

# POLICE USE OF DEADLY FORCE

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PoliceFoundation

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## PREFACE

It has been observed that the most distinctive characteristic of policing is the authority to use force. In turn, how the police use force distinguishes one era from another in policing, and even one police agency from another. During the past ten years the American police have exercised increasing restraint in hostage situations, civil disturbances, protest demonstrations, even in making arrests and dealing with juveniles.

The police today are far more likely than a decade ago to rely on negotiation and patience rather than on snap decisions and arbitrary commands to establish and preserve order. This conscious move toward restraint by the police has its origins in the events of the 1960s. The rioting and civil disorders of the last years of that decade began to diminish, and a turning point was reached, as the police switched tactics from shows of force to policies of professional restraint in the use of force.

This report deals with police use of force at its extreme—under those conditions when deadly force is employed. The authors of the report have found that there is a clear national trend among police agencies toward establishing restraint in the use of firearms. For those interested in building a more professional and humane police service, this trend is heartening. The important thing now for those who affect policing is to accelerate the process of developing written, more carefully defined standards for the use of firearms and by stronger management to enforce them.

This study reflects a beneficial use of a still too infrequent practice in American policing, that of cross-city comparative research. Police departments have much to learn from each other on issues such as the use of force. This study could not have been accomplished without the cooperation and support of the chiefs and personnel of these departments: Birmingham, Ala.; Detroit, Mich.; Indianapolis, Ind.; Kansas City, Mo.; Oakland, Calif.; Portland, Ore.; and Washington, D.C.

*Patrick V. Murphy*  
*President*  
*Police Foundation*



## ACKNOWLEDGMENTS

The use of deadly force by the police has been of interest and concern to the President of the Police Foundation, Patrick V. Murphy, during his entire policing career. When this study was only a remote possibility, he encouraged us to develop a proposal to the Police Foundation Board of Directors to research the issue.

The Board of Directors approved a preliminary research plan. Board members James Vorenberg and James Q. Wilson provided especially valuable guidance.

With the assistance of Susan Michaelson of the Foundation staff, we conducted a literature search. Project staff also interviewed police administrators in several cities to identify those willing to participate in the project: a comparative study of the impact of administrative action on police use of deadly force. An advisory group of experts was called in to frame issues and to assist with the project design. Group members were Professors Morton Bard of City University of New York, Hans Toch of the State University of New York, and Marvin Wolfgang of the University of Pennsylvania; and Lts. Francis J. McGee, head of the New York City Police Department's Firearms Training Unit, and Gary Abrecht of the Metropolitan Police Department, Washington, D.C. Lt. Billy Webb of the Birmingham, Alabama, Police Department assisted in the site visits and subsequent write-ups. His perspective was extremely helpful to the project.

This study would not have been possible without the important contributions of the police administrators and

their staffs in the seven participating cities: Birmingham Police Chief James Parsons, former Detroit Police Chief Philip Tannian, former Indianapolis Police Chief Kenneth Hale, former Kansas City Police Chief Joseph McNamara, Oakland Police Chief George Hart, Portland Police Chief Bruce Baker, and Washington, D.C., Police Chief Maurice Cullinane. We are especially indebted to Chief Parsons and Chief Cullinane for allowing members of their departments to work directly on this study. Other police and law enforcement agency officials and staff members were helpful, including Chief Patrick Fitzsimons and Sgt. James Fyfe of the New York City Police Department Training Academy; San Francisco Police Chief Charles Gain; and Robert Conger and Andrew McKean of the FBI. James Dougherty of the National Rifle Association; Charles Rogovin, former president of the Police Foundation; and the late John Fabbri, who had been police chief in Fremont, California, also gave assistance.

Throughout much of the project, Peter B. Bloch, formerly a researcher with The Urban Institute, and William McCarthy, former deputy commissioner of the New York City Police Department, were helpful in guiding the structure and substance of our work.

Patrick V. Murphy, Joseph H. Lewis, Richard Staufenberger, John Heaphy, Lucius Riccio, Joan Wolfle, John Greacen, and William H. T. Smith of the Police Foundation provided helpful suggestions throughout. Research assistant Kim Geringer contributed to the bibliography; William McClain and Judge Charles W. Halleck contributed to the chapter on firearms policies; and Mara Adams of the Foundation staff skillfully edited the final report.

To all these persons and to the police department personnel in the seven cities who so ably assisted the project staff, we are extremely grateful.

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## INTRODUCTION AND MAJOR FINDINGS

The Police Foundation undertook this study in the hope of finding information that might help police and city administrators reduce the rate of violence between police and citizens. The authors have focused on only one form of that violence, the use of firearms by police, but are acutely aware of the interrelationship between acts committed *by* the police and acts committed *against* them.

### PURPOSES OF STUDY

The primary purposes of this report are (1) to present results of site visits and data analysis in seven cities; (2) to raise issues and identify factors police administrators should consider in developing or reformulating department policies dealing with the use of deadly force; (3) to present practical recommendations for police administrators to improve the way departments approach the use of deadly force; and (4) to identify areas for future research.

The authors began with the premise that, although police use of firearms is not an everyday occurrence and at times is essential to the police mission, individual incidents can have a powerful, deleterious effect on the life of a community. Presidential commissions established to study violence and urban riots have pointed out that the precipitating event is often a police shooting of a civilian which, at



the time, seems questionable or pointless. On other occasions, such shootings yield less explosive but still harmful results: personal suffering on the part of victims, police officers, and families alike; lawsuits and substantial judgments against financially hard-pressed cities; and a significant erosion of confidence in and respect for the police.

Unfortunately, little information or analysis of information is available about the use of firearms, except on a case-by-case or, at best, city-by-city basis. States have different laws, departments have different policies, and supervisors have different standards, but the effects of these differences are unknown. Moreover, statistics on how many civilians are injured or killed by the police in particular cities are not easily accessible. The Federal Bureau of Investigation (FBI) collects figures, categorized by cities, on civilians killed by police, but does not present these figures to the public. The only published national figures are compiled from coroners' reports by the National Center for Health Statistics of the U.S. Department of Health, Education and Welfare (HEW). Unfortunately, these data are not categorized by cities, nor do they indicate the cause of death (e.g., firearms, batons, automobiles, and so forth).<sup>1</sup> Review of data made available to the authors from individual police departments, from news clippings, and from the FBI shows that the incidence of civilians shot or killed by the police varies considerably among cities. With these facts in mind, this study of a complex and controversial area tries to identify and explore some of the factors that might contribute to the variance in rates.

## *METHODOLOGY*

Because the use of firearms is but one expression of violent interaction between police and citizens, the Police Foundation's research began with a review of the large body of literature dealing with the general subject of violence and the police. That literature tends to fall into three categories: studies of how and why violent incidents occur; surveys of state laws and department policies authorizing



the use of force (including deadly force); and examinations by civil rights or public interest groups of police shootings or incidents involving alleged brutality and the adjudication of those incidents in particular cities.

Although few of the works in the first category treat the issue of police use of deadly force, these sources nonetheless helped identify some critical issues to keep in mind in developing the area of inquiry. For example, William A. Westley, Arthur Neiderhoffer, Paul Chevigny, Hans Toch, and others suggest that the eruption of violence between police and citizen is often the result of an attempt by one party to demand the respect of the other. Thus defiance of police authority, reflected in both aggressive action and escape, is thought to be an important contributing factor to police violence.

Toch has observed that violence is both an occupational risk and an occupational tool for police. It may occur as a provocative act or as a response to violence initiated by others. In addition, Toch notes that many officers perceive administrative efforts to reduce police violence, through either training or policy enforcement, as an attempt to compromise the traditional police mission of crimefighting. Thus the officers either reject such efforts or, at best, receive them ambivalently.

Among the surveys of laws and policies are several helpful works, some by outside groups and some by police departments. These include Samuel G. Chapman's report to the President's Commission on Law Enforcement and Administration of Justice, *Police Firearms Use Policy*; an unpublished paper by former Oakland chief, Charles R. Gain, "Discharge of Firearms Policy: Effecting Justice Through Administrative Regulation"; a law review article by John Nicholas DeRoma, "Justifiable Use of Deadly Force by the Police: A Statutory Survey"; Gerald Uelman's study, "Varieties of Police Policy: A Study of Police Policy Regarding the Use of Deadly Force in Los Angeles County"; and a 1975 article, "Police Homicide in a Democracy," by Arthur L. Kobler. In addition, the Boston, Seattle, and Cincinnati

police departments, among others, have conducted relatively recent and comprehensive firearms policy surveys.

The third category of source material, works dealing with particular shootings or violent incidents, proved slightly less valuable because the few such studies available had been conducted by outside agencies acting without the cooperation of the departments involved. These agencies and the police tended to be mutually hostile, with the result that the reports lacked certain data that only the departments could have supplied. Nevertheless, there was interesting material in two such studies of the Chicago Police Department: *The Police and Their Use of Fatal Force*, published by the Chicago Law Enforcement Study Group, and *Police Brutality*, a collection of stories from *The Chicago Tribune*. Also valuable was "A Study of the Use of Firearms by Philadelphia Policemen from 1970 through 1974," prepared by the staff of the Philadelphia Public Interest and Law Center (PILCO).

After completing the literature search, staff telephoned appropriate personnel in 45 police and sheriff's departments across the country. In each case there was a preliminary call to the chief supervisory official and, if necessary or if the staff member was so encouraged, there were follow-up calls to other individuals in the department whom the chief identified as being most knowledgeable about relevant policies and programs. The purpose of these calls was to identify a group of cities that (1) represented geographical balance, differing crime rates, and differing reputations for attitudes toward violence, and (2) routinely collected data essential to the study.<sup>2</sup> A secondary purpose was to identify for participation in the project cities that had established programs and policies aimed at violence reduction.

Police Foundation staff then sought the advice of many individuals and representatives of organizations, including experts from the FBI, International Association of Chiefs of Police, Law Enforcement Assistance Administration, National Association of Counties, National Sheriff's Association, National League of Cities, United States Conference of



Mayors, and National Rifle Association. Also consulted were several police chiefs and police legal advisors, firearms trainers, and noted psychologists and sociologists. One former and two present police officers became the field researchers. All of these individuals helped to narrow the field of study and contributed to the project design.

Selection of cities for case studies ultimately did not involve a particularly complicated formula, but had the general goal of encompassing a wide range of settings (e.g., geographic balance, varying crime rates, and so forth), styles of administration, and police policies. Nevertheless, there were some essential criteria: The cooperation of local police officials was of paramount importance, and the following police records and statistics had to be accessible and available to the field researchers:

1. Information concerning a department's use of firearms policy, training methods, and procedures for the reporting and review of shooting incidents and disciplinary procedures, and
2. A file of incidents in which officers used their firearms. The file might include only those incidents resulting in actual injury; better still, it also might include details of firings without injury. In either case, the file had to contain names, places, times, and a summary of the events surrounding each occurrence.

Also of interest were cities that had recently adopted new or changed policies that might have a bearing on the use of firearms, and cities that had experienced either very low or very high rates of civilian deaths by police action and for which there might be no ready explanation of those rates.

Before choosing the cities, the staff determined the rate of civilian deaths by police action, using figures supplied by the FBI and by local police departments, and matching those figures against population data. The field visits revealed that some of the figures this method produced were deceptive. The relatively small number of fatal shootings in

some cities meant that in one year the rate might have been unusually high because of just one incident. Therefore, in gathering data for comparison purposes, we included *all* shootings by police officers that took effect, excluding only harmless discharges, suicides, and shootings of animals.

The original intent was to include harmless discharges. Department administrators often give closer scrutiny to these shots that do not hit anyone than to shootings in which injury or death occurs—perhaps because in these cases the atmosphere is less charged and the opportunity for remedial action more favorable. (See chapter 3 for fuller discussion.) In addition, in all likelihood no greater distinction exists between harmless discharges and shots that take effect than that between fatal and nonfatal shootings. For these reasons, the discussion would surely have been enhanced if such discharges had been included in the case studies. However, not all cities uniformly record information about discharges. In the cases in which such information was available, staff and budgetary constraints did not permit collecting the data.

In the end, the departments chosen were a highly varied group. The seven cities represented a cross-section of urban America by geography, by population make-up, by style of department administration, and by their rates of police shootings of civilians.

- *Birmingham, Alabama*, at the time of the site visit, had no written firearms policy. Instead, it relied on Alabama case law: a half-century-old court decision sanctioning the use of firearms to apprehend the escaping operator of an illegal whiskey still.

- *Detroit, Michigan*, was notable for its high incidence of gun-related crime and for a dramatic program of plainclothes and decoy patrol that had led to a number of controversial shootings before being abandoned under a new mayor.

- *Indianapolis, Indiana*, appeared to have, on the whole, one of the less restrictive and, at the same time,



simpler firearms policies of any major city. Its police chief had just established a firearms review board and was reported to be considering other policy changes.

- *Kansas City, Missouri*, had recently adopted an elaborate new order governing firearms use and thus afforded an opportunity to see the initial consequences of a change in formal policy.

- *Oakland, California*, had a high crime rate and a history of racial problems, but it also had a much-touted conflict management program and a relatively small number of shootings by police.

- *Portland, Oregon*, was governed by an unusually restrictive state law on the use of deadly force and showed an extremely low rate of shootings.

- *Washington, D.C.*, had a tight firearms use policy and had been one of the first cities to create a firearms review board; nonetheless, it was experiencing a high rate of shootings.

In each of these cities, the field researchers examined the record of shootings by police officers over a period of time, ranging from a year and a half in Detroit to three years in Kansas City, Portland, and Oakland. Researchers also surveyed those factors and policies that might plausibly have an influence on such shootings.<sup>3</sup> Finally, by riding as patrol car observers, the field researchers tried to gain a sense of the style of policing in each city and of the attitude of rank-and-file officers toward firearms use and department policy.

Despite the obvious danger of unfavorable publicity, police administrators in all seven cities gave their full cooperation, freely answering questions, providing office space, and allowing access to relevant files. These administrators shared the attitude that the risks were outweighed by the goal of reducing unnecessary violence between police and citizens.



## MAJOR FINDINGS

The analysis of data collected during these field visits focused attention on the possible impact of written policies, administrative review procedures, and overall personnel and training practices on the rate and character of shooting incidents. The major findings, based on the literature search and on observations from the seven cities, can be summarized as follows:

1. Police departments differ widely in their policies and review procedures relating to the use of deadly force. There is no universally accepted standard dictating when an officer should use a firearm.

2. There is a clear national trend in police departments toward the enactment of written policies governing the use of firearms. Often, however, these policies are not set forth in any single document, but are scattered among several department orders or bulletins. Many of these policy statements are poorly organized and confusing.

3. Many departments appear to shy away from adopting firearms policies that are much more restrictive than state law, for fear of increasing their vulnerability to civil suits. In addition, police administrators have to cope with increasing police union opposition to the adoption of more restrictive standards.

4. The rates of shootings by police officers vary widely among jurisdictions, and it is impossible, within the limits of this study, to say what specific factors are responsible for these differences. In Kansas City, however, it was possible to document variations in *kinds* of shootings following the department's adoption of a rule prohibiting the shooting of juveniles except in self-defense. After the enactment of this regulation, the number of persons under 18 years old shot by police officers declined sharply.

5. Many departments are beginning to develop record-keeping procedures designed to identify and monitor officer conduct involving the use of excessive force and repeated involvement in shooting incidents.

6. It is difficult, after the fact, to categorize certain shootings as "justified" or "unjustified." Some shootings are clearly and unequivocally acts of self-defense. Some manifestly fail to meet the requirements of law and local policy, or appear to have served no compelling purpose, in that no lives were saved and no dangerous felons apprehended. Many incidents, however, fall into a middle ground where the officer's word may be pitted against that of a friend or friends of the victim, or where one or two facts appear to be inconsistent with the officer's version of events.

7. Most shootings are called "justified" by departments, and very few are referred for criminal charges.<sup>4</sup> When an officer is formally charged in connection with an incident occurring in the line of duty, juries generally do not convict, perhaps because most witnesses are themselves participants and not impartial observers. Department discipline in such cases rarely goes beyond a verbal or written reprimand to the officer involved.

8. The formal review of shooting incidents by a civilian or part-civilian body does not in itself guarantee a fairer or more systematic resolution.

9. The number of blacks and other minorities shot by police is substantially greater than their proportion in the general population, but is not inconsistent with the number of blacks arrested for serious criminal offenses (Index crimes). Shootings of minority juveniles, in particular, have been responsible for increased tensions and occasionally violent disturbances in ghetto neighborhoods.

10. The review of shooting incidents in the seven sample cities indicates that a sizable percentage involved out-of-uniform officers (both on duty in plainclothes and off duty), perhaps because out-of-uniform officers are less conspicuous and thus more able to intervene in situations in which criminal or suspicious activity is still going on.



### Notes

1. National Center staff members have indicated that, in their experience, more than 90 percent of civilian deaths by "legal intervention" result from firearms. This presumption is borne out by our review of incidents nationwide (from a news clipping service) over a two-year period.
2. See later description of essential records.
3. In chapter 1, police records of 320 shooting incidents occurring in 1973 and 1974 in the seven cities are reviewed and analyzed. The 320 shootings account for all such incidents in six cities and those occurring from July 1973 through December 1974 in Detroit. Staff researchers did, however, review records of shootings from additional time periods in a number of the cities. References to some of these incidents, not included among the 320, may appear in the report as illustrations of particular department practices and procedures.
4. This finding is confirmed in two recent studies by Arthur Kobler of the University of Washington in the *Journal of Social Issues* 31, 1 (1975) who found that of 1,500 killings of civilians by police from 1960 to 1970, very few cases were referred for prosecution and only three resulted in criminal punishment. See also J. G. Safer, "Deadly Weapons in the Hands of Police On Duty and Off Duty," *The Journal of Urban Law* Fall 1972: 566.

## CHAPTER 1

### ANALYSIS OF SHOOTING INCIDENTS

This chapter contains observations about 320 shooting incidents from 1973 and 1974, gathered from seven police departments. These data and selected characteristics of the cities and police departments, together with some very preliminary conclusions, are presented to serve as a guide to police administrators and to suggest areas for more extensive analysis in future research.

While the small sample size taken from a two-year period does not allow statistically significant conclusions to be drawn at levels usually acceptable to behavioral scientists, some findings are meaningful for policy-making officials. However, readers should take care in making comparisons between departments and should recognize that the data merely characterize the present level of shooting incidents in individual cities; the data do not explain why or how the rates got there. Furthermore, it would be inappropriate to be critical of police administrators for substantial percentage increases in shooting rates from one year to the next. Such changes may actually represent a very small number of incidents—such as five shootings instead of three—or may be attributable to factors entirely beyond a chief's control.

## *DATA COLLECTION*

The seven cities ranged in size from Birmingham, Alabama, with a population of slightly less than 300,000, to Detroit, Michigan, with a population of almost 1.4 million persons. The field researchers<sup>1</sup> visited only the city police department and did not collect information from other law enforcement agencies operating in a jurisdiction, such as transit or housing authority police. The researchers reviewed shooting incident reports, department regulations, and descriptions of procedures for the use of firearms. In addition, they interviewed administrative personnel and spoke informally, while riding on patrol or in other settings, with other members of the department.

Because information was available from all cities except Detroit<sup>2</sup> for calendar years 1973 and 1974, the staff reviewed a total of 320 incidents<sup>3</sup> involving the use of firearms by members of the seven police departments over a two-year period. Only incidents that involved shootings by police were included; deaths or injuries of civilians by other means attributable to police action were eliminated from consideration. Shootings by both on- and off-duty personnel were tabulated, including personal disputes involving off-duty officers. Five incidents (all nonfatal) involving shootings of police by their fellow officers also have been included. Discharges that did not hit anyone, shootings of animals, suicides, or instances in which a police weapon was used by someone other than an officer were excluded from the study.

## *OBSERVATIONS ABOUT THE DATA*

Observations about the data<sup>4</sup> are organized into the following three categories:

1. A description of the circumstances of the shooting incidents and the characteristics of the citizens and police involved. These observations include ratio of fatal to nonfatal incidents; sex, age, and race of shooting victim; possession of a weapon by shooting victim; type of incident in



which the shooting occurred; status and assignment of the officer involved; and adjudication of the incident by the department.

2. An examination of the relationship between the shooting rates of individual cities and population size, police department size, the index crime rate, and the violent crime rate.

3. An examination of the relationship between the use of fatal force by citizens against the police and by police against citizens. For this purpose, nationwide figures have been used.

Although it is reasonable to suppose that relationships of some kind do exist between various factors and shooting rates, a serious problem exists in attempting to isolate each variable to determine the nature and extent of its influence. Neither the data collected for this study nor existing knowledge about these matters is capable of providing that information. For example, a change in administration or in the written policy of a department might be followed by a reduction in shootings, but it is extremely difficult to tie the two together. The change in shooting rate might have come about because of an unrelated revision of the department's training program or because of a significant population shift in the community. Even to attempt such an analysis, researchers would have to collect data far beyond the scope of this pilot study. We hope that the preliminary findings presented here will encourage others to do just that.

## *GENERAL CHARACTERISTICS OF SHOOTING INCIDENTS, OFFICERS, AND CITIZENS*

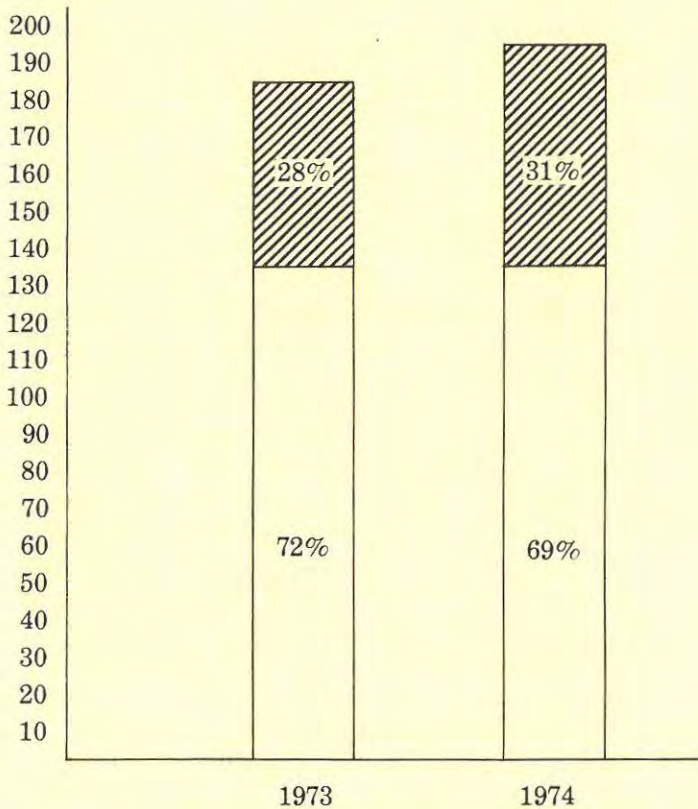
### *Ratio of Fatal to Nonfatal Shootings*

Of the 320 shooting incidents analyzed in this chapter, close to one-third (96) were fatal shootings. Of the total number of shootings in all seven cities in both calendar years (378), 29 percent were fatal and 71 percent nonfatal, as Figure 1 shows. The ratio differs from city to city in the study, ranging from one-quarter to a little more than one-

Figure 1

RATIO OF FATAL TO NONFATAL SHOOTINGS:  
SEVEN CITIES

Number of  
Shooting  
Incidents



Key:

Fatal Shootings



Nonfatal Shootings



NOTE: The figure is based on the total number of shooting incidents (378) occurring in the seven cities during the two-year period; it includes *all* incidents occurring during the full year 1973 in Detroit.



third of all incidents, as shown in Table 1; however, the number of fatal shootings is generally too small in individual jurisdictions and the study period too short to support a conclusion that major differences in this ratio exist among cities. Furthermore, comparative data from studies in other cities (see bibliography) show a similar ratio of fatal to non-fatal shootings.

As noted in the introduction to this report, the decision to include nonfatal shootings in this study was made primarily because the number of fatal shootings was quite low in some cities, and also because it was assumed that the distinction between the two was frequently a matter of chance; however, subsequent analysis of all shooting incidents suggests that fatal shootings are more likely to occur when subjects are armed (see Figure 5). It should be noted, however, that the small sample size and the uncertain validity of data concerning the presence of a weapon make this only a tentative conclusion.

In 1973, 376 civilians were killed in the United States by law enforcement officers, according to statistics gathered by the National Center for Health Statistics, U.S. Public Health Service. The total number of fatal shootings that year in the seven sample cities, 51,<sup>5</sup> represents almost 14 percent of the national total, even though the population of the seven cities is only 1.9 percent of the entire population, based on 1973 Bureau of the Census population estimates.<sup>6</sup>

#### *Sex (N = 314)*

Nearly all of the subjects shot by the police were known to be male (308 out of 320), and six were identified as female. In the remaining six instances either the police report was incomplete, or officers reported shooting a suspect who escaped and was not subsequently located. In those cases, age, sex, and race are unknown.

#### *Age (N = 290)*

The reported ages of the shooting victims ranged from 14 to 73. More than one-third (35 percent) were between the



TABLE 1  
FATAL AND NONFATAL SHOOTING INCIDENTS,  
1973 AND 1974

City and Population <sup>a</sup>	Percentage of Shootings		Total Number of Shootings
	Fatal	Nonfatal	
Birmingham 295,686	27	73	41
Oakland 345,880	24	76	17
Portland 378,134	33	67	9
Kansas City 487,779	23	77	26
Indianapolis 509,000	36	64	36
Washington, D.C. 733,801	31	69	70
Detroit 1,386,817	29	71	179
<b>TOTAL</b>	<b>29</b>	<b>71</b>	<b>378<sup>b</sup></b>

<sup>a</sup> Cities are ranked by population size, according to Bureau of the Census 1973 population estimates; the Indianapolis population figure refers to police district and is based on 1970 census.

<sup>b</sup> This figure represents all incidents occurring in both calendar years in all seven cities.

ages of 19 and 24. By way of comparison, 11 percent of the population and 26 percent of all persons arrested for Index crimes in the seven cities were in that age category. Almost three-quarters (73 percent) of all shooting victims whose ages were known were under 30, and 50 percent were 24 years old and under. The data presented in Figures 2 and 3 suggest that existing department sanctions against the shooting of juveniles (see Table 11) are being observed. Although

young persons between the ages of 13 and 18 represented 39 percent of all persons arrested for Index crimes in the seven sample cities in 1973, only 12 percent of the shooting victims were in that age group—a figure in direct proportion to their representation in the general population of those cities.

Comparative data from studies of police homicides by Robin (1963) and Kobler (1975)<sup>7</sup> show similar age breakdowns. Kobler's study of 911 civilian victims over a five-year period (1965–69) reports an age range of 12 to 81. The largest group of victims were between 17 and 19; approximately 50 percent were between the ages of 17 and 27. In Robin's study of 32 homicides by police officers in Philadelphia (1950–60), exactly half of the group was under the age of 24. Robin collected similar data from nine other cities which showed the largest percentage of victims to be in the 20-to-25-year-old range (32 percent); overall, 50 percent were under age 28.

#### *Race (N = 309)*

Of the number of nonfatally shot civilians whose race was known (169), almost 80 percent were black, as were 78 percent of those killed by police use of firearms. Overall, 79 percent of the shooting victims were black. The percentage of black shooting victims is disproportionately high in comparison with the percentage of blacks in the total population; however, the figure corresponds quite closely to black arrest rates for Index crimes (see Figure 4).<sup>8</sup>

In Robin's study of Philadelphia police homicides, 87.5 percent of shooting victims were black, in contrast to blacks' 22 percent representation in the city's population and 30.6 percent representation in the arrest population during those same years (1950–1960). In his expanded study of nine additional cities, almost 62 percent of shooting victims were black. In contrast, Kobler's study reported a substantially lower percentage of black victims: 42 percent. However, that study included both rural areas and, as Kobler points out, a disproportionate number of cases from the western states. There the population make-up is likely to differ from that of

Figure 2

AGE OF SHOOTING VICTIMS

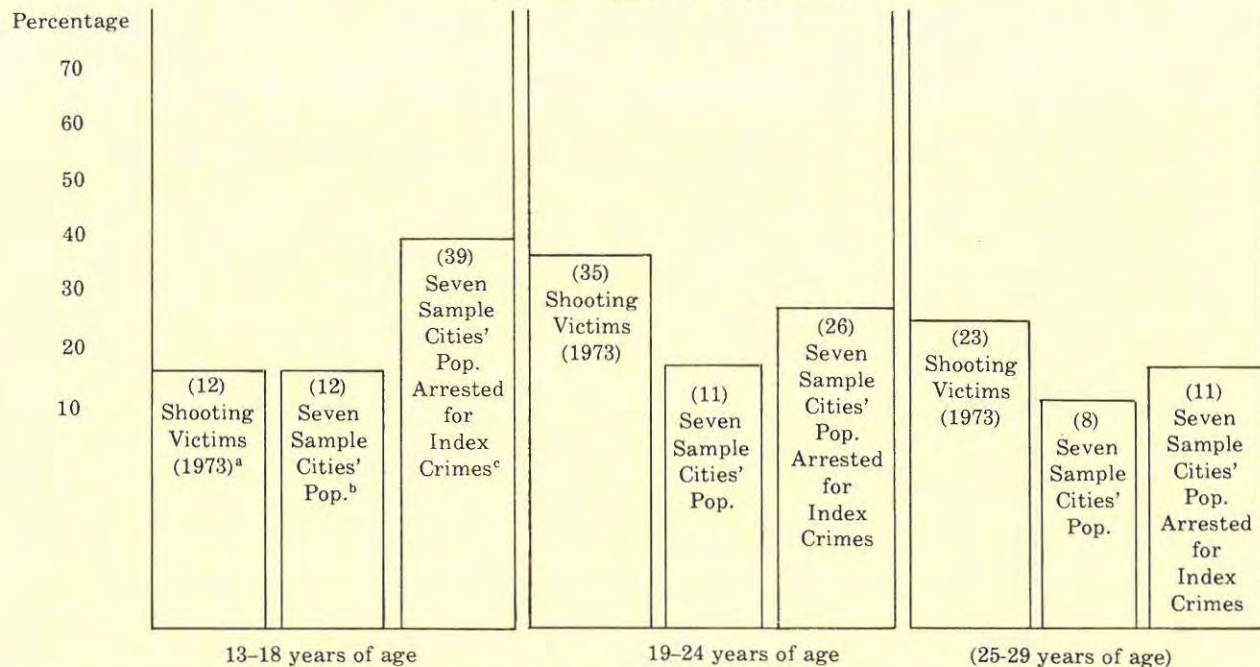
Ages		Percentage of Cases	Number of Cases
ALL		100	290 <sup>a</sup>
14-16		6.2	18
17-18		8.3	24
19-21		16.6	48
22-24		18.3	53
25-29		23.1	67
30-34		7.2	21
35-39		5.5	16
40-44		4.5	13
45-49		4.8	14
50-55		2.4	7
Over 55		3.1	9

<sup>a</sup> In 24 cases, ages were unknown; 5 additional cases were not included in the table because the shooting victims were police officers. Of the total not tabulated (30), 9 were fatal and 21 were nonfatal shooting incidents.

<sup>b</sup> The percentage of victims under 25 is 49.4—almost half.



# SHOOTING VICTIMS, URBAN POPULATION, AND ARREST POPULATION, BY SELECTED AGE GROUPS



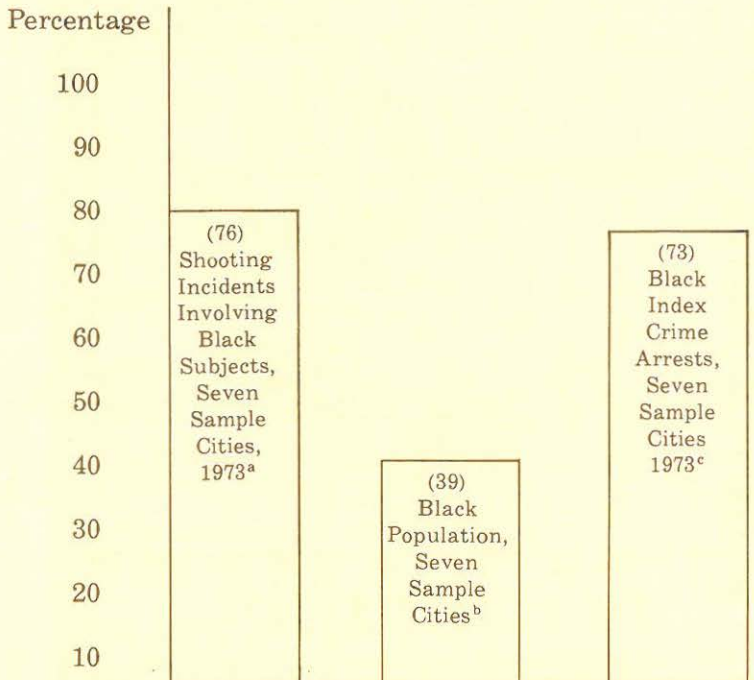
<sup>a</sup> The percentage of shooting victims varies only slightly—and in only one category—when 1974 incidents are added to those occurring in 1973: 13-18 years of age, 14 percent; 19-24 years of age, 35 percent; 25-29 years of age, 23 percent.

<sup>b</sup> Seven sample cities population figures are based on 1970 census data.

<sup>c</sup> Figures are derived from 1973 UCR report.

Figure 4

SHOOTING VICTIMS, CITY POPULATION, AND ARREST  
POPULATION, BY RACE



<sup>a</sup> Shooting incidents involving black subjects in 1973 and 1974 combined (from seven sample cities) equal 79 percent.

<sup>b</sup> City population and black population figures from 1970 Bureau of Census data.

<sup>c</sup> Figures are derived from 1973 UCR Report.

the large urban centers, which have been the source of most of the data on this subject gathered up to now.

*Victim Armed* (N = 315)

According to police reports, 57 percent of the 315 civilians shot were armed; 45 percent (143), with guns; and 12

percent (36), with other weapons, primarily knives. Fifty-four percent (52) of the subjects killed were armed with guns, and 15 percent (14) were armed with other weapons. Forty-two percent (91) of the persons nonfatally shot were armed with guns; in addition, 10 percent (22) were found to have had other weapons. Although many persons shot were unarmed (43 percent), the data, as shown in Figure 5, suggest that those who were armed were more likely to be fatally shot. (Suspects were considered to be armed only if a weapon was reported to have been recovered or, in a few instances, if the records contained additional evidence that supported the officer's report.)

Kobler's findings concerning the presence or absence of a weapon in police homicides closely parallel these: In 25 percent of the cases he studied, no weapon was recovered; in this study, 31 percent of those persons fatally shot were unarmed. Fifty percent of all victims had firearms, an additional 15 percent were armed with knives, and 10 percent apparently had other weapons.

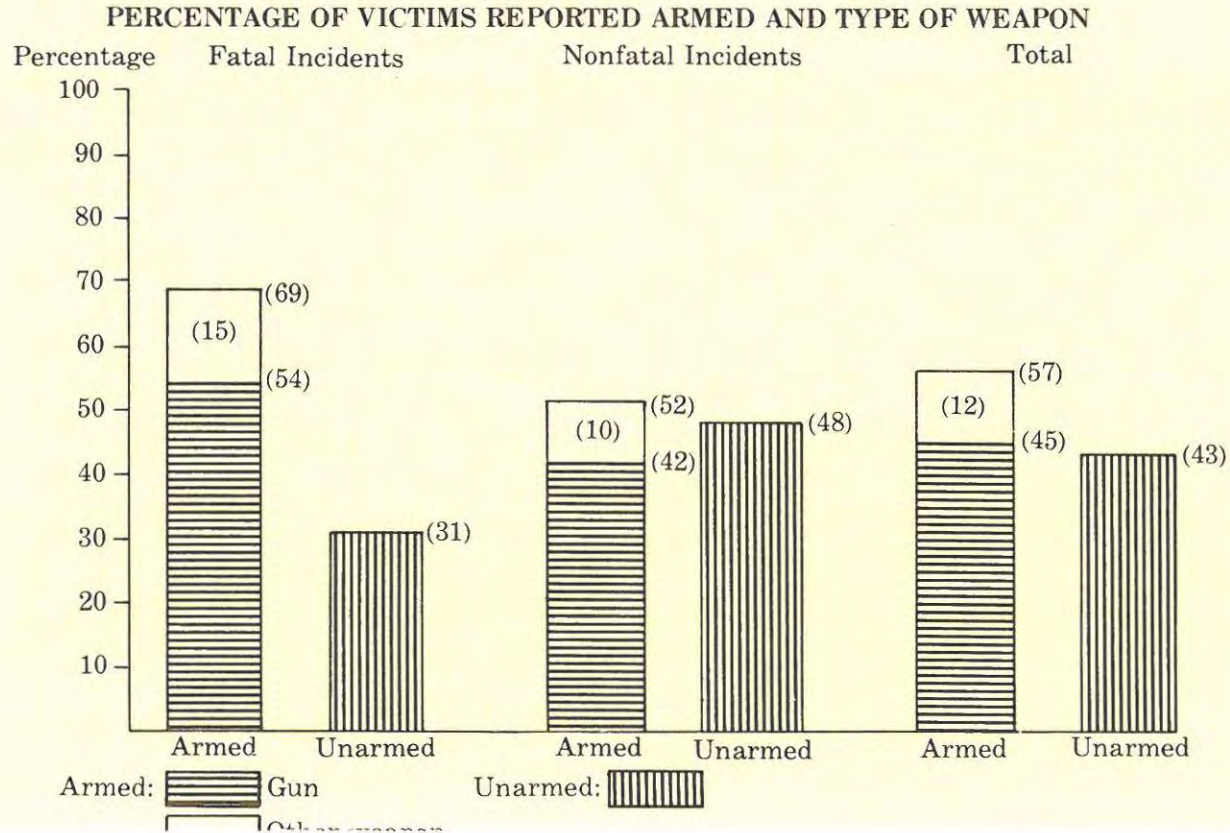
#### *Type of Incident (N = 320)*

On examination of the nature of the circumstances surrounding each shooting incident, some incidents were relatively easy to categorize. For example, the police dispatcher received a call requesting officers to respond to the scene of a burglary; when officers arrived, subjects were found on the premises, shots were exchanged, and a suspect was shot. However, in many incidents a series of events occurred which meant that officers responding to one presumed set of circumstances found themselves confronted with another. To the extent possible, incidents were classified according to the primary activity reflected in official reports.

According to department records, almost all 320 persons shot were seemingly involved in criminal incidents—either directly engaged in illegal activity or acting in a suspicious manner. Of the rest, four were bystanders, one was a citizen attempting suicide, and five were police officers.<sup>9</sup> Almost



Figure 5



one-third (32 percent) of the incidents to which the police responded involved disturbance calls: family quarrels, fights, assaults, disturbed persons, or reports of man or woman with a gun. Twenty-one percent of the incidents involved reports of a robbery in progress or pursuit of robbery suspects; a nearly equivalent amount (20 percent) involved a burglary in progress, larceny, tampering with an auto, or pursuit of subjects after an incident of this nature.

In 8 percent of the cases, persons shot were originally stopped for a traffic offense or stolen vehicle check; in a number of these instances, the shooting occurred in the course of pursuit. Only 4 percent of the shootings were either personal disputes involving the officer, accidental firings at friends or coworkers, or the result of horseplay. Another 4 percent of the incidents involved stakeouts or decoy operations. Miscellaneous situations, including escapes, investigation of accidents, serving of warrants, and other circumstances, constituted 11 percent of the total number of shootings (see Table 2).

Although some studies of shooting incidents have characterized subjects as "confronting" and sometimes "resisting" or "fleeing" at the time of shooting, our review of the data suggests that it is often extremely difficult to categorize incidents in this fashion. These postures are not always mutually exclusive, and both police and victim reports of shooting incidents are to some degree self-serving and not always easily verifiable. A complicating factor is that the presence of other witnesses may, depending on the circumstances, merely add to the number of conflicting accounts. Similar difficulties occur in trying to identify shootings which are "accidental" or "by mistake"—a problem researchers appear to share with grand juries.

#### *Officer Status and Assignment (N = 320)*

Of the 320 shooting incidents, 17 percent (55) involved off-duty officers, and 21 percent of the shootings occurring on duty involved plainclothes officers.<sup>10</sup> Several incidents

TABLE 2

## TYPES OF INCIDENTS TO WHICH POLICE RESPONDED

Incident <sup>a</sup>	Percentage of Total	Number of Incidents
Disturbance calls: Family Quarrels Disturbed Persons Fights Assaults "Man With a Gun"	32	102
Robbery in Progress, Pursuit of Robbery Suspects	21	66
Burglary in Progress, Larceny, Tampering with Auto, or Pursuit of Subjects	20	63
Traffic Offenses: Pursuits Vehicle Stops	8	25
Officer Involved in Personal Dispute, Horseplay, or Accident	4	14
Stakeout or Decoy	4	13
Other	11	37
TOTAL	100	320

<sup>a</sup> These incidents were classified from police records for this research. The categories do not represent formal charges or final dispositions.

involving plainclothes officers on their way to or from work were recorded as off-duty incidents. According to police reports, the majority of off-duty incidents came about because the officer happened upon the scene of criminal activity or was in a public place, such as a bar, when a disturbance occurred. Relatively few off-duty incidents ap-



pear to have been initiated by officers. As Table 4 shows, the ratio of nonfatal to fatal shootings by off-duty and plainclothes officers is very nearly the same as that of all incidents (2:1).

**TABLE 3**  
**STATUS AND ASSIGNMENT OF OFFICERS INVOLVED**  
**IN SHOOTING INCIDENTS**

	Percentage	Total (Number)
Incidents Involving Off-Duty Officers	17	320
Incidents Involving Plainclothes Officers (as Percentage of On-Duty Incidents)	18 (21)	320 (265)

Information about officer status and assignment represents the only officer-related information consistently available in all cities. The major difficulty in collecting personal information about officers, similar to that gathered about persons shot, is that such information is not likely to be included in the shooting incident report and must be retrieved from other sources. This procedure is time consuming and, in some instances, not feasible because of concerns about the confidentiality of personnel files. Needless to say, future research efforts looking more intensively into the

**TABLE 4**  
**RATIO OF FATAL TO NONFATAL SHOOTINGS BY OFF-**  
**DUTY AND PLAINCLOTHES OFFICERS**

	Fatal (percent)	Nonfatal (percent)	Total (percent)
Incidents Involving Off-Duty Officers	29	71	100
Incidents Involving Plainclothes Officers	27	73	100

question of police use of firearms should include more information about officers in the scope of inquiry.

*Disposition (N = 199)*

According to police department records, almost 92 percent of shooting episodes in all cities except Detroit were found to be justified or not to have resulted in any formal punitive action, such as a reprimand or suspension by the department. Detroit was not included in this tabulation because information about adjudication of police offenses was not available from incident reports.

Only two departments found less than 90 percent of shooting incidents in any single year to be justified. One of these departments was the second largest city, Washington, D.C. (84 percent), which has a well established Weapons Review Board that scrutinizes all firearms discharges.<sup>11</sup> This finding is consistent with those of other researchers; for example, Uelmen found that, on an annual basis, 88 percent of the shooting cases he reviewed in Los Angeles County were disposed of as justified.<sup>12</sup>

Note that review procedures, possible sanctions, and terminology vary among departments, resulting in some difficulty in interpreting the outcome of administrative review. For the incidents not considered to be justified, department action generally consisted of a reprimand rather than suspension or termination.

## *RELATIONSHIP BETWEEN SHOOTING RATES AND CITY CHARACTERISTICS*

In addition to looking at information about shooting victims, the researchers also tried to determine whether there is a correlation between shooting rates in individual cities and city characteristics, such as population size and the level of criminal activity reflected in crime rates.

*Population Size*

In examining the relationship between population size and shooting rates, it appears that the data support gener-



ally assumed trends. On the whole, larger cities have more shootings than smaller cities, and the influence of urbanization is reflected in the increased rate of shootings in larger cities. Factors other than population size, however, affect the shooting rate. Table 5 shows that more variation in rates occurs within a group of cities of similar size than between cities of dissimilar size. The most noteworthy example of this variation is Birmingham, which had a higher shooting rate than other cities of similar size.

TABLE 5

COMPARISON OF POPULATION SIZE  
AND SHOOTING RATES, 1974

Population Category	City	Population	Number of Shootings	Rate of Shootings per 100,000 People (1974)
295,000 to 475,000	Birmingham	295,686	25	8.5
	Oakland	345,880	10	2.9
	Portland	378,134	6	1.6
475,000 to 750,000	Kansas City	487,799	10	2.1
	Indianapolis	509,000 <sup>a</sup>	28	5.5
	Washington, D.C.	733,801	40	5.5
More than 1,000,000	Detroit	1,386,817	77	5.6

<sup>a</sup> The figure refers to police district population.

*Department Size*

Another factor thought to influence the number of shootings is police department size. The idea that the more personnel on the street, the greater the opportunity for interaction between police and citizens is not substantiated by the data presented. Table 6 shows the varied experience of the seven cities in this regard—variations that are particu-



larly striking when one compares the rates of shootings per 1,000 officers between cities with similar ratios of officers to population (e.g., Detroit and Washington, or Indianapolis and Birmingham). Any further exploration of this subject, however, should take into account the proportion of the force assigned to street work, in addition to the total number of personnel in the department.

TABLE 6  
RATES OF POLICE SHOOTINGS OF CIVILIANS  
PER 1,000 OFFICERS<sup>a</sup>

City	Number of Officers	Rate of Shootings per 1,000 Officers	Number of Officers per 1,000 Population
Portland	714	4.2	1.8
Washington, D.C.	4,937	6.0	4.1
Indianapolis	1,110	7.2	2.1
Oakland	722	9.6	2.0
Kansas City	1,310	12.2	2.6
Detroit	5,575	21.8	4.0
Birmingham	637	25.0	2.1

<sup>a</sup> Figures are derived from 1973 UCR report and 1973 police data from the seven sample cities.

#### *Index Crime and Violent Crime Rates*

An examination of Index crime<sup>13</sup> rates and shooting rates in the seven cities over the two-year period shows no consistent relationship between changes in the number and rate of shootings and changes in Index crime rates. In some instances, Index crime rates increased while the rate of shootings decreased; in other cases, the reverse was true. Kansas City experienced the greatest increase in Index crime rates of the seven cities. At the same time, the shooting rate decreased 38 percent in that city. A comparison of the violent crime rates reported by the FBI (homicide, rape, robbery, and aggravated assault)<sup>14</sup> with shooting rates

in the seven cities over the same two-year period produced a somewhat similar pattern.<sup>15</sup> This is not entirely surprising, given the fact that a sizable number of shooting incidents occurred in conjunction with less serious offenses which are not reflected in Index or violent crime rates (see Table 2).

TABLE 7

RATE INCREASES AND DECREASES IN SHOOTING INCIDENTS, INDEX CRIMES, AND VIOLENT CRIMES, 1973 AND 1974

City <sup>a</sup>	Percentage Change in Shooting Rates	Percentage Change in Index Crime Rates	Percentage Change in Violent Crime Rates
1. Indianapolis	+250	+15	+40
2. Portland	+100	+15	+35
3. Birmingham	+ 56	+17	+20
4. Oakland	+ 43	- 3	+ 6
5. Washington, D.C.	+ 33	+ 7	- 0.6
6. Detroit	- 25	+18	+18
7. Kansas City	- 38	+26	+27

<sup>a</sup> Ranked from highest increase in shootings (1) to greatest decrease in shootings (7).

Although a two-year period is insufficient to document established trends, the data from Detroit and Kansas City are nonetheless worth noting. In both cities, shooting rates decreased in 1974 even though both Index and violent crime rates increased. In early March 1974, the Detroit Police Department abolished STRESS (Stop the Robberies, Enjoy Safe Streets), a controversial plainclothes unit whose members had been involved in 17 fatal shootings over a three-year period. In Kansas City, a new police administrator took office in November 1973 and soon thereafter issued a more restrictive firearms policy in response to a particularly



controversial shooting incident. In neither instance can it be said, on the basis of available data, that the reduction in shootings was or was not directly attributable to administrative actions. The impact of those actions can be determined only by comprehensive, long-range studies.

### *THE USE OF FATAL FORCE BY CITIZENS AND POLICE*

Police administrators contemplating changes in their firearms policies will quite likely want to know the answers to the following:

1. What is the relationship between the use of fatal force by citizens against police and by police against citizens?
2. Does a reduction in the number of shooting incidents by police result in increased risk to the police, as measured by serious injuries or deaths?

As noted in the introduction, we did not collect detailed information about serious injuries or shootings of police officers. However, some observations can be made from a comparison of police and civilian deaths, using national figures over a 15-year period and figures from the 1973-74 study period in the seven cities. In Table 8, the number of civilians killed by police was obtained from the National Center for Health Statistics; as noted earlier, at least 90 percent of the deaths are presumed to be the result of firearms use. The data concerning deaths of law enforcement agents killed by civilians were obtained from the FBI; the number of deaths resulting from firearms from 1969 through 1975 is indicated in the table.

An examination of national figures fails either to support or to refute with any certainty the proposition that a reduction in the number of civilian deaths, possibly reflecting increased restraint on the part of the police officers, results in increased risk to officers' lives. However, a decrease is apparent in the 1-to-5 ratio of police killed to police



**TABLE 8**  
**POLICE AND CIVILIAN DEATHS: 1960-1975**

Year	Number of Law Enforcement Agents Killed as a Result of Criminal Action <sup>a</sup>	Number of Civilians Killed by Police
1960	28	245
1961	37	237
1962	48	187
1963	55	246
1964	57	278
1965	53	271
1966	57	298
1967	76	387
1968	64	350
1969	86 (83) <sup>b</sup>	354
1970	100 (93)	333
1971	129 (124)	412
1972	116 (111)	300
1973	134 (127)	376
1974	132 (128)	375
1975	129 (127)	not available

<sup>a</sup> From 1972 on, total includes federal law enforcement agents.

<sup>b</sup> Numbers in parentheses indicate those killed by firearms.

killings, noted by Kobler for the ten-year period 1960-69. That ratio is now 1 to 4 for the period 1960 through 1974, and to 1 to 3 for the period 1970 through 1974.

These figures and similar data from the seven cities shown in Table 9 are simply presented for the reader's information and as a suggested starting point for further research. Any attempt to draw conclusions about such a relationship from these data would be, at best, premature.

Table 10 presents a comparison between the circumstances of the shootings (fatal and nonfatal) of civilians in

**TABLE 9**  
**POLICE AND CIVILIAN DEATHS, 1973 AND 1974:**  
**SEVEN SAMPLE CITIES**

City	1973		1974	
	Police Deaths <sup>a</sup>	Civilian Deaths	Police Deaths <sup>a</sup>	Civilian Deaths
Birmingham	1	5	0	6
Detroit	3	28	5	24
Indianapolis	0	2	2	11
Kansas City	0	5	0	1
Oakland	3	1	2	3
Portland	0	0	1	3
Washington, D.C.	1	10	1	12

<sup>a</sup> As a result of criminal action.

the seven study cities and the circumstances under which police officers were killed during the same two-year period. The results indicate, as might be expected, that robbery is a high-risk venture for all concerned; disturbance calls appear to present an even greater risk to police officers and civilians. This latter finding suggests that departments that place an emphasis on "dangerous felons" in written firearms policies and in related training curricula may be overlooking a substantial problem area.

TABLE 10

**CIRCUMSTANCES SURROUNDING SHOOTING OF  
CIVILIANS AND DEATHS OF POLICE OFFICERS,  
1973-1974**

Type of Incident	Percentage of Police Officers Killed Nationwide	Percentage of Civilians Killed by Police Officers, Seven Sample Cities	Percentage of Fatal and Nonfatal Shootings of Civilians by Police Officers, Seven Sample Cities
Robbery, Pursuit of Robbery Suspect	20	21	21
Burglary, Pursuit of Burglary Suspect	6	13	20
Disturbance Calls	24	36	32
Traffic Stops	14	13	8
All Other <sup>a</sup>	36	17	19
<b>TOTAL</b>	<b>100</b>	<b>100</b>	<b>100</b>

<sup>a</sup> Because information on the circumstances surrounding shootings of civilians and police is maintained differently by different agencies, many categories proved to be noncomparable and had to be merged in the category "All other."



## Notes

1. Individuals with police experience were hired as field researchers to visit selected cities to gather data. One is currently a lieutenant in the District of Columbia Metropolitan Police Department; one is a writer and former D.C. police officer; and one is a lieutenant in the Birmingham, Alabama, police department.

2. As noted in the introduction, the staff collected information about shooting incidents from the Detroit police department for the entire year 1974, but only the last six months of 1973, because of the size of the department and the large number of cases to be reviewed. However, because the total number of shootings (both fatal and nonfatal) in that city in 1973 is known, that figure is used in several of the tables in this chapter and is identified as such. Similarly, there are occasional references to the total number of shootings—378—in all seven cities over the entire two-year period.

3. The term "incident" refers to the shooting of an individual subject even though several individuals may have been shot in one episode.

4. For the most part, data were collected by Police Foundation field researchers from department reports of shooting incidents. Relevant items of information were obtained by reading through a number of reports in each individual folder; in most instances, personnel information was maintained in a separate location and could not within the time available be correlated with data from shooting incident reports.

5. This figure includes *all* fatal shootings of civilians by police officers in Detroit in 1973.

6. It should be kept in mind that a small number of civilian deaths reflected in Public Health Service statistics are the result of means other than firearms.

7. Gerald D. Robin, "Justifiable Homicides by Police," *Journal of Criminal Law, Criminology, and Police Science* 54 (1963): 224; Arthur L. Kobler, "Figures (and Perhaps Some Facts) on Police Killing of Civilians in the United States, 1965-1969," *Journal of Social Issues* 31, 1 (1975): 185-91.

8. Age may be a very significant factor in the disproportionate number of black victims in comparison to their representation in the population. In some jurisdictions—New York City, for example—the median age of black males is 23.1 as compared to 33.3 for white males (Bureau of Census, 1970 data). The arrest rate for Index crimes of persons in the age groups 13-18 and 19-24, the vast majority of whom are male, is considerably higher than the arrest rate of persons 26 years of age and above.

9. Characteristics of police officers shot are not included in tabulations of age, race, or presence of weapon.
10. An incident was considered to involve plainclothes officers only if the officers were on duty and assigned as such.
11. The Washington, D.C., department reports that in the year preceding the publication of this report, less than 60 percent of the cases reviewed by the board were found to be justified. This figure, however, includes discharges which did not take effect. Such incidents were excluded from analysis in this report.
12. Gerald F. Uelman, "Varieties of Police Policy: A Study of Police Policy Regarding Use of Deadly Force in Los Angeles County," 6 *Loyola L. Rev.* 39 (1973).
13. Index crime offenses, as reported by the FBI, are murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, and auto theft.
14. Victimization rates for personal crimes of violence, as recorded by LEAA surveys, are undoubtedly higher; however, data are not available on a comparable basis for all seven cities.
15. Although both Portland and Indianapolis reflected the highest increases in shooting and violent crime rates, it should be noted that the actual number of shootings in Portland increased only from three to six.



## CHAPTER 2

### LEGAL AND ADMINISTRATIVE RESTRAINTS ON THE USE OF DEADLY FORCE

The police officer's legal authority to use deadly force is set forth and defined by common law, statute, and case law. Although the principles of common, or uncoded, law are essentially the same throughout the 50 states and are for the most part the same as their English antecedents, statutes governing justifiable homicide and police use of deadly force vary widely among jurisdictions. The same is true of case law, the ever-growing body of court decisions in which common law and statutes alike are interpreted and applied to actual situations.

As an adjunct to these elements of law dealing with the question of when a police officer may justifiably take a life, a number of police agencies have promulgated internal rules addressing that subject. Although such rules cannot grant the officer rights broader than those extended by law, they may impose further restrictions on police conduct.<sup>1</sup>

#### *Common Law*

The common-law rules governing arrests try to strike a balance between an individual's interest in freedom from government interference and the public's collective interest in the prevention of crime and the apprehension of law-breakers. In reconciling these interests, the common law traditionally has limited the authority to arrest in propor-



tion to the seriousness of the suspected offense. Likewise, the courts have held that the amount of force that may be used to make or maintain an arrest varies with the severity of the crime. For this purpose, the critical distinction is that between felony and misdemeanor: Under common law, a police officer may, when necessary, use deadly force to apprehend someone reasonably believed to have committed a felony; deadly force is not permitted, however, merely to prevent the escape of a misdemeanor.

The rationale for this simplistic formula is grounded in the fact that until 1800, in both the United States and England, virtually all felonies were punishable by death. A felon was someone who, by his acts, had forfeited the right to life; consequently, when an officer killed a resisting or fleeing felon, the "extirpation was but a premature execution of the inevitable judgment."<sup>2</sup> It should be noted, however, that homicide, rape, arson, mayhem, robbery, burglary, larceny, prison breach, and rescue of a felon were the only common-law felonies; all other offenses were misdemeanors (except treason, a separate category of crime). Today, in most jurisdictions, a felony is an offense punishable by death or a prison term of one year or more.

### *Recent Developments in the Law*

Whatever sense the felony-misdemeanor distinction may have made as a gauge for the use of deadly force has been eroded by two developments: the expansion of the felony category of crime to include a plethora of offenses, many of a nondangerous and relatively minor character; and an increasing reluctance to impose the death penalty as punishment for any but the most aggravated types of serious felony cases.

Although many states still retain the common-law rule or some variant of it, lawmakers increasingly have questioned the felony-misdemeanor rule as a basis for authorizing the use of deadly force and have significantly modified that rule in some jurisdictions. While some have codified the common-law rule of justifiable homicide, which allows the use

of deadly force in the apprehension or pursuit of felons; many others have enacted stricter statutes. These statutes vary in terms of the degree of knowledge an officer must have to justify killing a suspected felon. Some require a "felony in fact," some call for "reasonable belief," and some limit the kinds of felonies that will justify the use of deadly force. Others distinguish between an arrestee and an escapee. The modern trend, however, is toward the adoption of statutes that follow the American Law Institute's Model Penal Code.

The impetus for change was generated in 1962, when the American Law Institute announced its view that a substantial reform of the common-law rule was necessary. The Institute drafted a Model Penal Code authorizing the use of deadly force when the arrest is for a felony and the officer believes:

1. The crime for which the arrest is made involved conduct including the use or threatened use of deadly force, or
2. There is a substantial risk that the person to be arrested will cause death or serious bodily harm if apprehension is delayed.<sup>3</sup>

At least 24 states have codified the common law and provide that deadly force may be used to arrest any felony suspect. Seven states have modified the common-law rule by requiring that felonies for which deadly force may be used in an arrest are limited to "forcible felonies." Another seven states have adopted the Model Penal Code approach.

Modern literature over the past 50 years generally supports a rule which would limit the use of deadly force by police officers to those circumstances in which its use is essential to the protection of human life and bodily security, or in which violence was used in committing the felony. Moreover, the FBI has adopted a policy which provides that agents are not to shoot any persons except when necessary in self-defense—that is, when they reasonably believe that they or others are in danger of death or grievous bodily harm.



Deadly force is such force as under normal circumstances poses a high risk of death or serious injury to its human target, regardless of whether or not death, serious injury, or any harm actually results. Shooting at a human target involves the use of deadly force.<sup>4</sup>

Oregon's new criminal code sanctions the use of deadly force "in making an arrest or preventing an escape of a person who the officer reasonably believes attempted or committed a felony involving the use or threatened imminent use of physical force against a person. Such felonies include murder, manslaughter, robbery, rape, and felony assault." The statute goes on to add kidnapping, arson, first-degree burglary, and first-degree escape to the list. Similarly, the proposed new federal criminal code limits the use of deadly force to those situations in which such force is reasonably required to arrest or prevent the escape of a person who "had engaged in, or attempted to engage in, conduct constituting an offense that involved a risk of death, serious bodily injury, rape, or kidnapping" or who "was attempting to escape by the use of a weapon. . . ."<sup>5</sup> The Senate Committee report accompanying this bill comments that while this provision has roots in common-law principles, it is much more restrictive than the common-law rule because of "the greater respect of our modern society for human life. . . ."<sup>6</sup>

### *The Trend in the Courts*

Since 1967 there has been a court-imposed moratorium on capital punishment in the United States. Whatever the stated reasons, this refusal to sanction official execution in all but the most aggravated cases clearly reflects a judicial conviction that respect for individual human life must temper the state's response even to the most culpable criminal conduct.<sup>7</sup>

Given this concern for the lives of persons duly tried and convicted of capital offenses, it is hardly surprising that the courts should challenge the use of deadly force by police merely to apprehend or prevent the escape of a felony suspect. The Supreme Court has observed that officers "who



decide to take the law into their own hands and act as a prosecutor, jury, judge and executioner plainly act to deprive a prisoner of the trial which due process of law guarantees him."<sup>8</sup>

Most recently in a civil action against two police officers, brought by the father of a slain 18-year-old, the Eighth Circuit Court of Appeals concluded that the Missouri statute allowing the use of deadly force against any fleeing felon is unconstitutional, as applied to fleeing felons suspected of a nonviolent felony, if the officers do not reasonably believe the felons will use deadly force against the officers or others. (The unarmed deceased was shot while running from a golf-driving range office at 1:20 A.M.)

The Court recognized the fundamental right of an individual to life, a right protected by the Fifth and Fourteenth Amendments to the Constitution. The court concluded that the situations in which the state can take a life, without according a trial to the individual whose life is taken, must be determined by balancing the individual's right to life against the interest of society in insuring public safety.

Finding that the court has the ultimate responsibility to determine whether the balance struck is a constitutional one, the Eighth Circuit said that felonies are of an infinite variety and that a police officer cannot be constitutionally vested with the power and authority to kill any and all escaping felons, including the thief who steals an ear of corn as well as one who kills and ravishes at will. Rather, an officer will be required to use a reasonable and informed professional judgment, constantly aware that death is the weapon of last resort, to be employed only in situations presenting the gravest threat to either the officer or the public at large.<sup>9</sup>

The number of civil suits filed against police departments and individual officers rises each year, and almost 30 percent of these filings contain some claim of excessive use of force.<sup>10</sup> Although many claims are settled, as the number of cases coming before the courts increases, the result may

very likely be more decisions refining and extending tort liability for the unjustified use of deadly force.<sup>11</sup>

Police departments should carefully note this trend, not only because of the threatening prospect of more and larger recoveries by victims and their families, but also because of the legal philosophy underlying such decisions. In a sense, a collective social judgment is emerging through the resolution of lawsuits that accuse the police of using too much or the wrong kind of force. Citizens are increasingly aware of the existence of judicial remedies to enforce their rights. Judges and juries (in civil cases, at any rate) seem to be placing greater emphasis on the individual's right to life and physical integrity.<sup>12</sup> The correlative result is to place a greater degree of responsibility on departments, as well as officers, in their use of deadly weapons.

#### *POLICE RULE-MAKING TO LIMIT THE USE OF DEADLY FORCE*

It seems unlikely that judicial supervision over police firearms practices will soon abate. The willingness, or as some would no doubt call it, the eagerness of the judiciary to impose restraints upon police conduct flows from the principle that government agencies must be accountable to the people they serve, a fundamental tenet in our legal heritage. "Accountability" in this context means that official agencies—especially agencies such as police departments, which engage in discretionary decisionmaking—must be subject to public control according to known and uniform rules. The significance to the police of this judicial distaste for broad, unstructured discretion is readily apparent, inasmuch as discretion is a pervasive and often necessary feature of day-to-day police work.

Police departments are organized in a fashion that delegates greater amounts of discretion as one moves *down* the chain of command, and the courts are apt to perceive an absence of rules in this setting as particularly dangerous. Although the judiciary historically has been reluctant to intervene in matters of internal police management, courts



are now reaching the conclusion that external controls upon the police, through exclusionary rules and doctrines of tort liability, are often insufficient.

Substantial case law precedent now exists for the proposition that courts may compel police administrators to promulgate internal rules to provide guidelines for the conduct of their officers.<sup>13</sup> It is a reasonably safe prediction that departments soon will have to become actively involved in developing rules or guidelines to govern a wide variety of police behavior, or face the prospect that the courts will insist that such rules be made.

This development should not trouble police administrators. For too long the police have foregone the initiation of policy, content to respond passively to judicial direction. Internal rule-making offers an opportunity to reverse this process. As a former legal advisor to the Washington police department observes, rule-making gives law enforcement agencies the chance to develop policy that is sensible from the police perspective, rather than having to react to the often less informed dictates of the judiciary.<sup>14</sup>

Many police chiefs, however, are unwilling to adopt strict internal regulations governing the use of deadly force. In some instances, police union pressures militate against such strict or specific forms of regulations. Hervey Juris and Peter Feuille observe in their book, *Police Unionism*:

Consistent with their "hard line" on the handling of civil disorders, police unions have pressed for heavy armaments and minimal restrictions on the police right to use force, especially fatal force . . . [T]he San Francisco union was able to persuade the chief and the police commission to change a proposed set of gun guidelines so that an officer involved in an on-duty homicide is not automatically suspended pending an investigation. In Seattle, the union negotiated a contract clause providing that no officer can be required over his objection to work without a gun. . . . [A] union in a western city pressed unsuccessfully for the right of each officer to carry the weapon of his choice. In an



eastern city, the union lobbied the city council for the right to carry shotguns in squad cars, but the chief was able to muster sufficient opposition to have the union voted down.<sup>15</sup>

Frequently, police administrators want their officers to exercise restraint, but are reluctant to commit that desire to paper, for fear that a narrow department firearms policy will merely invite more civil suits and judgments in the wake of police shootings. The administrators believe that courts will, in effect, hold departments accountable to their own strict policies despite more lenient or ambiguous state laws.

This is not a groundless fear. The Supreme Court of California, for example, has held that a department's written firearms policy may be introduced into evidence in a wrongful death lawsuit and that a police officer's deviation from that policy is evidence of negligence.<sup>16</sup>

It would be a mistake, however, to assume that an individual officer or department can escape liability by the gambit of not committing a firearms policy to print. First, oral policy directives may be just as admissible in civil litigation as written ones. Second, the very lack of specific guidelines may itself be held to constitute negligence by the department. Liability could be imposed upon a municipality which failed to provide its officers with adequate instructions and training in the use of firearms. Finally, and most important, failure to promulgate written policy for fear of increased exposure to civil liability might result in more shooting incidents.<sup>17</sup> Ultimately, the absence of written policy may lead to an increase rather than a reduction in the number of successful civil suits.

### *THE RANGE OF DEPARTMENT FIREARMS POLICIES*

Despite concerns about establishing an increased basis for civil liability, the clear trend across the country seems to be toward the adoption of department firearms use policies, generally narrower than either the statutory or decisional

state law that is applicable. All of the seven sample departments have formal policies and most of those policies have been adopted within the last few years.

It is not a simple matter, however, to categorize firearms use policies as "restrictive" or "permissive." Oakland, for example, instructs its officers not to shoot at fleeing burglars.<sup>18</sup> Indianapolis imposes no such restriction. But in Indianapolis the officer who fires at a fleeing felon must have *positive knowledge* that the person committed a felony, while in Oakland the officer needs only *reasonable belief*. Thus, on one hand, Oakland has the more restrictive policy, while, on the other, Indianapolis has.

Most firearms policies are really the sum of many components, each addressing a particular set of circumstances in which an officer might consider firing a weapon. Depending on local attitudes and the pattern of shooting incidents in a particular city,<sup>19</sup> the firearms policy may be unusually restrictive when it treats one type of situation and yet unusually flexible when it treats another. For example, former Oakland Chief C. R. Gain decided to change his department's policy on burglary after examining how the courts were treating persons charged with that offense:

Considering that only 7.65 percent of all adult burglars arrested and only .28 percent of all juvenile burglars arrested are eventually incarcerated, it is difficult to resist the conclusion that the use of deadly force by peace officers to apprehend burglars cannot conceivably be justified. For adults, the police would have to shoot 100 burglars in order to have captured the eight who would have gone to prison. For juveniles, the police would have to shoot 1,000 burglars in order to have captured the three who would have gone to the Youth Authority.<sup>20</sup>

Although the Oakland department prohibits the shooting of burglars and auto thieves, it says nothing, at least officially, about other nonviolent felonies, such as grand larceny. It is reasonable to assume that if an Oakland police officer did shoot a person who had committed a grand



larceny, the department would adopt a rule to prevent such shootings in the future.

Indianapolis is the one city among those we visited with no written firearms policy at all beyond a restatement of state law. Birmingham, however, had no deadly force policy until March 1975. Because Alabama was one of those states without a statute establishing when an officer may use deadly force, the previous guiding principle of the decisional law was a 1915 Alabama case in which the court approved the use of deadly force to apprehend the operator of an illegal whiskey still as he ran from the premises.

Where guidelines have been formulated, the policies vary widely among departments. Some are decidedly narrower than the governing state law; some merely reiterate the law. Portland, for example, has a policy identical to Oregon law except for a single opening paragraph of general philosophy. Some policies are precise and technical; some are laced with statements of morality and strong rhetoric. Some policies amount to only a few paragraphs; some run on for pages. Until 1968, one southwestern department with more than 100 sworn members had the following policy on the use of a firearm (quoted in its entirety):

Never take me out in anger; never put me back in disgrace.<sup>21</sup>

A southern department had eight pages of its rules devoted to uniform specifications and allowances, yet had less than one page on the use of firearms:

Unnecessary and careless handling of firearms may cause accidents, and the drawing, aiming, or snapping of firearms within Police Headquarters, or in other places, is forbidden.

Samuel Chapman, writing for the Task Force Report on the Police, also noted other, similar policies:

- Officers shall not intentionally fire their guns except as authorized by law.
- Leave the gun in the holster until you intend to use it.



- Shoot only when absolutely necessary to apprehend a criminal who has committed a major felony.
- Never pull a sidearm as a threat, and if it is drawn, be prepared to use same.
- It is left to the discretion of each individual officer when and how to shoot.

Before June 1975 the policy in Cleveland, Ohio, provided simply that "Officers and members should use only such force as necessary to effect the arrest and detention of persons."

This great variety, Chapman remarks, "reflects, in far too many instances, a failure on the part of police administrators to provide adequate guidance for officers faced with situations where they must decide instantaneously whether or not to use their firearms in discharging their official responsibilities."<sup>22</sup>

A common feature of many firearms policies is that they *appear* to be more restrictive than they really are. The Kansas City Police Department, for example, on the first page of its firearms order, states: "An officer is equipped with a firearm to defend himself or others against deadly force, or the threat of imminent deadly force." Two pages later, the policy authorizes the use of deadly force against certain fleeing felons regardless of immediate danger.

The Los Angeles policy (and, modeled on it, the Birmingham policy) hints that while officers may use their firearms to apprehend fleeing felons, they should exercise discretion. "It is not practical," the Los Angeles Police Department manual states, "to enumerate specific felonies and state with certainty that the escape of the perpetrator must be prevented at all costs, or that there are other felonious crimes where the perpetrator must be allowed to escape rather than to shoot him. Such decisions are based upon sound judgment, not arbitrary checklists."

In Washington, D.C., the written policy holds that an officer may use deadly force to apprehend a suspect in a felony involving "an actual or threatened attack which the

officer has reasonable cause to believe could result in death or serious bodily injury." The Washington policy is a restatement of the common-law rule of self-defense, which provides that the law of self-defense is a law of necessity. The necessity must be, in appearance, a reality, and must appear to admit of no other alternative before the taking of life will be excused as justifiable on the ground of self-defense.

The following sections describe a variety of approaches, as articulated in department policies, to specific circumstances in which the use of a weapon might be considered. Certain aspects of weaponry are discussed as well.<sup>23</sup>

### *Self-Defense and Defense of Others*

Every policy gives the officer the right to use deadly force in self-defense or in the defense of others. Some policies say just that; others stipulate that firearms may be used only "when all other available means have failed" (Oakland), require a threat of "serious bodily harm or death" (Detroit), or specify that the danger must be "immediate" (Kansas City).

### *Fleeing Felons*

In all seven cities there was some provision for the use of deadly force to apprehend fleeing felons. There was, however, considerable variation in the felonies covered. Some departments itemize specific felonies justifying deadly force, whereas others list the felonies that do not justify such force. Still others state only that the felony committed must itself have involved the actual or threatened use of force (or deadly force); and some departments authorize deadly force in the apprehension of any felon, without qualification.

Where distinctions are made among particular felonies, one offense likely to be excluded is auto theft, presumably on the rationale that most auto thieves are juvenile joyriders. In large cities, a similarly tolerant attitude, although to a lesser degree, seems to be developing toward burglars (while burglary continues to be viewed in rural areas as an



implicitly violent crime, every bit as reprehensible as armed robbery).

In the majority of the sample cities, department policy forbids the use of firearms against fleeing burglars; Birmingham and Indianapolis are the exceptions. A very few police departments have drafted policies that virtually forbid the shooting of fleeing felons, regardless of the felony involved. The proposed new San Jose, California, firearms policy states: "The discharge of firearms is never justifiable solely for the purpose of apprehension. . . . A police officer may use deadly force when all other reasonable means have failed and the officer honestly and reasonably believes that such force is necessary to protect himself or another person from death or great bodily injury." San Jose's policy has not yet been put into effect because of a dispute with the police officers' association there.

San Diego's policy says much the same thing, adding only that an officer may use deadly force "to apprehend a violent person who is known to be armed and dangerous and who cannot be apprehended without risking loss of life or serious injury." It is somewhat difficult to reconcile this clause with another section of the San Diego policy that reads: "Firearms are not to be used . . . to fire at any person fleeing to evade arrest." Which passage would apply, for example, to a situation in which an armed bank robber was running away from the police and about to make good his escape?

### *Juveniles*

Many departments have different standards for juveniles and adults; typically, officers are instructed not to fire at juveniles except in defense of a life. The problem is that it is not always easy to distinguish juveniles from adults; there are few departments that have gone as far as Kansas City, where the policy states: "The Officer will be required to prove that his judgment in the matter of age was reasonable. If there is any doubt as to the age of the subject, the officer should not shoot."

The Birmingham policy's stricture on shooting at juveniles seems slightly less emphatic. "An officer generally should not shoot at a fleeing felon whom he has reasonable grounds to believe is a juvenile. However, when the escape of such a suspect can reasonably be expected to pose a serious threat to the life of another person, then, under these circumstances, an officer may shoot to prevent the escape of such person . . ."

In Detroit, most police officers feel that they are not to shoot at fleeing juvenile felons. The policy, in fact, makes no mention of juveniles; the only written reference to juveniles is contained in a training and information bulletin: "[I]t may be well to point out that over seventy percent of UDAA's (car thefts) and larceny from person (purse snatching) is committed by juveniles. Neither of these crimes, in most instances, are of such grave nature as to necessitate the use of an officer's firearm."

### *Innocent Bystanders*

One of the points that more extensive firearms policies tend to cover, and briefer policies do not, is the risk to innocent bystanders. No department is known to demand that its officers refrain from shooting *in self-defense* because of a danger to bystanders. But when the purpose is to make an arrest or prevent an escape, the officer may be instructed not to fire in the direction of uninvolved citizens. The Oakland policy, for example, says that in such situations "firearms shall not be discharged if the member has reason to believe, based upon the attendant circumstances, that the discharge may endanger the lives of passersby or other persons not involved in the crime from which flight is being made or attempted."

### *Shooting from or at a Moving Vehicle*

Shots fired from or at a moving vehicle are widely discouraged for two reasons. First, there is an obvious danger to innocent persons in the area if the driver should lose control of the car. Second, such shots are notoriously



ineffective. Rather than imposing an outright ban on shooting in these situations, however, departments dealing with the question generally restrict use of firearms to clear cases of imminent danger or merely stress the need for special caution.

New York City has an unusually strong provision: "Discharging a firearm from or at a moving vehicle is prohibited unless the occupants of the other vehicle are using deadly physical force against the officer or another by means other than the vehicle." Officers frequently justify firing at automobiles by testifying that the occupants have attempted to run them down. The New York policy may reflect a suspicion that such claims are often exaggerated or fabricated; from a practical point of view, an officer actually about to be struck by a car could probably find a more promising method of insuring personal safety than the use of a firearm.

### *Warning Shots*

All seven of the sample cities prohibit the use of warning shots in their firearms policy itself, in a supplemental bulletin, or verbally. In explaining such a prohibition, some police officials talk about the risk that a shot intended as a warning may strike an innocent person; privately they may fear something else—that officers shooting at a suspect and missing will claim they were merely firing a warning shot, and thus avoid answering for their actions. In addition, officials point out, warning shots rarely accomplish their purpose, especially if suspects know officers will not or cannot actually shoot them.

### *Drawing and Display of Firearms*

Most departments, taking the view that there are circumstances when drawing or displaying (pointing) a firearm is reasonable and firing it is not, have omitted the subject from their firearms policies altogether. Only a few policies go into the question of when an officer should draw a weapon. The Indianapolis policy (following the wording of

Indiana law) begins: "No officer will draw or discharge a firearm except . . ." and then lists the conditions which apply equally to either act. The Pasadena, California, policy takes a slightly different approach: "Firearms shall be removed from holsters only when the officer reasonably believes that he will have to discharge the weapon. . . ."

While neither of these provisions is unambiguous, both might prompt objections from many veteran police officers if narrowly interpreted. It is common practice for officers to draw their weapons upon arrival at the scene of a holdup or burglary, or on checking out a possible suspect in a violent crime. Certainly, no officer wants to enter a bank or liquor store where a holdup alarm has sounded without weapon drawn. Similarly, no officer wants to confront a reported armed suspect in any alleged offense, yet to display a weapon in these circumstances would seem to go against the Indianapolis and Pasadena policies.

One proposed model policy suggests "allowing the draw but preventing the display." The author, Paul M. Gilligan, believes that it is caution enough for officers to hold a gun alongside their legs. Pointing or aiming, however, "must not be allowed without an accompanying legal justification for the actual use of deadly force."<sup>24</sup>

It is true that officers who point their guns indiscriminately may, at best, unnecessarily frighten and offend people and, at worst, bring about a violent incident. But the job of a police officer is unpredictable, and some would argue that if having their firearms in a ready position can reduce the risk inherent in certain situations, then police should be given that right, even at the sacrifice of ideal police community relations.

A plausible compromise, for a department wishing to restrain the display of firearms without putting its members in jeopardy, is a provision such as that contained in the Dallas, Texas, policy:

The policy of this Department permits the drawing and/or displaying of firearms when:

1. An officer, in the exercise of sound judgment,



has reason to fear for his own personal safety and/or the safety of others (this includes but is not limited to the search of a building for a burglar, a robbery in progress) or

2. The offender is suspected of having a deadly weapon in his possession. (The intent of this provision is to permit the officers to protect themselves and others *and* to avoid the necessity of actually having to use a firearm when the threat of doing so might accomplish the purpose.)

### *Shotguns*

Nearly all big-city police departments use shotguns, but not all departments issue them to patrol officers. In some jurisdictions only superior officers or members of special units are equipped with shotguns.

The need for a shotgun arises when police anticipate confronting an armed subject or group of subjects at close range. Whether a department should issue shotguns to all its members or have one in every car is a difficult question. It is expensive to train hundreds of police officers in the use of a shotgun, and dangerous to put one in the hands of an untrained person. In addition, the widespread use of shotguns frequently makes for bad public relations. Finally, because shotguns have to be left inside vehicles during many, indeed most, police calls, there is always the risk of theft.

In one city surveyed, an officer observed a subject breaking into a basement window, chased him, ordered him to halt, and fired at the subject with a shotgun from a distance of more than 200 feet. Although the shot struck its mark and a burglar was thereby apprehended, such an incident raises at least two questions: First, wasn't there a substantial risk to innocent persons from the expanded shot pattern over so great a distance; and second, would the officer, had he not been carrying such a heavy and cumbersome weapon, have been able to apprehend the suspect without the use of any firearm?

Since the time of our site visit, Portland has put shotguns in patrol cars, a step prompted by an alarming increase in armed attacks on officers. This step was taken, however, only after considerable thought and planning, resulting in a set of procedures and policy guidelines that tell officers when and when not to take shotguns with them on assignments (see Appendix G). Each patrol car is equipped with a shotgun mount but the weapons are issued only at the discretion of supervisory officers.

### *Second Guns*

In two of the seven sample cities, it is not uncommon for officers on duty and in uniform to carry a second or "back-up" weapon. Detroit expressly permits the practice. Indianapolis, at the time of our visit, tolerated it despite a regulation that could be interpreted to the contrary. In July 1975, a revised general order was put into effect in Indianapolis which specifically stated that "officers wishing to carry a second gun may do so providing it is a departmental approved weapon and remains concealed from public view."

The rationale for a second gun, presumably, is that it will protect officers should they be disarmed, run out of ammunition, or have mechanical difficulties with the primary weapon. But there are many possible pitfalls. First, the practice is likely to make it harder to prevent the improper carrying of "drop guns"—weapons carried for planting on a suspect in order to build a case or justify a police shooting. In a department in which no additional firearms are permitted, the sight of a second gun protruding from an officer's pocket will be cause for immediate investigation by a passing superior. In cities such as Detroit and Indianapolis, where second guns are allowed, the passing superior might reasonably assume that such an extra gun was merely an officer's back-up weapon.

In addition, the practice may cause an officer to be less cautious—perhaps to take unnecessary risks rather than call for assistance. It could also hamper the investigation of



an incident by making it harder to trace a bullet to an officer's gun.

Finally, by leaving so important a question as the carrying of a second gun to the discretion of the individual officer, a department risks reinforcing the belief of many rank-and-file officers that desk-bound command officials have no idea what it is like out on the street. If officers are allowed to decide for themselves what weapons they should carry, why not decide for themselves when to use them?

### *Structure and Language of Firearms Policies*

Many police firearms policies seem poorly organized, badly worded, or both. Sometimes, apparent conflicts within a policy may be the result of a department's attempt to say two things at once—one thing to officers for their own information and another thing to the courts for the handling of incidents gone awry.

In some cities, it is difficult even to locate a complete copy of the firearms policy, which may be split among several department orders issued over a period of years. Oakland's provision against shooting fleeing burglars, for example, is contained in an order separate from the main firearms policy. Policies also can be long and confusing. The Kansas City policy, the longest of those studied, was written immediately after the shooting of a 15-year-old prowler, an incident that generated considerable controversy and may, therefore, be reflecting the trying circumstances in which it was conceived.

Some firearms policies are far too complex or the language too convoluted to be of practical use to police officers. For example, the Dallas policy, composed mostly of excerpts from Texas law, includes among its many sections and subsections the following:

- (c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use

of force would have been justified under Sub-section (a) of this section and:

1. the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or
2. the actor reasonably believes there is substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

Some policies, or parts of them, are heavily philosophical. A one-page order issued by a former chief of the Indianapolis department in 1974, for example, concludes with the following paragraph:

The Indianapolis Police Department values life so highly that each individual member is sworn to give a substantial portion of his or her own life at great risk to make certain that all other lives are safeguarded. The fabric of civilization and law which makes possible enjoyment of life and property in our community is worthy of careful and certain defense.

Not only is the precise meaning of this passage unclear, but some officers could find its moralistic tone patronizing. As impressive as such discursions may be to outsiders, their impact on the conduct of police officers is questionable.

## CONCLUSION

Our survey of the literature, the law, and recent court decisions, as well as a review of shooting incidents in seven cities has left us with the strong feeling that police departments should adopt written firearms policies. The administrative objective in adopting a formal policy is twofold:

1. Control over police use of firearms and protection of the community. Although no study has yet extensively documented the impact of formal policies on the rate or nature of police shootings of civilians, it stands to reason that the desired result is more likely to come about if the intent of a police administrator is conveyed in a clearly written document that lets officers know what is and what



TABLE 11

## COMPARATIVE ELEMENTS IN DEPARTMENTAL POLICIES

	Oakland	Birmingham	Detroit	Kansas City	Indianapolis	Washington, D.C.	Portland
Shooting of fleeing burglars permitted?	No	Yes	Yes	No	Yes <sup>b</sup>	No	No
Auto thieves?	No	Yes	No	No	Yes <sup>b</sup>	No	No
Fleeing juvenile felons?	No	Discouraged	Discouraged <sup>c</sup>	No	Yes <sup>b</sup>	Yes	Yes
Warning shots permitted?	No	No	No	No	Prohibited by unwritten rule	No	No
Must officer have positive knowledge or reasonable belief that suspect has committed a felony?	Belief	Belief	Known "as a virtual certainty"	Belief	Certain knowledge	Belief	Belief
Does policy include caution on firing at or from moving vehicle?	Yes	Yes	Yes	No	No	Yes	No
Carrying an off-duty firearm (in jurisdiction)?	—	—	—	Optional	Mandatory	Mandatory	Optional
Are officers permitted to carry "second guns"?	No	No	Yes	No	Yes	No	No

<sup>a</sup> The Portland policy includes a clause not taken into account here, authorizing use of firearms against *any* fleeing felon if, "under the total circumstances at the time and place, the use of such force is necessary."

<sup>b</sup> The policy includes the proviso: "[after] all other reasonable means of capture have been expended."

<sup>c</sup> The subject of juveniles is discussed obliquely in supplemental training bulletin.

is not permissible behavior. A formal policy also tells the community what standard of conduct it can expect from the police department.

2. Reduction in the number and degree of adverse results from both criminal and civil litigation arising from shooting incidents. These benefits can be expected to flow not only to individual police officers but to the department and to governing agencies. A clearly stated policy removes much of the uncertainty that can surround many situations confronting both individual officers and department administrators, and will certainly help to resolve subsequent legal issues that may arise after a shooting incident.

It is not enough, however, just to commit a policy to paper. If police officers are to respect the departments which employ them, it is important that rules be (and be perceived as) clear and reasonable. Firearms policies, and policies in general, should be written for use on the street rather than for public relations or for after-the-fact insurance against liability. The best way to accomplish this seems to be to examine other departments' firearms policies and perhaps to borrow elements from "model" or existing policies, adding whatever provisions seem appropriate for the individual department in light of local and state statutes and local community needs.<sup>25</sup>



### Notes

1. Promulgation of rules broader than allowed by state law may subject police and other public officials to civil liability. For example, a twelve-year-old youth obtained a \$50,000 judgment against both the mayor of Macon, Georgia, and the officer who shot the boy in the leg, pursuant to the mayor's executive order. That order said in part "Those people engaged in lawlessness and anarchy must be stopped. SHOOT TO KILL!" *Palmer v. Hall, et al.*, 360 F. Supp. 120 (M.D. Ga. 1974).

2. "Legalized Murder of a Fleeing Felon," 15 *Va. L. Rev.* 582, 583 (1929).

3. Model Penal Code, Sec. 3.07(b), 1962.

4. For a more extensive discussion of statutory changes in the common-law concept of justified use of deadly force in cases of criminal conduct, see DeRoma, *Justifiable Use of Deadly Force by the Police: A Statutory Survey*, 12 William and Mary L. Rev. 67 (1970); Tsimbinos, *The Justified Use of Deadly Force*, Vol. 4, No. 1, *Crim. L. Bull.* 3 (1968); Rummel, *The Right of Law Enforcement Officers To Use Deadly Force To Effect an Arrest*, 14 N.Y. L. Forum 749 (1968); *Justification for the Use of Force in the Criminal Law*, 13 Stan. L. Rev. 566 (May, 1961); Comment, *Deadly Force to Arrest: Triggering Constitutional Review*, 11 Harv. Civ. Rights-Civ. Lib. L. Rev. 361 (1976); *Mattis v. Schnarr and Marek*,—F.2d—(8th Cir.; decided Dec. 1, 1976).

5. *Criminal Justice Reform Act of 1975*, S.1, 94th Cong., 1st sess., Sec. 541. Both the Oregon statute and the proposed new federal code also contain broad and somewhat ambiguous language that could conceivably be interpreted as contradicting the narrow clauses quoted here. In Oregon's statute there is a passage permitting the use of deadly force "in making an arrest or preventing an escape of a person who the officer reasonably believes attempted or committed a felony, and under the total circumstances at the time and place, the use of such force is necessary." The revised federal code now before Congress ends with a phrase allowing the use of deadly force by a public servant when it is "otherwise authorized by law." This language apparently refers to executions; it is unclear whether it may turn out to have any other application.

6. *Report of the Committee on the Judiciary*, U.S. Sen., 93d Cong. 2d sess., to accompany the Criminal Justice Codification, Revision, and Reform Act of 1974, vol. II, p. 126.

7. *Furman v. Georgia*, 408 U.S. 238 (1972), decided by the United States Supreme Court, held that death penalty statutes were invalid if applied unequally. Since *Furman*, death penalty statutes were reenacted in some 35 states. Recently, the Supreme Court decided another series of cases challenging the death penalty statutes in five states. Those five opinions, announced

July 2, 1976, held that the North Carolina and Louisiana statutes violated the Eighth Amendment by making the death penalty mandatory in certain homicidal offenses. The statutes in Georgia, Florida, and Texas were upheld because they required the sentencing court to weigh the circumstances carefully before imposing the death penalty, or because they provided in some other way for consideration of aggravating or mitigating factors, or allowed other safeguards within the procedures used to foreclose any automatic imposition of the death penalty.

Clearly, the Court intended that only in the most serious and aggravated homicides should the death penalty be imposed and then only according to well defined criteria for application of discretion by courts and juries. The statutes in 18 states were either declared unconstitutional or cast into doubt, while 14 others seem to pass muster. However, as the possibility of the lifting of the nine-year moratorium on executions draws near, a new wave of public protest seems to be emerging to counteract the views of some that the death penalty should be imposed in certain selected, aggravated cases. The Court recognized that society may be said to accept the death penalty as appropriate sanction, but it also pointed out that evolving standards of community values have been reflected in the humane feelings of jurors who reserve the irrevocable sanction for a small number of extreme cases.

8. *Screws v. United States*, 325 U.S. 91, 106 (1945).

9. *Mattis v. Schnarr and Marek*.

10. Americans for Effective Law Enforcement, Inc., *Survey of Police Misconduct Litigation, 1967-1971* (1974) 6.

11. Another aspect of the increased number of civil suits is reflected by the experience of Miami and Dade County, Florida. Insurance premiums covering government protection in cases of police misconduct while on duty rose in one year from \$60,000 to \$150,000. It should be noted perhaps, that in some instances settlement reflects cost effectiveness (costs of insurance premiums vs. court costs) rather than an admission of fault. Nevertheless, the results are the same: increased insurance premiums for the jurisdiction.

12. In Madison, Tennessee, in January 1976, a man shot in the back after he fled from an officer writing a red light ticket was awarded \$35,000 by the court, which the city would have to pay. Additionally, the involved officer, fired from the department, also faced the prospect of criminal charges arising from the shooting.

Settlement payments and jury awards in police brutality cases cost the city of Philadelphia about \$400,000 in 1975. More than 70 percent of the damages resulted from deaths of civilians shot by police. One jury award amounted to \$116,570; another case was settled for \$130,000.



13. See, e.g., *United States v. Bryant*, 439 F. 2d 642 (D.C. Cir. 1971) which required the Bureau of Narcotics and Dangerous Drugs (now the Drug Enforcement Administration) to "show that it has promulgated, enforced and attempted in good faith to follow rigorous and systematic procedures designed to preserve all discoverable evidence gathered in the course of a criminal investigation." The Court also said: "Although we leave it up to the various investigative agencies to draft rules suited to their own method of operation, all such rules will be subject to review of their adequacy to the assigned task."; *Quad City Community News Service, Inc. v. Jebens*, 334 F. Supp. 8 (S.D. Iowa 1971), enjoining a police department from refusing press passes to an underground newspaper until the department issued available standards for the evaluation of all press pass applications; *Hicks v. Knight*, 10 Race Rel. L. Rptr. 1504 (E.D. La. 1965), directing police administrators, under penalty of contempt, to formulate and make public a plan for the handling of demonstrations, ordering them to reduce to writing specific instructions to individual officers and their supervisors for the execution of the plan, and to adopt in writing a disciplinary procedure to be instituted against any officer who failed to follow his assignment under the plan. See also Davis, *An Approach to Legal Control of the Police*, 52 Tex. L. Rev. 703, 708-12 (1974); McGowan, *Rule-Making and the Police*, 70 Mich. L. Rev. 659, 684-85 (1972); K. Davis, *Discretionary Justice* (1969); A. Amsterdam, *The Supreme Court and the Rights of Suspects in Criminal Cases*, 45 N.Y.U. L. Rev. 785 (1970). Professor Davis urges a revival of the non-delegation doctrine in order to place police investigative procedures under strict rule governance. Professor Amsterdam locates a firm constitutional basis for the requirement of rule-making by the police. Recently, however, the Supreme Court has indicated that federal courts can go too far by requiring local police to engage in certain administrative investigations of citizen complaints. In *Rizzo v. Goode*, 96 S. Ct. 598 (1976), a lower federal court order requiring the Philadelphia police department to set up new procedures to deal with citizen complaints against police was reversed by a 5 to 3 decision which held that the lower court order was an unwarranted intrusion by the federal judiciary into matters entrusted to local officials. This decision in no way reverses the powerful modern trend in the law which rejects blind reliance on the unstructured exercise of official discretion in favor of a new judicial willingness to require police and other law enforcement agencies to promulgate and follow rules.

14. Caplan, *The Case for Rulemaking by Law Enforcement Agencies*, 1971 L. & Contemp. Probs. 500, 505, Duke University School of Law 36 (1971) 4. Washington, D.C., provides a striking example of how police rule-making can influence subsequent judicial action. The courts had disapproved as unduly suggestive uncounseled one-to-one confrontations between victim and suspect for the purpose of securing identifications; however, the decisions

indicated that some identifications obtained in this manner would be acceptable if sufficiently proximate in time and place to the commission of the offense. The courts did not specify how long after an offense such confrontations might be permissible, preferring instead to consider the problem on a case-by-case basis.

In March 1970, the Washington police department issued an order to provide its officers with clear and concise identification procedures. The order adopted a one-hour limit for street confrontations. That is, a suspect apprehended within one hour of the offense in an area reasonably near the site of the crime could be returned to the scene for viewing by the victim. If the arrest occurred after the passage of an hour, the suspect could not be returned.

Although their previous decisions suggested that the courts would have preferred a much shorter interval between arrest and confrontation, the courts accepted the department rule: "We see in this regulation a careful and commendable administrative effort to balance the freshness of such a confrontation against its inherent suggestiveness, and to balance both factors against the need to pick up the trail while fresh if the suspect is not the offender. *We see no need for interposing at this time any more rigid standard by judicial declaration.*" (emphasis added). *United States v. Perry*, 449 F.2d 1026, 1037 (D.C. Cir. 1971). Washington's experience demonstrates that courts will be sympathetic and receptive to department attempts to clarify the law by responsible rule-making.

15. Hervey A. Juris and Peter Feuille, *Police Unionism* (Lexington, Mass.: Lexington Books, 1973), See also, *San Jose Police Officers Ass'n v. City of San Jose, et al.*, Sup. Ct., Santa Clara County, Ca., No. 325818, decided June 20, 1975.

16. *Grudt v. City of Los Angeles*, 2 Cal. 3d 575, 86 Cal. Rptr. 465, 468 P.2d 825 (1970).

17. Hahn, *A Profile of Urban Police*, 1971 L. & Contemp. Probs. 449, 464.

18. See Table 11; Oakland policy restrictions apply to the felony categories of burglary and auto theft only.

19. Frequently, written firearms guidelines evolve as a response to public outcry and media coverage surrounding some particular shooting incident. In 1974, a new set of written guidelines in Port Arthur, Texas, followed the killing of a youth after he was stopped for speeding. In 1975, a new set of guidelines in Cleveland, Ohio, followed the police killing of a 20-year-old motorcyclist.

20. Charles R. Gain, "Discharge of Firearms Policy: Effecting Justice Through Administrative Regulation," unpublished.

21. Samuel G. Chapman, *Police Firearms Use Policy*, Report to the President's Commission on Law Enforcement and Adminis-



tration of Justice (Washington, D.C.: U.S. Government Printing Office, 1967).

22. *Ibid.*

23. Two other appropriate and related policy elements, off-duty guns and guidelines for drinking, are addressed in chapter 6.

24. Paul M. Gilligan, "Police Policy Formulation on Firearms: Some Considerations," *The Police Chief* (May, 1971):62.

25. See Appendix A for model policy developed by California Peace Officers Association and the policy recommendations in chapter 7 of this report.

### CHAPTER 3

## DEPARTMENT REVIEW OF SHOOTINGS AND DISCHARGES

Police departments are, of necessity, built on paper. Every department has its forms, manuals, guidelines, general orders, special orders, interim orders, memos, circulars, and letters in triplicate. There are written rules to cover the most remote contingency including, in one city, complex provisions for mobilizing the department in case of nuclear attack; each division in that city is equipped with its own radiological monitoring kit to test for fallout. The department even anticipates the possibility that its switchboards might be jammed in such a crisis and requires each station-house to stock a supply of coins so that officers can be contacted by pay phone.

Some policies are so routine that officers follow them unthinkingly; others are so obscure that few know of their existence. Some policies are widely interpreted to mean something very different from what they say; others are generally ignored except when some particularly egregious violation prompts a temporary crackdown.

Enforcement is the ultimate test. What happens to the officer who indefensibly disobeys a policy? If nothing happens (or nothing very dramatic), the policy is just another piece of paper among many. If such an officer is fired, suspended, demoted, or otherwise seriously disciplined, the disciplinary action is an important indication that the policy is in fact a policy.



## INITIAL NOTIFICATION

To guarantee effective enforcement of a department's firearms policy, it is essential to require that all shootings and discharges be reported. In each of the cities surveyed, an officer has to make an immediate notification upon discharging his or her firearm.<sup>1</sup> In Detroit, the nearest precinct desk must be notified; in Birmingham, any superior officer (line officers must notify their sergeant as well); and in Portland and Indianapolis, the immediate superior officer. In Kansas City, it is the radio dispatcher; in Oakland and Washington, it is the watch commander of the officer's unit or, in the latter city, the official in charge of the communications division must be notified if the watch commander is unavailable.

It may not seem important to whom the officer makes initial notification. However, if only a "superior" must be informed, there is a risk that the officer will pick out a lenient or sympathetic superior for the occasion. This in turn may lead to a less than thorough investigation, whether by design or by negligence. In addition, if no single official has to be notified, it may be difficult to establish afterward whether an immediate notification was made. The Kansas City rule, under which the officer notifies the radio dispatcher (who in turn makes other notifications), would seem calculated to guard against this possibility because dispatchers are accustomed to taping or logging important communications.

Washington, D.C., not only requires an immediate notification in all shooting and discharge cases, but specifies: "Delay in the required notification shall be allowed only to render first aid, to maintain the arrest or prevent the escape of a felon, to protect a crime scene, or when the member himself is incapacitated." Rather than trying to cover all bases in a written regulation, it might be more practical simply to prohibit unreasonable delay, citing the enumerated situations as permissible exceptions.

Regardless of a department's provisions for notification, the officer whose gun discharges in a quick-draw contest at

home or who one night lets off a wild shot at someone on a deserted street may be tempted not to report the incident. But in the great majority of cases, the officers know that not reporting will only add to their troubles, and that the incident will come to the department's attention sooner or later. Thus they want at least to give their version of an event before the victim or hostile witnesses recount theirs.

### *INVESTIGATIVE MACHINERY*

There are two basic approaches to the investigation of a discharge or shooting: through the regular chain of command or through a centralized unit such as internal affairs.

Chain-of-command investigations are the rule. In Detroit, for example, the officer's immediate supervisor investigates each shooting or discharge and submits a report through channels to the chief, with each succeeding command level approving or amending the findings.<sup>2</sup> If a fatality is involved, a board of inquiry designated by the chief will also review the incident.

When there is even a possibility that the victim may not survive, the homicide unit will conduct its own parallel investigation for purposes of criminal prosecution.

Oakland, Washington, and Indianapolis all have somewhat similar procedures—chain-of-command investigations supplemented by firearms review boards. In Portland, the chief may name a firearms investigation committee if a particular shooting raises policy problems; otherwise chain-of-command findings are merely reviewed by the inspections division before being sent on to the chief.

Kansas City has a hybrid system. The nuts and bolts of the investigation of shootings and discharges alike are handled by the department's internal affairs unit, which assembles a file of statements, police forms, lab reports, photographs, and diagrams. In addition, cases in which a person is actually struck are investigated by detectives of the investigations bureau. Internal affairs makes no recommendation for a finding or a disposition in its report; that responsibility is left to the assistant chief, who may decide,



subject to the chief's approval, whether a shooting is "justified" or "unjustified," and (if the latter) what form of discipline to mete out. Alternatively, the assistant chief may decide to ask a lower-level officer for recommendation.

In Birmingham, actual shootings are investigated by the internal affairs and homicide sections and by a representative from the chief's office who is called to the scene. Discharges are reviewed only by the officer's sergeant, whose report is ultimately filed with internal affairs. Until recently, discharges were examined far more casually than shootings, although the difference between the two is often merely a matter of luck or marksmanship.<sup>3</sup>

By failing to scrutinize discharges closely, departments may be missing an opportunity. It is easier to be critical of a discharge incident in which nobody has been hurt than to second-guess an officer in the emotion-packed atmosphere surrounding a shooting. Indeed, in virtually all of the cities studied, a substantially higher percentage of discharges was found unjustified than of shootings.

Although scientific evidence may sometimes play a role in the investigation of a shooting incident, the questions most likely to be at issue will be whether the officer acted in self-defense and, when applicable, whether a felony had been or was being committed. Answering those questions will probably involve recording and weighing the testimony of witnesses, police, and civilians. Obviously, it is important that as many witnesses as possible be secured, and that they be interviewed promptly and independently. To prevent testimony from being manipulated, it may be advisable to stipulate, as some cities do, that at least two persons conduct each interview, including an investigator not associated with the officer involved. Other possibilities include asking a civilian or a member of a public interest group to serve as an interviewer.

Polygraph testing is widely employed in internal police investigations and can be especially useful when an officer contends that he or she was acting in self-defense while civilian witnesses insist that the firing was without provoca-

tion. Many police officers' associations object to the use of lie detector tests, but these objections can at least be minimized through the adoption of a rule such as Kansas City's; there, an officer is required to take a polygraph test only after conflicting witnesses also take the test and pass. Other concerns of individual officers and police associations can be addressed by having the test administered by a technician independent of either the police department or the city administration. However, because the reliability of test results is still a debatable issue, department investigators are well advised not to base their findings solely upon the results of a polygraph test.

### *FIREARMS REVIEW BOARDS*

The police firearms review board is a relatively new concept, but one that has caught on quickly. Washington, D.C., has one of the oldest such boards, dating back to 1970. Indianapolis created its review board at the beginning of 1975, after a new chief was named to head the department.

These boards differ from city to city in both composition and responsibilities. For example, Washington, D.C.'s Service Weapons Review Board consists of the department's civilian general counsel, who is the chairman; the deputy chief in charge of patrol; and the deputy chief in charge of the criminal investigations division. This board is charged with the responsibility for reviewing all incidents in which police officers have used firearms, chemical dispensers, batons, blackjacks, and tear gas.<sup>4</sup> In Detroit, fatal shootings are reviewed by a board of inquiry composed of three officials with the rank of inspector or higher; the chief designates a new board for each incident.

In Oakland and Indianapolis, the boards are considerably larger and include not only a rotating group of high officials but also one or two members of the same rank as the officer whose actions are being reviewed. This innovation is designed to add current street perspective and to increase the board's credibility with the rank-and-file. It also serves to help publicize the board's actions within the



department, as does Oakland's practice of putting a training official on the board.

More questionable, however, is the policy both in these cities and in a number of others of inviting the officer's immediate superiors to sit on the review board. The problem is that the superiors' actions, too, may be under review, including the quality of their supervision before and during the shooting incident, and the integrity and completeness of the investigation conducted afterward. The board obviously should hear from these officials, but perhaps as witnesses rather than as fellow board members.

The review board concept has several clear virtues. First, the very existence of the board makes it more difficult for a department simply to ignore the problem of excessive or unwarranted firearms use; creation of the board conveys to both citizens and members of the department that police shootings are matters the department takes seriously and upon which it expects to spend a good deal of time. Second, the review board concept shifts the responsibility for auditing shooting investigations from the chief or commissioner to the chairman of the review board; this is probably sound in terms of the efficient use of the chief's time and in serving to centralize and pinpoint accountability for the investigation. Third, the review board creates a natural, continuing forum for the discussion of an important policy question.

The continuity of the review board procedure is extremely important. Although Portland has no permanent board, a firearms investigation committee is convened whenever a shooting incident raises the possibility that department policy in some area might need revision. Even though the committee's job is strictly to analyze policy rather than individual incidents, its convening in the wake of some incidents and not others suggests both to the public and to police officers that the shooting is questionable.

Such boards, however, by no means guarantee a thorough or even-handed investigation. In one city, the firearms review board reports examined by the staff were invariably

written as point-by-point justifications of the officer's actions. One case even involved two reports: an official one defending the handling of the incident, and a much less laudatory confidential memorandum (drafted "because of the pending civil litigation and the likelihood that the board's [official] report will be subpoenaed").

### *HANDLING OF FATALITIES AND CONTROVERSIAL INCIDENTS*

Even the most clear-cut shooting incident can generate unpleasant headlines, but departments face special problems when the victim of a police shooting appears to have been unarmed or is a juvenile, or when witnesses loudly dispute the police version of events. The investigation of a fatal shooting may last months. Such shootings are routinely sent before a grand jury or coroner's jury, and the department usually defers its own internal review until the criminal process has run its course. Meanwhile, the department invites trouble by taking a stand one way or the other. If its spokespersons appear to defend the shooting, community groups may have grounds for protest. If the department hints that the officer may have been wrong, the officer, the defense attorney, and the local police officers' association will raise a furor.

An incident in Norfolk, Virginia, illustrates what can happen when a department lacks a consistent policy for handling controversial shooting incidents. A black Air Force sergeant was shot three times and killed after allegedly attacking a white police officer with the officer's nightstick. At first the department merely issued an account of the incident based on the officer's version of events and announced that the officer would be assigned to desk duty pending review of the shooting. Three days later, the officer was charged with murder. The charge was announced at a joint press conference called by the commonwealth's attorney and the chief of police.

The following day, the National Association for the Advancement of Colored People asked the chief to suspend



the officer without pay. The chief refused, saying his actions would be vindicated when the case went to trial, and he explained, "the facts in the case demand that I do what I am doing." But the pressure continued to mount. The American Civil Liberties Union requested an FBI investigation. Community spokespersons began complaining of too much police presence in the victim's neighborhood after the shooting had occurred. At an emotional city council hearing, witnesses spoke for and against suspending the officer. Finally, the officer's own attorney suggested that his client be suspended without pay pending the outcome of the trial, and the chief agreed.<sup>5</sup>

To avoid such controversies, many departments have a fixed set of procedures to use in the wake of fatal shootings: The officer is suspended with pay or reassigned to inside duty, and all public comment is declined. In Washington, D.C., the officer is also relieved of his or her service revolver, badge, and identification, and of the right to carry a personal off-duty revolver. This procedure is naturally resented by officers involved in shooting incidents, who feel they are being prejudged. In fact, the department's rationale for taking the officer's gun away in *all* cases is precisely to avoid having to make prejudicial decisions in those instances when the officer appears to be demonstrably unsuited for further duty.

In Detroit, an officer involved in a fatal shooting incident is relieved of customary duties and placed under the supervision of the board of inquiry appointed to investigate such incidents. During the period of investigation, the officer is interviewed by a psychiatrist, whose findings regarding the officer's mental condition are submitted to the board in writing.

When a department adopts fixed procedures, whatever they are, they may be more likely to be accepted if the rationale for adoption is explained in more or less the following fashion:

Any application of deadly force by a police officer is of sufficient gravity to warrant exten-

sive investigation and a full exploration of the facts. The search for truth when an officer has used deadly force cannot be any less intensive than it is when the actor is a civilian—for that reason, a police officer's version cannot be accepted without independent verification.

Officers are also less likely to react negatively to investigative procedures and are more likely to accept the outcome of an investigation if, at the same time the department articulates its rationale for an intensive investigation, it explicitly sets forth a determination to protect the officer's right to due process. In many departments these protections are spelled out either in internal affairs unit guidelines or in a police officers' bill of rights, such as those enacted in Florida and Maryland. (See Appendixes E and F.)

### *FINDINGS: JUSTIFIED OR UNJUSTIFIED?*

Deciding whether a shooting is justified can be difficult. First of all, an officer faced with a serious threat to life or limb should not be condemned for failing to find the best possible response. As Oliver Wendell Holmes put it, "Detached reflection cannot be demanded in the presence of an uplifted knife." In addition, the physical details of a shooting incident may not always be subject to clear-cut proof. Vital facts may vary according to which witness is recounting them.

As described in chapter 1, after reviewing several hundred shooting incidents in seven cities we found that the substantial majority appeared to be clearly justified under the applicable state laws and department policies. However, a few which were found to be justified appeared even to department reviewers to have questionable aspects, as illustrated in the following examples.

First are the incidents in which self-defense is claimed, but the officer's fear seems, in retrospect, out of proportion to the threat.

*Case A.* A burglary-in-progress call. An officer searching the rear of a building hears a noise, points a flashlight, and sees a man crawling out



through a hole in the building wall. The man makes a motion as if to reach for a weapon, and the officer shoots him. Photographs show the subject less than halfway out of the building and in a prone position when shot. No weapon is recovered.

In a second category of incidents, the officer testifies that the suspect had a weapon, but either no weapon is recovered or there is evidence to suggest that the officer may have planted a gun or knife on the suspect.

*Case B.* An officer on a burglary call goes to the rear of a house where he confronts a suspect, whom he shoots. According to the officer, the suspect had cut through the officer's shirt with a knife. A subsequent lab report, however, concludes that the cut in the shirt could be duplicated only by folding the cloth over the knife *from the inside* and cutting through. The report also comments on the fact that the knife has been meticulously cleaned very recently. The officer refuses to take a polygraph test.

The third category of questionable shootings includes incidents in which the officer fires to apprehend a fleeing felon, but probable cause (either that a felony occurred, or that the suspect necessarily committed it) seems lacking.

*Case C.* A sergeant observes two cars with tires packed into the rear seats. As he pulls up to investigate, both cars drive away. He pursues one of them, and when the driver bails out and starts running on foot, the sergeant shoots him. Only later is it determined that the tires were taken in the burglary of a tire store.

A fourth category of incidents involves persons who have undoubtedly committed felonies, but whose identities are known to the police and who can presumably be arrested later without resort to the use of firearms.

*Case D.* Officers are serving a burglary warrant at the residence of the suspect. However, the man they find there claims he is not the person named on the warrant. While the officers attempt to summon another officer who can per-

sonally identify the correct suspect, the man they have been questioning bolts and runs. After a lengthy chase, he is shot.

*Case E.* Two detectives are serving a warrant for grand larceny. The suspect refuses to go with them, so one detective returns to the car to call for assistance. Meanwhile, the suspect strikes the other detective, runs from the scene, and is shot fleeing across his own back yard.

In a fifth category of incidents, the use of deadly force becomes necessary because of some rash or ill-considered action taken by the police.

*Case F.* A suspect is already in the caged rear seat of a police transport vehicle, under arrest for assault on a police officer. Because a crowd is gathering, the officer at the wheel of the transport car quickly drives away from the scene of the arrest. Several blocks distant, the officer gets out of the car and opens the rear door, ostensibly to render first aid. The suspect, however, comes charging out of the car, uses his head to butt the officer in the stomach, and runs. The officer then shoots the suspect.

A review board found this shooting justified, although it may well have suspected that the officer's real reason for stopping the car and opening the rear door was to administer "curbstone justice" rather than first aid. The chief, on the board's recommendation, reprimanded the officer for "failure to carefully analyze the situation and for exercising poor judgment in attempting singlehandedly to confront an extremely violent suspect . . ."

*Case G.* An off-duty officer, in his private car, is advised by a friend about a reckless driver in a van who has cut the friend's car off in traffic. The officer locates the van and, while both are stopped at a red light, asks the driver why he tried to cut in front of the officer's friend. "I'll run anyone off the road who tries to pass me, including you, \_\_\_\_\_," is the driver's reply. When the officer asks him to pull over and get out of his vehicle, the driver refuses, and a long,



wild chase ensues, during which the van allegedly tries to force the officer's car off the road. Then, as both vehicles are hurtling toward a bridge abutment, the officer, "seeing the danger to his life and that of his passenger, Miss B.," draws his gun and fires one shot at the driver of the van. The shot does not take effect, and the van escapes.

In reviewing this incident, a lieutenant wrote: "Even though Off. J. was justified in using his revolver . . . he could possibly have used greater restraint and avoided firing the shot. . . . I therefore recommend that Off. J. receive retraining in the use of his firearm." There was no inquiry, at least in the written record, concerning why the officer chose to get involved, off-duty, in a minor traffic dispute. Nor was there any suggestion that if the officer were able to draw and fire his gun, he might have been able to brake his vehicle and thus avoid the imminent danger offered as the justification for shooting. Further, there is no indication in the record whether the lieutenant's rather questionable judgment in this matter was, in turn, reviewed.

The sixth and final group of incidents contains "accidental" shootings that appear to involve, at the least, negligence or extreme nervousness.

*Case H.* While an officer is making a routine traffic stop, the car he has stopped suddenly drives away. The officer gives chase, eventually catches up with the vehicle a second time, and approaches it on foot, weapon drawn. As he reaches the car, his gun accidentally discharges, fatally wounding the 63-year-old driver.

*Case I.* An officer involved in an off-duty fight strikes a subject over the head with his personal revolver, and the weapon, a "Saturday night special" .22 derringer, discharges with the impact.

All of the foregoing shootings and discharges (cases A through I) were found to have been justified under the applicable department policies. Although the supervisors

who investigated these incidents were not wholly uncritical, their words of criticism were few and appeared under such headings as "remarks" and "training aspects"—clearly divorced from their basic findings.

Some departments have attempted to construct rules that cover the issues raised by these incidents. The new Birmingham firearms policy, for example, states: "Justification for the use of an officer's firearm is limited to facts known to the officer, or perceived by the officer at the time he decides to shoot. Facts unknown to the officer cannot be considered in . . . determining justification for the shooting."

A Detroit training and information bulletin states: "An escaping felon whose identity is known to an officer or witness and whose arrest can subsequently be effected does not justify capture by wounding or death." By the same token, departments might consider a rule governing situations in which one or more suspects are already in custody while an accomplice is fleeing the scene.

Oakland, in the General Order establishing its board of review for shootings and discharges, has two provisions that may be unique:

When the circumstances at the time of the firing are justifiable but the firing was the result of the officer's departure from acceptable police procedures, the finding shall be that the discharge was Non-justifiable.

A finding of Accidental shall be made only when there is no element of negligence on the part of the member. If negligence on the part of the member is an element resulting in the discharge, the finding shall be Non-justifiable.

These are very tough standards that go against the tendency observed almost everywhere: to find an officer's conduct justified while noting any mistakes in the small print. Under the Oakland policy, the officer who rushes into a building and shoots a barricaded gunman could conceivably be disciplined for not having remained outside and called for assistance. Likewise, the officer who fails properly to guard a prisoner and then has to resort to the use of



firearms to prevent the prisoner from escaping could see the shooting called nonjustifiable.

It can be debated whether Oakland always has followed its own policy, yet one 1974 case illustrates the reason for both sections quoted.

*Case J.* A patrol car chases and stops an erratically driven truck. The officer approaches with gun in hand, ordering the driver out. When the driver refuses, the officer reaches inside with his free hand, tries to pull the driver from the truck, then wraps his other arm (the one with the gun) around the driver's shoulder. In the ensuing struggle, the officer accidentally shoots and wounds the driver.

This shooting was ruled nonjustifiable because, Oakland's board of review wrote, the officer should have had the sense to reholster his weapon.

### *DISCIPLINE.*

When officers use their firearms without proper justification, how should they be disciplined? Examination of shooting incidents in the sample cities as well as a review of the relevant literature, suggests that the officers involved in such shootings often receive verbal or written reprimands as the sole form of department discipline. Forfeiture of days off and suspension from duty are far less frequent as forms of disciplinary action.<sup>6</sup>

In one city, records of more than 100 shootings over a span of several years establish that five of these incidents were, in effect, found unjustified. A single officer was terminated from the department as punishment; the other four officers received verbal reprimands or counseling. In addition, four officers were reprimanded for their use of unauthorized hollow-point ammunition. In one of these instances, a lieutenant wrote: "I have verbally reprimanded Officer M. for this infraction and recommended that this suffice at this time, due to the fact that he is a hard-working conscientious police officer." The same lieutenant offered the estimate that 25 percent of the officers in a busy precinct probably

used hollow-point bullets; he did not, however, speculate that such a wide-scale defiance of department policy might have something to do with the mild discipline meted out to those found in violation.

The general pattern of discipline in unjustified shootings and discharges can best be illustrated by recounting incidents from several different cities:

*Case K.* An officer observes two subjects inside the previously damaged screen door of a grocery. They flee, ignoring a call to halt. The officer, still in his car, fires a shot that does not take effect. Later the subjects are arrested, but it is ascertained that no actual burglary has occurred.

A supervisor, reviewing this incident, wrote: "It has been explained to Officer C. that the circumstances as seen now would preclude the use of his weapon. I recommend no further action in this matter." The recommendation was approved up through the chain of command, one higher official noting: "Since this location has been the scene of several burglaries in recent months, and since Officer C. apparently sincerely but mistakenly believed that in this instance, there had been another burglary just committed . . . I concur in Lt. N's conclusion that the officer's action should not be further censured."

*Case L.* An officer has parked the patrol car in order to observe a supermarket plagued by robberies and shoplifting. The officer, seeing a clerk chase some shoplifters out of the store, and knowing he can't catch the suspects, fires at them.

This case went before a review board, which found the shooting unjustified. The officer, according to the board, "fired out of frustration, knowing the suspects would escape." The board also noted that "one of the suspects was known to the officer and a warrant could have been issued for the man's arrest." The board then took pains to recommend a light sentence, praising the officer's initiative in setting up the surveillance.



*Case M.* Officers are chasing a vehicle wanted for speeding when the occupants abandon their car and flee through an alley. The officers call for them to halt, at which time one of the officers fires a shot. Later the officer testifies that he feared the suspect might have a gun. The suspect's friends, however, state that he had put his hands up in the air to surrender.

The department must have believed the civilian witnesses in this case. The officer's lieutenant wrote: "I have verbally reprimanded H. on using his gun without proper justification. I have reinstructed the officer on the use of firearms and ordered him to read and study the general order on firearms use . . . I have instructed the patrol sergeants to give Officer H. close supervision and to report back to me on any unusual acts or actions taken by this officer while performing his duties. I recommend that this case be closed."

*Case N.* An officer observes a suspicious subject running through an alley carrying a television and a tape player. The officer chases the subject, and when he feels he can run no further, he fires a shot.

Here the officer's immediate superiors recommended a written reprimand and retraining, on the grounds that the officer could not have known if a felony had been committed. The next higher official modified the punishment, however: "After reviewing this matter, I feel that reinstruction, retraining in the advanced firearms training program, and verbal admonishment rather than a written reprimand suffice in this matter." In a similar incident in the same city, where suspected burglars were fired at but no burglary ever established, an official wrote: "I have cautioned Officer R. that unless he witnesses a subject in the act of breaking and entering, he has no way of being sure that *persons* running from policemen are all perpetrators. I therefore concur with Sergeant J. and recommend retraining."

*Case O.* Standing to one side, officers knock on the door of an apartment where shots have

been heard. Immediately two shots are fired out through the door. One of the officers fires back, and after several minutes of silence, they break down the door and find the subject dead.

In this case, a review board (1) commended the officer for his actions, (2) arranged for his transfer to the helicopter unit because he had been involved in three fatal shootings, and (3) reprimanded him for using unauthorized ammunition. The officer's actions in this incident would not seem to reflect sound police practice. A department order describes a complicated procedure to be followed in such "barricaded gunman" situations and expressly discourages shooting blindly through doors or walls at an undefined target. Although transferring the officer to the helicopter unit probably eliminates the risk of involvement in a fourth fatality, this choice duty will inevitably be viewed by the officer and fellow officers as a "reward" for the shooting.

In one sample city, a former chief took a close personal interest in disciplinary cases, shootings included, and often would call ordinary officers into his office for one-on-one sessions of inquiry or counsel. This chief's characteristic attitude, apparently, was to be considerate and flexible when it came to deciding punishment. If the officer was in bad financial straits, for example, the chief would probably overrule a lower-level recommendation that the officer be suspended.

Police departments are not, as a rule, using discipline to convey the impression that firearms use is a high-priority concern. Department discipline in shooting cases seems lenient if not perfunctory in many cities. Apparent violations of both the letter and the spirit of department policies have been condoned either by outright justification or by extremely mild discipline. Officers even have been commended for shootings that appear to have gone against department policy or sound practice. The National Commission on the Causes and Prevention of Violence, in a task force report, made similar observations and noted that departments often impose far more severe sanctions on personnel who have violated minor internal regulations



than on those who have been involved in questionable or unjustified shootings.

There are obvious reasons for this pattern of leniency—reasons peculiar to the occupation of law enforcement. As former patrol officers, police chiefs and high officials can remember just how nerve-racking and unpredictable that job can be. They are, moreover, the executives as well as the judiciary of their departments, and as such may want to avoid taking actions that could cost them the loyalty of rank-and-file officers or depress department morale.<sup>7</sup> Finally, there is the dilemma that even the most grossly unjustified shootings may in some sense be acts of “good faith,” the products of a sincere if overwrought dedication to duty. The same officers who use their firearms in this fashion may be responsible for many outstanding pieces of police work.

There are also exceptions to the pattern of leniency described here. As noted earlier, several of the sample cities appeared to deal much more sternly with unnecessary discharges than with unnecessary shootings, presumably feeling that a crackdown on the former will lead to a reduction in the latter. In one city, of 16 shootings that occurred in the course of a year, only a single case was ruled unjustified and the officer reprimanded. By contrast, of 51 discharges in the same year, the department took disciplinary action against 26, or roughly half, of the officers involved. The rate of shooting in this particular city was about average in 1973, and declined in 1974.

In several cities, strong discipline was handed down in one or two particularly dramatic cases. According to the police administrators in those jurisdictions, this action appeared to have made a powerful impression. In Oakland, for example, there was an incident in which a team of narcotics officers, serving a search warrant on a drug dealer, had surrounded his apartment and were about to enter when a shootout erupted. Scores of shots were fired from all directions, the drug dealer apparently escaped, and one officer was wounded in the wrist. According to police statements

made immediately after the incident, the first shots had come from inside the apartment, and police fired only in self-defense. But the subsequent investigation established that no shots whatever had been fired inside the apartment. The first bullet, like all the rest, had come from a police weapon.

The case was heard by a review board composed of the deputy chief in charge of patrol, a patrol captain, a vice squad lieutenant, a lieutenant from the bureau of investigations, a lieutenant from training, a sergeant from communications, two street sergeants, and two rank-and-file officers. Several witnesses were invited to testify before the board, including the half-dozen vice officers whose actions were under review.

The board found that the officer who fired first had "fired blindly into the apartment immediately after the door had been forced open." He was suspended for three days, transferred out of the vice section, and recommended for psychiatric evaluation "to determine his suitability for field duty." The lieutenant was reprimanded for authorizing the use of a 9mm. automatic against department policy. Another officer was suspended for three days because he "used extremely poor judgment when he discharged his weapon without seeing a target." And a sergeant was suspended because he "over-reacted" to what he thought were shots coming from inside the apartment.

The real but mistaken belief of some officers that there were shots coming from inside the apartment appears to have resulted from two factors. First, there were police at both front and rear, with weapons inadvertently directed at one another. Second, when one officer fell back from the recoil effect of his own gun, it looked as if he had been shot.

Although the harshness of the discipline in this case presumably reflects the danger to police as well as to civilians in such a chaotic situation, the board's findings nevertheless served to give a sense of force and immediacy to the department's firearms policy. That was precisely the idea: Suspensions, the board wrote, "will serve as an excellent notice to all other members."



When Oakland's board of inquiry finds something to criticize in a shooting incident, its report is distributed throughout the department and used in recruit and in-service training; even dissenting opinions of individual board members are published for such use. In this way, the issues of department policy and individual performance raised by a shooting incident are given a full airing. It should be kept in mind, however, that the purpose of department investigation and review is not only to discover the facts for disciplinary purposes, but also to identify faulty (and correctable) conditions and practices, e.g. lack of accountability, indolent and irresponsible supervisors, ineffective training and failure to monitor unacceptable conduct.<sup>8</sup>

Although a department may appropriately commend an officer for acting reasonably and courageously in circumstances in which the use of a firearm was clearly unavoidable, and may discipline an officer whose actions were unjustified, it should also be prepared to address the emotional needs of officers involved in either type of shooting. Supportive counseling or more intensive therapeutic intervention may be in order; supervisory personnel should be alert during and after the investigative process to refer officers who request help or those who appear to be in need to appropriate services and agencies.

In Portland, a representative from the Traumatic Incident Committee (a group of officers previously involved in such incidents) is made available to accompany an officer who has been involved in a shooting through the department's debriefing procedure; legal and psychological counseling also is available if needed and a partner may be temporarily assigned after the officer has been returned to duty.

### *CRIMINAL PROSECUTION*

Although the conduct of judges and juries is beyond the power of police administrators to control, and thus falls outside the realm of this study, a brief observation may be in order about the ultimate remedy of criminal prosecution.

Prosecutors must rely on the police for assistance in the investigation and preparation of cases, so it is perhaps understandable that they never have been very enthusiastic about pursuing allegations of criminal wrongdoing against the police. Of late, however, prosecutors in a number of cities have shown an increased willingness to investigate the conduct of local police officers; and where state and local officials choose to overlook possible criminal acts by police, the federal government may file its own charges. In Birmingham, for example, the FBI routinely investigates police shootings of civilians.

Even where prosecutors are not shy about initiating such cases, police officers are rarely convicted for on-duty or line-of-duty shootings. From 1971 to November 1975, federal prosecutors brought 128 cases against 228 law enforcement officials for alleged shootings, beatings, and other use of excessive force.<sup>9</sup> Of these officers, 180 were acquitted, and only 48 were convicted. It appears that judges and juries simply refuse to consider the actions of a law enforcement officer, acting as such, in the same light as those of an ordinary citizen.

It is conceivable that the risk of criminal sanctions may become more real in the future for police officers who violate laws concerning the use of deadly force; meanwhile, internal discipline is the more practical remedy.



TABLE 12

## INTERNAL REVIEW PROCEDURES FOR SHOOTING INCIDENTS

City	Immediate Notification to	Basic Investigation Handled by	Adjudication/Discipline Decided by
Detroit	Nearest precinct desk	Chain of command	Chain of command (plus a board of inquiry appointed in fatalities)
Oakland	Watch commander of officer's unit	Chain of command	Firearms review board/chief (includes members with same rank as officer under review)
Washington, D.C.	Watch commander of officer's unit	Chain of command	Firearms review board/chief (general counsel, deputy chief of patrol, and deputy chief of criminal investigations)
Kansas City	Radio dispatcher	Internal affairs	Assistant chief/chief
Portland	Officer's immediate supervisor	Chain of command	Inspections division/chief (a firearms investigation com-

TABLE 12

## INTERNAL REVIEW PROCEDURES FOR SHOOTING INCIDENTS—Continued

City	Immediate Notification to	Basic Investigation Handled by	Adjudication/Discipline Decided by
			mittee is named when shooting raises policy ques- tions)
Indianapolis	Any superior officer	Chain of command	Firearms review board/ chief (includes members with same rank as officer under review)
Birmingham	Any superior officer	Internal affairs	Chief (all actions subject to approval of county person- nel board)



### Notes

1. Shots fired at an approved range are generally excluded from this requirement. Kansas City also excludes "sporting events" (shooting matches and hunting), and in Detroit, an officer who shoots a wounded animal need only file an incident report at the end of the tour of duty.
2. The report form, which requires answers to numerous factual questions about the incident and includes a space for a written narrative, also includes a "recommendation" category where the supervisor is directed to check one of four options: (1) no further action; (2) retraining; (3) disciplinary action; (4) pending.
3. Since the Police Foundation site visit, some disciplinary actions have been taken with respect to discharges; one instance resulted in a five-day suspension and several others in written reprimands.
4. The only exception to this rule is the use of tear gas to control crowds or to assist in the capture of wanted persons protected by barricades. See Appendix D for more detailed description of Washington, D.C.'s review board procedures.
5. Articles from the *Virginia Pilot*: 2/16/75; 2/17/75; 2/19/75; 2/27/75; 2/28/75, and *Ledger Star*, 2/18/75; 2/19/75.
6. These observations do not apply to all seven cities in this study nor to any of the cities with respect to *all* unjustified shootings that were reviewed. They do, however, reflect a not uncommon practice.
7. A shooting incident in Indianapolis provoked Dep. Chief Larry Turner to exclaim: "I've had it. I don't care what they think of me. We are going all the way on this. We just can't have this kind of thing happening in the police department. Covering for your buddy won't work anymore." (Indianapolis *Star*, August 3, 1975.) Turner's words carried the implication that police administrators find it anything but easy to take action against officers in shooting or alleged brutality cases.
8. At the same time, police administrators should be careful not to fall into the trap of assuming that all mishaps are preventable; this leads to the kind of Monday-morning quarterbacking described in Joseph Wambaugh's *The Onion Field* (New York: Delacorte Press, 1973). After the abduction and murder of a police officer, some department officials decided that it was simply bad police procedure for an officer to allow himself to be taken hostage.
9. These prosecutions were brought under Title 18 U.S.C. Sec. 242. The pertinent part of that statute provides that "whoever, under the color of any law . . . willfully subjects any inhabitant of any state . . . to the deprivation of any rights, privileges, or immunities secured . . . by the Constitution or laws of the United States . . . shall be [guilty of an offense]."

## CHAPTER 4

### IMPACT OF PERSONNEL PRACTICES ON THE USE OF DEADLY FORCE

Police administrators cannot afford to rely on the same methods for implementing firearms policy that they use for implementing other internal rules and regulations. It is not enough merely to issue a copy of the policy to every officer, read it aloud at several successive roll calls, and then deal with violations on a "we'll cross that bridge when we come to it" basis.

Most ordinary violations of policy can be remedied after the fact. A firearms policy violation is likely to prove irrevocable. Thus, police administrators have a responsibility to be on constant alert for officers who appear likely to use their firearms without proper cause. As verdicts in a number of civil suits attest, "The municipal employer will generally be held liable where it has retained an agent whose past history did in fact, or should have, put the municipality on notice of the agent's propensity for violence or instability."<sup>1</sup>

To satisfy this broad call by the courts for internal vigilance, departments must screen applicants before appointment, put newly sworn officers through a rigorous "probationary" period, and continue to monitor the performance of officers through their entire careers, taking steps to dismiss, reassign, or change the conduct of those officers who show a tendency to use unnecessary or excessive force.



Despite a considerable investment of money and attention in elaborate police officer selection devices aimed at excluding violence-prone or otherwise unfit applicants, such devices have yet to prove themselves. Furthermore, studies indicate that people change once they are in the system. Therefore, it appears that police departments have to place emphasis on identifying and dealing with undesirable personnel during the probationary year and afterward.

## *SELECTION*

There is not enough information available about how to select the best candidates for the job of police officer. Because physical qualities are easier to measure than intellectual ones, and because the use of subjective hiring standards is historically linked to the spoils system, the tendency in hiring police officers has been to care more about a candidate's height, vision, or freedom from allergies than about maturity, ability to deal with people, or knowledge of the community.

The guiding principle of selection, as set down by personnel administrators and confirmed by the courts, is to adopt standards and tests related to the demands of the job. The practical problem has been to isolate the different abilities required by the job and then determine which selection devices actually measure those abilities.

Psychological screening of police candidates has become more widespread over the past few years, and many departments now administer personality tests aimed at weeding out undesirable applicants. There is no convincing evidence, however, that such screening methods really work. Most of these tests were developed for industry to use in selecting individuals for jobs quite different from police work. Studies conducted to relate results on these tests to job performance have not found a significant relationship.

One of the most thorough evaluations of the relationship of psychological test results to job performance was undertaken by the University of Chicago in 1968 and 1971;

this study found that the least reliable predictions possible from these tests were for future disciplinary actions. In other areas of performance, the longer the time lag after the test had been administered, the smaller the correlation between an officer's predicted and actual conduct.<sup>2</sup>

Similar problems exist for all the various selection devices developed to screen out the psychologically unfit. Studies have shown that oral board interviews and clinical interviews by a psychologist or psychiatrist have only limited predictive value. Individual departments have reported instances in which officers hired *against* the advice of consulting psychologists later become disciplinary problems, but a more systematic evaluation seems in order. Work that may shed further light on the relationship between commercially available psychological tests and job performance is currently being undertaken in the Dallas, Texas, Police Department.

Another hiring standard widely assumed to yield a less violence-prone police officer is the requirement that an officer have a college degree or a specified amount of college education. Unfortunately, here too the evidence is inconclusive. In one city that provided accurate educational data about officers involved in violent incidents (and for the department as a whole), it was found, paradoxically, that officers with several years of college were involved in more such incidents than were high school graduates. The city in question has educational incentives for promotion, and it may be that officers with college experience are merely energetic and ambitious rather than violence-prone. If such officers work harder and make more arrests, it is likely that they will experience more violent encounters than their colleagues. At the same time, college-educated officers are apt to be younger and therefore less experienced on the street. This combination of traits (rather than one single factor) may account for the somewhat unexpected finding.<sup>3</sup> Obviously, any fair study would also have to take into account the number of incidents to which an officer was exposed, ranging from the experiences of the officer as-



signed to a desk job downtown to the one working a high-crime district in a radio car during peak hours.

Physical characteristics are also commonly thought to have a bearing on an officer's tendency to use force. Until recently, it was widely assumed that a tall officer would be less likely to be assaulted than a short officer. It has also been suggested that the male officer might have the same advantage over the female officer. Two studies, however, suggest that neither of these assumptions is necessarily correct.<sup>4</sup>

### *PROBATIONARY PERIODS*

With so many studies showing that selection tests are, at best, imperfect predictors of performance, probably the best a good manager can do is to continue using the best available tests but not rely on them to identify violence-prone officers. Given this conclusion, the probationary period takes on an even more important role.

Most departments set aside a probationary period, generally a year, during which new officers can be terminated without the same measure of due process to which they will later be entitled. That, at any rate, is the theory. Generally, a recruit has to commit a fairly serious violation of department policy in order to be fired, and it is unlikely that he or she will do so between graduation from the academy and the end of the probationary year—especially inasmuch as the recruit will be expected to defer on serious matters to more experienced partners and other officers.

In several of the sample cities, there were instances in which probationary periods had been used to weed out immature, neurotic, or simply marginal officers. One Birmingham recruit was terminated after his field training officer reported that he lacked interest in the job. A Portland recruit was terminated after a series of small incidents in which he was felt to have been abusive or to have used unwarranted force.

Portland's probationary period is unusual because it lasts 18 months rather than a year; after the officers leave

the training academy, they are rotated through a series of assignments and evaluated by various supervisors. When the probationary period is almost over, the recruits' commanding officers, if they recommend retention, are asked to write a memorandum explaining why the officer should be retained. In most cities, only termination must be justified.

Another department that tries to make the best use of the probationary period is San Jose, California. Recruit action and behavior are intensively scrutinized during the 14-week field training phase that follows an initial 11 weeks of classroom work in the academy. Accountability for recruit performance—up to and including responsibility for recommending termination of a recruit if such action is warranted—rests with the field training officer, a patrol officer.

Starting with the third week of field training, the training officers prepare daily reports and evaluations of the recruits under their supervision; weekly observation summaries are compiled by field training sergeants. Every other week, at evaluation sessions, field trainers present reports on the strengths and weaknesses of recruits to the training team, the trainers' supervisors, the training lieutenant, and the staff psychologist. The field trainers' supervisors are responsible for preparing observation summaries in which remedial work is prescribed and contracts (for achievement of particular objectives) are set up for recruits who have specific deficiencies.

In the tenth month of the probationary year, the recruit's performance to date is subject to final review of a board chaired by the deputy chief of the bureau of field operations. Board action is set at ten months to allow deficiencies in performance to be corrected during the remaining two months of probation. Department administrators, however, are not hesitant about terminating unqualified or incompetent recruits; currently, the termination rate is approximately 20 to 25 percent of all recruits originally meeting selection standards.



## *MONITORING AND PREVENTION*

A few years ago in a large American city, the following nightmarish sequence of events unfolded: A police officer shot and killed a juvenile, claiming that the juvenile had been wielding a gun. No weapon was found, witnesses said the shooting was unprovoked, and a racial disturbance resulted. The officer was charged with murder and the trial revealed that the same officer had been accused of brutality in several previous cases and had been transferred from post to post after community residents complained. Newspaper editorials asked why something had not been done about this officer years earlier—in other words, why wasn't he fired, retrained, or assigned to a less sensitive post?

This case was unusual because the officer was charged and tried for murder, but unfortunately the accumulation of brutality charges against a single officer, resulting in no discipline beyond a transfer, is not entirely uncommon. Most large police departments have no information system to alert the administration about problem officers and no follow-up programs for dealing with such persons.

It is difficult to gauge whether such "problem officers" account for a significant number of shootings of civilians. In only one city were field researchers able to look at the internal affairs or personnel records of officers involved in shootings and to compare the officers with a random sample of street officers. Although the former group appeared to have accumulated a slightly larger number of what might be regarded as "negative entries" on their records, the difference was not sufficiently pronounced and the records not sufficiently precise to allow any positive conclusions.

As for officers involved in multiple shooting incidents, there were very few cases in the sample cities, a result hardly unexpected considering the short period of time covered (no more than three years) and the fact that most police officers go through their whole careers without shooting anyone. A news article on the number of shootings in New York City in 1975 indicated that fewer than 2 percent of the city's police force fired their weapons during that

year. Thus the probability that an officer will ever fire a weapon, except in connection with training, over a 25-year career is extremely low.<sup>5</sup>

These findings accord also with a Southern Methodist University (SMU) Law School study of shootings by Dallas police officers over a period of 34 months. "There is virtually no correspondence," the SMU study concluded, "between shootings occurring within one year and shootings occurring within other years across the 347 officers sampled. These results suggested that officers involved in shootings during one year are not likely to be involved in subsequent years."<sup>6</sup>

Several of the departments surveyed in this study have developed systems for monitoring officers' involvement in violent situations. These systems range from crude index-card files to computer punch cards, but the information collected generally includes some or most of the following items:

1. The number of times an officer is assaulted or resisted in the course of making an arrest, as well as the number of injuries sustained by officer or citizen in confrontations between the two. Arrest reports can, for this purpose, include a box to be checked if either party has been injured or received medical attention.

2. The number and outcome of citizen complaints lodged against an officer alleging abusive behavior or unwarranted use of force. Many such complaints are groundless, and many that would be well founded are never made; nevertheless, the accumulation of a large number of complaints against an officer may reveal something about that officer's style of policing.

3. The number of shootings or discharges involving an officer.

4. The picture of the officer presented in supervisory evaluations, intradepartmental memoranda, letters, and other reports.

In Oakland, copies of all arrest reports are sent daily to the conflict management unit. Personnel in the unit read these reports and isolate charges of simple resistance or



delaying the actions of a police officer, battery on a police officer, or assault with a deadly weapon on a police officer. The elements of these offenses are isolated even if none was charged. Then the original reports are filed by officer (for all officers involved), and the basic information is recorded on punch cards. The conflict management unit is staffed by civilians as well as sworn officers. In addition to watching individual officers for signs of trouble, this unit also attempts, using the department's computer facilities, to correlate the occurrence of violent episodes with facts about the officers involved—e.g., age, length of service, education, background, and physical stature.

The New York City Police Department has an early warning system that operates within its personnel division. The system was designed to identify violence-prone officers, but its jurisdiction has been broadened to include all officers judged to be in need of monitoring, support, counsel, or retraining (officers with drinking problems, for example). The early warning system contains a file on every member of the department, including such items as reports of abusive force, firearms discharge reports, citizens complaints, accusatory letters, information about civil suits pending against the officer, disciplinary actions, number and duration of sick leave reports, and information about off-duty employment.

The officers who enter this information into the files daily are responsible for noting trends and for bringing an individual file to the attention of one of the sergeants in the office, who in turn decides if a profile of the officer should be developed. Such a profile includes performance evaluation reports, a complete disciplinary record, a history of assignments, an interview with the member's commanding officer, and the sergeant's recommendation for department action. The recommendation could be for no further action, close monitoring, retraining, treatment for alcoholism, or psychological counseling.

The same kind of information collected by Oakland's conflict management unit and by New York's early warning

system is filed by the internal affairs unit in Kansas City. Cases are organized by both officers' and supervisors' names, on the theory that particular supervisory officials may be tolerating abusive behavior and excessive use of force among their subordinates. When a disproportionate number of complaints was found to be directed against officers under the command of a small group of officials, those officials were called in and counseled.

The data on which monitoring systems such as Oakland's and New York's depend cannot be used indiscriminately. To begin with, the officer's assignment has to be taken into account; a member of an old-clothes or decoy squad, for example, is far more likely to become involved in violent confrontations than an officer on permanent traffic duty. Resisting arrest charges, used as a measure by Oakland and other cities, do not always reflect an officer's ability to complete an arrest peacefully; some officers may add on such charges at the slightest provocation, while others may overlook even fairly serious acts of resistance.<sup>7</sup>

Citizen complaints and supervisory evaluations are not totally reliable measures of an officer's performance. Citizens and supervisors have different levels of tolerance and different standards of performance. Although it is probably not feasible to construct a strictly objective index for identifying violence-prone officers, it is nevertheless a good idea to try to refine available measures (e.g., to develop an index based on exposure rate) for the purpose of sifting out officers who merit closer examination.

These monitoring programs are promising, but none is designed to nor can replace the role of front-line supervisors. Only the officer's immediate supervisor is really in a position to know how that officer is behaving in the typical range of police-citizen encounters. But, unfortunately, some sergeants have a tendency to shirk their managerial responsibilities, to be "overgrown patrol officers"—that is, to identify more closely with their subordinates and their former selves than with administration goals. This phenomenon, plus the cliques and bonds that form among groups of



officers and officials within a particular unit, can make reliance on front-line supervisors alone inadequate as a means of controlling street behavior. Additional preventive and remedial programs are required.

### *Prevention Programs*

Once a department has identified an officer with a chronic inability to handle situations peacefully, it has an obligation to do something to prevent further violence by that officer. The options obviously will vary depending on the size of the agency and the character of the officer involved.

### *Peer Review*

The Oakland Police Department's effort to monitor the use of force by its members began with the creation of a seven-officer discussion group in 1969. Given no mandate except to consider the overall question of violence involving the police, the group gradually generated an array of ideas and programs, the most notable of which was the action review panel, a group of patrol officers created to conduct confidential counseling sessions with officers thought to need help in handling potentially violent situations.

Officers are brought to the panel's attention by involvement in ten or more violent incidents, after referral by a superior, or at their own request. The Action Review Panel has a complete file (provided by the conflict management unit) of incidents of resisting arrest, assault, and assault with a dangerous weapon, for each officer under review. A session typically begins by having the officer read the narrative portions of these reports. Then the panelists examine and criticize the incidents. Finally there is an open discussion of the subject officer's style of policing, attitude toward the panel itself, and potential for change.

Data assembled for the National Institute of Mental Health demonstrate that officers called before the action review panels tend not to be involved in as many reported violent incidents afterward.<sup>8</sup> It could be that such officers

experience a genuine change in attitude; that they avoid reporting incidents that might call further attention to their conduct; or even that, feeling wrongly censured, they decide to stop "putting out" for the department.

Whether peer review can alter fundamental attitudes is hard to evaluate, especially given the confidential nature of the proceedings. Yet the concept is appealing if only because it promises to start officers thinking about the possibility that they can influence the tenor of their everyday encounters with citizens. Police officers like to tell "war stories" about violent persons they have subdued; rarely do officers consider whether they may have helped bring a delicate situation to a nonviolent end.

Kansas City implemented a program similar to Oakland's in August 1972. The major difference between the two was that in Kansas City, subject officers were selected on the basis of citizen complaints in addition to the arrest resistance criterion. Available data from the Kansas City program do not suggest a marked difference between those officers who were exposed to the program and those who were not. In addition, citizen complaints increased for both subject officers and peer review panel members.

The authors of a report evaluating the Kansas City program,<sup>9</sup> which was terminated in February 1976, surmise that the lack of distinction between officers who had been before the panel and a control group may have resulted from lack of opportunity for subject officers to participate fully in a change process. Panel members were permanently appointed and subject officers did not have an opportunity to serve on the panel. Furthermore, the implementation of the peer review program was not accompanied by any widespread changes in the department's approach to police-citizen conflict.

With respect to the increase in citizen complaints for subject officers, the authors speculate that panelists were perhaps not taken seriously because of their own extensive history of conflict with citizens. The increase in citizen complaints directed toward the panelists is not addressed in the report.



The psychological services unit of the Dallas Police Department is another example of an effort to develop a more positive approach for dealing with disciplinary problems. Officers who receive complaints that are sustained, who receive many complaints, or who exhibit improper behavior, may be referred by the chief or the commander of the internal affairs division to the psychological services unit. The unit then will conduct a "behavioral cause investigation," which may include a battery of tests and an interview with a psychologist. The results of the investigation are then sent to the chief and/or commander of the internal affairs division. In addition, persons may be self-referred or referred to the unit by their superiors. The purpose of the latter referrals is to head off potential problems.

A similar prevention service, a mental health program for police officers, has recently been implemented by the Portland Police Department. It provides psychiatric and psychological services (on an emergency basis if need be) for officers exhibiting a sustained pattern of unacceptable behavior. Also eligible are officers needing help in resolving various personal problems which directly result from the job or which might affect future job performance—e.g., stress, anxiety, family problems, alcohol abuse.

### *RETRAINING*

In most of the sample cities, there is either a formal or an informal system for "retraining" officers after incidents in which they violate department policy. The retraining courses vary considerably among departments, but in one unfortunate respect they are alike: They tend to be viewed by officers as a form of punishment.

Many departments refer officers to the firing range after incidents involving poor marksmanship, improper tactics, or unsafe use of a weapon. In Detroit, the program consists of a one-day course with about ten fellow miscreants, during which the Motorola "Shoot/Don't Shoot" film is shown and each officer's incident is recounted and dis-

cussed. In addition, an attorney gives a lecture on the civil and criminal implications of police firearms use, and the class members practice optional shooting with slides and plastic bullets.

In New York City, the training academy receives officers on a referral basis from the personnel bureau of the department. Counselors from the academy develop individual retraining programs (averaging three weeks in length) after initial diagnostic interviews. Officers involved in excess force or questionable shooting incidents are given a review of probable cause standards, the law of search and seizure, and the department's use-of-force policies. Department administrators estimate that few officers involved in shooting incidents are referred for extensive retraining and, of these, many are referred for improperly firing at dogs.

### *DISMISSAL*

There is no avoiding the occasional necessity of firing a police officer. Sometimes it just will not do to counsel, reprimand, suspend, or transfer an officer to some innocuous "dumping ground." However, for some good reasons—and some not so good—it is very hard to dismiss a police officer. Not only must there be notice, a statement of cause, and a process for appeal, but some civil service unions have, in the words of personnel expert O. Glenn Stahl, made "a fortress out of the removal process."<sup>10</sup>

An incident that occurred in 1975 in a California city illustrates the difficulty of dismissal as the punishment of last resort. An officer described by a department official as a "hotshot detective—Dick Tracy—completely engrossed in police work," who had been involved in several prior shooting incidents, was leaving a restaurant with his girlfriend when he spotted several persons trying to break into her car. As the officer approached and identified himself, the suspects ran, and he shot one in the shoulder. The victim turned out to be a six-foot-tall adolescent.

Because the shooting was in direct violation of the department's firearms policy (which requires that the sus-



pect have committed a felony and present an immediate danger), the chief recommended dismissal. The city manager, empowered by the city to do all hiring and firing, accepted the recommendation. The officer, however, demanded that the case go to arbitration, citing a clause in the employment contract; the chief arbiter ruled that dismissal was too severe a punishment. Temporary suspension, he wrote, would have sufficed. The city manager took the issue to court, where the firing was affirmed. The officer appealed to a higher court, which reinstated him.

This case is fairly typical of disputes over police discipline dealing with the use of force. Officers who challenge a department's right to dismiss them—whether to an independent arbiter, a civil service board, or a court—frequently win reinstatement. The officer often has the backing of the union and is often represented, at no personal cost, by the union lawyer. Police administrators, acutely aware of the protections accorded civil servants in general and police officers in particular, as well as of the power of the unions, find it easier to rely on such time-honored remedies as transfer or oral reprimand.

## *CONCLUSION*

The personnel practices and programs discussed in this chapter are founded on the assumption that certain officers are more prone than others to use unnecessary force, and that this tendency may occasionally extend to the use of firearms. The ultimate worth of violence-monitoring systems and similar programs depends on the validity of that premise. It is impossible to prove or disprove the assumption, but it is shared by nearly all the police administrators involved in this study.

The authors believe that this hypothesis is well worth testing. One method for doing so would be to follow the activity of a group of police officers over a period of several years, charting every assignment, arrest, violent incident, citizen complaint, and disciplinary entry on the officers' records. With these data, it would be possible not only to

determine the distribution of such incidents among a random group of officers, but also to correlate an officer's accumulation of negative entries with quality arrests, nature of the assignment, and other accomplishments.

Is violence the inevitable byproduct of good police work? Or are there some officers who succeed in making more quality arrests than their colleagues while using less force? Is there a way to identify the officer prone to use unjustified deadly force in advance of the incident? These questions cannot now be answered with certainty and merit further research and investigation.

#### Notes

1. Herbert E. Greenstone, "Liability of Police Officers for Misuse of Their Weapons," *Cleveland-Marshall L. Rev.* 408 (1967).

2. John Furcon, *et al.*, "A Longitudinal Study of Psychological Test Predictors and Assessments of Patrolman Field Performance," 1971.

3. In Uelmen's study, officers being surveyed who said that they would shoot in hypothetical situations with which they were presented were likely to be more educated, younger, and less experienced than those who said they would not shoot.

4. Thomas W. White and Peter B. Bloch, *Police Officer Height and Selected Aspects of Performance*, Police Foundation and the International Association of Chiefs of Police in cooperation with The Urban Institute (Washington, D.C.: Police Foundation, 1975); Peter B. Bloch and Deborah Anderson, *Policewomen on Patrol: Final Report* (Washington, D.C.: Police Foundation, 1974).

5. *The New York Times*, April 3, 1976.

6. "Report on Police Shootings," unpublished report presented to Dallas, Texas, Police Department, Southern Methodist University Law School, 1974. One problem regarding the SMU/Dallas study is worth noting: Officers with more than 15 days sick leave taken were eliminated from the study group even though such officers might very well be the ones likely to have been involved in one or more incidents.

7. In addition, there are jurisdictions such as Washington, D.C., where the local criminal code provides no misdemeanor offense of resisting arrest; officers may be hesitant to bring felony charges of assault on a police officer but may charge disorderly conduct (a misdemeanor) instead.



8. Hans J. Toch, Douglas Grant, and Raymond T. Galvin, *Agents of Change: A Study in Police Reform* (New York: John Wiley & Sons, 1975).
9. See Tony Pate, Jack W. McCullough, Robert A. Bowers, and Amy Ferrara, *Kansas City Peer Review Panel: An Evaluation Report* (Washington, D.C.: Police Foundation, 1976).
10. O. Glenn Stahl, *Public Personnel Administration* (New York: Harper & Row, 1971): 312.

## CHAPTER 5

### TRAINING

In the course of this study, police chiefs and administrators were asked what steps they would consider most likely to bring about a reduction in unnecessary shootings by police officers. The most common response was to recommend a tight firearms policy coupled with an effective training program.

The proposed remedy sounds attractive: First, commit a set of clear rules to paper; then teach officers to follow them. Unfortunately, as many police administrators are quick to acknowledge, training has limitations. It alone cannot change the immature, fast-tempered recruit into a reasonable, steady officer, nor the bigot into a humanitarian. However, training can be a first important step in communicating to recruits the expected norm of behavior.

At best, training can give recruits and their supervisors the skills and information they will require in order to perform their jobs acceptably. This means teaching not only mechanical skills, but also the laws, rules, and standards of performance that officers are expected to follow; the rationale behind the most important of the foregoing; established tactical routines for handling situations police officers frequently encounter; and, finally, the instructive errors of officers past and present.

In the seven sample cities, there were considerable differences in how the use of firearms and other force was



taught, but it was impossible to evaluate objectively the effectiveness of any particular approach. To illustrate the difficulty, in the city with the lowest rate of shootings, recruits were routinely put on the street with almost no firearms training at all. In another city, one with an unusually high rate of shootings, recruits were given many hours of instruction in all aspects of firearms use—written policy, tactics, marksmanship, care of the weapon, and the moral implications of taking a life.

Obviously, many factors other than training influence the rate of shootings within a department. Perhaps more than anywhere else in the report, in this chapter it was necessary to rely on subjective impressions as a guide to comparing and evaluating various departments' approaches.

The best training programs seem to be those which are thorough and consciously job related—those which teach not only *how* and *when* to shoot but *what to do instead*. Also, the more impressive curricula are those in which firearms and firearms policy training is spread among a number of courses, not set aside as a course unto itself, and those that attempt to build in peer pressure to reinforce techniques in a positive manner.

### *RECRUIT TRAINING: WHEN TO SHOOT*

In many small or unsophisticated police departments, firearms policy is one of several items covered during classroom breaks at the range. Recruits learn when to shoot at the same time they are instructed in firearms nomenclature, safety precautions, and weapon cleaning methods. The problem with this approach is that, inevitably, most of a recruit's attention will be focused on the firearm itself, especially if the recruit has never used one before.

Another pattern is to include a few brief remarks about the firearms policy during range training and to devote more time to the subject as part of a lecture course in basic criminal law.

Some departments have established separate one- or two-hour courses with titles such as "Legal Aspects of Firearms Training" or "When to Shoot—Legal and Moral Issues." These courses are given either in addition to or in place of the lecture at the range. If this is the only treatment of the subject, a department may convey the idea that firearms use is not a very important issue. It is possible, with such an approach, that recruits may come to think of the firearms policy as a mere set of words to be memorized, an impression that is not discouraged by the quizzes given at the end of some "When to Shoot" courses (see Appendix C, for example).

Still other departments give their police recruits weapons and put them on the street with virtually no training. According to firearms training experts at the International Association of Chiefs of Police (IACP), the National Rifle Association, and the National Association of State Directors of Law Enforcement Training, this is the common practice in many smaller rural jurisdictions. In Portland, until recently the department sometimes found it necessary to assign recruits to the field with an experienced partner after only a four-hour orientation and limited target practice. The recruit was not sent through the academy until there was a group large enough to justify forming a class.

The Chesapeake, Virginia, department operated with a similar system until the occurrence of two controversial shooting incidents involving untrained recruits. Now Chesapeake is hiring new officers in groups of at least five and immediately giving them a week of training: two days of orientation and three days at the range. Portland also has revised its practice and now hires in conjunction with the beginning of the statewide basic academy program. This practice insures at least seven weeks of training before recruits are assigned to the street.

Generally, the trend is toward more serious and more thorough training programs, and two factors seem to be responsible for this trend. The first is the threat of lawsuits. According to an IACP/Americans for Effective Law Enforce-



ment survey of misconduct litigation, a number of court decisions have held police chiefs personally liable for wrongful death when a citizen was shot by an officer who lacked proper training.<sup>1</sup> Another source of pressure is the various state law enforcement training and standards commissions, established to set minimum standards for police officers. In California and Florida, for example, such commissions are requiring that more attention be paid to the use of firearms during recruit and in-service training. The California Peace Officers Association has gone so far as to develop, with the help of individual police agencies, a model policy on the use of fatal force (see Appendix A).

Each of the seven sample cities had at least one separate course in its recruit training program devoted to the use of force. For example, in Indianapolis, the firearms policy is formally presented during a course on legal issues, but the subject also comes up frequently during daily free discussion periods. In Portland, the subject is stressed in a course called "Street Survival," and Kansas City has a four-hour course entitled "When Not to Shoot." In connection with the Birmingham department's recent decision to adopt a formal firearms policy, it has introduced a two-hour class devoted to the legal and moral aspects of firearms use, emphasizing restraint.

Two of the cities seem to make more of an effort than the others to integrate deadly force training into a number of courses. In both Washington, D.C., and Oakland, classes on marksmanship, criminal law, patrol techniques, officer safety, and domestic disturbances deal formally with the issue, but deadly force also is discussed informally. According to one recent Washington academy graduate, "By the end of training, they have the firearms policy coming out of your ears."

Sheer volume of instruction, however, is no compensation for a lackluster, plodding style. As former New Haven Police Chief James Ahern wrote in his book, *Police in Trouble*, "The policeman does need to know about criminal law, but he does not need it fed to him in a monotonous

stream from a lectern. He needs it taught in such a way that the provisions of it which he will have to use day in and day out have become a part of him before he leaves the police academy."<sup>2</sup>

A number of departments have developed courses which allow the officers to learn by doing. Field exercises and role-playing are devices commonly used to supplement classroom lectures, particularly in the handling of family arguments, public disorders, robberies-in-progress, and suspicious persons or vehicles. Exercises dealing with these situations generally stress the officer's own safety as much as the need for restraint in the use of firearms. A good example is Kansas City's "Hands-On" training, a series of exercises involving police personnel and citizen volunteers from nearby Independence, Missouri, and carried out in Independence's homes, businesses, taverns, supermarkets, and banks. Indianapolis offers its recruits a similar opportunity by using local business establishments as settings for field exercises.

Films and tapes also can be employed. Although a number of cities use commercially produced "Shoot/Don't Shoot" films, the director of New York City's training academy believes it is better for departments to develop their own training films, if possible, because of the lack of standard policies and procedures. Commercially produced films—even those using police officers as actors—frequently are based on laws or rules that differ from those of the department offering the training.

The New York City Police Department, the size of which makes it economical to follow the foregoing advice, has itself produced some impressive training films. One, set in a bank, depicts an armed robbery from the viewpoint of an off-duty officer coincidentally waiting to cash a check. The value of the film, a composite of several real incidents, is that it convincingly demonstrates the inadvisability, in some situations, of impulsive "heroic" action.<sup>3</sup>

In Oakland, recruits listen to tapes of the radio transmissions to and from the scene of real incidents, then



discuss how each incident was handled or might have been handled better. Several of the other sample-city departments also make use of real incidents in recruit training, and have for this purpose mechanisms to make sure that instructive or provocative incidents are communicated to training personnel.

In Kansas City, the head of internal affairs provides the academy with a synopsis of such incidents. At the New York City police firearms range, all shooting incidents are classified by circumstances (e.g., robberies, self-inflicted wounds, police vs. police encounters, traffic stops) to help instructors provide relevant training. Detroit has built a whole course from a compilation of incidents in which officers have lost their lives. The course is called "Learn and Live."

Some departments are reluctant to use real incidents, fearing that the real officers involved may be embarrassed or compromised. The question is whether the risk is outweighed by the need for a department, collectively, to learn from its mistakes.

### *PRACTICAL PISTOL COURSES*

Several of the leading experts in firearms training contend that officers who undergo an effective, comprehensive training program will be less likely to resort to a weapon out of panic. Unfortunately, in a number of cities, range facilities are inadequate or inaccessible. Even when the range is beyond criticism, the training offered may leave something to be desired. Teaching an officer to shoot under optimum weather conditions, during the daytime, from a variety of unnatural positions, and using sights, is simply not enough to prepare that officer for real-life incidents he or she may experience. Sometimes, also, too much of the training is devoted to the handling of unusual incidents, such as sniper attacks, and not enough to everyday police work and its risks.

In the seven sample cities, recruit firearms training generally consists of a one-week course at the range, including time spent in the classroom learning nomenclature, care

and cleaning of weapons, safety techniques and, perhaps, the department's firearms policy. Marksmanship training is widely based on such standardized courses as the Practical Pistol Course (PPC)<sup>4</sup> or the NBA National Pistol Course,<sup>5</sup> which train officers in the type of shooting likely to be required of them in a combat situation. Some departments also use more recently developed FBI training courses: the Close Combat Course or the Tactical Revolver Course, a variation of the PPC with additional firing positions (prone, barricaded, kneeling, point-shoulder, and hip-level) that are closer to the target.

Several departments include shooting under night conditions in their training programs. In Portland, for example, recruits are given a one-hour night firing course at the range, preceded by an hour lecture on night vision. Indianapolis recruits practice night firing with and without a flashlight, and in Birmingham, nighttime conditions are simulated by lowering the lights at the indoor range.

Some departments include "stress shooting" in the curriculum. In Birmingham, this training takes the form of rapid firing. In Indianapolis, trainees run a lap around the range before each round of shooting. Oakland puts trainees through a simulated hard chase before firing, more to demonstrate the likelihood of inaccuracy under such circumstances than to develop proficiency.

In addition to multiple-position ranges and surprise targets (friend or foe), the New York City Police Department has under construction at its outdoor range a simulated city street for staging stress shooting and other exercises. In Los Angeles, with the help of Law Enforcement Assistance Administration (LEAA) funds, recruits are confronted with a filmed 35mm. color-sound enactment of a potential shooting situation, projected onto a large, concave, cylindrical-section screen. An officer's ability to react, under stress, to various situations demanding police intervention is measured, recorded, and discussed.

Most of the cities require officers to requalify annually with their service weapons. For example, Birmingham tests



its officers twice a year, and Indianapolis three times a year. Yet it is worth noting that, although Detroit allows its officers to carry "second guns" or back-up weapons (and indications are that some officers do so in other cities despite regulations to the contrary), no effort is made to have officers qualify with these nonissued weapons.

As for shotguns, there is a wide range of use and training. In Washington, D.C., only officials with the rank of sergeant or above, and officers of the special operations division, are assigned shotguns. These officers are trained in the use of the shotgun and required to requalify annually. In Kansas City, recruits are trained but not required to qualify with the shotgun. In Birmingham, officers must qualify twice a year. In Indianapolis, officers are taught to fire a shotgun from the hip and practice by firing 25 rounds at clay pigeons (in skeet-shooting style), a practice introduced some years ago by FBI instructors to develop instinct shooting, target identification, and accuracy with moving targets.

Since Portland police began carrying shotguns in cars on a regular basis, all officers are trained in shotgun use and required to requalify annually at the range. In addition, precinct and division commanders are required to conduct shotgun training every three months for all assigned officers. Range training and proficiency testing are augmented by classroom exercises related to actual incidents.

### *FIELD TRAINING*

Even among recruits in the training academy, there is peer pressure to reject official policy—particularly any policy that threatens to turn an officer into a "social worker" or a "bleeding heart." Some street-wise instructors make it clear by facial expression or tone of voice, even as they teach the elements of department policy, that recruits will learn the *real* story later. Of course, some degree of conflict is inevitable between the values of the training academy and the rules of the street. But the conflict can be reduced if, first, the academy avoids teaching unrealistic or unat-

tainable standards of performance, and second, if the recruit, once out on the street, is assigned to work with peers and superiors who genuinely support the policies taught in the academy.

Several of the seven sample cities have established field training officer programs to help accomplish this objective. The concept is to pair every recruit with a specially selected and trained veteran officer. Under the training officer's supervision, the recruit is then required to perform certain tasks and to demonstrate familiarity with certain rules and procedures. The California Commission on Peace Officer Standards and Training (POST) has developed a checklist-type of field training guide that includes a number of items relating to officer safety and the use of deadly force.

### *IN-SERVICE AND ADVANCED OFFICER TRAINING*

All of the seven sample departments address the use of deadly force in some way during advanced officer training, typically one week required of all officers each year. The issue may be brought up in classroom discussions, or illustrated by the use of "Shoot/Don't Shoot" films or by field exercises in patrol procedures and safety techniques. In Detroit and Portland, officers engage in training exercises simulating barricaded-gunman and hostage situations.

In Oakland, an entire day of the week-long training is devoted to officer safety. Included are the tape presentations and discussions described earlier, as well as films and field exercises. The director of Oakland's training program is concerned about striking a balance between an officer's concern for personal safety and regard for the rights and well-being of others. "Officers need to learn to walk the line between a storm trooper and a superhumanistic cop," he says.

Most departments make an effort to use roll call time for in-service training. Sergeants or lieutenants read training bulletins to the assembled officers. In Detroit, a training bulletin on the use of deadly force is read once a month.



However, the quality of this kind of training is generally not very high. No one has the time nor the inclination to do much preparing for these sessions: thus the instructor may end up reading the bulletin word-for-word and with little feeling.

Oakland uses roll call sessions to publicize and discuss noteworthy incidents; after such an incident, a deputy chief will take a copy of the radio transmission tape and splice in a few editorial comments. The resulting tape will then be played at roll call for several days running. Not only is this procedure intended as a training technique, but it also helps curtail the circulation of erroneous stories concerning a particular incident.

In addition to their role in formal in-service training, sergeants and lieutenants have a continuing responsibility for "communicating department policies to those in their charge," as a New York City superior officers' training bulletin puts it. In practice, lower-level supervisors tend to be preoccupied with paperwork, and when they teach policy it is usually only after a flagrant violation. This situation can change only if sergeants and lieutenants are given specific training assignments in areas such as the use of force—for example, to conduct regular roll call discussions of how officers have handled violent or potentially violent incidents.

#### Notes

1. Americans for Effective Law Enforcement, Inc., *Survey of Police Misconduct Litigation, 1967-1971* (1974).
2. James Ahern, *Police in Trouble* (New York: Hawthorn, 1972): 199.
3. The NYPD training academy also has prepared an excellent instructional manual, "Avoiding Reflexive Response," intended to teach officers how to minimize risks to both police and civilians which are generated in armed encounters.
4. The FBI's PPC consists of a total of 50 rounds: 10 in 25 seconds at the 7-yard line; 5 rounds at 60 yards; 20 rounds at 50 yards; and 15 rounds at 25 yards. The last 40 rounds are to be fired within 5 minutes and 45 seconds. The FBI has developed a 10-round PPC

which allows the shooter to fire the course five times with the same amount of ammunition used in one 50-round course.

5. The NRA National Police Course consists of a total of 60 rounds: 12 in 25 seconds at the 7-yard line while kneeling; 18 rounds at 25 yards (within 90 seconds); 24 rounds at 50 yards (within 2 minutes, 45 seconds); and 6 rounds at 25 yards while in a standing position.



## CHAPTER 6

### USE OF FIREARMS BY NONUNIFORMED POLICE: PLAINCLOTHES AND OFF DUTY

#### *OFF-DUTY WEAPONS*

Many police agencies *require* their members to be armed while off duty and in the jurisdiction, on the proposition that a police officer must enforce the law 24 hours a day, 7 days a week.<sup>1</sup> Some departments, however, qualify this requirement. New Orleans, for example, permits its officers to remove their firearms "when engaged in recreation or activities where the carrying of such weapon would be impractical or dangerous." Although police officers are unlikely to carry their weapons when they go swimming, regardless of what a department says, a clause such as New Orleans' may be helpful in imparting credibility to department policy.

Kansas City is one department that has changed its rules in this area. Until 1973, the policy there not only required officers to keep their firearms "readily available at all times," but underscored the point by adding, "If an officer has need for a firearm while off-duty but is unarmed, he will be subject to disciplinary action." The new policy leaves the question to the officers' judgment, makes it clear that they will *not* be disciplined for failure to carry a weapon off duty, and finally offers this admonition:

When an officer anticipates that he will consume alcoholic beverages in an off-duty situation, he is advised not to carry his firearm. If the need arises for police services while an officer (off-duty) is visiting an establishment which serves liquor, the officer shall call the dispatcher and request that on-duty officers respond.

More recently, the Berkeley, California, Police Department considered adopting the Kansas City provisions verbatim, but decided instead on the following:

Officers shall not carry a firearm or be expected to take police action . . . when under the influence of alcohol as defined in Section 23126 of the California Vehicle Code, and/or other drugs.

Berkeley's version, in other words, permits an officer to consume a quantity of alcohol and still perform police duties. The off-duty officer carrying a firearm, like the citizen driving an automobile, is expected to know when he or she has passed the point of intoxication.

Some cities merely *permit* officers to carry their firearms off duty, without instructing them when they should or should not do so; and there seem to be few, if any, urban jurisdictions in which police officers are expressly *forbidden* to wear handguns except on active duty. Such a regulation would, in fact, run counter to the prevailing tendency of states to permit police officers to wear their weapons outside of the home jurisdiction (but within state boundaries).

There are several rationales for requiring, or at least encouraging, off-duty officers to carry weapons. Department administrators sometimes say that they base their regulations on statutes defining arrest powers which they view as obligatory; however, the reason most generally cited is community protection. Many off-duty shootings involve the interception of crimes that might otherwise have been completed. Such shootings doubtless reflect a large number of off-duty arrests that could not have been effected by unarmed officers. The culture and tradition of policing may also play a part in determining department practice. Fi-



nally, it is plausible that if police officers were known *not* to carry their guns off duty, there might be more deliberate attacks against them by persons they had arrested or otherwise offended.

If departments wish to make informed decisions about the advisability of requiring or not requiring off-duty weapons, the way to start is by identifying the basic factors underlying current practice: statutory provisions, community protection, tradition, or officer safety and evaluating their worth. If, for example, the principal reason for carrying weapons off duty is the possibility that a lower-visibility, off-duty officer might apprehend the perpetrator of a violent crime, and even perhaps prevent the crime from occurring, then the next step is to collect data on the number and quality of off-duty arrests for particular offenses.<sup>2</sup> If off-duty officers are making 15 percent of all arrests for armed robbery, presumably aided by their weapons, then they are providing a valuable service to the department and to the community at large. If, on the other hand, they are making insignificant numbers of quality arrests but constantly embroiling the department in controversial shootings, then the price being paid for the extension of law enforcement services may be too high.

Of the 320 shooting incidents in the seven cities reviewed in chapter 1, 17 percent involved off-duty personnel. In Detroit, which accounted for 38 percent of all shootings, more than 22 percent involved off-duty officers; while in Kansas City, only one incident out of 26 (4 percent) involved such officers. The reasons for these variations are not known. They may reflect residency requirements, crime rates, or a variety of other factors—some perhaps controllable, others not.

As long as officers carry weapons off duty, there will undoubtedly continue to be a category of off-duty incidents that police administrators might like to wish away—shootings that grow out of private disputes, not related to duty, often fueled by the consumption of alcohol. There are cases in which police officers shoot their spouses, their spouses'

lovers, themselves, or other persons who arouse their ire. There are accidental shootings that occur when children, friends, or the officers themselves mishandle their weapons. And there are cases in which off-duty officers taking police action are mistaken for criminal suspects and are shot by fellow officers, security guards, or store owners. From 1970 to 1973, for example, there were 15 cases in New York City of police shot by other officers.

It is impossible to say just how many of these potentially deadly mishaps should be tolerated in order to achieve the benefits of off-duty police protection. A breakdown of off-duty shootings in one of the seven sample cities may be instructive. Over an 18-month period in that particular jurisdiction, 27 persons were shot by off-duty police officers. Fifteen of these shooting victims were armed with guns; in addition, one had a "b.b." rifle, one a toy gun, one a knife, and one a beer bottle. The rest were not armed.

- Nine of the incidents involved officers witnessing robberies (one bank holdup, four holdups of bars or restaurants, one purse-snatching, and three robberies directed against the officers themselves).

- Another six incidents involved suspects in a range of serious felonies: two shootings, three burglaries, and one stabbing.

- Five incidents involved off-duty police officers' coming across persons wielding or pointing guns. In one case, a mentally disturbed subject pointed a toy gun through the officer's car window. In another, the officer was visiting a friend's house when, by the officer's testimony, he observed a person sitting at the dining table with a rifle in his hand. The weapon turned out to be a "b.b." rifle. Police investigators suspected that there might be more to the incident than the officer related, but they were unable to prove their suspicions and so accepted the shooting as justified.

- Two incidents involved auto theft, an offense that does not justify the use of deadly force according to local police policy. In one of these cases, the shooting was de-



scribed as accidental; in the other, the officer testified that the suspect had tried to run him down with the stolen car. In the latter case, the car was the officer's own and he had borrowed a neighbor's car (at roughly 1:00 A.M.) in order to search for the thieves off duty.

- Two incidents occurred at bars: one in which the officer stated he was attacked without provocation by members of a motorcycle gang, and one in which an officer tried to break up a fight and got into a shootout.

- One incident resulted when an officer, cut off in traffic, shouted "Why don't you learn how to drive?" and the driver of the offending vehicle proceeded to draw a gun.

- The final two incidents involved officers' personal lives. In one case, the officer shot a man he found with his girlfriend; in the other, a woman's estranged husband shot the officer first, and the officer returned the fire.

Although only a small number of the shootings in this group appear unwarranted, their occurrence nevertheless suggests that departments might profitably issue specific guidelines for off-duty police action. In each of the cities visited, there were cases in which off-duty officers became embroiled in violent confrontations growing out of unimportant disputes or infractions. A set of rules limiting off-duty action to situations involving serious crimes or a danger to life might reduce the number of shootings by off-duty personnel at little cost. Certainly, officers could be instructed to ignore minor traffic offenses and not to become involved in barroom fights. In addition, the officer's proficiency with a weapon carried off duty, if the weapon is not issued by the department, should be subject to periodic review.<sup>3</sup>

### *PLAINCLOTHES AND OLD-CLOTHES OFFICERS*

Several of the cities—notably Detroit, Kansas City, and Washington—have made extensive use of old-clothes patrol

and decoy units. It is almost inevitable that the performance of officers assigned to these units will be measured by volume of arrests. Old-clothes officers, after all, are not expected to write traffic tickets nor to provide social services nor, generally, to prevent crime from occurring in the first place. Their job is to apprehend criminals; police administrators should not be surprised, therefore, if members of old-clothes units account for a disproportionately large number of shootings of civilians. At the same time, however, these shootings should be carefully reviewed and monitored, as should all shootings, for signs of potential problems. There is a certain danger that, within the close atmosphere of plainclothes units, officers may develop a sense of elitism which distorts their perspective and causes them to adopt an indiscriminately aggressive style of policing. Unwarranted use of firearms can be a byproduct of this tendency and ultimately may result in community pressure to discontinue an otherwise productive police practice.

One way of coping with problems which can arise in plainclothes units has been demonstrated by the New York City Police Department which, with the help of a grant from LEAA, has developed procedures aimed at maintaining a tight grip on its old-clothes and anticrime squad, known as the street crimes unit. Applicants for assignment to this unit must pass through a screening process that includes a written application, an oral interview by a three-member board, and a check of the officer's record of arrests. Street supervision is at a ratio of one sergeant to three teams of two or three officers. Whenever a firearm is discharged by a member of the street crimes unit, the unit's commanding officer responds to the scene and conducts a personal investigation. Each day's arrest reports are reviewed by the commanding officer, and in some cases this officer's views on the quality of individual arrests are relayed to the officers responsible for those arrests.

### *THE PROBLEM OF MISTAKEN IDENTITY*

Plainclothes, old-clothes, and off-duty officers run a constant risk of being mistaken for criminals. When a



nonuniformed officer chases after a holdup suspect, gun in hand, he may be hard to distinguish from the suspect. Even perfectly innocent acts on the part of off-duty officers may attract suspicion if they fail to conceal their weapons adequately. Shootouts may occur between officers or groups of officers in which both sides assume they are faced off against armed criminals. The two examples which follow illustrate the problem:

### **WOMAN SLAIN IN GUN FIGHT BETWEEN OFF-DUTY OFFICERS**

A 24-year-old woman was fatally wounded early yesterday in the East New York Section of Brooklyn when caught in the crossfire between a Housing Authority officer and a Correction Department officer who were exchanging shots because of a dual case of mistaken identity, the police said. Both off-duty officers were wearing street clothes at the time.

The shooting started when the correction officer saw the housing patrolman standing gun in hand over a man and a woman and apparently mistook him for a robber. The woman had been arguing with the officer about trying to get her car out of a parking space.

The victim of the shooting was Maria Pellot of 749 Franklin D. Roosevelt Drive. She was killed in a parking area at Pitkin Avenue and Crescent Street as she stood near her car. She had been visiting friends in the area.

The two officers involved in the gun battle, in which nine shots were exchanged, were Housing Officer James Gibson, 31 years old, and Correction Officer Robert Johnson, 26. Detective John Britt, who was passing at the time—shortly before 1 A.M.—halted the shooting and disarmed the two men.

As Detective Britt later reported, the other officers were crouching behind cars when he approached.

He said that he had drawn his gun, and showing his police shield to Officer Gibson, asked him to stop shooting. But the officer kept firing. Detective Britt said that he then approached Officer Johnson and

persuaded him to cease shooting. Then he and Officer Johnson, shouting to Officer Gibson, convinced him that they were officers and got him to desist.

Mrs. Pellot was taken to Brookdale Hospital, where she died of a bullet wound in the stomach.

Officers Gibson and Johnson were questioned at the Sutter Avenue police station and released pending further investigation. An autopsy is to be performed on the woman, and a ballistic test will be made to determine whose weapon had fired the fatal shot. A loaded .25-caliber automatic was found at the scene of the shooting.

The incident started when Mrs. Pellot tried to get her car out of a parking space and found it was blocked by Officer Gibson's double-parked automobile.

Officer Gibson, who lives nearby, saw her and went to his apartment to get his car keys so that he could move his vehicle. When he returned, he saw Mrs. Pellot hitting his car with a pipe in frustration.

The officer tried to take the pipe from the woman. A passerby saw the struggle, went to Mrs. Pellot's aid and punched Officer Gibson in the face. The officer then drew his service revolver and said he was going to arrest them.

At this juncture, Officer Johnson—on a passing bus—saw Officer Gibson holding his gun over the man and Mrs. Pellot. Officer Johnson got off the bus and fired. The two men, unaware that the other was an officer, then started their gun battle. The pedestrian fled.<sup>4</sup>

## DEPUTY SHERIFF KILLED, 3 WOUNDED BY STRESS OFFICERS IN 'MIX-UP'

In a tragic case of mistaken identity, three Detroit police officers and five Wayne County sheriff's deputies engaged in an intense, five-minute gun-battle early today that left one deputy dead and three wounded.

The three Detroit STRESS patrolmen were not hurt, nor was the fifth deputy and a civilian at the scene of the 12:05 A.M. shoot-out at an apartment at Rochester and Wildemere on Detroit's near west side. All the lawmen were in plain clothes.

Mortally wounded was Deputy Henry C. Henderson, 33, of Detroit who died of a gunshot wound of



the abdomen at 1:05 A.M. in Receiving branch of Detroit General Hospital.

In critical condition in the same hospital is Deputy James L. Jenkins, 29, of Detroit, who underwent surgery for a bullet wound in the head.

Doctors said Jenkins had lost the sight of one eye and could lose the sight in the other.

Deputy Henry Duvall, 29, of Detroit, was admitted to the hospital with a leg wound. Deputy Aaron D. Vincent, 23, who is the tenant of the second-floor apartment at 3210 Rochester, in the West Chicago-Dexter area, was treated for a grazing gun wound of the head.

These four deputies were longtime friends who worked at the Wayne County Jail.

The fifth deputy, David E. Davis, is assigned to the Sheriff's Road Patrol.

The civilian in the apartment was identified as Richard Sain, 32, an orderly at Boulevard General Hospital, who lives in another apartment in the building.

Although top-ranking detectives of the Homicide Section were still trying to untangle the exact events of the shoot-out, Police Commissioner John F. Nichols and Sheriff William Lucas agreed that it was a "tragic mistake."

They said the deputies and Sain were gathered after work, as was often their custom, to play a social game of cards—whist—in Vincent's apartment when the STRESS officers arrived under the apparent misapprehension that something illegal was going on.

They said the STRESS officers, in a cruiser on Wildemere, had seen one of the deputies enter the apartment from an outside stairway with a gun and a holster in his hand after parking his car in a well lighted parking lot next to the building.

They said two of the STRESS officers—joined by the third after the shooting started—climbed the stairway to a second-floor porch where the door to the apartment was ajar.

They said one of the STRESS officers said he poked his badge through the door and announced he was an officer. The deputies able to talk to detectives after the incident said they thought what they saw was the flash of a gun barrel, not a badge.

Nichols and Lucas said each side "sincerely believes" that the other started shooting first.

More than two dozen shots were reported fired in the shoot-out that followed, the STRESS officers apparently firing through a window and the door and the deputies firing while crouched behind overturned furniture...<sup>5</sup>

There is no way to stop all such incidents from ever taking place. After examining a number of mistaken identity situations in different cities, however, certain common factors emerge. The worst confrontations tend to involve overlapping law enforcement agencies—e.g., municipal, transit, and housing police, and sheriff's deputies. Often the situations are precipitated by an officer's failing to keep the off-duty weapon concealed, carrying a weapon while intoxicated, drawing the weapon without good reason, or turning a personal dispute into an occasion for police action.

It is at least plausible that strict standards for the care and use of weapons by plainclothes and off-duty officers, coupled with an effort to reduce the number of overlapping agencies operating in any one area (or to make certain that members of such agencies can identify one another by sight), could prevent some shootouts between law enforcement officers and some of the tragedies that inevitably result.

#### *Notes*

1. Such regulations may be a reflection of statutory requirements. As an example, the D. C. Code in Title IV, Section 143 states, "If any member of the police force shall neglect making any arrest for an offense against the laws of the United States committed in his presence, he shall be deemed guilty of a misdemeanor and shall be punishable by imprisonment . . . not exceeding two years or by a fine not exceeding \$500. . . ."

2. Arrests should be looked at not only in terms of absolute numbers, but also in terms of their effect on the closure rate for certain serious offenses such as armed robberies.

3. In Washington, D.C., for example, before a member of the police department can be authorized to wear an off-duty, nonissued revolver and holster, the weapon and holster must be taken to the pistol range to be approved by the range officer or assistant. In addition, the officer seeking authorization must demonstrate proficiency in handling the nonissued weapon. During annual



revolver qualifications, officers with approved nonissued weapons must qualify with both the service revolver and the off-duty weapon. If an officer is required to turn in the service revolver for any reason, authorization to wear an off-duty weapon is automatically rescinded until the service weapon is returned.

4. *The New York Times*, December 23, 1974.

5. *The Detroit News*, March 9, 1972.

## CHAPTER 7

### RECOMMENDATIONS

It is clear that many factors affect when and in what circumstances police officers use their firearms. This study has relied upon a review of the literature, field visits, interviews, and analyses of shooting incidents to identify factors that should be taken into account when police departments want to make changes aimed at preventing needless shootings without increasing the risk to officers. The study has tried to identify patterns of conduct or questionable practices subject to control and susceptible of modification. It has also tried to identify departments that have attempted to deal with these problems by enforcing rational firearms policies, implementing more effective selection and training programs, and exercising greater accountability and control.

The individual recommendations highlighted in this chapter—in addition to those made throughout the report—should be considered as steps in a process to develop and implement a comprehensive set of policies and procedures to deal with this important issue. These recommendations are based on common sense, informed judgments, good management practices, and the experiences of departments that have had at least initial success in reducing the number of shootings by their officers. They are not proven remedies, but are put forth as suggestions for influencing shooting



rates. Departments adopting these recommendations should document the effects and share their experiences.

## *POLICY DEVELOPMENT*

Generally, police officers do not question regulations that require them to keep their shoes shined, but they may very well chafe, citing concern for personal safety, at what they feel are unnecessary restrictions on their authority to use their weapons. Department policy revision resulting in further restriction can exaggerate this concern, and in the end the policy is circumvented or ignored. One way of dealing with this problem is to include representatives from a number of department levels, particularly line officers, in the policy formulation or revision process. Many police departments have experimented with the use of work groups or task forces to develop new rules and regulations, including those governing the use of force.<sup>1</sup> Some experiments with these mechanisms have been more successful than others, yet there is ample precedent for involving those individuals most directly affected by a policy in its evolution.

Information from other sources is likely to result in an even more balanced product—a policy that is acceptable to the community as well as the police department. We tend to agree with Uelmen, who suggests that

[T]he expertise of police administrators must be supplemented with . . . the caution of an attorney's advice as to legal implications, the sensitivity of elected officials, the reactions of other components in the criminal justice system and some means of citizen participation. In addition, the policies of neighboring police departments should be considered. If police policy is perceived as being nothing more than the dictates of individual police administrators, the public confidence so vital to the successful operation of police agencies will be undermined.<sup>2</sup>

On a cautionary note, department administrators embarking upon policy or program revision with a goal of

reducing shootings by police officers must recognize, as Hans Toch and others have observed, that it can be dysfunctional to emphasize simultaneously the ideas of violence reduction and stringent or overly aggressive law enforcement. "[T]he officer instructed to maximize arrests and minimize violence receives a double message."<sup>3</sup> Officers may feel that they are being asked to perform community service and break heads at the same time. Although department administrators obviously would be remiss if they *de-emphasized* arrests at the expense of public safety and officer safety, a balance in emphasis must be attempted. Changes in policy and procedures must be perceived as compatible with other goals and objectives of the individual department, if they are to be accepted and observed.

The process of developing, implementing, and enforcing a firearms policy and supporting regulations should also include provisions for periodic review and evaluation of the new program to see if it is meeting predetermined objectives and if any negative results (e.g., lowered morale, job dissatisfaction) have accompanied administrative action.

### *POLICY STRUCTURE AND SUBSTANCE*

The felony-misdemeanor distinction is no longer (if it ever was) a reasonable basis for deciding when to use deadly force; in fact, the trend in most large cities seems to be toward limiting the use of deadly force to situations involving self-defense, the defense of others, and the apprehension of suspects in violent or potentially deadly felonies. Most such firearms policies go on to enumerate situations in which even this narrow category of felons should not be fired upon: when, for example, the suspect is a juvenile, is driving an automobile, or is known to the police and can be apprehended later.

Although clearly preferable to the simple fleeing-felon rule, this violent-felony formula also has its drawbacks. It makes no distinction between the suspect who stabs a friend in a drunken quarrel—perhaps a first and only offense—and the mass murderer or confirmed armed robber, or between a



suspect just fleeing the scene of a crime and one wanted for an offense committed long ago. The officer acting under an apprehension policy may be called on to make extremely difficult split-second judgments: Could the crime committed have resulted in death or serious injury? Is the suspect an adult or a juvenile? Do the police have sufficient information to apprehend the suspect at another time if the suspect is allowed to escape now?

A few departments have adopted firearms policies that authorize deadly force *only* in self-defense or in the defense of another. Such a policy has the advantage of simplicity, requiring few elaborations or exceptions and is, in essence, the policy which guides members of the FBI. Other law enforcement administrators object to so narrow a rule on the grounds that it could potentially help armed and dangerous suspects avoid arrest and, further, that it could endanger police officers trying to arrest such subjects by requiring that the officers hold their fire until directly threatened or attacked.

#### *A WRITTEN FIREARMS POLICY BASED ON DANGER*

The differences in firearms policies from city to city reflect some honest differences of opinion and philosophy as well as a wide range of statutory variations. Although no one can say that there is any objectively "correct" policy, examination of dozens of specimens from all over the country leads to the conclusion that a policy based on the dangerousness of a suspect confronted by police is preferable to one based on the nature of the original offense. The two factors are obviously related, but a policy based on danger can be clearer and more concise, can exclude many questionable shootings, and need not require an officer to attempt so elaborate an evaluation of the facts before deciding whether to shoot.

Departments wishing to consider a change in firearms policy will undoubtedly want to research the range of

existing policies (many are discussed or summarized in this report), and may also want to examine some proposed "model" policies, such as that drafted by the California Peace Officers Association (see Appendix A).

*Basic Policy.* It is not our purpose to recommend that all departments adopt a common firearms policy, or indeed, that all departments discard their current policies. It does appear, however, that departments would do well to review their policies for content and clarity, and not wait until an embarrassing or tragic incident exposes the policy's inadequacies. For departments with current policies that are outmoded, confusing, or otherwise in need of revision, there is an alternative that, in substance, says the following:

An officer may use deadly force:

I. To defend himself or herself, or another person, from what the officer reasonably perceives as an immediate threat of death or serious injury, when there is no apparent alternative.

II. To apprehend an armed and dangerous subject, when alternative means of apprehension would involve a substantial risk of death or serious injury, and when the safety of innocent bystanders will not be additionally jeopardized by the officer's actions.

Perhaps within the policy order itself or in a supplemental regulation stressed during training, departments should provide at least the following elaboration on the basic policy:

Officers who use their firearms under the provision of section I above, will not be "second-guessed" or found at fault merely because of facts about a suspect which come to light after an incident occurs. An officer's reasonable belief that deadly force is necessary in order to guard against a threat of death or serious injury will be the only factor taken into account in reviewing such shooting incidents.

A greater burden of proof may be placed on officers who use their firearms under section II. Firing in circumstances when an officer's aim is



likely to be unreliable (e.g., from or at a moving vehicle, or from a location in which one's view is obscured) will be prohibited as involving a danger to innocent bystanders.

The principal factors which could make an armed subject so dangerous as to justify the use of deadly force under section II would be the following:

- (1) The subject has recently shot, shot at, killed, or attempted to kill someone, or has done so more than once in the past;
- (2) The subject has recently committed a serious assault on a law enforcement officer acting in the line of duty;
- (3) The subject has declared that he will kill, if necessary, to avoid arrest.

The subject must also be armed and appear to be capable of inflicting death or serious injury. Obviously, any person armed with a gun fits this description, unless the gun is known to be inoperable. The dangerousness of a person armed with a knife, axe, or similar weapon will depend on the feasibility of isolating the suspect and on his or her proximity to other persons. It should generally be assumed that someone armed with a lesser weapon *can* be apprehended without "substantial risk of death or serious injury"; thus, deadly force will not be used, ordinarily, against such a person except to defend against an "immediate threat" as described in section I.

An officer must know, rather than merely believe, that a subject is armed, but it may be assumed that a subject is armed if he has just committed a crime involving the use of a weapon, or has just been observed carrying a weapon, and there is no affirmative evidence indicating that he has discarded the weapon.

Although section II will most often apply in situations involving barricaded criminals or close confrontations between police and suspect, the use of deadly force is authorized against fleeing suspects if all the conditions

stated above are met and the suspect is so dangerous that any future attempt at apprehension is likely to involve a substantial risk of death or serious injury to police or civilians.

The firearms policy described here is not free of all ambiguities, nor will police officers operating under such a policy have no difficult decisions to make. However, the ambiguities of the basic policy and the decisions it leaves to the officer focus on immediate issues—whether a subject is armed, whether the arrest can be effected without the use of deadly force, and whether allowing the suspect to escape would endanger others—rather than on peripheral questions, such as whether a felony has been committed and whether the suspect is an adult or a juvenile.

*Additional Elements.* Reducing a policy to the simplest terms should not preclude some explanation of the department's intent from appearing in the written policy or in supporting regulations. It is important to address clearly certain specific circumstances such as juvenile suspects, moving vehicles, warning shots, drawing and displaying firearms, the use of shotguns and long guns, interjurisdictional flight, deployment of officers under military (or other unusual) conditions, and use of weapons as a method of crowd dispersal or breaking into a building. Efforts to address these issues should explain the rationale for prohibiting shooting, if that is the case, and should recommend other ways to handle the situation. For example, the following provisions might be appropriate:

*Juveniles: The provisions of a firearms policy based on danger are not intended to distinguish between adults and juveniles. Only to the extent that age (and the related factors of size and strength) influences the capacity of inflicting death or serious injury is it to be considered.*

A policy based on danger provides a way of dealing fairly with situations involving juveniles. Given the increasing involvement of persons under the age of 18 in all crimes, including street offenses likely to bring them to police attention, it is important to adopt a policy dealing realisti-



cally with this problem. As J. G. Safer points out, "Community resentment may more readily be aroused in the one case (juveniles) than the other (adults), particularly so, because the offenses for which young people may be convicted often have less onerous consequences for the offenders than if they were adults."<sup>4</sup>

If the policy does not differentiate between adults and juveniles in the use of deadly force but is based simply on the danger of the immediate situation, then officers will not be forced to play guessing games about age and will be in a far more defensible posture following the incident. In the end, police may be less likely to fire at juveniles than before because the policy (as postulated here) virtually precludes shooting persons in flight. Incidents reviewed or read about in other studies indicate that a great many juveniles are shot while running away from the scene or from police officers.

*Moving vehicles: Discharging a firearm from or at a moving vehicle should be prohibited unless the occupants of the other vehicle are using deadly force against the officer by means other than the vehicle.*

Shots from or at moving vehicles are generally ineffective and are risky to bystanders and to fellow officers. Officers should be encouraged, instead, to get out of the path of the vehicle and to call for assistance.

*Warning shots: Warning shots should not be allowed under any circumstances.*

Warning shots present a risk to innocent bystanders and to fellow officers. Furthermore, their prohibition prevents officers who fire their weapons under unauthorized conditions from falling back on the excuse that they were merely firing warning shots.

*Drawing and display of firearms: An officer should be allowed to draw or to display (point) a weapon only if there is reason to fear for personal safety or the safety of others.*

Pointing a gun can be considered an act of violence in itself, and therefore should be subject to some restrictions. Departments should take a middle course, permitting an

officer to draw or display a weapon only if, as the Dallas policy puts it, there is "reason to fear for his own personal safety and/or the safety of others." This clause would cover such situations as searching a building for a burglar, arriving at the scene of a possible robbery-in-progress, and checking out a suspicious automobile or a person suspected of carrying a weapon.

*Shotguns and long guns:* Department policy and regulations should make clear in what circumstances shotguns and long guns (rifles) are to be taken on assignment and who is authorized to use them.

*Other circumstances:* The preceding sections contain fairly specific recommendations about a number of elements that should be covered in a police department's firearms policy. Other circumstances, such as interjurisdictional flight, deployment of officers under military conditions, use of weapons to disperse crowds or break into a building, should be included as well. There are no specific recommendations here as to their form or substance; few, if any, such incidents were among those reviewed, and most of the policies surveyed provided very little guidance in these areas.

*Standards for Off-Duty Conduct.* Standards for the use of deadly force should be and are the same whether an officer is on duty or off duty. What should be different are the factors motivating an officer to take police action in the first place. Off-duty officers should avoid becoming involved in minor traffic incidents or fights, and should be wary of using their police office to try to adjudicate disputes to which they themselves are party. These are rules of thumb for most experienced, intelligent police officers; however, a pattern of questionable off-duty shootings in almost all of the seven sample cities suggests that departments could profit by issuing formal written guidelines for off-duty law enforcement, perhaps limiting action to incidents involving serious crimes or danger to self or others.

Such guidelines should also incorporate rules for carrying weapons while off duty. Because crime patterns and



residency requirements differ from city to city, it is not feasible to set forth a guideline here that can be recommended as appropriate in all situations. Each city has to examine the quality and quantity of off-duty service being provided in order to decide whether officers should be *required* to carry a weapon off duty, be given the *choice* of when and whether to do so, or be directed *not* to carry a weapon under specified circumstances. However, all police departments would do well to recommend against or to prohibit the carrying of weapons by officers when they anticipate consuming alcohol. In addition, when weapons carried off duty are not department issue, officers should be required to qualify regularly with those weapons at the range.

*Conclusion.* Whatever its content, it is important that the basic firearms policy be relatively brief and written in clear, straightforward language so that it can be easily understood. When this is the case, training becomes the appropriate and necessary vehicle for interpreting and demonstrating the policy's provisions. All related elements of the policy should appear, however, in a single document that can be revised as needed, rather than amended by the issuance of countermanding orders.

## **POLICY IMPLEMENTATION**

While it is generally agreed that a major vehicle for policy implementation is adequate training, certain personnel procedures need to be considered in revising and improving a department's approach to the use of firearms. Although current selection procedures are imperfect at best, police administrators should try to use the best means available (e.g., psychological tests, interviews) to screen out candidates with a propensity for violence or instability and should take maximum advantage of the probationary period for eliminating unsuitable recruits.

### *Realistic Firearms Training*

Policies are most effectively implemented when it is apparent that they have the full support of the department's administrators. While training is the most obvious vehicle for communicating unequivocal support for a department's written firearms policy, it is important that the policy not be taught by requiring officers to memorize it word-for-word. Instead, the elements of the policy should be related to real incidents or composites of real incidents; trainers should review incidents as they occur and work them into the curriculum as lessons to be learned. In addition, training should do more than tell an officer *when* he or she may shoot; it should present reasonable alternatives to shooting and thus encourage restraint.

Our observations suggest that the more successful programs are those incorporating firearms policy training into a number of courses in the recruit curriculum—especially those involving problem-solving and field exercises—rather than making the firearms policy a course unto itself.

At the completion of training, officers should be required to demonstrate in both written exercises and simulated situations their assimilation of the policy and their proficiency in handling a weapon, in addition to marksmanship scores. Taught in this way, the policy is more likely to be viewed as a standard for actual conduct, not as a standard for justifying conduct after the fact.

Annual requalifications with department-issued weapons (and private weapons if authorized for off-duty use) should be required, and any officer authorized to use a shotgun should also be required regularly to demonstrate proficiency with that weapon.

### *Personnel Practices*

An understanding of and conformity with the department's firearms policy should be factors in performance evaluation and promotion. Certainly the policy and related procedures are legitimate subject matter for promotional examinations and oral interviews.



## *POLICY ENFORCEMENT*

The commitment of police administrators to the enforcement of a policy is most visibly demonstrated by the way shooting incidents are investigated and officers involved in unauthorized shootings are disciplined. That commitment also is reflected in continuing efforts to identify members of the force who are involved repeatedly in such incidents and in the follow-up action taken in those instances.

### *Investigation and Review Procedures*

Police departments can take a variety of administrative routes in investigating and reviewing incidents in which officers use their firearms. Virtually any approach will work if top officials make sure such investigations are conducted thoroughly and impartially. Still, some systems are more likely than others to lead to error or manipulation. An example of a system calculated to minimize these risks would have the following elements:

*Reporting.* Officers would be required to report immediately to the radio dispatcher or another single designated office all discharges other than approved test firing or target practice.

*Investigation.* Officers involved in shooting or discharge incidents, and all other witnesses, would be interviewed swiftly and separately. The interviews would be conducted jointly by a superior of at least the rank of lieutenant and a detective from internal affairs or homicide not acquainted with the officer involved. The subsequent investigation would be conducted by the officer's unit command, with a parallel investigation by the homicide squad when a serious injury, likely to become fatal, has resulted. The internal affairs unit should monitor these investigations to guarantee their integrity.

*Review.* A firearms review board should be convened to consider each case. The board would be composed of several rotating department officials, a representative from the training academy, and one or more members of the same

rank as the officer under review. The board should be empowered to summon officers, supervisors, and investigators as witnesses; and should be able to invite, if not subpoena, civilian witnesses. It should also be able to launch its own inquiry, at its discretion, using internal affairs or other designated investigative personnel.

*Recommendations and Adjudication.* The board should recommend to the chief for review and final approval a finding—whether the shooting or discharge was in accord with department policy—and, if appropriate, a penalty.

Conclusions should be incorporated into recruit and in-service training when the board feels that others are likely to repeat an error in judgment or tactics. In addition, departments should publish results of disciplinary procedures in their annual reports.

### *Discipline in Unjustified Shootings and Discharges*

It is hard to generalize about the forms of discipline appropriate when police officers misuse their firearms, but no area of misconduct should be regarded more seriously. If officers can lose their jobs for taking a bribe, they should certainly be able to lose their jobs for shooting at someone in defiance of department policy.

But what if an officer makes an honest mistake while acting in good faith? If the mistake is a reasonable one any officer might have made, then no discipline is called for. If the mistake is unreasonable, the department must decide if it was an isolated mistake that is unlikely to recur. If so, the officer should be disciplined or counseled. If it appears to be yet another example of unacceptable behavior, then the officer should be removed from hazardous duty or dismissed. Whatever discipline is imposed, it is important that it not only relate to the nature of the firearms policy violation, but also be in proportion to the discipline called for in situations of similar gravity.



### *Monitoring Violence-Prone Officers*

In view of the imperfect nature of the available selection practices and the limited duration of many probationary periods, departments should have some form of management information system which identifies both problem officers and supervisory defects that appear to foster unnecessary violence. Certainly, every large-city police department should establish a system for identifying officers who are unstable or inclined to use unwarranted force. The ingredients of such a system might include a record of citizen complaints; a record of incidents in which officers or citizens are injured; arrest reports covering charges of resisting arrest, assault on a police officer, disorderly conduct, or comparable offenses; reports of shootings and discharges; disciplinary reports; assignment history; and supervisory evaluations.<sup>5</sup> As much as possible, these records should be gathered and maintained through a centralized office, so that their accuracy will not depend on the cooperation of lower-level supervisors or the officers themselves. In addition to developing a management information system, departments should train supervisory personnel to identify real or potential problems and to refer officers for appropriate assistance.

It is not enough, of course, merely to identify problem officers. Some positive action has to be taken, whether it is to counsel the officers, invite them before a peer review panel, put them through a program of retraining, or reassign them to less hazardous duty. The relative merits of these (and other) remedies are extremely difficult to measure, but any action which has the effect of making the officers aware that their conduct is under scrutiny may be desirable on that score alone.

Not all attention given to the officer who shoots should, by any means, be negative. Officers who have been involved in shooting incidents, whether justified or not, often need supportive counseling or other therapeutic intervention to deal with an array of feelings. Police departments should

also make available similar services to officers who have been shot or whose partners have been shot.

### *DATA COLLECTION AND RESEARCH*

One of the more important results of this study has been the identification of data needs for department use and for further research. The lack of systematic, centralized data collection in many departments inhibits the rational development of new policies, training programs, and enforcement procedures. Yet, department administrators need information about the nature of shooting incidents occurring in their jurisdictions to make judgments about off-duty regulations and to develop relevant training programs. They need information about officers who repeatedly become involved in shooting incidents in order to assess the appropriateness of personnel policies and training. Also, while information about local conditions is necessary to develop policies and procedures in harmony with individual community needs, informed decision-making requires a wider frame of reference than that offered by one particular department's experience.

A reliable, national-level source of information about police-citizen shooting incidents is necessary so that states, cities, and police departments can review and objectively evaluate their laws, policies, and procedures affecting police use of deadly force. The experience of other communities is helpful in guiding the development of new firearms policies and regulations and in overcoming initial resistance, which can arise when new, more restrictive measures are put into effect. When such resistance occurs, the chief can point to successful implementation of similar measures elsewhere.

It is therefore recommended that the FBI or another designated federal agency compile and make available figures on shootings of citizens by police officers, as well as shootings of police officers by citizens. These figures should be tabulated by city, by circumstances, and by characteristics of the parties involved. Obviously, the maintenance of aggregate data requires that individual departments keep



accurate internal records and use standard classifications and terminology.

### *Using the Data*

The existence of standardized data will allow studies to be undertaken for the benefit of individual departments and, if collected at the national level, for the purpose of making more extensive inquiries into various aspects of the subject.

*Studies for the Benefit of Local Departments. Analysis of harmless discharges or shots which did not take effect.*

Some departments scrutinize discharges far more carefully than shots that take effect, presumably because the environment of the incident is less volatile and a lesson may be learned without the glare of controversy. Other departments ignore discharges, despite the fact that many may be the result of unauthorized shootings by officers who are unskilled or unlucky.

In addition to monitoring discharge incidents for purposes of determining whether officers are abiding by policy requirements, it is recommended that departments analyze incidents in which firearms were discharged without hitting anyone to determine if these incidents differ in any significant way from those in which shots took effect. The results will enable police administrators to evaluate the effectiveness of both training programs and monitoring procedures.

*Analysis of characteristics of officers involved in shooting incidents.*

It is unknown whether officers involved in shooting incidents differ from those who do not become involved—and if so, in what way. Furthermore, the results of one study suggest that involvement in a shooting incident is not predictive of future involvement—that there may not be “shooting-prone” or “violence-prone” officers. The views of many experienced department administrators and the results of recent efforts to monitor Detroit police officers (see Appendix B) tend to contradict this finding, leaving the matter an open issue.

One approach to these unanswered questions might begin with the comparison of a high-incident group of officers with a control group of officers who had not previously been involved in shootings, to determine if there are any substantial differences in characteristics (e.g., age, race, educational level, length of service, etc.). Criteria for selecting high-incident officers might go beyond involvement in shooting incidents;<sup>6</sup> they could include, for example, complaints of unreasonable force from citizens and records of arrests an officer made for "resistance" or assault. An attempt should be made to select control group members whose assignment and duty status match those of the high-incident group.

Once characteristics distinguishing high-incident officers are identified, studies can be undertaken to determine if such characteristics have any predictive value. Data needs for the proposed studies would probably require the existence of a management information system, tying in personnel with internal affairs records to produce a profile of each officer. Results of these studies could be used to evaluate and improve selection and training procedures and to guide supervisory personnel.

*Analysis of characteristics of shooting incidents (location, time of day, nature of precipitating offense, characteristics of victims, presence of weapons, justification offered).* One particular aspect of this inquiry—the dynamics of the incident—has far-reaching implications for administrative action. Were there verbal threats or warnings by the subject or the officer? How extensive was the interchange? To what degree did it serve to escalate the situation? In retrospect, do there seem to have been alternatives to the action taken? These routinely unanswered questions point to an important area for further research. Inquiry could well extend to serious injuries to police and civilians, in addition to fatal and nonfatal shootings, giving a broader picture of police-civilian interaction. Note should be taken of the studies by Chapman and others on officer safety and assaults on police. Data generated in this undertaking can provide the basis



for any number of research efforts to identify contributory factors and to suggest remedial action that may be required in a variety of areas including assignment, deployment, dispatching and communications procedures, and supervisory practices. The results would be especially valuable in efforts to make crisis intervention and officer safety training more relevant.

*Inquiry into the impact of opportunity for police-citizen interaction on shooting incidents.* The number of police on the street, the number of calls for service, the number and nature of dispatches (including types of incidents and stage at which police intervention occurs), and the number of arrests represent possible measurements of opportunities for conflict between police and citizens that could escalate into shootings. A department can use this information to assess its shooting rate in relation to the nature and level of everyday activity. For example, the administrator of a department with a high concentration of manpower on the street, with many calls for the types of incidents past experience has shown to be more likely to result in shootings, and with high arrest rates can quite reasonably develop an expectation regarding the use of firearms that is somewhat different from that of an administrator in a department in which these conditions do not exist. The former is also alerted to the need to give special attention to the problem.

Other factors which relate to the degree of exposure include workload, assignment and deployment of officers, and response time. Because reduction of response time has become a major objective for many police administrators, it becomes important to anticipate the potential impact of a substantial reduction in response time on shooting rates (i.e., chances of violence occurring could increase if police began routinely arriving while criminal activity was still taking place) and to tailor training programs and supervisory techniques accordingly.

*Longitudinal studies.* Consistent and comprehensive data collection is absolutely essential to any study of shoot-

ing rates in one or more cities over time. A very important research contribution can be made by examining the effects of administrative action—by looking at a department over a number of years to see if it is experiencing any success in reducing the number of shooting incidents and if the implementation of any particular policy or program can be related to the reduction of such incidents or to a change in the nature of those which do occur.

*Special Studies Comparing Jurisdictions.* The existence of aggregate data from a number of cities would allow the studies recommended for the benefit of individual departments to be carried out in greater depth. However, additional studies can be undertaken only if standardized data from a number of jurisdictions have been collected—studies which, for example, compare cities with high, moderate, and low shooting rates in an attempt to isolate factors influencing these rates. While studies undertaken in individual departments with local data conceivably can demonstrate the impact of particular policies and procedures on the shooting rate of one jurisdiction, there appear to be great differences in shooting rates in cities with apparently similar policies and procedures. The collection of data from a number of jurisdictions for purposes of comparison might enable future researchers to suggest explanations for these differences; if so, this information then could be translated into recommendations for department administrators.

It is important to recognize that in both longitudinal and comparative studies, a number of complex variables must be taken into account. Such variables include the cultural and demographic characteristics of city populations and police personnel; public attitudes toward crime and violence, and expectations about police efforts to reduce them; crime and arrest rates, the availability of firearms;<sup>7</sup> the style of department administration; the strength of police unions; shooting policies and review and adjudication procedures; and the occurrence or nonoccurrence during the study period, of events such as riots, which might have a marked effect on relationships between police and citizens.



The foregoing research recommendations have been based upon the existence of systematically collected data, on both the local and national level. Ideally, in-depth studies should also take the form of parallel investigations, using additional data sources such as interviews of department investigators, newspaper files, coroner and medical examiner reports, and hospital emergency room records. Such information would be helpful in augmenting official reports and could serve to a greater extent as a barometer of community reaction, measuring the impact of particular types of shootings.

#### *APPLICATION OF RECOMMENDATIONS TO PRIVATE SECURITY NEEDS*

Finally, local officials responsible for regulating private security agencies should give some consideration to these recommendations, especially those dealing with training. The private security business now employs at least as many individuals as public law enforcement agencies do. Private agencies are being asked to provide security day and night in apartment buildings, business establishments, hospitals, schools, government buildings, and a variety of other busy public and private places. Many private security officers carry weapons, but few are trained in their use; still fewer, if any, have undergone the more sophisticated forms of training in simulated situations advocated here for police officers. These recommendations can be useful for this rapidly growing segment of the private sector, as well as for the public law enforcement agencies.<sup>8</sup>

#### *Notes*

1. Boston, Cincinnati, Dayton, Louisville, and Kansas City are among the growing number of departments using task forces and work groups in the formulation of policy or regulations. See also Hans Toch, et al., *Agents of Change: A Study in Police Reform* (New York: John Wiley & Sons, 1975), and Weisbord, Lam, and Drexler, *Improving Police Department Management Through Problem-Solving Task Forces: A Case Study in Organization Development* (Reading, Mass.: Addison-Wesley, 1974).

2. Gerald F. Uelman, "Varieties of Police Policy: A Study of Police Policy Regarding the Use of Deadly Force in Los Angeles County," 6 *Loyola of Los Angeles L. Rev.* 15 (1973).
3. Hans Toch, *Peacekeeping: Police, Prisons, and Violence*. (Lexington, Mass.: Lexington Books, forthcoming.)
4. J. G. Safer, "Deadly Weapons in the Hands of Police On Duty and Off Duty," *The Journal of Urban Law* 49 (Fall 1972): 565.
5. The importance of the immediate supervisor's role cannot be underestimated. A department's policy is communicated and reinforced by the supervising sergeant. The sergeant must be provided, through training, with the skills and abilities to evaluate a subordinate's performance. This means recognizing stereotyped reporting (e.g., the too frequent use of the "shiny object" rationale for drawing a weapon or shooting) and using available information in formulating appropriate recommendations.
6. All shooting incidents in which the officer is involved should be considered, including those occurring outside the department's jurisdiction.
7. One measure of the availability of firearms in a community is the number of guns confiscated by the police. The possible influence of the availability of weapons on the number or results of shootings is suggested by the fact that in this study, shooting victims were more likely to be killed if they were armed.
8. See Dennis T. Brennan, *The Other Police*, Administration of Justice Committee (Cleveland, Ohio: 1975).





## APPENDIXES





**APPENDIX A**  
**CALIFORNIA PEACE OFFICERS**  
**ASSOCIATION**

**PROPOSED POLICY ON THE USE OF FIRE-  
ARMS BY CALIFORNIA PEACE OFFICERS**

*I. PURPOSE*

This paper is not intended to create doubt in the mind of a peace officer at a moment when action is critical and there is little time for meditation or reflection. Rather it is an attempt to provide a reasonable basis for professional law enforcement agencies to standardize basic policies and procedures on the use of firearms so that individual officers can be confident in exercising their judgment as to the use of deadly force. It is in the public interest that law enforcement be guided by a uniformly accepted policy that creates confidence in peace officers rather than doubt resulting from disorganized and conflicting views concerning the use of firearms in the enforcement of the law. Such a policy must be viewed as an administrative guide for decision-making before the fact and not as a standard (for civil or criminal litigation) for judging the propriety of an action already taken. That is a matter of established law and also a process for courts and juries reviewing specific facts of a given incident.

The use of a firearm is in all probability the most serious act a law enforcement officer will engage in. It is therefore



imperative that he act not only within the boundaries of legal guidelines, good judgment and accepted practice, but that he also be prepared by training, leadership and direction to act wisely whenever using a firearm in the course of his duties.

## *II. POLICY*

It is the policy of California law enforcement to resort to the use of a firearm under law when it appears to be reasonably necessary and generally:

1. As a means of self defense from death or serious injury: or
2. To defend the life of another officer: or
3. To defend the life of a victim of a crime: or
4. To prevent a crime in which human life is in serious jeopardy as a result of a suspect's actions: or
5. To apprehend a fleeing suspect for a crime involving the use or threatened use of deadly force.

## *III. PROCEDURE*

In order to insure that the spirit of the above stated policy is carried out and that incidents involving the misuse of firearms, deliberate or accidental, by professional peace officers are minimized, the following practices and procedures are adopted by California law enforcement:

### *1. Qualifications for Use of Firearms by Peace Officers*

Only those officers who meet their agency's minimum requirements for demonstrated proficiency in the use of firearms shall be allowed to carry firearms in the course of their employment.

Demonstrated proficiency shall mean achieving minimum scores at least semi-annually on a prescribed course supervised by a person designated by the Chief Law Enforcement Administrator and attaining and demonstrating a knowledge of the laws concerning the use of firearms and the principles of accepted procedures for the use of firearms.

## *2. Weapons and Ammunition*

Only weapons and ammunition meeting department authorized specifications shall be carried in the performance of duty.

## *3. Discharge of weapon, report of:*

Whenever any officer accidentally or intentionally discharges his weapon while performing a law enforcement duty, a report shall be submitted to the Chief Law Enforcement Administrator or a designate setting forth all circumstances surrounding the incident.

## *4. Shooting Inquiry Board*

a. A Board of Inquiry shall be appointed by the Chief Law Enforcement Administrator to review the facts in each instance of the discharge of a weapon by officers in the performance of duty.

b. The Board shall prepare a report to the Chief Law Enforcement Administrator setting forth the facts of the incident including if, in the Board's opinion, the discharge violated any law or department directive.

c. The Board is a fact finding body which shall not be responsible for recommending disciplinary action.

## *5. Warning or Attention Shots*

Shots fired into the air or ground in an attempt to cause a fleeing suspect to stop or surrender are a danger to the officer and innocent persons and are prohibited except:

a. Shots fired intended to stop a threatened attack upon an officer or innocent victims or prisoners by persons engaged in riot.

b. Shots fired for the purpose of summoning aid when more conventional communication is not effective and the safety of other persons is considered.



## *6. Moving Vehicles*

Firing at or from moving vehicles is generally prohibited. Experience shows such action is rarely effective and is extremely hazardous to innocent persons.

## *7. Officers Surrendering Weapon*

Peace officers shall not surrender their firearms unless as a last resort and only after using every tactical tool at their disposal. Surrender of a weapon rarely de-escalates a serious situation and can in fact put an officer and innocent persons in jeopardy.

## *8. Removal of Weapon from Holster or Display of Weapon*

a. As a general rule officers shall not remove a firearm from the holster or display weapons unless there is sufficient justification.

b. In effecting the arrest of felony offenders officer may display a weapon for the purpose of obtaining and maintaining control of the arrestee.

## *9. Registration of Handguns*

All firearms used in performance of duty by an officer shall be registered with a person designated by the Chief Law Enforcement Administrator.

## *10. Disposal of Animals*

Killing animals which are seriously injured or pose a real threat to the safety of humans by use of firearms is approved when no other disposition is practical and safety of people has been given prime consideration.

## *11. Firearms Off Duty*

Officers off duty may carry weapons and Chief Law Enforcement Administrator may require weapon to be carried off duty except when the situation dictates it is impractical.

## APPENDIX B

### DETROIT POLICE DEPARTMENT MONITORING SYSTEM

*The Detroit Free Press*  
Detroit, Mich.  
MAY 20, 1976

#### Probe Hunts Gun-Happy Cops

*The names of certain officers keep reappearing on the lists.*

BY SUSAN WATSON  
Free Press Staff Writer

The Detroit Police Department has begun ferreting out police officers who are repeatedly and unnecessarily involved in shooting incidents with citizens.

For the past six months, the department has been compiling monthly lists of all officers who shoot at, wound or kill citizens while on or off duty, a high ranking police source said.

The source said that the names of certain officers keep reappearing on the lists.

A careful study of the incidents indicates that a small number of police officers repeatedly react to confrontations with citizens by shooting at them.

The Free Press could not learn the number of officers in question or their names. However, several sources said that



only a tiny percentage of the department's 5,300 officers are problem shooters.

These few officers, the sources said, cause a significant amount of the department's shooting problems.

The goal of the probe into the repeaters is to pinpoint the officers involved and to give them retraining, counseling or psychiatric help.

If those approaches fail, the department hopes to keep them away from public contact, either by reassignment to off-the-street jobs or by removing them from the force, if necessary.

The Free Press could not learn what action, if any, has been taken yet against the repeaters.

One high-ranking source said that the probe marks the first time the department has made a serious effort to deal with "shooters."

In the past, the source said, the tendency was to try to "sweep the problem under the rug."

Another source emphasized that not every police officer who fires his gun at someone is acting irresponsibly.

Some officers who work or live in the high-crime areas may discharge their weapons more than officers working or living in low-crime areas, he said.

The fact that one officer has a number of shooting incidents does not necessarily mean he is trigger-happy, he said. But that same source emphasized that there are trigger-happy officers on the force.

Police officials are reluctant to discuss publicly the results of the probe because the whole question of unnecessary force and police shootings is a highly emotional issue for both police and citizens.

If a good officer comes to feel he will be severely criticized and penalized everytime he is forced to discharge his gun, a source said, "we will have the situation where officers just begin to look the other way when something happens.

"We definitely don't want that to happen."

Because of the sensitive nature of the information about repeat shooters, the monthly lists which are printed by computer are circulated only to the highest ranking police executives, including Police Chief Philip Tannian, the executive deputy chief and the deputy chiefs.

A police executive who does not get the reports said the reports should be given to precinct-level executives who deal directly with the officers.

If that information were given to those precinct level executives, they would be better able to watch the troublesome officers and possibly reassign them out of potentially dangerous situations, he said.

A police officer is required to file a formal report each time he discharges his gun accidentally or when he fires at someone, even if the bullet does not hit the person.

In the past these reports have been fed into the police computer, but the department did not refine the results to determine if there were officers who repeatedly showed up on the lists.

A source said that the probe of the repeaters will continue and that the department hopes in the future to be able to take a similar look at officers repeatedly involved in physical confrontations with citizens.



## APPENDIX C

### "WHEN TO SHOOT" TEST

A police officer must (1) \_\_\_\_\_ bear in mind that no [State] (2) \_\_\_\_\_ provides for (3) \_\_\_\_\_ punishment. That a criminal will not (4) \_\_\_\_\_ his life for even the most (5) \_\_\_\_\_ of crimes. The use of (6) \_\_\_\_\_ by a police officer constitutes a similar type of deadly (7) \_\_\_\_\_.

An officer has the (8) \_\_\_\_\_ to (9) \_\_\_\_\_ only under the following (10) \_\_\_\_\_ circumstances and only as a (11) \_\_\_\_\_ resort.

A. To (12) \_\_\_\_\_ himself and others from (13) \_\_\_\_\_ bodily (14) \_\_\_\_\_ or death.

1. (15) \_\_\_\_\_ must be immediate

B. To prevent the (16) \_\_\_\_\_ or effect the (17) \_\_\_\_\_ of a person (18) \_\_\_\_\_ to have committed a (19) \_\_\_\_\_ felony. Provided the officer has (20) \_\_\_\_\_ all other (21) \_\_\_\_\_ means of effecting the (22) \_\_\_\_\_.

1. Murder

2. (23) \_\_\_\_\_

3. Rape

4. (24) \_\_\_\_\_ breaking and entering

5. (25) \_\_\_\_\_

6. Felonious assault which might lead to serious bodily harm or death.

However, officers should not (26) \_\_\_\_\_ at such (27) \_\_\_\_\_ when:

1. (28) \_\_\_\_\_ force could be used to make the arrest.
  2. The officer (29) \_\_\_\_\_ that the suspect can be (30) \_\_\_\_\_ reasonably soon thereafter (31) \_\_\_\_\_ the use of deadly force
  3. There is any (32) \_\_\_\_\_ danger to (33) \_\_\_\_\_ bystanders.
- C. The use of a firearm (34) \_\_\_\_\_ be justified on mere (35) \_\_\_\_\_ that a crime, no matter how serious, was committed or that the person being pursued committed the crime.
- D. The firing of warning shots is strictly (36) \_\_\_\_\_
- E. Officers should shoot from (37) \_\_\_\_\_ vehicles only in cases of extreme (38) \_\_\_\_\_ .

#### BASIC SAFETY RULES:

- A. Never (39) \_\_\_\_\_ your firearm at (40) \_\_\_\_\_ unless you (41) \_\_\_\_\_ to shoot that person, if it becomes (42) \_\_\_\_\_ (i.e. (43) \_\_\_\_\_ direction).
- B. Always keep your (44) \_\_\_\_\_ off of the trigger until the firearm is clear of the (45) \_\_\_\_\_ and pointed at the intended (46) \_\_\_\_\_ and until there is a need to (47) \_\_\_\_\_ .
- C. Never (48) \_\_\_\_\_ your firearm is either loaded or (49) \_\_\_\_\_ . Always check (50) \_\_\_\_\_ .



APPENDIX D

WASHINGTON, D.C., METROPOLITAN  
POLICE DEPARTMENT GENERAL  
ORDER

**Discharge of Firearms and Use of Other Service Weapons**

The purpose of this order is to establish the procedures for handling instances involving the discharge of firearms or the use of other service weapons by members of the force and commissioned special police officers. This order consists of the following parts:

PART I Responsibilities and Procedures for Members  
of the Department

PART II Responsibilities and Procedures for Supervi-  
sory and Command Personnel

*PART I*

*A. Definition.*

For purposes of this order, the term "service weapons" means revolvers and other firearms, aerosol chemical dispensers, batons, blackjacks, and teargas in any form carried or kept readily available by members of the department.

*B. Use of Firearms or Other Service Weapons.*

1. Except for annual revolver qualification or target practice or competition on an approved range, members of

the force shall not use any firearm or service weapon which is the property of the Metropolitan Police Department or use a blackjack or baton while on or off duty, unless in conformity with section 2.4 of the Manual of the Metropolitan Police Department.

2. Any member who uses a firearm or service weapon which is the property of the Metropolitan Police Department or a blackjack or baton either on or off duty, except as allowed by this order, shall notify the official then in charge of his organizational element as soon as possible and submit a written report and an appropriate field report to his commanding officer no later than the time relieved from duty, if on duty, or as directed by the official in charge of his organizational element if off duty.

3. Delay in the required notification shall be allowed only to render first aid, to maintain the arrest or prevent the escape of a felon, to protect a crime scene, or when the member himself is incapacitated.

4. The use of an authorized personal, nonissued revolver shall be subject to the provisions of this order whenever members are carrying such weapons in lieu of their issued weapons as specified in General Order No. 901.2.

5. A member who, for whatever reason, is unable to contact the appropriate official of his element shall instead notify the official in charge of the Communications Division.

6. If the incident occurs in another jurisdiction, the member shall notify both the local police agency and the appropriate official of this department and shall record these notifications in his report.

### *C. Special Police Officers.*

A special policeman who uses his service weapon while on duty and in the line of duty shall notify the official in charge of the Communications Division as soon as possible.

### *D. Revolver Qualifications.*

Each member of the force shall be required to qualify annually with the service revolver under such rules as the



Chief of Police may prescribe. Each member of the force authorized to carry a personal, nonissued revolver shall be required to qualify with that revolver on the same day he fires his department-issued revolver.

### *E. Shotgun Certification.*

Only those members who have qualified in the use and nomenclature of shotguns through the department's Shotgun Certification Course may have access to and use of shotguns in the performance of duty.

General Order No. 901.1  
(Revised 4/21/76)

### *F. Ammunition.*

Members of the force shall carry or use only that ammunition which is issued or authorized by the department. Personal ammunition is not authorized.

### *G. Security of Service Weapons.*

Because of the hazards to the public from stolen service weapons (department-issued service revolvers; authorized personal, nonissued revolvers; and aerosol dispensers) and the hazards of having service weapons stolen from insecure places such as automobiles, members of the force shall not leave their service weapons in their automobiles, whether in or outside of the District of Columbia.

## *PART II*

### *A. Official in Charge of the Communications Division.*

When the official in charge of the Communications Division is notified of an incident involving the use of a firearm or service weapon, he shall contact the senior police official on duty. When injury or death has resulted from the incident, the Chief of Police shall also be notified.

### *B. Notification to Communications Division.*

Any police official receiving information that a member has used a firearm or service weapon or has been involved in such an incident shall immediately notify the official in charge of the Communications Division.

### *C. Senior Police Official on Duty.*

The senior police official on duty shall determine which on-duty official shall conduct the immediate investigation.

### *D. Commanding Officers.*

1. Each commanding officer of an organizational element, unless another official is specifically designated to act in his place, shall:

a. In all incidents involving the discharge of any firearm by a member of the force, conduct an immediate preliminary investigation and forward a report of same through channels to the Chief of Police within 24 hours of the incident. In addition, commanding officers shall make an in-depth investigation and forward a complete written report, including conclusions and recommendations, through channels to the Chief of Police no later than 30 days after the incident.

b. In all incidents involving police use of aerosol chemical dispensers, batons, blackjacks, and teargas (excluding teargas utilized in crowd control and barricade situations which shall be reported by the official ordering its use) forward a copy of the appropriate field report directly to the Chairman of the Use of Service Weapon Review Board within 24 hours. Commanding officers shall also conduct an investigation of every such incident. When, in their opinion, a case may require disciplinary action, they shall forward a complete written report, including conclusions and recommendations, through channels to the Chief of Police no later than 30 days after the incident. Otherwise, the field report shall suffice.

2. All requests for extensions of reporting time limitations shall be made to and approved by the Chief of Police.



### *E. Use of Firearms or Other Service Weapons Resulting in the Death of Another.*

Members of the department whose use of firearms or service weapons results in the death of another shall automatically be placed on administrative leave (with full pay and allowances) pending investigation.

### *F. Use of Service Weapon Review Board.*

1. The Use of Service Weapon Review Board shall review all incidents involving the use of service weapons (i.e., firearms, aerosol chemical dispensers, batons, black-jacks, and teargas excluding teargas utilized in crowd control and barricade situations) that are referred for consideration by the Chief of Police and that are not disposed of by the board chairman in accordance with this order. The purpose of the board is to provide a high level review of instances in which service weapons are used by sworn members. Such scrutiny will insure uniformity of dispositions and identify training needs.

2. The board shall consist of the General Counsel, acting as chairman; the Commander, Patrol Division; and the Commander, Criminal Investigations Division. Each member of this board may designate a subordinate to act in his place; and, if the General Counsel is absent, the chairman shall be the senior official present. The board is authorized to conduct hearings concerning the use of service weapons and to summon any member of the department to appear as a witness at such a hearing.

3. The Use of Service Weapon Review Board Chairman shall review all incidents of the use of a service weapon that are referred to the board. In those cases in which the use of service weapons, other than firearms, is obviously proper, he may direct that the reports be filed without prejudice. In every case in which there is doubt concerning proper usage and in every case of use of a firearm, he shall refer the case to the full board for review.

4. Within 5 days of personal service upon a member of

an adverse finding by the board, the member shall have an opportunity to request, in writing, reconsideration of his case by the board. The request must state one or both of the following:

a. New matters of law or fact to be considered which were not considered in the initial hearing.

b. Extenuating or mitigating circumstances which were not considered in the initial hearing.

5. The member may also include a request to appear personally before the board and to have witnesses summoned in his behalf.

6. Both the granting of the request for reconsideration by the board and the granting of the request for a personal appearance shall be at the board's discretion after review of the request.

7. Upon reconsideration, the board shall have the power to modify or reverse any penalty imposed or decision made during the initial consideration of the case.

8. In all cases of reconsideration, including a denial of a reconsideration request, the entire file shall be forwarded by the board to the Chief of Police, with a brief summary of the reasons for the decision. The member shall also receive notice of the final decision and a copy of the summary.

### *G. Director, Internal Affairs Division.*

The Director, Internal Affairs Division, shall perform the following services for the board:

1. Notify its members as to date, time, and location of meetings and provide all clerical assistance.

2. Compile and present all official reports of incidents involving use of service weapons.

3. Investigate citizen complaints regarding use of service weapons when such complaints are referred for investigation by the Chief of Police, and convene a meeting of the board to reach conclusions and make recommendations concerning such complaints.

4. Summon such witnesses as the board directs.

5. Prepare the recommendations of the board for



transmittal to the Chief of Police. Two copies shall be forwarded to the member or members involved, one to be retained by that member and the other to be signed and then forwarded through his commanding officer to the Director, Personnel Division, for inclusion in the member's personnel file.

6. Maintain complete records of the board's action with respect to hearings held and recommendations made.

#### *H. Transportation of Weapons.*

Commanding officers shall insure that police cadets are not used to transport any firearms to or from organizational elements. This shall include, but not be limited to, bringing firearms to the range for service; bringing firearms to the Property Division as a result of resignation; bringing firearms designated as evidence to the Property Division for storage; and operating departmental vehicles equipped with a shotgun or other firearm, except when department-issued shotguns and other department-issued firearms are locked in the trunk of the vehicle.

Maurice J. Cullinane  
Chief of Police

MJC:DMS:mrr

#### **Addendum To Appendix D**

The Metropolitan Police Department of Washington, D.C. established the Use of Service Weapons Review Board in 1970. The records upon which the review of each incident of firearms use is based include a file compiled by internal affairs. That file consists of the account given by the officer(s) involved, the official reports prepared by district supervisors (which include witness statements), and, in cases involving death, a file prepared by the homicide unit including witness statements, diagrams, photographs, and other pertinent materials. While the board is authorized to

conduct hearings and to summon members of the department as witnesses, it does not have subpoena power and therefore cannot order civilian witnesses to appear.

In instances in which an adverse finding is made, one option available to the board is to recommend a Trial Board hearing. In such cases, the incident is reviewed by the full Trial Board if the discharge or the shooting involved a civilian. If the discharge involved only department personnel, two options exist. The case may be handled by either the disciplinary review officer who holds the rank of inspector or, in more serious instances, by the Trial Board, which does have subpoena power.



APPENDIX E

MARYLAND LAW ENFORCEMENT  
OFFICERS' BILL OF RIGHTS

HOUSE OF DELEGATES  
No. 1515

By: Delegate Hagner (By Request)  
Introduced and read first time: March 3, 1975  
Assigned to: Judiciary

A BILL ENTITLED

*AN ACT concerning*

*Law-enforcement officers—Bill of Rights*

FOR the purpose of providing that the provisions of this subtitle apply to the police forces of the State Aviation Administration of the Department of Transportation, the Toll Facilities of the Maryland Transportation Authority and the Department of Natural Resources but do not apply to law-enforcement officers in a probationary status, except when allegations of brutality are involved, or persons serving at the pleasure of the head of the agency; changing the name of "Investigating Committee" to "Hearing Board" and providing for the selection of the Hearing Board; clarifying language under the definition of "Hearing" to specify that testimony is taken under oath at a hearing; defining "Summary Punishment" and "Chief" as used in this subtitle; providing that certain punitive action may be taken without an investigation or formal hearing; providing that the Chief

shall have power to subpoena witnesses, administer oaths and compel production of evidence, and providing penalties and generally relating thereto; and providing for summary punishment and emergency suspension by higher ranking law-enforcement officers; and clarifying language.

*BY repealing and re-enacting, with amendments,*

Article 27—Crimes and Punishments

Section 727 and 730

Annotated Code of Maryland

(1971 Replacement Volume and 1974 Supplement)

*BY adding to*

Article 27—Crimes and Punishments

Section 735

Annotated Code of Maryland

(1971 Replacement Volume and 1974 Supplement)\*

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 727 and 730 of Article 27—Crimes and Punishments, of the Annotated Code of Maryland (1971 Replacement Volume and 1974 Supplement) be and they are hereby repealed and re-enacted, with amendments, to read as follows:

*Article 27—Crimes and Punishments*

*727.*

(a) As used in the subtitle, the following words have the meanings indicated.

(b) "Law-enforcement officer" means any person who, in his official capacity, is authorized by law to make arrests and who is a member of one of the following law-enforcement agencies:

(1) The Maryland State Police; or

(2) The Baltimore City police department; or

(3) The police department, bureau or force of any county; or

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\* Capitals indicate matter added to existing law.



(4) The police department, bureau or force of any incorporated city or town; or

(5) The office of the sheriff of any county; or

(6) The police department, bureau or force of any bi-county agency or the University of Maryland[.]; OR

(7) THE STATE AVIATION ADMINISTRATION POLICE FORCE OF THE DEPARTMENT OF TRANSPORTATION AND THE TOLL FACILITIES POLICE FORCE OF THE MARYLAND TRANSPORTATION AUTHORITY; OR

(8) THE POLICE OFFICERS OF THE DEPARTMENT OF NATURAL RESOURCES.

“LAW-ENFORCEMENT OFFICER” DOES NOT INCLUDE AN OFFICER SERVING IN A PROBATIONARY STATUS EXCEPT WHEN ALLEGATIONS OF BRUTALITY IN THE EXECUTION OF HIS DUTIES ARE MADE INVOLVING AN OFFICER WHO IS IN A PROBATIONARY STATUS. THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO PERSONS SERVING AT THE PLEASURE OF THE POLICE COMMISSIONER OF BALTIMORE CITY.

(c) “[Investigating committee] HEARING BOARD” means a [committee from within a law-enforcement agency] BOARD which is authorized BY THE CHIEF to hold a hearing on a complaint against a law-enforcement officer and which consists of not less than three members, ALL TO BE APPOINTED BY THE CHIEF AND SELECTED FROM LAW-ENFORCEMENT OFFICERS WITHIN THAT AGENCY, OR LAW-ENFORCEMENT OFFICERS OF ANOTHER AGENCY WITH THE APPROVAL OF THE CHIEF OF THE OTHER AGENCY, AND who have had no part in the investigation or interrogation of the law-enforcement officer.

(d) “Hearing” means any meeting in the course of an investigatory proceeding, other than an interrogation[,] at which no testimony is taken under oath, conducted by [an investigating committee] A HEARING BOARD for the

purpose of taking or adducing testimony or receiving other evidence.

(E) "SUMMARY PUNISHMENT" IS PUNISHMENT IMPOSED BY THE HIGHEST RANKING OFFICER OF A UNIT OR MEMBER ACTING IN THAT CAPACITY, WHICH MAY BE IMPOSED WHEN THE FACTS CONSTITUTING THE OFFENSE ARE NOT IN DISPUTE. SUMMARY PUNISHMENT MAY NOT EXCEED THREE DAYS SUSPENSION WITHOUT PAY OR A FINE OF \$150.

(F) "CHIEF" MEANS THE SUPERINTENDENT, COMMISSIONER, CHIEF OF POLICE, OR SHERIFF OF A LAW-ENFORCEMENT AGENCY, OR THE OFFICER DESIGNATED BY THE OFFICIAL.

730.

(a) If the investigation or interrogation of a law-enforcement officer results in the recommendation of some action, such as demotion, dismissal, transfer, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, EXCEPT IN THE CASE OF SUMMARY PUNISHMENT OR EMERGENCY SUSPENSION AS ALLOWED BY SECTION 735 OF THIS SUBTITLE AND before taking such action, the law-enforcement agency shall give notice to the law-enforcement officer that he is entitled to a hearing on the issues of [an investigating committee] A HEARING BOARD. The notice shall state the time and place of the hearing and the issues involved. An official record, including testimony and exhibits, shall be kept of the hearing.

(b) The hearing shall be conducted by the [investigating committee] HEARING BOARD of the law-enforcement agency by which the law-enforcement officer is employed. Both the law-enforcement agency and the law-enforcement officer shall be given ample opportunity to present evidence and argument with respect to the issues involved. Both may be represented by counsel.

(c) Evidence which possesses probative value commonly accepted by reasonable and prudent men in the conduct of



their affairs shall be admissible and shall be given probative effect. The [investigating committee] HEARING BOARD conducting the hearing shall give effect to the rules of privilege recognized by law, and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. All records and documents which any party desires to use shall be offered and made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(d) Every party has the right of cross-examination of the witnesses who testify, and may submit rebuttal evidence.

(e) The [investigating committee] HEARING BOARD conducting the hearing may take notice of judicially cognizable facts and, in addition, may take notice of general, technical or scientific facts within its specialized knowledge. Parties shall be notified beforehand of the material so noticed.

(F) WITH RESPECT TO THE SUBJECT OF ANY INVESTIGATION OR HEARING CONDUCTED PURSUANT TO THIS SUBTITLE, THE CHIEF MAY SUBPOENA WITNESSES AND ADMINISTER OATHS OR AFFIRMATIONS AND EXAMINE ANY INDIVIDUAL UNDER OATH, AND MAY REQUIRE AND COMPEL THE PRODUCTION OF RECORDS, BOOKS, PAPERS, CONTRACTS AND OTHER DOCUMENTS.

(G) WITNESS FEES AND MILEAGE, IF CLAIMED, SHALL BE ALLOWED THE SAME AS FOR TESTIMONY IN A CIRCUIT COURT. WITNESS FEES, MILEAGE, AND THE ACTUAL EXPENSES NECESSARILY INCURRED IN SECURING ATTENDANCE OF WITNESSES AND THEIR TESTIMONY SHALL BE ITEMIZED, AND SHALL BE PAID BY THE LAW-ENFORCEMENT AGENCY.

(H) SUBPOENAS OF WITNESSES SHALL BE SERVED BY THE LAW-ENFORCEMENT AGENCY OR THE SHERIFF IN THE SAME MANNER AS IF ISSUED FROM A CIRCUIT COURT. IF ANY INDIVIDUAL FAILS

TO OBEY A SUBPOENA LAWFULLY SERVED, THE CHIEF SHALL REPORT IMMEDIATELY THE DISOBEDIENCE, TOGETHER WITH A COPY OF THE SUBPOENA AND PROOF OF SERVICE, TO THE BALTIMORE CITY COURT OR THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE INDIVIDUAL WAS REQUIRED TO APPEAR, AND THE COURT SHALL FORTHWITH CAUSE SUCH INDIVIDUAL TO BE PRODUCED AND SHALL IMPOSE PENALTIES AS THOUGH HE HAD DISOBEYED A SUBPOENA ISSUED OUT OF COURT.

(I) ANY PERSON WILFULLY TESTIFYING FALSELY UNDER OATH AS TO ANY MATTER MATERIAL TO ANY INVESTIGATION OR HEARING SHALL UPON CONVICTION BE GUILTY OF PERJURY AND BE PUNISHED ACCORDINGLY.

(J) ANY PERSON WILFULLY FAILING TO ATTEND, ANSWER, OR PRODUCE RECORDS, DOCUMENTS OR OTHER EVIDENCE REQUESTED BY THE CHIEF OR WHO WILFULLY FAILS TO GIVE THE CHIEF FULL AND TRUTHFUL INFORMATION AND ANSWER IN WRITING TO ANY MATERIAL WRITTEN INQUIRY OF THE CHIEF, RELATIVE TO THE SUBJECT OF ANY INVESTIGATION OR HEARING, OR WILFULLY FAILS TO APPEAR AND TESTIFY UNDER OATH BEFORE THE CHIEF, SHALL UPON CONVICTION, IN ADDITION TO OR IN LIEU OF ANY OTHER PENALTY OR PENALTIES APPLICABLE, BE CONSIDERED GUILTY OF A MISDEMEANOR, AND UPON CONVICTION BE PUNISHED BY A FINE OF NOT MORE THAN \$1,000 OR IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BOTH.

SECTION 2. AND BE IT FURTHER ENACTED, That new Section 735 be and it is hereby added to Article 27—Crimes and Punishments, of the Annotated Code of Maryland (1971 Replacement Volume and 1974 Supplement) to read as follows:



*Article 27—Crimes and Punishments*

735.

(A) THE PROVISIONS OF THIS SUBTITLE ARE NOT INTENDED TO PROHIBIT SUMMARY PUNISHMENT OR EMERGENCY SUSPENSION BY HIGHER RANKING LAW-ENFORCEMENT OFFICERS AS MAY BE DESIGNATED BY THE HEAD OF A LAW-ENFORCEMENT AGENCY.

(1) SUMMARY PUNISHMENT MAY BE IMPOSED FOR MINOR VIOLATIONS OF DEPARTMENTAL RULES AND REGULATIONS WHEN: (I) THE FACTS WHICH CONSTITUTE THE MINOR VIOLATION ARE NOT IN DISPUTE; (II) THE OFFICER WAIVES THE HEARING PROVIDED BY THIS SUBTITLE; AND (III) THE OFFICER ACCEPTS THE PUNISHMENT IMPOSED BY THE HIGHEST RANKING OFFICER OF THE UNIT TO WHICH THE OFFICER IS ATTACHED.

(2) EMERGENCY SUSPENSION MAY BE IMPOSED BY THE CHIEF WHEN IT APPEARS THAT THE ACTION IS IN THE BEST INTEREST OF THE PUBLIC AND THE LAW-ENFORCEMENT AGENCY. ANY PERSON SO SUSPENDED SHALL BE ENTITLED TO A PROMPT HEARING.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1975.

## APPENDIX F

### FLORIDA LAW ENFORCEMENT OFFICERS' RIGHTS

#### PART VI LAW ENFORCEMENT OFFICERS

- 112.531 Definitions.
- 112.532 Law enforcement officers' rights.
- 112.533 Receipt and processing of complaints.
- 112.534 Failure to comply.

<sup>1</sup>112.531 Definitions.—As used in this act:

(1) "Law enforcement officer" means any person, other than a chief of police, employed full time by any municipality or this state or any political subdivision thereof, whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, traffic, or highway laws of this state.

(2) "Employing agency" means any municipality or the state or any political subdivision thereof which employs law enforcement officers as defined.

<sup>2</sup>(3) "Board" means the Police Standards Board, or its successor, as created by chapter 23, part IV.

History.—s. 1, ch. 74-274; s. 1, ch. 75-41.

<sup>1</sup>Note.—As amended, takes effect October 1, 1975.

<sup>2</sup>Note.—Ch. 74-386 repealed part IV of ch. 23 and created the Police Standards and Training Commission (See s. 943.11).

**112.532 Law enforcement officers' rights.**—All law enforcement officers employed by any employing agency shall have the following rights and privileges:



(1) **RIGHTS OF LAW ENFORCEMENT OFFICERS WHILE UNDER INVESTIGATION**—Whenever a law enforcement officer is under investigation and subject to interrogation by members of his agency for any reason which could lead to disciplinary action, demotion, or dismissal, such interrogation shall be conducted under the following conditions:

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that immediate action is required.

(b) The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer or agency.

(c) The law enforcement officer under investigation shall be informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator at any one time.

(d) The law enforcement officer under investigation shall be informed of the nature of the investigation prior to any interrogation, and he shall be informed of the name of all complainants.

(e) Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

(f) The law enforcement officer under interrogation shall not be subjected to offensive language or be threatened with transfer, dismissal, or disciplinary action. No promise or reward shall be made as an inducement to answer any questions.

(g) The formal interrogation of a law enforcement officer, including all recess periods, shall be recorded, and there shall be no unrecorded questions or statements.

(h) If the law enforcement officer under interrogation is

under arrest, or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.

(i) At the request of any law enforcement officer under investigation, he shall have the right to be represented by counsel or any other representative of his choice, who shall be present at all times during such interrogation whenever the interrogation relates to the officer's continued fitness for law enforcement service.

(2) **COMPLAINT REVIEW BOARDS.**—A complaint review board shall be composed of three members: One member selected by the chief administrator of the agency; one member selected by the aggrieved officer; and a third member to be selected by the other two members. Agencies having more than 100 law enforcement officers shall utilize a five-member board with two members being selected by the administrator, two members being selected by the aggrieved officer, and a fifth member being selected by the other four members. The board members shall be law enforcement officers selected from any state, county, or municipal agency within the county.

(3) **CIVIL SUITS BROUGHT BY LAW ENFORCEMENT OFFICERS.**—Every law enforcement officer shall have the right to bring civil suit against any person, group of persons, or organization or corporation, or the head of such organization or corporation, for damages, either pecuniary or otherwise, suffered during the performance of the officer's official duties or for abridgment of the officer's civil rights arising out of the officer's performance of official duties.

(4) **NOTICE OF DISCIPLINARY ACTION.**—No dismissal, demotion, transfer, reassignment, or other personnel action which might result in loss of pay or benefits or which might otherwise be considered a punitive measure shall be taken against any law enforcement officer unless such law enforcement officer is notified of the action and the reason or reasons therefor prior to the effective date of such action.

(5) **RETALIATION FOR EXERCISING RIGHTS.**—No



law enforcement officer shall be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to his employment, or be threatened with any such treatment, by reason of his exercise of the rights granted by this part.

History.—s. 2, ch. 74-274.

**112.533 Receipt and processing of complaints.**—Every agency employing law enforcement officers shall establish and put into operation a system for the receipt, investigation, and determination of complaints received by such employing agency from any person.

History.—s. 3, ch. 74-274.

**112.534 Failure to comply.**—If any agency employing law enforcement officers fails to comply with the requirements of this part, at the request of the <sup>1</sup>Police Standards Board established under part IV of chapter 23 or its successor, the Department of Legal Affairs shall apply directly to the circuit court of the county wherein such employing agency is headquartered and permanently resides for an injunction to restrain and enjoin such violation of the provisions of this part and to compel the performance of the duties imposed by this part. The <sup>1</sup>Police Standards Board and the Department of Legal Affairs shall not be required to give any bond in any proceedings hereunder.

History.—s. 4, ch. 74-274.

<sup>1</sup>Note.—Ch. 74-386 repealed part IV of ch. 23 and created a new Police Standards and Training Commission (See s. 943.11).

## APPENDIX G

### PORTLAND, OREGON, BUREAU OF POLICE GENERAL ORDER

Shotguns—Procedures for Logs, Storage, Training, Issuance,  
and Security of

#### *PURPOSE*

To provide uniform policy and procedures for the storage, training, issuance, security, use and reporting procedures for shotguns.

#### *POLICY*

The use of shotguns is controlled, as is the use of any firearm, by the Bureau's Firearms Policy. "The police officer's firearm is to be used only in extreme emergencies such as protection of himself or another from death or serious injury, or apprehension of a dangerous felon when all other means would be impractical or would constitute a serious threat to the public."

#### *PROCEDURE*

##### *Shotguns and Ammunition*

Precinct/Traffic Division commanders are responsible for issuing and accounting for all shotguns and ammunition. The following procedures will be adhered to:

a. An officer may obtain a shotgun from a superior officer after demonstrating to the supervisor's satisfaction



that there is a potential need for the weapon. The request may be based on current or historical data.

b. While the chamber and magazine are empty and the safety is in the "on" position, a single layer of masking tape will be applied to the slide. The tape will be initialed and dated by a superior officer.

c. When the shotgun is issued, the officer will obtain four rounds of Double O Buckshot.

d. The officer will load the four rounds into the magazine prior to entering the patrol vehicle.

e. The shotgun will be secured in the locking mount of the patrol vehicle.

f. If during a tour of duty an officer removes the weapon from the vehicle and breaks the seal, care should be taken to insure that the chamber is empty before returning the gun to the vehicle. Before going off shift the officer will contact a superior officer and have the chamber resealed.

g. At the end of the shift the shotgun will be removed from the vehicle, and as soon as possible (in a safe place) the four rounds will be removed through the magazine at the bottom of the weapon.

h. If, at any time, a police vehicle is *towed, parked in the garage, or left unattended at the precinct for any extended period of time*, the shotgun will be returned to the armory.

i. If the officer who obtained the shotgun has been injured or is otherwise unable to return the weapon to the armory, the officer's superior officer shall be responsible for securing the weapon.

Detectives, Intelligence, SID, and CERT personnel may check out shotguns for specific situations. However, they will not leave shotguns unattended in the police vehicle unless they are locked in the trunk.

## *Training*

Shotgun training will be the responsibility of the Training Division and the precinct commanders.

The *Training Division* will conduct annual shotgun training at the police outdoor range. All officers will be

required to requalify with the shotgun each year during the annual range program. Record of such qualification will be entered on the officer's training record.

In addition to the annual range program, precinct and division commanders will conduct shotgun training every three months, *for all assigned officers*. They will be required to demonstrate their proficiency in handling, loading, and unloading the shotgun by using dummy ammunition supplied by the Training Division.

Precinct and division commanders will keep records of this quarterly training by checking the officer's name on the roll call sheet, noting at the bottom of the page that the above-checked officers received shotgun training. The roll call sheet will be filed in the normal manner.

### *Shotgun Incident Report*

(The Shotgun Incident Report will be used for six months to provide statistical information and will then be discontinued. The original will be filed in the division/precinct files in section 1050.00.)

The precinct/divisions shall use a *Shotgun Incident Report* for recording information regarding the use of shotguns. Each time the officer removes the shotgun from the locking mount with the intent to use it to cover an incident, he will, before the end of the shift, complete a Shotgun Incident Report and turn it in to his superior officers, who will initial the report and forward a copy to the Chief's Office. If the shotgun is discharged, the procedures set forth in Bureau Firearms Policy will be followed.

B. R. BAKER  
Chief of Police

BRB/PLS/JRH/ck



# SHOTGUN INCIDENT REPORT

Reporting Officer	Off. I.D. Number	Prec/Div	Assn/Dist	Relief/Shift Type	Offense
Location of Occurrence	Seal Broken	Gun Fired	Injury or Property Damage		

Details:

1. Brief Summary of Incident:

2. Reason For Use of Shotgun:

3. Injuries Resulting From Use of Shotgun:

4. Property Damage Resulting From Use of Shotgun:

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5. Effect Shotgun Had on Situation:

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6. Other Details You Feel Are Important; Attached Reports, Opinions,  
etc.

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## Addendum to Appendix G

Although the current firearms policy of the Portland Police Bureau governs the use of shotguns as well as handguns, guidelines have been developed to help officers determine when shotguns are and are not to be used. The following version of these guidelines has been excerpted from departmental training materials.

The following are examples of situations when the removal of the shotgun from the vehicle would be appropriate:

Felonies in progress (silent alarms, hold ups, etc.)

Hazardous vehicle stops.

Apprehending wanted felons if the situation warrants it,

Hazardous situations (man with a gun, shots fired, etc.)

When the nature of the situation is such that a firearm may justifiably be drawn.

The shotgun should *not* be removed in the following situations:

Routine traffic stops.

Disturbances not involving weapons (bar fights, etc.)

Family disturbances (unless it is known that someone has physical possession of a firearm).

Apprehending persons wanted on misdemeanors (unless there is evidence that the person is armed.)

At any time the use or display of a weapon would not be justified.

#### EQUIPMENT POLICY

It will be the policy of the Portland Police Bureau that all patrol vehicles and sergeants' vehicles may be equipped with a 12-gauge shotgun as optional equipment. The shotgun will be carried in the following manner:

1. In the locking mount.
2. Chamber empty and action closed.
3. Safety on.
4. Four rounds 00 buckshot in the magazine.

If an officer is on a special detail using a non-uniform vehicle or another vehicle not equipped with a mount, steps 2, 3, and 4 above will be followed and it will be the responsibility of the officer to carry the shotgun in a safe and secure manner.



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