warrant may be issued in any case where the accused is a juvenile between twelve and eighteen years of age.
3. EXECUTION
- a. Prior to serving an arrest warrant, an officer should examine it carefully to determine what the officer's powers are under it and whether:
    - 1) It clearly names and describes the person to be arrested or, if his/her name is unknown, any name or description by which [s]he can be identified with reasonable certainty;<sup>14</sup>  
NOTE: A so-called "John Doe" warrant without a further satisfactory and sufficient description is unlawful and void.<sup>15</sup>
    - 2) The officer is authorized to serve it; and
    - 3) It clearly describes the offense for which the arrest is to be made.  
NOTE: The warrant shall recite the substance of the offense charged, and it shall command that the defendant be arrested and brought before the court.
  - b. A person arrested on a warrant, or otherwise taken into custody by a police officer, has a right to know the true grounds for such arrest.
    - 1) The officer need not have the warrant in his/her possession at the time of arrest; however, upon request [s]he shall show the warrant to the arrestee as soon as possible.<sup>16</sup> A printout of a warrant from CJIS shall constitute a true copy of the warrant.<sup>17</sup>
    - 2) If the officer does not have the warrant in his/her possession at the time of arrest, [s]he shall inform the arrestee that a warrant has been issued and of the offense charged.<sup>18</sup>
    - 3) If the officer does not then know of the offense charged, [s]he shall inform the arrestee thereof within a reasonable time after the arrest.<sup>19</sup>

- c. After the warrant has been executed, the officer-in-charge shall ensure that the warrant is located on CJIS/WMS. See the department policy on **Communications**.<sup>20</sup>

#### 4. WARRANTS ISSUED BY OTHER JURISDICTIONS

- a. OTHER COUNTY: When a person subject to a warrant issued by another county is arrested, [s]he shall be brought before a court of the county where the arrest was made in order to be admitted to bail.<sup>21</sup>
- b. OTHER STATE: A person who is the subject of an out-of-state warrant may not be arrested in Massachusetts on that warrant. Rather, a warrantless arrest shall be made pursuant to M.G.L. 276 §20B, Fugitive from Justice.<sup>22</sup>

### **C. Arrests without a Warrant**

1. Generally: Warrantless arrests merit much more detailed study because of the subjective factors involved.
  - a. If an unlawful arrest is made, any search made incidental to that arrest may be found unlawful, and any evidence seized may be declared inadmissible.
  - b. Any confession or admission made by the person arrested may also be excluded, if made after an unlawful arrest.
2. Lawful Authority: An arrest without a warrant may be lawfully made when certain circumstances exist:
  - a. FELONY: For a felony committed in the officer's presence or on probable cause that a felony has been committed.
  - b. MISDEMEANOR:
    - 1) For a misdemeanor committed in the officer's presence when such arrest is authorized by statute; or
    - 2) For certain misdemeanors authorized by statute for which arrest is allowed even though such misdemeanors were not committed in the officer's presence; or
    - 3) For a misdemeanor where there is no statutory authority to arrest, such arrest may be made only if:
      - a) The misdemeanor is committed in her/her presence; and
      - b) The misdemeanor is causing or threatening to cause a breach of the peace; and
      - c) The misdemeanor is still continuing or only briefly interrupted.

### 3. PROBABLE CAUSE

- a. In addition to having lawful authority, it is required under the Fourth Amendment that police officers have "probable cause" in order to make a valid arrest without a warrant.<sup>23</sup> [See definition of "probable cause" in definitions section.]
- b. The element of probable cause must exist at the time of arrest. Subsequent events or information acquired later cannot be used to justify that arrest.<sup>24</sup>
- c. The information upon which an officer relies in making an arrest must be more than just rumor or mere suspicion, but it does not require sufficient evidence to justify a conviction.<sup>25</sup>

Note: It does require a reasonable, common sense approach by a police officer and an honest judgment based upon a combination of factors, any of which standing alone might not be enough to justify an arrest but which, if viewed as a whole, constitute probable cause.

- d. Probable cause to make an arrest is always an overriding consideration for every police officer.
  - 1) Whether or not an arrest is based on probable cause will depend on a variety of factors, and unless the offense is committed in the officer's presence, usually no single fact alone is controlling.
  - 2) Therefore, the totality of circumstances surrounding the arrest is of great importance. Each officer should be aware of the following types of circumstances which have been looked to in establishing probable cause:
    - a) Direct observations of the police officer;
    - b) Knowledge of the prior criminal record or criminal activity of the person arrested;<sup>26</sup>
    - c) Flight accompanied by other factors;<sup>27</sup>
    - d) Evasive answers and/or conflicting stories;<sup>28</sup>
    - e) Time of day or night;<sup>29</sup>
    - f) History of criminal activity in the particular area;<sup>30</sup>
    - g) Experience of the officer applied to observations and firsthand information;<sup>31</sup> and
    - h) Reliable hearsay.<sup>32</sup>
- e. HEARSAY: Hearsay statements often present problems in establishing probable cause and also evidentiary problems during trial. Usually, they are derived from three principal sources:

- 1) Statements from the victims and/or witnesses;
- 2) Statement from other police officers;
- 3) Statements from informants.
  - a) It is this source that is most closely scrutinized when used to establish probable cause.
  - b) An officer relying on the hearsay statement of an informant must:
    - i. Show the circumstances establishing the reliability of the informant; and
    - ii. Show the circumstances establishing the reliability of the informant's information.<sup>33</sup>

#### ***D. Extra-Territorial Arrest***

##### **1. GENERALLY**

- a. Other than constitutional safeguards, the other major constraint on the power of arrest is jurisdictional. Generally, the power to arrest ceases at the boundaries of the officer's city or town.
  - b. Where an officer has been appointed and sworn as a "special police officer" in another (often neighboring) jurisdiction, [s]he has arrest powers in that community as well.
  - c. However, there are four instances in which an officer may make "extra-territorial" arrests, that is, arrests outside the limits of the city or town where [s]he has been appointed.
- 2. FRESH PURSUIT IN STATE:** An officer may, "on fresh and continued pursuit," pursue and arrest an offender in any other city or town in Massachusetts if:<sup>34</sup>
- a. The offense is one for which a warrantless arrest is authorized; and
  - b. The offense was committed in the officer's presence; and
  - c. The offense was committed in the officer's jurisdiction (city or town, etc.).
- 3. MUTUAL AID:** If there is a mutual aid agreement in effect between his/her city or town and the city or town to which [s]he has been assigned under the mutual aid agreement, an officer may exercise the same authority in such city or town as [s]he exercises in his/her own city or town.<sup>35</sup>
- 4. INTERSTATE FRESH PURSUIT:** An officer may "on fresh pursuit" pursue and arrest a person who has committed a felony in Massachusetts and may pursue and arrest such person in any other state if that other state has in force similar interstate felony fresh

pursuit laws.<sup>36</sup> (New York and all New England states have such laws.)

#### 5. CITIZEN'S ARREST

- a. An officer may exercise his/her citizen's arrest powers. For example, any citizen may make an arrest for a felony if a felony has, in fact, been committed.
- b. When a police officer exercises his/her citizen's arrest powers outside his/her jurisdiction, [s]he need only have probable cause to believe that a felony has been committed and that the person arrested committed it.<sup>37</sup>
- c. Such citizen's arrest powers may be exercised in another state.<sup>38</sup>

### ***E. Arrests in Dwellings***

#### 1. SERVICE OF WARRANT AT DWELLING OF NAMED PERSON

- a. Police officers may enter the dwelling of a person named in an arrest warrant to serve an arrest warrant without obtaining a search warrant, provided there is a reasonable belief that the arrestee is in his or her residence at the time the arrest warrant is executed.<sup>39</sup>
- b. **KNOCK AND ANNOUNCE:** To serve an arrest warrant on private property, police officers shall first knock and announce their authority and purpose (unless the warrant issued is a "No Knock and Announce Warrant") and wait a reasonable period to be admitted.<sup>40</sup>
  - 1) Once a reasonable time has passed and the officers have not been voluntarily admitted, and there is reasonable cause to believe that the wanted person is on the premises, officers may use whatever force is reasonably necessary to gain entrance.<sup>41</sup>
  - 2) The least amount of force that will accomplish an entrance should always be used.
- c. **DISPENSING WITH ANNOUNCEMENT:** If the police officers reasonably believe that announcing their presence and purpose will endanger themselves or others, or will result in the escape of the wanted person or the destruction of evidence, they may dispense with the announcement of authority and purpose.<sup>42</sup>
  - 1) In such cases, they may attempt to deceive the suspect into voluntarily opening the door, or gain entrance by a ruse, if this will result in a safe and successful apprehension with less destruction of property or risk of harm to persons. <sup>43</sup>
  - 2) Massachusetts has given recognition to a "Useless Gesture" exception, at least in the narrow situation where the facts

known to the officers would justify them in being virtually certain that the occupant already knows the police officers' identity and purpose.<sup>44</sup>

- 3) Further, violation of the "no-knock" rule may require that the evidence which has been seized be suppressed.<sup>45</sup>
- d. NO KNOCK WARRANT: If at the time police make application for an arrest warrant, they reasonably believe that dispensing with the knock and announce rule may be necessary, they should so inform the magistrate, give their reasons, and ask that the arrest warrant be marked "No Knock and Announce Warrant."
- 1) Valid reasons for requesting a "No Knock and Announce Warrant" would include a reasonable belief that the suspect would escape, or would resist violently if not taken quickly and by surprise, or that evidence or contraband would be destroyed if the police have to knock and announce their presence.<sup>46</sup>
  - 2) A defendant is entitled to suppression of the evidence seized to a "no-knock" search where the officer had knowledge or information available that would have justified dispensation with the rule, but had not presented the evidence to the issuing magistrate.<sup>47</sup>
  - 3) However, when the police seek to execute the "No Knock and Announce Warrant," they must reappraise the situation at that time. If the reason or circumstance that justified issuance of the "No Knock and Announce Warrant" is no longer present, then they must follow the normal knock and announce procedure.<sup>48</sup>
2. SERVICE OF ARREST WARRANT AT THE DWELLING OF A PARTY NOT NAMED IN THE WARRANT
- a. If police seek to arrest a person in someone else's dwelling, they must obtain a search warrant unless:<sup>49</sup>
    - 1) Lawful consent to enter is granted; or
    - 2) Exigent circumstances are present which excuse the failure to obtain a search warrant.
  - b. Exigent or emergency circumstances necessary to excuse the failure to obtain a warrant before entering a dwelling to make an arrest are determined by the following factors:
    - 1) Whether the crime was one of violence or there is a showing that the suspect is armed;
    - 2) Whether there is a clear demonstration of probable cause to arrest;

- 3) Whether there is strong reason to believe the suspect is in the dwelling;
  - 4) Whether there is the likelihood that the suspect would escape if not apprehended immediately;
  - 5) Whether the entry can be made peaceably; and/or
  - 6) Whether the entry would be in the nighttime (or could be made in the daytime when clerk/ magistrates are more readily available).
- c. Warrantless Arrest in Dwelling: Police officers should first determine whether a warrantless entry and arrest is allowed by law. Generally, no arrest warrant (or search warrant) is required to arrest a person who is in public. However, with regard to making an entry into and an arrest in a dwelling, the following standards apply:
- d. If the arrest pursuit was set in motion in public, the officer may make a hot pursuit warrantless entry into a private dwelling if the suspect runs into the dwelling.
  - e. If the police seek to arrest a person in that person's own dwelling, they must obtain an arrest warrant unless:
    - 1) Lawful consent to enter is granted; or
    - 2) Exigent circumstances are present which excuse the failure to obtain an arrest warrant.
  - f. If the police seek to arrest a person in someone else's dwelling, they must obtain a search warrant unless:
    - 1) Lawful consent to enter is granted; or
    - 2) Exigent circumstances are present which excuse the failure to obtain a search warrant.

### ***F. Alternatives to Arrest [1.2.6]***

1. **GENERALLY:** Although police officers must always be guided by the intent and purpose of the law, there are limited circumstances in the discretion of the officer involved when the public interest would be better served by not making an arrest, even though there is legal justification for such action.
2. **ALTERNATIVES TO ARREST:** Arrest alternatives include:
  - a. Citations,
  - b. Summonses,
  - c. Informal resolutions,
  - d. Warnings, and

e. Referrals to other agencies.

3. Discretionary Situations:

a. Circumstances where alternatives to arrest may be appropriate include the following:

- 1) When an arrest could aggravate community conflict or possibly precipitate a serious disorder;
- 2) When there is a greater priority to respond to a more serious crime or to an urgent public emergency;
- 3) In neighborhood quarrels, noisy parties, landlord-tenant problems and minor disturbances of the peace where no serious crime has been committed and the officer can successfully act as a mediator.
- 4) In minor juvenile offenses where a warning and a talk with the parents can avoid a court appearance; (See department policy on **Handling Juveniles.**)
- 5) In other minor offenses where a summons can effectively accomplish the intended purpose; and
- 6) Minor motor vehicle offenses. (See department policy on **Traffic Enforcement.**)

b. Circumstances where little or no discretion to use alternatives to arrest is appropriate include the following: [1.2.7]

- 1) Domestic Violence
  - a) Arrests are statutorily mandatory for violations of restraining orders (209A's)<sup>52</sup>
  - b) Arrests are the preferred method for domestic crimes of violence including assaults and assaults and battery.<sup>53</sup>
  - c) For further information, see the department policy regarding **Domestic Violence.**
- 2) Operating Under the Influence of Alcohol
  - a) Officers shall arrest all operators for whom probable cause exists for operating under the influence of alcohol or drugs.
  - b) Officers may, with a supervisor's approval, issue a criminal summons for operators injured in serious motor vehicle accidents.
  - c) For further information, see the department policy regarding **Impaired Drivers.**

**G. Officer Safety:** Arresting officers should not act in a careless or routine manner. They should take all necessary steps to ensure their



own personal safety and that of the public and to secure destructible evidence. Such steps shall include, but are not limited to:

1. Obtaining assistance when necessary whether before or after the arrest. This is particularly advisable when:
  - a. There is more than one person to be arrested;
  - b. A dangerous crime is involved, usually a felony of a serious nature;  
or
  - c. Prior experience has shown the need for assistance in particular situations.
2. Searching for and seizing any instruments capable of inflicting serious bodily injury or causing death, and evidence of any crime;
3. Making a search of the area within the immediate reach and control of the persons arrested for weapons or destructible evidence; and
4. Keeping the persons arrested in control and in view of the officer at all times. If more than one officer is present, the additional officer shall never pass or position himself/herself between the arresting officer and the person arrested.

#### **H. Following Arrest**

1. Once an arrest is made, it is the responsibility of the arresting officer or officers to ensure that arrestees do not injure themselves or others, and that they do not escape or dispose of evidence.
2. At the time of arrest, a "search incidental to arrest" shall be conducted in accordance with the department policy on **Searches and Seizures**.
3. At the time of arrest, unnecessary conversation should be avoided and any orders or statements to the persons arrested should be clear and brief.
4. Persons arrested shall be given the Miranda warnings as soon as possible and prior to interrogation or any questioning likely to elicit an incriminating response. (See department policy on **Interrogating Suspects and Arrestees**.)
5. See department policy on **Handling Juveniles** when a person under the age of eighteen is arrested.
6. The persons arrested shall be handcuffed and promptly and safely transported to the station house in accordance with the department policy on **Transportation of Prisoners**.
7. Upon arrival at the station house, the persons arrested shall be booked and processed in accordance with the department policy on **Detainee Processing**.

**I. REPORTS:** Arresting officers will make a full and complete report of any arrests made, with or without warrants, in accordance with standard department procedures.

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<sup>1</sup> See, 6A C.J.S. "Arrest" §4.

<sup>2</sup> *Beck v. Ohio*, 379 U.S. 89, 85 S. Ct. 223 (1964); *Com. v. Crawford*, 410 Mass. 75, 571 N.E.2d 7 (1991); *Com. v. Motta*, 424 Mass. 117, 676 N.E.2d 795 (1997).

<sup>3</sup> M.G.L. c. 274, §1.

<sup>4</sup> M.G.L. c. 274, §1.

<sup>5</sup> See 11 C.J.S. "Breach of the Peace" §1.

<sup>6</sup> *Mass. General Hospital v. Revere*, 385 Mass. 772, 434 N.E.2d 1851 (1982), *rev. on other grounds*, 463 U.S. 239 (1983); *Com. v. Cook*, 419 Mass. 192, 644 N.E.2d 203 (1994).

<sup>7</sup> See *Com. v. Klein*, 372 Mass. 823, 363 N.E.2d 1313 (1977).

<sup>8</sup> *Com. v. Moreira*, 388 Mass. 596, 447 N.E.2d 1224 (1983).

<sup>9</sup> M.G.L. c. 276, §23.

<sup>10</sup> *Com. v. Baldassini*, 357 Mass. 670, 260 N.E.2d 150 (1970).

<sup>11</sup> M.G.L. c. 276, §21.

<sup>12</sup> M.G.L. c. 318, §32.

<sup>13</sup> M.G.L. c. 276, §24.

<sup>14</sup> *Won Sun v. U.S.*, 371 U.S. 471, 83 S. Ct. 407 (1963).

<sup>15</sup> *Com. v. Crotty*, 92 Mass. 403 (1865).

<sup>16</sup> Mass. Rules of Crim. Proc. 6(c)(3).

<sup>17</sup> M.G.L. c. 276, §23A.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 6(c)(4).

<sup>21</sup> M.G.L. c. 276, § 29.

<sup>22</sup> M.G.L. c. 276, § 20B.

<sup>23</sup> See *Whren v. U.S.*, 116 S. Ct. 1769 (1996).

<sup>24</sup> *Beck v. U.S.*, 385 U.S. 293, 87 S. Ct. 408 (1966); *Com. v. Bottari*, 395 Mass. 777, 482 N.E.2d 321 (1985).

<sup>25</sup> *Won Sun v. U.S.*, 371 U.S. 471, 83 S. Ct. 407 (1963); *Com. v. Stevens*, 361 Mass. 885, 283 N.E.2d 673 (1972), *Com. v. Roman*, 414 Mass. 642, 609 N.E.2d 1217 (1993).

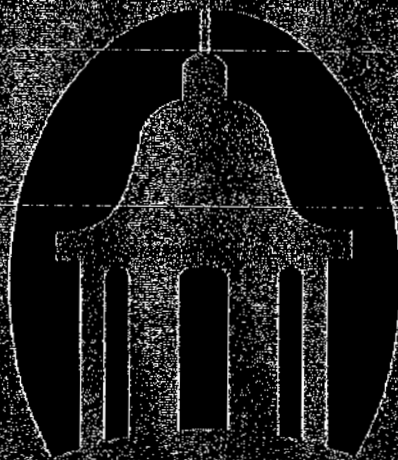
<sup>26</sup> *Com. v. Rossetti*, 349 Mass. 626, 211 N.E.2d 658 (1964); *Com. v. Silva*, 366 Mass. 402, 359 N.E.2d 942 (1974).

<sup>27</sup> *Won Sun v. U.S.*, 371 U.S. 471, 83 S. Ct. 407 (1963); *Com. v. Thibeau*, 384 Mass. 762, 429 N.E.2d 1009 (1981).

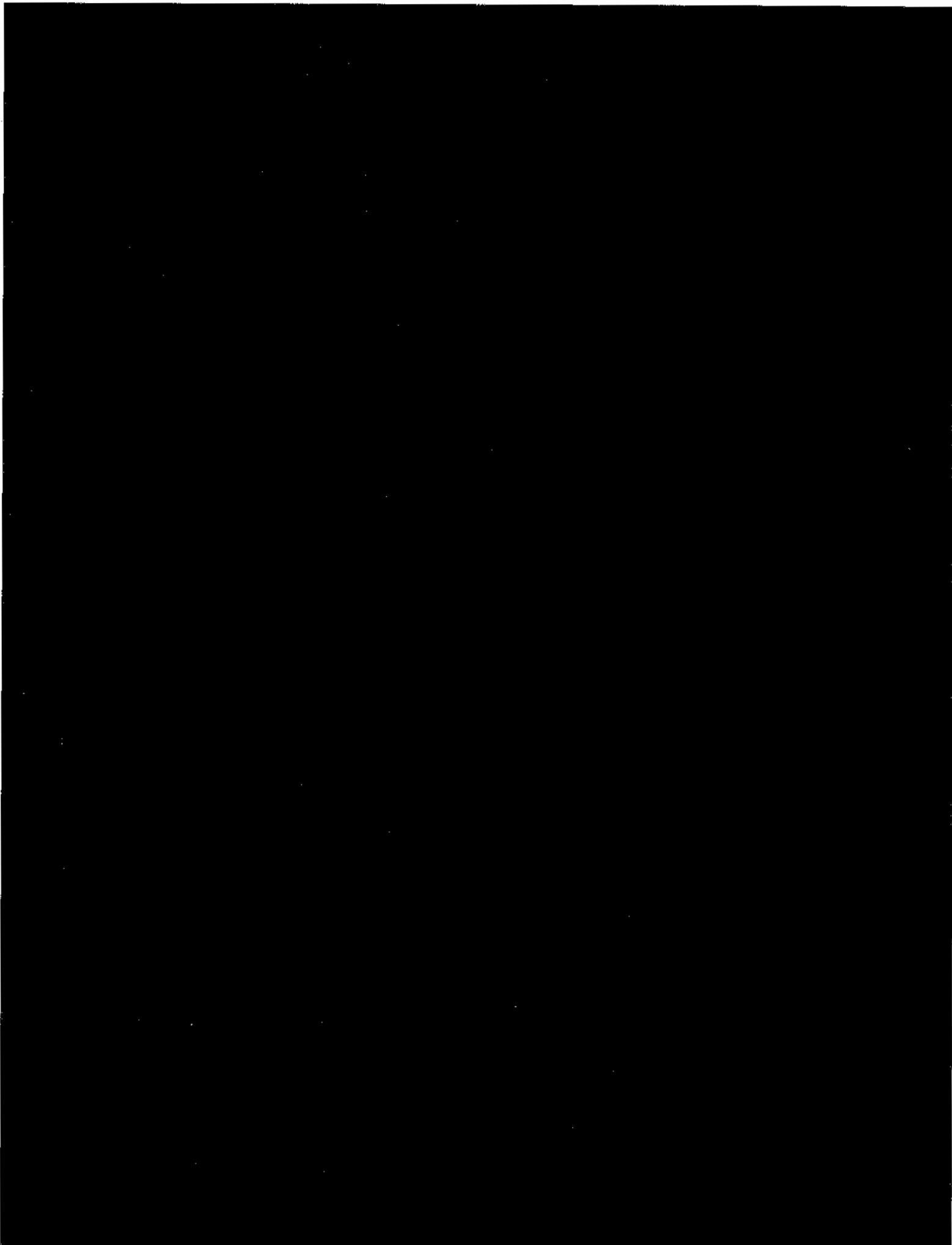
<sup>28</sup> *U.S. v. Brown*, 457 F.2d 731 (1st Cir. 1972); *Com. v. Chaisson*, 358 Mass. 587, 266 N.E.2d 311 (1971).

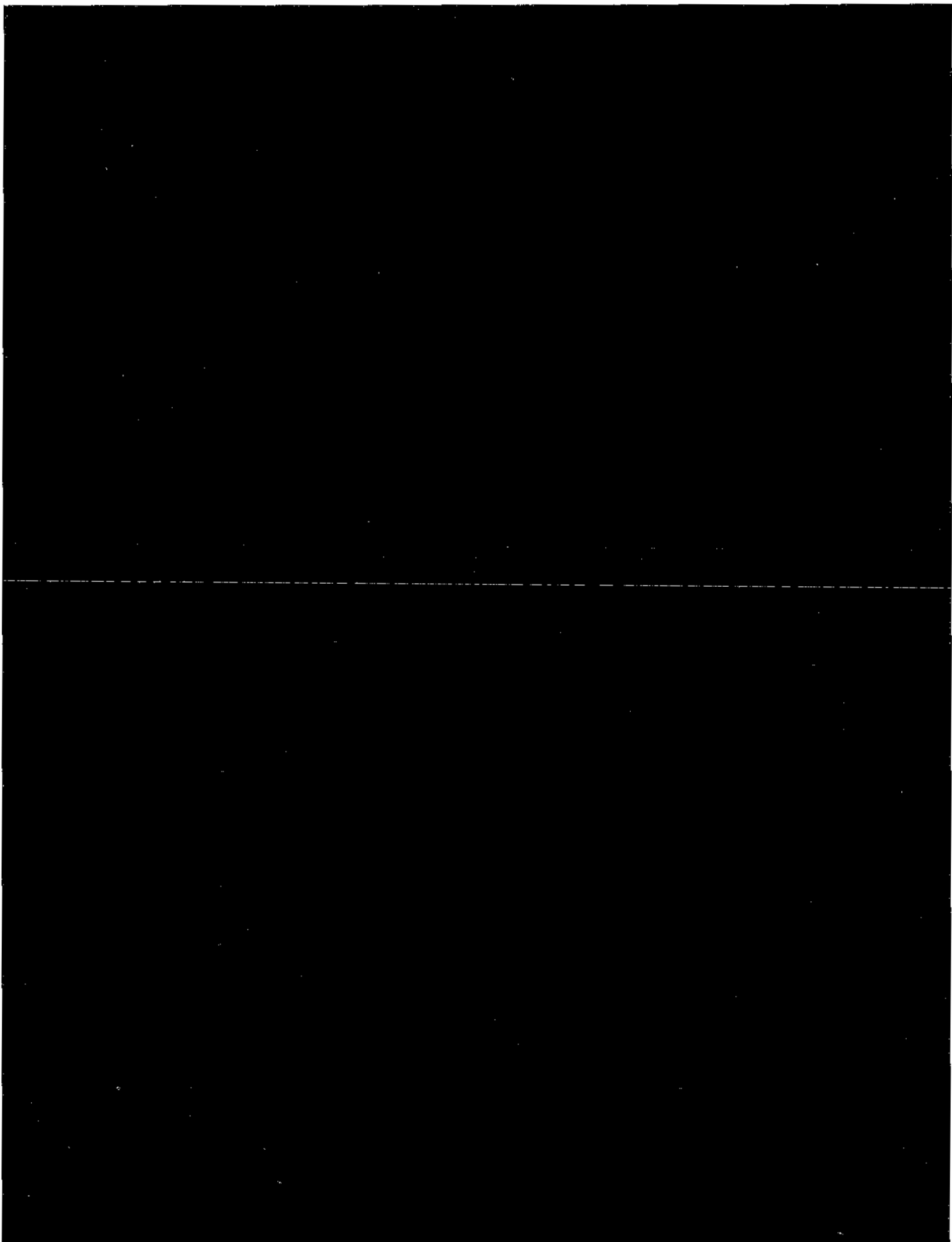
- <sup>29</sup> *Com. v. Ellis*, 365 Mass. 574, 254 N.E.2d 408 (1970).
- <sup>30</sup> *Com. v. Mercado*, 422 Mass. 367, 773 N.e.2d 243 (1996); *Com. v. Doulette*, 32 Mass. App. Ct. 506, 609 N.E.2d 473 (1992).
- <sup>31</sup> *Com. v. Mitchell*, 353 Mass. 426, 233 N.E.2d 205 (1967); *Com. v. Santaliz*, 413 Mass. 238, 596 N.E.2d 337 (1992).
- <sup>32</sup> *Draper v. U.S.*, 358 U.S. 307, 79 S. Ct. 329 (1959).
- <sup>33</sup> *See Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509 (1964); *Spinelli v. U.S.*, 393 U.S. 410, 89 S. Ct. 584 (1969); *Com. v. Frazier*, 410 Mass. 235, 571 N.E.2d 1356.
- <sup>34</sup> M.G.L. c. 41, §98A.
- <sup>35</sup> M.G.L. c. 40, §8G.
- <sup>36</sup> In Massachusetts, see M.G.L. c. 276, ss. 10A-10D (The Uniform Extraterritorial Arrest on Fresh Pursuit Law).
- <sup>37</sup> *Com. v. Claiborne*, 423 Mass 275, 667 N.E.2d 873 (1996); *Com. v. Harris*, 11 Mass. App. Ct. 165, 415 N.E.2d 216 (1981).
- <sup>38</sup> *Com. v. Harris*, 11 Mass. App. Ct. 165, 415 N.E.2d 216 (1981); *Com. v. Gullick*, 386 Mass. 278, 435 N.E.2d 348 (1982); *Com. v. Dise*, 31 Mass. App. Ct. 701, 583 N.E.2d 271 (1991).
- <sup>39</sup> *Com. v. Silva*, 440 Mass. 772, 802 N.E.2d 535 (2004).
- <sup>40</sup> *Com. v. Antwine*, 417 Mass. 637, 632 N.E.2d 818 (1994); *Com. v. Silva*, 440 Mass. 772, 781 n. 12, 802 N.E.2d 535, 543 n. 12 (2004).
- <sup>41</sup> *Com. v. Reynolds*, 120 Mass. 190 (1876).
- <sup>42</sup> *Com. v. Allen*, 22 Mass. App. Ct. 413, 494 N.E.2d 55 (1990).
- <sup>43</sup> *Com. V. Cundriff*, 382 Mass. 137 (1980).
- <sup>44</sup> *Com. v. Gondola*, 28 Mass. App. 286, 550 N.E.2d 880 (1990); *rev. den'd* 407 Mass. 1103, 554 N.E.2d 1214 (1990).
- <sup>45</sup> *Com. v. Gomes*, 408 Mass. 43, 556 N.E.2d 100 (1990).
- <sup>46</sup> *U.S. v. Ramirez*, 523 U.S. 65 (1998).
- <sup>47</sup> *Com. v. Gomes*, 408 Mass. 43, 556 N.E.2d 100 (1990).
- <sup>48</sup> *Com. v. Scalise*, 387 Mass. 413, 439 N.E.2d 818 (1982).
- <sup>49</sup> *Warden v. Hayden*, 387 U.S. 294, 87 S. Ct. 1642 (1967); *Com. v. DeRosia*, 402 Mass. 284, 522 N.E.2d 408 (1988).
- <sup>50</sup> *Payton v. New York*, 445 U.S. 573, 100, S. Ct. 1371 (1980); *Steagald v. U.S.*, 451 U.S. 204, 101 S. Ct. 1642 (1981); *Com. v. Forde*, 367 Mass. 798, 329 N.E.2d 717 (1975).
- <sup>51</sup> *Warden v. Hayden*, 387 U.S. 294, 87 S. Ct. 1642 (1967); *Com. v. DeRosia*, 402 Mass. 284, 522 N.E.2d 408 (1988).
- <sup>52</sup> M.G.L. c. 209A, §6(7).
- <sup>53</sup> M.G.L. c. 209A, §6(7).

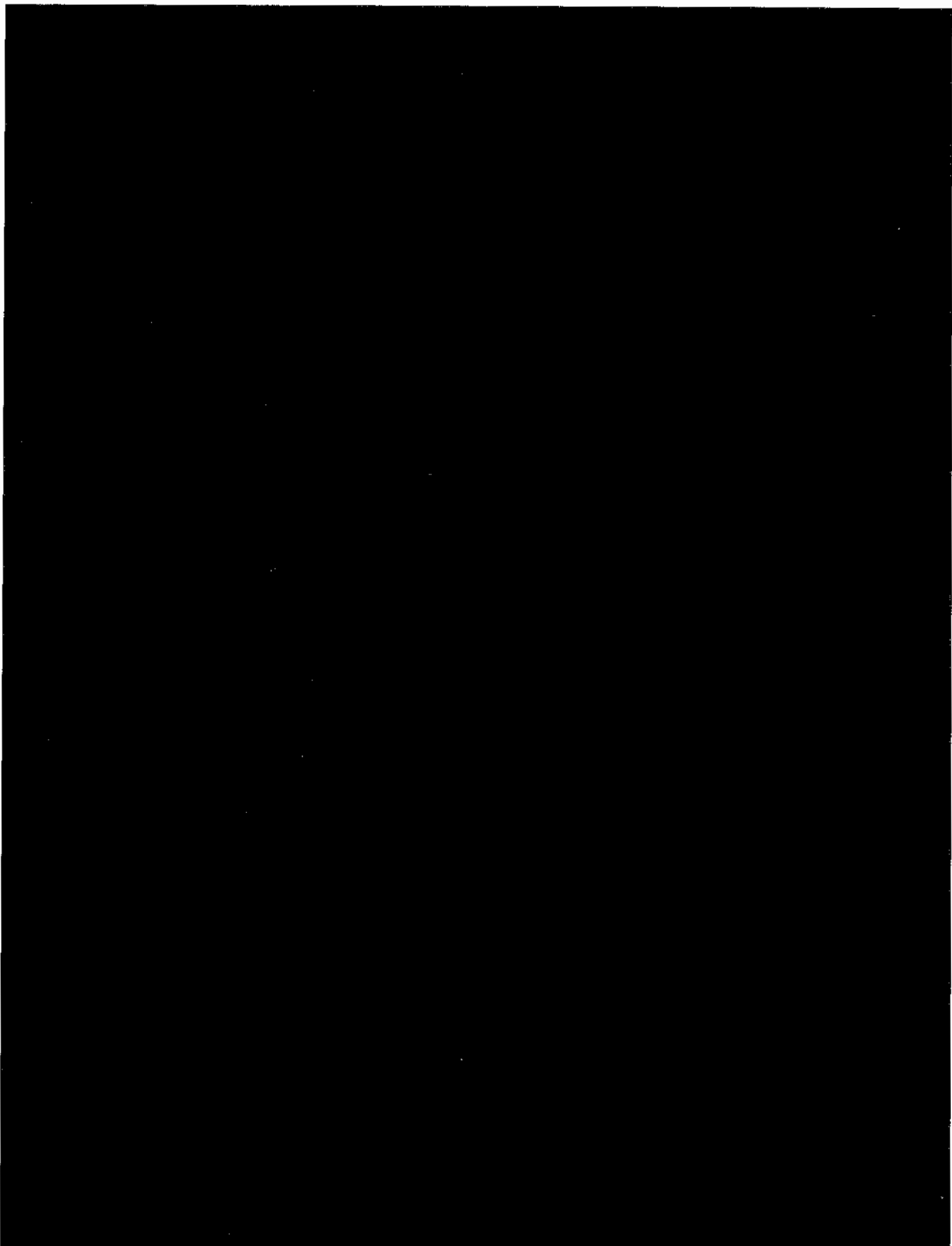
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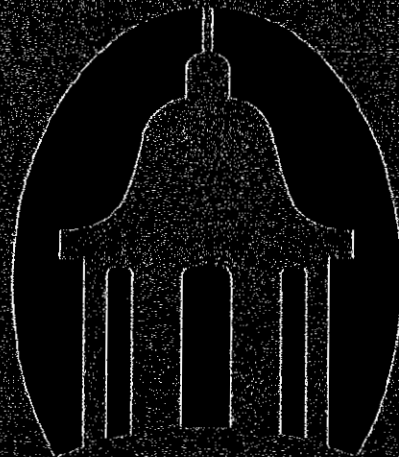
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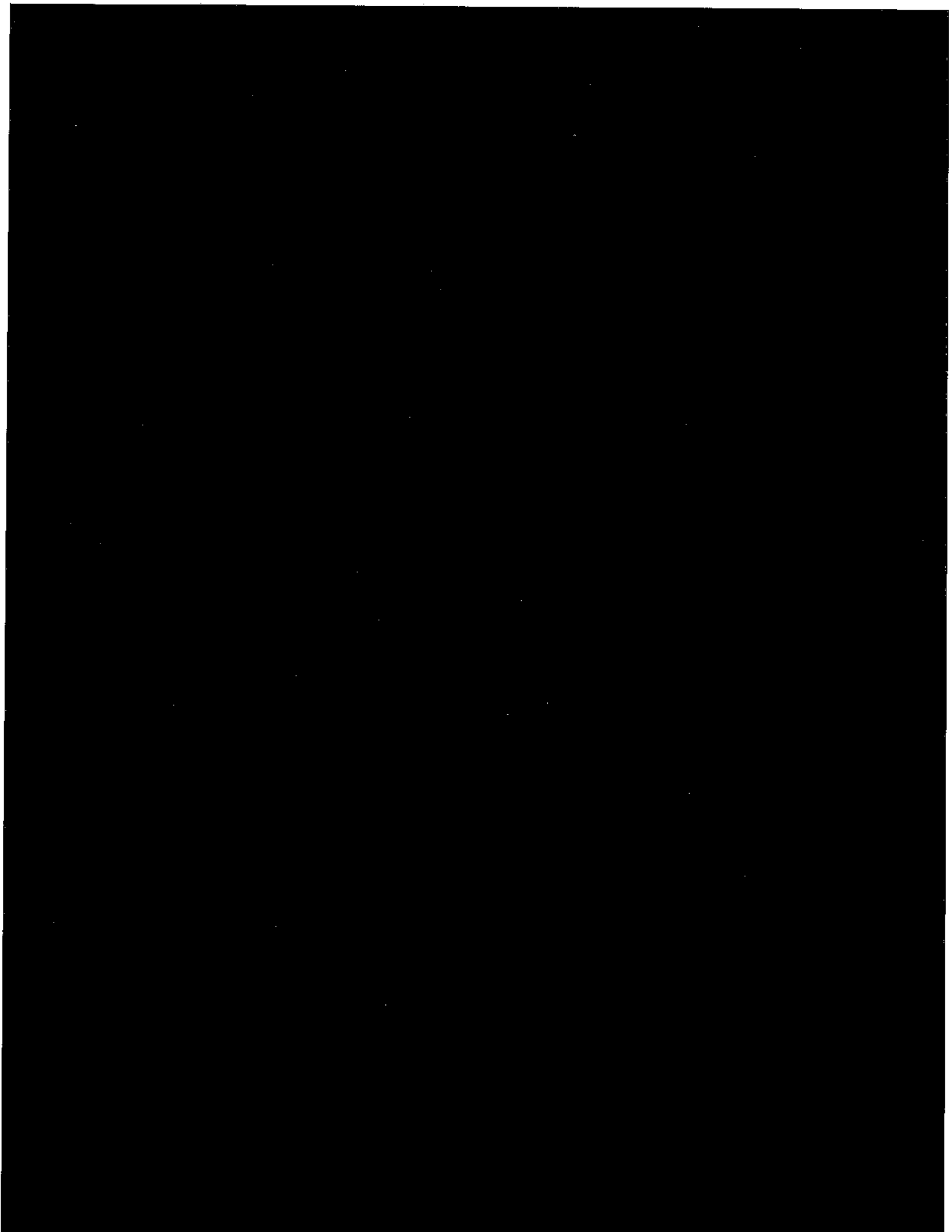


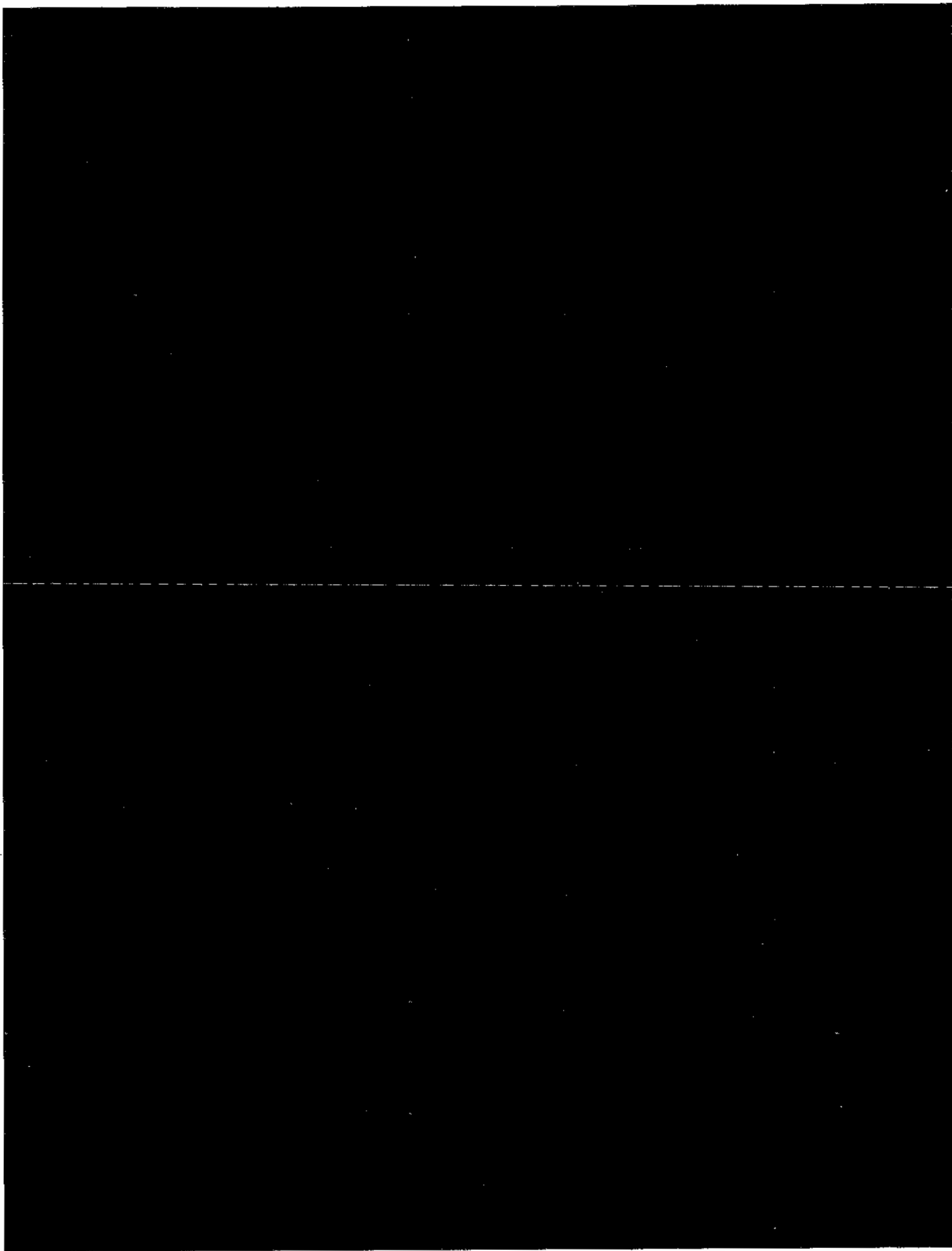
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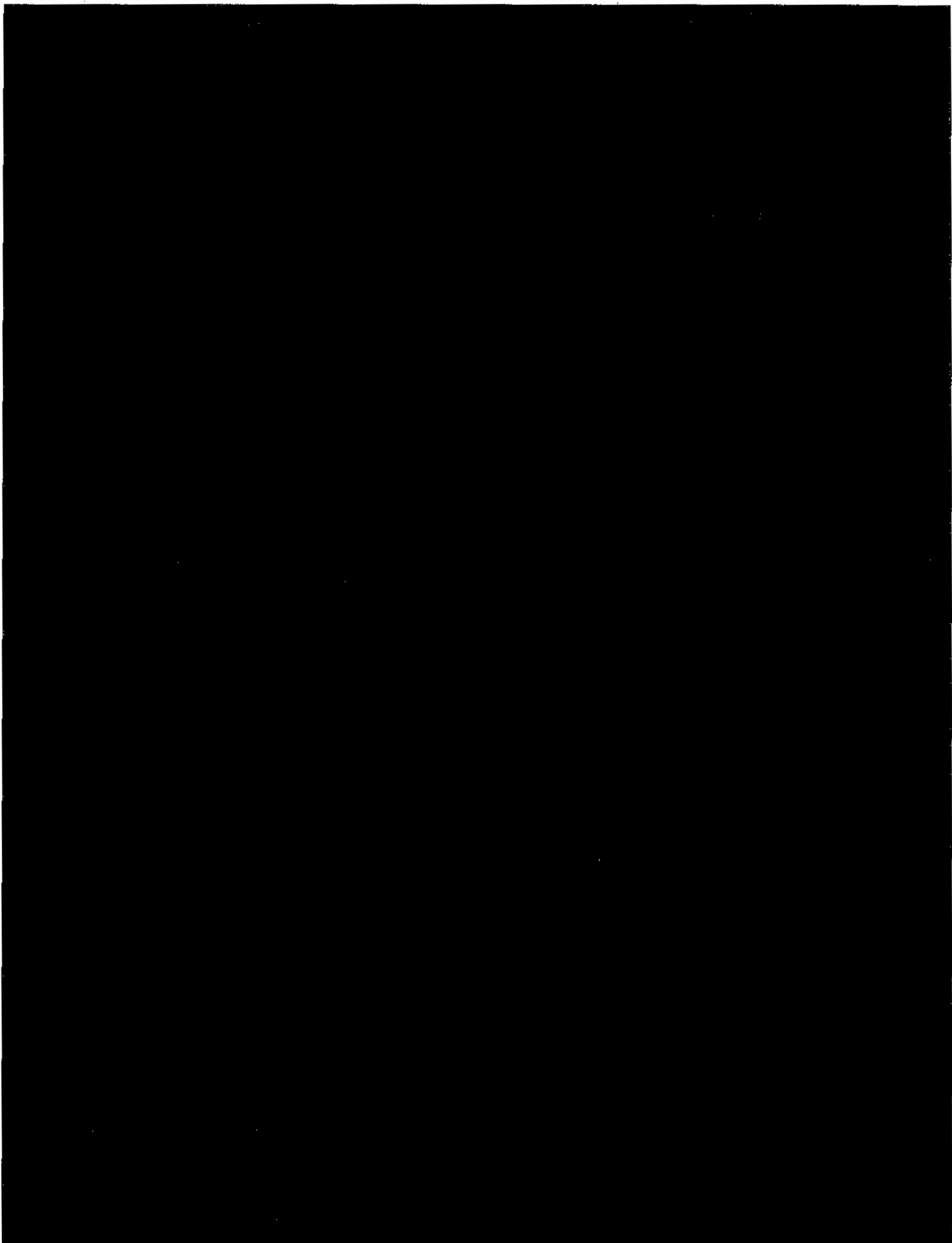


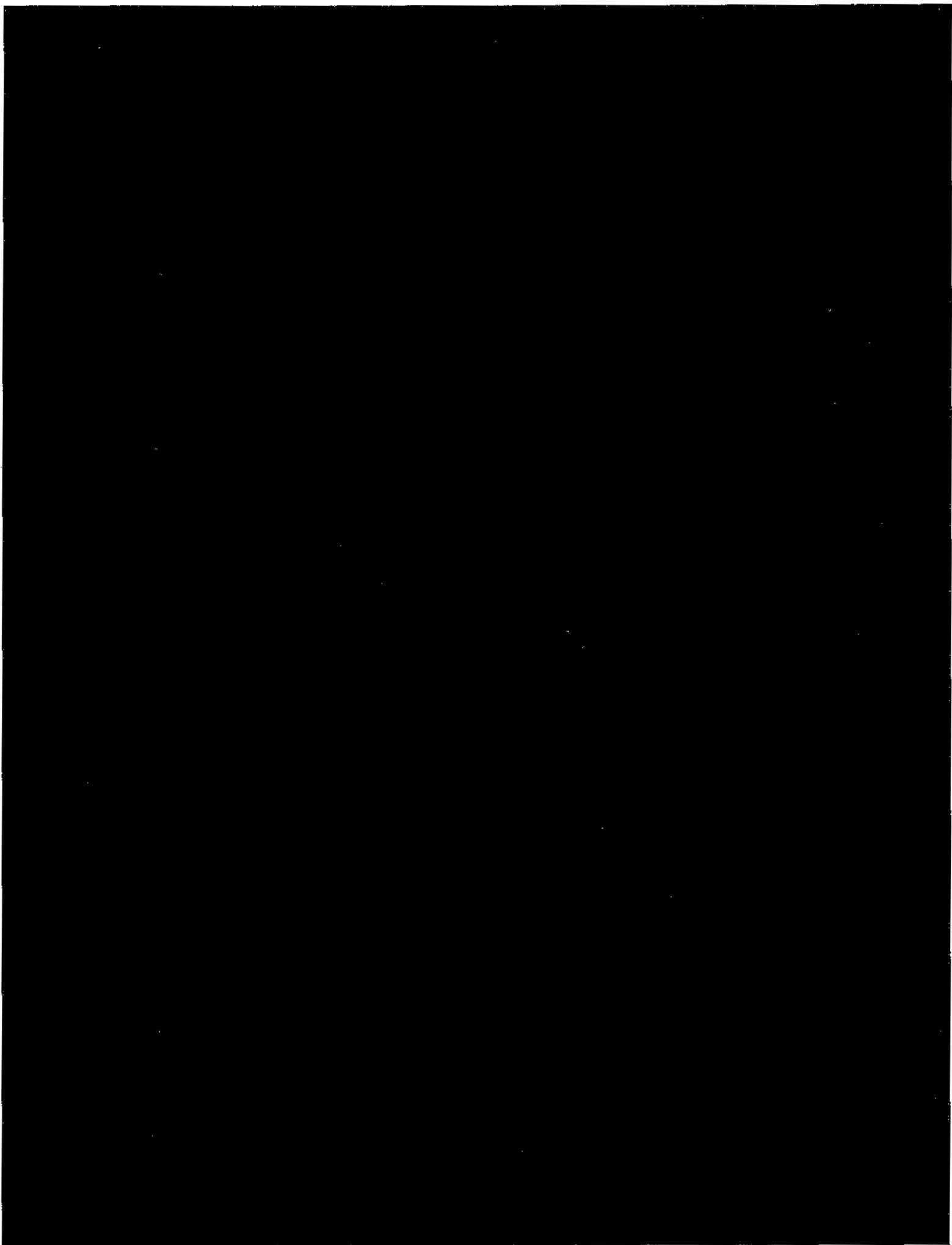
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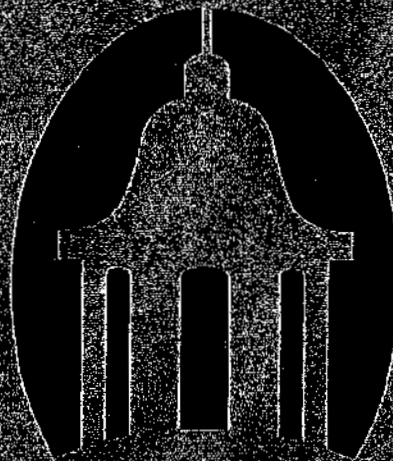




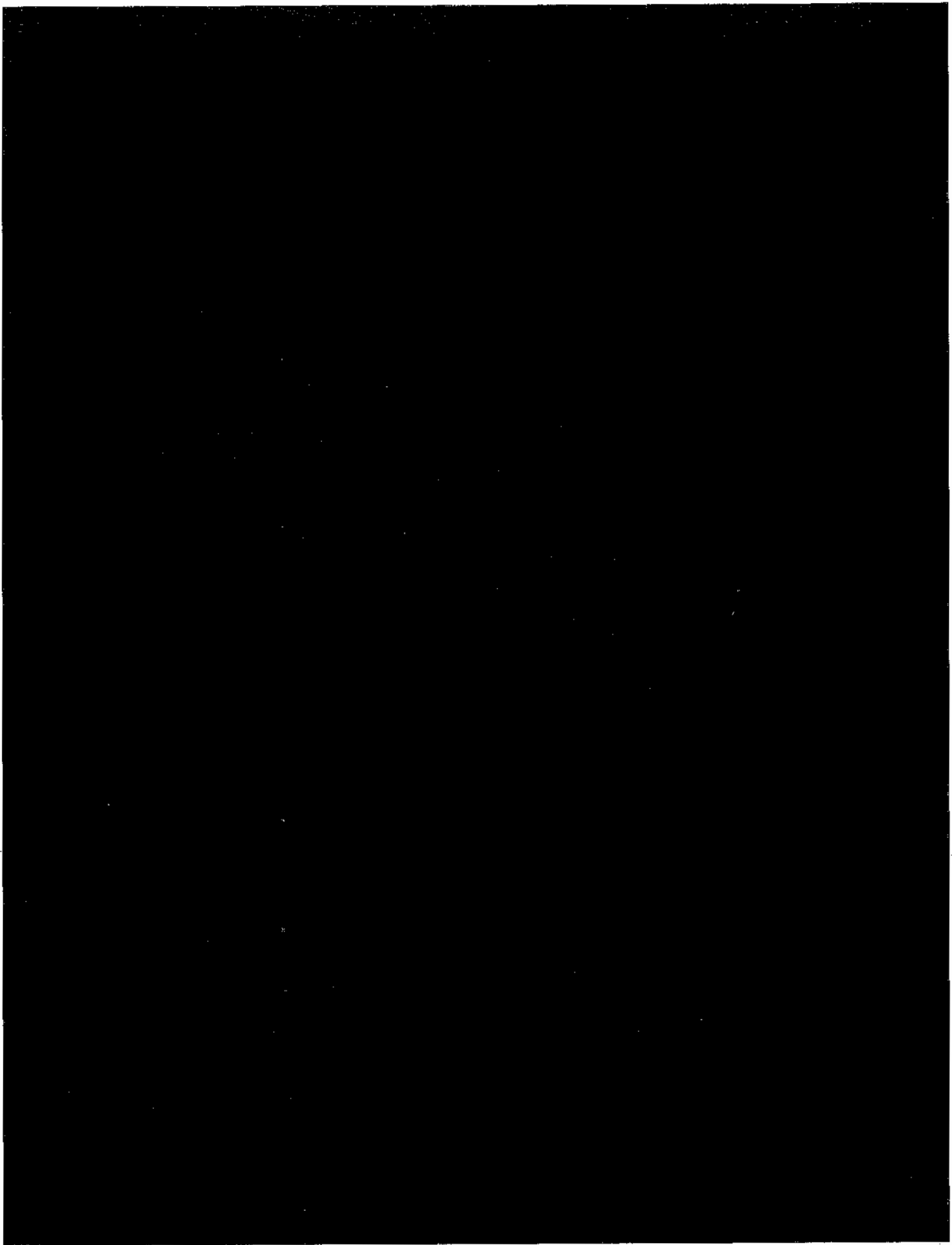


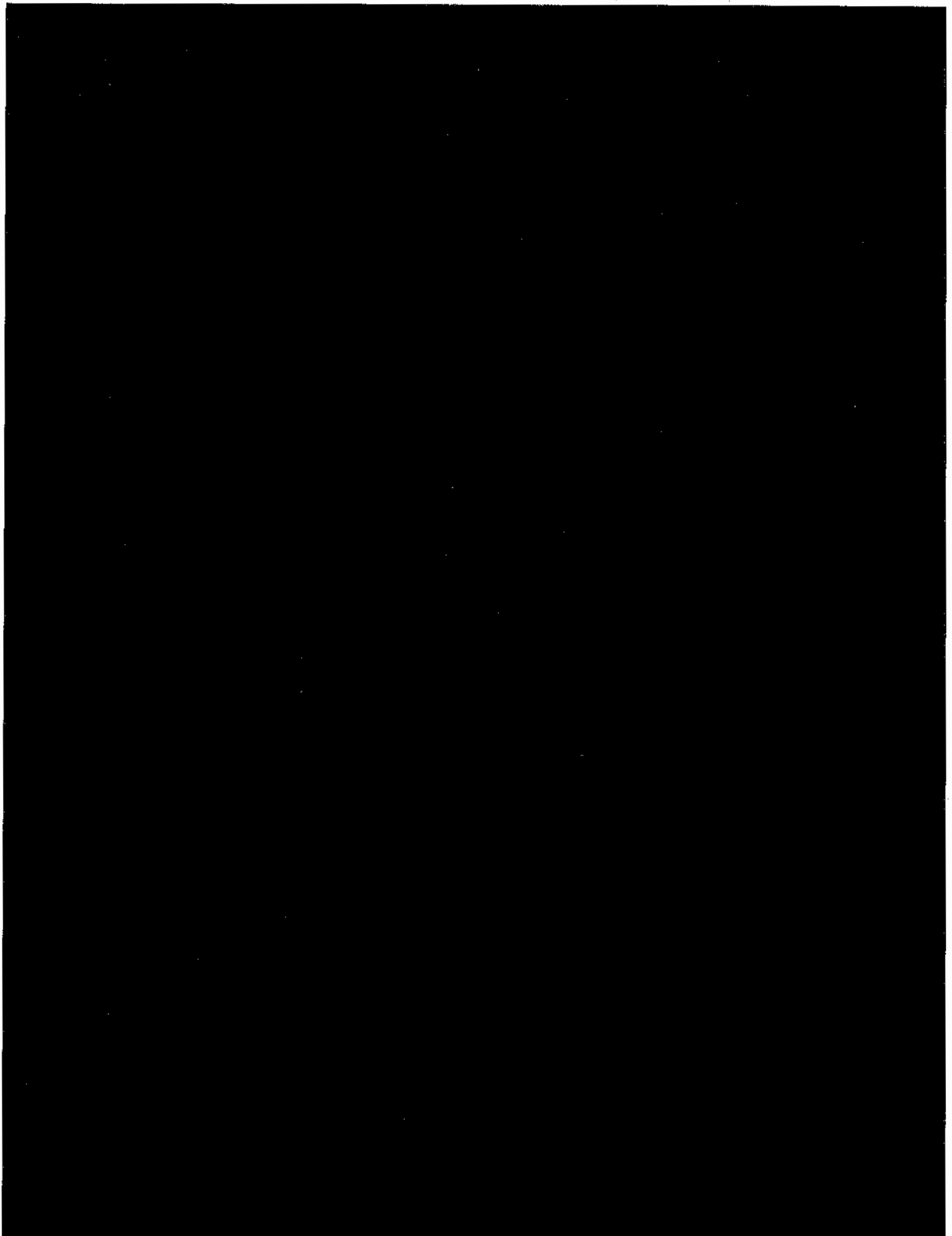


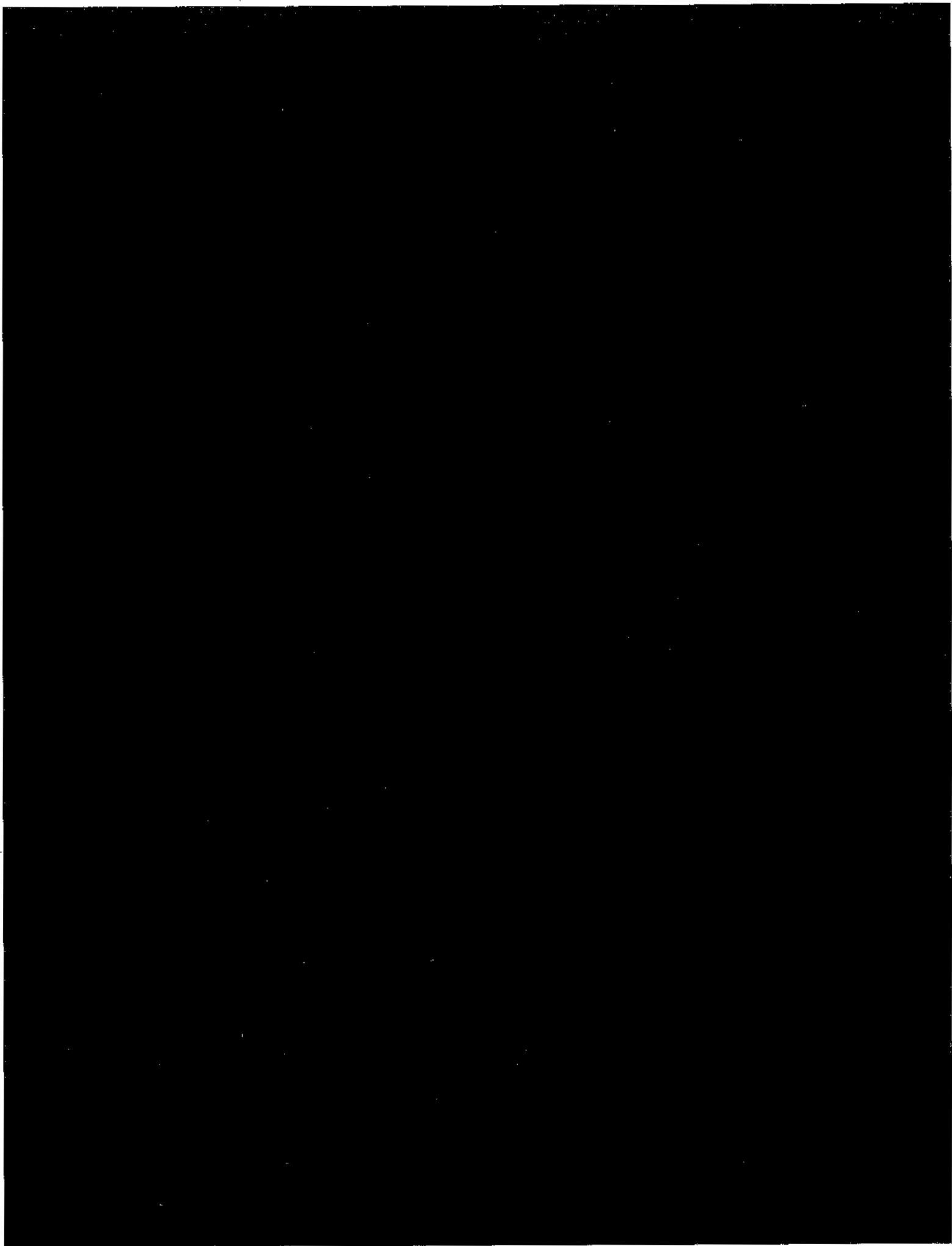
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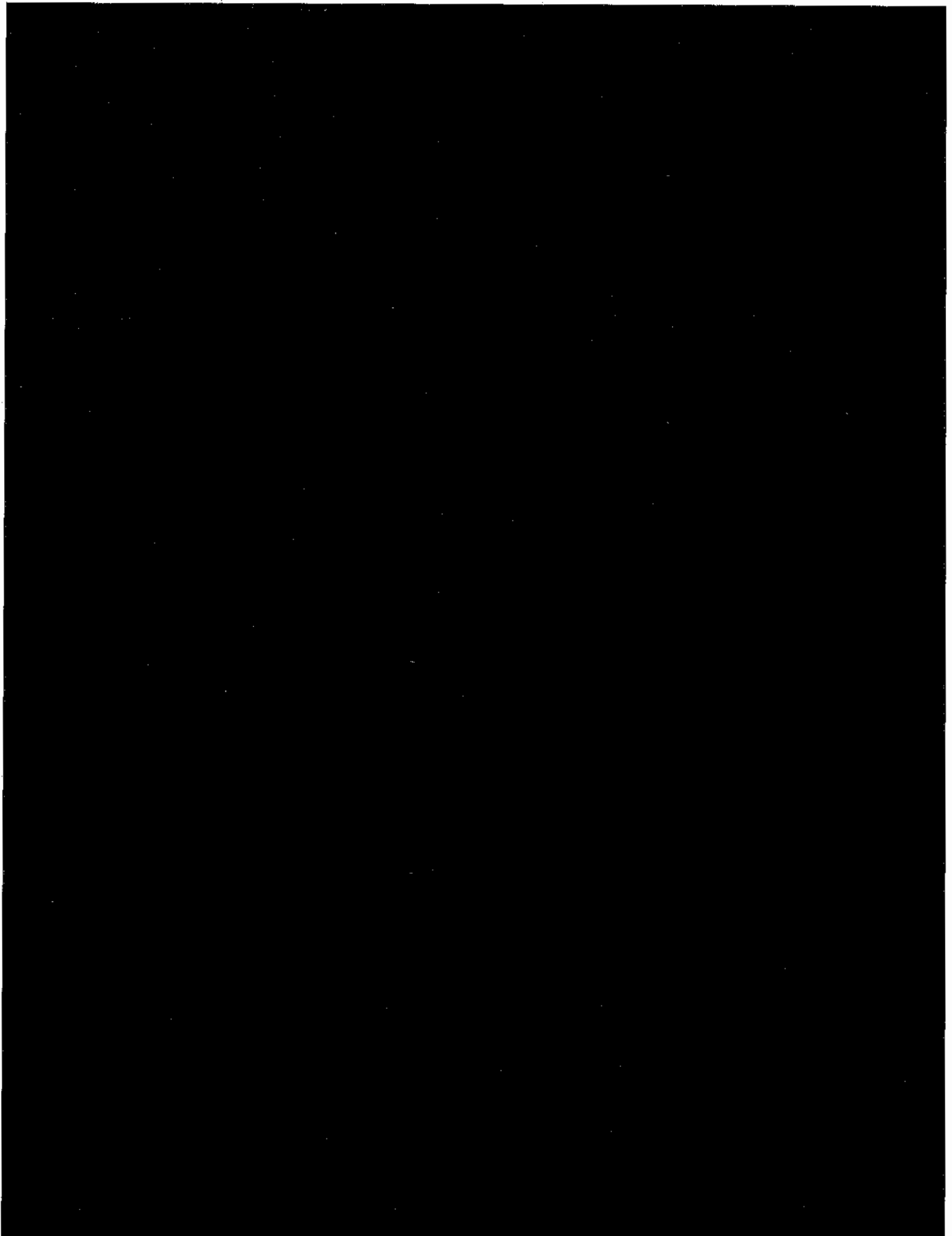
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# ***ATTACHMENT 8***



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## DISCIPLINARY PROCEDURES

<p>POLICY &amp; PROCEDURE NO. <b>4.13</b></p>	<p>EFFECTIVE DATE: January 1, 2015</p>
<p>MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: <b>26.1.1, 26.1.4, 26.1.5; 26.1.6; 26.1.7; 26.1.8</b></p>	<p>REVIEW DATE: December 1, 2021</p>

### I. GENERAL CONSIDERATIONS AND GUIDELINES

Under most circumstances, the term "discipline" is incorrectly interpreted to be solely a negative form of punishment. This directive reflects the term "discipline" in its broader sense, as in having a "highly disciplined department." In this usage, discipline takes on a positive connotation and is associated with conformance to a set of rules, a code of ethics and a high standard of conduct that results in a departmental image of professionalism. Department disciplinary policy differentiates between exemplary performance, performance deficiencies and intentional acts.

Exemplary performance should be recognized and/or rewarded.

Performance deficiencies may be the result of the lack of training, knowledge or experience on the part of an employee and may be corrected through training or mentoring.

Intentional wrongful acts, on the other hand, are a more serious matter. An employee must make a conscientious decision to disobey a department rule or policy, or a state or federal statute. These acts may be subject to discipline up to and including dismissal and/or criminal prosecution.

This disciplinary directive enables all officers and employees to know what is expected of them and to understand that appropriate discipline will be administered when required. Essential fairness and justice are the foundation of this process.

## II. POLICY

It is the policy of the Swampscott Police Department that:

- A.** Discipline will be administered in a fair, timely and consistent manner.
- B.** When appropriate, discipline will be directed toward ensuring that employees have an opportunity to correct deficient performance.
- C.** Employees are regularly told of their performance deficiencies and when sanctions are to be applied.
- D.** Discipline is consistent with the seriousness of the offense and the employee's prior record.
- E.** The department's disciplinary process includes training, rewarding, counseling and punitive actions in the interest of discipline.
- F.** The discipline process is a positive process that is used to train and develop by instruction.

## III. DEFINITIONS

- A. *Discipline:*** Any one of several actions designed to produce a pattern of behavior including, but not limited to, reprimand (oral and written); suspension; demotion; discharge; as well as reward, recognition, training and counseling.
- B. Note:** When an employee's conduct is of such a nature that continued employment is not appropriate, termination is warranted. Nothing in this policy is meant to expand the definition of discipline contained in the Civil Service law or any applicable collective bargaining agreement.
- C. *Competent Authority:*** Any person authorized by law or policy to issue orders or directives.

## IV. PROCEDURES

### **A. *Adherence to Directives***

1. Employees will, at all times, adhere to the Laws of the Commonwealth, Rules and Regulations of the Police Department, the procedural guidelines set forth in this manual, and any other department directives. [26.1.1]
2. All sworn and non-sworn personnel, upon appointment to the Police Department shall have access to and shall become familiar with the Police Department's Rules & Regulations Manual, Policy & Procedure Manual and other directives issued by the Chief of Police or other competent authority.

3. Employees are required to obey any lawful order of a superior, including any order relayed from a superior by an employee of the same or lesser rank.
4. Failure to comply with the Rules & Regulations, to adhere to the Policies & Procedures of the Police Department, to obey the orders of a superior, or to obey any other directives issued by a competent authority may result in disciplinary action against an employee.

### ***B. Role and Authority of the Supervisor [26.1.5]***

1. FIRST LINE SUPERVISORS
  - a. The first-line supervisor's familiarity with his/her personnel allows him/her the best opportunity to observe or foresee disciplinary problems and to determine the most appropriate methods to deal with them.
  - b. First line supervisors bear the primary responsibility for the conduct, discipline, and performance of all personnel under their supervision and the basic accountability for failure to take warranted disciplinary action.
  - c. They shall be responsible for recognizing poor performance and for uncovering any evidence of corruption, dishonesty, or malfeasance by personnel under their command.
2. All supervisors have a duty to ensure that discipline is maintained within the department. It must be remembered that discipline can be positive in nature and may include recognizing and rewarding exemplary performance, training, and counseling.
3. The following is an outline by rank and command level of authority of supervisors to discipline their subordinates: (Each supervisor should also be aware of his/her duties as specified in the Police Department Manual and Rules and Regulations):
  - a. The Captain, Lieutenants, and Sergeants have the authority to counsel, evaluate, praise, recommend letters of commendation in recognition of exemplary individual performance, and recommend for awards and decorations. They also have the authority to orally reprimand and recommend a formal written reprimand or more serious punitive disciplinary action, as appropriate.
  - b. The Chief of Police has all the above authority, plus the authority in accordance with the law and the provisions of any applicable collective bargaining agreement to impose punishment.
  - c. Any superior officer who is directed to act in the capacity of a rank above his/her ordinary or usual rank shall, for that period of time, possess the authority of that rank.

4. All supervisors have the authority to initiate an emergency suspension with pay and relieve from duty an employee whom they deem to be unfit for duty. Supervisors may suspend any employee for the balance of a workday under any of the following conditions:
  - a. Prescription drugs or a controlled substance;
  - b. Insubordination or misconduct;
  - c. Any violation of criminal law;
  - d. Any violation of department rules and regulations that would subject the violating employee to discipline;
  - e. Falsifying a statement or record;
  - f. Abusing, stealing, damaging, destroying, or defacing property or equipment of the department or others;
  - g. Any time the officer is not fit for duty.
5. Supervisors will notify the Chief of Police of any instance where an employee has been suspended under any of the above circumstances. The suspending supervisor will submit a detailed report to the Chief at or prior to the end of the shift.

### ***C. Types of Discipline [26.1.4]***

1. POSITIVE
  - a. Letters of Commendation are given for exemplary performance or achievements and for awards and decorations for accomplishments or heroism.
  - b. Supervisors may submit a written recommendation and appropriate supporting documentation through their chain of command to a superior who is authorized to issue such letter, award or decoration.
2. CORRECTIVE:
  - a. Counsel employee: to correct performance deficiencies. Document the condition(s) that prompted the counseling session and corrective action expected. Maintain the results for review and file the documentation in the officer's personnel folder. [26.1.4(b)]
  - b. Remedial training: when training, job knowledge, or experience is at the root of performance deficiency. Document the employee's shortcomings, deficiencies, or lack of expertise. Take immediate steps to retrain in deficient areas or schedule for training. Maintain the results for review and file the documentation in the officer's personnel folder. [26.1.4(a)]
3. PUNITIVE: First line supervisors will forward recommendations for punishment and all supporting documentation in writing to the Chief

of Police It will be the decision of the Chief to determine if punishment is warranted. [26.1.4(c)]

#### **D. Imposition of Punishment [26.1.5]**

1. Notice of Disciplinary Action: In all cases where punitive discipline is imposed, Notice of Disciplinary Action will be served in writing prior to the effective date of imposition. The Notice will include violation(s) specifications, the disciplinary action to be taken, and the effective date of imposition of discipline.
2. If punishment is warranted, the type of punishment and effective date of imposition will also be determined as follows: [26.1.5]
  - a. Counseling: (informal conference and/or oral reprimand) – the lowest level of punishment which may be appropriate when other methods have failed to bring about an appropriate change in performance or in response to minor intentional misconduct.
  - b. Written warning or deficiency notice: the second level of punishment for minor offenses with some recent disciplinary action, or moderately serious offenses with little or no recent, prior disciplinary action. Written warnings should include the following:
    - 1) Details of Offending Conduct: specify dates, times, persons present, location, etc.
    - 2) Rules Violated: list which rules and regulations or what orders or standards of conduct were involved.
    - 3) Require Future Conduct: make it clear what conduct is required. Specify an *order* if there is any doubt.
    - 4) Signatures: the supervisor should sign and request the employee to sign also (acknowledging *receipt* not necessarily admitting wrong). Note a refusal by an employee to sign the receipt. Refusal to do so is insubordination and may result in additional discipline.
    - 5) Comments by Employee: provide space for employee comments or rebuttal or afford the employee the opportunity to submit a written reply and have it attached to the written notice/warning.
  - c. Punishment Duty: Extra, unpaid duty in lieu of a suspension may be imposed by the Chief of Police with the agreement of the employee being punished.
  - d. Suspension: for a moderately serious offense with some recent disciplinary action or for a serious offense. The severity of offense should be commensurate with the length of suspension.

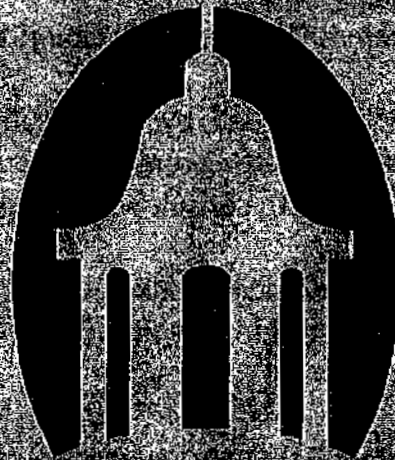
- 1) Short Term Suspension - of not more than 5 days may be imposed by the Chief of Police
- 2) Long Term Suspension: of more than 5 days may be imposed by the Board of Selectmen
- e. Demotion: In lieu of dismissal for a supervisor, a demotion of one or more ranks may be imposed by the Board of Selectmen.
  - 1) Dismissal: for the most serious of offenses, patterns of misconduct or deficient performance.
  - 2) The discharge of an employee may be directed by the Board of Selectmen
3. In the event that an employee is dismissed, the Chief of Police shall ensure that the employee to be dismissed is provided with a written notice advising of the following [26.1.7]:
  - a. The reason for dismissal;
  - b. The effective date of dismissal;
  - c. The status of fringe benefits after dismissal; and
  - d. The status of retirement benefits after dismissal.

**E. Appeals:** Employees may appeal their disciplinary action imposed in accordance with the employee's respective collective bargaining agreement [or M.G.L. c 31, s 41-45]. [26.1.6]

**F. Records:** Disciplinary records shall be maintained under lock and key in the Captain's Office along with the Internal Affairs files. A copy of each record will be placed in the personnel file of the affected employee by the Chief of Police. For further information see the department policy on Records. [26.1.8]



# ***ATTACHMENT 9***



**Municipal  
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### Dual Arrests / Dominant Aggressor

- Officers should attempt to identify the dominant aggressor, and take action based on that determination. In the majority of cases, an effective investigation will reveal the dominant aggressor.
- Officers should be aware of the difference between offensive and self-defensive injuries. The use of force used must be "reasonable" given the nature of the threat and surrounding circumstances and, if warranted, may even include the use of weapons. In some cases, the dominant aggressor may have the more serious injuries. If one of the persons acted entirely in self-defense, the situation should be treated as such and the dominant aggressor identified and arrested if appropriate.
- If the officers determine that neither party acted in self-defense and that both parties have committed an act of domestic abuse, then the officers should determine who is the dominant aggressor and take action after considering the totality of the circumstances including:

1. The severity of injuries and fear inflicted in the incident;

2. The use of force and intimidation in the incident;

3. Prior incidents involving either party; or

4. The likelihood of either party committing domestic violence in the near future

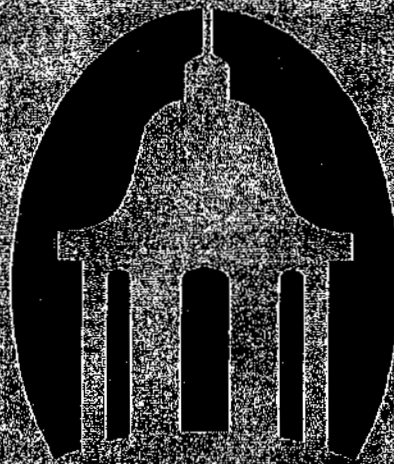
- Any officer arresting both parties is required, by law, to submit a separate detailed written report in addition to an incident report, setting forth the grounds for dual arrest. In the event of a dual arrest, officers are encouraged to consult with a supervisor prior to arrest.
- Officers investigating an incident of domestic violence shall not threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

2017 Executive Office of Public Safety Domestic Violence Law Enforcement Guidelines Page 28

"A&B on elder or disabled person always a felony even if no injury. *Comm V. Lockwood*, 95 Mass. APP. CT. 189 (2019) (defendant pushed 63 year old foster mother to try to remove his young children; he was still guilty of a felony under 265 S13K even though she suffer no injury)"

*Criminal Law, John Sofis Scheft, Esq. Print Date January 27, 2020 Page 14-11*

# ***ATTACHMENT 10***



**Municipal  
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## INTERVIEWING VICTIMS AND WITNESSES

POLICY & PROCEDURE NO.  <b>1.06</b>	EFFECTIVE DATE: March 25, 2009
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: <b>1.2.3(a)</b>	REVIEW DATE: January 1, 2023

### I. GENERAL CONSIDERATIONS AND GUIDELINES

The interviewing of a victim or witness is a vital part of the criminal investigation procedure. It can lead directly to the identification, subsequent apprehension and conviction of the guilty offender.

It is the task of a police officer to convince witnesses of the need for their testimony by appealing to their sense of civic responsibility and to their duty as citizens to ensure that the purposes of justice are effectively achieved.

Officers conducting the initial investigation and interviews should be aware that some criminals remain at the scene. If the officer begins to suspect that a person who claims to be only a witness or even a victim may actually be the perpetrator, the officer should be cautious in conducting any questioning. If the suspect is placed in custody, further questioning must be preceded by administration of the Miranda warnings. See department policies on *Interrogating Suspects and Arrestees* and *Stop and Frisk*.

### II. POLICY

It is the policy of the Swampscott Police Department that:

- A. Officers shall attempt to identify and interview all witnesses and victims of crimes.
- B. Officers shall obtain as complete and accurate a record of the witness's or victim's statement as possible.

### **III. DEFINITIONS**

- A. *Victim:*** Any person who suffers direct or threatened physical, emotional, financial or property harm as the result of the commission or attempted commission of a crime or delinquency offense, as demonstrated by the issuance of a complaint or indictment; the family members of such person if the person is a minor, incompetent or deceased.
- B. *Victim-witness advocate:*** An individual employed by a prosecutor or other criminal justice agency to provide necessary and essential services in carrying out policies and procedures under the general laws of the Commonwealth.
- C. *Witness:*** Any person who has been or is expected to be summoned to testify for the prosecution whether or not any action or proceeding has yet been commenced.

### **IV. PROCEDURE [1.2.3(A)]**

#### **A. *Conducting Interviews***

##### **1. PRE-INTERVIEW CONSIDERATIONS**

- a. A victim or witness has the right to consent or refuse to be interviewed and may conclude an interview at any time.<sup>1</sup>
- b. Will the interviewer conduct a minor interview, or is a more formal, detailed, recorded interview necessary?
- c. Obtain the services of an interpreter if needed.
- d. Consider the physical and emotional state of the witness/victim.
- e. Determine whether to take notes or tape record the interview.
- f. Will the person being interviewed be asked to make a written statement, or will the interview be transcribed?

##### **2. INTRODUCTION**

- a. The interviewing officer(s) should introduce themselves and show identification credentials (badge and identification) in these circumstances:
  - 1) If not in uniform and the officer(s) are not known to the person being interviewed; or
  - 2) If requested by the person being interviewed.
- b. Establish a rapport with the witness or victim with gentle conversation prior to beginning the interview.

3. TAKING NOTES OR RECORDING THE INTERVIEW

a. NOTES

- 1) Explain the role of the notes and the note taking process to the person being interviewed prior to conducting the interview.
- 2) Notes should be taken in a manner that does not interrupt the interviewing process. Some interviewees are reluctant to talk if they notice that the officer is taking down every word they say.
- 3) Brief notes can be made without deterring or distracting the interviewee. However, if a statement appears highly informative due to its nature and content, a verbatim account should be made.

b. AUDIO/VIDEO RECORDING

- 1) If the investigator decides he/she wants to record the interview, form INV-16 (Interview Electronic Recording Form) shall be used to document the recording or the refusal by the interviewee to be recorded.
- 2) If the person being interviewed refuses to be recorded, revert to note taking.
- 3) If any legal or other questions arise pertaining to the tape recording of an interview, consult with the District Attorney's office.

4. CONDUCTING THE INTERVIEW

- a. At the beginning of the interview, record preliminary information either in writing or, if the interview is being recorded, verbally at the beginning of the recording. Include the:
  - 1) The name(s) of officers present during the interview;
  - 2) Date and time of the interview;
  - 3) The location of the interview and
  - 4) The name of the witness being interviewed.
- b. Ask the person being interviewed to fully describe the incident.
- c. Ask specific questions to clarify the statement or to fill in any omissions or unknowns.

5. OBSERVATIONS

- a. Observe and note any emotional outbursts, inflections of the voice and nervous reactions which may indicate areas requiring further probing or clarification.
- b. Assess each interviewee's objectivity or possible bias.

- c. Note any relationship or connection the witness might have with the victim or perpetrator or the property or premises involved in the crime; the overall credibility of the witness/victim; his/her opportunity to make observations; and his/her ability to recall details as opposed to general impressions, etc.

#### 6. TRANSCRIBED AND WRITTEN STATEMENTS

##### a. WRITTEN STATEMENT

- 1) Obtain a written statement from the witness/victim, if appropriate.
- 2) The statement may be written on form INV-14 (Voluntary Statement form), or on blank paper. Ask the writer to provide the necessary information:
  - a) Identification of the writer;
  - b) Writer's address;
  - c) Date and time that the written statement was undertaken; and
  - d) Location of the statement.
- 3) The writer should recount the incident in his/her own words. The writer should review the statement, correct any errors and sign the statement.
- 4) The statement should be signed by at least one witness, who may be the officer asking for the statement or another police officer.
- 5) If the person giving the statement cannot write the statement due to injury, illiteracy, or another reason, the statement may be dictated and written, word for word, by a companion or by a police officer.

##### b. TRANSCRIBED STATEMENT

- 1) An oral statement may be transcribed:
  - a) By recording the statement in writing as the statement is being dictated; or
  - b) By transcribing the statement from a recorded interview.
- 2) The transcribed statement may be reviewed by the person who gave the statement, have any errors or omissions corrected, and then be signed by that person.

## 7. TERMINATING THE INTERVIEW

- a. Interviews shall be ended in a courteous manner. Do not terminate the interview abruptly or dismiss the witness or victim in a curt manner.
  - 1) Summarize what has been covered. Ask the witness or victim if there is anything [s]he wishes to add or emphasize.
  - 2) Inform the witness or victim that it is very important to contact the police if [s]he recalls or uncovers additional information about the crime or the criminal at a later time.
  - 3) Provide information about victim and witness assistance. (See department policy on ***Victim/Witness Assistance***.)
  - 4) Where appropriate, inform the victim or witness of the phone number and location of the District Attorney's Victim/Witness Assistance office, especially if the victim or witness has questions of a legal nature.
  - 5) Inform the witness that it is a criminal offense for anyone to threaten or intimidate the witness into altering or changing his or her testimony or into not testifying.<sup>2</sup> If anyone attempts to do so, the witness should be told to contact the police immediately.
- b. Thank the witness or victim for his/her cooperation and impress upon him/her the value of his/her services.

## ***B. Interview Locations***

### 1. GENERAL CONSIDERATIONS

- a. The intensity of the interview will be determined by the nature of the incident and the potential weight of the information from the person to be interviewed.
- b. Ideally, interviews should be conducted at the police station. Often times this is not feasible.
- c. Interviews can be conducted successfully at the scene of the incident.
- d. Consideration should be given to the witness's mobility and obligations. It is sometimes necessary to go to the victim or witness, or to a neutral location (other than the police station) where the victim or witness is comfortable.
- e. In all cases, the area of the interview should be relatively free from avoidable distractions and from being overheard by others.

### 2. INCIDENT SCENE

- a. The names, addresses and telephone numbers of all persons interviewed should be obtained.



- b. Witnesses/victims shall be separated, if possible, to prevent them from discussing what has occurred among themselves, before they are interviewed. This may taint individual recollections.
- c. Witnesses or victims may be provided with paper and pen to begin writing their descriptions of the incident prior to their interview.

### 3. INTERVIEWS AT OTHER LOCATIONS

- a. Homes: Interviews may be conducted in the home of a victim or witness with his or her consent.
- b. Public Locations: Interviews may be conducted at other locations in consideration of investigative process and the needs of the victim or witness. Such places include public buildings, libraries, and offices.

### 4. POLICE STATION

- a. Ideally, interviews should be conducted at the police station where the best facilities and resources are available to the investigator.
- b. The interview should be conducted in an area which is not prone to distractions or interruptions and where the interview may be recorded if appropriate.
- c. For further information, see the department policy on ***Temporary Holding Facilities***.

### 5. TELEPHONE INTERVIEWS

- a. Officers are discouraged from conducting telephone interviews.
- b. Telephone interviews do not allow officers to:
  - 1) Make a visual confirmation of the identity of the person being interviewed;
  - 2) Observe body language, facial expressions, and other visual clues; or
  - 3) Observe others coaching the person being interviewed.

### ***C. Report Writing***

- 1. All information obtained from witnesses shall be passed on to the follow-up investigator, if any.
- 2. All pertinent data, including notes, tapes, and written statements shall be included in the officer's official report and submitted in accordance with department practice and procedures.

## **V. INTERVIEW TECHNIQUES**

### **A. Use of Interpreters**

#### **1. FOREIGN LANGUAGES**

- a. Before using any person at the scene as an interpreter, make sure that the person chosen to serve as interpreter is reliable.
- b. If possible, take the precaution of asking a second person who knows the foreign language to listen to the interpreter and notify the officer if the interpreter fails to translate any question or answer accurately and completely.
- c. Interviews conducted at the station, that require translation services can be conducted using LANGUAGE LINE SERVICES which is a translation service we have access to 24 hours a day.
- d. Directions for Language Line use are posted in the booking room.

#### **2. INTERPRETERS FOR THE DEAF**

- a. In any court proceeding where a deaf person is a party or a witness, the court must appoint an interpreter, unless the deaf person makes a knowing and intelligent waiver.<sup>3</sup>
- b. For short interviews the officer may be able to communicate adequately with a deaf person orally or in writing, or with the services of another person serving as an interpreter.
- c. In the event that a detailed interview is needed, or that a deaf victim or witness is likely to become a suspect, the services of an interpreter are advisable.
- d. Interpreter services are available through the Massachusetts Commission for the Deaf and Hard of Hearing:
  - 1) Emergency services any time: call 1-800-249-9949, voice or TTY.
  - 2) Non-emergency services: call 1-617-740-1600 Voice or 617-740-1700 TTY.

### **B. Physical and Emotional Needs of Witnesses/Victims**

1. Calm the excited and emotionally upset witness or victim. (If necessary, delay the interview until the person has regained composure.)
2. Create a favorable atmosphere for the witness or victim to talk freely.
3. Conduct the interview in a quiet area, if available.
4. Maintain privacy to the greatest degree possible.

5. Do not distract the interviewee or interrupt his/her story unnecessarily.
6. Only one officer should conduct the interview. Any other officers present should remain inconspicuous and not interfere with the interview.

### ***C. Establish Cooperative Relationship***

1. Display a sincere interest.
2. Be patient, tactful and respectful.
3. Control personal feelings. Do not exhibit surprise or dismay at anything said by a witness or victim.
4. Provide reassurance.
5. Encourage an untalkative interviewee by asking appropriate questions.
6. Encourage witnesses/victims to give a full description of everything that occurred with a minimum of interruption. When the conversation lags or stops, be patient and wait for the interviewee to volunteer additional information.

### ***D. Conducting the Interview***

1. Do not take anything for granted, and do not jump to conclusions.
2. Listen for and note any obvious omissions or gaps in the statements made by a witness or victim, or for any conflicting or inconsistent statements.
3. Note any extreme nervousness or unusual behavior on the part of a witness or victim or any unguarded or spontaneous remarks.
4. It is important to listen not only to what is said, but also to how it is said. By noting these things, an officer will know what portions of the statement may require further probing or clarification.
  - a. Emotional outbursts and inflections of the voice may give a clue to sensitive areas of the interview.
  - b. Sudden silence, uncertainty or confusion, or the shifting of conversation to an unrelated subject may indicate that information is being withheld.
  - c. Nervous bodily reaction or facial characteristics may also signal that a sensitive area has been reached.

**E. Questioning Victims/Witnesses**

1. Withhold any direct questioning until after the witness or victim has given a complete account, then ask specific questions to clarify earlier statements or to fill in any omissions.
2. Questions should be clear, definite and in plain language.
3. Ask only one question at a time, and wait for a complete reply.
4. Avoid leading questions that imply or suggest a particular answer.
5. Avoid rapid-fire questions that can confuse or bewilder.
6. Avoid questions that can be answered by "yes" or "no," as these limit response.
7. Do not ask questions in a critical or derisive manner, which could deter previously cooperative witnesses or victims.
8. Do not correct the grammar or the language of the witness or victim, which could cause resentment.
9. Do not permit your own emotions, attitudes or opinions to distract the witness or victim or to interfere with your evaluation of his/her response to your questions.

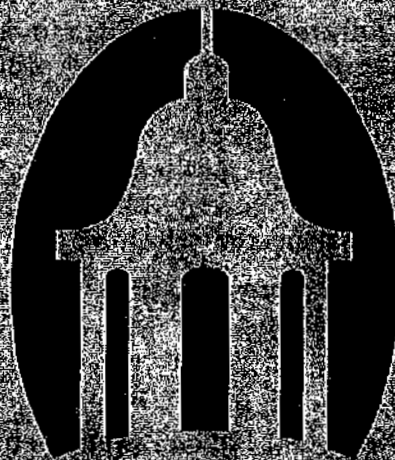
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<sup>1</sup> *Commonwealth v. Adkinson*, 442 Mass. 410, 813 NE2d 506 (2004).

<sup>2</sup> M.G.L c. 268, §13B.

<sup>3</sup> M.G.L c. 221, §92A.

***ATTACHMENT 11***



**Municipal  
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## PRELIMINARY INVESTIGATIONS

POLICY & PROCEDURE NO. <b>1.05</b>	EFFECTIVE DATE: March 25, 2009
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: <b>42.1.4; 42.2.1; 42.2.3</b>	REVIEW DATE: December 1, 2022

### I. GENERAL CONSIDERATIONS AND GUIDELINES

The ultimate success or failure of police efforts in solving a case is often based upon the immediate police response and preliminary investigation. This is generally the responsibility of patrol officers who are nearly always the first officers on the scene of a reported crime. It is the patrol officer who will initially discover facts, locate and identify witnesses and preserve physical evidence that is relied upon by the police investigator in the subsequent search for the suspected criminal.

The purpose of this policy is to provide guidance to those officers who conduct preliminary investigations.

### II. POLICY

It is the policy of the Swampscott Police Department that:

- A. Preliminary investigations shall be conducted on all incidents which violate the criminal code of the Commonwealth or town bylaws, or have the potential to result in a criminal or civil action; and
- B. All officers understand and comply with the following procedures when conducting initial investigations of crimes.

### III. PROCEDURES

#### *A. Responding to a Crime Scene*

1. Officers proceeding to a crime scene shall be vigilant and watchful in their approach for any signs of:

Suspicious activity that may be related to the crime;

Evidence of a fleeing criminal;

Persons acting suspiciously or furtively in the vicinity; or

Objects being thrown from a vehicle leaving the scene.

2. A threshold inquiry is justified when officers observe an individual fleeing from the scene of a crime.<sup>1</sup>
3. Responding officers shall record or report the registration numbers of any suspicious vehicles coming from the scene and the general description and any obvious characteristics of the operator or occupants if possible.
4. Officers shall be alert for any additional messages from the dispatcher.

The dispatcher shall immediately furnish the responding officers with any supplementary information that would be of assistance to them.

The dispatcher shall provide any available information that would indicate the possibility of a dangerous situation or the possible presence of an armed or dangerous criminal.

### ***B. Preliminary Investigation***

#### 1. ASSIGNMENT OF INVESTIGATING OFFICER [42.1.4]

The assigned officer arriving at the scene of an incident will usually be responsible for initiating and conducting the preliminary investigation unless otherwise directed by a supervisor.

A responding detective may relieve a patrol officer of the preliminary investigation if directed by a supervisor. The presence of a detective at a crime scene does not in and of itself relieve the patrol officer of the responsibility to conduct the preliminary investigation.

When a crime scene or investigation is turned over to an investigator, all information obtained up to that point, and the identity and location of any physical evidence discovered, shall be relayed to the investigator.

#### 2. ASSESSMENT [42.2.1(A)]

Upon arriving at the scene, the officer shall make a quick assessment of the situation and report the following to the dispatcher:

- 1) Assessment of any injured persons, providing or summoning appropriate aid;
- 2) The nature of the crime committed;
- 3) As complete a description of the offender as possible and the direction of his/her flight;

- 4) Whether the offender is, or may be, armed and dangerous;
- 5) A description of any vehicle being used by the offender and of any occupants of that vehicle;
- 6) A description of any firearms or other weapons used in the commission of the crime;
- 7) A description of any property stolen and whether it may be in the possession of the offender;
- 8) Any additional information that may lead to the apprehension of the offender;
- 9) The need for additional assistance from responding officers or investigators; and
- 10) The need for assistance from other agencies or special services (e.g., fire department, ambulance, etc.).

### 3. ARRESTING THE PERPETRATOR

If the perpetrator is at the scene, the crime is an arrestable offense, and probable cause to arrest exists, the officer may make an arrest. For further information, see the department policy on **Arrest**. In determining if an arrest is appropriate, the officers should consider:

- 1) The nature of the crime;
- 2) The suspect's propensity to violence;
- 3) The age of the suspect;
- 4) Suspect's criminal history;
- 5) The suspect's likelihood to default; and
- 6) The need for further investigation.

A decision to leave the scene to pursue a perpetrator shall be made based upon the following factors:

- 1) The likelihood that an apprehension can be made;
- 2) The physical condition of the victim(s);
- 3) The need to protect the victim from a renewed attack;
- 4) The potential danger to the public if the perpetrator is allowed to escape;
- 5) The nature of the crime committed;
- 6) The time and place of occurrence;
- 7) The lapse of time between the crime and the arrival of the police at the scene;



- 8) Whether the suspect is known to the officer or a good description of the offender is available; and
- 9) The availability of other officers to conduct the pursuit and to apprehend the offender.

#### 4. PRESERVING EVIDENCE [42.2.1(C)]

A critical task for the first officers at the scene of a crime is to protect the crime scene for the preservation of any physical evidence. (See department policy on **Collection and Preservation of Evidence**.)

The crime scene shall be maintained in the same manner as it was left by the perpetrator, as far as possible.

- 1) Clear the largest area possible. The size of the scene area can be contracted by investigators.
- 2) Secure and isolate the actual crime scene.
- 3) Secure a larger area for police personnel conducting the investigation.
- 4) Begin a "Crime Scene Sign-in Sheet," recording the name, agency, date and time of all persons entering the inner crime scene when appropriate.

Witnesses and other persons connected with the crime and persons associated with the property or premises involved in the crime shall be told to remain present and available for questioning but shall be removed from the actual crime area.

Officers shall look for any item of evidentiary value. This includes but is not limited to the following:

- 1) Weapons, shell casings, tools, clothing, shattered glass, stains, footprints, fingerprints, tool impressions, tire markings, etc.;
- 2) Ordinary objects or articles found in unexpected or unusual locations;
- 3) Ordinary objects or articles having individual peculiarities or markings;
- 4) Uncommon objects or articles not generally found at the location of the particular crime; and
- 5) Bits and pieces of evidence which may be of minor importance individually, but when taken together can be of significant value to the investigation.

The location of physical evidence shall be noted, but the evidence itself shall not be moved or touched if detectives or evidence technicians are responding to the scene to recover evidence. If evidence is to be recovered by officers at the

scene, or if it is absolutely necessary to ensure preservation of evidence, follow these procedures:

- 1) Photograph the item prior to moving it if possible.
- 2) Carefully note its exact location and position at the scene.
- 3) Handle the item using gloves and in such a manner as to prevent any alteration of its condition or the accidental impression of fingerprints.
- 4) For further information, see the department policy on **Collection and Preservation of Evidence**.

#### 5. INTERVIEWING COMPLAINANT, WITNESSES, AND SUSPECTS [42.2.1(D)]

The purpose of a preliminary interview is to obtain as much basic information as quickly as possible in order to identify the perpetrator and to establish the basis for the follow-up investigation.

Officers shall attempt to locate, identify and interview reliable witnesses.  
[42.2.1(b)]

- 1) Obtain the name, address and telephone number of all witnesses.
- 2) Separate witnesses to prevent them from discussing what has occurred among themselves before they are interviewed. This may taint individual recollections.

#### Conducting Interviews [42.2.1(d)]

- 1) The officer may ask each witness to write out a statement which describes what occurred.
- 2) Interview each witness separately and in a quiet area if possible.
- 3) When interviewing suspects, be mindful of any obligations to provide the suspect with Miranda warnings or record the interview. For further information, see the department policies on **Interrogating Suspects & Arrestees** and **Electronic Recording of Interrogations**.

Provide information about victim and witness assistance, including what to do if the suspect or suspect's companions threaten or otherwise intimidate the victim or witness. See department policy on **Victim/Witness Assistance**.

#### 6. REPORT WRITING

The officer conducting a preliminary investigation shall make an accurate and complete written report of the incident in accordance with departmental procedures.

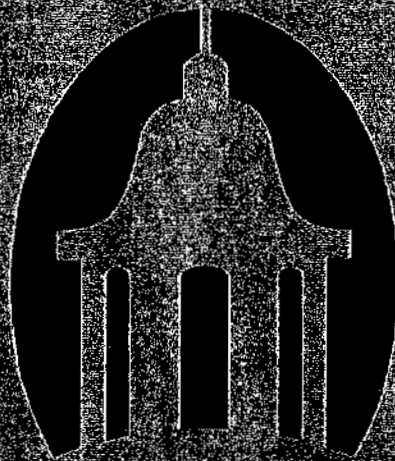
An officer making a preliminary investigation should make a written record of the following data:

- 1) Date and time of arrival at scene;
- 2) Weather conditions and visibility, including the location and distance from the nearest street light or artificial lighting and whether the lights were on;
- 3) Approximate time of commission of the crime and by whom it was discovered;
- 4) Identity of other police officers present;
- 5) All necessary information concerning any physical evidence discovered;
- 6) Name, address and telephone number of victims and witnesses;
- 7) The identity or the best available description of the criminal suspect or suspects, particularly noting any unusual characteristics;
- 8) The best available description of any vehicle used by the suspect or suspects;
- 9) Any information relating to others assisting at the scene including:
  - a) The name of any police photographer who took pictures;
  - b) The name and affiliation of any media photographer who took pictures;
  - c) The name and address of any private individual who took pictures;
  - d) The name and address of any individual turning evidence over to the police; and
  - e) Measurements made at the scene and a rough crime scene sketch if appropriate;
- 10) The time and location of any interviews of the victim or witnesses and a brief statement as to what they heard or observed; and
- 11) Any other information that the officer believes may be useful for the apprehension of the criminal suspect and his/her subsequent prosecution.

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<sup>1</sup> *Illinois v. Wardlow*, 120 S.Ct. 673 (2000).

# ***ATTACHMENT 12***



**Municipal  
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the chain of command, and also the grievance procedure of the Department as described in the applicable collective bargaining agreement. In addition, officers shall not publicly criticize instructions or orders they have received.

### **RULE 6.2 - DISPARAGING REMARKS**

Officers shall not speak slightly of any minority, race, nationality, gender, or religion nor make derogatory remarks about individuals on account of their marital status or sexual preference while on duty or while off duty in a public place.

### **RULE 6.3 - COURTESY**

Officers shall not be discourteous or inconsiderate to the public, to their superior officers, and to their fellow officers and employees of the police Department as well as other law enforcement and governmental agencies. They shall refrain from the use of profanity, derogatory comments, ethnic or racial slurs or any other type of demeaning statements or comments. They shall be tactful in the performance of their duties and are expected to exercise the utmost patience and discretion even under the most trying circumstances.

### **RULE 6.4 - RECOMMENDING PRIVATE SERVICES**

Officers shall not, except in the transacting of personal affairs, recommend or suggest in any manner the employment or purchase of any particular professional or commercial service or product, such as lawyers, bondsmen, undertakers, towing service, or burglar alarm companies.