CHAPTER SEVEN

THE ADMINISTRATIVE CONTROL OF DEADLY FORCE

Introduction: The Paradoxes of the Administrative Control of Deadly Force

A police chief in a mid-Atlantic city glanced nervously at the report on his desk. An officer with seven years experience had shot a man armed with a .22 pistol. On casual glance the shooting would seem non-controversial—almost routine. The report tersely indicated that the officer was faced with an apparent threat to his life and fired only after he had been shot in the thigh. This shooting was in reality, however, anything but routine. The officer had been disciplined twice in the two previous years for excessive use of force against black gang members. Three years before he had shot a kneecap off a sixteen-year-old boy who had a broken bottle when he was cornered in a school yard by the officer (and three others). Also, the current shooting involved a politically active black man in the "hardest" core ghetto area in the city. The preliminary report stated unambiguously that the man had first shot the officer in the thigh and then was shot by the police officer. As the chief was just finishing the report, a black reporter from a local newspaper called to ask him if he had a comment about a reported witness to the shooting who claimed that the victim was shot more than two minutes after the officer was shot. The chief responded that he was unaware of any such witness. "Well, you'll be reading about it in the evening paper," the reporter said. He abruptly hung up. The next call came from the Police Protective Association. The president of the Association was at the other end of the telephone line to urge the chief "to express support for all the city's officers in his report..." Anything else, he said, "might demoralize the troops." He added that he could take no responsibility for how they might respond if the officer

was disciplined. In the afternoon, the chief visited the wounded officer in the hospital. The man was not seriously hurt but seemed disoriented and defensive. His eyes twitched and he smiled blankly. Later that afternoon, the chief received a petition from a group calling itself "The Citizens' Coalition Against Police Abuse" demanding that the chief immediately fire the offending officer. The petition also called for a "citizen's audit" of the department's shooting policies, training and review processes. The chief later met with the captain in charge of the shooting review team; the grave captain handed him a detailed report containing the following:

> Officer X encountered a black male, age 23, who pulled a pistol from his jacket while on his porch at 22 Joseph Avenue, after Officer X questioned him about the whereabouts of an acquaintance. The officer told the man to drop his weapon. The man fired two shots from a .22 pistol at Officer X, wounding him in the left thigh. The officer returned fire, killing --.

"I.A., good as you can get" the captain grimly offered. "The broad who said that he waited to blow him away was full of shit. Two cops saw it differently. Those people will always stand up for their own." The chief asked for the service, personnel and psychiatric records of the two backup officers, both veterans with long service in the precinct with Officer X. Both service records indicated a series of unusual incidents; one officer was accused of covering up a beating; the other man was accused of participating in a "late cop.parts" at a local brothel. Neither, however, was sufficiently substantiated to warrant a shift in assignment or suspension. At 5 p.m. the mayor called. "What was the chief going to do about his shooting? Did the chief know that a

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rally was planned that night in the Baptist church?" The chief spoke to the district attorney's office before leaving for home. The D.A. wanted the "paperwork" on the shooting by the next morning. He said he'd had more than a dozen calls about it already. "What," he wanted to know, "was the chief going to do about _his_ shooting problem?"

A similar set of pressures has been faced over a shooting incident by police chiefs in Los Angeles, Birmingham, Miami, Oakland, Philadelphia, Chicago, and many other cities during the past several years. In this chapter, we will consider several of the techniques, procedures, and policies available to the chief to minimize occurrence of the phenomenon and to make handling easier if it does occur. We will outline the usefulness of formal administrative policy, training procedures, operational rules, and shooting review procedures in reducing the rate of deadly force by police officers. We will also address some of the forces which counteract the effective implementation of an effective organizational approach to control of the use of deadly force; we will consider, for example, the conflicts faced by the chief desiring at once to protect the lives of innocent citizens from abuse of police force and to maintain sufficient political support (both within and without the police department) to continue to administer his department effectively. The police association, for example, is likely, as discussed in Chapter to oppose virtually any imposition of a firmer, more restrictive rule or approach.

In our discussion of the administrative control of deadly force we will build on the arguments developed earlier. We have, in previous chapters, described the sequential (and complex) nature of decisions to use deadly force; we have argued that the bewildering array of personal

and situational forces that interact in armed confrontations makes the administrative control of police deadly force extremely difficult. In emphasizing the psychological complexity of the police decision to use or not use deadly force, we hope to have conveyed the exceedingly difficult judgment required of an officer required to implement almost any deadly force policy. This emphasis is illustrated by the comment of one police chief who perceptively observed, "You can attempt to control your department but you never can keep your officers from thinking and making judgments."

The difficulties of the administrative control of police deadly force are compounded by the reality that its use within the context of a democratic society by necessity poses powerful dilemmas. As a West German police officer interviewed by George Berkeley (1969) observed, "Democracy is awfully hard on the police." The officer continued, stating that, during the Nazi period Hermann Goring said, "When a policeman shoots, I shoot." In a democratic society, in contrast, there are forces to reduce shooting to the minimum level consistent with public order. Moreover, reviews of shooting may be open to public scrutiny, and there is always the threat of investigation by the press. This normally places a very demanding burden upon both the police officer and the police department.

These dilemmas are intensified by the occupational realities of policing. Street police work demands great organizational autonomy for its operatives (from patrol officers to commanders to detectives). Police departments are also by necessity highly cohesive social units governed more by informal norms, than by formal procedures. The

specific tasks of police work demand that its officers make rapid decisions (often irreversible ones), mostly with little direct super-vision.

The task of controlling police deadly force is further compounded by both the actual danger faced by police officers and the officers' and general perceptions of such danger. Since 1968 more than 100 police officers have been killed in the line of duty each year. In addition, the media, police unions and various political forces have heightened public awareness regarding the risks to police officers of violent criminals. No police chief in the country can afford to control police use of deadly force at the expense of either police safety or, as important, the appearance of police safety.

The nature of the beast is such that is is possible to have a chief who feels deep moral concern about the use of deadly force in his department, but can do little to change matters.

Variation in Departmental Rates of Deadly Force

We expect it will come as a surprise to no one that there are pronounced differences over departments in the rate of use of deadly force. One of the early scholars in the area of police use of deadly force, Robin, reported such differences in 1963. His results are summarized in Table 7.1, using populations and numbers of officers as comparison bases.

Table 7.1

City	Rate of justifiable homicide per 1,000,000 pop.	Rate of justifiable homicide per 10,000 officers
Boston	.40	1.05
Buffalo	1.07	4.76
Milwaukee	1.32	5.50
Philadelphia	1.42	6.08
Washington	3.06	10.65

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A recent article by Sherman and Langworthy (1980), comparing vital health statistics and "alternative sources for police homicides" (such as police or newspaper sources) similarly describes broad variations in police use of deadly force, whether the vital statistics or "alternative" sources are used. (See Table 6.3.) For example, using Sherman and Langworthy's "alternative" sources, Atlanta police killed 2.4 persons per year per 100,000 persons, while Honolulu (judged by the same type of data) killed but .07 persons per year per 100,000 population. This indicates that the frequency of police homicide in Atlanta was over 30 times more common than it was in Honolulu, on a population basis.

Obviously a complex array of social, political, and administrative factors influences the rate of use of deadly force in a particular police department. Two cities with identical populations may confront very different numbers of dangerous and armed offenders. Crime rates, arrest patterns, and local gun sale policies contribute to the hazard in a particular city or department and have an effect on deadly force rate. Administrative policy and shooting review procedure may similarly affect rate. While it is difficult to develop an agreeable standard by which to judge a police department's rate of shooting, it seems clear from existing studies that cities show broad variation in the rates of deadly force irrespective of how the number of shooting incidents are compared, e.g., by population, number of officers or other criteria.

Administrative Intervention and Changes in the Rate of Police Deadly Force

An indication of the importance of administrative policy in determining the rate of use of police deadly force may be found in examining changes in the shooting rate within cities that have experienced major

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administrative changes related to shooting practices. Atlanta, New York and Newark were all, by means of administrative changes, able to effect drops in rates of police use of deadly force in their respective cities. Lee Brown, Public Safety Commissioner of Atlanta, for example, commented that following major policy reforms in 1975, the rate of deadly force sharply declined:

> In Atlanta in 1971 there were 12 citizens killed by police; in 1972 there were eight; in 1973, 17; in 1974 there were 12; in 1975, seven; in 1976, five; in 1977, six; and this year to date there have been three.

> For the number of people shot but not killed by the police during the same eight-year period, there are no data available prior to 1973. In that year, 51 citizens were shot by the police; in 1974 there were 22; in 1975 there were 19; in 1976, three; in 1977, one; and to date this year there have been four.

The work of Fyfe (1977; 1980) with the New York Police Department provides another important example of the impact of administrative reform on the rate of police deadly force. The creation of a shots fired review board in 1972 and a change in department shooting policy was followed by a substantial drop in the rate of deadly force. That effect and the subsequent patterning are shown in Table 6.4.

Table 6.3
Mean Annual Deaths and Death Rates from Homicide by Police Officers
Based on Vital Statistics and Alternate Data in 36
Jurisdictions for Various Years from 1966 to 1976

City	No. of Years Compared	Mean No. of Deaths Per Annum		Mean Deaths Per 100,000 Pop Per Annum		Ratio of Mean Deaths Per Annum
		VS*	A**	VS	A	A/VS
1. Atlanta	4	6.25	10.50	1.41	2.37	1.68
2. Baltimore	2	3.00	8.00	0.34	0.91	2.67
3. Birmingham	4	1.80	6.00	0.63	2.10	3.33
4. Boston	2	2.00	2.50	0.32	0.40	1.25
5. Chicago	7	9.29	33.00	0.29	1.03	3.55
6. Cleveland	2	12.50	10.50	1.84	1.55	0.84
7. Columbus	2	2.50	2.00	0.46	0.37	0.80
8. Dallas	2	10.50	7.50	1.29	0.92	0.71
9. Denver	2	1.00	4.00	0.19	0.78	4.00
10. Detroit	3	15.67	29.67	1.13	2.14	1.89
11. District of Columbia	3	4.67	10.67	0.64	1.45	2.29
12. Honolulu	2	0.00	0.50	0.00	0.07	
13. Houston	2	0.50	15.00	0.04	1.14	30.00
14. Indianapolis	3	7.00	4.00	0.96	0.55	0.57
15. Jacksonville	2	0.50	5.50	0.10	1.05	11.00
16. Kansas City, Mo.	3	0.00	3.33	0.00	0.94	0.00
17. Long Beach	4	0.50	1.75	0.14	0.50	3.50
18. Los Angeles	4	7.50	21.25	0.27	0.76	2.83
19. Memphis	8	0.13	5.25	0.02	0.81	40.39
20. Milwaukee	2	1.00	3.00	0.14	0.43	3.00
21. Oakland	5	1.40	2.00	0.40	0.57	1.43
22. Philadelphia	11	9.45	14.18	0.50	0.74	1.50
23. Phoenix	2	0.00	1.50	0.00	0.24	
24. Portland	4	0.75	1.00	0.20	0.27	1.33
25. San Antonio	2	1.00	3.00	0.13	0.40	3.00
26. San Diego	4	2.00	1.25	0.28	0.17	0.63
27. San Francisco	4	2.25	3.25	0.32	0.46	1.44
28. San Jose	4	2.00	1.50	0.41	0.31	0.75
29. Seattle	2	1.00	3.50	0.20	0.70	3.50
30. St. Louis	2	4.00	6.50	0.72	1.16	1.63
31. Sacramento	4	3.00	2.00	1.14	0.76	0.67
32. New York County	5	5.00	24.80	0.34	1.70	4.96
33. Bronx County	5	5.80	14.00	0.14	0.98	2.41
34. Kings County	5	13.40	13.00	0.54	0.52	0.97
35. Queens County	5	3.60	8.20	0.18	0.42	2.28
36. Staten Island	5	0.60	1.00	0.19	0.32	1.67
(New York City Total)	(5)	(28.40)	(61.60)	(0.37)	(0.80)	(2.17)

*VS = Vital Statistics   **A = Alternate Source of Data

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Table 6.4

Shots Fired Wounding of Persons, and Fatalities by New York Police Officers

Year	Shots Fired	Woundings	Fatalities	Annual Reduction/ Increase of shots fired
1973	556	121	54	−29.5%
1974	470	109	56	−15.46%
1975	439	97	41	−6.5%
1976	374	86	42	−14.80%
1977	414	98	49	+10.6%
1978	372	80	41	−10.1%
1979	364	72	30	− .2%

While there are confounding factors from year to year (e.g. changes in crime rate, number of employed police officers, etc.) the almost steady decrease from 1972 makes an alternate explanation much less reasonable. Fyfe (1979) writes: "One question is asked whether firearms policies are effective--are they effective in reducing the incidence of police use of deadly force? In New York City the policies did reduce the use of deadly force significantly. Prior to the guidelines, 18.4 New York City police officers were shooting their guns every week. Following the promulgation of the guidelines, that declined to less than 13 per week."

Other cities have experienced notable declines in the rate in which deadly force is used. Kansas City, Mo. has decreased in police shooting incidents from 40 per year to 17 per year. Los Angeles has decreased in killings of civilians from 33 in 1976 to 14 in 1979. Newark, New Jersey has decreased its fatality rate from an average of 8 per year (from 1967-72) to an average of less than 2 per year under the administration of Hubert Williams (1974-80). Shots fired at persons were reduced from 72 in 1971 to 19 in 1977. Other cities which have reported steep declines in the rate of deadly force include Detroit, Washington, D.C., and Seattle.

There is the possibility that these declines in deadly force are related to extraneous factors such as declines in population, number of officers or crime rate needs to be rigorously examined, but this possibility seems unlikely given the available data.. While population has steadily declined in many of these urban areas, crime rates have either remained constant or risen in each case. In some cities the total number of officers has slightly decreased due to financial constraints;

however, the average workload per officer and the per officer contact rate with violent persons has probably increased.

Management Strategies to Control Police Deadly Force

In thinking about strategies to control use of deadly force by police officers, one must consider the nature of police decisions to use deadly force as well as the array of methods available to regulate these decisions. As we emphasized in Chapter Five, the decision to use deadly force often occurs with extreme suddenness, under unprepared conditions. Police deadly force decisions are most often made under emotionally stressful conditions in which it is most difficult to distinguish appearance from reality. Also, police officers are very varied in terms of their moral outlook and the psychological skills they bring to a confrontation. Finally, a use of deadly force is by nature an irreversible decision.

Organizational theory suggests that it is difficult to ensure compliance with policy guidelines aimed at regulating an activity that requires a complex judgment on the part of trained personnel. While it is relatively easy to attain compliance when activities are routine, as in production-line work, activities that require complex judgment and decision making, as those of a lawyer or surgeon, are far more difficult to control. In these judgment-dependent activities, only actions which are grossly negligent, for example, those actions for which virtually no justification may be found, typically will be subject to direct administrative sanctions. One reason for the difficulty is the organizational necessity to protect the decision-maker from unfair after-the-fact evaluations which may not take into account the context in which the

judgment was made. That factor was discussed earlier when a distinction was made between reasonable and right decisions.

Etzioni (1969) suggests three models of organizational control:

1. coercive,

2. instrumental,

3. normative.

Coercive control emphasizes intensive scrutiny and draconian punishments for non-compliance. Instrumental control implies product and performance in monitoring and achievement for rewards. Normative control achieves compliance through intensive socialization and indoctrination rather than direct monitoring and sanctioning. Most organizations requiring complex judgments by key personnel will use either instrumental or normative methods of control. A corporation division head, for example, will be evaluated by the profitability of his division, as determined by a rigorous audit of his division's finances. Other professionals such as physicians, professors and lawyers (and even S.S. commanders--Etzioni's example), are typically controlled more through adherence to a common normative ideology. What Etzioni calls semi-professions, such as social work, policing and school teaching, frequently employ more coercive techniques to ensure compliance, when appropriate behavior is defined and compliance is considered important by the organization. It is important to note in this context that what may be considered important to outside observers is not necessarily important to policy-makers in the organization..

Law enforcement officials rarely publicly articulate the strategies they use to ensure officer compliance to departmental rules. It should also be noted that the chief's stated approach to dealing with his own

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troops may be startlingly different from those he applies to the larger society - both criminals and other citizens. Thus, one very "liberal" chief who demonstrated great public concern for the civil rights of citizens was a notorious martinet in terms of ensuring officer compliance to departmental rules (including adherence to "hair-cut" standards). A hard-line public law and order chief, on the other hand (in charge of a huge city police department), initiated few disciplinary actions against officers - including those charged with serious abuse or negligence.

In any event, the point is that broad management strategies for controlling deadly force must often be inferred and the inferential process is fraught with risk. The following constructions are, thus, to be understood as approximations, although they do have similarities to more general typology of organizational control (see, e.g., McGregor, 1960 and Argyris, 1975).

Strategy A: "Severe and Punitive Sanctions"

This strategy assumes that the individual police officer is scarely more governable than the criminal he is supposed to arrest. One chief summed up his shooting policy by indicating that "Any guy who makes a mistake gets his ass." Officers found violating shooting guidelines will often be fined or suspended or, more commonly, fired, or even referred for prosecution. A bit of Hobbesian thinking may be found in the defense of this strategy to control police deadly force. One internal affairs lieutenant commented, "These guys if you let them run wild, you would find dead bodies all over the streets. You have to show them who's in charge." Fear of the internal affairs department is an

integral part of this administrative strategy. One seasoned officer
described the head of internal affairs in his department "as the scar-
iest thing since Godzilla!" Another internal affairs chief was describ-
ed "as being so scary even the chief is afraid of him."

Strategy B: "The Marginal Utility of Control"

This strategy is far more often practiced than preached. It is
charitable in its views toward the line police officer, suggesting that
if armed officers confront armed citizens often enough, some citizens
will inevitability be killed by police officers. Errors from this point
of view are seen as regrettable, but largely unpreventable. One assis-
tant chief frankly suggested that, "if I did all the things the liberals
wanted me to do, then maybe I'd save one life" (of the roughly 20 lives
lost due to the police use of lethal force each year in his city).
Management control using this approach is achieved by following "stan-
dard" procedures. All shootings are investigated; few result in serious
disciplinary actions or legal charges against the officers. Strategy B
officers in internal affairs tend to be rather sympathetic with "the
street" realities of patrol officers. In a few of the Strategy B cities
we reviewed, the head of the shooting review board was also the head of
the S.W.A.T. unit. Internal affairs officers tend to view many of the
shooting cases before them as either "righteous" or, at worst, "quest-
ionable but acceptable." One head of a shooting review board noted that
most of his cases involved "bad guys with guns." What do you expect the
guy to do, put flowers in the "bastard's teeth."

Strategy C: "They Have to be Taught"

This strategy emphasizes, as one would guess, the role of training and education in the control of police deadly force. This strategy suggests that the officer is faced with a decision that few men can be expected to implement successfully without a great deal of support, supervision and training. In one city, the chief mandated monthly shooting qualification of officers in both "silhouette and standing" situation shootings. This department offered officers no fewer than five programs which related at least in part to the use of deadly force. These included a complex shoot/don't shoot program; a program in crisis intervention skills; stress-management seminars; a class on "legal aspects of force"; and finally a class "on non-lethal force and emotionally disturbed persons." In Strategy C departments, officers involved in ambiguous or "controversial" shooting situations are more often assigned to retraining than they are disciplined. The head of a shooting review board characteristically observed that his "tactical reviews" were immediately "recycled" into the training program to correct future "tactical, psychological, or legal mistakes."

Strategy D: "Stepping Back"

This implicit strategy is far less sanguine about the malleability and trainability of the police officer than is Strategy C. The way to control police shootings is to avoid the types of situations which are likely to produce controversial use of deadly force. Policies are both defensive and reactive. "Problem Officers" are given desk jobs; risky chases are broken off; field commanders in the field lecture on their particular "aggressive practices." S.W.A.T. teams are called in

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whenever possible; pursuits are discouraged; and controversial en-
counters are avoided. When shooting incidents do occur they are re-
viewed somewhat defensively. One internal affairs captain admitted that
"We don't normally do any investigation unless there is a complaint."
Another internal affairs sergeant observed that "We try to keep things
as quiet as possible; that's the message we get from above--don't make
waves unless you have to."

This four-part typology, of course, suffers from all of the limi-
tations of similar efforts to conceptualize types of police administra-
tions or functions (see Wilson, 1968, for example). Many departments,
in fact, use multiple strategies in controlling their officers' use of
deadly force. Also, this typology of organizational control strategies
ignores the relationship of the type of strategy used to control police
deadly force to broader departmental style. For example, Strategy D
("Stepping Back") would be expected in a department with what Wilson
calls a "watchman" policing style; similarly Strategy C, emphasizing
training, seems consistent in a department with a "service" orientation;
finally Strategies A and B would be expected in departments with what
Wilson (1968) might term legalistic orientations to policing.

Even a preliminary typology like that offered above, however, is
useful in emphasizing the diversity in attitude in the control of police
deadly force. Nelman (1973) and Williams (1980), among others, have
suggested that it is the overall tone of a department that determines
the scope of management mechanisms used to control police deadly force
(e.g., guidelines, training, operational rules, review procedures, etc.)
and possibly (controlling for other factors) the frequency with which

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officers in the department will use their guns against citizens. One
chief argued this position as follows:

> It's not so much training or guidelines or any specific measure.
> Rather it is the attitude the chief executive takes towards the
> problem. You will find, for example, many departments with similar
> sounding paper policies having very different operational policies
> and also will find very different shooting rates. It's something
> else! It's the whole approach the top guy takes to the problem.
> Whether or not he's serious about what they do with those guns.

Specific Policies Designed to Control Police Deadly Force

Recently, attention has been focused upon specific administrative
mechanisms which might reduce the rate of police deadly force. Chapman
(1967) has argued·that each police department should develop a specific
shooting policy that systematically encompasses all relevant components
in a unified package. The development of that sort of policy, he
believes, should take into account the social, legal, personnel and
demographic realities unique to the particular police department. It
should include specific provisions for:

1. guidelines,

2. training,

3. operational rules and procedures,

4. shooting reviews.

We will review each of these four provisions of a systematic policy to
control deadly force, attempting to conceptualize the ways in which each
contributes to the end result. We will also explore some recent

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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.

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<u>Policy:</u>

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 individua', 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 appear 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.

B. <u>CALL FOR ASSISTANCE:</u> The rules pertaining to warning shots apply except if there is no other way to summon assistance.

C. <u>MOVING VEHICLES:</u>

Summary: When discharging a firearm, an officer <u>must</u> consider the lives and safety of others.

The effectiveness of restrictive guidelines has been well documented in a series of recent studies. Meyer (1980) has shown that the implementation of the restrictive Los Angeles guidelines (given above) has had a major impact upon the use of deadly force by police personnel since their adoption. Meyer writes:

> Commencing in 1978, there was a substantial decrease in persons shot (hit) and persons shot fatally. The number of persons actually shot - - that is, hit - - changed little prior to 1978, and the number of persons shot fatally did not decline prior to that year. The number of persons shot increased through 1976; the number shot fatally increased through 1977. About 80 persons per year were shot from 1974 through 1977. This number decreased to 63 in 1978 and 61 in 1979. About 30 people per year were shot fatally from 1974 through 1977, but the number of shooting fatalities dropped to 20 in 1978 and 14 in 1979.

TABLE 3: TOTAL PERSONS SHOT (HIT) AND PERSONS SHOT FATALLY BY YEAR

	<u>1974*</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
Total number shot (hit)	75	81	84	74	63	61
Number killed	26	30	30	33	20	14

*Includes SLA shootout (4 shot, 2 killed by LAPD bullets.)

Similar results have been found to follow implementation of more restrictive guidelines in other cities, as noted above. To repeat Fyfe's (1978) findings, for example, the promulgation of a new general order regulating deadly force saw a dramatic decline of deadly force by New York police officers during the next several years:

> In August of 1972, the New York City Police Department promulgated guidelines which emphasized the value of life and declared the police revolver to be a device "for personal protection against

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persons feloniously attacking an officer or others at close range."
This directive, T.O.P. #237, also generally proscribed warning
shots, shots to summon assistance, shots which endanger innocents,
and shots at or from moving vehicles. It also provided for strin-
gent investigatory and reporting requirements and established a
top-level review board to review and adjudicate all police firearms
discharges.

The effects of this order on police shootings in New York City were
dramatic, immediate, and continuing. During the 5-year period
1971-1975, which was the subject of my research, 14.7 New York City
police officers fired their guns every week. Dividing those 5 years
at the effective date of T.O.P. #237, however, shows that this
average is deceptive: before T.O.P. #237, 18.4 officers fired their
guns every week; after T.O.P. #237, that number declined to 12.9.

Before T.O.P. #237, New York City police shot and wounded 3.9
people every week; after T.O.P. #237 that figure decreased to 2.3.
Before T.O.P. #237, New York City police shot and killed 1.6
persons every week; after T.O.P. #237, that figure decreased to
1.0. During the 2 years and 9 months between the end of my study
and September 1, 1978, that figure has further declined to .6
citizen deaths per week.

In Seattle, a reduction from 20 shooting incidents per year to
fewer than ten followed the creation of a more restrictive shooting
policy. Changes in shooting guidelines in both Detroit, Michigan and
Washington, D.C. seemingly reduced the rate of deadly force by roughly
40% in Detroit and 35% in Washington, D.C.

It is uncertain whether the reductions stem entirely from the
restrictions on the types of situations in which deadly force may be
used (for example, not against a felon fleeing from a property crime),
or there is an attitudinal change with impact upon shootings within the
self-defense justification category, and similar allowed categories, not
directly affected by the change in guidelines.

Several critics have emphasized that limitation in their comments
about deadly force guidelines. It has been noted by Berkeley, 1969;
McKiernan, 1973; Rubinstein, 1973, and others, moreover, that as empha-
sized by many police officers and their associations, policy state-

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ments that are too encompassing may inhibit police functioning and endanger the police. And a review of guidelines by Gigliotti (1977) suggests that some are even more confusing than the state justification statutes (e.g., "Officers should not be allowed to fire at felony suspects when lesser force could be used; when the officer believes that the suspect can be apprehended reasonably soon thereafter . . . "). He ironically observes that "to apply the necessary permitted force is a feat rivaling the Amazing Kreskin (a noted mindreader of some repute) . . . ". While shooting guidelines may reduce the discretion to shoot, they will not do away with the need to process information, evaluate it and decide whether or not to shoot on the basis of a multitude of factors.

Even police departments that have specific administrative shooting guidelines frequently allow the officer broad latitude in deciding when to shoot. As we observed in Chapter Four, police officers shoot in only a small percentage of the instances in which they are legally or administratively justified in doing so. Similarly, Kaplan's (1980) report regarding the Los Angeles police suggested that guidelines simply define an outer circumference of what is administratively defensible, and that the circumference is large even when the guidelines are strict. The police officer still has the burden of distinguishing "between a shooting that is necessary and one which is legally allowable." The "tightest" of guidelines, thus, allows the shooting of a relatively large number of persons if officers were to shoot in nearly all situations where they were administratively permitted to shoot. In addition, restrictive guidelines may create conflicts between statute and administrative definitions of permissible deadly force. In Long Beach v.

Peterson, the courts ruled that the city of Long Beach could be held
civilly liable to the standards set in its administrative guidelines.
The decision stated that a city could be sued if it failed to meet the
stringent standards set in its public guidelines. This, as one Calif-
ornia chief observed, created a dilemma between a "city's conscience"
and its "pocketbook." The chief went on to observe that "the formulation
of restrictive guidelines might cost his city 10 or 20 million dollars
over the next several years." Other cities (for example, San Jose, New
York, and Los Angeles) have been sued by police unions demanding that
these departments return to less restrictive state shooting statutes.

In summary, while restrictive guidelines do indeed reduce shootings
within their specified domain - as, for example, no shooting at felons
fleeing after burglaries - they are of much more limited use in a
broader range of situations - as, for example, when people are, or may
be, in danger.

2. Training

Training is another obvious mode of control. We will consider
several aspects of police training that carry implications for the use
of deadly force.

The first of these is actual shooting. It is widely believed that
existing training offered in the area of technical shooting is inade-
quate. Most departments simply offer static target shooting during
pre-service training, supplemented by periodic (semiannual, quarterly,
or monthly) requalifications. Often such technical shooting is conducted
in a manner that is totally divorced from any possible street condi-
tions; for example, shots will be fired at static targets in daylight
more than 60 feet away. Typically, officers will fire 20 or more shots

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at paper targets on command of the training officer. Such training may be supplemented by "double action" firing (two shots at a time) or a shotgun course. Critics point out that such range shooting does not prepare officers for real life armed confrontations. For one thing, realistic levels of stress are certainly absent from such training exercises. Observations of officers who had achieved high scores in static training revealed that accuracy scores tended to plummet dramatically when the men were harrassed by range officers or after they ran 100 yards.

Further, officers will often practice shooting while firing from an arm rest in a static position. As one officer who had been involved in several shootings sarcastically commented, "It's completely unrealistic, a police Disneyland. You have time to set up; no one is trying to kill you and you aren't completely stressed out from six other insane assignments. Also you're not moving and the target's not moving. Otherwise the training is fantastic here."

It should be noted that in many departments, training of all sorts is relegated to the position of a very low priority activity. "Roll-call" training may be terminated when there is almost any sort of competitive need. And officers who fail to "qualify" (at their periodic shooting trials) are often simply returned to duty. Also, many cities, faced with severe budget cuts, have chosen to curtail or suspend some training activities.

Some cities have made intensive efforts to improve training related to deadly force. First, several police departments in the past few years have developed new approaches to train officers in rapid shooting judgments. The Riverside(California) Police Department has developed a

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quick perception reaction shooting program called "shoot/don't shoot."
The approach was described in a "60 Minutes" television program and has
been adapted as a major film training program by Motorola (1976, 1979),
which is widely used in both medium-sized and large departments.

The Riverside Police Department's "shoot/don't shoot" program is
conducted in an indoor training range. Each officer in the department
must qualify monthly in the program. A film is projected on a blank
sheet of paper placed at a distance of roughly 10 yards from the of-
ficer, presenting the officer with a dramatized shooting encounter. The
range master instructs each of a pair of shooters to fire his or her
weapon only when necessary, consistent with the laws of the State of
California and the guidelines of the Riverside Police Department. The
officers are then placed in darkness in their shooting stalls; told to
load their weapons and are presented with a brief film vignette (roughly
1-4 minutes) portraying a possible shooting situation, projected on the
paper target.

In one such situation, the officer is confronted by a group of
three Hispanic men who first hesitate upon an order to halt and then
turn and raise a concealed pistol at the officer. A related scenario
shows an irate housewife who quickly draws (and fires) a concealed
pistol at the police officers viewing the file. Another shows a man
"hovering" over a man who has been shot in the head. This man who is
holding a pistol turns out to be a neighbor who has found his friend
shot and has naively picked up his gun. In another vignette, police
officers respond to a "burglary in progress" in a convenience store. An
older man turns quickly towards the officers slowly and somewhat inco-
herently explaining that he is the manager of the store. Another

situation portrays a "robbery in progress" call in a variety store. The officers observe a black soldier in front of the counter and a pretty (and white) female behind the cash register. The black soldier turns out to be the victim of the robbery. The female perpetrator rapidly points her weapon and fires at the officers. In each simulation the officer must choose when to fire and must fire with sufficient accuracy to hit the appropriate target projected upon the paper screen.

Officers observed participating in this training exercise made several errors repeatedly; several were outgunned by the opponents on the screen; others shot with little accuracy. Also, there were several innocent citizens shot by the trainees. (In one simulation, we saw an innocent victim shot by each of six officers we observed go through the training.) One simulation showed a "reported" armed person near a railroad trestle. The trainee encounters (on the film) a somewhat disoriented young man who ignores all orders to halt. Suddenly, the rangemaster fires from the darkness to simulate an unexpected real shot being fired in a tense situation. In each training session we observed, the officers in training began firing almost instantaneously with the rangemaster. The disoriented young man turns out to be a deaf mute who was reaching for a wallet with a card which read "I AM DEAF AND DUMB." One lieutenant who shot the man through the head exclaimed as he walked forward in the darkness to observe his score: "Oh, my God, I probably shot a cop," obviously realizing the gravity of his reflexive response.

An improvement of the "shoot/don't shoot" approach has been developed by September and Associates, located in Tukwilla, Washington. The company has developed a computer-synchronized slide tape simulator which is adaptable in that sequences of slides can be altered and speeded up

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or slowed down. The simulator, for example, can diagnose an officer's "early" or "late" response to a simulated shooting situation.

The September and Associates training simulation begins with the officer placed in the dark of the Washington State Criminal Justice Academy training range. The trainer hands a young recruit a .38 "short special" loaded with blanks and tells him, "to react as you would on the streets." The trainer seeks to instill enough tension in the trainee to "simulate at least some of the tension of an armed confrontation". The trainee is then placed in total darkness awaiting the start of the simulation.

Finally, a dispatch like the following is heard in the dark: "Robbery in progress, black male with shotgun - 7012 77th street." All of a sudden, five slide projectors acting sequentially portray a police car slowly approaching a 7-11 store. As it arrives, a young robber runs towards the officer from the 7-11 store with what appears to be a sawed-off shotgun and immediately turns toward him. The officer who was undergoing the training, during one of our observations, fired at slide 76 when the robber leveled his gun at him. At frame 78 the "armed robber" shoots. "Good," says the trainer, "you got him." When, in a follow-up scenario, the trainee delayed firing (perhaps distracted by a pretty girl who ran across the 7-11 parking lot), and was "shot" in frame 104 while responding in frame 105, the training officer observed, "Well, next time shoot a bit quicker - but, ok."

The September and Associates group has further attempted to develop scenarios which closely correspond to actual armed confrontations. One technique for this purpose involves developing computer simulations of videotapes of actual police/citizen armed confrontations. The group

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also has attempted to assure that such factors as lighting, duration of the incident and distance between police officers and citizen correspond to the realities encountered in actual shooting incidents.

Another program which is seemingly very responsibly conceived, but uses no unconventional technology, is the New York Police Department's outdoor range program. The attempt is to make shooting simulations correspond to actual street conditions. If reported shootings over a six-month-period take place in alleys which are three yards wide, then the New York outdoor range simulations correspond to that type of physical condition. Similarly, shooting distance, race of opponent, time frame and other dimensions all are made to correspond to observed patterns in recent police/citizen shooting encounters.

The Riverside, Seattle and New York shooting programs obviously reflect major advances over static range firing. There is some evidence that such programs have influenced the police shooting rates in the cities which have widely adopted them. New York shootings have declined since 1973, and the shooting program seems partly responsible. The Riverside Police Department has documented a reduction in shots fired per incident.

Various police departments have developed interesting extensions of training related to the use of deadly force. In Rochester, New York, police officers receive eight hours of training in the "ethics of the use of deadly force." In New York City, trainees receive instruction in "legal training related to police use of deadly force." In these programs, officers discuss "grey" areas in the law, as well as the policy and practice of the use of deadly force. In the New York program, the recruits receive indoctrination in the legal philosophy

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underlying the city's use of deadly force guidelines; recruits discuss
shooting incidents in which the city shooting guidelines are ambiguous.
Past cases in which the use of deadly force was either appropriate or
not are carefully analyzed and discussed. In one New York police
training class we observed, the recruits discussed a case in which an
officer had been knifed by a crazed man. His partner shot the man while
he was fleeing from the scene (after the assailant dropped his knife).
He justified his decision on a little used "imminent peril" clause in
the New York State statute; this allows for the use of deadly force
against unarmed persons when they present "imminent peril" to others.
The recruits, in an animated way, discussed a variety of cases involving
the imminent peril clause and the types of situations where a decision
to shoot would be either justified or not.

A related training program was developed by one of the authors
(Scharf, 1980). Two teams of ten police officers received 36 hours of
training discussions about the moral implications of hypothetical
shooting situations. Officers in one simulated situation were given
an order to report to a building where they met a "neighbor," (actually
a plainclothes officer) who was reporting a family disturbance. This
"neighbor" told them that a man "inside the house was about to kill his
wife." After the trainees resolved the simulated situation (some by
shooting the man, others not) a discussion followed regarding the
decision each officer made and the justification for it.

Another very important, but often neglected, type of training
involves tactics likely to reduce the risk of armed confrontation. As

Rubinstein (1973) observes in the example below, poor tactics often contribute to an officer shooting in an armed confrontation.

> From a purely technical point of view the patrolman had initially made an error by failing to close the distance between himself and the suspect, allowing himself no alternative but to leave or to use his gun. If he had charged the man immediately he might have avoided the chance of a more serious incident.

This type of "street savvy" is very difficult to teach but a few departments have attempted sophisticated tactical training programs with varying success. The New York tactical training program uses cases in which training is either controversial or leads to increased hazards for the officer. One case (mentioned by the trainers as stimulating productive and apparently useful discussion) illustrated what the trainer called a "mass reflective response" to an armed confrontation:

> Two officers on foot patrol were advised by a civilian that a movie theater was being robbed. The officers cautiously approached the theater and the suspect, who was in the manager's office, heard them knock on the door and announced that he was coming out with the manager. The officers then radioed for help as the suspect left the manager's office and entered the theater's ceramic-tiled lobby with the manager at gunpoint. Eighteen foot and motor patrol officers responded to the call for help and confronted the suspect in the lobby which faced directly upon the street. As they took up various positions on the street, the patrol supervisor entered the lobby, holstered his gun and tried to coax the suspect into surrendering. The patrol supervisor suddenly lunged at the suspect, and both fell to the floor. As both began to rise, seven of the officers fired 31 shots at the suspect, who had his gun in hand. The perpetrator fell, instantly killed by multiple gunshot wounds. The patrol supervisor suffered five gunshot wounds in his left arm and both legs. Four of the other officers present were also struck by bullets which had apparently ricocheted off the lobby's tiled walls. One officer was hit in the right arm, the second in the

right thigh, the third in the left side and right leg,
and the fourth in the left cheek. The suspect's gun
was recovered fully loaded.

The trainer offered suggestions as to how tactical errors created "an
over-response to the situation" and entertained ideas from the officers
how the situation might have been tactically avoided.

In many cities, special units are given ongoing tactical training
regarding barricaded suspects and hostage negotiations. Difficult
"problems" are staged and officer responses to these problems are
scrutinized and corrected. Often when time permits, officers, preparing
for a particularly dangerous armed raid, will rehearse the tactical plan
prior to the raid. Possible contingencies are discussed in advance and
plans are made to prevent officer-to-officer cross-fire or unnecessary
exposure to fire from opponents.

Such tactical training attempts to influence officer decision-
making well prior to the actual decision to shoot. This we argued in
Chapter Four is essential for a successful outcome to many armed con-
frontations. The efficacy of such training (whether formal or informal)
is reflected in the observation by many police officers that "prepared"
armed confrontations (in which training and behavioral rehearsal is
possible) produce relatively few actual shootings compared with unpre-
pared confrontations (where little preparation or training is possible).
The usefulness of such training is further indicated in the relative
rarity of shootings compared to the overall rate of armed confrontations
of units which are given intensive tactical training such as LAPD's SWAT
Team, NYPD's "Street Crime Unit" and Newark's "Target Red."

Most tactical training is conducted informally through peer super-
vision and often through debriefing contacts with armed citizens. It

might be hypothesized in this respect that officers in units which have long experience in working together (presumably thus developing tactical plans to meet most situations) and high contact rates with armed persons, over time will reduce the risk of shots being fired in any particular armed confrontation. This hypothesis (if confirmed) would indicate that coping with armed confrontations is a trainable skill involving complex tactical and strategy techniques which are trainable through experience.

Another type of training teaches officers the interpersonal skills likely to avoid dangerous conflicts with agitated citizens. Such training is of course most relevant to armed confrontation with an extensive "information exchange" with the opponent (e.g., a family disturbance encounter). In Fresno, California, police officers participate in role-playing exercises (with Chicano actors) simulating a Mexican wedding. In New York City, officers learn skills useful in dealing with disputes involving a wide range of the city's polyglot of ages, races and cultures. This type of training focuses upon the interpersonal skills necessary to avoid at lease some shooting confrontations. Bard's (1980) training experiments sought to teach officers the skills and tactics likely to reduce the possibility of "unnecessary" escalation of conflict which might lead to a police use of force. Crisis intervention skills and non-lethal martial arts are taught in many policy departments. The Honolulu Police Department with a very low shooting rate offers recruits many hours of training in advanced martial arts. There also has been effective use of simulations, often staged by professional actors (see Bard, 1979; Liebman and Schwartz, 1974), to train officers in techniques to cope with violent citizens.

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New York's Social Science training program offers an example of a well-thought-through police crisis intervention program. Recruits receive training in the psychology of violent persons and advice as to how to deal with emotionally disturbed persons. Specific techniques are taught to "shape down" violent and psychotic or paranoid persons. Transactional Analysis is taught as a means of understanding and avoiding violence using communication strategies to defuse violent encounters through assertive commands, distractions and even humor. The trainees learn this strategy through lectures, role-playing and peer assessment of videotapes illustrating different strategies to defuse violent encounters.

It is obvious enough that no amount of training, no matter how sophisticated, will reduce unnecessary shootings to zero. There are, for example, many situations encountered by police officers in armed confrontations for which no training presently exists. Thus, while nearly one-fourth of all shootings are encountered by "off-duty" officers, virtually no means exists to train officers in the responses appropriate to the unique dynamics of off-duty armed confrontations. And a limitation in even the best training is found in what might be called the questionable "hidden curriculum" (or latent value assumptions) of some training programs. The "hidden curriculum" might suggest to the young officer attitudes, regarding use of deadly force, quite different from those he might encounter in the department's training manual. For example, we observed one trainer in a department with an uncomfortably high police shooting rate deliver a lecture on the "legal aspects of deadly force" commenting (as an aside) to the recruits:

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Now, of course, what we tell you in here is the
theory of it; if you are in an alley with some
prick with a .38, just make it look like he went
for you. I won't ask any embarrassing questions.

Similarly, field supervisors can convey to an officer an attitude
towards deadly force which may not be congruent with the department's
training manual - but may have as important an impact. One young detec-
tive was observed leaving a briefing in which he was ordered to trans-
port a dangerous prisoner to a county jail. The captain, we were told,
explained the assignment to the officer while he rotated the barrel of
his revolver (perhaps for emphasis, concluding his speech by saying,
"Now Smith, remember - don't lose the son of a bitch"). It would seem
reasonable to assume that this "briefing" constituted as important a
"training experience" for the young detective as did the forty-odd
instruction hours on the "legal and ethical dimensions of deadly force"
he received at his local training academy. It might also be added that
because of such value conflicts (and also technical limitations in
existing training approaches), training in itself will be unlikely (in
the absence of other changes) successfully to control fully police
deadly force.

3. Operational Rules and Procedures

Operational rules and procedures constitute another administrative
mechanism to control the rate of police use of deadly force. Operational
rules in police work seek to regulate police behavior in encountering
particular types of citizen behavior. For example, an operational rule
may prohibit chases of juvenile joy riders, or forbid the use of mace
against insane persons. In many other professions, it should be noted,

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operational rules are used more effectively than in police work. In the
airline industry, for example, pilot behavior is restricted by use of
very specific and empirically grounded operational rules. Such rules are
redefined and reverified through ongoing investigations of both actual
and averted aircraft disasters (lightning storms, forced landings, near
collisions, etc.). A pilot, for example, when faced with an emergency
such as a serious downdraft, burning engine or near collision is in-
structed to respond in terms of clearly defined procedures. Many of
these operating procedures require pilots to forsake intuitive reactions
to emergencies and engage in procedures which have been found to cope
effectively with specific emergencies. Thus, if an engine catches fire
on takeoff, the pilot is instructed to level his aircraft prior to
attending to the fire. Operational rules are defined for virtually every
situation a pilot might plausibly encounter. An airline pilot's rulebook
for such emergencies may cover more than 300 pages.

Police operational rules are far less formalized and detailed - and
all too frequently neglected. They are, however, a potentially very
important technique for the administrative control of deadly force since
they define how specific categories of incidents are to be dealt with.
Some departments have developed explicit operational rules for guiding
officers in coping with possible use of force situations. The Fresno
(California) Police Department's rules for "responding to violent oppo-
nents" may be found below in Table 3.2. They attempt to structure
officer responses to varying types of risk posed by opponents.

TABLE 3.2

CONTACTING THE VIOLATOR AND CONTROLLING CONTACTS
ESCALATING INTO DEGREES OF HAZARD

LEVELS OF FORCE

LEVEL #1 Basic enforcement contact	LEVEL #2 Passive Circumstances suggest a threat to officer safety	LEVEL #3 Aggressive Actions, threats or general circumstances threatening officer safety Ask for backup Notify supervisor Mace and baton level Take cover	HIGH RISK Overt act Information Observation Accompanied with present ability to do bodily harm to officer Ask for backup Notify supervisor Firearms display (semi-ready position) Take cover	FELONY Crimes of violence Ask for backup Notify supervisor Firearms display (ready position) Take cover

Reiss (1980), in an article in the Annals of the Academy of Political and Social Sciences, has persuasively argued that the creation of specific operational rules to deal with specific circumstances provide effective measure to control police use of deadly force in that "the earlier one intervenes in a casual sequence the more likely one can alter its course." Such operational rules, he argues, can effectively "rule out" those situations which are most likely to result in fatal or serious injuries to either citizen or officer.

Often departmental operational rules are very narrowly focused in ordering officers to deal with a particular type of confrontation in a particular manner. Reiss (1980) offers an as example of a possibly effective operational rule of that type, an order implemented after five officers fired at an insane man armed with a pair of scissors, a total

of 21 shots. The new order created an operational rule which required officers to call supervisors or specially trained service officers (skilled in the use of mace and other techniques) rather than attempt to resolve a confrontation with an insane person themselves. Other common operational rules order officers to attempt to contain rather than rush barricaded suspects; order them not to engage in certain types of high-risk pursuits; and require police officers to call specialized types of personnel (e.g. SWAT) teams to cope with particularly dangerous confrontations.

Clearly, informal police operational norms may be as important in controlling deadly force as are formal regulations. In almost every police department, one observes police cultural norms which define how to deal with particular types of confrontation. One set of such informal norms deals with discretion in terms of confronting particularly dangerous situations. One officer explained a norm of that sort in his department as follows:

> You have to remember. We had one of the worst riots back in the '60's. When we see a situation, lets's say a group of blacks standing on the street corner, possibly with guns, virtually every guy here will pass it up, knowing that it's too dangerous to take them on unless you've got three or four cars to spare. It's like an informal code: Restraint!

Another department had an informal rule on displaying guns on certain types of calls which contradicted its formal rule. An officer explained this norm as follows:

> It's a set thing in the Pittsford area that if you get a family beef call, or whatever at night, you unholster, no matter what.

The department says you can't unholster without seeing the other guy's gun, or something that's a threat, but you come with us any night and I bet you don't see one guy go up a back alley or staircase with his gun still in his holster.

Other informal rules may affect very subtle, though important, aspects of police behavior in armed confrontations. One informal norm deals with the time allowed for an officer or team to "clear" an assignment. In some departments, officers are encouraged to approach a building quickly, thus decreasing the time needed to "clear" a particular assignment. In one department, the sergeant would place a "walkie talkie" call to officers who he felt were "fooling around" (i.e., taking too long on a particular "job.") Other departments encourage greater caution in approaching "unknown or suspicious" circumstance calls.

Another type of informal norm governs pursuit of certain types of opponents. Some departments instill norms in their officers that encourage back alley chases of fleeing suspects. One supervisor, for example, chastised a young officer for not following an armed youth into the back of a darkened factory. Other departments discourage such chases, fearing the risk of a shooting should the opponent suddenly turn on a lone officer armed with a gun. One officer described his department's policy as follows:

Here it's an unsaid thing, like "you gotta let them go."
Like they seem to feel that most of these chases the guy will
get away anyway and it's not worth the risk of you plugging
the guy if he turns on you. Once he gets a step or two on
you, it's goodbye and if he's bad enough maybe you try to
get him later.

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Other risk situations may be similarly avoided by informal norms. One department virtually forbade two-man teams from entering beyond the third floor of a particularly violent, largely black housing project. Other departments similarly avoid dispatching line officers to Saturday night bar fights or domestic squabbles in certain areas or in high risk situations.

Other (both formal and informal) police operational rules mandate the use of specialized units for particular types of confrontation. In many cities, for example, a "man with a gun" call or "armed robbery in progress" automatically will be handled by a S.W.A.T. or other specialist team. In other cities, "backup officers" will be dispatched to certain categories of "high risk" assignments. In Rochester, New York, crisis intervention trained officers (or civilians) will be dispatched to certain types of domestic squabble. The article below describes a case where specialized police officers (Tactical Team) were able to "seal off" and "talk out" (rather than "rush") obviously frightened armed robbers.

> It wasn't clear at first who was more relieved--the hostages, the robbers or the police.
>
> Bellevue police last night arrested two gunmen, freeing two hostages unharmed and ending a brief but tense siege at a coin and jewelry shop in a small shopping center on the north side of the city.
>
> The robbers, who had tied up the owners of the shop, had barely enough time to peek inside the two open safes before police arrived.
>
> The panicked gunmen tried to ram their bodies through a rear window of the shop to escape. They only bounced off the double-pane glass, Conrad said.
> That was when one robber's gun went off, sending a bullet crashing through a glass display case.
>
> One of the men tried to pound a hole through the roof. It wouldn't have done him much good. Officer J.A. Rochell was

on the roof with a shotgun trained on the source of the
pounding.

Meanwhile, the store was being surrounded by dozens of
uniformed policemen, detectives, tactical-squad officers
and a canine unit.

"I told them that since they were giving themselves up,
we should call the police and tell them what we were doing,"
Conrad the store owner said, explaining that he didn't want
the officers outside the store to mistake him for a robber.

The two gunmen, frantic by this time, tried to use the
phone. But they were too nervous to dial out. They had to
untie Conrad so he could make the call for them, police said.

Conrad spoke with a police dispatcher, explaining that the
two were ready to surrender. He said their only request was
to be allowed to call their wives first.

Police agreed and the surrender came moments later.

The suspects emerged one at a time, hands high in the air.

Conrad, a former New Yorker, said he was not particularly
unnerved by his experience.

An important set of operational rules deals with the possession
and use of "off duty" weapons. In most departments, operational rules
regulate the carrying of off duty weapons. Many police departments
require their officers to carry their firearms off-duty since they are
expected to enforce the law on a continuous basis (24 hours each day).
Others, like Kansas City, leave the decision of whether or not to carry
a firearm up to the individual office, while advising against doing so
when alcohol might be consumed. Fyfe (1978) found that over 23% of his
shooting incidents involved off-duty officers. In addition, over the
320 shooting incidents surveyed by Milton et al., in their seven-city
study, 17% were by off-duty officers. In Detroit, which accounted for
38% of their shootings, over 22% of shooting incidents involved off-duty
officers. Fyfe (1980) has noted that off-duty armed confrontations tend
to be associated with erratic officer behavior. Such confrontations he

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argues are in part preventable through departmental operational rules regulating off-duty weapons. Most drastically he suggests departments ban off-duty weapons. Alternatively, the carrying of off-duty weapons may be limited by operational rules to particular contexts and purposes.

The use of operational rules to lower the rate of police deadly force represents a most promising line for systematic intervention. It may well be, as Reiss (1980) has suggested, that many police uses of deadly force are averted by creating rules which make improbable an armed confrontation between a patrol officer and dangerous citizens. This strategy is, of course, effective in averting only certain types of deadly force: primarily those incidents where there is adequate time to call for backups, and deploy special weapons and special personnel.

It should be noted, however, that there are inherent difficulties associated with the use of operational rules. First, the idea of creating an "empirically grounded" rule to guide discretion in risk situations is alien to many "seat of the pants," "intuitive" police officers and administrators. Also, at this point our knowledge of the mechanisms of armed confrontation is not advanced enough for the development of operational rules for any but the most obvious of situations. The next step in development might require that a department know not only how many armed robberies (of a particular type) resulted in a police use of deadly force, but how many total armed robberies of that type were encountered in a particular period. Finally, completely effective use of such rules might not be possible in the context of a human interaction that has the infinite nuances of a police-citizen armed confrontation. Even a pilot operates with considerably more circumscribed array of potential variations.

to the department's shooting policy. In those 77 incidents, 27 civil-
ians were killed and the rest suffered wounds ranging from minor to
critical." Harding and Fahey (1973) were able to relate Chicago's high
shooting rate to its lack of effective review of police shootings. The
authors observe that in 1970-71 Chicago had the highest rate of police
homicide of the five largest U.S. cities:

City	Population*	Number of** Officers in Police Department	Number of** Civilians Killed	Annual Death Rate per 1,000,000 Population	Annual Death Rate per 10,000 officers
New York	7,895,000	31,671	21	3.6	8.8
Chicago	3,367,000	12,961	32	12.6	33.7
Los Angeles	2,814,000	6,806	8	3.7	15.8
Philadelphia	1,949,000	7,780	13	8.9	22.3
Detroit	1,511,000	5,159	4	3.5	10.3

The authors attributed the city's high rate of police homicide to the
often superficial review of shootings performed by the department. For
example, they cite a grand jury analysis of the review of the Fred
Hampton (the Black Panther slain by the Chicago Police) case as an
example of the failure of the Chicago Police to police itself in terms
of placing deadly force under objective administrative review:

> The performance of this branch of the Chicago Police
> Department...was so seriously deficient that it suggests
> purposeful malfeasance... Instead of a complete investigation
> of the factual controversies raging in the press, the in-
> vestigation consisted only of gathering all the police
> reports, soliciting cooperation from counsel for persons
> accused of crimes (knowing that no defense counsel would
> permit pre-trial statements by an accused) and asking
> the officers involved a few simple conclusory questions
> in which they denied wrongdoing. No opportunity was given
> to explain in detail what happened, and all the subordinate
> officers were asked only to ratify their sergeant's account-
> -which itself was based not only on prepared questions,
> but suggested answers composed by a Police Department lawyer
> and shown to the sergeant in advance.

4. Shooting Review and the Punishment of Weapon Abuse

Perhaps the most direct administrative means of controlling police use of deadly force is the objective administrative review of all weapons discharges. Underlying the reliance on review and punishment of abuse is, of course, an assumption of the officer's belief that his conduct will be vigorously scrutinized and that the punishment will be significant. This position is stated by Dallas' chief, Glen King who argues:

> Obviously, if the first effort, the effort at positive discipline within a department, is totally successful, there's never any necessity for any other activity on the part of the administrator; but experience and knowledge of human nature tells us this will not always be successful. So there must exist also within the department the negative aspects of discipline where sanctions are exercised against those officers who fail to comply, in those instances where there is not conformance with the established rules and regulations and policies of the department. In law enforcement, those sanctions go all the way from a verbal reprimand through written reprimands, disciplinary transfers, demotions, loss of pay or privileges, to suspension, and the ultimate punishment within a department is termination or separation from the service.

Others have stated similar positions even more graphically. One deputy chief said emphatically that "If _any_ of my guys do anything with a gun that's out of line, they know I will get their ass!" Another chief added, "There has to be credibility in that when an action involving a gun leads to wrongdoing, they [the policemen] must know that something will happen." An internal affairs officer commented, "Look you gotta be absolutely objective, no favors to anyone. If you start saying, 'Hey, he's an O.K. guy' or any of that shit you stop being an investigator and become something else."

There is at least some empirical foundation for the assertion that effective control of police use of deadly force is facilitated by sure,

rapid and certain punishment of wrongdoing. Deterrence theory from Becarria and Bentham to Gibbs has emphasized the role of public sanctions in controlling social behavior, and psychologists have theorized about behavioral control through punishment for generations. Deterrence theory would lead one to conclude that actions which are publicly, certainly, rapidly and severely punished will tend to be reduced. In a closed administrative system (such as a police department), the detection and punishment of wrong doing should be (in theory at least) readily attainable.

Fyfe (1980), Culver (1975), Kobler (1975) and Harding and Fahey (1973) have related police rates of force to the frequency of police discipline following a review of force incidents. Fyfe (1980), as we noted earlier, found an 18% drop in the use of deadly force in New York following new (and more effective) shooting review policy. Culver (1975) found in a three-city comparison for use of force complaints that the rate of sustained complaints following internal affairs investi- gation ranged 15 to 0%. He also was able to relate these rates to the frequency of the use of force in these cities. Kobler (1975) observed that of 1500 police shooting incidents he reviewed only three resulted in criminal charges against the officer; even in cities with troublesome shooting rates, legal punishment of police shootings was practically non-existent. The Los Angeles Sheriff's office had referred but a single case for prosecution in almost eight years. More recently, Sappel (1980) found that of 77 shooting incidents in 1978-1979, not one finding of wrongdoing was sustained. Sappel writes: "Block, (the Undersheriff) said discipline was not imposed in the 77 shootings between 1978 and 1979 because the deputies involved had adhered strictly

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On the other hand, examples abound of cities where an effective shooting review policy has maintained a credible deterrence in terms of police abuse of deadly force. One common element in these cities is that the review process becomes detached from the power and influence of those officers most directly involved in the shooting incident.

A publicized case of innovative shooting review reform is found in the city of San Jose, under the auspices of Chief Joseph McNamara. When McMamara took over as Chief in 1977, the city was in the midst of a controversy regarding a shooting of a man named Danny Trevino. The police had answered a disturbance call at a home on the city's predominantly Mexican-American East Side. One car found Danny Trevino sitting in his parked car with his girlfriend, Maria Duarte. The couple had been fighting and Miss Duarte apparently was being held in the car against her will. The policemen approached the car from either side. As the woman leaped from the passenger side of the car, Trevino reportedly reached under the car seat with his right hand, then raised the hand and pointed it at an officer. A San Jose officer fired into the car, killing Trevino. Later, police found Trevino had been unarmed. McNamara responded to this controversy by taking several steps to control police abuse of firearms. Soon, eight "abusive" officers were fired; also the Internal Affairs office was both strengthened, (it now reported directly to him) and moved from police headquarters to a rented office. McNamara believed this would both encourage objective appraisals of cases and a sense of trust in the Internal Affairs office by the Latin American community. McNamara comments:

> In San Jose a little over two years ago I was greeted
> with demands for a citizen review board, for transfer of
> certain patrol officers, and other signs of great lack of
> credibility on the part of some fraternities who had represented

citizens against police officers, charging abuse of authority and excessive force. Today, the number of complaints against police officers, charging abuse of authority and excessive force has dropped in half. We have not had a questionable shooting in two years. The self-initiated, internally initiated, actions by supervisors have increased by 30 percent, and once again, the minority community spokesmen are the strongest supporters of the police agency.

One of the initial concerns raised by a group of attorneys that met with me was that the citizens feared to come into the police building to register complaints because they were greeted by uniform officers who, of course, were armed, and they were required to obtain security passes and that this acted as a deterrent to some citizens with legitimate complaints. They also strongly stated that it was their belief and the community belief that the Internal Affairs unit of the police department was a closed shop, policemen investigating policemen, and that it was a cover-up operation.
Regardless of the accuracy of both statements, it seemed to me important to recognize those kinds of community concern. So we moved the Internal Affairs unit out of police head-quarters, and we hired one of the minority community leaders to work as a civilian in the Internal Affairs unit. His presence there was a clear demonstration on the part of the police agency that we had nothing to hide, that we viewed the process as fair and one that would withstand public scrutiny. In addition to that, there were some cases where discipline was imposed, and these and a number of other actions--affirm-ative action plans, transfer and career program for minority officers--were also very positively received by the community.

Other departments have made great advances in the systematic review

of police shooting incidents. In Newark, New Jersey, all investigations

are handled by a two-man shooting review team (including a black and

white officer) who report directly to the police director. They will

"roll out" to the scene of a shooting immediately after the incident.

(Four A.M. "roll outs" are not rare.) Efforts are made to contact

civilian witnesses as well as other police officers at the scene. By

bypassing the shooting officer's normal chain of command, the department

believes it increases the chances of what several senior officers call

"an objective appraisal of fact." The internal affairs officers are

often feared but respected by line officers. Six-hour searches for a

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spent bullet (even a miss or a warning shot) are possible. Results from investigations are reviewed both by the I.A. Captain and by the police director. It should be noted that such objective appraisals often "clear" officers involved in controversial shootings. One officer who was involved in several prior shootings was thus cleared when two initially reluctant civilian witnesses supported his version of an ambiguous shooting incident.

Despite the evidence as to the efficacy of the stringent enforcement of shooting policies, many departments show scant interest in such measures. Often the reality of civil liability suits discourages the stringent review of police shootings. One chief, articulately explained what he called the Catch-22 of the internal review of police shootings:

> The reality of it is that there is a big Catch-22 in the whole business. The better your shooting review is, the more likely you are to get your ass had. The quieter and vaguer you keep it [the review] the safer you are, from a legal point of view.

Police union politics also discourage the active prosecution of police wrongdoing. In several cities, police unions have vigorously defended officers charged or actually disciplined by the police department. In Los Angeles, three officers charged by the district attorney were legally as well as politically defended by Police Benevolent Association lawyers. One LAPD internal investigator commented, "They won't even talk to us if the union lawyer isn't sitting there." Robert Di Grazia, former Chief of the Boston Police Department, observes that "Even if the guy is stone guilty, the chief couldn't do anything about it, even if he wanted to. Once I caught a guy with his trunk full of T.V. sets. After the union gets finished with the case, he almost got a medal."

Another problem lies in the extreme difficulty of defining unreasonable or even negligent conduct in police shooting decisions. Even in those cities where use of deadly force is restricted to the apprehension of armed and dangerous felons or self-defense, a wide latitude in judgment is still allowed to the officer. For example, in Los Angeles, an officer was exonerated by a shooting review board after he shot a 21-year-old white man, shortly after receiving a report that a 35-year-old black man had attacked a manager of a motel. This type of incident illustrates a core dilemma of the administrative review of police deadly force: that only grossly negligent cases of abuse can be controlled through administrative means. In situations where the officer reasonably (or apparently reasonably) believes that his life is threatened, administrative review is either difficult or impossible. The only incidents in which administrative sanctions are most commonly applied are cases in which gross professional negligence or criminal intent is readily evident. Milton et al. (1977) observe that the cases in which sanctions results were most frequently cases in which the officer lied (i.e. makes statements of fact which are proven untrue), was drunk, blatantly exceeded guidelines, or showed obvious erratic judgment. An example of this last type of situation is described by Milton as follows:

> 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.

Negligent conduct in more complex cases is far more difficult to define and document. Often the investigator must infer negligence from the position of bullets or persons rather than testimony of the officer himself who in controversial cases will be immediately represented by

the union attorney. One investigator thus commented, "Who (besides God) can with certainty say if an officer who confuses a raised wrench with a pistol made an unreasonable or negligent decision. We can't say and we can't prove it!" Unless there is evidence of lying or distortion of evidence, review boards rarely will doubt an officer where there is even plausible evidence to say that a reasonable man in these circumstances might have believed that his or someone else's life was in grave or mortal danger.

Whatever effect is exerted by the existence of an objective review policy may depend on an intangible factor: the belief by line police officers that their conduct will be rigorously scrutinized by the chief executive of a police agency and that wrongdoing will be punished. The case of Kenneth DiAngelis in Newark is interesting in this respect. In November of 1978, DiAngelis who had previously been involved in a series of controversial shootings, shot a young prisoner in a precinct jail cell. After a local prosecutor failed to act in the case, the police director Hubert Williams ordered DiAngelis arrested and charged with murder. While the facts of the case were ambiguous (DiAngelis claimed the prisoner had attacked him with a chair leg in the cell) and the aftermath controversial (Williams' firing of the officer was sustained by a civil service commission nearly two years later), shootings by Newark police officers in the six months following Williams' action dropped by nearly 60%. The impact of what one police official labeled "effective heat" might be similarly observed in the 70% drop in shooting following the Eulia Love controversy in Los Angeles and similar reductions in police use of deadly force following stern administrative actions in San Jose, Kansas City, Mo., and Atlanta. Such responses to

public sanctions indicate that the subjective belief that wrongful
shootings will be punished may be more important in reducing the rate of
police deadly force than are the specific formal shooting review poli-
cies or procedures. As Machiavelli (perhaps sadly, but also astutely)
observed, "Men react to fear more readily than kindness." This sad truth
may apply to the behavior of police officers, as it did to the behavior
of Machiavelli's Prince subjects.

Conclusions: Administration Control of Police Deadly Force

In this chapter we have outlined several of the major dilemmas
implicit in the administrative control of police use of deadly force. We
have surveyed existing research linking administrative policy to the
rate of use of deadly force; summarized some of the theoretical issues
related to the administrative control of deadly force; and speculated
about the impact of administrative guidelines, training, operational
rules and review policies on the rate of police deadly force. Upon
reconsidering this chapter, one might ask the following question: If the
administrative means exist to control police deadly force, why is it
that in some cities police use of deadly force remains strangely high
while shooting policies remain essentially unchanged?

Before attempting to answer the question a summary and highlighting
of previously discussed issues seem in order. Each of the four admini-
strative mechanisms we have discussed makes key social and psychological
assumptions about the way that police shooting behavior might be effec-
tively controlled. These assumptions are summarized in the table below:

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TABLE THREE

Administrative Mechanism	Assumptions about why avoidable shootings occur	Theory of Control	Theory of how to control police decision-making
Guidelines	Avoidable shootings occur when officers lack specific guidelines defining when they may be permitted to use deadly force.	If guidelines are made more specific, then inappropriate shootings will be reduced.	Officers have difficulty implementing ambiguous abstract legal statutes and policy statements.
Training	Avoidable shootings occur because untrained officers make errors in tactical or perceptual or legal judgment.	If officers are given realistic training, the probability of panic, tactical mistakes etc. will be reduced.	Officers can be trained to implement deadly force policies.
Operational Rules	Avoidable shootings occur when officers enter situations in which risk factors are too high to avoid use of deadly force.	Avoidable shootings will be reduced if certain risk situations are avoided through use of backups, back-off procedures, etc.	Officers cannot be expected to implement deadly force decisions in certain volatile situations.
Intensive Shooting Review	Avoidable shootings occur because officers fail to use caution or act emotionally due to failure of the department to review and sanction avoidable shootings.	If level of sanctions are increased, avoidable shootings due to lack of care, experience and emotion will be reduced.	Officers are deterred by fear from shooting abuses.

Obviously, a department's strategy of social control may include several of the administrative means we have described. Also, different departments or officers may define the assumptions of each of these mechanisms differently from the way we have characterized them above. We

offer the chart above to illustrate that the choice (or ordering of choices) of administrative mechanisms makes important assumptions regarding the definition of the problem of deadly force and, implicitly, asserts a theory of how deadly force may be controlled and how the officer makes a decision to use or not use deadly force.

While it is conceptually and practically possible to develop a consistent and effective administrative system to control police deadly force, few departments have systematically implemented the types of administrative techniques we have described. In many departments we find tortuously ambiguous shooting guidelines, sporadic and obviously ineffective training, few efforts to define operational rules designed to minimize the risk of deadly force, and incomplete reviews of officer decisions to use deadly force.

In many cities, the chief reacts defensively to the admittedly complex dilemmas of police deadly force. Faced with countervailing union pressures, demands for proactive policing, community pressures and threats of legal actions, the chief follows an (understandable) policy of pragmatic vacillation. "We are," as one chief admits, "between a rock and a hard place on this issue. It's a no-win situation." Another chief (a chief known for his reform policies) similarly described his frustration at not being able to "go after" an officer who had been involved in "two bad shootings" during a six-month period:

> Now what can I do? The union wouldn't let my "IA" even talk to the guy. The city manager is in bed with the union and the guy's brother-in-law is an ex-city councilman. The grand jury will smile at anything a policeman does, providing it's not an out and out execution and let's face it, I've got battles going on in other areas. I have to choose my fight.

Such comments echo the key questions we have raised: Why, if the means are available to reduce deadly force, are police policies in this direction rarely implemented?

Of the many constraints facing reform, perhaps the most insidious is the lack of clear legal statement on the issue of police deadly force. To date, the U.S. Supreme Court has not expressed itself explicitly on the topic. The legal status of many state statutes is much like the state of educational racial codes prior to the Topeka, Kansas v. Brown decision, or arrest laws prior to the Gideon, Miranda or Escobedo decisions. In California, for example, the state "use of deadly force" statute has been effectively ruled unconstitutional by the state's Supreme Court (Kortum v. Alkire). In another case, it was ruled that cities were to be held civilly liable for guidelines, policy and training which exceed the state statute (Peterson v. Long Beach). A further indication of the larger legal confusion is found in the observation that approximately one-half of the states still have codified the widely criticized common law rule that allows deadly force to be used in the arrest of any felony suspect. A somewhat different type of statute is found in the seven states that permit deadly force as a response either to specific felonies or to a general category of felonies. Finally, seven other states follow the Model Penal Code provisions which restrict the use of deadly force specifically to violent felonies.

Many critics of the existing legal status of deadly force law (see Finch, 1976, Sherman, 1979) emphasize that additional restrictions are needed on the broad discretionary powers given to the police by the justification statutes. A common theme in these arguments is an ethical

concern that flight from purely property crimes should not result in the death of the suspect.

The failure of many legislatures to adopt the Model Penal Code or a similar code has led to a growing number of Constitutional challenges. Finch (1976) finds substantial, though not altogether convincing, grounds for Constitutional review of justification statutes under fourth, eight and fourteenth amendment guarantees. Particularly convincing to him are claims of fourteenth amendment due process protections against unconstitutional deprivations of the right to life and trial. Sherman (1979) argues that the common law statutes are capricious in that they almost randomly punish fleeing felons.

A police administrator finds himself forced to choose between a number of shooting guidelines. As Uleman's (1973) study of police shooting policies in Los Angeles County shows, cities even in the same county may have radically different shooting policies. Lacking a clear legal foundation, administrations may face a choice between expediency and idealism. One example of this tension was observed in a city (headed by a nationally known reform chief) who was advised by his city attorney to drop all training and restrictive guidelines because state liability law (following Peterson v. Long Beach) held the city liable to actions which exceeded departmental guidelines, though within state law.

It should be further emphasized that the courts have been largely silent on several major definitional issues relevant to the administrative and legal control of deadly force. One issue deals with the concept of "gross negligence". Except for the Somers case which defined what a reasonable belief is that an atrocious felony had been committed, the courts have not given clear signals on issues as to how certain an

officer must be that his or a citizen's life is in jeopardy "or how serious the threat to an officer's life must be." Two cases in Los Angeles illustrate the definitional difficulty. In one case, the district attorney prosecuted a group of LAPD officers who confronted a parking lot worker armed with shotgun, who the District Attorney argued did not give the officers reasonable cause to use deadly force against him. In another case, the district attorney reviewed a case where an officer fired at a crazed man who was about to throw a typewriter in the direction of the officer. The key issue in this case according to the investigator in charge of the case is "whether or not the threat of the typewriter could be considered a lethal threat against the officer." The dilemmas of internal affairs officers, chiefs, juries and lawyers is that the courts have been virtually silent on such issues. One result of the resulting ambiguity is that police chiefs, grand juries and district attorneys have been reluctant to take action against (legally or administratively) all but the most egregiously negligent cases of the abuse of police deadly force.

Another constraint against effective reform involves the tenuous political status of the chief. One study found that the average chief enjoys a tenure of less than two years. Caught between political, union and community power blocks, the police chief of the 1980's finds himself in a constant battle for survival. The case of Boston's Robert DiGrazia is instructive. Leaving Boston, because of a refusal by the mayor to grant a long-term contract, DiGrazia accepted a job in Maryland. He was fired within a year. Professionally ostracized by conservative law enforcement and virtually hounded by embittered unions, DiGrazia has not been employed as a police chief for more than three years. Commencing on

what he called "The DiGrazia object lesson," another well-known reform chief said:

> Look, who's kidding who; what happened to Bob could have happened to any of us. Don't think that when we contemplate something radical we don't think of DiGrazia and his five kids.

Another of the many constraints making the job of controlling deadly force difficult (or impossible) is the recent rise of union militancy. The age of the Boston Police strike in which virtually a whole police force was fired are long gone. As LAPD's Chief, Daryl Gates has said (our paraphrase), "The mental patients are running the asylum." In many cities, police deadly force policy has become a major union issue. In San Jose, the Officer's Association filed a legal action against that city's deadly force policy. In Miami, the suspension of five officers for defacing the property of blacks (presumably) involved in the recent Miami riot was reversed due to the threatened statewide strike of police officers. In Los Angeles, The Police Protective League filed a class action suit designed to rescind certain policy recommendations of the Police Commission. Routinely in cases involving police use of deadly force, police unions defend the officers involved and vigorously fight actions to sanction officers for the abuse of deadly force.

Another factor making the task of the reform of deadly force extremely difficult is citizen preoccupation with "law and order" and safety from violent crime, often at a high price. In many cities, there is virtually a public obsession with the reality of street violence and crime, a concern which in many cities overwhelms almost any desire to control use of deadly force. One veteran city police reporter, for example, observed that, "If the guy on the street has a choice between risking getting killed by a wacko hype and a wacko cop, he'll take his

chances on getting wasted by the cop, so that the cop can kill or arrest

the hype." Recently, many middle-class blacks have articulated similar

positions. A New York "Village Voice" article in March, 1980 by an

articulate black journalist, Stanley Crouch, argues that blacks have

more to fear from black criminals (he uses the example of the notorious

Harlem black drug dealer) than they do from violent cops. He quotes one

black officer as indicating the pressure he would take in "wasting"

Nicky Barnes and similar street predators:

> A black cop, a friend of mine for years, told me this
> after the Times ran that story on Nicky Barnes. He says,
> "Listen, man. Let me tell you something. The white cops in
> Harlem, they don't give a fuck about drugs. They don't give a
> fuck about nothing. They think maintaining order up here is a
> losing proposition. They think black people will inevitably
> kill or maim each other or tear up each other's property. But
> the black cops, we take it personal. Particularly when they
> try to make somebody like Nicky Barnes a goddam folk hero or
> some motherfucker tells you how dope provides jobs for the
> downtrodden! If they'll sell dope or help cut dope, they need
> to be down and out. If one of us black cops had a chance, we
> would have taken Nicky Barnes somewhere when nobody was
> looking and put two in his head. Quick." That's the way he
> felt about it.
> "I wish they had've killed him. I wish they'd killed all
> of them," adds one of the others, "because they not only sell
> dope, they're the ones the kids get this attitude of not
> giving a fuck about anybody else from. This is why kids beat
> up people after they already done gave up their wallet, or set
> somebody on fire. They probably think they're being cute, like
> one of these goddam hustlers beating one of his bitches in the
> street. He's proving to the world how cold he is. Now you got
> kids who want to prove the same thing, or maybe they're just
> mad at the world. When you don't give a fuck, you'll do
> anything. People like that need to be behind bars or in the
> graveyard."

Crouch predicts (we think with some justification) that this new

"law and order" vigilantism will increase as more middle class citizens

(black and white) resettle the center cities:

> . . . if lots of white people start moving into Harlem,
> the schools will improve and so will the policing. They'll run
> all those dope dealers off 116th and Eighth Avenue and the
> other boulevards. Given the gas crisis and the fact that

young, successful couples are moving into the city and looking
for places to live, Harlem brownstones and refurbishable grand
apartment houses concretized the grim sense of the observa-
tion. It would also add another irony to the many connected to
this story, for it would mean that the criminals who have done
so much damage to Harlem are now helping to change it even
more. When they once made whites afraid to go there, they
might now be making it much easier for them to return.

    Interestingly, Columbia University just bought three
buildings at 145th and St. Nicholas, one of Harlem's most
crime-infested blocks. The tenants have been removed and told
they can come back. No one believes it. As the buildings are
renovated, the word among the hustlers is: "It's time to clear
out. They're getting ready to clean up this block."

The reality of violent crime leads to what we might call the

"administrative dilemma of the hard charger." The "hard charger" in the

police vernacular is an officer who achieves many arrests through his

aggressive "street attitude" and possibly uses at times excessive force.

The dilemma posed by this type of officer was articulated as follows by

a very bright, young and perceptive urban police force's deputy chief:

    Look we've got guys we <u>know</u> will get involved in
shootings. The problem is they also will get involved in many
arrests. The older fat officer (we got lots of these too)
won't shoot anybody. They also won't arrest anybody either.
10% of our guys will get involved in 80% of our shootings and
make 90% of our best felony arrests.

The observations made by this deputy chief were supported by a

sergeant who was commissioned by his chief to do a study of "officer

shooting risk." The sergeant commented that the major finding, "was that

most of the shooters had won medals." He went on to observe that the

more surprising thing was that "the chief threw his study in a waste-

basket as soon as he saw it." He said, "We couldn't fire those guys"

and, also "If the lawyers found out we knew how. dangerous those guys

were, they would murder us if they could prove we knew."

Another constraint against the effective adminstrative control of

police deadly force involves the very myth of police deadly force

itself. As we observed in Chapter Three, while the early urban police were not armed (the first reported shooting in New York occurred amidst much controversy in 1858), policing has become perhaps irreversibly intertwined with the mystique of the revolver. The early western "marshals" often were selected because of their prowess with a six-shooter (Prassel, 1972). Media police officers such as Starsky and Hutch, Popeye Doyle, Kojak, Bullit, and Dirty Harry seemingly use their guns as frequently as they use their forks and knives if one were to believe the movies.

Any effort to disarm (or even control) an armed police force violates the public (and possibly police) conception of the essence of policing - even though this conception may have little foundation in reality. For a police chief to demand control of his officers' weapons will appear to some almost un-American - a violation of a frontier myth in which one's security is measured by the speed of one's draw and the power of one's .44.

Such constraints should make the seemingly ineffective efforts by many police chiefs, at least understandable if not blameless. The typical police chief is (as one fellow chief puts it) almost by necessity (if he is to survive) a political animal. Torn between his (possible) humanistic ideals and such diverse groups as a local urban league chapter, civil liberties union, police union, law and order citizen, politicized courts and district attorneys, the line of least resistance (a tempting one, we might add) is a pragmatic course of action. Such a choice may maximize one's career chances in an (at best) extraordinarily difficult political role. It cannot however confront the realities of the effective control of polic use of deadly force. This we might

submit is the core paradox of the administrative control of police uses of deadly force: the means to control deadly force presently exist. What blocks effective reform is·the political will and finesse to implement those administrative measures which might substantially reduce the chances of death or injury to citizens at the hands of police officers.