

USA

USA: Race, Rights and Police Brutality

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UNITED STATES OF AMERICA

RACE, RIGHTS AND POLICE BRUTALITY

1. A GROWING NATIONAL CONCERN

“The issue is national in scope and reaches people all across this country. For too many people, especially in minority communities, the trust that is so essential to effective policing does not exist because residents believe that police have used excessive force, that law enforcement is too aggressive, that law enforcement is biased, disrespectful, and unfair.”

Janet Reno, Attorney General of the United States, speaking on police brutality at a National Press Club luncheon, Washington, DC, 15 April 1999.

Police brutality and use of excessive force has been one of the central themes of Amnesty International’s campaign on human rights violations in the USA, launched in October 1998. In *United States of America: Rights for All* (AI Index: AMR 51/35/98), the organization documented patterns of ill-treatment across the USA, including police beatings, unjustified shootings and the use of dangerous restraint techniques to subdue suspects. While only a minority of the many thousands of law enforcement officers in the USA engage in deliberate and wanton brutality, Amnesty International found that too little was being done to monitor or check persistent abusers, or to ensure that police tactics in certain common situations minimized the risk of unnecessary force and injury. The report also noted that widespread, systematic abuses had been found in some jurisdictions or police precincts. It highlighted evidence that racial and ethnic minorities were disproportionately the victims of police misconduct, including false arrest and harassment as well as verbal and physical abuse.

Police brutality has become the focus of acute national attention during the past year due to several high profile cases, including the fatal shooting of an unarmed West African immigrant, Amadou Diallo, in New York City in February 1999. Four white officers from an elite crime squad looking for a rape suspect fired 41 shots at Diallo, striking him 19 times as he stood in the vestibule of his apartment building.¹ The shooting highlighted not only the tactics of the crime squad itself (which had been the subject of repeated complaints) but wider concern about police unjustly targeting black people and other minorities as potential criminals.

¹ The officers were indicted on state charges of second degree murder in March 1999. The trial was still pending at the time of writing.

In April 1999, an interim report published by the New Jersey Attorney General's office concluded that New Jersey state troopers had been using race as a basis for stopping drivers on a major inter-state highway in the hope of making drug arrests. The review had been initiated following outcry over several cases, including an April 1998 incident in which troopers on the New Jersey Turnpike had shot and wounded three unarmed black and latino men travelling to basket-ball trials.² The report confirmed complaints voiced for years by minorities, including black police officers, that the state police were using "racial profiling" in traffic stops and searches. The same month, the US Justice Department also announced that it had enough evidence of discriminatory treatment by the New Jersey state police to bring a "pattern and practice" lawsuit for federal civil rights violations. These developments also reflected a wider national problem. Similar claims of racial profiling have been made against police forces across the USA, including in California, Colorado, Florida, Illinois, Indiana, Maryland, Massachusetts, Pennsylvania, Oklahoma, Rhode Island and Texas.³

²Case cited in *Rights for All*, p.17 In September 1999 two troopers were charged with attempted murder and assault in the case. Five months earlier, the same troopers were indicted on 19 misdemeanour charges of falsifying their records to conceal the number of minority drivers they stopped.

³Several of these states were or are the subject of lawsuits filed by the ACLU (Colorado, Maryland, Michigan, New Jersey, Pennsylvania, Oklahoma and Illinois)

Attorneys Barry Schecl, left, and Jonnie Cochran, right, flank their clients: Jarmaine Grant, second left, Keshon Moore, centre, Danny Reyes, centre right, and Rayshawn brown at a press conference in New York Wednesday, 8 September 1999. The four African-American men were stopped on the New Jersey Turnpike and shot by state troopers. Two state troopers responsible for the 1998 shooting of the men sparked a statewide investigation into racial profiling among the state police and both now face attempted murder charges. © AP (Ed Bailey) - ai use only.

Concern about these and other cases led civil rights leaders to call on the federal government to take urgent action to address the problem of racism in policing. President Clinton and Attorney General Janet Reno have met with police and community leaders several times this year and have announced various initiatives, described below. The issue is now at the forefront of a national agenda for police reform.

This document describes proposals for change made at federal and local level and other developments which have taken place since publication of *Rights for All*. It also summarizes Amnesty International's continuing concerns about police brutality in the USA, highlighting specific areas and reiterating its key recommendations.

2. KEY NATIONAL AND FEDERAL INITIATIVES

“...We must continue to hold accountable those who abuse their power by using excessive or even deadly force ... Some say police misconduct is an inevitable byproduct of the crackdown on crime. I don't believe that's so. As a society, we don't

have to choose between keeping safe and treating people right, between enforcing the law and upholding civil rights. We can do both ...”

President Clinton, speaking at a national summit on police brutality in June 1999.

The Clinton Administration has taken several important steps this year to address the problem of police brutality, particularly as regards treatment of racial minorities. These include the following:

- On 13 March 1999, in a radio address on “Strengthening Police Integrity”, President Clinton announced that he would be asking Congress to approve an extra \$20 million in federal funding for police ethics and integrity training at the 30 regional community policing institutes run by the Justice Department; plus further federal money to help local police hire more minorities and to provide more training in community policing.
- In April, Attorney General Janet Reno met with police chiefs and community leaders from some 20 US cities, and with inner-city youths, to discuss ways of improving public confidence in the police. In a speech on 16 April, she called on every law enforcement agency to make sure they had in place “a vigorous system for investigating allegations of misconduct thoroughly and fairly”; to monitor their use of force and to establish “early warning systems” to identify officers who engaged in misconduct. She stressed the need for an “independent review” of each department’s performance.
- On 9 June, the Justice Department held a national summit on police brutality - the “Police Integrity Conference” - attended by community and civil rights leaders and police representatives. President Clinton attended part of the summit and took part in a roundtable discussion. At the meeting Janet Reno announced that, over the next six months, the Justice Department would compile policy and practice recommendations and distribute them widely to agencies around the country.
- On the same day, President Clinton issued an executive order requiring federal law enforcement agencies (including customs agents and immigration officials at ports of entry) to compile data on the race or ethnicity of people stopped, searched or arrested, to determine if race played a part in such actions. He said he hoped this would spur state and local agencies to follow suit.

Other initiatives have been taken at state or local level. For example, police chiefs from some of the USA's largest police departments have announced that they will develop national guidelines governing traffic stops, in order to reduce concern about racial profiling.⁴ In April 1999, Representative John Conyers reintroduced the Traffic Stops Statistics Act into Congress, requiring the Attorney General to collect national data on traffic stops and to analyse the results (the Act had been passed unanimously by the House of Representatives in 1998 but was not voted on by the Senate). The bill was still pending at the time of writing.

Meanwhile, some police departments have voluntarily introduced their own monitoring systems, requiring officers to keep racial statistics on motorists stopped by the police. Thirty-three California law enforcement agencies, including the San José and San Diego police departments, have agreed to collect such data, as have police departments in Anne Arundel County (Maryland), Philadelphia and Rhode Island. Laws were also passed in New Jersey, Connecticut and North Carolina to outlaw racial profiling by police agencies statewide and similar bills were pending in California, Illinois and Massachusetts at the time of writing.⁵

⁴ The announcement was made in April 1999, following a meeting in Washington, DC.

⁵ The California bill, which would require all police departments in the state to keep basic statistics on the race of those stopped, passed overwhelmingly in the state legislature in September 1999 but still had to be signed by the Governor at the time of writing.

In June 1999 the ACLU published a report on racial profiling, which it said had escalated with the “war on drugs” beginning in the 1980s and which “since its earliest days targeted people of color”. The report gave examples of cases across the USA. It made five recommendations, including a call for the US Justice Department to end the use of racial profiling in federally funded drug interdiction programs; full government support for passage of the Traffic Stops Statistics Act and a call on all police departments to voluntarily collect such statistics.⁶

Police brutality and racism has been high on the agenda of many civil rights non-governmental organizations (NGOs) in the USA. On April 21, 1999 the Leadership Conference on Civil Rights⁷ sent a 16-page letter to President Clinton signed by 22 US-based human rights organizations, including Amnesty International-USA. The letter welcomed the President’s March 1999 address on “Strengthening Police Integrity” and urged him to “develop a national agenda to encourage the highest level of law enforcement service, both to protect all persons in our society and to hold police departments and federal law enforcement agencies accountable for their officers’ conduct”. They made 11 detailed recommendations, many of them similar to measures Amnesty International called for in *Rights for All*.

During the year, the Congressional Black Caucus held hearings on police brutality in Washington DC, New York City, Chicago and Los Angeles. Further hearings are planned for Houston and Atlanta, with a report and recommendations due to be presented to the federal government.

3. INTERNATIONAL STANDARDS

The USA is a party to the following human rights treaties which contain standards and protections relevant to the treatment of individuals by law enforcement officials:

The *International Covenant on Civil and Political Rights* (ratified by the USA in 1992) sets out a range of rights, including the right of every human being not to be arbitrarily deprived of life (Article 6) and the right to freedom from torture or ill-treatment (Article 7). Article 26 states that all persons are entitled without any discrimination to the equal protection of the law and that “..the law shall ... guarantee to all persons equal and effective protection against discrimination on any ground

⁶*Driving While Black*, ACLU June 2, 1999

⁷The oldest, largest coalition of organizations in the US working to protect civil and human rights.

such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (ratified by the USA in 1994) requires the prohibition and punishment of torture in law and in practice. States must ensure there is a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed, and must bring those responsible to justice (Articles 12 and 16).

The *International Convention on the Elimination of All Forms of Racial Discrimination* (ratified by the USA in 1994) obliges states to eradicate racial discrimination, including in the judicial system, and guarantees “the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”. An act or practice may be defined as racial discrimination under the Convention by its discriminatory effect on a particular group, even if not purposeful.

Other relevant international standards include the *Code of Conduct for Law Enforcement Officials* (adopted by the UN General Assembly in 1979) and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (adopted by consensus by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990). These provide, among other things, that force should be used only as a last resort when non-violent measures have failed or would be clearly inappropriate, and that in all cases the amount of force must be proportionate to the threat encountered and designed to minimize damage and injury.

The *Basic Principles* also provide that firearms should be used as a last resort in self defence or to protect others against “imminent threat of death or serious injury” and “only when less extreme means are insufficient to achieve these objectives” (Principle 9) and “...in a manner likely to decrease the risk of unnecessary harm” (Principle 11).

Although US laws and policies are in many respects consistent with the above standards, they are frequently violated in practice, as illustrated by the cases described in this report. By failing to take adequate measures to prevent or punish human rights violations by law enforcement officials, US authorities are themselves in breach of their international human rights obligations.

4. AMNESTY INTERNATIONAL'S CONTINUING CONCERNS

Amnesty International welcomes the initiatives taken by the federal government as well as local and state agencies. The moves to monitor racial or ethnic disparities in motor vehicle stops is an important step in identifying and thereby seeking to eliminate discrimination in a crucial area of law enforcement. However, it believes that more needs to be done to combat police brutality and to address the problem of racism in policing. In jurisdictions across the USA, the overwhelming number of victims of police brutality, unjustified shootings and deaths in custody are members of racial or ethnic minorities. Evidence of discriminatory treatment and bias in police contacts with members of the black, Latino and Asian communities is widely documented by NGOs, commissions of inquiry, in court cases and lawsuits and by countless individual testimonies. Such treatment is contrary not only to the US Constitution but also to US obligations under international law to eliminate all forms of racial discrimination.

Amnesty International further believes that, while race is a key factor in police brutality, it is not the sole problem. Police use of excessive force and questionable shootings are reported with alarming regularity in a variety of situations, sometimes cutting across racial lines. Other vulnerable groups include mentally disturbed and homeless people on the streets; gay people have been the target of harassment and undue force in some areas. Amnesty International is concerned by the abusive or inappropriate use of pepper spray by law enforcement officials, including its use against non-violent demonstrators. Suspects continue to die in police custody after being held in dangerous restraint holds or subjected to other force. Although some police agencies have taken measures to tackle these problems, the evidence suggests that police brutality and excessive force remains both persistent and widespread across the USA.

While a growing number of police departments are subject to some form of external, civilian review, many continue to lack effective oversight. Police internal investigations into shootings or other use of force remain for the most part shrouded in secrecy. Lax or non-existent oversight can mean systematic abuses going unchecked - even in the nation's capital, as shown by a recent study of police shootings in Washington, DC (see below). While there have been criminal prosecutions in several high profile cases, such action is generally rare. All too often, police officers involved in questionable shootings or other acts of excessive force are exonerated by criminal or administrative inquiries or they receive only minor punishment.

Amnesty International's concerns are illustrated by the following cases reported over the past year.

Police Shootings

“This was a person who did not have to die. I don't understand why law enforcement always says ‘we have to make split decisions’. Why is the decision always to kill? The black life is so expendable”.

Sister of unarmed motorist Stanton Crew, shot dead by New Jersey police officers in June 1999 (quoted in the New Jersey Record, June 6 1999)

There continue to be frequent disturbing reports of unjustified police shootings, with officers firing on unarmed suspects fleeing non-violent crime scenes, during traffic stops, at the end of pursuits or in other questionable circumstances. In some cases suspects have been hit with multiple police gunfire. In most of the cases reported, the victims were African American or other minorities, and some were children. For example:

- **Kansas City:** In November 1998 a 13-year old black child, Timothy L. Wilson, driving a friend's pick-up truck, was shot dead after a brief chase. Six officers had pursued the truck for several minutes after seeing Timothy driving erratically. All six surrounded the truck when it came to a halt in mud. Four white officers opened fire after, they said, he tried to reverse then drove towards them, a version disputed by an attorney for the Wilson family. The officers were cleared of criminal wrongdoing by a local grand jury. A civil lawsuit is pending.
- **California:** In August 1999, in an early morning narcotics raid, a SWAT team⁸ from the El Monte police department burst into the home of a Mexican immigrant family and shot dead an unarmed elderly man, Mario Paz, in his bedroom. He was reportedly shot twice in the back. No drugs were found in the raid and a different name to that of the residents was on the search warrant. Many other questionable police shootings have been reported in California, several of which are cited below.

⁸Special Weapons and Tactics: special paramilitary police units used by a number of US police departments to deal with incidents of urban terrorism and, increasingly, narcotics offences.

- **Connecticut:** In April 1999, a 14-year old unarmed African American Aquan Salmon, a suspect in an attempted street robbery, was fatally shot in the back by a Hartford police officer during a foot chase. The officer was cleared of criminal wrongdoing but a separate investigation by the state attorney was pending at the beginning of September 1999.
- **Chicago:** In June 1999, LaTanya Haggerty, a 19-year-old passenger in a car pulled over by Chicago police after a short chase, was shot dead when officers mistook the cell-phone in her hand for a gun. In September 1999, the Chicago Police Board (a police adjudicatory body) opened a hearing to decide on a recommendation by the police chief that the officers should be dismissed from the force. A day after the Haggerty shooting, Chicago police officers shot dead Robert Russ, a former college football player, after he refused to get out of his car after a pursuit. He was shot when an officer smashed the car window and pointed his gun directly into the car. The case was still under investigation at the time of writing. Both Haggerty and Russ were black.

Dr. Nenemiah Russell, left, from the adhoc Committee to End Police Brutality, and a demonstrator holding a cell phone, protest during a Chicago City Council meeting, Thursday, 17 June 1999. The meeting was called in response to the police shootings of 2 unarmed people, LaTanya Haggerty and Robert Russ (see over). LaTanya Haggerty was shot after police mistook her cell phone for a gun. © AP (Charles Bennett) - ai use only

- **New York City:** In May 1999 unarmed 16-year old Dante Johnson (black) was shot and critically injured after running away from three police officers who had stopped to question him and a friend while they were standing in the street. The officers were from the same street crime unit which had shot and killed Amadou Diallo in February 1999 (see above). Johnson's case was under investigation by the Bronx District Attorney at the time of writing.
- **New Jersey:** In June 1999 Stanton Crew, an unarmed African American, was shot dead in New Jersey, after he tried to manoeuvre his car out of the way of two police cars which had boxed him in after a car chase. The officers fired 27 shots at his vehicle, as he tried to drive back and forth. A female passenger in the car suffered police gunshot wounds to her leg. The case (which remained under investigation in September 1999) is the latest in a series of questionable police shootings of unarmed motorists in New Jersey.
- **Philadelphia:** In October 1998, 19-year-old Donta Dawson, an unarmed African American youth, was shot dead by a police officer who approached him after seeing him sitting in a stationary car with the engine running. The officer opened fire, shooting Dawson in the eye, after he said Dawson leaned forward and raised his arm. The officer was twice charged with manslaughter (voluntary and involuntary) but city judges dismissed the charges each time.

He was fired from the force but is currently seeking to get his job back through arbitration. In July 1999 the city agreed to pay Donta's family \$712,500 in settlement of a civil action.

· **Texas:** In July 1998 Pedro Oregon, an unarmed Mexican national, was fatally shot by six Houston police officers during a drugs raid on his home. He reportedly died in his bedroom with six gunshot wounds to the back, two to the head and another in his hand. Only one officer was indicted, on a criminal trespass charge. However, after an outcry from the Hispanic community, a police internal inquiry found the officers guilty of "egregious misconduct" and they were fired.

The above cases appear to grossly violate international standards which provide that force should be proportionate to the threat faced - and that firearms should be used only in self defence or the defence of others against an imminent threat of death or serious injury and "only when less extreme measures are insufficient to achieve these objectives".⁹

Most US police departments also stipulate that officers should use deadly force only when their lives or the lives of others are in direct danger - and the majority of police officers do not fire their weapons or do so only in response to armed confrontations. However, dozens of cases similar to those described above occur annually, causing devastating loss to the families as well as costly payouts by cities in civil lawsuits. Many police departments have guidelines specifically restricting the use of deadly force in certain common situations, such as in the case of unarmed suspects in moving vehicles. Officers have frequently been exonerated, however, after claiming they feared for their lives, despite having failed to take basic avoidance procedures (such as moving out of the path of an oncoming vehicle). Others have been only mildly disciplined even after being found to have breached guidelines (see, for example, the Virginia Beach case, below). Furthermore, lax training or supervision have led to systematic problems in some areas.

⁹ *Basic Principles on the Use of Force and Firearms*, cited above.

For example, an eight-month investigation into police shootings in Washington, DC, carried out by the Washington Post in 1998 found a pattern of “reckless and indiscriminate” shootings by officers in the 1990s, the extent of which had been hidden from public scrutiny through inadequate investigations and oversight.¹⁰ DC police shootings doubled between 1992 and 1995, even though homicides in the city had fallen from a record peak in 1991. Shootings since mid-1993 included 54 cases in which police had fired at vehicles (none of whose occupants had shot at officers), killing nine unarmed motorists and wounding 19. The Washington Post study looked at court records and police files and found that many internal investigations were riddled with omissions and errors. Most of the 422 police shootings examined by an internal police review board from 1993 to early 1998 were ruled to be justified, and only two cases resulted in criminal charges against police officers. One case was pending at the time of the Post’s report. In the other case, two officers were convicted of making false statements about a shooting: one was sentenced to 15 days in jail and the other received probation.

¹⁰Series of five articles appearing in the Washington Post November 15-19, 1998. The series reportedly led to some reforms and improvements in training.

Although DC had a higher rate of police shootings than other cities,¹¹ police shootings have reportedly risen in some other jurisdictions as well in the past few years, going against the general downward trend noted in earlier studies.¹² For example, in Chicago police officers are reported to have shot 71 people in 1998, the highest annual total in a decade, despite a fall in homicides in the city. Other cities where police shootings are reported to have risen include San José in California, where six fatal shootings from January to July 1999 was the highest annual total in ten years; San Francisco, where shootings (fatal and nonfatal) reportedly rose from 2 in 1996 to 6 in 1997 and 12 in 1998¹³; and Tulsa, Oklahoma, where the 7 armed people shot by police in 1998 was reported to be the highest in the force's history.

Police shootings in other areas have also caused concern. The US (federal) attorney's office in Los Angeles is currently investigating at least a dozen police shootings in seven Southern California jurisdictions, including Los Angeles County and has increased the number of civil rights lawyers to deal with an increase in complaints (see below). The US Justice Department is also conducting a detailed inquiry into the Riverside Police Department, California, following several controversial shootings and other allegations of mistreatment of minorities in the past year. Cases include the December 1998 shooting of Tyisha Miller, a 19-year-old African American woman shot 12 times by four white Riverside police officers after they found her apparently unconscious in her locked car with a gun on her lap. (The officers fired a total of 23 shots into the car after breaking the window.) Allegations were also made that, after Miller was shot, other officers sent to the scene uttered racial slurs. The officers who shot Miller were cleared of criminal wrongdoing by the local District Attorney but were fired by the police chief for violating departmental policy after sustained local protests. (They are reported to be appealing against their dismissal.)

¹¹The Post investigators looked at data (provided by police departments and other sources) on the average annual total of police shootings from 1990-1997 in 27 large cities (including DC). DC had the largest number of police shootings compared to its population, followed by Baltimore, Detroit, New Orleans, Phoenix, Houston and Philadelphia (comparison made by AI based on Washington Post's published data).

¹²*Deadly Force: What We Know*, Geller and Scott, 1992 (cited in *Rights for All*, p.20) remains the most comprehensive US study of police shootings to date, and noted research showing a general decline in shootings in major cities between 1970 and the late 1980s.

¹³San Francisco Examiner October 8, 1998

Eight fatal police shootings in the small northeastern state of Connecticut since September 1998 (mainly of minorities) have led to widespread protests by the black community. Cases of concern include the Aquan Salman shooting (above) and the fatal shooting of an unarmed Jamaican immigrant, Franklyn Reid, in December 1998. Reid, who was wanted for a parole violation, was shot in the back of the neck at close range by a white police officer from the New Milford Police Department, after a brief chase. He had been apprehended and was on his knees when he was shot. The officer said he fired after Reid made a quick movement and he could not see his hands. He has been charged with murder in the case (with the trial due to start in November 1999), but is reported to be back on active duty.¹⁴ Another disturbing case was the fatal shooting by a West Haven officer of unarmed motorist Victoria Cooper as she tried to drive away from a routine traffic stop in July 1999. The officer said she tried to run him down.¹⁵ In May 1999, the Governor of Connecticut asked a state law enforcement commission to study police shooting investigations by looking at practice in other jurisdictions, and to make recommendations. The commission is due to report its findings in November 1999.

Although the reasons for a rise in shootings are not always clear, community and civil rights groups have expressed concern that some officers may be using over-aggressive tactics. There is also concern that the introduction of powerful semi-automatic weapons which, unlike revolvers, fire many rounds in rapid succession, can increase the risk of unjustified shootings as well as deaths from multiple police gunfire, as in the Diallo and other cases. The Washington Post study found that the rise in police shootings in DC coincided with an influx of new recruits who were inadequately trained or supervised in use of the powerful Glock 9mm semi-automatic handgun, introduced by the department in 1988 to replace the revolver. The Post study found there had been 120 accidental discharges of the weapon by DC police since 1988 and that 75% of DC officers in 1996 had failed to comply with twice-yearly retraining requirements. Many other US police forces, including the New York Police Department (NYPD), have reportedly introduced the Glock or similar semi-automatic weapons in recent years. The use of such weapons underscores the need for thorough training both in the handling of the weapons and in broader tactics to minimise the need to use firearms.

¹⁴Information supplied to AI by the Reid family attorney.

¹⁵AP, July 15 1999, New York Times July 23 1999

Police shootings resulting in death or injury are routinely reviewed by local prosecutors in many US jurisdictions to see whether criminal laws have been violated. However, few officers are criminally charged and little public information is given out if a case does not go to trial. Police administrative inquiries into officer-involved shootings are rarely open to public scrutiny and even decisions on whether or not a shooting contravened policy are not always made public. Thus, systemic problems may remain hidden, as shown in DC. A few police departments have increased outside oversight of the review process in police shootings. Following the rise in police shootings in San José, the city announced in April 1999 that a new panel would review all police shootings, which would include the civilian complaints auditor and the city attorney, as well as police personnel. The findings in individual cases, however, were to remain internal, although any resulting policy changes would be made public. Los Angeles Police Department (Los Angeles Police Department (LAPD) shootings are reviewed by the civilian Board of Police Commissioners who informed Amnesty International in August 1999 that “Following the final adjudication of each incident, the Board’s findings and the report of the Chief of Police become public documents”.¹⁶ However, in many departments, including the New York Police Department (NYPD), the shooting review process as well as the findings in individual cases are completely internal.

Mentally ill or homeless: vulnerable to police abuse

¹⁶Letter from the Board of Police Commissioners August 2, 1999. It informed AI that same procedure applied in the case of all incidents in which force results in the hospitalization of a suspect and in-custody deaths.

Homeless activists and Los Angeles Council member Nate Holden, far right, join hands in prayer in front of a memorial Thursday, 27 May 1999, to protest the shooting of Margaret Mitchell by LAPD officers. Mitchell, 54, a homeless woman pushing a shopping trolley, was killed by police 21 May 1999 after allegedly lunging at officers with a screwdriver. The shopping cart bears a picture of Mitchell. © AP (Damian Dovarganes) - ai use only.

In *Rights for All* Amnesty International noted the problem of police using excessive force, including deadly force, against mentally ill or disturbed people who could have been subdued through less extreme measures. Further cases have been reported since then, including suicidal individuals shot by police after they had harmed themselves but not attacked other people. For example, in February 1999 Ricardo Clos is reported to have died after being shot at 38 times by Los Angeles sheriff's deputies who had responded to a call for help from his wife after he had cut himself in the neck. Police reportedly opened fire after he threw the knife towards them (missing them).¹⁷ In April 1999, a distraught man who had stabbed himself in the stomach was shot dead by police in San José, California, when he refused to put down the knife. In August 1999, Gidone Busch, a mentally ill man wielding a hammer, died after NYPD officers shot at him 12 times. The shooting led to protests in the local community, who questioned why the six officers at the scene could not have subdued him less violently.

¹⁷Amnesty International wrote to the Sheriff's Department in this case, noting reports that the officers used their firearms only after first resorting to nonlethal weapons (bean bag bullets and pepper spray) but said it remained disturbed by the levels of force used against an apparently suicidal individual. AI drew attention to international standards which provide that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force.

There are incidents in which suicidal individuals have overtly provoked the police into shooting them, a phenomenon known as “suicide by cop”. Several police killings in Colorado in 1999 appeared to fit this pattern. One was a young man reportedly upset by a recent break-up with his girlfriend who was shot dead in July when he ran towards an officer with a kitchen knife in his hand yelling “shoot me, shoot me”.¹⁸ An officer from the same department shot and killed another disturbed man with a knife in March 1999 (these were the first shootings in the Northglen police department in five years). Many similar incidents have been reported across the USA.

The fatal shooting of Margaret Laverne Mitchell - a frail, mentally ill, homeless 55-year-old woman - by a LAPD officer in May 1999 caused particular local concern. Police said the officer shot Mrs Mitchell when she lunged at him with a screwdriver while he and another officer were questioning her about a shopping cart she was pushing.¹⁹ Amnesty International wrote to the LAPD in July expressing concern that the shooting was disproportionate to the threat posed and seeking information on whether the department has introduced any special measures for dealing with the mentally disturbed. No response had been received at the time of writing. The shooting is believed to remain under investigation.

¹⁸Reports in Denver Post August 1999

¹⁹Many homeless people in and around Los Angeles carry their belongings in shopping carts or trolleys which are the property of grocery stores or businesses. There have reportedly been attempts by police to control this by issuing tickets, forcing people to remove their belongings from carts or even sending them to jail (e.g. Los Angeles Times July 14, 1998).

Police officers are increasingly called upon to deal with mentally ill or emotionally disturbed individuals, a task which Amnesty International recognizes can be difficult and dangerous at times.²⁰ Some police departments have introduced special programs to train officers to respond to such situations to reduce the incidence of unnecessary force or injury. The NYPD has for some years had guidelines for dealing with mentally disturbed individuals, including specially trained officers in an Emergency Service Unit, although the adequacy of this scheme was questioned following the Gidone Busch shooting. According to a police spokesperson, the NYPD responded to 36,000 “Emotionally Disturbed Person” calls in 1998, roughly 100 a day on average, but only about 4,000 were handled by the Emergency Service Unit.²¹

According to studies, one of the most effective programs is the so-called “Memphis Plan” (first developed by the Memphis Police Department in Tennessee), in which teams of police officers (known as Crisis Intervention Teams) receive special training from mental health experts to deal with crisis situations and de-escalate any violence. The teams are dispatched to defuse situations and take mentally disturbed people to local mental health crisis centres rather than police stations. The Memphis Plan has been adopted by several police departments in recent years, including in Albuquerque (New Mexico), Portland (Oregon), Seattle (Washington) and Waterloo (Iowa). The Houston Police Department (Texas) started a pilot program in September 1999. At the time of writing, police agencies in Ventura County, California, were working with the Ventura County Mental Health Board to introduce the Memphis Plan in several of the county’s cities, including Oxnard and Ventura.²² Similar proposals are under consideration in parts of Ohio and Florida. Anecdotal and other evidence indicates that the Memphis Plan has resulted in reductions in the use of deadly force and in injuries sustained by officers and civilians, as well as reductions in the use of restraints.²³

²⁰Increasing numbers of mentally ill and homeless people on the streets in US cities, due to the closure of long-stay hospitals, and in some areas cuts in community mental health provision, is well documented, as is the rise in mentally ill people going to jail or in prisons.

²¹Reported in the New York Times, September 1, 1999

²² A Ventura County Mental Health Board spokesperson told Amnesty International that the measures were taken because of the relatively high rate of police shootings of disturbed individuals in the county in recent years, including “suicide by cop” incidents.

²³Memphis Police Crisis Intervention Team report, 1999, p. 11. Police-inflicted injuries to mental patients were reported to have been reduced by nearly 40% by 1992, since inception of the program by the Memphis Police Department in 1988, article in the Commercial Appeal, 4 June 1992.

According to a January 1999 survey of police departments in 194 US cities with a population of 100,000 or more, 78 had some form of special program for dealing with mentally or emotionally disturbed persons. However, 96 police departments (55%) had no specialized response for dealing with such cases.²⁴ Amnesty International is calling on all federal, state and local authorities to ensure that police training programs involve instruction for coping with emotionally or mentally disturbed individuals.

The Margaret Mitchell shooting is one of a series of cases in which homeless people have been reportedly subjected to excessive force or other cruel treatment for apparently minor violations. Amnesty International is concerned that legitimate measures by police to pursue “quality of life” initiatives by cracking down on misdemeanour or public order offences has led to some officers resorting to excessive force in situations in which homeless or disturbed people are particularly vulnerable. The organization is calling on police departments to ensure that all people are treated with respect for their basic human rights regardless of their status. Cases of concern include:

Lewis Rivera, a homeless man sitting eating in a Miami shopping mall in May 1999, was chased by five or six police officers who, according to eye-witnesses, sprayed him with pepper spray, kicked him, threw him to the ground and bound his hands and feet before dragging him to a police car. He died less than an hour later in a police holding cell. On hearing news of his death, one witness is reported to have said: “ This was a skinny homeless guy who didn’t have the force to be fighting police ... he was just sitting there ... the officers were in his face, speaking badly to him. I came back a minute later, and there were so many police cars, I thought it was a bank robbery...”²⁵ He is the second homeless man in Miami reported to have died this year after being pepper sprayed and restrained by police: Rafael Perez Siberio died in February 1999 after a struggle with officers who were arresting him for jumping on cars and “acting crazy”.²⁶ Amnesty International has sought information on the outcome of official inquiries into both cases.

²⁴Emerging Partnerships Between Mental Health and Law Enforcement, Henry J. Steadman, Ph.D. et al, Psychiatric Services, January 1999, Vol. 50. No 1, pp. 99-101

²⁵Reported in the Miami Herald, May 21 1999.

²⁶Report in The Miami Herald 20 June 1999

Other cases include the shooting of an unarmed “squeegee”²⁷ man, Antoine Reid, by an off-duty NYPD officer in June 1998. The officer shot Reid in the chest, causing serious injury, after Reid had tried to wash his car windshield and refused to move on. The officer was acquitted of criminal charges of assault and reckless endangerment after a non-jury state trial in June 1999, but faced possible police disciplinary proceedings. In May 1998 two California Highway Patrol (CHIPS) officers pleaded no contest to state criminal charges of falsely imprisoning and threatening a homeless man who was washing car windshields: it was alleged that on three occasions they had taken him to remote locations, then abandoned him after pepper spraying him as punishment and subjecting him to other threats.

In July 1999 Amnesty International wrote to the authorities to express concern about reports about the fatal police shooting in June 1999 of an unarmed, homeless man during a confrontation with Alameda County sheriff’s deputies. It is alleged that the man, who was pacing the sidewalk in tattered clothing, was shot after he continued to approach deputies after they ordered him to stand still. Amnesty International had not received a response to its inquiries about this case at the time of writing.²⁸

Dangerous Restraint Procedures

Many suspects have died in custody from “positional asphyxia”: death caused from being placed in a position which restricts breathing. Factors which can precipitate positional asphyxia include placing someone in a prone position while restrained, especially if they have been involved in a violent struggle, are obese or are under the influence of drugs. Guidelines issued by the National Institute of Justice and other bodies have warned of the particular dangers of hogtying (where a suspect’s ankles are bound from behind to the wrists).²⁹ A number of police departments, including the LAPD and the NYPD, have banned hogtying. However, others still authorize the procedure and deaths continue to be reported.

²⁷An implement used for washing car windshields

²⁸AI wrote to the Oakland Police Department which was reportedly investigating the shooting and to the Alameda County Sheriff’s Department.

²⁹Guidelines issued by the National Law Enforcement Technology Center issued in June 1995 under the heading “Positional Asphyxia-Sudden Death” identifies risk factors and advises police agencies to avoid the use of prone restraint techniques such as hogtying and to take other precautions, including not keeping a suspect face down. See also *Rights for All* p.32 for reference to other reports on the dangers of hogtying and other restraint techniques.

For example, Dwayne Nelson is reported to have died in September 1998 after being placed in a Total Appendage Restraint Procedure (TARP), a form of hogtie, by Los Angeles County Sheriff's deputies while being transported to jail: he lost consciousness while still the patrol car and died in hospital less than two hours later.³⁰ The San José Police Department banned use of the TARP in September 1998, after a man died after being hogtied by seven officers. In January 1999, Luis Enrique Hernandez, a Latino man, died after being hogtied by three officers from the Fort Worth Police Department, Texas, in violation of a departmental ban on the procedure. The officers were later fired, as were two other officers who reportedly tried to cover up the incident by lying to investigators.³¹

Other deaths from positional asphyxia have resulted from suspects being knelt on by police officers or pressed face-down on the ground. They include Danny Smith, a mentally ill inmate who died during a struggle with Los Angeles County sheriff's deputies at the LA County Jail Twin Towers facility in August 1998: the coroner ruled a contributing factor in his death to be "probable positional asphyxia". A Chicago newspaper reported in March 1999 that there had been 14 restraint-related custody deaths in Cook County between January 1990 and September 1998 in which suspects had suffocated during a struggle with officers (although cocaine intoxication was a factor in some cases).³² In June 1999 Gregory Riley died after a struggle with Chicago police officers during a drugs arrest. The Cook County medical examiner's office found cause of death to be "asphyxia due to compression of the neck and chest" and ruled it a homicide. (The case was still being investigated at the time of writing.) Some other departments continue to authorize chokeholds (application of pressure to the neck), despite the risks of this procedure. They include the Dallas Police Department, where a man suspected of indecent exposure reportedly died in September 1998 after being sprayed with tear gas and placed in a neck hold.³³

Deaths of suspects have also been reported after multiple restraint techniques and other force were employed. They include:

³⁰Los Angeles Times, San José Mercury News, Fresno Bee, September 1999

³¹AP report 25 June 1999 (taken from Forth Worth Star-Telegram)

³²The Chicago Reporter, Volume 28, Number 3, March 1999

³³Dallas Morning News, September 18 1998.

Danny Dunn, a mentally disturbed Caucasian man arrested for public drunkenness, died shortly after a struggle with deputies in a padded holding cell in Kern County Jail, California, in February 1999. Three deputies reportedly entered the cell to restrain him after he had been “loud and combative”. According to information given to Amnesty International, one of the officers pepper sprayed him while another “placed” his foot on his chest and applied a carotid chokehold. Dunn was dragged to the hallway, where he was reportedly again placed in a chokehold with an officer’s weight upon him. He was transported to hospital dead on arrival, some six hours after his arrest. According to Dunn’s attorney, he had been involved in a bicycle accident on the day before his arrest for which he sought medical attention at a hospital and was diagnosed with concussion. His chest was X-rayed on that occasion and showed no new fractures.

The autopsy report in Dunn’s case established the cause of death as internal bleeding from a torn liver due to “compressive trauma to the abdomen” due to a “hyper excitable state associated with terminal police struggle”. The autopsy report also recorded three recent rib fractures and a recent skull fracture. The manner of death was given as “accident”.

Two independent forensic experts who have looked separately at the autopsy report for Amnesty International found the case to be highly disturbing. The experts agreed with the cause of death given in the autopsy report and the conclusion that Danny Dunn must have died within minutes of suffering the injuries to his liver. However, both experts noted that those liver lacerations could only have been caused by massive blunt trauma to the abdomen during Dunn’s period in custody. The only event which could have given rise to such traumatic injury was his struggle with the sheriff’s deputies and both concluded that the deputies must have forcefully stamped on Dunn’s stomach. They therefore disagreed with the conclusion that the manner of death was “accident[al]” and said further investigations into the case were needed. One also queried why Dunn was restrained at all, when he was already in a padded cell where presumably he was at no risk to himself or others.

Amnesty International continues to pursue this case with the authorities and to seek a full inquiry into his death.

In January 1999 Michael Labmeier died in Kenton County Jail, Kentucky, after he was pepper sprayed, possibly electro-shocked with a stun shield, and hogtied.³⁴

³⁴ Case cited in Amnesty International report: *Cruelty in Control: The Stun Belt and other*

OC Spray

In *Rights for All*, Amnesty International also expressed concern about OC pepper spray widely used by US police departments since the early 1990s. The spray is an inflammatory agent derived from cayenne peppers, which inflames the mucous membranes causing the eyes to sting and can temporarily paralyse the larynx, causing gagging and choking. Although it has been promoted as a safer and more effective pleaded or impact weapons in subduing unruly suspects, a number of studies have warned of the risk of death or adverse health effects from OC spray. Research suggests that pepper spray may be particularly harmful in the case of people who are agitated and under the influence of drugs such as cocaine, or to people with respiratory problems caused by asthma or heart disease. Although there are no national statistics available, at least 70 people are reported to have died in the USA after being subjected to OC spray during arrest or while in custody. While most of the deaths have been attributed to factors such as drug intoxication or positional asphyxia, or were unexplained, there is concern that OC spray may be a contributing factor in some cases.

In August 1999, the Tucson Police Department in Arizona suspended the use of OC spray after one suspect died and another was hospitalized. On 8 August, Tyrone Johnson (a former high school football star) died after Tucson police sprayed him with pepper spray and struck him with batons, when he tried to flee during his arrest. According to press reports, police and eyewitnesses confirmed that Johnson said he suffered from asthma as police and fire department officers tried to wash away the spray with a hose. He died 45 minutes later in an ambulance on the way to hospital. Final determination of cause of death was still pending in August 1999.³⁵ Eight days later, a 24-year-old Tucson man was rushed to hospital after foaming at the mouth and complaining of shortness of breath within minutes of being sprayed. The police chief is quoted as saying that he wanted “reasonable assurance that pepper spray is safe before I put it back on the street”.³⁶

³⁵The autopsy report is said to have ruled out bruises on Johnson’s body and head as possible causes of death. Police have said Johnson had cocaine and opiates in his system. The preliminary results of a police internal inquiry into police use of force in the case is reported to have indicated that the officers acted within policy (Arizona Daily Star 17 August 1999).

³⁶The Arizona Daily Star 19 August 1999

Many US police departments continue to use the spray, however, and other deaths have been reported in 1999. They include two homeless men in Miami, Florida (see above) and 21-year Daniel Ramirez, who died in June 1999 30 minutes after he was chased, pepper-sprayed and handcuffed by police in Los Angeles. The cause of death in Ramirez's case was given as "asphyxia" and "cocaine intoxication" with manner of death an "accident".³⁷ In April 1999, Earl Faison, a suspect in the shooting to death of a police officer, died in police custody in New Jersey, allegedly after being punched and doused with pepper spray by City of Orange police officers. An officer is alleged to have told federal investigators that Faison (who was asthmatic) was sprayed in the mouth and nose while handcuffed in a stairwell in police headquarters. The case remained under federal investigation at the time of writing. Amnesty International has received other reports of the abusive or inappropriate use of OC spray. Some suspects have been subjected to repeated bouts of spray, for example, despite warnings that serious health risks may ensue if someone is over-exposed to pepper spray. There is also concern that pepper spray may either be ineffective in cases of people who are mentally disturbed or under the influence of drugs or may even worsen their agitated behaviour.³⁸

³⁷Amnesty International has sought a copy of the autopsy report in this case in order to ascertain whether any lethal amounts of cocaine had been ingested. According to newspaper reports at the time of his death he was reported to have been trying to swallow an unbroken bag of cocaine when he was pepper sprayed. AI wrote to the LOS ANGELES POLICE DEPARTMENT (LAPD) for more information about this case in July 1999 but has received no reply to date.

³⁸This has been found in several studies, and was also reported in several of the cases cited in this report, including Ricardo Clos (shot by police in Los Angeles) and Danny Dunn (Kern County Jail death)

Amnesty International is concerned that, while some departments authorize OC spray only against violently resisting suspects, others have less stringent policies and may use it routinely in situations where people fail to comply with an order or passively resist arrest. Use of the spray in such circumstances would appear to contravene international standards which require that force should be used only as a last resort and only in proportion to the threat encountered. For example, an article in the Miami Herald in June 1999 reported that police in Miami used OC spray “mostly to arrest nonviolent people who failed to obey simple commands”.³⁹ Other cases where OC spray appears to have been used inappropriately include that of a 77-year-old black woman, pepper-sprayed by Virginia police in November 1998 as they dragged her from her car during confrontation over a minor traffic violation.⁴⁰ Non-violent demonstrators have also been pepper-sprayed. For example, in April 1997, officers from the University of California Police Department reportedly beat and pepper-sprayed students engaged in the non-violent occupation of a university building in Berkeley, California. Police officers reportedly hit students with batons as they were lying on the ground and sprayed pepper spray at close range into several students’ faces as well as in arcs across the crowd. At least two people are reported to have suffered asthma attacks (as well as other injuries) resulting from the treatment.⁴¹

In October 1997, Sheriff’s deputies in Humboldt County, California, swabbed liquid OC spray directly into the eyes of non-violent anti-logging demonstrators who had locked themselves together, action Amnesty International condemned as deliberately cruel and tantamount to torture. In October 1998, a federal judge dismissed a lawsuit brought by the protesters (seeking an injunction to end the practice) on the grounds that the procedure caused only “transient pain”. Earlier that same month, sheriff’s deputies from the same county again used the technique to force four female anti-logging protesters to comply with an order to unchain themselves. An appeal against the denial of an injunction to ban such treatment was pending before the 9th Circuit Court of Appeal in September 1999.

³⁹Miami Herald, June 20 1999. The article referred to its use by the Hialeah and Miami Beach Police Departments. The Miami-Dade Police Department currently does not use pepper spray.

⁴⁰Case of Goldie Akers, cited in statement by Rep James E Clyburn to Congressional Black Caucus hearing May 1999, Washington DC

⁴¹Report in Copwatch, Fall 97 and information from Berkeley Police Review Commission.

International standards encourage the development of non-lethal weapons in order to decrease the risk of death or injury inherent in the use of firearms or other potentially lethal weapons. However, they state that such weapons must be “carefully evaluated” and their use “strictly controlled”. This does not appear to be happening with pepper spray in the USA, where there is no systematic monitoring of its use either within states or nationally. Furthermore, policies on use of the spray appear to vary widely and some are far less stringent than others. Some agencies, for example, require the hospitalization or at least prompt medical examination of suspects subjected to the spray.⁴² However, others do not. Guidelines issued by the Kern County Sheriff’s Department (California), for example, expressly state that “it is not routinely necessary to medically clear all OC exposures”, noting that symptoms of “swelling and discharge of the mucous membranes” and “coughing and shortness of breath” will disappear naturally within about 45 minutes, during which time medical treatment will not normally be necessary. This is of particular concern given that many deaths can occur suddenly well within this period.

Stun belts

⁴²These include the Philadelphia Police Department, the Berkeley Police Department; St Paul (Minneapolis) Police Department

Remote-controlled electro-shock stun belts, which can inflict severe pain and instant incapacitation through a 50,000 volt charge of electricity at the push of a button, are used by law enforcement agencies in more than 100 US jurisdictions (including state corrections departments and local police or sheriff's agencies). They are used mainly to restrain prisoners during transportation and in courtrooms. Amnesty International considers that the use of stun belts, even without their activation, is inherently cruel and degrading and it has called for them to be banned.⁴³ In January 1999, a federal judge issued a preliminary injunction barring the belt for use in courts in Los Angeles County after it was activated against defendant Ronnie Hawkins on the orders of a judge whom he had repeatedly verbally interrupted during his June 1998 sentencing hearing. The federal court ruled that the "chilling effect" of the fear of being subjected to the pain of a 50,000 volt jolt of electricity could so inhibit a defendant that it could compromise the defence. Amnesty International submitted an *amicus curiae* brief to the court in support of Hawkins' claim that activation of the belt in his case constituted torture, in violation of international law. An appeal by LA County against the ruling was pending at the time of writing. Meanwhile the belt remains in force in other US jurisdictions (including at least 17 other counties in California).

Misuse of police dogs

Amnesty International has received disturbing reports of police dogs being used to attack and needlessly maul suspects in several jurisdictions. In February 1999, Roy Lynn Weeaks suffered severe injuries (including a nearly severed penis) when bitten in the groin by a dog attached to the Bakersfield Police Department's canine unit in California. The police claim Weeaks was running away when the handler released the dog, but witnesses are reported to have said he had surrendered and was lying face-down on the ground when police ordered the dog to bite him. (Amnesty International's request to the department for information on the outcome of their investigation into the case was denied by the city attorney's office on the ground that the information was "protected" under state law. A civil lawsuit is pending.) In July 1998, a mentally disturbed woman suspected of killing her child was mauled by a police dog from the Sacramento Police Department as she lay, apparently unconscious, on a motel bed. A police report confirms that the dog was not called off until after she was placed in handcuffs; she sustained severe dog bite wounds to her thigh. There are reports of other unresisting suspects being bitten by dogs from the

⁴³Amnesty International's concerns regarding the use of stun belts in the USA (and other electro-shock equipment) are described in *Cruelty in Control? The Stun Belt and other Electro-shock equipment in Law Enforcement*, June 1999 (AI Index: AMR 51/54/99)

Sacramento police and the Sacramento sheriff's departments' canine units. In March 1998, a man stopped by sheriff's deputies in Frederick County, Maryland, for driving erratically on the wrong side of the road (who turned out to be suffering from hypoglycemic shock) was reportedly beaten, pepper sprayed and repeatedly bitten by a police dog who was ordered into the car once it had come to a halt. He was reported to have suffered dog bite injuries to his arms and right thigh.

In June 1999, the FBI opened a criminal investigation into an alleged pattern of brutality involving the canine unit of Prince George's County Police Department, Maryland, following more than a dozen recent cases in which unresisting suspects - including several teenagers - were bitten and seriously injured by police dogs (in at least four incidents, according to civil lawsuits, officers ordered dogs to bite the victims after they were already subdued).⁴⁷ The department subsequently announced that it would revise its policies to train dogs to "bark and guard" rather than bite suspects. The LAPD is reported to have seen a drop in dog bite injuries after introducing a similar policy in 1992. However, it appears that some departments may continue to train dogs to routinely bite suspects during searches or arrests.⁴⁸ Amnesty International believes that such a practice is open to abuse and calls on all police agencies to introduce strict canine policies designed to minimize damage or injury, in accordance with international standards on the use of force. All departments should also require rigorous reporting procedures for incidents in which canines are deployed, and cases in which suspects are injured.

Alleged abuses against Gay, Lesbian, Bisexual or Transgendered (GLBT) individuals

⁴⁷Washington Post, July 1999

⁴⁸Amnesty International has requested information about the canine policies of the Bakersfield Police Department and the police and sheriff's departments in Sacramento but no information has been received to date.

There have been reports of police brutality or harassment of gay or transgendered individuals. Amnesty International received allegations that NYPD officers used unnecessary force against peaceful demonstrators attending a rally organized by gay activists in October 1998 to protest the homophobic murder of Matthew Shepard (a gay student killed by two men in Wyoming). The NYC authorities have denied that the police acted improperly.⁴⁹ However, earlier this year attorneys for rally participants submitted complaints to the Civilian Complaint Review Board (CCRB) based on affidavits relating to 70 incidents during and after the demonstration. Allegations include denial of HIV medication to some of those arrested along with access to food, water and toilet facilities, and the physical and verbal abuse of some demonstrators by police officers (including use of homophobic epithets), some of whom allegedly covered their badges. The CCRB was continuing to investigate the case at the time of writing.

Two NYPD officers, summoned in response to a 911 request for emergency medical assistance in the Bronx, are alleged to have attacked transsexual JoLea Lamor on 24 November 1998.⁵⁰ According to witnesses' version of events, disputed by the police, police officers verbally abused her and pushed her against a wall, after discovering that she was a transsexual. A large number of officers entered the apartment and family members were Maced. A civil lawsuit alleging police misconduct was filed by the family.

US-based organizations monitoring incidents of violence against gay, lesbian, bi-sexual and transgendered (GLBT) individuals report that, in 1998, they received information on 51 documented incidents of anti-GLBT violence by law enforcement officers in the USA (up from 42 in 1997).⁵¹

There continue to be reports of selective enforcement of laws and alleged "entrapment" of members of the gay community (see *Rights for All* p 42). At the time of writing, Amnesty International was seeking information on claims that gay men in

⁴⁹In a letter to Amnesty International dated 8 June 1999, Steven M. Fishner, on behalf of Mayor Giuliani, wrote that police action was "necessary and appropriate" ... "[as] unfortunately, when the protesters began to block the streets, the protest began to infringe upon the rights and safety of other New Yorkers ... Unfortunately, the arrest of the protesters became necessary. Yet police officers acted in a dignified and professional manner when making these arrests".

⁵⁰Article in Citystate, January 26 1999

⁵¹Committee United Against Violence (CUAV) report 1998

some jurisdictions (including Estancias, California) have been unfairly targeted for arrest by undercover police officers who make approaches then charge the men with lewd conduct. According to a US monitoring organization, reported police entrapment incidents increased by 67% in 1998, with the highest number of incidents reported in San Francisco, Detroit and Minnesota.⁵²

5. NEED FOR ACTION, ACCOUNTABILITY AND OVERSIGHT

Prosecutions

⁵²CUAV report, *ibid*

During the past year, police officers in several high profile cases have been convicted or are awaiting trial on criminal charges for using excessive force. In May 1999 an officer pleaded guilty to violating the civil rights of Abner Louima by ramming a broken broomstick handle into his rectum in a police station bathroom in 1997. In June 1999 a federal jury convicted a second officer of torturing Louima by holding him down during the attack. They were both in federal custody awaiting sentencing at the time of writing. In October 1998 a former NYPD officer was sentenced to seven and a half years in prison by a federal judge for violating the civil rights of Anthony Baez who was choked to death during a confrontation with officers in 1994. However, such cases remain rare and the “code of silence” (in which officers refuse to testify against their colleagues or cover up misconduct) continues to hamper investigations.⁵³ Civil rights lobbyists claim that local prosecutors are less diligent in pursuing criminal cases against police officers because they rely on police co-operation in other cases. A similar view was taken by the US Commission on Civil Rights in a report on policing in Los Angeles published in May 1999, when it called for a special prosecutor to be appointed in police abuse cases, citing the low rate of prosecution of such cases.

The lack of state prosecutions has been offset in some areas by more resources being allocated for federal civil rights prosecutions. In July 1999, it was announced that a special civil rights section had been formed in the US Federal Attorney’s office in Los Angeles to meet an increase in the number of civil rights complaints under investigation in Southern California. The office was reported, among other things, to be investigating at least 12 shootings in Los Angeles and neighbouring counties for possible federal criminal civil rights violations. In New York City some of the most severe penalties imposed on police officers in recent years have resulted from federal prosecutions rather than state action.

⁵³A key factor in the Louima prosecution, which led to one of the officers changing his plea to “guilty”, was the testimony of an officer who broke the code of silence and said he saw the officer moments after the alleged assault, swinging a broken broomstick. Two other police officers accused of beating Louima in a police car on the way to the station, where there were no independent witnesses, were acquitted.

Federal prosecutions of law enforcement officers have also risen nationally. According to a recent survey, the number of law enforcement officers in federal prison has risen by more than 500% in the past five years, from 107 in 1994 to 655 in June 1999.⁵⁴ While most prosecutions were for corruption, the number of officers prosecuted for excessive force also rose. The Justice Department is reported to have filed criminal charges against 74 officers for excessive force in 1998, a 12-year high. However, this still represents only a small proportion of the thousands of complaints of police brutality filed with the Justice Department each year. The Clinton administration has reportedly asked for more money in next year's budget to pay for 16 additional Justice Department attorneys to work solely on police cases.

The Justice Department is also increasingly using its powers under a 1994 law to investigate whether police or sheriff's departments engage in a "pattern and practice" of civil rights violations (by, for example, systematically failing to prevent police brutality, racism or other abuses) and to bring civil lawsuits to secure changes.⁵⁵ In most cases the Justice Department tries to seek court-approved agreements (known as "consent decrees") with the agencies under investigation, without proceeding to a full trial. At the time of writing the Department is reported to be investigating at least 10 US police or sheriff's agencies nationwide, including the NYPD. However, the process involved is lengthy and time-consuming. At the end of August 1999 the number of consent decrees drawn up still stood at only two - Pittsburgh (1997) and Steuvenville, Ohio (1998)- although detailed negotiations with several other departments were underway.

Discipline

⁵⁴Review of Justice Department data reported in USA Today 28 July 1999,

⁵⁵This authority was created under the Police Accountability Act provisions of the Violent Crime Control and Law Enforcement Act of 1994 and is described in *Rights for All*, p. 50

Although some police officers have been fired following internal police inquiries (often in very high profile cases), many continue to escape adequate discipline. In New York City, for example, there have been persistent complaints about the small proportion of police abuse cases resulting in disciplinary action, even when complaints have been upheld by the Civilian Complaint Review Board (CCRB). In 1998, the CCRB found 300 complaints to be substantiated but less than half of those cases resulted in disciplinary action by the department. In its 1998 report, the CCRB expressed concern that “the Police Department has declined to provide the CCRB with detailed information concerning the reasons that the cases have been resolved without discipline”.⁵⁶ The NYPD’s poor disciplinary record in excessive force cases is believed to be one of the factors behind a possible “pattern and practice” lawsuit which is currently under review by the Justice Department.

Police officers have a range of procedural protections (often negotiated with their unions), including multi-layered appeal processes, which can hamper efforts to impose discipline. For example, more than half the officers the former chief of the Chicago Police Department tried to fire during his five years in office were either acquitted or had their sentences reduced by the Chicago Police Board (an administrative hearing body).⁵⁷ The difficulty of sustaining strong disciplinary action is illustrated by the case of 14 officers from the Virginia Beach Police Department, Virginia, involved in the fatal shooting of Bruce Quagliato in 1997. Quagliato was an unarmed motorist struck 12 times when police fired more than 60 shots at his car after a slow speed chase. The officers were cleared of criminal wrongdoing but an internal police inquiry recommended that some of them should be fired and others demoted or suspended for violating departmental policies. The police chief declined to fire any of the officers and ordered reduced disciplinary action. All 14 officers appealed to the City Manager who reduced the penalties still further so that no officer received more than one week’s suspension. Seven of the officers lodged further appeals against the reduced penalties in June 1999. The city meanwhile settled a lawsuit filed by Quagliato’s family for \$350,000.⁵⁸

⁵⁶Civilian Complaint Review Board, Semiannual Status Report January-December 1998, p.33

⁵⁷Chicago Tribune, November 1997

⁵⁸The City of Virginia Beach declined to provide Amnesty International with details of the administrative investigations into the Quagliato case in 1998 on the grounds that these were confidential under state law. However, the outcome of the cases was later reported in the press, when officers appealed to the police board (and the hearings became public).

Monitoring/tracking officers involved in repeated complaints

Some departments have developed computerized monitoring systems designed to track officers' performance and to identify those who are the subject of repeated complaints of misconduct (commonly known as Early Warning Systems). The Pittsburgh and Steubenville police departments agreed to establish such systems in the consent decrees reached with the Justice Department (see above). Not all police agencies maintain such data on a systematic basis, however. The Chicago Police Department introduced a sophisticated computerized monitoring system in 1994 but this was discontinued, in part due to pressure from the police union, and all the information contained on a hard disc drive was reportedly deleted; the department has reportedly substituted a less sophisticated system, geared primarily to detecting officers involved in drugs offences rather than brutality.⁵⁹

There was a renewed call on the Philadelphia Police Department to develop a program for identifying potentially problematic officers following the shooting of unarmed black teenager Donta Dawson (see above), when it emerged that the officer involved in the shooting had 11 prior complaints lodged against him, including complaints of excessive force. (The officer and seven others were suspended in 1996 for 10 days each in the death of a man who died during a struggle with police in 1994.)⁶⁰ The Dawson case is one of many examples where officers involved in questionable shootings or brutality have been found to have a history of repeated complaints, a situation which underscores the need for adequate monitoring systems.⁶¹

External oversight

As noted in *Rights for All*, a growing number of US police departments now have some form of external oversight, although the mechanisms in place vary in their powers and effectiveness. The oversight bodies range from civilian complaint review

⁵⁹Information given to AI in July 1998 from Steve Mills, a Tribune staff writer, and G. Flint Taylor, People's Law Office..

⁶⁰Philadelphia Inquirer, October 1998

⁶¹For example, the off-duty officer involved in the shooting of unarmed "squeegee" man Antoine Reid (see above) had already been removed from patrol duty before the shooting because he had accumulated an unusually high number of complaints; however he had been allowed to keep his 9mm service revolver which he used to shoot Reid. The officer convicted of choking Anthony Baez to death had 16 prior complaints of excessive force lodged against him.

boards, with authority to carry out independent investigations into complaints against the police, to ombudsmen or monitors who review police internal procedures and performance.

Cities which established external review mechanisms for their police agencies during the past year include Sacramento which hitherto was the largest city in California (and the sixth in the USA) without any form of external oversight of the police. Following the recommendations of a special committee appointed to examine police issues⁶², the city appointed a full-time “Citizen Complaint Monitor” with power to review both ongoing and completed investigations of citizen complaints, although the actual investigations remained in the hands of the police. The monitor (due to take office in August 1999) has no subpoena or independent investigatory powers and it remains to be seen how effective the appointment will be. The Sacramento committee also recommended that the city and police department should provide more information to the public about the disposition of complaints. It noted that, although California law limited how much information could be disclosed on individual complaints, the police department should still be able to publish the overall results of its investigations of citizen complaints by category (such as excessive force, incivility and racism) and the types of penalty imposed in founded complaints.

Other cities in the process of considering civilian oversight bodies at the time of writing include Austin, Texas and Seattle, Washington. A civilian review board in Washington DC (which had lapsed some years ago) is in the process of being re-established.

National data collection on police use of force

Civil rights organizations and police experts have long expressed concern at the lack of accurate, comprehensive national data on police use of force, including shootings and other deaths or injuries in custody. Even within states, such data is generally not available as local police departments keep their own records (if at all) and there are few statewide reporting systems. Amnesty International believes that such data is essential for the authorities to be able to review practice, take remedial action where there are patterns of concern, and to hold the police publicly accountable.

⁶²Police Blue Ribbon Committee, which reported in September 1998

The Police Accountability Act, which was incorporated into the Violent Crime Control and Law Enforcement Act of 1994, attempted to remedy this by requiring the Attorney General to acquire national data about the use of excessive force by law enforcement officers for research and statistical purposes and to publish an annual summary. However, Congress, while passing the legislation, has consistently failed to fund this measure. Furthermore, the legislation does not require local police agencies to keep their own records on the use of force or to submit data to the Justice Department, so any data collection system at present must depend upon the voluntary cooperation of police agencies.

In a speech in April 1999, Attorney General Janet Reno acknowledged the government's need to "gather data that will help define the scope of the problem" of excessive force. She stated that the Justice Department had tried to develop ways of collecting data, as mandated under the 1994 Act. However, she said: "Because police departments often don't keep such records, and because they are not required to report to the federal government statistics on the use of force by officers, we have had only limited success in developing the information".

She announced that, in future, the government would try to obtain some of this information through the annual National Crime Victimization Survey (NCVS) by including questions relating to police use of force.⁶³ In June 1999, the government said they would also include questions on citizens' experience with traffic stops.

While this is a useful initiative, Amnesty International does not believe that it is an adequate substitute for a comprehensive, national reporting system on police use of force, which would enable the Justice Department to carry out the sort of analysis mandated under the Police Accountability Act. Amnesty International believes that police departments should be required (through funding incentives or legislation) to report on shootings, deaths and injuries in custody and other use of force and that this data should be collected and analysed at both state and national level.

⁶³Annual telephone surveys of citizens about their experience of crime

6. RECOMMENDATIONS

In *Rights for All*, Amnesty International made a series of detailed recommendations to the Federal government and local and state authorities to combat police abuse. A summary of these recommendations, and some additional recommendations, are given below:

1. State, federal and local authorities should ensure that abuses including torture, brutality and other excessive force by police officers will not be tolerated; that officers will be held accountable for their actions; and that those responsible for abuses will be brought to justice.
2. International human rights standards on the use of force and firearms, and on the prohibition of torture and ill-treatment and discriminatory treatment, should be fully incorporated into police codes of conduct and training and strictly enforced.
3. The Administration should seek, and Congress provide, adequate funding to allow the Justice Department to fulfill its mandate under the Police Accountability Act provisions of the Violent Crime Control and Law Enforcement Act of 1994 to compile, publish and regularly analyse national data on police use of excessive force (including all fatal shootings and deaths in custody). Adequate resources should also be provided to allow the Justice Department to continue to pursue “pattern and practice” lawsuits against police departments engaging in widespread or systematic abuses.
4. Funding should be provided to enable US Attorneys in jurisdictions throughout the USA to increase investigations and prosecutions of police officers suspected of committing federal criminal civil rights violations.
5. Police departments should be required to keep detailed records on the use of force and to report publicly at regular intervals, providing statistical data on shootings and other use of force, in-custody deaths and injuries. They should also provide data on the number and type of complaints filed, and on their disposition and outcome.
6. The federal government should increase its use of Title VI of the Civil Rights Act of 1964 to seek to eliminate racially discriminatory practices by law enforcement agencies⁶⁴

⁶⁴Title VI of the 1964 Civil Rights Act prohibits discrimination on grounds of race, colour, national origin, sex or religion by state and local law enforcement agencies, and allows the Justice

7. The Administration should actively support passage of the Traffic Stops Statistics Act of 1999, in order that the extent of racial and ethnic profiling in police traffic stops can be comprehensively and systematically evaluated. Meanwhile, all states and local agencies should follow the lead taken by some US police departments by voluntarily setting up their own monitoring systems.

8. All police departments should introduce training programs designed to minimize the risk of unnecessary force and death or injury in certain common situations, including vehicle pursuits and coping with mentally ill or disturbed individuals. Training programs should also include gender issues and sensitivity to minority groups.

9. All police departments should ban dangerous restraint procedures such as hogtying and chokeholds.

10. The federal authorities should establish an independent, national inquiry into the use of OC (pepper) spray by law enforcement agencies, including a review of all deaths and injuries reported after use of the spray. Meanwhile, police departments which continue to authorize the spray should introduce strict guidelines and limitations on its use, with clear reporting and monitoring procedures.

11. Law enforcement and correctional agencies should ban the use of remote control electro-shock stun belts and suspend the use of all other electro-shock weapons pending the outcome of a rigorous independent inquiry into the use and effects of such equipment.

12. All police authorities should ensure that police canine policies conform to best practice and are designed to minimize the risk of unnecessary force and injury.

13. All police departments should establish early warning systems to identify and deal with officers involved in human rights violations. They should establish clear reporting systems and keep detailed records in order to identify, and take remedial action in respect of, any patterns of abuse, including racial bias or other discriminatory treatment.

Department to withhold grants or make them conditional on compliance (see *Rights for All* p. 51).

14. There should be greater transparency in the investigation of complaints of human rights violations. Complainants should be kept regularly informed of the progress of investigations. The outcome of all criminal, disciplinary and administrative investigations into alleged violations, and into all disputed shootings and deaths in custody, should be made public promptly after completion of the investigation.

15. State, local and federal authorities should establish effective, independent oversight bodies for their respective police agencies, with powers to investigate and review complaints against the police as well as broader policy issues and patterns of concern, and to issue detailed public reports.