

To
Ronald Gaeta and Kenneth Post
for their guidance, encouragement and patience

Violent Transactions

The Limits of Personality

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The Split-Second Syndrome and Other Determinants of Police Violence

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Discussions of police violence are often blurred by the failure to distinguish between violence that is clearly extralegal and abusive and violence that is simply the unnecessary result of police incompetence. This distinction is important because the causes of these two types of violence, and the motivations of the officers involved, vary greatly. Extralegal violence involves the willful and wrongful use of force by officers who knowingly exceed the bounds of their office. Unnecessary violence occurs when well-meaning officers prove incapable of dealing with the situations they encounter without needless or too hasty resort to force.¹

EXTRALEGAL POLICE VIOLENCE

It is tempting but probably simplistic, to conclude that extralegal police violence results exclusively from the aberrations or prejudices of individual officers or their commanders. If this kind of violence were totally – or even primarily – attributable to officers who regard their badges as licenses to vent hostile and anti-social drives, we should be well advised to try to eliminate it by selecting and monitoring officers with greater care.

Certainly, these personnel processes are important, but it is probably useless to rely almost exclusively on them as the strategy for reducing extralegal police violence. First, our skill at predicting human behavior is not highly developed. Except in obviously extreme cases,² it is nearly impossible for personnel administrators to determine which police candidates of officers will eventually engage in extralegal violence. Second, as investigators of police corruption have suggested (City of New York, 1972), it is likely that characteristics of police work and police organizations, rather than characteristics of police officers, are the major determinants of police misconduct.³

Klockars (1980) makes such an argument in his formulation of a police "Dirty Harry Problem". He argues that some police perceive the procedural limitations under which they work as arbitrary barriers to achievement of one of their most important goals: the protection of good folk through the apprehension and conviction of criminals. Such officers operate on a presumption of suspects' guilt, and become frustrated when legal processes result in acquittals of people who have, in fact, committed the crimes of which they have been accused. Subsequently, to serve what they (and much of the public) see as justice, these officers resort to "dirty means" – fabrication of evidence, intimidation and even torture – to circumvent such perceived barriers to justice as judicial exclusion of illegally obtained evidence, and to make sure that their suspects ultimately receive in court what the officers regard as their just due. Even though the actions of such officers may reflect a widely held view that there should be little distinction between factual guilt and legal guilt (Packer, 1968), they involve, Klockars asserts, wrongful moral choices by the officers themselves. The best way, according to Klockars, of preventing such wrongful choices is to punish the individual officers and the police agencies who make and tolerate them.

As Klockars acknowledges, however, his approach to this kind of violence is not entirely satisfactory. To penalize individual officers who have been trained and socialized by their employers to believe that policing cannot be done by the book and that abuse and misconduct are the most effective means of accomplishing police goals is probably unfair and would almost certainly be ineffective. Extralegal police violence is probably more closely attributable to politically expedient, but morally wrong, definitions of appropriate police conduct at the highest levels of police agencies than to the deviance of street-level officers. Thus, a better way to reduce such violence is to alter the organizational expectations and norms to which the officers who commit abuses conform.

For that reason, Klockars is much more persuasive in his suggestion that police *agencies* bear penalties for extralegal violence than in his qualified advocacy of individual punishment. Certainly, officers who apply wrongful definitions to their work may *deserve* to be punished. But such wrongful definitions are likely to survive them and to dictate the behavior of other officers unless their superiors – and the citizens whose taxes ultimately pay for disciplinary measures against the police – learn that the costs of encouraging or tolerating the use of dirty means to achieve good ends are intolerable.

Thus, as the United States Supreme Court indicated in *Monell vs New York City Department of Social Services*,⁴ one way to correct high-level tolerance or encouragement of public officials' misconduct is to make citizens liable for their employees' misdeeds. Implicit in this approach is the theory that

concerned citizens will then demand that officials behave in a manner that is more consistent with both law and their financial interests. But, because the citizenry usually does not comport with this neat theory, this approach is not totally satisfactory either.

Citizens are often apathetic rather than concerned about the operations of their officials, including the police. Many of them simply expect officials to be there when needed, and become concerned only when officials have failed to meet this responsibility, or when they have personally experienced or witnessed what they regard as a grave injustice at the hands of officials. Further, many of the most concerned citizens regard with great distaste and little empathy the people against whom the police employ extralegal violence. The citizens who have the time to devote to civic affairs belong to the middle and upper classes, who rarely are the victims of police abuse; but it is they who sit on the juries that determine whether police have exceeded the bounds of their authority and, if so, whether the citizens – themselves included – should compensate the victims.

There is probably no better way to reform the wrongful behavior of police officers than to hit in the pocket the citizens to whom they are accountable. But this tactic often fails because those same citizens determine whether and how hard their pockets should be hit, and because they often do not regard as peers the victims of police abuse. Consequently, reality demands that more operationally practicable means of reducing extralegal police violence be found.

One such method is simple but rare: the engagement of leaders willing to disabuse the citizenry of their unrealistic expectations of the police. In a democracy, rates of crime, levels of disorder and the safety of "good people" are more closely associated with social conditions than with the number of police or the willingness of the police to employ dirty means to achieve the good ends of order and public safety. Few elected officials or police chiefs, however, are willing to run the risk of appearing to be soft on crime by announcing to apathetic citizens that crime and disorder are *their* problems rather than police problems and that, unless they are willing to give up many of their freedoms, no level of police presence or toughness is likely to improve matters.⁵

Were more mayors and police chiefs willing and courageous enough to do so, the pressures upon them and their personnel to achieve ends that lie beyond their means would dissipate, as would the temptation to bend the rules in attempts to achieve the impossible.⁶ Until we grow a new breed of elected executives and police chiefs who are somehow able to change unrealistic public expectations of the police, however, we will not remove the major source of extralegal police violence, but must expect it to continue, however dissipated by other, less direct, approaches.

INCOMPETENCE AND UNNECESSARY POLICE VIOLENCE

While extralegal police violence is egregious, it probably occurs far less frequently – and probably less frequently injures sympathetic and factually innocent victims – than does police violence emanating from simple incompetence. Such violence occurs when police lack the eloquence to persuade temporarily disturbed persons to give up their weapons, but shoot them instead. It occurs when, instead of pausing to consider and apply less drastic and dramatic alternatives, officers blindly confront armed criminals in the midst of groups of innocent people. It occurs when officers called to quell noisy but non-violent disputes act in a way that provokes disputants to violence to which the police must respond in kind. In short, it occurs when well-meaning police officers lack – or fail to apply – the expertise required to resolve as bloodlessly as possible the problems their work requires them to confront.

Much unnecessary violence occurs because many of us, including many police, have not adequately analysed the role of the police or the problems they confront. Thus, we have not devised adequate solutions to these problems, and have instead settled for a standard of performance from the police that is far below what we should tolerate from other groups.

THE ROLE OF THE POLICE

A common conceptualization is that the police, along with the courts and correctional agencies, are a component of the criminal-justice system. This observation is true but, for two major reasons, it may lead to shallow analysis of the police and their problems. First, the courts (excluding civil courts) and correctional agencies devote their efforts exclusively to crime-related matters, but police officers do not. The clients of court personnel are those who have been charged with or victimized by crime; without exception, they are alleged criminals and their presumed victims. The people with whom the officials of correctional agencies interact most directly are those who are awaiting trial on criminal charges, or those who have been convicted of crime; without exception they are alleged or convicted criminals. But, in addition to bringing the alleged perpetrators and victims of crime to the attention of the courts, police regularly interact with people in circumstances in which criminal behavior is doubtful or clearly absent. The clientele of the police includes participants in minor disputes and traffic accidents, those who are lost and in need of travel directions, those who suffer sudden illness or injury, and many others whose problems have nothing whatever to do with crime, criminal law or criminal justice.

In addition, in many cases in which it is clear that some violation of criminal law has occurred, police possess greater discretion to devise informal and unrecorded dispositions of offenders than is true of any other criminal-justice officials. The police officer who sends a disorderly group of teenagers on their way on the grounds that it is more just – or more convenient – than arresting them may do so in the knowledge that no official record of his encounter with them will appear anywhere. What he does and says in such a case disappears into the ozone and, unlike a court or correctional-agency decision to release, cannot be objectively reconstructed by reference to any transcript or detailed official document.

In large measure, the police officer decides which of the people with whom he interacts shall come to the attention of the courts. He exercises a degree of discretion that is usually unrestricted by the prior decisions of any public official.⁷ He cannot sentence offenders or impose harsh correctional conditions upon them, but he often has the power to choose between letting them go free and initiating a process likely to result in the imposition of penalties by other officials. He also has great power to impose upon his clientele penalties that do not require court agreement with his actions. Should he decide to arrest rather than to release, nothing a prosecutor, judge, defense attorney or correctional-agency official can do is likely to erase that arrest from the police record. Even when he recognizes that conviction is unlikely, the police officer knows that arrest will result in substantial inconvenience and cost.

But, as has been made clear in several attempts to define the police role, the police cannot be comprehensively discussed or understood in terms of their responsibilities to apprehend criminals or to enforce laws. Their job, Wilson (1968) suggests, includes the duty to see that popular conceptions of order are maintained. The police serve to prevent “behavior that either disturbs or threatens to disturb the public peace or that involves face-to-face conflict among two or more persons” (p. 16).

Goldstein (1978) concurs in part, arguing that law enforcement does not describe the role of the police, but instead defines only one of many methods that they may apply to achieve this goal. Bittner (1970) points out another method employed by police to maintain order: the use or threatened use of legitimate force (that is, as approved by both the government and most of the people served by the police) to coerce individuals to behave in accordance with society’s expectations.

Still, the functions of the police are so complex that they are not adequately captured by even the broad “order-maintenance” descriptor. Just as many police tasks have little to do with crime or law, many have little to do with threats to public order, and many involve no coercion or threat or use of force. The police are on duty 24 hours a day, seven days a week, Sundays and holidays included, in order to tackle a variety of problems and crises. These

range from tree-bound cats, through lost children and persons locked out of their homes, to people who have been horribly mangled in automobile accidents. In none of these cases is the quality of police response less critical for those concerned – the mother of a lost child, or the man whose femoral artery has been severed in a car crash – than in cases where the police are required to exercise their law-enforcement and order-maintenance responsibilities.

The breadth of police work is what makes Goldstein's definition of the role of the police the most comprehensive and satisfactory. He observes that

The police function, if viewed in its broadest context, consists of making a diagnostic decision of sorts as to which alternative might be most appropriate in a given case. In this respect the total role of the police differs little from their role in administering first aid to sick and injured persons. (1977, p. 41)

Goldstein is correct. Police officers, like doctors, lawyers, psychologists and marriage counselors, are human-service workers. Like these others, police are paid to diagnose problems that befuddle the rest of us, to treat those within their competence, and to refer to more specialized agencies and officials those problems that they themselves cannot solve. Just as we call upon the doctor to investigate and treat internal complaints not responsive to our own treatment efforts, so we call upon the police to investigate and treat complaints deriving from certain external conditions that we cannot otherwise ameliorate – noisy neighbors, assault or robbery, the injury of a loved one by a hit-and-run driver.

Police officers, however, treat their clients and professional problems under conditions that do not affect most other human-service workers, and that greatly increase the potential for violence. Police-client interactions are uniquely *urgent*, *involuntary* and *public*. Unless we and the police fully appreciate the causal relations between these three conditions and violence, we inadequately diagnose police problems. The result is that we witness and experience violence that need not have occurred.

Urgency of police-citizen encounters

Police are generally unable to select the times at which they will perform their services. They are expected to respond to and resolve our problems *now*, while we routinely agree to wait until two weeks from Thursday to obtain help for our medical and legal dilemmas. In Bittner's terms, the police task consists of resolving problems "*that-ought-not-to-be-happening-now-and-about-which-somebody-had-better-do-something-now*" (1974, p. 30). As a consequence, police usually encounter their clients in circumstances analogous to those faced by hospital emergency-room personnel: they deal with people immediately after their problems have come to light, and must treat not only the

substance of these problems, but also the shock that accompanies their clients' discoveries that suddenly all is not well.

Involuntariness of police-citizen encounters

The constraint of time usually denies police officers the luxury of picking and choosing their clientele from among those deemed in need of police attention, and places great limits on their ability to refer clients and problems to more highly qualified specialists. When we do get to see our family doctor, he may diagnose but decline to treat a problem that he views as most amenable to resolution by a more specialized colleague. But a police officer summoned to a late-night domestic dispute cannot withdraw with a referral to a better trained and more competent officer who does not come on duty until the morning. Regardless of his ineptness, and because his clientele includes the neighbors who cannot sleep because of the noise, he is duty-bound to establish at least temporary peace before he leaves, even if he has to coerce some of his clients to accept his prescriptions.

Therein lies another unique characteristic of police work: many of those who come to police attention do not seek it, but become unwilling clients through the intervention of third parties or of officers themselves. When this happens, just as officers cannot usually decline clients who come to their attention, so their clients cannot withdraw from treatment no matter how distasteful they find it. Given the choice, very few of the clients arrested or brought to book by the police would consent to this form of treatment.

Public setting of police-citizen encounters

Unlike even emergency-room personnel, police officers are unable to choose the places in which they perform their services. The work of police patrol officers occurs not in private offices, but in public settings or other locations in which the problems of their clientele have come to light. As a result, police officers suffer the disadvantage of performing in places in which clients' behavior is not constrained by the formality and decorum of a professional setting and the realization that one is on another's territory. The clientele of the police are governed only by the behavioral rules of the street.

Another consequence of the public setting of police work is that officers must be attentive not only to the immediate problems of the clients they have been summoned to treat, but also to third-party reactions to their efforts. If they are to avoid criticism and even interference from bystanders, police officers summoned to restrain emotionally disturbed or drug-crazed persons on the street must do so in a way that is demonstrably proper and humane.

The police officers' concern with the *appearance* of propriety and humane-

ness is not shared by mental-health professionals who work in residential facilities, or who administer shock therapy to patients in the privacy of their clinics. Nor is it shared by others who must render their services in public places. Ambulance personnel, for example, often perform their work in public, but it rarely involves resolution of disputes or other competing interests, so they need not concern themselves with their audiences' perceptions of their fairness. In addition the work of ambulance personnel usually involves more distastefully gory and less intriguing and public problems than those of the police, so that bystanders watch the proceedings less closely. It is much easier, less nauseating and more interesting to watch the police subdue a street drunk than it is to watch a team of emergency medical technicians treat a man whose leg has been severed in an automobile accident. Finally, the techniques used by ambulance personnel are far more arcane than are those of the police: few bystanders have any experience or expertise in stanching the flow of blood or treating shock, but nearly everybody has attempted to resolve a dispute, calm an unreasonable or unruly person, and seen the ways in which television police subdue suspects. Consequently, few bystanders feel competent to judge or protest the work of ambulance personnel, but many view themselves as qualified to assess the work of the police. As can be seen from cases where riots have been precipitated by bystanders' dissatisfaction with police actions, some are even willing to demonstrate their disagreement violently and immediately.

Police officers must also be acutely aware that the presence of an audience of bystanders may affect their clients' behavior. In some cases, the embarrassment of having one's problems aired in public may cause – or increase – irrational behavior on the part of the client. In others – the crowd encouraging the young man poised to jump from a high roof comes to mind – bystanders may become direct actors in police encounters. In still others, as Muir observes, police respond to street disputes that are “played out on two levels – in the relationship between the two antagonists, and in the relationship of the crowd to the disputants. Police officers have to perceive both levels” (1977, p. 102). Muir describes a situation in which police arrived at a crowded recreation center and found a bat-wielding young man confronting an aide. This case, which superficially appeared to be an attack by an inner-city youth upon an older authority figure could be satisfactorily resolved only if the police took time to learn the antagonists' motivations and the importance of the crowd. Here, the young man suspected that the aide had raped his 13-year-old sister, so that

From the point of view of the brother of the victim of the alleged rape, he was retaliating not only from a desire for retribution but to deter future marauders. . . . The brother was establishing face in the neighborhood, a reputation for dogged revenge; in thrashing his sister's rapist, he was making a harsh example for all the crowd to see. . . . He was publishing his message for those persons that really counted, those who might think they could push his

family around. In the brutish neighborhood he and his family inhabited, the brother was making himself “a man of respect”

In the relationship between the crowd and the brother, the crowd's definition of honorable conduct became crucial. Depending on its expectations of him, his attack on the aide would have different meanings. . . . Anyone who had the talent to influence the crowd's philosophy in this matter could make a great deal of difference to what the brother felt he had to do to establish face. (pp. 102–3)

To summarize, then, a proper analysis of the police role requires acknowledgement of many unique characteristics of the work of street-level officers. Policing is a form of human-service work that requires officers to diagnose the problems they confront, and to decide which of several means of solving them – invoking the law, threatening to invoke the law, employing force or, as in Muir's example, attempting to persuade – is most likely to be successful. The broader discretion available to police officers than to other criminal-justice officials, however, is limited by several constraints unique to policing. There is an urgency about police work that does not affect court or correctional-agency officials or most others whose work involves diagnosis and treatment of human ills. The police cannot select the times or places at which they treat their clientele. They often must do so at odd hours and in very public places. Consequently, if they are to avoid criticism or adverse response by third parties, they must be greatly concerned not only with *doing* the right thing, but also with *appearing* to do the right thing. This compounds the difficulties of police work, because the people they treat are often adversaries rather than individuals who have come to the police for help. The people at the core of police problems often do not agree with police diagnoses of those problems or even that any problem exists. They do not see the police as individuals who have come to help them. Once the police have come, however, neither they nor the police may withdraw until the problem at hand is at least temporarily remedied.

The urgent, involuntary and public relationship between police officer and client creates a high potential for violence. To avert it, police must often apply considerable diagnostic skills, and must learn to manipulate these causal variables in ways that diminish the likelihood that violence will result. If urgency and time constraints sometimes lead to violence, it follows that police should slow the pace of their encounters with citizens so that cooled tempers and the restoration of reason may eventually lead to non-violent outcomes. If involuntariness sometimes leads to violence, it follows that police should attempt to diminish their clients' feelings that something is being done *to* them, by trying to win their confidence and devising problem solutions that at least appear to be collaborative rather than exclusively coercive. If the public settings of police-citizen encounters sometimes lead to violence, it follows that police should inject as much privacy as possible into these encounters.

There is evidence that attempts by police to manipulate time and involuntariness, and to make more private highly volatile encounters between police and citizens, do reduce violence. Recent police efforts to diagnose and plan for hostage situations and situations involving armed and barricaded persons have led to a high rate of bloodless resolution of these situations. The time-manipulative techniques employed in these situations include avoidance and delay of armed confrontation unless it is clear that lives are in imminent danger. Involuntariness is manipulated by trained negotiators who attempt to determine the motives and win the confidence of their subjects, and to convince them that surrender is in their own best interests. Privacy is introduced into these situations by carefully controlling media access to hostage-takers and *vice versa*, and by clearing the public from the immediate areas. These privacy techniques serve the multiple purposes of protecting uninvolved citizens, eliminating the audiences to whom hostage-takers may wish to play, reducing hostage-takers' loss of face at the time of surrender, and eliminating the possibility that the attention of bystanders or the media will encourage hostage-takers or barricaded persons to further rash actions (see, for instance, Schlossberg and Freeman, 1974).

Despite the apparent success of such defusing-techniques, many of us – and many police leaders – often encourage officers to think of themselves as rough and ready men and women of action whose prime function it is to show up quickly at emergencies and to make their diagnoses on the spot. Unless we more strongly encourage officers to develop the requisite diagnostic skills to deal with certain types of situation when they occur, we are likely to witness many more hasty and inaccurate diagnoses and many unnecessarily violent attempts to treat police problems.

POLICE DIAGNOSTIC EXPERTISE

As too many experiences have demonstrated, police often do not attempt diagnosis until they are in the midst of treating critical problems. The 1965 Watts riot began when, despite the violent reaction of a large and growing crowd drawn by the protests of the suspect's mother, two police officers persisted in their attempts to arrest a drunken driver whom they had already identified and could presumably retake later under quieter circumstances. The 1971 Attica prison riot resulted in the deaths of 39 inmates and hostages when New York State police officers, who usually work alone or in small groups in rural areas, were armed with shotguns and armor-piercing rifles and directed to storm and retake the tear-gas-filled, heavily-walled yard of a maximum-security prison inhabited largely by inner-city convicts. A block in Philadelphia burned down in 1985 when, in an attempt to evict a radical group, a police helicopter dropped onto the roof of an adjoining wooden

house an incendiary device that had apparently never before been used by police in any field situation.

Looking back, it is easy to say that these decisions should not have been made. It would probably have been wiser for the police in Watts to have retreated, and to have returned to make their arrest in quieter and less public circumstances. In Attica and Philadelphia, continued negotiation or less drastic tactics probably would have better served the fundamental police responsibility to protect life than did the hastily devised tactics that were employed.

THE SPLIT-SECOND SYNDROME

It is difficult to define the factors that led well-meaning officials to make the bad decisions just reviewed, but it appears that they are reflections of what might be called a "split-second syndrome" that affects police decision-making in crises. This syndrome serves both to inhibit the development of greater police diagnostic expertise and to provide after-the-fact justification for unnecessary police violence. It also serves as a guide to many of the equally unfortunate low-visibility decisions made by individual police officers every day.

The split-second syndrome is based on several assumptions. First, it assumes that, since no two police problems are precisely alike, there are no principles that may be applied to the diagnosis of specific situations. Thus, no more can be asked of officers than that they respond as quickly as possible to problems, devising the best solutions they can on the spur of the moment. This, of course, places an extraordinary burden upon officers, who must make life-or-death decisions under the most stressful and time-constrained conditions.

Second, because of these stresses and time constraints, a high percentage of inappropriate decisions should be expected, but any subsequent criticism of officers' decisions – especially by those outside the police, who can have no real appreciation of the burdens upon officers – is an unwarranted attempt to be wise after the event. Thus, if we are to maintain a police service whose members are decisive in the crises to which we summon them, we had best learn to live with the consequences of the decisions we ask them to make. If we do not, we risk damaging police morale and generating a police service whose members are reluctant to intervene on our behalf.

Finally, the split-second syndrome holds that assessments of the justifiability of police conduct are most appropriately made on the exclusive basis of the perceived exigencies of the moment when a decision had to be taken. So long as a citizen has, intentionally or otherwise, provoked the police at that instant, he, rather than the police, should be viewed as the cause of any

resulting injuries or damage, no matter how excessive the police reaction and no matter how directly police decisions molded the situation that caused those injuries or damages.

Thus, should police receive a report of an armed robbery in a crowded supermarket, they should be granted great leeway in their manner of response, because no two armed-robbery calls are precisely alike. If, in the course of responding, they decide that, to prevent the robber from escaping, the best course of action is to confront him immediately in the midst of a crowd of shoppers, they should not be told they should have acted otherwise. When they do challenge the alleged robber and he suddenly reacts to their calls from behind by turning on them with a shiny object in his hand, the only issue to be decided by those who subsequently review police actions is whether, at that instant, the suspect's actions were sufficiently provocative to justify their shooting him. That is so regardless of how the prior actions of the police may have contributed to their peril; regardless of how predictable it was that the suspect would be alarmed and would turn toward the police when they shouted to him; regardless of how many innocent bystanders were hit by bullets; and regardless of whether the reported armed robber was in fact an unhappy customer who, with pen in hand to complete a check for his purchase, had been engaged in a loud argument with a clerk during which he had said that the store's prices were "robbery".

The underpinning of the split-second syndrome, in short, is the assumption that the sole basis on which any use of force by the police needs to be justified is the officers' perceptions of the circumstances prevailing at the instant when they decide to apply force. The officers involved in the incident described above did, of course, possess much information that would lead them to believe that the subject of their call was a robber. When he turned on them, they were entitled, in the heat of the moment, to believe that their lives were in imminent danger. When they made the split-second decision to pull the trigger, they were also entitled to believe that no less drastic action would adequately protect their lives, so they were fully justified in shooting. Under the split-second syndrome, this shooting was a legitimate use of force under provocation.

But such an analysis lends approval to unnecessary violence, and to failure of the police to meet their highest obligation: the protection of life. Split-second analysis of police action focuses attention on diagnoses and decisions made by the police during one frame of an incident that began when the police became aware that they were likely to confront a violent person or situation. It ignores what went before. As the successful application of hostage techniques illustrates, it also ignores the fact that there are general principles that may be applied by officers to a variety of highly predictable, potentially violent situations.

It requires no great diagnostic ability to determine that the officers

involved made a significant contribution to the bloody finale of the incident described above. Officers who respond to reports of robberies by charging through the front door and confronting suspects from exposed positions are almost certain to find themselves in great danger, real or perceived, and to face split-second decisions involving their lives, the lives of suspects and the lives of bystanders. Thus, instead of asking whether an officer ultimately had to shoot or fight his way out of perilous circumstances, we are better advised to ask whether it was not possible for him to have approached the situation in a way that reduced the risk of bloodshed and increased the chances of a successful and non-violent conclusion.

AVOIDING SPLIT-SECOND DECISIONS

Even though most potentially violent situations encountered by the police are not as clear-cut as the one described in the previous section, opportunities usually do exist for officers to attempt to prevent the potential for violence from being realized. Police are usually assigned to the same geographic areas for long periods, but in my experience they are rarely encouraged to leave their patrol cars when there is little happening and to survey the places in which they might someday be asked to confront potentially violent situations. Were they to do so, they would be able to formulate tentative advance plans for dealing with reported supermarket robberies, warehouse burglaries and the like. Most often, police are directed by radio to scenes of potential violence (Reiss, 1971) and so are usually not on the spot at the time. Thus, even in the few minutes it takes them to get there, they have some opportunity to avoid split-second decisions by analyzing available information and planning their responses in advance of arrival. If they do not, and if they fail to structure their confrontations in a manner that is most likely to avert bloodshed, almost any violence that results is unnecessary, and should be condemned rather than rewarded with headlines, honors and medals.

Two principles, tactical knowledge and concealment, may be useful diagnostic tools in deciding how to deal with potentially violent people and situations.⁸ Tactical knowledge includes prior knowledge of the setting and actors involved. Most often, police officers summoned to potentially violent situations have far less tactical knowledge than is desirable. While they usually know only what they have been told over the radio, any potential adversaries know precisely what is happening, where it is happening and who is involved. Since this places officers at a great disadvantage, it is important that they employ techniques for enhancing their tactical knowledge before committing themselves beyond the point of no return. If they fail to do this, they may easily fall prey to the more knowledgeable violent

subjects of their calls, or may misinterpret the actions of innocent persons – such as the outraged shopper with a pen – in a way that may create violence where none exists. Like the military, they must be expected to learn as much as possible about the settings in which they may have to intervene.

Concealment includes disguising one's intent or identity, as well as employing actual physical cover or shelter. Officers – especially those in uniform – are usually at a disadvantage where this factor is concerned. When they respond to scenes of potential violence (for instance, armed robberies in progress), they are readily identifiable, while the subjects of their calls (the robbers) usually are not. Consequently, officers should employ all possible means of concealing themselves or their presence until the moment of least hazard. Doing so generally involves confronting from positions of concealment subjects who are temporarily without concealment. In the example of the reported supermarket robbery, this might mean that responding officers should avoid losing concealment by actually entering the supermarket, and should instead surreptitiously take up positions of concealment outside it (for instance, behind parked cars) and wait for their suspect to come to them. The military knows that the safest way to confront potential adversaries is to wait for the appropriate moment to ambush them from positions of concealment, but police are often encouraged to charge up hills.

The use of concealment not only minimizes the risk of officers, bystanders and suspects, but may also prevent tragic mistakes. I can recount several occasions in which officers responding to such calls have neglected to seek concealment, have encountered armed individuals from positions of total exposure, have – with some justification – perceived imminent danger to themselves, and have shot persons later found to be plain-clothes police officers or crime victims who had armed themselves to pursue the actual perpetrators. Many of these tragedies might have been avoided if the officers involved had instead confronted these individuals from positions of physical cover. From such positions, officers make themselves near impossible targets, and are able to give their perceived adversaries opportunities to identify themselves or to drop their weapons without placing themselves in jeopardy.

Application of these principles requires that officers diagnose the most critical problems they face – those that may require the use of extreme force – *before* they occur, and that they attempt to apply to their resolution techniques of tactical knowledge and concealment. We demand that from the military and from the fire service, both of which spend considerable time diagnosing and planning for exigencies that we are someday likely to ask them to resolve. We do not tolerate it when their actions in emergency situations demonstrate that they have been taken by surprise and forced to react on the basis of instinct rather of careful advance diagnosis and planning. But, when police resort to forcible means to resolve readily foreseeable problems that could have been peacefully resolved with advance

diagnosis and planning, we not only tolerate but also often reward their behavior. The police officer who shoots and kills an armed robber is often rewarded for his efforts with a medal. Should he instead kill a shopper with a pen, he is likely to be viewed as the unfortunate victim of a shared tragedy who, under the circumstances, had no choice but to take the action he did.

We should pay less attention to the outcomes of potentially violent situations than to questions of whether officers respond to them in ways likely to reduce the potential for violence. If we do not, we fail to legitimize genuinely unavoidable provoked force, and we reward and encourage an operating-style that eschews advance diagnosis, planning and training, and relies on officers' ability to make the most critical decisions under the worst possible conditions. That operating-style can only lead to frequent bad decisions by officers, who in the heat of the moment cannot reasonably be expected to devise solutions of equal quality to those that could be reached through careful advance planning. These results are grossly unfair to the public and to street-level police officers.

Thus, to reduce unnecessary police violence, we must define the police as diagnosticians, and we must demand that they learn that role thoroughly long before they actually confront someone who they have reason to believe is armed and dangerous. As we have done where hostage situations are concerned, we must define as successful those encounters where the police have done everything reasonably possible to avoid violence, and we must cease rewarding easily avoided split-second violence.

NOTES

- 1 As Bittner suggests, it is also necessary to distinguish between all types of violence and "the exercise of provoked force required to meet illegitimate acts" (1970, p. 36). There is little doubt that the police must be granted considerable license to employ such force, and, in our condemnation of what Bittner calls "provocative violence" by officials, we should be careful to avoid retracting the legitimacy of police authority to employ necessary provoked force. The police simply cannot function without this authority. We should take care too to distinguish between legitimate provoked force and incompetence-related violence. The former is that *required* to put down threats against officers or other challenges to official authority. The latter is unnecessary, and occurs only because officers lack the expertise to employ readily available and less drastic means of putting down such threats and challenges.
- 2 As a result of bureaucratic procedures or administrative apathy, guns and law-enforcement powers have sometimes been granted to, or not withdrawn from, officer candidates or in-service officers whom personnel investigations have shown to possess gross psychological instability or character flaws. I have reviewed police personnel folders that disclose that officers accused of misconduct had been

- hired by officials who knew that they had previously been excluded or dismissed from police service in other agencies because of congenital brain defects, extensive criminal records, long histories of drug abuse, assaults on supervisors and co-workers, or giving false sworn statements at previous official investigations of allegations that they had committed extralegal violence.
- 3 Friedrich reports that the data he analysed did "not support the notion that police use of force depends very much on the individual characteristics of the police" (1980, p. 89). Sherman's extensive survey (1980) of studies of police behavior found virtually no empirical support for assertions that individual officer characteristics are measurably related to any type of performance in office.
 - 4 The major import of the judgment in this case is that public agencies are liable when plaintiffs can demonstrate in court that they have suffered constitutional deprivations at the hands of public officials, and that the unconstitutional acts of these officials were directly caused by agency custom and practice. Thus, if an individual were able to demonstrate that he had been unconstitutionally beaten and arrested by a police officer, and that the police department involved had a history of encouraging or tolerating such misconduct, he would presumably be entitled to money damages from both the officer and the government agency that employed him.
 - 5 In addition, elected officials, who serve as intermediaries between citizens and police, may often be tempted to react defensively to judgments against police, regardless of whether such defensiveness is in the citizens' best interests. Consequently, citizens' ire may be redirected at what may be portrayed by elected officials as the arbitrariness of the courts, rather than at the police misconduct that gave rise to judgments against the taxpayers. For an elected mayor to acknowledge that his police department has operated unconstitutionally is not easy. It requires him to admit that the person he appointed as police chief (or who was otherwise determined to have been best qualified for that position) has performed his duties in a manner that violates the fundamental law of the land.
 - 6 See Manning (1977), who argues that the police have assumed – or been given – the "impossible mandate" of responsibility for crime control and order maintenance, and that most police are unwilling to admit that they cannot accomplish it.
 - 7 This is not to suggest that police currently operate with no *a priori* restrictions. As Goldstein (1977) points out, police operations are greatly influenced by legislators, and by the decisions made by prosecutors and judges in prior *similar* matters. My point is that police make decisions about specific individuals and situations before they have come to the attention of other officials.
 - 8 These principles were first articulated in a training-program I developed in 1976 while on the staff of the New York City Police Academy.

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