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Varieties of Police Policy: A Study of Police Policy Regarding the Use of Deadly Force in Los Angeles County

Gerald F. Uelmen

VARIETIES OF POLICE POLICY: A STUDY OF POLICE POLICY REGARDING THE USE OF DEADLY FORCE IN LOS ANGELES COUNTY

*by Gerald F. Uelmen**

I. INTRODUCTION

The debate as to the most effective method of controlling the behavior of police is by no means closed. In the decade since the United States Supreme Court opted in favor of evidentiary exclusionary rules[1] as the best means of "policing the police," dissatisfaction with this alternative has steadily mounted.[2] New attention is now being focused upon civil tort liability as a more effective alternative.[3] This preoccupation with *external* methods of control has virtually ignored the growing sense of responsibility on the part of many law enforcement agencies themselves to set standards of conduct for their officers and to enforce these standards through *internal* disciplinary proceedings. The question of how police policy is formulated and promul-

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1. Mapp v. Ohio, 367 U.S. 643 (1961); *see* People v. Cahan, 44 Cal. 2d 434, 282 P.2d 905 (1955); Paulsen, *The Exclusionary Rule and Misconduct By Police*, 52 J. CRIM. L.C. & P.S. 255 (1961).

2. *See, e.g.*, LaFave & Remington, *Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions*, 63 MICH. L. REV. 987, 1000-12 (1965); McGarr, *The Exclusionary Rule: An Ill Conceived and Ineffective Remedy*, 52 J. CRIM. L.C. & P.S. 266 (1961); Oaks, *Studying the Exclusionary Rule in Search and Seizure*, 37 U. CHI. L. REV. 665 (1970).

3. Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971) (creating a private civil cause of action for damages against federal officials who violate the Fourth Amendment to the United States Constitution and remanding for a determination as to whether federal agents are immune from liability by virtue of their official position), *considered on remand*, 456 F.2d 1339 (2nd Cir. 1972) (determining that while federal agents have no immunity from damage suits charging violation of constitutional rights, it is a valid defense to such charges to prove that the federal officer acted in good faith in carrying out the search); Berch, *Money Damages for Fourth Amendment Violations by Federal Officials: An Explanation of*

gated has received little attention from legal scholars.[4] The effectiveness of internal sanctions as a means of controlling police conduct is also largely unscrutinized.[5] Finally, the current emphasis upon tort liability as a means of control presents the nagging but virtually unaddressed question of how the prospect of civil liability affects the determination and enforcement of internal police policy.

Police policy regarding the use of deadly force presents an excellent setting in which to study these questions. Very broad statutory provisions as to the use of deadly force by police officers[6] create a keenly felt need for more specific guidelines on an administrative level. The onslaught of large-scale rioting and civil disorder in our largest cities in recent years has provided additional incentive for the promulgation of specific guidelines. Today, since most large metropolitan police departments have adopted administrative policies specifying when deadly force may be used by their officers,[7] a good deal of comparative data is available. It is therefore possible to trace the formulation of policy by a number of different departments during a relatively compact period of time. Moreover, in the administrative reporting structure of most police departments, every discharge of a firearm by an officer will normally be brought to the attention of his superiors. Thus, a storehouse of relevant statistical data as to how these incidents are investigated, adjudicated and disposed of should be available. Finally, the effect of prospective tort liability upon police policy presents itself most force-

Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 1971 LAW & SOC. ORDER 43 (1971); du Fresne, *"Non-Visible Scar" Police Misconduct As a § 1983 Deprivation of Civil Rights*, 10 WASHBURN L.J. 372 (1971); Note, *The Constitution As Positive Law: Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 5 LOY. L.A.L. REV. 126 (1972). *See also* Foote, *Tort Remedies for Police Violations of Individual Rights*, 39 MINN. L. REV. 493 (1955).

4. Igleburger & Schubert, *Policy Making for the Police*, 58 A.B.A.J. 307 (1972). *But see* K. DAVIS, DISCRETIONARY JUSTICE 80-96 (1969); Goldstein, *Police Policy Formulation: A Proposal for Improving Police Performance*, 65 MICH. L. REV. 1123 (1967).

5. Notable exceptions include J. WILSON, VARIETIES OF POLICE BEHAVIOR (1968); ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO THE URBAN POLICE FUNCTION (Tentative Draft, March 1972) [hereinafter cited as THE URBAN POLICE FUNCTION]; PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE POLICE (1967) [hereinafter cited as TASK FORCE REPORT].

6 *E.g.*, CAL. PEN. CODE §§ 196, 835a (West 1972). See text accompanying note 13 *infra*.

7. In a 1964 survey of cities with populations in excess of 250,000, 42 of the 45 cities responding indicated they had departmental rules, regulations or procedures governing the use of firearms by their officers. Cincinnati Police Division, *Police Regulations Governing Use of Firearms Survey*, April 22, 1964.

fully in the setting of policy regarding the use of deadly force, because incidents involving the use of deadly force by police officers are more likely to culminate in civil litigation than any other single aspect of police conduct.[8]

This study will explore these questions in the context of the formulation, promulgation, and enforcement of police policy regarding the use of deadly force in the Los Angeles metropolitan area. A total of fifty different independent police agencies operate within the confines of Los Angeles County. Thus, a broad basis of comparison is available among police departments operating in a single urban milieu. The data used for these comparisons was collected from four basic sources. First, the Chief of Police or another administrative official in each of these fifty departments was personally interviewed in depth[9] as to how his department's policy was formulated and how it would be interpreted and enforced in the context of five hypothetical situations. Second, copies of their written policies were obtained from nearly all of these departments.[10] Third, statistical data reflecting the characterization and disposition of all firearm discharges by officers for a two-year period was supplied by forty of the fifty departments.[11] Finally, selected departments permitted the same series of five hypothetical questions to be posed to each of their officers in order to test

8. The experience in the Los Angeles City Attorney's Office, which handles all civil claims for compensation arising from conduct of Los Angeles Police Department officers, has been that, while less than half of all claims result in litigation, most claims involving the use of firearms by police officers are ultimately litigated.

While the number of administrative claims, as well as the number of lawsuits, arising from activity of the Los Angeles Police Department has risen substantially in recent years, the proportion of lawsuits to administrative claims has remained relatively constant:

	Claims	Lawsuits
1963	90	27
1964	120	54
1965	172	65
1966	167	82
1967	246	95
1968	281	137
1969	368	149
1970	490	191
1971	380	177

Claims involving the use of deadly force are a small portion of these claims: 20 out of the 380 claims filed in 1971, and 28 out of the 490 claims filed in 1970 involved the use of firearms by the police officers. Interview with Sgt. Billy E. Stephens, Police Statistician, Los Angeles City Attorney's Office, August 8, 1972.

9. The individuals interviewed are listed by Department in the Appendix *infra*.

10. Only five departments with written policies declined to furnish copies. See text accompanying notes 75-83 *infra*.

11. See notes 101-02 and accompanying text *infra*.

both the officers' familiarity with departmental policy and their reaction to typical stress situations. Needless to say, a study of this nature required extensive cooperation from each of the police agencies queried. It was a source of deep gratification to this author to have been afforded a cordial reception and meaningful assistance in virtually every police department approached. The motivation for this spirit of open cooperation was unquestionably a genuine interest by police administrators in comparative data and statistical analysis of the type contemplated by this study to assist them in the difficult process of policy formulation and enforcement.

II. THE RELATIONSHIP OF POLICE POLICY TO LAWS REGULATING THE USE OF DEADLY FORCE

By the very nature of their function, police are clothed with a great deal of discretion in their actions. The law merely lays down the borders of that discretion; legislation can never purport to provide the answer to how a policeman should react to every situation he encounters. The function of "policy," then, is to provide additional guidelines to achieve some sort of uniformity—to insure that when individual police officers confront similar situations, they will handle them in a similar manner. Thus viewed, police "policy" differs little from the rules and regulations adopted by any administrative agency, a point tellingly made by Administrative Law expert Kenneth Culp Davis:

> Unfortunately, our traditional legal classifications—"administrative law," "the administrative process," and "administrative agencies"—have customarily excluded police and prosecutors. . . . The police are among the most important policy-makers of our entire society. And they make far more discretionary determinations in individual cases than any other class of administrators; I know of no close second.[12]

The need for guidelines within the legislative framework is especially acute with respect to the use of deadly force by police officers. At least in California, the law is extremely broad. California Penal Code section 835a simply provides:

> Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. . . .[13]

While this section does not directly authorize the use of deadly force, such authorization can be found elsewhere in the Penal Code provi-

12. K. DAVIS, DISCRETIONARY JUSTICE 222 (1969).
13. CAL. PEN. CODE § 835a (West 1972).

sions relating to justifiable homicide. As in the case of any other person, a police officer can use deadly force to defend himself or another against death or great bodily injury inflicted by another.[14] Although the Penal Code does not spell out the distinction, a peace officer may have an even broader justification in defending another than would an ordinary person. Any citizen may use deadly force against an actual attempt to murder or do some great bodily injury to another, but where his justification is based only upon a "reasonable belief" that such an attempt is in progress, and such belief is mistaken, he will only have a defense available if the person he is defending is his "wife or husband, parent, child, master, mistress, or servant."[15] In the case of a peace officer, however, such a distinction is less tenable than in the situation of the ordinary citizen. Since he is charged with the duty of protecting the general public, justification should be found in any situation where the officer has a reasonable belief that deadly force is necessary to protect another from imminent death or serious bodily injury.[16]

A peace officer also shares with every person the right to use deadly force to prevent the commission of a felony.[17] However, since this right is limited to the prevention of felonies which threaten serious bodily harm,[18] the justification apparently extends only to those situations where self-defense or defense of others would already excuse the homicide.

Once a felony has actually been committed, any person, including a peace officer, can use deadly force to apprehend the felon.[19] With re-

14. CAL. PEN. CODE § 197(1) (West 1972).

15. CAL. PEN. CODE § 197(3) (West 1972). *See* R. PERKINS, CRIMINAL LAW 989-93 (2d ed. 1969); Note, *Kill or Be Killed?: Use of Deadly Force in the Riot Situation,* 56 CALIF. L. REV. 829, 834 (1968).

16. R. PERKINS, CRIMINAL LAW 989-93 (2d ed. 1969); Note, *Kill or Be Killed?: Use of Deadly Force in the Riot Situation,* 56 CALIF. L. REV. 829, 834 (1968).

17. CAL. PEN. CODE § 197(1) (West 1972).

18. People v. Jones, 191 Cal. App. 2d 478, 12 Cal. Rptr. 777 (1961). The Model Penal Code would likewise only permit the use of deadly force to prevent felonies when the threatened felony is dangerous or necessarily involves the use of force. MODEL PENAL CODE § 3.07, Comment 57 (Tent. Draft No. 8, 1958).

19. CAL. PEN. CODE § 197(4) (West 1972).

Under the California alternative sentencing structure, some offenses may be misdemeanors or felonies, depending upon what sentence is ultimately imposed. California Penal Code section 17(b) indicates the circumstances under which a "felony/misdemeanor" will result in a misdemeanor sentence. California case law interpreting this section has consistently held that:

> [I]f an offense is punishable either as a felony (by imprisonment in the state prison) or as a misdemeanor (by imprisonment in the county jail), it is deemed a felony for all purposes up to the imposition of sentence. Barker v. California-

spect to peace officers, however, a homicide is additionally justified "when necessarily committed in arresting persons *charged* with felony, and who are fleeing from justice or resisting such arrest."[20] This provision has been construed liberally to allow peace officers to use deadly force upon reasonable belief that a person is fleeing the commission of a felony, even though in fact no felony was actually committed.[21]

The breadth of these statutory provisions indicates how much discretion is left to the individual police officer. Under the Penal Code, it would be justifiable homicide if an officer shot and killed a fourteen year old boy fleeing the scene of an auto theft.[22] Similarly, one resisting an arrest on a charge of marijuana possession could justifiably be killed if no other means were available to prevent his escape.[23] While few, if any, police officers would resort to the use of deadly force in such situations, a decision to use deadly force is an irrevocable one, frequently made with little or no time for reflection. Thus, some administrative guidelines, in the form of police "policy," are required to assist the police officer. The bare skeleton of the Penal Code provisions offers no guidance as to which felonies should be regarded as sufficiently dangerous to justify resorting to deadly force to prevent their commission or to capture the perpetrator. Nor do the statutes suggest the use of non-deadly force if the felon is a juvenile or is known to be intoxicated or otherwise incapacitated. Such guidelines must come from police administrators.

Despite the apparent importance of police "policy" in controlling the

Western States Life Ins. Co., 252 Cal. App. 2d 768, 722, 61 Cal. Rptr. 595, 599 (1967), *cert. denied*, 390 U.S. 922 (1968), *citing, inter alia*, People v. Banks, 53 Cal. 2d 370, 381, 348 P.2d 102, 109-10, 1 Cal. Rptr. 669, 676-77 (1959).

Thus, "fleeing felons" in California would include persons suspected of committing a crime punishable as either a felony or misdemeanor who flee from the scene of the crime.

20. CAL. PEN. CODE § 196(3) (West 1972) (emphasis added).

21. People v. Kilvington, 104 Cal. 86, 37 P. 799 (1894). The *Jones* decision (see note 18 and accompanying text *supra*) allows deadly force only to *prevent* felonies involving a threat of serious bodily injury. But in defining the privilege of using deadly force to prevent a felon's *escape*, the law has not concerned itself with the nature of the felony; the privilege exists even though the crime was not accompanied by a threat of danger to the safety of any person. *See* Murphy v. Murray, 74 Cal. App. 726, 241 P. 938 (1925). Thus, California retains the common law anomaly of allowing a broader privilege to use deadly force to prevent the escape of a felon than would be allowed to prevent the commission of the felony in the first place. Comment, *Justification for the Use of Force in the Criminal Law*, 13 STAN. L. REV. 566, 577-80 (1961).

22. Grand theft of an automobile is a felony/misdemeanor. CAL. PEN. CODE §§ 487(3), 489 (West 1972).. See note 19 *supra*.

23. Marijuana possession in California is a felony/misdemeanor. CAL. HEALTH & SAFETY CODE ANN. § 11530 (West Supp. 1972). See note 19 *supra*.

discretion of individual officers, the law has been slow to recognize the significance of this rule-making function. There is no provision in any of the California codes delegating to police administrators any rule-making powers. While this is not an insurmountable barrier to the police administrator who wishes to promulgate a policy,[24] many administrators surveyed expressed a reluctance to announce policies limiting the discretion of their officers in the absence of statutory authorization, especially since the policy could create civil liability for both the city and the officer.[25] Conceivably, an officer who was disciplined for a violation of department policy in the discharge of a firearm could justly complain if his action was sanctioned by the law of the state and the legislature had not delegated the power to in any way limit that sanction. Thus, in its Standards Relating to the Urban Police Function, the American Bar Association recommends that legislatures actively encourage or require police administrative rule-making by delegating administrative rule-making responsibility by statute and requiring compliance therewith.[26]

III. Policy Disparity in Los Angeles County

The most remarkable discovery in surveying the policies with respect to the use of deadly force adopted by the fifty law enforcement agencies in Los Angeles County was the vast disparity in the guidelines offered to police in different departments. While there was general uniformity with respect to the less controversial provisions of the Penal Code, such as self-defense and defense of others,[27] the policies adopted with respect to fleeing felons were surprisingly diverse. In determining which felonies should be considered dangerous enough to justify the use of deadly force, police administrators expressed a wide range of judgment. Similarly, the attitudes toward the use of deadly force against fleeing juveniles reflected a deep divergence of opinion.

In order to ascertain the various departmental policies with respect to these key areas, a series of five hypotheticals was devised. In the

24. K. Davis, Discretionary Justice 220 (1969):

> Lack of a statutory provision which separately grants a rule-making power is not a justification for failure to issue rules. Whenever an officer has a discretionary power to decide what to do in a particular case, he necessarily has power to announce how he will exercise that power.

Cf. Amsterdam, *The Supreme Court and the Rights of Suspects in Criminal Cases*, 45 N.Y.U.L. Rev. 785, 813 (1970).

25. See text accompanying notes 59-68 *infra*.

26. The Urban Police Function, *supra* note 5, § 4.4(a).

27. Although not specifically covered by the Penal Code, the firing of warning shots was also universally proscribed by the departments surveyed.

course of the interview with each police chief or administrator, he was asked whether it would be within his department's policy if an officer discharged his gun at a suspect in each of the following five situations:

(1) An officer is responding to a silent burglary alarm at a warehouse at night. As he exits from his patrol car, he observes a suspect climbing out of a side window. He identifies himself as a police officer, and calls to the suspect to halt. The suspect runs down an empty alley.

(2) Assume that in addition to the facts set forth in (1) above, the officer has an opportunity to observe the facial features of the suspect as he climbs out the window, and he appears to be approximately 16 years old.

(3) An officer is responding to a report of a robbery in progress at a liquor store at night. As he approaches the store, he observes the suspect through the front window, holding a gun on the proprietor. As he watches, the suspect turns to leave the premises, tucking the gun in his belt. As the suspect runs out the door, the officer identifies himself as a police officer and calls to the suspect to halt. The suspect turns and runs up the empty street.

(4) Assume that in addition to the facts set forth in (3) above, the officer observes the facial features of the suspect as he leaves the premises, and he appears to be approximately 16 years old.

(5) An officer is responding to a call of a disturbance at a residence at night. Upon arriving, he is asked to eject a party crasher, who appears to be an adult. As he is escorting the suspect outside, the suspect hits the officer in the face with his fist, knocking him to the ground, and begins running up the empty street. The officer calls to the suspect to halt, but he continues running.

Each of these five situations is within the justifiable homicide provisions of the California Penal Code: in the first and second hypothetical situations, the officer would have reasonable cause to believe the suspect was fleeing after commission of burglary, a felony;[28] in the third and fourth hypothetical situations, the officer would have reasonable cause to believe the suspect was fleeing after commission of an armed robbery, also a felony;[29] in the fifth hypothetical situation, the officer would have reasonable cause to believe the suspect was fleeing after commission of an assault on a police officer.[30] Thus, a response of "no" to any of

28. CAL. PEN. CODE § 461 (West 1972).

29. CAL. PEN. CODE § 213 (West 1972).

30. Under Penal Code section 241, assault upon a peace officer may be treated as either a misdemeanor or a felony since the punishment prescribed by that statute offers sentencing alternatives of imprisonment in either county jail or state prison. See note

the hypotheticals would indicate that the departmental policy limited the use of deadly force more than is required under the Penal Code. The responses are presented in Table I.

TABLE I

	#1	#2	#3	#4	#5
Alhambra P. D.	No	No	No	No	No
Arcadia P. D.	No	No	Yes	Yes	No
Azusa P. D.	No	No	Yes	Yes	No
Baldwin Park P. D.	No	No	Yes	No	No
Bell P. D.	Yes	No	Yes	No	No
Bell Gardens P. D.	Yes	No	Yes	No	No
Beverly Hills P. D.	Yes	No	Yes	No	No
Burbank P. D.	Yes	Yes	Yes	Yes	No
Calif. Highway Patrol	Yes	No	Yes	No	No
Claremont P. D.	Yes	Yes	Yes	Yes	No
Compton P. D.	No	No	No	No	No
Covina P. D.	Yes	Yes	Yes	Yes	Yes
Culver City P. D.	No	No	Yes	Yes	No
Downey P. D.	No	No	No	No	No
El Monte P. D.	Yes	Yes	Yes	Yes	No
El Segundo P. D.	No	No	Yes	No	No
Gardena P. D.	Yes	No	Yes	No	No
Glendale P. D.	No	No	No	No	No
Glendora P. D.	No	No	Yes	Yes	No
Hawthorne P. D.	Yes	Yes	Yes	Yes	No
Hermosa Beach P. D.	No	No	Yes	No	No
Huntington Park P. D.	Yes	No	Yes	Yes	No
Inglewood P. D.	Yes	No	Yes	No	No
Irwindale P. D.	No	No	No	No	No
La Verne P.D.	No	No	No	No	No
Long Beach P. D.	No	No	Yes	No	No
Los Angeles County Sheriff's Office	No	No	No	No	No
Los Angeles P. D.	No	No	Yes	Yes	No
Lynwood P. D.	Yes	No	Yes	Yes	No
Manhattan Beach P. D.	No	No	No	No	No
Maywood P. D.	No	No	Yes	Yes	No
Monrovia P. D.	No	No	Yes	Yes	No
Montebello P. D.	Yes	No	Yes	No	No
Monterey Park P. D.	No	No	Yes	Yes	No
Palos Verdes Estates P. D.	No	No	Yes	No	No
Pasadena P. D.	No	No	No	No	No
Pomona P. D.	No	No	Yes	Yes	No
Redondo Beach P. D.	No	No	Yes	Yes	No
San Fernando P. D.	No	No	No	No	No
San Gabriel P. D.	No	No	Yes	No	No
San Marino P. D.	No	No	No	No	No
Santa Monica P. D.	No	No	Yes	Yes	No
Sierra Madre P. D.	No	No	Yes	Yes	No
Signal Hill P. D.	Yes	No	Yes	No	No
South Gate P. D.	No	No	Yes	No	No
South Pasadena P. D.	No	No	Yes	No	No
Torrance P. D.	Yes	Yes	Yes	Yes	No
Vernon P. D.	No	No	Yes	Yes	No
West Covina P. D.	No	No	Yes	Yes	No
Whittier P. D.	Yes	Yes	Yes	Yes	No
TOTAL YES:	17	7	39	23	1
TOTAL NO:	33	43	11	27	49

The nearly unanimous negative response to the fifth hypothetical, even among those departments which professed to have no policy in any respect limiting the provisions of the Penal Code, can be readily explained. Since the unwavering policy of the Los Angeles County District Attorney's Office is to charge assaults upon police officers which do not involve the use of deadly force as misdemeanor simple assaults rather than as felony assaults upon a police officer,[31] the assault described in the fifth hypothetical was universally regarded as a misdemeanor by the peace officers interviewed. This offers an interesting commentary upon police perceptions: they distinguish between felonies and misdemeanors not on the basis of the legal technicalities of the Penal Code, but rather on the basis of the cold realities of the complaint division of the District Attorney's Office.[32]

In analyzing the responses to the first four hypotheticals, five basic categories of restrictiveness of policy can be perceived:

I. Those departments which do not restrict the breadth of the Penal Code provisions, allowing deadly force to be used in all four situations.

II. Those departments which prohibit the use of deadly force against fleeing juveniles, but would allow deadly force to be used against adult fleeing felons in both the case of the fleeing burglary suspect described in the first hypothetical and the fleeing armed robbery suspect described in the third hypothetical.

III. Those departments which significantly limit the type of felony from which a suspect must be fleeing before deadly force may be used, permitting it in the armed robbery situation of the third and fourth hypotheticals, while prohibiting it in the case of the fleeing burglary suspect of the first and second hypotheticals.[33]

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19 *supra.* Further, it should be noted that assault with a deadly weapon upon a peace officer is treated only as a felony. CAL. PEN. CODE § 245 (West 1972).

If, however, a person commits an assault upon a peace officer while resisting an arrest that is found to be factually unlawful, he can only be charged with simple assault. If the arrest was found to be lawful, the assault would be considered a felony. People v. Curtis, 70 Cal. 2d 347, 450 P.2d 33, 74 Cal. Rptr. 713 (1969).

31. See note 30 *supra.*

32. The sole affirmative reply, reflecting a legalistic interpretation, is perhaps attributable to the effects of a legal education. Chief of Police Huchel of the Covina Police Department is a 1972 graduate of Loyola Law School.

33. Also placed in this category were the Huntington Park and Lynwood departments, which indicated that their policy would not permit the use of deadly force in the second hypothetical, but would permit it in the first, third and fourth hypothetical situations. While neither of these departments differentiate between fleeing adults and juveniles in their policies, they would apparently prohibit the use of deadly force against at least some burglary suspects, including juveniles. No such distinction would be applied in the case of robbery suspects, however.

IV. Those departments which limit the type of felony from which a suspect must be fleeing *and* prohibit the use of deadly force against fleeing juveniles, allowing deadly force to be used only in the case of the fleeing adult armed robbery suspect of the third hypothetical.

V. Those departments which verge on a policy of straight self-defense or defense of others, prohibiting the use of deadly force in all four of these hypothetical fleeing felon situations.[34]

The categorization of departments according to this formula is set forth in Table II, which also indicates the number of sworn police officers in the department, and the population of the area served by the department.

TABLE II

	Department	Number of Officers	Population Served (000)
CATEGORY I: (Penal Code Equivalent)			
	Burbank P. D.	137	89
	Claremont P. D.	24	24
	Covina P. D.	41	30
	El Monte P. D.	83	70
	Hawthorne P. D.	57	57
	Torrance P. D.	188	138
	Whittier P. D.	86	73
	TOTALS	616	481
CATEGORY II: (Juvenile Restrictions)			
	Bell P. D.	26	23
	Bell Gardens P. D.	42	30
	Beverly Hills P. D.	93	35
	Gardena P. D.	71	45
	Inglewood P. D.	110	90
	Montebello P. D.	56	43
	Signal Hill P. D.	23	6
	Calif. Highway Patrol	1,196	—
	TOTALS	1,617	272
CATEGORY III: (Felony Restrictions)			
	Arcadia P.D.	68	50
	Azusa P. D.	47	28
	Culver City P. D.	58	37
	Glendora P. D.	41	32

34. The policy followed by these departments approximates that followed by most federal law enforcement agencies, which were not included in this survey. The policy of both the F.B.I. and the Treasury Department agencies, such as the Secret Service, is to discharge a firearm only when the life of the officer or of another person is in danger. 1 WORKING PAPERS OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS 268-69 (1970).

	Huntington Park P. D.	52	31
	Los Angeles P. D.	7,000	3,000
	Lynwood P. D.	52	45
	Maywood P. D.	21	18
	Monrovia P. D.	51	30
	Monterey Park P. D.	63	50
	Pomona P. D.	121	89
	Redondo Beach P. D.	67	59
	Santa Monica P. D.	136	87
	Sierra Madre P. D.	17	12
	Vernon P. D.	63	0
	West Covina P. D.	77	70
	TOTALS	7,934	3,638
CATEGORY IV: (Both Felony and Juvenile Restrictions)			
	Baldwin Park P. D.	55	49
	El Segundo P. D.	58	16
	Hermosa Beach P. D.	31	20
	Long Beach P. D.	663	370
	Palos Verdes Estates P. D.	21	15
	San Gabriel P. D.	49	30
	South Gate P. D.	88	57
	South Pasadena P. D.	34	24
	TOTALS	999	581
CATEGORY V: (Self-Defense or Grave Threat)			
	Alhambra P. D.	87	65
	Compton P. D.	147	78
	Downey P. D.	100	90
	Glendale P. D.	160	132
	Irwindale P. D.	15	1
	La Verne P. D.	17	15
	L. A. County Sheriff	5,000	1,744
	Manhattan Beach P. D.	52	36
	Pasadena P. D.	194	113
	San Marino P. D.	30	15
	San Fernando P. D.	33	18
	TOTALS	5,833	2,307

In thus categorizing the restrictiveness of the policies of the fifty police departments operating in Los Angeles County, no apparent pattern emerges. The size of the department is not determinative, since the six largest police departments in the county appear in all five categories. The character of the community appears to be irrelevant; in each category can be found communities of every description, whether characterized by wealthy, middle class or working class population, and whether commercial, industrial or suburban areas. One familiar with the political geography of Los Angeles County will immediately recognize that no significant geographical pattern emerges either. Three-fourths of Los Angeles County's 4,000 square miles is unincorporated, thus covered by the policy of the County Sheriff's de-

partment. One-fifth of the incorporated area is also covered by the Sheriff's policy, since twenty-nine cities contract with the Sheriff for police services, rather than maintain their own police departments.[35] The fact that most of these "contract cities" are in the eastern half of the county accounts for the dominance of category five in that area. Each of the largest concentrations of racial minorities appear to be in areas governed by similar categories of policy. Most of the southeastern portion of the county, with a large Chicano population, is covered by departments whose policy is most restrictive, Category V. The South-Central area of Los Angeles, the heaviest concentration of Black population, is, of course, covered by the Los Angeles Police Department's policy. Contiguous areas with independent departments have adopted a variety of policies, however, in each of the five categories.

Nor does a readily discernible pattern present itself when the arrest rate in the areas served by each department is analyzed. In Table III, the cities in Los Angeles County[36] are listed in descending order of their arrest rate, based upon the seven major offenses as reported for 1970.[37]

TABLE III

City	Arrests for Major Crimes (1970)	Rate Per 1,000 Population	Category
Compton	8,816	113.0	V
Signal Hill	335	55.8	II
Pasadena	5,667	50.1	V
Huntington Park	1,546	49.9	III
Los Angeles	146,181	48.7	III
San Fernando	831	46.2	V
Santa Monica	3,793	43.6	III
Inglewood	3,894	43.3	II
Lynwood	1,933	42.9	III
Culver City	1,370	37.1	III

35. The contract cities are: Artesia, Avalon, Bellflower, Bradbury, Carson, Commerce, Cudahy, Cerritos, Duarte, Hawaiian Gardens, Hidden Hills, Industry, Lakewood, La Miranda, La Puente, Lawndale, Lomita, Norwalk, Palmdale, Paramount, Pico Rivera, Rolling Hills, Rolling Hills Estates, Rosemead, San Dimas, Santa Fe Springs, South El Monte, Temple City and Walnut.

36. The cities of Irwindale and Vernon are not included in this tabulation, since meaningful crime rates based upon population cannot be computed. Both are heavy industrial areas, with large day-time populations of factory workers, but permanent populations of less than five hundred.

37. CAL. BUREAU OF CRIMINAL STATISTICS, DEP'T OF JUSTICE, CRIMES AND ARRESTS, Table I, at 11-12 (1970). The seven offenses used are willful homicide, robbery, aggravated assault, forcible rape, burglary, auto theft, and other thefts over $200.

South Gate	2,048	35.9	IV
Long Beach	13,184	35.6	IV
Beverly Hills	1,204	34.4	II
Redondo Beach	1,951	33.1	III
Pomona	2,904	32.6	III
Los Angeles County (Incl. Contract Cities)	56,717	32.5	V
Gardena	1,399	31.1	II
Montebello	1,301	30.2	II
El Segundo	448	28.0	IV
El Monte	1,938	27.7	I
Hawthorne	1,565	27.4	I
Manhattan Beach	978	27.2	V
Bell	597	25.9	II
Torrance	3,530	25.6	I
Monrovia	766	25.5	III
Azusa	707	25.2	III
Covina	757	25.2	I
Hermosa Beach	505	25.2	IV
Downey	2,218	24.8	V
Alhambra	1,583	24.3	V
Glendale	3,059	23.1	V
Baldwin Park	1,094	22.3	IV
Burbank	1,961	22.0	I
West Covina	1,497	21.4	III
South Pasadena	514	21.4	IV
Bell Gardens	634	21.1	II
Whittier	1,514	20.7	I
Maywood	367	20.4	III
San Gabriel	544	18.1	IV
Glendora	546	17.1	III
Claremont	387	16.1	I
Monterey Park	733	14.7	III
La Verne	213	14.2	V
Arcadia	707	14.1	III
Palos Verdes Estates	208	13.9	IV
Sierra Madre	126	10.5	III
San Marino	129	8.6	V

As can be seen, cities with the highest arrest rates are just as likely to have the most restrictive policy on the use of deadly force as are cities with the lowest arrest rates. Among the nine cities with the highest arrest rates, over 40 major crimes reported per 1,000 population, two fall into Category II, four are in Category III, and three in Category V. Among the nine areas with arrest rates between 30 and 40 major crimes per 1,000 population, three are in Category II, three in Category III, two in Category IV, and one in Category V. Among the twenty cities with arrest rates between 20 and 30 major crimes per 1,000 population, we find six of the seven cities which fall into Category I. Two cities are in Category II, while four each are in Categories III, IV and V. Finally, of the nine cities with the lowest arrest rates, less than 20 crimes per 1,000 population, one is in Category I, four in Category III, and two each in Categories IV and V.

A slight pattern may appear, however, in computing a collective arrest rate for all of the cities in each of the five categories. Collectively, the seven cities in Category I have an arrest rate of 24.2 major crimes per

1,000 population. In Category II, the collective rate is 34.4 for the seven cities included. For the fifteen cities in Category III, the rate is 45.5, but when the top-heavy crime rate for the City of Los Angeles is omitted from the calculation, the collective rate for the remaining cities is 30.6. Category IV reflects a collective rate of 31.9 for its eight cities. Category V shows a collective rate of 34.8 when the sprawling statistics of the Los Angeles County Sheriff's Office are included, but an even higher rate of 41.9 when only the other nine cities in this category are computed. Thus, a slight tendency appears for cities with higher arrest rates to have more restrictive police policies on the use of deadly force. This kind of computation can be suspected, however, in view of the wide disparity among the arrest rates of the cities in each category. For example, Category V includes both Compton, with the highest arrest rate in Los Angeles County, 113 major crimes per 1,000 population, and San Marino, with the lowest arrest rate in the County, 8.6 major crimes per 1,000 population.

The absence of a meaningful pattern showing some relationship between the character of the community and the policy adopted by its police department as to the use of deadly force raises serious questions as to the formulation of police policy. It would appear that variations in policy are *not* reflections of different conditions under which the various police departments operate. Nor do the variations appear to be the result of varying community sentiments as to the vigor with which law enforcement officers should pursue fleeing felons. An inquiry as to how police policy is formulated discloses that the major factor which accounts for this wide disparity in policy is the equally wide diversity in the personal philosophies of the fifty chiefs of police who administer the various police departments in Los Angeles County.

IV. The Formulation of Policy

Realistic formulation of police policy requires input from a wide variety of sources. The expertise of police administrators must be supplemented with the experience of police officers at every level, the caution of an attorney's advice as to legal implications, the sensitivity of elected officials, the reactions of other components in the criminal justice system, and some means of citizen participation. In addition, the policies of neighboring police departments should be considered. If police policy is perceived as being nothing more than the dictates of individual police administrators, the public confidence so vital to the successful operation of police agencies will be undermined. The neces-

sity for input from other sources has been recently recognized in a number of recommendatons by the Advisory Committee on the Police Function of the American Bar Association Project on Standards for Criminal Justice,[38] as well as the Task Force on the Police of the President's Commission on Law Enforcement and the Administration of Justice.[39]

In recommending that police administrators develop methods to ensure effective participation in the policy-making process by all ranks including the patrolman, the A.B.A. Committee observed:

> The need for participation is not limited to supervisory personnel because the patrolman, possibly more than anyone, is uniquely aware of operational problems and needs and has unique expertise. The failure by police administrators to provide opportunity for their personnel to participate in the policy-making process will inevitably result in efforts to use other, less desirable means of achieving such participation.[40]

The advice of an attorney is of vital concern to the police administrator in view of the increasing complexity of legislation and court decisions regulating police conduct. In noting the need for in-house police legal advisors, the A.B.A. Committee recommended that, among the range of tasks to be performed by such advisors, first priority should be given to assisting police administrators in formulating administrative policies.[41]

While the input of elected officials may be a mixed blessing, and many cities pride themselves on the insulation of their police departments from the political influences of mayors or city councilmen, such input may be of significant assistance in formulating realistic policy which will have public support. As long as this input is a public one, concern over improper influence can be allayed. This was the conclusion of the Task Force on the Police:

> It may be helpful, in the long-range interest of law enforcement, to involve local officials in the process of developing enforcement policies, particularly those which have an impact upon a broad segment of the community. . . . Although this involvement of city government may give rise to concern over "political influence," the risk of improper influence is minimized by the fact that the involvement is open to view. The vice of political influence of an earlier day was that it tended to be

38. THE URBAN POLICE FUNCTION, *supra* note 5, §§ 4.4, 4.5.

39. TASK FORCE REPORT, *supra* note 5, at 25-27.

40. THE URBAN POLICE FUNCTION, *supra* note 5, § 6.2, commentary at 174; *cf.* TASK FORCE REPORT, *supra* note 5, at 27.

41. THE URBAN POLICE FUNCTION, *supra* note 5, § 7.14, at 244. *See generally* Caplan, *The Police Legal Advisor*, 58 J. CRIM. L.C. & P.S. 303 (1967); Jorgenson & Levine, *The Police Legal Advisor*, 45 FLA. B.J. 66 (1971).

of a personal nature and was secretive.[42]

The other components in the criminal justice system which are most affected by the policies formulated by the police are, of course, the prosecutor, who may have to litigate the propriety of the police officer's conduct in a criminal case, and the courts, whose decisions may render police policy a legal nullity. Unquestionably, the prosecutor can no longer conceive of his role "as limited to the trial and appeal of criminal cases rather than the development of enforcement policies which anticipate many of the issues before they arise in a litigated case."[43] With respect to the courts, the question is a more difficult one. The judiciary is understandably reluctant to compromise its neutrality by involving itself in the formulation of policies upon which it may have to pass judgment. Yet, a frequent criticism of the failure of exclusionary rules as a means of controlling police conduct is the failure of the judiciary to "follow through" beyond merely consigning opinions in individual cases to the official reports.[44] The esteem which most police officers still have for the courts places the judiciary in a unique position to affect the formulation of policy. Recognizing this, the A.B.A. Committee has recommended that the courts actively encourage police administrative rule-making.[45]

In rare instances, courts have gone beyond mere encouragement to affirmatively order police departments to develop and adopt instructions for their officers and plans for disciplinary action to be taken against officers who fail to comply with these instructions.[46] More recently, Judge Carl McGowan of the United States Court of Appeals for the District of Columbia Circuit noted the numerous advantages of judicial review of police policy prior to its implementation:

> There is, first, the desirability, in these times of congested dockets, of reducing the number of individual criminal appeals as much as possible.

42. TASK FORCE REPORT, *supra* note 5, at 33.

43. *Id.*

44. THE URBAN POLICE FUNCTION, *supra* note 5, § 4.4, commentary at 134; McGowan, *Rule-Making and the Police*, 70 MICH. L. REV. 659, 673 (1972) [hereinafter cited as McGowan]. *See* LaFave & Remington, *Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions*, 63 MICH. L. REV. 987, 1005 (1965); H. Goldstein, *Administrative Problems in Controlling the Exercise of Police Authority*, 58 J. CRIM. L.C. & P.S. 160, 169 (1967) [hereinafter cited as H. Goldstein].

45. THE URBAN POLICE FUNCTION, *supra* note 5, § 4.4(b).

46. Hicks v. Knight, 10 RACE REL. L. REP. 1504, 1507-08 (E.D. La. 1965); *cf.* Landman v. Peyton, 370 F.2d 135, 141 (4th Cir. 1966). *See also* Amsterdam, *The Supreme Court and the Rights of Suspects in Criminal Cases*, 45 N.Y.U.L. REV. 785, 810 (1970); McGowan, *supra* note 44, at 684-85.

> If a police practice embodied in a general rule withstands scrutiny by the courts promptly after issuance, defense attorneys will have no basis for filing repeated criminal appeals incorporating the same challenge. A second advantage is that pre-implementation review would enable the courts to examine a broader range of police practices. This includes those which do not normally produce evidence and which do not, therefore, come to light in a criminal trial. These very practices may, however, have substantial impact upon rights of privacy and the inherent dignity of the individual.
>
> A third consideration emerges from what has been described as a weakness of the present system of judicial review, namely, that it represents "a decision about the propriety of the actions of the individual officer rather than a review of departmental administrative policy." Pre-implementation review would shift the focus from individual derelictions to department-wide policies; and surely it is the latter which is the more vital concern of the courts. It is also true that a first essential of adequate administration of discipline within the police department is the early establishment of the illegality of the conduct sought to be punished. If there are clear definitions of proper police conduct which have successfully survived challenge in the courts, the police administrator is immeasurably strengthened in his capacity to secure adherence to those definitions by the prospect of departmental discipline.
>
> Lastly, improper police activity is, even apart from conviction of crime, frequently irreparable in a literal sense. It entails limitations upon freedom of movement and invasions of privacy for which there are virtually no means of redress. Thus it is important that rules liable to such defects be examined as quickly as possible and their implementation prevented. Pre-implementation review would serve this interest to a degree necessarily wanting in piecemeal challenges by individual defendants.[47]

Citizen participation in policy formulation is an extremely controversial issue among many police administrators, who resent the intrusion of those they regard as lacking expertise or appreciation of the policeman's task into the process of formulating policy. The shortsightedness of this view was noted by the A.B.A. Committee in recom-

47. McGowan, *supra* note 44, at 686-87. It is arguable that within the federal judicial system, pre-implementation review would be prohibited by the case-or-controversy requirement of the Constitution. U.S. CONST. art. III, § 2. *See* United Public Workers v. Mitchell, 330 U.S. 75 (1947) (federal employees not engaged in prohibited activities failed to present a controversy when seeking a declaration that the Hatch Act was unconstitutional). Judge McGowan considered this problem in light of *Mitchell* and concluded that the case-or-controversy requirement would not appear "to bar pre-implementation review of police regulations covering a wide range of police practices." McGowan, *supra*, at 688 n.81.

mending that police agencies effectively involve a representative cross-section of citizens in the process of formulating police policy:

> If the actions of police agencies are to have public support and acceptance, citizens must have a sense of involvement in the formulation of policies which set the tone and character of police services for individual communities. . . .
>
> . . . .
>
> Reasonable means for citizen participation on these important issues can do much to reduce the tensions in a community and the lack of confidence in the government "to rectify perceived injustice."[48]

Consideration of the policies of neighboring police departments is a necessity dictated by the frequency of joint operations in which a local police department may have to call upon a neighboring department to send its officers to assist in an emergency. Nearly every department surveyed was a party to some sort of "mutual assistance pact" with the police departments of neighboring communities. Frequently, as many as seven or eight departments were parties to such pacts. The confusion created when each of these departments has a different policy as to the use of deadly force is readily apparent. Thus, some effort to reconcile policies among cooperating departments is required.

In measuring the process of formulation of policies regarding the use of deadly force by the fifty police agencies in Los Angeles County against these proposals, little input beyond the expertise of police administrators was discernible. At the risk of oversimplification, the process of policy formulation most frequently described proceeded something like this:

> The newly appointed Chief of Police discovers that the department has no policy on the use of deadly force. He contacts several other departments and asks them to send him copies of their policy statement. He picks out the one he likes best and circulates it among his captains or division commanders, asking for their comments. If he agrees with the comments, they are incorporated into the policy statement, which is then officially promulgated as a departmental regulation.

With few exceptions, most departments had no formal means of soliciting the reaction of police officers below the administrative level to proposed policies. Although this can be done informally in smaller departments, two-thirds of the departments surveyed had over fifty sworn personnel. While nearly every department had some sort of "police association," an organization to which all uniformed personnel

48. THE URBAN POLICE FUNCTION, *supra* note 5, § 4.5, commentary at 139-40.

belonged, such organizations were largely fraternal in concept. Where they did exert some "muscle," it was only with respect to bargaining for wages and working conditions. One notable exception was the Los Angeles Fire & Police Protective League, which offered testimony before the Los Angeles Police Commission opposing a number of provisions in the new policy regarding the use of deadly force adopted by the Commission in March, 1972.[49]

None of the fifty departments surveyed had an in-house legal advisor, although several departments did have administrators with legal training. In most cases, any legal advice as to policy formulation came from the city attorney. Since the city attorney is the one who represents the city in civil litigation arising from police conduct, his role as a police advisor in formulating policy was found to be a very negative one. More than one police administrator interviewed related that his city attorney was opposed to the department putting *any* policy in writing, since such a written policy would only make it more difficult to defend the city against civil liability.

The reactions of elected officials were seldom solicited by the police administrators interviewed. In most cases, policies were simply presented to the city manager as a *fait accompli.* In many cities, police policy was submitted to the city council, but approval by that body was universally regarded as a mere formality. In none of the jurisdictions contacted had any debate or controversy over formulation of police policy on the use of firearms ever occurred in the city council.

The input of the prosecutor was found to be a forceful element in formulation of some police policy in Los Angeles County. Through a number of imaginative training and educational programs, the Los Angeles County District Attorney exerts considerable influence among police agencies. Numerous police officials spoke very highly of both the Law Enforcement Bulletin published by the District Attorney and his series of training films which is circulated via closed circuit television.[50] Neither of these sources had addressed the problem of policy regarding the use of deadly force, however, but had rather restricted themselves largely to the legal problems of gathering evidence.

No cases have been discovered in which the judiciary officially participated in the policy formulation process. However, in a commenda-

49. See note 54 *infra.*

50. This program is now being sponsored on a state-wide basis by Attorney-General Evelle J. Younger.

ble effort to formulate a uniform policy among the seven police departments which train their officers at Pasadena City College,[51] the Advisory Board for the training program sought the assistance of a trial judge (in his individual capacity) held in universally high regard by officials of the departments concerned.[52] His perceptive analysis of the differences among their individual policies proved of substantial assistance in drafting a proposal for a uniform policy.

With the single exception of the Los Angeles Police Department, no police agency in Los Angeles County was required to submit its policies to any type of citizen advisory board or police commission for approval.[53] Nor were any less formal means of citizen participation in policy formulation utilized by any department contacted. In Los Angeles, police policy is set by a Police Commission, composed of five members appointed for five year terms by the Mayor, subject to confirmation by the City Council. The commission seldom, if ever, disregards the recommendations of the police chief as to policy, however. The new firearms policy adopted in March, 1972, was identical to that proposed by the Chief of Police.[54]

The absence of citizen input is most pronounced, of course, in those cities which contract with the Los Angeles County Sheriff for police services. At least in cities with their own police department, citizens theoretically have indirect control over police policy by the pressure they can exert upon elected officials to bring about the removal of a police chief who promulgates policies which lack public confidence. In the contract cities, however, the policy promulgated by the Los Angeles County Sheriff is simply part of the "package"—the city can exert no influence to affect the policy by which the police officers serving it will be governed.

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51. See Table IV *infra*.

52. The individual selected was Judge Mortimer G. Franciscus of the Pasadena Municipal Court.

53. A Police Commission was established in Compton in January, 1972, but has not yet exerted any control over internal policy.

54. The new policy, which became effective in March, 1972, is to some extent less restrictive than the former policy (set out at text accompanying notes 69-70 *infra*). While the former policy offered examples of the "serious felonies" which might present compelling circumstances to justify the use of firearms to capture fleeing felons, the new policy provides:

> It is not practical to enumerate specific felonies and state with certainty that the escape of the perpetrator must be prevented at all costs, or that there are other felonious crimes where the perpetrator must be allowed to escape rather than shoot him. Such decisions are based upon sound judgment, not arbitrary checklists.

With respect to consultation between and among neighboring police departments in the formulation of policy, the interaction disclosed by this survey was sporadic where it existed at all. While several instances were found in which a department "borrowed" its policy from another department, most such instances did not involve departments in the same locality. For example, the policies of the Los Angeles Police Department and the Los Angeles County Sheriff's Department were widely adopted by other departments.[55] Although some of the adopting departments were in areas contiguous to those patrolled by the L.A.P.D. or the Sheriff's Department, more often the reason offered to explain the conformity was that the chief was formerly with the L.A.P.D. or the Sheriff's Department, or felt that the research resources of these larger departments entitled their policy formulation to greater consideration. Some regional conformity in written policy seems to have been accomplished in the San Gabriel Valley, where most of the departments which have adopted the "Chapman Model"[56] policy are located. There are numerous local organizations of police officials which offer a vehicle for the exchange of ideas on a regional basis. State-wide agencies such as the California Peace Officers Association and the California Commission on Peace Officers Standards and Training (P.O.S.T.)[57] have also attempted to encourage greater uniformity in policy, but with sporadic success.

The monopolization of the process of policy formulation by police administrators was evidenced by several other findings. The police agencies contacted were asked whether their policies on the use of deadly force had undergone any changes in the past ten years. It was found that those departments which had instituted the fewest changes generally were administered by a chief with relative longevity. Conversely, the reason most frequently cited to explain a change in policy was that a new chief of police had been appointed.

V. The Promulgation and Interpretation of Policy

If police policy is to achieve its ultimate objective of fostering uniformity in the exercise of discretion by individual officers, it must, of course, be effectively communicated to those officers. Effective communication requires the use of unambiguous language which can be easily and clearly interpreted. If individual officers perceive and interpret the policy diversely, the policy is useless, and may be worse

55. See text preceding and accompanying note 69 *infra*.
56. See text accompanying notes 70-71 *infra*.
57. See text accompanying notes 112-13 *infra*.

than no policy at all. The search for the most effective means of achieving these objectives raises a host of related questions.

A. Should Policy be in Writing?

Whether administrative guidelines should be in the form of a *written* policy is a question which is unsettled in the minds of many police administrators. At least eight of the departments surveyed in Los Angeles County have no written policy.[58] This is not to suggest that their officers are totally unrestrained, however. Rather, these departments choose to rely solely upon training programs to inculcate their officers with the kind of judgment they expect them to exercise when faced with the decision whether to use deadly force. Thus, every department has some "policy" in the sense that it seeks to achieve some degree of uniformity in the exercise of discretion by its officers. The reason most frequently offered for orally communicated policy was a very pragmatic one: if policy is in written form, it may be used against the department to impose civil tort liability.

This fear, of course, is a very realistic one, at least in California. In *Dillenbeck v. City of Los Angeles*,[59] the California Supreme Court reversed a judgment in favor of the city in a suit for wrongful death arising out of a collision between a police car and an automobile driven by the decedent. The plaintiff unsuccessfully sought the admission in evidence of a series of training bulletins issued by the Los Angeles Police Department, which specified the conditions under which emergency vehicles should be driven with red light and siren. In reversing, the supreme court analogized the bulletins to the safety rules of an employer, holding that they should have been admitted on three different theories: First, the bulletins constituted evidence of the standard of due care applicable to the officer's course of conduct. Second, the officer's failure to follow the directives in the bulletins constituted evidence of his negligence. And third, the factual statements and opinions contained in the bulletins were implied admissions by the city's agents, admissible against the city as expert opinions relevant to the issue of the decedent's lack of contributory negligence. The implication of this ruling in the context of firearms policy is clear: a written policy delineating when firearms should and should not be used could be offered to prove the standard of due care in the use of fire-

58. Those departments are Bell, Bell Gardens, Claremont, El Monte, Lynwood, Manhattan Beach, Signal Hill and Vernon.

59. 69 Cal. 2d 472, 446 P.2d 129, 72 Cal. Rptr. 321 (1968).

arms by a police officer, and his violation of the policy would be evidence of his negligence. Moreover, if the policy included any factual statements or opinions,[60] they could be offered against the city as admissions.

The applicability of the *Dillenbeck* reasoning to firearms policy need no longer be based upon implication, however. In *Grudt v. City of Los Angeles*,[61] a wrongful death action brought on behalf of a citizen who was shot by plain-clothes detectives when he allegedly accelerated his automobile toward a police officer after being pulled over for traffic violations, the police tactical manual which specified when firearms may be used had been excluded by the trial court on the grounds that negligence was not in issue, since the officers fired intentionally. Ruling that the negligence issue could be raised despite its inconsistency with the theory of intentional tort, the California Supreme Court held the tactical manual should have been admitted under both of the first two theories expounded in *Dillenbeck*. Going a step beyond, the Court noted that the tactical manual should have been admitted even on the issue of intentional tort:

> Even had the negligence issue been properly excluded from the case, it is arguable that the manual was relevant to the remaining issue of intentional tort. The rules on the use of firearms related to the issue of the reasonableness of the force used for self-defense by the officers—an issue which remained in the case on the cause of action predicated upon an intentional tort.[62]

To some police administrators and city attorneys, these cases may be read as dire warnings of the folly of putting police policy in writing. The defendant in *Dillenbeck* had argued that a holding in favor of the plaintiff would deter police administrators from formulating rules, urging the analogy to the inadmissibility of safety precautions after an accident, which are traditionally excluded from evidence on the ground that admissibility would serve to deter post-accident repairs. The court responded:

> This danger, however, is far less compelling than that attendant upon repairs after an accident; unlike repairs, safety rules, by controlling employee behavior, almost certainly serve to minimize the employer's total tort liability. . . . In any event, the legal principle that violation of

60. The written policies surveyed frequently abounded with statements of opinion. Azusa, Compton, Inglewood and Monterrey Park, for example, have adopted an identical written explanation of their policies which contains statements such as: "The display of a weapon as a bluff is a dangerous practice."

61. 2 Cal. 3d 575, 468 P.2d 825, 86 Cal. Rptr. 465 (1970).

62. *Id.* at 588 n.4, 468 P.2d at 831 n.4, 86 Cal. Rptr. at 471 n.4.

> safety rules constitutes nothing more than evidence of negligence, in permitting the employer to argue that the rule does not represent the standard of care or is inapplicable in a given situation, serves to minimize any deterrent effect that admissibility into evidence might otherwise portend.[63]

The reassurance that violations of safety rules are only "evidence" of negligence, thus leaving room for the employer to argue they do not represent the standard, seems somewhat out of place in the context of police policy. What else is policy except an attempt to set a standard? Holding this carrot out is nothing less than an invitation to make policy as ambiguous as possible. The simple truth is that the *Dillenbeck* and *Grudt* rulings will deter and have deterred some police administrators from producing a clear enunciation of policy.[64] It is suggested, however, that such an attitude on the part of a police administrator reflects a basic misconception of the whole purpose of policy. If policy is perceived as a prophylactic device, designed for maximum flexibility in "backing up" an officer in his decisions, it may well be that maximum flexibility can be maintained by having no policy, or by not putting policy in written form. If policy is perceived as a means of controlling the conduct of police officers, however, a clearly formulated policy may serve to limit liability by insuring that officers more consistently meet a uniform standard of conduct.

From a more pragmatic standpoint, it is unlikely that a police department can escape tort liability by the simple expedient of declining to put its policy in writing. First, as long as there is any policy, it will be admissible under the *Dillenbeck-Grudt* theories regardless of whether it is in writing or not. While the lack of written policy will certainly create a serious problem of proof for plaintiff's counsel, it is a problem which can be overcome by diligent and searching cross-examination of the defendant police officer and the department administrators and training officers.[65] Secondly, and more important, liability of a city may be premised on the *lack* of training and guidance which it gives to its police officers.[66] Using this theory, it could be

63. 69 Cal. 2d at 481 n.5, 446 P.2d at 134 n.5, 72 Cal. Rptr. at 326-27 n.5.

64. Recognizing this, the A.B.A. Committee recommended that a violation of administrative policy "should not result in mandatory civil liability." THE URBAN POLICE FUNCTION, *supra* note 5, § 4.4(b)(ii).

65. Even where policy is in written form, a searching cross-examination was held to be permissible in *Dillenbeck*. 69 Cal. 2d at 482-83, 446 P.2d at 135-37, 72 Cal. Rptr. at 327-29. Presumably, the scope would be expanded accordingly where policy was not in written form.

66. Carter v. Carlson, 447 F.2d 358, 367 (D.C. Cir. 1971); McAndrew v. Mularchuk, 33 N.J. 172, 162 A.2d 820, 88 A.L.R.2d 1313 (1960).

successfully urged that a city which failed to provide clear policy guidelines to its police officers as to when they should and should not use their firearms was itself negligent and should be held liable when an officer injures someone in the use of his weapon.[67]

B. *How Should Policy Be Interpreted?*

Since policy is simply an administrative interpretation of the law, ideally this interpretation should not require much further interpretation. It should be in such clear and unambiguous language that every officer understands it in the same way. Although this ideal may be unattainable, the goal should be sought.

Many of the written policy statements encountered in Los Angeles County appear to be models of ambiguity, rather than clarity. It is virtually impossible for an officer to understand the meaning of many of these policy statements without some further clarification. For example, one department offers the following guidance to its 67 officers as to when they can shoot at fleeing felons:

> In extreme cases, an officer may be justified in the use of his gun in retaking an escaped felon or in apprehending a person responsible for the commission of a felony. . . . Each officer should consider not only the legality of his actions but the appropriateness of any act in which he uses firearms in any manner.[68]

The ambiguity of many of the policies examined is dramatically demonstrated by the results of the testing of approximately 200 individual police officers in six different departments. The results, which are fully tabulated in Section VII of this article, dealing with the effectiveness of policy as a control device, disclose a wide disparity among officers in the same department in interpreting their department's policy.

The contrast between written policy and the varying interpretations of that policy becomes even more startling when analyzed in the context of identical written policies adopted by more than one police department. Three striking examples of such disparity can be offered:

1. The Los Angeles County Sheriff's Policy.

The policy adopted by the Los Angeles County Sheriff, and presently in effect, is as follows:

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67. *See* Chapman, *Police Policy on the Use of Firearms*, THE POLICE CHIEF, July 1967, at 16; Rimmel, *Police Firearms Training: An Inquiry into the Governmental Duty to Provide Adequate Training*, 3 THE NATIONAL RIFLEMAN, Aug. 1963, at 17.

68. Redondo Beach Police Department, Policy Statement.

The following shall be the guide for personnel of the Los Angeles County Sheriff's Department as to the use of force and firearms and shall be the policy of the Sheriff concerning these matters.

1. That we do not use firearms or force likely to produce great bodily injury upon any person who is arrested solely on a misdemeanor charge.
2. That in all arrests (felony or misdemeanor) we do not employ any more force than is absolutely necessary.
3. That all arrests for a felony charge be based on reasonable cause determined from credible or observed acts.
4. That it is the full responsibility of each individual Deputy Sheriff to use firearms only when absolutely necessary and fully justified by circumstances.
5. That firearms must be regarded as defensive weapons and are to be used as a last resort.
6. That each Deputy Sheriff involved in the shooting of a person is subject to the same type of civil action for damages as may be brought against any citizen under such circumstances.
7. That Deputies are not to be restricted in the lawful performance of their duty. They have a positive duty to use firearms when the necessity exists in the protection of their own life and the lives of others.

While the written policy does not prohibit the use of deadly force to capture fleeing felons who present no immediate danger to others, it could be so interpreted by virtue of the reference to firearms as "defensive weapons" and the caveat that a duty to use firearms exists when necessary to protect a deputy's life and the lives of others. On the other hand, the specific prohibition against the use of firearms upon persons arrested solely on a misdemeanor charge is pregnant with the implication that firearms *can* be used upon those arrested for felonies. Evidently, however, the former interpretation is that adopted by the Sheriff's Office. In responding to the five hypotheticals, the Sheriff's Office fell into the most restrictive category by indicating that in none of the five situations would the use of deadly force be within its policy.

This identical written policy has been adopted by at least six other police departments in Los Angeles County: Azusa, Compton, Covina, Downey, Inglewood and Monterey Park. Yet in only two of these, Compton and Downey, is the policy interpreted the same way as it is by the Sheriff's Office. Two other departments, Azusa and Monterey Park, interpret the policy to allow the use of deadly force to capture a suspect fleeing from an armed robbery, even if he is known to be a

juvenile (the third and fourth hypotheticals). Inglewood interprets the identical policy to allow deadly force to capture a fleeing burglary suspect as well as an armed robbery suspect (hypotheticals one and three) but to preclude deadly force in either situation if the suspect is known to be a juvenile. Finally, Covina interprets the policy as placing no restrictions on the provisions of the Penal Code whatsoever, allowing the use of deadly force in all five hypothetical situations.

2. The Former Los Angeles Police Department Policy.

Although it is no longer the policy of the Los Angeles Police Department,[69] the written policy in effect in that department until this year was widely adopted by other police departments in Los Angeles County, including Montebello, Palos Verdes Estates, San Marino, Torrance and West Covina. The policy provides:

> LEGAL LIMITATIONS. Police officers may use firearms only under certain restricted, justifiable circumstances. Penal Code Sections 196 and 197 delineate the California law of justifiable homicide.
>
> It is the law that a police officer must not discharge his firearm except in limited situations. No officer has the right to extend this power, but must decide his action in light of the circumstances confronting him within the limitations of his authority.
>
> SELF DEFENSE. An officer is entitled to use deadly force when it is necessary to save himself, a citizen, a brother officer, or a prisoner from death or grave bodily harm. He is not permitted to use deadly force to protect himself from assaults which are not likely to have serious results.
>
> MISDEMEANANTS. An officer may not use deadly force to effect the arrest or prevent the escape of a person who has committed a misdemeanor. This restriction does not infringe upon an officer's right of self defense should he be attacked.
>
> SUSPECTED FELONY OFFENDERS. An officer should not shoot at a person who is called upon to halt upon mere suspicion and, who, simply runs away to avoid arrest.
>
> KNOWN FELONY OFFENDERS. The firearm must not be discharged at persons who are running away to escape arrest except under compelling circumstances in felony cases. For example, if the officer actually sees a person commit a serious felony such as murder, rape, assault with a deadly weapon, or robbery, he may shoot to prevent escape if the offender cannot be apprehended by any other reasonable means.

69. See note 54 *supra.*

FLEEING JUVENILES. The rules pertaining to self defense are equally applicable to juveniles as a suspect can never be considered less dangerous merely because of his youth. However, in the event officers are pursuing a fleeing felony offender believed to be a juvenile, they shall not shoot even though the suspect ignores the officers' commands to halt.

PROTECTION OF THE GENERAL PUBLIC. Regardless of the nature of the crime or the legal justification for firing at a suspect, officers should remember that their basic responsibility is to protect the public. Officers should be particularly cautious when firing under conditions that would subject bystanders to possible injury or death.

WARNING SHOTS. Warning shots shall not be fired in an attempt to induce the surrender of a suspect.

With respect to fleeing felons, the phrase "compelling circumstances" is subject to a wide range of interpretations, although the examples provided seem to suggest that only felonies in which force had been used against the victim should be included. The policy appears to be unambiguous in limiting the use of deadly force against juveniles to self-defense situations. Yet, *none* of the five departments which have adopted this model as their written policy interprets it in the same way! In San Marino, the policy is read as precluding the use of deadly force in all five of the hypothetical situations presented. In Palos Verdes Estates, the policy is interpreted to allow deadly force to be used only in the situation of the third hypothetical, a fleeing armed robbery suspect. West Covina would permit deadly force to be used against a fleeing armed robbery suspect even if he were known to be a juvenile, however, interpreting the self-defense provision as applicable to any suspect who is armed. In Montebello, "compelling circumstances" would be found in the case of either the fleeing burglary suspect or the fleeing armed robbery suspect, although deadly force could not be used in either situation if the suspect were known to be a juvenile. Torrance interprets the policy to allow the use of deadly force in all of the first four hypothetical situations, although the use of deadly force against known juveniles is specifically allowed by modifying the section on FLEEING JUVENILES to delete the second sentence and add "The provisions of 'known felony offenders' shall apply."

3. The Chapman Model Policy.

A model police policy on the use of firearms was written by Samuel G. Chapman, Assistant Director of the President's Commission on

Law Enforcement and the Administration of Justice.[70] This policy provides as follows:

I. POLICY

The policy of this department is that members shall exhaust every other reasonable means of apprehension before resorting to the use of firearms.

II. REGULATIONS

A. An officer shall not discharge firearms in the performance of his police duties except under the following circumstances and after all other means fail:
   1. In the necessary defense from death or serious injury of another person attacked.
   2. In the necessary defense of himself from death or serious injury when attacked.
   3. To effect an arrest, to prevent an escape, or to recapture an escapee when other means have failed, of a felon suspect when:
      a. The crime for which the arrest is sought involved conduct including the use or threatened use of deadly force; and
      b. There is a substantial risk that the person whose arrest is sought will cause death or serious bodily harm if his apprehension is delayed.
   4. To kill a dangerous animal or one that humanity requires its removal from further suffering, and other disposition is impractical.
   5. To give alarm or to call assistance for an important purpose when no other means can be used.
   6. For target practice at an approved range.

B. Firearms shall not be discharged under the following circumstances:
   1. As a warning.
   2. At moving or fleeing vehicles unless the circumstances come within the provisions of Section II A, 1, and 3 of this policy.

The Chapman model has been made available in California through the cooperation of the California Commission on Peace Officers Standards and Training.[71] At least eight police departments in Los Angeles County have apparently patterned their written policies after the Chapman model: Alhambra, Arcadia, Culver City, Glendora, La Verne, Monrovia, Pomona, and Sierra Madre. While this policy is interpreted

70. Chapman, *Police Policy on the Use of Firearms*, THE POLICE CHIEF, July, 1967, at 34-36.

71. See text accompanying notes 112-13 *infra*.

more uniformly than either the County Sheriff's or the former Los Angeles Police Department's policies, the departments adopting the Chapman model still fall into two "camps" with respect to their interpretations of the fleeing felon provisions. Alhambra and La Verne would interpret the policy to preclude the use of deadly force against either the fleeing burglary suspect in the first hypothetical or the fleeing armed robbery suspect in the third hypothetical. The remaining six departments, however, would interpret the policy to allow the use of deadly force against the fleeing armed robbery suspect.

A number of instances were discovered in which the responses to the hypotheticals by the police administrator interviewed could not be reconciled with the written policy statement supplied by the department. Many of these situations did not involve ambiguous policy statements, but direct contradiction between the written policy and the way it is interpreted. For example, Baldwin Park and South Pasadena, both Category IV departments which indicated that shooting a known juvenile fleeing an armed robbery would not be within their policy, but shooting a fleeing adult in the same situation would be, supplied written policies which were completely silent as to juvenile suspects. Glendora, a Category III department which indicated shooting the juvenile armed robbery suspect in the third hypothetical would be within its policy, supplied a written policy which clearly provides:

> An officer shall not fire at persons known to be or suspected of being juveniles except . . . in the necessary defense of himself from death or serious injury when attacked . . . [or] in the necessary defense from death or serious injury of another person attacked.

Maywood, a Category III department which distinguished between the fleeing burglary suspect and the fleeing armed robbery suspect, offered a written policy which allows the use of firearms "to effect the arrest of a felony suspect when other means of arrest have failed, or to prevent the escape of a felon," without qualification.

Whether these discrepancies indicate that a department's actual policy may differ from what is in writing is a legitimate question. Some of the police administrators interviewed were very frank in conceding that their department had an "unwritten" policy which was more restrictive than what was in writing—but they hesitated to put these additional restrictions in writing, for fear of civil liability consequences. Incredibly, one department conceded it actually had *two* sets of written policies—one very broad policy, which was the "official" policy available to "back up" an officer if necessary, the other a much more re-

strictive "field service" policy supplied to patrol officers, which could be used to discipline an officer internally!

C. *How Should Policy Be Taught?*

The frequent ambiguity of written policy statements emphasizes the importance of training as an adjunct to policy promulgation. As noted by the Task Force on the Police of the President's Crime Commission:

> However successful a draftsman may be in building clarity and preciseness into a policy statement, dependence cannot be placed upon the written word in order to achieve effective implementation. Opportunities must be afforded for officers at the lowest level in the organization to ask questions and, more importantly, to gain a full understanding of how the policy came about and why it is important that it be implemented. An officer who knows why a policy is adopted is more likely to comply with it and, to the extent that he identifies with the new policy, is more likely to work toward its successful implementation.[72]

The most important stage in the training of a police officer is the orientation he receives as a recruit. It is at this point he can most effectively be inculcated with the kind of judgment he must exercise in the use of a weapon. Undoubtedly, this can most effectively be accomplished when the new recruit is being taught the mechanics of how to use his weapon.

The plethora of smaller departments in Los Angeles County are not in a position, of course, to sustain their own separate training academies for new recruits. They use a number of training programs which offer basic recruit training on a contractual basis. The largest such program is that operated by the Los Angeles County Sheriff's Office, which currently trains recruits for eighteen other police departments in Los Angeles County. The academy operated by the Long Beach Police Department trains recruits for three neighboring departments. Two junior colleges have developed ambitious programs for the training of police recruits: Rio Hondo College, used by thirteen different departments, and Pasadena City College, used by seven departments.

While each of these programs includes intensive training in the use of firearms, the great disparity among the policies regarding the use of deadly force adopted by the departments which send their recruits to the facility precludes any effective orientation to departmental policy during this crucial phase of recruit training. For example, both Rio

72. TASK FORCE REPORT, *supra* note 5, at 27.

Hondo College and the Los Angeles County Sheriff's Academy train recruits for departments in each of the five categories of restrictiveness. In Table IV, this diversity is illustrated by indicating the category of restrictiveness of the policy of each of the departments using these four training programs.

TABLE IV

Category	L. A. County Sheriff's Academy	Rio Hondo College	Pasadena City College	Long Beach P. D. Academy
I.	Hawthorne	El Monte	Burbank	
II.	Beverly Hills Gardena Inglewood	Bell Bell Gardens Montebello		Signal Hill
III.	Arcadia Culver City Glendora Monterey Park Redondo Beach Santa Monica Vernon	Azusa Huntington Pk. Lynwood Maywood Pomona	Monrovia Sierra Madre	
IV.	El Segundo	Baldwin Park Southgate	San Gabriel So. Pasadena	Hermosa Beach Long Beach Palos Verdes Estates
V.	Compton Downey Glendale Manhattan Beach San Fernando	Irwindale	Pasadena San Marino	

The net result of this diversity is that none of these training programs teaches recruits much more than the Penal Code provisions regarding the use of deadly force, leaving it up to each individual department to teach departmental policy to their own recruits. The problem is handled at the Sheriff's Academy by concentrating most of those portions of the training dealing with Sheriff's Department policy at the end of the 26 week course, so that other department's recruits can complete their basic training prior to the Sheriff's own recruits.

The undesirability of this bifurcation has been recognized at Pasadena City College, and an effort is under way to convince all of the departments using the training program to adopt a uniform policy which can be taught as part of recruit training.

The departmental programs used to teach policy to new recruits leave much to be desired in many of the agencies surveyed. Frequently, the recruit is simply given a copy of the department's policy

manual which he is expected to read on his own. Many of the smaller departments lack a full-time training officer, so the training of recruits is left to an administrator who is burdened with numerous other responsibilities.

Once the recruit has become a regular member of the force, few departments provide for any periodic review of policy as part of their in-service training. Nearly every department requires its officers to qualify regularly at a shooting range, but the emphasis is decidedly upon accuracy in shooting, rather than judgment in when to shoot. Those departments with regular training officers use training bulletins on a regular basis as "refreshers," but even these departments seldom have any set program to ensure review on a regular basis. More often, reviews of shooting policy are occasioned by an incident in which an officer has discharged a weapon in questionable circumstances. While a critique of an actual incident is certainly an excellent training device, it appears that most departments simply wait for the incident to happen, rather than using a backlog of examples for regular review. One notable exception is the California Highway Patrol, which regularly issues a training publication called "Routine Stops," in which a number of selected incidents are described and critiqued on a regular basis.

When a department revises its policy, the revision is ordinarily brought to the attention of all uniformed personnel at the roll-calls which mark the beginning of each shift. Most of the departments surveyed have policy manuals of one sort or another which are distributed to each member of the department, and revisions are distributed to each officer for insertion in his copy of the manual. More than a few departments, however, do not expect each officer to maintain his own policy manual, but keep several "desk copies" at the station for reference purposes. One chief of police interviewed was somewhat embarrassed to discover his own reference copy of the policy manual did not contain the latest revisions to his policy on the use of deadly force.

One may question the effectiveness of bulletins and/or lectures, no matter how regularly presented, as devices to teach an officer what kind of judgment he should use in a situation of stress. However, few departments appear to have heeded the advice of the Task Force on the Police of the President's Crime Commission:

> If adequate policies exist, they can best be communicated to the individual officer by a problem approach to training rather than the more traditional lecture form of police training. The problem approach, if done well, serves to test whether the training staff under-

> stands the important situations encountered in the field and whether existing policies are adequately responsive to these situations.[73]

The most effective method of teaching would certainly be to simulate the stress as realistically as possible, to test the officer's reaction when faced with a situation in which he must exercise his judgment as to whether he should shoot. Encouragingly, some departments are experimenting with this type of training. The Redondo Beach Police Department has conducted training exercises much like military "war games," in which officers are called upon to capture a fleeing robber. The Los Angeles Police Department is perfecting an elaborate simulation system under a grant from the Law Enforcement Assistance Administration. The Torrance Department uses their own video tape equipment to prepare simulations of stress situations to train their officers. Unfortunately, such experimentation is apparently limited to the larger departments which can draw upon their greater manpower and financial resources.

D. Should Policy Be Publicized?[74]

Only five of the departments contacted refused to furnish copies of their written policies on the use of deadly force: Beverly Hills, Hermosa Beach, Long Beach, Santa Monica and the California Highway Patrol. Although representatives of each of these departments were willing to discuss their policy fully, they indicated they would not release written copies of their policy except in response to a subpoena. The reason most frequently offered for this position was the fear that publication of their policy would make their job more difficult: if fleeing felons were aware that deadly force could not be used, they would ignore an officer's command to stop.

Even assuming this reason is a valid one, the inconsistency of this position bears comment. While willing to describe their policy orally with the understanding that the purpose of the inquiry was a research project to be published, they were unwilling to risk having the actual policy itself published. Unless the written policy differs from the oral description, the goal of secrecy would seemingly preclude an oral description of the policy as well as distribution of the policy itself. Moreover, if the written policy could be reached by subpoena, its secrecy

73. *Id.*

74. Many of the issues concerning publication of police policy are identical to the arguments regarding publication of prosecutor's policies, thoroughly treated in Abrams, *Internal Policy: Guiding the Exercise of Prosecutorial Discretion*, 19 U.C.L.A.L. REV. 1, 25-34 (1971).

could in no way be assured once a subpoena had compelled its production in a public court proceeding. This inconsistency is especially striking in the case of the Long Beach Police Department. Although the request for a copy of their written policy was firmly declined, subsequent research disclosed that the Long Beach Police Department had responded to a 1964 survey conducted by the Cincinnati Police Department by supplying a copy of its policy, which has been published and is available through the library of the International Association of Chiefs of Police.[75]

In addition, the attempt to maintain the secrecy of police policy may well be a violation of California law. The California Public Records Act,[76] clearly applicable to local agencies such as police departments,[77] provides that every citizen has a right to inspect any "public record," defined as "any writing containing information relating to the conduct of the public's business."[78] While the Act permits an agency to withhold a record if it can demonstrate "that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record,"[79] the justification offered by these departments does not appear to meet this standard.

First, the argument that fleeing felons will tailor their actions to the police policy of a particular jurisdiction is even more implausible than the suggestion that those who plan to commit crimes consult the decisions of the appellate courts.[80] Second, a fleeing felon has no assurance as to which police department's officers may be pursuing him; in view of the disparity of policy in Los Angeles County, a felon would have to undertake a good deal of research to be sure that the officer in pursuit was governed by one policy rather than another. Third, it is highly unlikely that most fleeing felons are completely confident that the pursuing officer will respond only in full conformity to the written policy of his department. It is more likely he assumes the risk of flight on the assumption that a moving target is hard to hit. Finally, the vast majority of departments which make their written poli-

75. See note 7 *supra*. Long Beach has not altered or changed its policy since 1961.
76. CAL. GOV'T CODE ANN. §§ 6250-60 (West Supp. 1972).
77. CAL. GOV'T CODE ANN. § 6252(b) (West Supp. 1972).
78. CAL. GOV'T CODE ANN. § 6252(d) (West Supp. 1972).
79. CAL. GOV'T CODE ANN. § 6255 (West Supp. 1972).
80. McGowan, *supra* note 44, at 661. *See* Medalie, Zeitz & Alexander, *Custodial Police Interrogation in Our Nation's Capital: The Attempt to Implement Miranda*, 66 MICH. L. REV. 1347 (1968); Seeburger & Wettick, *Miranda in Pittsburgh—A Statistical Study*, 29 U. PITT. L. REV. 1 (1967).

cies public report no discernible difference in the number of fleeing felons compared with those few departments which attempt to keep their policies secret.

The countervailing public interest in disclosure is indeed a weighty one. If the goal of police policy is the control of police conduct, public scrutiny is the most effective means of achieving that objective. As noted by the Task Force on the Police of the President's Crime Commission:

> Emphasis on methods for disseminating and communicating policies reflects the assumption that openness, affording a opportunity for public criticism, is of major importance as a protection against the arbitrary exercise of governmental powers. It follows that policies of administrative agencies, including those of the police, ought not to be kept secret except in those exceptional cases in which confidentiality is necessary in order to maintain their effectiveness.[81]

Much the same thought has been expressed by Professor Davis, whose conclusions were relied upon by the A.B.A. Committee in recommending that police policy be "openly" formulated, implemented and reevaluated:[82]

> Openness is the natural enemy of arbitrariness and a natural ally in the fight against injustice. We should enlist it much more than we do. When plans and policies and rules are kept secret, as through confidential instructions to staffs, private parties are prevented from checking arbitrary or unintended departures from them.[83]

VI. THE ENFORCEMENT OF POLICY

A police department's internal policies will be no more than window dressing unless they are backed up by an internal program of disciplinary sanctions for violations of policy. As noted by the Police Task Force:

> Internal discipline can be swifter and, because imposed by the officers' own superiors, more effective. If properly carried out, internal discipline can assure the public that the department's policies . . . are fully meant and enforced. This is particularly true when the department's own investigation discovers misconduct without any citizen complaint.
>
> Strong discipline shows the public that misconduct is merely the action of individual officers—the few who violate the rules in any organ-

81. TASK FORCE REPORT, *supra* note 5, at 27.
82. THE URBAN POLICE FUNCTION, *supra* note 5, § 4.5, commentary at 140.
83. K. DAVIS, DISCRETIONARY JUSTICE 98 (1969).

> ization—and not action which is customarily tolerated in the department.[84]

The Police Task Force found serious deficiencies in the internal disciplinary procedures in most of the metropolitan police departments which it examined. Some of the reasons for these deficiencies were suggested by the A.B.A. Advisory Committee on the Police Function:

> Police administrators are reluctant to articulate proper standards of police conduct which may be controversial among the rank and file and which may affect the outcome of criminal cases and potential civil and criminal actions against individual officers. Further, many police administrators are caught up in the bureaucratic requirements of civil service which restrict their right to discipline officers for misconduct.[85]

Enforcement of policy as to the use of deadly force, of course, presents these difficulties in their most exacerbated form. The widespread publicity which accompanies a police shooting incident frequently places a police chief squarely in the middle—with indignant community groups demanding severe sanctions against the police officer lined up against the rank and file of the department, who demand that the officer be "backed up."[86] Looming on the horizon, almost inevitably today, is a lawsuit for damages against the city, as well as possible civil service hearings if the officer appeals any disciplinary action. Thus, a standard enforcement procedure is needed to insure that internal discipline is fairly and impartially administered, divorced from public clamor, yet unmotivated by the natural tendency to "save face" or "preserve departmental morale."

In surveying Los Angeles County police agencies regarding their policies on the use of deadly force, an attempt was made to gather some preliminary data with respect to the enforcement of policy. While the effectiveness of internal discipline would best be measured by an analysis of individual cases on a prolonged and systematic basis,[87] some generalizations based upon this preliminary data may provide a helpful starting point for such analysis.

84. TASK FORCE REPORT, *supra* note 5, at 193-94.

85. THE URBAN POLICE FUNCTION, *supra* note 5, § 5.3, commentary at 159.

86. See H. Goldstein, *supra* note 44, at 167.

87. Such an analysis was recently attempted in Chicago. University of Chicago, Center for Studies in Criminal Justice, *Citizen Review of Police Misconduct: or "Who Will Watch the Watchmen?"*, REPORT TO THE POLICE-COMMUNITY RELATIONS SUB-COMMITTEE OF THE CHICAGO BAR ASSOCIATION. The lack of access to official police records, however, hampered this effort considerably. More revealing studies may emerge from New York, where Police Commissioner Murphy recently offered a group of law professors full access to the department's records for purposes of scholarly research. McGowan, *supra* note 44, at 675.

A number of basic similarities were found among nearly all the departments surveyed. Virtually every department required that *every* incident in which a firearm was discharged by an officer be reported to a superior officer. The incident is then reviewed through the chain of command, with a decision ultimately being made by the chief as to whether the firearm discharge was within departmental policy. Any investigation of the incident required is made by the department's detective division. Although the largest departments have a regular "internal affairs" division of investigative personnel for this purpose, such units are apparently beyond the means of smaller departments.[88] A few departments automatically suspend an officer from patrol duty while an investigation is pending.[89] This too appears to be a luxury the smaller, frequently undermanned departments cannot afford.

Most of the larger departments have a board of officers which reviews the incident and makes a recommendation to the chief. In the smaller departments, every incident is personally reviewed by the chief.

Once a determination is made that a firearm discharge is outside the department's policy, the discipline to be imposed is invariably up to the chief. The options available to him include (1) referring the matter to the District Attorney for prosecution of the officer involved; (2) discharging the officer involved; (3) suspending the officer involved; or (4) reprimanding the officer involved, either orally or in writing.

Each of the departments surveyed was asked to supply statistical information as to the shooting incidents found to be outside of policy for the years 1970 and 1971. Results as to each department responding are tabulated in Table VI, *infra*. County-wide, 25 of the total of 189 shooting incidents reported for 1970 were found to be outside departmental policy, while 27 of the 236 incidents reported for 1971 were declared to be outside policy. Thus, on an annual basis, approximately 12% of all incidents in which police discharge firearms are outside their department's policy. As reflected in Table VII, *infra*, there does not seem to be much correlation between the category of restrictiveness of departmental policy and the rate of incidents outside policy, although a consistently low rate of shootings outside of policy was reported among Category V departments, those with the most restrictive

88. The A.B.A. Study recommends that internal investigative procedures be established in all departments. THE URBAN POLICE FUNCTION, *supra* note 5, § 5.4.

89. The Inglewood and Los Angeles Police Departments automatically suspend officers pending such an investigation.

policy. A word of caution should be voiced with respect to this data, however. One should not conclude, simply because a department reports a high rate of incidents as outside of policy, that its officers are less restrained in the use of their weapons. This could simply reflect a department which takes its internal discipline more seriously, with less reluctance to find a violation of its policy. This cautionary note is motivated by the stark contrast between the data supplied by the Los Angeles Police Department and the statistics provided by the Los Angeles County Sheriff's Office. For the two-year period 1970-71, L.A.P.D. reported that 34 out of a total of 258 incidents were outside departmental policy, or 13%. The Sheriff's Office, on the other hand, reported that only 1 out of 82 incidents for the same period was outside their policy. Whether this contrast indicates a substantial difference in the degree of restraint exercised by their officers, or a difference in the strictness with which policy is enforced, or both, is a question which can only be resolved by a study of the individual incidents involved.

The responding departments were further asked to describe the disciplinary action taken in the incidents found to be outside of policy. Since this infomation was not provided by the Los Angeles Police Department, only nine of the incidents found to be outside policy in each of the two years can be described. This data is presented in Table V.

TABLE V

DISCIPLINARY ACTION TAKEN	1970	1971
Referred for Criminal Prosecution	1	0
Discharge of Officer	1	1
Suspension of Officer	1	1
Reprimand of Officer	4	5
No Discipline	2	2

A number of reasons might be suggested for the apparent infrequency with which the more severe sanctions are imposed. First, nearly all the incidents in which a suspension, discharge, or criminal prosecution ensued were incidents in which the discharge of the firearm resulted in the wounding or killing of a suspect by the police officer. Apparently, the severest discipline is reserved for those incidents which have the most serious consequences. Another reason may be the bureaucratic difficulty of imposing the more severe sanctions. In nearly every department surveyed any disciplinary action beyond a reprimand could be appealed to some sort of civil service board or panel. Most of the police administrators interviewed were very cog-

nizant of the type of showing required at a civil service hearing, and were extremely reluctant to undergo such a hearing without a very strong case. Many indicated that a past record of more than one violation of departmental policy was almost a prerequisite. Thus, very rarely would an officer be suspended or discharged for his first violation of departmental policy.[90] A third reason for reluctance to discipline may be the specter of civil liability. As articulated by the A.B.A. Advisory Committee on the Police Function:

> At the present time, police departments are often reluctant to proceed against police officers until pending criminal cases (in which the exclusionary rule may apply) or civil or criminal cases against the police officer based upon his actions are resolved. The reasons for this relate primarily to the fear that adverse administrative action against the officer may be prejudicial to a pending criminal case or to the criminal or civil liability of the officer. This concern exists even in those cases where the factors which may result in departmental disciplinary action are different from those which could result in the exclusion of evidence or the civil or criminal liability of the officer.[91]

This reluctance persists despite the rule that administrative disciplinary action taken against a police officer is apparently inadmissible against the city to prove negligence or culpable conduct since such action could constitute subsequent remedial conduct.[92] If the internal ad-

90. Such a policy could expose a city to liability for its own negligence in the knowing retention of a dangerous or incompetent officer. Foote, *Tort Remedies for Police Violations of Individual Rights,* 39 MINN. L. REV. 493, 514-15 (1955). An officer's prior record of disciplinary action has been held subject to discovery in a suit against the city arising from his conduct.

91. THE URBAN POLICE FUNCTION, *supra* note 5, § 4.4, commentary at 137. *See also* Goldstein, *Administrative Problems in Controlling the Exercise of Police Authority,* 58 J. CRIM. L.C. & P.S. 160, 168 (1967).

92. CAL. EVID. CODE § 1151 (West 1968). The courts have long refused to admit evidence of subsequent remedial conduct after an accident for the purpose of proving negligence. Many early cases refused to admit such evidence because it was considered irrelevant on the question of negligence. *E.g.* Engel v. United Traction Co., 203 N.Y. 321, 96 N.E. 731 (1911); Columbia & Puget Sound R.R. v. Hawthorne, 144 U.S. 202 (1892). Other cases acknowledge that the predominant reason for excluding such evidence is not lack of probative significance but a policy against discouraging the taking of safety measures. *See* Ashland Supply Co. v. Webb, 206 Ky. 184, 266 S.W. 1086 (1924). California recognizes that it is this extrinsic policy against discouraging later corrective action which forms the basis for the exclusionary rule:

> The admission of evidence of subsequent repairs to prove negligence would substantially discourage persons from making repairs after the occurrence of an accident. CAL. EVID. CODE § 1151, Comment-Law Revision Commission.

It would appear that evidence of disciplinary proceedings by a police department after a shooting incident is within the scope of the exclusionary rule of section 1151. The Law Revision Commission makes it clear that this section was intended to codify the common law rule excluding evidence of safety measures after an accident. CAL.

ministrative investigation is still pending, and no final action has been taken, investigative files of the police department may be protected from discovery in a civil action, either on a theory of limited executive privilege,[93] or based upon the attorney-client privilege.[94] Nevertheless, the temptation is strong to put off any final disciplinary action against a police officer until civil litigation is disposed of. Earlier action may be necessary, however, since disciplinary action against a city employee is frequently governed by a short statute of limitations.[95]

Despite the temptation to wait, the Los Angeles Police Department generally proceeds with internal discipline regardless of its potential effect upon civil litigation. For example, the officers involved in the alleged beating of singer Jimmie Rodgers were disciplined by the department while the civil suit filed by Rodgers was still pending.[96] Only in one recent case, apparently, was an internal investigation suspended during the pendency of litigation: the shooting of two Mexican nationals by Los Angeles police officers in July of 1970. This exception was explained on the grounds that a thorough investigation had already been completed by the District Attorney's Office and that the federal prosecution of the officers was "politically motivated."[97]

EVID. CODE § 1151, Comment-Law Revision Commission. And the common law rule was sufficiently broad to exclude subsequent disciplinary actions taken by an employer against the negligent employee. *See* Armour & Co. v. Skene, 153 F. 241 (1st Cir. 1907) (excluding evidence of the discharge of a driver one year after an accident); Engel v. United Traction Co., *supra* (excluding evidence of the discharge of an employee after an accident on the question of negligence).

Despite the language of section 1151, it seems that evidence of subsequent disciplinary action is routinely admitted by local courts on the question of negligence. According to George J. Franscell, Assistant City Attorney, City of Los Angeles, the city has been unsuccessful in blocking the admission of such evidence on the authority of section 1151; disciplinary action has been admitted as an implied admission on the authority of Dillenbeck v. City of Los Angeles, 69 Cal. 2d 472, 446 P.2d 129, 72 Cal. Rptr. 321 (1968) (see text accompanying notes 59-60 *supra*). Reliance on *Dillenbeck* is misplaced since that case, involving admission of training bulletins, clearly did not involve evidence which could be considered as subsequent remedial conduct. Mr. Franscell is unaware of any cases pending appeal on this question.

93. Kott v. Perini, 283 F. Supp. 1 (N.D. Ohio 1968); United States v. Mackey, 239 F. Supp. 733 (D.D.C. 1965). *But see* Carter v. Carlson, 11 Cr. L. Rptr. 2525 (D.D.C. 1972); Wood v. Breier, 54 F.R.D. 7 (1972).

94. *Cf.* D. I. Chadbourne, Inc. v. Superior Court, 60 Cal. 2d 723, 388 P.2d 700, 36 Cal. Rptr. 468 (1964); Holm v. Superior Court, 42 Cal. 2d 500, 267 P.2d 1025 (1954); Jessup v. Superior Court, 151 Cal. App. 2d 102, 311 P.2d 177 (1957).

95. *E.g.*, Los Angeles City Charter § 202 (1971), which specifies a one year limitation period.

96. Interview with George J. Franscell, Assistant City Attorney, Los Angeles, California, October 17, 1972.

97. *Id.*

Although the results of internal disciplinary proceeding may be available to the civil litigant who is astute enough to ask for them in discovery proceedings,[98] such results are not generally publicized. Thus, the very cogent reasons for full public disclosure of the results of police disciplinary proceedings advanced by the Police Task Force have been largely ignored:

> Once the decision on a complaint has been made, the complainant should be notified of the decision and of the basis for it. And the public should have access to the facts of the case and the nature of the decision. Unless the public has access to reliable information, it is likely to assume the worst. . . . An annual report by the police department providing such facts as the number and kinds of complaints, the kinds of people who made them, the disposition of the complaint, and the punishments imposed can also make a useful contribution to better public understanding.[99]

VII. THE EFFECTIVENESS OF POLICY TO CONTROL POLICE BEHAVIOR

In urging the importance of policy formulation, promulgation and enforcement, the underlying assumption is that departmental policy will somehow affect the decisions made by individual police officers in individual cases. This is an assumption which is very difficult to test. Many police administrators shared the initial haunting suspicion of this author that in the last analysis, policy statements may not mean much when an officer is in a stress situation. His decision may be more profoundly affected by the basic attitudes and personality characteristics he brought with him when he was hired as a police officer. To some extent, these attitudes may be reinforced or dispelled by his training. But policy manuals might well be meaningless in the context of decisions made under stress, such as the decision to use deadly force. On the other hand, policy statements might be the clearest reflection of what kinds of attitudes pervade a particular police department. By means of a clearly articulated and meaningfully enforced policy, a message may be conveyed which profoundly affects individual officers by warning them that their conduct under stress will be evaluated by their superiors against an objective standard.

In order to reach some tentative conclusions as to how effectively policy controls the conduct of police officers, two different devices were used in this survey. First, statistics reflecting the actual number

98. Apparently, most litigants do not include, in their requests for discovery, the *results* of police disciplinary proceedings. *Id.*

99. TASK FORCE REPORT, *supra* note 5, at 197.

of incidents in which firearms were discharged in each department surveyed were collected to compare the number of incidents with the degree of restrictiveness of the department's policy. Second, an attempt was made to test the perceptions and reactions of individual police officers within a department, to see whether they were guided by their perceptions of departmental policy in their reactions to hypothetical stress situations. Their reactions were then compared to those of officers in other departments with different policies.

The results of these two comparisons were apparently inconsistent. The statistical data reflected a direct relationship between the restrictiveness of policy and the number of actual shooting incidents; the hypothetical testing, however, while disclosing a strong relationship between the officer's *perception* of policy and his reaction to hypothetical situations, did not reflect a relationship between the actual policy and the officer's reaction. An hypothesis will be offered, however, which reconciles and explains this apparent inconsistency.

A. The Relationship of Policy to Shooting Incidents.

If police policy regarding the use of deadly force does act as a restraining influence upon police officers, then those departments with the most restrictive policies should have relatively fewer incidents in which firearms are discharged than those departments with less restrictive policies.[100] In order to test this theory, each of the fifty departments contacted was asked to supply statistical information regarding the total number of incidents in which firearms were discharged by its officers, breaking the total down to indicate how many of the incidents were within the departmental policy related to self-defense or defense of others, how many were within the departmental policy related to fleeing felons, and how many were found to be outside departmental policy. Data was sought for the two most recent years available—1970 and 1971. Although most departments supplied the data requested, several were unable to do so because they did not maintain such statistics, and compiling them would require searching the indi-

100. The theory might also be tested within a single department which modified its policy: a change to a substantially more restrictive policy should result in a reduction in the number of shooting incidents. Although it could not be documented because of the lack of statistical compilations, such an effect was reported by the Compton Police Department. After a new policy which verges on self-defense or defense of others only (Category V) was adopted in 1968, a dramatic decrease in the number of shootings by Compton officers took place.

vidual personnel files of each of their officers.[101] Others simply declined to supply the statistical information requested without offering any explanation.[102]

The data, compiled separately for each year, is collected in Table VI. Departments are listed according to the categories of restrictiveness of their policy, as devised in comparing their responses to the hypotheticals.[103]

TABLE VI

	1970				
	Felony Arrests	Total Incidents	Self Defense	Fleeing Felons	Out of Policy
CATEGORY I:					
Burbank	685	3	1	2	0
Claremont	62	0	0	0	0
Covina	314	0	0	0	0
El Monte	1,070	4	3	1	0
Hawthorne	434	3	1	2	0
Whittier	732	0	0	0	0
TOTALS:	3,297	10	5	5	0
CATEGORY II:					
Bell	215	2	1	0	1
Bell Gardens	224	2	2	0	0
Beverly Hills	456	3	1	2	0
Gardena	525	0	0	0	0
Signal Hill	194	0	0	0	0
TOTALS:	1,614	7	4	2	1
CATEGORY III:					
Arcadia	202	1	0	0	1
Azusa	376	0	0	0	0
Culver City	359	2	0	2	0
Glendora	236	0	0	0	0
Huntington Park	534	3	1	1	1
Los Angeles*	52,435	120	66-82	22-38	16
Maywood	101	0	0	0	0
Monrovia	334	3	0	2	1
Monterey Park	347	2	0	0	2
Redondo Beach	416	1	1	0	0
Sierra Madre	62	0	0	0	0

101. The Compton, Lynwood, Pomona and San Fernando departments do not maintain such statistics. If police departments are seriously interested in the continuing reevaluation of their policy suggested by the A.B.A. Committee [THE URBAN POLICE FUNCTION, *supra* note 5, § 1.2], it would seem the maintenance of this kind of statistical data is certainly a prerequisite.

102. The Inglewood, Long Beach, Montebello, Santa Monica, and Torrance departments, and the California Highway Patrol declined to supply this information. Long Beach, Santa Monica and the California Highway Patrol were also among those few departments which refused to supply copies of their written policies.

103. See text accompanying notes 27-35 *supra.*

Vernon	224	0	0	0	0
West Covina	487	1	1	0	0
TOTALS:	56,113	133	69-85	27-43	21
CATEGORY IV:					
Baldwin Park	269	0	0	0	0
El Segundo	154	0	0	0	0
Hermosa Beach	497	0	0	0	0
Palos Verdes Estates	115	0	0	0	0
San Gabriel	115	0	0	0	0
South Gate	755	1	0	1	0
South Pasadena	194	1	1	0	0
TOTALS:	2,099	2	1	1	0
CATEGORY V:					
Alhambra	441	0	0	0	0
Downey	958	1	1	0	0
Glendale	954	0	0	0	0
Irwindale	32	0	0	0	0
La Verne	46	0	0	0	0
L. A. County Sheriff	23,338	32	31	0	1
Manhattan Beach	247	0	0	0	0
Pasadena	1,685	4	0	2	2
San Marino	38	0	0	0	0
TOTALS:	27,739	37	32	2	3

	Felony Arrest	1971 Total Incidents	Self Defense	Fleeing Felons	Out of Policy
CATEGORY I:					
Burbank	660	2	0	1	1
Claremont	59	1	0	0	1
Covina	323	0	0	0	0
El Monte	1,194	6	4	2	0
Hawthorne	477	7	6	1	0
Whittier	702	3	1	2	0
TOTALS:	3,415	19	11	6	2
CATEGORY II:					
Bell	210	1	1	0	0
Bell Gardens	414	1	1	0	0
Beverly Hills	544	3	0	3	0
Gardena	744	1	1	0	0
Signal Hill	216	0	0	0	0
TOTALS:	2,128	6	3	3	0
CATEGORY III:					
Arcadia	202	1	0	0	1
Azusa	338	2	0	0	2
Culver City	445	1	0	1	0
Glendora	218	2	0	1	1
Huntington Park	568	1	0	0	1
Los Angeles*	54,097	138	101-119	1-19	18
Maywood	117	2	2	0	0

Monrovia	419	2	1	1	0
Monterey Park	299	1	1	0	0
Redondo Beach	483	0	0	0	0
Sierra Madre	64	1	0	0	1
Vernon	162	0	0	0	0
West Covina	545	0	0	0	0
TOTALS:	57,957	151	105-123	4-22	24
CATEGORY IV:					
Baldwin Park	316	0	0	0	0
El Segundo	132	1	0	1	0
Hermosa Beach	437	0	0	0	0
Palso Verdes Estates	120	0	0	0	0
San Gabriel	109	0	0	0	0
South Gate	975	0	0	0	0
South Pasadena	152	0	0	0	0
TOTALS:	2,241	1	0	1	0
CATEGORY V:					
Alhambra	423	0	0	0	0
Downey	1,245	4	4	0	0
Glendale	858	0	0	0	0
Irwindale	38	1	0	0	1
La Verne	62	0	0	0	0
L. A. County Sheriff	22,825	50	50	0	0
Manhattan Beach	297	1	1	0	0
Pasadena	1,837	3	3	0	0
San Marino	63	0	0	0	0
TOTALS:	27,648	59	58	0	1

* The statistics supplied by Los Angeles reflected categorization in the initial reports, rather than final dispositions. Thus, out-of-policy incidents would also appear as self-defense or fleeing felon incidents. To compensate, the totals for these categories reflect a range, the upper limit being the total supplied by L.A.P.D., the lower range being the adjusted total if all out-of-policy incidents were in that category. In addition, the 1971 statistics for L.A.P.D. did not break down the incidents by self-defense and fleeing felony categories. This was compensated for by applying the ratios reflected in statistics for the total number of officers involved in shootings, which were so categorized, to the total number of incidents.

In order to reduce the data to a basis for meaningful comparison, statistics reflecting the total number of felony arrests reported by each department in the two years concerned were also collected.[104] Since a high number of shooting incidents may simply reflect exposure of the department's officers to a higher number of situations which might lead to the use of deadly force, it was felt that the readily available felony arrest statistics would be the most accurate indicator of this "risk factor." Thus, the comparison to be made is not simply the total number of incidents per officer, but the total number of incidents

104. State of California, Department of Justice, Bureau of Criminal Statistics, CRIME AND ARRESTS, Table II, at 21-22 (1970); State of California, Department of Justice, Bureau of Criminal Statistics, CRIME AND ARRESTS, Table II, at 27-29 (1971).

per 1,000 felony arrests. The results of such a comparison are presented in Table VII.

TABLE VII

INCIDENTS PER 1,000 FELONY ARRESTS

Category	Total Incidents		Self Defense		Fleeing Felons		Out of Policy	
	1970	1971	1970	1971	1970	1971	1970	1971
I	3.04	5.52	1.52	3.20	1.52	1.74	0	.58
II	4.33	2.75	2.47	1.38	1.23	1.38	.62	0
III*	2.37	2.61	1.23–1.51	1.81–2.12	.48–.76	.07–.38	.37	.41
IV.	.95	.44	.48	0	.48	.44	0	0
V	1.33	2.13	1.15	2.10	.07	0	.11	.03

* A minimum and maximum number is reflected for self defense and fleeing felon statistics in Category III to compensate for the divergency in the statistics reported by the Los Angeles Police Department, as noted in Table VI, *supra.*

The comparison indicates a strong correlation between the restrictiveness of policy and the number of shooting incidents reported. For example, in both 1970 and 1971, the departments in Category I, the least restrictive, reported more than twice as many incidents per 1,000 felony arrests than did the departments in Category V, the most restrictive. The difference is accounted for largely in shooting incidents involving fleeing felons. This, of course, is where the major differences in policy occur. The results here coincide precisely with the degree of restrictiveness of policy. Thus, Category I departments, which allow their officers to shoot at any fleeing felons in accordance with the Penal Code provisions, reported 1.52 incidents per 1,000 felony arrests in 1970 and 1.74 in 1971 as within their policy related to fleeing felons. The Category II departments, which prohibit shooting at known juveniles, but in other respects are identical to Category I, report 1.23 and 1.38 for each of the two years respectively. In Category III, where use of deadly force against fleeing felons is restricted to those regarded as "dangerous," the results are reflected in a range between which the exact figure would lie. The range for 1970 was .48 to .76 incidents per 1,000 felony arrests, while for 1971 the range was .07 to .38. Thus, in both years even the top of the reported range would fall substantially below Category II. Among Category IV departments, which add to the restriction of Category III a flat prohibition against shooting known juveniles who are fleeing, the reported rates were .48 and .44 for the two years. The Category V departments, which approach a policy of self-defense or defense of others

only, report almost no shooting incidents as within policy regarding fleeing felons: .07 for 1970, and 0 for 1971.

Almost the same correlation appears with respect to incidents classified as within policy regarding self-defense. In this category, departments with more restrictive policies report fewer incidents. This is especially significant since, as previously noted, there were virtually no differences in policy regarding self-defense or defense of others among all the departments contacted. Thus, it appears that officers in those departments with more restrictive policies exercise more restraint across the board; not only do they shoot less often at fleeing felons, they also shoot less frequently in asserted self-defense.

B. Perceptions of Policy

In order to test how individual police officers perceived their department's policy, the same five hypotheticals used to test the interpretation of policy by police administrators[105] were submitted to an entire day's shift in six different departments. Each officer was asked, with respect to each hypothetical, whether he would be justified in shooting at the suspect under the policy of his department. He was also asked whether, under the circumstances described, he would shoot at the suspect.

All of the cooperating departments were promised anonymity in this survey. The individual responses were also anonymous, although the responding officers were asked to indicate their age, the number of years they had been police officers, and the number of years of formal education they had completed. Departments were selected which differed substantially in their policies, however. Department "A" has a written policy which is interpreted by its chief to place no restrictions on the Penal Code. Thus, Department "A" is one of those previously classified in Category I. A total of 22 officers were tested in Department "A". Department "B" has a written policy based upon the Chapman model.[106] Its interpretation of the policy would place it in Category III of restrictiveness. Forty of Department "B's" officers responded to the test. Department "C" does not have a written policy. The oral policy indicated by the responses of its chief to the hypotheticals, however, would place it in Category V, the most restrictive interpretation of policy. Forty-one officers were tested in Department "C". Department "D" operates under a written policy which is interpreted by its

105. See text accompanying notes 27-28 *supra.*
106. See text accompanying notes 70-71 *supra.*

chief as within Category V. Forty of its officers responded to the test. Departments "E" and "F" are not actually two separate departments, but rather two different divisions of the same department. Department "E", in which forty-eight officers were tested, is a division operating in a middle-class suburban area, while Department "F", in which twenty-two officers were tested, is a division operating in a working class area with a large Chicano population. Both departments, of course, subscribe to the same policy, a written policy interpreted in accordance with Category V restrictions.

The crime rates for the areas served by the six departments surveyed differ very little. Departments "E" and "F" would be the only departments serving areas with a crime rate above 30 arrests for major crimes per 1,000 population. Departments "A", "C" and "D" all fall within the middle range of 20-30 such arrests per 1,000 population, while only Department "B" would fall below that range.

The responses for all six departments are presented in Table VIII, with the results expressed in percentages. Although the margins vary considerably, the majority of police officers in five of the six departments perceived their policy in basically the same way: that it would preclude the use of deadly force in all but the third hypothetical.[107] Thus, a majority of each of these departments' officers perceived the policy of his department to be that which we previously labeled Category IV. Yet none of the departments tested were placed in that category based on the interpretations of policy by the police administrator interviewed! In Departments "A" and "B", these divergencies indicate a more restrictive view of shooting policy by the police officers than by their superiors. In the remaining four departments, however, a majority of officers understood their policy as allowing the use of deadly force in a situation in which their administrators indicated it would be precluded.

Most remarkable, of course, is the diversity of responses within the same departments, indicating a good deal of confusion as to just what departmental policy was. This was most pronounced with respect to the third and fourth hypotheticals. The division between "yes" and "no" responses to these hypotheticals was a very narrow one in most

107. Only Department "D" would be an exception to this pattern. A majority of Department "D" officers also indicated their policy would allow the use of deadly force in the fourth hypothetical, which would be consistent with Category III. The responses of Department "D's" chief to the same hypotheticals placed his department in Category V, however.

TABLE VIII

DEPARTMENT:		"A"	"B"	"C"	"D"	"E"	"F"
FIRST HYPOTHETICAL							
(Fleeing Burgular)							
(a) Within Policy?							
	YES	27%	17%	35%	15%	17%	10%
	NO	73	83	65	85	83	90
(b) Would You Shoot?							
	YES	4	10	22	8	6	0
	NO	96	90	78	92	94	100
SECOND HYPOTHETICAL							
(Fleeing Burgular, Known Juvenile)							
(a) Within Policy?							
	YES	18	2	12	2	9	5
	NO	82	98	88	98	91	95
(b) Would You Shoot?							
	YES	0	0	2	2	2	0
	NO	100	100	98	98	98	100
THIRD HYPOTHETICAL							
(Fleeing Robber)							
(a) Within Policy							
	YES	64	78	56	83	52	59
	NO	36	22	44	17	48	41
(b) Would You Shoot?							
	YES	52	78	55	83	57	68
	NO	48	22	45	17	43	32
FOURTH HYPOTHETICAL							
(Fleeing Robber, Known Juvenile)							
(a) Within Policy?							
	YES	41	35	32	72	43	45
	NO	59	65	68	28	57	55
(b) Would You Shoot?							
	YES	23	35	21	51	46	45
	NO	77	65	79	49	54	55
FIFTH HYPOTHETICAL							
(Assault on Officer)							
(a) Within Policy?							
	YES	4	0	2	2	8	9
	NO	96	100	98	98	92	21
(b) Would You Shoot?							
	YES	0	0	0	0	4	5
	NO	100	100	100	100	96	95

departments, indicating that the promulgation of policy has not been very effective in any of the departments tested. It is interesting to note that the closest division of opinion on the most hypotheticals, indicating the greatest confusion as to departmental policy, occurred in Department "C", which was the only department whose policy was not in writing. On the other hand, the department with the widest margin on every hypothetical, indicating a clear perception of departmental policy, was Department "D", in which the officers perceived far greater

discretion to shoot than was afforded under their administrator's interpretation of departmental policy. It is somewhat alarming that 83% of Department "D's" officers view their departmental policy as allowing the use of deadly force in the third hypothetical, and 72% in the fourth hypothetical, differing with the interpretation of their chief on both counts.

A comparison of Departments "E" and "F" reveals a very high degree of correlation, indicating that the perceptions of policy within the same police agency are basically the same, even though officers are assigned to different divisions which serve vastly different populations.

When the responses of all six departments were collectively tabulated, combining the responses of all 213 officers tested, the pattern which emerged was very similar to the pattern which emerged in tabulating the responses of the 50 police administrators who were interviewed. As indicated in the totals in Table I, *supra*, the fifty police administrators responded as follows:

First Hypothetical:	34%	Yes;	66%	No.
Second Hypothetical:	14%	Yes;	86%	No.
Third Hypothetical:	78%	Yes;	22%	No.
Fourth Hypothetical:	46%	Yes;	54%	No.
Fifth Hypothetical:	2%	Yes;	98%	No.

The responses of the total sample of police officers was as follows:

First Hypothetical:	20%	Yes;	80%	No.
Second Hypothetical:	8%	Yes;	92%	No.
Third Hypothetical:	65%	Yes;	35%	No.
Fourth Hypothetical:	45%	Yes;	55%	No.
Fifth Hypothetical:	4%	Yes;	96%	No.

Thus, to the extent that policy is merely an extension of individual judgment or opinion, it would appear that the diversity of judgment among police administrators is mirrored closely by the diversity among police officers.

Of far more importance for our purposes than the acuracy of perceptions of policy, however, is the actual judgment which the officers tested indicate they would exercise in the situations presented. The inaccuracy of the perception of policy is a serious problem, of course, but one that can be corrected by more effective promulgation of policy. A disparity between how an officer perceives policy and the decision he makes presents a far more serious problem, however, indicating that steps outside the realm of police policy are required to control his behavior.

The results of such a comparison reveal that, as inaccurate as their perceptions of policy might be, the vast majority of police officers indicated a decision which coincided with their perception of department policy. In nearly every instance, the proportion of officers who indicated they would shoot in a given circumstance was the same or smaller than the proportion of officers who indicated they thought that shooting in these circumstances was within their department's policy. The only exceptions to this pattern occurred within the same police agency. In Department "E", although only 52% of the officers tested indicated they felt it would be within their department's policy to shoot in the third hypothetical situation, 57% indicated they would shoot. Similarly, in Department "F", 68% indicated they would shoot, although only 59% felt it was within departmental policy. Again, in Department "E", a slightly higher proportion of the officers tested indicated they would shoot in the fourth hypothetical situation than had indicated such shooting would be within policy.

If policy does in fact control police behavior, ideally the results of this comparison would reflect that the departments with the least restrictive policies (Category I) would have more officers responding that they would shoot in these hypothetical situations than departments with more restrictive policies (Category V). Such a result did not occur. Quite to the contrary, the department with the greatest number of officers indicating they would shoot in most of the hypothetical situations was Department "D", which we previously noted has a policy which falls into Category V, the most restrictive, while the department whose officers responded with the greatest restraint in most instances was Department "A", which interprets its policy in the least restrictive way, placing it in Category I! The vast distortions in the perceptions of policy, however, render such a comparison meaningless. Since a majority of the officers tested described their department policy in substantial variance with the policy as described by their administrators, a more meaningful comparison would be to compare the proportion of officers who would shoot or not shoot with the departmental policy as these officers perceived it. When this is done, a high degree of correlation is revealed. For example, in responding to the third hypothetical, although a majority of officers in all six departments indicated they felt it would be within their department's policy to shoot, the highest such margin appeared in Department "D", followed in descending order by "B", "A", "F", "C" and "E". Affirmative responses to the query whether the officer would actually shoot followed much the same pat-

tern: Department "D" led, followed by Departments "B", "F", "E", "C" and "A", in that order.

Although perceptions of policy are most certainly a significant factor in the response of the officer tested, it may well be that other factors are of even greater consequence. An attempt was made to correlate the responses of the officers to three other variables in administering these tests: each officer was also asked his age, the number of years he had been a police officer, and the number of years of formal education he had received. The responses are averaged and tabulated in Tables IX, X and XI. As indicated in Table IX, there does appear to be a strong relationship with respect to age, younger officers responding affirmatively (that they would shoot) with greater frequency than older officers. Similarly, Table X indicates that more experienced officers were less likely to shoot in the hypotheticals presented than those with less experience. Finally, Table XI indicates minor differences with respect to the number of years of formal education, with a slight tendency for more educated officers to shoot with more frequency than the less educated officers. This would be consistent with the results reflected in Tables IX and X, since the older, more experienced officers have generally had less formal education than younger officers who were more recently recruited.

TABLE IX

	AGE					
DEPARTMENT:	"A"	"B"	"C"	"D"	"E"	"F"
FIRST HYPOTHETICAL						
(Fleeing Burglar)						
(a) Within Policy?						
YES	35.3	31.4	31.3	30.7	32.8	32.5
NO	30.1	37.1	34.5	30.4	31.0	32.0
(b) Would You Shoot?						
YES	43.0	34.0	31.0	26.3	31.6	—
NO	28.7	35.0	33.7	30.5	31.0	32.0
SECOND HYPOTHETICAL						
(Fleeing Burglar, Known Juvenile)						
(a) Within Policy?						
YES	37.0	37.0	35.2	27.0	34.5	29.0
NO	27.8	36.1	32.0	30.5	30.8	32.0
(b) Would You Shoot?						
YES	—	—	32.0	26.0	26.0	—
NO	29.0	36.0	32.9	28.1	31.5	32.0
THIRD HYPOTHETICAL						
(Fleeing Robber)						
(a) Within Policy?						
YES	30.7	34.5	32.0	29.5	31.2	31.6
NO	27.5	39.3	34.8	33.4	31.9	33.6

(b) Would You Shoot?							
	YES	31.5	35.3	31.5	29.9	30.0	31.0
	NO	27.0	36.2	34.4	32.7	32.0	32.0
FOURTH HYPOTHETICAL							
(Fleeing Robber, Known Juvenile)							
(a) Within Policy?							
	YES	31.5	32.0	31.5	29.9	32.0	30.6
	NO	28.0	37.5	34.0	33.1	30.8	33.0
(b) Would You Shoot?							
	YES	30.0	29.1	29.1	27.1	31.5	31.0
	NO	29.4	38.7	33.0	33.8	35.0	30.0
FIFTH HYPOTHETICAL							
(Assault on Officer)							
(a) Within Policy?							
	YES	39.0	—	36.0	26.0	28.7	31.0
	NO	29.0	36.0	33.0	30.0	32.0	32.0
(b) Would You Shoot?							
	YES	—	—	—	—	29.5	29.0
	NO	29.0	36.0	33.0	30.0	31.0	32.0

TABLE X

	YEARS AS POLICE OFFICER					
DEPARTMENT:	"A"	"B"	"C"	"D"	"E"	"F"
FIRST HYPOTHETICAL						
(Fleeing Burglar)						
(a) Within Policy?						
YES	10.7	8.7	7.0	8.1	5.8	6.5
NO	4.8	11.6	6.5	7.2	5.8	6.8
(b) Would You Shoot?						
YES	16.0	10.2	5.6	3.4	7.3	—
NO	6.3	10.6	6.7	7.2	5.7	6.8
SECOND HYPOTHETICAL						
(Fleeing Burglar, Known Juvenile)						
(a) Within Policy?						
YES	12.7	10.0	10.8	3.0	6.3	3.6
NO	5.6	11.0	5.1	7.4	5.7	6.6
(b) Would You Shoot?						
YES	—	—	5.0	3.0	6.3	3.6
NO	6.4	11.0	6.5	7.3	5.7	6.8
THIRD HYPOTHETICAL						
(Fleeing Robber)						
(a) Within Policy?						
YES	8.2	10.5	6.2	6.6	5.2	6.0
NO	4.5	13.4	7.0	10.0	6.4	7.6
(b) Would You Shoot?						
YES	8.1	11.3	5.6	6.8	5.7	6.2
NO	4.2	10.8	7.6	10.1	5.8	7.5
FOURTH HYPOTHETICAL						
(Fleeing Robber, Known Juvenile)						
(a) Within Policy?						
YES	6.0	7.8	6.0	6.3	5.7	6.2
NO	5.3	12.5	6.8	9.5	5.9	7.0
(b) Would You Shoot?						
YES	6.8	5.2	2.5	4.6	5.9	5.9
NO	6.2	14.0	7.5	10.4	5.7	7.3

FIFTH HYPOTHETICAL							
(Assault on Officer)							
(a) Within Policy?							
	YES	15.0	—	11.0	4.0	5.0	5.5
	NO	5.1	11.0	6.5	7.4	5.8	6.8
(b) Would You Shoot?							
	YES	—	—	—	—	6.5	4.0
	NO	6.4	11.0	6.5	7.3	5.8	6.8

TABLE XI

YEARS OF FORMAL EDUCATION DEPARTMENT:		"A"	"B"	"C"	"D"	"E"	"F"
FIRST HYPOTHETICAL							
(Fleeing Burglar)							
(a) Within Policy?							
	YES	15.0	14.0	13.7	13.8	13.5	14.0
	NO	14.0	13.6	13.3	13.7	13.9	14.5
(b) Would You Shoot?							
	YES	15.0	14.0	13.4	13.1	14.5	—
	NO	14.0	13.3	13.7	13.8	13.8	14.0
SECOND HYPOTHETICAL							
(Fleeing Burglar, Known Juvenile)							
(a) Within Policy?							
	YES	14.7	14.0	13.6	13.0	13.5	14.0
	NO	14.5	13.7	13.6	13.8	13.8	14.0
(b) Would You Shoot?							
	YES	—	—	14.0	13.0	15.0	—
	NO	14.6	13.7	13.6	13.8	13.9	14.0
THIRD HYPOTHETICAL							
(Fleeing Robber)							
(a) Within Policy?							
	YES	14.7	13.7	13.7	13.9	14.0	14.0
	NO	14.5	13.4	13.7	13.1	13.5	14.2
(b) Would You Shoot?							
	YES	14.9	13.5	13.6	14.0	14.0	14.0
	NO	14.1	14.2	13.7	12.7	13.5	14.5
FOURTH HYPOTHETICAL							
(Fleeing Robber, Known Juvenile)							
(a) Within Policy?							
	YES	13.9	14.7	13.8	13.8	13.9	14.9
	NO	14.4	13.6	13.8	13.5	13.2	14.1
(b) Would You Shoot?							
	YES	14.6	13.9	13.4	14.2	13.9	14.7
	NO	14.6	13.6	13.8	13.5	13.2	14.1
FIFTH HYPOTHETICAL							
(Assault on Officer)							
(a) Within Policy?							
	YES	14.0	—	14.0	14.0	12.5	17.0
	NO	14.7	13.7	13.6	13.8	13.9	14.0
(b) Would You Shoot?							
	YES	—	—	—	—	13.5	19.0
	NO	14.6	13.7	13.6	13.8	13.9	14.0

These generalizations, for some reason, are not borne out with respect to Department "A", however. This phenomenon bears further examination, since, as previously noted, Department "A" was the department with the least restrictive policy of those tested, and yet the officers tested perceived their policy as a very restrictive one and had the lowest proportion of officers who indicated they would shoot in the hypothetical situations presented. Unlike the other five departments, it was the older, more experienced officer who was more likely to respond affirmatively that he would shoot. The explanation may lie in the fact that Department "A" is a rather unusual department both in the average age of its officers and the amount of formal education they have completed. A profile of the average age, years of experience, and years of education of all of the officers tested in each of the six departments is presented in Table XII. There is one other important respect in which Department "A" differs from the other five departments tested, however. All of the other five departments used the same training academy to train their new recruits, the Los Angeles County Sheriff's Academy. Department "A" did not. Conceivably, the greater restraint of Department "A's" officers could be the product of a different initial training experience.

TABLE XII

Department	Average Age	Average Years of Police Experience	Average Years of Formal Education
"A"	29	6.4	14.6
"B"	36	11.0	13.7
"C"	33	6.5	13.6
"D"	30	7.3	13.8
"E"	31	5.8	13.9
"F"	32	6.9	14.0

C. A Consistent Hypothesis

If fewer shooting incidents occur in those departments with more restrictive policies, we should be able to conclude that policy is an effective device to control police behavior. But if the perceptions of policy are generally as inaccurate as those reflected in the hypothetical testing, it becomes a rather strained interpretation to attribute different levels of restraint simply to differences in policy. The consistency of the responses of officers that they will shoot with their perceptions of department policy may simply mean that they perceive policy as simply a prophylactic device by which the department will "back-up" the judg-

ment they in fact exercise. Certainly the interviews with police administrators disclosed that many, if not most, perceive policy in precisely that way.

Nonetheless, police administrators differ in their judgment as to how far they will "back up" their men. Policy may simply be one manifestation of this attitude. Other manifestations may not be as apparent, but are just as real to the patrolman.

The hypothesis that emerges from this analysis proceeds as follows:

. . . Police in different police agencies exercise differing degrees of restraint in the use of deadly force;

. . . The degree of restraint exercised by police coincides with the degree of restrictiveness of the declared department policy;

. . . This relationship between restraint and declared policy exists even though individual police officers are inaccurate in their perceptions of department policy;

. . . Police policy is simply a manifestation of basic, underlying attitudes in a police agency. These attitudes *are* perceived, even though the policy is not.

Needless to say, this hypothesis calls for a good deal of further research into the dynamics of police bureaucracy. To what extent can the "attitudes" which pervade an institution be measured? What is the source of these attitudes? To what extent can these attitudes be changed? Hopefully, in depth studies of police departments as social institutions can supply some answers.[108] The importance of these answers transcends questions regarding the use of deadly force, since internal policy is currently being proposed as a means of controlling the exercise of police discretion in a wide range of settings, including the decision to arrest, and the use of certain investigative techniques.[109]

VIII. CONCLUSION

If policy is simply a manifestation of institutional attitudes which pervade a police department, then simply changing policy internally may not significantly affect police behavior. This is not the same as saying policy is not an effective control device, however, where the policy is imposed externally. To this extent, "policy" is analogous to "law," which most certainly is a significant restraining influence on

108. *E.g.*, J. WILSON, VARIETIES OF POLICE BEHAVIOR (1968).

109. Goldstein, *Police Policy Formulation: A Proposal for Improving Police Performance*, 65 MICH. L. REV. 1123 (1967).

police behavior. "Policy" implies an administrative flexibility which "law" cannot afford, however. Thus, a solution to the problem of diversity disclosed by this study may be found in *externalizing* the process of policy formulation, promulgation and enforcement.

The diversity of police policy in one metropolitan area disclosed by this survey should be of little surprise in light of the process of internal policy formulation revealed. As long as police policy is in large part simply a reflection of the personal philosophy of the police chief who administers an individual police department, it is inescapable that fifty police departments administered by fifty different chiefs will have substantial differences in policy. Were the matter simply an academic question of philosophy, there would be little cause for concern. But it appears that the differences reflected in policy can be clearly measured in human lives. Whether such an option should be left open to each individual police chief is a question of the greatest urgency.

Diversity of policy also has serious consequences in terms of the efficiency with which police agencies can operate. Training of new recruits as to the kind of judgment they should exercise in the use of their weapons cannot be done on a systematic basis in the confines of present training programs, used by different departments with differing policies regarding the use of deadly force. Joint operations pursuant to mutual assistance pacts may also find officers working together to apprehend a felon, even though those officers are governed by widely divergent policies as to when deadly force should be used to capture that felon. Confusion, however, is not simply the product of diversity among police departments. Even within the same department, this survey revealed wide disparity in the interpretation of policy. This disparity, it is suggested, is the inevitable product of vagueness and ambiguity in the policies promulgated by many departments. While vagueness may be desired by those police administrators who regard policy as a flexible standard which gives them maximum maneuverability to "back up" their officers, it cannot be tolerated if policy is to function as a means of controlling discretion.

On one point, the police administrators interviewed were almost unanimous in agreement; there is little justification for different cities in the same county, or even in the same state, to have different policies regarding the use of deadly force by police officers. A fleeing burglar is neither more nor less dangerous because he happens to be in Azusa rather than Downey. Whether a fleeing juvenile felony suspect should be shot or allowed to escape should not depend upon whether he is in

El Monte or El Segundo. When asked how uniformity could best be accomplished, however, the unanimity quickly dissipated.

One suggestion frequently made was that the Penal Code be amended to clearly delineate and restrict the situations in which an officer could use deadly force. While its breadth and ambiguity suggest that the code is drastically in need of attention,[110] it may be un-

110. A number of proposals to change or supplant the fleeing felon provisions of Penal Code § 196 are currently under discussion. The Joint Legislative Committee for Revision of the Penal Code has proposed, as part of a new Criminal Code for California, the following provision:

§ 645. *Use of force in making and securing arrests*

645. (a) A peace officer, or any person whom he has summoned to assist him, is justified in conduct, including the use of force other than deadly force, when he has reasonable cause to believe that such conduct is necessary to prevent the defeat of an arrest or custodial restraint.

(b) A peace officer, or any person whom he has summoned to assist him, is justified in the use of deadly force when he has reasonable cause to believe that deadly force is necessary to prevent the defeat of an arrest or custodial restraint for the crime of or an attempt to commit:

(1) Murder, manslaughter, or aggravated criminal injury; or
(2) Aggravated kidnaping or kidnaping; or
(3) Rape, deviant sexual conduct, or sexual abuse of a child; or
(4) Robbery, aggravated burglary, burglary, aggravated arson, or arson

(c) When the use of deadly force subjects a person other than the person intended to be arrested or restrained to an unreasonable risk of death or serious bodily injury, the justification defined in subdivision (b) of this section is not available in a prosecution for killing such other person or inflicting bodily injury upon him.

(d) A person other than a peace officer who makes or assists another person in making a citizen's arrest is justified in conduct, including the use of force other than deadly force, when he has reasonable cause to believe that such conduct is necessary to prevent the defeat of an arrest or custodial restraint.

(e) As used in this section, "custodial restraint" means restraint by a peace officer or other person following an arrest with or without a warrant prior to the official booking of the person arrested. State of California Joint Legislative Committee for Revision of the Penal Code, The Criminal Code (Staff Draft, 1971).

An amendment to § 196 of the Penal Code is currently before the legislature as Senate Bill No. 1480, introduced by Senator Arlen Gregorio on May 4, 1972. It would provide:

§ 196. Homicide is justifiable when

(a) Necessarily committed by public officers in retaking felons who have escaped, or

(b) Committed in arresting persons charged with or suspected of having committed a felony, and who are fleeing from justice or resisting arrest, and when the officer reasonably believes that:

(1) The crime for which the arrest is to be made involved conduct including the use or threatened use of deadly force; or

(2) There is substantial risk that the person to be apprehended will cause death or serious bodily harm if his apprehension is delayed; or

(3) There is substantial imminent risk that the person to be apprehended will cause death or serious bodily harm to the officer or another person.

The Gregorio proposal is quite similar to the Chapman Model Policy already widely adopted in Los Angeles County (see text accompanying notes 70-71 *supra*), and both bear a striking resemblance to the recommendation of the Model Penal Code:

Section 3.07. Use of Force in Law Enforcement.

(1) *Use of force justifiable to effect an arrest.* Subject to the provisions of this

desirable to attempt to enact statutory guidelines which purport to be so specific that policy limitations become unnecessary, assuming this is even within the realm of human possibility. For one thing, the code provisions are, of course, penal in nature. They leave only one alternative for their violation—a criminal prosecution of the offending officer. The criminal sanction is fraught with so many pitfalls, in terms of its delays and uncertainties, that it would certainly be folly to place chief reliance upon it as a means of controlling police behavior. Moreover, it would measure the seriousness of a transgression only by its consequences. It may be that an officer who shoots and misses in a situation in which the use of deadly force is clearly unwarranted should be disciplined more severely than one whose aim is better but whose judgment does not fall as far short of the statutory standard.

Voluntary efforts to achieve uniformity are commendable, but ap-

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Section and of Section 3.09, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

(2) *Limitations on use of force.*

(a) The use of force is not justifiable under this Section unless:

(i) the actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(ii) when the arrest is made under a warrant, the warrant is valid, or believed by the actor to be valid.

(b) The use of deadly force is not justifiable under this Section unless:

(i) the arrest is for a felony; and

(ii) the person effecting the arrest is authorized to act as a peace officer; and

(iii) the actor believes that the force employed creates no substantial risk of injury to innocent persons; and

(iv) the officer believes that there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed, on either or both of the following grounds:

(1) the crime for which the arrest is made involved conduct evidencing a lawless readiness to take human life or cause serious bodily harm; or

(2) the person to be arrested is armed with a firearm which he employs or threatens to employ to escape arrest.

MODEL PENAL CODE § 3.07 (Tent. Draft No. 8, 1958).

Also worthy of consideration is the formulation offered as part of the Federal Criminal Code by the National Commission on Reform of Federal Criminal Laws:

§ 607. Limits on the Use of Force: Excessive Force; Deadly Force.

(1) Excessive Force. A person is not justified in using more force than is necessary and appropriate under the circumstances.

(2) Deadly Force. Deadly force is justified in the following instances:

. . . .

(d) when used by a public servant authorized to effect arrests or prevent escapes, if such force is necessary to effect an arrest or to prevent the escape from custody of a person who has committed or attempted to commit a felony involving violence, or is attempting to escape by the use of a deadly weapon, or has otherwise indicated that he is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay . . . .

Hearings on Reform of Federal Criminal Laws Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary, 92nd Cong., 1st Sess., pt. 1, at 202-03 (1971).

parently doomed from the outset. The diversity of interpretation among even those departments with identical written policies indicates that agreement on a written policy provides only the most superficial uniformity.

A model for achieving greater uniformity on a state-wide basis is already in existence. Since its establishment in 1959, the California Commission on Peace Officers Standards and Training[111] (P.O.S.T.) has accomplished a great deal in achieving uniform standards in the training of police officers. Through its control of allocations from the Peace Officers Training Fund, which finances most of the training programs operated by police agencies throughout the state, the commission has imposed a wide variety of minimum standards, including specifications as to how much time must be allocated to training in the use of firearms.[112] P.O.S.T. has carefully tread the thin line, however, between setting training standards and dictating policy. Most of the police administrators interviewed were vigorously opposed to P.O.S.T. invading the domain of policy formulation. If a state-wide police policy board is to be established, it would be advisable to create a body separate from P.O.S.T., lest the accomplishments of that agency in achieving professionalization among police agencies be jeopardized by embroiling it in the controversial process of policy formulation and enforcement.

Policy formulation and enforcement on a statewide basis could best be accomplished through a board somewhat along the lines first suggested by Professor Joseph Goldstein, in his classic analysis of police discretion not to invoke the criminal process:

> "[L]egislatures should establish Policy Appraisal and Review Boards not only to facilitate coordination of municipal police policies with those of other key criminal law administrators, but also to assist commissions drafting new codes in reappraising basic objectives of the criminal law and in identifying laws which have become obsolete. To ensure that board appraisals and recommendations facilitate the integration of police policies with overall state policies and to ensure the cooperation of local authorities, board membership might include the state's attorney general, the chief justice of the supreme court, the chairman of the department of correction, the chairman of the board of parole and the chief of parole supervision, the chairman of the department of probation, the chairmen of the judiciary committees of the legislature, the chief of the state police, the local chief of police, the lo-

111. CAL. PEN. CODE § 13500 *et seq.* (West 1972).
112. *See* CAL. PEN. CODE § 832 (West 1972).

> cal prosecutor, and the chief judge of each of the local trial courts. In order regularly and systematically to cull and retrieve information, the board should be assisted by a full-time director who has a staff of investigators well-trained in social science research techniques. It should be given power to subpoena persons and records and to assign investigators to observe all phases of police activity including routine patrols, bookings, raids, and contacts with both the courts and the prosecutor's office.[113]

While Goldstein envisioned a Policy Appraisal and Review Board which advised local departments as to their policies, a more active role is necessitated by this proposal. A board would be empowered to establish a state-wide policy governing the use of force by police officers, and to enforce that policy through investigations, hearings, and a wide range of administrative sanctions.

This device would allow implementation of many of the reforms in policy formulation currently being demanded which are beyond the means of many smaller police departments. A legal staff would be available to advise the board, and through public hearings a wide range of community participation in the process of policy formulation could be elicited. The board could be so constituted as to ensure input from police administrators and rank and file, as well as other components of the criminal justice system.

The consistent interpretation of a single state-wide policy by a single agency would go far to dispel much of the confusion which now surrounds many policies of individual departments. Policy pronouncements and administrative rulings would be publicly promulgated, and every police officer would be on notice as to what standards were being followed. Judicial review of policy could also be greatly facilitated.[114]

Enforcement by a single body would also produce much-needed reform. Disciplinary decisions would be effectively insulated from the public clamor of the local community in which an incident occurred. Discipline would also be independent of the subjective elements which frequently intrude when a police administrator is dealing with his own subordinates.

By placing policy formulation and enforcement in the hands of a single state-wide administrative agency, we would finally recognize that the function or objective of police policy is no different than that of

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113. Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice,* 69 YALE L.J. 543, 588-89 (1960).

114. *See generally* McGowan, *supra* note 44.

any other administrative policy—to achieve uniformity by controlling the exercise of individual discretion. To be sure, many police administrators would be violently opposed to this proposal as the first step towards elimination of the local police department as we know it. Certainly, the small local police department has important advantages that must be preserved. The maintenance of those advantages, however, does not require sacrificing meaningful control through rational policy formulation and consistent administrative enforcement. Achieving this through a state-wide administrative agency may be an important step in maintaining public confidence in the police and restoring judicial confidence in means other than evidentiary exclusionary rules as viable alternatives for the control of police behavior.

APPENDIX

	Department	*Person Interviewed*	*Date of Interview*
(1)	Alhambra	Chief Donal Meehan	5/31/72
(2)	Arcadia	Chief Robert E. Seares	4/21/72
(3)	Azusa	Chief Carl Elkins	4/7/72
(4)	Baldwin Park	Chief Dale Adams	4/7/72
(5)	Bell	Capt. Joe Thomas	6/20/72
(6)	Bell Gardens	Chief Ferice Childers	6/20/72
(7)	Beverly Hills	Chief B. L. Cork	6/26/72
(8)	Burbank	Capt. E. J. Vandergrift	7/11/72
(9)	California Highway Patrol	Inspector G. B. Craig	7/11/72
(10)	Claremont	Chief Charles Lines	4/21/72
(11)	Compton	Capt. J. W. Start	6/21/72
(12)	Covina	Chief Charles Huchel	4/8/72
(13)	Culver City	Capt. A. E. Lang	6/28/72
(14)	Downey	Chief Loren D. Morgan	6/20/72
(15)	El Monte	Dep. Chief Maurice L. Matthews	4/7/72
(16)	El Segundo	Chief James H. Johnson	6/29/72
(17)	Gardena	Chief Roy E. Tracey	6/27/72
(18)	Glendale	Sgt. LeRoy Newman	7/11/72
(19)	Glendora	Lt. Fred Dahm	4/7/72
(20)	Hawthorne	Chief Colman E. Young	6/17/72
(21)	Hermosa Beach	Chief William H. Berlin, Jr.	6/28/72

(22)	Huntington Park	Capt. L. Russell	6/27/72
(23)	Inglewood	Lt. R. J. Goodyear	6/27/72
(24)	Irwindale	Chief Ernest V. Aguirre	4/21/72
(25)	La Verne	Lt. Junior Hendricks	4/21/72
(26)	Long Beach	Capt. Richard L. Wolf	6/29/72
(27)	Los Angeles Police Department	Ass't. Chief Daryl Gates	7/13/72
(28)	Los Angeles Sheriff's Office	Ass't. Sheriff Howard Earle	7/12/72
(29)	Lynwood	Lt. Jim Burns	6/21/72
(30)	Manhattan Beach	Chief Charles W. Crumley	6/28/72
(31)	Maywood	Lt. Thedore R. Heidke	6/20/72
(32)	Monrovia	Lt. Carroll O. Brown	4/21/72
(33)	Montebello	Lt. D. L. Cooper	5/31/72
(34)	Monterey Park	Capt. Ray Warner	5/31/72
(35)	Palos Verdes Estates	Capt. J. E. Dollarhide	6/29/72.
(36)	Pasadena	Special Agent Ward Blackburn	5/26/72
(37)	Pomona	Ass't. Chief F. P. Wallick	4/7/72
(38)	Redondo Beach	Capt. H. Peterson	6/30/72
(39)	San Fernando	Sgt. Chuck Stein	7/11/72
(40)	San Gabriel	Capt. Harry C. Stone	5/31/72
(41)	San Marino	Capt. T. F. Girvan	5/31/72
(42)	Santa Monica	Ass't Chief G. Constable	6/28/72
(43)	Sierra Madre	Chief Thomas C. Kendra	5/31/72
(44)	Signal Hill	Lt. Gaylord R. Wert, Jr.	6/29/72
(45)	South Gate	Chief Robert W. Taylor	6/21/72
(46)	South Pasadena	Lt. John F. Gillette	5/26/72
(47)	Torrance	Capt. Robert E. Hammond	6/27/72
(48)	Vernon	Chief R. H. Bockhacker	6/20/72
(49)	West Covina	Chief Allen Sill, Sr.	4/7/72
(50)	Whittier	Chief James F. Bale	6/2/72