



# Department of Justice

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POLICE USE OF EXCESSIVE FORCE:  
A COMMUNITY RELATIONS CONCERN

BY

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NCJRS

TO

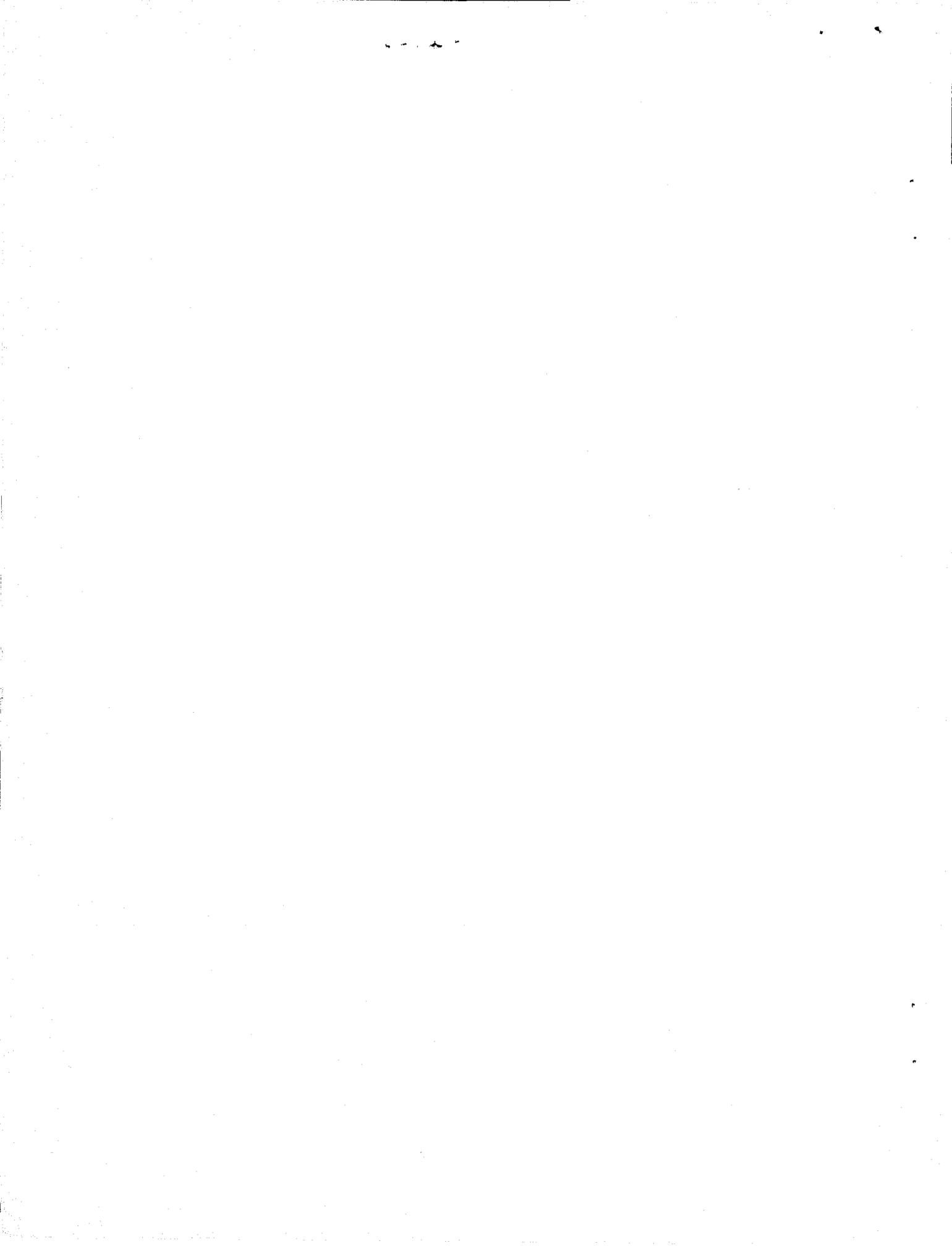
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NAACP-REGION III  
ANNUAL CONFERENCE  
LEXINGTON, KENTUCKY

ACQUISITIONS

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THANK YOU, MRS. GORMAN.

IT IS ALWAYS A PLEASURE TO BE PART OF AN NAACP EVENT. THE WORK OF THIS DISTINGUISHED ORGANIZATION HAS MADE AN INDELIBLE AND POSITIVE IMPRINT ON THIS NATION, ITS PEOPLE, AND, OF COURSE, MY AGENCY -- THE COMMUNITY RELATIONS SERVICE.

MOST OF THE ADVANCES WE HAVE SEEN IN CIVIL AND HUMAN RIGHTS IN THIS COUNTRY OVER SEVERAL DECADES HAVE BEEN GREATLY INFLUENCED BY THE VIGILANCE OF THE NAACP IN GUARANTEEING THAT AMERICA LIVES UP TO ITS PROMISE OF EQUALITY AND JUSTICE.

TODAY'S CONFERENCE THEME -- "IT WASN'T EASY ... IT STILL ISN'T" -- SUMS UP A CHALLENGE TO ALL WHO HAVE LABORED FOR JUSTICE AND EQUAL OPPORTUNITY TO MAINTAIN OUR HISTORICALLY STRONG AND STEADY VIGILANCE IN ASSURING A FAIR AND EQUITABLE CRIMINAL JUSTICE SYSTEM FOR ALL.

UNFORTUNATELY, MANY MINORITIES STILL FEEL THAT WHEN WHITES USE THE WORD "JUSTICE," THEY MEAN "JUST-US." THIS FEELING PREVAILS EVEN AFTER A DECADE OF EFFORTS AIMED AT ASSISTING AND MOVING MINORITIES INTO THE AMERICAN MAINSTREAM.

CRIME DISPROPORTIONATELY AFFECTS BLACK AND HISPANIC COMMUNITIES. MINORITIES CROWD THE PRISONS IN DISPROPORTIONATE NUMBERS. YET, UNFORTUNATELY, BLACKS AND HISPANICS ARE NOTABLY ABSENT AS DECISIONMAKERS IN OUR SYSTEM OF JUSTICE. THERE ARE SIMPLY TOO FEW MINORITIES SERVING AS POLICEMEN, LAWYERS, PROSECUTORS, JUDGES, CORRECTIONS OFFICIALS OR OTHER ADMINISTRATION OF JUSTICE SPECIALISTS.

BUT I THINK THE LONG OVERDUE PROCESS OF OVERHAULING THE CRIMINAL JUSTICE SYSTEM HAS FINALLY STARTED. OUR NEW ATTORNEY GENERAL -- GRIFFIN BELL -- HAS REPEATEDLY ESPOUSED THE VIEW THAT THE DEPARTMENT OF JUSTICE WILL TAKE ON A NATIONAL LEADERSHIP ROLE IN ASSURING JUSTICE AT ALL LEVELS.

MANY OF YOU MAY SAY, "THAT'S BEEN SAID BEFORE." AND I'LL GRANT YOU THAT IT HAS. BUT IN MY 11-YEAR TENURE WITH THE DEPARTMENT, I'VE NEVER SEEN CHANGE SO ENTHUSIASTICALLY EXAMINED OR SO READILY ACTED UPON. FOR EXAMPLE:

- . AN OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE HAS BEEN CREATED AND IS PRESENTLY STUDYING AND TESTING ALTERNATIVES FOR BRINGING THE SYSTEM OF JUSTICE CLOSER TO THE PEOPLE. THREE NEIGHBORHOOD JUSTICE CENTERS ARE ALREADY OPERATIONAL;

- STUDIES ARE UNDERWAY TO (1) IMPROVE CLASS ACTION PROCEDURES, (2) REVIEW THE FEDERAL FUNDING PROCESS FOR RESEARCH, AND (3) INVESTIGATE ALTERNATIVES FOR DEALING WITH JUVENILE OFFENDERS IN WAYS THAT WILL PREVENT THEM FROM BECOMING HARDENED CRIMINALS; AND
- A NUMBER OF LEGISLATIVE PROPOSALS -- INCLUDING THE REFORM OF THE FEDERAL CRIMINAL CODE, THE REVIEW OF THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, AND A MEASURE TO ALLOW THE ATTORNEY GENERAL TO INSTITUTE CIVIL ACTIONS TO REDRESS PRISONERS' DEPRIVATIONS OF THEIR CONSTITUTIONAL RIGHTS -- ARE BEING CLOSELY FOLLOWED.

I MENTION THESE EXAMPLES ONLY TO SHOW THAT THE JUSTICE DEPARTMENT'S STATED COMMITMENT TO IMPROVE THE DAY-TO-DAY WORKINGS OF THE CRIMINAL JUSTICE PROCESS WAS NOT, AND IS NOT, AN EMPTY PROMISE.

WE IN CRS ARE FOLLOWING UP THE ATTORNEY GENERAL'S COMMITMENT. PRESENTLY, WE ARE RE-EVALUATING OUR TRADITIONAL RESPONSE TO ADMINISTRATION OF JUSTICE CONCERNS, AND IMPROVING OUR CAPABILITY TO ASSIST COMMUNITIES TROUBLED BY SUCH PROBLEMS.

FROM OUR PERSPECTIVE, THE MOST IMMEDIATE AND TROUBLING PROBLEM AFFECTING PEACEFUL RELATIONS BETWEEN BLACKS AND THE CRIMINAL JUSTICE SYSTEM ALL TOO OFTEN RESTS WITH THE INDIVIDUAL POLICE OFFICER AND HIS DEALINGS IN THE MINORITY COMMUNITY.

DURING RECENT YEARS, STRONG CRITICISM AND SOMETIMES VIOLENT COMMUNITY PROTEST HAVE BEEN STAGED AGAINST POLICE DEPARTMENTS ALL OVER THE COUNTRY. IN FACT, POLICE/MINORITY RELATIONS PROBLEMS HAVE DOMINATED THE WORK OF MY AGENCY FOR EACH OF THE PAST FIVE YEARS.

PROBLEMS CONTRIBUTING TO THESE POOR RELATIONSHIPS RANGE FROM SIMPLE TRAFFIC DISPUTES TO HARASSMENT COMPLAINTS. BUT BY FAR THE MOST COMMON AND VOLATILE OCCURRENCE INVOLVES COMPLAINTS OVER ALLEGATIONS OF EXCESSIVE OR DEADLY FORCE IN CARRYING OUT THE POLICE MISSION.

WE HAVE FOUND THAT THERE IS NO SINGLE ISSUE WHICH FURTHER PROVOKES BOTH MAJORITY AND MINORITY RESENTMENT, OR WHICH HAS MORE POTENTIAL FOR COMMUNITY CONFLICT, THAN THIS ONE. WE RECOGNIZE THAT THERE ARE NO SIMPLE SOLUTIONS TO THIS PROBLEM.

BUT EFFORTS TO CLOSE THIS GAP AT LEAST IN TERMS OF POLICE/MINORITY RELATIONS MUST BEGIN, AND GROUPS LIKE YOURS SHOULD SEE THAT IT IS CARRIED THROUGH.

COMPREHENSIVE STUDIES CITING EACH AND EVERY INSTANCE OF EXCESSIVE OR DEADLY FORCE LEVIED AGAINST A BLACK, HISPANIC, OR OTHER MINORITY HAVE NEVER BEEN COMPILED. THIS MAKES IT DIFFICULT TO GET A HANDLE ON THE ISSUE. HOWEVER, EVERY AVAILABLE STUDY POINTS TO MINORITIES AS DISPROPORTIONATE VICTIMS OF SUCH FORCE:

- A DETAILED STUDY OF 1500 POLICE KILLINGS BY A NOTED CRIMINAL JUSTICE RESEARCHER CONCLUDED THAT MINORITIES -- AND ESPECIALLY BLACKS -- WERE COMMON POLICE VICTIMS, AND THAT THE YOUNG BLACK MALE WAS A MOST LIKELY VICTIM;<sup>1</sup>
- A CHICAGO LAW ENFORCEMENT STUDY GROUP REPORTED JUST A FEW WEEKS AGO THAT POLICE IN THAT CITY KILLED A CIVILIAN EVERY 11.9 DAYS AND WOUNDED ONE EVERY 4.3 DAYS IN ONE 44-MONTH PERIOD. THE STUDY ALSO SHOWED THAT A CIVILIAN KILLED A POLICEMAN EVERY 64.1 DAYS AND WOUNDED ONE EVERY 18.2 DAYS. A CRS STAFF

MEMBER PRESENTLY WORKING WITH THE GROUP TELLS ME THAT THE FINAL REPORT ALSO WILL POINT TO MINORITIES AS DISPROPORTIONATE VICTIMS;<sup>2</sup>

- A POLICE FOUNDATION REPORT ON DEADLY FORCE, WHICH COVERED SEVEN MAJOR U.S. CITIES, FOUND THAT 80 PERCENT OF THE NONFATALLY SHOT CIVILIANS WERE MINORITIES, WHILE 78 PERCENT OF THOSE KILLED WERE MINORITIES;<sup>3</sup>
- AND A STUDY BY THE OFFICE OF POLICY AND PLANNING IN SEATTLE NOTES THAT WHILE BLACKS ACCOUNT FOR ONLY NINE PERCENT OF THE CITY'S POPULATION, THEY COMPRISED 49 PERCENT OF THE PEOPLE SHOT BY POLICE IN A THREE-YEAR PERIOD.<sup>4</sup>

MY AGENCY'S DAILY CASEWORK LIKEWISE INDICATES THE ISSUE'S SERIOUSNESS AS A CONTINUING RACE RELATIONS PROBLEM.

WE'VE LEARNED THAT THERE ARE ALMOST AS MANY UNANSWERED QUESTIONS SURROUNDING THE ISSUE AS THERE ARE TRAGIC CASES TO DOCUMENT ITS EXISTENCE.

FIRST, WHERE ARE THE CASES OCCURRING? WHERE ARE THE AGENCY'S RESOURCES BEING DRAWN? CAN DEFINITE PATTERNS OF

OCCURRENCE BE IDENTIFIED? WHAT IS THE IMPACT OF GREATER  
CITIZEN INVOLVEMENT ON POLICE ADVISORY BOARDS OR SIMILAR  
COUNCILS?

IT IS COMMONLY BELIEVED THAT TRAGIC POLICE CASES ARISE ONLY IN LARGE URBAN AREAS. THEY DO NOT.

CRS HAS DOCUMENTED SUCH CASES IN EATONTON, GEORGIA; WEBSTER COUNTY, IOWA; AND QUINCY, ILLINOIS; AS WELL AS IN CHICAGO, DENVER AND SEATTLE. POLICE/COMMUNITY FRICTION ARISING FROM THE ISSUE OF DEADLY FORCE KNOWS NO BOUNDARIES IN TERMS OF CITY POPULATION, SIZE OR POLITICAL POWER OF THE MINORITY CONSTITUENCY, OR SIZE OF THE MUNICIPAL POLICE FORCE.

PATTERNS OF OCCURRENCE ARE PARTICULARLY DIFFICULT TO DETERMINE SINCE EVEN THE FBI REPORTS DIFFICULTY IN OBTAINING FULL, ACCURATE, AND RELIABLE STATISTICS FROM LOCAL JURISDICTIONS IN SUCH INSTANCES.

GAUGING THE EFFECT OF CITIZEN PARTICIPATION IS LIKewise NOT AN EASY TASK. GENERALLY, CRS BELIEVES THAT THE EXISTENCE OF CITIZEN BOARDS AND COUNCILS MAY RESULT IN FEWER ACTUAL CASES BECAUSE OF THE EXTRA LAYER OF ACCOUNTABILITY ADDED, BUT RARELY PROVIDE FOR A MORE SUBSTANTIVE REVIEW.

SECONDLY, HOW DO POLICE EXCESSIVE USE OF FORCE CASES ARISE? IS THERE A DEFINITE PROGRESSION OF EVENTS THAT USUALLY OCCURS? HOW MUCH OF THE COMMUNITY CONCERN OVER THE ISSUE IS EMOTIONALLY BASED?

WE'VE LEARNED THAT EXCESSIVE FORCE CASES DO NOT ALWAYS ARISE FROM AN INITIAL LIFE-AND-DEATH SITUATION FOR THE POLICE OFFICER. RATHER, THEY ARISE FROM A GREAT RANGE OF CIRCUMSTANCES. WHILE SOME HAVE INVOLVED THE POLICE RESPONSE TO ACTUAL AND VIOLENT CONFRONTATIONS, OTHERS HAVE ESCALATED FROM INCIDENTS AS INNOCUOUS AS THE WRITING OF A TRAFFIC TICKET.

THERE DOES NOT SEEM TO BE A USUAL PROGRESSION OF EVENTS LEADING UP TO AN OFFICER'S USE OF DEADLY FORCE, BUT OUR CASES SUGGEST THAT THOSE JURISDICTIONS WHERE RELATIVELY MINOR COMPLAINTS OF HARASSMENT ARE LONG-STANDING -- OR ARE IGNORED BY POLICE AGENCIES -- ARE MORE LIKELY TO GET EXCESSIVE FORCE COMPLAINTS.

COMMUNITIES SOMETIMES BECOME OVERLY INVOLVED IN THE EMOTIONAL ASPECTS OF A TRAGIC CASE TO THE EXTENT THAT THE MORE UNIVERSAL ISSUES ARE IGNORED. WE RECOGNIZE THAT THIS EMOTIONAL TACKLING BLOCK IS MOST DIFFICULT TO OVERCOME. WE HAVE FOUND, HOWEVER, THAT FAR BETTER RESULTS ARE GAINED IF BOTH SIDES FOCUS ON THE POLICE POLICY SYSTEM RATHER THAN ON THE INDIVIDUAL PATROLMAN INVOLVED.

THIRDLY, WHAT GUIDES THE OFFICER'S DISCRETION TO USE FORCE? WHAT LEGAL ISSUES ARE INVOLVED?

IN RESEARCHING THIS ISSUE AND ANALYZING OUR CASES, WE ATTEMPTED TO ISOLATE THE VARIOUS TYPES OF GUIDELINES GOVERNING THE OFFICER'S USE OF FORCE. AN OFFICER'S DECISION TO USE A WEAPON IS HISTORICALLY GROUNDED IN STRICT LEGAL TERMS. WHILE THESE TERMS ARE BASED ON SOCIETY'S VIEW OF WHAT IS REASONABLE AND JUST, THE STARK REALITY OF AN INCIDENT IN THE STREET MORE OFTEN THAN NOT DEMANDS THAT THE OFFICER MAKE HIS OR HER OWN DECISION. IT IS BASED ON LITTLE MORE THAN WHAT HE OR SHE VIEWS AS REASONABLE AND JUST AT THAT VERY INSTANT. AS A FORMER LAW ENFORCEMENT OFFICER, I CAN TELL YOU THAT SUCH AN AGONIZING DECISION CAN ONLY BE FULLY UNDERSTOOD BY THE OFFICER WHO HAS HAD TO MAKE IT.

STATE LAWS LIMITING A POLICE OFFICER'S USE OF DEADLY FORCE TO ARREST A FELONY SUSPECT ARE NOT UNIFORM. THEREFORE, IT IS EXTREMELY DIFFICULT FOR THE POLICE, OR ORGANIZATIONS LIKE YOUR OWN, TO COME UP WITH A PERFORMANCE STANDARD. BASICALLY, THERE ARE THREE CATEGORIES UNDER WHICH THE VARIOUS STATE LAWS FIT:

- 1) COMMON LAW: UNDER COMMON LAW, WHICH DATES BACK TO 15TH-CENTURY ENGLAND AND 18TH-CENTURY AMERICA,

ALL FELONIES ARE PUNISHABLE BY DEATH. SO THE USE OF DEADLY FORCE TO ARREST A FELONY SUSPECT IS GENERALLY SANCTIONED. THIS IS, OF COURSE, THE LEAST RESTRICTIVE POLICY. TWENTY-FOUR STATES ADOPT THIS APPROACH, BUT 17 HAVE PLACED SUCH VAGUE STATEMENTS AS "REASONABLE BELIEF" OR "SUFFICIENT CAUSE TO ASSUME" INTO THE BOOKS TO FURTHER GUIDE AN OFFICER'S DISCRETION.

- 2) FORCIBLE FELONY RULE: IN THIS CASE, STATE LAWS SPECIFY THE KINDS OF FELONIES FOR WHICH DEADLY FORCE MAY BE EMPLOYED; OR THEY MANDATE THAT ONLY "FORCIBLE FELONIES" JUSTIFY FORCE. SEVEN STATES ADOPT THE FORCIBLE FELONY APPROACH.
  
- 3) MODEL PENAL CODE APPROACH: HERE, THE TECHNICAL CLASSIFICATION OF A CRIME AS A MISDEMEANOR OR A FELONY IS IGNORED. RATHER, IT FOCUSES ON A BALANCE OF INTERESTS: THE NEED TO APPREHEND SUSPECTS VS. THE SAFETY OF THE ARRESTING OFFICER VS. THE VALUE OF HUMAN LIFE. IN OTHER WORDS, THE MODEL PENAL CODE APPROACH IS ONE BASED ON THE DANGER TO THE SUSPECT AND THE OFFICER, AND TO

SOCIETY ON THE WHOLE. SEVEN STATES ADOPT THIS APPROACH.

THE REMAINING 12 STATES HAVE NO JUSTIFICATION STATUTES LIMITING AN OFFICER'S USE OF DEADLY FORCE. HERE IN YOUR OWN NAACP REGION, IN FACT, THE NONUNIFORMITY IS EVIDENT. INDIANA AND WISCONSIN FOLLOW THE COMMON LAW APPROACH; ILLINOIS FOLLOWS THE FORCIBLE FELONY RULE; KENTUCKY FOLLOWS THE MODEL PENAL CODE APPROACH; AND MICHIGAN, OHIO, AND WEST VIRGINIA HAVE NO STATE JUSTIFICATION STATUTES ON DEADLY FORCE.

FURTHER COMPOUNDING THE PROBLEM OF DEADLY FORCE IS THE LACK OF CONSISTENCY IN THE CLASSIFICATION OF CRIMES BY THE VARIOUS STATES. WHAT IS CONSIDERED A FELONY IN ONE STATE MIGHT BE A MISDEMEANOR IN ANOTHER, AND IN A THIRD MAY NOT EVEN BE A CRIME.

FOR EXAMPLE, A SUSPECT'S RUNNING FROM THE POLICE IS A FELONY IN ONE OF OUR NORTHWESTERN STATES REGARDLESS OF THE SUSPECTED MINOR CRIME. IN OTHER STATES, PARTICULARLY FOR SUCH MINOR OFFENSES AS TRAFFIC VIOLATIONS, USE OF DEADLY FORCE ISN'T SANCTIONED.

THERE IS ONE ENCOURAGING NOTE, HOWEVER, WHEN ONE REVIEWS THE GUIDANCE GIVEN POLICE OFFICERS ON THIS ISSUE.

THERE IS A DEFINITE TREND EMERGING FOR LOCAL POLICE DEPARTMENTS TO IMPOSE MORE STRINGENT LIMITATIONS ON THEIR OFFICERS THAN ARE REQUIRED BY STATE LAWS. MORE RESTRICTIVE FIREARMS POLICIES AND THE LIKE HAVE RESULTED FROM SUCH SELF-IMPOSED EFFORTS.

BECAUSE THIS ISSUE IS MOST DESTRUCTIVE TO PRODUCTIVE RACE RELATIONS, I AM NOW CONSIDERING THE DEVELOPMENT OF AN AGENCY PROGRAM TO ASSIST POLICE DEPARTMENTS AND MINORITY COMMUNITIES TO BETTER UNDERSTAND THE IMPLICATIONS OF THIS ISSUE, AND THEREBY TO DEVELOP BETTER WORKING RELATIONSHIPS AS A RESULT. I HAVE ALSO COMMISSIONED A SPECIAL CRS TASK FORCE ON THE POLICE USE OF EXCESSIVE OR DEADLY FORCE IN DEALING WITH MINORITIES.

THE TASK FORCE IS OBTAINING INFORMATION ON SUCH THINGS AS:

- STATISTICAL STUDIES ON THE FREQUENCY OF POLICE/ MINORITY INCIDENTS IN STATES FOLLOWING DIFFERENT JUSTIFICATION STATUTES;
- STATISTICS ON THE NUMBER OF MINORITIES KILLED BY POLICE AND POLICE KILLED BY MINORITIES -- WITH BREAKDOWNS AS TO THE CIRCUMSTANCES INVOLVED;

- AND REVIEWS OF REPRESENTATIVE POLICE FIREARMS POLICES AND POLICE/MINORITY INCIDENTS THAT HAVE OCCURRED SO THAT A COMPARATIVE ANALYSIS OF POLICIES MAY BEGIN.

I HOPE THAT THROUGH THE WORK OF THE TASK FORCE, CRS WILL BE BETTER ABLE TO UNDERSTAND THE DEGREE OF EFFECTIVENESS INTERNAL POLICE POLICY HAS ON THE INDIVIDUAL PATROLMAN'S DISCRETIONARY POWER.

BESIDES POLICE OFFICIALS, WE ENVISION WORKING WITH A NUMBER OF OTHER GROUPS IN THIS EFFORT. WE HAVE FOUND IT TO BE A GALVANIZING ISSUE FOR OTHERWISE DIVERSE MINORITY GROUPS. THE NAACP, THE URBAN LEAGUE, THE MEXICAN-AMERICAN LEGAL DEFENSE AND EDUCATION FUND, THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS AND OTHER GROUPS HAVE ALREADY MADE THIS A PRIORITY ISSUE.

CRS HOPES THAT, BY WORKING WITH THESE VARIOUS GROUPS, WE MAY JOINTLY ARRIVE AT A SOLUTION THAT ESTABLISHES GREATER TRUST AND RESPECT BETWEEN MINORITY GROUPS AND THE POLICE STRUCTURE, AND THAT PEACEFUL AND PRODUCTIVE RELATIONSHIPS MAY RESULT.

SUCH AN EFFORT IS PAST DUE.

THANK YOU.

## ENDNOTES

- (1) JOURNAL OF SOCIAL ISSUES ; VOL. 31, NO. 1, 1975;  
P. 164-165.
- (2) CHICAGO TRIBUNE; "COPS KILL EVERY 11.9 DAYS, STUDY FINDS";  
NOV. 27, 1977; P. 48.
- (3) POLICE FOUNDATION REPORT; POLICE USE OF DEADLY FORCE;  
1977; P. 19.
- (4) SEATTLE CITY COUNCIL MEMORANDUM: POLICE USE OF DEADLY  
FORCE; JAN. 16, 1978
- (5) HARVARD CIVIL RIGHTS - CIVIL LIBERTIES REVIEW; VOL. 11,  
SPRING 1976; P. 361-389.
- (6) IBID, P. 368-369.



**END**