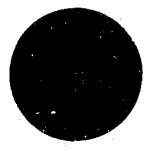
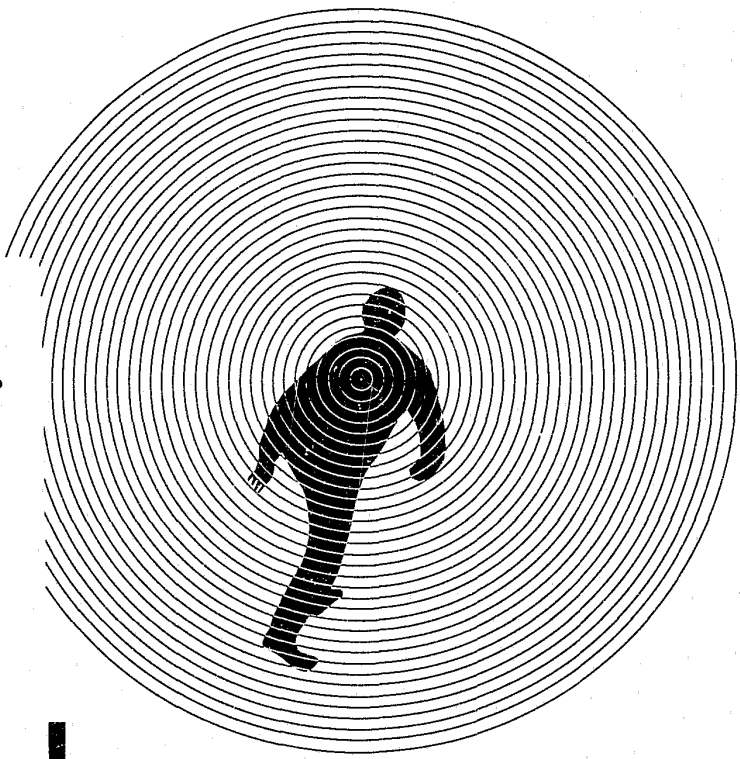


# A Community Concern: Police Use of Deadly Force



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Department of Justice  
Enforcement Assistance Administration  
Federal Institute of Law Enforcement and Criminal Justice

"There is no single issue that serves to precipitate a breakdown between law enforcement officials and minority groups—and has the potential for serious disorder—as police use of deadly and excessive force."

Robert Lamb, Jr.  
*Regional Director*  
Community Relations Service

"As a mayor, I am greatly concerned about the awesome power we as a society delegate to the police. We have ascribed to the police the role of being legally sanctioned to use deadly force as a means of social control. Thus, as managers of cities, we must insure that the police are provided with adequate guidelines to assist them in exercising their great discretion in this area. I strongly believe that the police use of deadly force should not only be legally justifiable but also socially and morally warranted and in keeping with the principles of humane social control in a democratic society."

The Honorable Maynard Jackson  
*Mayor of Atlanta*

"The rising incidence of police brutality is a cause for grave mutual concern. The indiscriminate and often deliberate use of police force against unarmed and innocent citizens must be regarded as a crisis which deserves the immediate attention of law-abiding citizens and the U.S. Department of Justice."

Margaret Bush Wilson, *Chair*  
NAACP National Board of Directors

"By assuming political responsibility for our cities, as has been successfully accomplished in numerous cities, we must also be responsible for changing attitudes of minorities towards law enforcement agencies, which heretofore have been perceived as instruments and vehicles of oppression."

Ben Brown  
*Deputy Chairman*  
Democratic National Committee

"The Department of Justice is committed to work with police officials across the country to develop a sound policy and useful guidelines for the appropriate use of deadly force. To accomplish this goal we will use all of our resources—research programs, training courses, and meetings with law enforcement officials and organizations and concerned community groups."

The Honorable Benjamin R. Civiletti  
*Deputy Attorney General*

"The discretion whether to employ deadly force is, because of its irreversible consequences, the gravest power that a society can delegate to one of its agencies. Accordingly, the development of strict guidelines to govern its use should receive the highest community priority."

The Honorable Wade H. McCree, Jr.  
*Solicitor General*

"The FBI has important investigative responsibilities in the area of civil rights; these include cases involving allegations of police brutality which must be investigated in every instance with thoroughness and professionalism. Our work serves to vindicate the good officers wrongfully accused and to identify those who dishonor the badge."

The Honorable William H. Webster  
*Director*  
Federal Bureau of Investigation

"LEAA will continue to assist police administrators, lawmakers, and city administrators as they strive to formulate clear direction and guidance to our Nation's law enforcement officers charged with the awesome responsibility of determining the need and degree of force and ultimately the use of deadly force in violent situations. Intensive and continuous training, appropriate guidelines, practices and controls must be addressed in order to reduce and restrict the use of force and deadly force by police without risking and jeopardizing their lives."

Henry S. Dogin  
*Administrator*  
Law Enforcement Assistance Administration

"The reluctance of people to even call to account the police officers they have been victimized by...or the system that continues to oppress them...and that actually operates against law enforcement officers who wish to do their job...might be the beginnings of a totalitarian system."

The Honorable John Conyers  
*United States Representative*

**A COMMUNITY CONCERN:  
POLICE USE OF DEADLY FORCE**

compiled by  
Robert N. Brenner  
Marjorie Kravitz  
National Criminal Justice Reference Service

January 1979

United States Department of Justice  
Law Enforcement Assistance Administration  
**National Institute of Law Enforcement and Criminal Justice**



Law Enforcement Assistance Administration

Henry S. Dogin, *Administrator*

Homer F. Broome, Jr., *Deputy Administrator for Administration*

National Institute of Law Enforcement and Criminal Justice

Harry M. Bratt, *Acting Director*

132789

U.S. Department of Justice  
National Institute of Justice

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## FOREWORD

The use of deadly force is in all probability the most serious act a law enforcement officer can engage in. It has the most far-reaching consequences for all the parties involved. Thus, it is imperative not only that law enforcement officers act within the boundaries of legal guidelines, ethics, good judgment, and accepted practices, but also that they be prepared by training, leadership, and direction to act wisely whenever using deadly force in the course of their duty.

Officers have an affirmative duty to use that degree of force necessary to protect human life; however, deadly force is not justified merely to protect property interest. A reverence for the value of human life should always guide officers in considering the use of deadly force.

It is in the public interest that law enforcement officers be guided by a policy which the people believe to be fair and appropriate and which creates public confidence in law enforcement agencies and individual officers.

It is the ultimate objective of the Law Enforcement Assistance Administration to assist law enforcement agencies in the development of strategies and techniques to reduce the number of homicides by officers without permitting the officers to put themselves in greater jeopardy.

Statement by

*Homer F. Broome*

Deputy Administrator for  
Administration

Law Enforcement Assistance  
Administration

The Community Relations Service (CRS) of the Department of Justice was pleased to respond to the request of the National Organization of Black Law Enforcement Executives (NOBLE) to conduct a workshop on the subject of Police Use of Deadly Force at the NOBLE convention in St. Louis on June 22, 1978.

The pervasive and stubborn antagonism between police and minority groups, which severely impedes law enforcement, is intensified by charges of excessive use of force and various forms of protest of such conduct. While this is a problem which only police can resolve, community cooperation and insistence are important components of the solution. To make that cooperation possible, dialog between police executives and minority community leadership must take place in a problem-solving atmosphere, rather than in moments of inflamed passion, when such discussions usually occur. To be successful such dialogs also depend on common understanding based on knowledge of the facts and complexities of the problem.

The desire to construct that base of shared knowledge lies at the root of CRS' sponsorship of the NOBLE Workshop and our request that LEAA publish this symposium of the papers presented there.

CRS, which is charged by Congress with the responsibility for helping communities to resolve racial and ethnic conflict, has dealt with such manifestations of the problem in many hundreds of cases throughout the nation in the past dozen years. While our assistance has often been useful to these communities in helping them reestablish ruptured relationships and improve policies and practices related to the use of firearms and other forms of force, the problem nationwide is unabated and recurrent.

Some students of the subject assert that the root of the problem lies neither with the police per se, nor with the community per se, but with the total societal predisposition and concomitant administration of justice system which, in various ways, tends to confer an unofficial sanction of immunity upon the police. They question the objective capacity of the "internal police investigation," no matter how well-meaning the intent may be.

It is further argued that when a case is taken to a grand jury, indictments are rare. The critics not only challenge the objective capacity of a grand jury to indict a police officer "who daily risks his/her life to protect the community," but also question the enthusiasm of the prosecutor to present a vigorous case against the police. With respect to the small number of cases that eventually are prosecuted before a jury, the number of convictions is far smaller—again, so the argument goes, because juries are reluctant to convict a police officer.



Stubborn as the problem has been, there are a number of harbingers of progress. Among these is the increasing attention being devoted to the problem.

Police administrators are taking a closer look at the issue of deadly force and discussing it with their peers. Officials of local government are increasingly expressing concern and reviewing relevant policies. Many who wish to see changes advocate improvements in State law as well as in departmental firearm policies, which generally are more restrictive than the State laws.

Some concerned organizations see in this climate an opportunity for initiating a new type of dialog with city officials and police—a dialog that opens at a time of relative accord, not discord; that quickly identifies the points of common interest; and that refers to the findings of research and the newer approaches of police administrators in seeking to bridge outstanding differences.

The Community Relations Service stands ready to provide technical assistance for such dialogs whenever requested by the parties at interest.

Statement by

*Gilbert G. Pompa*

Director

Community Relations Service

U.S. Department of Justice

## PREFACE

Police use of deadly force and the issues surrounding it are of primary concern to all, but the problem is particularly acute for black, Hispanic, and Native Americans. Because of alleged misuse of deadly force, police departments across the country have experienced strong criticism and even violent protests. Studies by the Community Relations Service (CRS) of the U.S. Department of Justice, the U.S. Civil Rights Commission, the Police Foundation, and LEAA's National Minority Advisory Council suggest that no other single factor exceeds police use of deadly force in fostering distrust and even disorder within communities, especially minority communities. Research by Gerald Robin, Paul Takagi, and others tends to support allegations that minorities are victims of police use of deadly force in excess of their proportion of the population.

The Department of Justice is sensitive to the issues raised by minority communities and researchers, and several agencies within the Department are addressing the questions posed. Early in 1978 CRS established a task force on police use of deadly force. The research arm of LEAA, the National Institute of Law Enforcement and Criminal Justice, has identified police use of deadly force as a research priority. Similarly, the National Minority Advisory Council of LEAA has designated this topic as a principal research priority.

This publication further demonstrates the commitment of the Department of Justice to face the issue squarely and work in concert with community organizations to dispel the distrust and the basis for such distrust that exists between law enforcement officials and the minority communities. Originally conceived as a report of the workshop on police use of excessive and deadly force, convened by CRS as an adjunct to the June 1978 meeting of the National Organization of Black Law Enforcement Executives (NOBLE), the scope of this publication has been expanded to include statements by key Justice Department officials and a review of the published research on this critical issue.

The remarks in the Foreword by Homer F. Broome, Deputy Administrator for Administration of LEAA, and Gilbert G. Pompa, Director of the CRS, set the stage for the articles that follow.

The NOBLE workshop is the focal piece of this publication, and this part begins with an overview of NOBLE itself by its president Hubert Williams, followed by the resolutions that emerged from the June workshop. These resolutions—11 proposals for action—include suggestions for legislation and remedial measures that would enhance the civil rights of all Americans. The workshop itself comprised presentations on police use of excessive and deadly force

from six perspectives and each makes a distinct contribution to building an understanding of the issues.

After the NOBLE workshop, CRS conducted a "Community Consultation" which consisted of representatives of NOBLE and other organizations sharing their concerns, their strengths, and their ideas on this topic of mutual concern. A summary of this informal "town meeting" is presented as is a roster of participants.

Part III of this publication highlights the concerns of the Department of Justice and includes statements by the Hon. Drew S. Days III, Assistant Attorney General, Howard P. Carrington of CRS, and Blair G. Ewing, Acting Director of the National Institute. Research efforts of the National Institute on police use of deadly force are outlined by Peggy Triplett, and the scope of a new research program is detailed.

The final section, Part IV, has been prepared by the staff of the Police Foundation and includes a summary of the concerns of that organization by its president Patrick V. Murphy and an indepth review of the literature on police use of deadly force. In addition to summaries of major research studies, this section also includes an annotated bibliography selected from the data base of the National Criminal Justice Reference Service (NCJRS). These documents are available from NCJRS on interlibrary loan.

In sum, what began as a report of the NOBLE workshop has emerged as a compendium of official statements, current thought, research directions, and bibliographic information about police use of deadly force. It is hoped that this publication will provide further impetus to all who are involved in addressing the issue of police use of deadly force and will maintain public awareness of the progress that is being made to resolve the problem.

## ACKNOWLEDGMENTS

As in the preparation of any publication, but particularly in one of this type, there are many contributors whose assistance was vital. The editors would like to acknowledge the efforts of the Community Relations Service (CRS) of the U.S. Department of Justice, specifically Gilbert G. Pompa, Director, and Robert Lamb, Roscoe Nix, Bertram Levine, and Howard Carrington. Their task force on deadly force, established early in 1978, became the foundation for the events that followed, and their dedication and commitment are worthy of note.

Blair Ewing, Acting Director of the National Institute of Law Enforcement and Criminal Justice, played a key role in providing encouragement and support for this important project. Peggy Triplett, of the National Institute staff, added her special talents and proved to be a source of continuing motivation and support.

The NOBLE conference was held in St. Louis, and the efforts of Mayor James Conway and his staff, Dr. Jack Sietzinger and the staff of the Greater St. Louis Police Academy were extremely helpful. Of course, St. Louis' finest—the police department—deserves special mention, especially Col. Atkins Warren, chairman of the NOBLE Conference Committee, and Capt. Gay Carroway, Maj. William Brown and Capt. Julian Boyd.

The following organizations were instrumental in keeping deadly force in the forefront as a priority community concern—another essential element in the evolution of this document:

National Black Police Association

National Minority Advisory Council on Criminal Justice

U.S. Civil Rights Commission

Police Foundation

National Association of Human Rights Workers

Coalition of Spanish-Speaking Mental Health Organizations

United Methodist Church

Providence (Rhode Island) Human Rights Commission

International Association of Chiefs of Police

Police Division, National Institute of Law Enforcement and Criminal Justice

Pennsylvania Committee for Reform

School of Criminal Justice, State University of New York—Albany

Northwestern University

And finally, William Heenan, of the Office of Development, Testing, and Dissemination of the National Institute, is acknowledged for his support, insight, and commitment to the development of this project.

**Part I**  
**THE WORKSHOP**

## NOBLE: AN OVERVIEW

Hubert Williams

*President, NOBLE*

NOBLE, the National Organization of Black Law Enforcement Executives is dedicated to improving the quality of criminal justice throughout the United States. This organization came about as a result of a symposium on Reducing Crime in Low Income Areas sponsored jointly by the Joint Center for Political Studies, the Police Foundation, and the Law Enforcement Assistance Administration on September 7-9, 1976, in Arlington, Virginia. Some 60 black law enforcement executives from 24 States and 55 cities across the Nation recognized the need to organize so they might continue to address collectively the crisis within the Nation's urban centers. These officials understood it was vital that high level black police expertise be given greater consideration in the development and implementation of policies and programs that would appropriately deal with crime in America. In doing this, NOBLE was based on the following purposes:

- To unify law enforcement officers at executive and command levels;
- To develop mechanisms that will facilitate the exchange of information among black police executives;
- To become the spokesman for black executives in law enforcement;
- To work with the community to achieve greater involvement and cooperation with criminal justice agencies;
- To work for immediate implementation of programs to increase the number of black police officers at all levels of police service;
- To develop communication techniques for sensitizing police executives, police officers, institutions, and agencies in the criminal justice system to the problems of black police officers and of the problems of the black community;
- To establish effective means and strategies for dealing with racism in the field of criminal justice;
- To establish linkages and liaisons with organizations of similar concern;
- To conduct research in relevant areas of law enforcement;
- To evaluate and recommend legislation relating to the criminal justice process.

In carrying these out, one of the mandates of the NOBLE Constitution is that NOBLE involve itself in meaningful research. Our St. Louis, Missouri, workshop on "Police Use of Excessive and Deadly Force" was a preamble to such research. In this regard, both the National Institute of Law Enforcement and Criminal Justice and the Community Relations Service provided vital input and support.

The workshop elicited views from cross sections of the criminal justice community and lay people, regarding the need to establish a uniform policy in this area.

In light of the absence of standards, unnecessary deaths result that impact disproportionately upon the minority community.

NOBLE believes that police departments and police officers in a democratic society have a mandate to perform in a manner which respects and preserves those rights guaranteed to all American citizens under the Constitution. We deplore those instances where people are injured or killed by the police's use of deadly force under circumstances where neither the life of the police officer, nor that of any other person, was endangered.

Finally, it is our contention that the unwarranted use of deadly force serves to perpetuate the schism between police and community; it generates fear, hostility, a climate of suspicion, indifference, and noncooperation, to the detriment of law enforcement.

Given the above, NOBLE has passed the resolutions that follow. These resolutions were a natural outgrowth of the workshop on "Police Use of Deadly Force."

## NOBLE RESOLUTION ON "POLICE USE OF DEADLY FORCE"

*That* police departments and other law enforcement agencies formulate firearm policies which are clear, uncomplicated, and easy to enforce.

*That* the firearm policies of police departments and other law enforcement agencies be based upon the principle that no officer's weapon be discharged except in the defense of life.

*That* State legislatures establish laws which require police departments and other law enforcement agencies within their jurisdiction to formulate firearm and use of deadly force policies which are consistent with the principle that weapons are to be discharged only in the defense of the life of the officer or of other citizens.

*That* the Civil Rights Division of the United States Department of Justice propose legislation to the Congress of the United States which would effectively make jurisdictions civilly liable for the excessive use of deadly force by officers of the law.

*That* the National Organization of Black Law Enforcement Executives and its constituent members vow never to abide by or support the unwritten "code of silence" when there has been an abuse of deadly force by the police.

*That* NOBLE support the establishment of technical assistance projects, the object of which would be to politically educate citizens in effecting change in the formulation and administration of the policies of the police departments and other law enforcement agencies in those communities where there is an habitual abuse of deadly force by law enforcement officers.

*That* NOBLE undertake a study of firearm policies of police departments and a survey of the types of firearms and ammunition being utilized by police departments.

*That* NOBLE appeal to the media to bring editorial pressure upon state and local officials to formulate, administer, and enforce firearm policies which would reduce the abuse of deadly force by the police.

*That* police departments adopt strong regulations designed to eliminate abuse of firearm usage.

*That* an adequate recordkeeping system be instituted to document firearm discharge occurrences.

*That* police departments establish mechanisms to insure proper investigations of firearm discharge situations in order to carry out their responsibilities.



## THE POLICE USE OF EXCESSIVE AND DEADLY FORCE: RACIAL IMPLICATIONS

Lennox S. Hinds

*Past National Director, National Conference of Black Lawyers*

The police have unique power. They are the only representatives of governmental authority who in the ordinary course of events are legally permitted to use physical force against a citizen. Other agencies of state power rely upon request, persuasion, public opinion, custody, and legal and judicial processes to gain compliance with rules and laws. Only the police can use firearms to compel the citizen to obey. The police are also in a special category in that they are sworn to enforce the law at all times, on or off duty in most jurisdictions, so that their access to firearms is constant and legal.<sup>1</sup>

The power of the State to kill exists not only after a conviction for certain crimes when a person may be executed, but at any time on- or off-duty police officers, armed as law enforcement agents, shoot to kill those they suspect are lawbreakers.

The national debate on the use of capital punishment continues. Its disproportionate application to minorities was considered an obvious justification by the Supreme Court to suspend its use (*Furman v. Georgia*, 408 US 238 (1972)).<sup>2</sup>

Despite the Court's recent decision which purports to "cure" the discriminatory impact of the death sentence, in many jurisdictions there is sufficient public and legislative repugnance to legalized murder as an "acceptable" criminal sanction to impede the passing of new capital statutes and, when passed, to discourage actual executions. At the least, it is apparent that public dialog and controversy continues on the subject of capital punishment. This article will not address the death penalty and its racial impact at this time (The National Conference of Black Lawyer's positions on it are on record in briefs amicus curiae in cases before the Supreme Court and in testimony and articles available to those interested.)<sup>3</sup>

I raise the issue to emphasize what seems to be uncontroverted: what distinguishes a judicially determined death sentence from the taking of life by police force is the availability of due process safeguards—the opportunity for those marked for death to be heard, to challenge, to appeal *before execution*.

The use of deadly force by police, however, remains a decision guided mainly by individual officers in what is usually described as pressure situations.<sup>4</sup> Not only can the victim not challenge that officer's decision, request a hearing, or appeal the split-second decision, but his survivors may have no redress either.

I will return to the question of redress for victims of police murder after a review of some statistics on police killings. Such statistics, incidentally, are very hard to obtain. The news media often serve as

the principal source of statistics and descriptions of incidents involving police killing of civilians. Fatal force by police has been studied by a number of social scientists. I will discuss some of their findings, and I will be pleased to provide references to anyone interested in reviewing the literature.

In the most recent data (1977) of police killings of civilians, white males continue to be killed at a consistent rate of 0.2 per 100,000 males aged nine or over. The rate of black males aged nine and over killed by the police continues to increase, a trend first noted in 1962; it reached an all-time high of 2.4 per 100,000 in 1969 and continues to rise.<sup>5</sup>

The rate of blacks killed by police has remained at least nine times higher over the last 18 years in which the statistics have been evaluated.<sup>6</sup> Although blacks only comprise 12 to 14 percent of the Nation's population, they comprise at least 50 percent of those killed by the police.<sup>7</sup> Even that statistic can be misleading, considering that nearly 90 percent of those killed by the Philadelphia police force were black in the years studied between 1960-1970,<sup>8</sup> when the black community accounted for 22 percent of that population. During the same period, a review of police killings in eight American cities—Akron, Chicago, Kansas City, Miami, Buffalo, Boston, Milwaukee—in addition to Philadelphia found that the ratio of black victims to white victims ranged from 6 to 1 (in Akron)<sup>9</sup> to 30 to 1 (in Milwaukee). Chicago has both the largest total absolute number of civilians killed by the police in the 5 largest American cities (New York, Los Angeles, Philadelphia, Detroit) and the highest rate in proportion to the population.<sup>10</sup> Blacks are six times as likely to be killed by police in Chicago as whites, and 50 percent of the victims of police fatal force were black males under 25.<sup>11</sup>

We at the National Conference of Black Lawyers do not need scholarly journals to tell us that police lawlessness is widespread and particularly targets black citizens in big cities and small—for beatings, illegal surveillance and searches, for harassment, and for murder on the street. Each day letters and petitions come to my desk describing in gross and horrifying detail the experience of blacks in every walk of life at the hands of the police.

Police abuse is a fact of life in every black community—none of us is immune. NCBL member, attorney John Walker was beaten mercilessly in a bar in Mississippi by the police on New Year's Day 1977 and then charged with aggravated assault and battery on a police officer. During the summer of 1975, three young black men sitting in a parked car in the Washington Heights section of Manhattan found themselves in a rain of police fire in a case of what the police later called "mistaken identity."<sup>12</sup> A young black child of 15, shot and killed by a New York officer in the Brownsville section of Brooklyn, was in a basement preparing for a birthday party, when the police charged in on a false burglary tip. One social scientist views the problem in this way: "police have one trigger finger for whites and another for blacks."<sup>13</sup>

Rather than continue this parade of horrors, I will turn to remedies—remedies which seem to me to be crucial not only to bring

confidence in law enforcement to the black community but to remove the stigma of lawlessness which stains the reputation of all police officers and stimulates the development of disrespect for legal institutions which is rampant nationally. This disrespect has too often been earned by the conduct of law enforcement agencies.

The patterns and practices of police abuse have been exacerbated by the creation and development of LEAA national resources which have increased the "kill power" in large and small departments by financing developments in weaponry, communications systems, surveillance techniques, and intelligence operations which operate in closed systems that have no provisions for public accountability and are unrestrained by specific legislation or judicial mandates.

BOSS Squads, RED Squads, STRESS Squads, and other paramilitary police units foster mentalities that place their conduct above and outside the law. "Kojak" and "Starsky and Hutch" need not be concerned with the trivia of the fourth, fifth, and sixth amendments—their judgment is always in the best interests of the public and their arrestees always guilty. The public seeks safety on the streets but not only from criminals but from legally sanctioned violence against them as well.

We know that litigation can be an effective tool in the efforts to curb police abuse and in some instances has resulted in the criminal prosecution of brutal officers and awards of large sums of money to victims and their survivors. Litigation certainly has a chilling effect, at least for a time, on the defendant officers and police departments.<sup>14</sup> But litigation will not result in the systematic changes needed to reduce the adversary relationships between the police and the citizenry, nor will it stop summary executions by the police.

The cessation of unnecessary and illegal use of excessive and deadly force seems likely to be achieved by a variety of strategies which cast the light of public involvement and scrutiny on police conduct and decisionmaking. These strategies should include:

- Inclusion of citizens members in internal police disciplinary systems.
- Citizen observers in station houses and operation rooms.
- External citizen review boards with decisionmaking power and organization and procedures that include paid civilian staff, administrators and investigators, public hearings, counsel for each party at proceedings for speedy investigations of complaints, rules of evidence, power of subpoena, and cross examination, and whose findings are binding on the internal affairs office of the police department.

I say this knowing full well the stormy history of police review boards and the anger they generate among law enforcement officers.

I am convinced that only through public awareness and police accountability to civilian authority can police ranks be purged of officers who misuse their discretionary authority to cloak the racism, psychopathology, and brutality which inculcates many officers.

We further purpose legislation that will define with great specificity the circumstances in which police may use deadly force. We feel very strongly that deadly force should not be used against a suspected

fleeing felon who has not used or threatened deadly force to the officer or a third person and whom the officer does not believe will use deadly force against him or others if not immediately apprehended.

The U.S. Court of Appeals in the 8th Circuit (*Mattis v. Schnal*) held that it is unconstitutional for a policeman to use deadly force against an escaping felony suspect who has not used violence or threatened other people's lives. Too many State statutes permit deadly force when a "forcible felony" is committed, without defining what "forcible" means. The court is properly concerned about a statute that permits the police to kill someone who may have committed a crime but does not show any intent to harm anyone and whose only concern is escape. We must prevent police execution of an accused who, if convicted, might only receive probation. We must prevent executions of citizens whose only fault is being black and being present when police overreact or make "mistakes."<sup>15</sup>

Police mistakes can no longer be allowed to kill black children, maim heads of households, or be justified by internal affairs procedures. The police must be liable for criminal prosecution as a result of their acts, like any ordinary citizen. We believe that the burden must shift to the officer to remove the present mitigating circumstances rules used to exculpate police officers from responsibility.

For information about draft legislation relating to significant civilian review boards or statutes relating to the police use of deadly force, please contact me at the National Office of NCBL.

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10. Ibid.

11. Cf. *Harvard Review*, "Deadly Force to Arrest."

12. *New York Times*, September 23, 1975.

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14. See e.g. *Wiley v. Memphis Police Department*.

15. Among other materials of use to those interested in this subject matter are: Duane Baker, "A Model Firearms Policy for California Law Enforcement," *Journal of California Law Enforcement*, v. 10, n. 1, 1975, pp. 5-8; Richard J. Gigliotti, "Guidelines for the Use of Deadly Force," *Law and Order*, v.25, n.3, 1977, pp.48-58; Andrew Mishken, *Justifiable Homicide by Police*, Gaithersburg, Maryland: International Association of Chiefs of Police, 1973; and *Annual Law Enforcement Casualty Summary*, Gaithersburg, Maryland: International Association of Chiefs of Police, 1971.

## POLICE DEADLY FORCE AND CHURCH CONCERN

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The official report of the 1931 U.S. Commission on Law Observance and Enforcement, in its section on Lawlessness in Law Enforcement, includes a parable. It says simply, "... official law breaking recalls the story of the Dukhobor who tried to go naked in the streets of London. A policeman set out gravely to capture him, but found himself distanced because of his heavy clothing. Therefore, he divested himself, as he ran, of garment after garment until he was naked; and so lightened, he caught his prey. But then it was impossible to tell which was the Dukhobor and which was the policeman."

This parable, as we would term it in religious parlance, graphically introduces one of the serious concerns of the church related to the use of deadly force by the police. The use of deadly force is an aspect of police work which contains a dangerous potential for lawlessness by those who exemplify obedience to the law as well as having been sworn to enforce it.

Anyone conscious of events in a multitude of minority communities across the United States knows that some officers of the law using deadly force, have taken upon themselves the characteristics of the lawless and have in the eyes of many citizens stripped their departments, as well as themselves, of the trust of the people. The number of such instances is not, as some might think, small and insignificant; rather, the number is numbing.

The majority community may not be aware of them, having passed them off one by one, never having faced them in the aggregate.

Yet, within the minority communities the incidents are known. They are numbered and remembered. If the killing of citizens by police were as carefully investigated as are the deaths of police under any condition, the majority community would be stunned—or it should be.

Not only is there lawlessness on the part of the police themselves, but there is also collusion in it by other parts of the criminal justice system commissioned to enforce the law. When prosecutors, with sufficient evidence of police abuse, refuse to prosecute, they become lawless. When grand juries hear testimony of excessive use of force by the police and refuse to indict, they become lawless. When juries ignore both evidence and testimony and refuse to convict simply because the defendant is a police officer, they become lawless. It is this lawlessness which is a concern in the religious community. Yet, this concern is focused not only on the police and other parts of the criminal justice system, but on the community at large. Too readily the majority community has given its ready support and easy approval to the use of deadly force.

There may not be wide awareness within the religious community, but there is a growing concern among many of its representatives about the lawlessness which frequently accompanies the use of deadly force by the police.

There is a concern in the religious community for the acceptance of a responsibility within the wider society for the use of deadly force by the police. Perhaps instead of saying the wider society, I should say the whiter society, for presently the strongest support for the minimal regulation of the use of deadly force by the police comes from those parts of the community which are white and where there is the least danger and the greatest influence.

If the police are to change their policies and their practices, there must be a change in the pressures which are brought upon the police to use their weapons to deal with the problems of crime and disorder.

George E. Berkeley in his book, *The Democratic Policeman*, states that, "... nothing differentiates the democratic policeman from his totalitarian colleague as his attitude toward and his use of force." Berkeley says that in a totalitarian regime, force usually plays a crucial role in the police function, is frequently unbridled, and may often be glorified. He quotes a recap which Field Marshall Hermann Goring made of a speech he had delivered to a group of high police officials in 1933, "... whoever obeyed my orders and took severe measures against the enemies of the State, whoever ruthlessly made use of his revolver when attacked, would be certain of protection ... I declared then before thousands of my fellow countrymen, that every bullet fired from the barrel of a police pistol was my bullet." That is solid sanctioning for the use of deadly force made by a representative of a totalitarian government. Such an expression should not and hopefully could not ever be made within a democratic government. Yet, on the other hand, all members of a democratic society should sense their responsibility for the bullets which are fired from the pistols of their police. The society has a responsibility for the policies under which deadly force is used by the police, and the majority community especially must be helped to accept that responsibility.

Police for their part, rather than catering to the majority community's excessive desire for the use of force, should declare to the community that force will only be used when absolutely necessary and then only to the degree essential to the performance of a lawful duty.

In his poem, "Killers," Carl Sandburg has an executioner say,

I am the high honorable killer today.

There are five million people in the state,  
five million killers for whom I kill.

I am the killer who kills today for five million  
killers who wish a killing.

A substantial part of the society may seem to sanction whatever force any police might wish to use, but when the police use this approval they begin to victimize innocent persons and endanger the society as a whole.

Another concern related to the use of deadly force is that efforts be made to reverse the cycle of fear within the American society. The growth in the fear of crime has far exceeded the actual increase in crime, for the fear of crime has been politically exploited during a time of rapid social change. We have moved, in fact, to the point that we could well paraphrase the words of a President of the United States in the 1930's and say, "the only thing we have to trust is fear itself." Fear has become one of the primary motivators of governmental action. Some have believed that it is only fear which can restore order and create respect for the law. The president of a midwestern police association said as much on the subject of deadly force when he declared recently, "If a person knew that a police officer would not shoot him...that the worst he could get was a knot on the head, he'd be afraid to go out and shop." Speaking to the local Jaycees the police association president said that a person would think twice about committing a felony, "When he knows that he can be wasted right on the spot. If you take away a police officer's right to use his pistol on a fleeing felon, you're hurting yourself. A lot of us are honest because of one thing ... fear."

Yet, real security within the society will only come when citizens voluntarily accept and support the law. Such acceptance and support will prevail widely among those who enjoy by legitimate means the benefits and the pleasures of life to which they believe they are entitled—who have, in short, a satisfactory stake in the system.

Reliance upon the threat of violence will not provide security and stability within the society. Let the words of the police association president be placed alongside of those of a white newspaperman who escaped from detention in South Africa. He wrote,

South Africa today is ruled by fear—the fear of the ruled and the fear of the rulers....As always, fear breeds hatred and hatred in turn breeds more fear. Increasingly, voices of warning are seen as voices of incitement. Voices of dissidence are seen as voices of treachery and treason. Increasingly moderation is being seen as extremism and the peacemakers are being portrayed as the advocates of violence. South Africa today is heading for civil war and we who warn of this, endanger ourselves by doing so, because what we intend as a warning motivated by love for all of our fellow citizens is seen as a kind of advocacy for the very thing we are trying to prevent.

*New York Times*, January 8, 1978

The indiscriminate use of deadly force, even the primary reliance upon deadly force as the source of citizen's support of the law, only tightens and accelerates the cycle of fear which breeds hate and, in turn, breeds more fear.

Fear breeds violence. As Eric Fromm has reminded us,

Fright, like pain, is a most uncomfortable feeling, and man will do almost anything to get rid of it.... One of the most effective ways of getting rid of anxiety is to become aggressive. When a person can get out of the passive state



of fright and begin to attack, the painful nature of fright disappears.

*(The Anatomy of Human Destructiveness p. 198)*

There are places in the United States where there are mutual states of anxiety felt by both the community and by members of law enforcement agencies. They are virtually in a state of civil war. The threat of force will not lessen the conflict, it will only intensify it. The cycle of fear needs to be reversed.

It can be reported that the issue of the police use of deadly force is one to which an increasing number of representatives within the religious community is giving serious consideration. However, this presentation is not designed to convince you that a majority of persons associated with the churches, synagogues, and temples across the nation is gravely concerned about the police use of force, whether excessive or minimal. That is not the case. There is no such grave concern among the majority of religious constituents, and that, indeed, is one of the critical factors rooted within the grave problems that have developed around the issue of the use of deadly force by the police.

However, the voices of concern are growing, and many of them are of officials of the religious community at high levels of responsibility. It is their concerns which I endeavor to express here today, and I will frame them as positively and constructively as I can, for that is the standpoint from which the representatives of the religious community would want them expressed. What is being said is not meant to be antipolice; it is intended to be prolife, prohuman, and pro-democratic-society.

Yet, for the religious community, at the heart of it all, is the concern for the enhancement of a basic respect for human life. The police use of deadly force except in those specific instances where there is a clearly apparent immediate threat to the life of the officer or other citizens is a desecration of life. Deadly force should be used only when absolutely necessary and then only as a last resort, when all other options have been exhausted. When there is no actual necessity to kill, there is the overriding requirement to protect—even the life of one who is violating the law.

Such a principle may be a difficult one to accept, but it is one which must guide governments and their agents if they are to expect citizens to respect the lives of one another as well as the lives of the police. It is a heavy burden for the government to bear and one which, obviously, it has the power to cast off. It involves risks for those agents of the government who apply such a principle in practical situations, but the risks must be taken in favor of life if the right to life is to be fully protected across all of society.

A police officer may not be encouraged to engage in such philosophical thought or to give such theological consideration—some would surely say that it would be dangerous for him or her to do so—but in a stable democratic society, a police officer not only defends his own life and those citizens who may be near him at a critical time, but that police officer also defends society's most essential principle: a basic respect for human life.

Frankly, I believe that there are officers who have laid down their lives not only in the protection of themselves or their police departments, but also in the defense of the concept of the sacredness of human life. To use the words of the New Testament, "Greater love has no man than this."

Of course, there will be those who will accuse the representatives of the religious community of playing the classical role of the "bleeding heart." It must be asserted that we are talking more of "beating hearts" than of "bleeding hearts." We are speaking of a human heart which is sensitive, capable of compassion, responsive to every part of the human community, determined to foster human respect, dedicated to develop and preserve the dignity of the human person. It is a life that uses reason to uphold the principle of life itself.

If it is suggested that here is simply another instance in which the church is engaged in offering protection to criminals by placing in jeopardy those who enforce the law, let us note that one of the concerns for the use of deadly force within the religious community has to do directly with the concern for the police themselves.

More frequently than not, the killing of a citizen by police, particularly under questionable circumstances, increases the danger to the police generally. There can be a loss of trust and a withdrawal of cooperation within the community, and this can provide a potentially violent vacuum in which angry and frustrated citizens can target the police for all of their grievances simply because the police are the most visible and symbolic representatives of the government.

Sometimes it is argued that it is unfair to expect such restraint on the part of the police. It is said that society does not risk firemen to go to fires and then not permit them to extinguish the blaze. Firemen can use any means at their disposal to put out the fire, even destroying part of the building, breaking out the windows, breaking down doors, or chopping through walls and ceilings. If society gives firemen freedom to do their tasks, then so it is said, the policemen ought not to be handicapped in doing an even more difficult job. A policeman should be able to deal with criminals in whatever way he finds necessary.

However, a fireman is not permitted to go to a fire and feed the flames. He is allowed to spray water on the fire, but he is not given the authority to turn a gasoline hose on a burning building. Furthermore, a fireman has as his first concern the protection of human life and secondarily the protection of property.

When a policeman uses deadly force indiscriminately, uses it unnecessarily, he is spraying gasoline on a fire and such a volatile mix is dangerous to himself as well as to his fellow officers and to the community at large.

There is also the concern that the use of deadly force may actually delay the establishment of justice in the American society. Guns can be used to intimidate those in communities who are already victims of discrimination and injustices. Those same guns can be used to insulate and protect those parts of the larger community which could bring social justice into greater reality for all of the people.

We are reminded again, as we were in 1967 by the Commission on Law Enforcement and Administration of Justice, that:

Warring on poverty, inadequate housing and unemployment, is warring on crime. A civil rights law is a law against crime. Money for schools is money against crime. Medical, psychiatric, and family counseling services are services against crime. More broadly and most importantly, every effort to improve life in America's "inner cities" is an effort against crime.

Of course, that same Commission declared that, "The police did not create and cannot resolve the social conditions that stimulate crime." (p. 92) Indeed, the police cannot resolve those conditions, but they can recognize that the primary reliance upon weaponry only wars upon those who are in poverty, who live in inadequate housing, and who cannot find employment. Social problems cannot be shot down, and the police should not support by their actions the belief of the dominant part of society that social problems can be eliminated by gun fire.

The National Advisory Commission on Civil Disorders said it clearly, "... precisely because the policeman in the ghetto is a symbol—precisely because he symbolizes so much—it is of critical importance that the police and society take every possible step to allay grievances that flow from a sense of injustice and increase tension and turmoil."

It is encouraging to see that one of the purposes of the National Organization of Black Law Enforcement Executives is to be sensitive to the problems of the black community. It is such sensitivity which will moderate the use of deadly force and will challenge the whole community to use of living forces to overcome injustice.

Finally, I want to say that I have been convinced for a long time that the gun in our American society is actually an instrument of communication, and that is how it is used by the police. In fact, the use of the gun for communication is its primary use. A police revolver is meant to communicate authority and power. It is a powerful symbol which can give strong signals. Unfortunately, the gun essentially is an instrument of destruction and, therefore, destroys the one with whom the communication is being conducted.

Another of the purposes of NOBLE is that of developing communication techniques, and it is at this point that this organization can lead the police community in discovering and developing alternatives to the use of deadly force.

Let us find other ways of joining together as well, as we seek to maintain order, keep the peace, and establish justice. We only have begun to explore the real alternatives to the use of force, but the future and the stability of our society will depend upon our finding and using every such option.

## A POLICE CHIEF'S VIEW OF DEADLY FORCE

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Through technology we have overcome the physical difficulties in our lives. It is the social difficulties that we have still not been able to solve, and deadly force is one of the most critical that faces all of us today. With that thought in mind I would like to share my ideas about working with the system and influencing the system to do some of what you believe should be done. I would like to quote from a recent paper of mine which was published in the Law Enforcement News:

The simple fact is that except for the need of an officer confronted with a life threatening attack . . . to use deadly force in self-defense, the public has an absolute right to decide when their police will shoot and should exercise that right . . . Such a decision is not for the chief to make unless the public abdicates their responsibility to do so and it is certainly not for each individual officer to make as a matter of personal judgment under the stress of a potential shooting situation. It should be made instead in an appropriate public forum with full participation by every interested segment of the community enacted by consensus within lawful constraints, comprehensively written into regulations, made a part of the basic instruction and continuing in-service training of each officer, and then enforced without exception.

The last part is probably the most important of all. I believe that the police should be well armed, and most officers in my department are probably as well armed as anyone. But it is essential that police be well trained, and especially important that this training include restraint in the use of deadly force. It is only fair that police sent out on the street against armed criminals are at least as well and hopefully better armed than their potential adversaries. Police who are better armed will be less likely to use that armament—they will recognize that they have the edge, as will the criminal they are up against. Well-trained police are not going to be precipitous in using their weapons and make a too frequent misjudgment that often leads to a shooting confrontation when there need not have been one.

In the jurisdiction next to mine—which is about the same size as St. Louis—two of the last three police officers shot to death were killed by their fellow officers in a free-wheeling shooting melee. They were killed by officers who were shooting without regard, obviously, for that restraint. Instead of accurately directing limited but effective fire to a particular target, they shot their own officers.

The 1977 statistics for officers killed in the United States reveal that

approximately half were killed in the South. And that is consistent with the type of policing that has traditionally been conducted in the South. Southern police receive less training and resort to physical force more than anywhere else in the United States. This greater use of deadly force by the police concurrently results in more police fatalities, and I think that fact should be pointed out to the police in their own self-interest!

The history of deadly force is essentially one of English common law. In early England almost all crimes were felonies, punishable by death. Escaping, for instance, was a capital offense. So in that society it made sense to apprehend people by the use of deadly force because they were facing certain death by capital punishment anyway. I suppose the rationale was, what difference did it make? It is a bit strange, however, that a country that now has essentially abandoned capital punishment still has an 18th century mentality about police use of deadly force, and in fact that policy has not been reviewed in the last several hundred years.

Performance standards in a police department start at the top. A brutal, violent police department will most likely have a chief that tolerates the unrestrained use of deadly force. The chief of police or the sheriff has the power to promulgate standards and enforce them. My attitude is that as chief I have the power to change my officers' behavior. If I fail to exercise that authority, it is my fault. By exercising that authority I change their behavior, and over time police attitudes will come into consonance with the behavior prescribed by their chief. I have watched it happen. The chief should serve as a change agent in our evolving society if the police are to meet the needs of the communities that created them. The first necessary change may be to change the chief himself. Police chiefs of the old school who believe that the indiscriminate use of deadly force is essential for effective policing must recognize that this idea is no longer socially acceptable and will create for more problems than it could ever hope to solve.

The next change involves the officers themselves. Because of the police leadership crisis in this country, there are many police unions that are, in effect, running our police departments. In such departments the administration reacts rather than leads. These unions frequently see any restriction on their use of deadly force as a challenge to their macho authority. Look at a young male police officer and you frequently see what looks like a gun wearing a man. As he gets older, the gun does not stick out quite as far. That is just a matter of growing up. But young officers, and that is what we recruit, have to be properly trained and their weapons placed in proper perspective.

I recently attended a police academy graduation where a law enforcement professor—an academic, if you will—told the class of professional young recruits in his commencement address that the city council and the mayor had no business “interfering” in the development of a use-of-force policy for the police department. He actually praised the police union for taking the issue to the public, since an emotional rather than a rational debate can sway

policymakers to the police union's position of maintaining the status quo. I have experienced a similar attitude in my own jurisdiction over limiting the use of deadly force, and the only support I receive is from the news media. I know we all have complaints about the media and the court system, but if they are ever muzzled we are all in serious trouble. Essentially civil rights will be won and lost in the courts and in the news media because, when the public has access to the facts, the people usually make a reasonable decision.

Another problem that has developed recently in California and spread across the nation is the concern with extended liability. In my State we literally have the old common law statute, which allows the use of all necessary force, including the taking of life, to prevent the escape of a felon. That is all it says. That is the State law. Until recently homosexuality was a felony in my state, so an officer could shoot an escaping homosexual. That has happened. The law ought to be extremely restrictive in specifying when deadly force can be applied, but it is not. What many chiefs of police have done is set up more restrictive shooting policies within their own departments and enforce compliance by regulations. Some cities have recently done it by ordinance, and a few States have legislated change too. City attorneys are concerned, however, that if we enact regulations that are more stringent than the State law and the officer acts outside of those regulations, the city will be subject to increased liability and have to make a large settlement in an improper shooting. My answer to that—and I think yours would be too—is that if you give officers regulations to follow but they do not follow them and someone is shot—even though it is still within the State law—let the officers stand on their own. You gave them the guidance. If they choose not to follow department regulations, it is their problem and should not be a question of city liability.

A shooting policy should include, among other things, a clear and unambiguous statement of when shooting is specifically permitted, and it should be highly restricted, no warning shots. Warning shots are ineffective—they just make suspects run faster in most cases and provide the officer an excuse if he or she shoots someone. It is difficult to enforce your regulation after the fact.

Each department should provide comprehensive training on how and when to shoot. Every time an officer goes to the range, he or she should be indoctrinated on both the shooting policy and the skills needed to line up the sights to hit the target. Each department should have a review process for all shooting incidents, and that includes all accidental discharges. As chief, you should indicate to the officer how seriously you take the firing of that weapon. If you suspend an officer for 1 day without pay for accidentally discharging the shotgun he or she is unloading, there will be no question in his or her mind that you mean business about the shooting policy. And, I believe that as a direct result of such enforced policies we have had no shootings of police or citizens in my jurisdiction, although they have been occurring all around us in even smaller communities.

Change does not just happen—you are going to have to make it happen. There are two ways to get a changed shooting policy in your

department. One is to think it out in advance and implement it before an incident, and the second is to ignore the problem in the hope that no incidents will occur. Inevitably the incident will occur and public reaction will be overwhelming while you try to justify an indefensible shooting. Develop an acceptable shooting policy yourself or the public will do it for you.

In closing I think this group should adopt a motto: Refuse to be complacent. In too many police jurisdictions the old school's code of silence prevails, and even though the chief may know what happened in a shooting incident, he does not say anything. If you make it clear in your organization that you will be a witness for justice in the case of an improper shooting, that in itself will have a high impact on prevention. If you are aware of improper use of force and if you do not want to tolerate it, as I suspect most of you would not, report it directly to the chief. Avoid getting caught in the chain of command because the problem may get sidetracked somewhere up the ladder, or a chief who does not want to do something about the problem can say he was never told about it.

Too, take an adequate amount of time to initiate corrective action. If you do not get satisfaction, send a copy of your report to the U.S. Attorney. And, it never hurts to leak a copy to the media, also. It makes a good story on the 6 o'clock news and it is awfully hard to hide it then!

In spite of the amount of space devoted to our young radicals in the sixties and their philosophies, political power in the United States does not grow out of the barrel of a gun. It does grow out of a well-informed public. And if groups like this will keep the public informed, the public will make the right decisions.

## POLICE USE OF DEADLY FORCE: POLICY CONSIDERATIONS

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As we address the issue of policies to control the police use of deadly force, it is important to remember that the establishment, implementation, and enforcement of such policies will not in itself guarantee a reduction in the number of citizens shot by police. The absence of such policies, however, will undoubtedly guarantee a continuation of the existing trend, which has been adequately described by the other speakers.

As I see it, the issue of police policies to control the use of firearms should be addressed from two different perspectives. First, we should address the subject from a historical perspective and second, from the perspective of developing an understanding of the contemporary status of policing in the American society.

If we first of all look at the topic from a historical perspective, we know that our form of policing in America, like many of our other social institutions, had its beginning in England. When this country was founded, we adopted the same form of policing as was used in England. This included the same ideas relative to the use of firearms. As a result, when policing was first started in America, they, like their English counterparts, were not armed. It did not take long, however, for that aspect of American policing to change. It was around the mid-18th century when the concept of the American police being unarmed changed. This resulted from a situation where a police officer used his privately owned gun in the performance of his duties. The case was taken to court and the authority of the police to use a firearm was upheld. Subsequently, the police were allowed to legitimately be armed. Thus, we find the situation existing today where firearms are a regular part of an American police officer's working equipment. In discussing this issue, it is not suggested that effort should be exerted to disarm the police. To the contrary, it must be recognized that America is a violent society and there are literally millions of firearms in the possession of non-law-enforcement persons. Therefore, it is illogical to assume that it is feasible to disarm the police at this point in time.

It should be our goal, however, to develop a society wherein it will not be necessary for the police to be armed. For this to occur, the American society must first develop policies relative to restricting the possession of firearms. For that reason, I strongly advocate national policy, developed through Federal legislation, that would ban the importation, manufacture, sale, and possession of all handguns, with the exception of those that are used for law enforcement purposes, military services, and legitimate gun clubs.



When we view the contemporary status of police in America, there are several points that need to be made. First, our society, like all other societies, must have a system for maintaining order. We, however, require a different form of order from some other societies. To that extent, our policemen not only must know the best way of maintaining order but also must be able to do so consistent with the principles of this democratic society. It is the role of the police not only to enforce the law but also to advance the precious principles of democracy that we as a people cherish. This position ascribes to the police the role of protecting the individual rights of the citizenry.

Second, the police must not be considered an entity unto themselves. Rather, they must be considered an integral part of city government. As such, the police must realize and understand that their sole reason for existing is to serve the people. To that end, it is imperative that the police be responsive and responsible to civilian control. This point is significant because police policy should not be developed in isolation. Rather, it should be reflective of the position advanced by the public through their elected officials.

Third, the police is the only agency in government that is authorized to use deadly force to compel people to obey the law. This is an awesome power and responsibility delegated to the police—one which has a potential for abuse and therefore must be controlled by a variety of means, including policies.

Fourth, it should be remembered that the United States Supreme Court, the nation's highest tribunal, has addressed the issue of capital punishment. One of the primary reasons that this issue was brought to the attention of the Supreme Court relates to the disproportionate number of minorities that have been sentenced to death by the government. Even though the highest tribunal in the nation has addressed this issue, there has been inadequate attention placed on the power of the police to exercise the same awesome power relative to taking a citizen's life. For that reason, it is imperative that police administrators and the public, in general, give paramount consideration to the authority invested in the police to take a life.

Fifth, the police have a great deal of discretion in carrying out their responsibilities. This discretion includes the use of deadly force. The broad police discretion is given to every police officer—be he professionally trained or poorly trained.

Finally police administrators have the responsibility of developing guidelines to assist their officers in carrying out their responsibilities, including the exercise of their discretion. This point becomes extremely important when we consider the issue of deadly force. As I see it, the purpose of such guidelines should be to assist the police officer in carrying out his responsibilities and not designed to hamper him or her. Police officers need administrative guidelines that are developed for the purpose of assisting them in making appropriate decisions as they carry out their work. And as police administrators develop guidelines to control the discretion of their officers, particularly the use of deadly force, they should do so based upon philosophies and principles that are consistent with our form of government.

Let me briefly share with you some of those philosophies and principles that I feel should be of utmost consideration. First, the police should realize that every time they use their weapon there is a potential that they will take someone's life. Thus, any policy developed by the police to control the use of deadly force must be based upon the premise that human life is sacred. Second, any policy that is developed must exclusively recognize that the use of lethal force must not only be legally authorized, but also must be socially and morally warranted and in keeping with the idea of rational and humane social control in a democratic society.

This is the essence of the point I wish to make relative to the police use of deadly force and as it is worth repeating: Any policy that is developed to control the police use of deadly force must be developed to explicitly recognize that the use of deadly force must not only be legally authorized but also socially and morally warranted and in keeping with the idea of rational and humane social control in a democratic society. In effect, a policy developed to control the police use of deadly force must be developed to ensure safety of both the police and the public. Such policies must not be complicated, must be easily understood by all police, must be easy to enforce, and must hold those officers that use deadly force accountable for their actions.

With that brief background, it is my position that all police agencies throughout this nation should adopt a firearm use policy that states in no uncertain terms that no officer shall discharge his or her firearm except to defend his or her life or the life of another person and only after all other means have been exhausted. The policy should leave no room for questioning, there should be no need for interpretation, and it should be easily enforced.

In conclusion, the issue of the police use of deadly force is one that is of paramount concern to this nation. It is one of even greater concern to the minority communities in this nation. It should be one of great concern to police administrators throughout this country. To that end, police administrators have a moral and professional obligation to develop policy guidelines that will provide police officers with guidance as they exercise this awesome authority ascribed to them by society.

## POLICE USE OF EXCESSIVE FORCE: A COMMUNITY RELATIONS CONCERN

Ozell Sutton

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It is always a pleasure to part of a NOBLE 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.

I want to talk to you today about an issue which affects us all—and the criminal justice system. Today, 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 minority policemen, lawyers, prosecutors, judges, corrections officials, and other administration of justice specialists.

The long overdue process of overhauling the criminal justice system has finally started. Our Attorney General, Griffin Bell, has repeatedly espoused the view that the Department of Justice will assume a national leadership role in assuring justice at all levels.

We in CRS are following up the Attorney General's commitment. We are reevaluating 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 our work for each of the past 5 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 and 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 NOBLE should see that it is carried through.

Comprehensive studies citing every instance of excessive or deadly force against a black, Hispanic, or other minority have never been compiled, which makes it difficult to analyze and organize support for measures to change the status quo. However, every available study points to minorities as disproportionate victims of such force:

- A detailed study of 1,500 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 that police in that city killed a civilian every 11.9 days and wounded one every 4.3 days during 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.<sup>2</sup>
- A Police Foundation report on deadly force, which covered seven major U.S. cities, found that 80 percent of the non-fatally shot civilians were minorities, while 78 percent of those killed were minorities.<sup>3</sup>
- A study by the Office of Policy and Planning in Seattle notes that although blacks account for only 9 percent of the city's population, they comprised 49 percent of the people shot by police in a 3-year period.<sup>4</sup>

CRS' daily casework also indicates the issue's seriousness as a continuing race relations problem. We have learned that there are almost as many unanswered questions surrounding the issue as there are tragic cases to document its existence.

*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, 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, we believe 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.

*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 have 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 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 obtained if both sides focus on the police policy system rather than on the individual patrolman involved.

*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.

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 to come up with a performance standard. Basically, there are three categories under which the various State laws fit:<sup>5</sup>

(1) *Common law*: Under common law, which dates back to 15th century England and 18th century America, all felonies are punishable by death. Thus 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 have adopted 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 approach based on the danger to the suspect and the officer, and to society on the whole. Seven States have adopted this approach.

The remaining 12 States have no justification statutes limiting an officer's use of 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 is not 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 required by State laws. More restrictive firearm policies and the like have resulted from such self-imposed efforts.

Because this issue is most destructive to productive race relations, we are in the process of developing a 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.

A task force has been set up to obtain 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;
- Reviews of representative police firearm policies and police/minority incidents that have occurred so that a comparative analysis of policies may begin.

We hope that through the work of the task force, we 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.

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## DEATH BY "POLICE INTERVENTION"

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In 1971, when I first became interested in doing a study of police officers killed in the line of duty and civilians killed by the police, there were only a handful of published works on the topics. After completing the study in which I traced over time the number of police officers killed each year per 100,000 authorized personnel and the number of civilians killed by the police per 100,000 males aged 10 and over, I submitted the article to the *New York Times* Sunday supplement, the Sunday supplement of the *San Francisco Chronicle*, and to several journals. I received rejection notices from all of them. I held the article for 3 years, and it was subsequently published in two journals in 1974—*The Journal of Afro-American Issues*<sup>1</sup> and *Crime and Social Justice*.<sup>2</sup>

Approximately 125 police officers were killed in 1971. Mass media, focusing on FBI statistics, alarmed the public with a report that 125 police officers had been killed in 1971, an increase of almost 2.5 times over 1963 when only 55 police officers were killed in all of that year. Police killings of civilians, however, were reported as isolated events. Although the police in 1970 and 1971 killed, on the average, one person per day, no news analyst attempted to show this as a national phenomenon.

There has been an increase in the absolute number of police officers killed in the line of duty since 1963; however, the actual rate of death has not increased because of the greater number of police officers on duty. By converting the number of police officers killed to rates per 100,000 authorized police personnel, it turns out that police officers are killed at a rate of 25 per 100,000 with no discernible trend either upward or downward since 1963.

W. H. Hutchins, the Assistant Chief of the California Bureau of Criminal Statistics, asserted in a paper delivered to the California Homicide Investigators' conference on March 5, 1971, that the great majority of homicidal deaths among police officers occurred in situations where robberies were in progress or where robbers were fleeing arrest. Hutchins also asserted that "the ambushing of officers, which has been relatively rare in the past, accounted for 25 percent of peace officers killed in 1970."<sup>3</sup>

Hutchins was not entirely correct when he reported that the majority of police officers killed were in situations involving armed robberies. An earlier report by Ronald Beattie of his agency indicated: "... 63 percent of these officers died while conducting routine investigations, responding to disturbance calls and taking people into custody ..."<sup>4</sup> The FBI's 1974 study confirms Beattie's findings that 18 percent of the police officers killed were investigating

a robbery; the largest group, some 22 percent, were killed while investigating domestic disturbances.<sup>5</sup>

Given the large number of "cops and robbers" shows on national television, we have been led to believe that law enforcement work is extremely perilous. In a 1963 study, Gerald Robin adjusted the death rate among police officers to include the accidental deaths (mostly from vehicular accidents), and compared the fatality rate among the major occupational groups.<sup>6</sup> He then showed that occupational fatalities per 100,000 employees to be highest in mining with 93.58 deaths per 100,000 workers; the construction industry was next with 75.81 deaths per 100,000 workers; agriculture was third with 54.97; transportation was fourth with 44.08; and law enforcement was fifth with 32.67 deaths per 100,000. Thus, when we compare occupational risks across the major industries, mining is three times more risky than law enforcement, construction work is two and one-half times more dangerous, and agriculture and transportation show considerably higher rates of death than does law enforcement. Robin concluded that the data do not support the general belief that law enforcement work is a highly dangerous enterprise.

A related issue is the death penalty statute, which is another form of state killing of civilians. Some 40 States have enacted or are in the process of enacting the death penalty. Following *Furman v. Georgia* (1972), in which the Supreme Court ruled that the death penalty, as imposed up to that time, was cruel and unusual punishment, the States began to revise their death penalty statutes to get around the Court's decision. One of the revisions considered was to specify the conditions under which the death penalty could be imposed, as, for example, in the homicide of a law enforcement officer, a provision in all of the death penalty statutes. While I do not minimize the rate of police fatalities, Robin's study showing law enforcement work to be considerably less dangerous than several other industries would suggest that the revised death penalty statutes are essentially class and race laws. What has changed since *Furman v. Georgia* is the extreme sanction for killing a police officer while no provision is provided in the law for the systematic violations of safety conditions that lead to the deaths of workers in mining, construction, agriculture, or transportation. Neither does the law provide for the extreme sanction in the case of a civilian wrongfully killed by the police.

The use of deadly force is, of course, the other side of the coin. What is generally not known by the public at large, and certainly not publicized by the police and other officials, is the alarming increase in the rate of deaths of male civilians caused by, in the official terminology, "legal intervention of police." These are the cases recorded on death certificates as "justifiable homicide" by police intervention. After disappearing onto computer tapes, these reappear as statistics in the annually published official volumes of *Vital Statistics in the United States*. Here they can be found under "Cause of Death, Code Number 984," where they have attracted little attention.

Several studies have been published since I conducted my own study in 1971 using the data published in *Vital Statistics*. While it is



possible to retrieve data on age, sex, and race, *Vital Statistics* does not permit a more detailed analysis of the circumstances of police killings. But some things we can extract.

For example, the death rate of male civilians aged 10 and over caused by police intervention has gradually increased, especially from 1962 to 1968. Some States like California show an increase of 2.5 times between 1962 and 1969. These increases cannot be attributed simply to an increase in the proportion of young adults or adolescents in the population, among whom a larger share of these deaths occur, because each annual rate is age-adjusted to the age profile of the population in 1960. There is an increase in the rate of police killings of civilians, regardless of the changes in that age profile.

The crime rate has, of course, increased at the same time, and this, it might be argued, indicates that more males put themselves into situations where they risk a police bullet. This is the argument that the victim alone is responsible. But that is too simple an explanation: an increase in such dangerous situations has not led to an increased jeopardy of police lives, for as we have seen, their homicide rate did not increase over the same period. The point is inescapable: the rate of death did not change for law enforcement officers during a period when it changed critically for male citizens.

Black men have been killed by police at a rate some 9 to 13 times higher than white men. Between 1969 and 1968, police killed 1,188 black males and 1,253 white males in a population in which about 10 percent are black. The rates of homicide due to police intervention increased over the years for both whites and blacks, but remained consistently nine times higher for blacks for the past 23 years. (Actually 9 to 13 times higher because the U.S. government does not distinguish the Mexican Americans and Puerto Ricans as national minorities. Arthur L. Kobler found that 13 percent of those killed by police were Spanish speaking.<sup>7</sup> If the 13 percent are deducted from the white total, then the police have killed blacks at a rate 13 times higher than for whites.)

Some studies have argued that since blacks commit crimes at a higher rate (i.e. in proportion to their numbers in the population), blacks run a higher risk of being killed by the police. It turns out, however, that in 1964 arrests of black males were 28 percent of total arrests, while black deaths were 51 percent of the total number killed by police. In 1968 the statistics were essentially the same as they were for 1969 through 1972.

It has also been argued that blacks have a higher arrest rate for the seven index crimes: homicide, rape, robbery, aggravated assault, burglary, theft, and auto theft. In 1968 black males accounted for 36 percent of the arrests for the index crimes; 4 years earlier, in 1964, black arrests were less than 30 percent during a year when they suffered 51 percent of the deaths from police guns. No matter how we view crime statistics on blacks with police killing of black civilians, the death rate of blacks is far out of proportion to the situations that might justify it.

Black people don't need these statistics to tell them what has been

happening. The news gets around the community when someone is killed by police. It is part of a history—a very long history of extralegal justice that included whippings and lynchings. But let us explore the statistics a bit further. Take the age group where “desperate” criminals are much less likely to be found, the very young, ages 10 to 14, and the very old, those 65 years of age and older. In proportion to population, black youngsters and old men have been killed by the police at a rate 15 to 30 times greater than that of whites of the same age. It is the actual experiences behind statistics like these which suggest that police have one trigger finger for whites and another for blacks. Recent data up to 1973 give no reason for altering that belief.

Black citizens have long argued that the police are committing genocide of black people, and there is increasing evidence that these killings are indeed murder. In 1972, Ralph Knoohuizen et al. conducted a detailed study of Chicago police killing of civilians that provided further credence to the claim that police are murdering black citizens.<sup>8</sup> In their report, Knoohuizen and associates examined the incidents as reported by the police, the reports of the coroner’s office, and testimony or statements by creditable witnesses. Let me read a couple of illustrations of what they found:

*Case 1.* The victim was Linda Anderson. Police action resulting in her death was ruled justifiable homicide because, according to police reports, she was killed accidentally during an attempt to gain entrance to her apartment by shooting the lock off the door. The partner of the officer, and independent witnesses, corroborated the police officer’s version. An independent investigation revealed that the officer used a shotgun standing 4 feet from the door, did not warn the occupant of the impending shot, and missed the lock completely.

*Case 2.* The victim was Raymond Jones. Police action was ruled excusable because police officers did not strike the deceased and used only the amount of force necessary to bring the suspect under arrest. Seven of the nine officers involved in the incident testified and confirmed each other’s story. The report of the coroner’s pathologist, however, revealed that Jones was age 31 and in good health. He was also unarmed. The use of excessive force is implied when nine police officers could not subdue a suspect without causing his death.

Although most police killings are designated “justifiable homicide” by the coroner and the victim’s identity disappears onto computer tapes, this kind of coverup is becoming increasingly problematic. Police killings are more and more likely to trigger resistance and to politicize masses of people. This has become a major concern to the police establishment, which I will get into shortly. But first, let me provide a gist of what happens when someone is killed by the police.

Of the four Houston police officers who were convicted of negligent homicide, a misdemeanor, after they had beaten and drowned a Chicano prisoner by pushing him into a bayou, a news item noted, “The light sentence inflamed Mexican Americans in

Texas and resulted in demonstrations in Houston against the police." A national weekly reported the conviction of Police Chief Frank Hayes, his wife, Dorothy Hayes, and her sister, Alice Baldwin, for their role in the 1975 murder of Richard Morales. The item went on to report that the indictment and conviction resulted from a vigorous letter-writing and street campaign from the Chicano community in Castroville and San Antonio demanding that the Federal Government try the criminals for civil rights violations. These are not isolated events. Press releases issued by the Department of Justice show that police officers have been indicted in every region of the country for "acting under the color of law, unlawfully shot the victim, taking away his constitutional right not to be deprived of liberty without due process of law." The indictments by the Department of Justice do not mean that it is concerned about due process. In many instances, the militant struggles of black and Chicano communities and well-organized campaigns to publicize the racist nature of the criminal justice system have led to Federal indictments. And even though 180 of the 228 police officers indicted by the Department of Justice between 1971 and 1975 were acquitted, the struggles continue.

The concept of due process has no practical reality in the black and Chicano communities. In 1973, New York police officer Thomas Shea shot and killed a 10-year-old black youngster. Shea said he thought the boy was a holdup suspect and claimed the suspect pulled a gun. The tragic and familiar fact is that the suspect was unarmed. Shea had been previously charged by the department for hitting a 14-year-old with his revolver; Shea had earlier shot a 22-year-old suspect; that suspect was unarmed and no charges were filed against the suspect.

Following the funeral of the 10-year-old victim, a huge crowd swept through the shopping center of South Jamaica, menacing and beating the few whites in the area. The hostility remained and many demonstrations continued. Shea was suspended and charged with murder. Almost a year later, Shea was tried and acquitted.

Again the black community protested. Bands of black youths shattered windows of police cars; white people were randomly attacked; and sporadic violence continued well into the night.

The New York police commissioner, in response to community pressures, promised to weed out the violence-prone officer and to develop new regulations involving firearms. Subsequently a Firearms Review Board was set up to review each firing of a weapon by a police officer (*New York Times*, May 6, 1973); but what the *New York Times* failed to report was that a Firearms Review Board had already been established in August 1972 under an administrative guideline called T.O.P. 237, which also narrowed the circumstances under which a New York City police officer could employ deadly force.

While one study by a New York City police sergeant showed that police shooting incidents and police-killings of civilians decreased after adoption of the new policy on the use of deadly force (James J. Fyfe),<sup>9</sup> the police killings in New York City continued to provoke mass demonstrations of anger and frustration. On November 9, 1976,

a 15-year-old youth, Randolph Evans, was killed by a white police officer, Robert Torsney. Mass demonstrations occurred and some 2,000 people attended the funeral of the victim. Torsney was indicted for second degree murder but was subsequently acquitted.

Mass demonstrations of anger and outrage do have an impact. The courts and liberal police reform organizations, like the Police Foundation, increasingly recognize from experience from Watts to Vietnam that indiscriminate State violence can be counterproductive. In a recent Federal case, a Court of Appeals found the Missouri statute on killing felons unconstitutional (*Mattis v. Schnarr and Marak*, 1976). The action was brought by the father of the unarmed burglary suspect who was killed while fleeing from a golf course early one morning. The court held that the State cannot properly deprive an individual of life for committing a nonviolent felony unless the police officer reasonably believes that the suspect endangers the life of the police officer or others. The ruling, however, was vacated by the Supreme Court on procedural grounds (*Ashcraft v. Mattis*, 1977). A similar case before the Court of Appeals in St. Louis ruled that police officers may not use deadly force against a felony suspect who is not violent (*New York Times*, June 1, 1978). The case was based on a \$4 million lawsuit against the Omaha police officers brought by the victims's mother; the three-judge panel ruled that the Omaha police officers violated the 5th and 14th amendments. The Court held that "The right to life is fundamental and is protected against unreasonable or unlawful taking by the procedural due process safeguards of the 5th and 14th amendments." One week later, the Federal Court of Appeals in New York ruled that municipalities could be sued for the unconstitutional actions of police officers or other employees (*New York Times*, June 6, 1978).

In addition to these recent court decisions, there is evidence that individual police officers have come forward to sustain public claims of police brutality, typically a novice or a racial minority. In Houston, Texas, it was Police Officer Carless Elliot, age 20, whose testimony against five Houston police officers for the beating and drowning of a Mexican American prisoner led to their conviction. A few weeks later, another young Houston police officer, Alan D. Nichols, filed charges against colleagues for unnecessarily beating a young black man. In New York City, it was two black officers, Jesse Murden and Marvin Goldston, who stepped forward to testify against police officer William Walker, who was acquitted for killing a 22-year-old black student, but was found guilty in a police department hearing of causing the student's wrongful death. And in Berkeley, California, an Asian-American police officer filed an internal complaint against his own supervisor for police brutality against a black prisoner.

At the outset of this paper, it was asserted that in 1971, there were but a handful of studies on homicides of and by police officers. Since then, several studies have been published; and a major study of police violence, funded by the National Institute of Mental Health, is currently underway.<sup>10</sup> The published studies may be summarized in the following way:

Richard Kania and Wade Mackey essentially argue that communities get the number of police killings which they deserve.<sup>11</sup> Kania and Mackey found that police killings are statistically associated with violent crimes in the community and concluded that "the police officer is reacting to the community as he perceives it, a perception which is usually correct." In this way, Kania and Mackey attempt to justify the high level of police violence in this country.

Arthur Kobler pursues the "bad apple" theory to explain police violence.<sup>12</sup> Kobler recommends that police administrators need to stringently enforce the laws and regulations governing police use of deadly force, and that individual officers who kill citizens improperly should be vigorously prosecuted. Without stricter application of regulatory and legal sanctions, according to Kobler, ghetto communities will continue to be suspicious of and hostile towards the police and courts as well as the political system which law enforcement represents. Kobler is therefore concerned about the maintenance of legitimacy.

The Police Foundation study is concerned about the growing cost, financial and hegemonic, of unregulated police violence.<sup>13</sup> The increase in law suits has fiscal repercussions for the already financially beleaguered cities. For example, in Macon, Georgia, a 12-year-old boy who had been shot in the leg obtained a \$50,000 judgment against the city after the mayor had instructed police to "shoot to kill" during civil disorders. In Dade County, Florida, insurance premiums increased from \$60,000 to \$150,000 in 1 year; and in Philadelphia in 1975, settlement payments and jury awards stemming from illegal police violence totaled about \$400,000. As the attorney general of Dade County put it: "The increasing cost of proven police brutality is, of course, an important factor, but the cost of what that means in terms of faith in the fair administration of justice is incalculable." (*New York Times*, February 2, 1975). To put it differently, the attorney general is saying that it is important to pay people to obtain the respect and faith of our political system.

These studies, especially those by Kobler and the Police Foundation, miss the point completely. To prosecute an individual police officer for the wrongful death of a citizen, to pay money to the victim or someone else representing him, is distributive justice and not social justice. Distributive justice means simply "what's good for the goose is good for the gander." Social justice, on the other hand, means that the rights of liberty, equality, and security are not elements to be exchanged for money or for property rights; nor should they be expressed in relative terms, that is, greater or less than property rights. One person's life and liberty is the same as the next person's. But in a society that equates the right of private property with human rights, they become inevitably reduced to standards and consequences that value some lives less than others. The system of coercion and punishment is intimately connected with the unequal distribution of wealth, and provides the legitimation under the perverted notion that "ours is a government of laws" even to kill in order to maintain social priorities based upon property rights. This is the meaning of police killings in American society.

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**Part II**  
**THE CONSULTATION**

# POLICE USE OF DEADLY FORCE: A COMMUNITY CONSULTATION

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## Background

Representatives of 11 national organizations met informally in St. Louis on June 23, 1978, to discuss problems stemming from the use of deadly force by police. The Community Relations Service (CRS) of the Justice Department, acting on the request of several groups, served as convener of the consultation.

On the previous day, the organizations had participated in a workshop on the subject of deadly force at the Annual Conference of the National Organization of Black Law Enforcement Executives (NOBLE) which had been conducted by CRS at NOBLE's request. The consultation on June 23 was held to permit the interested organizations to exchange information about their respective concerns and programs.

As a conflict resolution agency, CRS has, for a dozen years, responded to hundreds of instances of racial strife precipitated by the use of deadly force. While such after-the-fact intervention helped individual communities reestablish ruptured relationships and improve policies related to the use of deadly force, it did little to abate the problem nationwide.

For this reason, CRS, in collaboration with police agencies and community groups, is currently exploring ways to reduce the incidence of the use of deadly force and the ensuing community conflicts.

## Organizations and Agencies Participating (See appended roster of individual participants.)

### *Organizations*

ACTION (St. Louis)

American Bar Association

Cleveland Foundation (The)

IMAGE

Mexican-American Legal Defense and Education Fund (MALDEF)

National Congress of American Indians

National Interreligious Task Force on Criminal Justice

National League of Cities

National Organization of Black Law Enforcement Executives (NOBLE)

National Urban League

Police Foundation

United Methodist Church



*Agencies of the Department of Justice*  
Community Relations Service (CRS)  
Civil Rights Division  
Law Enforcement Assistance Administration (LEAA)

**Interests of the Participating Groups**

The participants identified the concerns and programs of their organizations relative to the issue of deadly force. In general, there was a feeling that current programming is not filling community needs. Indeed many of the organizations are still seeking, or perhaps only starting, what they see as constructive activities. The disproportionate rate of minority victims of police homicide was of special concern to organizations representing various minority groups—Hispanic, black, and Native American. Religious groups indicated that they were impelled by concern for the sanctity of life and opposition to injustice.

One representative indicated the desire of his organization to be of assistance to mayors, managers, and council members who are often reluctant to take on tough police problems for fear of being politically hurt. He indicated that his organization is preparing to develop a capability to provide technical assistance to such municipal officials, defining joint roles for police and municipal officials, and possibly promulgating a code of standards. NOBLE, representing both police executives and the black community, was concerned with equitable treatment for minorities and a higher quality of law enforcement.

The consultation focused on two areas: (1) the need for more and better information about the use of deadly force; and (2) the need for programs and strategies by which private organizations might effectively improve the existing situation.

**Information Base: What's available; What's missing**

A member of the minority advisory committee of LEAA and a representative of the National Criminal Justice Reference Service (NCJRS) spoke of the scarcity of information on the subject. Books contain very little information on the issue; most of what is available is in the form of articles in magazines and journals. Useful information appears frequently in local newspapers, but there is need for a comprehensive collection and organization system which presently does not exist. NCJRS has relatively few documents on use of deadly force in its computerized information system. Copies of a search were made available to the participants. It was also noted the National Institute of Law Enforcement and Criminal Justice is currently sponsoring research into police use of deadly force.

A collaborative effort of the National League of Cities and the Police Foundation to study the use of deadly force in seven cities was described and the possibility of extending this study to help fill the need for broader data with respect to police homicides was mentioned. Some conferees alluded to the reference in the Police Foundation study that while such data were collected by the FBI,

they were not made available by that agency. Others questioned the reliability of such information since it originated with the very police agencies which were involved. Homicide data alone were of limited value since drawing conclusions requires accurate knowledge of the circumstances involved in each shooting. One participant emphasized that the difficulty in collecting full information should not be allowed to impede more vigorous efforts to collect and analyze information which is available.

More and better research information was seen as essential for any program of public information. The need for better informed communities was a theme repeatedly sounded. It stems from the hypothesis that police homicides are less common in an environment that does not condone them. While such a hypothesis is as yet unproven, the question was raised as to whether the remarkable reduction in the number of minority citizens killed by the police in the cities of Detroit and Atlanta was not a consequence of the election of aggressive black mayors and the appointment of black police executives. In Atlanta for example, the number of justifiable homicides by police was 16 in 1972 but only 2 in 1977.

One delegate indicated that the National Interreligious Task Force on Criminal Justice, comprising major religious denominations and secular groups, is linked to a vast network of religious entities and communities all over the country which could conceivably be drawn on for local data collection. This activity would make such groups even more effective in a subsequent role of providing information to their respective communities. He suggested that the minority press could also serve as a valuable source of data.

It was suggested that the subject area of the Police Foundation's clippings service be expanded to include police homicides.

### **Community Approaches and Strategies**

In the discussion of possible roles and strategies for national organizations, the capability of the National Interreligious Task Force on Criminal Justice was described. This organization's local contacts could be used not only for data collection but also for local educational programs. It was suggested that the Task Force "plug in" to other networks which could facilitate broad-based local task forces or alliances. In selected instances the National Task Force might be in a position to help finance local ecumenical task forces. Suggestions for enlarging this religious network to include the networks of other interested groups should be directed to the National Task Force.

In a discussion of the utilization of networks, the potential of other groups was noted. For example, the National Urban League network includes 110 local leagues, while IMAGE has 60 chapters in 23 States.

A number of speakers referred to instances in which local community pressure on elected officials was able to influence police use of deadly force. In one city a massive protest by the United Black Fund was followed by a 50 percent drop in police homicides in a single year; in another, community pressure was followed by a reinvigorated prosecutorial role by the U.S. Attorney. Community

pressure was also seen as a means of improving police investigation of instances of deadly force, as well as more effective prosecution; community education was seen as a means for helping to achieve more responsive juries.

One of the speakers discussed the problem that arises when, even under satisfactory administrative procedures, inadequate investigation at the lower police levels makes for poor prosecution. This problem is compounded by the reluctance of juries to convict a police officer. Another participant vocalized an additional complication: the questionable enthusiasm of some prosecutors in pressing such cases against police.

The experience of the Law Enforcement Study Group of Chicago was reported. This organization, consisting of private citizens, many with extraordinary influence, has studied a number of problems with respect to law enforcement, and is currently completing a study of all police homicides in that city over a period of several years. This group was mentioned as a useful prototype for other communities. It was pointed out that police attitudes, with respect to the use of deadly force, were often the extension of decisions made by many other institutions which were destructive to minorities in other ways.

One of the participants, speaking of the need for community pressure on elected officials, stated that a prerequisite to that pressure was getting information out to the public. He spoke of the use of resolutions at national conferences and the possible development of a manual suggesting courses of action for supplying information to local groups.

It was suggested that efforts be made to contact the Attorney General for release of FBI information on citizens killed by police. A community education program might be helpful to police executives and prosecutors who could discharge their duties with respect to deadly force more vigorously if bolstered by community support.

In response to the question as to how local groups could gain information about homicides from the police department, it was suggested that the State Attorney's Office be used as an alternate source. Community pressure might best be focused on selecting coroners whose objectivity could be relied on with respect to matters of police homicides.

One participant emphasized the need to focus on the problem as it exists in small communities where minorities are most vulnerable because of their limited knowledge of the resources available to them. The national organizations and their local constituencies could serve an important role as liaison to the smaller communities, and the Mexican-American Legal Defense and Education Fund (MALDEF) was suggested as an example of a national organization that sought to serve in that capacity. The minority community was described as vulnerable to police retaliation in the form of harassment of those who sought to protest such matters as the use of deadly force. The community education work of MALDEF includes efforts to educate communities on how to keep elected officials accountable for police activities and work with business leadership. Law suits are used as a last resort. Also described were MALDEF activities at the national

level, in concert with other Hispanic organization, in an effort to focus attention on the problem. The Dallas meeting of National Hispanic Organizations and the specific communications that emanated from it to the Attorney General and the President were described. As a consequence of that meeting and followup meetings with the Attorney General, the Department of Justice was studying whether or not LEAA could develop national standards for proper and improper use of force by police.

In response to a question as to whether there was sufficient unity between blacks and Hispanics to permit coalition of efforts with respect to deadly force, it was stated that this was a natural issue for a concerted effort. It was emphasized that high visibility should be accorded all cases of police homicides in order to substitute an atmosphere of accountability for one of immunity. A special prosecutor and blue-ribbon grand jury to look into each instance of police homicide was recommended.

The possibility of convening a national conference on a moratorium of police homicides was suggested. The session adjourned with the suggestion that NOBLE speak out at the local level about individual cases of the use of deadly force.

Roster of Participants  
CRS Consultation on Use of Excessive Deadly Force  
June 22-23, 1978, St. Louis, Missouri

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Part III  
THE CONCERNS OF  
THE DEPARTMENT  
OF JUSTICE

## POLICE PRACTICES AND THE PRESERVATION OF CIVIL RIGHTS\*

Drew S. Days III

*Assistant Attorney General, Civil Rights Division,  
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The chief limitation on the effectiveness of prosecution as a deterrent to police abuse is in the nature of the criminal charge itself. A prosecution for police misconduct does not address itself to the activities of a police department as such, or of a city administration per se, but only to the actions of one or more officers in a given circumstance framed by and limited to the wording of a criminal indictment. Moreover, criminal prosecutions are reactive litigations involving only the calling to account of individuals who have already engaged in acts of misconduct. Any conscious effort to anticipate instances of police misconduct and head them off before they occur must arise from some other source than the Federal Criminal Code.

In establishing priorities for the future, I believe that Federal prosecutors must continue to be vigilant to identify and act upon all meritorious cases of police misconduct. In particular, we must be sensitive to cases in which the victim has been killed at the hands of the police, because these incidents are potentially very unsettling to the community involved, particularly a minority community which may already be suspicious of police actions. A disturbing aspect of these "death cases," as they are known, is that they are usually the most difficult cases to prove. Not only is the victim unavailable to explain himself but State "fleeing felon" statutes often provide an umbrella of protection for the officer involved.

In explanation of the phrase "fleeing felon" statutes, I mean those State laws which authorize a police officer to use whatever force he believes to be reasonably necessary, including deadly force, in order to apprehend an individual suspected of committing a felony. If an officer kills such an individual during efforts to apprehend him, it becomes extremely difficult to prosecute him. We must show not only that the suspect was not a fleeing felon but that the officer was unreasonable in believing that he was a felony suspect. And after that we must still show that under all the circumstances force was used willfully with a knowledge that it was unnecessary. In most cases in which the victim is available to testify, the circumstances are quite different (e.g., the suspect is already in custody and *no* use of force is warranted), and the victim is available to relate statements made to him by the officer (e.g., "I'll teach you to try to run from me") which plainly indicate the officer's wrongful intent.

It is for these reasons that I now personally review every file that comes into the Civil Rights Division involving the death of an individual at the hands of the police.

\*Excerpt from a statement made to the "Consultation on Police Practices and the Preservation of Civil Rights," sponsored by the U.S. Commission on Civil Rights, December 13, 1978.



## POLICE USE OF DEADLY FORCE: SEARCHING FOR REMEDIES\*

Howard P. Carrington

*National Administration of Justice Specialist,  
Community Relations Service, U.S. Department of Justice*

The diligence with which the U.S. Commission on Civil Rights is pursuing the pervasive nuances of the police use of deadly force issue is commendable and timely. President Carter has stated time and again that the pursuit of human rights is the cornerstone of his administration. The rising number of unresolved complaints of police brutality by citizens, especially black and brown, attests to the need for tempering discretionary police practices if the attainment of human rights is to be accomplished and preservation of civil rights maintained.

Those of us who have been directly involved in law enforcement know very well that strong public support for enforcement efforts is essential to avoid not only reluctant public acceptance, but also possibly severe alienation between the police and community. Of the many impediments to harmonious relationships between the police and minority communities, one of the most inflammatory is the use of excessive and deadly force by the police. In order to put in perspective the respective roles of citizen organizations, Federal intervention agencies, and State and local law enforcement agencies, it might be helpful to outline the nature and magnitude of the issue of excessive and deadly force, as well as some of the Federal efforts to deal with the problem.

Citing data from the U.S. Public Health Service's annual, *Vital Statistics*, for 1965-1974, Lawrence Sherman said:

Homicide by police officers is a major category of homicide. From 1965-1974, 3,456 deaths were caused by law enforcement officers comprising 2.4% of all homicides in the U.S. in that decade. Since 1970, American police have killed, on an average, one person per day.

The Public Interest Law Center of Philadelphia (PILCOP), in its 1977 Annual Report, said it had been informed of 272 cases of police beatings in Philadelphia in 1976. According to PILCOP statistics, 175 victims required medical treatment for their injuries. Of those, 113 were taken to hospital emergency rooms by police before they were arraigned. The report noted that 146 of those reported beaten by police were black; 36 were black women.

An article published in the *Dallas Times Herald* a few months ago stated that the U.S. Commission on Civil Rights had singled out the Southwest in general and Houston in particular as areas in which allegations of abuse were so widespread as to appear to be officially

\*Presentation to the "Consultation on Police Practices and the Preservation of Civil Rights," sponsored by the U.S. Commission on Civil Rights, December 13, 1978.

sanctioned. Of the 7,500 complaints received nationwide each year, approximately 15 percent involve Texas police departments. For example, the Justice Department has actually conducted some degree of investigation of 4,449 incidents of alleged police abuse in Texas since 1970. Of that number, the most—1,564—originated in the southern area, primarily in Houston, while another 1,109 came from the northern part of the State, where Dallas and Fort Worth are the focus. A total of 961 were from west Texas and 815 from east Texas.

These actual investigations represent approximately half of the total number of complaints the Justice Department has received against Texas police. Of the 4,449 complaints, prosecutions resulted in only 27 cases involving 52 police officers. Only 8 of the cases and 20 officers were successfully prosecuted before Texas juries.

A 1972 report of the Chicago Law Enforcement Study Group, which conducted a study entitled *The Police and Their Use of Fatal Force in Chicago*, revealed comparative information on civilians killed by police and police killed by civilians for the five largest U.S. cities as determined by the 1970 census: New York, Chicago, Los Angeles, Philadelphia, and Detroit. The source of the information was the Police Weapons Center of the International Association of Chiefs of Police (IACP). Data are as follows:

THE PATTERN OF CIVILIAN/POLICE DEATHS RESULTING  
FROM POLICE ACTIONS  
JULY, 1970-MARCH, 1971

City (Population)	Number of Arrests-1970*	Number of Officers in Department	Number of Deaths Police    Civilians
New York (7,867,760)	264,814	31,671	5        21
Chicago (3,366,957)	265,444	12,671	7        32
Los Angeles (2,816,061)	251,955	6,806	0        8
Philadelphia (1,948,609)	101,552	7,780	3        13
Detroit (1,511,482)	161,341	5,159	3        4

\*Includes only arrests for Part I Offenses.

According to the study group, the records of a Chicago newspaper morgue revealed that there were 78 civilian deaths by police action during the calendar years 1969 and 1970. The carnage represented by these figures is staggering and becomes even more stunning when figures are compiled for the rest of the Nation. The study group reported that, during a 44-month period, the police in Chicago killed a civilian every 11.9 days and wounded one every 4.3 days. On the other hand, a civilian killed a policeman every 64.1 days and wounded one every 18.2 days.

The ethnic disproportion is evidenced by the 2-year study in

Chicago which showed that 56 black males and 3 black females were killed by police action (74.8 percent), while 19 white males and no white females (24.0 percent) were killed. Four of the 19 had Spanish surnames.

Data for the 24-year period from 1950 to 1973 show an average of 245 persons killed by police in the years prior to 1967. For the 7 years beginning with 1967, the average was 359 per year. Of these, 50 percent were black. Here again, records are not clear as to the proportion of those killed who were Latino since they were counted as white in census tracts.

I have cited the foregoing examples in order to present a picture of the gravity and magnitude of this problem which besets communities of our Nation. Nor can we be lulled into thinking that the epidemic is centered only on the large metropolitan areas. CRS has documented such cases in places like Eatonton, Georgia, Webster County, Iowa, Quincy, Illinois, Blackfoot, Idaho, and West Liberty, Iowa.

Police/community friction arising from the issue of deadly force knows no boundaries in terms of city population, size, or size of the municipal police force.

A study by the Office of Police Planning in Seattle notes that while blacks account for only 9 percent of Seattle's population, they comprised 49 percent of the people shot by police in a 3-year period. A Police Foundation report on deadly force covering seven major U.S. cities found that 80 percent of non-fatally shot civilians were minority, while 78 percent of those killed were minority.

It is unlikely that CRS can offer a program which will eliminate the staggering loss of life attributable to "justifiable homicide by police action"; nor shall we try. Our task is of lesser reach but more immediate promise in reducing the lethal impact of police slaying and in effectuating an overall reduction in the number of citizen complaints of nonfatal excessive force.

The remedies we seek will only be accomplished through the concerted efforts of police organizations, police administrators, community organizations both national and local, private sector organizations, religious, fraternal, and sorority organizations, academicians, and business, as well as elected officials and Government functionaries. The police have traditionally, although tacitly, served the paramount interests of the status quo in most communities. We must enlist the active participation of all elements if we are going to achieve an appreciable reduction in the lamentable statistics cited above.

The problem is not utterly intractable. In some communities, forward-looking police executives have initiated policies and practices designed to insure that deadly force is used only under the most necessary circumstances. The experience of certain individual police departments indicates that the number of police homicides can be significantly reduced and that such reductions can be achieved by changes in police policy and practices.

In New York City, for example, the number of police homicides was reduced from over 63 in 1972 to 54 in 1973. By 1977 it was down to 30. In other instances, commendable change has resulted from

dialog and negotiation between police and community leadership. Unfortunately, in many communities negotiation is not successful because it occurs in an atmosphere of acrimony. The community becomes aroused and seeks change only in the wake of a tragic incident, and that sharp edge of concern quickly dulls. At the same time, police agencies, like all institutions, tend to defend and justify their actions and policies most vigorously when under attack. Efforts to arrive at reasonable solutions rarely prosper in such a climate.

At such times, issues are often misrepresented and polarized. One side is depicted as condoning murder by police, the other side as condoning wanton criminality. In actuality the gap is not really broad. Both the police executive and the minority community share the goal of crime reduction in the minority community. Both agree that the police officer should be authorized to use firearms to defend his or her own or another's life when other means are inadequate. Neither believes that the police badge should be a shield for brutality or racism.

Basic differences concern the nature of controls to be applied and the degree of accountability to be required of police in the exercise of their discretion. While such issues may still represent wide division, they are at least responsible to good faith negotiations. Stubborn as the problem is, there are a number of harbingers of progress. Among them is the increasing attention being given to the problem.

Police administrators are taking a closer look at the issue of deadly force and discussing it with their peers. Officials of local government are increasingly expressing concern and reviewing relevant policies. The National League of Cities is continually being called upon by municipal officials to provide technical assistance in dealing with the issue of deadly force.

The problem is receiving increasing attention from municipal officials for at least two reasons. One can be described as "political heat." When a shooting is followed by protest and sometimes disorder, it often leads to confrontation in the council chamber where political careers can be at stake. The second reason is the question of municipal liability. Local governments are being sued more frequently by individuals alleging violation of their rights by police officers. While few such actions ultimately result in verdicts against the officer or municipality, there have been some very costly awards.

In addition, out-of-court settlements and legal costs, while not known in the aggregate, have been sufficient to cause a revolutionary increase in the cost of municipality insurance. In the current climate of municipal tax and budget cutting, police actions that result in escalating costs are likely to come under scrutiny which will hopefully produce, under internal administrative command, a preceptible abatement of over zealous law enforcement practices.

We are witnessing a breakdown in dialog because of such practices. Rather than enjoying a mutual relationship with the people, the police are often in the unfortunate position of being in confrontation with racial and ethnic groups, social action and civil rights groups, the adolescent community, and the courts. If the emotions of fear and hate characterize the current relationship between the ethnic minority communities and the police, there is both an immediate and

long-range effect of the continuation of these conflicts. An immediate effect is the fact that, increasingly, contacts between policemen and minority group members are tinged with the possibility of violence. Of even greater concern, however, is the transmission of such attitudes to succeeding generations of young people.

We at CRS have found that if and when the dialog between the community and law enforcement agencies breaks down, reassessment of problems becomes very difficult, and the potential for constructive action is sharply curtailed.

CRS stands firmly committed to expend its energies and resources in working hand and glove with all of you in order to help in the reaffirmation of humane police community relations as the foundation from which our domestic human relations will spring.

# THE NATIONAL INSTITUTE AND POLICE USE OF DEADLY FORCE

Blair G. Ewing

*Acting Director, National Institute of Law Enforcement  
and Criminal Justice*

During 1978 it became apparent that the subject of police discretion in the use of force and deadly force was receiving far greater attention and concern in our Nation than ever before. Civilian fatalities caused by firearms discharged by the police and reported by the mass media received additional exploration and in-depth analysis by prominent writers and journalists; institutions of higher learning conducted intensive workshops and seminars for police officials and others concerned with police discretion in the use of lethal force; and, at least two national law enforcement organizations debated the issue during their annual meetings. The Department of Justice Community Relations Service and the U.S. Civil Rights Commission experienced substantial increases in the numbers of citizen complaints of police misconduct and incidents of excessive and deadly use of force by police.

In an attempt to examine this phenomenon, the National Institute of Law Enforcement and Criminal Justice is supporting research that will concentrate on internal policies and practices that impact on the use of lethal force by police officers. It is hoped that the research findings and recommendations will aid police administrators in further development of more clearly defined firearms policies and guidelines. Definitive and concise guidelines would greatly assist law enforcement officers confronted with use of force situations and further insure the safety of both the officers and the public at large.

# POLICE USE OF DEADLY FORCE: RESEARCH EFFORTS OF THE NATIONAL INSTITUTE OF LAW ENFORCEMENT AND CRIMINAL JUSTICE

Peggy Triplett

*Special Assistant to the Director*

In March 1978, the National Institute of Law Enforcement and Criminal Justice (NILECJ) convened a 2-day workshop of criminal justice experts to formulate an agenda for research on the relationship between minorities and crime and the role of minorities in the criminal justice system. The workshop participants included both minority and majority criminal justice practitioners and researchers. After discussing the issues related to minorities and the criminal justice system, the group recommended seven priority areas of research. Use of deadly force by police emerged as the number two priority for research.<sup>1</sup>

Shortly after the workshop, the Institute's Acting Director, Blair G. Ewing, established an internal staff committee to study the feasibility of funding research in the area of excessive and/or deadly use of force by police. The committee met several times and discussed extensively the broad area of police discretion in violent or potentially violent situations.

To assist in selecting a specific research topic, the committee conducted a literature review in two areas—excessive use of force and deadly use of force. During the review it became apparent that defining excessive force or police brutality would be difficult. Excessive force could cover a range of police practices—orders to move on, threats to use force if orders were disobeyed, use of physical force, etc. On the other hand, deadly force can be specifically defined.

The committee also explored possible research options, including an analysis of the characteristics of police officers involved in shooting incidents and the dynamics of each incident, an analysis of departmental policies in relation to officer discretion, and an update of relevant studies. Subsequently, the group concluded that additional outside assistance was warranted and recommended to Mr. Ewing that a small working group of experts meet with Institute staff to further discuss this broad area and make specific recommendations for research.

In the interim, NILECJ and the Community Relations Service (CRS) of the Department of Justice jointly accepted an invitation from the National Organization of Black Law Enforcement Executives (NOBLE) to assist in conducting a workshop on the use of deadly force, held during NOBLE's annual conference in St. Louis, Missouri, on June 22, 1978. The workshop focused on concerns and possible solutions to the growing rate of police homicides and proved to be an excellent forum for the exchange of information among

<sup>1</sup>Seven recommended priority areas for research: (1) community studies; (2) police use of deadly force; (3) arrest procedures; (4) unemployment in the minority community; (5) verification studies; (6) school system and its relationship to the criminal justice system; and (7) corrections and the postrelease supportive environment.

black law enforcement executives, religious and community groups, and national agencies such as the American Bar Association, the National League of Cities, and the National Congress of American Indians. The papers presented at the NOBLE meeting and at a subsequent workshop on this topic helped add to the knowledge on police use of force and have greatly enhanced the information base and computerized bibliography maintained at the Institute's National Justice Reference Service (NCJRS).<sup>2</sup>

During the summer of 1978, NILECJ representatives participated in several meetings and workshops on police use of force and were able to acquire additional information and source material on the subject. The meetings on deadly force included a 4-day training session conducted by Northwestern University Traffic Institute principally for police officials, a workshop held during the annual conference of the National Black Police Association in Chicago, Illinois, a session by the National Association of Human Rights Workers during their annual conference in Nashville, Tennessee, and a 1-day research meeting sponsored by the School of Criminal Justice, State University of New York at Albany.

On October 2, 1978, the Institute convened a small group of criminal justice experts to assist NILECJ in identifying issues and setting the direction for research on police use of excessive and/or deadly force. Besides the Institute staff, the group consisted of three police administrators, four criminal justice researchers, and representatives from the FBI, CRS, and the Office of Improvements in the Administration of Justice (Department of Justice).

The framework of discussion for the meeting was set by Blair Ewing's introductory questions: Is police discretion in the area of force becoming a national problem, and if so, why? Should the research focus on excessive force or deadly force or both? Is force aimed at certain groups and not others? What can the Federal Government do? What are the issues and how should we proceed?

During the discussion other related issues and topics arose and were explored in depth, including:

- relationship of department policies on firearms and excessive force
- extent of community influences and internal influences on police administrators
- racism and police use of force
- impact of legislative or statutory charges on use of deadly force
- examination of fleeing felon rule
- alternative ways of controlling police use of force

The participants finally concluded that: (1) the Institute should focus its attention on police use of deadly force, and (2) the research should examine organizational elements and administrative and policy strategies that may affect police use of deadly force.

Consequently, in December 1978, NILECJ issued a solicitation on use of deadly force by police. This initial research effort will examine issues and factors that may impinge upon the rate of police

<sup>2</sup>In June of 1978, there were only 47 documents listed and available in the NCJRS computerized bibliography. Since that time, the NCJRS has published "Police Discretion: A Selected Bibliography," and "Police Abuse of Authority" (an annotated listing of references).



homicides. Cities that have experienced reductions in police homicides will be examined to identify specific elements that may relate directly to the use of force. The reasons why some cities, more than others, have considerably higher incidence of police use of deadly force will be investigated. Firearm policies, State statutes governing the use of firearms, and legal guidelines and rules covering fleeing felons also will be reviewed. In looking at these factors, the study will take into account the different definitions of a felony from state to state.

The ultimate objective of this research is to reduce the number of citizens killed by the police without jeopardizing the safety of police officers. The scope of this effort will be limited to fatal shootings by public law enforcement officers. Organizational elements, administrative strategies, and the effect of different types of police policies and administrative sanctions will be examined to determine how they affect the problem. The project will last 18 months.

Questions about the project should be directed to the Police Division, Office of Research Programs, NILECJ.

**Part IV**  
**THE LITERATURE REVIEW**

## THE CONCERNS OF THE POLICE FOUNDATION

Patrick V. Murphy

*President*

The Police Foundation has had a continuing interest in the study of police use of deadly force. The authority to use force is the most distinctive characteristic of policing; how a police department uses force affects its relationship with the community and its mission to provide humane, productive law enforcement. Lack of restraint in the use of force, particularly deadly force, is a telling sign of poor management and supervision of a police department. By the same token, a police department which controls the use of force through clearly stated policies, training, and exacting supervision is almost certainly an effective agency.

To date, the foundation's major effort in dealing with the issue of deadly force has been support for the two years of research which led to publication of the foundation's report, *Police Use of Deadly Force*, discussed in the following pages. Police Foundation board and staff believe this report is among the foundation's most significant efforts, not because the report is definitive, which it is not, but because it has contributed to an important, growing debate on the issue of deadly force and to a rapidly developing body of research on the issue.

To further debate and research, the foundation is pleased to be able to contribute to this document the following literature review on police use of deadly force. This review marks the first comprehensive examination of empirical research available on the subject.

# SUMMARY OF RESEARCH ON THE POLICE USE OF DEADLY FORCE

Cynthia G. Sulton and Phillip Cooper

*Program Director and Researcher, The Police Foundation*

In 1977, the Police Foundation published a report entitled *Police Use of Deadly Force*, which presented the results of research by Police Foundation staff and police officers from Washington, D.C., and Birmingham, Alabama.<sup>1</sup> The Police Foundation continues to view police use of deadly force as an important research topic worthy of further analysis. In continuance of this interest, Police Foundation staff have analyzed the empirical studies conducted on the topic, some of which were prepared subsequent to the Foundation's report. An annotated bibliography on police use of deadly force is presented as an appendix to this review.

This review summarizes several leading studies of police use of deadly force. Three types of data sets are analyzed in this review: national trend data; single-city data, which demonstrates the circumstances and ramifications of police use of deadly force in specific cities; multiple-city and state data, which permit comparisons among several cities and regions within a state. A few studies contain two or three of the data set types analyzed and therefore these studies appear in more than one section of the review. Finally, the common elements in the studies, are noted, particularly the significance of several generally recognized variables thought to characterize or explain police use of deadly force.

## National Trend Data

The National Center for Health Statistics (NCHS), Division of Violent Statistics (U.S. Public Health Service) indicates that 3,082 citizens died between 1968 and 1976 as a result of "legal intervention." Included in the NCHS statistics are all reported civilian fatalities at the hands of law enforcement officers. The vast majority of these deaths were caused by firearms discharged by police officers. An average of 342 citizens were reported killed each year, with the percentage of deaths among nonwhites remaining almost constant at 51 percent per year. These statistics can be contrasted with data for the periods 1960 to 1967 and 1950 to 1959. In the former period an average of 268 citizens were killed per year (Kobler, 1957a) and an average of 240 in the latter period (Robin, 1963). These data suggest that civilian fatalities at the hands of the police increased significantly during the 18 years reviewed (See Tables 1 and 2).

A second recognizable trend is that nonwhite Americans comprise between 47 and 50 percent of the fatally injured (NCHS, 1978; Harring et al., 1977; Kobler, 1975a; Kobler, 1975b; and Robin, 1963).

**TABLE 1**  
**CIVILIAN DEATHS BY LEGAL INTERVENTION 1952-1969**  
**UNITED STATES PUBLIC HEALTH SERVICE**  
**VITAL STATISTICS**

Year	Total Civilian Deaths	White Male Deaths		Nonwhite Male Deaths		Female Deaths	
		Number	%	Number	%	Number	%
1952	256	128	50	125	49	3	1
1953	255	124	48	130	51	1	0
1954	244	130	53	112	46	2	1
1955	227	111	49	114	50	2	1
1956	226	123	54	103	46	—	0
1957	228	119	52	109	48	—	0
1958	229	111	49	117	51	1	0
1959	227	109	48	117	52	1	0
1960	245	124	51	118	48	3	1
1961	237	132	56	103	43	2	1
1962	184	88	48	94	51	2	1
1963	242	111	46	129	53	2	1
1964	278	131	47	143	51	4	2
1965	271	154	57	117	43	—	0
1966	298	150	50	144	48	4	2
1967	387	200	52	182	47	5	1
1968	350	163	46	181	52	6	2
1969	354	160	45	190	54	4	1

Source: Arthur L. Kobler, "Police Homicide in a Democracy"<sup>2</sup>

**TABLE 2**  
**CIVILIAN DEATHS BY LEGAL INTERVENTION 1968-1976**  
**NATIONAL CENTER FOR HEALTH STATISTICS**

Year	Total Civilian Deaths	White Civilian Deaths		Nonwhite Civilian Deaths	
		Number	%	Number	%
1968	343	159	46	184	54
1969	347	158	46	189	54
1970	329	154	47	176	53
1971	409	214	52	198	48
1972	296	132	45	164	55
1973	372	185	50	187	50
1974	370	183	49	187	51
1975	330	177	54	153	46
1976	286	146	51	140	49

Source: Unpublished NCHS statistics

"Justifiable Homicides by Police" by Gerald D. Robin<sup>3</sup>

As part of a study in which he collected extensive data relating to police killings of criminals in Philadelphia, Gerald Robin conducted some analyses of national statistics on police. Using National Center of Health Statistics data, the author notes that nationally during the period 1950 to 1959 the average number of citizens killed by police officers was 240. Four years—1950, 1955, 1956, 1957—the author obtained national data on the race and sex of fatal police victims. Forty-nine percent of the victims were black, and blacks were victims seven times as often as whites. All but 0.4 percent of the victims were male.

Considering concern for the occupational risks of police officers, Robin analyzed fatality rates from *Monthly Labor Review* and *Uniform Crime Reports* and concluded that the occupational risks of law enforcement have been exaggerated. The rate of occupational fatalities per 100,000 workers in mining, agriculture, construction, and transportation exceeded the rate for law enforcement. (See Table 3)

TABLE 3  
OCCUPATIONAL FATALITIES PER 100,000 EMPLOYEES  
1955

Occupation	No. of Employees	No. of Fatalities	Fatality Rate per 100,000 Employees*
Mining	748,000	700	93.58
Agriculture	6,730,000	3700	54.97
Contract Construction	2,506,000	1900	75.81
Manufacturing	16,552,000	2000	12.08
Transportation	2,722,000	1200	44.08
Public Utilities	1,335,000	200	14.98
Trade	10,728,000	1100	10.25
Finance, Service, Govt., Misc.	14,808,000	2100	14.18
Law Enforcement	167,862	55	32.76†

\*All fatality rates, except those in Agriculture and Law Enforcement, were calculated from: *Monthly Labor Review*, v. LXXIX January-June 1956, pp. 439, 474-77. The source for the number of employees in agriculture was *U.S. Bureau of the Census, Historical Statistics of the United States, Colonial Times to 1957* (Washington, D.C., 1960), p. 70.

†Calculated from *Uniform Crime Reports*.

"A Garrison State in a 'Democratic' Society" by Paul Takagi<sup>4</sup>

In response to 1971 mass media reporting of increasing "assassinations" of law enforcement officers, Paul Takagi conducted a comparison study of police officers killed in the line of duty and civilians killed by the police. This article presents the findings and

conclusions of that 1971 study.

Takagi reports that the FBI reported an increase in the number of police officers killed, from 55 in 1963 to 125 in 1971. During the same time period there was an increase of more than 50 percent in the total number of police officers. Consequently, there was no increase in the actual rate of death. The rate fluctuated from year to year, peaking in 1967 with 29.9 deaths per 100,000 law enforcement officers, but with no apparent trend. Takagi notes further that the number of agencies reporting data to the FBI has increased since 1963, suggesting that the increased number of reporting agencies has contributed to the increase in the number of reported police deaths.

Analyzing the number of deaths among male civilians 10 years old or older as a result of "legal intervention of police," Takagi reports a gradual increase in the age-adjusted rate for the period 1962 to 1968. His comparison of civilian with police death rates shows

... police to be victims of homicides at an annual rate of about 25 per hundred thousand/ while citizens are victims of killings at the hands of police at a rate of 0.5 per 100,000 males ages ten and over, on the national level, and a rate of about 0.8 in California... (p. 29)

Examining the racial disparity of civilian deaths by "legal intervention of the police," Takagi concludes,

Between 1960 and 1968, police killed 1,188 Black males and 1,253 white males in a population in which about ten percent are Black. The rates of homicides due to police intervention increased over the years for both whites and Blacks, but remained consistently at least nine times higher for Blacks for the past 18 years. (p. 29)

Takagi maintains that arrest rates among blacks do not explain the disparate proportion of deaths in that group. He says that in 1964 and 1968 blacks constituted about 28 percent of total arrests and 51 percent of the civilian deaths. Further, blacks accounted for 36 percent of arrests for the major crimes—homicide, rape, robbery, aggravated assault, burglary, theft, and auto theft—in 1968 and less than 30 percent in 1964, a year when blacks constituted 51 percent of civilian deaths.

Looking at racial differences in specific ages groups, which he says are unlikely to contain "desperate" criminals, Takagi concludes, "In proportion to population, black youngsters and old men have been killed by police at a rate 15 to 30 times greater than that for whites of the same age." (p. 30)

Takagi concludes that police killings are "manifestations of racism" and the increase in law enforcement personnel demonstrates America's movement toward a "garrison state."

"The Management of Police Killings" by Sid Harring, Tony Platt, Richard Speiglmann, and Paul Takagi<sup>5</sup>

In this article, Harring et al. present additional data updating the earlier Takagi data. The authors report that deaths by legal

intervention of police among white male civilians continued in the period 1969 to 1972 at a rate of 0.2 per 100,000 white males 9 years old and older, while the black civilian death rate continued the upward trend started around 1962. The highest black civilian death rate of 2.4 occurred in 1969. Rates for both whites and blacks showed a notable decrease in 1972, 0.18 and 1.81 respectively. Total civilian deaths for 1972 were 300, in contrast to 412 in 1971. Racial breakdowns for 1973 and 1974 were not available at the time this report was written, but the total civilian deaths for those years were 376 and 375, respectively.

For the period 1972-1975 the authors find continued yearly fluctuation in the rate to be around 25 deaths per 100,000 police killed in the line of duty, with no discernible trend. The rate dropped in 1968 from the reported high of 29.9 per 100,000 law enforcement officers in 1967, "but increased in 1970 and reached an all-time high of 31 deaths per 100,000 police officers in 1971."

The article continues with a critical analysis of other studies of police killings of civilians and an examination of "the ideological and strategic premises underlying state efforts to manage police killings of civilians." (p. 34)

"Police Homicide in a Democracy" by Arthur L. Kobler<sup>6</sup>

In this article, Kobler reports on the results of a 1970 research program which focused on records of about 1,500 civilians killed by police and 400 killings of police. Data sources included (1) the U.S. Public Health Service's annual, *Vital Statistics*, for data on violent civilian deaths where police involvement was specified for the years 1952 through 1969; (2) the FBI's annual, *Uniform Crime Reports*, for the years 1960 through 1973; and (3) newspaper reports for the period 1964 through 1969.

Using *Vital Statistics* data, Kobler reports a marked increase in civilians killed by police in recent years, an average of 237 for the 13-year period 1952 to 1964 and 332 for the 5-year period 1965 to 1969. Dividing *Vital Statistics* data into more comparable time intervals, the increase in civilian deaths remained apparent; an average of 242 civilian deaths for the 3-year period 1952 to 1954; and for the 5-year periods 1955 to 1959, 1960 to 1964, and 1965 to 1969, the average civilian deaths were 147, 297, and 332 respectively. According to FBI data, the number of police killed has increased from an average of 45 for the 5-year period 1960 to 1964 to an average of 67 for the 5-year period 1965 to 1969 and to an average of 116 for the 4-year period 1970 to 1973.

Further analysis of the data which Kobler himself collected showed

Using the threat of death or severe injury to a person as criteria for justifiability of homicide, information on about 1,500 incidents from 1960 through 1970 suggests that two-fifths of the killings were justifiable, one-fifth questionable, and two-fifths unjustifiable. (p. 165)

The remainder of the article deals with laws and administrative rules regarding police use of force, the absence of penalties for officer



killings of civilians—coroner's inquest, criminal prosecution and trial, and civil suits.

"Figures (and Perhaps some Facts) on Police Killings of Civilians in the United States, 1965-1969" by Arthur L. Kobler<sup>7</sup>

This article contains the findings regarding fatal incidents involving police officers from a study on noncriminal homicides. The principal data source for these findings was newspaper reports provided by clipping services throughout the nation. By writing to officers, attorneys, etc., Kobler obtained data which augmented the newspaper data. He examined records on civilians killed by police in the 5-year period 1965 through 1969, excluding riot-related killings. Comparing his totals to *Vital Statistics* data, Kobler estimated that the 911 incidents analyzed represent 70 percent of the total occurrences. This comparison also suggested that Kobler's data is overrepresentative of Pacific area occurrences.

Acknowledging that the data are poor and uncertain for statistical tests, Kobler presented the following findings:

The fatal incidents took place most often between 9 p.m. and 3 a.m. (42 percent), on weekends (35 percent), in the last 6 months of the year (two-thirds).

Data on time, day, and month of police officer deaths were strikingly similar to that on civilian deaths.

Three-quarters of the police killings of civilians occurred in urban areas, compared with 60 percent for police killed.

In urban areas, minority group members were 57 percent of the citizen victims and 57 percent of the killers of police.

In populations areas of 50,000 and smaller, white persons were the predominant victims (54 percent) and killers (56 percent).

For all areas, the racial distribution of victims was white, 43 percent; Spanish-American, 13 percent; black, 42 percent; other (Asian and American Indian), 2 percent.

Almost half of the persons killed were between the ages of 17 and 27, with a mean of 29 and a median of 25.5.

The group of civilians killed were younger than the group of civilians who killed police; the latter group had a mean age of 31 and median age of 27.

The average age of both black and Spanish-American victims was 27, as compared to an average age of 31 for white victims.

Prior to the fatal encounter, 30 percent of the victims were involved in no criminal activity or a misdemeanor; 27 percent were involved in property crimes; approximately 20 percent were involved in a dangerous felony, most commonly armed robbery; 10 percent were threatening others; 7 percent had assaulted others.

More than 30 percent of the incidents where police officers were killed began with a misdemeanor or less.

After encountering the police, approximately one-half reportedly attacked the police and more than one-fourth were reportedly fleeing from the police.

One quarter of the victims had no weapons; half had a firearm; 15 percent had a knife or sharp instrument.

Of the 530 armed victims, 24 percent (125) either killed or injured a police officer and almost 60 percent (315) used their weapons in other menacing ways.

The racial distribution of the police who killed civilians is white, 89 percent; black 7 percent; Spanish-American, 4 percent.

The racial distribution of police killed is white, 86 percent; black, 11 percent; Spanish-American, 3 percent.

Most of police who killed and were killed by civilians had between 1 and 5 years of police experience and were on duty city patrol officers.

Seventy percent of the officers reportedly approached the subject because they saw or suspected a felony; while one-quarter saw or suspected a misdemeanor.

The predominant reasons for police killing the civilian was defense of self from real or imminent danger (more than one-half) and prevention of escape of known or suspected felon (more than one-quarter).

One quarter of the victims were shot in the back and one-third in the head.

Although there were witnesses to 95 percent of the fatal incidents, in only 20 percent were the witnesses independent bystanders as opposed to police officers and companions to the victims.

### **Single-City Data**

**"Justifiable Homicides by Police Officers" by  
Gerald D. Robin<sup>8</sup>**

Robin analyzed 32 cases of police killings of civilians in Philadelphia between 1950 and 1960 (inclusive) to determine their justifiability.

The author reviewed all police killings of criminals in Philadelphia from 1950 to 1960 using data obtained from the books of the homicide unit of the Philadelphia Police Department. According to Robin, "Extensive records were maintained for each case, detailing the circumstances under which the killings occurred, various characteristics of the victim-offender, his previous criminal record if any, and interviews with witnesses to the homicide as well as friends and relatives of the decedent." (p. 226) Additionally, the author examined the testimony given at the medical examiner's inquest, along with police interviews and reports, to create an accurate picture of the events surrounding each killing.

Robin collected data on the number of officers who, in the performance of their duty, shot and killed a criminal, as well as on the number of criminals who were shot and killed; race, age, marital status, occupation, instant offense, resistance to arrest, and criminal record of victims and offenders; and the time, place, and circumstances of the shooting, as well as whether the criminal had been warned.

The author found that 42 officers in performance of their duty had shot and killed 32 criminals; in 23 cases only 1 officer was responsible for the killing; 28 victims were black. Although during the time period studied, Philadelphia's black population was 22 percent of the total population, blacks comprised 30.6 percent of the total arrests, 37.5 percent of the arrests for Part I serious offenses, and 87.5 percent of the deaths by police officers. The rate of black victims killed relative to the total black population was found to be 22 times greater than the comparable fatality rate among whites. The mean age for victims was 27.6 and half of the victims were less than 24 years old. The marital status of 27 victims was known to the researcher. Of these, 15 were single, 5 were married, 5 were separated, 1 was divorced, and 1 was a widower. Of the 30 victims about whom information could be obtained, 25 had jobs that required "no special skills or training." Of 32 victims 28 were shot either during the course of a crime, immediately after a crime, or in pursuit. Various degrees to resist arrest were used by 25 of the 32 victims. Seven fled from the scene of the crime. More than 75 percent of the victims had previous records; the average number of charges against each individual was 4.9 for general offenses and 2.1 for Part I offenses. Almost 72 percent of the incidents occurred between the hours of 9 p.m. and 9 a.m. Finally, in 28 of the 32 cases the victims were warned either verbally, by gunshot, or by both before they were killed.

The author relies on his findings to conclude that all the killings in Philadelphia were justifiable.

The context within which the killings occurred, the serious crimes for which the V-O's (victim-offenders) were being arrested, their realization of the possible consequences of resistance and flight, and the officer's reliance upon fatal force as a last resort—all these things make it clear that criminals killed by police officers generally are responsible for their own death. (p. 230)

*The Police and Their Use of Fatal Force in Chicago*  
by Ralph Knoohuizen, Richard P. Fahey, and  
Deborah J. Palmer<sup>9</sup>

Knoohuizen et al. (1972) sought to determine patterns in the conduct of Chicago police toward civilians by examining 79 incidents in which civilians were killed by police in 1969 and 1970. The study sought to analyze the characteristics common to fatal force incidents in Chicago, to determine the extent of use and misuse of police firearms, and to determine the degree of accountability for police misconduct in Chicago.

Data summarizing the incidents were obtained from newspaper clippings. The International Association of Chiefs of Police provided data on Chicago police officer fatalities. Transcripts and supplemental information were obtained from the Cook County Coroner's Office.

Knoohuizen et al., noted several characteristics of the victims of Chicago police killings. Although black male citizens comprised 33 percent of the Chicago population, they accounted for 70.9 percent of the fatalities of the incidents studied. Black females accounted for 3.9 percent of the fatalities, white males 24.0 percent. (Spanish-Americans were tabulated as white American citizens in this investigation.) The death rate among blacks, 5.35 per 100,000 was found to be approximately 6.3 times greater than the white rate of 0.86 per 100,000. Although the proportion of black citizens arrested was found to be greater (55.4 percent of the arrest population as compared to 35.7 percent for white citizens), the death rates adjusted for arrest frequencies still indicate that the death rate for black citizens in Chicago is about twice that for white citizens. This conclusion is consistent with Robin's evidence for Philadelphia (1963).

The analysis also indicated that 62 percent of those killed were under 25 years of age, and that those under 25 were twice as likely to die from police action than those over 25; 80 percent of the officers involved were on duty and 20 percent were off duty; 65 of the 76 cases were determined by the coroner to be justifiable homicides; 9 cases were determined accidental; 1 was determined involuntary manslaughter; and 1 was determined murder.

On the basis of a subjective review of the newspaper accounts and coroner's inquest records for each of the incidents, the researchers concluded that in 28 of the 76 incidents investigated (37 percent), substantial evidence of misconduct existed. Further, they concluded that, in 10 of those 28 cases, there was a substantial likelihood of criminal misconduct on the part of the police officers.

The researchers concluded further that the interdependence of the four separate bodies authorized to review incidents in which police kill a civilian (police department, State's attorney, coroner, and internal affairs division) comprises effective scrutiny of police use of fatal force. The researchers say

... the system for reviewing police use of fatal force suffers from two defects which combine to compromise the integrity of the review process. The agencies in the system have a close working relationship, an arrangement which precludes independent examination within the system; the review proceedings are conducted almost entirely out of view of the public, an arrangement which precludes independent examination from without. (p. 72)

"Killings by Chicago Police, 1969-70: An Empirical Study" by Richard Harding and Richard P. Fahey<sup>10</sup>

Richard Harding and Richard Fahey examined killings by Chicago police officers during 1969 and 1970, the same period studied by Knoohuizen et al. Harding and Fahey also critically analyzed the Illinois criminal justice system's failure to control questionable police conduct and suggested more effective control measures.

The authors were able to investigate 85 killings for which the Chicago Police Department acknowledged responsibility. Sources of information included inquest transcripts and other public data, as well as police descriptions of the incident, witness testimony, and coroner reports.

The analysis revealed that the death rate for Spanish-Americans was highest, at 4.5 per 100,000 population; black citizens followed, with 2.67 per 100,000 population; and white citizens had a significantly lower rate of 0.34 per 100,000 population. Clearly, the disparity in death rates between whites and nonwhites is significant. The study categorizes the incidence of felony arrest (murder, robbery, aggravated assault, and weapons offenses) by race. Black citizens were found to account for 73.3 percent of the arrest population for the felony offenses and 74.7 percent of the fatality victims. White citizens accounted for 19.5 percent of the felony arrests and 19 percent of the police fatal force victims. Spanish-American citizens accounted for 7.2 percent of the arrests and 6.3 percent of the fatalities. Finally, the authors reported that 68.0 percent of those arrested for violent crimes were under 24 years of age and that age group constituted 64.6 percent of the citizens killed by the police. These statistics are similar to other statistics comparing arrest and fatality (Milton, 1977; Kobler, 1975).

The authors criticize the criminal justice system's ability to hold police accountable for killing citizens for the following reasons: (1) The State's attorney is a politician under pressure from his constituent to convict criminals and to let police officers do their job unencumbered; (2) the States attorney is a police officer of sorts insofar as he shares police standards; and (3) the function of the State's attorney requires cooperation with the police, thus diluting his incentive to prosecute police officers vigorously.

*An Analysis of 248 Persons Killed by New York City Policemen* by Betty Jenkins and Adrienne Faison

The purpose of this study was to determine the number of youths 21-years-old and under who were killed by New York City police officers for the years 1970 to 1973 and to determine in each case the victim's age and ethnic origin, the location of the incident, and the ethnic origin of the police officer(s) involved.

Jenkins and Faison investigated 248 cases using both the *New York Times* newspaper and the New York Police Department firearms/discharge assault reports for supplemental information. Characteristics recorded from the newspaper source included age and ethnic origin of the victim, ethnic origin of the police officer, and geographic location of the incident.

Of the 248 individuals killed by police while involved in alleged criminal activity, 73 percent were minority group members: 52 percent were black and 21 percent were Hispanic. Only 10 percent were white. White police officers killed 96 black and 4 Hispanic civilians. Black and Hispanic police officers combined killed only two white citizens. Between 1970 and 1973 black officers constituted 6 percent of the NYPD and killed 9 percent of all black victims of police, 18 percent of all Hispanic police victims, and only 4 percent of all white police victims. Similarly, Hispanic police officers were 1 percent of NYPD and accounted for 2 percent of the black civilian deaths, 6 percent of the Hispanic civilian deaths, and 4 percent of the white civilian deaths.

The majority of the slain civilians were black or Hispanic and were under 30 years of age. Nearly half the incidents analyzed involved white police officers and a large proportion occurred in ghetto areas. During the period studied, the number of deaths among blacks declined, as did the number of deaths attributed to white patrol officers, but this phenomenon was accompanied by an increase in the number of "unknown ethnicity" of slain civilians and involved officers.

*A Study of the Use of Firearms by Philadelphia Policemen from 1970 through 1974* prepared by the Public Interest Law Center of Philadelphia (PILCOP)<sup>12</sup>

In 1975, the Public Interest Law Center of Philadelphia (PILCOP) investigated 236 incidents of police use of firearms for the 5-year period 1970 to 1974. According to the authors, the study was intended to provide an overview of the use of deadly force by Philadelphia police officers.

Researchers scanned newspaper articles from the four major Philadelphia papers: the *Philadelphia Inquirer*, the *Bulletin*, the *Daily News*, and the *Tribune* for fatal incidents involving the police. Information recorded included the names of citizens and police officers, race, juvenile status if applicable, previous record if applicable, and duty status of officer. Other factors included location of circumstances, fatality or injury, type of crime, victim armed or unarmed, resistance to arrest (victim fleeing or confrontation), victim shot during or after confrontation, accidental or intentional shooting, type and number of verbal warnings.

Researchers collected data on each variable for each year studied and aggregated the data for all 5 years. The researchers found that, of the 236 incidents discovered, 126 victims were armed, and 52 of these armed victims were killed. Of those shot, most (41) were in the act of

committing or had committed armed robbery. One hundred five of the 126 armed victims allegedly confronted the police. Regarding the 105 who confronted the police, 88 victims were shot during the confrontation and 17 were shot after the confrontation. Among the 126 armed victims, 45 allegedly fled, 15 of whom were killed. There were 10 juvenile armed victims. Off-duty police officers were involved in 21 of the 126 incidents involving armed suspects.

Similarly, from 1970 to 1974, 110 of 236 incidents involved unarmed victims: 29 were killed, 39 "allegedly confronted the police," and 64 allegedly fled. Of the 64 unarmed fleeing victims, 15 victims were killed. Off-duty police officers were involved in 25 unarmed incidents. The greatest number of unarmed victims were accused of burglary. There were 22 unarmed juvenile victims. The discussion and analysis include both the aggregate data and the year-by-year statistics.

The study made several conclusions. First, use of fatal force appeared to be worsening in the time period studied. Thirty-six incidents occurred in 1970, 30 in 1971, 45 in 1972, 55 in 1973, and 70 in 1974. From 1973 to 1974 shootings by police officers increased 27.3 percent. Of the civilians shot, 65.7 percent were wounded and 34.3 percent were killed. Off-duty police involvement appears to be significant. Off-duty officers accounted for 19.5 percent of the shootings during the 5-year period. Of the victims, 53.4 percent were armed. A significant proportion (14.3 percent) of the victims committed no crime. Finally, the review process appears to be inadequate. Of 170 incidents from 1970 to 1974, only 6 (3.5 percent) of the cases were formally brought before the attention of the review board and in all circumstances the officers' actions were vindicated.

The researchers cite 73 police officers identified in the PILCOP police cross-reference records of incidents of alleged misconduct. They condemn the police department for its failure to discipline officers who the researchers allege have misused a firearm. They call for a discussion between the police department and the community of the problems which were outlined in the report in order to resolve these problems.

**"Shots Fired: An Examination of New York City Police Firearms Discharges" by James Joseph Fyfe.<sup>13</sup>**

In his study of firearms discharges by New York City police, Fyfe pursues three research objectives: (1) To describe the phenomenon; (2) to analyze the effect of direct organizational interventions upon shooting discretion; and (3) to analyze the effects of indirectly related organizational variables on police shootings. Fyfe's data sources included New York City Police Department (NYPD) records of all reported incidents between January 1, 1971, and December 31, 1975, involving discharges of police firearms and/or assaults on police by persons who were armed with deadly weapons or dangerous instruments and who inflicted serious physical injury on police officers; and NYPD personnel records including characteristics of

involved officers. The data analyzed are not a sample, but rather the total population of shooting incidents and "officer shooters" in the NYPD over a 5-year period.

Fyfe employed a modified form of the department's Firearms Discharge/Assault Report (FDAR) to conduct incident-specific analyses. To conduct officer-specific analyses, he used a second form for each officer who had reported discharging a firearm and/or being the subject of a serious assault.

Although Fyfe also examined animal shootings and suicides, this summary concerns his analysis of shootings involving "opponents," the main concern of his study. In analyzing shooting incidents involving opponents, Fyfe found that the primary police officer was on duty in uniform in 52.1 percent; the primary police officer was on duty in civilian clothes in 26.4 percent; and the primary police officer was off duty in 21.5 percent.

Fyfe confirmed a hypothesis that the geographic distribution of firearms discharge/assault incidents over New York City's police precincts correlate closely with general "police hazard rates" for precincts (NYPD equation consisting of measures gauging the need for uniform personnel-reported indoor and outdoor crimes of violence and all complaints). He concluded that New York City, like Los Angeles, is composed of a few "free fire zones" and several "sleepy hollows" (Farrell, 1977, p. 72).

After examining the variables of age and race of opponents in police shooting incidents, Fyfe concluded

... while police shooting opponents are generally young and a greater proportion of the Black population is young, Black males in all age groups are considerably more liable to become police shooting opponents than are their White/Hispanic contemporaries.

Of the 2,149 opponents whose race and age were reported, 51 percent were 23 or younger. Of 1,878 shooting opponents of all ages, 19.2 percent were white, 57.8 percent were black, and 22.9 percent were Hispanic.

Also in the section of the research related to race and age of opponents, Fyfe concluded that the disproportionate number of blacks among police shooting opponents is explained by the larger number of black opponents reportedly armed with guns and involved in robberies. Of the black opponents, 61 percent were armed with handguns, machine guns, rifles, or shotguns, as compared with 53.7 percent of the Hispanic and 35.4 percent of the white opponents. Further, 45.6 percent of the black opponents were reportedly involved in robberies as a precipitating event, compared with 26.3 percent of the Hispanic and 23.4 percent of the white opponents.

Another interesting finding concerns the race of opponents in shooting incidents where the police officers were injured or killed. Police officers were injured in 16.6 percent of the encounters with black opponents.

... proportionally more officers are injured in encounters with Whites (22.8 percent) or Hispanics (18.0



percent). Proportionally more officers are killed in the line of duty by Blacks (1.2 percent) than Whites (.8 percent) or by Hispanics (.7 percent). (p. 137)

After examining the relationship between the sex of police shooting opponents and the type of incident, Fyfe concluded

1. Firearms Discharge/ Assault Incidents involving female opponents are significantly more often precipitated by non-crime related events than are those involving male opponents.
2. The most severe consequences of Firearms Discharge/ Assault Incidents involving lone female opponents are generated by confrontation between off-duty officers and females with whom these officers have been previously acquainted. (p. 158)

Fyfe found that most of the female opponents were involved in incidents along with male opponents and that no shooting incident precipitated by a robbery or burglary involved a lone female opponent.

In analyzing officer race and police shootings, Fyfe tested and affirmed the hypothesis that black and Hispanic officers have a higher rate of involvement in police shooting than white officers. The shooting rates of black, Hispanic, and white officers were 207 per 1,000, 177.5 per 1,000, and 114 per 1,000 respectively.

In an effort to explain these rates, Fyfe concluded

... that the major reason for the disproportionate shooting rate of on-duty black and Hispanic police officers and detectives is their disproportionate assignment to department units and those areas of the city in which the likelihood of police shooting is greatest. (p. 190)

Further, Fyfe found that minority officers seem to become involved in a disproportionate number of off-duty shootings because they reside in high hazard precincts in greater proportions than do white officers.

More than four in ten Black and Hispanic off-duty shooters (49.7 and 40.0 percent, respectively) reside in A Precincts, while only one in twenty (5.7 percent) of our White shooters do. (p. 211)

Fyfe attempted to measure the impact of direct organizational interventions on police shooting incidents. Examining the Firearms Discharge Review Board (FDRB), Fyfe found that 70.8 percent of FDRB's 2,155 dispositions and findings were "within law and department guidelines."

Fyfe hypothesized that negative FDRB dispositions and findings would be greatest among incidents which officers initiated and off-duty incidents, especially those occurring outside of the city or in bars and grills. Fyfe's findings affirmed the hypothesis with the exception of the impact of incidents occurring in bars and grills. Incidents involving proactive uniformed officers resulted in administrative

action or criminal charges with greater frequency than did incidents involving either reactive uniformed officers, or reactive and proactive plainclothes officers. Off-duty, out of the city incidents resulted in negative FDRB dispositions and findings 70 percent of time, as compared with 37.8 percent off-duty incidents within the city and 26.4 percent for on-duty incidents within the city. Incidents involving off-duty officers within the city in bars and grills did not result in more frequent FDRB negative dispositions and findings.

Another interesting finding is the null effect of prior shooting history on the FDRB disposition and findings. Of the incidents involving officers with prior shootings, 73 percent were found to be "within guidelines" as compared to 70.5 percent of the incidents involving officers with no prior shooting history.

In another research section, Fyfe analyzed the impact on shooting frequencies of "T.O.P. 237," a department order which established NYPD shooting guidelines and administrative review procedures. He found a 29.9 percent decrease in the weekly mean of officers reported discharging their firearms after the issuance of T.O.P. 237. He found important changes in officers' reported reasons for discharging firearms; the percentage of "defense of life" shootings increased and both the weekly mean and percentage of "prevent/terminate crime" shootings decreased. The weekly means of officers and opponents wounded and killed also decreased after the issuance of T.O.P. 237.

After examining the change in narcotics enforcement policy, from "Buy and Bust" operations to lengthy investigations of "higher-ups," Fyfe concludes that the former operation "heightens the potential for violent confrontation between narcotics officers and their lowest level clientele. . . ." (p. 344)

Fyfe says that New York City police shooting incidents involving confrontations occur mostly at night in inner-city areas and with fairly equal frequency in summer and winter. Fyfe finds "that 'robberies' are the modal precipitant of New York City police shootings. . . ." (p. 500) He attempts to generalize about the officers involved in police shooting incidents. Looking at officer rank, Fyfe states: " . . . police supervisors fire their guns far less often than do their subordinates; when they do fire their guns, however, they are involved in circumstances very similar to those which characterize shooting by non-supervisory officers." (p. 422-24) He finds that minority police officers, uniformed and plainclothes, are more often victims and aggressors in police shooting incidents than are white officers. Analyzing police officer shooter characteristics by rate of opponent fatality, Fyfe concludes that black plainclothes officers are involved twice as often as black uniformed, white, and Hispanic uniformed and plainclothes officers. The FDRB disposition and findings show that shooting incidents involving white, black, and Hispanic officers are found to be justifiable in expected proportions.

In discussing opponents involved in police shootings, Fyfe offers us the model opponent—a lone black male between 21 and 29 years old. Fyfe finds also that white, black, and Hispanic opponents are most often shot in neighborhoods inhabited by their own race and that the shootings are overwhelmingly intraracial. He finds further

that

Minority opponents—especially Blacks—are far more often armed with guns when they confront the police than are Whites. Concomitantly, we find blacks are far more often in the company of others in these situations; that lone Hispanics, who are generally older than most of our types, frequently employ knives against police; and that Whites are frequently involved in situations in which they employ vehicles to assault and/or flee from police. (p. 483)

The wide range of data and findings in the Fyfe study are attributable to the unique research opportunity of the open access to NYPD data.

*The Use of Deadly Force By Boston Police  
Personnel prepared by Planning and Research  
Division, Boston Police Department<sup>14</sup>*

In this report, the Planning and Research Division of the Boston Police Department endeavored objectively to review the policies, rules, and regulations governing application of deadly force by its members. As a part of this effort, 210 Boston police firearms discharges during the period 1970 to 1973 were studied.

Although not all firearm discharges reports were available, researchers examined 37 from 1970, 62 from 1971, 70 from 1972, and 41 from 1973. For analysis purposes, researchers categorized the 210 discharges as follows: 102 at a fleeing felon, 74 at an assailant, and 34 miscellaneous. The offenses which most frequently precipitated shooting at fleeing felons were breaking and entering, 31.4 percent; robbery, 18 percent; and auto theft, 15.7 percent. In the fleeing felon category, 57 of the 102 discharges were actually directed at the suspect, 40 of these discharges were "for assistance," and 5 were warning shots. In the fleeing felon group, 21.6 percent apparently were armed with deadly weapons.

Of the 74 shooting incidents resulting from assault and battery on a police officer, the most frequent initial violations were larceny (usually of an auto), 25.7 percent; traffic violations, 20.3 percent; and robberies, 13.5 percent. Analysis revealed that of the 74 incidents, the type of weapons used by assailants were automobile, 44.6 percent; firearm, 27.0 percent; knife, 21.6 percent; and physical force, 5.4 percent.

Of the 34 miscellaneous shooting incidents, 32.4 percent involved assault, without battery, against a police officer, and 26.5 percent were "accidental discharges."

Another interesting finding is that "Those shooting incidents that involved suspects resulted in 78 being captured uninjured, another 43 being wounded, and 5 fatalities. A total of 58 suspects escaped." (p.9)

The report also reviewed firearm discharge policies and review procedures in Boston and other large cities departments, as well as provided a legal prospective on the issue of police use of deadly force.

## Multiple City Data

*Peace Officer Involved Homicides in California, 1971-1972* prepared by Bureau of Criminal Justice Statistics, Division of Law Enforcement, California Department of Justice<sup>15</sup>

This study was conducted at the request of a California legislative committee examining the use of deadly force in law enforcement. The study's data sources included police summary reports, the California Department of Public Health's Vital Statistics files, and newspaper clippings.

The first set of findings concerns peace officers slain by criminal offenders: 14 in 1971 and 6 in 1972; 19 were white; 13 were under 35 years of age; all were shot to death, 12 by handguns.

The report analyzes 169 homicides by police in 1971 and 1972. Sixty-six percent of the police homicides and 62.5 percent of the felony crimes occurred in southern California, as compared with 14.8 and 23.0 percent of the San Francisco Bay Area.

The report also contains a brief but interesting discussion of the difficulties the researchers encountered in the data. Only 55 cases were correctly reported in both police summaries and vital statistics. The vital statistics included 28 that were missing from police summaries. There were 68 reported in both sources but not ascribed to police operations in the vital statistics. The researchers conclude that "dependence on a single source would result in a sizable underestimate of the problem." (p. 2) As a result of this finding, the Bureau of Criminal Justice Statistics instituted procedures to ensure reliable future counts.

Examining the cause of killings by police, the researchers report that 70 percent follow assaults on the police and that the largest percentage of those assaults occurred during misdemeanor investigations. Patrol activities account for 75 percent of the "police homicides" and detective operations 15 percent.

Findings regarding the circumstances surrounding suspect deaths show that they occur most frequently during hours of darkness (42 percent occur between 9 p.m. and 3 a.m.). More than one-third took place outdoors. Most of the slain suspects were shot with revolvers and suffered between one and three wounds.

Finally, analysis of the consequences of the "police homicides" shows that in 82.2 percent of the incidents there was no legal action and that "the only substantial body of actions were civil suits, which were filed in 13 percent of the cases." (p. 2)

*The Police and Their Use of Fatal Force in Chicago*  
by Ralph Knoohuizen, Richard P. Fahey, and  
Deborah J. Palmer<sup>16</sup>

The Chicago Study Group's report included a comparison of police killings of civilians in Chicago with killings in four other major cities—Philadelphia, New York, Los Angeles, and Detroit.

Chicago ranked first in the rate of citizen fatalities per hundred

thousand population; 42 percent greater than the next city, Philadelphia. Chicago also ranked first in the rate of civilian deaths per 1,000 officers, second in the rate of civilian deaths per 20,000 arrests, and second in the rate of officer deaths per 1,000 officers. (See Table 4)

TABLE 4  
RATIO OF CIVILIAN DEATHS FROM POLICE  
ACTIONS TO POPULATION, ARRESTS, AND OFFICERS IN  
FIVE LARGE U.S. CITIES—JULY 1970–MARCH 1971

City	Number of Civilians Killed	Death Rate per 100,000 Population	Death Rate per 20,000 Arrests	Civilian Death Rate per 1,000 Officers
New York	21	0.27	0.79	0.66
Chicago	32	0.95	1.21	2.53
Los Angeles	8	0.28	0.32	1.18
Philadelphia	13	0.67	1.28	1.67
Detroit	4	0.26	0.25	0.77

*Police Use of Deadly Force* by Catherine H. Milton, Jeanne Wahl Halleck, James Lardner, and Gary L. Albrecht.<sup>17</sup>

Milton et al, investigated police use of deadly force in seven cities: Birmingham, Ala., Detroit, Mich., Indianapolis, Ind., Kansas City, Mo., Oakland, Calif., Portland, Ore., and Washington, D.C. The study was conducted to raise issues and identify factors police administrators should consider in developing or reformulating department policies about the use of deadly force, specifically firearms.

In each of the seven cities, the researchers examined the record of shootings by police officers over a period of time, ranging from 1.5 years in Detroit to 3 years in Kansas City. Data sources included (1) review of shooting incident reports, (2) department regulations, (3) procedures for the use of firearms, and (4) patrol car ride-along observations.

Using an aggregate sample of 320 shootings from the 7 cities, the researchers present several interesting findings:

96 (30 percent) were fatal shootings.

308 (98 percent) of the subjects shot by the police were known to be male.

168 (58 percent) of the shooting victims were between the ages of 19 and 29.

79 percent of all shooting victims were black.

57 percent of civilians shot were armed, 45 percent with guns.

102 (32 percent) of the precipitating incidents were disturbance calls; 66 (21 percent) were robberies.

55 (17 percent) of the shooting incidents involved off-duty officers and 58 (18 percent) involved on-duty plainclothes officers.

Almost 92 percent of shooting incidents in all cities except Detroit were found to be justified.

There is no consistent relationship between shooting rates and changes in index and violent crime rates.

A comparison of the circumstances surrounding the shootings of civilians and police fatalities shows that, although robberies constitute a high-risk situation for both groups, disturbance calls constitute a greater risk.

Shooting rates varied from a high in Birmingham to a low in Portland. (See Table 5)

TABLE 5  
RATES OF POLICE SHOOTINGS OF CIVILIANS, 1974

City and Population	Number of Shootings	Rate of Shootings Per 100,000 People	Number of* Officers	Rate of Shootings Per 1,000 Officers
Portland (378,134)	6	1.6	714	4.2
Washington, D.C. (733,801)	40	5.5	4,937	6.0
Indianapolis (509,000†)	28	5.5	1,110	7.2
Oakland (345,880)	10	2.9	722	9.6
Kansas City (487,799)	10	2.1	1,310	12.2
Detroit (1,386,817)	77	5.6	5,575	21.8
Birmingham (295,686)	25	8.5	637	25.0

†The figure refers to police district population.

\*Figures are derived from 1973 UCR report and 1973 police data from seven sample cities.

The study presents the statutory and common law history of police use of deadly force, as well as new codes such as the Model Penal Code. The authors discuss the diversity of internal policies and in strictness of policy guidelines, and use brief case studies to define circumstances which may justify the use of force. Among other recommendations, the authors recommend monitoring and altering personnel policies to identify violence-prone officers, developing a firearm policy which stresses use only in self-defense, defense of

others, apprehension of potentially dangerous felons if no other lesser means are available and if there is no significant risk to innocent bystanders (Basic Model Penal Code Approach); prohibiting firing at moving vehicles; prohibiting display or drawing of firearms unless dangerous circumstances warrant; developing specific policies for the use of shotguns and long guns; developing specific guidelines for off-duty police officers; providing extended firearms training for all officers; requiring immediate reporting to the radio dispatcher for any use of weapon; establishing rotating firearm review boards, separate from the department's internal affairs division and empowered to call civilian witnesses to establish the propriety of police conduct; and administering punishment based on the particulars of the case.

**"Varieties of Police Policy: A Study of Police Policy  
Regarding the Use of Deadly Force in Los Angeles  
County" by Gerald F. Uelman<sup>18</sup>**

Uelman's purpose is to extend the debate about the most effective means of controlling police behavior from preoccupation with external methods of control; i.e., evidentiary exclusionary rules and civil tort liability. Toward this end, Uelman proposes a study of the formulation, promulgation, and enforcement of police policy regarding the use of deadly force in the 50 independent police departments in the Los Angeles metropolitan area.

The methodology used in this study had four stages: (1) extensive interviews with chiefs of police or other designated administrative police officials regarding use of deadly force policy formulation and its interpretation and enforcement in five hypothetical situations (all within justifiable homicide provisions of California Penal Code); (2) review of written policies; (3) statistics regarding the characteristics and dispositions of all firearm discharges for the 2 year period, 1970 to 1971; and (4) interviews with three police officers in selected departments, using the same five hypothetical situations presented to chiefs and administrative officials to test the officers' familiarity with policy and reactions to typical stress situations.

Uelman discusses at length the relationship of police policy to state laws regulating the use of deadly force and the resulting disparity among police departmental guidelines in Los Angeles County. In order to analyze department policy in greater depth, Uelman categorized the chiefs' of police and administrative officials' responses to the five hypothetical situations into five levels of restrictiveness. This categorization shows no patterns when levels of restrictiveness are compared with department size and character of the community. A slight tendency for more restrictive policies appears in categories of cities with higher collective arrest rates, but the relationship is suspect because of wide disparity among the individual cities' arrest rates. Uelman therefore concludes that the diversity in the chiefs' of police personal philosophies is the major factor which accounts for the wide disparity in policy. That police chiefs heavily influence the policy formulation process was evidenced by two of Uelman's findings: (1) the departments with the fewest

changes in policy were administered by chiefs with relative longevity; and conversely, (2) the most frequent explanation for a change in policy was the appointment of a new chief.

Uelman goes to great lengths to describe the processes of formulation, promulgation, interpretation, and enforcement of department policy regarding police use of deadly force. For the latter process of enforcement of deadly force policy, Uelman examined statistical information on police shooting incidents found to be outside of policy. Twelve percent of the shootings that occurred countrywide during 1970 and 1971 were declared outside policy. There did not seem to be much correlation between category of restrictiveness of department policy and the rate of shootings outside of policy. Analysis of disciplinary actions revealed infrequent disposition of severe sanctions for officers involved in shootings outside of policy. In the 2-year period, only one officer was referred for criminal prosecution; two officers were discharged, two were suspended, nine were reprimanded; and four received no discipline. The reasons for the infrequent imposition of severe sanctions include the following: severe discipline is reserved for incidents with most serious consequences, such as wounding or killing of a suspect by a police officer. Also cited were such bureaucratic difficulties as the evidentiary requirements of the possible civil service board appeal. The final reason given was "the specter of civil liability."

In an effort to assess the effectiveness of department policy in controlling police behavior, Uelman conducted a series of comparisons of statistics on firearm discharges and officer reactions to hypothetical stress situations. The results were inconsistent.

The statistical data reflected a direct relationship between the restrictiveness of policy and the number of actual shooting incidents; the hypothetical testing, however, while disclosing a strong relationship between the officer's perception of policy and his reaction to hypothetical situations, did not reflect a relationship between the actual policy and the officer's reaction. (p. 44)

In an effort to explain this inconsistency, Uelman analyzed 1970 and 1971 statistical information on the breakdown of firearm discharges related to self-defense or fleeing felons as either within or outside department policy. He found a strong correlation between restrictiveness of policy and the rate of firearm discharges per thousand felony arrests. The departments in the least restrictive categories had twice the rate of the departments in the most restrictive category.

Uelman also found great disparity in perception of department policy regarding use of deadly force among officers in the same department, as well as disparity between officers' and chiefs' perceptions. However, most of the officers' reactions to the hypothetical situations coincided with their perceptions of department policy. Given the vast distortion of perceptions of policy, the departments with the most restrictive policies had more officers responding that they would shoot in the hypothetical situations than



departments with less restrictive policies.

Analysis of officer characteristics had interesting results: Older, more experienced and less educated officers responded that they would shoot in the hypothetical situations less often than their younger, less experienced, and more educated colleagues.

In conclusion, Uelmen describes the diversity in police policy regarding the use of deadly force, a difference he believes can be measured in human lives. Also of concern to Uelmen is the disparity in interpretation of policy within individual departments. In response to these problems, Uelmen recommends a Policy Appraisal Review Board "empowered to establish statewide policy governing the use of force by police officers, and to enforce that policy through investigations, hearings, and a wide range of administrative sanctions." (p. 63) The envisioned result of the establishment of such a board would be policy uniformity and control of individual discretion.

"Justifiable Homicides by Police" by Gerald D. Robin<sup>19</sup>

Robin also conducted multiple city analyses. He requested comparative data on homicides from 17 selected cities and was able to analyze data from 9 cities that responded, along with data from Philadelphia.

Using the information obtained from the 9 responding cities, the author found that the median age of the victim was 28, and 61.7 percent were black.

Robin presents data on the citizen death rate by city (table 6), the distribution of justifiable police homicides by city (Table 7), justifiable police homicides per 10,000 officers (Table 8), and average annual rate of officers responsible for deaths of criminals per 10,000 officers by city (Table 9).

TABLE 6  
RATES OF BLACK AND WHITE DECEDENTS, BY CITY

City	Black	White	B:W Ratio
	Rates per 1,000,000 Pop.		
Akron	16.1	2.7	5.8 to 1
Chicago	16.1	2.1	7.4 to 1
Kansas City, Mo.	17.0	2.2	7.5 to 1
Miami	24.4	2.7	8.8 to 1
Buffalo	7.1	.5	12.2 to 1
Philadelphia	5.4	.2	21.9 to 1
Boston	3.2	.1	25.2 to 1
Milwaukee	13.5	.4	29.5 to 1

The author concludes that there are the following major certain trends: The death rate for blacks killed by police officers is 6 to 20 times greater than the rate for whites in the 10 major cities studied; the victims were overwhelmingly male and relatively young. Cities varied greatly with respect to death rates.

TABLE 7  
DISTRIBUTION OF JUSTIFIABLE HOMICIDES BY CITIES  
AND AVERAGE RATE PER 1,000,000

City	1955 Pop.	J.P.H. 1950-60	X Annual Rate per 1,000,000 Pop.
Boston	749,320	3	.40
Buffalo	556,445	7	1.07
Milwaukee	689,358	10	1.32
Philadelphia	2,037,058	32	1.42
Washington, D.C.	783,067	26	3.06
Cincinnati	503,274	23	4.17
Kansas City, Mo.	466,080	23	4.50
Akron	282,478	14	4.60
Chicago	3,585,683	191	4.85
Miami	270,482	21	7.06

TABLE 8  
JUSTIFIABLE POLICE HOMICIDE PER  
10,000 OFFICERS

City	Police Force* (1955)	Annual Rate per 10,000 Officers
Boston	2835	1.05
Buffalo	1260	4.76
Milwaukee	1635	5.50
Philadelphia	4763	6.08
Washington, D.C.	2253	10.65
Chicago	7720	22.53
Cincinnati	846	24.82
Kansas City, Mo.	593	35.41
Miami	498	38.15
Akron	268	48.50

\*Source: *Uniform Crime Reports*.

**TABLE 9**  
**AVERAGE ANNUAL RATE OF OFFICERS RESPONSIBLE**  
**FOR DEATHS OF CRIMINALS PER 10,000 OFFICERS,**  
**BY CITY**

City	Rate
Boston	1.41
Buffalo	6.34
Milwaukee	7.33
Philadelphia	7.76
Washington, D.C.	13.75
Chicago	29.66
Cincinnati	33.09
Kansas City, Mo.	47.21
Miami	50.20
Akron	63.43

### **Conclusion**

The studies reviewed in this article provide consensus on at least a few conclusions. They concur that the number of civilian deaths by legal intervention of the police is increasing and that the death rates for blacks and Hispanics remain disproportionate to the numbers of blacks and Hispanics in the general population. They generally acknowledge that most police shootings of civilians occur at night in urban ghetto areas and involve white, on duty patrol officers and minority male civilians between the ages of 19 and 29. However, the studies provide several opposing explanations of the rising number of fatal shootings and the disproportionate number of black and Hispanic victims.

Fyfe and Uelman seem to believe that the dangerousness of the police job explains the increased number of civilian deaths, pointing to increased numbers of felony crimes. Fyfe cites the large proportion of shooting opponents in his New York City study who were armed with guns or knives at the time of the incident. On the other hand, Takagi and Robin seriously question the assumption of danger in the police job. Robin noted that the fatality rate for law enforcement is lower than the rates for such occupations as mining, transportation, agriculture, and construction. Takagi found no upward trend in police death rates to accompany the upward trend in civilian rates.

Fyfe suggests that the disproportionate number of blacks shot in New York City is caused by the fact that a larger number and proportion of blacks than whites and Hispanics involved in the shooting incidents were armed and/or participating in robberies and, therefore, presented the greatest danger to police. Milton et al., explain that although the percentage of black shooting victims is disproportionately high in comparison with percentages of blacks in

the total population, that percentage corresponds to black arrest rates for Index crimes. Harring et al., took issue with the Milton explanation, citing the continuously climbing black civilian death rate in comparison with a steady rate for whites. The findings of Takagi (1974), Robin (1963), and Knoohuizen et al (1972) also contradict the Milton explanation. Takagi found that blacks made up 38 percent of the arrests for major crimes but 51 percent of the civilian deaths. Even more stark a difference was reported by Robin, who found that blacks accounted for 30.6 percent of the total arrests and 37.5 percent of the arrests for Index crimes, but 87.5 percent of the civilian deaths. Similarly, Knoohuizen et al. reported that the death rate for blacks, adjusted for arrest frequencies, indicates that it is twice the adjusted rate for whites. The Harding et al., analysis of the same data analyzed by Knoohuizen disputes the Knoohuizen finding. Harding reported that the percentages of black, Hispanic, and white felony arrests mirror the respective percentages of black, Hispanic, and white civilian deaths.

An interesting and perhaps important finding in the PILCOP, Knoohuizen et al., Milton et al., and Fyfe studies in the significant involvement of off-duty police officers in shooting incidents. These studies reported that between 17 and 20 percent of the officers involved were off duty at the time of the incident. Fyfe and Milton et al. also reported significant involvement in shooting incidents by on-duty plainclothes officers.

Another interesting finding reported in both the Jenkins and Faison and the Fyfe studies was the higher rate of involvement in shooting incidents by black and Hispanic police officers as compared with white officers although blacks were involved in a significantly lower number. Fyfe offered as explanation for the disproportionate involvement of black and Hispanic police officers in shootings their corresponding disproportionate assignment to and residence in high hazard geographical areas.

Generally, the studies reviewed found that there was usually no legal action in relation to police shootings. (Fyfe, 1978; Milton et al., 1977; California Department of Justice, 1974; Uleman, 1973; and PILCOP, 1974). Further, Fyfe and Uelman attempted to measure the impact of restrictive police department policy regarding the use of deadly force and concluded that restrictive policies accompanied by strong enforcement did reduce the incidence of police shootings.

The studies reviewed in this article provide analyses of the characteristics of police shooting incidents, as well as police department and general criminal justice system responses to the incidents. The analyses give some insight in the national scope of the problem and understanding the specific situations in selected cities. The quality of the various research efforts vary because of limitations in methodology and data sources, but the sum of the findings are, at the very least, suggestive of some trends.

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Two contradictory opinions, reached by the Sixth and Eighth Circuit Courts of Appeals, on the use of deadly force by law enforcement officers to prevent a felonious escape are discussed.

Flemming, Arthur S. "Investigating Police Practices." *e/sa forum*-46, 1978. pp. 15-17. (NCJ 52130)

The U.S. Commission on Civil Rights is conducting an investigation of police misconduct, ranging from verbal abuse to use of deadly force. Commission's goals include reform of police department policies, external review mechanisms, and legislative and

policy changes on the national level.

Fyfe, James J. *Police Deadly Force in New York City: Some Implications for Police and Community Action*. Unpublished paper, n. d. 15 pp. (NCJ 53594)

The author states that police agencies can reduce deadly force use by developing clear policies and review procedures, monitoring police performance, providing better training programs, and, with society's approval, equipping officers with weapons capable of temporarily immobilizing without killing.

Geller, William A. *Deadly Force Research by Public Interest Groups: The Sources and Availability of Information*. Evanston, Ill.: Chicago Law Enforcement Study Group, 1978. 12 pp. (NCJ 53593)

Efforts of the Chicago Law Enforcement Study Group to obtain material on police use of deadly force are outlined. Sources cited include police department officials, literature reviews, newsclippings, coroner's records, citizen groups, and State's Attorney's records.

Goldkamp, J.S. *Minorities as Victims of Police Shootings—Interpretations of Racial Disproportionality and Police Use of Deadly Force*. Denver, Colo.: Institute for Court Management, 1976. 15 pp. (NCJ 40099)

Two perspectives are examined which are frequently involved when racial disproportionality is being interpreted—either in the realm of police killings or in the realm of arrest rates for crimes of violence.

Harring, S.; Platt, T.; Speigman, R.; and Takagi, P. "Management of Police Killings." *Crime and Social Justice*, n. 8, Fall-Winter 1977. pp. 34-43. (NCJ 44416)

A critical analysis is presented of research on police killings of civilians in the United States, and conclusions are drawn regarding the management of police violence.

Harvie, R. A. *Police Officer's Use of Force—Law and Liability*. Chicago, Ill.: University of Illinois, n. d. 24 pp. MICROFICHE (NCJ 19412)

Illinois criminal statutes and case law relating to the use of deadly force by a peace officer are presented and discussed.

Huhs, M. *Seattle (Washington)—Police Use of Deadly Force*. Seattle, Wash.: Seattle City Council, 1978. 15 pp. (NCJ 48659)

Various aspects of the effort initiated by the city government of Seattle to define and limit police use of deadly force—when and under what circumstances police officers may shoot—are detailed.

Kania, R.R., and Mackey, W.C. "Police Violence as a Function of



Community Characteristics." *Criminology*, v. 15, n. 1, May 1977. pp. 27-48. (NCJ 42109)

The authors find that existing models concerning police violence are not designed to explain variations among the states in the rates of police use of deadly force.

Katz, B.S., and Edgner, D.O. *Los Angeles County District Attorney's Less-Lethal Weapons Task Force*. Aberdeen Proving Ground, Md.: U.S. Department of the Army, 1976. 31 pp. (NCJ 38670)

This report presents the findings of the Los Angeles County District Attorney's Office Task Force on less-lethal weapons, covering research and evaluation, wound ballistics, legislation, and public information.

McCreedy, K. R., and Hague, J. L. *Administrative and Legal Aspects of a Policy to Limit the Use of Firearms by Police Officers*. Gaithersburg, Md.: International Association of Chiefs of Police, 1975. 5 pp. (NCJ 26136)

An examination is made of laws relating to the use of deadly force and influences that groups such as the police, courts, and city government may have on firearms policy decisions; a restrictive policy is recommended.

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*Aspects of a Policy to Limit the Use of Firearms*. Austin, Tex.: Texas Police Association, 1975. 7 pp. (NCJ 18681)

The legal framework within which policy decisions concerning the use of deadly force must be made is discussed in relation to available alternative policies.

Nelligan, K. E. *Constitutional Law—Police Officer Who Shoots Fleeing Felon Protected from 42 U.S.C., 1983 Action by State Privilege Rule—Jones v. Marshall, 528 F.2d 132 (2d Cir. 1975)*. Boston, Mass.: Suffolk University, 1976. 18 pp. (NCJ 37240)

An analysis is presented of a Federal Court of Appeals decision in *Jones v. Marshall* (2d cir. 1975) determining the privilege of a police officer to use deadly force in effecting the arrest of a suspected felon.

Pompa, Gilbert G. "A Major and Most Pressing Concern." *e/sa forum-46*, 1978. pp. 10-14. (NCJ 52129)

A general discussion of issues pertinent to police use of deadly force is presented, with emphasis on the nature of the problem, its effect on police-minority community relations, and efforts to achieve a solution.

Ranck, Lee. "We Hire Our Officers from the Human Race." *e/sa forum-46*, 1978. pp. 29-34. (NCJ 52133)

A revised firearms policy that has tightened controls on police use of deadly force in Prince George's County, Maryland, is examined.

Written generally from the police point of view, the article includes a caution from the Chief of Police that the revised policy is flexible rather than absolute since police officers are human beings subject to the usual human frailties.

Rhine, B. "Kill or Be Killed—Use of Deadly Force in the Riot Situation." In Bassiouni, M.C., ed. *The Law of Dissent and Riots*. (NCJ 01764) Springfield, Ill.: Charles C. Thomas, 1971. 52 pp. (NCJ 02032)

An investigation into the use of deadly force in the Detroit riot and recommendations regulating such usage are presented.

Sands, J.M. *Civil Liability of Government for Inadequate Police Firearms Training*. Unpublished paper, October 15, 1972. 19 pp. (NCJ 16215)

A review is presented of appellate court decisions holding State and local governments liable for misuse of firearms by their police officers due to inadequate training, with suggestions for preventing such liability.

Stone, D. "On the Question of Repression—An Analysis of Repression and the Response of the Black Community." *Journal on Political Repression*, v. 1, n. 1, June 1975. pp. 71-78. MICROFICHE (NCJ 29017)

An analysis is presented of police repression of the black community in America as a reaction of monopoly capitalists to a national and international economic crisis resulting from a loss of markets and resources in underdeveloped nations.

Tange, D. E. *Model Firearms Training Program for All Police Agencies—Can One Be Devised?* Master's thesis, City University of New York, 1974. 219 pp. (NCJ 25234)

Findings of a study conducted to examine the present firearms training program of the New York City Police and the Federal Bureau of Investigation to determine whether a model police firearms program can be devised are reviewed.

Toch, H. *Peacekeeping—Police, Prisons, and Violence*. Lexington, Mass.: D.C. Heath, 1977. 148 pp. (NCJ 44297)

Police-suspect confrontations, violence in prisons, and efforts to deal with and reduce future conflict are examined.

Wallen, L.M. *Professional and Bureaucratic Process of Organizational Central-Internal Discipline in the Los Angeles Police Department*. Doctoral dissertation, University of California at Los Angeles, 1976. 353 pp. (NCJ 42040)

At the descriptive level, a major purpose of this study is to delineate from two perspectives (internal and external) the processes by which police malpractice in Los Angeles is handled.

Wilson, J. V. *Deadly Force, A Report to the 79th IACP Annual Conference, Salt Lake City*. Gaithersburg, Md.: International Association of Chiefs of Police, 1972. 3 pp. (NCJ 07517)

This article reviews guidelines and recommendations relating to police practices and policies on the use of firearms.

Wright, E. J. *Police Handguns and Deadly Force—A Special Report to the Governor of the State of New York, Hon. Hugh L. Carey, February 1976*. Albany, N.Y.: New York State Division of Criminal Justice Services, 1978. 180 pp. MICROFICHE (NCJ 46256)

The necessity of the use of the .357 magnum handgun and of deadly force by New York State troopers is examined, and the study's findings and recommendations are reported.

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