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Deadly Force

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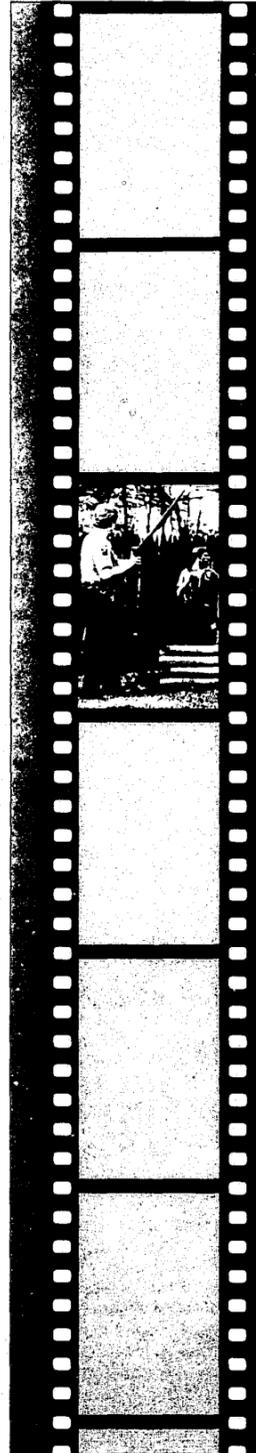
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**Moderator: James Q. Wilson, Professor of Government,
Harvard University**

**Guests: Neil Behan, Baltimore County Police Department
James J. Fyfe, American University
School of Justice
Richard Hickman, Dallas Police Association**

Your discussion will benefit from some knowledge of how often the police use deadly force against civilians or are themselves killed or wounded while on duty, the circumstances in which police-civilian violence occurs, trends over time, methods for controlling police use of deadly force, and the applicable legal standards.



The Deadly Force Debate

Within a 10-month period, four New York City police officers were killed in the line of duty. In the tense aftermath, a city policeman shot and killed a fleeing suspect in an unrelated case. A *New York Times* editorial was sharply critical, declaring, "if a policeman needs to defend his life, the use of force is permissible, but if he is chasing a suspect, he has no right to shoot the man." These events and the resulting controversy occurred in 1857 and 1858, but the pattern they represent is as current as this morning's headlines.

The factors that placed police use of deadly force high on the civic policy agenda before the Civil War have changed surprisingly little. These include the crime problem, the public's ready access to handguns, conflicting community perceptions and values, the limited technology available to police for the immediate apprehension of fleeing suspects, and the potential of questionable police actions to plunge a community into turmoil. More is known now about the nature and frequency of shootings in which police are involved, although we have nothing resembling a comprehensive, continuous national picture of these violent police-civilian encounters. Even *police* insight into the nature, extent, causes, and prevention of police shootings tends to draw on anecdotes rather than on systematic information, and insight is highly localized. The art of apprehending potentially dangerous criminal suspects with a minimum of bloodshed remains in its infancy.

This state of affairs poses a dilemma for public policymakers, who do not have the luxury of waiting for systematic data or tactical advances before making concrete decisions about how the police are supposed to conduct themselves. The atmosphere surrounding the "deadly force debate" is charged with emotion, fear, entrenched assumptions, class- and race-based suspicions, and virtually intractable value conflicts. For some partisans, the controversy is a skirmish in a larger battle to "handcuff" or "unhandcuff" the police. Virtually any deadly force policy decision is likely to be challenged by one constituency or another. And the challenges raise issues that no responsible public official can disregard. If we clamp down too strictly on police use of deadly force, will we endanger the police and the public by permitting rapists, robbers, and murderers to evade arrest? If we are too lax in our controls, thereby permitting shootings that many perceive as discriminatory and excessive, will we imperil the police and the public by discouraging the community cooperation necessary for effective police work, provoking retaliatory violence against the police and, in particularly volatile situations, even providing the catalyst for a riot?

It is no wonder that reasonable people differ on when police should be allowed to use their firearms. Indeed, the debate rages as vehemently *within* the police world as it does across the police-civilian boundary, a fact sometimes obscured by simplistic, monolithic perceptions of the law enforcement profession, and by the tendency of many police practitioners to close ranks when criticized by the news media, community groups, or other "outsiders." The aim of this commentary is not to resolve the debate but to inform it by briefly surveying what little hard data are currently available.

On what issues would empirical information be helpful? Several come to mind. How much shooting—not only *by* police but *of* police—is there now? Who gets shot, why, and by whom? Is the picture significantly different from

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city to city? Is the current level of shooting too high? What yardstick do we use to answer that question? What rules govern officer discretion to shoot? How controllable are shootings? What control techniques seem to work? What social costs might these techniques impose?

Most research on police use of deadly force, like research on many other aspects of policing, has occurred in the last 10 to 15 years. Our knowledge is uneven and intermittent. It remains extremely difficult even to get an accurate national count of fatal shootings by police. It is harder to tally *non-fatal* shootings or, of almost equal importance, incidents in which police shoot at people but miss them. And, given current law enforcement reporting practices, it is completely impossible systematically to identify—and learn from—incidents in which police would have been legally justified in shooting suspects but, through personal skill at avoiding violence, were able to apprehend them safely without use of deadly force.

With considerable room for error, researchers conservatively estimate that publicly employed American law enforcement personnel kill approximately 600 criminal suspects per year, shoot and wound another 1,200, and fire at but miss an additional 1,800 individuals. The "hit rates" and "fatality rates" on which these national estimates are based vary from city to city, so the number of people killed by different police departments (often the only available information) is a poor basis for estimating and comparing the number of suspects they wound or attempt to shoot but miss entirely. For example, over the 5 years from 1974 through 1978, officers in Chicago and Los Angeles fatally shot similar numbers of people: 132 and 139 respectively. There the similarity ended, however, for the Chicago police shot 386 people nonfatally, compared to 238 for the Los Angeles police. And the total number fired upon, including those missed, was 2,876 in Chicago but 611 in Los Angeles.

Chicago and Los Angeles are comparable-sized cities, but their populations (especially in the high-crime areas, where shootings are concentrated) have markedly different chances of being exposed to police use of lethal force. An International Association of Chiefs of Police (IACP) survey of "justifiable homicides by police" in the Nation's 57 largest cities from 1970 through 1979 confirmed widely different municipal rates even for fatal incidents. For instance, police officers in New Orleans were 10 times as likely as officers in Newark to kill criminal suspects—a disparity that holds true even when the rates are based on the number of violent crimes rather than on the size of the police department in each community. This tenfold difference is an extreme example, but many cities in the IACP study differed by a factor of five. Moreover, as suggested above, the incidence of extreme police-civilian violence is vastly different from neighborhood to neighborhood within a given city. For example, in an average year in Chicago, the Near West Side was shown in a recent study to be 27 times as likely as the Near North Side or the Near South Side to be the scene of a police shooting.

How Much Shooting Is Too Much Shooting?

Stepping back from these local variations, what is one to make of the estimated 3,600 people whom American police shoot at each year? Is that too many? How do we think about that question with some objectivity? One approach is to ask: 3,600 compared to what? One's choice of comparison very likely will be rooted in personal values. For instance, the 3,600 people could be compared to the millions of serious offenders encountered annually by America's 500,000 publicly employed police. The number of intended police shooting victims could be viewed against the backdrop of the "subculture of violence" that has characterized

America from its revolutionary birth. Against either of these backdrops, it may seem remarkable that the average American police officer goes through an entire 20-year career without ever firing his or her gun, except in target practice. From another perspective, the 3,600 shootings could be considered examples of lawful governmental decisions to kill and could be compared to the handful of individuals who, after lengthy court consideration, are given capital punishment each year. Or the 3,600 could be considered in light of the findings of several national riot commissions that even a single instance of questionable police use of force can be enough to spark an urban rebellion and tarnish the good image a police department has painstakingly built through countless thousands of positive contacts with the citizenry.

Another way to think about the national and local levels of police shootings is to ask whether the various police missions—preventing, detecting, and solving crimes; protecting human life; providing a host of emergency services; and helping to build safer and more vital communities—could be accomplished as well or better, without undue risk to police officers, if the number of shootings were different. Only the most rudimentary and spotty information is currently available for this difficult cost-benefit analysis, virtually assuring that interpretations of the data will reflect the interpreters' predispositions.

Dangers of Police Work

Surely one of the most important factors in weighing police use of firearms is the danger that surrounds police work. It is easier to obtain valid, long-term counts of police killed in the line of duty than it is to amass data on persons shot by police, chiefly because the FBI has collected and published the former figures for some time. While the risk of job-related death is reportedly lower in police work than in such industries as mining, agriculture, construction, and transportation, the hazards are substantial nevertheless, especially in the United States. An early study of British and American police fatalities revealed that, from 1946 through 1966, 1,014 American law enforcement officers were killed on the job, compared to 10 of their British counterparts. By the 1970's American police deaths were up dramatically—1,018 officers were slain from 1972 through 1980—although the annual figure has begun to decline in the 1980's.

Without in any way denigrating the dangers of policing, one should perhaps note that research in a number of cities has revealed that large percentages of the police who are shot, particularly while off duty, are shot by themselves or by their coworkers. For example, in Chicago police bullets accounted for 38 percent of the 187 officer victims during 1974-1978. In New York City, according to researcher James Fyfe, police "are at least as likely to be killed by themselves, their acquaintances or their colleagues as by their professional clientele." Another commentator observed with only mild exaggeration that the principal threats to the lives of the police seem to come from two sources: the armed robber and the armed policeman. Thus, the use of deadly force by police (and the increasingly controversial *mandatory* arming of off-duty officers by more than a quarter of all large departments) can directly jeopardize police, completely aside from whatever retaliation, emotional trauma, or critical scrutiny may follow an officer's decision to shoot. Nevertheless, it seems indisputable that police must use lethal force at times to protect themselves or their communities from dangerous individuals.

Deadly Force Situations

Most police use of deadly force occurs at night in "public" locations within high-crime areas of big cities and involves

on-duty, uniformed officers firing at suspects in the crime-prone ages of 17 to 30. Just as the armed robber is a significant threat to the lives of police, the police are more likely to shoot suspects wanted for armed robbery than for any other crime. In studies of nine major cities, police shootings were prompted by suspected armed robberies in 21 to 39 percent of the cases, by "disturbance" calls ("man with a gun," fights, assaults, disturbed persons, family quarrels, and so forth) in 25 to 39 percent of the cases, in response to burglaries in 7 to 15 percent, in violence arising from traffic pursuits or stops in 7 to 12 percent, and in connection with other suspected crimes in 6 to 11 percent.

Cutting across these patterns of "underlying offenses" are the reasons police give for actually deciding to pull the trigger. This distinction is important and sometimes confusingly reported by the news media and even law enforcement agencies. Officers' reasons for shooting, as one might expect, carry even greater weight than the suspected underlying crime in many people's assessments of the justifiability of a shooting. A shoplifter shot after drawing a gun on police is less likely to generate controversy than a suspected armed robber who clearly is unarmed and is shot simply because he is about to outdistance an overweight policeman. A 1974-1978 survey to determine the array of reasons Chicago officers gave for firing their weapons shows that two-thirds of the police shootings occurred when the police perceived an imminent threat to their own or another person's life. But (with great variation from city to city) police also shoot to apprehend fleeing suspects who are offering no violent resistance.

Deadly Force Equality and Justification

In Chicago, 70 percent of the civilians struck by police bullets were black, 20 percent were white, and 10 percent were Hispanic. Data for Philadelphia, New York City, and Los Angeles reveal similar distributions.

Without denying that individual instances of police racism may exist in the use of deadly force, the general patterns in most cities where research has been conducted (such as Chicago, Philadelphia, New York City, and Los Angeles) reveal that minorities are shot out of proportion to their representation in the general populace, but not out of proportion to their participation in serious crime. Similarly, black police officers have been found to shoot—and be shot—out of proportion to their numbers on the force, but at levels generally consistent with their assignment and residence in high-crime areas of their cities.

The vast majority of all shootings by police are determined, after departmental and prosecutorial investigations, to have been justified—a conclusion usually broadly accepted by the community. Most of the controversy stems from a relatively small number of cases where, arguably, shooting discretion was too broad and was abused. Off-duty shootings by police have proved especially nettlesome. In New York City, where an internal police study revealed that off-duty officers make only 1 of every 1,000 of the department's felony arrests, 17 percent of the shooting officers were off duty and 40 percent of the officers disciplined for shooting were involved in off-duty incidents. Some departments have begun to rethink the traditional notion of an armed, "24-hour cop," wondering whether requiring police officers to be "always prepared" for aggressive crime fighting may be unfair to the officers and may produce as much violence as it prevents. Unfortunately, virtually no data are available concerning the crime prevention effects of arming off-duty police.

Shooting Control Techniques

One of the few areas in which the deadly force research data do seem to offer beleaguered police leaders some meaningful guidance is on the question of what shooting control techniques help limit problematic violence. Among many techniques, the following show promise:

- Policies narrowing officer shooting discretion.
- Violence-reduction training to help officers abide by a "shoot only as a last resort" policy.
- Use of modern communications equipment and interagency cooperative arrangements that enable officers to summon whatever assistance they may need.
- Protective equipment, such as lightweight soft body armor suitable for routine wear by officers, and so-called "less lethal weapons," including TASER's (electronic dart guns), stun guns (compact cattle prods), rubber bullets, and other similar devices.
- Strong personnel policies, supervision of line officers, and fair but firm accountability up the chain of command for inappropriate officer aggressiveness and for deficient firearms training, procedures, and practices.
- Counseling for officers who desire help in dealing with job and other stresses and with postshooting trauma.
- "Cultural awareness" training to sensitize officers to ethnic, religious, or other group traits that might have a bearing on the officer's appraisal of a suspect's dangerousness and on the officer's ability to reduce it.
- Departmental reward systems that honor equally both an officer's decisiveness in using deadly force when necessary and his or her ability to resolve situations by less violent means when that option is available.

Big-city departments that have employed a number of these techniques together have produced positive results: fewer controversial shootings by officers, fewer serious injuries of officers, no increase in the crime rate, and no fall-off in officers' aggressiveness in making arrests.

This and other evidence convinced the U.S. Supreme Court in March 1985 to decide, by a 6-3 vote, that more than half the States' laws and many law enforcement agencies' regulations on police use of deadly force were unconstitutionally permissive. In *Tennessee v. Garner*, for the first time, a national minimum standard was imposed. While ambiguities remain, the ruling prohibited police from shooting at unarmed, nonviolent, fleeing felony suspects. The Supreme Court listened to and rejected the argument that a criminal suspect forfeits his right to live by committing a crime and disobeying a lawful police order to surrender. The Court reasoned that there must be proportionality—reasonable balance—between the alleged criminal conduct and the governmental response.

The Continuing Debate

State laws and departmental shooting policies are likely to remain fairly diverse even after *Garner*, although within narrower bounds. No longer can these provisions leave officers virtually untethered, as in the extreme case of one small American town whose only gun-use guidance to its officers was the homily, "Never take me out in anger, never put me away in disgrace." The range of firearms policies hereafter is likely to be from "defense-of-life" regulations, which permit shootings only to defeat an imminent threat to the officer's or another person's life, on the one extreme, to approaches on the other end that, in minimal compliance with the *Garner* ruling, permit shooting at currently nonviolent, fleeing suspects whom the officers reasonably believe committed a felony involving the threat but not the use of violence. Both approaches are currently employed by many large police departments.

Although our insight into police shooting encounters is growing rapidly, much research and development remains to be done before assertions about the causes and prevention of extreme police-civilian violence can be made with even modest confidence. As technological and tactical breakthroughs occur (for example, when Samuel Colt's 1836 six-shooter is replaced as the standard police revolver by an instant, harmless "immobilizer"), the grounds of public policy debate will shift somewhat.

Until then, the reality is that police officers across the Nation will be required, from time to time, to use deadly force. As part of the public's vital role in working for public safety, all of us bear some responsibility to assure that, to the extent humanly possible, police energies are channeled in ways that stem community violence without unnecessarily contributing to it.

References

Fyfe, James J. 1982. *Readings on Police Use of Deadly Force*. Washington, D.C.: Police Foundation.

Geller, William A. 1982. "Deadly Force: What We Know." *Journal of Police and Administration* 10:151-77.

_____. 1985. "Officer Restraint in the Use of Deadly Force: The Next Frontier in Police Shooting Research." *Journal of Police Science and Administration* 13:153-71.

Matulia, Kenneth J. 1982. *A Balance of Forces*. Gaithersburg, Maryland: International Association of Chiefs of Police.

Milton, Catherine, Jeanne Wahl Halleck, James Lardner, and Gary L. Albrecht. 1977. *Police Use of Deadly Force*. Washington, D.C.: Police Foundation.

Sherman, Lawrence W. 1983. "Reducing Police Gun Use: Critical Events, Administrative Policy, and Organizational Change." In *Control in the Police Organization*, edited by Maurice Punch. Cambridge, Massachusetts: MIT Press.

Case References

Tennessee v. Garner, 53LW4410-18 (March 27, 1985).

Discussion Questions

1. Under what circumstances should the police be authorized to use deadly force against criminal suspects?
2. Does a criminal "forfeit his right to live" by committing a crime?
3. Should the police ever have authority to shoot at a fleeing suspect who has not committed a violent crime and who is not threatening to use force against the officer or other people?
4. Should off-duty police officers be *required* to carry guns?
5. A study described in the commentary indicated that 1,014 American law enforcement officers were killed during the period 1946-1966 compared with only 10 British police officers during the same period. How would you explain this dramatic difference and what bearing, if any, should it have on how police use of deadly force is regulated?

This study guide and the videotape, *Deadly Force*, is one of 22 in the CRIME FILE series. For information on how to obtain programs on other criminal justice issues in the series, contact CRIME FILE, National Institute of Justice, NCJRS, Box 6000, Rockville, MD 20850 or call 800-851-3420 (301-251-5500 from Metropolitan Washington, D.C., and Maryland).

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