

CHAPTER 7

RECOMMENDATIONS

It is clear that many factors affect when and in what circumstances police officers use their firearms. This study has relied upon a review of the literature, field visits, interviews, and analyses of shooting incidents to identify factors that should be taken into account when police departments want to make changes aimed at preventing needless shootings without increasing the risk to officers. The study has tried to identify patterns of conduct or questionable practices subject to control and susceptible of modification. It has also tried to identify departments that have attempted to deal with these problems by enforcing rational firearms policies, implementing more effective selection and training programs, and exercising greater accountability and control.

The individual recommendations highlighted in this chapter—in addition to those made throughout the report—should be considered as steps in a process to develop and implement a comprehensive set of policies and procedures to deal with this important issue. These recommendations are based on common sense, informed judgments, good management practices, and the experiences of departments that have had at least initial success in reducing the number of shootings by their officers. They are not proven remedies, but are put forth as suggestions for influencing shooting

rates. Departments adopting these recommendations should document the effects and share their experiences.

POLICY DEVELOPMENT

Generally, police officers do not question regulations that require them to keep their shoes shined, but they may very well chafe, citing concern for personal safety, at what they feel are unnecessary restrictions on their authority to use their weapons. Department policy revision resulting in further restriction can exaggerate this concern, and in the end the policy is circumvented or ignored. One way of dealing with this problem is to include representatives from a number of department levels, particularly line officers, in the policy formulation or revision process. Many police departments have experimented with the use of work groups or task forces to develop new rules and regulations, including those governing the use of force.¹ Some experiments with these mechanisms have been more successful than others, yet there is ample precedent for involving those individuals most directly affected by a policy in its evolution.

Information from other sources is likely to result in an even more balanced product—a policy that is acceptable to the community as well as the police department. We tend to agree with Uelmen, who suggests that

[T]he expertise of police administrators must be supplemented with . . . the caution of an attorney's advice as to legal implications, the sensitivity of elected officials, the reactions of other components in the criminal justice system and some means of citizen participation. In addition, the policies of neighboring police departments should be considered. If police policy is perceived as being nothing more than the dictates of individual police administrators, the public confidence so vital to the successful operation of police agencies will be undermined.²

On a cautionary note, department administrators embarking upon policy or program revision with a goal of

reducing shootings by police officers must recognize, as Hans Toch and others have observed, that it can be dysfunctional to emphasize simultaneously the ideas of violence reduction and stringent or overly aggressive law enforcement. "[T]he officer instructed to maximize arrests and minimize violence receives a double message."³ Officers may feel that they are being asked to perform community service and break heads at the same time. Although department administrators obviously would be remiss if they *de-emphasized* arrests at the expense of public safety and officer safety, a balance in emphasis must be attempted. Changes in policy and procedures must be perceived as compatible with other goals and objectives of the individual department, if they are to be accepted and observed.

The process of developing, implementing, and enforcing a firearms policy and supporting regulations should also include provisions for periodic review and evaluation of the new program to see if it is meeting predetermined objectives and if any negative results (e.g., lowered morale, job dissatisfaction) have accompanied administrative action.

POLICY STRUCTURE AND SUBSTANCE

The felony-misdemeanor distinction is no longer (if it ever was) a reasonable basis for deciding when to use deadly force; in fact, the trend in most large cities seems to be toward limiting the use of deadly force to situations involving self-defense, the defense of others, and the apprehension of suspects in violent or potentially deadly felonies. Most such firearms policies go on to enumerate situations in which even this narrow category of felons should not be fired upon: when, for example, the suspect is a juvenile, is driving an automobile, or is known to the police and can be apprehended later.

Although clearly preferable to the simple fleeing-felon rule, this violent-felony formula also has its drawbacks. It makes no distinction between the suspect who stabs a friend in a drunken quarrel—perhaps a first and only offense—and the mass murderer or confirmed armed robber, or between a

suspect just fleeing the scene of a crime and one wanted for an offense committed long ago. The officer acting under an apprehension policy may be called on to make extremely difficult split-second judgments: Could the crime committed have resulted in death or serious injury? Is the suspect an adult or a juvenile? Do the police have sufficient information to apprehend the suspect at another time if the suspect is allowed to escape now?

A few departments have adopted firearms policies that authorize deadly force *only* in self-defense or in the defense of another. Such a policy has the advantage of simplicity, requiring few elaborations or exceptions and is, in essence, the policy which guides members of the FBI. Other law enforcement administrators object to so narrow a rule on the grounds that it could potentially help armed and dangerous suspects avoid arrest and, further, that it could endanger police officers trying to arrest such subjects by requiring that the officers hold their fire until directly threatened or attacked.

A WRITTEN FIREARMS POLICY BASED ON DANGER

The differences in firearms policies from city to city reflect some honest differences of opinion and philosophy as well as a wide range of statutory variations. Although no one can say that there is any objectively "correct" policy, examination of dozens of specimens from all over the country leads to the conclusion that a policy based on the dangerousness of a suspect confronted by police is preferable to one based on the nature of the original offense. The two factors are obviously related, but a policy based on danger can be clearer and more concise, can exclude many questionable shootings, and need not require an officer to attempt so elaborate an evaluation of the facts before deciding whether to shoot.

Departments wishing to consider a change in firearms policy will undoubtedly want to research the range of

existing policies (many are discussed or summarized in this report), and may also want to examine some proposed "model" policies, such as that drafted by the California Peace Officers Association (see Appendix A).

Basic Policy. It is not our purpose to recommend that all departments adopt a common firearms policy, or indeed, that all departments discard their current policies. It does appear, however, that departments would do well to review their policies for content and clarity, and not wait until an embarrassing or tragic incident exposes the policy's inadequacies. For departments with current policies that are outmoded, confusing, or otherwise in need of revision, there is an alternative that, in substance, says the following:

An officer may use deadly force:

I. To defend himself or herself, or another person, from what the officer reasonably perceives as an immediate threat of death or serious injury, when there is no apparent alternative.

II. To apprehend an armed and dangerous subject, when alternative means of apprehension would involve a substantial risk of death or serious injury, and when the safety of innocent bystanders will not be additionally jeopardized by the officer's actions.

Perhaps within the policy order itself or in a supplemental regulation stressed during training, departments should provide at least the following elaboration on the basic policy:

Officers who use their firearms under the provision of section I above, will not be "second-guessed" or found at fault merely because of facts about a suspect which come to light after an incident occurs. An officer's reasonable belief that deadly force is necessary in order to guard against a threat of death or serious injury will be the only factor taken into account in reviewing such shooting incidents.

A greater burden of proof may be placed on officers who use their firearms under section II. Firing in circumstances when an officer's aim is

likely to be unreliable (e.g., from or at a moving vehicle, or from a location in which one's view is obscured) will be prohibited as involving a danger to innocent bystanders.

The principal factors which could make an armed subject so dangerous as to justify the use of deadly force under section II would be the following:

- (1) The subject has recently shot, shot at, killed, or attempted to kill someone, or has done so more than once in the past;
- (2) The subject has recently committed a serious assault on a law enforcement officer acting in the line of duty;
- (3) The subject has declared that he will kill, if necessary, to avoid arrest.

The subject must also be armed and appear to be capable of inflicting death or serious injury. Obviously, any person armed with a gun fits this description, unless the gun is known to be inoperable. The dangerousness of a person armed with a knife, axe, or similar weapon will depend on the feasibility of isolating the suspect and on his or her proximity to other persons. It should generally be assumed that someone armed with a lesser weapon *can* be apprehended without "substantial risk of death or serious injury"; thus, deadly force will not be used, ordinarily, against such a person except to defend against an "immediate threat" as described in section I.

An officer must know, rather than merely believe, that a subject is armed, but it may be assumed that a subject is armed if he has just committed a crime involving the use of a weapon, or has just been observed carrying a weapon, and there is no affirmative evidence indicating that he has discarded the weapon.

Although section II will most often apply in situations involving barricaded criminals or close confrontations between police and suspect, the use of deadly force is authorized against fleeing suspects if all the conditions

stated above are met and the suspect is so dangerous that any future attempt at apprehension is likely to involve a substantial risk of death or serious injury to police or civilians.

The firearms policy described here is not free of all ambiguities, nor will police officers operating under such a policy have no difficult decisions to make. However, the ambiguities of the basic policy and the decisions it leaves to the officer focus on immediate issues—whether a subject is armed, whether the arrest can be effected without the use of deadly force, and whether allowing the suspect to escape would endanger others—rather than on peripheral questions, such as whether a felony has been committed and whether the suspect is an adult or a juvenile.

Additional Elements. Reducing a policy to the simplest terms should not preclude some explanation of the department's intent from appearing in the written policy or in supporting regulations. It is important to address clearly certain specific circumstances such as juvenile suspects, moving vehicles, warning shots, drawing and displaying firearms, the use of shotguns and long guns, interjurisdictional flight, deployment of officers under military (or other unusual) conditions, and use of weapons as a method of crowd dispersal or breaking into a building. Efforts to address these issues should explain the rationale for prohibiting shooting, if that is the case, and should recommend other ways to handle the situation. For example, the following provisions might be appropriate:

Juveniles: The provisions of a firearms policy based on danger are not intended to distinguish between adults and juveniles. Only to the extent that age (and the related factors of size and strength) influences the capacity of inflicting death or serious injury is it to be considered.

A policy based on danger provides a way of dealing fairly with situations involving juveniles. Given the increasing involvement of persons under the age of 18 in all crimes, including street offenses likely to bring them to police attention, it is important to adopt a policy dealing realisti-

cally with this problem. As J. G. Safer points out, "Community resentment may more readily be aroused in the one case (juveniles) than the other (adults), particularly so, because the offenses for which young people may be convicted often have less onerous consequences for the offenders than if they were adults."⁴

If the policy does not differentiate between adults and juveniles in the use of deadly force but is based simply on the danger of the immediate situation, then officers will not be forced to play guessing games about age and will be in a far more defensible posture following the incident. In the end, police may be less likely to fire at juveniles than before because the policy (as postulated here) virtually precludes shooting persons in flight. Incidents reviewed or read about in other studies indicate that a great many juveniles are shot while running away from the scene or from police officers.

Moving vehicles: Discharging a firearm from or at a moving vehicle should be prohibited unless the occupants of the other vehicle are using deadly force against the officer by means other than the vehicle.

Shots from or at moving vehicles are generally ineffective and are risky to bystanders and to fellow officers. Officers should be encouraged, instead, to get out of the path of the vehicle and to call for assistance.

Warning shots: Warning shots should not be allowed under any circumstances.

Warning shots present a risk to innocent bystanders and to fellow officers. Furthermore, their prohibition prevents officers who fire their weapons under unauthorized conditions from falling back on the excuse that they were merely firing warning shots.

Drawing and display of firearms: An officer should be allowed to draw or to display (point) a weapon only if there is reason to fear for personal safety or the safety of others.

Pointing a gun can be considered an act of violence in itself, and therefore should be subject to some restrictions. Departments should take a middle course, permitting an

officer to draw or display a weapon only if, as the Dallas policy puts it, there is "reason to fear for his own personal safety and/or the safety of others." This clause would cover such situations as searching a building for a burglar, arriving at the scene of a possible robbery-in-progress, and checking out a suspicious automobile or a person suspected of carrying a weapon.

Shotguns and long guns: Department policy and regulations should make clear in what circumstances shotguns and long guns (rifles) are to be taken on assignment and who is authorized to use them.

Other circumstances: The preceding sections contain fairly specific recommendations about a number of elements that should be covered in a police department's firearms policy. Other circumstances, such as interjurisdictional flight, deployment of officers under military conditions, use of weapons to disperse crowds or break into a building, should be included as well. There are no specific recommendations here as to their form or substance; few, if any, such incidents were among those reviewed, and most of the policies surveyed provided very little guidance in these areas.

Standards for Off-Duty Conduct. Standards for the use of deadly force should be and are the same whether an officer is on duty or off duty. What should be different are the factors motivating an officer to take police action in the first place. Off-duty officers should avoid becoming involved in minor traffic incidents or fights, and should be wary of using their police office to try to adjudicate disputes to which they themselves are party. These are rules of thumb for most experienced, intelligent police officers; however, a pattern of questionable off-duty shootings in almost all of the seven sample cities suggests that departments could profit by issuing formal written guidelines for off-duty law enforcement, perhaps limiting action to incidents involving serious crimes or danger to self or others.

Such guidelines should also incorporate rules for carrying weapons while off duty. Because crime patterns and

residency requirements differ from city to city, it is not feasible to set forth a guideline here that can be recommended as appropriate in all situations. Each city has to examine the quality and quantity of off-duty service being provided in order to decide whether officers should be *required* to carry a weapon off duty, be given the *choice* of when and whether to do so, or be directed *not* to carry a weapon under specified circumstances. However, all police departments would do well to recommend against or to prohibit the carrying of weapons by officers when they anticipate consuming alcohol. In addition, when weapons carried off duty are not department issue, officers should be required to qualify regularly with those weapons at the range.

Conclusion. Whatever its content, it is important that the basic firearms policy be relatively brief and written in clear, straightforward language so that it can be easily understood. When this is the case, training becomes the appropriate and necessary vehicle for interpreting and demonstrating the policy's provisions. All related elements of the policy should appear, however, in a single document that can be revised as needed, rather than amended by the issuance of countermanding orders.

POLICY IMPLEMENTATION

While it is generally agreed that a major vehicle for policy implementation is adequate training, certain personnel procedures need to be considered in revising and improving a department's approach to the use of firearms. Although current selection procedures are imperfect at best, police administrators should try to use the best means available (e.g., psychological tests, interviews) to screen out candidates with a propensity for violence or instability and should take maximum advantage of the probationary period for eliminating unsuitable recruits.