

# **Building Respect for the Badge: The management of the use of force by police<sup>1</sup>**

by

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In day-to-day policing, police members encounter many situations where there is the potential they will be required to use force. In some of these situations their ability to use force properly may make the difference between whether they survive or not, or whether they are able to carry out their duties effectively or not.

The ability to use force effectively is necessary for police to protect themselves and carry out their occupational responsibilities. Police organisations generally acknowledge the need to support and assist police members in learning how to do so. While there is broad recognition of the need to support police in this regard, in practise many police managers exhibit a type of paralysis in managing the use of force by their members.

One of the key reasons for this appears to be that many police managers are aware that some of the police who are amongst the most motivated and highly productive, and generate the most arrests, are those who 'push the limits' of the use of force. This appears to create a conflict for managers who feel uneasy about disciplining those who appear to be at the forefront of their crime-fighting efforts.

In addition, while managers know their professional responsibility is to discourage abuses of force and ensure that members apply minimum force principles, they, often without formally acknowledging this, don't actually believe that the police can be effective if these principles are applied. Secretly they believe that the manner in which police obtain respect is through physically dominating those who challenge their authority.

Because managers know they cannot actively encourage this behaviour, and at the same time believe the use of force is what enables police to be effective, they end up turning a blind eye to the question of how their members use force. As a result, questions of the use of force by members end up being neglected to the detriment of the best interests of members of the service, the potential to establish greater levels of trust between the police and community members, and the cause of good policing.

But, how can police managers engage with how their members use force – not from a position of mistrust and suspicion, but in a manner that supports members in achieving high standards, and in a manner which supports the objective of bringing honour and public respect – to the work of the police?

This paper aims to address this question. Before doing so it looks at some of the features of the use of force, which are important in understanding the constraints and risks related to attempts to manage it.

## **General characteristics of situations involving the use of force**

### **Visibility of settings**

Most police use-of-force takes place in circumstances where managers are not, and cannot, be present. It involves a decision by a police officer that force is justified or necessary in the circumstances. 'The actual decision to use force to enforce the law falls on the members of the lowest level of the organisational structure' (Major City Chief Administrators, 1991: 12). In this respect it reflects the 'character of routine uniformed or plain-clothes police work' which is "dispersed" and has "low visibility" from the point of view of police management or any outside regulatory bodies' (Reiner, 1997: 1009).

While not visible to police managers, police encounters with persons that involve the potential for the use of force take place 'in public settings or other locations in which the problems of their clientele have come to light' (Fyfe, 1986: 537). In addition to the suspect or opponent, other people may be present, which increases the pressure on police to deal with the situation 'in a way that is demonstrably proper or humane' (ibid) or run the risk of adverse public reaction (ibid, p. 538) and possibly increasing pressure on the police opponent to save face by a show of bravado.

By contrast, these encounters also frequently take place in settings or locations which, while they may be public, are, by virtue of the lateness of the hour or other factors, deserted of non-police third-party witnesses. This removes the pressure and possible restraining influence of adverse public reaction, and could possibly increase the temptation to use excessive force and enhances the potential for police to fabricate or 'modify' the facts of the event. It can also deprive the opponent of the confidence that the presence of third parties will serve as a restraint on the police.

### **Unpredictability, urgency and (the myth of) the split-second syndrome**

Along with the presence of 'non-police third-party witnesses', the settings as well as the times at which the use of force may occur, are to a large degree unpredictable. The reactions of persons involved in confrontations with police to the use or threat of force by police are also unpredictable. How police will behave in situations involving the use or potential use of force is also partly unpredictable as it is also influenced by factors such as beliefs, personality and temperament. However, it can be shaped and partly controlled by training, support and other systems for managing the use of force in a police organisation.

Situations where police may need to use force, when they do occur, tend to have a sense of urgency about them (Fyfe, 1986: 537). Police may have a limited degree of choice as to whether to become involved in the situation. In this sense the situation may be said to be 'involuntary' (ibid). Related to these factors conventional wisdom is that when police are required to use force this is always in terms of 'split-second decisions' made on the spur of the moment.

Clearly some situations police encounter are unanticipated and call for very quick responses from police.<sup>2</sup> At the same time, 'trainers and analysts have begun over recent years helpfully to debunk the myth of the "split-second decision"' by 'focusing on officer decisions made prior to arrival in the immediate vicinity of the subject,' (Geller and Toch, 1996: 312). Scharf and Binder (1983) 'characterised five decision phases in a potential or actual deadly force encounter: anticipation; entry and initial confrontation; dialogue and information exchange; final frame decision and aftermath'. Geller and Scott (1992) 'have pointed to another phase involving non-lethal tactics between the dialogue/information exchange and final frame decision points' (both cited in Geller and Toch 1996: 312).

Police responses in situations relating to the use of force reflect a series of subjective judgements regarding unfolding situations. While police-work involves extensive use of discretion by police officers, once involved in a situation or confrontation, the options available to police may be more limited, and split-second decisions may make the difference between life and death, successful resolution of the situation or embarrassment and even disgrace.

But the response of the adversary and the outcome of the incident, may, in many circumstances, be influenced decisively by the police, depending on the quality of the diagnosis by the police of the situation, and their skill in dealing with it. This includes not only skill in the use of weapons and physical force, physical agility and strength but also communication skills and tactics, the manner of approach, including the use of cover and concealment, one's level of composure and self-control, effective cooperation between colleagues where present, and may also be assisted by addressing external influences such as the role of other people who are in the vicinity.

### **Consequences**

Situations of the potential use of force may therefore be highly charged, with high levels of fear and other emotions involved, and may contain a high potential for violence. Related to this, the factor of unpredictability also attends to the results and consequences of the use of force in both the immediate and the long term. The use of force may sometimes lead to the injury or death of a suspect, one or more arrests, or the prevention of a crime. The use of force, as well as 'unreasonable restraint' (Geller and Scott, 1992: 285) may also lead to the injury or death of a police officer or some other person. Inadequate handling of a use of force situation may also lead to the flight of a suspect who should preferably have been arrested.

Uses of force may also evoke a variety of responses from the public or community. Where they are direct witnesses, or where incidents are reported on in the media, community members may respond with anything from admiration to revulsion, depending not only on what is directly witnessed or reported on but also on their broader perceptions and the reputation of the police. If the police have a reputation for unjustified violence, even commendable uses of force may tend to be viewed with suspicion by members of the public. Incidents, or even unsubstantiated allegations, of the use of force, and the harassment, real or perceived, by police of particular groups or communities, have also been known to provoke strong public outrage and protests as well as expressions of public anger of the most extreme kind, including riots and rebellions.

Potentially the use of force may also have other outcomes for a police officer including a sense of excitement about, or pride in his or her work, destabilising effects on his or her mental health, recognition for skill or bravery, or disciplinary and/or criminal charges. A further set of consequences which may follow would include training, mentoring or debriefing, but these are not commonly part of how use-of-force incidents are responded to in most police agencies.

## **The purpose of the use of force**

### **Arrest, defence and keeping the peace**

The use of force is often linked to the police power to arrest. '[P]olice are most likely to use force when dealing with a criminal suspect, especially those who are resisting arrest' (Adams, 1999: 5).

But when the police use force this is not always for the purpose of arrest. In a situation where there is a direct threat of death or injury to the police officer or another person, the use of force is not primarily directed at securing an arrest. The immediate purpose of the use of force is to protect the police member or other person by disrupting the course of action being taken by the person posing the threat. In law such a use of force is called 'private defence'.

Where they do respond to a call or come across an incident in progress, and a 'suspect' is present at the scene, the police also hold a considerable degree of discretion as to whether or not to make an arrest. Decisions which police make relating to arrest may be influenced by several factors including the seriousness of the alleged offence, legal provisions which prescribe arrest in certain situations, the preference of the victim or person who called the police, how closely the complainant and suspect are related,<sup>3</sup> the level of respect shown by the suspect to the police, race (see Black, 1971),<sup>4</sup> and gender as well as 'the beliefs, expectations and self interest' (Walsh 1986: 362) of the individual police officer.

Police may often intervene and use force in situations without having decided a crime has been committed or without the intention of placing charges once they have pacified those who are involved. In many situations the primary concern of the police may be to restore the 'peace' ('keep the peace', 'restore public order') rather than to enforce the law. The police may merely intervene to restore the peace, such as where there is a fight, or someone is engaged in threatening behaviour, in a bar or shebeen, without arresting any of the parties or pressing charges. Even where an arrest follows the use of force, this may depend on a subsequent decision, influenced perhaps by the continued attitude of the person to the police, rather than by the behaviour which provoked the use of force.<sup>5</sup> In a situation where there are high levels of crime, such as that currently in South Africa, the police may also be inclined to give minimal attention to 'less serious' problems such as situations which amount to breaches of the peace, to free themselves up to focus on 'serious crime'. In other situations the presence of the police may discourage a person on the verge of violence from resorting to such violence. By their presence the police may therefore have discouraged the type of behaviour which might have justified an arrest.

Situations have been reported where police arrests have lead to rioting or a similar backlash

from members of the public. In some of these situations, it is recognised more and more widely, that the sensible course of action for the police may be to prioritise the public peace over the need to make an arrest, especially if the arrest can be made at a later point, or is not for a serious offence. In the words of Morgan and Newburn, 'there are inevitably situations in which the enforcement of the law is not compatible with the public peace' (1997: 83).<sup>6</sup> Where a person is arrested this is not simply because 'a crime has been committed' but because 'police officers are satisfied that a crime has probably been committed and because they deem it appropriate' to arrest. (Morgan and Newburn, 1997: 82-83, emphasis in original).

Where police in South Africa use force this is usually for one, or a combination, of the following reasons:

- To secure an arrest;
- To protect the police member or other person against injury or death;
- To maintain the peace or public order.<sup>7</sup>

There are probably many other situations, which might necessitate or justify the use of non-lethal force by a member of a police service.<sup>8</sup> As Bittner has stated, 'the duties of patrolmen are of a mind-boggling variety'. This

compels the stronger inference that no human problem exists, or is imaginable, about which it could be said with finality that this certainly could not become the proper business of the police (1974: 250).

#### **Crowds and the use of force**

One factor that should be noted as a significant variable in understanding the situations where force may be used is the number of people against whom the force is directed. In many countries, special policing units are created for the purpose of policing large public gatherings and demonstrations. In South Africa Section 17 of the SAPS Act provides for the establishment of a national public-order policing unit.<sup>9</sup>

The idea that the concern to maintain peace should be prioritised over the need to enforce the law is explicitly acknowledged in the current SAPS Public Order Police policy document which states that

According to the principle of situational appropriateness, arresting people at the scene is not always viable, as this could antagonise and aggravate the crowd even further. One can proceed to the necessity of making arrests at a later stage when the persons are isolated and away from the scene (SAPS, undated: 5).

While this is explicitly stated, what is less clear from the policy document and from the legislation on the issue (the Regulation of Gatherings Act, 205 of 1993), is what importance should be given to the right under Section 17 of the Constitution to Freedom of Assembly, Demonstration, Picket and Petition.

In relation to the manner in which the rights of other people may be infringed, the key

concerns which are identified by the Regulation of Gatherings Act (see for instance section 4(b)) are in relation to: Impediments to vehicular or pedestrian traffic, especially during traffic rush hours; The potential for clashes between participants in the gathering and rival gatherings; Impediments which may be imposed on access to property and workplaces; The prevention of injury to persons or damage to property. Where a march is not authorised, as required by the Regulation of Gatherings Act, but poses no danger of injury to any person, damage to property, or disruption, situations have been documented where the police have broken up the march despite the fact that there is no real need for them to do so. In these situations therefore the police have used force, not for purposes of peace-keeping or law enforcement,<sup>10</sup> but purely because the marches are not authorised.

## **Describing the level or type of force used**

### **Physical versus non-physical force**

The question of what should and what should not be regarded as 'force', presents certain difficulties on a definitional level. One publication indicates that the use of force 'may range from a loud, vocal command to deadly force, depending on the circumstances involved' (Major City Chief Administrators 1991: ii). It goes on to suggest that

many police training programmes teach a force 'continuum' that starts with verbal commands and ends with deadly force (op cit: 2).

Similarly, another text refers to police officers' being 'authorised to use both psychological and physical force to apprehend criminals and solve crimes'. It says:

... psychological force or a show of authority can be a police presence, an order (either verbal or visual), or some other form of coercion or deception used to gain a suspect's compliance (Alpert and Smith, 1994: 481).

'Loud, vocal commands', and even more softly spoken verbal commands or other forms of non-physical force might achieve the same ends as physical force. Often a situation where a 'verbal command' is used will be one where this is combined with physical force. A police officer might verbally threaten the use of physical force or even implicitly do so by his or her actions, such as by raising a baton. As police are seen to have authority, and are recognised as having the mandate and capacity to use force, any instruction from a police officer, or even the presence of a police officer, may be seen as presenting a threat of force. Verbal communication might also be used unnecessarily, or even in a manner contrary to the law, as where a police officer insults or denigrates a person. Police officers may abuse their authority through the use of non-physical force in the same way they abuse the use of physical force. If force were to be defined in terms of its potential consequences, or the manner in which it might be abused, the definition might be *any act or form of activity that has the capacity to intimidate, coerce or ensure compliance*.

The problem with such a definition is that it may fail to capture what is in many ways the quality of force (and of violence) that causes the greatest concern – its physical nature and thus its capacity to cause physical, and sometimes even fatal, injury. Physical force needs to be distinguished from non-physical force. This is important because measures which fall short of physical force may not only be seen as 'non-physical force' but if used skilfully

may be used as a way to diminish the need to use physical force. Not only is non-physical force a form of the use of force, it is also potentially an alternative to the use of physical force.<sup>11</sup>

### Levels of physical force

A second distinction is between different levels of physical force. As McEwen states,

Law enforcement officers frequently encounter situations requiring some type of coercive action or force, but not deadly force. Common scenarios include close encounters (e.g. breaking up bar fights and intervening in domestic disputes), flights by suspects, hostage situations, barricades and crowd control. Officers clearly respond to many situations where LTL [less-than-lethal] force is the appropriate action (1997: 40).

It appears evident that less-than-lethal force (LTL force), while not necessarily a day-to-day occurrence for all police, is far more common than lethal force.<sup>12</sup> One American study by Garner and Maxwell (1999) covered 7 512 arrests. It found:

- There was some use or threat of physical force in 19% (1 418) of the arrests studied while actual physical force was used in 17% (1 283) of the incidents.<sup>13</sup>
- Of the 1283 incidents where physical force was used, the most severe form of force used was a weaponless tactic in 1092 (almost 80% of the 1283 incidents) while weaponless tactics were used in 1184 arrests altogether (Op cit: 41).
- In the 1 184 arrests where weaponless tactics were used the most common were: grabbing (954 or 81% of arrests), twist arm (281 or 24%); wrestle (233 or 20%), control hold (164 or 14%), push/shove (145 or 12%) and pressure hold (83 or 7%) (Op cit: 33).
- In discussing whether weapons were used one of the questions raised is what constitutes 'use'. Thus in relation to the use of handguns they ask, *Does a firearm have to be discharged to be used?* (Op cit: 30) They note how handguns were threatened, displayed or used by the police in 204 arrests (or 3% of the total number). Though they were not in fact discharged in any of the incidents recorded handguns were 'used' in other ways in 11 arrests (or 0.1% of the total) while rifle's or shotguns were similarly 'used' in 7 incidents.
- Weapons were not merely threatened or displayed but 'used in 158 incidents altogether'. Those used most commonly were (in some incidents more than one weapon was used): chemical sprays (56% of the 158 incidents); flashlight (26%); dogs (13%); baton (10%); motor vehicle (10%); handgun (7%); and rifle/shotgun (4%). As indicated the 'use' of guns did not actually involve discharge of the weapons, in any of these 7512 arrests.

LTL force frequently involves no weapons but sometimes involves LTL weapons such as batons and, as is the case in countries such as the US, chemical sprays. Just as psychological force may be used as an alternative to physical force, it has been suggested that improving the ability of police officers to use LTL force (by improving their LTL training and weaponry) may assist in reducing the use of lethal force. However, the distinction between LTL and lethal tactics and weaponry is far from watertight. In the US

some police departments are authorised to use a variety of electric-shock weapons. According to an Amnesty International report 'there have been several reported deaths following the use of such weapons' and they have been used for the purposes of torture in some countries. Countries including Canada and most West European countries have banned them for the purposes of law enforcement (Amnesty International, 1998: 37). The use of weaponless tactics may also have lethal consequences. 'Suspects have also died from police choke holds, where pressure is applied to the neck' with the consequence that some large US police departments have banned the use of such holds (op cit: 34 See also Geller and Scott, 316-318).

Non-physical force, LTL force and lethal force may be seen as different 'levels', in terms of their severity or seriousness, of the 'continuum' of force. Table 1 depicts non-physical force, LTL force, and lethal force in terms of key and general characteristics.

**Table 1: Levels of 'force' in policing<sup>14</sup>**

<b>Type/level</b>	<b>Key quality</b>	<b>Generally associated with:</b>
Non-physical force	Non physical in nature. Referred to by some as 'psychological force'.	Usually understood as verbal in nature but may be accentuated through demeanour, posture, level (e.g. large number of police officers attending). Physical acts which amount to threats, but fall short of actual physical force, may also fall into this category.
Less than lethal force	Physical in nature but unlikely to cause death or serious injury unless misused.	Involves weaponless physical force or LTL (or intermediate) weapons such as batons; 'sprays', and water cannons. Some might argue that handcuffs (and other restraints) should also be in this category.
Lethal force	Likely to cause death or serious physical injury.	Normally associated with the use of firearms. Particularly aggressive uses of weaponless force (such as certain choke-holds) and batons may also have potentially fatal consequences. The use of police dogs in apprehending suspects may also fall into this category though more likely to cause serious injury than be fatal.

In relation to levels of force it has been observed that

(m)any police training programs teach a force 'continuum' that starts with verbal commands and ends up with deadly force. Officers can employ each level on this continuum as effective policing techniques. They can also potentially misuse each level (Major City Chief Administrators, 1991: 2).

The essential information about any incident involving force is 'not so much the strength of the level employed' (ibid) but if the level was appropriate for the particular situation. This requires a set of concepts by means of which the appropriateness of the force used can be evaluated.

## Evaluating the use of force

### Legal versus professional standards

Literature on the police has traditionally distinguished between the *use of force* – where members of a police service are acting within the law in fulfilment of their responsibilities as police officers – and the use of *excessive force* frequently referred to as *police brutality*.<sup>15</sup> *Police brutality* is where a police officer 'chooses or intends to use force beyond what is reasonably necessary' (Alpert and Smith, 1994: 489) and is involved in conduct which is itself unlawful.<sup>16</sup> It would also include the criminally negligent use of force. What characterises this 'traditional' approach is that it places an emphasis on the distinction between lawful and unlawful uses of force by the police.

But this emphasis on legal standards contributes to an overall situation where the basic standards by which uses of force are evaluated are set at an unacceptably low level, as the criminal law is a fairly inappropriate instrument for analysing professional skill and judgement.

[T]he criminal law remains so broad and presents so many enforcement problems that it cannot serve meaningfully as the parameters for any professional's discretion. When we try to use criminal law as a substitute for standards that should be applied within a profession or occupation, we almost invariably are disappointed with the results (Skolnick and Fyfe, 1993: 197-198).

In the words of another analyst,

We would not find the behaviour of a physician, lawyer, engineer, teacher, or any other professional acceptable merely because it was not criminal, civilly liable, or scandalous, and it is preposterous that we continue to do so for police (Klockars, 1996: 8).

Not only is the criminal law inadequate but many managers feel reluctant to impose its standards too consistently for fear of losing popularity, and therefore authority, with members. It is an uncomfortable mechanism for them to apply as it requires suspicion in response to intense situations in the aftermath of which there is frequently a high level of emotion involved.

While it is necessary that questions of legality be investigated following use of force incidents, an approach to the evaluation of use of force incidents which focuses only on a legal standard will fail to recognise and correctly diagnose those incidents where, police officers act with good intentions, but lack the skill or experience to deal with the situation in a professional way. Incidents of this kind, which are best described as unnecessary force, occur when

well-meaning officers prove incapable of dealing with the situations they encounter without needless or too hasty resort to force (Fyfe 1993, quoted in Alpert and Smith, 1994: 489).<sup>17</sup>

As Klockars states, the 'traditional' approach means that the only standards applied to the evaluation of use of force incidents are those of the criminal and civil law and, sometimes, of public outrage or scandal. For these reasons he argues that excessive force should be defined in terms of a professional rather than a legal standard.

Excessive force should be defined as the use of force more than a highly skilled police officer would find necessary to use in that particular situation (op cit: 8).

The definition of excessive force that Klockars puts forward is therefore one which would capture both incidents of brutality and 'unnecessary force'. Such a definition, he says,

imposes the highest possible standard on the conduct of the police. It leads to findings of excessive force far more frequently than any other reasonable definition and does so in many instances where criminal, civil, commonsense, and even less than expert police understandings would find no excess whatsoever (op cit: 8-9).

The value of an approach to evaluating the use of force which emphasises expert police understanding and skill is that the best way to prevent brutality and unnecessary force is to focus on a standard of officer performance that is so far above the minimal standards imposed by the law and public opinion, 'that, for all practical purposes, police officers and police agencies need not be concerned with them' (op cit: 11).

Klockars emphasises that such a 'new definition' of excessive force requires 'new mechanisms' (op cit: 12) which make it possible to 'discover and discuss the use of force freed from the threat or fear of punishment' (op cit: 19). This calls for an 'administrative apparatus' which 'would work differently from a mechanism designed to discover criminal misconduct, unreasonable violence, or behaviour that risks civil liability or scandal' (op cit: 12).<sup>18</sup> The type of 'apparatus' suggested by Klockars is discussed further below in the section on incident investigation.

### **Non-occupational violence**

Incidents of the use of force, authorised and unauthorised, may occur in non-work related situations. Even while off duty, members of the SAPS are usually armed, and are apparently expected to 'place themselves on duty' if they witness acts of criminality, though this apparent obligation is not clarified anywhere in any instruction which is provided to them or explained to police in training. In acting on this 'duty' police may potentially be involved in the use of force while off-duty and thus, while off-duty, be involved in incidents of police brutality, (or be subject to victimisation), related to their role as police officers.

In addition to incidents of this kind police may also engage in unlawful acts of violence not related to their work responsibilities and not directed at suspected offenders. These may include acts of domestic violence where the victims may be their own family members, and also include incidents which occur at work, such as attacks on colleagues.

A distinction can therefore be drawn between *police brutality* and *non-occupational police violence* where:

- The term police brutality is used to refer to unlawful violence by the police which is directly related to the police occupational role;
- The term non-occupational police violence is used to refer to unlawful violence not directly related to carrying out the occupational role of a police officer. It will usually occur in non-occupational settings but may also occur in occupational settings.<sup>19</sup>

#### Preferred terminology

- **A professional use of force.** The police officer uses reasonable standards of professional judgment in evaluating the situation and uses force accordingly.
- **Unnecessary force.** An experienced and skilled police officer would have evaluated the situation differently and/or acted differently. Excessive force in terms of a professional standard but not a deliberate violation of the law.<sup>20</sup>
- **Brutality.** The act is criminally negligent or a deliberate violation of the law which occurs while the member concerned is acting in the police role. The act contradicts ethics of professional policing. Excessive force in terms of a legal standard.
- **Non-occupational violence.** The act is a criminally negligent or deliberate violation of the law which occurs in circumstances not related to the police role.

#### Structures and systems impacting on the use of force

Where incidents of the use of force occur, these are often of an extremely short duration. While force is 'happening' there is very little that a police organisation can do about how it is used. Police organisations are generally only able to influence how force is used prior to the event or by responding to it afterwards. Some of these ways of influencing the use of force, include:

- **Internal police regulations and standing orders** – these may be used to clarify for police members when, it is acceptable for them to use force.
- **Values and the use of force** – in addition to explaining the legal and regulatory framework police agencies also may attempt to motivate members to adhere to these standards by explaining to them how these standards relate to questions of ethics or values, whether these are the values of the police, or broader values such as those embodied in the Bill of Rights and the Constitution. For instance some police organisations have adopted statements which motivate police members to give priority to the protection of human life (including the lives of police members, suspects and other members of the public) when faced with situations of the potential use of force.
- **The recruitment and selection system** – selection systems may look not only at physical criteria relating to physical fitness, strength or size, but also at indicators of integrity (such as whether applicants have a criminal record) and psychological criteria which may indicate how they are likely to respond in situations of heightened danger and emotion.
- **The training system** – ideally the training provided should assist police to use force effectively in situations where this is required, to attend to their own safety, and to resolve situations without the need for force or with minimal force. Such training

should preferably be provided to police throughout their careers and should support the specific weaponry which is provided. Training also involves a dimension of personal responsibility as physical fitness and mental alertness require personal motivation and responsibility. While this may be supported, it cannot be 'provided' by the organisation.

- **Provision, inspection and confiscation of weapons** – in South Africa police agencies usually provide members with firearms (and hopefully with training in the use of the weapons in question). Inspections are used to ensure that these are properly maintained. It is also the responsibility of the organisation, and therefore of managers, to confiscate firearms from members, either permanently or temporarily, where there is evidence of misuse, or the member is identified as unfit to carry it. The provision of other equipment such as bullet-proof vests, handcuffs and batons and other non-lethal weapons is also important here.
- **Operational command** – police are not usually subject to direct supervision when in the field but there are ways in which 'operational command' may be exercised and thus impact on how police deal with situations. Station or unit commanders or supervisors for instance have influence over how police are deployed and may decide to increase the size of teams. In certain situations, such as arrests of persons believed to be dangerous, plans may be set out regarding the operation. Also in confrontations forms of operational command might apply within the team with one member being more senior, and also may apply if other police arrive as 'back-up'.
- **Incident investigation** – police organisations may have systems for investigating use of force incidents after they have taken place. Where they exist these tend to be focused on examining incidents where firearms have been used and usually focus on whether the police action was lawful or not.
- **Support to officers suffering stress and exposure to traumatic incidents** – police agencies may have systems in place to help police officers cope with the risk of Post-Traumatic Stress Disorder or other psychological or stress related problems. These problems may be a consequence of use of force incidents and may also impact on how police react in subsequent situations.
- Complaints reception, internal investigation and disciplinary systems – police agencies may have facilities (this may be the 'charge office') for members of the public to lodge complaints against police members. In addition they may have units or individuals intended to follow up on complaints or other information which implicates police officers, as well as systems for bringing disciplinary charges against members where investigations provide evidence of the misuse of force or other misconduct.

Within large police organisations there are therefore a range of ways of impacting on how force is used by members. These systems can be described as systems of the management of the use of force. Understanding how the management of the use of force within police organisations operates is potentially fairly complex and involves an examination of the interplay between a range of structures in operationalising various systems.

In the SAPS, for instance, senior management (the National Commissioner and provincial level managers), middle management (area management and station or 'unit commanders') and junior managers (line managers and station and unit supervisors), and specific divisions including the training division, personnel services, management services and so on, all may play a role in the management of force. Sometimes a particular 'system' is not necessarily

the sole responsibility of a particular division or management level but operates in terms of collaboration (or the lack thereof) between different components. The tasks of promoting organisational values, selection, training, or discipline depend on different components of the SAPS and are effectively 'co-managed'.

It should also be noted that the task of managing the use of force occurs not only through internal systems but also through engaging with people and structures outside the police including the Constitutional and law courts, government, the Independent Complaints Directorate, members of the legal profession, the media and members of the public.<sup>21</sup>

Table 2 depicts the relationship between the different levels and types of management structure within the SAPS and some of the systems relevant to the management of the use of force.

**Table 2 Management structures and systems relevant to the use of force in the SAPS**

indicates key level(s) at which system is managed.

Internal SAPS Systems Impacting on the Use of Force	Structures			
	Senior management	Divisions	Middle management	Line management and supervisors
Developing regulatory framework				
Defining/promoting organisational values				
Selection				
Training				
Control of firearms				
Operational command				
Review of use of force				
Debriefing and other support				
Discipline				

**Administrative review**

**Forms of administrative review**

The capacity of police members to use force is in many ways a complex activity for a police organisation to come to terms with and manage effectively. While there are some

'proactive' measures, such as selection and training, which can impact on how force is used, situations where force may be required mostly cannot be predicted and, when they occur, take place in situations of low visibility from a managerial point of view. Part of the management of the use of force necessarily involves an 'after-the-fact' response which involves evaluating the handling of use of force incidents, and the behaviour of police members, retrospectively. Recent thinking and practise in countries like the US has focused on how this retrospective evaluation or review can be used in a more effective manner so as to better support police in achieving the objective of using force professionally. The two key ideas and practices which have emerged are quite different with *incident investigation* focuses on individual incidents of the use of force, and *early warning systems* involving a review of general data relating to the involvement of specific police officers in the use of force.

### **Incident investigation**

#### ***Investigation of use of force incidents involving SAPS members***

Where police members are involved in shooting incidents (though usually not in relation to other uses of force) many police organisations require that an investigation be conducted into the incident. Use of force incidents involving SAPS members may be the subject of both internal (Standing Order 251) and external (Independent Complaints Directorate, or ICD) investigations.

- ***Standing Order 251*** – SAPS Standing Order 251 (SO 251) provides that investigations must be conducted into all shooting incidents involving SAPS members (excluding those in training) and for reports to be compiled thereon. The shooting incident report (SIR) must indicate whether, in the supervisor's opinion, the police member's actions were legal or not. Where the officer decides that a shooting has been unlawful, a criminal case must be opened. Internal disciplinary action may also be initiated and a notice of contemplated suspension may be served on the member. In some circumstances the member's service weapon may be taken and the member may be declared unfit to possess a firearm in terms of the Firearms Control Act (previously the Arms and Ammunition Act).
- ***ICD investigations into deaths as a result of police action*** – another measure that provides for the review of some uses of force is Section 53(2)(b) of the South African Police Services Act. This section provides that the ICD must investigate all deaths as a result of police action or in police custody. 'Deaths as a result of police action' are usually the result of shootings or other uses of force. As is the case with SO 251, Section 53(2)(b) investigations are also primarily focused on issues of legality.

The common factor therefore in these investigations, as with most such systems internationally, is that they 'focus primarily on criminal and other grossly substandard officer misbehaviour that merits *punitive* responses' (Geller and Toch, 199: 293). If it is concluded that the shooting or death was lawful, the investigation is effectively at an end.

#### ***An effective system of investigation?***

There are several potential impediments to effective incident investigation. Members

involved may not report the incident immediately or may tamper with the scene, or the officers responsible for the investigation may not carry out their duty to investigate the incident in an impartial manner but rather in terms of a 'protectionist attitude', particularly if it is perceived that the member acted within the scope of employment. According to one police officer 'unless it is a clear-cut case of murder, they will try and protect him as far as possible' (Bruce, 2000: 114).

However, the major limitation of these investigations is not merely related to the behaviour of members involved but may also be seen as a consequence instead of the nature of these investigations. Most uses of force are not investigated but when members have been involved in the shooting of a firearm, or use of force resulting in a fatality, they are faced with an investigation. It is obviously important that police members act within the law when using force and therefore it is important that the question of whether they have acted lawfully or not be addressed as a priority in these investigations.

But the focus on whether the shooting was lawful or not imposes major limitations on the investigation. One of these limitations is that it contributes to members often being very guarded in their statements, and responding in a defensive manner providing minimal information about the event.<sup>22</sup> Rather than making use of the opportunity to analyse and evaluate the way the situation was handled, members give a one-dimensional depiction of events which focuses essentially on demonstrating that 'one's actions were reasonable, acceptable, right, and to be accepted under the circumstances' (Van Maanen, 1980: 154). Not only does the approach to investigation motivate the police officer to provide an account of what happened, which is intended to sanitise his or her conduct, but the need to do so also has the effect of discouraging the police officer from discussing the incident in a more open and candid way.

A further limitation of these investigations, related to the 'either/or' pre-occupation with the question of legality versus illegality is that the investigations fail to highlight incidents of *unnecessary force*. The investigation is purely pre-occupied with whether the member has acted lawfully or not. Unless the member has acted unlawfully the investigation will not highlight the fact that the member could have dealt with the situation in a better way.

While measures such as training do impact on how force is used, much of a member's learning takes place through trial and error. Actual incidents in the field are potentially the best material from which to draw lessons, and for assisting police to learn about the effective use of force. But legally-orientated investigations where members sanitise their account of events are not used, and are unlikely to contribute, towards this end.

#### ***An alternative approach to incident investigation***

According to Klockars the most effective system of review depends first of all on defining 'excessive force as more force than a highly skilled police officer would find necessary to use in a given situation' (1996: 12). Thereafter it is possible to create 'an administrative control apparatus that is specifically designed to respond to that definition'. (ibid).

In order to be effective, the system of review should be composed of a policy, goal or objective as well as an organisational apparatus to realise the former. The statement of

policy Klockars proposes is simply that *police officers shall work in ways that minimise the use of force*. The organisational apparatus he suggests must at minimum 'monitor the use of force, evaluate the skill with which it is used, and educate officers in its skilled use' (ibid).

Klockars's suggested approach uses a standard defined in police agency policy rather than a legal standard. It emphasises evaluating issues of skill. As Klockars describes it,<sup>23</sup>

On each occasion on which you have a police use of force,<sup>24</sup> you write a use of force report. And at the end of that report, the immediate supervisor of the officer reaches one of three conclusions: The use of force was justified and appropriate—fine, no further problem; the use of force was a violation of the agency policy, it was wrong, and you refer that for further investigation to internal affairs; Or the use of force was consistent with agency policy, but an alternative approach would have been desirable, one which might have avoided the use of force. And it's that third option that you want officers to consider. You want a supervisor to look at that, use that supervisor's skill and history in policing and say: 'Is there a way that this could have been handled better?' You don't punish the officer whom you find in this case. You simply say this is the way it could have been done. If that sergeant can't find that 'way', that report then goes up to a lieutenant. The lieutenant reads the case and says, 'wait a minute, it didn't have to happen this way—that police officer could have handled it this way'. So that lieutenant then turns it back down to the sergeant and officer and says, 'this whole thing could have been avoided if you did X, Y, and Z'.

This approach puts initial responsibility for the evaluation of use of force incidents in the hands of first line supervisors, building in a process of evaluation and feedback into the day-to-day management of the use of force. One of the strengths of the model put forward by Klockars is that it gives a management tool to those who interact on a day-to-day basis with police officers involved in the use of force.

Such an approach is not dissimilar from that sometimes used by the Public Order Police units in South Africa. The National Head of POP is generally charged with investigating the functions and operations of his division, and thus, at his discretion, can initiate an inquiry wherever he/she feels there might be an irregularity or departure from policy. The unique feature of the POP investigation is that even where a use of force is deemed legal, the investigator may comment on how the situation might have been better managed. This information may be used to the benefit of the members involved, as well as for the purpose of improving policy and training.

#### *A holistic approach*

The one limitation of the approach put forward by Klockars is that it focuses exclusively on the question of avoiding and minimising the use of force. But it is important that concerns of effectiveness, and particularly of police safety, be given emphasis within use of force investigations. Investigations would preferably be expanded to address an integrated set of questions that provide a more comprehensive statement of the standards which police should meet in dealing with use of force situations. A more comprehensive statement of

policy would be one that encourages or directs members to:

- Protect and value human life;
- Give attention to considerations of safety in all situations of the potential use of force;
- Conduct their duties in a manner that seeks to avoid the use of force;
- Where it is legal and necessary, use force effectively according to the principles of minimum force.

An effective system of incident investigation would preferably integrate and balance these questions. The investigation would examine whether there was a 'better way' of dealing with the situation, not only in relation to the need to minimise and avoid uses of force, but also in terms of considerations of police safety and effectiveness.

### ***Review and learning***

The need to justify shootings in terms of the law is likely to tend to suppress any inclinations officers may have towards open discussion of the shootings. This is often associated with a culture within police services that condones the abuse of force as functional in achieving objectives of the police and where police are pre-occupied with shielding themselves and their colleagues against external scrutiny and criticism. While police may modify their behaviour to avoid external criticism, what may emerge is an attitude that 'anything goes' as long as it is not likely to lead to police abuses being exposed. This defensiveness against external scrutiny and criticism also feeds into a lack of self-criticism within the police organisation, and thereby inhibits the potential for learning.

But incident investigation can be used more effectively and in a manner which supports members in learning how to use force effectively, in giving appropriate attention to their own safety, and in discouraging abuses, and which promotes openness and accountability within the police about the use of force.

### **Early warning systems**

#### ***'Problem officers'***

Where allegations of police brutality are made, the nature of the cases is often such that they are unlikely to provide the basis for a successful criminal investigation and prosecution. The victims, or other witnesses, are often not people who are credible and convincing. Other than the victims there are often no other witnesses so there is often simply a conflict between two competing versions of an event, and no conclusive reason for rejecting the account provided by the police officer alleged to have perpetrated the brutality. In the absence of convincing evidence it is difficult for police commanders to know whether there is substance to the allegations, partly because false allegations are sometimes made against the police. Investigations of individual incidents therefore do not necessarily provide clarity, particularly where there are competing versions of an event.

But if a pattern of complaints, or other types of reports, emerges in relation to an individual police officer, this may also indicate that the officer is one who is prone to over-stepping the boundaries, even where none of the individual cases are of such a nature that it would

support a conviction in court. United States research on police abuse of force has increasingly highlighted the fact that a small number of police officers are often responsible for a high number of the complaints, often relating to abuses of force, against specific police agencies (See e.g. Adams, 1996; Toch, 1996; Walker, et al, 2000 & 2001).

What is interesting is that it is not unusual for the officers who are the subject of these complaints to be highly committed to what they perceive, (possibly in fairly crude terms), to be the objectives of the police organisation. While they generate a high number of complaints and allegations of abuse they may also be amongst the police who generate the most arrests, and are sometimes regarded with respect, and even a type of awe, by some of their colleagues.

Authors of one study set up to examine systems intended to identify these 'problem police officers' noted for instance that there was a 'slight tendency' for these officers to be promoted at higher rates than other officers. (Walker, et al, 2001: 3). In South Africa there has also been cases of police implicated in notorious incidents of violence who had achieved respect and recognition, for their police work. One of the interesting facts that emerged in the uproar following the screening of the notorious dog unit incident ([see Bruce, 2002](#)) was that one of the policemen, later sentenced to six years imprisonment for his involvement in the incident, had in the previous year (1999) twice been voted Gauteng's top dog handler, an honour awarded on the basis of number of arrests, successful prosecutions and 'exemplary professional behaviour' (Sunday Times, 12 November 2000).

As distinct from corrupt or other problematic police behaviour, brutality may be a manifestation of a type of 'over-zealous' policing style on the part of police who believe that their actions the best way of crime-fighting. While the psychological profile of 'problem officers' is not necessarily uniform some of them may for instance be driven by a need for approval or lack of self-esteem and may respond to social pressures within the police organisation in terms of which 'the willingness and ability to handle physical conflict are requisites for peer acceptance' (Toch, 1996: 102). Other officers may become involved in violence because they have 'limited verbal or interpersonal skills' and therefore feel unable to assert authority other than through violence. Whatever the underlying causes Toch suggests that one option may be to 'assist the person to gain insight into his or her patterns of violence and help the person discover or invent a different mode of response to situations in which he or she reacts violently' (1996: 108).

But this should preferably happen prior to the officer's becoming involved in major incidents of brutality for which they need to be criminally charged and even dismissed from the police. This requires that systems be established to identify them and assist them to change their behaviour.

### *Identifying problem officers*

Early warning systems are systems intended to identify 'problem officers' with the intention of intervening preferably 'before such an officer is in a situation that warrants formal disciplinary action' (Walker et al, 2001: 1). While some police departments only use complaints from members of the public, more sophisticated early warning systems use a combination of indicators including complaints, shooting incident reports, civil litigation, resisting arrest incidents, and other indicators such as vehicle damage (ibid: 2). The early

warning system may, for instance, specify that three complaints within a twelve-month period indicates that the officer should be the focus of intervention. One report suggests that 'Supervisory observation; Peer observation; Media inquiries; Problems experienced by family and friends; Behavioural indicators including sick leave abuse, alcohol abuse, marital problems and others; Critical incident stress inducers and other officer stress factors' should also be considered (Major City Chief Administrators, 1991: 42).

An interesting indicator is the filing of resisting arrest charges against suspects, which may be used by police to cover up incidents of brutality.

Charges of resisting arrest (or of assault on officers) may be frequently filed to 'cover' or try to justify excessive uses of force. The practice is prevalent across agencies, and repeated filing of charges of resisting arrest can be a reliable indicator of excessive use of force by individual officers (Toch, op cit: 104).

Police officers who are identified by the early warning system are then usually subject to 'intervention' which may involve a review by their immediate supervisor, the provision of counselling by other officers, training classes or other interventions (Walker, et al, 2005: 2). In some systems, selection for the early warning system is automatic if officers receive a specified number of complaints while in others commanders review performance records and exercise discretion in selecting officers for the intervention.

In the Miami-Dade County police department for instance the intervention phase consists 'primarily of an informal counselling session between the supervisor and the officer. The supervisor is expected to discuss the report with the officer and determine whether further action is needed. Such actions may include making referrals to employee assistance programmes inside or outside the department, such as psychological services, stress abatement or specialised training programmes (ibid: .4).

The New Orleans Police Department on the other hand has a specific class for officers identified by the early warning system which includes units on

'human behaviour, stress management, conflict management, complaint avoidance, sensitivity training , "extraneous contributors to conflict" (such as substance abuse), and techniques and assessment (which includes training related to such police activities as tactical stops, situation assessment, handcuffing, and custodial security). Each class includes a private counselling session with the instructor, during which the officer's record is reviewed and the reasons for being selected for the programme are explained'. (Walker, et al, 2001: 5).

Walker et al, however, caution that early warning systems

are extremely complex, high-maintenance administrative operations that require close and ongoing human attention. Without this attention the systems are likely to falter or fail. (ibid: 6)

Where these systems have been implemented, however, they 'appear to have a dramatic

effect on reducing citizen complaints and other indicators of problematic police performance among those officers subject to intervention'. (ibid: 3).

#### **Administrative review and the systems for support and discipline**

Forms of administrative review provide a vehicle for identifying officers who, as a result of inexperience, or their style of work, appear prone to dealing with incidents of the use of force in a manner which falls short of professional standards. Through highlighting incidents of unnecessary force or other unskilled responses to use of force situations, and through helping to identify 'problem officers' both incident investigation and early warning systems can be used to identify those officers who are in need of assistance.

The assistance needed may vary from officer to officer. In some cases informal advice will suffice while in other cases, specialised training or psychological counselling may be more appropriate. As indicated, some police agencies have developed specialised training interventions targeted at problem officers. The quality of these systems obviously depends not only on whether they identify the right officers, but also on the quality of the assistance provided, by other divisions of the police service including the 'helping professions' (welfare and psychological services) as well as training.

The effectiveness of the system will also clearly depend on whether the individual officers are open to recognising that their behaviour is not only unacceptable in terms of organisational policy, but also ultimately likely to undermine their own interests. Where systems are established which can identify risk behaviour and therefore potentially lead to engagement with such officers at an early stage, programmes and interventions may therefore be of value in assisting such officers. Timely action in this regard may save not only careers but lives, and contribute to the development of effective and professional police officers.

The types of support provided, such as retraining or counselling, may also be appropriate in the case of police who have been found guilty of criminal or disciplinary offences, which, while potentially serious, do not have the consequence that they are dismissed from the service, or removed from operational policing. Depending on the nature of the violation, it may be appropriate to combine the support provided with a warning or more serious disciplinary sanction.

These interventions can obviously only be considered where police, while they have transgressed in relation to standards of acceptable behaviour, have not as yet committed violations of the law of such a nature that they necessitate that they be dismissed from the police service.

#### **Leadership and the values of the police**

Potentially then, both incident investigation and early warning systems may be of value and would serve to supplement or enhance the management of the use of force.

But ultimately the role of managing the use of force in the police involves going beyond issues of the technicalities of how force is used and the identification of police with a use of force problem and involves engaging with police members about the implications of the use

of force, and how these relate to the objectives of the police.

But the willingness to engage with the use of force, and to engage with police about questions of values and how these relate to the work of the police, is unlikely to emerge unless there is a police leadership which is committed to accountability. This depends significantly on the personal philosophies and policies of the police chief and senior police management (White, 2001).

For force to be managed effectively therefore requires that police leadership is not only committed to and understands the need for police to observe high standards in using force but also has the courage, commitment and skill both to hold serving police officers to these standards, and to support police in achieving them.

### **Notes:**

<sup>1</sup> This paper was initially completed in 2003 as part of work towards a book on police accountability in South Africa which was later abandoned. The framework which it puts forward for analysing the management of the use of force by police is substantially based on that developed in a research report which I wrote as one of the requirements for a Masters in Management undertaken at the School of Public and Development Management at the University of the Witwatersrand (see Bruce, 2000) in the bibliography. It is now (September 2006) being published on the CSV website as it is believed that the issues which it discusses will continue to be of interest.

<sup>2</sup> Research on killings of police in the line of duty in the US during 1983 to 1982 period for instance found that 'in 4 out of every 10 incidents, the first interaction of the officer with the assailant was the fatal attack, that is they were "killed at entry" '. The remaining 60 percent of the officers had some sort of interaction (such as pursuit, communication) with the suspect prior to the attacks (Fridell and Pate, 1997: 586). However, in incidents involving the use of force which do not involve a police death, the proportion of incidents preceded by prior interaction is probably much higher.

<sup>3</sup> According to Black 'the probability of arrest is highest when the citizen adversaries have the most distant social relationship to be one another', i.e. when they are strangers (1971: 341).

<sup>4</sup> Black's study, in a US setting, concluded that race was not one of the major explanatory variables for variations in practise relating to arrest. Another obvious factor is the demeanor and behaviour of the complainant.

<sup>5</sup> Of course even where there is some evidence that a crime has been committed, where an arrest is carried out, whether or not involving the use of force, this might be followed by a decision not to proceed with a matter against a particular individual.

<sup>6</sup> For example in dealing with an illegal demonstration 'law enforcement'-orientated responses might increase the anger of the crowd and lead to a breakdown in public order.

<sup>7</sup> These distinctions are relevant to SAPS basic training where emphasis is placed on the distinction between armed or unarmed 'suspects'. An example of a situation which may call for police intervention is one where an armed person is involved in a fight with another person who may or may not be armed. The police, when they arrive, may know nothing about who started the fight and who is the aggressor. The issue about whether the person is armed or unarmed is of course highly relevant but it is also useful to enable police to understand that they may be required to mediate or use force in situations where the people they are dealing with are not necessarily best understood as 'suspects'.

<sup>8</sup> The discussion in this section is possibly more relevant to the work of uniformed police than to detectives. For detectives, exposure to situations of the potential use of force is much more likely to occur in situations of arrest - overlapping somewhat with situations of defence of life or against injury.

<sup>9</sup> The title should not be taken to imply that 'public order' is the jurisdiction of the public order policing unit. Rather the unit is primarily concerned with large-scale threats or disruptions to public order. Where such threats or disruptions are of a small scale, such as a fight in a public place, they are the responsibility of the police as a whole.

<sup>10</sup> Section 9(2) of the Regulation of Gatherings Act authorises the police to disperse gatherings which have been formally prohibited, or which pose a danger to persons or property. Mere participation in a gathering which is not authorised, but which has not been prohibited is not an offence (see section 12(e)).

<sup>11</sup> In this report it is accepted that 'force' includes physical and non-physical forms. The force (and violence) which will be focused on will overwhelmingly be that which is physical in nature. Non-physical force will be seen primarily as an alternative to the use of physical force.

<sup>12</sup> This typology of force does not include forms of torture. Arguably torture can be combined with lethal force in a category of 'extreme force' representing the most severe forms of violence which police have been known to use.

<sup>13</sup> The authors note that 'handcuffing alone is not typically perceived as involving force' (op cit: 33). In 57.3% (4 305) of all the arrests the most forceful behavior by the police was handcuffing (op cit: 41).

<sup>14</sup> Examples of several other approaches to classification of levels or types of force can be found in the 1999 US Department of Justice report on the use of force by police.

<sup>15</sup> There are some objections to the term. Thus the Major City Chief Administrators argue 'police brutality' may be misleading as 'what may have been present was individual brutality, not brutality by the entire group of police in a community'. The point is valid and it needs to be borne in mind in relation to a discussion particularly of unlawful uses of force, which may occur even in police services which make a concerted effort to discourage these types of behaviours.

<sup>16</sup> When used by members of the public, terms like 'police brutality' may have a much vaguer meaning extending to 'any behaviour that in their judgment treats them with less than the full rights and dignity owed to citizens in a democratic society'. (Klockars, 1996, p. 7)

<sup>17</sup> Unnecessary force may reflect factors such as a lack of skill and/or training or that the police officer concerned is not, by temperament, well suited to this aspect of police work. There may also be situations where force is used inappropriately as the result of an error of judgement on the part of a police officer who is acting in good faith and to the best of his ability but otherwise in terms of high professional standards. While unnecessary force is in theory preventable through improved selection or other procedures or through improved training, not all inappropriate uses of force are thus preventable in so far as the possibility of human error cannot be eliminated even in respect of the highly skilled police officer.

<sup>18</sup> The issue of an 'administrative apparatus', concerned with the review of use of force incidents, is covered in more detail below in the discussion of administrative review.

<sup>19</sup> Exceptions to the above distinctions will inevitably crop up. For example 'authorised force', 'unnecessary force', and 'police brutality' are distinguished from 'police violence' to some extent in that they are likely to be targeted at people who, by reason of present or former conduct would often be regarded as the 'legitimate focus' of police work. People who are not police may also legitimately act against other people, particularly in self-defence. A police officer who acts in self defence while off duty need not necessarily 'place himself on duty'. Technically in terms of the terminology used here if he or she goes beyond the bounds of the law, his or her actions might either be 'police brutality' or 'police violence' depending on whether he or she is regarded as having 'placed' him or herself on duty or not.

<sup>20</sup> Note that lack of experience or skill may also result in a police officer failing to use force in circumstances where such force is appropriate. The category of 'unnecessary force' could be seen as part of a broader category of situations where police responses to situations of potential use of force, reflect a lack of professional judgement and skill.

<sup>21</sup> In this paper the focus is on 'internal mechanisms'. This obviously raises questions about other mechanisms, most notably the Ministry/Secretariat and ICD and whether or not they should also be regarded as mechanisms for managing the use of force. The approach taken here is that they can be seen as mechanisms with the potential to impact on the management of force but not part of the SAPS management system. In particular the ICD's obligation to investigate all deaths 'as a result of police action' (some deaths 'in police custody' may also be the result of uses of force), as well as its broader concern with alleged police crime and misconduct, implies it can be regarded as a quasi internal mechanism in terms of its potential contribution to the management of the use of force.

<sup>22</sup> As is the case in criminal investigations, police members in SO 251 investigations may make use of a right to remain silent (see [Bruce, Savage and de Waal, 2000](#), in relation to this issue). While members do sometimes refuse to give statements it appears that this is not usually the case. But despite this apparent 'cooperation' the information provided in

statements is often very limited.

<sup>23</sup> This quote is from a transcription of a telephonic conference held on 22 April 1999. The telephonic conference was organised by the United States Information Service and the questions were put forward by researchers from the Centre for the Study of Violence and Reconciliation and the Policing Programme at the School of Public and Development Management at the University of the Witwatersrand. The transcription is by Susan Chung. An edited version was later published (see [Centre for the Study of Violence and Reconciliation, 1999](#)).

<sup>24</sup> In his article on the issue Klockars proposes 'two rules to govern when a low-level use of force that does not produce injury should be reported: whenever anyone gives any indication or suggestion of any dissatisfaction with the officer's use of force, or any occasion on which any officer involved in the incident believes for any reason that a use-of-force report would be desirable. Both rules are admittedly imperfect but extend the scope of force monitoring beyond instances causing injury' (1996: 14).

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