

### CHAPTER 3

## DEPARTMENT REVIEW OF SHOOTINGS AND DISCHARGES

Police departments are, of necessity, built on paper. Every department has its forms, manuals, guidelines, general orders, special orders, interim orders, memos, circulars, and letters in triplicate. There are written rules to cover the most remote contingency including, in one city, complex provisions for mobilizing the department in case of nuclear attack; each division in that city is equipped with its own radiological monitoring kit to test for fallout. The department even anticipates the possibility that its switchboards might be jammed in such a crisis and requires each station-house to stock a supply of coins so that officers can be contacted by pay phone.

Some policies are so routine that officers follow them unthinkingly; others are so obscure that few know of their existence. Some policies are widely interpreted to mean something very different from what they say; others are generally ignored except when some particularly egregious violation prompts a temporary crackdown.

Enforcement is the ultimate test. What happens to the officer who indefensibly disobeys a policy? If nothing happens (or nothing very dramatic), the policy is just another piece of paper among many. If such an officer is fired, suspended, demoted, or otherwise seriously disciplined, the disciplinary action is an important indication that the policy is in fact a policy.

## INITIAL NOTIFICATION

To guarantee effective enforcement of a department's firearms policy, it is essential to require that all shootings and discharges be reported. In each of the cities surveyed, an officer has to make an immediate notification upon discharging his or her firearm.<sup>1</sup> In Detroit, the nearest precinct desk must be notified; in Birmingham, any superior officer (line officers must notify their sergeant as well); and in Portland and Indianapolis, the immediate superior officer. In Kansas City, it is the radio dispatcher; in Oakland and Washington, it is the watch commander of the officer's unit or, in the latter city, the official in charge of the communications division must be notified if the watch commander is unavailable.

It may not seem important to whom the officer makes initial notification. However, if only a "superior" must be informed, there is a risk that the officer will pick out a lenient or sympathetic superior for the occasion. This in turn may lead to a less than thorough investigation, whether by design or by negligence. In addition, if no single official has to be notified, it may be difficult to establish afterward whether an immediate notification was made. The Kansas City rule, under which the officer notifies the radio dispatcher (who in turn makes other notifications), would seem calculated to guard against this possibility because dispatchers are accustomed to taping or logging important communications.

Washington, D.C., not only requires an immediate notification in all shooting and discharge cases, but specifies: "Delay in the required notification shall be allowed only to render first aid, to maintain the arrest or prevent the escape of a felon, to protect a crime scene, or when the member himself is incapacitated." Rather than trying to cover all bases in a written regulation, it might be more practical simply to prohibit unreasonable delay, citing the enumerated situations as permissible exceptions.

Regardless of a department's provisions for notification, the officer whose gun discharges in a quick-draw contest at



home or who one night lets off a wild shot at someone on a deserted street may be tempted not to report the incident. But in the great majority of cases, the officers know that not reporting will only add to their troubles, and that the incident will come to the department's attention sooner or later. Thus they want at least to give their version of an event before the victim or hostile witnesses recount theirs.

### *INVESTIGATIVE MACHINERY*

There are two basic approaches to the investigation of a discharge or shooting: through the regular chain of command or through a centralized unit such as internal affairs.

Chain-of-command investigations are the rule. In Detroit, for example, the officer's immediate supervisor investigates each shooting or discharge and submits a report through channels to the chief, with each succeeding command level approving or amending the findings.<sup>2</sup> If a fatality is involved, a board of inquiry designated by the chief will also review the incident.

When there is even a possibility that the victim may not survive, the homicide unit will conduct its own parallel investigation for purposes of criminal prosecution.

Oakland, Washington, and Indianapolis all have somewhat similar procedures—chain-of-command investigations supplemented by firearms review boards. In Portland, the chief may name a firearms investigation committee if a particular shooting raises policy problems; otherwise chain-of-command findings are merely reviewed by the inspections division before being sent on to the chief.

Kansas City has a hybrid system. The nuts and bolts of the investigation of shootings and discharges alike are handled by the department's internal affairs unit, which assembles a file of statements, police forms, lab reports, photographs, and diagrams. In addition, cases in which a person is actually struck are investigated by detectives of the investigations bureau. Internal affairs makes no recommendation for a finding or a disposition in its report; that responsibility is left to the assistant chief, who may decide,

subject to the chief's approval, whether a shooting is "justified" or "unjustified," and (if the latter) what form of discipline to mete out. Alternatively, the assistant chief may decide to ask a lower-level officer for recommendation.

In Birmingham, actual shootings are investigated by the internal affairs and homicide sections and by a representative from the chief's office who is called to the scene. Discharges are reviewed only by the officer's sergeant, whose report is ultimately filed with internal affairs. Until recently, discharges were examined far more casually than shootings, although the difference between the two is often merely a matter of luck or marksmanship.<sup>3</sup>

By failing to scrutinize discharges closely, departments may be missing an opportunity. It is easier to be critical of a discharge incident in which nobody has been hurt than to second-guess an officer in the emotion-packed atmosphere surrounding a shooting. Indeed, in virtually all of the cities studied, a substantially higher percentage of discharges was found unjustified than of shootings.

Although scientific evidence may sometimes play a role in the investigation of a shooting incident, the questions most likely to be at issue will be whether the officer acted in self-defense and, when applicable, whether a felony had been or was being committed. Answering those questions will probably involve recording and weighing the testimony of witnesses, police, and civilians. Obviously, it is important that as many witnesses as possible be secured, and that they be interviewed promptly and independently. To prevent testimony from being manipulated, it may be advisable to stipulate, as some cities do, that at least two persons conduct each interview, including an investigator not associated with the officer involved. Other possibilities include asking a civilian or a member of a public interest group to serve as an interviewer.

Polygraph testing is widely employed in internal police investigations and can be especially useful when an officer contends that he or she was acting in self-defense while civilian witnesses insist that the firing was without provoca-



tion. Many police officers' associations object to the use of lie detector tests, but these objections can at least be minimized through the adoption of a rule such as Kansas City's; there, an officer is required to take a polygraph test only after conflicting witnesses also take the test and pass. Other concerns of individual officers and police associations can be addressed by having the test administered by a technician independent of either the police department or the city administration. However, because the reliability of test results is still a debatable issue, department investigators are well advised not to base their findings solely upon the results of a polygraph test.

### *FIREARMS REVIEW BOARDS*

The police firearms review board is a relatively new concept, but one that has caught on quickly. Washington, D.C., has one of the oldest such boards, dating back to 1970. Indianapolis created its review board at the beginning of 1975, after a new chief was named to head the department.

These boards differ from city to city in both composition and responsibilities. For example, Washington, D.C.'s Service Weapons Review Board consists of the department's civilian general counsel, who is the chairman; the deputy chief in charge of patrol; and the deputy chief in charge of the criminal investigations division. This board is charged with the responsibility for reviewing all incidents in which police officers have used firearms, chemical dispensers, batons, blackjacks, and tear gas.<sup>4</sup> In Detroit, fatal shootings are reviewed by a board of inquiry composed of three officials with the rank of inspector or higher; the chief designates a new board for each incident.

In Oakland and Indianapolis, the boards are considerably larger and include not only a rotating group of high officials but also one or two members of the same rank as the officer whose actions are being reviewed. This innovation is designed to add current street perspective and to increase the board's credibility with the rank-and-file. It also serves to help publicize the board's actions within the

department, as does Oakland's practice of putting a training official on the board.

More questionable, however, is the policy both in these cities and in a number of others of inviting the officer's immediate superiors to sit on the review board. The problem is that the superiors' actions, too, may be under review, including the quality of their supervision before and during the shooting incident, and the integrity and completeness of the investigation conducted afterward. The board obviously should hear from these officials, but perhaps as witnesses rather than as fellow board members.

The review board concept has several clear virtues. First, the very existence of the board makes it more difficult for a department simply to ignore the problem of excessive or unwarranted firearms use; creation of the board conveys to both citizens and members of the department that police shootings are matters the department takes seriously and upon which it expects to spend a good deal of time. Second, the review board concept shifts the responsibility for auditing shooting investigations from the chief or commissioner to the chairman of the review board; this is probably sound in terms of the efficient use of the chief's time and in serving to centralize and pinpoint accountability for the investigation. Third, the review board creates a natural, continuing forum for the discussion of an important policy question.

The continuity of the review board procedure is extremely important. Although Portland has no permanent board, a firearms investigation committee is convened whenever a shooting incident raises the possibility that department policy in some area might need revision. Even though the committee's job is strictly to analyze policy rather than individual incidents, its convening in the wake of some incidents and not others suggests both to the public and to police officers that the shooting is questionable.

Such boards, however, by no means guarantee a thorough or even-handed investigation. In one city, the firearms review board reports examined by the staff were invariably



written as point-by-point justifications of the officer's actions. One case even involved two reports: an official one defending the handling of the incident, and a much less laudatory confidential memorandum (drafted "because of the pending civil litigation and the likelihood that the board's [official] report will be subpoenaed").

### *HANDLING OF FATALITIES AND CONTROVERSIAL INCIDENTS*

Even the most clear-cut shooting incident can generate unpleasant headlines, but departments face special problems when the victim of a police shooting appears to have been unarmed or is a juvenile, or when witnesses loudly dispute the police version of events. The investigation of a fatal shooting may last months. Such shootings are routinely sent before a grand jury or coroner's jury, and the department usually defers its own internal review until the criminal process has run its course. Meanwhile, the department invites trouble by taking a stand one way or the other. If its spokespersons appear to defend the shooting, community groups may have grounds for protest. If the department hints that the officer may have been wrong, the officer, the defense attorney, and the local police officers' association will raise a furor.

An incident in Norfolk, Virginia, illustrates what can happen when a department lacks a consistent policy for handling controversial shooting incidents. A black Air Force sergeant was shot three times and killed after allegedly attacking a white police officer with the officer's nightstick. At first the department merely issued an account of the incident based on the officer's version of events and announced that the officer would be assigned to desk duty pending review of the shooting. Three days later, the officer was charged with murder. The charge was announced at a joint press conference called by the commonwealth's attorney and the chief of police.

The following day, the National Association for the Advancement of Colored People asked the chief to suspend

the officer without pay. The chief refused, saying his actions would be vindicated when the case went to trial, and he explained, "the facts in the case demand that I do what I am doing." But the pressure continued to mount. The American Civil Liberties Union requested an FBI investigation. Community spokespersons began complaining of too much police presence in the victim's neighborhood after the shooting had occurred. At an emotional city council hearing, witnesses spoke for and against suspending the officer. Finally, the officer's own attorney suggested that his client be suspended without pay pending the outcome of the trial, and the chief agreed.<sup>5</sup>

To avoid such controversies, many departments have a fixed set of procedures to use in the wake of fatal shootings: The officer is suspended with pay or reassigned to inside duty, and all public comment is declined. In Washington, D.C., the officer is also relieved of his or her service revolver, badge, and identification, and of the right to carry a personal off-duty revolver. This procedure is naturally resented by officers involved in shooting incidents, who feel they are being prejudged. In fact, the department's rationale for taking the officer's gun away in *all* cases is precisely to avoid having to make prejudicial decisions in those instances when the officer appears to be demonstrably unsuited for further duty.

In Detroit, an officer involved in a fatal shooting incident is relieved of customary duties and placed under the supervision of the board of inquiry appointed to investigate such incidents. During the period of investigation, the officer is interviewed by a psychiatrist, whose findings regarding the officer's mental condition are submitted to the board in writing.

When a department adopts fixed procedures, whatever they are, they may be more likely to be accepted if the rationale for adoption is explained in more or less the following fashion:

Any application of deadly force by a police officer is of sufficient gravity to warrant exten-



sive investigation and a full exploration of the facts. The search for truth when an officer has used deadly force cannot be any less intensive than it is when the actor is a civilian—for that reason, a police officer's version cannot be accepted without independent verification.

Officers are also less likely to react negatively to investigative procedures and are more likely to accept the outcome of an investigation if, at the same time the department articulates its rationale for an intensive investigation, it explicitly sets forth a determination to protect the officer's right to due process. In many departments these protections are spelled out either in internal affairs unit guidelines or in a police officers' bill of rights, such as those enacted in Florida and Maryland. (See Appendixes E and F.)

#### *FINDINGS: JUSTIFIED OR UNJUSTIFIED?*

Deciding whether a shooting is justified can be difficult. First of all, an officer faced with a serious threat to life or limb should not be condemned for failing to find the best possible response. As Oliver Wendell Holmes put it, "Detached reflection cannot be demanded in the presence of an uplifted knife." In addition, the physical details of a shooting incident may not always be subject to clear-cut proof. Vital facts may vary according to which witness is recounting them.

As described in chapter 1, after reviewing several hundred shooting incidents in seven cities we found that the substantial majority appeared to be clearly justified under the applicable state laws and department policies. However, a few which were found to be justified appeared even to department reviewers to have questionable aspects, as illustrated in the following examples.

First are the incidents in which self-defense is claimed, but the officer's fear seems, in retrospect, out of proportion to the threat.

*Case A.* A burglary-in-progress call. An officer searching the rear of a building hears a noise, points a flashlight, and sees a man crawling out

through a hole in the building wall. The man makes a motion as if to reach for a weapon, and the officer shoots him. Photographs show the subject less than halfway out of the building and in a prone position when shot. No weapon is recovered.

In a second category of incidents, the officer testifies that the suspect had a weapon, but either no weapon is recovered or there is evidence to suggest that the officer may have planted a gun or knife on the suspect.

*Case B.* An officer on a burglary call goes to the rear of a house where he confronts a suspect, whom he shoots. According to the officer, the suspect had cut through the officer's shirt with a knife. A subsequent lab report, however, concludes that the cut in the shirt could be duplicated only by folding the cloth over the knife *from the inside* and cutting through. The report also comments on the fact that the knife has been meticulously cleaned very recently. The officer refuses to take a polygraph test.

The third category of questionable shootings includes incidents in which the officer fires to apprehend a fleeing felon, but probable cause (either that a felony occurred, or that the suspect necessarily committed it) seems lacking.

*Case C.* A sergeant observes two cars with tires packed into the rear seats. As he pulls up to investigate, both cars drive away. He pursues one of them, and when the driver bails out and starts running on foot, the sergeant shoots him. Only later is it determined that the tires were taken in the burglary of a tire store.

A fourth category of incidents involves persons who have undoubtedly committed felonies, but whose identities are known to the police and who can presumably be arrested later without resort to the use of firearms.

*Case D.* Officers are serving a burglary warrant at the residence of the suspect. However, the man they find there claims he is not the person named on the warrant. While the officers attempt to summon another officer who can per-



sonally identify the correct suspect, the man they have been questioning bolts and runs. After a lengthy chase, he is shot.

*Case E.* Two detectives are serving a warrant for grand larceny. The suspect refuses to go with them, so one detective returns to the car to call for assistance. Meanwhile, the suspect strikes the other detective, runs from the scene, and is shot fleeing across his own back yard.

In a fifth category of incidents, the use of deadly force becomes necessary because of some rash or ill-considered action taken by the police.

*Case F.* A suspect is already in the caged rear seat of a police transport vehicle, under arrest for assault on a police officer. Because a crowd is gathering, the officer at the wheel of the transport car quickly drives away from the scene of the arrest. Several blocks distant, the officer gets out of the car and opens the rear door, ostensibly to render first aid. The suspect, however, comes charging out of the car, uses his head to butt the officer in the stomach, and runs. The officer then shoots the suspect.

A review board found this shooting justified, although it may well have suspected that the officer's real reason for stopping the car and opening the rear door was to administer "curbstone justice" rather than first aid. The chief, on the board's recommendation, reprimanded the officer for "failure to carefully analyze the situation and for exercising poor judgment in attempting singlehandedly to confront an extremely violent suspect . . ."

*Case G.* An off-duty officer, in his private car, is advised by a friend about a reckless driver in a van who has cut the friend's car off in traffic. The officer locates the van and, while both are stopped at a red light, asks the driver why he tried to cut in front of the officer's friend. "I'll run anyone off the road who tries to pass me, including you, \_\_\_\_\_," is the driver's reply. When the officer asks him to pull over and get out of his vehicle, the driver refuses, and a long,

wild chase ensues, during which the van allegedly tries to force the officer's car off the road. Then, as both vehicles are hurtling toward a bridge abutment, the officer, "seeing the danger to his life and that of his passenger, Miss B.," draws his gun and fires one shot at the driver of the van. The shot does not take effect, and the van escapes.

In reviewing this incident, a lieutenant wrote: "Even though Off. J. was justified in using his revolver . . . he could possibly have used greater restraint and avoided firing the shot. . . . I therefore recommend that Off. J. receive retraining in the use of his firearm." There was no inquiry, at least in the written record, concerning why the officer chose to get involved, off-duty, in a minor traffic dispute. Nor was there any suggestion that if the officer were able to draw and fire his gun, he might have been able to brake his vehicle and thus avoid the imminent danger offered as the justification for shooting. Further, there is no indication in the record whether the lieutenant's rather questionable judgment in this matter was, in turn, reviewed.

The sixth and final group of incidents contains "accidental" shootings that appear to involve, at the least, negligence or extreme nervousness.

*Case H.* While an officer is making a routine traffic stop, the car he has stopped suddenly drives away. The officer gives chase, eventually catches up with the vehicle a second time, and approaches it on foot, weapon drawn. As he reaches the car, his gun accidentally discharges, fatally wounding the 63-year-old driver.

*Case I.* An officer involved in an off-duty fight strikes a subject over the head with his personal revolver, and the weapon, a "Saturday night special" .22 derringer, discharges with the impact.

All of the foregoing shootings and discharges (cases A through I) were found to have been justified under the applicable department policies. Although the supervisors



who investigated these incidents were not wholly uncritical, their words of criticism were few and appeared under such headings as "remarks" and "training aspects"—clearly divorced from their basic findings.

Some departments have attempted to construct rules that cover the issues raised by these incidents. The new Birmingham firearms policy, for example, states: "Justification for the use of an officer's firearm is limited to facts known to the officer, or perceived by the officer at the time he decides to shoot. Facts unknown to the officer cannot be considered in . . . determining justification for the shooting."

A Detroit training and information bulletin states: "An escaping felon whose identity is known to an officer or witness and whose arrest can subsequently be effected does not justify capture by wounding or death." By the same token, departments might consider a rule governing situations in which one or more suspects are already in custody while an accomplice is fleeing the scene.

Oakland, in the General Order establishing its board of review for shootings and discharges, has two provisions that may be unique:

When the circumstances at the time of the firing are justifiable but the firing was the result of the officer's departure from acceptable police procedures, the finding shall be that the discharge was Non-justifiable.

A finding of Accidental shall be made only when there is no element of negligence on the part of the member. If negligence on the part of the member is an element resulting in the discharge, the finding shall be Non-justifiable.

These are very tough standards that go against the tendency observed almost everywhere: to find an officer's conduct justified while noting any mistakes in the small print. Under the Oakland policy, the officer who rushes into a building and shoots a barricaded gunman could conceivably be disciplined for not having remained outside and called for assistance. Likewise, the officer who fails properly to guard a prisoner and then has to resort to the use of

firearms to prevent the prisoner from escaping could see the shooting called nonjustifiable.

It can be debated whether Oakland always has followed its own policy, yet one 1974 case illustrates the reason for both sections quoted.

*Case J.* A patrol car chases and stops an erratically driven truck. The officer approaches with gun in hand, ordering the driver out. When the driver refuses, the officer reaches inside with his free hand, tries to pull the driver from the truck, then wraps his other arm (the one with the gun) around the driver's shoulder. In the ensuing struggle, the officer accidentally shoots and wounds the driver.

This shooting was ruled nonjustifiable because, Oakland's board of review wrote, the officer should have had the sense to reholster his weapon.

### *DISCIPLINE.*

When officers use their firearms without proper justification, how should they be disciplined? Examination of shooting incidents in the sample cities as well as a review of the relevant literature, suggests that the officers involved in such shootings often receive verbal or written reprimands as the sole form of department discipline. Forfeiture of days off and suspension from duty are far less frequent as forms of disciplinary action.<sup>6</sup>

In one city, records of more than 100 shootings over a span of several years establish that five of these incidents were, in effect, found unjustified. A single officer was terminated from the department as punishment; the other four officers received verbal reprimands or counseling. In addition, four officers were reprimanded for their use of unauthorized hollow-point ammunition. In one of these instances, a lieutenant wrote: "I have verbally reprimanded Officer M. for this infraction and recommended that this suffice at this time, due to the fact that he is a hard-working conscientious police officer." The same lieutenant offered the estimate that 25 percent of the officers in a busy precinct probably



used hollow-point bullets; he did not, however, speculate that such a wide-scale defiance of department policy might have something to do with the mild discipline meted out to those found in violation.

The general pattern of discipline in unjustified shootings and discharges can best be illustrated by recounting incidents from several different cities:

*Case K.* An officer observes two subjects inside the previously damaged screen door of a grocery. They flee, ignoring a call to halt. The officer, still in his car, fires a shot that does not take effect. Later the subjects are arrested, but it is ascertained that no actual burglary has occurred.

A supervisor, reviewing this incident, wrote: "It has been explained to Officer C. that the circumstances as seen now would preclude the use of his weapon. I recommend no further action in this matter." The recommendation was approved up through the chain of command, one higher official noting: "Since this location has been the scene of several burglaries in recent months, and since Officer C. apparently sincerely but mistakenly believed that in this instance, there had been another burglary just committed . . . I concur in Lt. N's conclusion that the officer's action should not be further censured."

*Case L.* An officer has parked the patrol car in order to observe a supermarket plagued by robberies and shoplifting. The officer, seeing a clerk chase some shoplifters out of the store, and knowing he can't catch the suspects, fires at them.

This case went before a review board, which found the shooting unjustified. The officer, according to the board, "fired out of frustration, knowing the suspects would escape." The board also noted that "one of the suspects was known to the officer and a warrant could have been issued for the man's arrest." The board then took pains to recommend a light sentence, praising the officer's initiative in setting up the surveillance.

*Case M.* Officers are chasing a vehicle wanted for speeding when the occupants abandon their car and flee through an alley. The officers call for them to halt, at which time one of the officers fires a shot. Later the officer testifies that he feared the suspect might have a gun. The suspect's friends, however, state that he had put his hands up in the air to surrender.

The department must have believed the civilian witnesses in this case. The officer's lieutenant wrote: "I have verbally reprimanded H. on using his gun without proper justification. I have reinstructed the officer on the use of firearms and ordered him to read and study the general order on firearms use . . . I have instructed the patrol sergeants to give Officer H. close supervision and to report back to me on any unusual acts or actions taken by this officer while performing his duties. I recommend that this case be closed."

*Case N.* An officer observes a suspicious subject running through an alley carrying a television and a tape player. The officer chases the subject, and when he feels he can run no further, he fires a shot.

Here the officer's immediate superiors recommended a written reprimand and retraining, on the grounds that the officer could not have known if a felony had been committed. The next higher official modified the punishment, however: "After reviewing this matter, I feel that reinstruction, retraining in the advanced firearms training program, and verbal admonishment rather than a written reprimand suffice in this matter." In a similar incident in the same city, where suspected burglars were fired at but no burglary ever established, an official wrote: "I have cautioned Officer R. that unless he witnesses a subject in the act of breaking and entering, he has no way of being sure that *persons* running from policemen are all perpetrators. I therefore concur with Sergeant J. and recommend retraining."

*Case O.* Standing to one side, officers knock on the door of an apartment where shots have



been heard. Immediately two shots are fired out through the door. One of the officers fires back, and after several minutes of silence, they break down the door and find the subject dead.

In this case, a review board (1) commended the officer for his actions, (2) arranged for his transfer to the helicopter unit because he had been involved in three fatal shootings, and (3) reprimanded him for using unauthorized ammunition. The officer's actions in this incident would not seem to reflect sound police practice. A department order describes a complicated procedure to be followed in such "barricaded gunman" situations and expressly discourages shooting blindly through doors or walls at an undefined target. Although transferring the officer to the helicopter unit probably eliminates the risk of involvement in a fourth fatality, this choice duty will inevitably be viewed by the officer and fellow officers as a "reward" for the shooting.

In one sample city, a former chief took a close personal interest in disciplinary cases, shootings included, and often would call ordinary officers into his office for one-on-one sessions of inquiry or counsel. This chief's characteristic attitude, apparently, was to be considerate and flexible when it came to deciding punishment. If the officer was in bad financial straits, for example, the chief would probably overrule a lower-level recommendation that the officer be suspended.

Police departments are not, as a rule, using discipline to convey the impression that firearms use is a high-priority concern. Department discipline in shooting cases seems lenient if not perfunctory in many cities. Apparent violations of both the letter and the spirit of department policies have been condoned either by outright justification or by extremely mild discipline. Officers even have been commended for shootings that appear to have gone against department policy or sound practice. The National Commission on the Causes and Prevention of Violence, in a task force report, made similar observations and noted that departments often impose far more severe sanctions on personnel who have violated minor internal regulations

than on those who have been involved in questionable or unjustified shootings.

There are obvious reasons for this pattern of leniency—reasons peculiar to the occupation of law enforcement. As former patrol officers, police chiefs and high officials can remember just how nerve-racking and unpredictable that job can be. They are, moreover, the executives as well as the judiciary of their departments, and as such may want to avoid taking actions that could cost them the loyalty of rank-and-file officers or depress department morale.<sup>7</sup> Finally, there is the dilemma that even the most grossly unjustified shootings may in some sense be acts of “good faith,” the products of a sincere if overwrought dedication to duty. The same officers who use their firearms in this fashion may be responsible for many outstanding pieces of police work.

There are also exceptions to the pattern of leniency described here. As noted earlier, several of the sample cities appeared to deal much more sternly with unnecessary discharges than with unnecessary shootings, presumably feeling that a crackdown on the former will lead to a reduction in the latter. In one city, of 16 shootings that occurred in the course of a year, only a single case was ruled unjustified and the officer reprimanded. By contrast, of 51 discharges in the same year, the department took disciplinary action against 26, or roughly half, of the officers involved. The rate of shooting in this particular city was about average in 1973, and declined in 1974.

In several cities, strong discipline was handed down in one or two particularly dramatic cases. According to the police administrators in those jurisdictions, this action appeared to have made a powerful impression. In Oakland, for example, there was an incident in which a team of narcotics officers, serving a search warrant on a drug dealer, had surrounded his apartment and were about to enter when a shootout erupted. Scores of shots were fired from all directions, the drug dealer apparently escaped, and one officer was wounded in the wrist. According to police statements



made immediately after the incident, the first shots had come from inside the apartment, and police fired only in self-defense. But the subsequent investigation established that no shots whatever had been fired inside the apartment. The first bullet, like all the rest, had come from a police weapon.

The case was heard by a review board composed of the deputy chief in charge of patrol, a patrol captain, a vice squad lieutenant, a lieutenant from the bureau of investigations, a lieutenant from training, a sergeant from communications, two street sergeants, and two rank-and-file officers. Several witnesses were invited to testify before the board, including the half-dozen vice officers whose actions were under review.

The board found that the officer who fired first had "fired blindly into the apartment immediately after the door had been forced open." He was suspended for three days, transferred out of the vice section, and recommended for psychiatric evaluation "to determine his suitability for field duty." The lieutenant was reprimanded for authorizing the use of a 9mm. automatic against department policy. Another officer was suspended for three days because he "used extremely poor judgment when he discharged his weapon without seeing a target." And a sergeant was suspended because he "over-reacted" to what he thought were shots coming from inside the apartment.

The real but mistaken belief of some officers that there were shots coming from inside the apartment appears to have resulted from two factors. First, there were police at both front and rear, with weapons inadvertently directed at one another. Second, when one officer fell back from the recoil effect of his own gun, it looked as if he had been shot.

Although the harshness of the discipline in this case presumably reflects the danger to police as well as to civilians in such a chaotic situation, the board's findings nevertheless served to give a sense of force and immediacy to the department's firearms policy. That was precisely the idea: Suspensions, the board wrote, "will serve as an excellent notice to all other members."

When Oakland's board of inquiry finds something to criticize in a shooting incident, its report is distributed throughout the department and used in recruit and in-service training; even dissenting opinions of individual board members are published for such use. In this way, the issues of department policy and individual performance raised by a shooting incident are given a full airing. It should be kept in mind, however, that the purpose of department investigation and review is not only to discover the facts for disciplinary purposes, but also to identify faulty (and correctable) conditions and practices, e.g. lack of accountability, indolent and irresponsible supervisors, ineffective training and failure to monitor unacceptable conduct.<sup>8</sup>

Although a department may appropriately commend an officer for acting reasonably and courageously in circumstances in which the use of a firearm was clearly unavoidable, and may discipline an officer whose actions were unjustified, it should also be prepared to address the emotional needs of officers involved in either type of shooting. Supportive counseling or more intensive therapeutic intervention may be in order; supervisory personnel should be alert during and after the investigative process to refer officers who request help or those who appear to be in need to appropriate services and agencies.

In Portland, a representative from the Traumatic Incident Committee (a group of officers previously involved in such incidents) is made available to accompany an officer who has been involved in a shooting through the department's debriefing procedure; legal and psychological counseling also is available if needed and a partner may be temporarily assigned after the officer has been returned to duty.

### *CRIMINAL PROSECUTION*

Although the conduct of judges and juries is beyond the power of police administrators to control, and thus falls outside the realm of this study, a brief observation may be in order about the ultimate remedy of criminal prosecution.



Prosecutors must rely on the police for assistance in the investigation and preparation of cases, so it is perhaps understandable that they never have been very enthusiastic about pursuing allegations of criminal wrongdoing against the police. Of late, however, prosecutors in a number of cities have shown an increased willingness to investigate the conduct of local police officers; and where state and local officials choose to overlook possible criminal acts by police, the federal government may file its own charges. In Birmingham, for example, the FBI routinely investigates police shootings of civilians.

Even where prosecutors are not shy about initiating such cases, police officers are rarely convicted for on-duty or line-of-duty shootings. From 1971 to November 1975, federal prosecutors brought 128 cases against 228 law enforcement officials for alleged shootings, beatings, and other use of excessive force.<sup>9</sup> Of these officers, 180 were acquitted, and only 48 were convicted. It appears that judges and juries simply refuse to consider the actions of a law enforcement officer, acting as such, in the same light as those of an ordinary citizen.

It is conceivable that the risk of criminal sanctions may become more real in the future for police officers who violate laws concerning the use of deadly force; meanwhile, internal discipline is the more practical remedy.

TABLE 12

## INTERNAL REVIEW PROCEDURES FOR SHOOTING INCIDENTS

City	Immediate Notification to	Basic Investigation Handled by	Adjudication/Discipline Decided by
Detroit	Nearest precinct desk	Chain of command	Chain of command (plus a board of inquiry appointed in fatalities)
Oakland	Watch commander of officer's unit	Chain of command	Firearms review board/chief (includes members with same rank as officer under review)
Washington, D.C.	Watch commander of officer's unit	Chain of command	Firearms review board/chief (general counsel, deputy chief of patrol, and deputy chief of criminal investigations)
Kansas City	Radio dispatcher	Internal affairs	Assistant chief/chief
Portland	Officer's immediate supervisor	Chain of command	Inspections division/chief (a firearms investigation com-



TABLE 12

## INTERNAL REVIEW PROCEDURES FOR SHOOTING INCIDENTS—Continued

City	Immediate Notification to	Basic Investigation Handled by	Adjudication/Discipline Decided by
			mittee is named when shooting raises policy ques- tions)
Indianapolis	Any superior officer	Chain of command	Firearms review board/ chief (includes members with same rank as officer under review)
Birmingham	Any superior officer	Internal affairs	Chief (all actions subject to approval of county person- nel board)

### Notes

1. Shots fired at an approved range are generally excluded from this requirement. Kansas City also excludes "sporting events" (shooting matches and hunting), and in Detroit, an officer who shoots a wounded animal need only file an incident report at the end of the tour of duty.
2. The report form, which requires answers to numerous factual questions about the incident and includes a space for a written narrative, also includes a "recommendation" category where the supervisor is directed to check one of four options: (1) no further action; (2) retraining; (3) disciplinary action; (4) pending.
3. Since the Police Foundation site visit, some disciplinary actions have been taken with respect to discharges; one instance resulted in a five-day suspension and several others in written reprimands.
4. The only exception to this rule is the use of tear gas to control crowds or to assist in the capture of wanted persons protected by barricades. See Appendix D for more detailed description of Washington, D.C.'s review board procedures.
5. Articles from the *Virginia Pilot*: 2/16/75; 2/17/75; 2/19/75; 2/27/75; 2/28/75, and *Ledger Star*, 2/18/75; 2/19/75.
6. These observations do not apply to all seven cities in this study nor to any of the cities with respect to *all* unjustified shootings that were reviewed. They do, however, reflect a not uncommon practice.
7. A shooting incident in Indianapolis provoked Dep. Chief Larry Turner to exclaim: "I've had it. I don't care what they think of me. We are going all the way on this. We just can't have this kind of thing happening in the police department. Covering for your buddy won't work anymore." (Indianapolis *Star*, August 3, 1975.) Turner's words carried the implication that police administrators find it anything but easy to take action against officers in shooting or alleged brutality cases.
8. At the same time, police administrators should be careful not to fall into the trap of assuming that all mishaps are preventable; this leads to the kind of Monday-morning quarterbacking described in Joseph Wambaugh's *The Onion Field* (New York: Delacorte Press, 1973). After the abduction and murder of a police officer, some department officials decided that it was simply bad police procedure for an officer to allow himself to be taken hostage.
9. These prosecutions were brought under Title 18 U.S.C. Sec. 242. The pertinent part of that statute provides that "whoever, under the color of any law . . . willfully subjects any inhabitant of any state . . . to the deprivation of any rights, privileges, or immunities secured . . . by the Constitution or laws of the United States . . . shall be [guilty of an offense]."