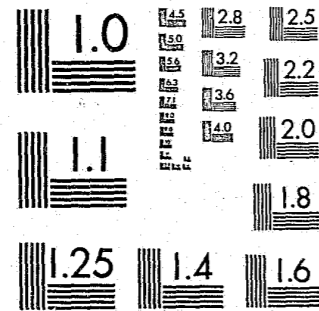


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UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

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ACQUISITIONS

DEADLY FORCE
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WASHINGTON, D. C.

SEPTEMBER 6, 1978

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WHD

P R O C E E D I N G S

1
2 MR. BITNER: -- is to talk about philosophical,
3 moral, ethical, political issues concerned with the use of
4 deadly force by government, by the police in particular, and
5 ordinarily, an assignment like that gives a person license
6 to talk about how we all ought to act if the world wasn't
7 the kind of place it is.

8 So I'll take advantage of that freedom, as far as
9 it goes, but I don't intend to lose your interest, so I
10 realize that there are limits to how far my fancy can go.

11 In any case, you can bring me back to earth if you
12 feel that I've flown a bit too high.

13 And one more remark: I'm acutely aware of the fact
14 that I'm not a practicing law enforcement officer; rather,
15 I'm an academic. Outside of that -- but I've always thought
16 that academics have particular contributions to make, not so
17 much by telling law enforcement what they're supposed to
18 know, or what they're supposed to know how to do, but rather
19 by being intellectual stimulants, gadflies, in a way.

20 And like all academics, I wrote down what I'm going
21 to say, more or less, not because I think it's the gospel
22 truth, not because I think that anything in black and white
23 needs to be believed, necessarily, but because if I don't
24 have notes, I'll drift -- I'll probably drift anyway, but I'll
25 try to minimize that.

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1 Now to the topic.

2 Well, deadly force is inherently controversial. It
3 can't be approached with equanimity; might as well forget
4 about that. It's a topic around which views are bound to
5 clash. Moreover, it happens to be a topic about which every-
6 body has an opinion. It doesn't matter how close or how
7 far they are from the problem, they know!

8 Now, in a debate, in those controversies, those
9 conflicts -- as I hear them -- around deadly force, the
10 problem is ordinarily so posed, deliberately or inadvertently,
11 that those polemic confrontations result in a split in which
12 law enforcement personnel, "law enforcement" in the broad
13 sense of the term, take the position in favor of rather
14 liberal and wide use of deadly force, whereas the polemic
15 opponents of law enforcement then take the position in favor
16 of a narrow limitation of its use.

17 Now, the opponents come from groups like the
18 American Civil Liberties Union, and various other civil liber-
19 ties representations. Now that polemic of this sort has
20 been going on for a very long time. I don't mean to be
21 suggesting that necessarily every single prosecutor or police
22 chief is in favor of wider use of deadly force, and every
23 single civil libertarian is in favor of actually banishing
24 it, but roughly speaking, that's the way it divides.

25 Now, it's been going on for a long time, as I said,

1 and rather intelligent and well-informed people do it this
 2 way, so there must be one good way of doing it, and it's
 3 okay with me. But I want to try to do it somewhat differ-
 4 ently; that is, instead of trying to locate, determine,
 5 define, what the boundaries of permissible authorization are,
 6 and instead of trying to draw parameters, so to speak, around
 7 -- within which, so to speak, you can get away with it, get
 8 away with it in light of considerations of brutality, ethics,
 9 political considerations and so on -- instead of talking
 10 about what it is that a policeman "may" do, I want to focus,
 11 rather, on the use of deadly force, on the perspective of
 12 what he "must" do.

13 That is, to put it differently: instead of talking
 14 about authorization, I want to talk about duty, and I'll see
 15 how far that might take us.

16 Now, talking about duty in police obligations is a
 17 very difficult task -- and permit me for a minute to reminisce;
 18 it's been a long time since I got into police work, probably
 19 longer than most of you.

20 In 1963, I went to the San Francisco Police
 21 Department; its Chief was a man by the name of Thomas Cahill.
 22 You may have heard about him; he was President of the
 23 Commission on Law Enforcement and Administration of Justice
 24 in 1967, the only police chief -- and I wanted to study the
 25 police. I wanted to know, in fact -- and that's what I told

1 him when I interviewed him -- I wanted to know what it is
 2 a person has to do to be a good police officer. And when
 3 I talked to him, needless to say, I said I wanted to know
 4 what a "man" has to do to be a good police officer, but if I
 5 talked to him today I'd say -- "What does a 'person' have to
 6 do..?"

7 Well, Tom Cahill leaned back in his chair -- he was
 8 a short, stocky, red Irishman -- he leaned back and he smiled,
 9 and he said:

10 "I'll tell you: in this business it's a damned
 11 sight easier to say what a man must not do than what he
 12 has to do."

13 That is, it's very hard, in police work, to define
 14 in any strict sense, what it is a person has to do to do
 15 police work right. It's a lot easier to say what he must not
 16 do under any circumstances.

17 That is the law. It surely was like that in 1963,
 18 and as Cahill explained to me:

19 "I have no trouble at all telling my men what
 20 they have to do to survive in the Department, what forms
 21 to fill out, when to report to work, when to sleep, what
 22 vacation...the whole shebang of interdepartmental per-
 23 formance. But when it goes to my telling them how to
 24 act on the street, I'm not all that confident at all."

25 Well, ever since I started, in San Francisco in

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1 1963, my interest has focused on wanting to know what has to
2 be done; that is, those aspects of police work that represent
3 the serious, the important, the necessary nature of the
4 police mandate.

5 I wanted to know the standards of good practice;
6 I wanted to know the nature of specific skills, the techniques,
7 the aspects of craftsmanship in that vocation. I wasn't
8 very much interested in finding out whatever (inaudible) --

9 Well, things have changed quite a bit since then,
10 and it's a lot easier to talk about it today than it was
11 fifteen years ago. So it's in the light that, in the light
12 of the nature of an obligatory performance aspect of the work,
13 that I want to approach the use of deadly force. And I had
14 to divide my approach to driving at two targets, two aims --
15 two topics.

16 I want first to talk about whether there is a duty
17 to use deadly force against a dangerous armed assailant,
18 whether there is a duty to use deadly force against a danger-
19 ous armed assailant.

20 And then I want to consider whether there is a duty
21 to use deadly force against a suspect who is seeking to flee
22 from arrest.

23 Now, there is a third topic which I'm just barely
24 going to touch upon, unless you people want to talk some more
25 about it, and then we can talk about it jointly -- I really

WHD

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1 have no terribly good ideas about it -- and that has to do
2 with the use of deadly force in connection with the whole
3 area of insurrection, riot and terrorism, which is, I think,
4 a separate matter.

5 So my intent, henceforth and for the next half an
6 hour or so -- 40 minutes, is to talk about those two topics,
7 the problem of the dangerous assailant, and the problem of
8 the fleeing suspect, which I regard as sensitive.

9 Now, to the first: I said I want to talk about
10 duty of police officers, but I've got to depart from that
11 for just a moment to talk about rights, or just a mention --
12 not because they're not important, but precisely because they
13 offer an unavoidable aspect, even though you want to go around
14 it.

15 It's an obvious fact that a police officer enjoys
16 the right to resort to deadly force to save his own life and
17 limb. He does. He enjoys that right, not because he's a
18 police officer, but because he's a human being, and he shares
19 it with all other human beings. This is fact.

20 I have to immediately add that there is a very sig-
21 nificant difference, even at the very beginning, between the
22 rights of the citizen who is not a police officer, on the one
23 hand, and the right of the police officer in the same situa-
24 tion. It's a very important difference, and here's what that
25 difference consists of.

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1 A citizen has a right to kill in self-defense under
2 certain limitations. But the citizen is also free not to
3 avail himself of that right. He may, therefore, lay down his
4 own life -- I don't know why -- because (inaudible) --, because
5 he's a radical pacifist, because he's a saintly person -- I
6 have no idea. He has the right to defend himself, and to kill
7 in his own self-defense, but he also has the right not to
8 avail himself of that right.

9 The police officer does not have that option. If
10 he's an absolute and radical pacifist, and will refuse to
11 kill when he finds himself in a situation where that may
12 become necessary, he may have to give up his vocation. He
13 does not have the freedom to exercise -- as a police officer,
14 he does not have the freedom to decide that he will not kill
15 in self-defense.

16 Now, understand me: I'm saying that he has a duty
17 to exercise that right, to defend himself; he has the duty
18 to exercise it. That is not just exactly the same thing as
19 to say that you have the duty to exercise -- the right to
20 vote, because that's true, but if you decide not to vote,
21 you retain citizenship. But if you decide that -- you say:

22 "Here I am, here is the target..."
23 you forfeit, I think, being a police officer.

24 So it's a rather compelling right. This is so, I
25 think, because it is commonly understood, even if it isn't

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1 written down -- it is commonly understood that police offi-
2 cers will oppose force with force. More than that, it's
3 commonly understood that, all things being equal, police
4 officers will not retreat, or at least will retreat only
5 within limits in such situations.

6 Now, there is another difference between the citi-
7 zen and the police officer connected with what I've just been
8 talking about, and that is this: as you no doubt know, accord-
9 ing to the common law, the right to self-defense is expressed
10 not very precisely, but nevertheless limited by the require-
11 ment that the person defending himself must first exhaust all
12 other means before he, so to speak, acquires the entitlement
13 to kill in self-defense. Above all, he's required to retreat
14 to save himself, first.

15 Now, I think it's fair to say that a police officer
16 also is required to exhaust other means, and to retreat,
17 before he kills. But those maneuvers of avoidance that are
18 available to the policeman are somewhat more limited than the
19 maneuvers of avoidance that are available to an ordinary
20 citizen. And they're limited so by the consideration of
21 what exposure will result to others on the scene.

22 So while a citizen can in fact flee completely with-
23 out concern over what it is he's leaving when he saves his
24 own skin, the police officer's freedom to retreat is limited
25 by consideration of what is going to be left after he's

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1 then saved his skin.

2 In sum, the police officer's duty to use deadly
3 force in defense of his own life is augmented by the fact that
4 he has a duty to defend the lives of others.

5 Well, I think what I've said so far is not terribly
6 new to most of you; it's an understatement. I think it's
7 pretty widely agreed upon, but the formulation which I've
8 proposed contains a bit more than meets the eye. I posed it
9 that way because I think that, in the light of those comments
10 that I've just made, the notion of "kill or be killed" is
11 only the most dramatic, the most critical instant, for
12 expression of the absolutely fundamental feature of all
13 police forces, without any exception whatever.

14 The feature that I'm talking about is this: that
15 the police and the police alone, of all other functionaries
16 of government without any exceptions -- the police and the
17 police alone, are empowered and required to use force in
18 all situations where force may have to used in the defense of
19 life, property and the public order.

20 No one else -- no Judge, no doctor, no priest, no
21 Government official of any kind, is either empowered or
22 required to intervene forcibly with his own body physically
23 to turn an untoward development away from the brink of dis-
24 aster. Only the police and the police alone have that as a
25 feature of their vocation.

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1 Now, whenever I say that, people say:

2 "Are you saying that using force is the bread
3 and butter of police work?"

4 and the answer is: it's the other way around. It's that the
5 police alone may have to deal with that and may not retreat
6 from it, but that the skill of policemen, the technique, the
7 profession, consists of learning all the ways of not letting
8 situations develop to that critical end.

9 That critical end, however, is always, in every
10 case (inaudible), and known to both police officer and citi-
11 zen, as an eventuality to be reckoned with. That is to say
12 that far from being the routine of police work, the use of
13 force is its ultimate. Skill, acumen, judgment, knowledge --
14 all go to solving problems without having to resort to the
15 ultimate.

16 That's the nature of the duty; that's the nature of
17 the obligation that one assumes. That's what one is supposed
18 to be -- (inaudible) -- technically good at.

19 That's true generally, and the use of deadly force
20 is only the most critical, the most dramatic instance. It can
21 be done; that's essential -- (inaudible) -- but the work is
22 to make certain, or as certain as can be made, that it won't
23 be necessary.

24 So you can now align, as it were, in the situation
25 of the dangerous, deadly assailant, three possible outcomes of

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that kind of an encounter, and one possibility is, of course, of being killed. If it happens; it happens to about 120-130 police officers every year in this country.

The second outcome is to kill the one who's threatened you, and the third alternative -- is to disarm him. And you want to be able to assess the value of those three -- the relative value comparatively.

Well, I think there's a romance, human interest, a touching appeal to the dramatic, heroics of an successful disarmament. The newspapers lap it up. It's on TV; there's admiration for the actual courage that goes into it, and I share that attitude, but every time I see it I say to myself:

"Now that we've stopped celebrating, let's figure out just how did he do it."

I want to know the knack; I want to make sure that the next person will pick it up, and that all will pick it up. So I want to treat that in the cold-blooded, sober way of a matter of skills, because that's what's meant by something -- rather than merely an expression of personal fortitude.

So let me put that as that in concluding this first part of my consideration, that police may not retreat, they may not retreat from using force, including deadly force, all else failing, but please note that, all else failing is a failure. True -- (inaudible) --

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End Side #1
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-- and pride of workmanship ought to make that failure as rare as possible.

(Malfunction on tape interferes with proper transcription balance of Side #1, Tape #1.)

QUESTION: Then I do understand you to draw a line between violent and non-violent crime?

MR. BITTNER: No, I would prefer if the line was drawn around the actual conduct of the person, of the potential parties. It's quite conceivable that there is the rapist who defies the police; a rapist is, of course, a violent crime. When he runs, my guess is you should not shoot. I think that's what I'm trying to say.

Finally, let me make one or two quick remarks on organized riots, sedition, violence and terrorism.

There is an old fact that is known about it, known for nearly 200 years in -- you find it in political theory, that organized riots and sedition violence always involve a calculated effort to invite reprisals. The aim is twofold: in the first place, the rioters try to goad the police into action that would firm lukewarm sympathizers into committed activists.

And the second, and in this sense insofar as I can see, they manage to get their police to do their recruiting for them.

And the second point is that at a deeper level,

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1 seditious violence aims at provoking government to the use
2 of force in a more or less indiscriminate basis. That is,
3 revolutionary violence always seeks to tumble civil author-
4 ity into anarchy.

5 So I think, if you appreciate that fact, I think
6 if you know that fact -- (inaudible) -- then politically,
7 common sense, practical and strategic considerations, ought
8 to advise the most stringent kind of controls and discipline
9 in the use of deadly force.

10 But there's a purely expedient ground that poses
11 -- I think, very serious problems, and it has always been my
12 view -- though I don't know exactly where to draw the line --
13 that public disorders on a large scale ought not to be the
14 responsibility of municipal police departments. I say this
15 because police departments are not geared to the handling of
16 those situations; they're not equipped -- they weren't, espec-
17 ally for the upheavals of the late Sixties, and I think it
18 would be too expensive, too wasteful, to equip them for it.

19 I think it would be, on the whole, far better if
20 those order problems were handed over to other agencies. I
21 don't know -- the National Guard, perhaps the State Police
22 forces; I haven't thought that through, nor do I know exactly
23 where to draw the line.

24 Is a dozen people who take their fight out of the
25 bar into the street a riot? Well, I don't know. I don't

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1 know if that meets all the requirements, but I think that on
2 the whole, essential police work -- the strength of police
3 work lies in dealing with more confined, more individual-type
4 problems rather than with the large-scale public upheaval,
5 and I don't think they ought to be included in them.

6 If they are included in them, however, I think that
7 the police officer ought never to forget what the designs of
8 his opponents are.

9 Well, I'm about to conclude. It was my purpose to
10 deal with the use of deadly force, not as a question that
11 often comes up, whether or not a police officer exceeded his
12 or her authorization, but rather as a question of whether he
13 did his duty.

14 My first and foremost interest in that is the
15 following: I think we altogether too often set on -- the
16 following two cases.

17 One, in which a police officer has acted with con-
18 summate skill, with superb judgment, and with hard effort,
19 to find that with no other means, to save life.

20 We set that case on a par with the case in which
21 -- stumbled into a situation which he has aggravated, in
22 which with ineptitude and bad judgment, in which he kills
23 impulsively.

24 We treat the two as if they were similar, or the
25 same. And we try to say that as long as we can find no

malice or gross intelligence, all that we need to be concerned with is whether the case can be excused.

Well, the second case may be excusable, but it's not the same as the first. I'm not talking about Monday morning quarterbacking; I know that even first -- that I've just mentioned, that he like everybody else, can be made to look bad. I know that. Nor am I interested in head-hunting. I don't want to go after the guy who did poorly.

I'm interested in the existence of danger, and the ability, the willingness and the stable way of distinguishing good work from bad. I think it is wrong; I think it is wrong not to make those distinctions. I think it is wrong for there to be only an exculpation and excuse in the jackets of both of these men, as if they did the same thing.

I think we ought to concentrate on the question of whether the exercise of deadly force was within the sphere of necessary, obligatory, rather than concentrate on the question of whether the exercise of deadly force was excusable within the sphere of permissiveness or authorization.

I don't mean to say we should never excuse bad judgment; we may have to. God knows, none of us could long survive without such excuses. But let us make known that it takes a very long road to hoe to work one's way out of a pardonable excess. One has to learn to avoid these. Let us not say: it can happen to anyone, and leave it at that.

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We may have to say that that can happen to anyone, but let us not leave it at that.

I started out by reminiscing about how Cahill -- let me conclude by reminiscing about a sergeant -- Cahill is no longer Police Chief; we have a new Police Chief -- about a sergeant from Denver -- who's still there, so I won't name him.

I worked with him for about a week on Larimer Street -- I don't know if you know Larimer Street; it's a skid-row in Denver -- and he was as good a policeman as I've ever met, and by good I mean mainly "knowing" his work. And he said that when you first start out -- (inaudible) -- but by the time you get to your 40's, you either learn to get at them in some other way, or you'll be one sore and sorry cop.

MODERATOR: Let's take a break for about ten minutes.

(Whereupon a short recess was taken.)

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MR. BITTNER: The floor is open for questions, insults --

QUESTION: I couldn't hear what was going on in front, so I'd like to ask you to clarify one thing (inaudible) -- had to do with the topic of the police officer's duty, or lack of duty, to retreat, in a self-defense situation.

If I understood you, you seemed to say that the police officer has no right not to kill when confronted with a (inaudible) attack upon his own personal safety, but at the same time I thought I later heard you say that there is some degree of duty upon police officers to retreat in that situation.

I'd like you to clarify for me what that borderline -- where the line is, and what is the source of his duty?

MR. BITTNER: I think you have to use that analogy that I drew between the citizen and the police officer; that will make it easier for me to specify.

I think the right of the citizen to self-defense includes the right to waive it. So, as it were, when the chips are down, he can still decide not to destroy the assailant, even though that assailant will make -- against him, his wife or children or whatnot; okay? He'll say:

"We'll lay our lives down for the ideal of peace."

Now, in that situation there is the police officer.

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I think in that situation the police officer is -- He will, to begin with, make every effort he can mobilize to disarm that person, or to postpone the climax of that situation. He will talk; he may even take himself and/or other people to another room, if he can .

That's what I meant by saying "exhausting all means."

But then he sees the gun blazing. And at that point, he can not say -- or, unlike the citizen, who says -- at that point will say a prayer, the policeman has to return fire.

QUESTION: Why?

MR. BITTNER: Because, as I have suggested, I regard it as an essential action of police work -- fundamental; that which makes this unique in society, that which distinguishes it from every other kind of profession, that the policeman and the policeman alone, is required to use force to put a stop, to arrest something that ought not to happen.

And when he refuses that, then he refuses being a policeman. He took upon himself to do that, and just as it is the vocation of a clergyman to save souls, the vocation of a teacher to educate, the vocation of the physician to heal, so it's the vocation of a police officer to deal with all situations, regardless of -- (inaudible) -- in which force

1 has to be used to put a stop to something that ought not to
2 be happening.

3 So the emphasis is on that "may have to be used..."
4 understanding that his skill, his technique, consists of
5 not letting situations develop --
6 That's what the profession is all about.

7 Now, what are those situations in which force may
8 have to be used? Well, there are an endless variations;
9 there's no stopping. In fact, the strange thing about it is
10 that every kid on the street knows how to use that, but
11 nobody can define it. But then, most people know how to do
12 one thing more or less properly ---

13 When do you call a cop? When you know that some-
14 thing is going on. A lot of people call the cops for
15 frivolous reasons. A lot of people also call doctors for
16 frivolous reasons. But most people are reasonable and when
17 they call you know something is going on that you had better
18 put a stop to. (Inaudible)

19 QUESTION: (Inaudible) Simply one on one, the
20 police officer defending his own life and no immediate danger
21 to third persons. Is the officer not privileged to make a
22 judgment -- make the choice -- that the harm being done by
23 the assailant was not so serious to warrant his taking the
24 assailant's life, and would that then have put him in the
25 precise position of the non-police officer citizen and

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1 authorize him then to make a decision that I choose not to
2 kill him, even if I lose my own life?

3 MR. BITTNER: I have absolutely no quarrel with
4 what you are saying. People will say, "I've been a police
5 officer for twenty-five years. I've been in every kind of
6 critical situation. I never had to draw my gun."

7 (Inaudible)

8 Imagine that we would have guns that would shoot
9 tranquilizers. You know, lions go berserk in the zoo. They
10 shoot tranquilizer drugs into them. Human beings go berserk
11 -- maybe we will have something like that. I don't know.

12 QUESTION: You are talking about a technological
13 -- not actual practice. We don't have anything, and we are
14 very much different from a lion in a zoo or something, which
15 is held in a cage and is virtually harmless. You can shoot
16 him with a tranquilizer and wait 15 minutes.

17 One of the arguments of police officers, in the
18 California Division, is that it is not our job to kill someone
19 but in many cases it is our job to stop somebody and stop
20 them immediately before they can do additional harm. And
21 this requires a great deal of force to be used and the killing,
22 the actual death, is accidental. It is not what he intended.

23 If you could give us something, or if something
24 could be designed so that we could do this without killing
25 somebody and it is no longer deadly force. This is an ideal

1 situation, but we don't have it yet.

2 MR. BITTNER: I agree completely with what you said
3 except for one little thing. I am not going to give you
4 anything. Nobody is going to give you anything. You got to
5 do it yourself. Answers in policing aren't going to come from
6 the likes of me. They are going to only come from within the
7 police community. Only you know that it works. The first
8 step you have to get is to have a sense that there are
9 techniques, are skills (inaudible).

10 There are things that rankle you, anger you.

11 I am not talking to a citizens group, I am talking
12 to a group of police officers.

13 QUESTION: I don't disagree with what you say.
14 When I say, "Give us something," I'm talking to the tech-
15 nology, because I can't do that. I may be pushed into a
16 situation where I have no choice but to stop somebody. Period.
17 No matter what I try. And the only thing I have left to do is
18 to kill him. I don't have something else available. When
19 technology reaches the point that I do have something else
20 available, I may be able to make a choice which I can't make
21 now.

22 MR. BITTNER: You can make now another one,
23 can't you? You must have had those cases where you (inaudible)
24 and you shook your head. You must have heard about cases
25 like that. Can you do something other than just shake your

1 head? My point is that 99 out of 100 police officers just
2 shake their heads.

3 QUESTION: Several of us here come from different
4 areas. I don't think we have that problem. In fact, I
5 think we have the other problem. I think in our area it
6 happens very, very seldom. And maybe not as often as it should.
7 And what we are running into are situations -- one officer
8 is sitting right here now -- and had another man with a
9 loaded gun aimed at the officer and the officer told him to
10 put it down he was going to shoot, he was watching too many
11 movies -- because they are not afraid in our area of a police
12 officer with gun because they know it is not going to be used.
13 That takes another tool away from us. That takes away the
14 fact that it is always a threat to carry a gun.

15 QUESTION: Doesn't the felon assume some obligation,
16 some risk at all? Certainly he can't hope to enter into a
17 criminal vocation without abiding by some rules himself.
18 Isn't there something that can be said for that end of it?

19 MR. BITTNER: I would like to draw the distinction
20 between me and him as clearly as possible. That's what makes
21 him a felon, because he does not respond to any appeal of
22 legality, morality, ethics. That's why he and I belong to
23 two entirely different worlds. So the professional has
24 duties and obligations. He is, of course, what he is because
25 he forsakes them. He opens himself to reprisals. What those

1 reprisals are is the thing that we are discussing, what kinds
2 of things we want to do while retaining a sense of decency,
3 morality, ethics and expediency about ourselves.

4 QUESTION: I agree with you, but take for example
5 the rapist. Rapists don't commit a single rape and then
6 find out they don't like it because -- married or something.
7 He made his moral decision. Isn't he liable to assume a
8 risk, the risk of being killed in the act or killed fleeing?

9 MR. BITTNER: (Inaudible) All I am saying is that
10 you know as well as I do the last execution was in 1967 --
11 since then we've had Gary Gillmore. The last Supreme Court
12 decision was against the 120 people who were sentenced
13 to death (inaudible). That's the truth, so the rapist
14 thumbs his nose, if you want to put it that way.

15 QUESTION: Are we protecting the people? "Well,
16 he can outrun me so I'm just going to give up." Are we
17 protecting the people?

18 MR. BITTNER: Obviously not. If you talk about
19 protection, talk about risk, it would be, on the whole,
20 wiser to shoot. Given the number of rapes, whatever it is,
21 will it really make so much difference if that one couldn't
22 get away? What I am saying is in a situation where 19 or 20
23 get away anyway, given the fact that there are instances where
24 grave errors in judgment have been made. There is a rape and
25 somebody runs. So the guy that runs wasn't it. It can happen

1 and does. What I am saying is under these circumstances it
2 would be my view that if we give up (inaudible) on the whole,
3 on balance, it would be better to do that.

4 QUESTION: I understand what you are saying about
5 positively not 100% identifying the offender as opposed to an
6 offender where there is no question. Witnessing the crime
7 in progress, there is no question of who you are dealing with.

8 MR. BITTNER: The point is that is in any case the
9 rule, isn't it? The rule doesn't say whenever you think you
10 have the guy who did it, go ahead and fire. The rule is be
11 sure and make no error. And with that rule errors are made
12 in shooting. The rule isn't good. It may look good on paper,
13 but doesn't work out good and we ought to not have it.

14 QUESTION: You are getting into the area -- I guess
15 we are all beating around it -- is role expectation of the
16 officer. My question is: What influence do you feel role
17 expectation by citizens, political leaders or even the officer's
18 peers have upon expecting a viable deadly force policy?

19 MR. BITTNER: You are quite right in saying this.
20 Very often questions are being raised: What would you do in
21 a situation like this, or what would you do in a situation
22 like that? I can't give answers to that because what I mean
23 to be talking about -- sort of generalities -- and questions
24 come up -- applies then. Examples are raised and so much
25 depends on things that are circumstances that I can't give an

1 answer. So, in a way, what you've brought up is very helpful
 2 because it does something like that. As long as you think if
 3 you just stay out of trouble (inaudible) then it's okay.
 4 If that's the expectation -- and I hear it far too often from
 5 police officers (inaudible). Don't expect too much of us
 6 because, well, we are just cops.

7 QUESTION: What I am saying, though, is that the
 8 police administrator, and perhaps a lot of the officers them-
 9 selves, when they try to resolve this issue from a purely legal
 10 or moralistic point of view find that the role expectation
 11 that is held by citizens, or some citizens, their own peers,
 12 the political leaders who exert the economic sanctions against
 13 them are in conflict as to how they should act in these
 14 circumstances. A good example is in my department, in my
 15 State, I suspended a man for shooting at a burglary suspect.
 16 And I was attacked by judges, newspapers and all different
 17 kinds of people. However, when the case went to court, after
 18 I had submitted my rationale and the investigation, they found
 19 in favor of me but nobody wanted to publicize it or discuss
 20 the facts or the reasoning behind the judge that heard the
 21 case. What they were trying to do was try to get a judgment
 22 of having me change the firearms policy because there seemed
 23 to be some feeling that this would be a precedent-setting type
 24 of situation that would affect all the other departments in the
 25 area. It may be a little bit unique in that I had the support

1 of my superiors, but I can see where a lot of departments,
 2 particularly mid-sized departments in larger cities are going
 3 to run into a lot of problems and not too many political
 4 people or so-called community leaders are going to stick their
 5 necks out. And it all boils down that that street cop ends
 6 up either doing two things, doing what he thinks is expected
 7 of him or doing what the chief says or the administrator of
 8 the department says you must do. Either way, as we will
 9 probably find out, that he's the one that ends up holding the
 10 bag for liability and even criminal prosecution in some cases.
 11 So, what we are talking about here is fine and I don't think
 12 that we are too far out, but I think -- and I agree with him
 13 -- I think what's happening here is that the people who we
 14 work for are not willing to stick their necks out. And one
 15 reason they are not going to stick their necks out is be-
 16 cause they don't care how we view the felon or how you view
 17 the felon, as an academician, but what their concern is is
 18 the criminal. And this is why a rapist, if we didn't shoot
 19 at a rapist, particularly when we could determine that he
 20 committed the assault, all hell would break loose. So there
 21 is a definite conflict here, what they want the police to do.
 22 And you are getting it from all different -- you know.

23 MR. BITTNER: I know.

24 QUESTION: I don't say you don't know. I'm just --

25 MR. BITTNER: I know. It is your struggle. It is

1 -- something in your profession. There are some people who
2 still say we ought to unleash the police. It is a long
3 struggle. You must in the long run somehow or another con-
4 vince the politicians that you are not doing their dirty work.

5 QUESTION: I'd like to follow up on a comment. I
6 represent the second largest sheriff's department in the
7 country and we are right here in this urban area. My concern,
8 listening to the philosophical impact and I recognize that
9 Dave Mozee from Chicago will be here with the media -- but
10 I am wondering how does this philosophy, how do these
11 ethical, moral and political and philosophical ideas fit
12 into what seems to be our biggest critic. Our biggest critic
13 is not necessarily the Circuit Court of Cook County or a
14 particular circuit court some place else. I think that my
15 experience has been -- I've been in internal affairs work, too,
16 so I've seen both sides, -- is that the cases are very often
17 tried in the media on the same impact, philosophical, moral,
18 political; okay? And I am wondering whether or not we could
19 address ourselves to that particular issue. It seems that our
20 -- not the worst enemy -- but the media seems to feel that they
21 have the whole gamut. Here you are a qualified instructor in
22 your own right, based upon your own credentials, and I think
23 you can talk about the impact of those four areas that you
24 indicated earlier, the philosophical, the ethical, moral and
25 political issues. But I am a little more interested in your

1 thoughts as to why the news media feels that they can run the
2 gamut of those four topics.

3 MR. BITTNER: Well, you know why. Of course, you
4 know why. The media are selling newspapers. It's a combina-
5 tion of a necessary, important and ethical endeavor. Some
6 newspapermen are very good and others are in it for the money.
7 Editors have got to make sure that they sell papers. You will
8 find over and over again people saying things and they are
9 quoted. They don't quote all the reservations, they don't
10 quote all the (inaudible), they quote the hot lines. Who
11 wants to read on the way home in the L the subtler points.
12 You are pointing out to me certain difficulties that law
13 enforcement is fraught with, political pressures, television,
14 from cities (inaudible)

15 There are certain things that ought to be done.
16 We undertook to do them. I don't suggest that you be heroes
17 24 hours a day. You've got to be alert and you've got to be
18 smart and see what can be done.

19 In the 15 years that I have seen, police work has
20 changed incredibly.

21 QUESTION: I'd like to make an observation. I think
22 the mere fact that our departments (inaudible) I feel like
23 we have to figure that out for ourselves. What I am here for
24 is to try to listen to as many people as I can discuss this
25 and help me establish some guidelines for new officers or

1 young officers who haven't been out there on the street. Give
2 them some moral guidance and (inaudible)

3 What I'd like to do and have done -- I've got a set
4 of our regulations here which I've had a little bit of input
5 with and we sweat blood -- What we've tried to do, what we've
6 all tried to do, is establish some moral guidelines for
7 officers, guidelines that will protect him from civil liability
8 and not only him but the department. If you don't give some
9 guidelines then the department is negligent and you become
10 liable.

11 MR. BITTNER: How can you decide on guidelines
12 concerning civil liability? Is that all that really should
13 interest us?

14 QUESTION: No.

15 MR. BITTNER: I mean, doesn't it still remain that
16 here is something state police officers have to do well.
17 And what doing it well means is, I think, what I've been
18 trying to talk to you about. I shouldn't be telling you what
19 to do. I can't tell you what to do.

20 QUESTION: One of the things I didn't quite get to
21 here -- I said we've got to give him some moral guidance
22 and some guidance that will protect him and the department
23 from civil liability, plus one more thing. And this is where
24 it becomes difficult. We've got to leave him room to use his
25 own judgment in any given situation. We can't take that away

1 from him. He's the guy that's got to make the final decision
2 on whether to shoot, whether to kill or not to kill. So
3 you've got to do all three of these things on one piece of
4 paper and, brother, it's not easy.

5 MR. BITTNER: You are saying he's got to use his
6 own judgment. Now, isn't it true that when you go with an
7 infected tooth the dentist has got to use his judgment? Of
8 course, he has to use his judgment as to what to do about it,
9 but it is informed judgment. It's not just anybody's judgment.
10 All I am saying is, get that to the point, make it known,
11 work it out, so he can make that kind of a judgment, so that
12 you can review it, discuss it. I know that -- You see, the
13 point is it is a lot easier to exercise judgment with an
14 infected tooth. You have more difficult decisions to make.
15 You think it is just common sense. No, it isn't. I assure
16 you it isn't. But if I ask you what is that judgment, then
17 it hasn't been formulated. (Inaudible)

18 QUESTION: We've all of us, at one time or another,
19 looked back and said (inaudible)

20 end tape

END