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THE USE OF DEADLY FORCE BY  
BOSTON POLICE PERSONNEL

26010

Boston Police Department  
Planning and Research Division  
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## INTRODUCTION

The use of force, and specifically the use of firearms by police officers, is an issue that has evoked a considerable amount of discussion in recent years. This dialogue has shown signs of increasing in both frequency and intensity. Indeed, each time a suspect is fatally wounded by a police officer, the issue comes under the glare of close public scrutiny and questioning.

This high visibility, and the irrevocability of deadly force make it imperative that the Boston Police Department carefully and objectively review the policies, rules, and regulations governing application of such force by its members. The use of a firearm is the ultimate force that a police officer can apply. Because of many possible ramifications from the use of firearms the Department should constantly be alert to ways in which, through proper regulation, the use of such force can be kept to the minimum amount-necessary.

It is important to understand, first and foremost, that society has undergone fairly dramatic changes within the last 15 years. The civil rights movement, the war and its resultant domestic conflicts, and the broad dissatisfaction among students and young people, have all been indications that our society has been involved in a significant metamorphosis. It is essential that the proposed changes in the Department's firearm's policy be considered in the context of an overall change in the traditional views of the role and function of the police, keeping in mind that these proposed changes in policing are an outgrowth of the broader changes in society.

Because of the magnitude of the problem and the many questions that are raised, we have seen the need to discuss certain important areas under individual headings. This approach, while significantly clarifying these areas, may also present a possible barrier to attaining an overall perspective of the entire firearms question; we have therefore included a section of general considerations which, while based largely upon the data contained herein, do not lend themselves to a strictly empirical evaluation. Hopefully, this will serve as a basis for discussing the policy options set forth in the final section.

It has not been our purpose to, at any time, focus on an individual case or a particular unit within the Department. In those few instances where specific incidents are cited, they have been mentioned as being representative of a particular issue or problem area that we believe is relevant and should be dealt with as such.

The need for widespread public support of the police is clear. This support can only be obtained if a large segment of the community has faith in the integrity of the police. Yet overseeing the activities of the police is almost exclusively an internal function, with little public involvement. Clearly, the public must be convinced that the police are doing a thorough job of self-regulation. Nowhere is this more important than when the police officer uses deadly force, particularly when he discharges a firearm.

CURRENT FIREARMS DISCHARGE POLICY  
IN THE BOSTON POLICE DEPARTMENT

The present policy for the use of deadly force by members of the Boston Police Department is set forth under Rule 35, Use of Revolvers and Clubs. The following circumstances are listed under which an officer may fire his weapon:

- a. To defend himself from death or serious injury
- b. To defend another person unlawfully attacked from death or serious injury
- c. To effect the arrest or to prevent the escape, when other means are insufficient, of a convicted felon or of a person who has committed a felony in the policeman's presence.
- d. To kill a dangerous animal, or to kill an animal so badly injured that humanity requires its removal from further suffering.
- e. To give an alarm or to call assistance for an important purpose when no other sufficient means can be used.

In addition to these guidelines, there is an addendum, located near the back of the manual which gives advice to officers relative to particular situations. These comments, however, are not regulations.

CURRENT REVIEW PROCEDURES  
IN THE  
BOSTON POLICE DEPARTMENT

Our research illustrates that just as different departments have differing policies that regulate the discharge of a firearm, they also have different methods of reviewing those discharges. Almost all of them begin their follow-up procedure with a written report, filed by the officer. Generally, the officer's commanding officer oversees this report and often carries out an investigation, at the conclusion of which he submits his recommendation. It is at this point that differences emerge among various departments. In some cities, including Boston, the report is forwarded directly to the Commissioner's Office. In others, Internal Affairs or a similar branch of the department initiates a follow-up investigation. In still other departments, a firearms discharge review board handles the investigation.

In this Department, the involved officer submits a report to his Commander. The commanding officer, usually the District Captain, then files a report with the Commissioner's Office. Included in this report is the Commander's conclusion as to the justifiability of the discharge.

Presently in this Department, further investigation of discharge incidents by Internal Affairs may be initiated by one or more of the following actions:

1. The investigating Commanding Officer may express doubt as to the justifiability of the discharge and recommend disciplinary action or further investigation. Of 70 discharges reported in 1972, there was no case in which the Commanding Officer made such a recommendation.
2. If a fatality is involved, Homicide automatically begins an investigation. However, such an investigation is generally restricted to the legalities of the case and does not address the matter of compliance with department policy or rules.
3. Should a complaint be filed by a private individual, or a group of citizens, it is likely an investigation will ensue. That is, if a citizen observes an officer using his weapon in what he believes to be an irresponsible manner, that citizen can bring this to the attention of the Department. For example, in the preceding year, a woman felt her dog had been unjustly destroyed by officer and filed a complaint.
4. Internal Affairs may itself initiate an investigation if deemed appropriate.
5. Finally, an investigation can be conducted at the behest of the Commissioner's Office.

In 1972, the Internal Affairs Unit investigated two shooting incidents. One involved the accidental wounding of an eight year old child, the other was initiated pursuant to the complaint mentioned above filed by a lady whose dog had been destroyed by officers.

BOSTON POLICE FIREARMS DISCHARGES - (1970-1973)

The categorizing of police officers' use of their service weapons is a relatively new concept. Only recently have some departments begun to keep a record of the number and types of firearms discharged by their officers. At present, this Department keeps no such records.

Therefore, we have undertaken a long term study of the incidents of firearms discharges by officers in this Department. Because a four year period was reviewed at once with no previous accounting of these discharges, not all firearms discharge reports for the research period were available.

However, despite the fact that some reports are missing, the survey was taken over a long enough time period to provide a significant sample, thereby maximizing the reliability of the data obtained.

The total number of discharges reviewed numbered 210. The yearly breakdown was as follows: 1970-37, 1971-62, 1972-70, 1973-41 (Jan. - Nov.). As was previously mentioned not all discharges are included in these totals, therefore we will not breakdown the figures on a yearly basis, but rather use the total for four years.

There are two clearly distinguishable categories into which most of the 210 discharges fall. The first of these is a shooting involving a suspect fleeing from an attempt to apprehend him. The other involves an assault and battery on a police officer. There is one additional category which we will refer to as Miscellaneous.



This includes various incidents which do not fall into the two other major groupings; e.g., simple assaults, accidental discharges, and destruction of injured animals. It should be pointed out that there is nothing sacred or official about these three categories, rather these distinctions seemed the most useful for purposes of presentation.

Of the 210 discharges that were reviewed, 102 were in response to a fleeing suspect. In none of these instances was there an assault on a police officer. Of primary significance in this category is the nature of the offense for which the suspect is wanted.

The most frequent offense that precipitated a shooting incident was Breaking and Entering. On 32 occasions officers fired their weapons while responding to such a call. Oftentimes the scenario evolves with the officers arriving on the scene, observing someone exiting a building in a suspicious manner, giving chase, and firing their weapons.

The second most frequent offense in this category is robbery, which accounted for 19 shooting incidents. Many of these were hand-bag snatches, while a relative few were armed robberies.

The next most frequent offense was larceny, which precipitated 16 discharges. In almost all of these cases the larceny was of a motor vehicle.

Another less frequent reason for officers firing their weapons was suspects fleeing from attempted arrests on warrants. On 12 occasions this occurred, and although several of the suspects were wanted for serious offenses, many of the reports did not indicate

the offense for which the warrant was issued. There were 5 incidents of assault and battery on a citizen, and 4 each for traffic violation and suspicious conduct that resulted in an officer discharging his weapon. The remaining discharges resulted from fleeing suspects wanted for rape (3), possessions of a gun (2), an escaping prisoner (2) and narcotics (1). Additionally, there were two reports of discharges in response to fleeing suspects that failed to mention the suspected offense.

Another important consideration regarding firearms discharges in the fleeing suspect category is the intent of the officer when firing. This Department, while under no circumstances approving warning shots, does authorize the firing of the service revolver "for assistance". Such a shot is not intended to strike the suspect, but is fired into the air or ground in an effort to attract the attention of other police officers in the area. Of the 102 discharges in the fleeing suspect category, 55 were directed at the suspect. Those that were fired "for assistance" numbered 40. Additionally, there were 2 incidents during which shots were fired both at a suspect and "for assistance". Finally, despite the official prohibition against such discharges, there were 5 shootings that were officially reported as "warning shots."

A final major consideration relative to the fleeing suspect category is the determination as to whether or not the suspect was armed. In some instances, particularly when the suspect is not apprehended, this is a difficult question to answer. However, the

obvious importance of the question dictates an examination of the issue. One possible approach would involve consideration of only those suspects who were apprehended, since it would seemingly be possible to determine for certain whether they had a weapon in their possession. However, this approach neglects the possibility that suspects could get rid of their weapons during the pursuit. Therefore, we have included in the Apparently Armed category those suspects who were reported to have had "an object" in their hands unless it was clearly established that the object was not a deadly weapon. It is noted that the category includes any potentially deadly weapon, not just a firearm. Using these criteria, out of the 102 fleeing suspects, 22 were apparently armed and 80 were unarmed.

The next important category includes shooting incidents resulting from an assault and battery against a police officer. There were 74 of these discharges. Again, the original offense is relevant. The most frequent initial violation was larceny (usually of a motor vehicle), of which there were 19. Next in frequency was traffic violations, which precipitated 15 shooting incidents. This was followed by robbery, which accounted for 10 discharges. Breaking and entering and possession of a firearm were each the initial offense in 5 shootings, while the execution of warrants and simple assaults against citizens each accounted for 4 discharges. An assault and battery against citizens resulted in officers firing their weapons 3 times, while suspicious conduct and domestic investigations each were the initial factors in 2 discharges. The rest of the incidents were spread out, with 1 each being precipitated by an attempt to free a prisoner, a drug investigation, an "operation 16" investigation, a search warrant execution,

and an unknown cause (not specified in report.)

Perhaps the most important information revealed by the survey concerned the type of weapon used by assailants against police officers. Of the 74 assault and battery incidents against police officers, 33 involved an automobile as the weapon used. A firearm was used 20 times, while both a motor vehicle and a gun were used by one assailant. On 16 occasions a knife or similar implement was the weapon used. Finally, 4 attackers used either their fists or their feet.

The third and final category is a collection of various types of discharges that do not fall into either of the two primary groups. There are 34 of these "Miscellaneous" shooting incidents. The most common type is an assault, without battery, against a police officer. A typical incident in this grouping would have a suspect brandish a weapon in a threatening manner, then flee, with the officer firing his revolver. Since there was a threat against the officer, the incident cannot be placed in the fleeing suspect category as we have defined it; because there was no battery it cannot be classified under the A&B group, therefore, it is placed under "Miscellaneous." There were eleven of these incidents. Accidental discharges accounted for 9 incidents. There were 4 persons wounded as a result of these accidental discharges - 2 were struggling prisoners and 2 were police officers who were shot when a fellow officer's gun went off. Another grouping that accounted for 9 discharges was the shooting of dogs. Five of these were in response to dogs attacking officers, while the remaining 4 were for the purpose of

destroying severely injured animals. There was 1 suicide by an officer and 2 additional attempts at suicide. Further, there was 1 instance of misuse of a service weapon by a family member. Finally, there was 1 incident involving an officer firing a shot for assistance while holding a prisoner.

There is one additional piece of information that has some value. 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.

TOTAL DISCHARGES

At Fleeing Suspect	102
At Assailant	74
Miscellaneous	<u>34</u>
TOTAL	210

FLEEING SUSPECTS - SUSPECTED OFFENSE

Breaking and Entering	32
Robbery	19
Larceny	16
Wanted on Warrant	12
Assault and Battery	5
Traffic Violation	4
Suspicion	4
Rape	3
Possession of Gun	2
Escaping Prisoner	2
Unknown	2
Narcotics	<u>1</u>
TOTAL	102

FLEEING SUSPECT - INTENT OF OFFICER

Fired at Suspect	55
Fired for Assistance	40
Fired for Assistance and at Suspect	2
Fired a Warning Shot	3
Fired both a Warning Shot and at Suspect	2
TOTAL	<u>102</u>

FLEEING SUSPECT - APPARENTLY ARMED/UNARMED

Suspect Apparently Armed	22
Suspect Unarmed	80
TOTAL	<u>102</u>

ASSAULT AND BATTERY - INITIAL OFFENSE

Larceny	19
Traffic Violation	15
Robbery	10
Breaking and Entering	5
Possession of Gun	5
Assault	4
Wanted on Warrant	4
Assault and Battery	3
Domestic Investigation	2
Suspicious Person	2
Attempt to Free Prisoner	1
Drug Investigation	1
Operation 16	1
Search Warrant	1
Unknown	1
	<u>74</u>

ASSAULT AND BATTERY - WEAPON USED

Motor Vehicle	33
Gun	20
Motor Vehicle and Gun	1
Other Deadly Weapon	16
No Weapon	4
	<hr/>
TOTAL	74



## FIREARMS POLICIES - OTHER DEPARTMENTS

In the past several years, a significant number of police departments across the country have given consideration to the question of police use of deadly force, specifically use of service revolvers. In many instances, departments have made revisions aimed primarily at clarifying existing regulations. In reviewing these policies, we found that there are several rather distinct categories into which policies can be grouped.

The first category can be said to include those cities that currently have in force what could be termed a "traditional" policy. This policy has two basic points:

1. A police officer is authorized to use that force necessary to protect himself or others from loss of life or great bodily harm at the hands of another, and
2. to effect the arrest or prevent the escape of a person whom the officer knows, or has probable cause to believe, has committed a felony, when all other means fail.

These are the major points of the present policy of this Department. Other departments which use this type of policy include Minneapolis, Newark, Cincinnati, Indianapolis, Cleveland and Kansas City. Obviously, the formats are different, but the basic core of these policies is that officers are allowed to use deadly force either to prevent death or serious injury to themselves or others, or to apprehend a known felon. Also, these policies take a specific approach - that is they rely on do's and don'ts to communicate the

Intention of the policy. Hence, while they are somewhat more definitive, they are also potentially restrictive with regard to certain situations.

The second category is the one into which the majority of large cities in the country fall. A typical policy in this group would contain the two major provisions of those in the first category, except that the part of the policy which dealt with the apprehension of fleeing felons makes a distinction between serious and non-serious felonies. That is, officers are allowed to fire their weapons only if the perpetrator has, in the process of committing an offense, presented a threat of serious injury or death to someone.

Sometimes specific offenses are listed for which deadly force can be used. Indeed, there is somewhat of a distinction within this second category, as some departments allow the use of deadly force for a very limited number of crimes, while others authorize its use in more frequent situations. Among the more restrictive are Washington, D.C., San Francisco, Dallas, Philadelphia, Oakland, Atlanta, New Orleans, Honolulu, and Phoenix. These departments, when they do list offenses, limit them to a very few, i.e., homicide, robbery, rape, arson and kidnapping. Most do not provide a listing, rather they simply require an immediate, clear-cut threat to life. Those departments which provide a list containing additional offenses include Chicago, Seattle, Memphis and Buffalo. The most frequent additional offenses for which these cities authorize the use of deadly force include burglary, breaking and entering, and various "assaults with intent...."

There are three other departments which we feel should be looked at closely. While their policies are somewhat different from each other, we group them together because they are rather unique and distinct from the previous policies discussed in the first two categories.

Los Angeles, California

The first of these is Los Angeles. The policy is one which sets certain limitations, but relies very heavily on each officer to interpret the specifics. For example, relative to felony suspects, section 556.60 of the policy states, in part:

"...It is not practical to enumerate specific felonies and state with certainty that the escape of the perpetrator must be prevented at all costs, or that there are other felonious crimes where the perpetrator must be allowed to escape rather than to shoot him. Such decisions are based on sound judgement, not arbitrary checklists."

Clearly, the Department wants officers to exercise discretion when apprehending felons however, it provides little in terms of specific guidance. The regulations for juveniles and warning shots are similar. The degree of accountability is substantial however; there is a strong review board to oversee weapons discharges.

New York City

The second Department is New York City. New York handles both the questions of protection of lives and apprehension of felons by stating that, "In all cases, only the minimum amount of force will be used which is consistent with the accomplishment of a mission. Every other reasonable means will be utilized for arresting, preventing or terminating a felony or for the defense of oneself or another before a police officer resorts to the use of his firearm."

Hence, this policy does not mention specific crimes, indeed it does not even make a distinction between serious and non-serious felonies, however, it does make clear the serious nature of a firearm discharge. Additionally, it sets down certain prohibitions, such as warning shots, and shots from or at a moving vehicle.

San Diego, California

The final policy is that of the San Diego Police Department. It allows the firing of a gun in the following situations:

1. To protect the life of an officer or another person or to prevent serious injury when there is no alternative.
2. To apprehend a violent person who is known to be armed and dangerous and who cannot be apprehended without risking loss of life or serious injury.

This policy is certainly more restrictive than most, however, it is relatively concise and definitive. Similar to New York's, there is also a listing of situations in which firearms are not to be used.

Aside from the question of apprehension of a felon which, as we have shown, departments have confronted in different ways, there are other issues which are often dealt with in firearms policies. The most common of these is the use of warning shots. Of the nineteen departments we surveyed, sixteen strictly forbade such a discharge, two cautioned against it and one had no policy. (It should be noted that the concept of a discharge "for assistance" was rarely encountered and never permitted.)

Another frequently mentioned problem was the firing at or from a moving vehicle. There was no consensus found, as two departments strictly prohibited it, eight limited it to the most serious circumstances, and nine had no restrictions.

Finally, the question of firing at juveniles was seldom confronted. Only a very few departments advised officers with regard to this subject, with the general philosophy being to refrain from shooting unless there was an immediate threat to life.

#### REVIEW POLICIES - OTHER DEPARTMENTS

##### Washington D.C.

Among the most notable review procedures is the Washington, D.C. Police Department's Use of Service Weapon Review Board which was established approximately three years ago. With the exception of adequately safeguarded target practice, all firearms discharges as may be referred for consideration by the Chief of Police are reviewed by this board. Included as members of the board are the General Counsel, acting as chairman; the Commander of the Patrol Division, and the Commander of the Criminal Investigation Division.

Looking at the actual duties of the Board, it can be best characterized as an advisory arm of the Chief's Office. This is in no way intended to de-emphasize the authority of the Board since, in virtually all cases, their recommendations were accepted by the Chief. These recommendations ranged from exoneration, to filing the case with prejudice, to the termination of the officer. A comprehensive picture of the duties and scope of the Board can be gained by referring to the summary of cases before the Board during a recent year. (see Appendix A)

Oakland, California

A similar review board, this one made-up entirely of sworn personnel, has been instituted by the Oakland Police Department. Members include the Bureau of Field Operations Deputy Chief, the Commanding Officer of the Training Division, the Command and Supervisory Officers of the member who discharged his weapon, two members of the same rank as the member who discharged his weapon, and any others designated by the Chief of Police.

As in Washington, this board convenes after each firearms discharge regardless of the apparent seriousness. Furthermore, the board recommends a course of action to the Chief who either concurs and acts accordingly or disagrees and orders further action by the board. Here too, possible disciplinary action involves a wide range of options, from counselling to dismissal.

New York City

A third example of an intra-departmental review board is found in New York City. In fact, New York uses two separate boards to review each discharge. The Field Service Area Firearms Review Board provides the initial review. There are boards of this type located throughout the department, each one covering several districts. Each of these boards is made up of the following:

1. The Field Service Area Commander
2. The Zone Commander
3. The Area Training Officer
4. A precinct Commander (different precinct than involved officer)
5. Member of same rank as involved officer

This board reviews the Firearms Discharge/Assault Report which must be filled out by each officer following a discharge. The board then forwards its conclusions to the department-wide review board. This is made up of the following:

1. The Chief of Operations (Chairman)
2. Deputy Commissioner Legal Matters
3. Deputy Commissioner Community Affairs
4. Supervisor - Training Division - Firearms Unit

After completing its review, the board will forward its recommendations to the Commanding Officer of the involved member. Also, "in appropriate cases" a copy of such reports will be forwarded to the Police Commissioner. Possible action that the board might recommend ranges from having the officer review regulations relative to deadly force to a variety of disciplinary procedures, with a gradual process of escalation used to determine the appropriate sanction.

Seattle, Washington

A particularly detailed procedure for review of firearms discharges is the Seattle Police Department. Seattle gives specific instructions to cover both those incidents which involve only a discharge and those that result in a wounding or a fatality. In either case, the officer is ordered relieved from duty pending an investigation. His commanding officer is charged with personally investigating the firearms discharge and preparing a detailed report, including his observations and conclusions regarding the incident. A copy of this report is sent to the Chief of Police and the Firearms Review Board. The Review Board has the following members:

1. Operations Bureau Commander (Chairman)
2. Commanding Officer - Patrol Division
3. Commanding Officer - Training Division
4. Watch Commander of involved officer

The Chairman is charged with determining whether there will be a Firearms Review Board meeting except where there is personal injury or property damage, in which case there must be a meeting within forty-eight hours. In any case, it is the Chairman's responsibility to make a recommendation to the Chief, whether he does it on his own or convenes a board meeting. An additional feature of the Seattle policy is the establishment of a file, in the Personnel Division, of all firearms discharge incidents that are handled by the review board.

Los Angeles, California

A similar procedure is followed by the Los Angeles Police Department. The Shooting Review Board is made up of:

1. The Commanding Officer, Personnel and Training Bureau (Chairman)
2. The Bureau Commanding Officer of involved employee
3. The Division Commanding Officer of the involved employee
4. The Commanding Officer, Training Division, as ex officio member

As in Seattle, the Chairman is charged with determining when a meeting will be convened, except when an injury has resulted, in which case the board meeting is automatic. Additionally, the Chairman must maintain a file of the investigation of discharges.



The aforementioned detailed accounts should provide an insight into the workings of a discharge review board. It should be noted that these are not the only departments that use such a procedure. In fact, among others, Dayton, San Francisco, Atlanta, Minneapolis, Cincinnati and New Orleans use this method to insure a thorough investigation and complete accountability.

There is another method of follow-up investigation that has met with approval in certain departments. Basically, it entails the application of the same types of investigatory techniques along with a high degree of accountability along the chain of command, but it excludes a formal Firearms Discharge Review Board, supplementing in its place, one or more already existing units within the department.

Dallas, Texas

One department which uses such a procedure is Dallas, Texas. General Order 70-14 establishes the following guidelines: Both the Crimes Against Persons Section of the Criminal Investigations Division and the Internal Affairs Division of the Special Investigation Bureau will investigate and report on any discharge resulting in injury or death. The commanding officer of the Special Investigation Bureau will review these reports and submit to the Chief of Police within eight hours a preliminary report for his consideration. It is further noted that any discharges resulting in injury or death are automatically placed before a grand jury by the District Attorney's Office. As noted, this procedure does not extend to those incidents which do not result in a wounding or fatality.

Kansas City, Missouri

This is not the case in Kansas City, Missouri, where the internal Affairs Unit is directed to investigate every discharge of an officer's firearm. In specific terms, the applicable General Order sets down criteria for the conducting of an on-scene investigation including the stipulation that the officer involved, his immediate supervisor, and the Assistant Division Commander will remain at the scene until the arrival of the investigator from Internal Affairs. Additionally, if an injury or fatality results from the shooting, the Investigations Bureau conducts a concurrent probe into the matter.

Miami, Florida

Still another department that has established this type of procedure is Miami. All firearms discharges require the filing, by the officer, of a use of force report. The officer's commander conducts an on the scene investigation, followed by the Internal Security Unit which similarly carries out its inquiry at the scene of the incident. These reports are forwarded to the Chief of Police for his consideration.

Chicago, Illinois

As a final example, the Chicago Police Department has a clearly defined procedure for the investigation of each shooting incident. The involved officer's supervisor responds to the scene to oversee the investigation. In those incidents that result in a person being wounded, the District Watch Commander proceeds to the scene. In all incidents, the Assistant Deputy Superintendent conducts a personal investigation, summarizing all preliminary reports, and

forwards his report to the First Deputy Superintendent for appropriate action.

These then are the two basic approaches that departments have taken relative to follow-up investigations. One is to designate a special board, the other is to assign an existing unit within the Department to handle the investigations. Both have worked well in various departments.

There is one additional area relative to follow-up investigations of firearms discharges. A survey of other comparably sized departments indicates a recent trend toward the establishment of permanent files for the recording of the number of shooting incidents occurring each year. Almost all of the departments responding to our survey began such procedures within the last four years. Among those keeping such files are New York, Chicago, Los Angeles, Detroit, San Diego, Dallas, Oakland, and Washington, D.C. These figures become particularly useful when the discharges are categorized, since command staff can make judgements as to the effectiveness of the firearms policy based on the types of shootings that are occurring. Additionally, thorough classification can provide a useful pool of information for training purposes.

JUDICIAL REVIEW - A LEGAL PERSPECTIVE

There is currently no statutory law in the State of Massachusetts regarding police use of deadly force. This being the case, the original premise behind a review of applicable court decisions rested on the belief that judicial opinions would prove enlightening. This, however, appears not to be the case. In fact, Massachusetts courts have provided very little in the way of guidelines for this problem.

Powers v. Sturtevant, 199 Mass. 265, 85N.E. 84 (1908) states that a police officer may use such force as is reasonably necessary to overcome resistance to an arrest, but that excessive force can not be used. Further, the court states that the officer would be held accountable for his decision - that is, he is not the sole judge of what force is reasonable.

In 1950, Commonwealth v. Young, 326 Mass. 597 simply reaffirmed the right of the police officer to use deadly force when it is reasonably necessary. The court was a long way from issuing any clear directives on the matter.

In 1971, an attempt was made to induce the court into providing a clearer definition. Uranek v. Lima, 1971 Mass. Adv. Sh. 898, 269N.E. 2d 670 (1971) provided the setting for an assault on the traditional felony/misdemeanor distinction, which had evolved out of common law. The plaintiff, Uranek, objected to the judge's refusal to instruct the jury to the effect that a distinction should be made between serious and nonserious felonies.

The Massachusetts Supreme Court, on appeal, ruled for the defendant and refused to make such a distinction. Hence, in this state, neither the Legislature nor the Courts have moved to change the traditional felony-misdemeanor distinction.

This fact is in no way a barrier to the Department should it desire to re-define the conditions under which officers will discharge firearms. Indeed, the broad powers granted to the Police Commissioner under Chapter 322 of the Acts of 1962 would support any administrative change in this area. Section 11 of the aforementioned law reads as follows:

The Police Commissioner shall have cognizance and control of the government, administration, disposition, and discipline of the department, and of the police force of the department and shall make all needful rules and regulations for the efficiency of such force.

As is shown in the section dealing with the policies of other departments, such administrative restrictions on the use of force are not only possible, but quite common.

To summarize, the lack of action by the Courts and the Legislature in this area should in no way impede change - indeed it should serve as a mandate to the Department to develop, on its own, an effective, clearly enunciated firearms policy.

### GENERAL CONSIDERATIONS

The magnitude of the problem before us is such as to have required a significant amount of research. This research has extended to various areas including this Department's history of both the discharge of firearms and the response to each discharge, various procedures employed in other departments, and appropriate case law relative to the issue.

These have been basically factual presentations, designed to focus on what has been done here and elsewhere in the past. However, there are certain legitimate issues that are not easily analyzed empirically. We feel it necessary to present these issues, making it clear that these are not in any way intended to be policy statements.

A primary concern of any firearms policy must be ensuring that those who must adhere to it understand the policy, as well as the reasons for it. Attainment of this widespread level of understanding will result only after the Training Division has undertaken the task of establishing routine instruction not only in how to shoot, but when to shoot. By all indications, the current training regarding the actual mechanical techniques of shooting is handled quite professionally, despite severe limitations imposed by a lack of adequate facilities. This area does not concern us as much as does the need to establish comprehensive training regarding when to shoot, as established by policy and regulations.

It has been said by some that the whole concept of a firearms policy is not valid since each officer has to make a decision on the facts as he sees them, and no policy could cover all possible situations. It is here that a strong training program can use the policy as a foundation to develop a high percentage of acceptable responses to potential "deadly force" situations on the street. In essence, this translation of words into acceptable actions is the mandate of the Training Division.

One of the most crucial issues to be dealt with in any proposed policy is the question of the amount of force acceptable to apprehend a fleeing felon. Although this question will be discussed briefly in our review of applicable case law, the importance that we attach to it requires its consideration here. Duke Robert and A.P. Bristow, in their article, An Introduction to Modern Police Firearms (Glencoe, Beverly Hills, California, 1967), provide an excellent briefing on the subject:

"The interpretation of the legal right of the police officer to use deadly force when arresting a felon has undergone considerable change. Most of the state statutes giving the peace officer this power were developed in the mid 1800's when felonies, by classification, were few and necessarily serious--murder, rape, arson, train wrecking, robbery, etc. When the justifiable and excusable homicide sections were adopted in these states and the word "felony" used, felony was generally intended to mean these serious, forcible, major crimes. In subsequent years, more and more codes listed less serious offenses as felonies; most of these crimes were of a nonviolent nature.

If a strict interpretation of the excusable and justifiable homicide laws were followed by state courts, the police could lawfully shoot a fleeing felon whose only crime was embezzlement of funds, forgery, or misappropriation of property. The courts, however, are tending not to permit the exact interpretation of excusable and justifiable homicide laws. They are, instead, looking at the original legislative intent. This means that courts today, and certainly in the future, are going to require an officer to show that deadly force was employed only against a felon whose crime had been of an extremely serious, forcible, violent nature and that the public health and safety would have been jeopardized if he were permitted to escape."

As is shown in the section of this report dealing with judicial decisions, the courts in this state have not yet followed the lead of other states in making a distinction between forcible and non-forcible felonies. However, it is notable that many police departments across the country have not waited for court decisions or legislative enactments; rather, they have incorporated into their rules governing use of deadly force the stipulation requiring that officers fire their revolvers only when faced with a threat to their lives or the lives of others.

Departmental rules mandating such a procedure have been put into effect in New York, Seattle, San Francisco, Dallas, Chicago, New Orleans, Philadelphia, Atlanta, Detroit and many other cities. The most recent local example was, the Massachusetts State Police. Clearly, law enforcement administrators across the nation are being moved to differentiate between types of crimes on the basis of the actual threat to life that they pose. It seems wise for this Department to accept and follow suit in this regard.

Another important issue that requires some additional discussion is the use of warning shots and/or shots for assistance.



These two types of discharges ostensibly have different objectives, one being to issue a warning to a suspect, the other being used to call assistance for an officer. The warning shot is prohibited in this department, however the firing of a shot for assistance is allowed. (As noted in a previous section, shots for assistance are not allowed in most other departments). Despite the different reasons that have been advanced for each of these discharges, they have very similar results in two respects.

First, a deadly bullet is discharged at nothing in particular, into the air or the ground. Secondly, the allowance of either of these discharges by a firearms policy creates a serious void in terms of accountability. For this reason, we will view them as being similar and practically interchangeable in effect.

One of the justifications frequently used for allowing shots for assistance is that a police officer may at some time find himself either disabled or unable to defend himself, and such a discharge would be effective in summoning aid. We feel the legitimacy of this entire line of thought is open to serious question. Indeed, a look at those discharges listed as "for assistance" by members of this Department over the last four years is revealing. In none of those cases was a police officer disabled or in danger prior to discharging such a shot.

In many of the instances, the suspect was not armed. In fact, in 41 out of 44 "for assistance" discharge incidents, a fleeing suspect was involved. It seems quite possible then, that police officers were using this type of discharge as a warning shot, something that is simply not allowed under present Departmental policy. But we can never be sure, since as we mentioned, the allowance of such a discharge provides for a significant lack of accountability. Aside from the dangers inherent in such a discharge, this lack of accountability alone is, in our opinion, a strong reason to remove such a discharge from the acceptable category.

There are other reasons to prohibit such a discharge. The San Francisco Police Department makes the following points about warning shots in its Patrol Officer's Manual: "For every suspect who surrenders upon hearing warning shots, there are others who flee that much faster. The danger of injuring an innocent bystander or of a ricochet are always present and it should also be noted that officers other than the one who discharged a warning shot may easily be decoyed into killing a suspect by believing that the officer's shot was indeed offered to kill, not to warn." If these points are valid for warning shots, they must certainly be valid for shots for assistance.

As a final point in this area, we must question the effectiveness of such discharges, even if they were restricted to those situations in which an officer needed help. While the sound of a gunshot is certainly loud enough to be heard over a fairly wide distance,

there is no guarantee that the person who hears it will determine that it is a gunshot or, assuming that they do identify it as such, they will understand that a police officer needs assistance. In recent years, we have seen the distribution of large numbers of portable radios to officers throughout this Department. If these are available in sufficient number and are equally reliable, there can be no real need to discharge shots for assistance. If they are not available in adequate quantities, or they are lacking in quality, then it is incumbent upon the Department to take whatever steps are necessary to satisfy this need. With this done, there could be very little justification for discharging shots for assistance.

Another matter that must be addressed is the frequency of the firing of shots at motor vehicles, as well as from moving police cars. Certainly an automobile can be just as lethal as a firearm. However, there are several factors which make close scrutiny of this problem imperative. When an officer fires at a moving vehicle, the chances that his shot may miss and result in an innocent person being injured are substantial. This is particularly true if the officer is trying to avoid being run over as he is firing.

The New York Police Department gives the following admonition to all personnel: "A police officer's revolver is carried for personal protection against persons feloniously attacking an officer or another at close range, it is not intended to nor is it ordinarily effective in stopping a moving vehicle. An officer,

when being attacked by a person operating a moving vehicle stands a much better chance of avoiding an injury by jumping aside than by trying to halt the oncoming vehicle with shots." Furthermore, the chance of the bullet ricocheting off an automobile is high. The police Firearms Administrator's School of the F.B.I. makes these comments: "Firing a revolver at a moving vehicle is a dangerous practice and should be avoided. Tests have shown that unless the bullet strikes at a near perfect right angle it will ricochet off the surface of the automobile, including the glass."

One additional point can be made in this regard; because this type of incident so often involves stolen cars or traffic violations, juveniles are likely to be involved. In fact, in a "joyride" situation, there may be several juveniles in the car, all potential targets. While it is acknowledged that the act of directing an automobile at an individual is a most serious one, it is in the best interests of the department to attempt to avoid discharge of a firearm under this type of circumstance.

Another point has particular significance relating to the question of police use of deadly force against juveniles. Obvious problems arise if an attempt is made to regulate police use of force in this sensitive area. First and foremost is the potential for error when an officer must make a split-second decision as to the age of a suspect.

Secondly, we cannot lose sight of the fact that a juvenile, particularly one who is convinced he has nothing to lose, is quite capable of inflicting deadly force. Despite these problems, it still seems necessary to consider some important reasons for

exercising restraint in this situation.

Perhaps the most important consideration is the fact that in our criminal justice system, with the exception of extreme cases involving a homicide or other crime involving potential deadly force, juveniles are never convicted of any crime. Rather, their cases are adjudicated. Upon reaching adulthood, juveniles' records are expunged. Obviously if they have been fatally wounded, they do not have the second chance, the chance to start with a clean record, for which our system of justice provides. Indeed anytime an officer fires his weapon at a suspect he may be bringing to an end the criminal justice process with a degree of finality that has no equal.

Additionally, the shooting of a juvenile by the police, whether or not it is legally justifiable, inevitably provokes cries of brutality from large segments of the community.

The adverse effects on police-community relations mandate considerable restraint in all those cases that do not involve an immediate and clear-cut threat to a human life.

It is essential that serious consideration be given to modifying the Department's procedures for investigating firearms discharges. As presently structured, a follow-up investigation depends totally upon the personal initiation of such an inquiry by a responsible official who at some point in time questions the accuracy of a discharge report or the propriety of the discharge itself.

The significant factor here is that an affirmative decision must be made by one of several individuals. In essence, someone must "rock the boat". It is not difficult to envision what type of pressure this procedure brings upon those involved. A decision to initiate a follow-up investigation becomes tantamount to suggesting that there is something of a suspicious or unauthorized nature about the shooting.

Those charged with making such a decision realize that if they take action they may be casting doubt, be it warranted or not, on those involved in the original incident. Since the great majority of discharges do not result in any personal injuries, it becomes particularly easy to accept the preliminary report to forego further investigation. All this, because there is no concrete, established procedure upon which to rely.

Clearly, if a procedure calling for a follow-up investigation of all discharges by officers were instituted, such measures would quickly become routine, and the onus that was previously attached to the initiation of such an investigation would be greatly reduced.

Additionally, consideration must be given to the degree of subjective analysis in any type of self-evaluation procedure. Traditionally, there has been a deeply rooted feeling in police departments which finds any type of external review process objectionable. The agitation caused by such proposals may or may not be well founded; this question we will not attempt to explore. What we will discuss is the mandate for police departments, if they choose to reject external controls, to implement a system of internal investigation and control that has as its central feature a high

degree of accountability. It is generally counter productive to have a major decision, one so important as a possible follow-up investigation of a shooting incident, made by a single individual who may have prejudices of his own. In a question of this magnitude, the decision-maker(s) should represent a wide range of interests and, since there is little external influence in such matters, this representation must come from within the department.

Only through an objective, open-minded approach to issues, whether they relate to firearms discharge review procedures or any other important policy question, will the Department provide the foundation upon which can be built the public confidence and trust that is so necessary to its proper and efficient functioning.

There are two further points of interest that should be considered carefully. The first has to do with the use of shotguns in the Department. The issue has been the subject of much commentary and concern in recent weeks and is still controversial in many respects.

It is recommended here that shotguns, rifles, and other such high-powered weaponry be considered generally, for the purposes of policy and regulation, as firearms. Both of the attached policy options address the use of such weapons in provisions regarding the use of deadly force in general and in regulations that deal specifically with the issuance, carrying and use of long guns.

Finally, the approach taken in developing the attached policy options should be stated briefly. It is recognized that the policy provisions and regulations in both options could have been stated in much more simplistic language. However, it is important to further recognize that we are dealing with very complicated issues in this area and that the most critical considerations cannot be stated simplistically. The officer on the street who encounters a situation in which the use of his firearm is necessary must know beforehand the position of the Department in that regard and the rationale by which that position was taken. He must also know the specific circumstances under which he may fire his weapon, but the "shoot-don't shoot" decision in each of a myriad of similar but different situations must be based on more than memorization of a check list of acceptable circumstances. The Department is obligated to share with its members the reasons behind the rules and the philosophy of the policymaker. It is only then that officers can realistically be expected to perform prudently and safely in compliance with the policies of the Department.



APPENDIX A

METROPOLITAN POLICE DEPARTMENT

Office of the General Counsel

March 1, 1973

MEMORANDUM

TO: Jerry V. Wilson  
Chief of Police

SUBJECT: Third Annual Report of the Use of Service Weapons  
Review Board (1972)

INCIDENTS INVOLVING USE OF SERVICE WEAPONS BY MEMBERS OF THE DEPARTMENT

i.	A. Within the District of Columbia	118
	B. Outside the District of Columbia	<u>11</u>
	TOTAL	129

## APPENDIX A cont'd

## II. Type of Incident

## A. Self Defense

1. Assault of Police Officer (gun)	46
2. Assault on Police Officer (auto)	7
3. Assault of Police Officer (knife, other weapon or physical attack with no weapon)	10
4. Shiny or dark object held by suspect	1
5. Threatening gesture by suspect	3
6. Attack by a vicious dog	9

B. Effect Arrest 9

C. Prevent Escape 4

D. Dispose of mortally wounded animal 2

E. Accidental Discharge 20

F. Unauthorized discharge (intentional) 12

G. Cases not yet completed by Use of  
Service Weapon Review Board 3

H. Cases pending in court and deferred  
for final court disposition 3

TOTAL 129

## APPENDIX A cont'd

## III. Miscellaneous Data

## A. Results of Incidents in which Service Weapons were Used

1. Injury to officer	15
2. Injury to other person	25
3. Death of other person	10

## B. Weapons used by Officer

1. Service revolver	125
2. Off duty revolver	1
3. Shotgun (Department)	2
4. Other weapon	<u>1</u>

TOTAL	129
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## IV. Disposition of Weapon Cases

## A. Recommendation of Commanding Officer

1. Filed without Prejudice	92
2. Filed with Prejudice	9
3. Official Reprimand from Chief of Police	8
4. Trial Board charges placed against officer	10
5. Fine	3
6. Termination of Officer	1
7. Cases not yet completed by Use of Service Weapon Review Board	3
8. Cases pending in court and deferred for final court disposition	<u>3</u>

TOTAL	129
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## APPENDIX A cont'd

## B. Recommendation of the Use of Service Weapon Review Board

1. Filed without Prejudice	89
2. Filed with Prejudice	6
3. Official Reprimand from Chief of Police	14
4. Trial Board charges placed against officer	13
5. Termination of Officer	1
6. Cases not yet completed by Use of Service Weapon Review Board	3
7. Cases pending in court and deferred for final court disposition	<u>3</u>
TOTAL	129

## C. Action taken by the Chief of Police

1. Filed without Prejudice	89
2. Filed with Prejudice	6
3. Official Reprimand from the Chief of Police	14
4. Trial Board charges placed against Officer	13
5. Termination of Officer	1
6. Cases not yet completed by Use of Service Weapon Review Board	3
7. Cases pending in court and deferred for final court disposition	<u>3</u>
TOTAL	129

Geoffrey M. Alprin  
General Counsel

## POLICY OPTIONS

Two options are presented for consideration. In many respects they are identical; however there are some important differences in paragraphs detailing the circumstances under which firearms discharges are permissible. Paragraphs that are in one option but not the other are italicized.

1 This rule is issued to provide a basic set of guidelines and regulations for the use of deadly force by members of the Department and to establish procedures for the orderly investigation of firearm discharges under street conditions. Its provisions are effective immediately, superseding all previously issued rules, regulations, orders, bulletins, and memoranda regarding the use of firearms or other deadly force by Boston Police officers.

2 In the institution of these regulations in the Department, it is understood that they will not likely cover every conceivable situation that may arise. When the provisions of this rule are found to be incomplete or inapplicable to a particular set of circumstances officers are expected to act with intelligence and sound judgement, attending to the spirit above the letter of the rule.

3 GENERAL CONSIDERATIONS: The primary purpose for which each sworn member of the Department is issued a firearm and trained in its use is the protection of life and limb, his own and that of every other person needing such protection. Although the firearm is a necessary tool for present-day law enforcement, the destructive potential it carries mandates that it be used discriminately and within clearly-defined limits. This rule is intended to establish those limits.

4 In the interests of personal safety, police officers must seek to gain and maintain an advantage over persons known or suspected to be armed; such an "edge" may take the form of numerical superiority of manpower and firepower or that of an officer staying "one jump ahead" of a subject likely to produce a weapon. But the officer

seeking to maintain the advantage over a subject suspected of being armed is in a tenuous position. He must prepare to use his firearm should it be necessary, yet show the constraint required to ensure the propriety of his actions. The situation demands the utmost of his ability to think clearly, quickly, and decisively, and to utilize his firearm in a safe and effective manner.

5 The Boston Police Department recognizes its legal duty to protect the rights of all individuals to due process of law and a fair trial, and its members are thereby bound to refrain from any use of force that unnecessarily tends to administer punishment at the hands of a police officer. The responsibility for punishment of criminal acts rests solely with duly constituted courts of law and penal institutions and is by no means extended to the police.

6 DEFINITIONS: For the purpose of this rule, the following definitions will apply:

Deadly force is that degree of force likely to result in death or great bodily harm. The discharge of a firearm toward a person constitutes the use of deadly force, even if there is no express intent to kill or cause great bodily harm.

Great bodily harm is an injury likely to result in immediate or eventual disability of a permanent nature.

Immediate danger (hazard) to life means and includes circumstances under which (1) such a danger exists in reality, or (2) such a danger is apparent, and the officer is unable to affirm or disaffirm its actual existence.

Reasonableness and prudence can be defined only on a case-by-case basis by those members of the Department called upon to judge the propriety of a fellow officer's actions. Such judgements, however, may not conflict with the expressed provisions of this or any other rule or order.

Street conditions are all those in which an officer is rendering police services, as opposed to attending a training course or maintaining equipment.

7 POINTING FIREARMS: Officers will avoid pointing firearms at persons in circumstances under which discharge would not be clearly justifiable. However, in situations involving a strong possibility of great danger (e.g., searching a building pursuant to a burglar alarm or approaching a business establishment on report of a robbery in progress), the officer should carry his weapon in a position that will facilitate its speedy and safe use. While an officer should not point his weapon unless he is prepared to use it, the fact that he has done so obviously should not be interpreted as an obligation to fire.

8 DISCHARGE OF FIREARMS: The law permits police officers to use physical force in the performance of their duties, but only to the degree required to overcome unlawful resistance. This doctrine of "minimum use of force" applies to the use of firearms as well as to that of non-lethal force. Also because of their destructive potential, the use of firearms must be further restricted to the purpose for which they are issued, that of protecting life and limb. It is, therefore, the position of this Department that the discharge of



firearms or application of other deadly force is permissible only when there is a clear and immediate danger of death or great bodily harm that cannot be removed by any other reasonable means. The only other acceptable reason for discharging a firearm under street conditions is to dispatch a dangerous animal or one so badly injured that humanity requires its removal from further suffering.

9 SAFETY OF BYSTANDERS: Officers who find it necessary, under the provisions of this rule, to discharge firearms under street conditions will exercise due care for the safety of persons and property in the area and will fire only when certain that there is no danger to bystanders.

10 WARNING SHOTS AND SIGNALS: Firearms are not to be used for warning shots, signals or calls for assistance.

11 MOVING VEHICLES: Firearms will not be discharged at or from a moving vehicle unless the officer is being fired upon by an occupant of the target vehicle. Revolver fire is notoriously ineffective at stopping motor vehicles; revolver bullets usually ricochet off automobile surfaces (including glass) and create a new danger to persons in the area.

12 FLEEING SUBJECTS: Officers will not discharge firearms to apprehend a fleeing subject, regardless of the offense for which he may be wanted, unless he presents an immediate danger to life and limb.

13 PERMISSIBLE WEAPONS AND AMMUNITION: Officers may carry on duty only weapons and ammunition issued to them by the Department. Special weapons, e.g., shotguns, rifles, automatic weapons, etc., are not

normally issued. However, such weapons may be selectively issued by the Commissioner if, in his opinion, they are necessary to ensure the safety and effectiveness of police operations. Officers armed with special weapons in such circumstances will use those weapons in accordance with the provisions of this rule as well as any additional guidelines issued at the time.

14 **REPORTING FIREARM DISCHARGES:** An officer discharging a firearm under street conditions must, as soon as possible, take the necessary steps to report the discharge. An on-duty officer will notify his immediate superior, as well as the officer in command of the district in which the event occurred, and will submit the necessary reports without delay. An off duty officer will notify the officer in command of the district in which the event took place and submit the necessary reports without delay. All discharges require submission of an Incident Report containing, in addition to the regular information, the officer's duty status (on duty or off duty) at the time of the incident, the model and serial # of the weapon, the number of shots fired, and the reason for the discharge. Cases in which a person is fired upon by an officer require also that the officer report the number of shots, if any, fired by the subject (s), the distance between the subject and himself when the first shot was fired, and who fired the first shot. All these points of information will be included in the narrative portion of the Incident Report.

15 **INVESTIGATION OF FIREARM DISCHARGES:** The manner in which police officers use their firearms is an extremely critical issue to the Department, one in which the community and the courts allow little

margin for error. To ensure that proper control in this area is maintained, all discharges under street conditions will be thoroughly investigated for the purpose of determining the extent to which they comply with Department policy.

- 16 Upon receiving notification of a firearm discharge by an officer, the commanding officer of the district in which the event took place will assign a supervisor to investigate. Normally, that will be the involved officer's immediate supervisor; however, if the officer involved is off-duty at the time of the discharge, or if his supervisor is otherwise not available, another supervisor will be assigned. The investigating supervisor will respond to the scene of the discharge as expeditiously as possible and will there conduct an investigation to determine the facts of the incident and the extent to which the officer complied with Department policy. The supervisor will submit his preliminary findings in written narrative form, through channels, to the Commissioner within 24 hours. Any further information that he obtains will be submitted in a supplementary report.

- 17 FIREARM DISCHARGE REVIEW BOARD: As an additional investigative resource, there will be a seven member Firearms Discharge Review Board composed of (1) the Superintendent-In-Chief, who will serve as the Chairman, (2) the Superintendent of the Bureau of Field Services, who will act as Chairman in the absence of the Superintendent-In-Chief, (3) the Deputy Superintendent in charge of the area to which the officer is assigned or, if such officer is not under the command of one of the area deputies, a Deputy Superintendent from the Bureau of Field Services appointed by the Chairman, (4) the commanding of-

ficer of the District, Division, Section or Unit to which the officer is assigned, (5) the officer in charge of the Internal Affairs Division, (6) a sworn officer assigned from the Training Division, and (7) a sworn Boston Police officer chosen by the officer whose actions are under review.

18 The Firearms Discharge Review Board will function primarily as an investigative body, to review, not only discharges of firearms, but also the subsequent actions of superior officers who investigate such discharges and report their findings to the Commissioner. The Board will seek to determine the extent to which both activities complied or failed to comply with Department policies and regulations and will make a report of its findings and recommendations to the Commissioner.

19 Staff support will be provided to the Board, as needed, by the Internal Affairs Division. However, the Chairman may, with the approval of the Commissioner, use other Department resources as investigative staff for F.D.R.B. inquiries.

20 Upon receipt of reports pertaining to a firearm discharge, the Chairman of the Board will review the information submitted and, in accordance with the provisions of this rule, take appropriate action.

21 Accidental discharges and those directed at an animal may be investigated by the Board if the Chairman deems an investigation to be appropriate and necessary. The Firearms Discharge Review Board will investigate all other incidents in which a firearm is discharged by a member of the Department under street conditions.

22 The Board will receive all reports submitted in relation to a firearms discharge and will have authority to call and interview any person who can give information pertinent to the inquiry. Members of the Department are obligated to appear and give information if called; however, members are not required to give information that may result in the filing of criminal charges against them or that may be used as evidence against them in a court of law. Officers called upon to provide information pertaining to a firearm discharge will do so by the method requested and will be compensated appropriately if an off-duty appearance is required.

23 Copies of all reports relating to a discharge incident will be routed to the Office of the Commissioner, Internal Affairs, Records, Personnel, Ballistician and the Chairman of the Firearms Discharge Review Board. All such reports, including those generated by the proceedings or inquiries of the Firearms Discharge Review Board, will be maintained in separate files by the Internal Affairs Division.

24 DISPOSITION: Upon receiving the F.D.R.B. report pertaining to a firearms discharge and investigation, the Commissioner may accept and act upon its recommendations in total or in part or he may return such report to the Board with a request for further information or clarification. In either case, the authority and responsibility for final Departmental disposition of a firearms discharge case rests solely with the Commissioner.

25 TRAINING AND QUALIFICATION: In the use of a firearm, ineptitude can be as disastrous as indiscretion. Police Officers in this Department

will, therefore, be held accountable for proficiency as well as compliance with policy in the use of firearms. All sworn members of the department are responsible for maintaining a minimum level of expertise in the use and handling of all firearms approved for their carrying. Specifically, sworn members will qualify at least once a year with a score of 80% or higher, using the firearm normally carried on duty. Officers who fail to qualify will be allowed 30 days to bring their score up to a qualifying level and, failing to do so, will be temporarily reassigned to inside duties that do not require the carrying of firearms, with twice weekly training at the police range until qualification is achieved.

DRAFT

1 This rule is issued to provide a basic set of guidelines and regulations for the use of deadly force by members of the Department and to establish procedures for the orderly investigation of firearm discharges under street conditions. Its provisions are effective immediately, superseding all previously issued rules, regulations, orders, bulletins, and memoranda regarding the use of firearms or other deadly force by Boston Police officers.

2 In the institution of these regulations in the Department, it is understood that they will not likely cover every conceivable situation that may arise. When the provisions of this rule are found to be incomplete or inapplicable to a particular set of circumstances officers are expected to act with intelligence and sound judgement, attending to the spirit above the letter of the rule.

3 GENERAL CONSIDERATIONS: The primary purpose for which each sworn member of the Department is issued a firearm and trained in its use is the protection of life and limb, his own and that of every other person needing such protection. Although the firearm is a necessary tool for present-day law enforcement, the destructive potential it carries mandates that it be used discriminately and within clearly-defined limits. This rule is intended to establish those limits.

4 In the interests of personal safety, police officers must seek to gain and maintain an advantage over persons known or suspected to be armed; such an "edge" may take the form of numerical superiority of manpower and firepower or that of an officer staying "one jump ahead" of a subject likely to produce a weapon. But the officer

seeking to maintain the advantage over a subject suspected of being armed is in a tenuous position. He must prepare to use his firearm should it be necessary, yet show the constraint required to ensure the propriety of his actions. The situation demands the utmost of his ability to think clearly, quickly, and decisively, and to utilize his firearm in a safe and effective manner.

5 The Boston Police Department recognizes its legal duty to protect the rights of all individuals to due process of law and a fair trial, and its members are thereby bound to refrain from any use of force that unnecessarily tends to administer punishment at the hands of a police officer. The responsibility for punishment of criminal acts rests solely with duly constituted courts of law and penal institutions and is by no means extended to the police.

6 DEFINITIONS: For the purpose of this rule, the following definitions will apply:

Deadly force is that degree of force likely to result in death or great bodily harm. The discharge of a firearm toward a person constitutes the use of deadly force, even if there is no express intent to kill or cause great bodily harm.

Great bodily harm is an injury likely to result in immediate or eventual disability of a permanent nature.

Immediate danger (hazard) to life means and includes circumstances under which (1) such a danger exists in reality, or (2) such a danger is apparent, and the officer is unable to affirm or disaffirm its actual existence.



Reasonableness and prudence can be defined only on a case-by-case basis by those members of the Department called upon to judge the propriety of a fellow officer's actions. Such judgements, however, may not conflict with the expressed provisions of this or any other rule or order.

Street conditions are all those in which an officer is rendering police services, as opposed to attending a training course or maintaining equipment.

7 POINTING FIREARMS: Officers will avoid pointing firearms at persons in circumstances under which discharge would not be clearly justifiable. However, in situations involving a strong possibility of great danger (e.g., searching a building pursuant to a burglar alarm or approaching a business establishment on report of a robbery in progress), the officer should carry his weapon in a position that will facilitate its speedy and safe use. While an officer should not point his weapon unless he is prepared to use it, the fact that he has done so obviously should not be interpreted as an obligation to fire.

8 DISCHARGE OF FIREARMS: *The law permits police officers to use physical force in the performance of their duties, but only to the degree required to overcome unlawful resistance. This doctrine of "minimum use of force" applies to the use of firearms as well as to that of non-lethal force. Also, because of their destructive potential, the use of firearms must be further restricted to the purpose for which they are issued, that of protecting life and limb.*

The discharge of firearms under street conditions by members of the Department is permissible only:

- A. when there is a clear and immediate danger of death or great bodily harm that cannot be removed by any other reasonable means
- B. to apprehend a fleeing felon when (1) the officer knows, as a virtual certainty, that the felon has committed criminal homicide, rape, armed robbery, kidnapping, or arson, during the commission of which he inflicted or threatened to inflict deadly force upon the victim; (2) there is substantial risk that the felon in question will cause death or great bodily harm if his apprehension is delayed; and (3) all other reasonable alternatives have been exhausted.
- C. to dispirit a dangerous animal or one so badly injured that humanity requires its removal from further suffering.

9 JUVENILES: Under the laws of the Commonwealth, juveniles between the ages of 7 and 17, in all but the most serious offenses, must be proceeded against as delinquent children in the Juvenile Court and are not subject to actual conviction of a crime. Rather, their cases are adjudicated and their records likely to be expunged upon their reaching adulthood. Officers of this Department will therefore refrain from the use of firearms against persons known or thought to be under the age of 18, except when such persons present an immediate threat of death or great bodily harm.

10 SAFETY OF INSTANCES: Officers who find it necessary, under the provisions of this rule, to discharge firearms under street conditions will exercise due care for the safety of persons and property in the area and will fire only when certain that there is no danger

to bystanders.

- 11 WARNING SHOTS AND SIGNALS: Firearms are not to be used for warning shots, signals, or calls for assistance.
- 12 MOVING VEHICLES: Firearms will not be discharged at or from a moving vehicle unless the officer is being fired upon by an occupant of the target vehicle. Revolver fire is notoriously ineffective at stopping motor vehicles; revolver bullets usually ricochet off automobile surfaces (including glass) and create a new danger to persons in the area.
- 13 SUSPICION OF A CRIME: *Under no circumstances will members of the Department apply deadly force to effect an arrest on mere suspicion that a crime has been committed or that a particular person has committed a crime.*
- 14 PERMISSIBLE WEAPONS AND AMMUNITION: Officers may carry on duty only weapons and ammunition issued to them by the Department. Special weapons; e.g., shotguns, rifles, automatic weapons, etc.; are not normally issued. However, such weapons may be selectively issued by the Commissioner if, in his opinion, they are necessary to ensure the safety and effectiveness of police operations. Officers armed with special weapons in such circumstances will use those weapons in accordance with the provisions of this rule as well as any additional guidelines issued at the time.
- 15 REPORTING FIREARM DISCHARGES: An officer discharging a firearm under street conditions must, as soon as possible, take the necessary steps to report the discharge. An on-duty officer will notify his

immediate superior, as well as the officer in command of the district in which the event occurred, and will submit the necessary reports without delay. An off-duty officer will notify the officer in command of the district in which the event took place and submit the necessary reports without delay. All discharges require the submission of an Incident Report containing, in addition to the regular information, the officer's duty status (on duty or off duty) at the time of the incident, the model and serial number of the weapon, the number of shots fired, and the reason for the discharge. Cases in which a person is fired upon by an officer require also that the officer report the number of shots (if any) fired by the subject, the distance between the subject and himself when the first shot was fired, and who fired the first shot. All these points of information will be included in the narrative portion of the Incident Report.

16 INTENTION OF FIREARM DISCHARGES: The manner in which police officers use their firearms is an extremely critical issue to the Department, one in which the community and the courts allow little

margin for error. To ensure that proper control in this area is maintained, all discharges under street conditions will be thoroughly investigated for the purpose of determining the extent to which they comply with Department policy.

- 17 Upon receiving notification of a firearm discharge by an officer, the commanding officer of the district in which the event took place will assign a supervisor to investigate. Normally, that will be the involved officer's immediate supervisor; however, if the officer involved is off-duty at the time of the discharge, or if his supervisor is otherwise not available, another supervisor will be assigned. The investigating supervisor will respond to the scene of the discharge as expeditiously as possible and will there conduct an investigation to determine the facts of the incident and the extent to which the officer complied with Department policy. The supervisor will submit his preliminary findings in written narrative form, through channels, to the Commissioner within 24 hours. Any further information that he obtains will be submitted in a supplementary report.

- 18 FIREARM DISCHARGE REVIEW BOARD: As an additional investigative resource, there will be a seven member Firearms Discharge Review Board composed of (1) the Superintendent-In-Chief, who will serve as the Chairman, (2) the Superintendent of the Bureau of Field Services, who will act as Chairman in the absence of the Superintendent-In-Chief, (3) the Deputy Superintendent in charge of the area to which the officer is assigned or, if such officer is not under the command of one of the area deputies, a Deputy Superintendent from the Bureau of Field Services appointed by the Chairman, (4) the commanding of-

ficer of the District, Division, Section or Unit to which the officer is assigned, (5) the officer in charge of the Internal Affairs Division, (6) a sworn officer assigned from the Training Division, and (7) a sworn Boston Police officer chosen by the officer whose actions are under review.

19 The Firearms Discharge Review Board will function primarily as an investigative body, to review, not only discharges of firearms, but also the subsequent actions of superior officers who investigate such discharges and report their findings to the Commissioner. The Board will seek to determine the extent to which both activities complied or failed to comply with Department policies and regulations and will make a report of its findings and recommendations to the Commissioner.

20 Staff support will be provided to the Board, as needed, by the Internal Affairs Division. However, the Chairman may, with the approval of the Commissioner, use other Department resources as investigative staff for F.D.R.B. inquiries.

21 Upon receipt of reports pertaining to a firearm discharge, the Chairman of the Board will review the information submitted and, in accordance with the provisions of this rule, take appropriate action.

22 Accidental discharges and those directed at an animal may be investigated by the Board if the Chairman deems an investigation to be appropriate and necessary. The Firearms Discharge Review Board will investigate all other incidents in which a firearm is discharged by a member of the Department under street conditions.

23 The Board will receive all reports submitted in relation to a fire-arms discharge and will have authority to call and interview any person who can give information pertinent to the inquiry. Members of the Department are obligated to appear and give information if called; however, members are not required to give information that may result in the filing of criminal charges against them or that may be used as evidence against them in a court of law. Officers called upon to provide information pertaining to a firearm discharge will do so by the method requested and will be compensated appropriately if an off-duty appearance is required.

24 Copies of all reports relating to a discharge incident will be routed to the Office of the Commissioner, Internal Affairs, Records, Personnel, Ballistician and the Chairman of the Firearms Discharge Review Board. All such reports, including those generated by the proceedings or inquiries of the Firearms Discharge Review Board, will be maintained in separate files by the Internal Affairs Division.

25 DISPOSITION: Upon receiving the F.D.R.B. report pertaining to a firearms discharge and investigation, the Commissioner may accept and act upon its recommendations in total or in part or he may return such report to the Board with a request for further information or clarification. In either case, the authority and responsibility for final Departmental disposition of a firearms discharge case rests solely with the Commissioner.

26 TRAINING AND QUALIFICATION: In the use of a firearm, ineptitude can be as disastrous as indiscretion. Police Officers in this Department

will, therefore, be held accountable for proficiency as well as compliance with policy in the use of firearms. All sworn members of the Department are responsible for maintaining a minimum level of expertise in the use and handling of all firearms approved for their carrying. Specifically, sworn members will qualify at least once a year with a score of 60% or higher, using the firearm normally carried on duty. Officers who fail to qualify will be allowed 30 days to bring their score up to a qualifying level and, failing to do so, will be temporarily reassigned to inside duties that do not require the carrying of firearm, with twice weekly training at the police range until qualification is achieved.

DRAFT



**END**

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