

innovations in each area and focus upon some of the difficulties implicit in each mechanism.

1. Guidelines

One administrative means of controlling police use of deadly force may be found in shooting guidelines used to restrict police shooting to specific situations. Such guidelines are most often more specific and restrictive than statute law.

As recently as 1970, many departments had no guidelines beyond such truisms in personnel manuals as "Leave your gun in your holster until you intend to use it." But that has changed considerably over the last decade. A survey by the I.A.C.P. in 1980 found that every department that responded to its questionnaire had a written policy, and many of these policy statements contain moral, ethical and constitutional discussions as well as specification of when it is appropriate and acceptable to shoot. The 1977 Los Angeles Police "Use of Firearms Policy" below, for example, provides a model of a comprehensive, intelligible, yet sufficiently open-ended policy. It replaced a far more ambiguous and open-ended policy allowing the shooting, for example, of any type of fleeing felon. This document was created following a series of shootings with political repercussions. The policy reflected intensive study, dialogue and compromise among various functions and between the department and its constituency. The availability of such a document makes public the expectations and standards of the department while preserving freedom of interpretation for the officer. This type of document also articulates a general departmental "philosophy" regarding the use of deadly force.

Policy:

1. PREAMBLE TO THE POLICY ON THE USE OF FIREARMS. The use of a firearm is in all probability the most serious act in which a law enforcement officer will engage. It has the most far-reaching consequences for all of the parties involved. It is, therefore, imperative not only that the officer act within the boundaries of legal guidelines, ethics, good judgment, and accepted practices, but also that the officer be prepared by training, leadership and direction to act wisely whenever using a firearm in the course of duty.

A reverence for the value of human life shall guide officers in considering the use of deadly force. While officers have an affirmative duty to use that degree of force necessary to protect human life, the use of deadly force is not justified merely to protect property interests.

It is in the public interest that a police officer of this Department be guided by a policy which people believe to be fair and appropriate and which creates public confidence in the Department and its individual officers.

This policy is not intended to create doubt in the mind of an officer at a moment when action is critical and there is little time for meditation or reflection. It provides basic guidelines governing the use of firearms so that officers can be confident in exercising judgment as to the use of deadly force. Such a policy must be viewed as an administrative guide for decision-making before the fact and as a standard for administrative judgment of the propriety of the action taken. It is not to be considered a standard for external judgment (civil or criminal litigation) of the propriety of an action taken. This is a matter of established law and also a process for courts and juries reviewing specific facts of a given incident.

- II. NECESSITY THAT OFFICERS BE ARMED. As long as members of the public are victims of violent crimes and officers in the performance of their duties are confronted with deadly force, it will remain necessary for police officers to be properly armed for the protection of society and themselves.
- III. REASON FOR THE USE OF DEADLY FORCE. An officer is equipped with a firearm to protect himself or others against the immediate threat of death or serious bodily injury or to apprehend a fleeing felon who has committed a violent crime and whose escape presents a substantial risk of death or serious bodily injury to others.
- IV. PROTECTION OF GENERAL PUBLIC. Regardless of the nature of the crime or the justification for firing at a suspect, officers must remember that their basic responsibility is to protect the public. Officers shall not fire under conditions that would subject bystanders or hostages to death or possible injury, except to preserve life or prevent serious bodily injury. Firing under such

conditions is not justified unless the failure to do so at the time would create a substantial immediate threat of death or serious bodily injury.

V. MINIMIZING THE RISK OF DEATH. An officer does not shoot with the intent to kill; he shoots when it is necessary to prevent the individual from completing what he is attempting. In the extreme stress of a shooting situation, an officer may not have the opportunity or ability to direct his shot to a non-fatal area. To require him to do so, in every instance, could increase the risk of harm to himself or others. However, in keeping with the philosophy that the minimum force that is necessary should be used, officers should be aware that, even in the rare cases where the use of firearms reasonably appears necessary, the risk of death to any person should be minimized.

VI. THE USE OF DEADLY FORCE. An officer is authorized the use of deadly force when it reasonably appears necessary:

- A. To protect himself or others from an immediate threat of death or serious bodily injury, or
- B. To prevent a crime where the suspect's actions place persons in jeopardy of death or serious injury, or
- C. To apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed.

Officers shall not use deadly force to protect themselves from assaults which are not likely to have serious results.

Firing at or from moving vehicles is generally prohibited. Experience shows such action is rarely effective and is extremely hazardous to innocent persons.

Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.

VII. JUSTIFICATION LIMITED TO FACTS KNOWN TO OFFICER. Justification for the use of deadly force must be limited to what reasonably appears to be the facts known or perceived by an officer at the time he decides to shoot. Facts unknown to an officer, no matter how compelling, cannot be considered at a later date to justify a shooting.

VIII. SUSPECTED FELONY OFFENDERS. An officer shall not fire at a person who is called upon to halt on mere suspicion and who simply runs away to avoid arrest. Nor should an officer fire at a "fleeing felon" if the officer has any doubt whether the person fired at is in fact the person against whom the use of deadly force is permitted under this policy.

- IX. YOUTHFUL FELONY SUSPECTS. This Department has always utilized extreme caution with respect to the use of deadly force against youthful offenders. Nothing in this policy is intended to reduce the degree of care required in such cases.
- X. SHOOTING AT FLEEING MISDEMEANANTS. Officers shall not use deadly force to effect the arrest or prevent the escape of a person whose only offense is classified solely as a misdemeanor under the Penal Code.
- XI. FIRING WARNING SHOTS. Generally, warning shots should not be fired.
- XII. DRAWING OR EXHIBITING FIREARMS. Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm in conformance with this policy on the use of firearms.

Other departmental policy statements are far less comprehensive, restrictive, and clear than that of the Los Angeles department. But no modern ones are like the one reported by Chapman (1969) which consisted of the not-too-useful aphorism, "Never take me (i.e., your gun) out in anger, never put me back in disgrace." The city of Charlotte (North Carolina) Police Department's statement below as an example of a rather "terse" and almost incomprehensibly open-ended departmental shooting guideline:

DEADLY FORCE

1. The officer may use only that amount of deadly force which is reasonably necessary. If a peaceful means is at his disposal and would serve as well, he must use it. If another means exists for dealing with the situation, it must be used.
2. The officer may use deadly force.
3. The officer is justified in using deadly force only when reasonably necessary.

V. PUBLIC SAFETY

- A. WARNING SHOTS: The danger to innocent bystanders must be taken into consideration.