

Community Relations Service  
U.S. Department of Justice

# **POLICE USE OF EXCESSIVE FORCE**

## **A CONCILIATION HANDBOOK FOR THE POLICE and THE COMMUNITY**



June 1999 (Updated June 2002)

## **Community Relations Service**

The Community Relations Service (CRS) is a U.S. Department of Justice agency created by the Civil Rights Act of 1964 to help resolve community racial conflict through non-coercive, third party intervention. CRS is called upon to assist communities to resolve disputes arising from alleged police use of excessive force. As a result, agency conciliators have developed extensive experience with the issues involved in those incidents.

When the parties request, CRS conducts formal negotiations to determine whether the differences between the police and the community can be resolved. In addition to formal negotiations, CRS provides a wide range of informal assistance that attempts to keep communications open among the affected parties and to facilitate a mutually acceptable resolution of the conflict. CRS offers its services either upon request or on its own initiative, when is threat of disruption to peaceful community relations.

The Community Relations Service (CRS) is headquartered in Washington, D.C., and has offices in Atlanta, Boston, Chicago, Dallas, Denver, Detroit, Houston, Kansas City, Los Angeles, Miami, New York, Philadelphia, San Francisco, and Seattle. Assistance may be requested from any of these offices.

## Preface

Community disturbances resulting from the police use of excessive or deadly force continue to plague many American communities. Law enforcement is an important societal function and its effectiveness is hampered when tensions exist between the police department and the public it serves.

Over and over, one thing we have learned, is that good policing practices are essential to developing community support. Other elements include trust and confidence in the administration of justice. With this foundation, the prospect of successfully dealing with the potential for violent disturbances in the community is greatly enhanced. Moreover, a healthy relationship between the police and the community diminishes the prospect of the police using excessive force at all.

From Community Relations Service's (CRS) 35 years of conciliation experience in the area of race relations, we are convinced that incidents of police use of excessive and lethal force can be prevented, and the turmoil in the communities in the aftermath of such an incident can be reduced; civil unrest and disorder is not a necessary consequence of such a terrible tragedy.

This guidebook was developed to give the police and community groups options for addressing any controversy surrounding the police use of excessive or deadly force. Even after pursuing formal avenues like criminal prosecutions and civil litigation, we are still left with the need to address the underlying, unresolved concerns.

We have laid out some practical guidelines for resolving community disputes involving excessive or deadly use of force disputes. A conciliation approach is an effective method for resolving police-community conflicts. Thus we would like to share CRS' professional conciliators' collective experience.

The original handbook was published in May, 1982. In that publication, we tried to capture the essence of a meeting that CRS co-sponsored with the National Urban League and the League of United Latin American Citizens on police-minority community cooperation. Others present at that meeting included representatives of minority organizations, police executives, line officers, public officials, and civic leaders from across the country.

While the 1982 document has served CRS well over the years, this edition reflects some updates. In the Spring of 1999, CRS brought four nationally recognized chiefs of police together with experienced CRS conciliators and staff to review the 1982 handbook. As a result, this guidebook includes recent developments in community policing and other police/community dynamics. This handbook also focuses on steps that have the most potential for bringing about beneficial change in police/community relationships.

CRS has produced many other useful and informative publications over time. One in particular, *Principles of Good Policing: Avoiding Violence Between Police and The Community*, is a lengthier publication with a more detailed discussion of the same topics and issues in this guidebook. It contains sections on police policies, training modules, and examples of how some police departments and community groups address the use of force issue. CRS has also developed a Bulletin entitled *Police Use of Force - Addressing Community Racial Tensions*, which highlights best practices, as illustrated by CRS' casework.

CRS' mission is to help promote communication between the police and the community. Toward these ends, we hope you will find these materials useful, and we hope to continue working in cooperation with you to provide a quality service in reducing racial tensions in communities across our nation.

*There still is a large gulf between how the criminal justice system is viewed by Black and White Americans. There is no other area where the potential for misunderstanding can have such dangerous consequences.*

## **Acknowledgments**

CRS wishes to thank the police chiefs who participated in the review of the 1982 handbook. They are: Commissioner Paul Evans, Boston (Massachusetts) Police Department; Chief John S. Farrell, Prince George's County (Maryland) Police Department; Chief Reuben Greenberg, Charleston (South Carolina) Police Department; and retired Superintendent Matt Rodriguez, Chicago Police Department. CRS also recognizes the contributions of the staff who participated in this updating effort; namely, Byron Wong, Special Advisor to the Director; Patricia Glenn, Regional Director; Marty Walsh, Regional Director; and Tommy Battles, Senior Conciliator. CRS also acknowledges Mark A. Cunniff, Executive Director of the National Association of Criminal Justice Planners, for his editorial work in incorporating all the recommended changes of the participants in this process into the revised handbook.

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*“Law enforcement and community leaders agree that simply reducing the nation’s crime rate cannot be the only barometer of police success. The means used to accomplish crime reduction must be as important as the results themselves. The success of crime reduction is diminished if community trust declines as well. Crime reduction strategies must be consistent with democratic principles. The two are not mutually exclusive. The end does not justify the means.*

*As community leaders and law enforcement professionals, we will not tolerate inequity in our departments, or in the treatment of our citizens. We will not tolerate the use of excessive force or discrimination in any form.”*

**Thomas C. Frazier**  
**President, Police Executive Research Forum (PERF)**  
**& Commissioner of Police, Baltimore, Maryland**  
**April 8, 1999**

## **I. Introduction**

The scenario is a now familiar one: a police officer, attempting an arrest, fatally shoots an African American, Hispanic American, or other minority person. Word spreads quickly through the deceased's community that the person was unarmed. Crowds gather and rock-throwing begins. There are injuries and arrests. The following day, minority leaders charge that the shooting was unjustified and demand the immediate arrest and indictment of the police officer involved. The police chief refuses to arrest the officer involved, the prosecutor does not indict the officer on grounds that there is insufficient evidence of any wrongdoing, and the next several days are marked by demonstrations, stepped-up police patrols, and further arrests. Finally, the reaction subsides, and the police and protestors settle into an uneasy truce.

Few police officers or minority members, given the option, would choose the state of affairs depicted in this composite incident to characterize their relationship. Even though deaths are not always involved in incidents of police officer use of excessive force, unfortunate incidents similar to this occur all too frequently. These incidents raise the central question addressed in this handbook: is it possible for police and minorities to find means of dealing with their differences short of legal or legislative actions?

### **The Conciliation Approach**

The answer clearly is yes. The power of conciliation to produce a mutually desirable outcome in even the most difficult circumstances is well established. Conciliation brings opposing parties together to hear each other's point of view and to find common ground. Because the parties may never have engaged in such a dialogue, the act of coming together may itself help to ease tensions and reduce misunderstandings. When conciliation produces a lasting solution to troubled police-minority relations, everyone benefits - aggrieved minority residents, the police, and the entire community. If conciliation efforts fall short, on the other hand, neither the police department nor minority community will have lost their options to pursue other courses of action available to them.

A conciliation effort requires that the police department and minority community look at their overall relationship. While a single issue, such as the department's firearms policy, may be the immediate cause of such a dialogue, no single issue exists in isolation from other departmental policies and practices. Minority leaders and the police chief, preferably with the support of city officials, have to approach each other with the willingness to pursue actions that offer the prospect of creating constructive change in the entire police-minority relationship. In the following pages actions are proposed for police departments and community organizations to break down the barriers to good relations and to deal constructively with the issues surrounding disputes of police officer use of excessive force.

### **Police-Community Relations**

Controversy over firearms policy and use of excessive force is inseparately tied to the overall quality of relations between the community population and the police. Where police and all groups in the community develop good relations, friction generally is minimized. The perception of the police as concerned, professional, and fair leads to greater respect throughout all segments of the community. Likewise, police officers' confidence that they can count on the support of all the community population in the performance of their duties gives them a greater sense of confidence in doing their job. An effective police-minority relationship can contribute to the reduction in incidents of excessive police force. However, in the event, an incident of excessive force does occur, the public is more likely to respond with an open mind due to the positive relationships and trust built up with the police through daily experience.

Community organizations might consider two other possibilities as an aid to improving relations with police. Explore the establishment of communications links to professional police associations as well as with the police union, and institute an annual award for the police officer believed to have contributed most significantly to positive police-community relations. While it might seem at first glance that the two programs have few common interests, in many situations there are mutually beneficial grounds on which to cooperate.

### **Cultural Pluralism**

American society has always been characterized by change in its racial and ethnic composition. At the start of the Twentieth Century, the U.S. population was largely made up of persons with a British Isles heritage and with the African American population concentrated in the southern part of the country. The immigration patterns at the start of the century brought an influx of southern and eastern Europeans. The industrial production precipitated by two world wars contributed to the migration of African Americans from the south to northern cities. The change in immigration laws in the 1970's, along with refugees from southeast Asia, broadened the representation of Asian Americans that had immigrated from China, Japan, and the Philippines during the preceding century. Job opportunities brought many immigrants from Mexico. Political turmoil in Central America also contributed to the growth of the Hispanic population in the country. Today, the United States is more diverse in religion, race, nationality and cultures than at any other point in its short history.

Racial and ethnic diversity is one of America's strengths, but this diversity also represents a challenge to policing. A police officer's lack of familiarity with the customs and mores of various ethnic and racial groups can lead to misunderstandings and conflict. Cultural parochialism wherein police officers are only familiar with their own heritage does not provide a solid foundation for effective policing. Cultural colonialism wherein the values of the dominant ethnic group in the department become those of the department is a prescription for friction between the police and the communities that they serve.

Police departments have to work hard to become familiar with the various ethnic and racial groups that they serve, to understand their languages, customs and traditions, and to establish mechanisms for communicating with them.

A component of such communication ought to be in the department's articulation of its values in interacting with the community.

*“Police officers have one of the hardest jobs there is. A police officer is charged with ensuring public safety, but she or he is also empowered to use force and, if necessary, to take a life to protect others from death or great bodily harm. The police are there to protect us from crime, but they must protect our rights at the same time. And to do their work effectively, the police must have the trust and confidence of the communities they serve. They must develop a partnership and a relationship with the citizens they protect.*

*Crime is a problem that all of us must work together to solve because no one of us can solve it alone. It is now time for all of us to come together in our communities, with citizens from all parts of the community, to build the trust and confidence of all Americans in law enforcement.”*

**Janet Reno  
Attorney General  
U.S. Department of Justice  
National Press Club, Washington, D.C.  
April 15, 1999**

## **II. Community Policing: A Framework for Managing the Use of Force**

One of the tenets of policing in the current era is the requirement for a cohesive community working with a responsive police department.<sup>1</sup> Violent confrontations between police and their service population does not support a cohesive community or a responsive police department. Unfortunately, unjustified violence between police and minority members is not something from an era of policing that is behind us, as evidenced by recent, well publicized cases across the county.

### **Community Policing**

Some agencies never lost a community orientation in their policing. Some agencies may have recently regained their community orientation that was previously sidetracked due to the technological developments of the squad car and the two way radio. Other agencies may have never had a community orientation. Regardless of departmental history, community policing is a philosophy in which the police engage residents to solve problems in their communities.

Community policing is a broad concept that can take on many different forms among the host of local police agencies operating in the United States. Nevertheless, there are common elements that characterize a community policing approach. Community policing emphasizes the view that the community is a partner in the performance of the police mission. Community policing does not view the minority neighborhood as a territory to be occupied. The community has a role in keeping neighborhoods safe and free of the fear of crime.

### **Community Partnering**

Departments operating under a community policing philosophy endeavor to understand the concerns of the community. This approach requires that line officers move from such narrow functions as writing up incident reports to developing interpersonal skills that enable them to engage people of all backgrounds, listen to their concerns and to devise collaborative responses to those concerns.

Eliciting community concerns can be accomplished through a variety of means, including: one-on-one contacts between the police officer and the public; the attendance at, and participation in, community meetings; and surveying residents about their concerns and priorities through the mail or on the phone. Collective problem solving is the key to effective community policing.

When police departments address issues that concern the community, better relations can develop between them. Being a good community police officer can also mean being a more effective crime fighter. Community policing makes residents partners for the police not only in their crime control efforts, but also in making improvements in the community's quality of life.

### **Problem Solving**

Community policing creates a positive atmosphere for police community relations and provides the foundation for effective partnerships, even for assertive crime control initiatives. Assertive, however, does not have to mean abusive. A department can set objectives (reduce complaints, police shootings, and injuries to civilians) and then set out to shift the culture to accomplish these objectives by developing policies and procedures, training it officers

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<sup>1</sup> Hubert Williams and Patrick V. Murphy, "The Evolving Strategy of Policing: A Minority View," **Perspectives on Policing**, No. 13, January, 1990, National Institute of Justice and Harvard University, U.S. Department of Justice.

and monitoring them for compliance.

## **Values and Culture of Policing in the New Millennium**

The primary focus of this handbook is to assist police agencies and communities reduce violent confrontations between police officers and the public. The successful accomplishment of this objective should produce two major benefits. First, this would enhance the safety of both police officers and the residents whom they serve. Second, this objective will foster an atmosphere of cooperation and mutual respect between the police and the community. To initiate this process, a police department must determine whether its organizational culture is conducive to reducing violent confrontations between the police and the public.

### **The Police Culture**

The "culture" of a police department reflects what that department believes in as an organization. These beliefs are reflected in the department's recruiting and selection practices,<sup>2</sup> its operational policies and procedures, its training and development, its reward systems, and ultimately the actions of its officers in delivering services.

Clearly all police departments have a culture. The key question is whether that culture has been carefully developed or simply allowed to develop without benefit of reflection or guidance. There are police agencies, for example, where the use of force is viewed as abnormal. Thus, when force is used in such an environment, the event receives a great deal of managerial and administrative attention. Such scrutiny reflects the department's culture: the use of force is viewed, and responded to, as an atypical occurrence.

Contrast such a department with one that does not view the use of force as abnormal. In such a department, there may be minimal written rules providing officers with policy guidelines regarding the use of force. There may be a lack of clearly articulated administrative procedures for tracking and investigating officers' use of force. Finally, and most importantly, the culture of these departments is such that officers may view the use of force as an acceptable way of resolving conflict with the public.

Over the past few years, there has been significant progress in improving police-community relationships. However, the major continuing source of friction between the police and the community today, especially in minority communities, is police use of deadly force. This is an age-old problem that continues to command national attention. The fact that this problem persists can be attributed in part to the culture of certain police departments.

There are ways to recreate or change the "culture" of a police department. In order to do so, one must analyze and understand the currently existing culture. Analyzing and understanding the past and current culture may mean acknowledging that "business as usual" has not always equated with "good business." Any organization that overvalues pride and tradition to the exclusion of sensitivity toward community values would find it difficult to acknowledge and rectify shortcomings. In order to move forward and to redefine their cultures, however, police departments have to learn how to operate differently. Change is not always comfortable or easy. Just as police chiefs have challenged their officers and supervisors to shift their philosophy of policing, so too must police executives challenge themselves to diagnose and understand their agencies' culture and to manage it differently.

### **Developing a Set of Values**

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<sup>2</sup> It is useful to note the role that a locality's civil service can play in advancing or hindering police efforts in its recruitment initiatives.

The starting point for establishing a departmental culture is to develop and articulate a set of values. Such values serve a variety of purposes, including:

- Setting forth a departmental philosophy of policing;
- Stating in clear terms what a department believes in;
- Articulating in broad terms the goals of the department;
- Reflecting the community's expectations of the department;
- Serving as a basis for developing policies and procedures;
- Establishing the parameters for organizational flexibility;
- Providing the basis for operational strategies;
- Setting the framework for officer performance;
- Establishing the framework for departmental evaluation.

The development of a set of values for a police department does not necessarily entail a lengthy list. Rather, a few values, when taken together, can embody what the department considers to be important. For example, if the department wants to create a service oriented culture, then that desire should be reflected in its set of values. The importance of values is qualitative, not quantitative. Values permeate the department, being reflected in its policy making decisions, written into its rules and procedures, incorporated into its training and providing the foundation for its goals. The values of a department are important because they set the standards for the quality of its performance.

### **Developing a Mission Statement**

A mission statement describes the fundamental role of an organization in support of its vision; i.e., why it exists; its constancy of purpose, with a single overriding goal statement.

The role of government is to provide a wide variety of community services, including health, education, recreation, library and public safety services. The police department is one of the most important governmental services offered to the community. The mission of a police department should include such activities as: crime prevention; victim assistance; providing for the public's safety; protection of property; and the enforcement of the law.

### **III. Police Community Bridge Building**

*“In Boston, the department has been engaged in a comprehensive strategic planning process over the past several years. As part of that process, community stakeholders are identified and brought to the table to include their input on developing crime fighting strategies, as well as identifying neighborhood problems. Since 1994, every district station has opened this strategic planning process to supporters and critics of the police department, enabling both to voice their concerns and offer their remedies. Citywide surveys were taken in 1995 and 1997 to measure levels of fear and enable the department to act upon recommendations for better policing voiced by Boston’s residents. Among those suggestions was a desire that the department personnel better reflect the neighborhoods they police. A commitment to diversity in recruiting efforts, coupled with special certifications for languages, has led to a department that is more representative of our various minority residents.*

*Since 1994, nearly 300 officers have been added to the department, while at the same time complaints against officers have declined nearly 50 percent . . . Training, both recruit and in-service, has also emphasized respect and civility while interacting with members of the public . . . Boston’s three pronged approach to violent crime (prevention, intervention and enforcement) has led to major decreases in violent crime throughout the city, especially among Boston’s youth. A huge part of this success is due to continued education, and open lines of communication between the department and the communities it serves.”*

**Paul Evans  
Commissioner of Police  
Boston, Massachusetts  
April 9, 1999**

#### **Recruitment and Selection**

Every police department benefits from a work force that reflects the racial-ethnic makeup of the community that it serves, but even the most sincere efforts to recruit minority police officers have sometimes met with only marginal success. Nevertheless, police departments should make every attempt to attain this objective.

##### **Police and Personnel Roles**

The police department's minority recruitment program needs to be well-organized and closely coordinated within and outside of the department. Aggressive recruitment at local colleges has proven to be a very effective technique for minority recruitment.

Responsibility for recruitment is sometimes split between a police department recruiting team and the locality's human resources agency (Civil Service), with no attempt to coordinate its efforts with that agency. In addition, personnel agencies have often limited their efforts to posting job announcements on bulletin boards and placing occasional advertisements in newspapers and law enforcement journals, an approach not likely to produce the desired results.

Within the police department, best results occur when responsibility for recruitment efforts are assigned to a specific, high ranking officer. An ideal recruiting team would be diverse in race and gender, reflecting the type of persons a department wants as police officers. Furthermore, the recruitment effort would be more effective if all members are thoroughly trained in the application and selection procedures so they can better assist applicants in preparing for, and complying with, these procedures.

Publicity is important too. The department should use all available communications channels, including neighborhood newspapers, public service announcements on radio and television, displaying posters where they are likely to be seen by the largest numbers of minority residents, and announcements at public meetings. In addition, minority community organizations can publicize the recruiting effort through their formal and informal communications channels.

Finally, in its efforts to recruit more minorities, the police department must remove unnecessary obstacles to the application process. For example, application forms are sometimes available only from the city personnel agency or the police department recruiting team. Efforts can be made to distribute the application forms, along with statements of required qualifications, to all police department facilities. These materials would be readily available to anyone who requests them.

### Community Involvement

The police department's recruiting team work includes establishing ongoing relationships community organizations to establish liaison with the community's applicant pool. If there are several interested organizations, they could set up a working group to pursue common objectives, perhaps drawing on the expertise and resources of a local minority police officers' association. If such a local association exists, the community organizations may also explore the possibility of working cooperatively to establish a tutoring program to help applicants prepare for examinations and other aspects of the selection process.

### Outreach to Youth

Each police department must determine the specific components of its minority recruitment program, but a key target group is minority youth. The relationship between a police department and the youth, especially minority youth, is a critical factor for the success of its recruitment efforts. There are several options that a police department may wish to consider in focusing on youth, such as implementing a cadet program or working with community organizations that sponsor youth activities.

### Psychological Testing

The importance of the police function argues for keeping persons emotionally unsuited for the job from entering or remaining in police work. The predictive capacity of psychological tests may be limited, but even if such tests reveal only the most pronounced cases of emotional instability, psychological evaluations serve a purpose. Every police department benefits from the capability to evaluate applicants and officers already in the ranks.

### **Training**

Police training should start with the department's mission statement and the training program should incorporate the values of the department. Training can have a positive impact in addressing negative relations between police and minorities. The department and its officers are best served with training that addresses real life situations and that the tactics being taught have demonstrated their effectiveness in meeting those situations that they are intended to address.

### Community Cultural Diversity

To promote a better of the communities the recruits will be serving, police departments have incorporated human

relations training specifically geared to understanding the cultural patterns and characteristics of these communities. Many veteran police officers talk about difficulties they experienced in minority and immigrant neighborhoods before learning about the ways and mores of the people who lived there. This is an area where the training could benefit by including members of the community in the program.

Aside from the question of content, there is the matter of how much time is devoted to human relations compared to other categories or training. What does it mean, for example, if a department's training academy devotes 75 of 250 hours of recruit training to firearms, but only 10 hours to human relations? While it may not be possible to draw a direct cause and effect inference, such a department may decide to reevaluate its situation, especially if it has been plagued by excessive force controversy and habitually poor relations with the minority community.

### Communication Skills

Language problems may also represent an important training need. Where there are substantial Spanish-speaking populations, or other large language-minority groups, such as Asian refugees, the police department may need to develop a minimum language competency among its officers, at the same time attempt to hire individuals with the requisite language skills.

The objective of any language program would not to make officers fluent in a particular language. That would be impractical within the framework of available time and resources. Rather, the emphasis would be on learning key words likely to come up in police call situations.

### Less than Lethal Tactics

Modern police training includes techniques to use the least amount of force necessary to overcome the subject. Consequently, there is a need to train police officers in the use of non-lethal weaponry. This might include use of such items as pepper spray, rubber bullets, "bean bags," and tasers. Police departments should also provide training in tactics that are useful in averting violence where confrontation is necessary. Some departments, for example, have developed "officer survival," "hostage negotiation," conflict resolution, and verbal skills courses. These courses have been credited with preventing physical conflict and saving the lives of many people, including officers and suspects. Such tactics reinforce the highest departmental priority of preserving life.

### Community Involvement

In addition to involving community representatives in delivering parts of the training program, departments might also want to consider inviting interested residents to observe parts of the training program. This sends a message of police openness to the community and can contribute to breaking down some of the barriers between the police and the community, especially the minority communities.

## **IV. Policies on Use of Force**

*“Many believe that complaints automatically increase when enforcement increases. Our experience with a focused complaint reduction initiative challenges that belief. Intense officer training must precede aggressive enforcement. Strong supervision reinforced our strict emphasis on courtesy during citizen contacts. Professionalism mandated that the community was clearly informed of our mission to reduce crime; critical community outreach and support must be engendered. Our results are impressive; citizens complaints did not increase, but significantly decreased during a time period when traffic stops, investigative person checks, and arrests increased by 66%.”*

**John S. Farrell**  
**Chief of Police**  
**Prince George’s County, Maryland**  
**February 1999**

*“Similarly, the police must respond to citizen perceptions regarding the police use of force. Although our data tell us its actual use is quite low, we must recognize that citizen fears and perceptions of the police must be taken seriously and dealt with on their own terms, lest they undermine trust and confidence in the police. Ultimately, the greatest guarantee of citizen safety is a relationship with the police based on mutual trust and respect. The greatest guarantee of officer safety is citizen support and approval.”*

**Edward A. Flynn**  
**Chief of Police**  
**Arlington County, Virginia**  
**April 8, 1999**

The use of force by law enforcement officers is an unusual, but at times necessary, aspect of police officers' arrest and detention of alleged law violators. The absence of the use of force by law enforcement in performing its functions is the norm. Consequently, force is viewed as a necessary, but rare, occurrence.

### **The Legal Use of Deadly Force**

Prior to 1985, a majority of the 50 states had laws that authorized the so-called "any-felony" policy - essentially, that police could use firearms or any other means of deadly force to arrest a person suspected of committing any felony. Some states permitted police officers by law to shoot fleeing persons, including those suspected of such property offenses as check forgery and auto theft. Other states had slightly more restrictive variants on the use of deadly force, limiting its use to persons suspected of having committed "forcible" felonies, such as a robbery. About 12 states had no statute at all on police use of deadly force.

In 1985, the U.S. Supreme Court's decision in Tennessee v. Garner (471 U.S. 1) placed restrictions police use of deadly force. The ruled that: "deadly force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."

Garner established a key legal parameter on the use of deadly force, but this decision does not resolve all of the issues surrounding the use of deadly force. Police departments still have a substantial responsibility in developing their own policies on the use of deadly force, training their officers in following these policies to carry out their duties, monitoring officer compliance with these policies, and establishing standard operating procedures for investigating all instances involving the use of deadly force.

## **Use of Firearms Policy**

The question of firearms policy is central to the excessive force controversy. Many minority organizations and individuals consider a strict defense-of-life policy an absolute necessity; that is, they argue that an officer should shoot only to protect his life or the life of someone else. Some in the law enforcement community would argue that only minimal restrictions be placed on police discretion to judge when the use of lethal force is necessary, citing concern for the safety of police officers and the public.

The difficulty of determining the optimum firearms policy is described in a 1978 staff memorandum to the Seattle, Washington, City Council, as the Council prepared to enact new policy by ordinance:

As with many issues, the greatest difficulty public officials may have in dealing with the deadly force issue is that the differences of opinion do not arise from differences in fact, but from differences in basic values. The Council's task is to make an informed judgment tempered by competing interests, as expressed by the police, the community, the American Civil Liberties Union, and other interested groups.<sup>3</sup>

Regardless of state law restrictions on police use of deadly force, police departments retain the option of placing tighter restrictions on their own officers. Moreover, available evidence suggests that the establishment of a policy emphasizing a respect for the sanctity of human life reduces shootings without negative effects on law enforcement or public safety.

A key factor in how police officers use firearms is the attitude of the police chief. If the chief stresses conduct that respects the sanctity of human life, and follows up through close administrative review, line officers will respond accordingly.

The chief must take such a stand because there is little hope of alleviating hostile community relations if minority residents think that the police use deadly force against them indiscriminately. In this matter of deadly force, perception is as every bit as important as reality. If the community perceives that police officers can use deadly force indiscriminately, then that perception can be just as destructive to police/community relations as if that was the reality of the situation.

The critical nature of deadly force strongly suggests that police departments conduct thorough periodic reviews of their firearms policies and make changes, as necessary, to reduce the number of shootings. When

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<sup>3</sup> Maryann Huhs, "Police Use of Deadly Force," Seattle, Washington, City Council Staff Memorandum, January 16, 1978 (unpublished).

police chiefs send the message of their concern over this issue to both the police and the community, officers will know that "the chief means business," and people in the community will not wrongly perceive the chief as uncaring.

### **Less Than Lethal Force**

Providing officers with options for less than lethal force is strongly encouraged. However, the application of any less than lethal force or device should be managed and monitored in the same way as if that force could cause serious injury or even death. There is a need to proceed with caution in establishing the threshold for police use of less than lethal methods or devices when they are introduced into the department. Furthermore, officers should not be allowed to deploy any of these methods until they have been trained in their proper use.

### **Analyzing the Use of Force**

Police departments benefit from a comprehensive review and analysis of each use of force by their officers. The purpose of such review and analysis would be to discern patterns in incidents and/or officer behavior that may have contributed to the use of force. Such analysis could be helpful in improving officer training or in revising departmental policies and procedures. The purpose for this type of review and analysis is to improve police response to occasions that can give rise to the use of force. This type of tracking can also help to identify officers who have a history of complaints, so that the department can take corrective actions with them. This type of review and analysis would be over and above any disciplinary or criminal investigation into officers' use of force.

### **Use of Persuasion**

Persuasion can be an effective instrument in obtaining the suspect's cooperation in the criminal investigation and court processing of the case. There are options available to police officers when they need to arrest someone. Perhaps the most common option is the issuance of a citation for the suspect to appear in court. Such an approach is an effective means of having persons suspected of minor offenses to report voluntarily into custody and thus reducing the potential for the use of force to obtain a suspect's compliance.

## **V. Responding to Civilian Complaints & Excessive Force**

The manner in which a police department responds to civilian complaints establishes a tone in police community relations. If the tone is negative, the community atmosphere can be very hostile when an incident of police use of excessive or lethal force occurs. On the other hand, if the tone is positive, the prospects of preventing any civil unrest arising out of an incident of lethal or excessive force is greatly enhanced. Before examining the issues surrounding the investigation of civilian complaints and incidents of excessive force, there is the need for the public to understand the authority of police officers.

### **Public Education**

Discussion and analysis of previous controversies between the police and minorities have revealed a general need for a better community understanding of the "nuts and bolts" of the police department's mission and responsibilities. Community organizations can contribute to better police-community relations by educating their constituencies about the difficulties confronting officers on the street. No doubt most police departments could be counted on to cooperate with such a campaign.

Citizen academies have been initiated by police departments, providing residents with the opportunity to learn about local law enforcement, while providing community input to the departments about law enforcement issues that exist in their neighborhoods. With greater understanding of the police officer's role and responsibilities, minority members who have encounters with the police may be less likely to react in ways that could have negative consequences, perhaps reducing the number of incidents in which the use of police force ever becomes a factor.

For example, take the situation in which a person, who has done nothing wrong, is suddenly stopped by an officer. He or she may resent it. Consider the position of the officer, however, who is acting because the civilian, or his car, matches a description from a burglary or armed robbery a block away. In most cases, the officer will probably soon discover his mistake and be on his way. However, if the detainee resists physically, the situation could deteriorate and generate a complaint to be filed against the officer. While the police expect the subject to be cooperative in these situations, the public also expects the police to be courteous on such stops.

### **Civilian Complaint Process**

Even the best department will receive complaints. The absence of faith in the legitimacy of the department's complaint procedure has figured prominently in many cities that have been troubled by allegations of excessive force. Police chiefs generally recognize the need for an open honest vehicle for members of the general public to seek the redress of their grievances involving alleged police misconduct. Most chiefs know that when a department conveys to the public that it is open to criticism and to examining allegations of abuse, officers can expect to gain the public's confidence in their policing efforts. The department's complaint procedure should be set forth in writing regardless of the size of the community or the department.

An open complaint process provides the aggrieved person with access to a responsive listener who will carefully record essential details of the allegation, explain pertinent requirements of the procedure, and advise of the options available to the party. The process should be relatively simple for the complainant to activate and should require a minimum of forms. Persons assigned to the complaint intake function should be carefully chosen for their patience, understanding and objectivity.

The chief should also consider whether the office responsible for receiving civilian complaints would benefit from being located away from the headquarters building to a location without any other police units. The public should feel free to file a legitimate complaint without fear of unwanted confrontation with officers who might be hostile to their reason for being there.

While the police carry the major burden in establishing and operating a fair investigatory process for civilian complaints, the public also has responsibilities in this matter as well. Police have voiced frustration over frivolous complaints as well as with the reluctance of complainants to comply with the legitimate requirements of the complaint process, such as the need in some instances to reduce allegations to a sworn statement. Until there is a wider understanding that such requirements are often valid, some residents will continue to blame the police department for an unwillingness to take action when the real problem may be the person's refusal to meet requirements of the process. Community organizations can make dissemination of such information a part of a public education campaign.

### **Internal Affairs**

The majority of American communities have some form of police internal review of complaints against police officers. In small departments, a police officer, possibly a sergeant, will be responsible for receiving and investigating a civilian's complaint of abuse by an officer. Large police departments will have an internal affairs division (IAD) with several officers receiving and investigating civilian complaints of abuse. The chief of police reviews the internal reports and their recommendations. The chief then decides whether any disciplinary action will be taken, including, in the event there was a departmental trial board, acting on its recommendations.

There may be some confusion among community organizations about the purpose of the internal affairs division (IAD) of a police department. The key point to remember is that IAD does not have the responsibility to file criminal charges. That responsibility rests with the local prosecutor. Rather, the IAD investigation determines whether accused officers acted wrongfully and in violation of departmental policy. This is an administrative, not a criminal procedure.

A common criticism of internal affairs units is that someone who files a complaint often never hears anything further about the case. Providing a written response to complainants on all complaints filed is standard operating procedure for most departments. When the investigation is a long one, reports may be necessary at intervals to keep the complainant informed about the status of his or her case. Ultimately, however, each complainant should receive in writing the disposition of the complaint.

Because of such factors as confidentiality of employee records, the full investigative report may not be completely available. Nevertheless, the complainant can be provided with as much of the report as the law permits. At a minimum, however, the police department should inform the complainant whether the complaint was upheld or dismissed, and, if dismissed, why.

### **Civilian Oversight of Complaints**

The availability of a legitimate and sound civilian complaint process offers a means for addressing accusations of police misuse of force in a fair manner. Community members, remembering previously unresolved complaints, may harbor expectations that the police department will discredit and dismiss the immediate complaint. Being without community support in the process at a moment of crisis runs a very high risk for the immediate crisis to escalate.

In an effort to enhance the credibility of the complaint review process, larger cities, and a few medium sized communities, have chosen to expand the complaint process from being a purely departmental review to one involving civilian input. There are a variety of forms that civilian review can take: from using community representatives to conduct systematic reviews of complaints to identify needed improvements in the internal review process to a hybrid approach that uses a board of review composed of police officers and civilians either to hear and adjudicate the complaint or to select police officers to serve as investigators for an all civilian review board. Each civilian review mechanism reflects that community's judgment of how best to meet the community's needs.

When a community explores the possible approaches for reviewing civilian complaints, the public debate can generate adamant positions for and against civilian involvement in the process. Fortunately, there is a growing body of research and anecdotal information about civilian and police review systems that provide options for addressing a community's concerns.

### **Investigations of the Use of Force**

It is recommended that each use of force by officers be comprehensively reviewed and investigated to determine compliance with law and departmental policy, with appropriate action taken when needed. Determining the facts is critically important to the successful investigation of any police use of lethal or excessive force. There tends to be many units within the department, as well as agencies outside the department, that play a role in gathering the facts surrounding the case. There are also provisions prescribed by state and local laws that can circumscribe the investigative process. Finally, there are multiple audiences that have a stake in finding out what the investigation has uncovered.

#### **Fact Collectors**

The investigation of a police officer's use of force, especially deadly force, cannot be an ad hoc process. Police departments must have written procedures for identifying the roles and responsibilities of the various supervisors and specialized units that are to be involved in the investigation. These written procedures provide guidelines to supervisors as to their duties and responsibilities at the shooting scene.

For example, the officer's immediate supervisor is generally the first superior officer at the scene. The immediate supervisor is trained in, and given responsibility for, taking such rudimentary actions as protecting the integrity of shooting scene, separating the officer involved in the shooting from any other officers present, securing any weapons that were involved in the incident, etc.

There may be other public agencies, such as the medical examiner, that have to be notified about the incident. Where multi-agency involvement occurs with police shootings, it is advisable to enter into Memoranda of Understanding (MOU's) with the involved agencies, so that roles and responsibilities are delineated before an incident occurs. These MOUs can build community faith in the process and avoids the appearance that the police and the justice system are making up the rules as the investigation progresses.

#### **Legal Provisions**

Police officers have the same constitutional protections as any other individual; i.e., the right to an attorney, the right to be free of unreasonable searches and seizures, and the right not to self incriminate. The police officer is also an employee who may have protections under the state's labor laws. These laws may limit

the requests that the employer can make of the employee as well as the actions that the employer can take to secure the cooperation of the employee in an investigation.

With investigations of police use of excessive force, especially force that results in a fatality, there may be two distinct investigations occurring simultaneously: one for assessing whether the officer followed departmental policies in the use of force (internal); and another for assessing whether the officer committed any criminal offense (external). The results of an external investigation can be shared with an internal investigation. Information from an internal investigation, on the other hand, can be privileged, and so, may not be shared with the external investigation.

### Agency and Justice Audiences

There are multiple parties that have an interest in the information generated at the scene both within the police department and outside of the department. Within the police department, chiefs need to know the facts so that they can brief local officials, the community and the media. In addition, the unit responsible for investigating the shooting needs the facts to undertake its investigation to determine whether any wrongdoing or violation of departmental policies has occurred. Other units, such as the training division, may also need the facts of the shooting in order to identify issues that might be addressed in recruit or in-service training.

Outside of the police department, there are other criminal justice agencies that have an interest in knowing the facts of the shooting, most notably the prosecutor. Generally the prosecution will involve only the local district attorney, but in some cases there may be a need to coordinate with state and/or federal prosecutors.

### Public Information

There is a tension between informing the public about an incident and getting the facts on that incident. The release of incorrect information, however, can severely undercut the credibility of the police department. The department should have procedures for identifying who can make public statements, along with procedures for verifying information before it is released to the public.

Silence on certain aspects of the investigation may be viewed as stonewalling, when in fact, the department simply does not yet have the information. The department that is prepared to explain why certain information is not yet available, but makes assurances that when it does materialize, it will be disseminated to the extent permitted by law, will be regarded as responsive to the community's concerns.

Departments might wish to consider establishing some protocols on information dissemination. For example, there could be a meeting within the first 24 hours that would focus on where the department and other agencies are at with the investigation and what processes are in play. Another meeting could then be scheduled within a couple of days of the incident that would be more formal and would share what facts are known about the incident. From then on, meetings would be held on an as needed basis up to the report of the formal findings of fact from the inquest. Processes such as this can counteract negative community perceptions of the police trying to hide information.

### Community's Role

Minority community organizations have an important role in assuring police integrity and accountability. They can assist police in gathering the facts from all sides of the incident, and monitoring the investigation

process. If there is dissatisfaction with this fact finding process, there are still other options to pursue.

The police claim that community groups often want answers before there has been an opportunity to make even a preliminary investigation of the situation. The police believe that minority community organizations at times "go public" with their allegations after a questionable incident before getting the facts. Some police chiefs feel that once a public attack has been made on the police, the damage to their department has been done - even if subsequent information shows conclusively that the allegations were groundless.

When a controversial police-minority incident occurs, a community organization's response should focus on feasible solutions to the problems that gave rise to the incident. Too often a confrontational approach is taken that involves premature demands or impractical remedies, i.e., calling for the immediate indictment of the officer involved in the incident or the immediate firing of the police chief before the facts are known.

A more positive approach might be to try and identify the sequence of events where decisions have been made by the police, prosecutors, or other parties involved in the investigative process. The purpose of this monitoring is to identify actions that were right or wrong - from the minority community's perspective - and to problem-solve solutions that will remedy bad decisions and prevent future problems. The advantage of this approach is that it could give the police department practical resolutions which can be implemented.

## **Preventing Civil Disorder**

### Flash points

Whenever an incident of excessive police force occurs, especially one involving the loss of life of a minority individual, a potential for civil disorder or unrest exists. The incident itself, and the events that follow, form a continuum of potential flash points or triggering incidents that may lead to civil unrest or disorder. The Community Relations Service (CRS) definition of a flash point or triggering incident is a tension-heightening event that catalyzes discontent and turns it into civil disorder.

An incident of police use of excessive force and the subsequent events can contain the following major potential flash points, each of which may be discrete or overlap with one another:

- The incident itself
- The investigation of the incident
- The community reaction to the incident
- The announcement of the results of the investigation
- The announcement of court decision(s)/jury verdict
- New incidents or grievances

There are several variables that influence the reaction to an incident of excessive use of police force by the public, especially the affected minority community. Among the factors impacting the level of public discontent and anger are:

- preexisting conditions -- the overall quality of race relations in the community, especially police-community relations;
- nature of the incident itself -- the type and nature of force used, especially whether it was deadly or excessively brutal;
- the circumstances surrounding the incident, including the age and mental condition of the victim and the reaction of witnesses;
- concurrent police action -- the actions of the other police officers at the scene and the action taken, or statements made by officers and the police chief;
- media reporting--how the media portray the incident;
- city leadership action--what the mayor and other leaders say or do; and
- initial community response--whether there is an immediate community reaction and escalating racial tensions.

### Techniques and Strategies

In instances where civil disorder has occurred, is occurring, or may occur, police managers and other authorities are continually seeking ways in which to reduce the violence or disorder, contain and manage it, or prevent it. As with other aspects of law enforcement, the law enforcement response is most effective when the police form a partnership with the community.

One of the principles governing law enforcement response to civil disorders is its continuous seeking to avert or reduce the violence by bringing the issues underlying the violence into a negotiation or other non-violent process for resolution. A corollary to this is that negotiations to end the violence continues, even if the initial efforts fail and law enforcement is using force and arrest to control the civil disorder. Community leaders and groups can play an essential role in this negotiation process that seeks to avert or reduce violence.

The International Association of Chiefs of Police recommends several steps a police department can take in such matters as an excessive force incident. Among these steps are:

- Arrange for community leaders to accompany police on patrol in their neighborhoods in order to interact with residents, letting the community know that the police care about community concerns;
- Arrange for precinct commanders to meet with elected local officials, advise them of the potential for violence, and request their assistance in keeping their areas calm;

- Arrange for representatives of the Mayor's office and the police department to contact community and religious leaders, requesting these leaders to talk with their constituents to maintain peace and calm;
- Request government officials to walk the streets with community leaders and police to talk to residents about their concerns;
- When demonstrations or marches are planned, arrange for authorities to meet with organizers to establish ground rules; when these are agreed upon, the police should offer to provide security and facilitate the orderly conduct of the demonstration.

It is advisable for law enforcement agencies to contact any person or group desiring to organize and conduct a public demonstration and/or meeting regarding alleged verbal, physical abuse or discrimination by police officers in order to inform them of the avenues available to them for the review and investigation of such complaints.

If community groups desire to organize or conduct public demonstrations after having been informed of the available options of addressing those complaints, the police agency maintains open communication with the community by offering its complete assistance in developing a time, place and manner of conducting a peaceful demonstration. The agency should also offer items as speaking platforms, public address systems, barricades and traffic control.

Whenever possible, the police agency can offer advice to the march organizers on how to avoid flash points, such as routes of travel that might unnecessarily bring divergent groups into close physical contact. The demonstrating groups should also be advised to set up a plan to handle, in a legal and peaceful manner, the disruption of the event by non-group participants.

Sometimes a confrontation is impossible to avoid, but a police department may save itself a lot of potential problems if officers are trained in techniques to maintain or restore control over large groups without exacerbating the situation. In addition, contingency planning is a fundamental part of the department's operations. Regardless of size, a department will be better off if it has considered in advance how it will respond to civil disturbances rather than trying to organize its response in the heat of the moment.

# CRS Customer Service Standards

Our goal is to provide sensitive and effective conflict prevention and resolution services. CRS will meet the following standards:

- ▶ We will clearly explain the process that CRS uses to address racial and ethnic conflicts and our role in that process.
- ▶ We will provide opportunities for all parties involved to contribute to and work toward a solution to the racial or ethnic conflict.
- ▶ If you are a participant in a CRS training session or conference, you will receive timely and useful information and materials that will assist you in preventing or minimizing racial and ethnic tensions.
- ▶ We will be prepared to respond to major racial or ethnic crisis situations within 24 hours from the time when your community notifies CRS or CRS becomes aware of the crisis.
- ▶ In non-crisis situations, we will contact you within three days of when your community notifies CRS or when CRS becomes aware of the situation to discuss your request for CRS services.

(August 2001)

*. . . there is little question that the justice system faces a crisis of legitimacy that is particularly acute in communities of color. The crisis is based on increasing racial conflicts over the fair administration of laws. The public debate is indeed currently dominated by heated arguments over the appropriateness of racial profiling and the unchecked use of excessive force by law enforcement.*

*The most vulnerable source of racial conflicts remains strained police minority community relations. A review of the history of race riots, reveals that there is no more volatile a trigger point than police use of excessive force incidents, and the failure to make accountable officers who violate use of force policies. There are untold social and economic consequences of civil riots, and as you know, the greatest costs are the tears in the social fabric that hold our democracy together.*