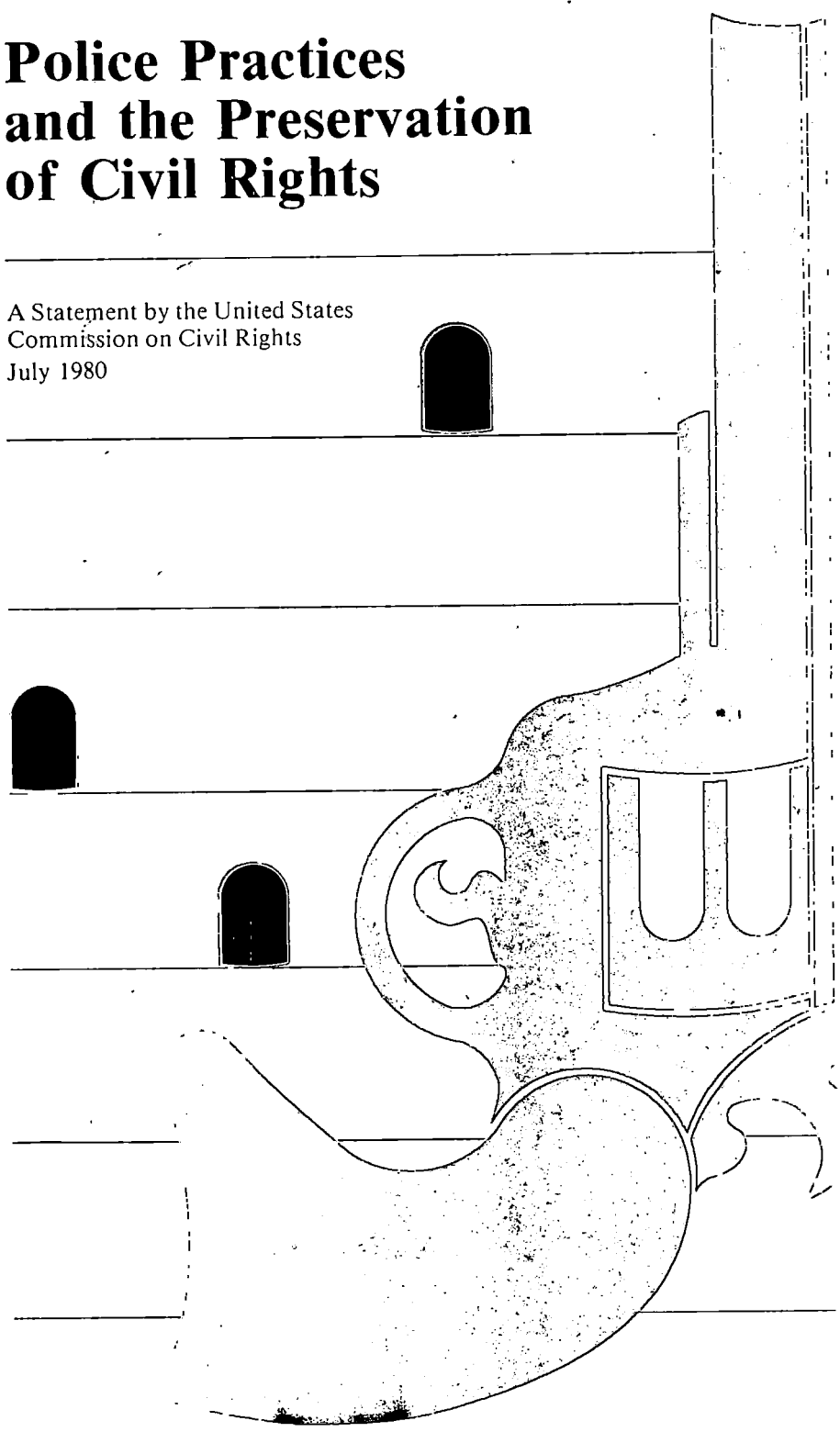


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Police Practices and the Preservation of Civil Rights

A Statement by the United States
Commission on Civil Rights
July 1980



U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;
- Submit reports, findings, and recommendations to the President and Congress.

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Arthur S. Flemming, *Chairman*

Mary F. Berry, *Vice Chairman*

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LETTER OF TRANSMITTAL

U.S. Commission on Civil Rights
Washington, D.C. 20425
July 1980

Honorable Jimmy Carter
President
The White House
Washington, D.C. 20500

Dear Mr. President:

The members of the U.S. Commission on Civil Rights have adopted for transmission to you the enclosed statement on *Police Practices and the Preservation of Civil Rights*.

We are in the process of preparing a statutory national report on police practices based on field studies by our own staff and a number of our State Advisory Committees, a national consultation, and public hearings in Philadelphia, Pennsylvania, and Houston, Texas.

We have concluded, however, that in the light of current developments in Miami, Florida, and elsewhere we should issue this statement in advance of the completion of our statutory report.

Violations of the civil rights of our people by some members of police departments is a serious national problem, especially in light of the anguish that they have caused within minority groups. In our statement we have made recommendations for Federal action. We believe that the acceptance and implementation of these recommendations would make it clear that the Federal Government intends to act in an increasingly vigorous manner to remedy intolerable practices. In our statement we also recommend standards to which we believe communities should adhere in

such areas as police recruitment, training, use of deadly force, citizen complaints, and discipline. We urge public and private leaders in our communities to consider adopting these standards as community goals and then developing action programs designed to bring about their implementation. As a nation, we must do everything we can to end police abuse and the civil violence that it promotes.

Respectfully,

ARTHUR S. FLEMMING
Chairman

JILL S. RUCKELSHAUS
Commissioner

MARY F. BERRY
Vice Chairman

MURRAY SALTZMAN
Commissioner

STEPHEN HORN
Commissioner

LOUIS NUÑEZ
Staff Director

and destructive violence that occurred in Miami, Florida, following the acquittals of white police officers charged with the killing of a black civilian who was pursued in a high-speed chase for a minor traffic violation. Over the past several years, incidents of excessive use of force by police have triggered widespread tension and community unrest in several communities around the country, including Birmingham, Alabama; Denver, Colorado; Houston, Texas; Jackson, Mississippi; Los Angeles, California; Memphis, Tennessee; New York, New York; Philadelphia, Pennsylvania; the Tampa Bay area of Florida; and Wrightsville, Georgia.

Perhaps the most valuable asset that a police agency can possess is credibility with the community it serves. Effective policing depends to a large degree on the cooperation and support of residents, and these can be obtained only where the community perceives the police force as working in its behalf, not as the "enemy" to be feared and avoided. Within minority communities the perception that police abuse of authority is discriminatory is reinforced by national statistics which show that disproportionately large numbers of minority civilians are victims of brutality and use of deadly force.² This remains a potentially explosive issue that not only inhibits effective policing, but in fact undermines the public security.

In accordance with its mandate to "study and collect information [and to] . . . appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws . . . in the administration of justice,"³ the Commission has consistently focused its attention on problems of police misconduct and their implications for civil rights in America. In 1961, the Commission reported that "police brutality in the United States is a serious and continuing problem. . . ."⁴ Other Commission reports in the 1960s documented the disproportionately low levels of minority employment in municipal police departments⁵ and the slower police response in some ghetto areas.⁶ These studies were extensively cited by other commissions formed to study the outbreak of urban disorders in 1967.⁷

During the 1970s, the Commission continued to report on serious problems involving police misconduct in specific localities and with respect to

²J. Goldkamp, "Minorities as Victims of Police Shootings: Interpretations of Racial Disproportionality and Police Use of Deadly Force," *Justice System Journal*, vol. 2 (1976), pp. 169, 183 n. 2.

³42 U.S.C.A. §1975c(a)(2), (3) (Supp. 1974-1979).

⁴U.S., Commission on Civil Rights, *Justice* (1961), p. 26.

⁵U.S., Commission on Civil Rights, *Law Enforcement: A Report on Equal Protection in the South* (1965), pp. 97-99.

⁶U.S., Commission on Civil Rights, *A Time to Listen . . . A Time to Act* (1967), p. 23.

⁷Kerner Commission, *Report of the National Advisory Commission on Civil Disorders*, pp. 310, 315-16; Burton Levy, "Cops in the Ghetto," in *Riots and Rebellion: Civil Violence in the Urban Community*, ed. L. Masotti and D. Bowen (1968), pp. 347-57.

particular minority communities.⁸ Many of the State Advisory Committees to the Commission have also conducted studies of police practices at the local level, including a 1976 study of police-community relations in Miami and Dade County, Florida. Many civilian complaints of police brutality and of inadequate services in minority neighborhoods were reported. The report of that project⁹ emphasized the importance of having a police force that reflects the racial and cultural composition of the public it serves. The Florida Advisory Committee called on city and county officials to intensify their efforts to recruit, hire, and promote more minority and women police officers and to improve civilian complaint procedures. The report further urged that departments should take steps to identify officers who are repeatedly cited in complaints and to ensure that they receive appropriate counseling or discipline.

Since the Miami report, Advisory Committees in Arizona, North Dakota, and South Dakota have studied police practices in communities with large American Indian populations.¹⁰ The Kentucky Advisory Committee called for greater minority and female representation in the bureau of State police.¹¹ A Tennessee Advisory Committee investigation and subsequent Commission hearing on police practices in Memphis prompted an 18-month investigation by the U.S. Department of Justice.¹² This investigation led to an April 1980 agreement with the Memphis Police Department to end all discriminatory practices in the provision of services and to provide officers with training in conflict resolution and the proper use of deadly force.

In 1978, in response to an ever-increasing number of complaints alleging police abuse, the Commission undertook its national police practices project. The first stage of the project consisted of research and field work that culminated in the December 1978 consultation on police practices and the preservation of civil rights. This consultation brought together over 30 experts and spokespersons who explored the vital issues of the police role, community perceptions of the police, selection and training, and remedies for abuse.¹³

⁸U.S., Commission on Civil Rights, *Cairo, Illinois: A Symbol of Racial Polarization* (1973); U.S., Commission on Civil Rights, *Mexican Americans and the Administration of Justice in the Southwest* (1970).

⁹Florida Advisory Committee to the U.S. Commission on Civil Rights, *Policed by the White Male Minority* (October 1976).

¹⁰Arizona Advisory Committee to the U.S. Commission on Civil Rights, *Justice in Flagstaff* (1977); South Dakota Advisory Committee, *Liberty and Justice For All* (1977); North Dakota Advisory Committee, *Native American Justice Issues in North Dakota* (1978).

¹¹Kentucky Advisory Committee, *A Paper Commitment: EEO in the Kentucky Bureau of State Police* (1978).

¹²Tennessee Advisory Committee, *Civic Crisis—Civic Challenge* (1978).

¹³The transcript of that consultation, *Police Practices and the Preservation of Civil Rights*, 179 pp., is available upon request.

more difficult because the offender is held to a higher standard in that it must be proved that he or she intended to accomplish the precise act prohibited by the law rather than simply proving that the consequences of the act were substantially certain to occur, which is all that is required for a showing of general intent. The "specific intent" requirement has proved in practice to be an impediment to successful prosecution in that its application is often confusing to juries. Secondly, while section 242 is the principal tool in the Federal criminal code for prosecuting incidents of police misconduct, its violation is in most cases a misdemeanor punishable by not more than 1 year in prison. Only when death results does the crime become a felony, punishable by up to life in prison.

While prosecutions for offenses can and should be sought under existing law, the Commission on Civil Rights believes that it is imperative for the Department of Justice to have at its disposal more effective statutory tools to prosecute unlawful police misconduct. For example, the requirement of a conspiracy was introduced during the Reconstruction Era to deal with the type of violence typical of that era. Elimination of the conspiracy requirement will enable prosecution of the individual acts of violence more characteristic of today. The Commission therefore recommends that:

- **18 U.S.C. 241 be amended to: (1) eliminate the restriction that the victim be a citizen; the Commission believes there is no reason to shield an offender solely because of the citizenship status of the victim; and (2) remove the requirement that prohibited actions must be proven to be a part of a conspiracy.**
- **18 U.S.C. 242 be amended to: (1) remove the impediment to prosecution presented by the judicially imposed "specific intent" requirement; and (2) treat unlawful acts of violence committed under color of law as felonies under any circumstances.**

Legislation proposing the revision of sections 241 and 242 consistent with these recommendations is currently pending in both houses of Congress, as a part of a proposed overall revision of the Federal Criminal Code. If consideration of this overall revision is delayed, we urge that these recommendations be considered separately so that they can be implemented within a short period of time.

Litigation Alleging Patterns of Police Misconduct

The Federal criminal civil rights statutes discussed above are designed to apply to individual acts of misconduct or to conspiracies to commit such acts. Cases may arise, however, in which a systematic pattern of police misconduct within a police department is alleged. In such a case the At-

torney General should have the power to bring suit to enjoin the continuation of these practices, but his authority to do so is currently in doubt.

In the case of *United States v. City of Philadelphia*,¹⁷ filed by the Department of Justice in 1979, the Department alleged the existence of a pervasive pattern of police abuse in Philadelphia that resulted in the denial of basic Federal constitutional rights to persons of all races, colors, and national origins. The complaint further alleged that police department and city officials actually facilitated the abusive practices by maintaining policies and procedures that thwarted the investigation of complaints and shielded the officers involved from any kind of discipline or scrutiny. As a remedy, the Department sought, in part, to enjoin the defendant officials from engaging in the allegedly unconstitutional acts, practices, policies, and procedures. The Federal district court concluded that no statutory authority, express or implied, empowered the Attorney General to bring such a suit and dismissed the major portion of the case without ever reaching the merits of the serious charges alleged. The Commission commends the Department of Justice for appealing this decision to the Third Circuit Court of Appeals.

The Commission on Civil Rights believes that the Justice Department should have the authority to deal with patterns and practices of police misconduct. The Civil Rights Act of 1957, which created this agency, contained a provision that would clearly have given the Attorney General such authority. That portion of the act, however, failed to survive the floor debates in the Senate and was deleted. Therefore, if the appeal that has been taken in the Philadelphia case is unsuccessful, the Commission recommends that:

- **Congress enact legislation specifically authorizing civil actions by the Attorney General against appropriate government and police department officials to enjoin proven patterns and practices of misconduct in a given department.**¹⁸

Allocation of Resources and Organizational Emphasis

While it is absolutely essential to have the proper legal authority to pursue unlawful conduct by law enforcement officials, it is also essential to have sufficient staff and resources to enforce these laws effectively. The responsibility for enforcing existing Federal criminal civil rights laws in the area of police misconduct rests with the Criminal Section of the Civil

¹⁷United States v. City of Philadelphia, No. 79-2937 (E.D. Pa., filed Aug. 13, 1979). An appeal from this decision is currently pending.

¹⁸This Commission recommended similar legislation in its 1970 report on *Mexican Americans and the Administration of Justice in the Southwest*.

Rights Division of the Department of Justice and with the U.S. Attorney offices located throughout the country. At present, only 21 of the Civil Rights Division's 168 attorneys are assigned to the Criminal Section, despite the heavy caseload and backlog confronting the Section.¹⁹ The Department of Justice acknowledges the need for increased staffing in the Criminal Section and has requested the budgetary authority to hire additional personnel.

The Commission recommends that:

- **The Congress approve the hiring of additional personnel for the Criminal Section of the Civil Rights Division of the Department of Justice in order to make it possible for the Department to handle cases involving alleged violations of civil rights by police effectively and expeditiously.**
- **The Congress also provide adequate staffing for civil rights enforcement in the U.S. Attorney offices.**

The Federal Role in Conciliation, Data Collection, and Funding

The Commission strongly believes that the Federal Government must also address the problem of police brutality outside of the litigation context. The Community Relations Service (CRS), created by the Civil Rights Act of 1964 to assist troubled communities in resolving racial and ethnic disputes, plays an important role in this regard.

CRS carries out its mandate through the process of conciliation and mediation and by providing technical assistance. It also intervenes in disputes whenever peaceful relations among citizens are threatened by racial or ethnic conflict. The Commission believes that the mediation and conciliation efforts of CRS have several advantages over litigation, especially in cases involving police-citizen disputes:

- The parties can agree to remedies that may not otherwise be imposed by a court (i.e., a change in a department's use of deadly force policy).
- A just and reasonable settlement of the dispute may result more quickly than in litigation.
- The residue of anger and bitterness that often follows court orders is less likely to occur when a mutually agreed-upon settlement is reached.
- There are substantial financial savings to both parties.

¹⁹It should also be noted that police brutality cases are very complex and time consuming to litigate. According to Assistant Attorney General for Civil Rights, Drew S. Days III, it takes about one year on the average to take a typical police brutality prosecution from receipt of complaint through trial.

In the past several years, CRS has noted a steady increase in the number of complaints it receives from minorities alleging use of excessive force by the police. A comparison of the first 6 months of fiscal years 1979 and 1980 reveals an increase of 142 percent in CRS cases involving allegations of excessive use of force by the police.

Unfortunately, CRS is very limited in both staff and resources. At the present time, CRS employs a total staff of 111 divided among the Washington, 10 regional, and 4 temporary offices. Its budget for FY 1980 is just under \$5 million.

The Commission recommends that:

- **The President and Congress urgently address the need for the services of the CRS and provide for an expansion of its staff and resources so that the important work it is doing in mediating police-citizen conflicts can be extended.**

During the course of the police project, the Commission has noted the lack of any reliable national-level (and in some cases local-level) source of information about police-citizen assaults and shootings. While the uniform crime reports of the Federal Government contain information regarding assaults on and shootings of law enforcement officers, no corresponding information is reported regarding similar conduct by police.

The Commission agrees with other commentators that the existence of a national-level source of information in this area is necessary so that governmental units and police departments alike can objectively evaluate their statutes, policies, practices, and procedures regarding use of excessive and deadly force by law enforcement officers. Learning of the experience of other communities should assist in the development of new policies by police departments. Should a police chief face resistance to a new policy, he or she can possibly point to its successful implementation in other communities, in an effort to overcome this resistance.

The Commission recommends that:

- **The Federal Bureau of Investigation be directed to collect, compile, and make available statistics and information regarding assaults on and shootings of civilians by law enforcement officers. These data should be reported and analyzed by city, circumstances, and characteristics of the parties involved. In order that this information be useful, police departments must keep accurate internal records and use standard classifications and terminology.**

II. STATE AND LOCAL ISSUES

As a result of our studies and hearings, we believe that leaders from both the public and private sectors in our communities should play a major role in setting the communities' goals in the area of the administration of justice. In some communities broadly based coalitions that could undertake such leadership already exist; in others they would have to be brought into existence. Such coalitions should also play a continuous and significant role in developing support for programs designed to achieve these goals. In far too many cases administration of justice is considered to be the sole responsibility of a few appointed or elected officials and is not looked upon as a community-wide responsibility.

Here, based on our studies, are some of the areas that we believe should be included in any overall plan for strengthening administration of justice within a community.

Selection and Training of Police Officers

1. Major emphasis must be placed on the selection and training of police officers.

Selection and training methods are topics of vital concern to those attempting to influence police practices. These processes offer the opportunity to identify and select individuals who are best equipped to perform in the police role and to assure that they possess the skills and sensitivity conducive to effective service before they enter the closely-knit police culture. These processes also offer the opportunity to identify, select, and train the persons who are in or will be promoted to positions of leadership in the department. Fundamental to a successful police department are the sensitivity, responsibility, and training of such persons. A class of new recruits, carefully chosen and thoughtfully trained, can act as a catalyst for changes within the existing police force. Budgetary restrictions currently facing many cities, however, will in many cases reduce the number of new officers hired, making inservice training of current officers even more important.

2. A police force must reflect the racial and ethnic composition of the community it serves.

The Commission has frequently called upon law enforcement officials to work toward developing a police force that is reflective of the racial and

ethnic composition of the community it serves, including persons who can speak the major languages spoken in the community. Nearly all police departments continue to fall far short of that goal, however. While many departments have now begun actively recruiting minority and female applicants, such recruitment efforts will be ineffective unless the department leadership clearly demonstrates that it is working to eliminate police officer discrimination against members of the minority communities. A department must also demonstrate that minority and female officers will be fairly treated in matters of assignment, pay, and advancement. As credibility is pursued, the department should undertake an aggressive recruitment effort in accordance with the minority recruitment standards of the National Advisory Commission on Criminal Justice Standards and Goals.²⁰

Even the most diverse group of applicants will fail to produce a diverse class of recruits if the department's selection instruments and requirements disproportionately disqualify minority and female applicants. Written examinations must be revised to ensure job-relatedness, and other prerequisites must be scrutinized to determine their relevance to adequate performance on the job.²¹

The relative importance of entry-level recruitment programs will decrease as some departments attempt to deal with the financial crisis facing many municipalities. Additional efforts must, therefore, be made to retain and promote minority and female officers already on the force. If layoffs or reductions in force are contemplated, the department must assure that any progress already made toward obtaining a representative police force is not wiped out by losing the recently hired minority and female personnel.

The Commission and others have noted that many police recruits enter law enforcement careers with significant misperceptions about police work.²² They are often surprised to find that a major portion of a police officer's time is expended on administrative and service-oriented tasks that bear no resemblance to high-speed auto chases and shootouts portrayed in motion pictures and on television. It is, therefore, important that police agencies stress the service role of the police during recruitment and training to prepare the new officer to assume the actual duties of the job.

²⁰National Advisory Commission on Criminal Justice Standards and Goals, *Police* (1973) (hereafter cited as NAC), p. 329.

²¹For example, recent studies have shown that height requirements which disproportionately excluded some minorities and women are actually unrelated to a police officer's ability to perform effectively. White and Bloch, *Police Officer Height and Selected Aspects of Performance* (Police Foundation and International Association of Chiefs of Police in cooperation with the Urban Institute, 1975).

²²Herman Goldstein, *Policing a Free Society* (Cambridge, Mass.: Ballinger, 1977), p. 24.

3. Civil service rules and collective bargaining agreements that unreasonably restrict the chief police executive's authority to discipline or dismiss violence-prone officers should be revised in light of the overriding public interest in safe and professional law enforcement.

Such an objective can be achieved without depriving the police officer of the due process designed to protect him or her from arbitrary and capricious action. Police agencies should devise a management information system that reliably identifies both problem officers and supervisors as well as administrative inadequacies that appear to foster unnecessary violence. The system should, at a minimum, keep records, by individual officers, of civilian complaints; officer or civilian injuries; reports of assault on an officer, resisting arrest, or disorderly conduct; firearms discharges; and supervisory evaluations.²³ When an officer's record indicates a problem, he or she should be reassigned to a nonsensitive position until steps are taken to evaluate the problem and to counsel, retrain, discipline, or dismiss, as appropriate.

4. Training of police officers must be based on the development of clear, consistently enforced, written policies and support from department leadership.

While officer training has received increasing attention in recent years, the Commission believes that training must go hand in hand with the development of clear, consistently enforced, written policies and support from department leadership. The chief police executive must, of course, ensure that the training offered is given by professional and effective instructors who are aware of modern teaching methods, that class size and number of hours are conducive to learning, and that adequate support services are made available. Most important, however, the training must accurately reflect department policy and prepare officers for the problems they will actually face on duty.

Training in human relations, conflict resolution, and minority cultures and languages should be offered to prepare the recruit to deal with a pluralistic constituency. An ability to communicate with persons whose backgrounds and languages differ from those of the officer not only increases the rapport between officers and civilians who can provide help and information, but decreases the chance that conflict will develop due to

²³Such "early warning" systems were studied and recommended by the Police Foundation. Catherine Milton, Jeanne Halleck, James Lardner, and Gary Albrecht, *Police Use of Deadly Force* (Washington, D.C.: The Police Foundation, 1977) (hereafter cited as Police Foundation), pp. 94-98, 140.

misinterpretation. Neglect of this area feeds a general attitude of isolation and prejudice among officers.

Following completion of preliminary training, all officers should enter a probationary work period to ease the transition from the formal instruction of the police academy to actual duty. During this period, which should last several months,²⁴ the new recruit should be closely supervised and coached by specially trained officers who evaluate the recruit's progress at frequent intervals. Further training in certain problem areas may be necessary. Such a program will help to guarantee that the new officer does not dismiss formal training in departmental policies as "just talk" once he or she confronts the realities of police work.

Police departments should operate a varied and creative inservice training program to reinforce and further develop officers' understanding of laws and policies and communications skills. The department should operate a counseling or referral service for officers seeking assistance in handling job- and home-related stress. Such a counseling program should be free to the officer, and the department leadership should encourage all officers to partake of its services without stigma.

Frequent seminars on police-community cooperation should be arranged utilizing resources from the community. These forums should maximize the opportunity for frank exchange between community leaders and police officers.

Police Use of Deadly Force

Police practices and laws governing the use of deadly force must reflect concern for safeguarding the lives of officers, bystanders, and suspects.

One of the most important areas in which police officers should receive extensive instruction is the appropriate use of firearms and other weapons. This instruction should be based on a written departmental policy on the use of deadly force that preferably has the approval of both the executive and legislative bodies of the jurisdiction in question.

In the absence of a definitive departmental policy, the applicable State law governs the circumstances under which an officer may use deadly force. Several States have enacted "fleeing felon" statutes that typically authorize a police officer to use whatever force he or she believes necessary, including deadly force, in order to apprehend an individual suspected of committing a felony. These statutes have been widely, and we think pro-

²⁴The National Advisory Commission on Criminal Justice Standards and Goals recommends a 4-month field training program. NAC, 396.