

U.S. Department of Justice
Community Relations Service



POLICE USE OF DEADLY FORCE

What Police and
the Community
Can Do About It

A Workshop Conducted by
the Community Relations Service
at the 1978 Annual Conference
of the National Association
of Human Rights Workers

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ACQUISITIONS

A Workshop Conducted by the Community Relations Service
at the Annual Conference of the
National Association of Human Rights Workers
Nashville, Tennessee
October, 1978
Bertram Levine, Chairman and Project Coordinator

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The Community Relations Service (CRS) is a U.S. Department of Justice agency created by the Civil Rights Act of 1964 to help communities resolve disputes and conflicts arising from discriminatory practices based on race, color, or national origin.

CRS performs this role as a conciliator and mediator, persuading people in disagreement that cooperating to resolve their differences is, in most instances, preferable to the likely alternatives.

As a conciliator, the agency opens up communications between disputing parties and takes other, miscellaneous steps to help them achieve a voluntary settlement. As a mediator, CRS -- if the parties prefer -- convenes formal negotiations on a specific agenda of issues or grievances. The objective is the same in either case: establishing harmonious relations among residents of the community.

The agency offers its assistance at the request of appropriate state or local officials, other interested persons, or on its own motion. CRS' mandate extends to any discrimination dispute that is based on race, color, or national origin. Since the agency's inception in 1964, a substantial number of the race-related disputes in which it has intervened have involved negative relations between minority groups and law enforcement officers.

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PREFACE

Police use of deadly force is a volatile community relations issue. Increasingly, minority community groups have reacted hostilely to use of such force, alleging that police practice a racially-discriminatory double standard of law enforcement against them. The Community Relations Service, receiving a growing number of complaints, has made this a top priority of its conciliation-mediation efforts.

A part of those efforts is promoting a reduction in the incidence of use of deadly force. And one need is to add to the body of useful knowledge on the subject. In line with that objective, CRS accepted an invitation to conduct a workshop on deadly force at the annual conference of the National Association of Human Rights Workers in October, 1978.

The title of that workshop was "Police Use of Deadly Force: What Police and the Community Can Do About It." The six main speakers presented an overview of the problem; reviewed the evolution of deadly force and some current facts and figures; looked at Atlanta's and New York's success in reducing use of deadly force; and suggested how community-based organizations can get needed information and influence police practices.

The speakers' presentations are reproduced here to illustrate that positive action by police and community groups can reduce the incidence of use of deadly force by police. It is hoped that this publication will be a useful addition to the recorded technology on how this critical community problem can be constructively dealt with.

Gilbert G. Pompa, Director
Community Relations Service
U.S. Department of Justice

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THE COMMUNITY RELATIONS SERVICE PERSPECTIVE

Howard P. Carrington
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Community Relations Service
U.S. Department of Justice

The issue of police use of deadly force is one of the crucial issues that face this nation today. CRS is in a very unique position to get feedback from perceptions and concerns of community groups across the country, and in our daily operations in 10 regional offices, we have, for a long time, been getting reverberations about the impact of police use of excessive force. Recognizing the delicacy of this issue, our director, Gilbert Pompa, has established it as one of our priority issues. So we have set about trying to utilize the objectiveness of the Department of Justice in conjunction with addressing the immediate concerns of those who have been most victimized, and those are obviously minorities -- mostly blacks and browns.

In an effort to come to grips with this very serious problem, we have set about, in this initial stage of our venture, an effort to coalesce the various disciplines that are involved. And we're

trying to get those different groups together in an effort to find the kinds of diversities which face us and the directions that we should take. We have had some success in our initial efforts, and it's only in recent months that we have really given full force to this issue. Through the efforts of Bert Levine, who is our chief officer for liaison with different national organizations, we've been able to gather, in a variety of settings, those persons who we hope will continue to act responsively to the kinds of challenges that are so abundant in this entire area.

In doing this, CRS recognizes the kinds of disturbing influences that even the mere mention of brutality effects, particularly in the police community. We have, therefore, set about trying to bring into activity an impact upon police and community attitudes which will weld a very solid base for our thrusts. To this degree, we've had some success.

I recently attended the International Association of Chiefs of Police conference in New York, and in one of their workshops, Assistant Chief William Bracey, from the New York Police Department, addressed this issue before a predominantly police audience. The reception given his remarks was varied. We cannot say that there is

a wholesome reception on the part of the police executives in dealing with this very, very crucial issue. However, we recognize that the need is to have their full involvement -- not only their commitment -- in order to really penetrate the abundant barriers.

We have had meaningful relations with the Police Foundation, which is directed by former police executive Patrick Murphy. This is one of the more powerful and persuasive of the organizations that deal with the police communities. We have also made contact with fraternal organizations such as the Fraternal Order of Police, the National Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, and the National Black Police Association. They are representative of, I would say, some 80 percent of the police community across the country. We're trying to enlist their support, and, although at this initial stage we have not had the unanimity that one would hope for, we do see that there is some recognition of the need to grapple with the very sensitive nuances that accompany this problem.

CRS, in conjunction with the Providence Human Relations Commission, recently conducted a workshop in Providence. The Director of that human relations commission, Ben Little, is here.

We had a very fine conference there. Now, this was the first attempt on our part to involve functionaries from across the state, representing a broad array of persuasions, in an effort to sit down and thrash out these several and very, very difficult problems. And we were fortunate. Mr. Little did a yeoman's job in bringing together a very diffuse group of persons who were responding to the issue of police use of excessive force. Time is too short for us to give a complete evaluation as to the effectiveness of that conference. But given the fact that it was a success, CRS will try to use the Providence experience as a modality in other locations.

I came in last night from Houston, after attending a national Hispanic conference. The acronym is COSSMHO, which stands for Coalition of Spanish-Speaking Mental Health Organizations. In the glare of publicity that has recently focused on Houston in particular, and the atrocities that have been occurring in the Southwest generally, I was very disappointed to find an extremely sparse turnout at that workshop. And now as I look across this room, there is also a sparse turnout here. Considering the importance and impact of this issue, we should be able to get a far larger audience. I mention these two situations in order that we not lose sight on the fact that we generally

assume the perceptions of the public to be such that they would show volumes of interest in the solution of these problems.

There is a great deal of work that has to be done, not only by those of us who are on the firing line, but by secondary beneficiaries as well. We must not presume that because we are going to have a panel discussion or workshop that the turnout will be automatic. It will not be automatic because a great deal of attention must be focused on this whole issue to create a responsiveness.

We were recently attuned to a situation in Philadelphia, the MOVE situation, which exemplified an extreme amount of what may be regarded as police over-zealousness, if one were to use the term. This is only one of the kinds of situations that happen. Philadelphia and Houston happen to be cities in which the press has been extremely interested, but there are many other Philadelphias and Houstons across this country. Many of them do not get the kind of publicity that has accrued to those two cities, but the basic problem is still there.

The alienation that continues to rock these minority communities, in most instances, can be traced to one incident of the promiscuous use of force. There's no question that the discretionary power that is placed in the hands of the policeman is inordinate. At all times, he's faced with that split-second decision where he does indeed become

executioner, judge, and jury. He is given an inordinate amount of life and death discretion, yet as a former policeman, I don't think many policemen relish having this awesome authority in their hands. But regulations as they are now leave a policeman little or no alternative except to play that role.

It is our contention that measurable reductions in loss of life could be realized by trying to recodify state and departmental laws and existing firearms policies to more closely approximate the ideal firearms policy as the FBI delineates it: "the use of firearms only in defense of oneself or another person." Therefore, the kinds of excessive force cases we read about, where a youth is shot in the back escaping because the officer thought he had a gun or that he could reach for something, would become fewer and fewer. Those kinds of excuses that have been used traditionally by police are the areas in which corrective measures can be effected as a result of the public clamor that would inure to the problem.

CRS has been conducting, in addition to the Providence workshop, a series of in-house workshops in which we have brought before our staff those functionaries and very distinguished persons active in this field to give us a complete exposure to philosophies and to disciplines that may be useful as we go about our business. And we

find that it has indeed been a very enlightening experience. We've utilized the skills of most of those who are sitting on the panel, and those on the panel whom we have not yet used, I can assure you, gentlemen, that you will be called into action.

Of great importance, too, has been the fact that CRS, although in the Department of Justice, has been straining for quite a while to effectuate a channel of communication and a responsiveness with some of our sister agencies. We have recently been able to accomplish that with the Law Enforcement Assistance Administration, and certainly it has been through the tremendous efforts of Peggy Triplett, from LEAA, who is here in the audience. We are very glad to recognize the fact that LEAA, instead of directing all of its might and its efforts in the police community, is now going into the public community. We hope that with this coalition, we will be able to derive many, many benefits.

WHAT DO WE KNOW ABOUT HOMICIDES BY POLICE OFFICERS?

Dr. Lawrence W. Sherman
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I am the director of a national study of homicides by police officers funded by the Center for Studies of Crime and Delinquency, National Institute of Mental Health.¹ The purpose of the study is to find out some things we don't know about police homicides, but, in the process of designing the study I had an opportunity to go through the existing literature pretty exhaustively. In the available time today, I will try to summarize what we do know at this point.

I will focus on three kinds of issues. First, I will review the history of law and practice in police use of deadly force. Second, I will review the available facts and figures from the few cities that have been studied regarding the modern incidents of homicides by police officers in the United States. Third, I'd

1. This work is being conducted under grant number IRO1MH31335-01CD awarded to the Criminal Justice Research Center, One Alton Road, Albany, New York 12203.

like to look at something that is at once encouraging and at once discouraging: the wide range of variation across cities in the frequency with which police kill people. It's not a problem that's equally bad everywhere; it really varies quite widely, and I'm going to look into that just briefly.

For all the concern in this country about capital punishment, there has been a surprising lack of concern with what is the most frequent means by which the state takes a life. The concern for execution after trial has made us almost blind to execution before trial, even though for as far back as we have records on the subject, executions before trial have been far more common. Even in the 1950s when post-trial executions were common, pre-trial execution outnumbered capital punishment by more than three to one. And our research has shown that those national figures that we used to measure on homicides by police are grossly under-reported. According to our estimates, the police may be responsible for anywhere from four percent to seven percent of all homicides committed in the United States in recent years.

The use of pre-trial execution as something that is legal and acceptable under our system of justice dates from a common law doctrine which originated in the twelfth century -- if not before. The doctrine

permitted killing in order to arrest someone for a felony if there were no other means available for making an arrest. The doctrine was predicated, I think, on two historical conditions that are no longer present in modern American society.

One is the punishment of all felonies by death, and so the right to kill during arrest was a procedure no more severe than what would happen ultimately to someone convicted of the crime. The doctrine was also predicated on the fact that the existing technology did not provide any accurate distance weapons. You know the gun had not been invented in the twelfth century, and when crossbows were invented they were only available to the very rich. Not until post-civil war times in this country was it technologically possible to kill someone who was fleeing unless you could overtake them and get into a fight with them. The meaning of the doctrine, therefore, was basically that if in physically subduing somebody with your hands or with a knife you got into hand-to-hand combat and killed someone who'd be killed anyway if apprehended, then under those circumstances homicide was justified.

The basis on which the doctrine was formed rapidly eroded in the nineteenth century. In the first part of the century, capital punishment was abolished for most felonies. By the 1840's, Mr. Colt's invention

made it possible to kill people without having to stuff all the papers and wads down in a flintlock pistol, which often misfired. For the first time in history, cartridge weapons made it possible to kill people quite frequently when they were escaping from felonies, felonies for which they could not be sentenced to death. The courts in the nineteenth century refused to come to grips with that inconsistency, and that reluctance persists in many places today.

We are therefore left with the historical anachronism whereby people can be killed in the process of being arrested for crimes, the most severe punishment of which would be incarceration and the typical punishment for which is often no incarceration at all. Charles Gain, the former chief of police in Oakland, pointed this out when he instituted a police department policy forbidding his officers to shoot fleeing burglars on the grounds that plea bargaining for burglary was so high in Oakland that for adults the police would have to shoot 100 burglars in order to capture the eight who would have gone to prison upon apprehension. And for juveniles, they would have had to shoot 1,000 of them in order to catch the three who would have gone to prison. It is that kind of disjunction that I think raises a great deal of protest, particularly in our minority communities,

when unarmed burglars fleeing from a burglary scene are shot in the back on the basis of a common law doctrine developed under twelfth century conditions.

Fifteen states have recognized this disparity between the force permissible for arrest and the force permissible for punishment by restricting deadly force to the apprehension of suspects of crimes in which such force has been used. No state law, however, presently is as restrictive as the FBI policy, which basically says that officers may only kill someone in self-defense or the defense of another from an immediate threat of physical violence. If we would get every police department and state legislature in the country to go along with that idea, we would probably see a decline in the number of killings by police.

But if that policy were enacted -- here I differ with my distinguished predecessor behind this lectern -- we would still have enough ambiguity in police homicide situations so that strong enforcement would be required. For example, there was a case in Houston in which the police pumped eight shots into a black man who was pulling something from his pocket that looked like a pistol. What it was he was pulling out of his pocket was a bible. Or the

Los Angeles police officer who asked a black man who had been stopped as a car theft suspect for his registration, and when the man reached in the glove compartment the officer shot him; the officer thought that he might have been reaching for a gun.

The policy that says you can only shoot in defense of an immediate threat to your life might be construed to justify that action because if it seems reasonable to someone to think that there was a gun in that glove compartment, the officer was shooting in defense of his life. You don't avoid that kind of situation through better policy. You only get at it through strict enforcement. That's something that we don't have. What we probably do have is a lot of unjustified homicides going unpunished. But let me back up a little and put that in context by looking at some of the basic characteristics of the police homicide incidents.

When do police homicides happen? Most of them happen at night when there are very few witnesses around, and that has some implications for enforcement policies. Most of them happen in public places, and most seem to be located in central cities.

Who are the victims of police homicides? The victims of police homicides are almost all male. Most of them are between 17 and 30 years of age, and around half of them nationally are black. There's

no breakdown showing Hispanic victims at the national level. In certain cities, we know that up to 80 percent of the victims of police homicides are members of minority groups.

A number of articles have commented that the fact that there's a high percentage of minorities in the arrest population, and the arrest population for violent crimes, might seem to make it appear less discriminatory to have such a high representation of minority groups in the police homicide population. Others have criticized that viewpoint, saying that you should look at convictions and not arrest rates as reasonable basis for making that comparison. Still others have suggested that there's racial discrimination in arrest practices and, therefore, the fact that the racial characteristics of the arrest population match the racial characteristics of the police homicide victims in the few cities that have been studied in this regard does not mean much.

Black officers, incidentally, appear more likely to shoot their weapons, but they're also more likely to be assigned to violent precincts or even to live in areas of the city in which violence is common and they are given more opportunities or necessities to use their weapons. Of the police officers who kill people, 10 to 30 percent, depending on which city, are out of uniform, and therefore are not recognizable as police

officers. Being in plain clothes creates enough ambiguity of identity so that police officers often kill each other. Again, all too often the police officer on the wrong end of the bullet happens to be black, again because they're more likely to be assigned to those kinds of plain clothes assignments in high crime areas.

What are the circumstances preceding the homicides? This varies the most widely of any of these characteristics among cities, and I think it does reflect the difference in policies. What varies the most is traffic. In a big city like Philadelphia or New York, a very small percentage of the homicides occur in the context of traffic incidents. The national study of newspaper clippings, however, showed that one-third of police homicides occurred during a traffic incident.

More important, perhaps, was the fact that in New York, where felons who have not committed violence are not permitted to be shot, only seven percent of the police homicide victims were burglary suspects, whereas in Philadelphia, where there is no such restriction, 37 percent of the police homicide victims were burglary suspects. Robbery suspects comprised between one-fifth and two-fifths of all the cases. Disturbance calls -- a very imprecise category, ranging from a family fight to a man with a gun -- comprise one-sixth to one-third of the cases. But

in the cases that were studied by the Police Foundation in a report I recommend to you entitled Police Use of Deadly Force,² fully four percent of the woundings (bullets that hit people) were officer horseplay, accidents, personal disputes and things that weren't justified by any kind of crime intervention at all.

How often is the victim armed? The majority of the victims -- about 55 to 60 percent -- in the studies that have been done, have been found to have weapons on them. But those figures are based on official data, and the problem of the throw-away weapon that police officers plant on a victim of homicide is a very real one. Recently, in the Houston area, a police union responded to a case in which a police officer had planted a gun on a homicide victim. The gun was found to have disappeared from the police property room, having been seized in a suicide in 1963 and disappeared in 1968, and the logic was that it disappeared into the officer's pocket as a throw-away weapon to provide a defense when he killed somebody. The response of the local police union was to publish in their newsletter the advice that you should use a knife for a throw-away because it cannot be traced as easily as a gun! That problem varies across cities, but I think it should at least make one skeptical about the frequency with

2. Copies are available from the Police Foundation, 1909 K Street, N.W., Washington, D.C. 20006

which the victims of police homicides are, in fact, armed. And it's something that should be looked at certainly whenever one is dealing with particular cases.

How often are homicides justified according to the official ruling? The lowest percentage found anywhere is in New York City, where it is 71 percent. A large portion of those justified include things that might not have had to happen, and retraining is often required. But in other cities, up to 100 percent of the police homicides are justified. In Chicago, 97 percent of them during a two-year period were justified, but when they were re-examined independently by a group of lawyers, only 84 percent of those incidents fitted the legal policy guidelines for what was justified and what was unjustified. The national study of newspaper stories by Arthur Kobler in Seattle, using the criterion of justification only when there is an immediate threat to someone's life, found that two-fifths were unjustified, one-fifth was questionable, and only two-fifths were justified.

Nonetheless, police officers are not punished very often. In fact, they are rarely punished even when the department says the killings are unjustified. Kobler found in his national sample that only three out of 1,500 cases resulted in a criminal conviction of a police officer for homicide. In another study in Los Angeles county, of 18 killings that the various local police departments had ruled

unjustified, only one of them was referred to the prosecutor for criminal prosecution. Two of the 18 resulted in dismissal from the department; two of them resulted in a suspension, and 13 out of those 18 resulted in absolutely no action by the police department or the prosecutor.

But the situation is not hopeless. I think the best evidence for the possibility of doing something about this problem is found in the wide variation across cities. It's clear that some cities are simply doing a better job at controlling police homicides than other cities. And this has been true for quite a long time. A study done in the 1950s found that the rate of killings per million population in 15 different departments varied from 0.4 in Boston to 7.06 in Miami, and the rate per 10,000 officers varied from 1.05 in Boston to 48.5 in Akron. I don't think you'll find that the disparity in the rates of violent crime come close to accounting for that magnitude of differences.

Some police departments simply may have a culture of violence in which going into scenes with cocked guns and using the weapon indiscriminately is supported by local norms, not just within the department, but also among the dominant community leadership. Indianapolis offered a prime example of this in 1975, when the

prosecutor tried to raise the question of whether shooting fleeing felons for property crime was justifiable. The question was raised during a mayoral contest, and both candidates agreed that "we can't tie the police department's hands; we've got to let them do what they need to do in order to fight crime." Their views seemed to reflect the prevailing sentiment of the community even though a youth had just been killed fleeing from an auto he had stolen. The values of the community seemed to be firmly opposed to any restriction.

Police homicides are therefore not just a police problem, they are a community problem as well. Any discussion about how to deal with the problem must look beyond the police. In many cities, in fact, the police departments themselves have taken some initiative in dealing with the problem. The entire issue is facing a period of intense scrutiny around the country, and the times seem ripe for a change.

REDUCING THE USE OF DEADLY FORCE:
THE ATLANTA EXPERIENCE

Dr. Lee P. Brown
Public Safety Commissioner
Department of Public Safety
Atlanta, Georgia

I chair an organization called the National Minority Advisory Council on Criminal Justice. That council has held public hearings throughout the nation in the minority community to make an assessment of the problems and concerns that minorities have about the issues of crime and criminal justice. The overriding issue that emerged from the public hearings was a concern about police use of deadly force. As a result, we decided, by virtue of the public concern in the minority community, not to wait until our final report was completed, but to release a preliminary report on the subject of police use of deadly force. I think Larry has a copy here, which outlines some of the concerns brought about by our public hearings and augmented through the research that our staff did.

Essentially, the report suggests that while the police use of deadly force is a problem that may emerge anew for some people, it has

been a concern to the minority community for years. It also indicates that this is not only a concern with police involvement in the number of citizen deaths, but also a concern for conditions throughout the criminal justice system: the prosecutor won't prosecute; the court won't sentence; etc.

But that is not the basis for my remaining 13 minutes. I was asked to do a case study of what has occurred in the City of Atlanta relevant to police use of deadly force. In doing so, let me just take a few minutes to bore you with some statistics relating to the number of people killed by police in Atlanta, which will allow me to make my point.

My intention was to look at data for the past eight years, beginning in 1970. There is no information available for 1970, however, which is indicative of another problem: that the administration during that period apparently did not consider the use of deadly force by police significant or unusual enough to record, so no records were kept. In 1971 there were 12 citizens killed by police; in 1972 there were eight; in 1973, 17; in 1974 there were 12; in 1975, seven; in 1976, five; in 1977, six; and this year to date there have been three.

For the number of people shot but not killed by the police during the same eight-year period, there are no data available prior to 1973. In that year, 51 citizens were shot by the police; in 1974 there were 22; in 1975 there were 19; in 1976, three; in 1977, one; and to date this year there have been four.

If we look at the number of police officers killed in the City of Atlanta, there are records for the entire eight-year period. In 1970, one police officer was killed; in 1971, two; in 1972, none; in 1973, three; in 1974, one; in 1975, two; and one in each of the remaining years, 1976, 1977, and 1978.

As one final bit of information, there have been a number of police officers assaulted by citizens. We also kept good data on that. In 1970 there were 397; in 1971, 491 -- no information could be found for the year 1972 -- in 1973, 683; in 1974, 1,052; in 1975, 911; in 1976, 856; in 1977, 822; and to date this year, 415.

Let me translate these statistics in terms of the Atlanta story. First of all, during that eight-year period, 1973 saw the most use of deadly force, with 51 citizens shot and 17 killed by the police. Also in 1973, three police officers were killed on duty, the most in any of the eight years under observation. The following year, 1974, recorded the highest number of police officers assaulted by the public --

1,052 -- a fact which suggests that violence tends to perpetuate itself both ways.

All categories of assaults and homicides involving police personnel have decreased since 1974. Attempting to determine what accounted for this magic in 1974, I have talked with a number of people who were in the Atlanta Bureau of Police Services at that time, and they indicate that it was probably the product of a number of things, the key event being the election of Mayor Maynard Jackson. Mayor Jackson made his policy immediately clear: that the excessive use of force by police was going to stop. Some of the people I have talked with said it would have made no difference if Bull Connor had been chief of police. The use of violence was going to stop by virtue of the mayor's posture on the subject.

As a result of this policy, a number of changes were made in the Atlanta Police Bureau. Prior to 1974, there were only three regulations which governed the police use of force and firearms. One stated that a detailed report must be made whenever an officer discharged his revolver or firearm in the line of duty. The second rule required a detailed report whenever it became necessary to use force to the extent that a prisoner required medical attention. The third rule prohibited officers from carrying an automatic or any handgun other than regulation service

revolvers while on duty. There were no other regulations governing the police use of deadly force. Clearly, until the rules were revised in 1975, there was no policy or guidelines controlling police use of firearms.

A number of other things happened when Mayor Jackson came into office. He instituted a domestic crisis intervention training program for all officers. There was an expanded effort in the area of community relations and an experimental project in team policing. There was a general emphasis on increased sensitivity for community complaints and concerns, and there was a decentralization of the police function. which began about 1974.

As a result, I think it is safe to conclude that the new administration brought with it an increased sensitivity to the concerns expressed by the community and to the mandate that changes take place; that changes did, in fact, take place; and that these changes reduced considerably the number of people killed by police in Atlanta.

Let me conclude my remarks by sharing with you some other concerns I have relating to the development of policy and guidelines to limit police discretion in the use of deadly force. As policymakers, we must view this issue in essentially two ways: within its historical perspective and from the perspective of the role that police play in contemporary society.

Historically, our form of policing was adopted from the English model, with one important modification. Police in this country have been armed since the middle of the eighteenth century, whereas police in England traditionally have not carried firearms. American society seems more prone to violence, and the citizenry is well armed. This suggests that anyone who is sensitive to the issue of violence should be working for a federal ban on the importation, possession, sale, and manufacture of handguns in this country. With handgun control, we may be able to proceed to the next logical step: disarming the police. But it is illogical at this point in time to talk about disarming the police when so many weapons are available to those who wish to use them to break the law.

To look at the contemporary status of police in our country, I think it is important to again do so in the context of what we consider America to be about. In that context, I would suggest that our society, like any society, must have some form of order, although the framework must be consistent with the principles of a democracy. The police must not be considered as entities unto themselves but should be viewed within the context of the municipal jurisdiction and treated as an integral part of city government. And like any other agency of government, the police should exist only to serve the people, a principle which carries with it

the protection of the rights of individuals. Larry mentioned some of the court rulings about capital punishment. I won't repeat them, but the point is well taken that even the highest tribunal in the nation has considered the issue of one losing his life by government decree, yet we have not as a nation successfully addressed the use of deadly force by police.

The point that I want to emphasize is that we, as police administrators or as mayors or as people who influence policy, can accomplish much more through the implementation of policy to control the use of deadly force by police. Let me briefly review a few points that I think must be considered in developing such guidelines.

First, it is important for police administrators to develop policies based on some sense of a philosophy of what police officers are about. This philosophy should place a heavy emphasis on the value of human life. It should include an understanding that the police use of deadly force must be socially and morally warranted as well as legally authorized.

Secondly, a policy controlling the police use of deadly force should not be so complicated, long, or confusing that it can be interpreted in more than one way. Essentially, it should be very simple and easily understood by every member of the agency. It should

be simple to apply. It should be easy to enforce, and it should hold the officers accountable for their actions.

In this context, the policy developed by the FBI which was discussed earlier fits all of these criteria, and I would recommend it to all of you -- that a police officer is authorized to use deadly force only in the protection of his life or someone else's life, period. This leaves no room for debate, complication, or other areas of concern.

REDUCING THE USE OF DEADLY FORCE:
THE NEW YORK EXPERIENCE

Lieutenant James J. Fyfe
Police Academy
New York, New York

My experience shows me that there are two types of cops. There are those who believe in telling nothing, and those who believe in talking too much. Unlike everybody else, I've restricted myself to written remarks because I'll talk all day if you let me. The question of what communities can do is what I want to talk about first.

The question of what communities can do about police deadly force is encouraging. It's encouraging because it suggests an awareness that the questions and problems related to the use of police deadly force are not the exclusive domain of the police. Like "crime on the streets," "drug abuse," "urban disorder" and so many of the issues we in the field have traditionally, and erroneously, defined as "police problems," police deadly force is more accurately described as a "community problem."

This definition may sound like semantics -- or a "cop-out" -- but it has important implications. It implies that shooting, like "crime in the streets," is a problem upon which the police, acting alone, can impact only minimally. Just as no unilateral police action will eliminate "crime in the streets," no unilateral police action will eliminate police shootings. Both these phenomena are symptoms of more widespread and systemic community problems.

All the research, for example, demonstrates that blacks and Hispanics are disproportionately counted among those on the receiving end of police deadly force, whom, I believe are best defined as those killed, wounded, or missed by police bullets fired at them. Because the consequences of a police shooting -- a death, a wound, or a miss -- are largely the result of chance, the frequency of police deadly force is best measured in terms of officer decisions to pull the trigger.

In any event, whether we use actual body counts or reports of the ethnicity of all those shot at by police, we find that blacks and Hispanics are everywhere over-represented among those on the other side of police guns. We find also that young adults are over-represented here and that the great number of police shootings take place in what are euphemistically called "inner city areas."

My own research, which involved the analysis of more than 3,800 police shootings in New York City over five years, suggests that this is no accident. Police shooting rates by opponent race, age, or geographical area are almost directly related to the corresponding homicide rates and rates of arrest for violent felonies. While we can, of course, get into a "chicken and egg" debate over these relationships, I would interpret them as a strong indication that police use of deadly force -- shooting -- is a response to other forms of intra-community violence -- "crime in the streets" -- over which the police exert little or no control.

Arguing that police deadly force is largely a community problem is not to say that police agencies are powerless to reduce the frequency with which officers fire their guns. In many jurisdictions, for example, the only restrictions imposed on police authority to use deadly force are the overly broad common law or statutory "defense of life" and "fleeing felon" provisions. In many jurisdictions, there simply exist no clearly delineated policy statements regarding police use of deadly force. Last year, for example, the Police Foundation reported that one agency's formal written firearms policy read, in its entirety: "Never take me out in anger, never put me back in disgrace."

Such statements, obviously, offer very little guidance to police officers in making the literally "life or death" decision of whether or not to "pull the trigger." The experience in New York City, where data sufficient to conduct statistically significant tests of research questions accumulate quickly, suggests that administrative limitations upon police shooting discretion exert enormous influence in the frequency and nature of police shootings.

In August of 1972, the New York City Police Department promulgated guidelines which emphasized the value of life and declared the police revolver to be a device "for personal protection against persons feloniously attacking an officer or others at close range." This directive, T.O.P. #237, also generally proscribed warning shots, shots to summon assistance, shots which endanger innocents, and shots at or from moving vehicles. It also provided for stringent investigatory and reporting requirements and established a top-level review board to review and adjudicate all police firearms discharges.

The effects of this order on police shootings in New York City were dramatic, immediate, and continuing. During the five-year period 1971-1975, which was the subject of my research, 14.7 New York City police officers fired their guns every week. Dividing those five years at the effective date of T.O.P. #237, however, shows that this average is deceptive: before T.O.P. #237, 18.4 officers fired their

guns every week; after T.O.P. #237, that number declined to 12.9. And this during a period in which reported homicides and arrests for violent felonies, which I found to be corollaries of shootings, continued to increase.

What's more interesting is what happened to the nature and consequences of police shootings during this period. "Shootings in defense of life," which are generally considered the most justifiable such incidents, remained fairly constant between 1971 and 1975 -- the pre-T.O.P. #237 weekly average of 10.6 declined to 8.7 after T.O.P. #237. Shootings to "prevent or terminate crimes" usually involving "fleeing felons," however, declined to one quarter of their pre-T.O.P. #237 level: from two officers weekly to .5 weekly.

Before T.O.P. #237, New York City police shot and wounded 3.9 people every week; after T.O.P. #237 that figure decreased to 2.3. Before T.O.P. #237, New York City police shot and killed 1.6 persons every week; after T.O.P. #237, that figure decreased to 1.0. During the two years and nine months between the end of my study and September 1, 1978, that figure has further declined to .6 citizen deaths per week.

Those figures present rather compelling evidence that civilian injuries and deaths can be reduced if police administrators let their field personnel "know what they want." But the police chief who values life also has another concern: what about the lives of his people? Do such guidelines and review procedures "handcuff" the police? Make them hesitate to resort to their firearms when they are in imminent peril? Do such guidelines and review procedures make the "cop's job more dangerous"?

The experience in New York City indicates that they do not. Although many factors contribute to the frequency with which police are injured or killed -- the early seventies were marked by several "political" assassinations of New York City police, for example -- officer injuries and deaths have declined considerably since the promulgation of our shooting guidelines.

Before T.O.P. #237, 4.4 New York City police officers suffered substantial line-of-duty injuries during violent confrontations every week; the same figure following T.O.P. #237 is 2.5. Before T.O.P. #237, one police officer was killed in the line of duty every five weeks; after T.O.P. #237, we suffered an average of one line-of-duty death every 10 weeks. Since 1975, we have lost one officer in confrontations every 27 weeks. While we can't attribute these declines to our shooting

policy, we can make a strong argument that our policy did not make "the cop's job more dangerous," especially in the light of continued increases in other measures of violence in the City.

One thing police agencies can do about the use of deadly force, therefore, is to put together policy statements which give officers more guidance in this important decision. A second is to enforce these policies by establishing administrative review procedures. This latter is important for two reasons.

First, it demonstrates the chief's personal interest in his personnel's use of their weapons. And the New York experience suggests that periodic and largely symbolic reaffirmations of his interest, via minor change in review procedures, and the like, have a salutary effect on shooting. Second, frequently it brings the responsibility for the control of police guns out of the courts and into the agency. This is important because it makes accountability for the use of weapons far more manageable.

In jurisdictions without clear policy guidelines and review procedures, often the only way to deal with an officer who has used his weapon unwisely is to bring criminal charges against him, and these are very difficult to sustain. Internal review procedures, in contrast, are not required to adhere to strict evidentiary

standards -- a positive finding requires "a preponderance of the evidence" rather than "guilt beyond a reasonable doubt." The penalties meted out after such positive findings need not be extremely harsh -- they're not in New York City -- but certainly "send a message to the troops."

A third area for police agency efforts to reduce the use of deadly force is less obvious. It involves examining the "violence potential" of alternative operational policies and practices. For many years, New York City narcotics officers followed a "Buy-and-Bust" policy, which resulted in the arrests of great numbers of street drug pushers immediately after small undercover narcotics "buys."

Because arrests for "nickel bag" sales will never solve the "drug problem," even though they may be valid responses to community demands about street conditions, we can certainly argue that such a policy is not cost-effective. We can also argue that such a policy leads to considerable police-suspect violence: the shooting of "Serpico," for example, was far from an isolated incident.

In New York City, changing our narcotics enforcement policy from "Buy-and-Bust" to one involving lengthy investigations directed at high level drug traffickers was not only cost-effective in terms

of volume of drugs seized, but reduced the dangers of narcotics enforcement, as well.

Since that policy change, our narcotics officers use their guns with half the frequency they did under "Buy-and-Bust," they are seriously assaulted less than half as often, and they shoot others less than half as often.

It would appear, therefore, that deployment patterns involving police personnel engaged in highly sensitive work impact dramatically on police use of deadly force. "Violence potential," along with cost-effectiveness, should be a consideration in decisions related to enforcement strategies. Before laying out operational plans involving narcotics officers, decoys and stake-outs, for example, police administrators should ask whether or not they are putting their personnel into such hazardous positions that they will have to resort to their firearms regularly. If so, every effort should be made to find less potentially violent alternatives.

A fourth and related area for administrative action is probably most relevant to large agencies, where it is possible for individual officers to become "lost in the crowd." It involves the reward systems traditionally employed by police agencies. In most departments, "aggressiveness" and "activity" -- lots of arrests -- are highly valued

commodities. In most departments, the most "active" officers are perceived, usually deservedly, as the "best cops": they are regarded as assets by field commanders and, perhaps less often, by their peers. While this system is generally admirable -- I'm sure that we all want bright, observant, and curious officers patrolling our neighborhood -- it is not without dangers.

I'm going to have to divert from my written remarks. Another area here that I would talk about at length, if I had the time, has to do with monitoring the performance of overzealous officers. It seems to me, on the basis of my experience, a lot of excessive use of force is tolerated by field commanders who regard the people who are involved as assets because they generate a lot of arrests. So it's very difficult for those people to take action against heroes. And it's very difficult for the administration of an agency to take action against those people because they don't have access to the most valid information. All they have are the arrest statistics coming in. So an argument that I would make would be that field commanders and supervisors should monitor the performance of their people. They should be held accountable for doing that.

An interesting point I think that can be made is the sub-parochial attitude that police agencies have. In my own agency, for example, we've taken commands from a lot of people because they didn't take any action upon corrupt activities by personnel, but I've never heard of anyone losing a command because of brutal activities of their personnel.

Another area has to do with training. When I came into the police department in 1963, I can recall my instructor telling me that a good cop's attitude should be that this is my street, and I'm only letting you guys use it. That obviously creates some problem. What we've done since then, is to revise recruit training considerably and we run an eight-month curriculum which New York State feels is worth 35 college credits, and we've spent about a third of that on social sciences. We're trying to get across the different philosophies to the recruits. In part of the community, we're trying to educate them in the mores of the different population sub-groups in New York City.

We've also changed deadly force training considerably. We've done away with a lot of the bull's-eye training, things that were not relevant to street patrol and tried to make it a course in officer survival and violence minimization. I think the whole department adopted a philosophy that the best solution to a potential confrontation is one that minimizes bloodshed. A good example of that I can think of

has been our response to the hostage situations, which are pretty frequent in New York City. Rather than assemble a special weapons and assault team, what we've done is set up a hostage recovery team which consists of people who are normally engaged in rescue work and were not weapons-types with negotiators who are trained in psychology, and they've been in operation for about six years now.

They've been engaged in 135 protracted hostage situations. They have had 100 percent success. They haven't killed anybody, they haven't wounded anybody, no hostage has been killed, no cop has been wounded, no cop has been injured, no cop has been killed. The only bad injuries were a couple of hostage-takers who committed suicide, the paranoid types. Other than that, we've done pretty well.

I think the things that I've outlined here have to do with the development of clear policy. The analysis of shooting incidents to find out what really is generating them -- through development of pretty stringent review procedures, performance monitoring, examining operational policies, and restructuring departmental philosophy -- I think is needed in a lot of these agencies in this country. And restructuring of the training program, which is pretty important.

I also perceive another problem. It's something that struck me during a discussion of the Attica riot. My feeling is that if there was a failure at Attica, it was largely an administrative failure, but

there's another issue that's involved. It has to do with sending cops into C block at Attica armed with 35 caliber armor-piercing rifles.

It also appears to me that the same point was made a couple of weeks ago on TV when the karate expert climbed the White House fence, and I watched six cops armed with night sticks trying to take him on. If you make those six cops two cops, and put them in a dark alley on a rainy night with the same guy, they're going to kill him. So there really is no alternative, because nobody is paid enough to take on a karate expert with a knife with a night stick.

My feeling is we have a problem. It's a societal problem; what it has to do with is the idea that anything less than a gun is sub-human. In discussions earlier, Bert was mentioning the police in Europe use rubber bullets and gases and things that stop people without killing them. We don't do that in this country. So it seems to me that what we're doing is limiting police to two alternatives: one that's not sufficient and the other that's overly final.

What I think we need is the development of some instruments that stop people without killing them, and the development of administrative guidelines like those we have in New York City to control guns for the control of those things. I think that's a major problem. That's a societal, philosophical problem rather than a police problem.

FILLING THE INFORMATION GAP:
A STUDY OF POLICE SHOOTINGS IN CHICAGO

William A. Geller
Research Director
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I would agree with Jim Fyfe that police shootings are a community problem in a sense that society gets the quality persons that it deserves, the quality police the community deserves. I'd like to confine my remarks just to the narrow question of how a public interest group, presumably in any of your cities, goes about doing a helpful study of police shootings.

Police departments normally provide detailed data on police shootings only to other law enforcement agencies, declining the requests of private researchers on the grounds that such researchers lack "a legitimate law enforcement interest." The resulting information gap may breed public suspicion that police have something to hide about their use of deadly force. This suspicion may be especially strong among those who already distrust the police. And the suspicion is fed by accounts of tragic, apparently unjustified police shootings, which typically are the only kind to make the headlines.

My remarks are based on my experience over the last 15 months conducting an empirical study of shootings of and by Chicago police officers. The study is a project of the Chicago Law Enforcement Study Group, a private, nonprofit, modestly endowed, criminal justice research organization of which I am research director.

The Study Group's research was prompted by inquiries from the media following the fatal shooting by a Chicago police officer of a handcuffed white boy. The youth was shot while fleeing from police after his arrest for attempting to steal a minibike from a garage. The department fired the officer involved, but the press has maintained a heightened interest in police shootings.

After designing a preliminary research format, we asked the police department for extensive data on police-involved shootings over a four-year period, 1974 through 1977. For the better part of a year, the police department refused to provide us with the data we requested. The reticence the department expressed is understandable for a number of reasons.

First, our request came in the highly charged atmosphere that follows a notorious police shooting, when a department typically feels defensive. Second, the Study Group, since its formation in 1970 by a number of Chicago-area legal, social service, and civic groups, has

developed a reputation as an outspoken critic of the police department. Our published reports have both commended and criticized police work, but the criticism has been stronger than the praise. In any event, few police departments willingly furnish information that they think might be turned against them.

But today the Chicago Police Department is giving us data which are among the most detailed ever received by private researchers in America. Public interest groups which want to study police shootings in other cities may be able to draw on our experience. I should add, although I don't want to go into the substance of our research, that the effect of the mere pendency of our research has been about -- what the police department confides -- a 20-percent reduction in shootings by police since last year.

When the police department declined to supply the data we had requested, we tried to learn as much about shootings of and by police as we could from other sources. We began reading the growing body of pertinent literature. We chatted with police officials who would give us their impressions of the characteristics of shooting incidents even though they would not or could not give us statistics to back them up. We began collecting newsclips about police shootings and studied the clipping files on the subject maintained by Chicago's Municipal Reference Library, a library open to the public but designed especially for use by city employees. Incidentally, such a library often will

establish additional clipping topic files if their utility is demonstrated, so if the library in your community does not have relevant clipping files, you might ask the library to set some up.

Once we learned the names of police officers and civilians who had shot one another fatally, we were able to study the transcripts of the coroner's inquests concerning these deaths. Information collected by citizen watchdog groups and the Afro-American Patrolmen's League was also of some use to us. We also studied the Chicago Police Board files on the shootings for which the police department sought to seriously discipline the officers. And our most important source was the office of the Cook County State's Attorney, which promptly agreed to permit Study Group researchers to collect data from its files on shootings by police officers. These files -- and the newsclips, coroner's, and police board files -- are based primarily on testimony or documents supplied by the police department, so even without obtaining records directly from the department, we were able to obtain some of the information contained in them.

Different kinds of information can be obtained from the sources I have mentioned. First, a literature review helped us identify issues and provided us with a sense of perspective. You have already heard today about the state of knowledge reflected in the literature.

Second, police department officials at various levels were helpful in a number of ways, despite the initial top-level decision not to expend departmental resources on our study. We contacted the officer in the department's research and development unit who was assigned to review deadly force guidelines of other departments with a view to reconsidering Chicago's guidelines. We offered him copies of the deadly force guidelines contained in every state statute and in the regulations of nearly every major police department in the nation. We had collected these documents through law library research and by sending form letters to every American police department in a city with over a half-million population.¹ The Chicago officer gratefully accepted copies of guidelines he had not seen and, in return, spoke with us for several hours about deadly force guidelines, training, departmental weapons and ammunition, and procedures for investigating police shootings. We also were

1. Our form letter explained the nature of our research and asked the departments to send us their deadly force guidelines and statistics on the number of police-involved shootings in their city during our four-year study period. Further, our letter promised to share with each department information we obtained from other departments. This promise, we learned, was attractive to many police departments, which, for a variety of reasons, tend not to communicate with other departments about policy and training.

given permission by the department to observe an eight-hour, in-service training program on deadly force, which nearly all 13,000 sworn personnel have been attending in groups. The information we gathered from these conversations and observations gave us an invaluable background.

Third, newsclips are a risky but still helpful source of data. Incidents are haphazardly reported, and usually no information is included about the characteristics of the involved police officers. Nevertheless, the newsclips may help clarify information which is ambiguous or illegible in official reports. In addition, the fact that a researcher may have nothing to depend on besides the sometimes slanted information in newspapers may prompt a police department to furnish information to correct the impression left by the news stories.

Fourth, coroner's records supplied us with a great deal of information about fatal shootings. Since the task of the coroner's jury is to determine the nature of the death, witnesses are called upon to explain what led to the fatal encounter. Typically, the lone witness is a police officer who testifies based on the reports of the officers who were involved. These files are unlikely to contain any information on the background and characteristics of the police officers

since such information usually is not relevant to the jury's task. One of the great advantages of these files, however, is that they are publicly available.

Fifth, citizen groups and liberal police associations will sometimes have files detailing questionable shooting incidents and any community activity concerning them. So, too, with the local human relations commission and the U.S. Justice Department's Community Relations Service.

Sixth, the Chicago Police Board, a five-member panel that oversees departmental policy and adjudicates serious disciplinary charges, has files on certain shootings. These are shootings by officers whom the department sought to suspend more than 30 days for their conduct during the incidents. There are very few such files, but these files contain extensive details of the shootings, as well as the officer's disciplinary record, and are publicly available.

Seventh, State's Attorney's records have been of tremendous assistance to us, and they were obtained with ease because our State's Attorney felt that such a study would serve the end of better enforcement of the laws. In Cook County, police seek the approval of a prosecutor before a suspect is charged with a felony. The

Felony Review Unit of the State's Attorney's office responds promptly to an arrest for a possible felony. An assistant State's Attorney takes sworn statements from the arresting officers, any other witnesses, and the suspects, if they are willing to give statements. As part of its work, the Felony Review Unit responds every time a police officer shoots someone because of the potential for charging the officer or the civilian with a felony. The statements and memoranda prepared by the Felony Review Unit provide a great deal of information about both fatal and nonfatal shootings.

Again, detailed information about police officers -- such as length of time on the force; number of months in present assignment at the time of the shooting; age, sex, and race; and disciplinary record -- normally is lacking. Nevertheless, by using these files we were able to compile the basic scenario of more than 500 shootings over four years. And we were able to review one or more police department documents on each of several hundred cases because the State's Attorney's office, for its own reasons, had kept copies of these documents. The kind of information normally contained in such documents is indicated by the data collection form we developed for our study, a copy of which can be made available to interested researchers.

Even after a year's worth of traveling around the city collecting all the data the above sources had to offer, we still were not in a position to address many of the issues that interest us, in part because our data were incomplete and in part because we needed arrest, deployment, and other information from the police department to put our findings in a meaningful context. So we returned to the police department and asked again for its cooperation. This time we were able to negotiate successfully for data.

Several factors may account for the department's decision finally to cooperate. Over the past year, we had demonstrated a sincere and lasting interest in deadly force issues and a willingness to study and discuss the issues in an open, objective way. Shortly after we undertook the study, we arranged to have some top flight empirical researchers serve without charge as consultants. Further, we convened a "Blue Ribbon Advisory Committee," composed of a U.S. Court of Appeals judge with considerable prosecutorial experience, an internationally respected dean of a major law school, the president of the Illinois State Bar Association, and the former director of the Illinois Bureau of Investigation.

Again, these people were willing to serve at no charge because of their interest in the topic. The established credentials of our advisors made it difficult for the police department to dismiss our deadly force project as a witch hunt. And the substantial network of people

represented by the Study Group's 23 sponsoring organizations made it clear, if there was any doubt, that there is considerable public interest in the use of deadly force.

Another factor which may have prompted the department's decision is that our study is not restricted to shootings by police officers. Our consideration of shootings of police officers is not a manipulative device, however, for we feel that one cannot fully understand why police shoot people unless one examines the risks that officers run of being shot themselves. In fact, the first break in the department's steadfast refusal to furnish data came several months ago when we told the acting superintendent that if he could not give us all the information we wanted, we would at least like to know minimal details of incidents in which police officers were shot. This was information we could not get from other sources with any consistency, and it was in the department's interest to have the public know that police run considerable risks in the performance of their duties.

It has also been in the department's interest -- and ours as well -- for the Study Group to refrain from commenting publicly, especially to the press, about the characteristics of police shootings until we have finished our study. Before we have analyzed our data, we will not have the basis for portraying police shootings or recommending ways to reduce them without unreasonably endangering the police or the public.

Two other differences between the circumstances of our first, unsuccessful request and our most recent, successful request to the department are noteworthy. For one thing, a new superintendent was named in the interim. He was appointed amidst considerable press and community outcry -- including our own² -- that the process being used to search for and select a new superintendent left no meaningful opportunity for public input. Despite defects in the selection procedure, however, the appointee, a career Chicago police officer, is a man with a very good reputation for responsiveness to the public. He may have taken an opportunity with our request for cooperation to demonstrate that he will continue to be open in his new position.

Secondly, and perhaps most important of all, after a year of data collection, we knew enough about police shootings to publish a report that would enhance understanding of the use of deadly force both within and outside of police departments. And it was clear to the department that we would publish our findings with or without departmental help on the project. It was also clear that the report would be a more accurate portrayal of shootings of and by police if the department filled in the gaps in our data.

2. See W. Geller, Chicago's Police Superintendent Selection: An Interim Assessment. Chicago: Chicago Law Enforcement Study Group (1978).

Furthermore, the department had our assurance, as it had from the inception of our project, that we would supply the department with a copy of the final draft of our report for technical review sufficiently in advance of publication to permit the police to submit written comments that we would publish in the report. Considerations such as these, perhaps combined with the constructive outlook of the new administration, apparently led the department to conclude it had more to gain than to lose by cooperating.

As we proceed with our study and receive information from the police department, we are operating in a way that respects legitimate departmental interests. Thus, so as not to breach promises of confidentiality to witnesses who furnished information to the police, we are not handling police department documents ourselves. Rather, the department is furnishing specific data about specific incidents which we could not obtain from other sources. There is, of course, a risk of mistakes by police clerks, and we would prefer that the responsibility for the accuracy of information rest with us and not with people beyond our control. But this is one of several compromises that we have considered worth making in order to obtain data. For with these data, a rich new information base will be available for people outside of police departments who wish to grapple with the complex issue of deadly force.

It is gratifying to me to see that the National Association of Human Rights Workers is concerned enough about the deadly force question to devote an entire panel to it, and I hope that those of you who want to explore the issue in your own cities can make use of the Study Group's experience. If any of you would like to discuss these matters further, I would be only too glad to do so. My phone number in Chicago is (312) 346-1179. And if any of you have suggestions for how we can fund the remainder of our study, I would be only too happy to listen!

A ROLE FOR COMMUNITY GROUPS AND HUMAN RIGHTS AGENCIES

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During the time that remains, I would like to tell you a little about the work we have done in the San Francisco Bay Area through the Northern California Police Practices Project and then discuss what communities and human rights commissions can do about deadly force problems. We set up a project designed to develop and demonstrate new methods for dealing with police abuse problems and police accountability. Principally, we attempted to use administrative rulemaking as a means for controlling police discretion and bringing police practices into line with the needs and concerns of the communities served by the police.

One of our primary concerns focused on police use of deadly force. The reason for that was not accidental. For there is no occurrence between police and communities that causes more outrage,

demoralization, and precipitates tension in a community as the police shooting of a civilian. I know of no other. It far surpasses any other sort of police abuse in intensity of the emotions generated and practical consequences. It breeds enormous resentment, distrust, and anger. Deadly force takes away human lives. And, of course, a police shooting raises severe, complex problems for most police officers. When we talk about police abuse generally, we have to begin with police shooting cases and work our way down from there.

We worked with community groups by assisting them in pressing for and making changes in the police practices of individual police departments. We also had the opportunity -- a good opportunity -- to work with several police departments in helping them devise remedies for troublesome practices.

What I am going to do in the time that remains is, first, to give you a few observations concerning police shooting incidents with which we were involved, focusing particularly on so-called self-defense cases. Second, I want to give you the sequence of events of a typical post-shooting investigation, including the exploration of post-shooting administrative remedies as they unfold. And third, I want to point out the role that I think community groups, human rights commissions, and community relations commissions can play in these sorts of incidents.

The problems of police use of deadly force and the circumstances which occur are tremendously fluid, tremendously complex. As you have heard this afternoon from several speakers, you can put to one side the question when police should and should not be permitted to shoot the fleeing felon. I think that, in many respects, the answer to that question is easily resolvable -- that is, when the police can and cannot use deadly force. Police chiefs can make strong, no-nonsense policies as Lee Brown and Jim Fyfe described. The bigger questions surround enforcement of policy directives.

The hard questions, the questions that come up repeatedly in less-sophisticated, small police departments and in the inner city areas of larger cities, are the situations where no major policy questions are involved in one way or the other. That is, the situations where it becomes very difficult to assign fault after the shooting has occurred. Typically, an officer will claim that the shooting did not happen in an attempt to apprehend a fleeing felon, but for purposes of self-defense and in good faith.

Now, you cannot make a policy choice about self-defense; every self-respecting department permits its officers to use deadly force when necessary in self-defense. The community, on the other hand, will often take the fact of the shooting and resulting death

as an indication that the officer acted illegally, that the officer was reckless, negligent, or, in some cases, a cold-blooded murderer. Let me give you some illustrations.

We have had situations where police have blown people's brains out "mistakenly" because the officer was trying to conduct a frisk at the same time he was holding a gun next to the suspect's head. We have examined situations where suspects have been killed because an officer believed -- often in good faith -- that the suspect was making a gesture to reach for a weapon which did not turn out to be a weapon, or the suspect was holding a knife with twelve feet separating the knife and the officer and the officer shoots in self-defense.

Those kinds of situations, I think, outrage most minority communities as much as the murder of the fleeing felon who is escaping from police pursuit. They are much more difficult to resolve after the fact and much harder to prevent. They involve judgmental decisions and a good deal of hindsight, but they also involve sacred human lives.

Let me give you a sequence of a typical post-shooting process and then we can get to remedies. What we have noted, at least in California, is that, typically, what happens is that a shooting will occur in a public place. The first step that the police often take

is to secure the scene, which means to separate out the witnesses, to look for weapons that may be around, then to call on ranking officers to help with the investigation.

One of the things that ordinarily does not happen is to separate the police witnesses. The focus is immediately upon the victim and the victim's friends or family, or who happens to be around, while the police go about their way, given the opportunity to fabricate a cover story, if one is necessary. A time later, a new ranking officer will show up on the scene and take over the investigation, with very little coordination with the officer who was previously in command at the scene.

Then there is public media exposure of the shooting and death; the community learns about it and an uproar begins. The next step in the uproar is that an ad hoc community group will form, composed of representatives from various groups and people in the neighborhood who will call themselves "the committee for justice for X" -- the person who was killed. The ad hoc group will immediately make some demands on the police department both in terms of preventing future killings and in terms of justice with respect to criminal charges against the officer who fired the gun.

The police will simultaneously be doing their own self investigation. At least most departments go through the motions in doing that; although some are better than others, most will go through the motions. They will send out some of the physical evidence for analysis to the criminalistics lab. The coroner's inquiry will be next. It will be monitored by the press and community groups will show up there. The officer, again, in most, but not all, departments will either be suspended with pay during the pendency of the investigation or assigned to an administrative duty while the investigation is going on.

Community groups will get more organized; demands will be made on the city council. In the vast majority of the cases, the police will announce to the public that the police officer was justified in taking the life under the circumstances. Very few details of that justification will be given.

In the meantime, the district attorney will announce that he either is or is not presenting the case to the grand jury although no investigation independent from the police department's is undertaken. Then if the grand jury hears the case, the jury announces whether an indictment will or will not be returned. Of course, the prosecutor makes a recommendation to the grand jury and often uses the grand jury as a lightning rod upon which the responsibility for the final decision

rests. But the prosecutor rarely tells the public that he recommended against an indictment. Hence no indictment is returned and responsibility or blame is cast on the "impartial" grand jury. The prosecutor does not have to take the heat.

Then the community effort of the ad hoc committee dissipates because time has gone on and there has been little positive response from the police or other authorities and the people move on to do other things. The council does not act. There is left a legacy of resentment over another killing that was never redressed by the agencies who should bring accountability to bear in the first place.

The reason I went through that process for you -- and of course it will not be identical in every case -- was to attempt to identify those issues or segments of the post-shooting process where we might have an impact in changing something. I think that the mistake that is often made by many community groups is that they take on the police killing situation as an all-or-nothing prospect. For example, besides asking that the police officer be criminally indicted and fired from the force, they ask that the police chief be fired or a citizen review board created. I found that if you take on too much in terms of immediate remedies in the defensive closing of ranks that occurs after the police kill someone, you are not going to accomplish much of anything in terms of change.

What has been somewhat more productive in our work has been to try to identify that sequence of events where decisions have been made by the police, prosecutors, city council, whomever is responsible for the shooting and post-shooting process. We have tried to identify decisions that were right or wrong from our perspective and then propose solutions that will remedy the bad decisions. I do not think you need much data to do that. Data are undoubtedly helpful, but we are in the beginning stages of gathering useful data nationwide.

What we have done -- and human rights commission staffers are certainly in a position to do it -- is to go to police departments and even some of the most rigid and rotten ones around and say: "Look, it is not a question of whether your officer was right or wrong. In fact, we are not here to assess blame with regard to this shooting. What we are here to say is that the community has a perception that this department was wrong both in the shooting and the way it conducted the post-shooting investigations." Remember I am speaking here of the hard cases -- the so-called mistake and self-defense cases.

The answer to the accusation of community perceptions is not for the police department to come out and say, "we did everything right." The answer is for the police department to make positive

changes that will assure people in the future. Then in the future things are going to be done differently and better.

I found that when you go to police departments and talk about perceptions held by the community rather than making allegations of absolute wrongdoing -- that is, "you're wrong and we're right" -- the defensiveness is lessened and you can begin talking about solutions. You can say, "the community believes you're wrong and that the only way these perceptions are going to be alleviated and the tension is going to be alleviated is by talking about the future and not just talking about the past." In other words, you have to really begin thinking about technical issues.

You have to make yourself an expert. I do not mean an expert like the people sitting here. But I mean an expert so that you at least understand what the sequence of events is and what the decision-making process is like. And once you can do that, you can start to identify remedies.

The differences I see in the community groups' roles and the human rights staffers' roles are the following: Community groups can put immediate pressure on a police department to do something. They can bring media attention to the problem or problems. They can focus public consciousness on the incidents of police use of deadly force and incidents of brutality. But what they cannot ordinarily do is give much technical help, and I use that word "help" as directed

to the police department.

They cannot really assist the department or the government in changing, because they just do not ordinarily have the expertise to talk the same operational language as the police. The community groups can do some investigation. The police can talk to witnesses; so can community investigators. But in the long run, community interest is going to fade. I have seen it happen time and time again, and I am sure you have too.

Deadly force raises strong emotions. Emotions eventually peak and then they fade. So if one puts all the eggs in one basket, hoping that an ad hoc group is going to be able to achieve all that it wants -- I am not going to say it will never happen -- it will rarely happen. Change will come more regularly when organizations like human rights commissions and staffers begin to tackle some of the tough issues in a non-adversarial fashion when they can do it.

I think that the major advantage of a human rights commission is that it can span various governmental agencies, and not restrict itself only to one. And that is to say nothing about the fact that its staff is paid, which provides incomparable staying power. I am not going to pretend that the local human rights commission is an equal agency of government because in most places it is not. But it

does have jurisdiction to at least look into and make recommendations about a broad segment of the criminal justice system, not just the police department.

As the earlier speakers pointed out, a lot of the problems are interrelated. It is not just the responsibility of the police, the community, the prosecutor, the correctional officers, and the like. The local human rights commission is in an ideal position to take a broader look at the interrelated components of the system.

The human rights commission can also investigate the investigation. That is, you do not have to go in and second-guess the police over the original incident, whether the police were right or wrong in their findings after investigating a deadly force incident -- of course, that assumes some public findings are available. But what you can do is to investigate the procedures used and the processes used when the police or prosecutor went through the motions of investigating. I believe that if a critique comes from a human rights commission which does not go to the ultimate question of right or wrong, but addresses the factors affecting the necessity to shoot or incentives to shoot and the aftermath of the shooting, it can be very, very beneficial.

In addition, the human rights commissions can add some openness to a situation that is ordinarily closed. Deadly force incidents, as most of you know, are the "don't-tell-them-anything" sort of situations.

I think a human rights commission is in a position, if it wants to be, to hold public hearings and hear from the public publicly, hear from the police publicly, and hear from the prosecutors publicly with regard to these sorts of controversies. They can do so in an atmosphere where some reflection is possible, because such public inquiry does not have to be done the day after the incident. I think you are in the unique position of being able to provide the forum for reflection. The police ordinarily will not open their system to public scrutiny by themselves, in part because they do not want to be attacked.

Finally, and I think most importantly, human rights commissions are in a very good position to use staff resources and commission resources to make remedial suggestions. That is, suggestions for change that go to the heart of the problems. As Bill Geller pointed out, and I think it is a point that was verified during our experience, you cannot just go to the police department and make demands. You have to help them out. The way to help them out is by suggesting alternatives. Few people like to do more work than they are paid to do; few people can perform multiple tasks at once.

So if you end up asking the police to change their process for investigating deadly force incidents, or to change their firearms policy,

or that they go from single-action guns to double-action guns, or that they make policies on cocking and drawing firearms, that they make policies that prisoners should not be searched with one hand while a gun is held in the other, you have provided some ideas which are practical. You have saved the department the time it takes to do the initial identification and analysis of issues. And you have done much of the think work that the police may not have the time to do, in part because think work takes dispassionate reflection.

Make recommendations that are affirmative steps toward incremental change. It can be done. I have seen numerous groups do it, and you do not have to be a pro to do it. I think sophisticated community groups and human rights staffers are in the position to move from making demands to initiating and developing the real changes that will make a difference, rather than the easier but far less effective method of making demands and watching them be rejected.

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