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# Police Use of Firearms in West Virginia--An Empirical Study

James R. Keegan

*West Virginia University College of Law*

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## Police Use of Firearms in West Virginia — An Empirical Study

In its study of crime and law enforcement in the United States, the President's Commission on Law Enforcement and Administration of Justice found it "surprising and alarming that few police departments provide their officers with careful instruction on the circumstances under which the use of a firearm is permissible."<sup>1</sup> This failure on the part of police administrators leaves the uninformed patrolman, charged with the day to day duty of law enforcement, subject to civil and criminal liability for the wrongful use of his weapon.<sup>2</sup> It also needlessly exposed the innocent bystander to death or grievous bodily harm.

To discover the extent of this problem in West Virginia, a survey was made of the four major levels of police in the state: The state police, the county sheriffs and deputies, the city police, and the constables.<sup>3</sup> The police departments of Pittsburgh and Philadelphia, Pennsylvania, were also consulted to obtain comparative data.<sup>4</sup> The survey sought to determine what firearm policies exist and to elicit opinions on those policies. It also sought information on the need to codify such policies. Some of the areas surveyed included shooting at those fleeing from minor felonies; using warning shots; shooting at or from a moving vehicle; filing a written report when a firearm is discharged on duty; wearing of firearms off-duty; and employing a substitute for the lethal weapon.<sup>5</sup> Commentators feel that by formulating

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<sup>1</sup> PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE POLICE 189 (1967) [hereinafter cited as TASK FORCE, THE POLICE].

<sup>2</sup> W. VA. CODE ch. 61, art. 7, § 1 (Michie 1966) prohibits anyone from carrying a dangerous weapon without a license. Section 5 exempts sheriffs, their deputies, constables, all regularly appointed police officers, members of the department of public safety and certain others,

who shall have given bond in the penalty of not less than three thousand five hundred dollars, conditioned for the faithful performance of their respective duties, which said officers shall be liable upon their said official bonds, for the damages done by the unlawful or careless use of any such weapon or weapons, whether such bond is so conditioned or not.

*Id.* § 5. Cases where the officer was sued on his official bond are collected at note 36, *infra*.

For criminal liability *see, e.g.*, State v. Boggs, 87 W. Va. 738, 106 S.E. 47 (1921).

<sup>3</sup> See Appendices A-1, A-2, and B, *infra*.

<sup>4</sup> The police department of Philadelphia, Pennsylvania, provided a copy of their firearms training manual but was not interviewed.

<sup>5</sup> *See generally* TASK FORCE, THE POLICE, *supra* note 1, at 189-90; Safer, *Deadly Weapons in the Hands of Police Officers, On Duty and Off Duty*,

and enforcing clear policies in these areas the police will avoid many tragic incidents that stifle police-community relations.<sup>6</sup>

The survey assumed the form of telephone interviews with various officers and chiefs in the departments. Selection of participants was made at random and attempted to secure a representative state-wide geographic sample. Additionally, an effort was made to ascertain the effect of department size (in the case of county sheriffs, city police, and state police) and years of experience (in the case of constables) on the firearms policy. A total of forty agencies were interviewed. Each representative was initially told the purpose of the interview and then was asked a series of questions designed to ascertain his department's policies on the use of firearms.<sup>7</sup> When the question was avoided or misunderstood, it was paraphrased and repeated. Participants were urged to give a definite answer to questions involving personal opinion.<sup>8</sup>

#### I. THE USE OF DEADLY FORCE BY POLICE OFFICERS: THE WEST VIRGINIA LAW

Intra-departmental policies on gun use should be well within the law and cover all circumstances in which an officer will be called upon to use his weapon. This need will most often arise in an arrest situation when the suspect is either fleeing or resisting arrest. Justification for using deadly force will vary depending upon whether the arrest is for a misdemeanor or a felony, with or without a warrant, legal or illegal, and whether the suspect is fleeing or resisting.<sup>9</sup> In West Virginia the authority to make arrests is primarily governed by statute. Sheriffs and deputies may arrest within their counties for any crime for which they have a warrant or for any criminal act, felony or misdemeanor, committed in their presence.<sup>10</sup> Similar authority has

49 J. URBAN L. 565 (1972) [hereinafter cited as Safer]; MODEL PENAL CODE § 3.07, Comment (Tent. Draft No. 8, 1958).

<sup>6</sup> See note 5, *supra*.

<sup>7</sup> The questions asked appear in Appendices A-1 and A-2, *infra*.

<sup>8</sup> The cooperation of the various agencies was most appreciated. In only one of forty interviews did the officer refuse to participate. This response belied critical comments regarding the attitude of the police to such inquiries. "Police regard the critical questioner as ignorant, malicious, or subversive — period." Germann, *Changing the Police — The Impossible Dream?*, 62 J. CRIM. L.C. & P.S. 416 (1971).

<sup>9</sup> For more thorough discussion see R. PERKINS, CRIMINAL LAW 977-86 (2d ed. 1969); Lugar, *Arrest Without a Warrant in West Virginia*, 48 W. VA. L.Q. 207 (1942); Moreland, *The Use of Force in Affecting or Resisting Arrest*, 33 NEB. L. REV. 408 (1954); Note, *Justification for the Use of Force in the Criminal Law*, 13 STAN. L. REV. 566 (1961).

<sup>10</sup> W. VA. CODE ch. 62, art. 10, § 9 (Michie 1966). "In the presence of

been given to municipal police,<sup>11</sup> members of the department of public safety (state police),<sup>12</sup> and to a lesser extent, constables.<sup>13</sup> Officers may also arrest when they have reasonable grounds to believe the suspect committed a felony, whether a felony, in fact, was committed.<sup>14</sup> If the arrest is outside these limitations and is illegal, West Virginia has recognized the right of the suspect to resist with proportionate force.<sup>15</sup> In all other cases, he must submit to the officer. The officer is expected to accomplish the arrest promptly and may be the aggressor in order to do so. If resistance is encountered, he may use that amount of force necessary to overcome the resistance.<sup>16</sup> Should the resistance amount to a threat to the officer's life, the officer is afforded the right of self-defense with no duty to retreat. Although he may take the life of the offender, the officer must have reasonable grounds to believe he is in danger of great bodily harm.<sup>17</sup>

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the officer" has evolved into a term of art. The West Virginia Supreme Court of Appeals has interpreted it to mean that the officer must detect the crime through one of his senses. *See, e.g., State ex rel. Verdis v. Fidelity & Cas. Co.*, 120 W. Va. 593, 199 S.E. 884 (1938) (sale of beer to an intoxicated person in the actual presence of a constable or very near the time the constable entered the premises, held to be within the presence of the constable); *State v. Koil*, 103 W. Va. 19, 136 S.E. 510 (1927) (officer observed suspect carrying a sack, ordered him to stop, and defendant said "you got me," held no crime committed in the presence of the officer); *State v. Lutz*, 85 W. Va. 330, 101 S.E. 434 (1919) (admission by suspect that he was carrying three pints of whiskey after inquiry by police, held not an offense committed in the presence of the officer).

<sup>11</sup> W. VA. CODE ch. 8, art. 14, § 3 (Michie 1969 replacement volume).

<sup>12</sup> W. VA. CODE ch. 15, art. 2, § 11 (Michie 1972 replacement volume).

<sup>13</sup> W. VA. CODE ch. 50, art. 18, § 2 (Michie 1966). A constable's authority to arrest is more limited than the other branches. He may arrest without a warrant for a misdemeanor committed in his presence only if the offense is within the jurisdiction of his justice of the peace or if the offense is one enumerated in W. VA. CODE ch. 62, art. 10, § 6 (Michie 1966). *See Winters v. Campbell*, 148 W. Va. 710, 137 S.E.2d 188 (1964).

<sup>14</sup> *McMechen ex rel. Willey v. Fidelity and Cas. Co.*, 145 W. Va. 660, 116 S.E.2d 388 (1960); *State ex rel. Brown v. Spangler*, 120 W. Va. 72, 197 S.E. 360 (1938); *Allen v. Lopinsky*, 81 W. Va. 13, 94 S.E. 369 (1917). *See also Lugar, Arrest Without a Warrant in West Virginia*, 48 W. VA. L.Q. 207 (1942).

<sup>15</sup> *State v. Gum*, 68 W. Va. 105, 69 S.E. 463 (1910). There is a developing trend that a citizen may never resist arrest by one whom he knows is a police officer; if the arrest is wrongful, the citizen is left to rely on various tort remedies. MODEL PENAL CODE § 3.04, Comment (Tent. Draft No. 8, 1958); UNIFORM ARREST ACT § 5 (a copy of the act may be found in Warner, *The Uniform Arrest Act*, 28 VA. L. REV. 315, 343-47 (1942)). It is doubtful that West Virginia would follow this trend, however, in light of *Gum*. 68 W. VA. L. REV. 353 (1966).

<sup>16</sup> *State v. Reppert*, 132 W. Va. 675, 52 S.E.2d 820 (1949); *Nutter Fort ex rel. Queen v. Corbin*, 119 W. Va. 324, 193 S.E. 560 (1937); *State v. Wisengoff*, 85 W. Va. 271, 101 S.E. 450 (1919).

<sup>17</sup> *State v. Stalaker*, 138 W. Va. 30, 76 S.E.2d 906 (1953); *Nutter Fort ex rel. Queen v. Corbin*, 119 W. Va. 324, 193 S.E. 560 (1937); *State v. Murphy*, 106 W. Va. 216, 145 S.E. 275 (1928); *State v. Stockton*, 97 W. Va. 46, 124 S.E. 509 (1924).

The West Virginia court has declared that the law affords the arresting officer a "special protection", something more than the ordinary right of self-defense.<sup>18</sup>

An officer in the performance of his duty as such stands on an entirely different footing from an individual. He is a minister of justice, and entitled to the peculiar protections of the law. Without submission to his authority there is no security; and anarchy reigns supreme. He must of necessity be the aggressor, and the law affords him special protection. In his capacity as an individual he may take advantage of the "first law of nature", and defend himself against assault; as an officer he has an affirmative duty to perform, and in the performance thereof he should, as long as he keeps within due bounds, be protected; sentimentalism should not go so far as to obstruct the due administration of the law, and brute force should not be permitted to obstruct the wheels of justice.<sup>19</sup>

A precise delineation of this "special protection" has not been advanced.

The court has said that the officer is presumed to use good faith in the amount of force he exercises,<sup>20</sup> but he still may use no more force than is necessary to accomplish the arrest.<sup>21</sup> The effect of this presumption is uncertain. It apparently leaves the burden on the prosecution to show that the amount of force used (most commonly the shooting) was unwarranted. Yet the courts have also recognized, in several civil suits, that the discharge of a firearm, even by an officer, creates a presumption of negligence.<sup>22</sup> In most cases of improper use of force by a police officer, whether civil or criminal, the same tests are used to establish liability or innocence, and precedents are frequently used interchangeably.<sup>23</sup> The court has not dealt with the net effect of these apparently conflicting presumptions.

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<sup>18</sup> *State v. Reppert*, 132 W. Va. 675, 52 S.E.2d 820 (1949); *State ex rel. Ashworth v. Bibb*, 114 W. Va. 215, 171 S.E. 414 (1933); *Charleston ex rel. Peck v. Dawson*, 90 W. Va. 150, 110 S.E. 551 (1922).

<sup>19</sup> *State v. Stockton*, 97 W. Va. 46, 52, 124 S.E. 509, 511-12 (1924).

<sup>20</sup> *State ex rel. Bumgarner v. Sims*, 139 W. Va. 92, 79 S.E.2d 277 (1953); *State ex rel. Mullins v. McClung*, 123 W. Va. 682, 17 S.E. 621 (1941); *Barboursville ex rel. Bates v. Taylor*, 115 W. Va. 4, 174 S.E. 485 (1934).

<sup>21</sup> *Reynolds v. Griffith*, 126 W. Va. 766, 770, 30 S.E.2d 81, 83 (1944).

<sup>22</sup> *State ex rel. Ashworth v. Bibb*, 114 W. Va. 215, 171 S.E. 414 (1933); *Charleston ex rel. Peck v. Dawson*, 90 W. Va. 150, 110 S.E. 551 (1922).

<sup>23</sup> Note, *The Civil Liability of Peace Officers for Wounding or Killing*, 28 U. Cln. L. Rev. 488 n.1 (1959).

In any event, the appraisal of whether the force was reasonable must be made in light of the circumstances as the officer saw them,<sup>24</sup> and is one peculiarly for jury determination.<sup>25</sup> Tests the jury might employ in making their appraisal include alternative courses of conduct, physical disparities between the officer and the suspect, weapons available to the suspect, and the nature of the resistance.<sup>26</sup>

In applying force, the officer must distinguish between flight and resistance where the offender is a misdemeanor. If the individual to be apprehended is a felon and there is no other way to make the arrest, the officer may justifiably take his life.<sup>27</sup> Similarly, where the misdemeanor resists and such resistance amounts to a threat on the officer's life, the officer may avail himself of his right to self-defense. Where the misdemeanor is merely fleeing to avoid arrest however, the

<sup>24</sup> *State v. Reppert*, 132 W. Va. 675, 52 S.E.2d 820 (1949); *Thompson v. Norfolk & W. Ry.*, 116 W. Va. 705, 182 S.E. 880 (1935); *Barboursville ex rel. Bates v. Taylor*, 115 W. Va. 4, 174 S.E. 485 (1934).

<sup>25</sup> *State ex rel. Bumgarner v. Sims*, 139 W. Va. 92, 79 S.E.2d 277 (1953); *State v. Stalnaker*, 138 W. Va. 30, 76 S.E.2d 906 (1953); *State ex rel. Mullins v. McClung*, 123 W. Va. 682, 17 S.E.2d 621 (1941); *Barboursville v. Taylor*, 115 W. Va. 4, 174 S.E. 485 (1934). *But see* *Thompson v. Norfolk & W. Ry.*, 116 W. Va. 705, 182 S.E. 880 (1935), where the court reversed a jury finding that the defendant police officer had acted negligently. "The fact that some officers have overstepped their authority and that instances have occurred where officers have needlessly taken human life is no reason why the courts should deny to all officers the protection of the rules which experience has shown to be essential to the proper performance of their duties." *Id.* at 712, 182 S.E. at 884.

<sup>26</sup> Greenstone, *Liability of Police Officers for Misuse of Their Weapons*, 16 CLEV.-MAR. L. REV. 397, 403 (1967).

<sup>27</sup> *Thompson v. Norfolk & W. Ry.*, 116 W. Va. 705, 182 S.E. 880 (1935). There is some question whether the officer needs only a reasonable belief that the suspect is a felon to be justified in shooting or whether the suspect must in fact be one. Both the common law and the weight of authority in the United States hold that only a reasonable belief is necessary. R. PERKINS, *CRIMINAL LAW* 982-83 (2d ed. 1969). West Virginia has held that an officer may arrest a suspect on reasonable belief and not incur liability, even though no crime has been committed. *McMechen ex rel. Willey v. Fidelity & Cas. Co.*, 145 W. Va. 660, 116 S.E.2d 388 (1960); *State v. Spangler*, 120 W. Va. 72, 197 S.E. 360 (1938). Yet West Virginia has also held an officer liable on his bond despite his reasonable belief that the victim was a felon. "We cannot appraise the capture of a supposed felon above the preservation of the innocent." *State ex rel. Ratliff v. Day*, 120 W. Va. 412, 414, 198 S.E. 609, 610 (1938); *State ex rel. Bumgarner v. Sims*, 139 W. Va. 92, 79 S.E.2d 277 (1953). This unsettled aspect of the law makes some police procedures questionable. *See, e.g.*, *Huntington Police Dep't Gen. Order 67-25, Discharge of Firearms*, § III A. 5 (1967) [hereinafter cited as *Huntington Gen. O.*]: "Firearms may be discharged . . . [w]hen necessary to effect the capture of or prevent the escape or rescue of a person whom the member has reasonable cause to believe has committed a felony. . . ." (emphasis added). The better advice to officers would be, "don't use your gun if you are in doubt as to whether you are shooting at the right man." W. LORENSEN, *MANUAL FOR WEST VIRGINIA LAW ENFORCEMENT OFFICERS* 35 (rev'd ed. 1972).

officer is obliged to let him escape rather than resort to deadly force.<sup>28</sup> The judicial attitude has been that the sanctity of human life far outweighs the need to apprehend in such cases.<sup>29</sup> The resistance-escape distinction is also important in situations where the officer is killed. If the officer in attempting to make a lawful arrest is killed by the suspect, the crime is murder. If, however, the suspect is seeking to flee and the officer is killed by an act not intended to cause great bodily harm, malice cannot be inferred, and the crime is manslaughter.<sup>30</sup>

In summary, the officer is protected only where his arrest complies with the arrest statutes and is otherwise legal. He enjoys a "special protection" and a presumption of good faith. He may use that amount of force necessary to accomplish the arrest; the permissible amount of force is a function of the type of crime involved and type of resistance offered. Note that the officer must satisfy two tests: His arrest must have been lawful, and the amount of force used must not have been excessive.<sup>31</sup>

## II. ANALYSIS OF QUESTIONNAIRE AND SURVEY

### A. Written Firearms Policies and Training

With the exception of the state police, the presence of written departmental regulations governing the use of firearms is a function of the size of the department. All of the departments in cities having populations of over 50,000 have such instructions. Of the other thirty-seven agencies interviewed, only two cities, both in the 25-50,000 range, have written regulations.<sup>32</sup>

The amount of training the personnel receive is also proportional to the size of the departments. Of the fourteen largest West Virginia departments surveyed, twelve require new recruits to undergo formal

<sup>28</sup> Nutter Fort *ex rel.* Queen v. Corbin, 119 W. Va. 324, 193 S.E. 560 (1937); Princeton *ex rel.* Barber v. Fidelity & Cas. Co., 118 W. Va. 89, 188 S.E. 757 (1936); State *ex rel.* Vandevender v. Cunningham, 113 W. Va. 244, 167 S.E. 595 (1933); State v. Boggs, 87 W. Va. 738, 106 S.E. 47 (1921).

<sup>29</sup> R. PERKINS, CRIMINAL LAW 981 (2d. ed. 1969).

<sup>30</sup> State v. Wisengoff, 85 W. Va. 271, 101 S.E. 450 (1919).

<sup>31</sup> The fear has been expressed that courts, which rely exclusively on arrest statutes to define the privilege to use force, neglect limitations in the law of justification. Such courts could find an officer who uses deadly force to arrest a misdemeanant innocent of any wrongdoing, solely on the ground that the arrest was lawful, never reaching the question of whether the amount of force was reasonable. See Note, *Justification for the Use of Force in the Criminal Law*, 13 STAN. L. REV. 566, 605 (1961). West Virginia has recognized and preserved the double aspect of the privilege. See, e.g., Reynolds v. Griffith, 126 W. Va. 766, 770, 30 S.E.2d 81, 83 (1944).

<sup>32</sup> See Appendix B, *infra*.

training courses of at least ten weeks.<sup>33</sup> (It was assumed that any formal police training would encompass detailed instruction in the use of firearms.) Only one of the fourteen largest departments does not require any institutionalized training. The police in the smaller towns and counties, and the constables are less adequately trained. Of twenty-five small units, only nine have received formal police training. Many acknowledged their deficiencies and expressed a desire for more training, but pointed to problems of insufficient staffs, the economic necessity of outside employment,<sup>34</sup> conflicts with such employment, and the lack of funds.<sup>35</sup> Most of those receiving "some" training obtained it either in the military or in association with another law enforcement agency. Two of the ten constables interviewed had invested their own time and money to obtain eighty hours of vocational police training.

It is interesting to compare the amount of training each agency receives with the type of law enforcement officers historically involved in the questionable use of a firearm. A study of twenty-three West Virginia cases involving twenty-two separate incidents in which a firearm was discharged or misused by an officer indicated the following officers to be involved: Seven small town policemen, six constables, five county sheriff's departments, two state police officers, two large city officers, one railroad policeman, one game warden, and one prison guard.<sup>36</sup> It seems fair to conclude that those officers from

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<sup>33</sup> All West Virginia counties having a population of at least 25,000 are required to be under civil service. W. VA. CODE ch. 7, art. 14, § 1 (Michie Supp. 1972). All new deputies in such counties are required to undergo a training program approved by the Governor's Committee on Crime, Delinquency and Correction. W. VA. CODE ch. 7, art. 14, § 16 (Michie 1969). The program is optional for all other departments. Interview with Kenneth Clark, Governor's Comm. on Crime, Delinquency & Correction, in Morgantown, Aug. 21, 1972.

<sup>34</sup> The great majority of West Virginia police departments in cities having populations of under 10,000 rank in the bottom tenth of salaries paid when compared to cities of similar size in other states. GOVERNOR'S COMM. ON CRIME, DELINQUENCY, AND CORRECTION, COMPREHENSIVE CRIMINAL JUSTICE PLAN 15 (1970).

<sup>35</sup> Presently, the Governor's program consists of a ten week session conducted at the State Police Academy in Institute, West Virginia. The Governor's Committee pays the entire cost, but the employing unit must continue to pay the trainee's salary. Interview with Kenneth Clark, *supra* note 33.

<sup>36</sup> The types of officers involved and the fact situations are as follows: State *ex rel.* Bumgarner v. Sims, 139 W. Va. 92, 79 S.E.2d 277 (1953) (shooting of person mistaken for a fleeing felon by a prison guard); State v. Stalnaker, 138 W. Va. 30, 76 S.E.2d 906 (1953) (shooting of resisting misdemeanant by game warden); State v. Reppert, 132 W. Va. 675, 52 S.E.2d 820 (1949) (shooting of resisting misdemeanant by small town officer); Reynolds v. Griffin, 126 W. Va. 766, 30 S.E.2d 81 (1944) (shooting of fleeing misdemeanant by sheriff's deputy); Booten v. Napier, 121 W. Va. 548, 5



smaller departments, who generally do not have written procedures governing the use of firearms or some sort of formal training, are the most likely to be involved in the questionable use of a firearm.<sup>37</sup> This points to a serious gap in West Virginia's training of law enforcement personnel.<sup>38</sup> While maintaining the level of assistance from the Governor's Committee to large departments, aid must be forthcoming for smaller departments who are apparently in need of training.<sup>39</sup>

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S.E.2d 441 (1939) (shooting of fleeing misdemeanor by sheriff's deputy); State *ex rel.* Ratliff v. Day, 120 W. Va. 412, 198 S.E. 609 (1938) (shooting of person mistaken for fleeing felon by a constable); State *ex rel.* Brown v. Spangler, 120 W. Va. 72, 197 S.E. 360 (1938) (misuse of weapon by small town sergeant in making an arrest without a warrant or probable cause); Nutter Fort *ex rel.* Queen v. Corbin, 119 W. Va. 324, 193 S.E. 560 (1937) (shooting of armed misdemeanor resisting arrest by small town officer); Princeton *ex rel.* Barber v. Fidelity & Cas. Co., 118 W. Va. 89, 188 S.E. 757 (1936) (shooting of fleeing misdemeanants by small town officer and constable); Thompson v. Norfolk & W. Ry., 116 W. Va. 705, 182 S.E. 880 (1935) (shooting of fleeing felons by state police officer and railroad policeman); Barboursville *ex rel.* Bates v. Taylor, 115 W. Va. 4, 174 S.E. 485 (1934) (shooting of tear gas gun by small town policeman into face of misdemeanor resulting in loss of an eye); State *ex rel.* Ashworth v. Bibb, 114 W. Va. 215, 171 S.E. 414 (1933) (attempt to recover against the bond of constable (exact factual situation not determinable)); Mabscott v. Sanders, 114 W. Va. 196, 171 S.E. 410 (1933) (attempt to recover against the bond of a small town sergeant (exact factual situation not determinable)); State *ex rel.* Vandevander v. Cunningham, 113 W. Va. 244, 167 S.E. 595 (1933) (shooting of fleeing misdemeanor by constable having warrant); State v. Murphy, 106 W. Va. 216, 145 S.E. 275 (1928) (shooting of armed misdemeanor while resisting arrest by large county deputy sheriff); State *ex rel.* Cook v. Doss, 102 W. Va. 162, 134 S.E. 749 (1926) (attempt to recover against bond of constable (exact factual situation not determinable)); Hatfield *ex rel.* Justice v. Wyatt, 99 W. Va. 604, 130 S.E. 129 (1925) (attempt to recover against bond of county sheriff's deputy (exact factual situation not determinable)); State *ex rel.* Sonner v. Dean, 98 W. Va. 88, 126 S.E. 411 (1925) (shooting of fleeing misdemeanor by county sheriff's deputy); Charleston *ex rel.* Peck v. Dawson, 97 W. Va. 55, 125 S.E. 234 (1924) (shooting of resisting felon by large city lieutenant); State v. Stockton, 97 W. Va. 46, 124 S.E. 509 (1924) (shooting of resisting misdemeanor by small town justice's deputy); State v. Boggs, 87 W. Va. 738, 106 S.E. 47 (1921) (shooting of fleeing misdemeanor by state police officer); Lester *ex rel.* Richardson v. Trail, 85 W. Va. 386, 101 S.E. 728 (1920) (attempt to recover against bond of small town sergeant (exact factual situation not determinable)); Charleston *ex rel.* Peck v. Dawson, 85 W. Va. 353, 101 S.E. 728 (1920) (shooting of resisting felon by large city lieutenant). While the West Virginia court has not been called on to consider the issue recently, the problem persists. *See, e.g.*, Charleston Gazette, May 14, 1971, at 3, col. 2; Morgantown Dominion News, May 14, 1971, at A-1, cols. 1-4; Morgantown Post, April 13, 1971 at 8-A, col. 6.

<sup>37</sup> Six cases involved the shooting of a fleeing misdemeanor; eight involved overcoming resistance; and two involved the shooting of suspected felons, one of whom was a misdemeanor while the other committed no offense. One case was concerned with the shooting of fleeing felons and in five the factual situation could not be determined. *See* note 36, *supra*.

<sup>38</sup> *See* notes 33, 35, *supra*. While the Governor's Committee eventually hopes to require a training program for all county and municipal police, there are currently no plans for the training of constables. Interview with Kenneth Clark, note 33, *supra*.

<sup>39</sup> Inadequate training of officers has resulted in liability of the employing

## B. Use of a Warning Shot

All three West Virginia city departments found to have written policies on the use of a warning shot are opposed to its use, as is Pittsburgh and Philadelphia.<sup>40</sup> Four of the six department heads interviewed in cities of 25-50,000 population expressed disapproval, but only two constables among the other thirty-one police officials interviewed were opposed to warning shots.<sup>41</sup> The greater danger to bystanders in the urban areas as compared to the rural areas, from both the shot itself and possible ricochets, accounts in part for this difference of opinion. Nevertheless, the West Virginia court has found the failure to fire a warning shot a factor in establishing liability of a police officer for misuse of a weapon.<sup>42</sup> While most commentators have condemned the warning shot,<sup>43</sup> there would seem to be justification for it, especially in rural areas. The possibility that the suspect could be apprehended without shooting to maim or kill would seem to justify the small danger to others created by shooting into the air or soft ground.<sup>44</sup> It should only be used in situations where deadly force is justified, and then only as a last resort before shooting to kill or maim. Absolute prohibition is only warranted in urban areas.

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unit in several jurisdictions. See Greenstone, *Liability of Police Officers for Misuse of Their Weapons*, 16 CLEV.-MAR. L. REV. 397 (1967). In establishing liability, relevant areas of inquiry include amount of training, type of instruction, frequency of target practice, type of printed material disseminated, qualifications of instructors, maintenance of departmental records, amount of continuing education, and methods of selecting officers. Greenstone has found that "courts have little difficulty utilizing lack of training as a satisfactory basis for municipal liability." *Id.* at 411.

<sup>40</sup> See, e.g., Pittsburgh Bureau of Police Rules and Regulations Manual art. 20, § 19 ("A member shall not discharge his firearm as a warning against fleeing felons or other persons."); Huntington Gen. O., *supra* note 27, at B-1 ("Firearms shall not be discharged . . . [a]s a warning."); Philadelphia Police Dep't Training Manual, Pamphlet Ten, at 7 ("A policeman MAY NEVER fire warning shots"); Wheeling Bureau of Police Rules and Regulations, § 141 ("The policeman must not use his revolver except in extreme cases.").

<sup>41</sup> See Appendix B, *infra*.

<sup>42</sup> In *Princeton ex rel. Barber v. Fidelity & Cas. Co.*, 118 W. Va. 89, 188 S.E. 757 (1936), the decedent was shot while attempting to escape from two policemen. The court found the shooting to be unjustified.

In view of the evidence indicating that Newkirk [the officer] had gone only a short distance before firing the shot . . . , the youth of the prisoner, and the fact that Newkirk did not fire a warning, before the fatal shot, we also believe the jury was justified in finding that the shooting of deceased was unnecessary to prevent his escape.

*Id.* at 92-93, 188 S.E. at 758.

<sup>43</sup> See TASK FORCE, THE POLICE, *supra* note 1, at 189: "4. Officers should never use warning shots for any purpose. Warning shots endanger the lives of bystanders, and in addition, may prompt a suspect to return the fire." See also Safer, *supra* note 5, at 572.

<sup>44</sup> The chief of police of one city in the 25-50,000 population range noted, however, that in his twenty-six years of experience he had found warning shots to be "worthless".

## C. Firing At or From a Moving Vehicle

Participants were asked if they have formal policies regarding shooting at or from moving vehicles and if their men would shoot at a fleeing car thief. Only three of the twenty-nine West Virginia police and sheriffs departments surveyed have a formal written policy specifically covering shooting at or from a moving vehicle.<sup>45</sup> Of all the departments surveyed, the Philadelphia police department was the only one that absolutely proscribed it.<sup>46</sup> The others indicated that the justification for such a shooting would depend on the particular circumstances. Only one county sheriff's office, of the fourteen agencies with over ten men, indicated that they or their men would shoot at a fleeing car thief. Three of the ten smaller cities, one of the five smaller counties, and three of the ten constables also responded in the affirmative.

An officer generally may shoot a fleeing felon and incur no liability,<sup>47</sup> but he may be held both civilly<sup>48</sup> and criminally<sup>49</sup> liable for

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<sup>45</sup> See, e.g., Huntington Gen. O., *supra* note 27, at B-2: "Firearms shall not be discharged . . . [a]t moving or fleeing vehicles involved in violations of the Vehicle Code [unless in self-defense or defense of another when all other means have failed]."

<sup>46</sup> Philadelphia Police Dep't Training Manual, Pamphlet Ten, at 5: Policemen must NOT SHOOT at or from moving vehicles, even though the crime and circumstances justify the use of a firearm. We work in a densely populated area which requires exact accuracy of gunfire. When a weapon is fired at or from a moving vehicle the chance of hitting a specific target is not good and you may hit an innocent person.

<sup>47</sup> At common law the shooting of any fleeing felon was justifiable, provided it was reasonably necessary to prevent escape. *Thompson v. Norfolk & W. Ry.*, 116 W. Va. 705, 182 S.E. 880 (1935); R. PERKINS, CRIMINAL LAW 981 (2d ed. 1969). A felony was defined at common law as a crime "occasioning total forfeiture of either land or goods to which capital or other punishment might be superadded according to degree of guilt." BLACK'S LAW DICTIONARY 744 (4th ed. 1951). Eventually death was imposed for all such crimes, and in killing the felon, the officer was merely hastening the inevitable. R. PERKINS, CRIMINAL LAW 981 (2d ed. 1969). In West Virginia the distinction between a felony and misdemeanor still depends on the punishment. W. VA. CODE ch. 61, art. 11, § 1 (Michie 1966). Because the number and types of crimes considered felonies have significantly expanded to include non-dangerous crimes, this simplistic distinction has been widely criticized. See, e.g., MODEL PENAL CODE § 3.07, Comment 3 (Tent. Draft No. 8, 1958); Pearson, *The Right to Kill in Making Arrests*, 28 MICH. L. REV. 957 (1930); Rummel, *The Right of Law Enforcement Officers to Use Deadly Force to Effect an Arrest*, 14 N.Y.L. FORUM 749 (1968); Note, *Legalized Murder of a Fleeing Felon*, 15 VA. L. REV. 582 (1929); 34 N. CAR. L. REV. 122 (1955). Twenty-nine states have enacted various justifiable homicide statutes, preserving or changing the common law in varying degrees. The statutes are collected at Note, *Justifiable Use of Deadly Force By the Police: A Statutory Survey*, 12 WM. & MARY L. REV. 67, 71 n.28 (1970). West Virginia has no such statute, and the West Virginia Supreme Court of Appeals has rejected the dangerous or major felony distinction and retained the common law rule that

shooting a fleeing misdemeanor. Although the survey question asked stipulated that the perpetrator was "stealing" the car,<sup>50</sup> the difference between a felonious stealing and a misdemeanor stealing of an automobile turns on the intent of the thief.<sup>51</sup> Often the perpetrator is a juvenile,<sup>52</sup> and such shootings attract much criticism.<sup>53</sup> Considering the types of crimes usually involving a moving vehicle, the danger to the public both from an errant bullet and an errant vehicle, the small probability of success, and the potential liability of the police, a policy of complete prohibition seems most advisable.

#### D. Alternatives to Deadly Weapons

Twelve of thirteen city police department officials, from West Virginia cities having populations over 2,500, felt something in the nature of a stun gun would be a worthwhile addition to the equipment a policeman carries.<sup>54</sup> Several noted the value of such weapons in riot situations and spoke highly of tear gas and mace as currently used alternatives. Officers in the small city and county departments and the constables were less receptive. Thirteen of twenty did not feel these weapons would be particularly valuable. Interestingly, of the seven who saw merit in the stun gun proposal, five were willing to substitute such a weapon for their firearms, while only one of the larger departments, a sheriff's office, was willing to do so. The two most commonly expressed reasons for the reluctance were that a weapon was necessary for self-defense and that being armed was psychologically important in establishing authority in an arrest situation.<sup>55</sup>

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the officer may justifiably shoot a fleeing felon, regardless of the nature of the felony, if it is necessary to prevent his escape. *Thompson v. Norfolk & W. Ry.* 116 W. Va. 705, 711, 182 S.E. 880, 883 (1935).

<sup>48</sup> See notes 2, 36, *supra*.

<sup>49</sup> See, e.g., *State v. Boggs*, 87 W. Va. 738, 106 S.E. 47 (1921).

<sup>50</sup> See Appendices A-1 question 9, and A-2 question 9, *infra*.

<sup>51</sup> Compare W. VA. CODE ch. 61, art. 3, § 13 (Michie 1966) (making larceny of goods valued over \$50 a felony), with W. VA. CODE ch. 17A, art. 8, § 4 (Michie 1966) (making driving a vehicle without the consent of the owner, with the intent to deprive him of its possession temporarily, a misdemeanor).

<sup>52</sup> A study by the American Civil Liberties Union revealed that one-third of all police shootings involve juveniles. TASK FORCE, *THE POLICE*, *supra* note 1, at 189.

<sup>53</sup> *Id.* See also NEWSWEEK, Aug. 29, 1972, at 28.

<sup>54</sup> See Appendix B, *infra*.

<sup>55</sup> The possibility that the suspect may act more aggressively if confronted with a non-lethal weapon has been recognized by commentators. See, e.g., PRESIDENT'S COMM'N ON CRIME AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 256 (1967). The reticence of the police is understandable as there are currently no effective substitutes available. "The development of modern, nonlethal control equipment has languished because police departments lack the resources for tests and evaluation. . . . [P]rivate

Yet, one small county sheriff whose men go unarmed did not feel the absence of a weapon hindered their performance. Those officers who have employed their firearms within the last year said it was infrequently done.<sup>56</sup> Among all of the constables, representing an aggregate of 111 years in office, there was only one instance when a gun had been fired in the line of duty.

Thus, it would appear that security and psychological factors play larger roles in the officers' attitude toward having a gun than does actual necessity. Nevertheless, until a truly effective non-lethal substitute is found for the deadly firearm, the scattered incidents of abuse<sup>57</sup> do not justify disarming the police.<sup>58</sup>

### E. Special Reporting Requirements

All three departments surveyed in cities with over 50,000 population have institutionalized reporting requirements and procedures in the event a firearm is discharged on duty. Usually a written report is required "as soon as time and circumstances permit."<sup>59</sup> A captain or lieutenant makes an investigation and submits a written report to the chief or superintendent.<sup>60</sup> Three of the six cities in the 25-50,000 population range have such requirements, but of the other thirty-one branches surveyed, only one county department requires a written report. All departments not having written procedures, with the exception of constables, indicated that some report, usually oral, would be made to the chief of police or the county sheriff. Several of the

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industry has been reluctant to invest in research and development of new police equipment." REPORT OF THE NATIONAL ADVISORY COMM'N ON CIVIL DISORDERS 272 (1967).

<sup>56</sup> The head of one urban department felt the topic has received far more attention than it merits. Telephone interview with Lawrence Morris, Chief of Police, Charleston, West Virginia, Aug. 19, 1972.

<sup>57</sup> There is a diversity of opinion on whether abuses are scattered. "When studied objectively and unemotionally, particular uses of firearms by police officers are often unwarranted." TASK FORCE, THE POLICE, *supra* note 1, at 189. However, a study of all police killings of suspects in Philadelphia from 1950 to 1960 concludes that "a close examination of the 32 cases indicates that, with few exceptions, the officers who took the criminals' lives acted as any 'reasonable man' in their position would have." Robin, *Justifiable Homicide by Police Officers*, 54 J. CRIM. L.C. & P.S. 225, 227 (1963).

<sup>58</sup> The experiences with an unarmed police force in England is not generally considered to be applicable to the United States because of differences in mobility, the number of violent crimes, the degree of heterogeneity of the population, and the number of attacks on police. Safer, *supra* note 5, at 574-75.

<sup>59</sup> See, e.g., Pittsburgh Rules Manual art. 20, § 31; Huntington Gen. O., *supra* note 27, at § IV.

<sup>60</sup> See, e.g., Huntington Gen. O., *supra* note 27, at § IV; Pittsburgh Rules Manual art. 20, §§ 33, 34.

constables noted that they too would submit a report to the county sheriff's office.

A written report provides a complete factual accounting of an incident in the event of subsequent litigation. By having an immediate investigation by a superior officer, disciplinary action or vindication can be made within hours of the incident. Additionally, periodic studies of these reports might reveal patterns police should be warned of in training. A mandatory reporting procedure should be implemented at all levels.

#### F. Off-Duty Wearing and Use of Firearms

Of the three West Virginia written policy statements that could be obtained, none specifically dealt with the off-duty use of a firearm, although nine of fourteen large departments interviewed require their men to be armed twenty-four hours a day.<sup>61</sup> This is an area often overlooked or treated insufficiently.<sup>62</sup> The need for clear policies is especially acute because of the danger that an officer may interject himself into a desperate situation unidentified.<sup>63</sup> In West Virginia several innocent people have been shot because the officer was not recognized as such.<sup>64</sup> There is also the possibility that the weapon will be misused by the officer in a domestic quarrel.<sup>65</sup>

Twenty of the forty departments surveyed do not require their men to be armed off-duty.<sup>66</sup> Even departments having the requirement admit it is not evenly enforced, which makes the necessity of such a regulation questionable. While there is some evidence that armed officers, working off-duty as taxi drivers, have reduced the number of robberies,<sup>67</sup> this alone does not justify the burden on police to be armed at all times. The argument is more persuasive for large urban departments than for the departments in West Virginia, but there is no unanimity of opinion even among these larger depart-

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<sup>61</sup> See Appendix B, *infra*.

<sup>62</sup> Safer, *supra* note 5, at 574.

<sup>63</sup> *Id.* at 577.

<sup>64</sup> Examples of wrongful shootings by an officer where he was not identified as such include: *State ex rel. Bumgarner v. Sims*, 139 W. Va. 92, 79 S.E.2d 277 (1953) (plaintiff shot by prison guard who plaintiff thought was an assailant); *Reynolds v. Griffith*, 126 W. Va. 766, 30 S.E.2d 81 (1944) (deputy not in uniform attacked when mistaken for a robber); *State v. Boggs*, 87 W. Va. 738, 106 S.E. 47 (1921) (victim shot while fleeing officers who appeared to be robbers).

<sup>65</sup> Safer, *supra* note 5, at 576.

<sup>66</sup> See Appendix B, *infra*.

<sup>67</sup> Safer, *supra* note 5, at 577 n.47.

ments.<sup>68</sup> The reasons for requiring the wearing of a weapon off-duty do not justify the considerable risks and inconvenience of doing so.<sup>69</sup>

### III. CONCLUSIONS AND RECOMMENDATIONS

Of the thirty-nine West Virginia police units interviewed, only four have written departmental regulations governing the use and discharge of weapons. These proved to be dissimilar, and they contained several questionable policies. Many units receive no formal training or instruction in the use of weapons. This same segment has historically been most often involved in the questionable use of a firearm. Ideally, all officers at all levels should receive the twenty-four weeks of training given to the state police, covering all aspects of police work. This, of course, is neither fiscally nor practically possible. The smaller departments cannot spare their men, nor can they afford to pay men who are away at training. Constables serve an elected term of only four years, and are often concerned primarily with civil matters; the expense involved in their training could not be justified. The more immediate concern of protecting the public and the officer can be served, however, with an explicit and easily understood statement of policies and procedures.

The basic policy must be that firearms are to be used as a last resort, after all other means of apprehension are exhausted. An explicit statement of situations warranting the use of a weapon should be set forth. Self-defense and defense of another should justify the use of a weapon, but only where the failure to act would result in serious bodily harm. Also included should be situations where the officer knows that the suspect has committed murder, arson, rape, robbery, burglary or kidnapping, and there is no other way to effect the arrest.<sup>70</sup> An officer who shoots an innocent person, mistaking him for a felon, may be held at least civilly liable, no matter how reasonable the mistake.<sup>71</sup> To be safe, he must be certain. By limiting deadly force to six heinous crimes several objectives are accomplished. The problem of shooting a fleeing misdemeanant is avoided.<sup>72</sup> Such a regulation reduces the shootings of non-dangerous or minor felons, a

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<sup>68</sup> *Id.* at 578.

<sup>69</sup> *But see* Safer, *supra* note 5, at 576, where the author concludes otherwise.

<sup>70</sup> These crimes have been regarded historically as the major or dangerous felonies. *See* R. PERKINS, CRIMINAL LAW, 983 (2d ed. 1969).

<sup>71</sup> *See* note 27, *supra*.

<sup>72</sup> *See* note 47, *supra* and accompanying text.

step suggested by commentators.<sup>73</sup> A precise statement of six felonies gives an officer making a split-second decision an easily remembered standard, and provides maximum protection. Again, the policy statement should emphasize that shooting is a last resort.

A warning shot provision would be appropriate after considering the areas of self-defense, defense of another, and apprehension of a dangerous felon. Such a shot is permissible only in those circumstances and only in those rural areas where there is no danger to bystanders. In no case should the officer fire more than one warning shot. To be comprehensive, provisions relating to destruction of dangerous animals and target shooting should be added to written regulations.

Regulations should also include circumstances where the firearm may not be used, such as firing at or from a moving vehicle. A necessary but seldom occurring exception would be where an automobile is being used as a weapon. The department should also recommend against carrying a weapon off-duty, except in unusual circumstances.<sup>74</sup>

A reporting requirement in the event a firearm is discharged should be mandatory. The officer should make a written report to the command officer as soon as possible, and in no event later than sixteen hours after the incident to insure promptness. The command officer should then make and file an independent report, and submit both to the superior officer.

As indicated, the regulations need not be prolix to be comprehensive. If it impresses upon the officer that his weapon is a last resort, never to be fired<sup>1</sup> in doubt, it will substantially reduce the number of wrongful police shootings.

*James R. Keegan*

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<sup>73</sup> *Id.*

<sup>74</sup> See notes 61-68, *supra* and accompanying text.



APPENDIX A-1

QUESTIONS ASKED CHIEFS OF CITY POLICE AND COUNTY SHERIFFS

1. How many men do you have in your department?
2. Do your men wear a firearm? If so, what type?
3. What sort of firearms instruction are your men given as to when and under what circumstances they may fire their weapon?
  - a. Are these instructions in writing?
  - b. By whom are they instructed?
  - c. How many hours of formal police training are they given?
4. Have your men had to discharge their firearms often in the line of duty? Within the last year?
5. Do you have any special reporting requirements if a gun is used? Must a special written report be made? What investigation is made?
6. Are there controls or suggestions regarding the use or possession of weapons off-duty? Are these in writing?
7. Does your department have a policy regarding the use of a warning shot?
8. Do you have any policy as regards shooting at or from a moving vehicle?
9. If one of your men observed an individual stealing a car, and that suspect ignored all orders to halt, would he probably or probably not fire at him?
10. There has been some discussion concerning some of the alternatives to deadly force such as a "stun gun" which would stun a man by shooting something in the nature of large rubber bullets, and a tranquilizer gun which would render a man unconscious. Would you recommend this be used in your department as a supplement to a regular firearm?

As a substitute for a regular firearm?

If your department has any written regulations regarding the use of firearms, I would greatly appreciate a copy of such.

APPENDIX A-2

QUESTIONS ASKED CONSTABLES

1. For how many years have you been a constable?
2. Do you carry a weapon? If so, what type?
3. Have you ever received any formal training in its use? If so, where and by whom? Do you have any written instructions concerning its use?
4. Are you required to submit written reports to anyone if you use your weapon in the line of duty?
5. Have you ever had to use your weapon in the line of duty?
6. Do you carry a weapon off-duty?
7. Do you approve or disapprove of the use of a warning shot?
8. Do you have a policy regarding shooting at or from a moving vehicle?
9. If you observed an individual stealing a car, and that suspect ignored all orders to halt, would you probably or probably not fire at him?
10. Some discussion has been made concerning some of the alternatives to deadly force such as a "stun gun" which would stun a man by shooting something in the nature of large rubber bullets, and a tranquilizer gun which would render a man unconscious. Would you recommend this be used in your department as a supplement to a regular firearm?

As a substitute for a regular firearm?

APPENDIX B  
ANALYSIS OF QUESTIONNAIRE  
City Police and County Sheriffs' Departments

	Number of cities surveyed	Size of department (average)	Type of weapon most often used	Weeks of formal general training b	Written instructions on use of firearms	Personnel have fired weapon within last year	Have official policy on use of warning shot	Approve of firing at or from a moving vehicle: have official policy	Approve of c	Men would probably fire at a fleeing car thief	Have policy or controls on off-duty use of a weapon	Suggest or require men to be armed 24 hours	Special reporting requirements if gun discharged	Favor non-lethal weapon as supplement to firearm	Favor non-lethal weapon as substitute for firearm
West Virginia State Police a	1	453	.357 magnum	24	no	N.A.	no	N.A.	no	N.A.	no	yes	no	N.A.	N.A.
<i>City Police</i>															
Pittsburgh City Police	1	1600	.38	16	yes	yes	yes	yes	no	no	yes	no	yes	no	no
Police in West Virginia cities, population 50,000-100,000	2	130	.38	12	yes 2 no 0	yes 2 no 0	yes 2 no 0	yes 2 no 0	yes 0 no 2	yes 0 no 2	yes 2 no 0	yes 2 no 0	yes 2 no 0	yes 2 no 0	yes 2 no 0
Police in West Virginia cities, population 25,000-50,000	6	36	.38	10-4 6-1 some 1	yes 2 no 4	yes 4 no 2	yes 2 no 4	yes 1 no 5	yes 0 no 6	yes 0 no 6	yes 4 no 2	yes 4 no 2	yes 3 no 3	yes 6 no 0	yes 0 no 6
Police in West Virginia cities, population 2,500-10,000	5	6	.38	10-10% some 40% none 50%	yes 0 no 5	yes 2 no 3	yes 0 no 5	yes 0 no 5	yes 0 no 3	yes 2 no 3	yes 0 no 5	yes 2 no 3	yes 0 no 5	yes 4 no 1	yes 0 no 5
Police in West Virginia cities, population under 2,500	5	3	.38	10-0 some 33% none 67%	yes 0 no 5	yes 1 no 4	yes 0 no 5	yes 0 no 5	yes 0 no 5	yes 1 no 4	yes 0 no 5	yes 2 no 3	yes 0 no 5	yes 2 no 3	yes 1 no 4
<i>County Police</i>															
Police in West Virginia counties, population over 25,000	5	13	.357 magnum	10-4 some 1 none 0	yes 0 no 5	yes 1 no 4	yes 0 no 5	yes 1 no 4	yes 0 no 5	yes 1 no 4	yes 0 no 5	yes 2 no 3	yes 1 no 4	yes 4 no 1	yes 0 no 5
Police in West Virginia counties, population under 25,000 f	5	2	.38	10-0 some 1 none 4	yes 0 no 5	yes 0 no 5	yes 0 no 5	yes 0 no 5	yes 0 no 5	yes 1 no 4	yes 0 no 5	yes 1 no 4	yes 0 no 5	yes 2 no 3	yes 2 no 3

APPENDIX B  
ANALYSIS OF QUESTIONNAIRE  
*Constables*

Years as a Constable	Number surveyed	Number who carry weapons	Type of weapon most often used	Have had to fire weapon on duty	Weeks of formal general training	Favor use of warning shot	Would fire at or from a moving vehicle	Would probably fire at a fleeing car thief	Carry weapon off-duty	Favor non-lethal weapon as supplement to a deadly weapon	Favor non-lethal weapon as substitute for a deadly weapon
Over 10	5	5	.38-3 .357-2	yes 0 no 5	10-0 some 2 none 3	favor 4 disfavor 1	circumstantial	yes 2 no 3	yes 3 no 2	favor 2 disfavor 3	favor 2 disfavor 3
Under 10	5	5	.38-5	yes 1 no 4	10-0 some 2 none 3	favor 4 disfavor 1	circumstantial	yes 1 no 4	yes 3 no 2	favor 1 disfavor 4	favor 0 disfavor 5

<sup>a</sup> All information regarding the state police is unofficial. No response could be obtained from either the Superintendent or the state police training facility at Institute, West Virginia.  
<sup>b</sup> Weeks of training encompasses training given new recruits only, and does not include any subsequent training.  
<sup>c</sup> In all instances the officer could envisage some circumstance when shooting at or from a moving vehicle would be warranted.  
<sup>d</sup> Superintendent Coyville indicated that he did not feel such weapons are sufficiently refined at present.  
<sup>e</sup> The figure is based on the number of men who received formal training individually, and not necessarily as a department.  
<sup>f</sup> The members of the county sheriff's office in one county surveyed do not wear a firearm.