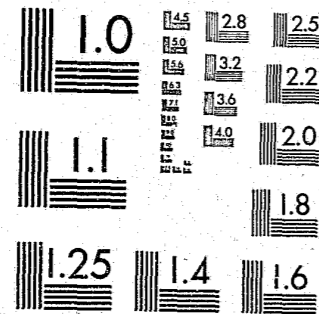


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National Institute of Justice
United States Department of Justice
Washington, D. C. 20531

9/25/85

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UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

U.S. Department of Justice
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PANEL DISCUSSION
INVESTIGATION OF OFFICER-INVOLVED SHOOTINGS

MSSRS:
CASEY, GOOP, KEITTER

WASHINGTON, D. C.

SEPTEMBER 11, 1978

P R O C E E D I N G S

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MR. CASEY: I like to classify shootings in my own little way, and I've really come up with four classes and subclasses.

One is the intentional shooting. Now, the intentional shooting, there are some subdivisions which I'll talk about later. One is the armed offender; one is the perception of a shiny object, or that he made a move, which also falls into the classification of self-defense. The other is the fleeing felon.

That's the intentional shooting.

The other type of shooting is the accidental, and I've got that subdivided into culpable and non-culpable -- the accidental shooting, and I will give you an example of each. And this is the reason that I have problems with the current debate on deadly force.

I tend to think that it's not real, in terms of the kinds of shootings that we deal with. Very seldom do you hear about an actual, provable police execution. Very frequently you hear about police accidents, police mistakes. Are all accidents the same? I suggest that they are not.

I'll give a good example. The police officer on patrol, after midnight, sees a car run a red light. He proceeds to put on his Mars lights and chases the car. The car then turns off its headlights and takes the police on a four

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or five-block side-street chase. The car then pulls into an alley and goes to a "T" intersection at the end of the alley and is stopped.

The two police officers get out of their car, approach the car from each side, with their guns drawn. As the officer is approaching the passenger side of the door, he has his gun in his right hand and he puts his left hand on the car door to open the car door, at which point the driver of the car puts the car in reverse. The policeman is standing on ice, and slips and falls.

The gun goes off and kills a 17 year old boy through the -- (inaudible) --

That is an accident. That's one accident.

Another incident. Police are in a neighborhood looking for three armed robbers. They approach an intersection, see three young men standing on a corner, and decide to question them.

Prior to questioning, they put them up against the wall, frisk them. One officer is conducting the search, the other officer holds his weapon. One of the gentlemen moves his head, the policeman raises his gun, like that (indicating) and the gun goes off. He shoots the gentleman and kills him.

Now, the questioning after that shooting, and it's almost verbatim from the policeman's statement:

"Did he make any move, of any threatning

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nature against you?"

The answer:

"No."

Question:

"Did he say anything to cause you any concern for your personal safety?"

The answer:

"No."

Did he resist the search in any way?

No, sir. He moved his head, and when I moved my gun up it went off. I don't know how it happened."

Now, except for the purposes, those are genuinely truthful answers. I don't want to get into whether or not -- credibility; it could have happened. Except -- those are -- accept the idea that those are truthful.

Now, there we have two accidents, in which two young men were killed by police officers. Are they both the same? I don't think they are. But the two are distinguishable.

In the first case, did an officer, after midnight, in a dark alley, after a three or four-block chase -- evasive chase -- did he have the right to have his weapon displayed as he approached that car, in the alley?

I would say yes, he did. What happened after that, is unfortunate as it may be, was not triggered by his negli-

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gence. He was standing on ice, the car did move, he did slip and fall.

In the other case, there is no right or rational explanation other than -- other than that the .38 Smith and Wesson revolver was cocked. He doesn't know that. We think the gun was cocked when he drew it out of his holster; maybe he cocked it unconsciously. -- gross negligence. That police officer has been suspended, is facing separation charges, and he's been indicted.

So -- investigation of police use of deadly force, it is a very, very complicated subject. I've tried to resist catch-phrases like: we will solve our problem if we put in enough restriction on the use of deadly force. I don't think we will.

In neither of the cases I've described would a restriction on fleeing felon, for example, have prevented either of those incidents. These incidents are very real incidents in the life of a policeman and the life of a police department, and they're very difficult to resolve.

I am not going to stand here and tell a roomful of police officers how to conduct an investigation. That is your training, it is why you became police officers, and so on.

What I can tell you is some of the things that I have seen in investigations that I think are helpful, and I'll

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tell you how we conduct ours --

I think it is the essence of police shooting, is the speed of the response and the speed with which the investigation is begun. Policemen, by nature, are nosy people. When a policeman is involved in a shooting, you can't -- you just don't take him away from that scene; everyone's sticking their nose in, trying to see what's going on. That is the last thing you need, is to have a lot of policemen sticking their nose in where they don't have any specific assigned duties. They are counterproductive.

I think the police officer involved in the shooting should be removed from that scene as quickly as possible. He is not of much value there; he's certainly not conducting his own investigation. I think he ought to be sent back to the station as quickly as possible with his supervisor.

(Inaudible remarks)

What is helpful is: who saw the shooting and what happened? That is, find as many people who either did or did not see the shooting, and get them on record as quickly as possible. That is the best way of insuring the integrity of what they're saying.

For example: police officers get a call of a burglary in a private, residential home. They respond; one unit goes to the front, one unit goes to the rear -- all by the book.

One policeman notices somebody jump off the roof.

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With his weapon out, he runs up and places him under arrest. As he is doing that, another person who he didn't see also jumped off the roof, lost his balance, stumbled into the first arrestee, who in turn stumbled into the policeman; all three of them went falling, the gun went off, and one of them is killed.

That night we took statements from the two individuals involved -- two other offenders other than the one who was killed. Both stated -- fairly consistently with the police officer, that there was this stumbling action before the gun discharged -- stumbling and jostling.

I went home and went to bed, woke up about 7:00 o'clock the next morning, turned on the radio, and there were two witnesses on the radio: there was no stumbling, there was no justling, and there was no pushing, nobody fell down; he just shot.

(Inaudible) -- to wake up the next morning and hear someone on the radio and television saying they saw that shooting, and you don't know who the hell that person is, you never saw him before in your life!

Now, there are things sometimes policemen tell you that you want to take with a grain of salt. One of the problems of policeman involved in a shooting, is that he always tries to make it appear a little better than it was. Particularly if it's a gray one -- (inaudible) --

WHD

1 I was reading a case report the other day of the
 2 -- of a battery case, where two kids were arrested for
 3 battery. In the narrative case report, the police had de-
 4 scribed the victims of the battery at one point as "two
 5 elderly gentlemen," and at another point described them as
 6 "two senior citizens." One was 52 and the other was 53.

7 But the policeman's version of the shooting has
 8 got to be given serious scrutiny. If he lies in any substan-
 9 tial degree, he has got a problem, and I would impress that --
 10 I would try to impress it on people as soon as they're involved
 11 in one. (Inaudible) -- but don't try to make it look a lot
 12 better.

13 If you called him a "motherfucker" say you called
 14 him a "motherfucker," because if you say "I didn't say any-
 15 thing," I guarantee ten people will have heard you!

16 We have had many policemen cause themselves a maxi-
 17 mum, immense amount of trouble, and sometimes their jobs,
 18 because they tried to turn a gray shooting into a Medal of
 19 Honor award-winning -- in trouble to the point of penitentiary.

20 The most controversial police shootings that I
 21 have seen are neither clearly justified or clearly unjustified.
 22 Very gray. Frequently, it is the word of a policeman pitted
 23 against the word of friends of the person shot, the person
 24 shot, if he lives, or friends of the person shot.

25 Some shootings obviously very clearly fall within

WHD

1 -- standards of -- some clearly do not. Most are in that
 2 gray area. People make fun of the "shiny object;" it makes
 3 good war stories. The shiny object is self-defense, whether
 4 you saw it or not, if he's telling the truth or he's not
 5 telling the truth. It is a plea of self-defense. Therefore,
 6 it's a --

7 In some cases, you can show that you probably did
 8 not see the shiny object, if as the gentleman said this
 9 morning, the bullet is --

10 (Balance of this speaker's remarks inaudible for
 11 continuous transcription.)

12 (Inaudible question)

13 MR. CASEY: In 1975, 136 citizens were shot by the
 14 Chicago police; of that 136, 38 were fatal.

15 In 1976, 79 were shot by the police; of that, 16
 16 were fatal. In 1977, 89; 31 of them fatal.

17 A lot, but not inordinate.

18 QUESTION: I'm still interested in this joint
 19 effort of the different agencies investigating the shooting.

20 What kind of safeguards do you have to prevent the
 21 culpable police officer who shot a person criminally, and him
 22 being culpable; right? What kind of safeguards do your par-
 23 ticular outfit have to prevent that guy from saying something
 24 that might incriminate himself? Saying something in viola-
 25 tion of Miranda?

End Side #1 17

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1 MR. CASEY: You mean the police officer?

2 QUESTION: Yes.

3 MR. CASEY: We have two required reports by a
4 police officer when he discharges his weapon. One is the
5 Firearms Use Report, which gets into a lot of technical
6 information; the other is a brief -- subject regarding what
7 happened in the incident.

8 After a shooting, when the formal statement from
9 the police officer -- in every shooting, he is given a crim-
10 inal warning, the right to remain silent. In every fatal
11 shooting he is given that right, initially given that right
12 when we take his formal statement.

13 QUESTION: Our Department can require that he sub-
14 mit an administrative report, but as far as the statement is
15 concerned, that's -- we don't require it.

16 MR. CASEY: No, no. I understand that. We require
17 some administrative reports. That's -- when the formal state-
18 ment is taken, the police officer is given the right to remain
19 silent; in other words, he is not ordered to give the state-
20 ment.

21 Now, in 98 percent of our shootings, the policeman
22 waive the right to remain silent, and give a statement. But
23 he is given full Miranda warnings at the time he gives the
24 statement.

25 Is that what you're driving at?

LWHD

1 QUESTION: Yes. Maybe not quite so far.

2 There are occasions where a police officer may or
3 may not -- be in danger of being indicted over a shooting.
4 Okay; if it doesn't go so far that he's in violation of --
5 he's not in danger of being indicted, that he may have just
6 only gone so far as to have violated Departmental regulations,
7 you've got to do that; right?

8 MR. CASEY: Uh-huh.

9 QUESTION: All right. Our Internal Affairs
10 Division is primarily assigned -- concerned with the violation
11 of Departmental regulations, but in a case when we get into
12 areas where the shooting becomes criminal, where do we stop
13 and where do we continue on?

14 MR. CASEY: What we do is, we initially give all
15 policemen involved in shootings the Miranda warning. Okay?
16 Until it has been determined that there is not any crime
17 involved.

18 Then at a later point we will then bring the man
19 in, he will then be ordered to give a detailed statement.
20 But that's not until it has been clearly established that
21 there is not a crime involved, and no real probability of
22 criminal investigation exists.

23 QUESTION: So Miranda warnings are given prior to
24 administrative reports; is that correct? From what you just
25 said?

WHD

1 MR. CASEY: There are two required administrative
2 reports, right.

3 QUESTION: Those are filled out then; then Miranda
4 intervenes.

5 MR. CASEY: Correct.

6 QUESTION: Do you have any statistics at this
7 point as to how many officers, after the Miranda interview,
8 request counsel and then go on with the statement?

9 MR. CASEY: I don't have any figures on it.

10 QUESTION: Is that common?

11 MR. CASEY: It is not uncommon. It is not uncommon.

12 Police association attorneys are on call, and
13 generally they're there within 15 or 20 minutes if the police-
14 man desires it. So we do allow them to have counsel. It is
15 not uncommon for a policeman to request a lawyer. And then
16 proceed with his statement.

17 In some instances, the police officer has refused
18 to give a statement. We then proceed with the investigation
19 without the statement, make a determination of the facts,
20 whether there's criminal involvement or not; if not, --

21 But it's not uncommon to have an attorney present.

22 (Inaudible question)

23 MR. CASEY: No, no. Generally speaking, the duty
24 status of police officers in Chicago generally remains unal-
25 tered.

WHD

1 (Inaudible question.)

2 MR. CASEY: No, no. I've never seen one of these
3 initial investigations that didn't last at least through the
4 tour of duty.

5 I know, you're talking about -- like the next day.
6 Unless we have some indication of mishandling, we do not
7 alter his duty status.

8 (Inaudible question)

9 MR. CASEY: Oh, yeah; the people have gone home
10 in the meantime.

11 I'm getting confused by your question.

12 MR. CASEY: If there's no wrongdoing found, he's
13 generally through for the day. And he goes back to work the
14 next day. He goes back to work the next day, to his normal
15 duty assignment, unless he claims to be injured, or wants
16 medical -- wants to go on medical. We're very liberal with
17 medical after a shooting, if a policeman wants it. We don't
18 force it on him.

19 But unless -- and until we determine that there is
20 a -- and I don't mean really prove it. But a strong possibil-
21 ity of misconduct, we generally don't alter his duty status.

22 (Inaudible question)

23 MR. CASEY: Yes; we don't make that determination.
24 We expect him back to work the next day. If he wants time
25 off, then it will be given to him, but we don't force it on

WHD

1 him, and will not force him.

2 QUESTION: Is he required to take that time off with
3 either his regular leave, vacation, or his sick leave, or do
4 you have a special kind of leave for that situation?

5 MR. CASEY: No. If he's not going to come to work,
6 he's got to say: "I don't feel well enough to come to work,"
7 and then he's on medical.

8 QUESTION: So he uses up some of his sick leave?

9 MR. CASEY: Yes. Other than that, we expect him
10 at work.

11 (Inaudible question)

12 MR. CASEY: Not unless he was hurt in the incident.
13 I mean, if he got kicked in the leg, then he can take the --
14 then he can go "Injured on duty."

15 (Inaudible question)

16 MR. CASEY: In Illinois, they generally are subpoena-
17 able. Yes, they generally are subpoenaed, by court direction.

18 QUESTION: Mr. Casey, I'd just like to know, just
19 what are your views about putting a guy right back in the
20 same area where he's just had a shooting, say on the day
21 prior to that?

22 I'm involved in an investigation right now which
23 occurred just a couple of days before I came out here; a cop
24 shot a guy out in a public project area, the guy was trying
25 to interfere with him towing a stolen car. The next day he

WHD

1 and his partner go back into the same area, and their radio
2 car was all shot up -- about 12 shots.

3 I'm involved with this investigation now, and we're
4 very concerned about establishing some kind of a policy as
5 to whether or not we should advise these guys, to take a week
6 off, or maybe assign them to a different area.

7 MR. CASEY: Many departments -- well, there are
8 several answers. Many departments send people home for a
9 week, to stay home and -- you know, do whatever they want.
10 Some put them on light duty, put them inside.

11 As I say, we generally do not; we generally send
12 them back to work. If there is a great deal of tension in
13 that community, because of the shooting, then we may transfer
14 them to another district to keep them out of there.

15 QUESTION: Permanent or temporary?

16 MR. CASEY: Sometimes temporary, sometimes perma-
17 nent, if there is a great deal of tension in the community,
18 in order to minimize that.

19 I don't know -- I know what we do. We have dis-
20 cussed whether or not we should remove the policeman -- you
21 know, just give him time off.

22 Most of the policemen don't like it, because they
23 think it's an implication that they've done something wrong.
24 Some shootings -- shootings affect different men different
25 ways. If it is a clearly justifiable shooting, many policemen

WHD

16

1 will return to work without any perceptible effects. I have
2 seen policemen go to pieces --

3 Now, I don't know. I understand what other depart-
4 ments have done. We have done -- we just haven't done --
5 if there is an indication of wrongdoing, we then bench, and
6 bring them inside, until we make a final determination.

7 If there is tension in the community, we will cer-
8 tainly transfer him, so he's not involved with the same
9 people the next night.

10
11 MODERATOR: -- Richard Groop, who's a First
12 Lieutenant in the Michigan Department of State Police, and
13 has been assigned as Assistant Commanding Officer of the
14 Executive Division since 1977.

15 He's responsible for the supervision of policy
16 development, equipment evaluation, departmental research,
17 Governor's security, legislative analysis and legal research.

18 Sounds as though they give you everything they
19 can't find somebody else for!

20 Okay: with that note, let me turn it over to him,
21 and hear what the Michigan State Police do.

22 LIEUTENANT GROOP: Let's just take a second to
23 familiarize you a little bit with our Department.

24 In Michigan, our State Police have been named a
25 Department and our Director reports directly to the Governor.

LWHD

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1 We're not limited to highway patrol; we are full-service --
2 we also provide various support services for various State
3 functions.

4 We have an authorized strength of 2,356 men; we
5 also have approximately 1,000 civilian employees in various
6 support services.

7 I don't want to get into what we had this morning,
8 because I'm sure most all of you know more about that topic
9 than I do. I just want to state our position, and go from
10 there into some -- into investigation.

11 By procedure, all Michigan police officers have --
12 what we discussed this morning, the same rights and so forth.
13 The only limitation that we have placed on these basic rights
14 in our procedure in the Department is something to the effect
15 that deadly force shall be used only when all other efforts
16 have been unsuccessful.

17 "Officers shall be ever mindful of the seri-
18 ousness of the offense for which the person is being
19 arrested, and exercise discretion to determine their
20 capacity to use firearms.

21 An officer shall not fire on a person that
22 is fleeing from him on mere suspicion that he has com-
23 mitted a felony, or solely because he fails to stop at
24 his command or runs a blockade."

25 That's our basic policy.

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1 It goes one step further and says:

2 "Under no circumstances can use of a firearm
3 be justified in effecting arrest for a misdemeanor or
4 a person fleeing from that crime."

5 We've kicked this around many times within our
6 Department. Top brass has reviewed it many times; it has
7 always ended up coming back around in a circle, and our posi-
8 tion today is that our policy is what we want it to be, and
9 we don't intend to change in the near future. As times
10 change, we may change.

11 But I think we can say this mainly because in our
12 Department the use of force has not been a major problem
13 for us. If it had, then we probably would have changed.

14 Our Department relies mainly on employee selection
15 and training, to provide the judgment that is necessary to
16 follow our policy. We rely on their judgment, and --

17 Like, as discussed this morning, our officers are
18 trained on the weapon carried; they don't carry other weapons.
19 We require them to carry and train on what we tell them to
20 carry. They also carry the ammunition that we provide,
21 nothing else.

22 Any time an officer in our Department uses a wea-
23 pon for anything besides his recruit training program or
24 target practice, he is required to notify his commander --
25 his immediate superior. This is done immediately by him. His

1 immediate superiors are required to notify our Federal Operations
2 Section immediately.

3 The Operations Center will go one step further in the
4 average run-of-the-mill use of a firearm and they will write a
5 memo which is directed to the top command in the Department.
6 He will just review it. If somebody is shot, however, immediate
7 notification is required by the Director and involves top
8 command people in our Department. The State Police Crime
9 Laboratory is notified if somebody is shot. They may or may
10 not respond.

11 Our investigation commences as soon as possible after
12 notification of the top brass in the Department. Our problem
13 there is we are spread out throughout the State. There is no
14 one person such as Internal Affairs type thing that could go
15 500 miles and begin an immediate investigation. It is not
16 feasible. When we do our reports an investigation is handled
17 simply at local level. It is handled by the detectives that
18 are assigned there, either post or district, preferably district.
19 The local post commander has a responsibility to see that --
20 He may take an active part in it or he may just sit back and
21 let -- but he's still got a responsibility.

22 The crime laboratory will normally respond if it can
23 give any assistance. Its sole function is gathering evidence
24 at the scene, find out what happened.

25 Interdepartmental affairs normally will never

1 investigate a shooting. If they do get involved in it it will
 2 be on the basis of something that was revealed in the initial
 3 report of the investigation and they will work from there.

4 In all cases the officer's weapon is taken from him
 5 and it is checked to make sure that it is an approved weapon
 6 and that approved ammunition was used when someone was shot.
 7 They run a ballistics check on it to make sure that that was
 8 the weapon used that shot someone.

9 Ordinance inspection also makes an inspection of
 10 this weapon to make sure that the weapon was not defective.
 11 If claim is made that it went off by itself, we want to know
 12 that it is a fact.

13 Our biggest problem in investigation was -- We
 14 found in the past the problem is it seems like there are too
 15 many little areas when you are talking to a fellow officer
 16 you want to kind of slough it off, different areas that seems
 17 to be too basic to even ask him. We found it doubly important
 18 to ask him these very basic questions and get it reported on
 19 the record for later use. It is very important.

20 We go one step further in the end of our investiga-
 21 tion we hold the investigator accountable for a good investiga-
 22 tion. We also hold his superiors accountable for a good in-
 23 vestigation. That stimulates him into doing a better job.
 24 We can't afford any sloppy investigation. We can't afford
 25 overlooking anything. The biggest thing we have to do is

1 forget that it involves one of our own when we are investigating.
 2 The biggest favor you can do. We do not request our officers
 3 to take a polygraph examination. We cannot. We've had a
 4 permanent injunction against our department prohibiting this.
 5 If they request it themselves, we will administer it.

6 QUESTION: (Inaudible)

7 LIEUTENANT GROOP: No, nothing to do with that.
 8 It is simply that in all State Governments you cannot use a
 9 polygraph as a means of determining whether or not someone
 10 is to remain --

11 QUESTION: What if you find that the trooper has
 12 violated rules and regulations?

13 LIEUTENANT GROOP: If you will hold that question,
 14 I will get to it in a minute.

15 Once our basic investigation is completed which is
 16 done by -- and they have special training in handling this --
 17 in dealing with our own people, it works quite well. Once
 18 that's completed, our Training Division is required to make
 19 an evaluation of the incident. Now this in no way conflicts
 20 with the other. The Training Division will do an evaluation
 21 later. That's simply for training purposes. What happens
 22 there, they will come in once the thing is resolved and look
 23 it over. Once in a while they come up with a worthwhile thing
 24 that may be published in the field as a training aid, where
 25 an officer did something right or maybe did something wrong.

1 And that is strictly to improve training in the field.

2 One incident that was helpful -- shooting incident.
3 The Training Division went out after the shooting incident and
4 found that the guy was complaining about not being able to get
5 the thing open. It turned out we chatted and found that the
6 gun would hardly pull open and he almost had to use his teeth
7 on it. So we quickly changed over and put nylon and put
8 prongs on them and it was helpful. So that's the purpose of
9 that type of evaluation.

10 The officer involved is required to submit certain
11 reports, The Use of Firearm Report, which again is designed
12 to make sure what the officer did, what he did right and
13 what he did wrong. It is used to assist in our training
14 program and may lead to new training programs or to changes
15 within training programs.

16 The form you have furnished there is under review
17 right now and in all probability there will be changes made.
18 The officers are also required to submit a special report
19 in shooting incidents. I should preface this by saying these
20 reports we are talking about now should be basically when no
21 one is shot, accidental discharge or something like that.

22 Special report is a report to our department
23 directors specifying what happened during the incident.
24 Officers can be directed to answer any questions by the
25 investigator. Failure to do so will end up in discipline

1 proceedings.

2 If someone is shot and there is no prosecution
3 anticipated against the officer, the officer will submit the
4 same reports. Use of firearms will submit a special report.
5 He will also be directed to answer questions by the investiga-
6 tor. However, if someone is shot and prosecution is antici-
7 pated, there will be no report submitted by the officer and
8 we won't accept them if he were to make them. He doesn't have
9 to submit them. No questioning without the Miranda warning
10 in that situation. If charged with a crime, he will be sus-
11 pended immediately without pay.

12 If an officer fatally shoots someone -- until this
13 is resolved through an investigation, the officer is placed on
14 administrative leave with pay. That's if someone is fatally
15 shot.

16 Our policy presently states that an officer is
17 considered innocent of any wrongdoing until facts overcome
18 this presumption. It didn't always state that. We found
19 that in the past we had a lot of Gestapo-like tactics as
20 far as investigations were concerned. We also found that it
21 didn't pay off at all. We ended up with a lot of people that
22 got awfully angry. We don't find any place for that today.
23 Years ago it was entirely different. I think we are catching
24 up with the trend there and it is well that we have.

25 If you mistreat people when you are investigating

1 we've found that they will find coverups and there won't ever
 2 be able to know what's going on out there. The only way you
 3 will get honest factual reporting is to treat them properly,
 4 back them when you can and if they are wrong they are wrong.
 5 We are very fortunate we have honest reporting and hope we
 6 can keep it that way.

7 In all cases when someone is shot a prosecutor is
 8 contacted. We ask him for a statement at that time con-
 9 curring with our findings on the investigation of the incident.
 10 If we find that our man was not involved, we request a state-
 11 ment from him on this.

12 Our department has a Force's Evaluation Committee
 13 which kind of pulls this all together. The reports come in
 14 from the field investigation and our Force Evaluation
 15 Committee functions is to sit down and review the report. It
 16 can require further investigation; it can also interview people
 17 if they want. This committee is made up of our Uniform
 18 Division Commander, our Detective Division Commander and our
 19 department legal adviser. Conceptually this is fine. It is
 20 their function to review the matter and if they find the man
 21 is operating within our rules and regulations there would be
 22 no problem involved. They can also recommend discipline action.
 23 If they recommend discipline action, it goes through the
 24 standard discipline procedure. They do not administer any
 25 discipline.

1 This body can also review the material and find
 2 that we are lacking in training procedures or policy.
 3 One problem with our Force Evaluation Committee is that its
 4 application is not good in our department. Our biggest
 5 problem is that the main link in this whole thing is the
 6 Department Legal Adviser which we presently do not have. We
 7 have to rely on the Attorney General of Michigan for legal
 8 advice. During the past when there was an Assistant Attorney
 9 General -- we also worked with him closely. As we no longer
 10 have one, we have to ask for one and we may or may not get
 11 the same one. It is a problem on that type of thing.

12 One problem that the Attorney General has in Michigan
 13 is that he wears several hats. He represents the Department.
 14 He represents our officers civilly or he could be representing
 15 a citizen in another department in a claim against us in
 16 civil rights litigation. So he is kind of in the middle too,
 17 but it doesn't help our Force Evaluation Committee to not have
 18 --

19 So I have a feeling that good critical evaluation is
 20 a must regardless of how you do it. We do it; we'd like to
 21 have it improved. I don't know how we can have it in our
 22 present situation. We don't investigate and do a thorough
 23 review, critical review, of every shooting. We have a strong
 24 feeling that civilian review boards will, Civil Rights
 25 Department will complain against you or you may be tried in

1 the media. We feel that a good thorough investigation
 2 protects the officer and it protects the department. We want
 3 to know if our officer is wrong. We are not going to protect
 4 him. We want to know if he is right or if he is wrong. A
 5 sloppy investigation is a disservice to an officer. If it is
 6 done sloppily, if you just touch the surface on an investigation
 7 it will come to light, probably a couple years later. Then
 8 everybody looks bad. Then you have a hard time convincing
 9 anyone who had anything to do with this whole affair that it
 10 wasn't a deliberate coverup on the part of the department.
 11 That is something you have to watch.

12 Our department's shooting philosophy is shoot only
 13 when necessary, as told by training. We have a fear that
 14 too much restriction would cause some hesitation that could
 15 cause problems. Civil suits, we feel that a more restricted
 16 regulation would be used against us, as it has already.

17 We don't have too many shooting incidents in a year's
 18 time. Last year we had a total of 17 in our department. We
 19 haven't shot anyone fatally in three years. That's pretty
 20 good. As far as I can tell from our files we have had
 21 14 officers killed in that time.

22 One of our shooting incidents was when one of our
 23 officers a while back had a valid B&E in progress, holding
 24 a gun on the subject, approaching him from behind, when he
 25 accidentally shot him. It could have been a good piece of

1 police work and we ended up with a darn serious problem, both
 2 for him and for us. Our findings showed that the officer was
 3 negligent. Nowhere was he ever taught to cock a gun before
 4 using it. He was never taught to never point it at someone --
 5 The gun was examined and it didn't have any defects. Looking
 6 at it as policemen we could all see how that could happen.
 7 Excitement of the chase, alone at night -- but the full facts
 8 are we had a serious problem as a result of this. And no
 9 matter what we do we must get it thoroughly documented and
 10 let the chips fall where they may.

11 A remedy to any of our problems so far that has been
 12 successful is to put new emphasis on training. The man had
 13 the gun cocked. You've got to drill it into them that they
 14 can't. It may help, it may not.

15 Departmental discipline is our next step. They
 16 have to know that each and every incident when they use their
 17 gun -- we are not restricting them -- is going to be reviewed
 18 and carefully looked at by someone in a critical manner.
 19 Unless you have that you are going to have real problems.
 20 If the officer knows it is going to be closely looked at
 21 that in itself helps to develop discretion and caution.

22 Our department does not carry liability insurance
 23 for such acts. To date, we've had a minimal number of
 24 suits against us and judgments haven't been large. There
 25 again, our department kicked insurance around quite a bit

1 and basically came right on back where we decided we (inaudible)
 2 One thing that probably works in our favor is that if an
 3 officer has something at stake, rather than an increase in our
 4 insurance premium, that he may be more cautious.

5 After a shooting incident is resolved, we presently
 6 do very little for our officers. One step we are taking after
 7 this month we will have a departmental psychiatrist coming on
 8 board. Hopefully this will help our officers to adjust after
 9 a shooting and also to cover our tracks if anything should
 10 occur after he goes out on the street.

11 We haven't made too many changes in our program.
 12 The addition of the psychiatrist is probably the only current
 13 one. We are into training our investigators to do a more
 14 thorough job investigating. We push for that type of training.
 15 Aside from that, we've done very little with our program in
 16 quite a while. Things that work for us may not work for you.

17 A really strong Freedom of Information Act was
 18 passed in Michigan, whereby most of our reports are subject
 19 to being turned over to anyone asking for them. We may win
 20 or we may lose on these. If we should lose, we will have a
 21 serious problem with our entire reporting system. If an
 22 officer knows that a report that he candidly submits is going
 23 to be in the hands of an attorney suing him, in all probability
 24 -- loss of memory -- It could be a problem for us too. We
 25 in the Michigan, at least at the State Police level, don't

1 have the answers to this whole problem.

2 Do you wish to direct some questions to me or, if
 3 you prefer, to the panel?

4 QUESTION: Yes, sir.

5 In your in-house investigation of a shooting in-
 6 volving an officer, is this of your own choice or only because
 7 you are the supreme State agent that you don't want to dele-
 8 gate the responsibility to another, let us say, county agency
 9 where the shooting might have occurred?

10 LIEUTENANT GROOP: No, we investigate our own by
 11 choice. We often will investigate other departments at the
 12 request of -- and assist them.

13 QUESTION: Other than the prosecutor assisting you
 14 or your asking for his opinion -- concurrence with your in-
 15 vestigation, your findings, this is really the only other
 16 look that you have at your own investigation; is that correct?

17 LIEUTENANT GROOP: That's right, unless it went
 18 through a coroner's inquest, but as far as internal --
 19 (Tape inaudible for about 5 minutes.)

20 MODERATOR: Okay. Let's do the last member of the
 21 panel's presentation and then we will take a break and then
 22 we should have some time for questions after that.

23 The last jurisdiction is another large city, not
 24 quite as large, Kansas City, Missouri. We have James Keiter
 25 who was appointed to the rank of Lieutenant Colonel in 1977.

1 After serving as Night Operations Bureau Commander and
 2 Commander of the Desegregation Task Force, he was assigned as
 3 Director of Operation Support where he has responsibility for
 4 administrative services, including internal affairs -- I am
 5 sorry. I take that back. You had been Commander of Internal
 6 Affairs previously.

7 LIEUTENANT KEITER: I do represent the smallest
 8 police department on the panel this afternoon. I kind of
 9 feel like a piker as I've heard some of the statistics of
 10 Chicago. We have nothing that will match that, and we are
 11 thankful for that.

12 I would like to give you a little information about
 13 Kansas City, Missouri, and put it in the proper perspective
 14 as far as the size of the city and the department: 700,000
 15 and metropolitan-wide about 1.3 million. The city limits
 16 is 316 square miles, that we have responsibility for policing
 17 and this lies in three separate counties. So when we go for
 18 prosecution -- When we have to draft up a procedure and policy
 19 statement, we have to touch base with just about everybody.

20 We have 1200 police officers and about 500 civilian
 21 supporting force. We have one precinct that is under State
 22 control. We still have the Board of Police Commissioners who
 23 are appointed by the Governor of the State of Missouri, who
 24 in turn appoints a Chief. Fiscally we are funded by the City
 25 of Kansas City, Missouri, but we are under State control.

1 St. Louis and Baltimore, Maryland, are still like that.

2 The law that applies in the State of Missouri and
 3 the firearms policies are pretty well spelled out in your
 4 manual, although there is an updated version, smiliar to the
 5 one that you do have in the manual, that we operate under.
 6 In preparing for this, I traced back to our first firearms
 7 policy which was written in 1942 and basically said who was
 8 responsible -- and then from that we have come up to what
 9 we have today. So we have made some progress. I think it is
 10 progress. At least we are moving.

11 I found out in the Police Foundation book that they
 12 classify Kansas City investigating methods as a hybrid system.
 13 I am not sure exactly what that means. We do use a two-
 14 investigating team method. The one that carries the most
 15 authority is the Crimes Against Persons Division or the
 16 criminal investigation elements of the police department.
 17 They have the primary responsibility for investigating officers
 18 who become involved in shootings and the discharge of firearms
 19 and the like. Paralelling this investigation is the Internal
 20 Affairs Division, and they have separate responsibilities
 21 which I will get into.

22 The criminal aspects, the Crimes Against Persons
 23 Division makes no distinction between situations involving
 24 police officers and shootings in which police officers are not
 25 involved. They use the same techniques, which are all the

1 ones that have been discussed here earlier today and I am sure
 2 your departments are applying back in your own jurisdictions,
 3 the various techniques of the labs, photographing, diagramming,
 4 right on down the line. We apply no special techniques.

5 I think it was Jim who was talking about the use of
 6 labs. We do have a very important situation right across the
 7 State line in Kansas City, Kansas. Basically what has happened
 8 is that we've had a Wynedi County reserve officer killed in a
 9 shooting situation. The importance of the lab, unfortunately,
 10 in this case, is determining whether it was the assailant's
 11 weapon who brought down the officer or another officer who
 12 brought down the Wynedi County officer. It is supposed to be
 13 resolved today, but I have been out of town and simply have
 14 not heard.

15 That is standard operation any time we have more than
 16 one shot fired in Kansas City, Missouri, -- ballistics lab --
 17 again, I am not telling you anything new.

18 At the completion of the criminal investigation,
 19 when this file is totally ready to be wrapped up and Case
 20 Review has reviewed it, which is an element within the
 21 Investigative Bureau, it then goes to the prosecutor and he
 22 makes a ruling on it or he sends it to the grand jury who
 23 makes the ruling on it. And in the last year, we have found
 24 more of them going to the grand jury than the prosecutor
 25 wanted to take his officer's authority to rule on. So we do

1 have more going to the grand jury right now than we have ever
 2 had in the past.

3 As I say, concurrent with this, Internal Affairs
 4 conducts the investigation. They have several objectives in
 5 theirs. One of them is to provide a very rapid summarization
 6 of the shooting, of the discharge situation, for the Chief.
 7 This puts him in a position where he can respond with authority
 8 to the inquiries of the media and gives him first-hand knowledge
 9 of what has taken place. It does provide first-hand infor-
 10 mation in the event that a complaint is filed against the
 11 officer, against the police department. We have a complete
 12 file on it. Internal Affairs is charged with documenting
 13 everything that led up to it, what transpired during the
 14 situation and then what happened immediately thereafter the
 15 situation. Internal Affairs does not and will not make any
 16 recommendations concerning disciplinary action or whether
 17 or not there was violation of policy or procedure of the
 18 police department. It is a very objective investigation,
 19 that's why we ask that no recommendations come from this
 20 group.

21 At the conclusion of their investigation, they
 22 submit the entire file to the Chief for his review and a
 23 copy to the Firearms Review Panel. I will get to the Firearms
 24 Review Panel in just a moment, but let me talk about some of
 25 the safeguards that we incorporate during the investigation.

1 Any officer involved in a shooting has certainly every right
 2 a citizen has while under investigation. Any officer involved
 3 in a fatal shooting is immediately relieved of duty with full
 4 pay, full allowance. We have done this for years. It does
 5 not reflect negatively on the officer if you apply it con-
 6 sistently right down the line. They know that if this happens,
 7 if it is them, discharge, or two months later the same thing
 8 is going to happen. Full pay, full allowance -- this allows
 9 him an opportunity (inaudible) on the street. It also makes
 10 him available to assist the investigators on proceeding as
 11 quickly as possible with the investigation.

12 We realize that it is an extremely emotional ex-
 13 perience. Therefore, it is mandatory in the Kansas City
 14 Police Department at this time to very shortly thereafter he
 15 goes through a psychological debriefing with department
 16 psychologists, and this if, of course, at no expense to him.
 17 We even extend it beyond that. If it is not the subject
 18 officer but another officer that a supervisor feels that be-
 19 cause of the trauma of the situation he needs it, then we will
 20 send him. We have had some bad experiences where an officer
 21 has been a witness officer and saw his partner go down and
 22 six or seven years later he has had -- you know, he has gone
 23 berserk for no apparent reason, until we sent him to the
 24 psychiatrist and it comes out that he has been holding these
 25 feelings within himself all these many years. So we have

1 instituted this program in the last 90 days and it has been
 2 well accepted.

3 Internal Affairs has strict procedures concerning
 4 the conducting of their investigation as to the length of the
 5 interview the time of the interview, the fact that the questions
 6 be relevant and pertinent to the area of knowledge. We do
 7 know (inaudible) is trying to build a case against this
 8 officer just because we have this officer here on a discharge
 9 or a shooting situation. He may be one that has passed through
 10 Internal Affairs doors every other day on brutality, excessive
 11 force and all these other things. We don't capitalize on the
 12 opportunity. The area of pertinent knowledge is all that we
 13 look into at this point. We go for no devious questioning
 14 techniques. It is all straight and above-board.

15 Firearms Review Panel that I mentioned reviews all
 16 situations when a firearm has been discharged by an officer
 17 -- whether it is intentionally or whether it is accidental.
 18 This panel provides recommendations and modifies policies,
 19 procedures and training based on the data that they receive
 20 in review. They also maintain statistics as to types of
 21 situations that we become involved in. It is a standing
 22 panel and there are five voting members on this board. The
 23 Chairman is the Executive Officer of our Field Services
 24 Bureau of Uniform Operations, simply because he has the
 25 majority of personnel coming before this panel. Another

1 voting member is the Commander of the Crimes Against Persons
 2 Division, the one who is responsible for the criminal investi-
 3 gation. Another voting member is the supervisor of our Fire-
 4 arms Training, and he is looking at it from the fact of up-
 5 grading training, who will need additional training, different
 6 types of training. The immediate commander of the subject
 7 officer also is a voting member on this panel. He has a
 8 personal interest. This serves several purposes. It identifies
 9 the field with this panel, but it also gets away from the
 10 (inaudible) syndrome some commanders have in going over --
 11 overly protective to help the man, which he should not do.
 12 Then there is the police officer who is assigned -- He is
 13 put on this board for a year's time, appointed by the Chief
 14 to serve, and that gives the balance. All these other people
 15 are more or less from the "tower of power" as we call it,
 16 downtown, and this brings in the field people for the proper
 17 perspective. Everybody has a single vote; whether he is a
 18 major or whether he is a police officer, he still has a single
 19 vote.

20 I might say that this Firearms Review Panel is not
 21 convened until after the prosecutor rules that there is no
 22 problem in this case and he sends over this yellow sheet which
 23 closes out -- and then it goes to the Administrative Review
 24 Panel.

25 Non-voting members who sit in. One of them is a

1 department safety unit representative. He is looking at it
 2 from the perspective of safety, weapon care, perhaps a
 3 procedure that goes against a safety regulation of the depart-
 4 ment. The other non-voting member is what we call the Review
 5 Officer and he is the supervisor in charge of the investigating
 6 team of Internal Affairs Division. His job is merely to pre-
 7 sent the case in chronological order.

8 The Board has the authority to call any department
 9 member in and may recommend that any outside department per-
 10 sonnel be called. We have had excellent cooperation since we
 11 have set this up. It is a very informal proceeding. It is
 12 directed toward issues of proper police procedures and
 13 the officer's judgment at the time the situation took place,
 14 and other alternatives open to the subject officer that
 15 perhaps he did not avail himself of.

16 After review of the entire file and the hearing of
 17 the pertinent witnesses, the Panel makes the determination of
 18 one of five categories, but they will not make any recommenda-
 19 tion for any disciplinary measures to be taken.

20 Title 18, Section 241, 242 and 245, U.S. Code. That
 21 gets us into the excessive force cases. Let me hit some
 22 highlights if I can regarding the specific statutes under
 23 Title 18, 241: "Prohibits conspiracies."-- A criminal con-
 24 spiracy statute. That's what it amounts to. We do not use
 25 that often, but it is a criminal conspiracy statute. --

Begin Side
 4 - Speaker
 not identi-
 fied

1 "Prohibits conspiracies to deprive citizens of federally
 2 protected rights." That's it in a nutshell. The second
 3 portion of that, the types of rights that we are talking
 4 about, Federally protected rights, right to vote in Federal
 5 elections and have one's ballot counted fairly, etcetera.
 6 The second portion of 241 deals with a specific type of
 7 conspiracy which involves going in disguise. Title 18, 241
 8 and the next one, 242, were enacted right after the Civil War.
 9 241, the part about going in disguise, has to do with the
 10 Klu Klux Klan. There was a lot of civil unrest after the
 11 Civil War. Finally, in 242 -- the one that applies most
 12 prominently in police departments, excessive force.

13 The two important points that I want to make in 242
 14 are, number one, "willful deprivation of federally secured
 15 rights under color of law." The second portion I would like
 16 to emphasize is "willful infliction of discriminatory punish-
 17 ments." Willful in this statute means specific intent. Color
 18 of law -- let me read this portion here. This statute does
 19 not read "a person having color of law," but rather "under
 20 color of law," which means that while a police officer is
 21 on active duty status, carrying out the duties and responsi-
 22 bilities of the office a couple of police officers off-duty
 23 go into a bar. They get into a hassle with patrons. At some
 24 point during the scuffle they identify themselves as police
 25 officers. At that point, they are acting under color of law.

1 A guy goes home -- an off-duty police officer goes home and
 2 gets into a hassle with his wife and he assaults her. Now
 3 simple assault, she can come to the courts. She cannot come
 4 to the FBI. It is not actually under the color of law. That's
 5 the difference.

6 Also in this 242 "willful" specific intent. Willful
 7 in this statute means specific intent. It must be shown that
 8 the perpetrator has not only committed a specific act, exces-
 9 sive force, but at the time he did so he had the specific in-
 10 tent of depriving the victim of a specific right guaranteed
 11 under the Constitution and the laws of the United States.
 12 Specific intent under color of law, Title 18, 242.

13 Let me expound just a little bit. I am sure you
 14 have heard this before. An officer is justified in using
 15 such force as is necessary to secure and detain, prevent his
 16 escape, recapture him if he escapes, and protect himself from
 17 bodily harm. The standard to be applied (inaudible) ordinary,
 18 prudent and intelligent person, through the knowledge of and
 19 the same situation as the arresting officer deems necessary.
 20 In other words, what took the officer three seconds to make
 21 up his mind about takes the court three years.

22 Title 18, Section 245. 245 was enacted during the
 23 60's. I think everybody in this room can remember the 60's.
 24 Specifically, it was enacted in 1968. This act prohibits
 25 forcible interference with the exercise or participation in

1 specific federal rights. Prohibits a specific type of denial
 2 of equal protection that is interference with federally pro-
 3 tected activities because of race, color, religion or national
 4 origin. Part three insures against intimidation or threats
 5 against any individual encouraging or furnishing opportunity
 6 to others to enjoy such activities listed under Parts 1 and 2.

7 What I want to get to is how does the FBI fit into
 8 all of this? The FBI, as you all know, is the investigative
 9 agency which conducts investigations in these types of specific
 10 statutes. The Civil Rights Division of the U.S. Department
 11 of Justice also sets up and establishes guidelines; how will
 12 we investigate these particular violations?

13 Also -- and I cannot underscore this heavily
 14 enough -- the Civil Rights Division ultimately makes the
 15 final prosecuting decisions. The FBI does not make any kind
 16 of a recommendation whatsoever.

17 The practicality -- all of you have had the
 18 experience of being before a prosecutor and having him ask
 19 you what do you think of the case. That's the pragmatic
 20 approach. But as far as what goes into our report, we do not
 21 make any recommendations. The Department is the final
 22 decider. Shall we go or not. Nowhere in our report goes
 23 the FBI make any kind of recommendation.

24 How do we handle these (inaudible). This is a
 25 rather loaded statement. Investigations can be initiated upon

1 any source not known to be unreliable. Any source not known
 2 to be unreliable. Most complaints come from the victims.
 3 I call them victims. You call them subjects. We call them
 4 victims for purposes of our reports. They come from the
 5 victims, victims' families, victims' attorneys (inaudible)
 6 even chiefs of police. Also the FBI has authority to investi-
 7 gate on its own initiative.

8 Complaints are broken down for us into two categories,
 9 non-brutality and brutality. Non-brutality allegations cover
 10 a wide spectrum, from verbal mistreatment, police harassment,
 11 to denial of due process, etcetera.

12 Brutality; everything, as I said, must be in the
 13 complaint.

14 Types of investigations. This is purely an internal
 15 administrative thing for the FBI. We categorize civil rights
 16 investigations as limited and preliminary. Limited usually
 17 refers to non-brutality. Preliminary usually refers to
 18 brutality type cases.

19 In most cases, a limited investigation is conducted
 20 which would include an interview with the (inaudible) and
 21 with the victim, and the obtaining of any available police
 22 reports.

23 In brutality-type allegations, a preliminary inves-
 24 tigation is conducted. We have the victim and/or a complaint
 25 come into our office. The first thing we do is take a signed

1 statement from he or she. The next step is to advise our
 2 headquarters in Washington that we are in receipt of allega-
 3 tions. The very next step after that is to advise the
 4 commanding officer, be he Chief of Police, District Commander
 5 or whatever. Then we try to enlist his cooperation in making
 6 officers available for an interview, by obtaining copies of
 7 all reports that are available, witnessing police officers.
 8 We try to enlist his help. When the officers are made avail-
 9 able for an interview, they technically are subject to an FBI
 10 investigation. They will have to be advised of their rights.
 11 We obtain a statement from them. We obtain a statement from
 12 the witnessing police officers. We obtain copies of all
 13 reports within the police department, any reports referring
 14 to allegations. In a case of excessive force where no
 15 deadly force was utilized, we go to the doctor and get a
 16 report. In the case of deadly force, we interview the
 17 coroner. This entire preliminary investigation for us is
 18 usually conducted within 21 days. If it is impossible to
 19 get it all done within 21 days -- but basically we try to
 20 make every effort to get it done, wrapped up in a report
 21 form within 21 days. In most instances, within 21 days, we
 22 feel we have done all logical investigations and administra-
 23 tively -- I would like to emphasize that point -- our case
 24 being closed, we submit copies to the United States Attorney's
 25 office and copies are forwarded to our headquarters in

1 Washington and they, in turn, forward the copies of that
 2 report to the Department of Justice, Civil Rights Division.
 3 We may or may not hear something from the department. Again,
 4 the U.S. Attorney, in a given district, will a recommendation,
 5 a preliminary opinion, if you will, as to the merits of the
 6 allegation. He is not the decider of fact. The Civil Rights
 7 Division ultimately makes the decision. In most instances,
 8 in most of our investigations, we close our case. That's the
 9 last we hear. Sometimes they come back and ask for additional
 10 investigation. Sometimes they ask the United States Attorney
 11 to conduct it.

12 I would like to emphasize popular misconceptions
 13 about the FBI. Again, we investigate. We do not prosecute.
 14 All law enforcement officers are subject to these statutes;
 15 that includes myself. Special Agents -- this I am sure will
 16 come as a shock -- special agents do not relish these types
 17 of investigations.

18 Gentlemen, let me also emphasize FBI conducts fair,
 19 thorough, impartial investigations. We are not going to lean
 20 over backwards for a police officer, particularly when our
 21 jobs (inaudible). We are not going to lean over backwards
 22 for the victim. We are going to remain neutral and do the
 23 best job we know how.

24 Lastly, let me emphasize the fact that police, you,
 25 should not ignore allegations of excessive force. The victim

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1 or subject says something like, "He roughed me up." Don't
2 ignore it. If we come in, all we can find in that police
3 department is an arrest report and nothing else and we advise
4 the United States Attorney's office and the Justice Department
5 of that fact, that no internal investigation has been con-
6 ducted, the supposition leads one to believe that somebody
7 is trying to push something under the rug. On the contrary,
8 if a thorough investigation has been conducted by that depart-
9 ment and they resolve the matter, it is clear there in black
10 and white for anybody in the world to read. Don't ignore it.
11 Take the bull by the horns.

tape
ends
abruptly

END