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Editorial

Law enforcement officers are authorized to use force, including deadly force, daily as they face numerous circumstances when use of force is appropriate. This has always been an area of critical concern and debate for police administrators. Legislation, specific jurisdictional protocols, training, departmental supervision, and public oversight have been the means by which police have sought to ensure compliance with strict law, human rights, and professional standards.

The extreme pressure of split-second decisions in certain circumstances could lead to deviations from the justifiable grounds, result in excessive levels of force, and place the activities of the police under public scrutiny and damaging criticism. Such unfortunate cases involving the use of excessive force by the police frequently attract attention from the media, public authorities, and, in some extreme instances, judicial intervention. Whether the excessive force is the result of wrongdoingly understood discretion by individual officers or is a pattern of corruptive practices of power application by an entire department, both the criminal justice system and communities condemn such practices and demand immediate responses and long-term solutions.

Current research consistently demonstrates that only a small percentage of police-public interactions involve use of force. But these low numbers have an extremely high impact on police image. In many cases, even a justifiable application of force could generate lack of public support and some form of degradation of public trust. The need for objective scientific analysis which potentially could produce clear benchmarks and standards is urgent. Research in regards to use of force incidents traditionally suffers from narrow approaches, and it is obvious that the primary focus should be placed on the totality of the circumstances of the incidents in question.

On the basis of academic research and various agencies’ best practices, traditional policies and protocols must be constantly reviewed and evaluated to adequately reflect new concerns, collective experience of law enforcement agencies, and scientific research in this critical area of policing modern society. This online edition of the Forum in the monograph format focuses on multidimensional use of force phenomena by police and related issues of consideration, including policy development, training, deployment, and review/evaluation. Updated research events and recommendations, such as those included in this monograph, are intended to assist law enforcement administrators and the police community at large to enhance their policies and practices as new technology and alternative tactics for employing new humane use of force methods develop.

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A Modern Understanding of Police Use of Force Through Consideration of the Antiquated: The Just War Tradition in Contemporary Criminal Justice

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Introduction

Scholars within the fields of crime and justice have toiled for centuries to arrive at an understanding, a consensus of sorts, upon which to base a greater understanding of the proper use of force by societal agents of control. In the Middle Ages, it was the Church who proclaimed the right to enforce doctrine, law, and social mores of the era. The search for justice was often brutal, forgoing much, if not most, of the esoteric nuances of modern law so commonly taken for granted in contemporary society.

As societies began to grow and mature, there developed a more benevolent notion of what justice could entail for the general public. There were those scholars and theorists who failed to understand the utility in the continued use of physical torture to enact the measures of retribution, and ultimately justice, favored by the Church and those individuals within the inner political sanctum. It is a generally agreed upon fact that the “glory of having expelled the use of torture from every tribunal throughout Christendom” was due to the writings of Cesare Bonesana Marchese Beccaria (1764/1880, p. 3).

Despite the passion of Beccaria and his adamant stance against the use of torture and physical violence within the justice system of his time, there remains a modern dilemma as scholars continue to endeavor to arrive at a proper understanding regarding the true nature of man. Some theorists maintain that man is nothing more than a beastly incarnation with an expanded intellect—an inherently flawed being whose animal passions override logic and judgment. Others maintain that man is a divine creation imbued with the wisdom and erudition to create a society with artistry and imagination.

These two competing perspectives are fundamentally at odds, yet they both provide a discriminating observer with an invaluable tool in the study of the morality of the use of force. Since the dawn of time, man has warred, too often relying upon violence and coercion to settle even the most minor of disputes. So, too, can it be said that the search for the true essence of man can be found within the study of police and their judicious use of force to maintain peace and order within the modern metropolises of the contemporary United States.

Out of the struggle to define the proper place of war and violence among the religious traditions of the time arose the first theories of just war. The just war doctrine, to evolve
from the teachings of some of the world’s greatest theologians and philosophers, was utilized to draw a moral boundary between those wars deemed apposite and those uses of force deemed morally reprehensible. A parallel can be drawn between the position taken to define the proper place of war within a society and the necessity of agents of modern law enforcement to use force in the discharge of their daily operations.

It is the intention of this paper to utilize the teachings of Cicero, St. Augustine, and St. Thomas Aquinas, the most noteworthy theorists of just war teachings, in an effort to analyze the appropriateness of the police use of deadly force. The just war tradition will be used as a backdrop for an analysis of the moral integrity in the use of deadly force by police. Often, law enforcement officers are required by virtue of their profession to employ force as they serve and protect the citizens of their respective jurisdictions. This paper will strive to support such a contention and arrive at a valid connection between the just war tradition and the use of deadly force by police.

**Just War Doctrine**

**Classical Perspective**

**Cicero**

Strictly speaking, the just war doctrine exists as a set of normative and empirical assumptions, the result of which is a qualified justification of warfare and a set of moral principles for its constraint (Adeney, 1988). The first prominent theorist to propose a set of conceptualizations underlying a theory of justifiable war was the Roman political philosopher Cicero (106 BC-43 BC). Forming the center of Cicero’s philosophy was the concept of natural law as developed by the Greek Stoics. According to the Stoic philosophy, “the specific nature of humans is rationality, morally good actions would be those which are rationally directed toward the full actualization of human potential” (Gula, 1989, p. 201). Cicero expanded this idea of the natural rationality of man maintaining that every human was ultimately subject to the “eternal principles of natural law and justice” (Adeney, 1988, p. 24).

Cicero developed the first comprehensive theory of just war intended to apply to all wars under all situations. The theory advanced by Cicero included regulations by which to measure the justifiability of resorting to war (jus ad bellum) and rules through which to test the morality of specific practices of warfare (jus in bello) (Adeney, 1988). Cicero was adamant in his belief of the necessity of a theory of just war as a part of natural law. The primary emphasis of his teachings was the basic contention that a just war had as its primary goal the establishment of peace.

**Augustine**

The next great philosopher to devise a formal set of moral principles by which man should adhere in his quest for power and justice was Saint Augustine, the 5th-century Bishop of Hippo. Augustine appears to scholars to have been the first theorist to proclaim to the Christian world a middle ground between absolute pacifism and unrestrained, uninhibited war (Stevenson, 1987). Christian Biblical scholars have acknowledged the fact that Augustine stands at the beginning of the Christian just war tradition (Childress, 1978). There exists several notable scholars who are wont to describe the philosophical underpinnings of the just war doctrine
as a mere theory, opting instead for the descriptor “tradition.” According to many scholars, “Augustine was the first great formulator of the theory that war might be ‘just,’ which thereafter has mainly directed the course of Western thinking about the problem of war” (Ramsey, 1961, p. 15).

Augustine theorized that it was not the act of waging war that was to be inherently evil it was the inward disposition of those waging the war that was of primary import. If a king or ruler waged their war for the common good of the people and had a noble and honorable intent, then the war was to be considered just in cause. Therefore, just wars were waged in the defense of peace—an endeavor not to be considered evil unless the desired peace was itself evil (Stevenson, 1987). A war waged for the protection of the kingdom of God was also a war waged with just intent and cause. The impact of Augustinian thought on political theory was to have profound consequences for subsequent Western philosophers as speculation broadened the concept of just war thinking.

**Aquinas**

By the middle of the 13th century, pedagogy in European theological study had progressed from penitential theologians to more speculative philosophers whose primary interests were the compilation of enormous theological summae (Russell, 1975). Thomas Aquinas was one such contemplative theologian. It is not presumptive to state that Aquinas merely returned to the previous formulation of just war proposed by Saint Augustine (Russell, 1975). Thus, removed from Medieval accretions, Augustine’s formulation could sustain more generalization than had ever been considered before.

The concept of war guilt, broached by Cicero and detailed in the works of Augustine, was reduced by Aquinas to a set of prescriptions which served as a basis for later Medieval and early modern theories of *bellum justum* or just war. In the teachings of Aquinas, war had a twofold purpose: (1) the punishment of sin and (2) the rectification of a wrong that detracted from the common good. Aquinas’s most extensive treatment of war, found within his “Pars Secunda Secundae” of his *Summa Theologiae*, indicated his ardent desire to place warfare within an overarching moral schema of the Christian design of salvation (Russell, 1975).

The formulation of a doctrine of just war prescribed by Aquinas was comprised of a series of requirements for the appropriate reasoning behind a decision to go to war and proper conduct in the arena of combat. The idea of *ius ad bellum*, or the justification of war, can be illustrated by the conceptualizations of proper authority, just cause, just intent, last resort, and reasonable hope of success. Justice in war, or *ius in bello*, was determined by discrimination and proportion (Davis, 1992). It was the first instance in which philosophers and scholars saw value in noncombatant immunity and the idea of force being directly proportional to that needed to establish peace and end bloodshed.

The fundamental doctrinal underpinnings of the just war tradition establish several criteria by which to measure the morality and appropriateness of war. The criteria of *jus ad bellum* include (1) competent authority, indicating the need for a sovereign entity to wage war versus a single individual; (2) just cause, which incorporates the proportionality between the just cause and the means of pursuing it; (3) just
intent, of which the ultimate aim is peace; (4) last resort, indicating an absence of the availability of other means of resolving the conflict; and (5) reasonable hope of success, a requirement that any morally just conflict must have a semblance of hope for achieving a peaceful resolution. The criteria of *jus in bello* provide for (1) discrimination or noncombatant immunity and (2) proportion directly related to the amount and type of force used.

In the third requirement, Aquinas stated the need of right motivation that theologians had previously deemed necessary for any just war. Aquinas was also influenced by the Augustinian notion that prior guilt of the enemy justified a resolution of war (Russell, 1975): “The just cause constituted some fault or sin committed by an adversary that needed to be punished, and the right intention was to suppress injustice, return the situation to order and assure peace” (Hubrecht, 1961, p. 115).

Aquinas regarded war as a communal, organized effort that should not be initiated without the consent and authority of the community. Justice is not concerned about where the authority to wage war lies, but it is imperative that those in positions of authority initiate the war in their capacity as servants of the public for such actions to be just in nature.

It has been stated that to act without just intent is to act unjustly regardless of the cause at hand. To act without just cause is to “manifest indifference” (Stevenson, 1987, p. 54) to justice itself. Intent plays a dual role in the philosophy of Aquinas. Intent describes the relation of the authority figure to justice in the sense that the desire to protect the communal commodities for the general welfare of the populace must be characteristic of the authority from the commencement of the war if it is to be just. In addition, the authority agent can be “just in his intent without being clear about where justice lies in the prosecution of a war” (Stevenson, 1987, p. 54). Thus, the criteria of Aquinas specifies that the intent of the agent of war must be just in purpose but fails to stipulate exactly what comprises just intent.

Finally, the concepts of last resort and reasonable hope of success, while they are subordinate to just intent, are nonetheless of extreme importance when deciding if an action is just in cause. As Aquinas noted, if a war was declared as anything other than a last resort, moral doubt would be cast upon the agent’s motives (Stevenson, 1987). An honorable authority agent would be repelled by the idea of waging war for anything other than a last resort. In addition, a virtuous agent would never wage a war for further advantage if such action was not considered a last resort. Such an individual would search for other means through which to achieve the desired ends.

The same reasoning holds for reasonable hope. A scrupulous agent would not wage war if the hope for success was unrealistic. Such a ruler would not sacrifice innocent citizens in a quest for a hopeless victory. Hopeless wars are not only unjust, they are also destined to produce enormous casualties and, hence, the power of the ruler is diminished. Aquinas notes that any just authority agent understands the sanctity of human life and, as such, it is not to be squandered on hopeless endeavors.

The conditions of *in bello* provided by Aquinas are also, by necessity, conditions of any just war. The failure to distinguish those who are legitimate subjects of attack from innocent bystanders is contrary to all pronouncements of justice and, as such, should not occur if the action is to be just in content. Aquinas thought of just
warfare as the assault of one community, or one public body, upon another with the intent to “preserve the integrity of a community and intercommunal relations” (Stevenson, 1987, p. 55).

While discrimination is a basic tenet of the just war tradition, it must be cautioned that even a discriminatory attack is not necessarily perfect. Aquinas considered it unreasonable to require both justice and perfection. Unintended loss of life and property are occasionally a misfortune of any armed conflict, albeit a regrettable tragedy. Therefore, discriminate attacks must be weighed against the evil that will result.

The concept of proportion is considered a part of the idea of discrimination. In just actions, proportion must always be observed. Aristotle (1106 BC/2005) stated, “A master of any art avoids excess and defect, but seeks the intermediate and chooses this” (p. 56). The term intermediate is not intended to indicate average. The intermediate is the pathway chosen to best avoid defect and unnecessary loss. A just war is waged so as to avoid voluminous slaughter and loss of life.

**Police and Social Contract Theory**

The social contract theory provides a firm foundation upon which to rest an understanding and evaluation of police practices. The influence of 17th-century social contract philosophy can be discerned in both the Declaration of Independence and the Constitution (Cohen & Feldberg, 1991). Thomas Jefferson, a chief drafter of the Declaration of Independence, was a student of English political theorists Thomas Hobbes and John Locke, leading advocates of the social contract theory.

Hobbes (1950) and Locke (1970) each developed an image of government as an agreeable compromise between citizens. The theory of the social contract treats both “the government itself and the authority it exercises” (Cohen & Feldberg, 1991, p. 24) as products of a mutual compact struck between citizens and rulers. Hobbes (1950) argued that political authority was derived from the consent of the governed rather than from a divine right bestowed upon a hereditary ruler by God. Thus, political authority was conceded by each member of a society in a unanimous and collective decision to an individual or individuals who would act to protect the collective from a life that would otherwise inevitably be “solitary, poor, nasty, brutish and short” (p. 104).

Citizens, therefore, grant the ruler the power to make and enforce law. Likewise, Locke identified the purpose of government as “providing safety and security to the governed” (Cohen & Feldberg, 1991, p. 26). As Locke (1970) stated, “Political power I take to be a right of making laws with penalties of death, and consequently all lesser penalties, for the regulating and preserving [of] property, and of employing the force of the community, in execution of such laws, and in defense of the commonwealth from foreign injury; and all this only for the public good” (p. 268). The German social theorist Max Weber alluded to the concepts of just war when he defined the good politician as the individual capable of forging together “warm passion and a cool sense of proportion . . . in one and the same soul” (Muir, 1977, p. 49). The essential question becomes one of successfully merging the two qualities into a single personality.

Thus, the citizens of the United States will ultimately relinquish a bit of their own personal political power to the State, wherein are crafted the laws and regulations that provide for the protection of each member of society. Hence, the institution of
the police is created to provide for the protection of the members of society while also enforcing the laws drafted by the government. The police have been vested with the proper authority by the government of the United States to enforce laws and serve the citizens of the nation.

The Supreme Court has been influenced to a large extent by the theorizing of Augustine and Aquinas. In the 1989 decision in *Graham v. Connor*, the Court provided a four part test to determine whether a use of force by police was excessive and a violation of the Constitution: “The factors to be considered in determining when the excessive use of force gives rise to a cause of action under 1983: (a) the need for the application of force; (b) the relationship between that need and the amount of force that was used; (c) the extent of the injury inflicted; (d) whether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm” (p. 391). Thus, the Court has provided the police, imbued with the authority to enforce laws, with guidance on the precepts of just intent, proportion, and reasonable success in the restoration of order.

The Court has also provided guidance on the concepts of just intent and just cause. The Fourth Amendment provides for, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Herein is contained the essence of the notion of discrimination, or noncombatant immunity, and of self-defense in the protection of the lives of innocent bystanders.

The reasonableness standard of the Fourth Amendment reads, “Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given” (*Tennessee v. Garner*, 1985, p. 12). Therefore, in a similar manner that a military action is measured by the tenets of the just war doctrine outlined by Augustine and Aquinas, so is a police action limited by precepts constraining the hostile action.

**Court Rulings**

As the field of law enforcement continues to mature and become increasingly professionalized, the remnants of the just war tradition are more readily observed. The principles of just war have had a tremendous impact on much of Western thinking pertaining to the use of force and fundamental morality in instances of coercion. This philosophy has been intertwined in much of the decisionmaking in both law enforcement administration and legal rulings.

After administrators become adept with the terminology required to understand policy, they must next embark on an endeavor to untangle the intricate web of court rulings relating directly to the use of force by police. It is a basic necessity when writing effective policy to take into consideration the decisions of the courts. A department gains little if policy is drafted with no conscious effort devoted to synthesizing the organizational mission, requirements of law, and court rulings.
Administrators must become acutely familiar with what is considered improper police conduct by the courts if they are to draft effective formal policy.

_Tennessee v. Garner_

It is of little doubt that the Court’s ruling in _Tennessee v. Garner_ (471 U.S. 1, 1985) has had the largest impact on the area of police policy (Lewis, 1991). Under the Court’s ruling, actions of officers can legally constitute a seizure protected by the Fourth Amendment of the Constitution. The Court maintains that while it is not always clear when police interference becomes a seizure, there can be no question that apprehension “by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment” (_Tennessee v. Garner_, 1985, p. 8). The question under consideration concerns the reasonableness of an officer’s actions in the apprehension of a suspect: “Whenever an officer restrains the freedom of a person to walk away, he has seized that person” (p. 8). The language of the Court must be carefully scrutinized as later in the same decision it is stated that, “When an officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force” (p. 11).

As stated previously, the reasonableness standard contained within _Garner_ (471 U.S. 1, 1985) provides that if the suspect threatens the officer with a weapon or there is probable cause to believe that a crime has been committed involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape. Three elements may be gleaned from this single statement: (1) the suspect threatens the officer with a weapon; (2) the officer has probable cause to believe that the suspect has committed a crime involving infliction or threatened infliction of serious physical harm; or (3) the officer has given some warning if feasible (Hall, 1988).

These three seemingly simple statements have been at the center of a variety of liability suits alleging improper use of force by police in apprehension or arrest attempts. The presence of a weapon in the hands of suspects has been dealt with in a fairly concise manner: “Without question an officer can use deadly force in the immediate defense of his life or the lives of others” (Hall, 1988, p. 4). Additionally, the Court stated that such action by a suspect can justify an officer’s use of deadly force to prevent an escape due to the danger posed to the community at large by the presence of an armed and presumably dangerous individual.

A case in point is that of _Crawford v. Edmonson_ (764 F.2d 479, 7th Cir., 1985). The case, in brief, centered around an officer, Edmonson, firing at the main suspect, who was known to be armed, but accidentally hitting the second suspect. The court reasoned that the second unarmed suspect was not an innocent bystander but was in fact a willing participant in an armed robbery. In concluding, the court noted that there was “sufficient evidence that Edmonson did what a reasonably careful person would have done under the circumstances” (Hall, 1988, p. 5).

Another case illustrating the importance of the presence of a weapon is that of _Amato v. United States_ (549 F.Supp. 863 D.N.J., 1982). In this case, one bank robbery suspect sued the U.S. government for wounds suffered from FBI agents in a shootout that was triggered by a second suspect’s firing at federal agents. The plaintiff contended that he was in the process of surrendering to agents when the battle began and he was
wounded. The Court observed, “If [one’s co-conspirator] has used deadly force against police officers, and they reasonably fear that he will continue to do so, the one [who] is inclined to surrender may be unable to dissolve his association where his partner, in close proximity, appears to have plans to carry on the battle. Having determined to enter into an illegal enterprise, the plaintiff may have deprived himself of the right and ability to disassociate himself from the venture under such circumstances” (p. 869).

Finally, in an effort to highlight the intricacies involved in an incident involving the use of deadly force by police is *O’Neal v. DeKalb County* (667 F.Supp. 853 N.D. Ga., 1987). Here, officers shot and killed a hospital patient who had stabbed six people. The family of the perpetrator sued the officers, their superiors, and the county government alleging violations of numerous constitutional provisions, including the Fourth Amendment. The plaintiff’s contended, *inter alia*, that O’Neal was not in the process of attacking the officers but was intent on escape. The court did not attempt to resolve the factual issues under dispute but held that even if O’Neal were trying to escape, the use of deadly force under the circumstances was not unconstitutional and hence warranted (Hall, 1988).

The third statement of the reasonableness requirement of the *Garner* decision has also been closely scrutinized by the courts. This portion of the reasonableness standard concerns the issue of a warning, if feasible, provided by the officer to the suspect prior to using deadly force. It has been stated that the requirement is consistent with the common law notion that deadly force should only be used when necessary. The court has also noted that, “even a criminal in the course of committing a crime has certain rights. If he surrenders upon command, does not resist, and makes no attempt to flee, he cannot and should not be physically harmed, no matter how serious the crime just committed may be” (*Amato v. United States*, 1982, p. 869).

In *Hill v. Jenkins* (620 F.Supp. 272 N.D. Ill., 1985), the plaintiff contended that the decision in *Garner* requires an officer to give a specific warning prior to shooting, ostensibly suggesting that a shouted command to halt is insufficient. Although conceding that the *Garner* decision requires some warning where feasible before deadly force is applied, the court rejected the idea that more is required than a shouted command to stop or halt (Hall, 1988).

*Graham v. Connor*

*Graham v. Connor* (490 U.S. 386, 1989) also concerns the reasonableness of the use of force by police. Initially, the Fourth Circuit Court of Appeals ruled in affirmation with a lower court’s decision that the use of force by officers did not meet the criteria of excessive. However, upon subsequent appeal, the Supreme Court reversed the earlier decision of the Fourth Court of Appeals in favor of a more liberal stance, ultimately deciding that the lower courts had applied an incorrect legal standard by which to judge excessive force claims. This approach was based upon the substantive due process standard of the Fourteenth Amendment, ultimately ordering a legal reconsideration based on the Fourth Amendment’s objective reasonableness standard.

The objective reasonableness standard resulting from the earlier *Garner* decision is fundamentally a two-part rule. The first consideration consists of a cautionary statement pertaining to subjective interpretations of excessive force cases. Due to
the fact that the Court had discarded the previous substantive due process standard in use by many lower courts, defendants were no longer required to prove that an officer acted with malice in a use of force situation. Subsequent decisions by the Court would no longer require deliberation on obtuse points such as officer motivation or intent. Instead, the Court went a bit further in determining what actions could be considered reasonable: “The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight” (p. 396). Additionally, the Court’s ruling considers the totality of the circumstances surrounding an event: “The question is whether the totality of the circumstances justified a particular sort of . . . seizure” (p. 396).

The second portion of the reasonableness standard pertains directly to the reasonableness of the seizure in question. A thorough determination of reasonableness when pertaining to events surrounding a seizure requires consideration of the individual suspect’s interests weighed against those interests of the government. The Court utilized the four prescriptions of the (1) need, (2) amount, (3) extent, and (4) application of force in an effort to determine if the officer’s use of force in this case was justified and legally acceptable. Scholars have often referred to this reasonableness standard as the “balancing test of Garner” (Kappeler, 1993, p. 68).

**Police Continuum of Force and Just War Parallels**

While it may seem as though the doctrine underlying the just war tradition is far removed from discussions of police use of force or analyses of Supreme Court legal precedents, it is only with a deeper appreciation of the philosophical foundations of the Western legal tradition that the relationship becomes clear.

In an effort to decrease claims of liability and negligence, police agencies across the nation have begun to implement a use of force continuum. Any use of force can be measured by both its intensity and its necessity. A use of force continuum provides officers with a means whereby to measure the escalation of force to be legitimately used in a confrontation. It is typical of many law enforcement policies to state that officers should escalate or de-escalate their use of force in accord with that used by the suspect (Smith & Alpert, 2004). Use of force continuum policies also provide officers with permission to omit steps in the continuum should a suspect suddenly opt to use a more deadly form of force in the encounter. The philosophical foundation of use of force continuum policies centers on protecting both the officer and suspect should a situation rapidly escalate. It is the duty of the officer to quell the situation as quickly as possible so as to effect the arrest or surrender of the suspect. The more benign the actions of the officer, the better to quell a potentially violent confrontation.

A use of force continuum provides allowances for the escalation of force in any situation should the need arise. A basic use of force continuum is comprised of the following components (Smith & Alpert, 2004):

**Basic Police Use of Force Continuum**

1. No force
2. Officer’s presence in uniform
3. Verbal communication
4. Chemical agents  
5. Light subject control, escort techniques, pressure point control, handcuffs  
6. Physical tactics and use of weapons other than chemicals and firearms  
7. Firearms/deadly force  

In an effort to further assist officers in determining the most appropriate course of action in any given coercive situation, the basic use of force continuum has been broadened to provide a countermeasure, taking into account the actions of the suspect (Smith & Alpert, 2004). This extended use of force continuum considers the actions of the suspect in an effort to justify any further escalation of force by the officer on the scene.

Use of Force Continuum Resistance and Response Levels

<table>
<thead>
<tr>
<th>Suspect Resistance Level</th>
<th>Officer Level of Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Suspect presence</td>
<td>1. Interview stance</td>
</tr>
<tr>
<td>2. Verbal resistance</td>
<td>2. Verbal commands</td>
</tr>
<tr>
<td>4. Defensive resistance</td>
<td>4. Chemical agents</td>
</tr>
<tr>
<td>5. Active physical resistance</td>
<td>5. Physical tactics/impact weapons</td>
</tr>
<tr>
<td>6. Firearms/deadly force</td>
<td>6. Firearms/deadly force</td>
</tr>
</tbody>
</table>

If the conceptualizations of the just war doctrine are placed alongside the use of force continuum used by contemporary law enforcement agencies, there emerges a distinct pattern of similarities. Both the just war doctrine as well as the use of force continuum place a prominent value on the proper authority vested in the police officer as an agent of social control, hopefully resulting in a peaceful resolution to the conflict. As stated by both Locke and Hobbes when considering the social contract, each citizen of the United States has relinquished a certain amount of private political authority in favor of a more communal agent of law enforcement and social control provided by the rulers of our nation in the form of the police (Cohen & Feldberg, 1991). The police act as agents of law enforcement vested with the authority to act on behalf of each and every citizen.

As a conflict escalates and the force used by one “combatant,” understood as the suspect, increases, it is deemed necessary and appropriate for the other “combatant,” in this scenario the police officer, to, in turn, increase the use of force. Both the doctrine of just war and the use of force continuum place the responsibility for escalation of violence, or force, in a given scenario on the part of the aggressor, or suspect. It is considered morally reprehensible for an officer or a sovereign agent to use excessive force without due necessity. However, once the need arises for a proper escalation of force, both the doctrinal theses of just war and the use of force continuum provide for a proper and morally principled use of necessary force. The cause is just if the agent of law enforcement is acting under color of law in an effort to protect the citizenry who have entrusted the officer with the proper authority to do so. The officer’s intent is just if there is probable cause to become engaged with the suspect in question. This matter is no longer simply an esoteric concept pulled from ancient philosophy as the contemporary Court has been called upon in numerous instances to rule on just such matters.
While the use of force continuum also provides for an escalation of force, it allows for only that amount of force deemed necessary to bring the coercive situation to an end. Therein is couched the element of proportionality included in the just war doctrine. Officers are justified in their use of force as specified by the continuum, but an excessive amount is considered unreasonable and morally unjust. This has been the underpinnings of both the *Tennessee v. Garner* as well as *Graham v. Connor* rulings by the Supreme Court.

When considering the principle of discrimination, or noncombatant immunity, in terms of a law enforcement function, it is necessary to appreciate the many legal intricacies of police liability and negligence. Although the actions of the police are constrained by moral principles and the decisions of the Supreme Court, there are still, nonetheless, avenues for the betrayal of trust and abuse of power by officers. In efforts to rectify any such misuse of the power with which police officers have been entrusted, the courts have delivered decisions and proclamations prohibiting unnecessary uses of force against the civilian population.

The Court’s decisions in both *Garner* and *Connor* provide for the escalation of force couched within the concept of reasonableness. The Court considers force proper and necessary if such actions can be considered necessary and appropriate considering the “totality of circumstances” justifying that singular use of force (*Graham v. Connor*, 1989, p. 396). Any use of force beyond those measures is to be considered improper and excessive, thus placing the officer and law enforcement organization at increased risks of liability and negligence.

The elements of the reasonableness standard, deemed vital to the consideration of any use of force by agents of law enforcement, provides for a warning to be given, if feasible, by the officer, in an effort to bring the situation to a close. Thus is eliminated the need for an escalation of force by either the suspect or officer. A peaceful ending to a coercive and potentially violent encounter is favored. The use of force is escalated only as a last resort.

The reasonableness standard also has provisions for the need of the application of force, the relationship between that need and the amount of force used, the extent of the injury inflicted, and whether the force was applied in a good faith effort to maintain and restore discipline or maliciously, for the purpose of causing harm. Here again is an incorporation of the principle of proportionality. This serves as a protective mechanism for the officer, the suspect, and, ultimately, the general civilian population.

Finally, the element of discrimination, or noncombatant immunity, is expressed in many suits pertaining to police vehicular pursuits. Many contemporary scholars consider the police cruiser or squad car to be an instrument of force as deadly in its use as any firearm (Alpert & Fridell, 1992; Hicks, 2007; Kappeler, 1993). The principles surrounding the escalation of force are as readily applied and appropriate for vehicular pursuits as in instances of police shootings and other means of deadly force.

In incidents of vehicular pursuit, officers have, for many years, been advised to refrain from placing innocent bystanders in harm’s way. The courts have been witness to a growing trend of litigation due to police vehicular pursuits resulting in tragedy involving an innocent third party. The improper use of police emergency vehicles has been litigated under provisions detailing use of force claims by injured parties.
As a result, law enforcement officers have been brought to court for improper uses of force as pertaining directly to high-speed vehicular pursuits. Litigation has entailed such incidents as whether an actual emergency situation existed (Hamilton v. Town of Palo, 1976; Keating v. Holston’s Ambulance Service, Inc., 1989), the availability of pursuit alternatives (Mason v. Britton, 1978), improper use of emergency equipment (Fowler v. North Carolina Department of Crime Control, 1989), disregard for traffic signaling devices (Brown v. City of Pinellas Park, 1990), and physical conditions of the roadway (Bickel v. City of Downey, 1987). Each of the cases included in it a prescription for the avoidance of unnecessarily placing innocent bystanders, or noncombatants, in jeopardy. Herein is evident the principles of both discrimination as well as proportionality.

The philosophy of the just war tradition provides a foundation upon which much of Western thinking and social policy is based. The influences, both direct and indirect, of ancient precepts so eloquently outlined by the great thinkers such as Cicero, Augustine, and Aquinas abound within the nuances of modern law and law enforcement. It is with their wisdom that our system of American government and law enforcement continues to grow and prosper.

Conclusion

Cicero, Saint Augustine, and Saint Thomas Aquinas set the stage whereby the scenario of the just war can be dramatized for all of mankind. Their respective thoughts on the subject have had momentous and provocative implications for Western thought and political theory. The use of force by police is one theme through which the just war tradition can be utilized to demonstrate how ingrained the concept of justice is in the Western political archetype. As the police become fettered in their use of force when encountering citizens, they are bound by the many policies with which they abide in the course of their daily patrol duties. They have been imbued with the proper authority by virtue of the social contract in our society to act as agents of social control and law enforcement. Their decisionmaking while on duty is guided both by the components of the use of force continuum as well as by their individual agencies’ written policy manuals.

These, in turn, have been influenced by the philosophy of the just war doctrinal precepts, in much the same fashion as the American court system has been influenced by the same school of ethics and morality. The esoteric concepts inherent in the philosophy of the just war doctrine have pervaded the Western psyche in many complex ways. The Supreme Court, likewise, has been influenced by the political philosophy of the just war tradition in many of its decisions regarding the proper use of force by police personnel. The standard of reasonableness outlined in the Tennessee v. Garner and Graham v. Connor decisions, two of the most influential rulings pertaining directly to the police function, have been influenced by the concepts of the just war tradition. While the interconnection is primarily philosophical in nature, it has been incorporated into both legal decisions as well as police policy pertaining directly to many societal issues. It has important implications for police behavior and provides insight into the dynamics and role of the police and their function in contemporary American society.

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Managing Use of Force: An Administrative Perspective on Use of Force Reporting and Tracking

David Grossi, Police Force Expert

One of the most important aspects of police use of force from an administrative viewpoint is the documentation procedure. Notwithstanding the need for a comprehensive force policy or the requirement for frequent and consistent training, there are two primary issues that agency heads need to keep in mind when dealing with use of force. First, departments should have a vehicle in place through which officers can report when force is used; and secondly, there needs to be a channeling or tracking system trainers can use to manage use of force instruction. These two issues are important for two reasons: (1) to ensure that officers are not using excessive levels of force when they have to use force and (2) to ensure that the force techniques they are using are effective.

**Reporting Use of Force**

The International Association of Chiefs of Police (IACP) (2001) defines excessive force as “the application of an amount and/or frequency of force greater than that required to compel compliance from a (willing or unwilling) subject” (p. 14). One of the most effective means to document when a high level of force is used is the Subject Management Report, or what some agencies refer to as a Use of Force Report. While name changes, especially those involving report forms, often mean very little, in the case of police use of force, it can mean a lot. This is particularly significant since many times these reports are channeled to risk managers, municipal administrators, and, in some cases, juries or civilian review boards who often do not have the law enforcement background to grasp the intricacies that are inherent in police use of force.

As most police professionals know, it is the subject’s self-initiated level of resistance that dictates the level of reactive force an officer must use, be it physical force measures, aerosol restraint systems, electronic control devices, impact weapons, or deadly force. In justified arrest situations, it is always the subject’s resistance (by word or conduct) that dictates the officer’s response or use of force. The term subject management places the focus on the reactive management efforts the reporting officer was forced to employ rather than his administrative responsibilities of reporting that particular level of force. It is a minor, but important, distinction. A comprehensive and well-written Subject Management Report should document that resistance. However, during the course of this article, for simplicity purposes, I’ll use the names Subject Management Report and force report interchangeably.

The IACP Model Use of Force Policy requires that all agencies have a procedure for filing a written report whenever high levels of force are used as does the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) (1983). In fact, most force experts feel that a separate force report, over and above the Incident/Offense Report, is essential. While some variations occur between the two...
agencies, there are several commonalities between both organizations for which a written report is required: (1) when a firearm is discharged outside of a firing range, (2) when the force used results in death or serious injury, (3) when a less-lethal weapon is used on a person, and/or (4) when a subject complains that an injury has been inflicted through the use of force. Some police agencies require a force report whenever handcuffs are applied or whenever an officer draws his or her weapon. Most force experts, this author included, feel this type of regulation is too restrictive for two reasons: (1) short of an extraordinary circumstance, every arrestee should be handcuffed, even seemingly nonviolent ones; and (2) police officers conducting high-risk operations such as a felony warrant service should have their weapons drawn and readied. To burden officers with the necessity of filing force reports in situations as described above may result in officers not having their weapons out and readied when they should be. Officers assigned to high-risk search warrant teams will be filing force reports on an almost weekly basis. Likewise, transport officers who use handcuffs on a daily basis will be spending a considerable amount of their duty time filing force reports. The administrative ramifications for this requirement will be discussed later in this article.

A second commonality is that an administrative or supervisory review must take place whenever any one of the four commonalities occur to determine if any departmental rules, procedures, or policies were violated or if the force application constituted a criminal offense. Most force reporting forms contain the essential information such as the agency arrest/incident number; date, time, and place where the force application occurred; subject’s name; officer’s name and ID number; assisting officer(s) information; witness names and contact information; the level (or force tool) used; and whether the subject or officer was injured and, if so, what treatment was administered and where. Others can be very elaborate and contain fields for the temperature and weather conditions, as well as boxes to check off for other relevant data such as emotional state of the subject; demeanor; level of resistive tension; verbal threats; whether photographs were taken and by whom; and, if medical treatment was refused, an area for a signature acknowledging the waiver of such treatment. Most will also contain a list of the authorized force options or tools that the agency issues to their members such as firearms, electronic control devices, impact weapons, chemical agents or other less-lethal weapons, and occasionally police service dogs. Virtually all will contain a half-page or more for a short but detailed narrative statement by the officer on why the force was needed and an area for supervisory review. This administrative or supervisory review is probably one of the most misunderstood aspects of the force reporting procedure. While most supervisors will agree that this internal review is needed to aid them in determining if any agency rules or policies were violated, there is a second reason why it is important. If analyzed properly, these written force reports can help a supervisor uncover if any training deficiencies exist or if the force applications are effective.

**Tracking Use of Force**

Distribution is important. There is some debate on the channeling procedure of Subject Management Reports. Some police force experts feel that force reports should be included in the subject’s arrest folder, and after routing to the Prosecuting Attorney/District Attorney’s Office, kept with the Records Division, thus available for public viewing at any time. Others look at these reports as a confidential
document to be stored in the files of the Internal Affairs Bureau (IAB) after supervisory review. One repository that cannot be ignored is the Training Unit. One of the most important and often overlooked aspects of Subject Management Reports is periodic analysis by the Training Unit. No other vehicle exists that can help assist the trainer in determining if a particular use of force tool is being effective or not. For example, while handcuffing is not ordinarily a force application that either the IACP, CALEA, or other agency would require the submission of a written report, if a review by the Training Unit were to determine that a significant number of subjects were resisting arrest at the time of the handcuffing process thus requiring higher levels of force, a review of how officers were completing the handcuffing procedure might be needed. In fact, that force report review might uncover deficiencies in their officers’ approaches and/or verbal directions that are causing arrested subjects to resist the handcuffing procedure. In that case, remedial training in tactical approaches and/or verbal defusing techniques may be in order.

There are well-established procedures for handcuffing both compliant and noncompliant subjects. By properly analyzing the force reports, trainers might look at the number of times an officer was required to use physical force during the handcuffing process and, after doing so, suggest that remedial training for that officer be initiated. Likewise, if a number of Subject Management Reports are being filed which document that higher levels of force have been required after oleoresin capsicum (OC) use, a close look at the strength level, formulation, and/or method of distribution (e.g., spray, stream, or foam), or even the expiration date of the carrier, should be examined.

The “Fear Factor”

One of the most common concerns that rank-and-file officers have over the requirement for written documentation of their use of force is the fear that mismanagement or improper analysis of the report will result. One of the most frequent mistakes administrators make is simply counting the number of force reports an officer submits and using that sum as evidence that there is an over-aggressive officer, one who has a propensity for using excessive force, within the agency. The mere comparison of the total number of Subject Management Reports between two veteran officers very often paints an inaccurate picture of whether an officer is using force improperly or too frequently. Hypothetically, let’s look at two veteran officers in the same department. Officer A has 20 Subject Management Reports in his IAB file, while Officer B has only five. Both have been in the department for ten years. Both have the same education level, and both have over 500 hours of inservice training. To the casual observer or untrained civilian, it would appear that Officer A, since he has filed four times as many force reports as Officer B, is either overly aggressive in his custodial arrests or has a propensity for using higher levels of force. However, while both have ten years of experience and each has an AAS degree and better than 50 hours of inservice training, it would appear that Officer A, since he has filed four times as many force reports as Officer B, is either overly aggressive in his custodial arrests or has a propensity for using higher levels of force. However, while both have ten years of experience and each has an AAS degree and better than 50 hours of inservice training annually, a more complete analysis will show that Officer A has worked nights his entire career. Furthermore, Officer A has worked his entire ten years on the street in a high crime, drug-infested area. Officer B, on the other hand, just came over to the Patrol Division two years ago after eight years in the Community Services Unit and has worked the day shift in a quiet, residential beat for most of those 24 months. Additionally, officers assigned to tactical units that assist with high-risk search warrants and who work for an agency that requires a force report whenever
a weapon is drawn, as discussed earlier, may accrue an inordinate amount of force reports in his or her IAB file but may never make an arrest or have encountered a resistive suspect. Any analysis of Subject Management Reports that merely count the total sum of reports filed as evidence of an overaggressive officer should be looked at with a jaundiced eye.

Likewise, any so-called tracking system that “red flags” an officer after a certain number of reports is nothing more than a sophisticated calculator. Legitimate tracking systems will contain a more objective set of criteria. However, virtually every police procedures expert will agree that some type of analysis should be done and that the topic is indeed a sensitive one. Using our earlier example, a small agency of 50 officers that by policy requires a Subject Management Report for mere handcuffing or the drawing of a weapon can conceivably have more force reports in their database than one with 500 members. While it is important to understand that FORCE is a component of law enforcement, complaints of excessive force are rare. What is important is how those “tools of force” are used.

The reporting and compilation of when and how force is used can be a very valuable asset to any agency and will serve to answer questions on its appropriateness.

**Bibliography**


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Investigating Use of Force Before and After Complaints: An Operational Template to Avoid Civil Liability

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Introduction

Many police agencies lack policy, procedure, and diligence by police supervisors to investigate NON-excessive use of force incidents before a citizen files a formal complaint of a civil rights violation against the police. Police by their very nature are the guardians of the nation’s civil rights. They are the glue that holds the fabric of our constitutional guarantees in place. Therefore, when the underpinnings of those civil rights are compromised by those entrusted with their care, it limits the effectiveness of the police-guardian role, obscures the trust relationship, and creates liability for the supervising organization.

Every police administrator’s dream would be to recruit honest, loyal, and well-balanced officers who will carry out their duties and responsibilities without incident. Then they wake up and realize that police officers are people, with all the character flaws and psychological baggage that most people carry. Whether from reaction to stress, flawed judgment, or simply some misconstrued dealings with the public, officers have problems that cause conflicts, and it is up to the police administrator to assign blame, mete out discipline, and provide both reputational and legal safeguards to the community.

Officer reliability issues and citizen complaints come in all shapes and sizes: complaints of excessive force, abuse of authority, harassment, unlawful behavior, ad infinitum. And when problems happen, they are rarely clearly delineated and easily resolved. They come through the muddied, if not conflicting, reports of the various sources involved, and it is the police administrator’s job to investigate and attempt to factually determine what really happened.

To make matters more difficult, there is no single formula for conducting such internal investigations; they necessarily vary based upon the dynamics of the issues and encompassing circumstances. While some issues may be resolved quickly, others require judgment calls about what to investigate, who to include in the investigation, and ultimately who to believe.

Internal investigations also have risks. A poorly orchestrated investigation may do more harm than good, raising questions about the accuracy of the results as well as casting doubt about the police organization’s commitment to treating the complainant and (or) the subject of the investigation fairly.

The need for strong investigative protocols is therefore a management imperative. If issues can be resolved internally in a timely and professional manner, minor
problems can be stopped from exacerbating into major problems. Even if a problem turns into a serious legal issue, a good investigation and appropriate response may be the officer’s best defense. Sometimes internal investigations are necessary to preempt or prepare for inquiries from outside regulatory agencies. By an agency conducting its own investigation first, it may be able to root out problems before they are uncovered and summarily addressed by outside investigative sources.

With the ever-increasing incidence of use of force complaints, the resultant disruption, the enormous financial and emotional costs, and the obligation of departments to provide reasonable enforcement efforts set the stage for a formidable confrontation between officers and the public that employs them. Therefore, police leaders, in addition to taking reactive steps to protect and promote civil rights throughout their communities, should take proactive steps immediately after an incident involving any use of force. Despite the amount of force used at the time, proactive steps should always precede an anticipated or unanticipated formal complaint that may be made by a citizen/victim and the subsequent reactive steps of an investigation. Visionary leaders recognize that the motive for these steps emerges out of the obligation to abide by the U.S. Constitution. But why not define steps for an investigation before the complaint is filed? An internal accountability mechanism that becomes routine with use of force incidents will, by virtue of its function, become a deterrent to false complaints and intentional excessive use of force incidents (International Association of Chiefs of Police [IACP], 2006). With this said, an investigative protocol should be put into effect requiring an immediate response to the scene of all use of force activity to gather facts and supplementary evidence to determine if the use of force in this instance was reasonable.

According to the Fourth Amendment, force must be reasonable. It is implied, therefore, that there is both (in a general sense) reasonable force and unreasonable force. The force continuum used in force training around the U.S. flows from the level of use of words, or just the presence of the officer, to the level of deadly force (Petrowski, 2002). Choosing the correct level must be reasonable. Herein lies the problem—determining what reasonable force is. The U.S. Supreme Court decision in *Graham v. Connor* states that determining what is reasonable is an objective standard based on the “common sense evaluation of the officer” during the situation. The reasonableness is determined by the officer at the scene rather than using hindsight evaluation to determine whether his use of force was reasonable (Petrowski, 2002). Hence, the importance of investigating the situation immediately by the supervising sergeant is magnified by this rationale of the Court. All courts recognize from a legal standpoint that officers can select the level of force that is reasonable—not necessarily the minimum amount of force. In *Plakas v. Drinski*, the court stated there is no precedent that officers must use all feasible choices before using deadly force. However, the *Plakas/Drinski* court decision did state that there are cases in which deadly force was used with precedent—that there is no constitutional requirement that other alternatives must be used first before deadly force. Further, Petrowski stated that the U.S. Supreme Court and all federal circuit courts recognize that the “least obtrusive alternative” is impossible to choose. In view of the situation and the heat of the moment, this is a reasonable conclusion.

**Use of Force Defined**

The meaning of the term *use of force* can be unclear at times. It can best be understood within the context of the situation in which it is used. Walker and Katz (2008) state
the authority to use force distinguishes the police from other professionals. It is a necessary part of the broad system of social control. Egon Bittner argued that the capacity to use coercion is the defining feature of the police. Force is a broad term and its use can be defined as deadly force, less than deadly force, and deprivation of liberty through arrest. Bittner also stated that the use of force by the police is limited by law and must be used only in the exercise of official police action (pp. 10-11). The U.S. Supreme Court in the *Graham v. Connor* decision stated that the reasonable use of force by police has two justifications: (1) for safety and (2) for preventing escape and maintaining custody (Petrowski, 2002).

**Criminal Misconduct**

Police misconduct, or corruption, includes several characteristics. One characteristic, or category, is any activity of police corruption that compromises the officer’s ability to provide police service impartially and enforce laws of the community. It is illegal for police action to be deployed in a manner that may produce personal gain for the officer. Police use of excessive force falls into this category. Sometimes the action is not excessive and is only perceived in that manner, but perception of wrong actions by the police has a negative effect on the police/citizen relationships in the community. In anticipation of possible later formal complaints of excessive force, it is imperative to investigate all uses of force, including nonexcessive as originally reported. If a later claim is made, facts gathered by the investigation of the supervisor when the incident happened are already known. After all, not all claims of police brutality are filed immediately. In order to quell future allegations of excessive force, get the facts while witnesses are available and witness recollections of the incident are fresh.

**Citizen Complaints**

In a study by Scrivner (1994) on the psychologist’s role in controlling police behavior, her findings show the types of services provided agencies to identify officers with potential behavior risks. The best way to control behavior risks is eliminating officers with potential behavior problems during the selection process. Some problems, however, do not manifest themselves until after employment. Scrivner identified several profiles of violence-prone officers. These profiles included personality disorders (e.g., acquired before the job); related experience from previous employment (e.g., justified traumatic situations), problems that developed during the early part of their careers (e.g., impressionable and macho types), inappropriate patrol techniques (e.g., heavy handed and/or have a chip on their shoulders), and officers who have personal problems (e.g., divorce). Procedures should be in place to assist the officers with these profiles to prevent problematic behavior. In addition to selection screening, it is recommended that officers develop the proper tools through provision of inservice training on the use of force and receive proactive supervision to identify problematic performance.

The first person to hear a citizen’s complaint is generally the supervisor. According to Whisenand (2007), a complaint has three stages: (1) reception, (2) investigation, and (3) disposition. The first stage is the receipt of the complaint which provides a paper trail for officer performance evaluations. A uniform format should be used to record all complaints. The citizen should be assured that an investigation will be made and a copy of the written complaint should be given to the citizen (p. 268).
Why not investigate before a complaint and be ahead of the blame game? This will protect the integrity of the officer and the department and act as a deterrent to false and frivolous accusations of excessive force.

The second stage is the investigation. As part of general inservice training for newly appointed supervisors, specialized training on investigating internal and external complaints should be given to all supervisors, including providing them a resource guide on written guidelines for the investigation. Basic training curricula should provide familiarity with the procedures conducted by the supervisor after receipt of a complaint. In addition, every agency should establish a policy to adopt formal procedures to investigate complaints of misconduct. Furthermore, these investigations should reveal facts and at the same time maintain the dignity and confidentiality of everyone involved (Whisenand, 2007, p. 268). Results of the investigation should be provided to the complainant (p. 271).

The third stage is disposition. During this stage, the supervisor is an advisor to police management. After the investigation is complete, the supervisor can inform management that the complaint is not sustained, unfounded, or that the officer should be exonerated. He can also advise the extent of the discipline to be meted out if the complaint is valid (Whisenand, 2007, p. 272). Allegations of excessive force, or police brutality, represent the most common complaint of minorities against police. The beating of Rodney King video is frequently used for evidence of this claim (Walker & Katz, 2008, p. 404). Research conducted by Kappeler, Carter, and Sapp (see Walker & Katz, 2005) found that college-educated officers have fewer complaints filed against them than less-educated officers (p. 164). The attitude and demeanor of the suspect can have an effect on police use of force. In a study conducted by Black (cited in Walker & Katz, 2008), it was found that blacks are more likely to be antagonistic toward the police. Pilvavin and Briar found that juveniles had the same response toward police. This, in turn, can trigger an overbearing response by the police (cited in Walker & Katz, 2008, p. 408). However, Klinger argued that it was the arrest that triggered the antagonism (cited in Walker & Katz, 2008, p. 408).

Physical force is authorized by law for police to use to protect themselves, to affect an arrest, to overcome resistance, and to bring a dangerous situation under control. Excessive force is never authorized. The law enforcement agency accrediting body, the Commission for Accreditation of Law Enforcement Agencies (CALEA) (2006), illustrates in Standard 1.3.1 that police officers “will use only the force necessary to accomplish lawful objectives” (p. 1-6). Standard 1.3.6.(d) states that a written report is submitted whenever an employee “applies weaponless physical force at a level as defined by the agency” (pp. 1-7). Walker and Katz (2005) state “that excessive force is any level of force [that is] more than is necessary to handle a situation” (p. 208). Walker and Katz’s comments on force were basically the same in their 2008 text, except, however, they suggested better accountability and better data on the use of force is needed (p. 493). There should be unmistakable differences between excessive force and plain force; measurement of force needs to be better. Management must identify situations where force may most likely be used, identify individuals susceptible to using more force than necessary, and develop mechanisms to control officers use of force more effectively (p. 493).
As stated in the *Graham v. Connor* decision (Petrowski, 2002), the level of force used is determined by the officer’s perception in a given situation. It may be determined later that the amount used was not necessary. It is a matter of opinion. The opinion of the officer is going to be different from the opinion of the defendant or complainant. Most police departments adopt a *use of force continuum*, identifying appropriate action in particular situations. Force continuums generally range from officer presence to using deadly force with three to seven stages between the two characteristics (Walker & Katz, 2008, p. 406). A Bureau of Justice Statistics (BJS) study found that police use of force happens in less than 1% of all citizen encounters with the police. The study involved over 80,000 people (Walker & Katz, 2008, p. 405).

In 2004, Walker and Alpert wrote about early intervention (El) systems being recognized by the U.S. Department of Justice for enhancing use of force accountability. Consent decrees contain a variety of early intervention systems (Hickman, Piquero, & Greene, 2004, p. 21). The CALEA (2006) Standard 35.1.9 requires agencies to “establish a Personnel Early Warning System to identify employees that may require intervention efforts” (p. 35-4). Identifying problem employees and offering remedies early helps the agency establish accountability and increase respect in the community.

**Police Citizen Contacts and Complaints**

**1996-2001**

In 1996, Langan, Greenfeld, Smith, Levin, and Durose (2001) found a low number of incidents of excessive force by police. A nationally representative sample of 6,421 persons representing a population of 216 million people found 1,308 persons had face to face contact with the police and that 14 of them stated that police used or threatened force against them. Ten of these persons reported that their actions provoked the police to use force. The 14 incidents represented an estimated 500,000 people. Another estimated 800,000 had no force or threats used against them but were handcuffed only. Half of all contacts in police-public interactions in 1999 resulting in the use of force or threatened force were in traffic stops (Langan et al., 2001). In the last six months of 1999, approximately 422,000 people 16 years old and older were estimated to have had contact with police when force or the threat of force was used. The analysis of the Langan et al. survey found that less than 1% of these contacts resulted in police force or threat of force and only an estimated 20% of these involved only the threat to use force. In 0.7% of the stops, the surveyors were told that force was used, and in 0.5% the survey respondents alleged that excessive force was used.

**2002**

Citizen complaints resulting in disciplinary actions accounted for less than 10% in a recent 2002 BJS study that was analyzed by Hickman (2006). Overall, he found evidence that justified disciplinary action in about 8% of 26,000 complaints of excessive force by police. Hickman also found the percentage of merited complaints ranged from 6% among county police departments to 12% among sheriffs’ offices.
Highlights of the analysis from Hickman (2006) include the following:

- During 2002, large local and state law enforcement agencies, representing 5% of agencies and 59% of officers, received a total of 26,556 citizen complaints about police use of force.
- About a third of all force complaints in 2002 were not sustained (34%). Twenty-five percent were unfounded, 23% resulted in officers being exonerated, and 8% were sustained.
- Using sustained force complaints as an indicator of excessive force results in an estimate of about 2,000 incidents of police use of excessive force among large agencies in 2002.

Approximately 19% of large municipal police departments had a civilian complaint review board or agency within their jurisdictions. Additional information about BJS statistical reports and programs is available from the BJS website at www.ojp.usdoj.gov/bjs.

2005

A 2005 BJS survey illustrates data on the characteristics of contacts between police and the public from a nationally representative group of 60,000 U.S. residents age 16 or older who had face-to-face contacts with the police (BJS, 2006b). The findings represent one full year and include reasons for and outcomes of the contacts, resident opinions on police behavior during the contact, and whether police used or threatened to use force during the contact.

Highlights of the BJS (2006b) survey include the following:

- An estimated 19% of U.S. residents age 16 or older had a face-to-face contact with a police officer in 2005, a decrease from 21% of residents who had contact with police in 2002.
- Overall, about 90% of persons who had contact with police in 2005 believed that police acted properly.
- Of the 43.5 million persons who had contact with police in 2005, an estimated 1.6% had force used or threatened against them during their most recent contact, a rate relatively unchanged from the 1.5% in 2002.

U.S. District Court Civil Rights Complaints

1990-2006

Below is a summary of the highlights of a BJS (2006a) publication, Civil Rights Complaints in U.S. District Courts, 1990-2006, which illustrates the number of civil rights violations filed in federal district courts. Highlights include the following:

- Civil rights filings doubled in U.S. district courts from 1990 (18,922 filings) to 1997 (43,278 filings) and subsequently stabilized until 2003. From 2003 through 2006, the number of civil rights cases filed in U.S. district courts declined by 20%.
- During the period from 1990 through 2006, the percentage of civil rights cases concluded by trial declined from 8 to 3%.
• From 2000 to 2006, plaintiffs won just under a third of civil rights trials on average, and the median damage awards for plaintiffs who won in civil rights trials ranged from $114,000 to $154,500.

Awareness over the recent years is becoming much greater, and as evidenced from the data, the potential litigation of use of force incidents that may end up in federal district court can be seen. Once it goes to court, the odds are in favor of the plaintiff, whether it is Section 1984 civil rights lawsuits or Pattern and Practice DOJ lawsuits. Although the percentage is very low, be prepared because it can be costly. The decline of trial litigation in that period of time is assumed to be the result of out of court settlement agreements and early warning intervention of problem employees by police agencies.

Due to ethical imperatives, law enforcement leaders must be continually attentive to ensure the actions of their officers do not compromise civil rights and erode public support. With the authority of the position, officers are granted a tremendous amount of discretion to enforce the law and protect individual rights in the community. At the same time, officers must act within the laws of the Constitution while executing their authority and discretion. They are not above the law nor should they ever consider themselves above the law while executing their responsibilities. The main purpose of the police is to protect, rather than restrict, the rights of civilians, a distinguishing factor of our constitutionally based republic (IACP, 2006).

Police supervisors, in addition to taking reactive steps to protect and promote civil rights throughout their communities, should take proactive steps immediately after an incident involving any use of force. Despite the amount of force used at the time, proactive steps should always precede an anticipated or unanticipated formal complaint that may be made by a citizen/victim and the subsequent reactive steps of an investigation. Visionary leaders recognize that the motive for these steps emerges out of the obligation to abide by the U.S. Constitution (IACP, 2006). But why not define steps for an investigation before the complaint is filed? An internal accountability mechanism that becomes routine with use of force incidents will, by virtue of its function, become a deterrent to false complaints and intentional excessive use of force incidents.

Investigating Use of Force Incidents

Implementing timely and well-thought-out investigative protocols act to minimize risk; and risk prevention related to the use of force is certainly one of the most misunderstood and underutilized aspects in the abatement of officer-related complaints. In our attempt to protect against aggressive behavior and the subsequent results of such behavioral anomalies, we spend a great deal of time and fiscal resources in precursory activities such as applicant screening and post-employment training assuming the formulary dealing with potential risk has been dutifully satisfied. And while candidate assessment and training are key preventative factors and should always be a part of the ongoing development process, they are not a panacea.

Additionally, we fail to take into account that the original risk criteria is predominantly established against the backdrop of pre-employment suitability,
which is based on the current individual’s lifestyle and experience—something that can be validated in part by a subsequent background investigation. However, once ensconced in the organizational culture and subjected to the varying demands of the work—work which exposes individuals to an unfamiliar set of circumstances and stresses not encountered before or reckoned with—individuals morph psychologically by varying amounts, both positively and negatively as previously illustrated by Scrivner’s (1994) findings about the different officer at risk behavioral profiles.

A strong investigative self-audit, coupled with appropriate policies and procedures, helps to take the guesswork out of executing one of a police administrators’ toughest tasks and leads the investigation from the initial after-action report to final resolution—hopefully prior to any formal complaint or other form of negative-based encroachments. Such early intervention is an effective means of protecting both the officer and public.

Information should therefore be gathered by supervisory personnel immediately after all use of force incidents, even those thought to be incidental. The information gathered by such supervisory staff helps to establish early warnings as well as protect officers from false allegations. Just as technologically sophisticated early intervention systems will be severely compromised when data are not collected thoroughly, so will the analysis of data collected by managers who are not trained and motivated to take advantage of early intervention as a deterrent in the use of excessive force. Although more and more departments are using early intervention systems, clear data standards and uniform practices have yet to be established for the routine investigation of all uses of force, especially the use of force not resulting in a citizen complaint (IACP, 2006).

Proactive Investigations

A framework leading to the curtailing of liability-ensconced issues should begin with the premise that every officer-related incident involving the use of force should be investigated, whether it has been the subject of a complaint or not, thus resolving potential problems before they are identified in a subsequent formal complaint. Such procedural perspectives allow increased public confidence and trust in the police; allows for quicker resolution of future formal complaints; improves collection of investigative data; and helps to provide an evenhanded approach, identifying intentional misconduct or willful negligence while absolving the innocent of wrongdoing.

While it is recognized that police officers may have to use force in the course of their duties, such should only be used to the extent necessary in the prevention of a crime, to affect a lawful arrest, or as a defensive countermeasure, with the assumption being that under such particular and substantiated circumstances, officers had no alternative but to use force. Any force beyond these limits should be characterized as “excessive.”

Any investigation on the use of force should therefore focus on two prime elements: (1) the methods used and (2) the purpose for such use. The primary focus in these investigations should be (1) to collect relevant evidence, (2) to be thorough and impartial, (3) to make findings supported by evidentiary constructs only, and
The investigative presumption in use of force occurrences should be initially viewed as no wrongful or improper conduct, rebutted only by substantial evidence that the use of force resulted from intentional misconduct or willful negligence. Substantial evidence means that investigative findings support a greater weight of evidence toward misconduct than any different conclusion. The information obtained therefore must be based on well-established investigative and legal principles. Evidence which establishes merely the possibility of intentional or deliberate misconduct should not overcome the presumption of innocence. As stated earlier, the *Plakas v. Drinski* decision stated that officers must use all feasible choices before using deadly force, but legal precedent also states that the “least obtrusive alternative” is impossible to choose when it comes to following the force continuum (Petrowski, 2002).

Added to this are the ethical considerations. Law enforcement executives and managers face a variety of ethical challenges on a frequent basis, running the gamut from politically motivated situations to problems incurred through employee orchestration. Regardless of how the situation develops, it is up to those in command to serve the public and the department in a responsible and ethical manner.

**The Internal Investigation Process**

The internal investigation process is different in many ways from a normal criminal investigation. Police executives should be wary of assigning officers to internal investigation tasks based solely on operational convenience. Officers charged with investigating use of force activity should be the best qualified to serve in such a capacity, possessing a mastery of investigative techniques such as gathering evidence, interviewing witnesses, and analyzing facts. Such investigators should also exhibit a professional quality of impartiality and a working knowledge of what it takes to meet legal standards in today’s litigious atmosphere.

There is also the problem of skepticism in terms of whether any law enforcement organization can conduct an impartial investigation regarding one of its own. Police executives must recognize that the most important aspect of any internal investigation process is the most difficult to achieve—conducting the investigation in the same professional manner in which criminal investigations are conducted. The investigation of use of force incidents should be just as thorough and complete as the investigation of any crime. This is additionally important because of the potential liability factor, the seriousness of which dictates the need to be as objective and thorough as possible. Therefore, the investigator chosen should be a trusted and well-thought-of member of both the department and community—one who recognizes the importance and priority of the investigation and appreciates the ramifications for the maintenance of confidentiality of the investigative process.

As much as we can determine from government reports, there are more than 18,000 law enforcement agencies in the United States. Most police departments
are rather small compared to those in Chicago, New York, and Los Angeles. They do not have a complex organizational structure. It is difficult for small agencies to have specialists for personnel complaint investigations. The person most likely to investigate is the supervisor. Uniformity should be the rule for agencies with limited organizational structure and numbers (More & Miller, 2007, p. 336).

Sergeants are usually the most visible and often the most approachable members of the police department’s management team. They are first in the chain of command and understand that officers will have a bad day and sometimes take it out on the citizens they encounter. The officer may “be rude, insulting, intimidating, or downright criminal in dealing with others” (More & Miller, 2007, p. 336).

Since constitutional constraints require reasonableness in the use of force (Petrowski, 2002), the supervising sergeant is the best choice to determine reasonableness by interviewing at the scene for any kind of force used, including voluntary handcuffing. Verbal abuse as well as physical abuse can be determined while it is fresh in the minds of witnesses as well as the condition and the demeanor of the person arrested. Supervisors have inherent power and authority and are departmental disciplinarians who generally investigate minor claims and mete out discipline if warranted. In more serious claims of corruption, an internal affairs procedure is implemented. In smaller departments, they may also assist command officers in the investigation of serious complaints. In both situations, an administrative review evaluates whether personnel policies are followed appropriately (More & Miller, 2007, p. 337).

Personnel investigations of misconduct claims require highly trained investigators, regardless of rank. Therefore, the selection and training of investigators are very important. Police managers in smaller agencies do have several options when faced with an internal affairs investigation situation. Small agency managers can assign a case to the supervisor or themselves. The chief is responsible for making sure the investigation is of the highest calibre and fair (More & Miller, 2007, p. 338).

The initial stage of an investigation is to interview the complainant (More & Miller, 2007, p. 338). It is good practice to always anticipate a complaint after a custodial arrest, especially when force is used. The initial step in the investigation should occur just after the use of force incident takes place while witnesses are still available and before a formal complaint is made. The function of the interview is to gather information concerning the use of force complaint or, if no complaint, gather information about the use of force. Witnesses and investigative leads related to the alleged police action and possible misconduct need to be identified, and the incident and the suspect’s credibility and, if necessary, the complainant’s credibility, need to be assessed. It should be determined whether the situation will likely end up in a formal complaint, ascertaining, if possible, the complainant’s motive or motives for making the allegation if there is a claim. It is important to not give opinions—do not editorialize, do not commit the department, and do not form conclusions during the interview process (p. 339).

Two Types of Investigations

With this in mind, we want to discuss two investigative protocols to help minimize legal exposure, anti-police rhetoric, and the disruption to organizational
functionality. The first or Type One protocol involves investigations of complaints originating both internally and from the public domain—the reactive dynamic triggering most internal investigations. The second or Type Two protocol takes the position that an ounce of prevention outweights a pound of cures. Proactively investigating all use of force activity for potential misconduct issues is what agencies should think about implementing—not only to anticipate a complaint but as a routine procedure for any type of force used. Such an investigative self-audit allows for a liability focused analysis against the rule of law and organizational policies and procedures, all prior to a costly lawsuit or negative public impact. Type Two not only protects the citizens, but it also protects officers against false allegations of excessive use of force. It goes a step beyond the normal requirements of investigating use of force incidents and alleged illegal uses of force. It is early intervention of all uses of force and an effective means of protecting officers and the public.

Formal Complaint

Generally, agencies follow three basic steps when reacting to civilian and internal complaints: (1) the formal filing of the complaint, (2) investigation, and (3) the disposition. Although these steps are constant, there are differences in policies and procedures among departments.

The determination of whether the force was reasonable is based on the circumstances of the incident. Whenever possible, individuals should be allowed to submit to arrest before force is used. But, when there is resistance, necessary reasonable force can be used.

The first step, the formal complaint, should not be difficult for the public to make. All perceived and real obstacles should be removed. In U.S. Department of Justice (2003) consent decrees, it is a requirement that the civilian complaint process must be readily accessible to the public. Officers should notify citizens of the right to file a complaint, where to go, and who to see to file the complaint. Business cards can provide the message of this right; a website URL; or the name of the person to contact at the agency and his or her badge number. Complaint forms should also be provided by the office when requested at the scene. Since these are required by consent decrees after a Pattern and Practice lawsuit has been filed against the agency by the DOJ, why not be proactive and implement the procedure as a matter of policy before a lawsuit happens.

Enforcement of the process is mandated by policy with disciplinary action for failure to comply with the policy, including disciplinary actions for impeding the complaint process. Officers should be investigated for failure to notify citizens of the right to complain and for any impediments by an officer.

Police agency accreditation standards have been established by CALEA. These standards are in place for agencies that wish to become accredited and maintain accreditation. According to CALEA (2006) Standard 26.1.5, first-line supervisors have the best opportunity to observe the conduct and appearance of employees and detect instances when disciplinary actions are warranted (p. 26-2). Another standard (26.1.8) states that a written directive provides specific procedures for maintaining records of disciplinary actions to document a warning system and
individual history of citizen complaints (p. 26-3). There is also a standard (45.2.2d) suggesting that the chief can proactively head off any potential problems as related to the community. It is reactive to community concerns, but it is also proactive because the chief can address concerns before a formal complaint against an officer is made (p. 45-4). In CALEA Standard 82.2.2(b), it states that the agency should have a written directive that requires the reporting of every incident of citizen complaints. The purpose of the standard is to require a procedure for proper investigation of complaints (p. 82-3). Accreditation standards do not specify what the investigative procedures should be. As with all CALEA standards, procedures and policies are left up to individual agencies to determine how an activity should be conducted. No CALEA standard addresses or explains “how” to investigate, only “to” investigate, and to have a process in place for investigation of a complaint, including being available to the public.

The entire department must accept the responsibility of ensuring accessible civilian complaint processes. Federal consent decrees and Memoranda of Agreement (MOAs) state the following measures: agencies should allow citizens to make complaints from various venues, both public and private; they should assure the public that they need not go to a police facility. Therefore, complaints should be allowed to be delivered in person, by U.S. Postal Service, or via personal e-mail. If a formal complaint is received at a police facility, officers should not make any assessment of the complainant’s mental capacity or physical condition. Third party and anonymous complaints should also be accepted. If the complainant needs help completing the complaint form, assistance should also be given to the person (IACP, 2006).

Formal Investigation After the Complaint

The second step is the process of investigating the complaint. In addition to training recommendations by Whisenand (2007) illustrated earlier in the article, federal consent decrees and MOAs require departments to give complaints full and rigorous investigatory attention. To do this effectively and appropriately, complaints first must be categorized. Police and legal experts recognize that not all complaints are of the same gravity or require the same type of investigation or intervention. Complaints range from gripes to allegations of felonies. This does not mean that low-level complaints can be summarily dismissed, however (IACP, 2006).

When force is used, the following questions should be given consideration to evaluate the officer’s actions that should have been taken (IACP, 2006):

- Why did the officer use force?
- Was the person a threat?
- Did the person hinder the seizure?
- Was the perception reasonable?
- Was the use of force seizure reasonable?

Complaint categories are based on the seriousness of the allegation. Many departments define multiple categories of complaints since procedures for investigating complaints depend on the nature of the incident and the allegation. For example, the Boise, Idaho, Police Department has two classifications of
complaints: Class I, policy violations and criminal conduct, and Class II, less serious allegations, including citizen inquiries not directed at an individual officer or employee (IACP, 2006).

The Tempe, Arizona, Police Department Agency Policy Manual has five categories of complaints. Complaints received will generally fall into one of the following categories (IACP, 2006):

1. **Serious Misconduct**—Allegations of criminal conduct or conduct that could result in suspension, disciplinary pay reduction, demotion, or termination
2. **Minor Misconduct**—Allegations not appearing to be criminal and which would not result in suspension, demotion, disciplinary pay reduction, or termination
3. **Policy Infraction**—Allegations which are not of a serious nature, but involve some infraction of department policy
4. **Inquiry**—Those complaints against department policy
5. **Administrative Investigation**—Initiated at the direction of the chief of police and conducted by the internal affairs component

Procedures for all investigations of complaints should be categorized according to the level of seriousness. Complaints based on seriousness are investigated through different procedures. Less serious complaints are reviewed by supervisors and managers, while more serious complaints are reviewed by specialized units within the department or external boards or commissions that have various degrees of independence from the department (IACP, 2006). It is better to have commendations go into a separate level of intake rather than combining them with the complaint intake process.

All allegations in the investigatory process, covering a wide range of issues, should include thoroughness of investigation. Standards of proof, quality of information, the role of supervisors, and timeliness of dispositions are important considerations. Consent decree agreements are deliberately prescriptive and proscriptive, addressing both what departments ought to do and ought not to do.

**IACP Recommendations**

The IACP (2006) made several nonstatic recommendations in their project report on the basis of its assessment of federal consent decrees and MOAs as well as the project report. Additional comments to the IACP recommendations make the recommendations more applicable to what we are advocating—that is, an investigation of all use of force incidents regardless of severity. The authors’ recommendations are based on the IACP recommendations, but they have been modified to include all use of force incidents, including “soft hands control” situations. The recommendations are as follows:

1. Implement a clear use of force policy that specifically addresses ALL use of force incidents, not just deadly and nondeadly use of force, and that is consistent with all legal and professional standards. All agencies should have a use of force policy with directives regardless of agency size or function.

2. Implement a comprehensive use of force policy that addresses all available use of force options, clearly places these options within a force continuum or a force
model, and associates these options with corresponding levels of subject resistance. Policies should include canine deployment and conducted energy devices (CEDs) (i.e., TASER use of force).

5. Monitor, review, and update use of force policies to reflect changes in use of force options, laws, and standards and provide specialized and comprehensive training and testing for use of force options.

6. Provide specialized training on alternatives to the use of force.

7. Use of force policies must define ALL, NOT JUST SERIOUS use of force incidents, must include the circumstances under which supervisors must report to the scene of a use of force incident, and must require supervisors to report to the scene of all use of force incidents. The presence of supervisors provides support to officers at the scene and enhances accountability.

9. Clearly stipulate that a written use of force report is required for ALL incidents of force used. Reports aid supervisors and investigators in resolving incidents that may end up as formal complaints.

10. Clearly stipulate that for all levels of force, a use of force review and report is required. The authors’ recommendation is a reviewable use of ALL force at the scene by the supervisor. This recommendation goes beyond the consensus recommendation of the IACP advisors to this project—that reportable force is only the force above “soft hands control.”

11. Ensure that accountability mechanisms, including use of force investigations for allegations of excessive force or force without cause, are fair, thorough, rigorous, and transparent. Unlawful or excessive use of force is contrary to the ethics of policing, creates tremendous liabilities, and undermines the credibility of the department in the eyes of the public and the department members themselves.

12. Collect and analyze use of force data for organizational, management, and assessment purposes. Data collection should be frequent enough to enable analysis on a monthly or quarterly basis.

13. Establish proactive media and public relations strategies regarding department use of force policies and practices.

14. Establish community outreach strategies to build the social capital on which departments may draw in the event of a critical use of force incident.

**Conducting the Investigation**

First and foremost, the internal investigative process should be considered a cognitive (critical thinking) exercise, characteristically likened to any professionally guided research endeavor—not simply a task-oriented process. As such, the investigator should seek to explore and analyze all forms of information, determining either a pattern for further inquiry or helping to contribute to the conceptual understanding of the circumstances being investigated. This method
of inquiry helps to formulate and consider as relevant all possible investigative avenues by asking questions, making observations, manipulating conditions and observing the effects of those manipulations, and then developing explanations from the resultant data.

In addition, best investigative practices take the form of theoretical insight regarding an essential feature or pattern of the event under investigative scrutiny—in other words, “what” and “how.” These practices use the procedural tenets of probabilistic analysis and abductive (cause and effect) reasoning toward determining logical and verifiable solutions to identified events and outcomes—that is, “reasoning backwards” from consequent to antecedent. Simply stated, one throws all the obtained information and evidentiary possibilities in a bag and through a process of elimination removes possibilities from the bag, scrutinizing each until the bag is empty; the only thing left standing are the verifiable answers.

Further, it is not enough to simply collect and analyze investigative data. A guiding theory that is sufficiently flexible to accommodate new information and sufficiently logical to show a clear pattern of cause and effect is required. The essence of such thought-provoking “investigative inquiry” is established for providing investigators with a hypothetical learning experience in which they can develop their conceptual knowledge in the context of simulated authenticating processes, resolving doubt and creating an additional knowledge base.

**Investigative Steps**

While there are numerous ways to articulate methodological formularies in such investigative processes, the underlying operational premise is based on three intertwining factors: (1) investigative integrity, (2) investigative effectiveness, and (3) the ability to functionally adapt to the complexities of the investigation at hand. Utilizing these prime formularies as the principle guide, the investigative strategy is simply an exercise in problem solving:

1. Review the preliminary case information and make observations about the data.
2. Consider the possible interpretations of those observations/data, and create a list of unanswered questions.
3. Develop a strategy for obtaining answers to those unanswered questions.
4. Continue making additional observations and collecting new information.
5. Take time to think about new observations/information, determining the best methods toward gleaning a full and better understanding of the subject matter under investigation; the resulting evidentiary data should be both clear and unambiguous to all who are reviewing them.
6. Determine whether the observations and information garnered answer the original questions posed during the preliminary review, or whether there are other questions that need to be answered before a final conclusion can be
drawn. If there are still unanswered questions, repeat the appropriate steps until there is nothing left to investigate.

Finally, use of force investigations should be governed under a “standard of proof” doctrine and supported by relevant evidence that accurately and substantively articulates the findings to have merit against the backdrop of any differing conclusion. Upon critical inspection, all findings should be able to meet the burden of proof required in any future legal proceeding.

Conclusion

The use of force in police-citizen encounters is one of the most complex and emotionally charged issues in law enforcement. Officers must make decisions that are compliant with applicable laws, professional standards, and departmental policies, often in the context of split-second, life-or-death circumstances. While the safety of officers and civilians remain a major concern, law enforcement leaders must create accountability mechanisms to ensure that the application of force remains within legal interpretation of “reasonableness.” As use of force tools and techniques continually evolve, departments must carefully consider their use of force options. Maintaining public relations and respect for civil rights must continually be part of the process of making decisions in all situations (IACP, 2006).

References


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Charles A. Gruber, Chief (Retired), now head of CAG Consulting, has a career in law enforcement that spans more than 36 years with 30 years as a chief of police. He is past president of the International Association of Chiefs of Police (IACP) and the Illinois Association of Chiefs of Police. Chief Gruber was appointed by the federal district court as part of a team of legal and policing experts to monitor compliance with the negotiated settlement agreement between the City of Oakland, California, and private plaintiffs pertaining to pattern and practice claims filed against the Oakland Police Department. Concurrently, he is retained by the U.S. Department of Justice Civil Rights Division to investigate alleged pattern and practice abuses in several police departments. Like much of Chief Gruber’s work, the DOJ reviews include assessments of numerous officer-involved shootings and use of force issues. Chief Gruber earned a Bachelor’s degree in Psychology and a Master’s degree in Police Administration. He is a graduate of the FBI National Academy, Law Enforcement Executive Development Seminar, National Executive Institute, and the Southern Police Institute at the University of Louisville. Chief Gruber is a decorated law enforcement executive and has received many distinguished service awards. While heading the Shreveport Police Department, he received national attention for his leadership role in preventing use of force by his officers while containing a two-day riot within the city. Chief Gruber was awarded the Paul Lynch Award for his contribution to the advancement of Shreveport’s civil rights movement by containing and de-escalating a riot without resorting to force. He is the recipient of numerous other awards, including Law Enforcement Officer of the Year by the U.S. Marshals Service and the IACP Civil Rights Award.
Examining the Utility of the Use of Force Continuum: TASERs and Potential Liability

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“Art, like morality, consists of drawing the line somewhere.”

– G. K. Chesterton, 19th-century English essayist and poet

Where do our police officers “draw the line”? Where do we want them to draw it? While it has been noted that use of force decisions are the most significant of police actions (Bittner, 1970), these actions are subsumed under the overall exercise of discretion. Discretion is the most important tool possessed by an American law enforcement officer. This powerful ability is informed by law; agency policy; education; training; and the officer’s experience, background, and values. It is a given in modern America that actions of police that impact a citizen’s person or freedom will be viewed carefully and repeatedly. This examination is often by individuals unqualified to accurately assess what has occurred in the dyadic of officer and citizen. An officer’s training and experience prepares him (perhaps) for the encounter if not the aftermath. Encounters requiring use of some level of force are rare (Pate & Fridell, 1995), which partially accounts for the increased interest when such force is necessary. According to Durose and Langan (2007), “Of the 43.5 million persons who had contact with police in 2005, an estimated 1.6% had force used or threatened against them during their most recent contact, a rate relatively unchanged from 2002 (1.5%).” It is generally understood that all acts of intervention are not reported or not reported accurately.

It is a paradox of police work that citizens want to be effectively protected by tough, capable law enforcement officers while also being served by these same officers with civility if not downright subservience. Officers in the United States are trained in law enforcement academies sanctioned by the various states. The curriculum reflects a fairly consistent mix of procedural methods to accomplish the contemporary tasks of policing. While the paradigm shift from traditional policing to the ubiquitous mode of community-oriented policing is beyond the scope of this article, it is noted that the dynamic of this shift impacts both public perception of the methods utilized by police and the dilemma faced by officers and administrators in embracing the aforementioned paradox. Ross (2002) points out in regards to use of force incidents that “In some communities . . . well publicized incidents have polarized the community and the police” (p. 294). Further, Jurkanin and Sergevnin (2003) state, “Negative ideology in identifying use of force results in negative public attitudes towards the use of force by police” (p. 92).

To supplement the training, experience, and physical skills of the officer, a panoply of tools and devices are available. How the assorted devices are situated on the
commonly referred to use of force continuum is the starting point for this article’s discussion of the TASER or similar conducted energy devices (CEDs). The TASER and other CEDs have become almost ubiquitous with estimates of their use in more than 8,000 agencies nationwide (White & Ready, 2007). Industry reports put the number significantly higher (U.S. Department of Justice [DOJ], 2008). This does not mean that CED usage is without medical risk or legal liability in some cases. Some international groups have even denounced the use of CEDs altogether (Amnesty International, 2006). The scope of this article addresses how and when the device should be employed, where it should appear on an agency’s continuum, the role of the continuum, and aspects of related liability. Empirical evidence is still building regarding CED usage and must continue (White & Ready, 2007). Some researchers have advocated that further research be conducted in this area to understand the effects of this technology on our society (Ho, Dawes, Johnson, Lundin, & Miner, 2007). The acronyms TASER or CED will be used throughout this article to refer to the various devices.

**Literature Review**

**Conducted Energy Devices**

Various devices marketed to domestic law enforcement use electrical voltage with relatively low amperage to cause muscular disruption. Two modes involve either the firing of dart-like probes into a subject or making close-quarters contact of the pistol shaped TASER to the subject, which is referred to as touch stun. Selection of mode is based on proximity of the officer to the subject. The probes allow for some distance, though perhaps not the distance advertised by the manufacturer.

The use of a CED is available across several response and resistance categories of common continuums. What is sometimes not clear to observers is that the use of CEDs, pepper spray, or other devices used to halt resistance or aggression is not intended or likely to cause lasting harm. Even courts have agreed that CEDs are considered to be nondeadly force (McKenzie v. City of Milpitas, 1990). In fact, the use of such devices can and has prevented the use of deadly force, including instances of attempted suicide by cop (Ho et al., 2007). The reaction of a subject to the use of a CED, while potentially dramatic in appearance, is not to be taken as a necessary indication of physical damage.

Guidelines have been developed by myriad agencies and recommended by numerous researchers. One of the most cited to date is the PERF Conducted Energy Device Policy and Training Guidelines for Consideration, developed by the Police Executive Research Forum (PERF) (2005). In this guide, PERF offers 52 recommendations as best practice in the policy, training, and deployment of CEDs. The International Association of Chiefs of Police (IACP) (2008) published an executive brief on electro-muscular disruption technology (EMDT) as a nine-step “deployment strategy.” The brief provides guidance to agency executives on policy and training decisions about use of the technology. Agencies should also pay close attention to ongoing research such as the NIJ Special Report that studied deaths following electro muscular disruption (DOJ, 2008).
Other Force Options

In the early days of organized police forces in the United States, officers were equipped with perhaps a firearm and later perhaps something as crudely effective as brass knuckles or a truncheon. Baton-like items have been used in ways that resulted in significant injuries to citizens both within and outside of policy guidelines. Such use of impact weapons was (and is) sometimes disproportionate to the level of resistance but was utilized anyway for lack of other force options.

Beginning in the 1950s and 1960s, more options were added to the law enforcement arsenal, including sprays consisting of so-called tear gas (CS or CN) for crowd dispersal. These generally gave way to oleoresin capsicum, or OC, after 1990. With the exception of stream-type spray that allows relatively effective deployment from 10 to 15 feet, the spray-type devices still require relatively close proximity to the subject. Such closeness was a weakness of batons, too. When an officer has to intercede between struggling or fighting parties, or close the distance to make physical contact with a subject, the potential for injury to all parties increases.

An officer deploying OC spray may receive an amount of blowback. Assisting officers or other bystanders may be “over-sprayed.” Even with this potential, the use of OC spray or stream can provide some distance if it is deployed in a timely way. The use of OC, like the CED, is intended to halt aggression or resistance prior to injury occurring (Morabito & Doerner, 1997).

The most irrevocable and last resort measure an officer may employ is deadly force. Deadly force is most associated with the use of a firearm, though it can certainly come by other mechanisms. Agencies train most intensively for this least-employed firearm force option. The rationale remains sound, however, in that once fired, the projectile can cause damage and injury that may be permanent. The use of alternative force options is intended to forestall or prevent such deadly force use.

Force Continuums

The policies of individual law enforcement agencies outline officer responses available to corresponding subject actions (resistance). The more threat perceived by the officer, the greater number of force options authorized by policy. Factors include those of the subject and any potential cohorts, those of the officer individually, and, if applicable, those of additional officers on scene. A force continuum should also recognize actors related to the immediate surroundings of the incident and the dynamic nature of the conflict. Some court decisions (e.g., see Illinois v. Wardlaw, 2000) recognize the potential justification for expanded application of police powers based on environmental factors such as operating in a high crime area.

An officer can select options as varied as his mere presence through the use of deadly force to deter or defeat the efforts of a subject’s aggression or escape. When an officer is faced with a subject’s imminent or current use of a deadly threat, the officer’s options are typically limited by immediate ability to deploy the option. Officers can be faced with a rapidly deteriorating or already deadly situation.
This can preclude less-lethal force options such as shotguns loaded with bean bag rounds or other options potentially available given more time.

While we maintain in this article that the use of force continuum remains a useful tool, there is continuing debate over the efficacy of its use (Bostain, 2006; Peters, Peters & Brave, 2006; Petrowski, 2002; Terrill & Paoline, 2007). In fact, many researchers have recently declared that the use of force continuum is no longer useful. Peters et al. (2006) state that many argue “persuasively” that the need for continuums has declined due to “adequate guidance” from the judiciary. Bostain (2006) seems even stronger in assailing the organized guidance available through the structure of a continuum by pointing to the abandonment of such aids by the Federal Law Enforcement Training Center (FLETC). Bostain goes on to assert that trainers attempt to “scare students with the threat of liability for using force” (p. 35). Experienced officers, force trainers, administrators, and the general counsels of law enforcement agencies realize that officers should have a healthy concern for the liability that can arise from the use of force. In such a litigious era, it seems wrongheaded to move away from training aids that lend themselves to explanation into a gray(er) landscape where an officer grapples with the nebulous concept of reasonableness: “One of the obvious problems created by a reasonableness standard is determining the appropriate level of reasonableness” (Alpert & Smith, 1994, p. 483).

Agencies in the criminal justice system interpret laws and court precedents in different ways. The interpretation and implementation by agencies result in somewhat different local policies. Decisions in court cases such as Miranda (1966), Terry (1968), and, notably, Tennessee v. Garner (1985) and Graham v. Connor (1989) serve to address deficiencies or inappropriate behavior or to establish a direction for future conduct. Courts do not typically issue free-standing guidelines that can be adopted wholesale as policy or a training component. Such specific guidelines are left to agencies to articulate. The development of use of force continuums has been a valuable and necessary response to the Graham decision. Bostain (2006) states that factors may “mean many different things to many different officers” (p. 34). Yet the very point of continuums and training is to reduce the occurrence of individual interpretations and provide clear criteria for an officer to use in interpreting and responding to a subject’s actions.

In building a case for the abandonment of a continuum by FLETC, Bostain (2006) states that instructors at FLETC “attempt to dispel the various myths regarding Use of Force” (p. 35). It is hoped that all use of force instructors, whether using a continuum as a training aid or not, train to dispel myths and provide officers with the most complete knowledge currently available to assist and guide use of force decisionmaking. While Bostain’s article claims to not take sides, one would be hard pressed to locate within his writing any support for use of a continuum by an agency. Bostain argues that a use of force model or continuum may cause confusion and hesitation, but it is not clear from the article how training outcomes are improved through the new FLETC method.

In further questioning the efficacy of use of force continuums, Petrowski (2002) highlights wording from the Graham (1989) decision that cautions against “mechanical application.” Petrowski equates use of force continuums as the proscribed mechanical application. In further describing the quality of many
such continuums as facilitating escalation and de-escalation, Petrowski asserts that for an officer, “the seed of hesitation is inescapably planted” (p. 29). Even though Petrowski grants that empirical evidence seems to reveal a tendency for police to hesitate in the application of serious force anyway, he believes that the continuum adds to this demonstrated hesitancy. Our position is that continuums used in comprehensive training may clarify choices open to an officer rather than burden him or her with a mental block against force usage further than what other psychological forces may already be at work.

Pedagogical issues related to presenting concepts for comprehension and retention include visual aids, dynamic and interactive drills, directed readings, and mastery testing, both written and physical. Ease of teaching is of great importance in high-liability topics (Gordon, 2003). The graphic aid of a force continuum that shows options available to an officer has been embraced by many, if not most, agencies nationwide. Agency administrators, risk managers, general counsel, and trainers still see the benefit of using the continuums to explain the complex dynamics of force situations. The time has not yet arrived when the use of force continuum is irrelevant or unnecessary.

A continuum example, Florida’s 2005 Recommended Response to Resistance and Levels of Resistance Matrix (Figure 1), presents six subject resistance levels and six officer response levels. For many years, Florida’s comprehensive training incorporated this matrix (continuum). The training module included exhaustive instructor guides and recruit officer guides that provided in-depth discussion of situational factors. The matrix was not presented in a vacuum.

In the officer response level “Physical Control,” Florida’s matrix included the categories (1) restraint devices, (2) transporters, and (3) takedowns. The next level, “Intermediate Weapons,” had two categories: (1) pain compliance and (2) counter moves. Pepper sprays and CEDs, both intended to halt a subject’s resistance without risk of grappling in close, have been considered for various levels in the continuums used by each agency. As complex as these models can seem, this underscores the need for graphic aids to explain their function to juries and others. Use of force expert Dave Grossi (2006) stated,

A properly constructed control continuum provides a clear method for educating civilians in understanding that your force decision was the most reasonable one, based on the threat you were facing; the ability to diagram the standard progression of force from presence, dialogue, empty-hand control, chemical, electronic or impact weapons, up through deadly force, including why skipping steps based on special circumstances are sometimes necessary. (p. 1)

Placement of CEDs on the Use of Force Continuum

Deciding where to place the CED or other devices on an agency’s use of force continuum is a matter of departmental policy and sometimes of state statute. While there is not a consensus as to the specific location to place CEDs, there is general agreement that the devices should be placed on an agency’s use of force continuum (IACP, 2008). Subsequent to the introduction of OC as a restraint, a strident debate ensued about placing the spray’s use above or below empty-hand
Figure 1. Recommended Response to Resistance and Levels of Resistance Matrix

<table>
<thead>
<tr>
<th>Resistance Level</th>
<th>Aggravated Physical</th>
<th>Aggressive Physical</th>
<th>Active Physical</th>
<th>Passive Physical</th>
<th>Verbal</th>
<th>Presence</th>
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</tbody>
</table>

Checkered areas represent suggested acceptable, beginning response levels. Any response in an unchecked area requires explanation. Refer to definitions for each level of resistance and response.

Officer Presence

<table>
<thead>
<tr>
<th>Officer Presence</th>
<th>Communication</th>
<th>Physical Control</th>
<th>Intermediate Weapons</th>
<th>Incapacitating Control</th>
<th>Deadly Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

Effective 2/1/2002

Incorporated by Reference in Rule 11B-27.001(4)(c)1., F.A.C.
controls on an agency’s use of force continuum. In much the same manner, TASER use is debated. Ho et al. (2007) offer their opinion that CEDs are “considered to be an intermediate weapon by law enforcement agencies” (p. 783). The researchers, a group of medical doctors, go on to assert that such intermediate weapons are “those that generally can induce subject compliance because of pain or incapacitation and are a level above empty hand control techniques, such as joint locks, but less than deadly force” (p. 783). A central component of the argument that CEDs or OC be used prior to a hands-on action is that actual physical contact between the officer and subject increases risk of injury.

Support for placement of CEDs below an intermediate weapon such as a baton is contained in verbiage from An Overview of Electronic Control Devices and Their Use in Florida (Florida Department of Law Enforcement [FDLE], 2006), which states, in part, “[TASERs] have become popular with law enforcement agencies because they allow officers to subdue a person from a distance and then ideally, capture the person without loss of life or injury to the officer or the person” (p. 2).

The argument for placement of CEDs before use of physical techniques on the use of force continuum is to halt aggressive or resistive action as quickly as possible and with less potential for injury. Arguing which approach is least intrusive may not be settled yet, but both are defensible under a force continuum placement or use under the broadly labeled concept of reasonableness.

While positioning concerns for officers remain even at distances beyond the reactionary gap, vulnerability to assault increases with reduced distance to subject. Probe deployment from a distance reduces the need to physically control the subject until they are temporarily stunned or impaired. If an officer is physically engaged in trying to subdue a subject, a second officer may approach and use a CED in stun mode to halt the subject’s resistance. At this point, potential harm to the subject and officers is reduced by the reduction or elimination of struggling. Defensive tactics instructors always teach recruits and inservice officers of the dangers of close proximity. When one handcuff is on, the subject may decide in an instant that this is his or her last chance to avoid captivity. Someone with a weapon may struggle to acquire it, or the officer’s weapon, when his or her being restrained is imminent.

In 2005, the number of officers reported assaulted was 57,546. Of those, 15,763 officers were injured: “The majority of officers assaulted (80.0 percent) were attacked with personal weapons such as hands, fists, or feet” (DOJ, 2006). Not all assaults on law enforcement officers have or will be eliminated through the use of devices such as CEDs or OC spray. Reduced injuries to all parties have been reported by numerous agencies based on the use of CEDs. If officers, through agency policy, are authorized to utilize the CED as soon as a subject physically resists, rather than “waiting” to see if the resistance escalates, it is logical to assume we will continue to see reductions in injuries to both officers and those they attempt to restrain.

Case Law Review

The U.S. Supreme Court promulgated standards of review for considering lawsuits where excessive force allegations are made. In Tennessee v. Garner (1985)
and *Graham v. Connor* (1989), the Court held that the standard of review should be one of “objective reasonableness” under the Fourth Amendment. This standard requires that an officer’s use of force be examined “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight” (p. 396). The Court also provided several factors that could be used to determine reasonableness, including (1) severity of the current crime, (2) whether the suspect poses an immediate threat to officer safety, (3) whether the suspect is actively resisting arrest, and (4) whether the suspect is attempting to flee to evade arrest. The Court stated that the objective reasonableness test is based on an examination of the totality of the circumstances surrounding the arrest and can, therefore, not be defined precisely. The *Graham* case has been cited in over 21,600 cases since it was decided in 1989. In his comprehensive assessment of lower court federal cases decided in a ten-year period after the *Graham* decision, Ross (2002) determined that police prevailed in 72% of the published cases. He also concluded that while courts are generally following the reasonableness standard set in the *Graham* case, some courts are using stricter applications, including the deliberate indifference standard, than the Court established in *Graham*. It seems that the standards established by *Graham* have made the constitutional claims relatively clear, but the state negligence claims are not nearly as clear (Zigmund, 2006).

There have been numerous lawsuits filed by criminal defendants based on violations of 42 U.S.C. sec. 1983 for which courts have applied the standards established in *Graham*. Many of these cases involve the use of TASERs during an arrest. In *Mckenzie v. City of Milpitas* (1990), the court established that electronic control devices are generally considered to be nondeadly force. Most recent decisions have shown that courts give much discretion to law enforcement officers in the use of force in order for them to protect themselves (Anderson, Zoufal, & Conlon, 2003). In one of its recent editions devoted to civil liability issues, the group Americans for Effective Law Enforcement (AELE) (2007) examined several recent cases in which courts examined the reasonableness of the use of TASERs.

In one recent case, *Draper v. Reynolds* (2004), the court held that the officer’s use of a TASER during a lawful arrest during which the defendant resisted the officer’s commands did not violate the defendant’s rights. This was the first TASER case decided by the 11th Circuit Court of Appeals. In this case, a deputy stopped a motorist with a malfunctioning tag light. When he approached the passenger side of the vehicle and shined his flashlight into the vehicle, the deputy asked the driver to get out of the vehicle and meet him behind the truck and in view of the officer’s patrol camera. The facts suggest that the driver became upset about the officer shining the flashlight in his eyes, and he became belligerent and failed to comply with the officer’s repeated request to provide his driver’s license and other documents. After a fifth request, the officer discharged his TASER one time. The entire incident was recorded on the deputy’s patrol car camera. Using the reasonableness standard and the factors articulated in *Graham*, the court determined that the officer’s actions were reasonably proportionate to the need for force and were appropriate under the circumstances.

Other cases examined the reasonableness of the use of TASERs when a suspect actively resists arrest. In these cases, federal courts have upheld the use of a TASER when a suspect resists arrest and when the officer acts reasonably to protect himself to effect the arrest. In *Russo v. Cincinnati* (1992), a federal appeals court held that
an officer’s use of a TASER several times against a noncompliant suspect who was carrying two knives was not excessive. In fact, the court in this case noted that the officer used his TASER in this case to avoid the use of deadly force against a potentially homicidal suspect. In Carroll v. County of Trumbull (2006), the court also upheld the use of a TASER used against a suspect who was resisting arrest. The court found again that the officers had not violated the defendant’s constitutional rights. In U.S. ex rel. Thompson v. Village of Spring Valley (2006), an officer used a TASER on a suspect who was fleeing and attempting to evade arrest. The record showed that the officer warned the suspect several times, and the suspect did not contest this version of the facts.

Courts have also recently upheld multiple uses of TASERs on suspects who continued to resist arrest efforts, and the use of TASERs when a suspect is handcuffed but continues to resist arrest. In one interesting case, Willkomm v. Mayer (2006), the court granted summary judgment to law enforcement officers even though the officers used a TASER three times during the arrest. The suspect was even handcuffed during two of these incidents, but the court found that since he was continuing to resist arrest even while handcuffed, the officers’ actions were reasonable under the circumstances. In Devoe v. Rebant (2006), officers used a TASER on the lower back of a handcuffed suspect who was resisting arrest, and the court again determined that the officers’ actions were reasonable under the circumstances.

In a couple of recent cases, however, courts have denied summary judgments to officers when they used TASERs on suspects who did not actively resist arrest or may have even been cooperating with police. These cases show that courts will restrict the use of the TASER in some circumstances in which the use was not reasonable. In Schmittling v. City of Belleville (2006), the plaintiff alleged that he was approached by police on a roadside while waiting for medical assistance. When the officers arrived, they told him that he was going to jail. He claimed that one of the officers used his TASER on him while he was putting his hands together to be handcuffed, and then he was unable to comply with further requests by the officers. He was subsequently shocked by the TASER three more times. The court determined that these claims could legitimately constitute excessive force if a jury believed them and, thus, denied summary judgment. Finally, in Autin v. City of Baytown (2005), an officer allegedly used a TASER on a woman who was attempting to get into her brother’s house because she believed that he might be ill. An officer approached her from behind and gave no warning before he used his TASER on her. The court determined that the officer’s failure to warn her before the use of the TASER could constitute excessive force.

These recent decisions by federal courts based upon the application of Graham v. Connor (1989) suggest that courts have achieved some consistency in applying the reasonableness standard to excessive force lawsuits. More study of state law claims of negligence should also be completed to clarify this picture. These cases suggest that continued training by law enforcement agencies on the use of force will help officers prevail in excessive force lawsuits. This training will help law enforcement officers be able to clearly articulate the reasonableness of their actions in use of force situations.
Discussion

Policy Recommendations

A recent trend in the literature that addresses force continuums is the assertion by some that the use of force continuum has outlived its usefulness. If officers were simply handed a graphic of their agency’s use of force continuum and admonished to follow the resistance and response categories listed, the method would be wholly inadequate, perhaps even negligent. The use, however, of the continuum as one component of a comprehensive and ongoing training effort is encouraged: “Most recognized professionals in the police training or liability field accept a force (or control) continuum in some form” (Grossi, 2006, p. 2). The argument that courts have provided some clarity through decisions on reasonable use of force is sound, but it must be noted that the courts’ ability to provide such clarity flows at least in part from the judiciary’s exposure to such use of force continuums, agency policies, and academy curricula.

Both PERF and IACP have addressed the issues associated with CEDs. Both organizations and many researchers have provided guidance, admonitions, and policy recommendations to assist agencies in the effective and appropriate deployment of CEDs. We recommend that an agency consider all such recommendations and incorporate those that assist officers in understanding both application of use of force and the context in which police in a free society employ force to carry out their duties.

The primary focus of this article is to make a recommendation on where to place CEDs on the use of force continuum. We recommend that agencies authorize officers to use CEDs prior to hands-on techniques or impact weapons that have shown likelihood of greater injury than CED application. This is a novel recommendation and represents a significant departure from many agencies’ policies. The reason for this recommendation is that if used properly and without complicating health or intoxication conditions in the subject, the CED has shown its usefulness and low risk of injury. In making this recommendation, we strongly recommend that agencies also adhere to the PERF (2005) policy and training guidelines.

Other Implications

While many engage in the semantics debate over terminology vis à vis types of force, trainers should be reminded that the conversation is not for them alone. The term less lethal, when heard by the lay public including jurors, the public, and the media, may imply that a tool, device, or technique is actually lethal. This can be a damaging label, and agencies should avoid using this term in their policies. These are not inconsequential considerations. Assisting agencies and officers in properly carrying out their duties includes ways to survive court challenges and civil lawsuits.

There is risk with the use of any law enforcement tool, device, or technique. With the use of CEDs, there have been injuries as well as deaths that may in part be attributed to the device or its use and in part to the underlying conditions that brought a subject to the attention of police. Continued research into the effects of CEDs on the human body is warranted. The potential for harm to subjects
and officers from physical conflict is the reason to search for alternatives and continually safer methods. Researchers have found that “the most powerful predictor of force is the presence and level of suspect resistance presented to officers” (Terrill, Leinfelt, & Kwak, 2008). The potential for serious injury is also one reason that officers must be trained fully on the use of force continuum.

An officer utilizes force in response to a situation in part based on the criteria established by the U.S. Supreme Court in *Graham v. Connor* (1989). The Court addressed excessive force in a framework that called for viewing an officer’s actions as objective and reasonable by an officer at the scene. The knowledge that responses are guided by law, court rulings, and department policy is mediated by the reactions and responses born of ongoing training. Such training is critical to proper response selection and, indeed, to the officer’s potential survival.

Dynamic training accompanied by guided report writing training will improve the skills of officers. Review of usage of electronic control devices and other less-lethal force options will assist policymakers in formulating clear and defensible policies. Policies with regard to any techniques or device deployment should note that added caution needs to be exercised with persons exhibiting a potentially compromised physical condition such as very young or old persons, pregnant women, or frail persons. While any person may suffer injury from collapse subsequent to resistance or CED contact, those mentioned above may be at an increased risk of doing so.

**Conclusion**

In this article, we discussed placement of conducted energy devices (CED) on agencies’ use of force continuums and recommended such placement as preceding hands-on techniques. Such recommendation is made to prevent increased risk of injury to everyone involved in the incident. We recommend the continued use of continuums in both training and policy. Some have argued for use of force continuums, and others have argued against them. Some have argued for the use of CEDs, and others have argued against their use. In this article, we specifically recommend placing CEDs below intermediate weapons on the use of force continuum. There is little extant literature relating to where to place the CED. Further empirical research needs to focus on the use of force continuum and its benefit as a training aid and policy component.

Herein, the proliferation of lawsuits arising from use of force was also examined, specifically the use of CEDs. We believe the reasonableness standard used by most courts in addressing excessive force complaints favors proactive use of force and control techniques so that officers do not needlessly hesitate in employing appropriate force and thereby put themselves or others at increased risk. However, it must also be stressed that “[t]he general principle that officers confronted with threats to their safety are not required to select the least intrusive alternative to counter the threat does not suggest that officers always are justified in using deadly force” (Hall, 1997). Clear agency policies, comprehensive training, and availability of CEDs to public safety organizations will reduce liability exposure as well as injuries and death just as other researchers have suggested (Archbold, 2004).
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Police Use of Conducted Energy Weapons in Canada

Joel Johnston, Staff Sergeant, Vancouver Police Department
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Chris Lawrence, Project Manager

Introduction

Recent events involving Canadian police use of force to control resistive subjects has created deep public anxiety and has negatively impacted police and community relations. This concern is aggravated by a general lack of public understanding as to how police officers are trained to use force, how use of force law is applied, and how the use of force is evaluated. This problem is further exacerbated by people who publicly speak to these issues without the requisite in-depth knowledge of this subject matter.

The purpose of this document is to provide meaningful, objective information concerning the topic of use of force by Canadian police officers. It is intended for people who have more than a passing familiarity with the law, police duties, police training, and with the difficulties that can be realized when responding to rapidly unfolding, tense, and uncertain circumstances where the outcome is unclear.

Five primary documents were used to develop the concepts within this report:

1. Peel’s Nine Principles of Policing (Seagrave, 1997)
3. The National Use of Force Framework (Canadian Association of Chiefs of Police, 2000)
4. Legal Aspects of Policing (Ceyssens, 1994)
5. A History of Police in England (Lee, 1901)

Peel’s Nine Principles of Policing provide a vision on community-based policing that is as relevant today as it was in 1829. Canada’s Criminal Code outlines the legal standard regarding use of force applicable to all members of society. While section 25 of the Code includes police officers, other sections involving use of force use no exclusionary language regarding law enforcement officials. The National Use of Force Framework provides a heuristic device by which officers can be trained to use force. While it has no force in law, this single training model can be used for guidance by the courts, the police, and the public in understanding and evaluating police use of force incidents. The text prepared and consistently updated by Mr. Paul Ceyssens regarding judicial decisions on police use of force provided a concise reference to relevant case law on this important topic. Insights into the periods before (Colquhoun, 1806; Fielding, 1751), during (Reith, 1956, 1975), and after the creation of the London Metropolitan Police (Babington, 1990; Lee, 1901) are helpful to appreciate that current public concerns may be simply echoes of the past. History informs us that the public and the police have been at odds since the modern inception of the police.
The remainder provides a collection of informed opinion and comment by individuals immersed within the general subject matter of police use of force. The resultant comments are intended to generate discussion relating to Conducted Energy Weapons (CEWs), their use, training, and policy guidance. It is also appreciated by the authors that it will indeed be others who determine the outcome of that discourse.

**Historical Context**

Prior to the inception of a professional police, what today would be recognized as law enforcement functions were the responsibility of the citizenry. Before the dawn of culture, the observance of the communal best interest was secured by the use of teeth and limb. As human culture progressed to societies, weapons evolved, and crude physical force evolved into military force. Sentiment and emotion were replaced by morality and rules: “These supplied to the maker and administrators of laws improving means of securing their observance but never, in the history of mankind, have any means been discovered which have made wholly unnecessary the ultimate use of some measure of physical force” (Reith, 1975, p. 18).

At the end of the 18th and beginning of the 19th centuries, modern policing had arguably not yet been invented. Crime in England had grown to epic proportions (Colquhoun, 1806; Fielding, 1751; Lee, 1901; Reith, 1956, 1975):

> Each citizen looked to his own individual safety, and the protection of his own property and dwelling. The rich surrounded themselves with armed servants, and were comparatively safe and independent on this account. The less affluent saw to it their houses were protected as strongly as possible by bars and bolts and heavy doors and shutters, and that loaded blunderbusses and pistols were always close at hand. A journey of any kind was always a perilous adventure. A sum of money in a handy pocket for highwaymen was as necessary and customary provision as the purchase of a coach ticket. Highwaymen were so free to carry out their exploits without interference that they would walk into an inn-yard and paste up a notice announcing the place and time at which a coach would be stopped for the purpose of giving the passengers who were travelling by it an opportunity to hand over their valuables. (Reith, 1975, p. 134)

Mob violence was frequent throughout England, Ireland, and parts of Wales. In London, angry crowds would quickly form and sweep through the streets. Some individuals were said to be quite adept at using mobs to their advantage (Reith, 1975). Until the inception of the London Metropolitan Police (The Met), the usual response was to call for military assistance. Groups which would not disperse were subjected to volleys of musket shot, followed by saber or bayonet charges (Babington, 1990; Lee, 1901; Reith, 1975).

Into this general setting, not one but several attempts were made to organize a professional police force. Most of these efforts were unsuccessful for a variety of reasons, including political unwillingness to support this new proposition. Peel was successful in his 1829 Metropolitan effort despite “intense and almost unanimous public opposition” (Reith, 1975, p. 139):
The storm of opposition which the new police aroused on their appearance in the streets of London on 29th September 1829 reached tornado force within a year or two, and united all classes in demand for their disbandment. (Reith, 1975, p. 150)

Had it not been for the leadership of The Met’s first Commissioners, Colonel Charles Rowan and Sir Richard Mayne, and their unwillingness to bow to public pressure to annul an unpopular decision, one could only wonder how history may have unfolded.

Police tools and weaponry have continued to evolve, further reducing the reliance upon teeth and limb. Consistently, research informs us that police use of force is infrequent and that the vast majority of arrests are conducted without violence (Alpert & Dunham, 2004; Langan, Greenfeld, Smith, Durose, & Levin, 2001). Even in the few cases where force is used, seldom is there any injury (Butler & Hall, 2008).

Once again, the police are the focus of substantial public concern. This time the public is upset over police use of CEWs. Proponents point out the effectiveness and reduction in injuries following CEW deployment, while opponents point to the controversy surrounding research, the limits of prudent use, and the numbers of deaths associated with deployment. Police executives have had to face a similar level of controversy when policing was founded. This paper is provided for the consideration of the decisionmakers.

**Police Use of Force in Canada**

It is unclear at what point the first police officer appeared in Canada. It is suggested that policing in Canada may be traced as far back as 1651 in Quebec City. The Newfoundland Constabulary appointed the first police constables in 1729 (Fox, 1971), about the same time as the first Parliament of Upper Canada made provision for the formation of a “police system in September 17, 1792 (Larochelle, 1994; Seagrave, 1997). Certainly, a relationship has existed between the public and a police presence in Canada for well over 200 years. During this period, the citizens of Canada, through the government, have agreed upon a legislative framework that supports their fundamental need to feel safe in their communities. When members of the public are caught up in circumstances that are beyond their control, they often choose police as the public agency to restore order. To that end, police officers are selected, trained, and equipped to enforce the laws enacted by Parliament and the provincial legislatures. The prospect of having laws without the requisite enforcement mechanisms has in the past been shown to be ineffective in maintaining the peace and order that society requires to progress (Babington, 1990; Colquhoun, 1806; Fielding, 1751; Lee, 1901; Reith, 1956).

The use of force by police has always been a sensitive and difficult subject to reconcile with the tenets of freedom in a liberal democracy. Most people go through life never having to personally use force against another person. Consequently, modern media—making full use of images, sounds, and popular myths—shapes public perceptions of physical confrontation and the force used. These include news and editorial accounts of incidents through print and electronic mediums, including documentaries and major motion pictures. Due to the need to make
fiction more appealing in the competitive environment of the motion picture industry, rarely do such representations accurately reflect reality. In essence, most of society has never been exposed to an actual use of force situation. They are forced to rely on a media-based paradigm, often relying on the exacerbation of controversy, sensationalism, and the polarization of issues most likely to increase audience ratings.

In Canada, the Criminal Code (R.S.C. 1985, c.46), a federal statute, authorizes everyone to use force to protect themselves (self defence; s. 34 C.C.), or anyone under their care, from assault (s. 37 C.C.) so long as they use no more force than necessary to do so (s. 26 C.C.). The law also authorizes everyone to use as much force as is reasonably necessary to prevent the commission of certain offences (s. 27 C.C.). Additionally, police officers are specifically required—that is, they have a positive obligation versus a mere authorization—to use necessary force (s. 25 C.C.) if certain conditions exist. In addition to statute law, ethical guidance regarding police citizen interaction has existed since Sir Robert Peel established the London Metropolitan police in 1929:

Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence. (Seagrave, 1997, p. 18)

Within this context, there are two realities that drive law enforcement use of force in Canada. The first is that police officers are sometimes bound by their duty to apprehend, arrest, and detain certain individuals, often in criminal and/or crisis situations, and then deliver the arrested person to competent authorities, be that the Courts or the hospital, or in certain cases to be released. The second is that a certain unpredictable number of those individuals will resist police, either passively or actively, making the process difficult and sometimes dangerous, or they will become assaultive, placing officers and the public at immediate risk of physical harm. There are some situations wherein the person at greatest risk is the subject, and the risk is created by the subject’s own actions. In simple terms, sometimes there is no alternative but to use force. Experience has shown, and continues to show, that there are both immediate and long-term costs of failing to intervene when intervention is necessary. The immediate costs may involve the loss of life, while the long-term costs may be the erosion of the social fabric.

The risks, both personal and to the organizations they represent, are many when police officers engage in physical conflict (e.g., criminal liability, civil liability, internal discipline, mental anguish, physiological stress, injury, or death). However, if police officers are compelled by mandate and/or circumstance to control a violently resistive offender, they have an obligation to do so having regard for the public’s and their own safety. In other words, the police are not required by law to use a minimum of force. The courts appreciate the difficulties faced by law enforcement officials in this type of event and have provided latitude in the courts’ after the fact evaluations. Police officers are not compelled to use the least amount of force but, rather, to do what is believed necessary, given the totality of the situation and the arduous conditions under which these decisions and assessments are made, and to use “reasonable force” in the process:
In Levesque v. Sudbury Regional Police (1992) Ontario Court of Justice – General Division O.J. No. 512 Action No. D.C. 1930/87 – Bernstein, J: “It is both unreasonable and unrealistic to impose an obligation on the police to employ only the least amount of force which might successfully achieve their objective. To do so would result in unnecessary danger to themselves and others. They are justified and exempt from liability in these situations if they use no more force than is necessary having regard to their reasonably held assessment of the circumstances and dangers in which they find themselves.

Police officers by virtue of their mandate are compelled to control resistive and often violent subjects. Oftentimes, these subjects are physically attacking the officer. In the rare instances in which presence and communication tactics fail to control or influence behavior, the objective of police officers is not to fight with these people but to control this unlawful and frequently violent behavior in order to deliver them (1) to the criminal justice system to be dealt with according to law or (2) to a medical care facility. Anything further is beyond the police mandate. Again, Peel’s guidance on this issue has existed since the inception of modern policing:

Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice and warning is found to be insufficient. (Seagrave, 1997, p. 17)

The responsibilities currently placed upon law enforcement are greater than at any time in history. The proliferation of drug use, the growing number of persons with mental illnesses within our communities, and the increase in the numbers of homeless persons, all occurring in conjunction with funding shortfalls in all levels of government, have made policing in the new millennium particularly challenging. The following circumstances provide examples of some of the challenges facing modern police officers:

[The] Canadian Addiction Survey (CAS) – 2004 indicates past-year use of cannabis and cocaine/crack in Alberta has more than doubled over the last 15 years . . . . The proportion of Albertans using cannabis went from 6.5% in 1989 to 15.4% in 2004 and the proportion using cocaine/crack went from 1.1% to 2.4%. The proportion of Albertans using LSD, speed/amphetamine or heroin remained relatively stable over the years between 1989 and 2004, consistently below the 2% level. These Alberta trends in illicit drug use closely parallel Canadian trends. (Alberta Alcohol and Drug Abuse Commission, 2005)

Illicit drug use increased substantially across the country between 1993 and 1994. Use of cannabis increased from 4.2% to 7.4%, cocaine increased from 0.3% in 1993 to 1% in 1994. No recent national data are available to determine if this trend continues. An (under) estimated 132,000 (7.7%) Canadians who use cocaine, LSD, speed, heroin or steroids have injected drugs. (Riley, 1998)

The Vancouver Police Department has conducted research that reveals there is a profound lack of capacity in mental health resources in Vancouver. The result is an alarmingly high number of calls for police service to incidents that involve mentally ill people in crisis. More than one-third of all calls for Vancouver Police involve people with mental health issues. In the Downtown
Eastside, it increases to almost one in every two calls. VPD officers, along with the citizens with whom they come in contact, are bearing the burden of a mental health system that lacks resources and efficient information sharing practices, often with tragic consequences. (Wilson-Bates, 2008, p. 3)

Street counts of homeless people have increased, sometimes at triple digit rates: Calgary’s homeless population grew 740 per cent between 1994 and 2006, for example, an average 40 per cent increase in homelessness every two years. In 2005, the National Homeless Initiative, the federal secretariat most directly responsible for homelessness in Canada until its closure in 2007, estimated that 150,000 Canadians were homeless. Given the rapid growth found in municipal homeless counts, some non-governmental sources estimate Canada’s true homeless population, not just those living in emergency shelters, ranges between 200,000 and 300,000. (Laird, 2007, p. 4)

Additionally, the demographic changes in society have left police agencies without the corporate experience that had been enjoyed in past years. In spite of these challenges, the vast majority of police-citizen interactions are resolved without the need to use physical force. Alpert and Dunham (2004) observed that, “Although there are significant methodological challenges in determining the frequency and rate of police force, it is unquestionably an uncommon occurrence” (p. 2). Recent reports involving the Calgary Police Service (Butler & Hall, in press) and the Halifax Regional Police (Stienburg, Hernden, & Croft, 2008) validate this view within a Canadian context.

While Peel’s admonishment that “the degree of co-operation of the public that can be secured diminishes proportionately to the necessity of the use of physical force” (Seagrave, 1997, p. 17), there remains a small segment of police-citizen interactions which involve subjects refusing to cooperate, regardless of what is said or who is saying it. At that point, the police are faced with controlling uncooperative, occasionally violent subjects, which can involve erratic and/or drug-induced behaviour. These events may require the application of some force response option in order to lawfully resolve the situation:

Analysis showed that patrol officers encountered resistance predominately from male citizens approximately 22 years old. In approximately 89 percent of the incidents, the officer encountered citizens under the influence, or suspected to be under the influence, of alcohol or drugs. Fifty-one percent of the resisting suspects were white, 43 percent were black, and 6 percent were Hispanic. One officer encountered more than one individual in fewer than 10 percent of the incidents. The study found that officers experienced defensive resistance more than any other type. Resistance during handcuffing and active aggression, where citizens made physical contact with the officer, accounted for other significant types of resistance. The most common form of active aggression toward the officer was a punch, followed by a push and a kick. In approximately 46 percent of the incidents, the subject confronted the officer with verbal noncompliance to the arrest orders. The data indicated that during an arrest, an officer may experience more than one type of resistance with no order or pattern. At any time during the arrest, the officer may confront resistance, and depending on the dynamics of the arrest, the
If police use physical force, there is an ever-present risk that someone may become injured in the process. This is an uncomfortable fact of real-world conflict. Sometimes, people will die. While injury and/or death is not the intent, it is an infrequent, unfortunate byproduct of the police mandate to bring violent people under control—for a variety of reasons such as subject physiology, intoxication, the nature of the force, the dynamics of the encounter, and so on. Police officers endeavor to use force that is proportional to the threat that they face or that they are attempting to control while having regard for their own safety and/or the safety of other innocent parties. Importantly, the outcome of the force response used does not relate to the justification for the use of the force. In other words, injury or death do not necessarily equate to “excessive” or unjustified force. Similarly, the absence of injury does not denote that force was necessarily justified. Reasonable force is the standard that police officers are held to in Canada and, indeed, internationally. The reasonableness of the force used will be determined by the “trier of fact” (judge or jury) regarding the circumstances surrounding any given incident. For example:

In Anderson v. Port Moody (City) Police Department (4 August 2000), New Westminster Capital Registry No. 5016178, (2000) B.C.J. No. 1628 (Q.L.), Dillon, J. reviewed the authorities dealing with the issue of reasonable force, stating at para. 51, Consideration must be given to the circumstances as they existed at the time. Allowance must be made for exigencies of the moment, keeping in mind that the police officer cannot be expected to measure the force with exactitude.

Wackett v. Calder (1965), 51 D.L.R. (2d) 598 at 602 (B.C.C.A.); R. v. Bottrell supra at 218; Allarie (sic) v. Victoria (City) (1985) 1 W.W.R. 655 at para 20 BCSC; Levesque v. Sudbury Regional Police Force (1992) O.J. No. 512 (Ont. Gen. Div); Breen v. Saunders (1986), 39 C.C.L.T. 273 at 277 (N.B.Q.B.); Berntt v. Vancouver (City), supra at 217: This may include the aura of potential and unpredictable danger; Schell v. Truba (1990), 89 Sask. R. 137 at 140 (Sask. C.A.) (in dissent): There is no requirement to use the least amount of force because this may expose the officer to unnecessary danger to himself (Levesque v. Sudbury Regional Police Force, supra at 1).

In R v. Bottrell (June 9, 1981) 60 C.C.C. (2d) 211 British Columbia Court of Appeal, Seaton, Anderson, and Hutcheon JJ.A: In deciding whether the force used by the accused was more than necessary in self-defence you must remember that one cannot be expected to weigh to a nicety, the exact measure of necessity, the defensive action; it was put this way by a Judge in one case; detached reflection cannot be demanded in the presence of an uplifted knife.

These legal considerations as to the standards on police use of force are reflected in two landmark decisions—one by the Supreme Court of Canada and one by the U.S. Supreme Court:

In Cluett v. The Queen (1985) 2 S.C.R. 216: Police officers are authorized to use such force as is reasonable, proper and necessary to carry out their duties, providing that no wanton or unnecessary violence is imposed. What is
reasonable and proper in the particular circumstance, and in the particular case, will depend upon all the circumstances. It is not possible to lay down any hard and fast rule, except the test of reasonableness. If the police officer in carrying out his authority acts on reasonable and probable grounds, he is justified in doing what he is required to do and in using as much force as is necessary for that purpose.

Therefore, if a police officer is doing anything in the administration or enforcement of the law and who is required or authorized to do so, he is, if acting on reasonable and probable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

In *Graham v. Connor*, 490 U.S. 386 (1989): The Court held that the reasonableness of the force used “requires careful attention to the facts and circumstances” of the particular incident “including the severity of the crime at issue, whether the subject poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”

Further, the Court stated,

the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight. [Moreover,] the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain and rapidly evolving . . . . Thus we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day.

There will often be some variance of responses among similarly trained police officers facing similar situations because police officers, like every other citizen, have different physical, social, psychological, and emotional characteristics, and have different life and occupational experiences that assist in shaping their decisionmaking. As such, the response might be seen to be somewhat subjective. However, there must be a measure of objective reasonableness because purely subjective responses are unacceptable.

Police officers in Canada are trained and equipped with a variety of force response options. These range from a variety of symbols of authority, communication skills and tactics, physical control strategies, tactics and techniques, and a variety of intermediate weapons and firearms. They are mandated to enforce the law, and to do so, they benefit from some of the best training and equipment available, including efficient and scientifically reliable less lethal equipment. Inevitably, police officers will be called upon to utilize these response options and are accountable at many levels for use of these options. They are accountable to the courts, to their employing agency, to various oversight bodies, and, ultimately, to the public.
These response options include the following:

**Physical Control**

This force response option consists of two levels of physical control: (1) soft and (2) hard. In general, physical control means any physical technique used to control the subject that does not involve the use of a weapon.

*Soft techniques* are control oriented and have a lower probability of causing injury. They may include escorting and/or restraining techniques, joint locks, and nonresistant handcuffing.

*Hard techniques* are intended to stop a subject’s behavior or to allow application of a control technique and have a higher probability of causing injury. They may include unarmed strikes such as punches and kicks.

**Intermediate Weapons**

The term *intermediate weapons* was coined in the United States in the 1980s. Canadian law enforcement adopted this terminology in the 1990s. Intermediate weapons, as the term indicates, are those weapons situated between empty-hand physical control and firearms. This class of weapons is meant to be deployed when physical control tactics have been ineffective or unsuitable in the situation, and the use of the firearm was not justified and/or appropriate. Traditionally, before the term was coined, *per se*, intermediate weapons consisted solely of police impact weapons (e.g., batons, SAPs, slapjacks, blackjacks, etc.). Oleoresin capsicum (OC) spray and CEWs are now also generally classified as intermediate weapons.

Intermediate weapons employ the concept of a *less-lethal effect*. That is, if these weapons are used in the intended manner, they are normally less intrusive than firearms and are not intended to cause grievous injury or death:

*Grievous Injury: Pursuant to Canadian case law, R. v. Bottrell (1981), 60 CCC (2d) 211 (BCCA): [G]rievous bodily harm means “serious hurt or pain.” This would include physical harm that, either at the time of the actual injury, or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body; breaks or fractures of the femur or spinal column; or burns of the third degree to any portion of the body, or of a second degree to a major portion of the body. (Layden, 2007, p. 4)*

**Lethal Force (Firearms)**

This force response option primarily involves the use of conventional police firearms (e.g., duty pistol, shotgun, rifle, patrol rifle, etc.). Firearms are normally used at the moment when someone is at imminent risk of grievous bodily harm or death. The firearm is the only response option with considerable likelihood of stopping a deadly threat immediately. When used, firearms normally cause grievous injury, and sometimes death results through ballistic force (i.e., a lead projectile penetrating and sufficiently injuring a vital organ or causing sufficient loss of blood). The intent
of the use of firearms is not to cause grievous bodily harm or death; the intent is to render the situation safe by stopping the subject’s actions. Unfortunately, serious injury or death are often the consequences. Police officers are trained to fire to the center of mass on a person because this area has the greatest likelihood of stopping the imminent threat of serious bodily harm or death as quickly as possible while at the same time affording the greatest likelihood of hitting the target and posing the lowest risk to the community at large from misplaced rounds.

Firearms are not the only force response options that may have lethal consequences. In spontaneous situations in which officers may have to defend their own life or that of another person, they may be forced to utilize any options immediately at their disposal. These options may include the physical control option, any intermediate weapon, and any reasonable weapon of opportunity (e.g., a flashlight) to defend themselves or any members of the public. These would generally be used in an unconventional manner to a vulnerable target (e.g., intentional baton strike to a subject’s head or neck area).

At this juncture, it is important to specifically address the evolution of the use of CEWs in Canada.

The Evolution of Acceptable CEW Use in Canada

It has been just over 10 years since the TASER® was field-tested by the Victoria (BC) Police Department and subsequently implemented as a less-lethal force response option in Canada (Battershill et al., 2004). At that time, the intent of introducing less lethal weapons was “in response to the demand for tools that will allow police to control non-compliant subjects with reduced risk to both the officer and the subject” (p. 1).

While the original concept of CEW use may have been to reduce the need for police officers to use firearms and other more intrusive force response options (which include hard physical control and batons), practical experience found these devices to be more versatile in gaining control of a resistive subject. CEWs made it possible to reduce the reliance upon sheer muscular strength with a corresponding decrease in the potential for significant injury to both the public and to police officers, a goal consistent with both historic and modern international ideals (Canadian Association of Chiefs of Police, 2000; Reith, 1975; United Nations [UN] Office of the High Commission for Human Rights, 1990). CEWs provide the possibility of applying force capable of overwhelming a subject’s ability to resist, notwithstanding a subject’s possession of a high pain tolerance threshold, level of intoxication, or state of mind. CEW use allows for discomfort to be ended with the deactivation of a switch and control to be established without regard to the number of police officers present or the physical size of either the officer or the subject. The fact that some aggressive subjects alter their aggressive behavior to compliance at the mere presentation of a CEW quickly became recognized as a means of avoiding an application of any force response option altogether, another one of the goals of modern policing.

As the number of deaths occurring proximal to CEW use have grown, there have been assertions that CEW applications cause other physiological problems such as stress on the heart and/or that repeated cycles can cause a build-up of lactic acid in the muscles (acidosis), making one more prone to a cardiac event. It is a fact that
all use of force encounters, particularly the long, drawn-out struggles to restrain or control resistive subjects, also cause significant stress on the heart and may also cause a build-up of lactic acid in the muscles, with little ability to mitigate this build-up in the short term. The theory behind CEW use evolved as a means to create a window of opportunity for expeditious subject control such that rapid subject restraint would be possible and confrontations would become less protracted. The subject being restrained and the arresting officers would become less physically compromised. Medical aid could be facilitated quickly in an effort to reduce injuries and deaths that have occurred, including events pre-dating CEW deployment.

In the 2005 CPRC Conducted Energy Device (CED) Report, it states, “It would be unwise and counter-productive for any police service or government body to develop policies and procedures that explicitly specify in what kinds of circumstances a CED may or may not be used” (Manojlovic et al., 2005). This guidance is in keeping with the original directions given to the “new police” in 1829:

The following instructions are for the different ranks of the police force [and] are not to be understood as containing rules of conduct applicable to every variety of circumstances that may occur in the performance of their duty; something must necessarily be left to the intelligence and discretion of individuals; and according to the degree in which they show themselves possessed of these qualities and to their zeal, activity, and judgement [sic], on all occasions, will be their claims to future promotion and reward. (Metropolitan Police, 1829)

Since the 2005 CPRC report (Manojlovic et al., 2005), several Canadian reports have expressed concern about how CEWs are being deployed in Canada (Almond et al., 2008; Kennedy, 2008; Standing Advisory Committee on the Use of Force, 2008; Standing Committee on Public Safety and National Security, 2008). The Kennedy (2008) report states that “use of the conducted energy weapon (CEW) is in fact very much a public policy issue, and that the public has a role to play in shaping how the police use the weapon” (p. 6). It further states “that decisions around when to deploy the weapon should be based on the principle of proportionality: the amount of force used should bear some reasonable relationship to the threat the member is facing and its impact upon public safety” (p. 7). This perspective is consistent with Peel’s principles of policing (Reith, 1975).

While it was believed in the 2005 CPRC report (Manojlovic et al., 2005) that the application of best practices relating to the safe use of CEDs should lead to an increase in public confidence in CEDs as appropriate law enforcement tools, according to these reviews, this has not occurred. A position taken is that CEW deployment includes situations in which it is believed that other means of control could have been used. The Canadian police community is being directed as to the types of situations in which CEWs should be deployed. For example:

• “Police officers may use CEDs where that option is reasonable, having regard to all the circumstances, in order to:
  • Control an individual whose resistance presents significant risk for his or her own safety, that of the officers or those of another person;
  • Protect themselves or protect another person from imminent threat of bodily harm” (Standing Advisory Committee on the Use of Force, 2008, p. 62).
• “Recommendation #1 that the conducted energy weapon be classified as an ‘impact weapon’ and use be allowed only in situations where an individual is ‘combative’ or posing a risk of ‘death or grievous bodily harm’ to a member, the individual or the general public” (Kennedy, 2008, p. 13).
• “[U]se of such weapons can only be justified in situations where a subject is displaying assaultive behavior or represents a threat of death or grievous bodily harm” (Standing Committee on Public Safety and National Security, 2008, p. 2).
• “Recommendation #8: [T]he use of the CED be restricted to situations of ‘violent’ or aggressive resistance or active threat that may cause serious injury to the law enforcement officer, the subject or the public” (Nova Scotia Department of Justice, 2008, p. 7).

The public expectation is that CEWs are to be used in response to significant subject aggression towards police, members of the public, or in situations in which the subject poses a risk of grievous bodily harm or death to anyone. In short, CEWs must be used as a tool of necessity rather than one of convenience. The recent Québec report stated,

[S]ociety requires that police officers use only necessary force, that is, force that is reasonable and appropriate in the circumstances overall, that they use it without needlessly or gratuitously violence, and that they use their equipment with care and judgment. (Standing Advisory Committee on the Use of Force, 2008, p. 8)

Policing in Canada or any common-law country for that matter is as complex and multifaceted as the society served. Efforts to outline specific circumstances where CEW use is appropriate or prohibited are likely to overlook situations where a CEW might have been used to prevent serious injury or death to the subject, a citizen, or the officer. The public and police leaders should consider situations Canadian police officers have already faced:

• An individual, contemplating suicide, standing passively on the sidewalk of an overpass above a busy highway
• A distraught, potentially suicidal subject carrying a small child who may endanger the infant by tossing the child into highway traffic
• A subject standing rigid and unmoving in a public park, believed to be mentally ill, hands in his or her jacket pocket, where information exists that the subject may be armed, although no weapon has been seen
• A previously armed, now fleeing subject, running through residential backyards where the pursuing officer could not tell if the subject was still carrying a potentially lethal weapon or not
• Two experienced, special unit officers with a very large, handcuffed, very intoxicated subject actively resisting their attempts to put him into the back seat of the police car, where both officers are about to be swarmed by a crowd of the subject’s associates
• A subject who runs towards the balcony of a high-rise apartment in an effort to evade the police by leaping from one balcony to another

These real-world situations have resulted in grievous bodily harm or death or, in some cases, were resolved safely through the deployment of a CEW on a person who was not combative. Between 2001 and 2007, in Ontario alone, the province’s
Special Investigation Unit (SIU) investigated 13 events during which subjects fell or jumped from significant heights, often to their deaths during some type of police intervention.\textsuperscript{10}

The public and policymakers must consider whether or not it is in our collective interest that police be allowed to deploy a CEW in these types of situations—when the subject is involved in behavior other than combative or assaultive resistance. If the answer is “no,” then everyone must appreciate the risks in precluding this type of intervention, and further consideration must be given to the language used within each of the above recommendations. It is the contention of the authors that the list of actual situations provided above could allow for CEW deployment and still remain within the limits of the recommendations. Each recommendation discusses risk in terms of \textit{significant risk}, \textit{imminent threat}, \textit{posing a risk of death or grievous bodily harm}, or \textit{active threat that may cause serious injury to the law enforcement officer, the subject, or the public}, and in each situation, the potential for serious bodily harm or death reasonably exists.

If the public wishes otherwise, front line officers must be informed by policy and guided by training. The public and police oversight bodies must be mindful that it is the totality of the situation that drives the police response to an event, not merely the subject’s behavior. An additional example would include the following: Police officers, given reasonable grounds to believe a person is armed with a firearm and has been involved in a violent altercation in which the firearm was used, have lawful authority to stop the subject and investigate. In doing so, prudent police practice often involves an arrest at the point of a police firearm from a position of cover. Officers who draw their firearms have incurred a potential use of their firearms—possible lethal consequences. If the subject complies with their requests—ceases movement, raises his or her hands, and submits to arrest—using the language of the National Use of Force Framework (NUFF) (Canadian Association of Chiefs of Police, 2000), the subject is cooperative. Yet, \textit{lethal force} and \textit{cooperative} behavior do not align on the framework. They are at opposite ends of the perceived \textit{continuum of force}. The officer’s actions are, therefore, consistent with \textit{officer presence} and \textit{communication}. Throughout the situation, the threat of death or grievous bodily harm is omnipresent, and the application of ballistic force with potentially lethal consequences is dependent upon the subject’s actions.

The firearm example provided demonstrates again how it is the situation and the totality of circumstances that drives the event, not solely the subject’s behavior. The subject, if indeed armed, has the potential to change this event dramatically. According to research conducted at Minnesota State University’s Force Science Research Center, a person can remove a pistol from his or her waistband and raise and fire it with their arm extended in 9/100ths of a second (Lewinski, 2000). Using 68 officers from different sections of the Los Angeles Police Department, it was found that the human capacity for a trained police officer to fire a single shot, with a finger on the trigger, using a simple, unsighted reaction to an auditory stimulus is 35/100ths of a second (Lewinski, 2002) or four times slower than the subject’s movement time.

It is for reasons similar to the examples provided that police officers cannot always wait until a threat has fully manifested itself or wait until a subject has started their movement before responding proactively to the totality of the situation.\textsuperscript{11} The
legal precedents cited within this report provide examples of how the courts have determined that situations involving police use of force should be reviewed. It is not through the lens of hindsight but, rather, on the situation as faced by the involved officers. The NUFF provides guidance, but it does not represent any legal authority nor does it dictate policy. It is a training aid to guide officer training, it facilitates a consistent description of events, and it assists triers of fact in following and appreciating how an event may have unfolded.

The police must also be mindful that substantial changes to police policy have been made before. At one time, the law permitted the use of lethal force to stop a “fleeing felon.” As a result of a 1993 court case\textsuperscript{12} in which such force was declared unconstitutional (Roach, 2000), Parliament changed the law in 1994 and placed strict limits on use of lethal force to prevent flight (s. 25(4) C.C.). Similarly, some jurisdictions have placed limits on high-risk police responses such as motor vehicle pursuits.

Public consultations, with full and objective discussion of the risks and benefits, will assist in formulating policy on use of this weapon system. It should also be expected that variance in policy, based on freedom of choice and local considerations, may result in differences from one jurisdiction to another. This variance should be expected in a free society.

Canadian police services possess the potential to deploy a modern method of control. While it is one more advanced than the primitive fist and baton, it should not be used as a replacement for communication, negotiation, nor as a control method of convenience. Deployment should be guided by policy crafted to address the difficulty in attempting to anticipate every situation that could involve police intervention. Restricting CEW use to a particular “level” of subject behavior will miss situations wherein subject behavior, although not assaultive or combative, could reasonably result in avoidable serious injury to the subject, police officer(s), or both.

To paraphrase Peel, the public and the police, who attend full-time to duties incumbent upon all citizens, must do what is right rather than what is convenient.

**Future Directions**

It was noted in the 2005 CPRC CED report (Manojlovic et al., 2005) that scientifically tested, independently verified, and globally accepted CED safety parameters were lacking. This condition largely remains so. Efforts are currently underway to establish a qualified, reputable, transparent method of conducting quality assurance reviews whenever a CEW is used in actual events as well as the capability to randomly audit operational CEWs in the field.

Given the polarization of opinion surrounding this topic, it is unlikely any standard will be accepted by everyone. Public and police leadership is essential to ensure that decisions around CEW use are related to the science as it exists, with tacit understanding that as information evolves, a change in policy may become necessary. It is worthy of note that to date (July 2009) no investigation in Canada has concluded that a CEW has been the direct cause of any of the deaths that have been through the inquest/inquiry process.\textsuperscript{13}
Canadian Police Chiefs and the officers they assign as trainers are less dependent upon manufacturer claims regarding the safety of CEWs than in the past. Independent research regarding CEW safety, which did not exist in 2005, has evolved considerably and is available on an ongoing basis. While it is important that personnel using these devices understand how they operate and the parameters relative to engineering limits and design, prudent trainers set context regarding use of force by involving officers in reality-based/scenario-based training. This is a process extrinsic to the manufacturer.

Scientific information on death proximal to CEW use is becoming available. A recently published prospective, population-based, 15-month study of 426 CEW activations (November 2004 to January 2006) found that no subject required further treatment. Although one death occurred within this cohort, it was determined to have resulted from lethal hyperthermia rather than CEW use (Eastman et al., 2008). A second study examined 1,201 incidents occurring within six U.S. jurisdictions in which subjects were brought under control using CEWs. Two deaths occurred, neither of which was attributed to CEW use (Bozeman et al., 2009). Death associated with restraint in this group occurred in 0.166% of cases. In a Canadian study involving 562 use of force events tracked over a two-year period, no one died. CEWs were used in 48% of all incidents (Butler & Hall, 2008). It is particularly important to note that in all three studies, the population involved reflected the spectrum of real-world incidents faced by police officers. The subjects included those who were intoxicated, using illicit and/or prescription drugs, mentally ill, and obese. Critics cannot claim these subjects merely represented the effects of simulated police restraint within a healthy population or that researchers were unable to replicate real-world conditions. These three studies counted all comers in the full range of human conditions.

A national epidemiological study of individuals resisting arrest is underway. Dr. Christine Hall, MD, has commenced the RESTRAINT study, which began in Calgary, Alberta, with the intent of gathering data in regards to all features of subject resistance and those dying in police custody. An associated outcome may be an improved appreciation for what occurs physiologically in subjects suffering from excited delirium, including questions regarding acid/base balance (blood pH) and body temperature.

In the 2005 CPRC CED report (Manojlovic et al., 2005), police response to persons who may be experiencing a state of excited delirium was discussed. The guidance offered was that police officers should recognize that acutely agitated and delirious persons are likely suffering from a medical emergency, and that emergency medical services (EMS) involvement is warranted as early as possible, particularly if restraint becomes involved. This advice remains valid given the current state of information available on this topic. The evolution towards a medical response to the events rather than the traditional police response should continue to evolve. Ideally, having EMS on the scene prior to actual physical engagement may be the most rational policy. Consideration must be allowed for events that require police intervention prior to EMS arrival for a variety of reasons.

Finally, it was stated in the 2005 CPRC CED report (Manojlovic et al., 2005) that there is a need, at a national level, to develop research that will allow the study of the existence and nature of excited delirium and how people suffering from this
condition can be best subdued by police in order to expedite medical treatment. The general consensus of knowledgeable medical and tactical experts on the topic of sudden deaths proximal to restraint is that if a subject cannot be talked down, a protracted, vigorous struggle to establish control of the subject may not be in the subject’s best interest (Di Miao, 2006; Ross & Chan, 2006; Stuart & Lawrence, 2007). There can be no medical treatment until control has been established. EMS personnel and other emergency service providers are neither trained nor equipped to perform that task. The need to control the subject will continue to fall to the police.

With respect to subject control, physical altercations have never been intended to be a 50/50 proposition. Unless the police officer’s efforts are greater than the subject’s efforts, the officer cannot prevail. The greater the subject’s efforts to resist or escape require that even greater police efforts must be made to establish control. If the police fail to secure a violent, delirious subject, and he or she is allowed to roam through the community in an agitated state, community safety and the safety of the individual is imperiled.

In light of the realization that use of a CEW was not always viable due to the frequently spontaneous and close-proximity nature of law enforcement physical encounters, and that CEWs do not always result in control of an agitated subject, the CPRC, in conjunction with the Calgary Police Service, reviewed the science associated with vascular neck restraints and published the National Study on Neck Restraints in Policing (Hall & Butler, 2007). This report extensively reviewed the medical literature associated with this restraint method and concluded that while certain groups may be at greater risk for an adverse outcome, and on the understanding that no restraint method is risk free, vascular neck restraints are not as dangerous as had been reported, and an adverse outcome should not be expected if correctly applied by a properly trained, professional police officer. Consideration should be given to whether or not this tactic should be reviewed and its relationship to increasing or decreasing the use of CEWs in the community.

In general, training on restraint within the broader police community should emphasize factors such as the following:

- A planned response to the event (if the situation permits)
- The use of necessary force
- The establishment of effective control in an efficient manner
- A further assessment of the situation upon successful restraint of the subject
- A request for medical assistance, when necessary, if it has not already been dispatched
- Assistance provided towards the medical needs of the subject to the extent possible, given the situation

**Conclusions**

The authors believe that consideration should be given to the following CEW issues:

- CEWs play an important role in public safety, subject safety, and officer safety.
• There needs to be a common, unified communication strategy on CEWs with the requisite background information on what their purpose is, how they are used, and what tangible accountability mechanisms exist.

• There needs to be standardized training that is independent of the manufacturer and includes critical judgment issues with respect to deployment of the CEW.

• CEWs are intermediate weapons that should be utilized in a manner consistent with that of other intermediate weapons—they should be considered for use in situations wherein there is an imminent need for control and other options have been precluded because they were ineffective or would be inappropriate given the totality of circumstances in the situation.

• The medical community (e.g., first responders and Emergency Room physicians) has a role to play in dealing with persons in a state of crisis (e.g., excited delirium). The police community needs to further engage the medical community in a response strategy for incoherent and violent individuals.

• CEW use should to be tracked, logged, and reported.

• CEWs need to be periodically tested as a matter of quality assurance in a similar manner to which radar guns and breathalyzers are tested.

• Consideration should be given to a systemic recording of subject and officer injury patterns regarding police use of force.

• A plan for the consistent assessment of future police force technologies should be developed. CEW issues can provide a template around which strategies for evaluation, training, reporting, and data management can be developed as required.

The authors’ goal in producing this paper is to support, inform, assist, and advise chiefs, police oversight bodies, and the public regarding relevant operational issues associated with CEWs.

Endnotes

1 The opinions and conclusions expressed within this report are those of the authors and do not necessarily reflect the official position and policies of their respective organizations nor any other person or entity. The products, manufacturers, and organizations discussed in this document are presented for informational purposes only and do not constitute product approval or endorsement by anyone. The authors have no financial interest in any weapons manufacturer or distributor.

2 The standard for police use of force evaluation in Canada and the U.S. is objective reasonableness.

3 While many sources reference these principles, one was chosen for the purpose of this report.

4 Within Canadian legal citations, the abbreviation “C.C.” stands for the Criminal Code.

5 See Appendix A for the actual Criminal Code text for each of these sections.
Current prudent police practice acknowledges that police officers may objectively use reasonable force given the totality of the situation known to the officer at the time of the event.

The term less lethal is used here to acknowledge that an element of risk is associated with all police use of force related equipment. No tactic or weapon system is absolutely risk-free, and occasionally lethal outcomes result, with or without police lethal intent.

All incidents are based upon documented situations occurring in Canada.

A term used to encompass assaultive and active resistant behaviour, notwithstanding the subject’s competency to appreciate the event or their actions.

This number was derived through a review of every SIU press release during this time frame. SIU press releases may be found at www.siu.on.ca/siu_press_subpage54b0.html?id=8&sectionid=.

This is not to advocate for a “shoot first” type of police action but to illustrate the prudence of securing a subject and controlling his or her hands in situations wherein officers have reason to believe the subject may be armed or, based on information or experience, may suddenly become aggressive.


This statement is based on a review of 13 coroners’ reports and two SIU press releases, all of which are publicly available.

RESTRAINT: Risk of Death in Subjects That Resist: Assessment of Incidence and Nature of Fatal events—A prospective evaluation of individual and situational characteristics and risk of sudden death proximal to police restraint

Acknowledgments

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References


*Criminal code, c. 46 C.R. (R. S. C. 1985)*.


**Cases Cited**


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Chris Lawrence is currently on secondment to a national research program as a project manager regarding research into less-lethal weapon technology, sudden in-custody death, and personal protection gear for front line officers. Chris is a staff instructor at one of North America’s largest police training facilities. With 30 years of police-related experience, Chris has made presentations to diverse audience groups on the topic of police use of force as well as providing expert evidence internationally. Chris holds a Master of Arts from Royal Roads University.
Appendix A: Protection of Persons Administering and Enforcing the Law (Criminal Code)

Protection of persons acting under authority

25.(1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law
(a) as a private person,
(b) as a peace officer or public officer,
(c) in aid of a peace officer or public officer, or
(d) by virtue of his office,
is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Idem

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

When not protected

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person’s protection from death or grievous bodily harm.

When protected

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if
(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;
(c) the person to be arrested takes flight to avoid arrest;
(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and
(e) the flight cannot be prevented by reasonable means in a less violent manner.

Power in case of escape from penitentiary

(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the Corrections and Conditional Release Act, if
(a) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and
(b) the escape cannot be prevented by reasonable means in a less violent manner.
R.S., 1985, c. C-46, s. 25; 1994, c. 12, s. 1.

Excessive force

26. Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.
R.S., c. C-34, s. 26.

Use of force to prevent commission of offence

27. Every one is justified in using as much force as is reasonably necessary
(a) to prevent the commission of an offence
   (i) for which, if it were committed, the person who committed it might be arrested without warrant, and
   (ii) that would be likely to cause immediate and serious injury to the person or property of anyone; or
(b) to prevent anything being done that, on reasonable grounds, he believes would, if it were done, be an offence mentioned in paragraph (a).
R.S., c. C-34, s. 27.

Self-defence against unprovoked assault

34.(1) Every one who is unlawfully assaulted without having provoked the assault is justified in repelling force by force if the force he uses is not intended to cause death or grievous bodily harm and is no more than is necessary to enable him to defend himself.

Extent of justification

(2) Every one who is unlawfully assaulted and who causes death or grievous bodily harm in repelling the assault is justified if
(a) he causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purposes; and
(b) he believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm.
R.S., 1985, c. C-46, s. 34; 1992, c. 1, s. 60(F).

Preventing assault

37.(1) Every one is justified in using force to defend himself or any one under his protection from assault, if he uses no more force than is necessary to prevent the assault or the repetition of it.

Extent of justification

(2) Nothing in this section shall be deemed to justify the wilful infliction of any hurt or mischief that is excessive, having regard to the nature of the assault that the force used was intended to prevent.
R.S., c. C-34, s. 37.
TASER Use Policy

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The use of TASERs and similar devices, sometimes generically called *electronic control weapons* (ECWs), *electronic control devices* (ECDs), or *conducted energy devices* (CEDs) has recently generated a great deal of dispute (e.g., see “Taser Safety Issues,” 2009). Both agencies using the TASER (e.g., see City of Moberly, Missouri, 2009; Greaney, 2009) and the TASER’s manufacturer have been sued, and in 2008, a Winnfield, Louisiana, officer was charged with manslaughter for the death of a suspect in custody which allegedly resulted from the use of a TASER on the suspect (Witt, 2008). The government of the Canadian province of British Columbia has been conducting an inquiry into the death of a man who was TASERed in 2007 at Vancouver Airport. More recently, in 2009, the Royal Canadian Mounted Police decided to withdraw older model M26 TASERs from use, pending further testing, after tests conducted for the government of British Columbia allegedly showed that approximately 100 M26 TASERs did not meet the manufacturer’s specifications for power output (“RCMP Halts Use,” 2009). Against this background of controversy, in August 2008, the Special Litigation Section of the Civil Rights Division of the U.S. Department of Justice (DOJ), which had been conducting an investigation of the Orange County Sheriff’s Office (OCSO) in Orange County, Florida, sent a letter to the Sheriff’s Office, recommending changes to the agency’s use of TASERs (referred to as “CEDs” and “ECWs” in the letter). The DOJ is the federal agency responsible for investigating police misconduct and prosecuting police misconduct actions. The letter itself is a public document, available from DOJ’s website. It would be instructive for anyone with an interest in TASER use or use of force policy, or criminal or civil liability issues related to TASER use, to look briefly at the key points of this letter. (The OCSO’s [2005a] current TASER policy can be found online. Also, in 2004, the OCSO created a Taser Task Force Committee which issued a report in 2005.) However, this article is not intended as a specific criticism of, or comment on, either the former or current TASER use policy of the OCSO.

The DOJ (2008) letter contained what DOJ described as “recommendations and not mandates” (p. 1) and expressed appreciation for the cooperation of the OCSO with the DOJ’s investigation. A letter such as this from the DOJ must be given very serious consideration.

Written Policies on TASER Use

The DOJ letter emphasizes the importance of clear and accurate written policies for use of the TASER (p. 4).

Verbal Warnings Prior to TASER Deployment

The DOJ recommended use of verbal warnings before TASER deployment, unless exigent circumstances existed or the warning would place an individual at risk (p. 5).
Flight as Justification for TASER Use

The DOJ recommended that a subject’s flight should not be the sole justification for use of the TASER, but before using a TASER on a fleeing subject, the deputy should consider:

- The severity of the offense
- Any immediate threat to the safety of the deputy or others posed by the subject
- The ability of the deputy to make the arrest safely without using the TASER (p. 5)

Prohibiting Use of TASER Against “Passive” Subjects

The DOJ recommended that the TASER not be used on passively resisting subjects such as persons who question a deputy’s commands in a nonviolent and nonthreatening manner, and persons who are nonviolently participating in a public protest (p. 6).

TASER Use Against Handcuffed Subjects

The DOJ recommended that TASER use only be authorized on handcuffed or otherwise restrained subjects if those subjects exhibited “Level 5 or higher” resistance as per the Orange County Sheriff’s Office (2005b) Use of Force Matrix (p. 6). The Use of Force Matrix defines “Level 5” resistance as either “aggressive physical resistance” or “aggravated physical resistance,” and defines those terms as follows:

Aggressive Physical Resistance – moderate physical harm: A subject makes overt, hostile, attacking movements which may cause injury, but are not likely to cause death or great bodily harm to the deputy or others.

Aggravated Physical Resistance – great bodily harm: A subject makes overt, hostile, attacking movements with or without a weapon with the apparent ability to cause death or great bodily harm to the deputy or others.

TASER Deployments Resulting in Collateral Injury

The DOJ recommended that the agency’s policy, which already stated that TASERs should not be used “in any environment where potentially flammable, volatile, or explosive material (gasoline, natural gas, propane, flammable chemical sprays, etc.)” are present, should also prohibit use of the TASER in environments where the subject’s fall might cause substantial injury or death, and that the policy give specific examples of such environments (e.g., when the subject is in an elevated location such as a rooftop or building ledge, standing in or near water or other drowning hazards, or climbing a fence or wall) (p. 7).

TASER Deployment Against Subjects Operating Vehicles

The DOJ recommended that TASER use should be prohibited against subjects in physical control of a vehicle in motion, absent exigent circumstances (p. 7).
Disciplinary Action Resulting from Inappropriate TASER Use

The DOJ noted that agency policy already prohibited the use of the TASER for “extracting evidence or contraband” or in any type of “punitive or reckless manner,” and it recommended that additional examples of prohibited actions be included, such as:

- Needless display of the TASER
- Careless or haphazard “muzzle control” of the TASER (i.e., control of the end of the TASER from which the cartridges are fired)
- Using the TASER to awaken a person
- Using the TASER as a “prod”
- Using the TASER on a helpless person or an individual with a severe disability
- Careless storage of the TASER
- Failing to report damage to the TASER
- Failing to log out a TASER or a TASER cartridge in accordance with agency policy (pp. 7-8)
- The DOJ also recommended that, absent exigent circumstances, TASER use be prohibited on:
  - Young children
  - The elderly
  - Females believed to be pregnant
  - Individuals with apparent physical disabilities impairing their mobility (p. 8)

Spark Tests

The DOJ recommended that deputies be required to check or “spark test” the TASER before each shift, in the presence of a supervisor, and that policy should:

- Set out procedures to deal with TASERS that fail to fire or fire too slowly
- Prohibit deputies from testing the TASER a second time without a supervisor’s approval
- Require deputies to report all accidental TASER discharges to a supervisor, to ensure accurate auditing of the data downloaded from the TASER (pp. 8-9)

Warning Regarding TASER Use Under Extreme Heat

The DOJ recommended that the agency include in its policies warnings to deputies that exposing TASER cartridges to extreme heat or cold could cause malfunctions, and instructions not to store the TASER or TASER cartridges in vehicles for extended periods of time (p. 9).

TASER Use and “Excited Delirium”

The DOJ stated that studies sponsored by the National Institute of Justice (NIJ) suggested that using TASERs on subjects under the influence of drugs or presenting behaviors associated with “excited delirium” (p. 9) may lead to sudden death. (The DOJ said a subject in excited delirium will exhibit extreme agitation, bizarre and/or violent behavior, imperviousness to pain, exceptional strength and endurance, inappropriate nudity, extreme paranoia, and/or incoherent shouting.) The DOJ recommended that the agency inform deputies of the findings of the
studies, instruct deputies how to identify behaviors associated with the influence of drugs or the condition of excited delirium, and suggest precautions to be taken to minimize the risks involved. According to the DOJ, some precautions that might minimize the risks are:

- Deploying an arrest team with a larger number of deputies
- Staging medical personnel to respond to the scene prior to using the TASER when practicable
- Ceasing the use of the TASER and moving to a different means of force if it becomes clear that several TASER cycles have not affected the subject’s aggressive behavior (p. 9)

**Notification of Emergency Medical Personnel**

The DOJ stated that while use of the TASER rarely results in death or serious bodily injury, since such incidents can and do occur, the agency should take proper medical precautions whenever practicable. The DOJ recommended that the agency instruct deputies to notify emergency medical personnel when it is reasonably anticipated that the deputy will deploy the TASER against a subject. It indicated that it recognized that many law enforcement encounters involving the TASER occur rapidly and unexpectedly, but that in some cases TASER use is predictable. According to the DOJ, notifying EMS personnel is particularly important when TASER use is anticipated involving a subject:

- Under the influence of drugs
- Exhibiting behaviors associated with excited delirium
- Apparently suffering from a mental illness, or
- Posing a threat to him- or herself, but not to others, as in some cases of attempted suicide (p. 10)

**Multiple Deputies Deploying TASERs**

The DOJ recommended that agency policy should state that, absent exigent circumstances, no more than one deputy at a time should deploy a TASER against a person (p. 10).

**Providing Cover and Arresting Under Force**

The DOJ recommended that, when practicable, arrests using a TASER include a “cover deputy” (p. 11) to provide deadly force cover to the TASER operator who might not be in a position to respond effectively to rising levels of resistance, and an “arrest deputy” (or deputies) (p. 11) to secure the subject “under force” (p. 11), which the DOJ defined as meaning to control or secure the subject and to effectuate an arrest of the subject upon deployment of the TASER, which does not necessarily conclude with the termination of the TASER cycle (p. 11).

The DOJ also recommended that agency policy should instruct deputies to effect the arrest on the command of the TASER operator and to follow standard procedures for effecting the arrest, including securing their weapons in their holsters prior to approaching the subject (p. 11).
Multiple TASER Deployment Cycles

The DOJ recommended that agency policy state that deputies should use the TASER for no more than one standard cycle before stopping to evaluate the situation, and that during the assessment period, deputies should give commands to the subject to achieve compliance. According to the DOJ, since suspects are often unable to hear or respond to commands during the cycling of the TASER, it is ineffective to give commands while using the TASER as deputies might mistakenly interpret the subject’s failure to respond to commands as active physical resistance (p. 11).

The DOJ also recommended that agency policy should clearly state that one standard TASER cycle (a full five seconds) is often unnecessary to achieve compliance and that compliance could often be achieved two to three seconds into the deployment cycle, especially with an arrest team prepared to secure the subject under force. If, after assessing the situation, the deputy decided that a second TASER cycle was necessary, the deputy should also restrict the duration of the second cycle to the time needed for the subject to comply and be safely placed under arrest. If the second cycle has no effect, the deputy should consider whether the TASER is working properly, whether the subject is exhibiting behaviors associated with excited delirium, and whether other use of force options might be appropriate (p. 12).

Proper Use of “Probe Mode” and “Drive Stun Mode”

The DOJ recommended that deputies be instructed to use the “touch stun” (p. 12) or “drive stun mode” (p. 12) of the TASER, in which the cartridge is removed and the device is pressed against the subject’s body, only as a secondary option, since, in the DOJ’s opinion, this is less effective in controlling the subject than the TASER’s “probe mode” (p. 12) or “dart mode” (p. 12) and more likely to lead to excessive force (p. 12).

Proper Restraint Techniques

The DOJ recommended that the agency’s TASER policy instruct deputies that, absent exigent circumstances, they should not employ restraint techniques that will impair a suspect’s respiration since, according to the DOJ, some studies have suggested that TASER use leads to death of individuals restrained in such a manner (pp. 12-13).

Medical Evaluation and Monitoring

The DOJ recommended that the agency’s policy require post-deployment medical evaluation and monitoring of the subject (p. 13).

Supervisor Response to TASER Incidents

The DOJ recommended that agency policy require that a supervisor respond to all incident scenes as soon as practicable when a deputy deploys a TASER (p. 13).
Supervisor's Initial Review of TASER Deployment

The DOJ recommended that a supervisor conduct an initial review of every TASER deployment, and that the review include:

- Interviewing the deputy, the subject, and other witnesses
- Completing a use of force report
- Photographing all relevant evidence, including impact points of the TASER probes before and after removal from the subject
- Collecting a sample of the AFID confetti from the TASER cartridge (“AFID confetti” is a series of small identification labels that are expelled from a TASER cartridge when it is fired.)
- Ensuring that the deputy place the spent TASER cartridge into evidence control
- Securing and reviewing any in-car video
- Downloading TASER deployment data to determine the time of the deployment, the number of deployments, and the duration of each deployment
- Determining whether a violation of law or policy is suspected, and if so, forwarding a copy of the supervisor’s use of force report to the agency’s Professional Standards Division (pp. 13-14).

Supervisor TASER Training

The DOJ recommended that, since agency policy should require supervisors to evaluate and investigate TASER use, supervisors should also be required to complete TASER training (p. 14).

Develop Agency-Based TASER Training

The DOJ noted that the agency conducted its TASER training almost exclusively with training materials provided by TASER International. The DOJ stated, “While it may be appropriate to employ these materials discussing the basic functions and operation mechanics of the ECW, the materials are inadequate for other aspects of ECW training” (pp. 14-15). The DOJ recommended that the agency create its own training materials, scenario-based deployment and arrest drills, and testing procedures to best develop the TASER knowledge and skills of its deputies as tailored for the needs of the agency. Training materials should be distributed to the deputies during the training course, and deputies should be encouraged to take notes in the materials during the course (pp. 14-15).

Seriousness and Professionalism in TASER Training

The DOJ recommended that TASER training courses be conducted with the same level of seriousness and professionalism as firearms courses (p. 15).

Inclusion of Agency TASER Policy in Training

The DOJ recommended that agency TASER training instructors address the policy issues discussed by the DOJ throughout the letter to the agency, specifically reviewing such policy aspects as:

- Prohibiting TASER use against passive subjects
• Deployment of the TASER against handcuffed or otherwise restrained subjects only when the appropriate level of resistance from the subject was present
• The risks associated with TASER deployment, specifically against subjects under the influence of drugs or exhibiting behaviors associated with excited delirium
• The role of supervisors in reviewing TASER deployment (p. 15)

Enhanced Pre-Deployment Training
The DOJ recommended that the agency enhance its TASER training regarding pre-deployment decision making, including:

• Discussion of legal issues such as Fourth Amendment standards and the application of those standards when effecting an arrest and using force against a subject
• Discussion of agency TASER policy, as well as the TASER policy recommendations suggested in the DOJ’s letter (p. 16).

Scenario-Based Training Exercises
The DOJ recommended that the agency have scenario-based training in which deputies would be instructed, drilled, and tested on how to:

• Give a verbal warning to the subject and other deputies
• Work together with other deputies as a team
• Provide cover, and how to arrest under force
• Deploy a standard cycle and assess the situation
• Recognize symptoms of mental illness and excited delirium
• Stage emergency medical services in cases where TASER deployment is predictable (pp. 16-17)

Training on Supervisor Review of TASER Use
The DOJ recommended that supervisors be trained in how to review TASER use incidents and prepare appropriate reports (p. 17).

Training on Risks of Using a TASER Against a Subject
The DOJ recommended that agency instructors explain to deputies the risks involved in deploying TASERs, “specifically against subjects under the influence of drugs or exhibiting behaviors associated with ‘excited delirium’” (p. 17). The DOJ further stated:

Moreover, OCSO ECW instructors spend an inordinate amount of time offering explanations for ECW-related deaths. During an OCSO ECW training, we observed instructors state, “The ECW can’t hurt you; it won’t hurt you,” and “Such a small amount of electricity has no effect on the body,” and “The ECW absolutely will not hurt someone with a pacemaker.” Such statements provide deputies with a misunderstanding of the potential dangers involved in ECW deployment, and as a result, can increase the potential for injury and excessive force against a subject. (pp. 17-18)
The DOJ further stated that “Training instructors should provide examples from actual cases in which subjects received serious injuries as a direct or indirect result of an ECW deployment” (p. 18).

**Accountability for TASER Use**

The DOJ recommended that the agency’s Professional Standards Division (PSD) monitor TASER use to ensure accountability. Specifically, the DOJ recommended that PSD incorporate TASER use in its “Early Identification System (‘EIS’)” (p. 12), which the DOJ described as a database used to identify deputies with a higher than normal record of using force in the course of their law enforcement duties (p. 18).

**Use of Force Form for TASER Use**

The DOJ also recommended that the agency create a TASER use of force form that included:

- The serial number of the TASER and TASER cartridge
- Information regarding the deployment (e.g., holstered only, unholstered and deployed, and hit or missed target)
- Distance from the subject, environment, and physical and weather conditions of the location
- Number of cycles deployed
- Whether a drive stun was employed
- A description of the resistance demonstrated by the subject
- Injuries
- Names of witnesses (p. 19)

**Automatic PSD Review of Certain TASER Cases**

The DOJ recommended that PSD should review TASER cases when:

- The subject dies or suffers serious bodily injury after deployment of the TASER
- A subject experiences prolonged or excessive cycling of the TASER
- The TASER appears to have been used in a punitive or abusive manner
- There appears to be a substantial deviation from agency TASER policy (p. 19)

**Download of TASER Data Following Deployment**

The DOJ recommended that the agency download data from the TASER after each deployment, in order to:

- Produce a more accurate record of each TASER incident
- Allow supervisors and PSD to compare downloaded data with the deputy’s use of force and arrest reports to ensure accuracy, and identify errors, unreporting, or false reporting
- Avoid data loss since if too much data is stored in the TASER, the TASER computer memory begins to record over itself (p. 20).
Random Audits of TASER Deployment Data Downloads

The DOJ recommended that PSD conduct random audits of TASER deployment data, comparing downloaded data to the deputy’s (or supervisor’s) use of force report, noting discrepancies, and investigating and addressing them appropriately (p. 20).

Statistical Information Regarding TASER Deployments

The DOJ suggested that analysis of TASER deployment information would let the agency identify trends in TASER use and allow agency leadership to make informed decisions to provide better law enforcement services to the community. The DOJ specifically recommended that PSD collect the following statistical information:

- Date, time, and location of the incident
- Subject compliance with or without deployment and number of deployment cycles
- Descriptive information about the subject, witnesses, and the deputy
- The type and brand of ECW deployed
- The level of resistance displayed by the subject
- Whether the subject possessed a weapon, and whether the deputy was aware of the subject’s weapon at the time of the deployment
- The type of crime involved
- A determination of whether deadly force would have been justified
- The type of clothing worn by the subject
- The distance of the deputy from the subject
- Whether a cover deputy was employed
- Whether a deputy or deputy team arrested the subject under force
- Whether a drive stun was employed
- The environment, physical, and weather conditions of the location of the incident
- Injuries to the deputy or subject
- The medical care provided to the subject
- Whether the subject was under the influence of drugs or exhibiting behaviors associated with excited delirium (pp. 20-21)

Civilian Complaints Regarding TASER Use

The DOJ recommended that all civilian complaints regarding TASER use be forwarded to PSD (p. 21).

General Notes on Letter and TASER Policy

The letter raises many important issues about TASER use policy that are worth consideration. However, at a minimum, several basic ideas discussed would be important to consider for an agency’s TASER policy. The recommendations that follow highlight, and expand on, some of the most important issues raised in the letter:
• Avoid Using the TASER on Passively Resisting or Nonviolent Subjects.
The TASER should generally not be used on passively resisting or nonviolent subjects.

• Limit Use of the TASER on Higher Risk Subjects.
Absent exigent circumstances:
• Avoid using TASERs on children under 16, elderly people over 65, women reasonably believed to be pregnant, and persons who are known to be extremely frail.
• Avoid firing TASERs at the chest of people with extremely thin builds, since there is an increased possibility of a TASER probe penetrating the chest, and striking an internal organ such as the heart or a lung. The back would be a safer target.
• Avoid using the TASER on persons with cardiac pacemakers.

• Limit the Number and Duration of TASER Exposures or Cycles Used on Subjects.
Absent exigent circumstances, limit the number of TASER exposures or cycles (shocks) that a subject receives. While the letter does not specify a recommended maximum number of exposures as such, three five-second exposures is a reasonable limit. As a practical matter, if a TASER is not effective after several exposures, it is unlikely to become more effective with repeated uses. Limiting the number and duration of exposures helps reduce the risk of potential injury. As a liability and community relations matter, it is also far easier to defend a few exposures, and/or exposures of limited duration, than many exposures and/or exposures of longer duration.
Note: Absent exigent circumstances, avoid having multiple officers use TASERs against a single subject at the same time.

• Get Medical Attention as Appropriate for Subjects Who Are TASERed.
Get prompt medical attention for subjects who appear to need it or who ask for it. Not only is this more likely to prevent a bad outcome, if there is a bad outcome (whether or not actually related to the use of the TASER), it is far easier to defend an officer’s actions when the subject received prompt medical attention. Subjects should always receive medical attention, and officers should call EMS if:
• The subjects are in a higher risk category:
  • Under 16
  • Over 65
  • Pregnant
  • Extremely frail
  • Of extremely thin build
  • Have a cardiac pacemaker
• The subjects have received more than three five-second exposures.
• The subjects are suspected of having excited delirium or to be under the influence of drugs.
Note: Subjects who may have excited delirium should always be transported to the hospital by EMS, and officers should be trained to recognize possible signs of excited delirium.
• The subjects have lost consciousness.
• The subjects have difficulty breathing.
• The subjects have chest pain.
• The subjects are in obvious distress.

Note: Whenever possible, notify EMS before using the TASER on subjects who may have excited delirium, or may be under the influence of drugs, or are in any of the other categories above.

Note: Officers should continue to observe subjects after they have been TASERed to monitor their physical condition.

Note on Removal of TASER Probes

While properly trained officers can generally remove TASER probes, officers should not remove TASER probes, but should call EMS to have the probes removed by a physician if:
• The probe is in the subject’s head, face, neck, groin, breast, or nipple.
• The probe is apparently impaled in bone (e.g., in the finger or the skull).
• The officer is unable to remove, unwilling to remove, or uncomfortable with removing the probes.

Note: In many jurisdictions, EMS paramedics are not allowed to remove impaled objects, including TASER probes.

All subjects who have been TASERed should be seen by a physician within 24 hours for a medical evaluation which should include:
• Evaluation of the wound
• Determination of the subject’s tetanus immunization status
• Determination that there is no foreign body retained in the wound

Note: When officers remove TASER probes from a subject, if the officers accidentally cut or damage the probe, small pieces of the probe could be retained in the wound without the officers’ noticing this, so it is advisable for a physician to evaluate the wound.

Note: It is desirable that an officer or supervisor photograph the probes after removal to verify that their points are undamaged.

• Avoid Using the TASER on Handcuffed or Otherwise Restrained Subjects Unless They Are Engaged in Forcible Resistance.

• Do Not TASER Officers in Training.

• Absent Exigent Circumstances, Do Not TASER Subjects in Physical Control of a Vehicle in Motion.

• Avoid Using the TASER in Hazardous Environments.

Avoid using the TASER when:
• The subject is on a rooftop or in an elevated location, or climbing a fence or wall, etc., and the subject’s fall would cause substantial injury or death.
• The subject is in water or other location where there is a risk of drowning.
• Potentially flammable, volatile, or explosive material (e.g., gasoline, natural gas, propane, flammable chemical sprays, etc.) is present.
• Have an Alternative Plan for Managing the Situation in Case the TASER Is Not Effective.
  • Officers should be instructed that the TASER may not always be effective, and that they need to have alternative plans for arresting subjects and defending themselves in case the TASER is not effective.
  • If possible, have an additional officer (or officers) present to:
    • Assist the TASER operator in making the arrest
    • Apply alternate forms of force if needed
    • Assist in defending the TASER operator if necessary since the TASER operator may not be able to respond effectively to escalating levels of resistance

Endnotes

1 See, e.g., Fisk (2008). The punitive damages against TASER International were later eliminated, leaving only compensatory damages against Taser International of approximately $153,000. However, the court later awarded the plaintiffs’ attorneys’ fees against TASER International of over $1.4 million (Heston v. City of Salinas, 2009). Both the plaintiffs and TASER International have filed appeals in this case.


3 Review of the documentation involved indicates that the ECWs in question were in fact TASERS.

References


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Police Protection: The Local Governmental and Governmental Employees Tort Immunity Act

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"Enforcing the law is rarely a single, discrete act, but is instead a course of conduct."

– Thomson v. City of Chicago (1985)

Use of Force in Law Enforcement

When a lawful arrest is made, an officer is justified in using such force as is reasonably necessary to effect that arrest. Each state’s criminal code and case law varies on the definition of what is reasonable use of force, but generally it includes that force necessary to secure and detain an offender, overcome his or her resistance, prevent his or her escape or to secure recapture, and those efforts taken to protect the officer from bodily harm. However, the officer is never justified in using unnecessary force by using or resorting to dangerous means when an arrest could be effected by less dangerous means (Klotter, Walker, & Hemmens, 2005, p. 74).

The Criminal Code of Illinois (Compiled Statutes [720 ILCS 5/7.5]) goes further in the powers and protections it grants Illinois Peace Officers with respect to what it supports as “reasonably necessary” use of force. Section 7-5 of the Criminal Code states that,

A peace officer... need not retreat or desist from efforts to make a lawful arrest due to resistance or the threat of resistance by a suspect. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. (emphasis added)

This same section of the statute further and more specifically addresses the justifiable use of deadly force that a peace officer may employ in making an arrest:

[H]e is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, or when he reasonably believes both that:

(1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and
The person to be arrested has committed or attempted a forcible felony involving the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay. (emphasis added)

However, a police officer may not use deadly force if the officer himself unreasonably created the encounter that ostensibly permitted the use of deadly force to protect himself (Starks v. Enyart, 1993, 5 F.3d 230: 234).

**Force Used in Law Enforcement Is Reviewable**

Subsequent to an arrest, a party may file a civil or criminal claim against the officer and their employing agency alleging improper use of force. If brought as a civil claim in state court, it is typically a tort action. The term tort is derived from the Latin word *tortuous* which means wrong:

Tort (tort). 1. A civil wrong, other than breach of contract, for which a remedy may be obtained, usually in the form of damages; a breach of a duty that the law imposes on persons who stand in a particular relation to one another. (*Black's Law Dictionary*, 1990, p. 1036)

In order to prevail in a tort claim alleging injuries from a police officer’s use of force, the claimant has the burden of proving that the State’s agent was negligent or used excessive force. To succeed in a tort claim of negligence, the plaintiff must prove (1) the defendant owed a duty to the plaintiff to conform to a specific standard of conduct, (2) the defendant breached that duty, (3) the breach was the actual and proximate cause of the plaintiff’s injury, and (4) there exists damages suffered by the plaintiff.

Further, in applying the objective reasonableness standard used in determining whether a police officer used excessive force during an arrest, courts consider the severity of the crime at issue, whether the suspect posed an immediate threat to the safety of the officers or others, and whether the suspect was actively resisting arrest or attempting to evade arrest by flight. The court further balances the amount of force used in relation to the danger posed to the community or to the arresting officers (*Smith v. City of Chicago*, 2001, 242 F.3d 737: 761).

Police officers did not use excessive force in effecting the arrest of a motorist when they pulled him out of his vehicle, pinned his arms behind his back, slammed him against the hood of his vehicle, and handcuffed him in a situation wherein the subject failed to stop for 12 blocks after the officers thought they saw him commit a traffic violation and pursued him with a siren on. A reasonable officer would have thought that motorist was trying to flee, thereby justifying the use of a higher degree of force to protect the community and the officers than that needed for someone who committed only a minor traffic violation, and the level of force used was not high, let alone excessive (*Smith v. City of Chicago*, 2001, 761).
Immunity for Law Enforcement

Sovereign immunity is a judicial doctrine that stems from the ancient English principle that the king can do no wrong. In its modern application, the doctrine prevents the government or its political subdivisions, departments, and agencies from being sued without its consent. For a person individually to be immune from liability, he or she must be acting as an arm of the government.

In 1959, the Illinois Supreme Court abolished the doctrine of sovereign immunity in the case of Moliter v. Kaneland Community Unit District No. 302 (1959). The legislature responded in 1965 by enacting the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.). The purpose of the Act was to protect public entities and public employees from liability arising from the operation of government and, ultimately, to prevent the diversion of public funds from their intended purpose to the payment of damages for claims. It should be noted, however, that the Act does not affect liability based on contract, workers’ compensation, or claims based on federal laws. Also, it is important to understand that an immunity is a defense to liability rather than a right to be free from a lawsuit or trial.

The Act, in Article IV, concerns itself with the spectrum of law enforcement and correctional activities—specifically, Police Protection (§ 4-102); Jails and Correctional Facilities (§ 4-103); Confinement of Prisoners (§ 4-104); Medical Care of Prisoners (§ 4-105); Paroled, Released, or Escaped Prisoners (§ 4-106); and Failure to Make Arrest or Release of Person in Custody (§ 4-107).

In the context of police protection, courts have generally held that, absent some special duty owed, the oversights or omissions of a police department are not the proximate legal cause of harms committed by others, and while a municipality has a duty to preserve the well-being of the public as a whole, it has no duty to protect individual citizens. This tenet in the law has been commonly referred to as the “public duty rule” and has generally been codified in Section 4-102 of the Act, which provides that

Neither a local public entity or public employee is liable for failure . . . to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals.

The Act also provides immunity to officers engaged in the “execution and enforcement of the law.” Section 2-202 of the Act provides that

A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct.

Section 2-202 of the Act is likely the codification of common law exceptions to the public duty rule that developed over time as courts considered the competing interests of limiting government liability with the hazards imposed upon innocent third parties during the police pursuit of criminals. For the purposes of the Local Government and Governmental Employees Tort Immunity Act, “willful and
wanton conduct” means that a course of action that shows actual or deliberate intention to cause harm or that, if not intentional, shows utter indifference to or conscious disregard for safety of others (Towner v. Board of Education of City of Chicago, 1995, 275 Ill.App.3d 1024: 1260).

A grant of immunity to public employees and public entities under the Local Government and Governmental Employees Tort Immunity Act does not necessarily include all activities of employees during hours of duty, but, rather, extends only to acts or omissions done while in actual execution or enforcement of a law (Bruecks v. County of Lake, 1995, 276 Ill.App.3d 567: 569).

Section 4-102 of the Act, concerning “adequate police protection or services,” would cover a larger spectrum of police activity than would § 2-202, governing “the execution and enforcement of the law.” There are instances, however, when both of these provisions could arguably apply and, historically, courts have been less than consistent in reconciling the interplay between the two provisions.

Much of the confusion regarding which provision should be applied to a particular case was cleared up in a recent First District Appellate Court holding, McElmeel v. Village of Hoffman Estates (2005, 359 Ill.App.3d). The case involved an action brought by plaintiffs on their own behalf and on the behalf of their decedent for injuries they incurred when a drunk driver hit their vehicle.

The incident occurred while the plaintiffs’ car was parked in traffic that was blocked by a Village police officer. The officer had blocked the southbound traffic to allow a tow truck to pull another vehicle out of a ditch. While the officer turned the flashing lights on in her car, she did not place any flares or similar devices to notify southbound traffic of the need to stop. As a result, it appeared that only one lane of the southbound traffic was stopped, while the other remained open.

Plaintiffs claimed that the officer was guilty of willful and wanton conduct, but the trial court granted the Village’s motion to dismiss, finding that the Village was immune from liability under Section 4-102 of the Act. Plaintiffs appealed, arguing that the Village was not immune from liability because of the willful wanton exception afforded them in Section 2-202 (827).

Ultimately, the appellate court determined that the applicability of Section 4-102 versus Section 2-202 depends upon the nature of the governmental activity. In McElmeel, the officer was clearly performing a “police service” and was not “executing or enforcing the law.” Consequently, the court held that the absolute immunity provision found in Section 4-102 applied, and the Village was immune from liability for plaintiffs’ injuries (829).

While courts have applied various approaches in construing the willful and wanton language of Section 2-202 with the common law special duty exceptions and the specific immunity afforded officers in Section 4-102, the Illinois Supreme Court, in the case of Aikens v. Morris (1991, 145 Ill.2d 273, 583 N.E.2d 487), clarified that the distinction between Sections 2-202 and 4-102’s immunity depends on the nature of the officer’s activity. Section 4-102 applies in cases where officers are simply providing (or conversely failing to provide) police services, while Section
2-202 immunity requires more particular circumstances for its application—a course of conduct in the execution and enforcement of the law.

Responding to a call of a traffic matter involving a motor vehicle that had driven off the roadway is in the nature of a police service and the absolute immunity of Section 4-102 would apply. On the other hand, courts have held that where an officer responds to a traffic accident in order to investigate, the officer is engaged in activity in the nature of executing and enforcing the law and, therefore, the willful wanton exception of Section 2-202 would apply (Hudson v. City of Chicago, 378 Ill.App.3d 373, 881 N.E.2d 430 [1st Dist. 2007]).

The mere fact that a police officer acts on the speculation that she may be required to enforce or execute some as yet undetermined law is not enough to activate the immunity set forth in Section 2-202 (Leaks v. City of Chicago, 1992, 238 Ill.App.3d 12 at 17, 606 N.E.2d 156: 159). Thus, there was no immunity from negligence where the officer merely had a suspicion that drug laws required enforcement because there was no specific indication that any law was actually being broken.

Obviously, there are instances when both of these provisions may apply to the facts of a particular case. For example, had the McElmeel officer noticed that the driver who had driven into the ditch had alcohol on his or her breath at the time the accident occurred, and further, had started to investigate this belief, the outcome of the case could have turned out quite different.

Clearly, the analysis surrounding the application of these two provisions will often come down to a complicated question of fact, causing a matter to proceed to trial. Consequently, this forces municipalities to expend the very resources the Tort Immunity Act was supposed to save them . . . legal expenses. However, history has taught us that the king can do wrong; therefore, a legal remedy with due process must be available to preserve individuals’ rights. In spite of the tensions between these two doctrines, a balance is attainable. Governmental units which define law enforcement officers’ activities at the time of an incident in the light of providing a service, as opposed to in the nature of executing and enforcing the law, are likely to fare better overall, and are far more likely to dispose of cases in the earlier stages of litigation.

References


Illinois compiled statutes: 745 ILCS 10/1 et seq. (Local Government and Governmental Employees Tort Immunity Act).

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Use of Force and Excited Delirium Syndrome

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Much has been written about policing and the use of force. Scholars have debated the use of force in minority communities (Luna, 2003), when force is appropriate to meet the subject’s level of resistance (Bartollas & Hahn, 1999; Frisby, 1993; Neyroud & Beckley, 2001), and scenarios involving the appropriate and inappropriate use of both deadly and nondeadly force (Williams, 1993), just to mention a few areas of focus. There has also been a concentration in the literature on police stress before and after the use of force in a variety of circumstances (Artwohl, 2003; Ross & Siddle, 2003). The U.S. Supreme Court has specified the conditions in which police officers can use deadly force in the apprehension of felons (Tennessee v. Garner, 1985), the use of physical force in police-suspect interrogations (Brown v. Mississippi, 1936), among other issues. Police departments have also adopted their own internal policies on the use of force, and police officers have been trained continuously on the use and abuse of force. However, one issue that needs additional attention is when physical restraint, even when used appropriately and not in a deadly way, leads to the death of the restrained individual. Known as Excited Delirium Syndrome (EDS), victims of this condition (who are likely mentally ill and/or under the influence of drugs and alcohol) die immediately following a struggle involving physical restraint with the police or other medical personnel (Di Maio & Di Maio, 2006). This article attempts to rectify the fact that little interest has been paid to this issue by discussing the use of force and EDS.

Use of Force

The use of force by police is likely one of the most debated topics in criminal justice. The question is not why the police use force in the course of their duties, but how much force they are entitled to use during a particular incident. In actuality, it is the abuse of force, often termed excessive force, which raises concerns in the minds of scholars, the media, and the public alike. This dispute has no easy answers. For the most part, the public and the police realize that using force is a necessary, unavoidable, and, oftentimes, required component of the policing job. Seron, Pereira, and Kovath (2004) found in a study of public perceptions of police use of force that although the public can be offended by police use of offensive language and misconduct, they do factor in the conduct of the civilian’s confrontational demeanor when determining if the use of force was necessary. Accordingly, “the public seems to be quite willing to grant a degree of police discretion to engage in what may be, legally speaking, abusive behavior - e.g., the public recognizes that a civilian’s aggressive behavior may call for more deterrent practices by officers” (p. 703). So, using physical restraint or behaviors like grabbing, pushing, tackling, or taking down an offender is viewed as appropriate as long as the subject is seen as aggressive, resistant, or defiant in the police-civilian interaction. However, if these behaviors result in the death of the civilian, additional questions are raised about police conduct.
When it is appropriate for an officer to use force and how much force he or she can use in a particular incident is determined in both statute and administratively by police departments. The law has carefully identified the situations in which police officers are entitled to use force (e.g., in order to avoid instances of excessive force, as mentioned above). The State of Missouri (2008), for example, supports a police officer’s use of physical force when making an arrest or to prevent the escape of an offender from custody. An officer may also be entitled to use deadly force if (1) the suspect has committed or attempted to commit a felony; (2) the suspect is attempting to escape by using a deadly weapon; or (3) the suspect may endanger the life of others or inflict serious physical injury if the arrest of the suspect is delayed (563.046, ¶ 3). The State of Georgia (2008) provides police officers with the ability to use force to execute search warrants, while Illinois’s statute is similar to Missouri’s in that the peace officer is justified in the use of any force which he/she reasonably believes to be necessary to defend self or another from bodily harm while making the arrest. However, he/she is justified in using force likely to cause death or great bodily harm only when he/she reasonably believes that such force is necessary to prevent death or great bodily harm to self or such other person, or when he/she reasonably believes both that: (1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and (2) The person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay. (Illinois Law Enforcement Training and Standards Board, 2003, p. 13)

Other states have enacted their own rules for the use of force by peace officers while keeping federal requirements in mind.

Police departments have also set standards on police use of force through policy. Most commonly, police departments rely on use of force continuums. With regard to continuums, police officers are required to use no more than the amount of force necessary to accomplish the goals of compliance, arrest, search, etc., and to move progressively across the continuum if needed (only in cases of sudden escalation or threat should an officer ignore the sequential progression of expected use of force behaviors). The continuum begins with the least aggressive tactics an officer can use in a situation and ends with the most aggressive strategies available to an officer. Typically, the officer’s presence begins the continuum with the belief that just being at a scene grants the officer some authority in controlling those involved. Moving across the continuum, the officer may use verbal commands to elicit compliance, hand controls to move a suspect from place to place (perhaps with those too intoxicated to control their movements), hard hand controls (such as grabbing, pushing, takedowns, come-alongs, etc.), chemical agents, other weapons (such as TASERs), and finally deadly force. Officers are trained to deescalate the use of force when the subject is no longer resistant and/or when the situation is under control and no longer requires an increase in the amount of force used. Police officers are also skilled at using the subject’s characteristics in determining the amount of force necessary. Officers will take into consideration the amount of resistance or threat level used by the subject; the aggression or overt hostility
displayed by the subject; and the level of physical skill, disability, and/or unique characteristics of the subject (e.g., if the subject is intoxicated, mentally ill, elderly, etc.) if this information is available. There are instances when an officer is not able to determine the subject’s individual qualities. It is in these cases that EDS may be an issue.

Even though the use of force has been discussed for many years, it was not until a 2001 study by the International Association of Chiefs of Police (IACP) that the use of force was defined as “that amount of effort required by police to compel compliance from an unwilling subject” (p. 1). Additionally, the IACP identified five types of force commonly used during policing: (1) physical (the use of fists, feet, hands, grabbing, pushing, etc.), (2) chemical (the discharge of MACE, CS, or other CN devices), (3) electronic (the discharge of a Taser, stun gun, etc.), (4) impact (the use of a baton or other weapon impacts), and (5) firearm (considered lethal force that consists of the discharge of any type of firearm) (pp. 66-67). The study also found that police rarely used force (in less than 1% of all police-citizen interactions), but when required to do so, physical force was the most common type of force used by police during 1999-2000. This finding supported Garner and Maxwell’s (1999) assertion that the police used weaponless tactics in 80% of use of force incidents and that most of the time grabbing the subject was the most common police behavior. Alpert and Dunham (1999) found similar results in a Miami study of police use of force and suggested that in 97% of force cases, the force was initiated because the subject resisted arrest.

In perhaps one of the largest studies done on police use of force, the National Institute of Justice and Bureau of Justice Statistics (Adams et al., 1999) found that when police use force, there is a high likelihood of injury to both the officer as well as the subject. Since police officers most often use physical force that involves hands or arms, they are at risk of injury to those areas. Suspects also were most likely bruised or received an abrasion in 48% of the cases investigated, followed by lacerations (24%) and gunshot injuries (4%). Regardless of the type of force used by the police, the suspect had a significant chance of injury. Those subjects who were impaired by alcohol or drugs were more likely than non-impaired suspects to directly assault the police officer and more than twice as likely to use a gun. The study also suggested that police use of force appears to be unrelated to the officer’s personal characteristics but directly related to the suspect’s resistance to arrest and forceful actions by the subject.

This leads us to the basic topic of this paper. As police officers come into contact with persons who are impaired by drugs and alcohol and with persons who may be in varying mental states (e.g., hysteria, anger, disorientation, irritation, etc.), the police are placed in situations in which the use of force may be necessary, and perhaps, inevitable. In dealing with these situations, officers, of course, attempt to talk the person into compliance (programs like Verbal Judo are used to train officers to talk to people who may be highly agitated), but because of the individual’s altered state of mind, the chances “of a police officer having to use force presumably increase[s] and the possibility of injury to both officer and civilian increases as well” (Adams et al., 1999, p. 110). Alpert and Dunham (1999) claimed that 42% of all police use of force incidents involved a suspect that was under the influence of alcohol or drugs. Research in this area has been inconsistent, with some researchers finding that drugs and alcohol are related to the use of force in police-civilian encounters (Garner,
Buchanan, Schade, & Hepburn, 1996; Reiss, 1967), while other research shows the opposite (Alpert & Dunham, 1999). However, this is an area of concern since there is a greater risk of injury to both officers and suspects involved in force situations and a possibility of a higher likelihood of using force in situations that involve mentally unstable individuals or individuals impaired by drugs and alcohol. Adams et al. (1999) claim that “Questions about how police deal with civilians who appear to have impaired mental states are important from administrative and practical points of view. Police officers are expected to exercise restraint in dealing with impaired civilians, while at the same time they need to be cautious about protecting their safety as well as the safety of other civilians. This puts them in a precarious situation, one in which mistakes of judgment or tactics can have grave consequences” (¶. 113). EDS is one of those critical consequences.

According to Di Maio and Di Maio (2006), police officers encounter two types of individuals at highest risk of death by EDS: (1) those who have drug-induced psychotic behaviors and (2) those who are mentally ill and are in crisis due to the mental illness or because they have mixed the illness with drugs or alcohol (p. 98). Relating this back to the findings of Adams et al. (1999), the likelihood of a police officer encountering individuals with EDS is great since more and more mentally ill individuals are being treated through community-based programs (DeSalvo, 1986), and the chance that this encounter results in a violent interaction is highest among those subjects who have a mental illness and have combined it with illicit drugs (Di Maio & Di Maio, 2006). In the next section, we explain what EDS is and discuss how the use of force (i.e., TASERs and physical restraints) and drugs can lead to an EDS death.

Excited Delirium Syndrome

For police and correctional officers who are faced with the real possibility of offender confrontation ending in restraint, the task of judging who might suffer from Excited Delirium Syndrome (EDS) is almost impossible. To date, no research has provided public safety officials with specific red flags as indicators to the onset of EDS. However, the following four characteristics appear to accompany many of the episodes of EDS:

1. Profuse sweating, indicative of elevated core body temperature
2. Agitated delirium
3. Respiratory distress
4. Cardiac arrest

This begs the question, “What precisely is EDS?” Several forensic pathologists have attempted to define this lethal manifestation over the years. Wetli and Fishbane (1985) claimed that “fatal EDS victims exhibited an acute onset of bizarre and violent behavior, which was characterized by one or more of the following: aggression, combativeness, hyperactivity, extreme paranoia, demonstration of unexpected strength, or incoherent shouting” (Wetli & Fishbane, 1985, p. 875). Di Maio and Di Maio (2006) identified delirium as an “acute (minutes to hours), transient disturbance in consciousness and cognition” that is shown through “disorientation; disorganized and inconsistent thought processes; inability to distinguish reality from hallucinations; disturbances in speech; disorientation to time and place; and misidentification of individuals” (p. 1). When delirium is
combined with combativeness and violence, it is considered “excited delirium” (p. 1). These demonstrations may take place prior to the arrival of the police officer on the scene and are potentially why public safety officials were requested to the site in the first place (O’Halloran & Lewman, 1993).

This knowledge prompts the question, “Is public safety presence the reason for fatal EDS?” The obvious answer is no. Just the presence of police is not enough to result in death by EDS; however, the fact that the police arrive and, in all likelihood, end up using physical restraint with the individual who is out of control could lead one to believe that the presence of public safety officials runs contrary to the intended purpose of the practice of deescalation in this particular situation. If we apply the definition provided by Wetli and Fishbane (1985), it stands to reason that individuals with these defined precursors may be further aggravated by the presence of the police, particularly if there is underlying natural disease processes such as atherosclerotic cardiovascular disease, drug and/or alcohol usage, or if the individual is predisposed to certain manias or phobic behaviors. Unfortunately, there is no way that a police officer will know this in advance of the situation since the officer may not know the individual’s past mental health history, criminal history, history of violence, medical history, or whether the person is on drugs (Di Maio & Di Maio, 2006). To be honest, this puts the police at a distinct disadvantage when working with this population.

Conducted Energy Devices (CEDs)

TASERs and physical force by police officers have been the most commonly accused factors leading to fatal EDS. In our recent history, there have been a number of erroneous media reports that the TASER International company invented the term Excited Delirium Syndrome. Certain media sources and psychiatric authorities also claim that EDS was manufactured by law enforcement and medical examiners who are simply looking to explain bad behavior on the part of public officials. Although other researchers (Peters, 2007) have discounted these claims and pointed to the sheer number of manias and deliriums identified in psychiatric literature that closely fit the descriptors of EDS (see the International Classification of Disease list for the following diagnoses: 799.2X Abnormal Excitement; 296.00S Manic Excitement; 799.2AM Psychomotor Excitement; 307.9AD Agitation; 799.2V Psychomotor Agitation; 780.09E Delirium; 293.1J Delirium of Mixed Origin; 292.81Q Delirium, Drug Induced; and 292.81R Delirium, Induced by Drug), the controversy has brought negative attention to the use of TASERs in law enforcement. Prior to their modern configuration, CEDs required direct contact with the body of the person being subdued and were commonly referred to as stun guns. Now these devices can deliver approximately 50,000 volts of current from a range of up to 26 feet away in a five-second burst. The CED does not need to be in direct contact with the body of the subject but can deliver its current while connected to clothing some two inches from the skin’s surface (Dolan, 2006).

As a result of the misconceptions regarding CEDs, EDS, and invalid media reports on the use of TASERs and resulting injuries and deaths, a linkage has been created in the minds of some members of the public between the use of TASERs and EDS. Peters (2007) states that there have been no scientific studies or court rulings demonstrating a relationship between the use of TASERs in cases involving fatal EDS. Di Maio and Di Maio (2006) also state that even though TASER use
is becoming more widespread, its ability to stop or to prevent death by EDS is “open to question” (p. 100). Regardless of these findings, TASER use still remains controversial among many groups such as the ACLU and the NAACP.

Physical Restraint

Physical restraint is one of the most easily identified precursors to fatal EDS because a connection has been shown in reviews of cases that involve police struggle with the suspect and immediate cardiac arrest. Di Maio and Di Maio (2006) suggest that the struggle begins after the law enforcement officer exhausts all verbal approaches to diffuse the individual’s aggressive and violent behavior. During the struggle, the subject experiences physiological responses that may be exacerbated by drugs, alcohol, and/or mental illness: “Following a struggle and the use of restraint, cardiopulmonary arrest is due to excited delirium syndrome [and] may occur at the scene, during transport to jail in a police vehicle, during transport to a hospital by either a police vehicle or EMS, on arrival at a jail or on arrival at the hospital” (p. 101). Di Maio and Di Maio go on to say that “the vast majority of deaths occur at the scene (48%), less commonly during transport (29%), and only occasionally after arrival at a hospital or jail (16%)” (p. 101). Contradictory research on physical restraint as it relates to inappropriate restraint measures and positional asphyxia as the causes of death have also been discussed. However, research on the relationship between EDS and positional asphyxia has been discredited (see Chan, Neuman, Clausen, Eisele, & Vilke, 2004; Chan, Vilke, Neuman, & Clausen, 1997; O’Halloran & Frank, 2000; Stratton, Rogers, Brickett, & Gruzinski, 2001); even so, law enforcement departments continue to train officers in positional asphyxia.

To determine why EDS may occur after a struggle with the police, forensic pathologists Reay, Howard, Fligner, and Ward (1988) conducted physical restraint research on 10 subjects—eight males and two females. This research specifically dealt with the practice of “hogtying” an individual after rigorous physical activity, which is used to simulate a struggle with the police. According to the researchers,

[t]he results show that positional restraint can prolong recovery from exercise as determined changes in peripheral oxygen saturation and heart rate. The mechanisms by which this occurs are unclear but may include restriction of thoracic respiration movements, airway compromise, or physical stimulus of catecholamine release during exercise. Physiologic changes of positional restraint occurred in normal subjects exposed to mild exercise. Extreme physical exertion as occurs in a violent struggle could amplify this response. Drug or ethanol intoxication or the presence of demonstrable natural disease might well combine with positional restraint to prolong and amplify this deleterious effect. (p. 16)

Any discussion regarding restraint methods cannot be limited to hogtying; other methods used to gain control and maintain continued control over a subject should be considered. A study published in the Canadian Medical Association Journal related that of the 21 restraint deaths analyzed, all of which had a post mortem diagnosis of EDS, researchers found that 29% of the subjects were shackled at both the hands and feet and 50% of the decedents had pressure applied to either the chest, neck,
or both during the course of the restraint (Pollanen, Chiasson, Cairns, & Young, 1998).

Three frequently used methods of restraint are (1) chokeholds, (2) knee to neck compression, and (3) multi-officer pinning. Chokeholds, also known as *sleeper holds* and knee to neck compression deplete the flow of oxygenated blood to the brain. Multi-officer pinning, otherwise known as *piling on*, results in tremendous pressure on the chest. Any restraint used that inhibits oxygen uptake and/or cardiac output creates a potential scenario for death. In light of the 1988 study of live subjects, when police are confronted by a subject who is in a state of EDS, the application of any one of these aforementioned restraints could potentially result in a fatal event. However, as suggested throughout the paper, these restraint holds must be coupled with some other preexistent condition or situation which acts as a potential trigger for a fatal EDS event. Stimulants, such as cocaine, in concert with appropriate police actions, can further exacerbate the condition of a subject experiencing symptomology associated with EDS.

**Cocaine and Excited Delirium**

From the perspective of availability, there are few illicit drugs encountered by police and used by the public which rival cocaine in its wide-ranging effects on the user. Due to the psychoactive nature of cocaine as well as its effects on the cardio-respiratory system, cocaine can play a part in the sudden onset of death in subjects being confronted by the police. According to a study conducted by physicians Sztajnkrycer and Baer (2005), “the actual cause of cocaine-associated excited delirium and sudden death remains to be determined” (¶. 11). It should be noted that one of the characteristics manifested by EDS subjects is elevated core body temperatures. When cocaine is used, it has been noted that the metabolic rate is increased as well as the core body temperature. Sztajnkrycer and Baer relate that “studies have suggested that the elevated temperatures seen in these patients is due to abnormal changes in brain dopamine receptors, while violent behaviors may be due to changes in other neurotransmitter receptors” (¶. 11). In the Canadian study conducted by Pollanen et al. (1998), eight (31%) of the 21 deaths examined were thought to have been cocaine induced. A significant component to the deaths examined in this study is that all of the subjects who died with cocaine in their systems had also been restrained, suggesting that there may be a linkage between EDS, police restraint, and cocaine intoxication. Sztajnkrycer and Baer (2005) concluded that cocaine associated delirium already accounts for 10% of all cocaine-related deaths. Couple their findings with restraint and the four predominant features of EDS, and the level of lethality increases exponentially.

**Psychopathology**

Drug-induced psychosis is not an uncommon manifestation among abusers of such stimulant drugs as methamphetamine and cocaine. According to research, these subjects are potential candidates for the onset of EDS. However, it is prudent that we consider the interactions that public safety officials have with that portion of the population who suffers from some type of organic psychopathology. Some examples of these disorders that have a natural predisposition to maniacal behaviors are delusional patients, paranoid schizoid disorders, and various manias. Also to be considered are those individuals who have a generalized diagnosis of Post Traumatic Stress Disorder, which is accompanied by a bevy of associated
phobias such as claustrophobia, agoraphobia, and generalized panic attacks. These groups are of particular concern to law enforcement if these individuals are undermedicated or unmedicated.

In their 1993 study, O’Halloran and Lewman related that of the 13 deaths that they studied involving EDS, three of these cases involved subjects who were suffering from major psychiatric illness with no underlying illicit substances in their systems at the times of their deaths. Subjects with underlying significant psychopathology may be triggered into the inducement of EDS as a result of an acute psychotic break accompanied by severe paranoid delusions. These episodes may well be underway upon the arrival of law enforcement at the scene. O’Halloran and Lewman indicated in their study that one symptomology that some manic personalities share with EDS subjects is elevated core body temperatures.

Public safety officials deal with the mentally ill on a regular basis; being able to differentiate between genuine psychopathology and drug-induced mania is impossible. According to Pollanen et al. (1998), of the 21 deaths involving EDS, 57% of those deaths involved subjects suffering from organic psychopathology. As stated before, it is nearly impossible for a police officer to know the individual’s personal characteristics when he or she arrives at a scene. Compound that with the inability to know whether a person is only mentally ill or has combined that mental illness with illicit drugs, and we can see why law enforcement officials are in a very difficult situation when confronted with EDS and use of force.

Recommendations

In conclusion, we suggest that EDS continues to be investigated and that law enforcement agencies consider the role physical restraint may play in the death of individuals suffering from EDS. Education and training programs that identify the symptoms (at least those that we are aware of) associated with EDS and the methods police can use to deescalate a highly agitated person (such as those with EDS) should be incorporated into regular training modules with new and seasoned officers. Consideration should also be given to the inclusion of EMS personnel at all incidents that involve delusional or psychotic individuals (Di Maio & Di Maio, 2006) as they have, in most cases, been trained in the administration of medication that could assist in the situation. A second thought should also be given to the type of training provided to street officers on the application of physical restraint. If positional asphyxia is not an issue, as suggested in the research, then police departments should reconsider training officers in this subject. Focusing on the real issue at hand—potential death by EDS—may increase a police officer’s ability to handle an EDS situation when it arises.

Further research should be initiated relative to restraint methodologies versus the use of CEDs. The use of CEDs may hold a key to rapid deescalation. Researchers suggest that “gaining rapid control of the individual so as to reduce the time of the struggle is of paramount importance in preventing death from excited delirium” (Di Maio & Di Maio, 2006, p. 101). Therefore, if police officers cannot avoid the use of force in a situation involving a mentally ill individual, their actions should be rapid and involve overwhelming force—CEDs could be useful here (Di Maio & Di Maio, 2006). According to research, many of these deaths involving EDS appear to involve restraint coupled with illicit drug abuse, particularly cocaine. Although officers cannot always determine if a person has used illicit drugs, gaining as much information as
possible once arriving at the scene may be useful. Additionally, the linkage between EDS and psychopathology should be further explored and incorporated into training programs for law enforcement in order to better understand appropriate public safety responses to the mentally ill who are in acute distress.

References


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Police Shootings and Deadly Outcomes: Reporting and Research Issues

Rick Parent, Assistant Professor, Simon Fraser University, School of Criminology – Police Studies

In an attempt to maintain law and order, police officers must routinely use force in their day-to-day contact with the public. In North America, both law and policy govern the police use of force within the parameters of state and federal legislation as well as organizational policies. Within this legal framework, the police are also empowered to utilize discretion. Geller and Scott (1992) defines official discretion as an authority conferred by law to act in certain situations in accordance with an official’s or an official agency’s own considered judgement and conscience. Government legislation and organizational policies within the United States and Canada serve to provide only the outer limits of police discretion in using force.

There is no obligation for the police to use force whenever it would be legally justifiable. The use of force, including deadly force, is dependent upon both the unique circumstances of the incident and the unique decisionmaking of the officer. It is within this setting that roughly 350 individuals are shot and killed by U.S. law enforcement personnel each year (Bureau of Justice Statistics [BJS], 2007). In the neighbouring nation of Canada, roughly 12 individuals are shot and killed by police personnel each year (Parent, 2004).

This situation emphasizes the need for research pertaining to the police use of deadly force. Research and subsequent findings serve as a viable means of providing insight into how and why incidents of justifiable homicide occur. By understanding the police use of deadly force, it may be possible to minimize the frequency of police shootings by way of police training and tactics. Research findings may also help to understand the role of the victim during a lethal or a potentially lethal encounter with the police. What role does the victim play in a police shooting incident? Does the victim’s role differ in those documented incidents in which the police would have been justified in using deadly force but did not? These are but some of the questions that may be answered when examining police shootings and police incidents resulting in deadly outcomes. The importance of this research underscores the need for access to valid and reliable police data that must be qualitative in nature in order to provide meaningful analysis.

Reporting Incidents of Police Use of Deadly Force in the United States

Unfortunately, researching the police use of deadly force is often complex and may pose difficulties for the researcher. In the U.S., the major sources of crime reported data are published yearly by the Bureau of Justice Statistics (BJS), the Federal Bureau of Investigation (FBI), and the Administrative Office of the U.S. Courts. BJS issues several reports that include the Sourcebook of Criminal Justice Statistics, Criminal Victimization in the United States, and the annual Expenditure and Employment Data for the Criminal Justice System. The reporting of the police use of deadly force in part reflects a provision in the
1994 Crime Control Act requiring the Attorney General to collect the data and publish an annual report pertaining to statistics on police shootings.

The FBI’s (2002) major annual report entitled *Crime in the United States* presents data on reported crimes gathered from local and state law enforcement agencies. The FBI through its Uniform Crime Reports (UCR) Program provides this information. In preparing this report, the FBI receives monthly and annual reports from law enforcement agencies throughout the United States with the representation of roughly 90% of the national population (BJS, 2001).

For example, during each month, city police, county sheriffs, and state police agencies file reports on the number of index offences that become known to them. In summarizing the crime data, the FBI depends primarily on the adherence to the established standards of reporting for statistical accuracy.

One of the FBI crime index offences that are recorded includes the category of murder and non-negligent manslaughter. This information is based upon police investigations as opposed to the determination of a Medical Examiner or judicial body and includes willful felonious homicides. However, this database excludes attempts and assaults to kill, deaths caused by negligence, suicides, accidental deaths, and justifiable homicides (BJS, 2001).

In the U.S., when a police officer deliberately kills an individual, a determination is made by the police agency as to whether the homicide occurred in the line of duty and whether the homicide was justified to prevent imminent death or serious bodily injury to the police officer or another person. If an investigation determines that the homicide did occur in the line of duty and that circumstances warranted lethal force by the police officer, then a record of justifiable homicide is to be voluntarily sent by the investigating agency to the FBI in Washington, DC (BJS, 2001).

This information received by the FBI is forwarded to the U.S. Department of Justice, BJS, and this agency compiles and maintains a national database on the justifiable homicides that occur within the U.S. In this regard, the killings by police are referred to as *justifiable homicides*, and the persons who kill police are referred to as *felons*—terminology utilized by U.S. police agencies. The rational for the use of the term *felons* for those individuals killed by police is based upon the perspective that the deceased was involved in a violent felony at the time of police intervention or was perceived to be involved in a violent felony at the time, ultimately resulting in the police use of deadly force.

Unfortunately, the police use of deadly force information compiled by the U.S. Department of Justice, BJS (2001), is aggregate in nature, lacking specific information, and is therefore limited. Important research information such as the specific characteristics of the shooting incident, the name of the police agency, and the final determination of the incident are not included with this document. A comprehensive government document pertaining to the police use of deadly force in the U.S. emphasizes this situation in the methodology section of the report entitled *Policing and Homicide, 1976-98: Justifiable Homicide by Police, Police Officers Murdered by Felons* in stating

Ideally, every time police kill a felon in a justifiable homicide, a record of the event is sent to the FBI in Washington. Each record of justifiable homicide
received by the FBI is then entered into the Supplemental Homicide Reports (SHR) database. Published counts found in *Crime in the United States* do not agree precisely with the number of justifiable homicides by police found in the database. Moreover, in certain years, there are police justifiable homicides that are unaccounted for either in the annual publication or in the SHR database.

Justifiable homicides by police for an entire State are sometimes missing from the SHR database. For example, in a large state such as Florida, there is at least one justifiable homicide by police each year. Yet none are recorded in the SHR database for Florida for certain years. The number of missing justifiable homicides is unknown. For 1976 to 1998, the results are summarized below:

<table>
<thead>
<tr>
<th>Year</th>
<th>States with No Record of Justifiable Homicide in SHR</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>Florida, Kentucky</td>
</tr>
<tr>
<td>1989</td>
<td>Florida</td>
</tr>
<tr>
<td>1990</td>
<td>Florida</td>
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<td>1991</td>
<td>Florida</td>
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<td>1993</td>
<td>Kansas</td>
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<td>1994</td>
<td>Kansas</td>
</tr>
<tr>
<td>1995</td>
<td>Illinois, Kansas</td>
</tr>
<tr>
<td>1996</td>
<td>District of Columbia, Kansas</td>
</tr>
<tr>
<td>1997</td>
<td>Florida, Kansas</td>
</tr>
<tr>
<td>1998</td>
<td>District of Columbia, Florida, Kansas, Wisconsin</td>
</tr>
</tbody>
</table>

Ironically, although the 1994 Crime Control Act required the Justice Department to collect and publish data pertaining to the police use of deadly force, there is no law within the U.S. that requires local police agencies to provide it. The BJS (2001) document also fails to break down the number of police shootings by city, unlike other Justice Department reports on crime, making it impossible to compare a particular police agency’s performance. As a result, there is no comprehensive accounting for the nation’s 17,000 police departments in regards to the police use of deadly force. These inherent weaknesses of the aggregate data reported by the BJS emphasize the need for researchers to make direct contact with specific U.S. police agencies in an attempt to obtain detailed information of a police shooting incident.

**Reporting Incidents of Police Use of Deadly Force in Canada**

In Canada, the Health Statistics Division of Statistics Canada compiles and records information pertaining to deaths occurring within the nation. This information is forwarded to Statistics Canada from provincial and territorial Vital Statistic Registrars. It is within this framework that these government agencies are also tasked with the responsibility of gathering and reporting data pertaining to deaths attributed to the police use of deadly force. In this regard, Statistics Canada (2009) utilizes the World Health Organization’s International Statistical Classification of Diseases and Related Health Problems to record the police use of deadly force under the code category of “Y35 – Legal Intervention.”

Within the Statistics Canada (2003) publication *Causes of Death*, the federal agency relies upon the attending physician, Coroner, or Medical Examiner to accurately record on the medical certificate the cause of death. This information is then gathered
by provincial and territorial Vital Statistic Registrars who, in turn, forward the aggregate data to Statistics Canada. This is the only known published document within the nation to provide some account of the police use of deadly force within Canada.

Unfortunately, Canadian statistics pertaining to the police use of deadly force are difficult to locate within the Statistics Canada publication and, additionally, the aggregate statistics are typically inaccurate. Parent (2004) noted that although, on average, 12 fatal police shootings occur each year within the nation, Statistics Canada will typically significantly underreport this number. For example, the Statistics Canada (1995) publication entitled *Causes of Death 1993* states that five deaths occurred within the nation that were attributed to “injury due to legal intervention by firearms” (p. 134).

Specifically, the 1995 Statistics Canada publication records that in the year 1993, “0” deaths occurred within the province of Newfoundland and “0” deaths occurred within the province of Ontario. However, Parent (2004) noted that one individual was shot and killed by police within the province of Newfoundland during 1993. In addition, two individuals were shot and killed by police within the province of Ontario during 1993. These factors were not recorded within the Statistics Canada publication.

In the more recent 2009 Statistics Canada publication, aggregate numbers are presented reflecting the number of deaths attributed to legal intervention during the years 2000 through 2005 (see Table 1):

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
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<td>7</td>
<td>7</td>
<td>6</td>
<td>13</td>
<td>16</td>
</tr>
</tbody>
</table>

Statistics Canada (2009)

However, a check of official police media release reports, official government police accountability sources, and general media reporting in Canada reveals actual cases of deaths attributed to legal intervention by police more precisely (see Table 2):

<table>
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<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>8</td>
<td>10</td>
<td>5</td>
<td>6</td>
<td>22</td>
<td>19</td>
</tr>
</tbody>
</table>

Police, government, and media sources from 2009

It is also significant to note that Statistics Canada’s (2003) definition of death by legal intervention includes “deaths due to injuries inflicted by the police or other law enforcing agents, including military on duty, in the course of arresting or attempting to arrest lawbreakers, suppressing disturbances, maintaining order, and other legal action; legal execution” (Statistics Canada, personal communication with author, 2009). This definition is well beyond the parameters of the police use
of deadly force, further emphasizing the significant underreporting of fatal police shootings by Statistics Canada.

In addition to the federal government statistics center, individual provinces may additionally record the police shootings and the police use of deadly force. For example, in the province of British Columbia, Police Services (formerly the BC Police Commission) records all instances in which a police firearm was discharged by a police officer. In many instances, there is also a brief narrative report outlining the circumstances of the shooting incident. This information is contained within a document entitled *Annual Report on Shots Fired by Police*. Unfortunately, this police shooting database is considered confidential and typically contains no more than one or two sentences in describing police incidents of firearm discharges.

In the province of Ontario, the civilian Special Investigations Unit (SIU) records all instances in which an individual within the province was killed or injured through the use of police firearms. This information is disseminated to the public by way of a document entitled *SIU Occurrence Chart* that is published on the SIU website and within an annual SIU report. The *SIU Occurrence Chart* provides aggregate numbers of occurrences that include firearm injuries and deaths as well as the number of cases in which charges were laid against police personnel.

Unlike the BC Police Services, the role of the SIU in Ontario is to conduct professional and independent investigations into incidents involving police activities that have resulted in serious injury, sexual assault, or death. Ontario is the only Canadian province with an independent civilian agency that has the power and authority to investigate and charge police officers with criminal offences (SIU, 2007).

Noteworthy is that the Police Services records pertaining to shots fired in British Columbia, and the Ontario SIU police shooting intake database document all occurrences pertaining to the discharge of a police firearm outside of training practice. By collecting this information, it is possible to ascertain those incidents in which an officer levelled his or her firearm at an individual and fired it with the intent to kill, regardless of whether the individual was actually hit by the bullet. This important piece of information is easily missed as often research is based upon those reported incidents of wounding or death. However, equally important from a researcher’s perspective are those instances in which deadly force was contemplated and exercised but for an act of God, or poor marksmanship, did not occur.

**Office of the Coroner – Medical Examiner**

Another key source of information pertaining to the police use of deadly force exists within those files held by the Coroner or Medical Examiner’s office. In Canada, the Coroner’s office is legislated to conduct an inquest into all deaths resulting from, or related to, a police action. Typically, under the category “Type of Death,” the Coroner’s office maintains a database regarding those deaths that occur within the province as a result of a police shooting.

For example, Section 9(1)(a) of the British Columbia Coroner’s Act (1993) states that the Coroner will conduct an investigation into any death occurring as a result of “violence, misadventure, negligence, misconduct, malpractice or suicide.”
Section 9(3) additionally notes that a Coroner’s investigation will commence when any death occurs while a person is “detained by or in the actual custody of a peace officer.” Further, the Coroner’s office maintains an internal policy to hold an inquest into all deaths that result from a police shooting.

Governed by both policy and legislation, a Coroner’s office will typically conduct an independent public review into all police shooting incidents that result in death. The Coroner’s office controls and conducts the investigation into the police shooting, independent of the police agency. In addition, a Coroner’s Inquest serves as an independent public forum to examine and comment on police shootings. Typically, five jurors are selected from the public voters list to hear the information presented and ultimately to submit their findings and recommendations. In the province of British Columbia, the Coroner’s comments and analysis of the police shooting are documented within a final report known as the *Verdict-at-Coroner’s-Inquest*. Included within this report are a narrative account of the police shooting, the independent investigation, and, significantly, the recommendations of the jurors. The investigation and subsequent findings contained within the *Verdict-at-Coroner’s-Inquest* reports provide both a detailed and impartial account of a police shooting. The recommendations reached provide a lay commentary on how such incidents of violent death can be reduced in the future.

However, unlike a criminal court, it is important to distinguish that a Coroner’s inquest simply serves as a fact-finding exercise in determining the cause of death. It is not a fault-finding process. Therefore, the recommendations and conclusions reached by a Coroner’s inquest must be viewed with caution. Notwithstanding these caveats, the database and findings maintained by the Coroner’s office are the most comprehensive and independent source of information regarding police shootings in Canada.

In the U.S., a similar situation typically exists within each county, mandating the Coroner or Medical Examiner’s office to investigate a fatal police shooting. However, unlike the sparsely populated nation of Canada where only 12 Coroner’s offices exist in the entire country, there is an array of counties in each of the 50 states which makes research problematic. Nonetheless, Coroner and Medical Examiner’s offices provide yet another source of accurate qualitative data in regards to the police use of deadly force in the United States.

**Accessing Local Police Shooting Data**

Perhaps the greatest difficulty in conducting research pertaining to the police use of deadly force is in obtaining qualitative data from local police agencies. Although there are many checks and balances within society that ensure public accountability in the police use of deadly force, these same entities are generally reluctant providers of research information. For example, although local police agencies in the United States and Canada may provide a brief media release following a police shooting incident, they typically will not disclose the specific details of the police investigation beyond the legal requirements pertaining to the Coroner/Medical Examiner and the public prosecutor’s office. The reluctance of police agencies to provide research data on police shootings varies from liability concerns and the protection of private information to protecting the police agency from criticism, embarrassment, and a negative public image. Unlike the glossy and highly promoted aspects of community policing, the police use of deadly force is often considered by police managers to be
a controversial subject, the details of which are best kept under the lock and key of the police information section and only released within the legislated parameters of freedom of information guidelines pertaining to the jurisdiction.

Parent (2004) noted that in many instances the police agency will maintain a public policy that it does not keep track of police shootings and does not maintain a database of such incidents. These agencies will provide an impartial investigation to the Coroner/Medical Examiner’s office as well as the public prosecutor’s office. However, once the shooting incident has been dealt with via these government agencies, and upon conclusion of any subsequent civil proceedings, the file is purged from the police recordkeeping system.

Ironically, these police agencies will not disclose any information prior to the conclusion of public prosecutions and civil proceedings as “the matter is still before the courts” (Parent, 2004, p. 159). However, immediately upon conclusion of all legal processes, the file is typically destroyed with no publicly accessed record kept of the incident. This system of recordkeeping often serves to protect the police agency from any criticism or subsequent legal proceedings surrounding the use of deadly force by its personnel. Unfortunately, this process also serves to confound objective research pertaining to police use of deadly force.

For example, Parent (2004) noted that when a Deputy Sheriff in charge of public relations for a populous major county in the U.S. was interviewed in relation to the obvious absence of official police records and data pertaining to police shootings, the officer candidly stated,

> When it comes to a police shooting, the media are typically there before we are. Often there is no need for an official press release; we just answer as many questions as we can, depending upon the circumstances of the particular shooting. In regards to data or a record of police shootings, we simply don’t keep that information. If we did we would constantly be subject to media enquiries and scrutiny. Honestly, the less information that we keep . . . the better. We intentionally don’t keep this information, only a few facts and figures. That way, we can face the cameras with a straight face (at the next police shooting) and say “Sorry we don’t have that information.” (p. 159)

In a smaller number of cases, police agencies will keep accurate and detailed records of incidents surrounding the police use of deadly force. These records tend to be aggregate numbers and are often posted on the police agencies’ websites for public consumption and review. Rarely do police agencies maintain descriptive data pertaining to police shootings that may be accessed by the general public. The lack of descriptive data tends to be for reasons that include confidential rights of the deceased and the involved officers. In some instances, this aggregate information will include official media releases that detail some of the events that pertain to the police shooting.

**Accountability and Access to Data via Government Sources and the Media**

As stated, in response to the public’s right to know and in regards to accountability issues pertaining to the use of force, many police agencies will prepare a brief media release outlining the police shooting incident. Once released to the media, this information
is often combined with investigative journalism that typically results in a somewhat 
accurate published media report that is communicated by a variety of methods. While 
media databases provide some information pertaining to a police shooting incident, 
they must be evaluated on an individual basis for their validity and reliability.

The best source of data pertaining to a fatal police shooting incident in the U.S. 
and Canada is frequently obtained by way of the independent investigations 
conducted by the Coroner, the Medical Examiner, or the public prosecutor’s office. 
These public agencies are independent from the police agency thereby providing 
an additional review of the police shooting incident. In some jurisdictions, police 
accountability agencies serve in an oversight capacity and provide an additional 
source of independent and reliable information.

However, in the majority of cases, it is left to the police agency to conduct a thorough 
investigation into the police shooting incident that will typically include a review by 
the police agency’s homicide unit and internal affairs unit. The police investigation 
is typically comprehensive and critical into how and why the shooting occurred. It 
is important to emphasize that it is in the police agency’s best interest to conduct a 
thorough and unbiased review of the shooting incident. An impartial investigation 
serves to maintain the integrity and credibility of the law enforcement agency while 
providing discipline or the elimination of personnel who have wrongly exercised the 
privilege and powers surrounding the police use of deadly force.

In most instances, the results of the police investigation will be presented to the 
public prosecutor’s office for the determination of charges, if any, pertaining 
to the police personnel involved in the shooting incident. Along with public 
prosecutions, civil proceedings serve as yet another legal avenue that may be 
pursued to ensure police accountability. In addition to the review conducted by 
the public prosecutor’s office, the Coroner or Medical Examiner may decide to 
hold a public inquiry into the fatal police shooting incident. In some jurisdictions, 
this review will include the presence of a jury that has been selected from the 
public to review the fatal police shooting and to make recommendations.

Finally, the media remain as one of the most powerful reviews of a police shooting 
by virtue of their critical examination and wide-reaching dissemination of issues 
pertaining to the incident. For example, in some instances, the media are on the scene 
of the incident providing live coverage of the police shooting. In other cases, media 
sources are reporting and distributing information surrounding the shooting incident 
to the public within minutes or hours of the event occurring. Typically, media reporting 
will include the interviewing of independent witnesses to the police shooting event.

It is by way of these various checks and balances that exist within the legal system, 
government agencies, and media sources that police personnel within the U.S. and 
Canada are held accountable for the use of deadly force. These same independent 
agencies and sources have the potential to provide accurate and reliable research 
data pertaining to the frequency and specifics surrounding police shootings.

Discussion

Ironically, although North Americans live in the information age, when daily or 
even second-by-second accurate statistics are available on a variety of subjects,
the precise number of individuals annually shot and killed by the police is left to
guesswork. There is an obvious lack of detailed and publicly accessed information
in regards to the police use of deadly force.

Although the reporting of the police use of deadly force in the U.S. is somewhat
addressed within documents published by the U.S. Department of Justice (2000,
2003, 2008), there is still a lack of comprehensive accounting for all of the police
agencies within the nation. Unfortunately, the statistics on police shootings within
the U.S. is a series of piecemeal attempts at data collection and are largely dependent
on the cooperation of local police departments and individual states.

In Canada, what little information that does exist in relation to police shootings is
typically vague and inaccurate. The recording and reporting of the police use of deadly
force by Canada’s official recordkeepers, Statistics Canada, is difficult to locate within
their publications and, significantly, is inaccurate and mixed in with other nonrelevant
information such as military and prison shootings. While other forms of information
exist within individual Canadian provinces, there nonetheless is a lack of national data
pertaining to police shootings and the police use of deadly force in Canada.

These complexities and difficulties surrounding research pertaining to the police
use of deadly force is not new as police scholar James Fyfe (1988) notes:

In a democracy that counts executions carefully and tries to keep close count
of the political prisoners held by foreign governments, one might expect to
find accurate data on the number of Americans who became subjects of police
deadly force. Yet in an omission that can be defined only as inexcusable, no
federal agency has ever collected or published such data nationwide. Amid
their statistics on crimes reported and solved, calls received, tickets issued,
and assaults on officers, even the glossiest police department annual reports
rarely include any information on the frequency or the circumstances of
police use of deadly force. (p. 195)

In summary, the lack of accurate statistics and information pertaining to the police
use of deadly force in the U.S. and Canada creates difficulty in drawing meaningful
conclusions in regards to the deadly encounters between the police and members of
the public. Without an accurate national recordkeeping and reporting system, there is
no conclusive way to determine many of the issues that surround a police shooting.

There is a need for the U.S. and Canada to set into motion the creation of regulatory
bodies that will gather, research, and publish those incidents and trends related to
police use of deadly force. Wide-reaching enforceable legislation is required on the
part of government if police agencies within both nations are to provide reliable
and valid data on police shootings.

Accurate and accessible police shooting information would satisfy the public’s
right to know when and why a police officer has taken the life of another and of
those instances wherein a police officer discharged his or her firearm but death
did not result. In addition, it is equally important for police agencies to share their
experiences and knowledge surrounding a police shooting incident so that police
personnel can be trained and policies created to reduce the likelihood that an
encounter will lead to death by legal intervention.
References


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Explaining Support by African Americans for Police Use of Force: A Research Note

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Scholarly attention to public opinion about criminal justice is burgeoning (Cullen, Fisher, & Applegate, 2000; Flanagan & Longmire, 1996; Johnson, 2008). Researchers have theorized about and empirically examined public views on the performance of the police and the criminal courts, on the punishment of criminals, and on the treatment of released inmates. Because of the importance of public opinion for policymaking in a democracy, the large body of recent work on public opinion about criminal injustice is a welcome addition to the criminological literature.

In this regard, studies of public opinion about the police are particularly important in view of the importance of the police for public safety but also in view of the controversy the police often generate as they perform their duties. Public opinion favors the police in some aspects of their jobs but criticizes them in other aspects of their jobs. Here, racial differences in public views are especially sobering as studies of a variety of attitudes about the police routinely find that African Americans are much more likely than whites to hold negative views (Cullen et al., 2000). In particular, African Americans are less likely to have confidence in the police and more likely to believe that the police are racially insensitive (Johnson, 2008; Weitzer & Tuch, 2006).

At the same time, studies of race and perceptions of the police have failed to pay sufficient attention to views on police use of force. This paper addresses this neglect by examining the predictors of support by African Americans for a particularly controversial manifestation of police use of force, that involving a suspect attempting to escape from custody.

Background

Focusing on African Americans and whites, a growing number of studies document racial differences in views about the criminal justice system. African Americans are much less likely than whites to favor the death penalty; they are more likely to perceive racial discrimination in the performance of the various dimensions of the criminal justice system; and they are more likely to think that the treatment of criminal offenders should involve a rehabilitative component (Cullen et al., 2000; Hagan, Shedd, & Payne, 2005; Johnson, 2008; Schuck & Rosenbaum, 2005; Unnever & Cullen, 2007). In views of the police, African Americans are less likely than whites to have confidence in the police; they are more likely to perceive that the police act in a racially discriminatory manner; they are more likely to perceive that the police engage in misconduct; and they are more likely to call for reforms in police administration and in the behavior of police on patrol (Huang & Vaughn, 1996; Weitzer & Tuch, 2004, 2006).
Despite the burgeoning work on race and public attitudes about the police, an understanding of the determinants of views on police use of force remains limited (Flanagan & Vaughn, 1995). This disregard is unfortunate for two reasons. First, the use of force by police has long been regarded as one of the most important if controversial powers that the police exercise in a democratic society (Bittner, 1970; Skolnick & Fyfe, 1993; Westley, 1970). Second, the use of force by police has also generated much racial resentment, with African Americans particularly likely to think that the police unfairly and disproportionately use force against them as part of a more general pattern of disrespect and harassment (Brunson, 2007; Stewart, 2007). This perception of the racialized use of force has long been regarded as one of the major sources of dissatisfaction of African Americans with the police in their communities (Holmes, 1991; Saad & McAneny, 1995).

Only a few studies have empirically examined public views on police use of force with nationally representative samples of Americans (e.g., Flanagan & Vaughn, 1995). Cullen and colleagues (1996) examined racial differences in support among Cincinnati residents for police use of deadly force and found that African Americans were less likely than whites to support this use. Focusing just on whites and using data from the 1990 General Social Survey, Barkan and Cohn (1998) examined the predictors of views on what they termed police use of reasonable force (hitting a citizen attacking an officer and hitting a suspect trying to escape from custody) and of excessive force (hitting a citizen cursing an officer or being questioned as a murder suspect). In a multivariate analysis, these authors found that racial stereotyping, membership in a fundamentalist church, fear of crime, and gender (male) all predicted whites’ support for the use of excessive force, while no variable predicted the use of reasonable force net of controls. The authors interpreted their finding on racial stereotyping as evidence for conflict theory views in the study of public opinion on criminal justice.

Most studies of public opinion about criminal justice, including the police, examine the views of samples combining members of the various races or just the views of samples of whites given the dominance of whites in American society and their disproportionate influence on public policy, including criminal justice policy. Recent work on racial prejudice and views about various crime and criminal justice issues has also highlighted the views of whites over African Americans for this reason (e.g., Barkan & Cohn, 2005; Soss, Langbein, & Metelko, 2003). An unfortunate result of the focus on the views of whites, however merited it might be, is that the views of African Americans, and more specifically the predictors of these views, have been neglected in the recent wave of work on race and public opinion on criminal justice (see Johnson, 2008). Reflecting this neglect, scholars of racial attitudes have called for greater understanding of the predictors of African American views that directly or indirectly address racial issues (Quillian, 2006).

In an effort to advance this understanding, this paper investigates the predictors of African American support for one type of police use of force, that against a citizen attempting to escape from police custody, with data from the 2000-2006 General Social Surveys. We study this type of police use of force for two reasons. The first reason concerns the historical and social importance of the use of force against persons running from the police (Skolnick & Fyfe, 1993). Charges of police brutality against African Americans in this circumstance fueled several of the urban disorders of the 1960s (Kerner Commission, 1968), and, as noted
earlier, perceptions of such brutality have traditionally been a major source of the dissatisfaction that African Americans express toward the police. The second reason is empirical; as we shall show, it made sense for certain empirical reasons for us to focus solely on the circumstance for police use of force that we selected.

**Methods**

Data were analyzed from the General Social Survey (GSS), a nationally representative sample of noninstitutionalized Americans that has been conducted regularly since 1972 and biennially since 1994. We combined the 2000, 2002, 2004, and 2006 GSSs to yield a sufficient number of African Americans for analysis owing to their relatively low numbers in the U.S. population and the use in the GSS of split samples for some of our variables of interest. To ensure that our analysis was limited to African Americans, and not just people identified as black, we excluded respondents who were of Hispanic origin and/or who were not born in the United States. Our combined GSS data include 1,467 African Americans as defined by this operationalization. The use of split samples and small amounts of missing data yielded a sample size of 289 African Americans for the multivariate results that comprise the principal part of our analysis.

The GSS routinely asks respondents whether they “would approve of a policeman striking an adult male citizen” in four different circumstances: (1) the citizen “had said vulgar and obscene things to the policeman”; (2) the citizen “was being questioned as a suspect in a murder case”; (3) the citizen “was attempting to escape from custody”; and (4) the citizen “was attacking the policeman with his fists.” Responses to each item were either “yes” or “no.” As noted earlier, our multivariate analysis focuses on the third circumstance, escaping from custody, for the historic and social importance of this circumstance but also for empirical reasons that we discuss in the next section.

Our control variables for our multivariate analysis of support by African Americans for the use of force against persons escaping from custody come from the literature on public opinion, punitiveness, and police use of force (see Barkan & Cohn, 1998, for a review). Education was measured as years of schooling and ranged from 0 to 20. Age was measured in years from 18 to 89. Gender was coded as 1 = male and 0 = female. Southern residence was coded as 1 = South and 0 = non-South. Rural residence was coded as 1 = central city of 12 largest SMSAs to 6 = rural counties having no towns of 10,000 or more. Political conservatism was coded as 1 = extremely liberal to 7 = extremely conservative. Religious fundamentalism measures respondents’ views on the Bible (1 = ancient book of fables to 3 = actual word of God). Prior work suggested that all of these variables except education would be positively associated with support for police use of force against persons escaping custody. The year of the GSS was also included in the multivariate analysis (results not reported).

Prior work on African Americans’ attitudes about criminal justice emphasizes the role perceptions of injustice play in their views about punitiveness and other aspects of the criminal justice system (Johnson, 2008). Although the GSS does not include such perceptions, it does include an item that asks respondents whether they think that African Americans’ “worse jobs, income, and housing” are “mainly due to discrimination,” which we recoded as 1 = yes and 0 = no. We reasoned that
African Americans who think that discrimination matters in this regard would be more likely to believe that the criminal justice system, including the police, is also discriminatory.

Results

Although racial differences in support for police use of force are not the purpose of this study, we first examine these differences in order to indicate the empirical reasons for our choice of force against persons escaping from custody as our empirical focus. Table 1 indicates the percentages of African Americans and whites who favored the use of force in each of the four circumstances outlined in the previous section. Because of the large numbers of African Americans and whites in our combined GSS samples for these comparisons (more than 640 African Americans and 3,700 whites in each comparison), even very small racial differences (including all four differences in Table 1) are statistically significant. We therefore focus on the percentage comparisons in the following discussion.

Table 1. Percentages of African Americans and Whites Who Favor Police Use of Force, by Circumstance, 2000-2006 General Social Surveys

<table>
<thead>
<tr>
<th>Circumstance</th>
<th>African American (%)</th>
<th>White (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Saying vulgar and obscene things</td>
<td>4.8</td>
<td>7.1</td>
</tr>
<tr>
<td>2 Suspect in murder case</td>
<td>11.9</td>
<td>7.3</td>
</tr>
<tr>
<td>3 Escaping from custody</td>
<td>49.1</td>
<td>80.3</td>
</tr>
<tr>
<td>4 Attacking policeman</td>
<td>81.3</td>
<td>94.0</td>
</tr>
</tbody>
</table>

Despite very small differences, African Americans and whites have very similar views regarding the use of police force in two circumstances: (1) when citizens curse a police officer and (2) when they are being questioned as a suspect in a murder case. On the other hand, African Americans are 12.7% less likely than whites to favor police use of force when someone is attacking a police officer, and a full 31.2% less likely to favor force when someone is escaping from custody. To the best of our knowledge, no previous study has determined that racial differences in support for police use of force depend heavily on the circumstances under which such force is used.

In addition to our substantive reasons for focusing our empirical analysis on force used against someone escaping custody, we have several empirical reasons for this selection. First, the numbers of African Americans favoring force in the first two circumstances—cursing an officer and being questioned as a suspect—were very low (33 and 81, respectively) even in our combined sample, and these numbers would have become even smaller in multivariate analysis in view of split samples and missing data. Second, the circumstance we chose represents the greatest racial difference we found and is thus of particular interest in a study of the predictors of African American support for police use of force. Third, there is a sharp division within African Americans over the use of police force against an escaping suspect as they were almost evenly divided (see Table 1) over the use of such force, again lending this view particular interest.
Table 2 presents the bivariate correlations (Pearson’s $r$) of our predictor variables with approval for police use of force against an escaping suspect. Education, religious fundamentalism, Southern residence, and belief in discrimination all predict approval of this type of police force in the ways indicated in the table. Such approval is higher among better educated African Americans and lower among those who are more religiously fundamentalist, those who live in the South, and those who believe that discrimination explains African Americans’ low social status.

Table 2. Bivariate Correlations (Pearson’s $r$) of Predictor Variables with Approval of Police Use of Force Against Escaping Suspect, 2000-2006 General Social Surveys

<table>
<thead>
<tr>
<th>Predictor Variable</th>
<th>$r$</th>
</tr>
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<tbody>
<tr>
<td>Education</td>
<td>0.154**</td>
</tr>
<tr>
<td>Age</td>
<td>-0.067</td>
</tr>
<tr>
<td>Male</td>
<td>0.016</td>
</tr>
<tr>
<td>Southern residence</td>
<td>-0.098*</td>
</tr>
<tr>
<td>Rural residence</td>
<td>-0.008</td>
</tr>
<tr>
<td>Political conservatism</td>
<td>-0.046</td>
</tr>
<tr>
<td>Religious fundamentalism</td>
<td>-0.100*</td>
</tr>
<tr>
<td>Belief in discrimination</td>
<td>-0.124*</td>
</tr>
<tr>
<td>Number of cases</td>
<td>289</td>
</tr>
</tbody>
</table>

*p < 0.05, **p < 0.01, ***p < 0.001; one-tailed tests

To determine independent effects on police use of force net of controls, Table 3 presents our multivariate analysis (logistic regression). Of the net of controls, only education and belief in racial discrimination predict police use of force against an escaping suspect. Repeating the bivariate results for these two variables, approval of police use of force is higher among better educated African Americans and lower among those who believe that discrimination explains blacks’ low social status. The odds ratio for the belief in discrimination variable was 0.560, indicating that the odds of approval for police use of force against an escaping suspect are 44% lower for African Americans who say that discrimination explains African Americans’ low social status than for those who do not believe that discrimination matters in this regard. Since we used the discrimination variable as a proxy for perceptions of injustice in the criminal justice system, we infer that this result reflects the effects of African Americans’ perceptions that the use of police force against escaping suspects is directed unfairly and disproportionately against African American suspects. The coefficient for education is somewhat surprising as African Americans with greater education are more likely to approve police force against an escaping suspect. In prior research, education has been linked to lower punitiveness, but it was not related to support among whites for either the reasonable or excessive use of police force in Barkan and Cohn’s (1998) study. The reasons for the result here should be considered in future research.
### Table 3. Logistic Regression of Predictor Variables on Approval of Police Use of Force Against Escaping Suspect, 2000-2006 General Social Surveys

<table>
<thead>
<tr>
<th>Coefficients</th>
</tr>
</thead>
</table>
| Education                     | 0.109*  
| Age                           | -0.006  
| Male                          | -0.118  
| Southern residence             | -0.318  
| Rural residence                | 0.021   
| Political conservatism         | -0.064  
| Religious fundamentalism      | -0.263  
| Belief in discrimination       | -0.579**|  
| -2 Log likelihood              | 381.073 
| Number of cases                | 289     |

*p < 0.05, **p < 0.01, ***p < 0.001; one-tailed tests

### Conclusion

Despite a burgeoning of research on public opinion about criminal justice and, in particular, of research on racial differences in views on criminal justice, relatively few studies have examined public views on police use of force. The few studies that exist have focused on racial differences in approval for such force and on the predictors of whites’ approval of police use of force.

This paper has addressed the inattention to police use of force with representative national data on African Americans. Examining opinions on four types of police use of force, we first found that the greatest racial difference existed for approval for force against an escaping suspect, for which African Americans were almost evenly divided. Focusing on this circumstance, we next determined that education increases approval of such force, while the belief that discrimination explains African Americans’ low social status noticeably decreases approval of such force. We interpreted the latter result as reflecting concerns among African Americans that police use of force against escaping suspects is unfairly and disproportionately targeted against African American suspects. To the extent this interpretation is correct, it reinforces findings in prior research that African Americans’ perceptions of injustice in the criminal justice system reduces their punitiveness toward criminal offenders (Johnson, 2008) and extends these findings to views on police use of force, at least in the circumstance studied here.

Future research on African Americans’ views on police use of force should investigate the use of such force in additional circumstances beyond those included in the General Social Survey. Since the use of force by police has been a source of considerable dissatisfaction with the police among African Americans, it will remain important for both theoretical and policy reasons to understand the extent and predictors of African American views on police use of force for some time to come.
References


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Canines Take a Nonlethal Bite Out of Crime: The Use of Police Dogs as Less-than-Deadly Force

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Within the arsenal of lesser forms of nonlethal force, police officers can make use of technological advances to subdue a recalcitrant suspect. The use of TASERs, for example, has gained much popularity in recent years, and it is estimated that over 11,000 departments have now purchased TASERs because they are considered safe and nondeadly when employed on noncompliant individuals (Seals, 2007). Pepper spray, bean bags, and batons, although not as technologically forward as TASERs, are other forms of less-than-lethal force and are also utilized by police departments to incapacitate obstinate individuals. Verbal Judo is also making gains as a form of nonlethal force among police departments in the United States because of its gentle ability to diffuse potentially dangerous police-citizen encounters (San Miguel & Rudolph, 2008). Perhaps an often forgotten tool in the armory of nonlethal force is the canine. Canines have been used not only as force multipliers since the early 20th century, but they have also been used for their olfactory skills to track missing people, suspects, or narcotics as well as for their keen sense of hearing (Kirchmaier, 2006; Meade, 2006; Mesloh, 2006). Today, it is believed that over 9,000 canine units operate in police departments around the United States (Hutson et al., 1997), and after the terrorist attacks of September 11, 2001, police dogs have become more visible law enforcement companions as their use at airports, checkpoints, and other points of entry has become commonplace and essential to homeland and hometown security (Government Security News, 2007; U.S. Customs and Border Protection, 2009).

Although canines are considered nondeadly weapons, large breeds such as German shepherds and Doberman pinschers can be trained by their handlers to exert a bite force of 1,500 psi (pounds per square inch) (Hutson et al., 1997), while smaller breeds of dogs and most domestic dogs can exert a bite force between 150 to 200 psi (Meade, 2006). The Rottweiler, however, can be trained to exert a bite force of 2,000 psi (Hutson et al., 1997). Lawsuits reveal that some suspects have received bites from police dogs which have warranted prolonged hospitalization as a result of brutal puncture wounds (Meade, 2006). Additionally, three individuals have died as a result of police dog bites in recent history (Meade, 2006). Yet, scant attention has been devoted to the lethal potential of canines, and some departments continue to train dogs using find and bite or bite and hold techniques as opposed to the bark and hold technique (Mesloh, 2006; Wallentine, 2008). Additionally, there exists little oversight into the handler training measures, and legal liability against municipalities and officers for excessive force using police dogs continues to plague departments across the country (Chew v. Gates, 1994; Kerr v. City of West Palm Beach, 1999; Mesloh, 2006).

This paper will discuss the use of canines as nonlethal force. In particular, a historical assessment of the use of canines in police operations will be provided.
along with contemporary examples of their usage. The use of canines, which remain absent in most use of force continuums, will be discussed in light of their potential to be used as lethal weapons. Canine drives and police dog training techniques will be explained as well as excessive force, civil liability, and current case law in relation to canine use of force. Finally, potential problems and benefits associated with police canines will be addressed.

**Literature Review**

**The Use of Canines in Police Operations**

Undoubtedly, canines serve as force multipliers with an extra benefit of having heightened olfactory and hearing abilities to accomplish certain tasks that would be exceedingly difficult for humans to accomplish, too perilous, and/or too time consuming (Kirchmaier, 2006; Meade, 2006; Mesloh, 2006). Canines’ keen aptitude for exerting fear, incapacitating enemy combatants, and aiding in search and rescue missions was first utilized by the military. Their usage for military operations and/or warfare is said to date back to 700 BC, and with respect to U.S. military operations, it is estimated that 250,000 of these animals were used during World War II (Kirchmaier, 2006; Marders, 1960). Today, the military continues to use canines for several reasons:

- To seek, detect, bite, hold, and guard suspects
- To deter attacks of their handlers
- To detect and pursue fleeing suspects
- To detect the presence and location of invisible enemy combatants
- To attack on command
- To search buildings
- To detect bombs and other explosive materials (Kirchmaier, 2006, pp. 3-4)

Canines are also used by the military for search and rescue missions of soldiers. Despite the varied usages, “both the U.S. Army and the U.S. Air Force military working dog training manuals state that allowing a dog to bite during an apprehension is a non-lethal use of force” (Kirchmaier, 2006, p. 3).

Historical accounts are a bit nebulous with regards to precisely where and when dogs were introduced into municipal policing functions. Law enforcement pundits believe that the first usage of canines in police operations occurred during the 1300s in France (Lilly & Puckett, 1997). In the United States, it is also unclear when dogs were used to aid police in their daily tasks, but it is believed to have occurred during the first decade of the 20th century. Chapman (1990) reports dogs were first used by the states of New York and New Jersey in 1907. Despite the imprecise genesis of canines in law enforcement, “man’s best friend” had an aptitude for certain police deterrent, apprehension, and detection directives. By the 1950s, canine units in the United States were beginning to sweep the nation at a deliberate pace. In fact, in 1959, the International Association of Chiefs of Police (IACP) published an article in their journal entitled, “Use of Police Dogs a Fad?” (Wallentine, 2008).

Today, approximately 2,000 law enforcement agencies across the country use canines to enhance police operations, including municipal agencies; county,
state, and federal agencies; and school and university police forces (Hutson et al., 1997). This can be roughly translated into at least 9,000 canine units in the U.S., with German shepherds the most commonly used due to “their size, keen senses of hearing and smell, intelligence, agility, and temperament” (p. 638). However, Rottweilers, Doberman pinschers, and Belgium Malinois are also used for similar reasons (Mesloh, 2006; Palman, 2009). Police canines can be trained to perform a multitude of tasks necessary not only to effectuate police missions but to minimize officer injury and death (Meade, 2006). For instance, dogs can be trained to search buildings for explosives or for humans, especially when the latter search for suspects can escalate into a shooting incident. Literature reveals that officers’ safety can be compromised during building searches because suspects may gain the upper-hand due to the many areas for concealment that a building provides (Eden, 1993; Remsberg, 1995). The Los Angeles Police Department, for instance, conducts approximately 1,500 searches of buildings using canines. It believes that using canines is “safer, faster, and more effective” (Hutson et al., 1997, p. 638).

These canines can also be used to sniff out drugs during vehicle stops or to provide backup for officers during such stops, especially for rural, county, and/or state police who often patrol vast areas without instant officer backup (Wallentine, 2008). Vehicle stops are also dangerous for local police officers. According to Ashton (2004), police officers involved in traffic stops have typically been exposed to a number of potential risks, the most common among these are traffic accidents. However, since 9/11, local police officers have become targets for terrorists and anti-government extremists as well (Sweeney, 2005). Parsons (2004) noted that assaults against police officers during field detentions, such as traffic stops, have increased since the terrorist attacks on the World Trade Center and the Pentagon. Thus, canines not only provide extra protection for officers patrolling without a readily available backup unit, but they also help detect the presence of drugs and/or explosives during roadside vehicle detentions.

With respect to the use of canines by federal law enforcement agencies, U.S. Customs and Border Protection (CBP) (2009), for instance, generally utilizes dogs for counter-terrorism and drug interdiction operations. Canines are also used to sniff out explosives, human cargo, agricultural contraband (e.g., prohibited fruits such as the avocado), and unreported currency. Currently, there are over 1,200 canine units within CBP, which are mostly located along the southern border. According to the Department of Homeland Security (2008), from April 2006 to 2007, CBP procured the purchase of 322 dogs at a cost of $1.46 million. The U.S. Secret Service and the Transportation Security Administration (TSA) also use canines. The Secret Service spends approximately $4,533 for 16 dogs from 2006 to 2008, while the TSA, which obtains its canines from the Department of Defense (DOD), can spend up to $3,500 for each canine. The DOD usually purchases about 600 canines directly from Europe each year and then distributes the canines to the various agencies under its umbrella (Department of Homeland Security, 2008). These costs do not include the training for canines and their handlers or the boarding and medical care for such animals. Nevertheless, canines and their handlers are “valued for their ability to efficiently clear people and vehicles with minimum wait times at ports of entry [land, sea, and air] and checkpoints as well as locating migrants and smugglers crossing through the desert” (p. 11). In a post-9/11 world, canines are also used to detect explosives coming across our borders.
TSA has deployed explosive detection canine teams to metropolitan cities with large transit and commuter rail systems (Government Security News, 2007).

Canines, whether procured by the federal government or municipal agencies, are also valued for their ability to search and rescue missing persons, as was the case during the search for survivors and deceased individuals in the aftermath of the terror attacks in New York City (Rebmann, 2009). Interestingly, they are also used to augment police-community relations by appealing to children’s sense of curiosity during career days. Many agencies conduct canine demonstrations to community groups to solidify the value of dogs in law enforcement operations (Mesloh, 2006; U.S. Police Canine Association, 2009b). However, it is their use as weapons that draws the most attention and the most contention as well as trepidation. As mentioned, German shepherds and Doberman pinschers can be trained by police to exert a bite force of 1,500 psi, while Rottweilers can be trained to exert a bite force of 2,000 psi (Hutson et al., 1997). Meade (2006), in an analysis of police dog bite injuries from the Los Angeles Police Department from 1988 to 1990, determined that suspects were bitten multiple times, and most suspects required hospitalization due to severe injuries suffered. Yet, police canines are not considered forms of deadly force.

Training Techniques

Canines can be trained in various ways. It is important to note, however, that each dog responds to training differently based on personality, temperament, motivation, and drive (Department of Homeland Security, 2008; Palman, 2009). Typically, dogs have three basic drives, and these drives are said to help set the basis for training techniques (Frawley, 2008). These drives include the play drive, the prey drive, and the defense drive. The play drive is better known as the retrieve drive and sets the foundation for the prey drive. According to Frawley, the prey drive is based on the dog’s instinctual desire to chase moving objects, while the defense drive is the dog’s intrinsic response to protect itself from perceived danger or harm or protect its human custodian. Accordingly, based on a dog’s inherent drives, training dogs for police use simply requires repurposing these drives.

The training of dogs is ultimately achieved by adhering to the principles of classical and operant conditioning. Classical conditioning, otherwise known as Pavlovian conditioning, is best illustrated using an example from Ivan Pavlov’s experiments with canines in the early 20th century. Pavlov began his experiments with the hypothesis that the introduction of certain stimuli (e.g., ringing a bell before dogs were fed), if always followed by a constant effect each time, would eventually produce a desired behavior, even if the stimuli were later altered. Pavlov’s experiments ultimately showed that a dog can be taught to salivate not through the presentation or visual introduction of food, which is a physiological response, but through the introduction of other stimuli such as the ringing of a bell. Essentially, classical conditioning achieves behavior modification by teaching dogs to learn to make associations between stimuli and responses (Fredholm, 2001). Operant conditioning, on the other hand, achieves behavior modification through rewards and punishments. In the case of police canines, handlers learn to reinforce certain behaviors in their dogs through praise (e.g., verbal or physical praise such as petting), allowing the dog to play with a chew toy, or by giving it a treat. Undesirable behavior is quashed by not giving the dog praise, the chew toy,
or the treat (Phillips, 1971). According to Palman (2009), punishment should not be in the form of physical and/or psychological coercion because this may ultimately make the dog more aggressive. Instead, punishment should be the removal of something of interest and/or something desirable to the dog such as the praise or a chew toy.

Operant conditioning is based on the work of B. F. Skinner (1953) who believed that “behavior is controlled through manipulation of the consequences of previous behavior” (as cited in Lanier & Henry, 2004, p. 143) and that behavior is shaped through the introduction of positive reinforcement or negative reinforcement. Repurposing canine drives to perform police missions such as detection of narcotics or explosives takes into consideration dogs’ internal desire to prey and defend together with the elements of operant conditioning. Additionally, dogs’ innate yearning to please their human custodian makes it feasible to condition their behavior toward law enforcement objectives (Frawley, 2008).

One of the most contentious training techniques of police canines is the bite and hold or find and bite techniques (Mesloh, 2006). Essentially, dogs are trained to either pursue a fleeing suspect and/or find a suspect and then proceed to bite them until their handler gives a command for the suspect’s release. Although it may take several months for the canine to learn this training method through the use of positive and negative reinforcements, this method of locating and apprehending suspects can lead to serious injuries (Hutson et al., 1997). Dogs may be trained to perform the bite and hold technique at the verbal and/or nonverbal (e.g., hand gestures) command of their handlers or act when they believe their handlers are in peril. It is this latter scenario that causes some to question whether the dog is given too much discretion (Campbell, Berk, & Fyfe, 1998). In any case, this technique has brought about numerous lawsuits against canine handlers and their employing law enforcement agencies (see Mesloh, 2006; Wallentine, 2008). However, most lawsuits are brought about due to officers’ inappropriate and/or unreasonable use of canines to subdue non-threatening suspects (see Chew v. Gates, 1994; Grant v. City of Los Angeles, 1994; Kerr v. City of West Palm Beach, 2008; Rogers v. City of Kentwick, 2008, to be discussed later). In other words, lawsuits ensued not because the canine acted independently of the officer’s commands but because it acted in response to the officer’s unreasonable decision to use the canine to subdue a suspect.

Due to the mounting number of litigants claiming excessive use of force by means of a police canine, agencies have now started training dogs using the bark and hold (or circle and hold) technique. The bark and hold technique, as the name implies, trains a dog to either pursue a fleeing suspect and/or find a suspect and then proceed to bark until its handler has found the suspect and gives a command for the dog to stop (Mesloh, 2006). This method should yield a lower bite ratio (e.g., number of bites per total number of apprehensions) than the bite and hold technique even though dogs trained using the bark and hold technique may eventually bite if they foresee a threat to their handler and/or if their handler commands them to bite. The Department of Justice (DOJ) (2001) and the IACP (2001) both agree that agencies should primarily train canines using the bark and hold technique. In particular, the DOJ (2001) stated that

A canine should be deployed to apprehend or seize an individual only where: (a) the individual is suspected of having committed a serious or
violent crime, (b) less potentially injurious techniques are insufficient, and (c) unless it is precluded by officer safety, a verbal warning is given prior to deployment, and a supervisor’s approval is obtained. Agencies should train their canines to follow the approach of “bark and find” rather than “find and bite.” (pp. 4-5)

The bark and hold technique, however, has also been subjected to criticism for several reasons. First, this technique may be creating additional risk to the handler and the canine because it may provide ample time for the suspect to retaliate against the officer and the canine. Second, it is believed that this technique can also lead to a high bite ratio similar to the find and bite technique because the dog is not necessarily trained to abstain from biting but trained to bite if the suspect moves once the canine finds him or her (Mesloh, 2006). So, even if the suspect surrenders but is moving his or her arms excessively, the dog may perceive this as a threat and bite. Therefore, the bark and hold technique does not eliminate the bite and may give much more discretion to the canine to perceive threats (Mesloh, 2006). Mesloh, in an analysis of bite ratios in the State of Florida, found, in part, that canines trained using the bark and hold technique versus those that were trained using the bite and hold technique had significantly higher bite ratios. This is drastically different from conventional wisdom and runs counter to the reasons why both the DOJ (2001) and the IACP (2001) advocate the bark and hold technique.

**Canines and Use of Force**

The DOD (Kirchmaier, 2006), the DOJ (2001), the IACP (2001), and the U.S. Police Canine Association (2009a) all maintain that canines are a form of force but that such force is nonlethal. Force as a necessary and inherent component of police work (Lyman, 2005; Walker & Katz, 2005) comes in many different forms. For instance, force can be exerted by the officer as a verbal communication, as psychological discomfort, and as a physical action—including actions that may lead to serious injury and death (Skolnick & Fyfe, 1993). Force may also be exerted using different techniques (e.g., pain compliance techniques) or with objects such as a baton, a TASER, a flashlight, and a gun (San Miguel & Rudolph, 2009). Force may also be exerted through the presence and use of a canine.

Although there are many use of force continuums, canines are rarely found in these continuums. For instance, most use of force continuums list varying degrees of force such as the mere presence of the officer constituting the most nonlethal form of force to verbal force (e.g., the use of persuasive communication), command voice (e.g., direct orders), physical grips (e.g., making physical contact with the individual to help them comply with specific orders), pain compliance techniques (e.g., applying pressure to certain parts of the body), impact techniques (e.g., TASERs), and deadly force (Roberg, Novak, & Cordner, 2005). Canines are usually not listed in the continuum but are always referred to as less-than-lethal force. Despite the absence of canines from force continuums, they present a foreseeable risk of injury and even death in some situations (Wallentine, 2008).

Use of force, whether involving canines or otherwise, must be legally justified in all situations. Accordingly, although police have discretionary ability to perform their duties, they must act in accordance with department policy, state statutory
law, and/or federal and constitutional law. Use of force is strictly proscribed when (1) a minor crime is believed to have occurred or is occurring, (2) the individual poses no threat to the officer or others, and (3) when the individual is not resisting arrest or fleeing (see Graham v. Connor, 1989). The Supreme Court has also stated that deadly force is reasonable (1) not only to stop a suspect from evading arrest but one who has threatened the officer with a weapon, (2) when such threat involves death or serious bodily injury to the officer or others, (3) when there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious bodily injury, and (4) when some warning, if practical, has been given by the officer (Tennessee v. Garner, 1985). The use of force specifically when using canines also follows the rules set forth by Graham v. Connor and Tennessee v. Garner. Thus, a decision to deploy a canine must be based on the totality of the circumstances in each case, but ultimately it is based on the type of crime the suspect is alleged to have committed (e.g., misdemeanor versus felonious), the degree of threat posed to the officer and/or others, and the degree of resistance to apprehension put forth by the suspect.

The deployment of canines is seen by most departments as a safe alternative to using more aggressive forms of force, including deadly force (Mesloh, 2006; Wallentine, 2008). In fact, most departments adopt canine units because of a belief that canines will lead to a decrease in having to resort to deadly force. These creatures are believed to diffuse situations in which there is substantial risk of injury to officers and to others (Meade, 2006). However, canine use of force has been the subject of a myriad of lawsuits against police, and excessive force is the most common reason for such lawsuits.

For instance, in Grant v. City of Los Angeles (1994), the plaintiff filed a lawsuit against police for several canine bites suffered as he was trying to flee from police. The facts of the case reveal that the plaintiff carjacked an automobile at gunpoint, led police on a chase, fled from police on foot after crashing the car, and was subdued by a canine as he tried to scale a six-foot wall. The canine bit both his arms and legs. The Ninth Circuit Court ruled that despite some injury to the plaintiff, police were justified in using the canine to prevent the escape of a fleeing suspect. More specifically, the court held that the canine did not constitute excessive force in light of the fact that the suspect had committed a felony with a deadly weapon, posed a threat to officers, and tried to evade arrest. Hence, the court applied the principles outlined by the Supreme Court in Graham v. Connor (1989).

The Ninth Circuit Court, which hears cases from Alaska, Arizona, California, Guam, Hawai‘i, Idaho, Montana, Nevada, Oregon, Pacific Islands, and Washington, has heard its share of cases involving canines. Other circuit courts have also heard canine excessive force cases. The facts of cases involving canines are usually quite similar—the plaintiff has committed a crime; he or she flees from police to avoid arrest; a canine is deployed to prevent the escape; the plaintiff is injured due to a bite or several bites; and then the plaintiff files a lawsuit against the handler, the department, and/or the municipality. Although criminal action against police for unreasonable use of force involving canines can be taken if there is cause to do so, it is not common. These cases rarely receive court attention because they lack the requisite elements to find that officers acted outside the scope of their constitutional duties. Most cases involving canines are therefore civil cases wherein the plaintiff is seeking monetary damages for injuries suffered by a canine. In addition, most
cases are filed in federal courts under Title 42 United States Code Section 1983 (also referred to as 42 U.S.C. §1983), but seldom does the plaintiff win his or her case.

Plaintiffs in dog bite cases have the option of filing a civil lawsuit in state court or federal court, and most file with the latter court because the Attorney’s Fees Act of 1976 gives plaintiffs who win their case the ability to recover attorney’s fees (del Carmen, Williamson, Bloss, & Coons, 2003). This is why most plaintiffs allege a violation of §1983. Section 1983 lawsuits are not easy to win, however. Plaintiffs must prove that the canine handler (1) acted under color of law, meaning that the handler was acting in his or her official duties to fulfill a legitimate police function; and (2) violated a constitutional right or right given by federal law. A canine handler is entitled to qualified immunity or protection from lawsuits if the court finds that the law governing use of force was clearly established (i.e., that a reasonable officer would agree that the law on that issue was clear to him or her) and that the handler acted in accordance to such law. Thus, the court applies a “reasonable officer” test, and if it deems that a reasonable officer, based on the totality of circumstances in the case, would have acted similarly when confronted with the facts of the case, then the handler is entitled to qualified immunity (del Carmen et al., 2003).

A canine bite is treated by the courts as a seizure under the Fourth Amendment and, as such, every individual has the right to be secure from an unreasonable seizure. The Ninth Circuit Court of Appeals, the First Circuit, the Sixth Circuit, the Eighth Circuit, and the Tenth Circuit Court have all ruled that canines are nondeadly force. However, courts have ruled against canine handlers in some cases. For instance, in Rogers v. City of Kennewick (2008), the Ninth Circuit Court held that officers were not entitled to qualified immunity and that the use of a canine constituted an unreasonable seizure under the Fourth Amendment. In this case, the plaintiff, Rogers, is not the suspect wanted by police but the one who suffered the canine bite. In a bizarre turn of events, police were in pursuit of a suspect on a moped for a misdemeanor traffic violation. The suspect drove the moped into the garage of a house, and the occupants of the house closed the garage door and lied to police regarding the whereabouts of the suspect. The officer called the station for a canine that could aid in finding the suspect. While waiting for the canine to arrive, the officer obtained consent to search the house and found the moped but not the suspect. Upon arrival, the canine handler prompted the dog to sniff the moped to pick up the scent of the suspect. The dog was released, unleashed, and ran to a backyard where Rogers was sleeping. The dog proceeded to bite his hands, back, neck, and face. Three officers, including the one who called for the canine and the canine handler, proceeded to subdue Rogers who had begun to hit the dog in order to stop the attack. Although the officers claimed that qualified immunity should be granted because they acted in good faith believing that the canine had located the suspect, the Ninth Circuit Court ruled that regardless of whether Rogers was or was not the suspect, the use of the canine constituted excessive force. Specifically, the court applied Graham v. Connor (1989) and held that the case involved a misdemeanant who did not pose a threat to the responding officer and that fleeing from the officer did not create enough justification to call for a canine that eventually bit Rogers. With respect to qualified immunity, the court held that officers were not entitled to it because they violated clearly established law—they failed to give a warning before releasing the dog and
allowed the dog to continue to bite Rogers even after they arrived to subdue him. The court awarded Rogers $1.5 million.

Undoubtedly, courts will consider the facts of each canine bite case independently, but they will follow precedence, primarily the case law established in *Graham v. Connor* (1989). Therefore, as stated earlier, canine bites are justified if the suspect

- is believed to have committed or is committing a serious crime.
- poses a threat of serious bodily injury or death to the officer and/or others.
- is actively resisting arrest or attempting to flee from police.

Canine bites are considered excessive use of force when the canine is deployed to chase and subdue a misdemeanant who poses no threat to the officer or others (see *Kerr v. City of West Palm Beach*, 1999; *Rogers v. City of Kennewick*, 2008).

One lawsuit that was filed for a fatal canine bite was *Robinette v. Barnes* (1988), the surviving family members of a burglar who had been fatally wounded by a police canine filed suit alleging excessive force. Officers, upon responding to a burglary in progress, found the victim fleeing from the scene of the crime. In accordance to clearly established department policy, the officers warned the victim that if he did not surrender, a canine would be deployed to subdue him. Since the suspect did not capitulate to the officers’ demands, the canine was released and pursued the suspect into a building. The officers lost sight of the dog momentarily, but when they found it, it was biting the throat of the victim. The Sixth Circuit Court first opined that the use of a canine constituted nondeadly force and that the death of the victim was “an extreme aberration from the outcome intended or expected.” It also stated, based on *Tennessee v. Garner* (1985), that officers are justified in using canines to avoid the need to use deadly force if and when they are presented with deadly force. As mentioned, only three fatalities have occurred as a result of a police canine bite: the one in the *Robinette* (1988) case, in the case of a Florida woman who was repeatedly bitten by a canine out of sight of the handler, and in the case of a child of a canine handler who was not home at the time of the fatality (Meade, 2006).

Lawsuits for police canine bites may be filed against the handler, the police agency, and/or the municipality. The latter two are generally included in the lawsuit for allegations of failure to adequately provide training to canine handlers. For example, in *Kerr v. City of West Palm Beach* (1999), misdemeanor suspects in three different incidents brought suit against the officers involved in the respective cases as well as the West Palm Beach Police Department for failure to adequately train canine handlers and for deliberate indifference to the inadequate training methods. West Palm Beach Police Department lost the lawsuit because it (1) allowed officers to use canines to subdue nonresistant and nonthreatening misdemeanants, (2) had knowledge that officers would not correct canine behavior when canines would not release the suspects on demand of their handlers, (3) had knowledge that handlers bragged about the number of bites each of the canines had inflicted on suspects, (4) did not have a method to track and identify performance concerns, and (5) showed deliberate indifference.

In *Chew v. Gates* (1994), the court further delineated when a department and/or municipality may be held liable by noting that in addition to the factors first
discussed in *Graham v. Connor* (1989), courts must also take into consideration the following factors: (1) canine bite ratios for the department, (2) the adoption and reasonableness of department policy on canine use of force, (3) procedures for monitoring canine use of force, and (4) oversight of police canine units. Today, police departments have firm policies regarding the deployment of canines. In short, policies generally state that canines should be deployed after a verbal warning to the suspect in the most serious of incidents such as felonies. Also, canines should only be used if the suspect poses a threat to the officer and is actively resisting arrest. However, most policies do make exceptions in misdemeanor cases. For instance, an officer may unleash the canine during a misdemeanor traffic stop when the incident escalates into a potentially dangerous situation that could seriously harm the handler. Additionally, most policies contain requirements for the selection of canines together with their handlers as well as training certification procedures and continuing training hours. Finally, most agencies have procedures for oversight of canine units. Due to these written policies and procedures, together with appropriate training, handlers have been shielded from liability. Accordingly, unambiguous policies plus training of when to lawfully deploy a canine has protected law enforcement agencies from excessive force claims.

**Are Canines Worth the Investment?**

As discussed, thousands of dollars are spent for the purchase of a canine and even more can be spent to train them, house them, and care for them (U.S. Police Canine Association, 2009b). Additionally, there is a growing trend to cross-train dogs or to make them multipurpose in that not only are they driven to sniff out narcotics but also explosives. Needless to say, this increases training dollars. Furthermore, monies must be reserved for handlers as they need to become acclimated to a dog and learn how to direct its movements. Since training for both the handler and the canine may take up to 15 weeks, this may be cost prohibitive for some agencies (Department of Home Security, 2008; U.S. Police Canine Association, 2009b). It is important to note that not all canines selected, purchased, and sent to training are fit for police work. Some dogs do not display the necessary motivation to complete tasks, and others fail to perform at an adequate level. According to the federal government’s Office of Training and Deployment, less than 10% of canines are found to be unfit for police work as determined by the failure to complete training objectives (Department of Homeland Security, 2008). Although the agency’s investment for the purchase of the canine will not be lost because most police canine vendors will replace the dog free of charge, monies will need to be spent to train a handler with a new dog.

Admittedly, canines are a huge investment. Moreover, the investment is accompanied by a high likelihood of liability. Injuries as a result of a police canine bite are common, and some may lead to severe puncture wounds, arterial repairs, open joint repairs, tendon repairs, and, although rare, death (Meade, 2006). Though German shepherds and Doberman pinschers are often used by police agencies, the Belgium Malinois has a significantly higher bite ratio—almost twice that of the German shepherd (Mesloh, 2006). Furthermore, the commonsensical belief that the bark and hold technique yields lower bite ratios than the bite and hold technique is not accurate. Mesloh found the opposite to be true. He argued that such a contradictory finding may be due to the heightened discretion given to canines to bite at the slightest movement. Further, he contends that the higher bite
ratio may be attributable to the fact that bark and hold dogs were once bite and hold dogs that received new training due to a paradigm shift nationwide to switch to this technique, and the dogs continue to abide by the former training method. Bite ratios and publicity of civil lawsuits against police for excessive force in the form of canine bites can be harmful to the image of a department and call into question whether canines are worth the investment.

Despite evidence to the contrary, law enforcement agencies overwhelmingly agree that canines are beneficial to accomplishing policing objectives. From the federal government’s need to sniff out narcotics, explosives, prohibited produce, and unreported money to helping search for missing people, canines have become ingrained in the field of policing, and there is no indication that canine units are diminishing in popularity. In fact, the number of canine units across the country continues to grow, and becoming a handler is now one of the most coveted law enforcement positions (U.S. Police Canine Association, 2009b). However, many intricacies are involved in forming a canine unit. According to the U.S. Police Canine Association, the following conditions must be met:

• Canines and handlers must be carefully selected and fully trained.
• Canines should be kept at the homes of their handlers.
• The canine unit should be organized as a specialized unit.
• The entire force should be instructed in the capabilities and limitations of canine units and in the use of them.
• The canine unit should be assigned to specifically defined missions and should operate according to carefully formulated tactical procedures.
• Attention must be given to program administration and the maintenance of comprehensive records such as records on bite ratios, number of drugs detected by the canine, etc.

Oversight of canine units is crucial. Apart from the numerous training hours involved in initially repurposing canines’ instinctual drives for law enforcement use, agencies must be cognizant that continuous training is needed throughout the career of a working dog. Also, handlers must not allow the canine to make too many discretionary decisions. As noted by Mesloh (2006), “it is unrealistic to expect dogs to decide which actions warrant force and which ones do not. Regardless of the training methodology, the handler alone is responsible for the force delivered by his four-legged partner” (p. 334).

Conclusion

Although canines may have been a fad in the 1950s, today they are considered essential to law enforcement operations. From providing backup to officers patrolling rural areas to helping defend hometown and homeland security, police dogs have become indispensable to law enforcement, especially for the completion of certain tasks (Department of Homeland Security, 2008; Kirchmaier, 2006; Mesloh, 2006). Additionally, most agencies create canine units to minimize officer injury and to decrease incidents in which police have to resort to using deadly force (Meade, 2006). All in all, police canines are considered a safe and nondeadly alternative as well as a force multiplier. Admittedly, canines introduce an element of liability, but this generally stems from handlers’ inappropriate deployment of canines in nonserious and nondeadly confrontations with citizens.
Thus, rather than canines having to be retrained on apprehension techniques, perhaps more investment should be made to reeducate officers on reasonable versus unreasonable use of force. In the above-mentioned cases involving canine use of force, most liability ensues as a result of the officer handlers incorrectly letting their canines subdue nonthreatening misdemeanants. However, the ability of plaintiffs to win lawsuits is rare and thus canines are worth the investment.

Nevertheless, careful attention to the actions of handlers must be a priority for departments that rely on canines for the fulfillment of certain patrol operations and for departments who wish to minimize liability. In short, agencies must be unambiguous in policies and procedures related to the deployment of canines. Additionally, they must be vigilant that handlers are compliant of such policies and procedures and must take action if evidence to the contrary is discovered. Complacency with respect to canines can be detrimental to the safety of citizens and the legitimacy of an agency, especially if an officer’s four-legged partner tarnishes the reputation and image of the agency.

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Let the Beatings Begin: A Look at Law Enforcement’s Use of Force

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South Carolina has recently captured the national spotlight twice. Most recently for the forest fire that swept through Horry County destroying 70 homes, damaging another 100, and burning almost 20,000 acres of land. Through the effective delivery of services from law enforcement officers and fire fighters, no deaths nor injuries were reported. The other incident, however, came to light when several South Carolina State Troopers were indicted for using excessive force after their dashcams revealed them kicking, punching, and using their patrol vehicles to subdue suspects. These dashcam videos, which were recently released to the media via a Freedom of Information Act request, show, in three of the cases, troopers using their vehicles to run down and hit suspects who were fleeing on foot. These tapes caused such an outrage that Public Safety Director James Schweitzer and Patrol Colonel Russell Roark were ousted from their positions. All the officers and their supervisors have been named in federal lawsuits.

Civil suits against officers have been rising at an alarming rate, primarily due to the fact that most lawyers are aware of the many causes of action which may be brought against officers and their supervisors. The primary causes of actions are based on violations of the Civil Rights Act of 1964, which is more commonly referred to as 42 USC § 1983. This section provides that “every person, who under color of law, deprives another of any rights, privileges and immunities secured by the Constitution shall be liable to the party injured.” Actions filed under this section may be based on excessive force as well as negligent hiring, training, supervision, retention, and entrustment. The primary elements here are that there was an affirmative duty to supervise the subordinate, a failure to supervise, the failure was negligent, and that the negligence was the proximate cause of the plaintiff’s injuries. An officer is acting under color of law when he or she is exercising that legal authority which is granted pursuant to state or federal statutes, rules or regulations, or municipal ordinances. The U.S. Supreme Court has held that an officer and his or her department may be sued for money damages by the victim of an unlawful arrest (Malley v. Briggs, 1986).

The Fourth Amendment regulates the force that can be used in making an arrest or other seizure. The officer may use no more force than necessary to protect him- or herself or others from danger, to overcome resistance, or to prevent escape (Graham v. Connor, 1989). For years, law enforcement officers have struggled with “reasonable force.” What is reasonable? The consensus is what would a reasonable police officer would do in a similar situation. So the next question is, “What is a reasonable police officer?” With well over 700,000 law enforcement officers in the United States, how do we determine reasonableness? Are the reasonable arrest actions of an officer in Seattle reasonable in Miami or Detroit? Sam Faulkner, CEO, Response to Resistance, LLC, who developed the Response to Resistance/Aggression Policy (Action-Response Continuum), is still in the process of surveying law enforcement officers to determine their views on reasonableness.
Law enforcement personnel must still look to the courts for guidance. In their text, *Constitutional Law*, Jacqueline and Michael Kanovitz (2005) state that

Courts assess the reasonableness of an officer’s use of force for the perspective of a reasonable police officer on the scene. Force is excessive if it exceeds what a reasonable police officer on the scene would have deemed necessary to manage the situation at hand. The severity of the crime, whether the suspect posed an immediate threat to the safety of the officer or others, actively resisted arrest, or attempted to flee are the principal considerations. (Graham). The Supreme Court has cautioned that appropriate allowance should be made “for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving” about the amount of force that is necessary in a particular situation. Lower courts have interpreted this to mean that courts should limit their focus to the exact moment when the force was used. (*Carter v. Buscher*, 973 F.2d 1328 [1992]). The issue is not whether the officer’s earlier management contributed to the need for force or whether alternative strategies existed; the issue is whether the officer made a reasonable split-second judgment at this exact moment. (p. 146)

In South Carolina, the general rule is that reasonable force may be used to place a suspect under arrest. The permissible quantum of force employed varies from situation to situation. A reasonable level of force in one context may be unreasonable in another, and vice versa. Regardless, the essential principle under the particular circumstances surrounding the arrest is how much force to apply? The analysis applied by courts to determine the reasonableness of an officer’s actions focuses on the police conduct, viewed objectively in light of the circumstances confronting the officers at the time, without regard to their subjective intent or motivation. Factors a court will weigh include the severity of the crime at issue, whether the suspect posed an immediate threat to the officers or others, and whether the suspect was actively resisting arrest or attempting to evade arrest by flight (*Heyward v. Christmas*, 2004). The ultimate inquiry is whether a reasonable officer, confronted with the same circumstances, would have reacted in the same way (*Milstead v. Kibler*, 2001).

In some situations, the use of deadly force is reasonable within the meaning of the Fourth Amendment. Deadly force does not mean force that necessarily results in the death of the suspect, but, rather, a level of force that is reasonably likely to cause serious bodily injury or death. In *Tennessee v. Garner* (1985), the Supreme Court has described the circumstances under which the use of deadly force may be reasonable for purposes of Fourth Amendment analysis, and is therefore permissible.

Where an officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.
However, a vast majority of the cases dealing with excessive force concern resisting arrest, which is a misdemeanor, and an officer is never justified in using deadly force to affect an arrest for a misdemeanor (North Carolina v. Wall, 1982). Resisting arrest is a crime involving a person’s opposition by direct, forcible means against a law enforcement officer in order to prevent the officer from taking the person into custody. South Carolina Statute §16-9-320 is one such statute:

Opposing or resisting law enforcement officer serving process; assaulting officer engaged in serving process. (A) It is unlawful for a person knowingly and willfully to oppose or resist a law enforcement officer in serving, executing, or attempting to serve or execute a legal writ or process or to resist an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less that five hundred dollars nor more than one thousand dollars or imprisoned not more than one year, or both.

Even though force is used in less than 3% of arrest situations, it is in these types of arrests that officers sometimes become overzealous and use more force than necessary to overcome resistance. This can expose an officer and his or her supervisors to liability. While personal participation of the supervisor is not necessary, if a plaintiff can establish that the conduct of the subordinate, which resulted in the plaintiff’s injuries, was reasonably foreseeable, then liability will attach. All that a plaintiff needs to show is that the supervisor knew or should have known of the particular propensities of the subordinate officer which resulted in the plaintiff’s injuries. Further, a supervisor may be named as a defendant based on the allegations that he or she had some personal involvement, participation, or encouragement in the wrongful conduct of the officer. One such incident occurred in the City of Detroit:

During the evening of November 5, 1992, Malice Wayne Green, a black, unemployed steelworker, stopped his car to drop off a friend at a house in the inner city of Detroit, Michigan. He was observed by two white police officers, Larry Nevers and Walter Budzyn, who were working undercover and who suspected the location was a drug house. They ordered Green to get out of his car. When he refused, they radioed for backup help; then they dragged him out. Noticing that Green kept one fist clenched, the officers ordered him to open it. When he balked, they started beating him with their heavy metal flashlights.

While the policemen were beating Green, five additional officers arrived in response to the backup call. By then, it was later alleged, Nevers and Budzyn were hitting Green on the head with their flashlights. One of the five, a white officer named Robert Lessnau, joined in the beating. Another, Sergeant Freddie Douglas, who was the ranking officer at the scene, and who was black, did not participate in the beating; neither did he intervene to stop it.

Malice Green, 34, died that night. The next day, Detroit Police Chief Stanley Knox suspended Nevers, Budzyn, and the five backup officers from the force without pay. An autopsy a few days later revealed that Green had died of a
torn scalp and as many as 12 to 14 blows to the head, and that he had both cocaine and alcohol in his system at the time of his death. On November 16, 1992, Wayne County Prosecutor John D. O’Hair charged Officers Budzyn and Nevers with second-degree murder. Sergeant Douglas was charged with involuntary manslaughter and with neglect of duty for failing to stop the beating, and Officer Lessnau was charged with aggravated assault. All four pleaded not guilty. The three other officers were kept on indefinite suspension, but Prosecutor O’Hair said he did not have enough evidence to charge them with a crime. Budzyn and Nevers were convicted of second degree murder and did their time in a federal correctional institution in Texas. Budzyn was released in 1998 and Nevers has just recently been released. Officer Lessnau was found not guilty. The resulting civil lawsuit filed by Malice Green’s family against the City of Detroit, et al., was settled for $5.25 million.

It was interesting to note that during the course of the trial, Officer Nevers was asked why he hit Malice Green so many times with his flashlight. His response, as I recall, was that that was the way he had been trained many years before, and he had never had any additional training in areas such as Pressure Point Control Tactics/Defensive Tactics (PPCT/DT). Liability attaches to a municipality when the officer’s unconstitutional action results from execution of a formal written policy such as an ordinance, regulation, or written policy statement; is taken at the direction of a city official who has final authority to set policy on the matter; or is a predictable consequence of the conscious choice of the city’s responsible policymaker to take no action in the face of a known risk that deprivation of constitutional rights is almost certain to result. (*City of Canton v. Harris*, 1989)

So how do we correct the “overzealous” actions on the part of our law enforcement officers?

Don’t get me wrong here. Back in the early 1970s, when I was a young police officer, we meted out “street justice” on a regular basis. But in the late 1970s and early 1980s, things started to change, primarily due to an avalanche of lawsuits against law enforcement personnel at all levels. It became very apparent, in rather quick fashion, that our street tactics had to change. Officers were not only being subjected to lawsuits, but to criminal sanctions as well, just like Butzyn, Nevers, and many more.

The answer to correcting police actions in arrest situations seems to be in continuous training—not only for patrol personnel but for their supervisors as well. The best vehicle we have in place is inservice training. According to Lt. John Bennett of the Charleston, Illinois, Police Department,

To have a successful training program, administrators must “buy in” to the mission as well and be willing to commit the necessary funds and time needed to develop capable and competent instructors. Unfortunately, funds and time are the two areas in which those involved in the training function often find themselves struggling. Supportive administrators facilitate the effective prosecution of the program and affect its overall success or failure.
The mission statement of one law enforcement training facility states that training serves four basic objectives:

1. Well-trained personnel are better prepared to act decisively and correctly.
2. Training results in greater productivity and effectiveness.
3. Training nourishes cooperation and unity of purpose.
4. Training provides safeguards for being legally accountable for actions of personnel. (Monroe Community College Public Safety Training Facility, 2009)

It is this fourth area that we need to emphasize. Most state laws, and a growing number of police department policies, require all sworn officers to attend an annual inservice training program consisting of a minimum of 40 hours of relevant topics. Within the training blocks, at least eight hours are devoted to firearms. This entails qualifying with service weapons and weapons-related use of force tactics. Updates on state and federal statutes and cases are provided such as *Arizona v. Gant*, 556 U.S. ____ (2009), wherein the U.S. Supreme Court effectively overruled *New York v. Belton*, 453 U.S. 454 (1985), which allowed police officers to search the passenger compartment of a vehicle, and any containers found in the vehicle, when someone in the vehicle was arrested. Beyond legal updates, officers are given instruction on diversity, management, officer survival (which usually entails a stress management program), child sexual abuse, administrative policies and procedures, and defense and arrest tactics and procedures. Most departments require some type of testing at the end of each session and/or at the end of the inservice program. Officers who do not meet the departmental pass/fail scores are then subjected to remedial training. Officers are reminded that whatever they do on the street is always being watched by someone and that their actions will also be caught by a dashcam. Officers need to be periodically reminded that even though they want to beat the living daylights out of a suspect, they need to restrain themselves and not exceed the limits of excessive force laid out in *Graham v. Connor*. This is very difficult to do when the adrenalin is pumping through your body. It is in these circumstances that it is the supervisor’s responsibility to monitor the officer’s actions and, if necessary, bring those actions under control. Supervisors need to know that they, too, will be subjected to departmental sanctions, as well as lawsuits, should they fail to control the overly aggressive activities of their subordinates.

Police officers make hundreds of arrests every day in the United States, and only a small fraction of those arrest situations require the use of force. An even smaller percentage of those arrests involve excessive force. However, it is those very few situations that come into the view of the public. It is here that actions need to be taken to curb the use of force that exceeds reasonableness. Officers who display a constant abuse of authority need to be either counseled or join the ranks of the unemployed—just like the five officers in Alabama who were recently fired for using excessive force on a suspect who had been ejected from a minivan that officers had been chasing. Officers who, on rare occasions, display excessive force need to be reminded that this type of behavior can no longer be tolerated, and they must be subjected to departmental discipline. The key to the elimination of excessive force is the continual training of officers and the monitoring of their behavior by their supervisors.
Ronald Wilson is a retired police officer from Dearborn, Michigan. He holds a Bachelor of Science from Madonna University, a Master of Arts from the University of Detroit–Mercy, and a Juris Doctor from the Detroit College of Law. Although Professor Wilson has been licensed to practice law for more than 20 years, he no longer practices law but has devoted his time to teaching criminal justice, law, and American Government. Professor Wilson is the immediate past chairman of the Criminal Justice Department at Colorado Northwestern where he not only taught classes within the degree program but was in charge of the Colorado basic police academy, the out-of-state certification program, and the National Park Service Ranger Training Academy. Professor Wilson continues to teach in Colorado via webcam. He brings with him a tremendous amount of insight into the inner workings of city, county, state, and federal governmental agencies, and he is prepared to assist students in their endeavors to become attorneys, governmental agents, or, in general, better citizens. Professor Wilson is married and has three grown children. The oldest child works as an EMT at a major hospital in the Detroit area; the middle child is an analyst with the Department of Homeland Security in Washington, DC; and the youngest is a police patrol supervisor in South Carolina. His wife is an administrative assistant with a major Detroit area firm. Both Professor Wilson and his wife are avid golfers.
Beyond Arrest Control

Chet Zajac, Retired Police Officer

Fact

During the past ten years (1999-2009), an average of one law enforcement officer died every 53.41 hours or an average of 164 offices per year. As of May 29, 2009, there were 53 law enforcement officers killed in the line of duty in 2009. On an average, more than 60,000 law enforcement officers are assaulted each year, an average of one every 9 minutes, resulting in some 17,000 injuries. Let's repeat that . . . one every 9 minutes.

History/Philosophy 2009

Law enforcement owes a large debt of gratitude to the pioneers of American arrest control in that their efforts in the last 50 years have given officers skills and tools to control the most common types of subjects who “resist arrest.” Arrest control systems have forever changed the landscape of modern law enforcement, creating an objectively reasonable foundation to regular and customary use of force training. Arrest control skills are designed to change the mind of the subject who wants to “get away” by making defensive (pulling away) moves, or a simple assaultive attempt (punch/kick/bite) on the officer, but will ultimately succumb to police authority and make the choice to comply because of negative reinforcement for unacceptable behavior.

Arrest control systems are a sampling of useful techniques such as the application of handcuffs, joint locks, basic baton strikes, simple neck restraints, punches, and kicks to deal with that same “eventually compliant” subject.

An essential and professionally progressive development in the world of arrest control training in the last decade or so has been the continued advancement of dynamic scenario training. Equipment companies have given trainers, pads, safety gear, replicas, projectiles, and inert products that enhance reality simulation to the level that anything less could and should be considered negligent training simply because the training does not truly represent the reality the officer must face in the field. Ironically, even though manufacturers have given us more options than ever before in the history of law enforcement training, departments are not taking advantage of the opportunity; that is, of course, unless the fight in progress is at the Fitness Club Juice Bar where the environment is comfortably heated in the winter, cooled in the summer, and everyone is in their athletic clothing/shoes without 20+ pounds of duty gear, body armor, boots, gloves uniforms, rain, snow, ice, gravel, alcohol, drugs, etc. . . . yes, reality. Trainers recognize that dynamic scenario force on force training has created new challenges for policymakers, officers, and budgets and is gear and equipment intensive but not near as challenging as the catastrophic consequences of failure in the street battle (refer back to paragraph #1).

Why people do a job and don’t properly train and equip themselves for it is an enigma to any serious professional in any industry, period.
Local, county, state, and federal agencies are customarily behind the curve when it comes to basic and inservice training. They summarily and negligently ignore factual science and research which has taught us undisputedly that use of force training, at a minimum, must be

- frequent enough to keep skills in the short-term memory where officers will need them in a time of stress.
- simple enough to perform under the rigors of stress.
- comprehensive enough to build an effective inventory of skills for professional and effective decisionmaking.
- real enough to accomplish the stress inoculation necessary for competence and confidence, thus reducing stress and improving performance.
- in compliance with State, Circuit, and Supreme Court rulings that date back decades.

**Beyond Arrest Control**

The points made thus far are where the topic of arrest control needs and analysis may end, but dismally it is merely a preface to the real issue. The state of affairs in the training arena of our industry is not simply deficient in the control of the “eventually compliant” subject, but grossly deficient in the ability to control the motivated criminal—you know, the guy with nothing to lose when officers must go beyond arrest control to survive the moment. That scenario is when standard arrest control training truly falls flat on its face (pun intended).

The officer was on patrol on a police department graveyard shift early one Sunday morning at 0430 hours. His two-square-mile tourist town was overflowing with 60,000 people during Christmas week and, yes, the Sheriff’s deputy who was 30 minutes away was the officer’s only backup, and they were the thin blue (and green) line in the entire city and county. The officer rounded a corner downtown, and looking down the snow- and ice-covered alley behind a popular bar, he sees a man beating the snot out of another man pinned against a dumpster, witnessed by a female screaming banshee style, watching the show. The beater was punching, kicking, and tearing at clothes as he screamed insanely at his target who was not able to fall and cover due to the dumpster at his back. Hitting the overheads and takedown lights and calling out the “fight” location, the officer requested the backup he knew was miles away and engaged the apparent aggressor.

At the time, the evolution of the officer’s department’s use of force training and equipment was lacking; he had no OC or TASER to “reach out and touch” the subject from a distance. As the officer screamed, “Police, you’re under arrest,” the aggressor stopped his beating of the now fallen subject and looked at the officer the way the officer recalled gang members looking at him during his inner-city Detroit upbringing—a scoffing taunt and stance that told the officer he was going to enjoy engaging this cop who was alone in the alley.

Commanding him to “Get down” as he closed the gap, reaching for his baton (which never came out because of closing distances), the officer charged the suspect. The fighter, a left-handed experienced street warrior, ignored the officer’s verbal commands and lunched for a clash with a left hook in time to meet the officer’s block of his hook and a return palm heel to the chest, punch to the solar plexus, second palm heel to the chin,
and forearm to the face, laying his nose across his face and cutting lips on his teeth. The officer had originally planned on the CQB (close quarters battle) only long enough to check him away and pull his baton, but the fighter turned out to be a motivated and determined sociopath with a (intoxicated) pit bull mentality; he had fought and beaten cops before (criminal history) and was mentally and physically prepared to do it again. The four full power strikes only slowed him down enough for the officer to zone to the outside and encircle his neck with a lateral vascular neck restraint. Being 6’3” and 210 pounds with 30 years of martial arts training under his belt, the officer also “enjoyed” (tongue in cheek) the engagement from the sense that he was familiar with such clashes and had prepared with three-times-a-week martial arts training sessions and daily aerobics and weight training for decades. While compressing his newly intimate opponent into submission, the officer was blindsided by the suspect’s girlfriend (tunnel vision under stress?). She was screaming and clawing like a cat lit on fire but luckily very intoxicated and inaccurate. While holding onto the neck restraint with one arm, the officer back fisted the abdomen of the wild woman and immediately foot swept her with all the skill he could muster. She hit her tail bone on the pavement full weight and her breath and the fight in her quickly left. The officer’s neck restrained subject went limp, and the officer’s two pair of cuffs and hobble were put to use until backup arrived. The officer was exhausted, elated at the “win,” and at first angry. Later, upon reflection, he was concerned to think of the many officers not prepared for that very same encounter. Like boxer Mike Tyson said, “Everyone has a plan until they get hit.”

The Disorder at Hand

Antisocial Personality Disorder is also known as psychopathy or sociopathy. Individuals with this disorder (sociopaths) have little regard for the feeling and welfare of others. As a clinical diagnosis, it is usually limited to those over age 18. It can be diagnosed in younger people if they commit isolated antisocial acts and do not show signs of another mental disorder. Antisocial Personality Disorder is chronic, beginning in adolescence and continuing throughout adulthood. There are ten general symptoms that to the law enforcement community merely document what we know to be true. Much of the following list describes the sociopathic criminal:

1. Not learning from experience
2. No sense of responsibility
3. Inability to form meaningful relationships
4. Inability to control impulses
5. Lack of moral sense
6. Chronically antisocial behavior
7. No change in behavior after punishment
8. Emotional immaturity
9. Lack of guilt
10. Self-centeredness

Challenge the Traditional Model

As the “attributes” of sociopaths are integrated into the violent exchange with an officer, we are challenged to examine the traditional arrest control model.
First is to understand, admit, and commit to the fact that there is a significant difference between the skills/mindset needed for the “eventually compliant” subject described earlier and the sociopathic, motivated criminal. Given that those differences are understood suggests that the different situations require unique skill sets.

Second, preparation and training, for the street battle type fight begins with a comparison to arrest control. That comparison is as different in scope as drawing your firearm to control a subject in a low-threat situation (e.g., felony car stop, building clearing) and shooting a dedicated, motivated subject who will stop at nothing to end you (again, see paragraph #1). Fundamentals of aerobic fitness, anaerobic strength, street fighting, submission wrestling, the current mixed martial arts (MMA) following, and other real (nonsport) martial arts are essential to the quality of skills needed to deal with performance under stress issues and to go beyond arrest control. Mental preparation from physical competence, creating the will to win, must supersede the subject’s will to defeat you.

Third, officers must have the ability to discern arrest control from a fight. Truly understanding your skill, physical abilities, and limitations comes with training that is specifically designed to win the fight, not merely control an arrestee or to survive. Fighting in combination skills designed to violently, thus quickly, disable the subject and defeat their “will to fight” is how it starts; arrest control is how it ends.

Last, contingencies in preparation for winning not merely surviving must be in place. Contingencies such as lethal force transitions in the form of empty-hand skills, edged weapons, and firearms must be readily available to the officer both philosophically and operationally. Officers must have the skills/equipment and know, through training, when and how to deploy them before they begin to lose the battle in the spirit of the preemptive strike.

As an industry, law enforcement officers continually face a better trained and motivated criminal. Our society has quickly evolved to having martial arts, self-defense, kick boxing, MMA, and fight-aerobic studios on almost as many corners as gas stations and in every community college campus, and “Fight Clubs” groom street fighters nightly. Video games have sharpened synaptic pathways and enhanced neurotransmitter functions in our “customers.” We have entered into a time of war internationally, and hundreds of thousands of soldiers are trained in the combat arts. We have sent the full contact fights and MMA matches to cable TV, creating a very popular activity and hero worship. Yet, ask how many of these well-trained, New Wave fighters and schools are checked for their criminal history or psychological profile before they receive their training or notoriety? Remember the recent “roid-rage” murders in professional wrestling?

Though arrest control systems have thankfully come a long way and contain a necessary set of skills for the average arrest or resistance, they have further to go, and skills beyond arrest control are now at the forefront of challenges police departments face to meet the needs of officer survival. Find a school where fellow students like to hit you and like to get hit, those willing to roll on the mats and sweat with you to avoid bleeding in the streets.
Chet Zajac is a retired police officer. He has 17 years of experience as an Academy Instructor and is a full-time law enforcement trainer. (He was the officer in the alley that night.) He has served as a subject matter expert for the Colorado POST Board, is a court-recognized use of force expert witness, and is an accomplished martial artist. Chet is dedicated to the success of law enforcement training. Feel free to contact him with questions or comments:

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Performance Evaluation of Chemical Agent Delivery Systems

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Introduction

In a recent civil court case, a law enforcement agency was criticized for not deploying pepper spray against an armed offender prior to using deadly force. The suspect, armed with a hammer, pursued the officer through a residential neighborhood. The officer drew his weapon and attempted to disengage by returning to the patrol vehicle. After a pursuit that lasted over one and a half minutes, the suspect managed to block the officer’s path to the vehicle and closed to a distance of six feet. With the hammer raised, the suspect lunged forward and the officer fired a single round. Although striking the suspect in the chest, the suspect survived to file a civil suit based partially on the fact that the officer was equipped with pepper spray and failed to deploy it prior to the use of deadly force. The issue of reactionary (nondominant) hand use of pepper spray was critical to this suit as the officer’s dominant hand contained a firearm. This concept had not been explored as pepper spray training does not include reactionary hand use of the products. As with most product-based training, agencies tend to mandate that their personnel utilize their tools in accordance with the approved techniques taught in training. The end result was that officers did not train with nor deploy chemical agents with the reactionary hand. Consequently, there were no case studies or data to disprove that an officer shouldn’t be able to hold a suspect at gun point and accurately deploy a chemical agent with the reactionary hand. This disturbing trend suggests that unrealistic expectations continue to be attached to even the most basic of law enforcement technology. Furthermore, officers may be placing themselves at risk due to the dearth of research regarding the performance of pepper spray. This study examines the physical properties of nine pepper sprays, quantifies the operational limits, and determines the feasibility of reactionary hand use.

Literature Review

Historical

The use of chemical agents can be found throughout history. In 178 AD, a peasant revolt in China was quelled through the use of lime dust, a severe irritant, which was used to create an early form of tear gas (Mayor, 2003). Quicklime projectiles
were used to create clouds that both suffocated and blinded enemies throughout the Byzantine war in 941 AD (Partington, 1999).

Noxious smoke from poisonous plants was also propelled from a smoke device to repel attempts of the Roman invaders to tunnel under the city of Ambracia’s walls (Mayor, 2003). Leonardo Da Vinci later created a similar poison smoke machine in the late 1400s (Partington, 1999). Ancient Chinese writings contain literally hundreds of recipes for creating chemical agents that were able to disable or even kill enemy troops (Mayor, 2003). The earliest form of pepper spray appeared in the 16th and 17th centuries by means of the Caribbean and Brazilian Indians who burned hot pepper seeds to create an irritant cloud against Spanish conquistadors (Mayor, 2003).

CN (Chloroacetophenone) is a lacrimal gas that causes profuse, uncontrollable tearing; shallow labored breathing; tightness of the chest; and severe skin irritation (Edwards, Granfield, & Ornen, 1997). A CN agent is commercially known as Mace, one of the first American companies to market CN in its aerosol form (Dobrowolski & Moore, 2005).

CS (Chlorobenzylidene malononitrile) was named after Corson and Stoughton who first synthesized the compound in 1928 (Tyler & King, 2000). The lower toxicity along with its fast-acting results helped CS’s acceptance in many agencies. In fact, the U.S. National Guard transitioned from CN to CS for riot control as early as 1960, with many law enforcement agencies following suit shortly thereafter (Edwards et al., 1997).

**OC Spray**

In the law enforcement community, CN and CS were eventually replaced by oleoresin capsicum or OC. Commonly known as pepper spray, OC is a naturally occurring inflammatory agent derived from cayenne peppers (Lumb & Friday, 1997). Contact with the OC in pepper spray causes blephrospasm (involuntary tight closure of the eyelids) attributed to the dilating of capillaries, copious amounts of nasal/sinus drainage, gagging, coughing, and shortness of breathe (Das, Chohan, Snibson, & Taylor, 2007; Lumb, 1997; Zollman, Brag, & Harrison, 2000). These reactions allow OC to be effective even when dealing with the mentally ill, highly intoxicated, and very agitated suspects, unlike its predecessors (Edwards et al., 1997).

**Delivery Systems**

Commercially available chemical agents utilize various types of carriers in order to deliver the payload a greater distance. Carriers used to deliver the OC can come in stream, fog, foam, and gel form. Each type has a specific issue that it attempts to address (i.e., single target, large groups, or greater accuracy and distance). The facial area is the primary target for all of these delivery systems.

The stream delivery system is a concentrated method which allows for a solid stream of spray to be administered to the target. The foam delivery system uses a sticky foam solution with consistency similar to shaving cream. Once deployed, the foam will stick to the subject causing the solution to be immediately absorbed. Foam has minimum blowback risk and breaks down within minutes, resulting in
a nonstaining residue that is easy to clean up and is nonvaporizing. Gel pepper spray sticks to the subject and penetrates their pores. Blowback is minimal to nonexistent.

**Effectiveness**

Under ideal conditions, the hope for OC spray is to cause a reduction in aggressive behavior and officer/suspect injuries by incapacitating the suspect (Morabito & Doerner, 1997). When OC spray first hit the market, there was much enthusiasm, which was eventually linked to exaggerated claims about its effectiveness (Morabito & Doerner, 1997).

When compared with impact weapons, as a less-lethal force alternative, OC spray was found to be as effective in stopping subject resistance, with the added benefit that the majority of suspects sprayed did not require medical treatment (Rogers & Johnson, 2000). OC was one of the cutting-edge less-than-lethal weapons of its time as it incapacitated suspects by “causing the eyes to tear and swell shut, mucus to drain profusely from the nasal passages, bronchial passages to constrict, and breathing [to] become more labored” (Morabito & Doerner, 1997, p. 681). Prior literature suggests that many law enforcement agencies believe pepper spray to be the “magic bullet” to reduce officer and suspect injury as well as citizen complaints (Kaminski, Edwards, & Johnson, 1998; Rogers & Johnson, 2000).

A study conducted in Baltimore for the National Institute of Justice found that out of 194 incidents involving pepper spray, 90% of the suspects were incapacitated enough to be arrested effectively (Greinsky, Martin, & Holland, 2000). This study was evaluated through a dichotomous variable of effective or noneffective (Kaminski et al., 1999). While reviewing the Baltimore Police report on pepper spray, it was noted that there were significant variations in human responses that could not fully be explained by just using a dichotomous variable (Kaminski et al., 1999). When New York City conducted their own survey of officers, it was found that officers rated the pepper spray at 85% effective (Greinsky et al., 2000). More recent studies indicated that effectiveness was between 68 and 72% (Mesloh, Henych, & Wolf, 2008).

Differences in effectiveness are likely the result of the difficulty quantifying a “successful” deployment as pepper spray formulations differ greatly. Initially, the strength of the spray was believed to be related to the heat rating, the quality of the source peppers, and the percentage of OC in the formulation. The Scoville Heat Rating, created in 1912, assigns a value to each pepper. Pure capsaicin has a rating of 15 million, while pepper spray has an average rating of 5.3 million. Most OC sprays identify their specific heat rating for consumer comparison. Recovery time after exposure is believed to be based on the percentage of capsicum in the formulation. A 15% solution may require one and a half to two hours to recover, while 2% may require only 15 to 30 minutes. Thus, suspects are forced to endure burning pain for a shorter period of time. An added benefit of lower solutions comes in the fact that the solution can penetrate mucus membranes and the skin’s pores much easier, which leads to faster more immediate results. More recently, emphasis has been placed on the percentage of capsaicinoids as they are considered the active ingredient.
Methodology

A series of research trials were conducted to evaluate the physical performance of nine OC products currently used by law enforcement. The goal was to define operational limits and quantify performance factors previously untouched in the extant literature. These factors fell into two primary groups: (1) product and (2) human. Product-related factors include maximum range, number of uses per canister, and the cost of deployment. Human-related factors focus upon the ability for test subjects to accurately strike a target with an inert stream of chemical agent.

Nine chemical agents were tested under controlled conditions utilizing a standardized protocol. All of the chemical agents were law enforcement products and designed to be carried on an officer’s duty belt. Each product was test fired from a fixed position at predetermined distances beginning at six feet and extending outward to 21 feet in three-foot increments. One-half second deployments were utilized to prevent inadvertent aim correction. Photographs and measurements were taken after each shot.

Twenty-one volunteer test subjects agreed to participate in the human factors study. Each participant fired an inert liquid (non-irritant) from a standard chemical agent dispenser. The inert liquid was fired at a standardized target from a distance of eight feet (see Figure 1). Accuracy was measured as hit/miss and difference from central point of aim to point of impact of the spray. The primary goal was to examine the differences in accuracy between the dominant and nondominant firing hands. Hand dominance is an important variable when applied to accuracy with weapons. Dominant hand activities were shown to be less laborious on the cerebellum, which may be important when an officer is forced to make a split second decision (Jancke, Specht, Mirzazade, & Peters, 1999). There is also a crucial union between the visual system and nervous system that controls goal-directed movement (Horstmann & Hoffman, 2005). Each volunteer fired a total of ten shots (five with each hand), while research assistants collected measurement, photo, and video data.

Findings

Each brand’s statistics (e.g., size, type, and cost) was combined with the physical performance data of the nine pepper sprays (see Table 1). The sample of pepper sprays included seven streams, one foam, and one gel.

Sizes varied and included five MK-3s, three MK-4s, and one MK-5. Each canister was fired in one-half second bursts until its reservoir was empty. Not surprisingly, there were substantial differences between products as performance ranged from 12 to 61 shots (M = 28.6; SD = 15.2). Utilizing this data and the cost for each product, it was then possible to formulate a cost per shot (CPS) value for each brand. The number of uses per canister depends upon the duration of each spray. Firing at a suspect at greater distances consumes a greater portion of the canister.
Table 1. Description and Performance of Pepper Sprays

<table>
<thead>
<tr>
<th>Brand</th>
<th>Size</th>
<th>Type</th>
<th>Liquid (oz)</th>
<th>Cost¹</th>
<th>Shots</th>
<th>CPS²</th>
<th>15' Drop</th>
<th>18' Drop</th>
<th>21' Drop</th>
<th>Max. Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MK-4</td>
<td>Stream</td>
<td>3.0</td>
<td>19.99</td>
<td>33</td>
<td>0.61</td>
<td>0.0</td>
<td>17.0</td>
<td>nd</td>
<td>16’ 2”</td>
</tr>
<tr>
<td>2</td>
<td>MK-3</td>
<td>Stream</td>
<td>1.5</td>
<td>15.99</td>
<td>12</td>
<td>1.33</td>
<td>0.0</td>
<td>18.0</td>
<td>nd</td>
<td>15’ 2”</td>
</tr>
<tr>
<td>3</td>
<td>MK-4</td>
<td>Stream</td>
<td>3.1</td>
<td>12.99</td>
<td>61</td>
<td>0.22</td>
<td>0.0</td>
<td>17.0</td>
<td>nd</td>
<td>13’ 8”</td>
</tr>
<tr>
<td>4</td>
<td>MK-3</td>
<td>Stream</td>
<td>1.5</td>
<td>11.99</td>
<td>28</td>
<td>0.43</td>
<td>0.0</td>
<td>34.0</td>
<td>nd</td>
<td>13’ 8”</td>
</tr>
<tr>
<td>5</td>
<td>MK-3</td>
<td>Foam</td>
<td>2.4</td>
<td>19.99</td>
<td>33</td>
<td>0.61</td>
<td>25.5</td>
<td>nd</td>
<td>nd</td>
<td>9’ 2”</td>
</tr>
<tr>
<td>6</td>
<td>MK-3</td>
<td>Stream</td>
<td>1.8</td>
<td>14.99</td>
<td>13</td>
<td>1.15</td>
<td>0.0</td>
<td>22.0</td>
<td>43.0</td>
<td>15’ 2”</td>
</tr>
<tr>
<td>7</td>
<td>MK-4</td>
<td>Stream</td>
<td>3.3</td>
<td>16.99</td>
<td>24</td>
<td>0.71</td>
<td>0.0</td>
<td>13.0</td>
<td>51.0</td>
<td>17’ 2”</td>
</tr>
<tr>
<td>8</td>
<td>MK-5</td>
<td>Stream</td>
<td>4.0</td>
<td>20.99</td>
<td>37</td>
<td>0.57</td>
<td>0.0</td>
<td>14.0</td>
<td>43.0</td>
<td>13’ 8”</td>
</tr>
<tr>
<td>9</td>
<td>MK-3</td>
<td>Gel</td>
<td>1.6</td>
<td>16.99</td>
<td>16</td>
<td>1.06</td>
<td>0.0</td>
<td>12.5</td>
<td>27.5</td>
<td>16’ 8”</td>
</tr>
</tbody>
</table>

¹ Cost in dollars
² Cost per shot in dollars
nd = no data
Secondary testing of the pepper spray examined the linear drop of each brand as the distance between the target and canister increased. Of the nine products tested, only the foam-based product produced a substantial deviation in trajectory at 15 feet (25.5” drop). However, this changed dramatically at 18 feet where the linear drop ranged from 12.5 to 34.0 inches (M = 18.4; SD = 7.0). At 18 feet, the foam-based product was unable to reach even the bottom of the target. This trend continues at 21 feet where five of the nine brands were unable to reach the target. The remaining four products’ drop was substantial (27.5 to 51.0”) and would be unlikely to deliver a sufficient amount of chemical agent to the suspect to induce incapacitation.

As a result of these findings, the maximum effective range was identified for each product. These ranges varied considerably (M = 14.6; SD = 2.5) and appear to be uncorrelated to canister size. Foam was identified as having the least reach (9’2”) while gel was able to score near the top of the maximum range scale (16’8”). The highest maximum range score was obtained from a MK-4 stream (17’2”).

The human subjects test group was made up of 13 men and eight women. Seventeen reported being right handed, while only four were left handed. The median age was 22 years (M = 23.8; SD = 5.4). A t-test indicated that no statistically significant differences existed between the genders which allowed the groups to be aggregated. The distribution of scores varied greatly between the dominant (M = 4.57; SD = 0.51) and nondominant hands (M = 3.52; SD = 1.03), although both groups were negatively skewed. The dominant hand scores were limited to the upper end of the scale, while the nondominant hand scores were in a somewhat normal distribution across the entire scale. Interestingly, perfect scores occurred 57% of the time for dominant hands and only 19% of the time for nondominant hands (see Table 2). It was also noted that the most common type of miss with the nondominant hand was high. In fact, more than 50% of the misses that occurred with the nondominant hand were above the target. This trend is illustrated below in Figure 2.

| Table 2. Comparison of Hand Score Accuracy |
|-----------------|-----------------|-----------------|-----------------|-----------------|
| Score | Frequency | Percent | Frequency | Percent |
| 1  | 0 | 0.0 | 1 | 4.8 |
| 2  | 0 | 0.0 | 1 | 4.8 |
| 3  | 0 | 0.0 | 9 | 42.9 |
| 4  | 9 | 42.9 | 6 | 28.6 |
| 5  | 12 | 57.1 | 4 | 19.0 |
Conclusions

This type of testing was not without difficulty. Contamination of the test area by the chemical agents necessitated the use of respirators and protective garments. These precautions only reduced the level of exposure to research personnel as a fine mist was frequently created by the pepper spray as the stream separated into smaller and smaller droplets. This drop and spray effect has been noted in prior scientific literature (Lin & Rietz, 1998) and most recently applied to the liquid dynamics of pepper spray (see Fatah, Presser, & White, 2007). This pepper spray mist is the most common cause of cross-contamination of law enforcement officers and provides significant challenges in deployment. Photographic records of testing indicated that as the stream of pepper spray left the nozzle, it began to break up into large uniform drops consistent with the Rayleigh type breakup (a core theory of jet dynamics). As these droplets travel further and further from the source, they continue to break apart and eventually atomize into a mist. As a result, missing the target is not without consequence. After passing the target, the stream will
continue on and break into an unpredictable mist that may not be easily visible to the eye (see Figure 3). Law enforcement officers may unintentionally stray into this cloud and become incapacitated.

Figure 3. Mist Created from Pepper Spray

Testing the physical parameters of the different pepper sprays suggests that there are substantial differences between similar products. These differences are quantifiable in the maximum range, number of shots, and cost. Maximum range, utilized as a dependent variable in this analysis, provided the greatest linear distance that each product could be deployed. However, it was always possible to extend this range by elevating the canister nozzle. This was eliminated from testing as it was found that blowback risk increased dramatically and appeared to hasten the development of a pepper spray mist.

Initially, it was hoped that a cost/benefit ratio could be produced that could aid in the procurement of chemical agents. While it is possible to some degree to create this model, the number of unquantifiable factors (such as effectiveness and delay of onset for each product) significantly degrades its utility. Additionally, there are some factors such as the reduction of blowback risk that completely elude quantification. Pepper foam substantially reduces the risk of blowback but has a corresponding reduction in maximum range and requires the user to be much closer to a combative suspect. Pepper gel appears to reduce blowback while maintaining a high maximum range, but to date, no known studies have been conducted on its effectiveness. As a result, many of these test results produced more questions than answers.

It was assumed that a product that contained sufficient propellant for a larger number of shots would also lead to larger maximum ranges. However, there was no correlation between the number of possible shots and the range of the chemical agent. MK-3 canisters, representing the smallest duty belt carried pepper sprays, contained a smaller amount of liquid, which frequently translated into a smaller number of shots and, thus, a higher cost per use. Canisters, despite their size markings (e.g., MK-3, MK-4, MK-5), did not conform to a uniform amount of
liquid content. Additionally, the size of canisters and amount of liquid contents were not a consistent indicator of performance. Three different size canisters had identical maximum ranges, with some MK-3s outperforming MK-4s and some MK-4s outperforming the MK-5.

The human subjects testing provided considerably more insight. Dominant hand performance was clearly more accurate than nondominant hand. However, the distribution of scores is even more meaningful. With the dominant hand, none of the test subjects scored below 80%. Conversely, over half of the nondominant hand scores fell below the eighty percentile. This dichotomy in performance suggests that nondominant hand use of pepper spray is not appropriate in even low-level confrontations due to the substantial risk of blowback contamination. This risk in a deadly force confrontation is completely unacceptable given that the margin for error is so small.

The vast majority of research focuses upon the officer-suspect factors in the analysis of use of force encounters. However, the officer-product factors may be able to explain significantly more of the variance in the successful deployment of law enforcement technology. Each law enforcement tool has distinct strengths, weaknesses, and operational limits. This was especially true with the products examined in this study. Some products were able to reach considerable distances but created substantial contamination issues as their streams began atomizing within feet of the user. Other products were able to combat this problem but at the cost of reduced range. Unfortunately, there is no regulating agency for the vast majority of law enforcement products, and agencies frequently rely on data provided by manufacturers that may be skewed to their benefit. Consequently, agency testing and evaluation prior to procurement becomes critical to the success of later field deployments.

References


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Police Handgun Marksmanship and Gunhandling Training: Implications for Policy and Practice

Gregory B. Morrison, PhD, Ball State University

Introduction

Academic research into police use of deadly force over the past four decades generally has focused on two areas: (1) understanding these complex, often confusing and dangerous encounters that carry great risk for police and the public, and (2) limiting police use of deadly force through a combination of constitutional, statutory, and policy provisions. This is appropriate in a democratic society that perpetually seeks to limit governmental intrusions into the lives of its people, particularly in the case of one as serious as the use of deadly force. From the standpoint of risk-management, there is a strong desire to reduce governmental exposure to state and federal civil suits which sometimes produce huge monetary awards for plaintiffs. The combination has resulted in much knowledge about the nature and extent of police use of deadly force, laws, and policies to constrain police officers in their use of this extraordinary power, and a variety of control measures to encourage compliance (see Geller & Scott, 1992, for exceptional coverage of early research in this area).

Despite all that has been learned and applied, scant attention has been focused on the more technical matters associated with the safe and effective use of handguns. Marksmanship and gunhandling, for example, must seem esoteric to many of the persons interested in policies about the use of deadly force. For instance, proscribing the use of firearms against nondangerous fleeing felons, or shots fired as warnings or to summon assistance, is a far different matter than developing and delivering comprehensive programming that prepares officers with the necessary knowledge, skills, and abilities to prevail over armed, dangerous, and determined offenders. More research and program evaluation focused on the full spectrum of outcomes of high-risk police-public encounters comprises the natural extension of earlier groundbreaking research into police use of deadly force. Since police use of deadly force is at relatively low levels and the vast majority of shootings justified based on an objective reading of the facts, the timing has never been better for shifting some research focus in this important area toward further improving police performance. The handgun remains the principal police firearm for unanticipated emergencies and, therefore, attracts the bulk of academy firearms training resources, including contact hours. Yet there is virtually no detailed information in the academic literature on the development, content, delivery, and impact of this training on the outcomes of high-risk encounters during which police reasonably may threaten to use or use deadly force.

This paper fills a portion of this void by presenting previously unpublished findings from a study on police firearms training conducted with the assistance of the Washington State Criminal Justice Training Commission (WSCJTC) (Morrison, 2001; Morrison & Shave, 2002). That survey project gathered an extensive array of data through two surveys that explored, among other topics, similarities and
differences in department-based inservice marksmanship and gunhandling training that is central to police proficiencies in the use of deadly force. The survey of departments \((n = 124)\) inquired about training policies and customary practices, while the instructor \((n = 224)\) survey probed opinions on key facets to this vital training (see Morrison, 2003, 2006b, for more details on the administration of these surveys and other important findings).

Washington is progressive in the area of police firearms training, with one prominent indication being the Washington State Law Enforcement Firearms Instructors Association (WSLEFIA). WSLEFIA is unusually active for a statewide association even though at the time of the study there was no statutory requirement\(^1\) that departments provide ongoing handgun training and requalifying for their sworn personnel. Legally, police officers there need not have participated in additional education and training after graduating from the Basic Law Enforcement Academy (BLEA). WSLEFIA holds a three-day instructor conference each summer that includes classroom presentations, hands-on training, requalifying sessions, and practical competitive shooting matches. Importantly, WSLEFIA worked closely with the Commission such that their combined leadership fostered high expectations regarding instructor development and continuing education, along with inservice firearms and deadly force training programs. WSLEFIA aided in pilot testing both instruments and encouraged its members to participate, while WSCJTC assisted in administering the surveys by mail, collecting returned surveys, and creating the data file. Their combined assistance was central to the success of the project and undoubtedly contributed to the high participation rate of 50% among departments which, given the sensitive nature of the topic, is remarkable.

**Divergent Approaches**

While even modestly informed police firearms instructors are aware that their departments approach training in a variety of ways, earlier studies rarely quantified or otherwise usefully described this training (e.g., see Langworthy, Hughes, & Sanders, 1995; Matulia, 1982; McManus, Griffen, Witterroth, Boland, & Hines, 1970; Skillen & Williams, 1977; Strawbridge & Strawbridge, 1990). We now know that departments take dramatically different approaches to instructor development and staffing; the frequency, duration, and emphasis of training; the frequency, difficulty, and significance of inservice handgun requalifying; and assessing officer-involved shootings (OISs) (Morrison, 2003, 2005, 2006a, 2006b, 2008b). We know far less about the degree to which systematically collected information informs trainers about the impact of their programs on officer performance in high-risk field encounters (e.g., consider Schade, Bruns, & Morrison, 1989). On the bright side, some departments heavily invest in developing expertise in their instructors; frequently conduct inservice training; de-emphasize rote requalifying that principally measures marksmanship skill, often impractically; and assign a high priority to practical scenario training to provide useful experiences in applying tactical procedures, developing creative solutions to problems posed, and making judgments about using deadly force. Far less encouraging is that many departments have their officers requalify once a year using an unchanging course-of-fire, rarely engage in training that would maintain more than very low skill levels, rarely introduce new skills, and provide few opportunities through which officers learn and then must demonstrate their ability to integrate knowledge and skills during unpredictably
realistic scenarios (see Morrison & Vila, 1998, for an extended discussion of police handgun qualification processes and outcomes).

Departments, therefore, are known to rely upon a surprisingly diverse array of training frameworks in their efforts to accomplish the presumably shared goal of maximizing officer and public safety during dangerous encounters. Preparing officers for those occasions when they reasonably may threaten to use or use deadly force to overcome potentially lethal assaults against themselves and other officers certainly should reside near the top of the list of competencies that training programs should produce. The extensive resources committed to this and related weapons during academy basic training attests to this, but graduates then are solely dependent upon their employing departments for maintaining and supplementing their skills throughout their terms of employment. As found elsewhere and as presented in this paper, there are many stark differences in the content, extent, delivery, and assessment of this programming.

This paper therefore delves into this fascinating area in order to begin examining more detailed elements of the content to this critical training (i.e., the techniques that comprise the substance to handgun and deadly force training). This is as important as the frequency and duration of inservice handgun activity sessions, particularly since impractical content delivered frequently hardly is acceptable for officer and public safety, or compatible with a professional environment that increasingly seeks greater accountability (e.g., see Commission on Accreditation of Law Enforcement Agencies [CALEA], 2009; Walker, 2001). There is much we simply do not yet know, but the findings from this study confirm long-standing anecdotal impressions that departments reflect wide-ranging approaches on marksmanship and gunhandling techniques and instruction, as do instructors in their opinions on these matters.

Before providing needed background for readers who might be relatively unfamiliar with the more technical facets to police handgun and deadly force training, it is important to note that there might be a positive bias to the findings presented and discussed here. The picture that emerges could be better than might be found in many other states since departments and/or instructors in Washington on average might be more motivated, knowledgeable, experienced, and discerning than in many other states. This is difficult to accurately determine and admittedly is subjective, but it is worth considering that many states do not appear to have firearms instructor associations. Among those that do, there often appear to be focuses other than instructor development (e.g., competitive handgun shooting of various types) that not always are clearly related to the training function.

**Technological Background**

The semi-automatic pistol was rarely issued or approved by U.S. police departments until the late 20th century. The U.S. military adopted a semi-automatic pistol in the first quarter of that century, and the general public was increasingly interested in semi-automatic handguns by the second quarter. The U.S. military adoption of the 1911 Colt semi-automatic pistol in .45 caliber ended its relatively short experience with the .38 caliber double-action revolver. The 1911-patterned pistol had a single-action firing mechanism; it was designed to be fired using only one trigger manipulation method. This pistol gradually became the favored handgun for competitive bull’s-eye target shooting as it did among the segment of the shooting public that
became interested in practical or “combat” handgun shooting in the 1960s, which was organized as an international sport in the mid-1970s (International Practical Shooting Confederation, 2009). This form of competitive handgun shooting remains very popular in the U.S. (United States Practical Shooting Association, 2009).

Up through the 1980s, however, the standard police sidearm remained the time-honored .38 caliber, six-chambered, double-action2 revolver manufactured by Smith & Wesson or Colt Firearms. The dominant handgun training model—there was little shotgun training and rifles typically were not a part of the police armory—relied upon by police by the 1960s was deeply rooted in the Federal Bureau of Investigation’s (FBI’s) 50-shot Practical Pistol Course (PPC). Designed in the late 1930s around double-action revolver handguns, the PPC gradually displaced the previously dominant bull’s-eye target shooting model that originated with early 20th century U.S. military handgun training (Morrison, 2008a). The PPC delivered some modest improvements such as a limited requirement for the use of the trigger-cocking mechanism—more on this immediately below—as opposed solely to thumb-cocking the hammer as was the universal technique among serious bull’s-eye target shooters. The PPC model was widely implemented by departments around the U.S. between the end of World War II and the 1980s (for details on this important course and critical analysis of its features, see Morrison, 2008a).

Nevertheless, the FBI’s original PPC only required trigger-cocking of the ten close-range shots fired at seven yards from the target. The remaining 40 shots (80%) were fired from the distances of 60, 50, and 25 yards. Thumb-cocking, which often is referred to as single-action cocking, provides the shooter with a shorter, lighter trigger press action enabled by using the thumb to cock the hammer and simultaneously rotate a chamber into alignment. This would have generally been used for longer distance firing, for example, at the 25-, 50-, and 60-yard lines with the original PPC. It also would have been used to varying degrees during introductory training sessions since it simplifies the firing process and more readily accommodates accurate shooting when done under little or no time pressure. Over time, however, police came to predominantly use the trigger-cocking mode.

The trigger-cocking option to the double-action revolver is the one most likely to be used during police encounters that overwhelmingly occur at close range (McGee, 1981). Trigger-cocking enables an officer simply to press the trigger to cam the hammer rearward to compress its spring while simultaneously rotating the cylinder. Slightly before the trigger reaches its rearmost position to release the hammer to spring forward, the mechanism is timed to complete the cylinder’s rotation and lock a chamber into alignment with the bore. Trigger-cocking does require relatively heavier pressure by the trigger-finger over a longer arc compared to thumb-cocking the hammer that also rotates the cylinder to align a chamber with the bore. When thumb-cocking, the trigger press to discharge a cartridge is a separate manipulation.

Double-action semi-automatic pistols operate quite differently than double-action revolvers, and not simply because they harness the power of the expanding gases driving the bullet down the barrel to operate their extraction, ejection, and loading cycle. The double-action semi-automatic pistol design makes it necessary for police officers to become proficient with techniques for both firing mechanisms. The reason is that this handgun is designed to be carried in the “hammer down” position (i.e., forward against the back of the slide). This is somewhat similar to the double-action revolver. Unless the hammer is first thumb-cocked, the initial—
and arguably often very important—shot from the double-action pistol must be trigger-cocked (even though there is no cylinder to rotate). Until the hammer is decocked (more on this in the upcoming section), subsequent shots are fired from a cocked-hammer position because the slide’s rearward motion during the ejection portion of the firing cycle leaves the hammer in that condition.

The switch from double-action revolvers to the similar sounding double-action, semi-automatic pistol therefore introduced a long list of new challenges for marksmanship and gunhandling training and, thus, officer performance in high-risk encounters which claim the lives of dozens of officers each year and seriously injure hundreds more (FBI, 2008). This paper now turns to findings from the two surveys on both of these core areas to firearm and deadly force training.

Findings

As previously outlined, one survey explored department policies, programs, and practices, while the second survey probed instructor opinions. They shared many general topics. Before examining the many diverging practices and varied opinions that comprise the focus of this paper, it is important to acknowledge that consensus exists on some issues. For example, upon combining agree and strongly agree responses from the instructor survey, there was much agreement on matters such as holster designs needing to accommodate a proper firing grip when the handgun is holstered and fully secured (89%); multiple retention devices on high-security holsters encumbering officers when trying to quickly draw their handguns (89%); combat gunhandling being at its most effective when techniques share some complementary elements3 (80%, though nearly all of the remaining instructors were undecided about this matter); marksmanship-related trigger control being essential to effective combat handgun shooting (94%); and keeping the trigger-finger off the trigger and outside the trigger-guard loop except when aimed at a training target or an adversary against whom deadly force reasonably might be used (99%).

Readers unfamiliar with the full range of police handgun and deadly force training programs might be surprised, however, at the extent and degree to which departments and instructors differ on fundamental marksmanship (e.g., firing stances, gripping the handgun, aiming, and trigger manipulation) and gunhandling techniques (e.g., drawing from the holster, unholstered “ready” positions, magazine exchanges, and malfunction clearances). Instructors often hold strong and sometimes sharply contrasting opinions about what and how they teach, and at times report substantial uncertainly about the best approaches. As will be discussed later, the meager empirical evidence available for supporting one approach over another remains a (if not the) principal obstacle to making continuous improvements—not merely changes—in this vital area of police training.

Marksmanship Techniques

**Double-Action Semi-Automatic Pistols and Proficiency**

When asked whether it was more difficult for trainees to achieve proficiency with double-action versus single-action pistols, instructors were split—49% agreed and 42% disagreed. Given the same resources, it seems highly improbable that trainees
could become equally proficient with two complex motor skills as with only one. When instructors were asked which of these two pistol types they preferred, very similar percentages expressed preference for single-action (47%) and double-action (44%) pistols. Only 8% preferred the then only recently introduced (and oxymoronic) double-action only pistol that only has the relatively longer and heavier trigger-cocking mechanism.

**Stance**

The popular police literature reveals a wide variety of handgun firing stances used by police over the second half of the 20th century. These include those from one-handed (more on firing grip later) target shooting and the deep crouch of the original PPC’s close-range stage, to the relatively upright boxer’s stance, two-handed isosceles, and Weaver stances. Due to a combination of safety, the lure of uniformity, and easing the task of instructing, a common practice in basic academy handgun training has been to teach a general-purpose stance. Since the present study focused on inservice training where more discretion is left to individual officer trainees, only around one-third (34%) of departments reported that their officers primarily used one general-purpose stance for handgun shooting. For many of these departments (44%), the stated reason was that it was easier for maintaining proficiency. Over one-third (37%) also believed that their preferred stance held up better under combat conditions than alternatives.

The two most preferred stances were the “boxer’s” stance (46%) and an upright stance featuring slightly unlocked knees (41%). Instructors were asked whether the most appropriate combat shooting stance featured an upright or essentially erect body position, to which one-third (35%) agreed or strongly agreed, while one-half (51%) disagreed or strongly disagreed. One in seven (15%) instructors were undecided. Yet few (3.4%) departments reported that their officers relied upon the same general-purpose stance, confirming that much discretion is left to inservice officers in their shooting stance for training and requalifying.

One of the most widely known combat handgun shooting stances is the previously mentioned Weaver Stance that was popularized through a combination of the prolific writing of Jeff Cooper, early IPSC competitive shooting that he organized, and the private-sector American Pistol Institute (API; aka Gunsite Ranch) shooting school that he established in Arizona during the mid-1970s. The Weaver Stance is named for Jack Weaver who was a San Diego County deputy who used his two-handed stance to dominate early practical pistol shooting matches in Southern California. The prominent characteristic of the Weaver Stance as refined for instructional purposes at API features a two-handed firing grip (more on this later) with substantial isometric tension between the firing and support arms in a “push-pull” fashion to dampen the rise of the muzzle upon discharge so as to shorten the interval between shots. Since the PPC course placed little emphasis on firing as quickly as possible even at close range, the Weaver Stance was perceived by change agents as an important means for enabling quicker accurate firing. No other stance was designed to control recoil-related muzzle rise in the same manner, which was particularly important given the growing emphasis on maximizing firing speed across any given series of shots. Nevertheless, only one in four (24%) instructors felt that effective recoil recovery to minimize shot-to-shot intervals was unique
to the Weaver Stance. In contrast, nearly two-thirds (63%) of instructors felt that other stances were capable of accomplishing the same result.

Grip

Handguns enable holding and firing using one hand, but the other hand certainly can be used in a supporting role to minimize muzzle flip and/or to provide additional steadiness while aiming. The supporting arm and hand can lend even further stability when firing from a kneeling or prone position, and two-handed gripping when firing is quite common today. Nearly three in five (57%) instructors disagreed (though few strongly disagreed) that a one-handed technique should be the predominant method used for close-quarters handgun shooting. Less than one-third (30%) either agreed or strongly agreed that a one-handed grip should be the predominant technique. Regardless of which primary two-handed grip was used by departments, the most common reason given was that it was believed to hold up better in combat than the alternatives (51%). The next most common reason was that it was easier for trainees to develop acceptable skill levels (41%).

Over one-half (58%) of the departments also taught a one-handed, strong-side, extended arm firing technique (and for some departments this was their general purpose firing technique). The vast majority (81%) described this as a fully extended shooting arm in front of the chest with the handgun at eye-target level. The two most common reasons for using such a technique were that it was easier to bring trainee skills to acceptable levels (24%) and that it held up better in combat (27%). Most departments (74%) also had their officers learn and practice a one-handed, support-hand firing technique in case the primary hand used to grip and fire the handgun became injured or was otherwise unavailable for this purpose. The vast majority (88%) of these departments described their technique as a fully extended arm and with the handgun held at eye-target level. The reason for one-third (35%) of them being that it was believed to hold up better in combat.

Finally, a one-handed “retention” firing technique—in which the handgun is in some manner held near to or touching the upper torso to reduce the likelihood of its being grabbed by an assailant—was taught by over one-half (57%) of the departments. Of these, not quite one-half (46%) indicated that it was a technique where the handgun was held at belt level near the point of the hip. Roughly one-half (23%) of the remaining departments used belt-level techniques in which the handgun was extended only around halfway to a fully extended arm position, whereas the other one-half (28%) held the handgun high and near the chest wall. Interestingly, the principal reason (49%) for teaching these two different techniques was that each held up better in combat.

Aiming

Aiming a handgun may be accomplished in one of two general ways. First, the handgun simply can be pointed at the intended target without purposefully (or at least consciously) using the sights. Someone with only a cursory knowledge of handguns would undoubtedly aim in this fashion which is somewhat as one would point an index finger at some object. Point-aiming dates back hundreds of years when sighting devices either were not fitted to handguns or so inadequate as to be of little practical use. Even when sighting devices were installed, they
were of little aid given the combination of their small size, that they often lacked a rear sight as a critical reference point, and the inherent inaccuracy of common ammunition. In modern parlance, point-aiming equates to indexing the handgun on the target other than through conscious use of the sights integral to the slide or some other weapon-mounted device.

The second (and already mentioned) aiming method is to “sight” it by using the sights that are integral to the slide or otherwise attached to the handgun for this purpose. These devices typically involve two metal or plastic pieces, with one at the top, front, and center of the slide (i.e., the front sight) and one at the top, rear, and center of the slide (i.e., the rear sight). When these two sights are aligned, the bore of the barrel down which the bullets travel is centered on the intended target. Properly designed practical sights for police service provide a precise alignment between the axis of the barrel’s bore and the target that can be used quickly and under less than perfect lighting conditions.²

Of the departments (64%) that favored a general purpose aiming technique, the overwhelming choice was sight-aiming (93%). Departments were not so unanimous when it came to the reason, however, as there was a two-way tie between those stating that sighted-aiming was more easily acquired by trainees (44%) and that it held up better in combat (42%). The two most commonly described techniques for sight-aiming were either similar to deliberate aiming common to conventional target shooting (42%) or the “flash” sight-picture (34%). The latter differs in that it involves not much more than a glimpse of the sights to confirm alignment with the target before firing.

Of interest was that nearly one-half (46%) of the departments reported that they did not teach any below eye-target plane aiming technique.² Of those that did, roughly one-quarter (27%) did so in combination with close-range handgun retention firing techniques. Half of the point-aiming techniques, however, positioned the handgun below the eye-target plane yet still “close to eye-level” (30%) or else “at or barely below the sighting plane” (20%). In spite of any particular aiming techniques that their officers were expected to use in training and/or requalifying, the vast majority (88%) of departments reported that officers could use techniques of their own choice as long as they achieved requalifying scores. When instructors were asked whether sighted firing techniques were more effective at typical combat distances than point (aimed but not sighted) shooting techniques, nearly one-third (32%) disagreed. Point-aiming advocates emphasize the advantage that they feel accrues to officers who keep their eyes on the target that, during field encounters, are persons confronting officers with potentially lethal threats.²

Trigger Manipulation

The added complexity of modern double-action pistols discussed earlier impacts upon training and resulting proficiency levels. Given the same resources, shooters cannot logically achieve a given proficiency level with two techniques as easily as with one. When asked whether it was more difficult for trainees to achieve proficiency with double-action pistols, however, instructors were split—49% agreed, while 42% disagreed. As for trigger mechanism preference, nearly half (47%) stated a preference for single-action pistols, while a very similar percentage (44%) preferred double-action pistols. Only 8% of the instructors preferred the then newly introduced “double-action only” pistol featuring only the longer, heavier trigger press.
Gunhandling Techniques

Background

The crux to marksmanship is not simply shooting but, rather, hitting a “mark” that in contemporary vernacular means a target. To the police trainee at the firing range, this would likely be a humanoid-shaped target; during simulation training, a projected image; or during role-playing, a trainer or fellow officer. During high-risk encounters in the field, the “mark” would be one or more persons behaving in a threatening manner. This is what comes to mind for most people when they think of police handgun training and the use or threatened use of deadly force. Yet, there is an array of gunhandling techniques not directly related to marksmanship (i.e., stance, grip, aiming, and trigger control presented earlier) that nonetheless is critically important to practical proficiency for dangerous encounters.

Gunhandling endured a far inferior status until the past couple of decades. What now is recognized as critical skills that produce safe carrying and effective use of handguns in dangerous encounters has in the past gone either completely unrecognized or else has taken impractical forms. For example, officers who draw their handguns in the field need a variety of skills if they are to be able to safely maneuver with them in hand, be able to instantly and accurately discharge their handguns to stop the actions of dangerous persons, and then to continue to competently handle their handguns despite the harrowing experience. They must remain vigilant, too, since there always is the real possibility that the dangerous encounter will resume because assailants are not quickly incapacitated by their wounds; ones who appear to be incapacitated quickly remobilize and continue to present a serious threat; and previously unrecognized associates of the primary suspect who present new threats.

The transition by police from revolvers to semi-automatic pistols discussed earlier coincided with (some would say led to) increasing departures from the PPC model for recruit and inservice training and qualifying. In terms of sheer numbers, the transition to double-action semi-automatic pistols has had a much greater impact on gunhandling techniques than on marksmanship. This was far from simple, too, because it introduced unique manipulative techniques never associated with revolvers. Examples include loading and unloading magazines used to supply the pistol with ammunition (no revolver cylinder); operating safety devices, slide catches/releases, and magazine releases (revolvers had none of these); and clearing malfunctions or “stoppages” unique to the pistol (such as a failure to feed a cartridge from the magazine into the chamber or to eject a spent cartridge case when fired). Frankly, malfunction clearances for revolvers had been largely overlooked as a matter of practical gunhandling for police. It was the norm to seek assistance from a range officer upon encountering a problem, and in fact, this customary practice often was reinforced through formal range rules. Yet, police officers clearly needed to be able to immediately correct revolver malfunctions experienced during field encounters.

The survey findings presented below probed a wide variety of gunhandling topics for which there were highly varied approaches in use by departments and widely varying opinions expressed by instructors. Before delving into those, and in the interest of balance, it is important to mention that there was strong agreement...
on many matters such as officer safety being enhanced by the ability to swiftly draw the handgun from a secured holster (90% agreed or strongly agreed) and that combat gunhandling techniques generally were at their most effective when manipulations shared common movements (80% agreed or strongly agreed). This paper, however, focuses primarily on important differences.

**Drawing and Unholstered “Ready” Positions**

Two important areas of gunhandling proficiency are being able to quickly draw the handgun from its holster and unholstered ready positions when it is reasonable for police to have their pistols in hand during an encounter. Though the PPC model included several occasions when officers had to draw their handguns immediately prior to firing, the typical time limits provided a disincentive for developing the skill to draw quickly (and, for that matter, fire quickly). It also is easy to overlook the fact that, while police rarely fire their handguns at adversaries, they sometimes draw their handguns when it appears reasonably likely that they might have to use deadly force or want to proactively curtail escalating actions by suspects. There also are situations when police are responding to obviously dangerous circumstances, such as an in-progress armed robbery or a report of shots having been fired, and should have their handguns unholstered. One advantage to a ready position is eliminating the complicated and cumbersome process for drawing the handgun from some high-security holsters. Another advantage is the slightly quicker target acquisition it offers as is the shorter time frame to the first shot when needed. Unholstered handguns require suitable gunhandling techniques if police are to be able to maneuver safely and effectively.

When departments were asked how officers generally should carry unholstered handguns in the field, the vast majority (83%) responded with either a “low ready” or barrel “45 degrees to the ground” position. Both describe ready positions where officers are in a semblance of a firing stance (even if moving) and applying a firing grip on the handgun but not aiming it at a particular person. A low ready position also can describe an arm and handgun orientation at only slightly less than the horizontal plane with the shoulders, for example, if aligned with the feet of a suspect or slightly below the waist so as to keep the hands within sight. The rationale for this ready position is that the waist is the most common area for concealing weapons since it includes the waistline/pants top, access to pockets, belt-holsters, and shoulder-holsters that suspend toward the waistline.

A swift draw should produce the shortest possible time to the first shot. This raises an important issue that lies at the juncture of gunhandling and marksmanship—the point at which the trigger-finger initially contacts the trigger, followed by applying pressure to the trigger to fire the handgun. As is the case around the U.S., departments in Washington State either issued or allowed their officers to use single- and/or double-action semi-automatic pistols. This potentially affects procedures for (1) at first only contacting the trigger and then (2) initiating the trigger-press to fire a shot. For safety, the trigger-finger remains outside the trigger-guard during the draw but obviously must enter the trigger-guard and contact the trigger at some point in order to fire a shot.

One-third (34%) of the departments reported that applying pressure to the trigger was appropriate as the arm(s) approach(ed) full extension. Yet nearly half (46%)
of the departments indicated that trigger-finger pressure should not be applied until the arm(s) cease(d) all forward movement. Although these two techniques may appear identical, they in fact reflect different takes on the philosophy of not touching the trigger unless the weapon is aimed at a target. It also likely reflects differences in pistol type (i.e., single- versus double-action mechanisms). The margins here can be slim given how quickly police on average can be trained to draw—under two seconds from stimulus to a fully extended arm and a shot fired and a hit achieved—or raised from a ready position. For example, few departments (5%) reported that applying pressure to the trigger should commence once the handgun has been moved approximately halfway to the target. Not applying trigger pressure, however, does not mean that the trigger-finger cannot enter the trigger-guard and make contact with the trigger prior to completing the draw. (There are additional subtleties involved that cannot presently be explored due to survey item limitations.)

**Speedy and Tactical Reloading**

Traditionally, training at the target shooting range included a protocol whereby loading the handgun was done only upon direct command from a rangemaster shortly before giving the command to fire the designated five-shot string (i.e., slow-, timed- or rapid-fire bull’s-eye). During the period where bull’s-eye target shooting was the dominant model for police, practical loading/reloading skills for close-range combat situations languished. Even when the PPC came to be the dominant model during the 1960s, reloading the revolver was done at what only can be characterized as a leisurely pace. Sequences generally consisted of five or six shots fired in an unbroken string, ejecting all the fired cases, followed by individually reloading each chamber of the cylinder with a cartridge, and then firing another complete string. As with bull’s-eye target shooting that preceded it, police habitually fired their revolvers during training until completely empty even though this could be disadvantageous in armed encounters.

Speedy loading devices—plastic cylinder-shaped devices that approximate the diameter of a revolver’s cylinder and incorporate holes pre-aligned to hold cartridges for simultaneous insertion—gained wide popularity by the 1980s. These simple devices can dramatically reduce the time interval between the last shot fired from the previously loaded cylinder and the first shot after reloading the cylinder. Although advantageous in terms of speed, their popularity lent further momentum to the long-standing practice of firing the revolver until empty, fully reloading the cylinder’s chambers, and then firing again until empty. In addition, holstering an unloaded revolver after a specified string of shots was the norm. Curiously, though officers carry their revolvers loaded and largely unsupervised while on duty as well as generally off-duty, they typically carry unloaded revolvers at the range between strings of fire.

We know from early research into officer-involved shootings that police who carried revolvers rarely fired all six shots at a suspect (e.g., see Alpert, 1987; Fyfe, 1978; Geller & Karales, 1981; Geller & Scott, 1992). In fact, they most often fired only one or two shots. Did they then replace those empty cases with cartridges from behind cover before taking further action? Perhaps, but there is nothing about common training techniques or requalifying practices during that period to suggest that officers learned and practiced refilling their partially fired revolvers with cartridges.
before taking further action or during a lull in the action. Furthermore, anecdotal evidence suggests that this would have been rarely encountered at the firing range. The two likely gunhandling practices were to (1) proceed with a reduced number of cartridges in the cylinder or (2) perform a speedy reload that would result in ejecting the unfired cartridges still in the cylinder along with the empty cases.

Today, “tactical” reloading is looked upon favorably as an alternative for those occasions when refilling the handgun to full capacity is the prudent step before taking further action, but without discarding unused cartridges. The increasing popularity of the semi-automatic handgun, coupled with the growing influence of several private-sector shooting schools, gradually led to a consensus among police trainers that it was a poor idea to habitually discard partially expended magazines during speedy magazine exchanges when those cartridges might be needed before the encounter concluded. Quick magazine changes—releasing the one in the pistol to fall free followed immediately by inserting a full magazine—used by combat or practical competition match shooters also was an influence here which, in principal, was not much different than the long-standing practice with revolvers. In one sense, the substitution of the pistol for the revolver did not necessarily lead to the development of new practical techniques such as with continuing to shoot the pistol until empty before inserting a fresh magazine. With the pistol, however, a quick out-of-battery reload when all cartridges had been expended and the slide had locked to the rear position did need attention.

As for the tactical reload, there are a number of methods for performing one, but all have at their core the retention of the partially depleted magazine for potential use later in the encounter before it concludes. When instructors asked whether tactical reloading generally was more useful than speedy reloading during armed confrontations, they agreed by greater than a two-to-one ratio—58% agreed, while 25% disagreed. Roughly three in five departments also had their sworn personnel practice speedy (61%), out-of-battery (60%), or tactical (65%) reloading at least once during the typical training year. Surprisingly, approximately one in eight departments (12%) reported that they did not have their officers perform any of these three during the typical training year.

**Malfunctions**

A semi-automatic pistol that experiences a malfunction or “stoppage” effectively disarms the officer until he corrects or “clears” the problem. Fortunately, most stoppages can be remedied in a couple of seconds. When police used double-action revolvers—particularly under the bull’s-eye target shooting model, but typically also with the PPC model—a malfunction during training or qualifying resulted in an “alibi” that entitled the officer to reshoot the affected string of shots once the problem was corrected. It is significant that shooters were expected to keep the handgun pointed down range or placed safely on the bench in front of them and then signal the range officer by raising a hand. After leisurely correcting the problem, the shooter was given the opportunity to refire the affected string of shots. While this is not inappropriate for recreational or sport bull’s-eye target shooting focused purely on marksmanshp proficiency, it clearly is unacceptable for police. If a police officer experiences a malfunction during a field shooting, she or he needs to be able to immediately correct the problem without any assistance. Nonetheless, malfunction
clearances were not usefully addressed on a wide scale until the gradual transition to semi-automatic pistols.

There are two general approaches. Malfunctions were at first often classified or typed for specific pistol designs. A diagnostic cue was developed for each based on its particular characteristic(s) and a remedy or “immediate action drill” devised for clearing each type. For example, there are five types of malfunctions associated with the Model of 1911-patterned pistol (Morrison, 1991). In part due to wider use of a larger variety of pistol makes and models, trainers identified similarities between malfunctions and reduced the number of corrective actions. This seems especially appropriate for police who, in the midst of a gunfight, can ill afford to devote much of their precious visual acuity and cognitive attention to the handgun when in close proximity to dangerous persons. The vast bulk of those capacities must be reserved for observing, processing information, making decisions, and taking action. Techniques developed within the confines of the training range can unintentionally compromise officer and public safety and, therefore, lead to disastrous outcomes in the field.

As a result, police moved away from consciously diagnosing specific malfunctions during range sessions and toward substituting a two-stage process comprised of a primary and a secondary clearing technique. The initial clearance procedure is to remove the trigger-finger from the trigger, smack the base of the magazine with the palm of the support hand to ensure that it is fully seated in the pistol’s frame, grasp the slide with the support-hand and draw it rearward against spring pressure to eject either an unfired cartridge or a spent casing, and then release it to spring forward to chamber a cartridge. If the handgun still will not fire, the officer immediately locks the slide to the rear, ejects the magazine (this might require pulling it out if it does not drop out due to gravity), vigorously racks the slide several times, inserts a fresh magazine, draws the slide fully to the rear, and then releases it to chamber a cartridge. This primary-secondary approach has three advantages. First, it offers greater simplicity for the stressful conditions that police operate under. Second, it reduces the overall number of manipulative techniques. Third, the first or primary corrective action is quick and cures most malfunctions.

Interestingly, a minority (35%, though still large number) of departments indicated using a clearance procedure tailored to each specific type of malfunction, though the two-stage sequential clearance procedure described above was far more common (61%) among departments. Purposely inducing malfunctions during inservice training is not uncommon, but how frequently officers experience them during training is central to remaining proficient at clearing them. The vast majority of departments (80%) reported that they had their officers practice at least one purposely induced type of malfunction at least annually to maintain proficiency, though it should be noted here that testing gunhandling skills lags far behind marksmanship testing. The percentages of departments purposely setting up and practicing the four malfunctions most common to semi-automatic pistols (which, fortunately, rarely occur in practice) were, in descending order, failure to eject a fired cartridge case (67%), failure to feed a cartridge from the magazine (65%), a “double-feed” where a live cartridge is already chambered but the slide is attempting to chamber another one (62%); and an unseated magazine/empty chamber (60%). These figures all hover near the two-thirds mark, which means that approximately one-third of the departments do not practice one or more of these malfunctions at least once during the typical year.
Decocking the Double-Action Semi-Automatic Pistol

Double-action semi-automatic pistols are designed to have their first shot fired from the hammer down condition in which the hammer is cocked and released by pressing the trigger through a comparatively long arc (i.e., trigger-cocking). After the first shot, during the slide’s rearward travel, the first case is extracted and ejected. The slide also recocks the hammer for a subsequent shot. Once cocked, the second firing mechanism (i.e., this is what makes them double-action) activates the shorter trigger arc and a considerably lighter trigger pressure.

Police departments that transitioned to double-action semi-automatic pistols therefore faced the challenge of decocking the hammer after one or more shots had been fired since, as mentioned above, the hammer remained fully cocked. This is an important distinction from double-action revolvers since their hammers remain forward or “down” after each shot regardless of whether the hammer is thumb- or trigger-cocked. Double-action pistols therefore incorporate either a frame- or slide-mounted lever to be used for mechanically “decocking” (i.e., lowering) the hammer to its forward or “down” position. This comprises the normal carrying mode for this type of handgun. On many earlier Smith & Wesson pistols of this type, the decocking mechanism also can be used as a quasi-manual safety mechanism in that it can be left in a position that disconnects the trigger from the hammer.

To explore how departments address these gunhandling matters, those \((n = 92)\) that issued or authorized their officers to carry double-action semi-automatic pistols were asked to respond to a short series of questions. Not surprisingly, departments rarely (96% did not) allowed their officers to manually restrain (such as with the thumb) the hammer, press the trigger, and then lower the hammer to the forward position. Perhaps due to the unfamiliarity that some instructors might have had with these particular handguns, some of the survey items elicited a relatively high “undecided” response rate. For the slide-mounted type of decocking lever, half (49%) of the instructors agreed that this type of handgun should be carried in the firing mode. Yet slightly more than one-third (34%) disagreed, reporting that they carried the handgun with the decocking lever placed in the nonfiring mode where it functions as a quasi-safety mechanism.

As to how best to use decocking levers, around one-quarter (24%) of departments trained their officers to manipulate the decocker only with the firing hand thumb. This reflects the doctrine that only the firing hand should be used to operate its various controls (i.e., manual safety levers, decocking levers, slide release levers, and magazine release buttons). The rationale here is that, at a critical moment, the other hand could be needed for some other purpose. Relying upon gunhandling techniques that require two hands might complicate or seriously compromise gunhandling abilities at a critical moment during a high-risk encounter and increase danger to officers and the public. Although few departments (2.2%) indicated that using the support-hand thumb was the preferred decocking technique, over one-third (37%) nevertheless allowed officers to use either thumb as long as they consistently performed the manipulation in one manner.

Another important matter is the point at which officers should manipulate a double-action pistol’s decocking lever during training and qualifying sessions. This is important because developing skills and forming habits at the firing range...
provide the sole institutional basis for officer actions during field encounters. Techniques used at the firing range therefore must be tactically appropriate for the field. Departments were presented with several choices: to decock either while still aimed at a target, soon after lowering the pistol to a ready position, not until just before returning the pistol to its holster, or “other.” The by far most popular choice (74%) was to decock at some point after lowering the pistol to a ready position. None of the three remaining choices attracted more than 10% of the remaining responses, though “while still on target” came the closest (9.9%).

Discussion

The divergent department approaches and varied instructor opinions regarding police marksmanship and gunhandling techniques have potentially serious consequences for police and public safety. Given the range of preferred techniques and opinions about them, it seems implausible that officers are comparably prepared for similar high-risk encounters. Some of those encounters will end in the use or threatened use of deadly force. Despite the high levels of agreement on some matters, the findings presented in the paper focused on differences in critical areas of marksmanship and gunhandling techniques that comprise the substance to much firearms and deadly force programming.

Since the shared goal to this vitally important programming presumably is to produce officers who are highly competent to perform safely and effectively during high-risk field encounters, the fact that they rely upon highly disparate doctrines, techniques, and instructional delivery methods raise concerns about our current level of knowledge. This has implications for notions about “what works,” which is a phrase that continues to defy a useful definition. What presently would be the basis for promoting specific best practices? Together with previous research, the findings in this paper present practitioners and applied researchers with a lengthy list of research and evaluation questions revolving around how to explore a fuller range of performance goals and objectives embedded in the use or threatened use of deadly force. At the close of the first decade of the 21st century, researcher-practitioner collaborations have only scratched the surface on improving police performance in high-risk encounters.

There are challenges to identifying, developing, and promoting major new contributions to our understanding of the impact of training outcomes on police performance in high-risk encounters. Perhaps most significant is the highly decentralized nature of U.S. policing. The U.S. Constitution provides for, among other things, separation of powers across the state and federal levels that prevents simple top-down mandates. States, in turn, extend much autonomy to their local departments in terms of inservice programs. This limits consolidation of too many powers and too much control in a central government that, in the broader sense, is a strength of the U.S. system. Its impact on policing is plainly evident in its complex tapestry of over 3,000 sheriff’s departments and over 16,000 municipal departments (Reaves, 2007). At the state level, there is more complexity than there might at first appear since there are not merely 50 state departments but, rather, many separate departments in each state handling a variety of law enforcement services and investigative specialties. Even at the federal level, there are 65 agencies with various responsibilities and powers, and 17 employ 500 or more full-time law enforcement personnel (Reaves, 2006).
Although this paper has focused on inservice training that spans the typical 25- to 35-year employment periods for police officers, the basic training provided at the outset of their careers by recruit academies also reflects much discretion. Police officer standards and training (POST) bodies have been central to making basic training available and affordable to officers from across their respective states. State-operated academy basic firearms and deadly force training programs vary considerably in content and length (IADLEST, 2008). This training is not always perceived favorably by department-based instructors who inherit those academy graduates (Morrison, 2006a). Although most state influence has been through preparatory training for newly hired officers, many POST bodies are now venturing into aspects of department inservice training mandates and/or recommendations. Handgun training and/or requalifying is often one of the areas, but even a cursory Internet review of such requirements show that they vary substantially between the states (see, also, Hickman, 2005).

The landmark 1980s U.S. Supreme Court cases of *Tennessee v. Garner* (1985), *Graham v. Connor* (1989), and *City of Canton, Ohio v. Harris* (1989) undoubtedly had an impact on firearms and deadly force training policies and practices even though the precise nature and extent of these impacts are rather unclear. This does not make these well-known cases unimportant, but they offer no specific guidance as to how police trainers around the U.S. should go about making their programs more effective. For example, when the U.S. Supreme Court weighed in on the inadequacy of police training in *City of Canton, Ohio v. Harris* (1989), its focus was on “deliberate indifference” to training needed for officers to be able to adequately carry out job-tasks that they reasonably can anticipate. The facts of that case, however, had nothing specifically to do with firearms training. It also is important to note that the U.S. Supreme Court neither continuously monitors police training nor claims expertise in firearms training. The Court’s role is to establish guidelines for persons alleging constitutional rights deprivations as a direct result of police policy who desire their remedy through federal civil rights lawsuits.

Another influential actor in the area of police policy and practice is the Commission on Accreditation of Law Enforcement Agencies (CALEA) and its affiliated state-based Police Accreditation Coalitions (PACs) that provide similar services. This is a voluntary undertaking, however, and in CALEA’s case, approximately 900 departments have elected to engage in the lengthy process that leads to compliance with its standards. Although accreditation offers many advantages in terms of best practices, risk management, and reduced liability, CALEA’s requirement for annual firearm training and recertification seems curiously minimal at this point in the evolution of police professionalism. This is far from an ambitiously high standard because the majority of departments already conduct such activities two or more times a year. In fact, an annual session seems inadequate on its face for maintaining competent levels of proficiency with the marksmanship and gunhandling skills examined in this paper. An apparently calendar-based requirement also is far less compelling compared to what should be an empirical basis that reflects research into the perishable nature of psychomotor skills needed by police for high-risk encounters. For instance, officers need to exercise their practical skills during scenario training that requires the confluence of information gathering, decision-making about tactical procedures, and making judgments about if and how best to use deadly force to end a dangerous encounter. This is what they will need as experience if they are to successfully cope during actual encounters. Importantly,
the one-to-one instructor-to-trainee ratio that this training requires is far more time-consuming and taxing of creative energies than requalifying on rote courses-of-fire.

Finally, an easily overlooked but extremely important factor is the police firearm instructor. Professional associations of police trainers first appeared in the early 1980s in the form of the International Association of Law Enforcement Firearm Instructors (IALEFI; est. 1981) and the American Society of Law Enforcement Trainers (ASLET; est. 1984 but now defunct). IALEFI, for example, has an official journal, has published recommended standards, and holds periodic regional and national annual conferences (IALEFI, 2008). More recently, the International Law Enforcement Educators and Trainers Association (ILEETA; est. 2002) appeared as a new professional body that holds an annual national conference and, among other periodicals, publishes its Use of Force Journal.

**Conclusion**

The differences in department approaches to handgun training and the variety of instructor opinions can be best addressed through a research and evaluation agenda designed to produce empirical evidence about the linkages (and the lack of them) between the combination of training and qualifying on the outcomes of high-risk field encounters. Absent empirically based linkages, the impact of various approaches on officer performance in high-risk encounters will remain principally speculative and subject to the sway of competing assumptions about this complex area of police performance. For instance, while it seems logical that more training is better than less training, there is no data establishing how much is enough under a particular set of circumstances given the nature and extent of marksmanship, gunhandling, tactical, and judgment training. In other words, we do not know in which ways and to what degrees the commitment of varying resources to particular programmatic approaches produces the most favorable outcomes in high-risk field encounters.

As the research findings presented in this paper make clear, departments and instructors look to a variety of justifications for a wide range of approaches about which we know little in terms of actual impacts in high-risk encounters. Police, therefore, need compelling evidence that researcher and trainer collaborations are capable of delivering, this despite the challenges discussed earlier. Finally, one of the greatest challenges will be funding for this area of research. The persistent lack of systematically collected data on training programs and field performance for informing trainers and policymakers leaves much to do. We need to know far more about the performance challenges that officers must be prepared to capably manage and, crucially, in what ways existing training doctrine, techniques, and delivery methods contribute to success and failure in the field. The lack of a feedback loop continues to be a serious handicap to widespread improvements and must be addressed.

**Endnotes**

1 This was rectified by the legislature in 2005 by mandating 24 hours of annual inservice training beginning in January 2006 (Revised Code of Washington, 2005).
“Double-action” means two firing mechanisms. The double-action revolver can be “thumb-cocked” and fired, and this remains the customary method for target shooting since it provides for a short arc and a lighter resistance to trigger-finger pressure. The double-action revolver also can be “trigger-cocked,” which, while requiring a longer trigger arc and considerably heavier weight, is the mode most likely to be used in a combat situation where minimizing the interval between shots is important.

An example would be one technique for grasping the slide for loading, unloading, and clearing malfunctions.

The double-action only pistol actually is a single-action pistol, though not in the traditional sense of having to thumb-cock a “western” revolver or with the single-action Colt .45 ACP pistol that is fired from a cock-hammered position. All three of these have one mechanical “action” as a part of their design in that they can only be fired in one fashion. What really is meant by the term double-action only is that the hammer or striker must be trigger-cocked for each shot (i.e., it does not remain cocked after the slide’s rearward travel during the firing cycle).

When viewed from above, lines drawn between the shoulder joints and then outwards along the fully extended arms when grasping the handgun with both hands roughly forms an isosceles triangle.

Handguns suitable for police use, loaded with quality ammunition, and fired from a stable position generally are capable of delivering slow-fire groups about the size of a small coffee cup at 75 feet.

This seems rather unlikely given departmental responses to the retention-technique question discussed earlier and, therefore, probably reflects their perception of its not being their general-purpose technique since that is the context within which many such questions in this section of the survey were framed.

It is worth noting that an observer might not be able to discern whether an officer is using sight- or point-aiming when both are performed at the level of the eye-target plane. The difference lies in whether the shooter’s visual focus is upon the sights or the target since even at close range the human eye cannot simultaneously focus upon two visual planes.

References


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Legal Aspects of Use of Force by Russian Police

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The Russian MVD was recreated as the MVD of the RSFSR in 1990, following the restoration of the republican Council of Ministers and Supreme Soviet, and remained when Russia gained independence from the Soviet Union. It currently controls the militsia, the State Road Inspection Service (GIBDD), and the Internal Troops. Since the disbanding of the Tax Police, it also investigates economic crimes. The long-time additional duties of the Imperial MVD and NKVD, such as the Firefighting Service and Prisons Service, were recently moved to the Ministry of Emergency Situations and the Ministry of Justice, respectively.

Militsia (Police)

The name originates from early Soviet history when the Bolsheviks intended to associate their new law enforcement authority with the self-organization of the people and to distinguish it from the “bourgeois class protecting” police. Originally, the militsia was created in 1917 under the official name the Workers’ and Peasants’ Militsia. Eventually, it was replaced by the Ministry of Internal Affairs, which is now the official full name for the militsia forces in the respective countries. Its regional branches are officially called Departments of Internal Affairs—city department of internal affairs, district (raion) department of internal affairs, state (oblast) department, or ministry in some of the republics of internal affairs, etc.

The Ministry of Internal Affairs is a police agency. Its functions and organization differ significantly from similarly named departments in Western countries, which are usually civil executive bodies headed by politicians who are responsible for many other tasks as well as the supervision of law enforcement. The Soviet and successor MVDs have usually been headed by a militsia general and predominantly consist of service personnel, with civil employees only filling auxiliary posts. Although such ministers are members of the respective country’s cabinet, they usually do not report to the prime minister and parliament but only to the president. Local militsia departments are subordinated to their regional departments, having little accountability before local authorities. The official names of particular militsia bodies and services in post-Soviet countries are usually very complicated, hence the use of the short term militsia. Laws usually refer to police just as militsia. The current state of crime in Russia is characterized by dangerous trends. The most evident of them is the recorded growth of criminal acts. For example, in 2005, the total number of crimes detected was 3,555,000—a 22.8% increase over the previous year. In some regions, the rate was even more dramatic—in the Ryazan region, it amounted to 49.3%; the Republic of Tatarstan, 45.2%; the Tambov region, 42.1%; and St. Petersburg, 41.1% (Milyukov & Pobegailo, 2006, p. 11).

Taking into account such threatening developments with crime in the country, and recognizing the critical level of safety and security of law enforcement officers
and citizens, police officers received new and very important guarantees of personal safety. Police officers were allowed to draw their firearms and put them in readiness if in their opinion the specific circumstances might arise under legal grounds for their application.

This suggests that exposure of a firearm and bringing it into readiness for shooting is permitted even before there is an immediate reason for its use. A person detained by police officers can be held at gunpoint until the police officer verified that the grounds for the use of firearms were not available or the firearm was no longer needed. In doing so, according to the Russian law for the police, any attempts by the person at gunpoint to approach the officer, or to reduce the distance specified, or to grab the officer could provide the officer with the right to use the weapon (Federal Law on Militsia, 2007).

This does not mean that a police officer will use the weapon if such behavior is displayed by the detained person. But it is clear that law will place the entire risk of irreparable consequences of the use of a firearm by the police officer on the person who commits acts which could be interpreted as a threat to police officers.

Using weapons for self-defense should be resorted to only when there is a situation that exists in reality—an attack rather than an imaginary attack. However, the omission by the officer, expressed through the non-interest of the state, society, or the individual citizen, is punishable in accordance with applicable law. Timidity of policemen and other law enforcement agencies in curbing a dangerous assault and arrest of the perpetrators can be explained by many factors of socioeconomic, military, political, and moral-psychological order.

But along with these circumstances, the negative impact on the effectiveness of law enforcement agencies in the use of force is due to a lack of knowledge of the contents of the legislative and other normative acts regulating the procedure which limits the use of firearms, physical force, and so-called “special means.” In the Federal Law on Militsia (2007), the following special means were identified: baton, handcuffs, stun devices, tools with destructive capability, water cannons, armored vehicles, canines, coloring chemicals, etc. Incompetence is compounded by the contradictory statements of these acts, which leads to unjustified prosecution and even condemnation of persons who lawfully use their weapons.

**Abuse of Police Powers**

Cases of physical abuse by police officers usually occurred within the first few hours or days of arrest. Some of the methods reportedly used were beatings with fists, batons, or other objects; asphyxiation using gas masks or bags (at times filled with mace); electric shocks; or suspension by body parts (e.g., suspending a victim from the wrists, which were tied together behind the back). Allegations of abuse were difficult to substantiate because of limited access to medical professionals. According to the annual report of the country’s human rights ombudsman, published in June, the majority of police brutality cases in 2005 were reported in the Khanty-Mansiysk, Bashkortostan, Tatarstan, Bryansk, Moscow, and Tver regions. A report by Amnesty International documented 114 cases of torture by police to obtain a confession (U.S. Department of State, 2006).
In January, in the case of Aleksey Mikheev, the European Court of Human Rights (ECHR) found that the government had violated Article 3 (torture) of the European Convention on Human Rights. Specifically, the ECHR found that Mikheev had been falsely accused of murder. In order to force him into confessing, investigators severely beat him and tortured him with an electric shock. After the torture, he jumped out of a window and broke his spine. The two investigators were prosecuted and sentenced to four years of imprisonment each.

In Chechnya, there were credible reports that both government forces and Chechen rebels tortured detainees. Human Rights Watch reported that it had documented 115 torture cases in Chechnya between July 2004 and September 2006. The report concluded that most of the incidents were carried out at one of at least 10 unlawful detention centers.

Reports by refugees, nongovernmental organizations (NGOs), and the press suggested a pattern of police beatings, arrests, and extortion directed at persons with dark skin or who appeared to be from the Caucasus, Central Asia, Africa, or Roma. For example, in March, two militsia officers were detained for extorting money from a foreign woman who lived in the Voronezh region without registration. In June 2004, the press reported that in Novosibirsk, four policemen were arrested on suspicion of extorting over $1 million (28 million rubles) from a Romani family by kidnapping and torturing family members until their demands were met. The case reached court in April 2005, and the policemen were reportedly tried and convicted.

Police reportedly harassed defense lawyers by calling them in for questioning regarding their conversations with their clients and continued to intimidate witnesses.

Trial proceedings continued at a slow pace for the eight police officers charged with abuse of office in August 2005 by the Bashkortostan prosecutor’s office in the beatings of at least 32 persons during the 2004 “crime prevention” crackdown in Blagoveshchensk. The accused were mostly junior officers of the town police and the Bashkortostan OMON (a special police detachment). The highest ranking defendant was Lieutenant Colonel Ildar Ramazanov, head of the Blagoveshchensk town police. Defendants included the chief of Blagoveshchensk police and the OMON unit commander. In March, the district court returned the case to the prosecutor’s office for clarification and to separate it into two cases: one for the rank-and-file policemen and the other for their commanders. Bashkortostan’s Supreme Court supported the decision in a July ruling, but the Bashkortostan’s prosecutor’s office disagreed with separating the cases and, in August, announced that it would appeal the decision to the Supreme Court. Most of the defendants continued working in their positions.

In February, three Blagoveshchensk residents were convicted of attacking a police patrol, triggering the 2004 crackdown. Two received suspended sentences, but the third, Victor Geroyev, was sentenced to two and a half years in prison. In April, Bashkortostan’s Supreme Court annulled the sentences and sent the case to the Blagoveshchensk district court for retrial.

Legal Framework

The legal basis for the use of weapons by law enforcement is primarily the law of self-defense (Article 37, Criminal Code) (Lopashenko, 2002). Other grounds
for force application, based on the criminal law governing institutions, were for the detention of the perpetrator, of necessity, reasonable risk, and performance of a mandatory order (Articles 38-39, 41-42, Criminal Code). In addition, the legislation specifically governing the performance of law enforcement agencies—in particular, internal affairs—has in place a number of specific conditions under which employees are entitled to use weapons (Federal Law on Militsia, 1991).

Given the seriousness of the consequences of the use of weapons, Article 15 of the Federal Law on Militsia (2007) and departmental regulations (statutes and regulations) set out a list of conditions under which its use is recognized as lawful.

The Use of Firearms by Police Officers

The Militia Act enshrines the right of police officers to apply guns (shoot to kill) in the following cases:

- To protect civilians from attack which would endanger their health and lives. When the health or lives of citizens are threatened, a police officer must take whatever measures necessary to prevent those attacks and arrest the offender.

- To repel an attack on a police officer, where his health or life is at risk, as well as when there are attempts to capture arms, with the threat to health or life of a police officer. In these situations, he is entitled to suppress an attack using weapons without delay, especially in cases where the threat is inevitable—without warning. Weapons can be used without further delay and warning when conditions preclude the possibility of resorting to any other remedies. Usually, this is a typical way to deal with the offender when the offender’s intention toward authority is clear.

- For the release of hostages, the police have the right to apply firearms only against those criminals directly involved in the capture or retention of the hostages, who have real opportunity to prevent their release or to enforce death threats, causing bodily injury or other violent acts. With respect to other persons involved in the seizure or holding of hostages, the use of a firearm is lawful if these persons’ actions endanger the health or lives of the hostages and other civilians participating in the release of the hostages.

- To arrest a person caught perpetrating a felony against the health, life, and property of another party who are trying to escape as well as persons rendering armed resistance. Serious crimes against health, life, and property committed by a person attempting to escape from the scene, justifying police use of firearms, can be classified as follows: a terrorist act, sabotage, banditry, mass riots, looting, robbery, rape, hostage taking, murder, hijacking, malicious hooliganism, and especially the infliction of moderate and serious injuries. Under armed resistance means the use of firearms or knives, as well as an ax, crowbar, forks, shovels, kitchen knives, razors, and other similar items to actively counter the militsia in carrying out their duties related to the offender’s detention.

- To reflect armed attacks on the homes of citizens or the premises of state bodies, public associations, enterprises, organizations, and institutions. Being under such a violent attack is defined as invasion, in the open, contrary to the established regime of the public or private place and against the current rules or...
the requirements of those enforcing them or against the will of citizens, entering the room accompanied, in some cases, by destructive force, damage to property (e.g., breaking down doors, fire, explosion, etc.), the infliction of bodily injuries to persons, or threats of such acts in order to take hostages or control of objects or documents via theft or destruction of property. In specially protected places, the police may use weapons if somebody demonstrates noncompliance with requests to not approach a location or the border’s exclusion zone after a warning shout.

- For the suppression of escape from custody of those detained on suspicion of committing a crime, persons against whom detention has been elected, and persons sentenced to imprisonment, as well as to prevent violent attempts to release these individuals. Before the use of weapons, patrol officers in all cases, except for in an attack when health and lives are in immediate danger, are obliged to make the warning shout, “Stop! I will shoot!” Police officers have the right to use weapons not only for suppression of the escape but also to prevent attempts to forcibly release from detention on suspicion of committing a crime individuals for whom detention was chosen and persons sentenced to imprisonment.

**Regulatory Authority of Police to Use Physical Force, Special Means, and Firearms**


The police have the right to use physical force, special means, and firearms only in the cases and manner prescribed by law. Police officers are required to undergo special training as well as periodic checks on their suitability to act in circumstances associated with the use of physical force, special means, and firearms. Police officers have the right to bare firearms and bring them into readiness if they consider that under the current circumstances grounds for this application could arise per Article 15 of the *Federal Law on Militsia* (2007).

Attempts by persons detained by police officers who have their weapons drawn to come closer, reducing the distance specified to them by the police officers in order to attempt to capture the police officers’ firearms give police officers the right to use their firearms in response (Article 16, *Federal Law on Militsia*, 2007).

The charter of the patrol-sentry service of the Public Safety Militsia, Article 169, indicates that the police have the right to use firearms in the following cases:

- To protect civilians whose health or lives are in danger from attack.
- To repel an attack on a police officer when his health and life are at risk, as well as to prevent attempts to capture his firearms.
- To free hostages.
- To arrest a person caught in the commission of grave crimes against health, life, and property or who are trying to escape, as well as those providing armed resistance.
• To reflect armed attacks on the homes of citizens and the premises of state bodies, public associations, enterprises, institutions, and organizations.
• To prevent the escape from custody of persons detained under suspicion of a crime, persons against whom the courts have elected detention, and persons sentenced to deprivation of freedom, and to prevent violent attempts to suppress the release of these persons. (Prikaz MVD RF, 1993)

In addition, the police have the right to use firearms in the following cases:

• To stop a vehicle by damaging it if a driver creates a real danger to the health and lives of people and refuses to stop, despite repeated demands by police officers.
• To protect citizens from the threat of attacks by animals.
• To warn of intention to use weapons, to sound an alarm, and to call for help.

Police officers have the right to use physical force, including the methods of defense fighting, to curb crimes and misdemeanors; to arrest the perpetrators; and to overcome those opposing lawful demands by police officers when nonviolent means are insufficient to carry out police duties (see chapter entitled “The Use of Special Means” in Article 14 of the Federal Law on Militsia, 2007).

Police officers have the right to use the special means which the militia has at its disposal in the following cases:

1. To reflect the attacks on civilians and police officers.
2. To suppress resistance to the police.
3. To arrest a person caught in the commission of a crime against another’s health, life, or property or who is attempting to escape.
4. For the detention of persons against whom there is sufficient reason to believe that they intend to give armed resistance.
5. For the delivery of detained persons to the police station, escorting and protection of detainees and persons under administrative arrest, and detainees when they justify their behavior believing that they could escape or cause harm to others or themselves.
6. For the release of forcibly detained persons captured in buildings, facilities, equipment, vehicles, and land.
7. To suppress riots or group actions and the disruption of transportation, communications, and organizations.
8. To stop the vehicle when the driver has not complied with the request of a police officer to stop.
9. To identify persons who commit or have committed a crime.

The following special means may be used:

• Rubber stick – in cases stipulated in paragraphs 1, 2, and 7 of Part I of this article
• Tear gas – in cases stipulated in paragraphs 1, 2, 4, 6, and 7 of Part I of this article
• Handcuffs – in cases stipulated in paragraphs 2, 3, and 5 of Part I of this article. If a police officer does not have handcuffs, he may improvise other means to tie up the individual.
• Bright and loud tools with distraction effects – in cases stipulated in paragraphs 1, 4, 6, and 7 of Part I of this article

• Means of destruction of obstacles – in cases stipulated in paragraphs 4 and 6 of Part I of this article

• Means of forcible stop of transport – in the cases provided for in paragraph 8 of Part I of this article

• Water cannons and armored vehicles – in cases stipulated in paragraphs 4, 6, and 7 of Part I of this article and only at the direction of the Chief of Internal Affairs, the chief of the criminal police, and the chief of police of public security of this particular jurisdiction, with subsequent notification of the prosecutor within 24 hours from the time of application

• Special colored tools or devices – in the cases provided paragraph 9 of Part I of this article. Special colored tools are installed with the consent of the owner or his authorized person.

• Dogs – in cases stipulated in paragraphs 1, 2, 3, 4, 5, 6, and 9 of Part I of this article

• Stun devices – in cases stipulated in paragraphs 1, 2, 3, and 4 of Part I of this article (Federal Law on Militia, 2007)

The use of special means is prohibited against women with visible signs of pregnancy, persons with obvious signs of disability, and children, except in cases when they are involved in an armed resistance group or are otherwise committing an attack that threatens human health and life. Special means also may not be used in the suppression of unlawful assemblies, rallies, street marches, and nonviolent demonstrations that do not violate the operation of transport, communications, and organizations. In the state of necessary defense or extreme need, in the absence of special means and firearms, a police officer shall be entitled to use any improvised means. A list of special means which are in use by police officers as well as the rules of their use are set by the Russian Government. It is prohibited to arm police officers by special means that may cause serious injury or potentially could be a source of undue risk.

The Application and Use of Firearms

Police officers have the right to use firearms in person or in units in the following cases:

• To protect civilians from attack which could pose danger to their health or lives.
• To repel an attack on a police officer, where his health or life are at risk, as well as to prevent attempts to capture his or her firearms.
• To free hostages.
• To arrest a person caught in the commission of grave crimes against health, life, and property or who is trying to escape, as well as those providing armed resistance.
• To reflect the group or armed attacks on citizens’ homes and the premises of state bodies, organizations, and public associations.
• To prevent the escape from custody of persons detained under suspicion of a crime, persons against whom the courts have elected detention, and persons
Police officers are also entitled to the use firearms in the following cases:

- To stop a vehicle by damaging it in cases when the driver creates a real danger to human health and life and is not following the repeated legal demands of the police to stop.
- For the removal of an animal that is directly threatening human health and life.
- For the production of warning shots to sound an alarm or call for assistance.

Police may not use firearms against pregnant women; persons with obvious signs of disability; and minors, where the age is obvious or known to police, except for in situations of their armed resistance or when they are in an armed group that threatens people’s lives. The police are also prohibited from using weapons in areas where there are large clusters of people (e.g., in the crowded street, squares, places of recreation, and other public places) when this might affect other individuals (Prikaz MVD RF, 1993).

In every case in which a police officer uses firearms, he must submit a report within 24 hours from the time of its application to the Chief of Internal Affairs (police), to his duty station, or to the jurisdiction in which the firearms were used. The list of types of firearms and ammunition which could be used by police is approved by the Government of the Russian Federation.

**Police Limitations in the Use of Physical Force, Special Means, and Firearms**

When using physical force, special means, and firearms, police officers must warn of their intention to use them, while allowing offenders sufficient time to meet the demands of a police officer, except in those cases where the delay in using physical force, special means, and firearms poses imminent danger to the health and lives of citizens, when police officers may have other serious consequences, or when such a warning in the current circumstances is inappropriate or impossible. Depending on the nature and extent of the crime and those who committed it, police officers must minimize the damage caused. To those injured, they must provide first aid and notify relatives as soon as possible. The prosecutor must be notified of all cases of injury or death. The use of physical force, special means, and firearms in an abuse of power is punishable by law. Similar rules and restrictions govern the performance of the Internal Troops of the Russian Ministry of Internal Affairs and the penal system.

In addition to Article 28 of the Federal Law of the Russian Federation (1997), Article 31 provides to servicemen of the Internal Troops the right to use weapons when they have to stop the vehicle by damaging it if there is a legal state of emergency in jurisdiction and the driver is refusing to stop despite the legitimate demands of the police officers or Internal Troopers as well as to reflect the group or armed attacks (including the use of vehicles) to military camps; troop levels; transport convoys; protected objects; special shipments; facilities for communications; citizens’ homes; and the space occupied by public authorities, enterprises, institutions, organizations, and public associations. They also have the right to suppress armed resistance of those who refuse to comply with legal requirements for the
termination of illegal actions and the surrender of their weapons, ammunition, explosives, special vehicles, and military equipment.

Employees of the penitentiary system, in accordance with Article 31 of the Federal Law of the Russian Federation (1993), might use firearms without warning in the following cases:

• In reacting to the attack using weapons or vehicles
• If the sentenced person has escaped from prison, pretrial detention, or a detention facility with a weapon or by using vehicles or by escaping from vehicles on the road
• When a convict or prisoner is approaching the correctional officer with a weapon which may cause injury, while reducing the distance designated by a correctional officer, and also when the prisoner tries to take the correctional officer’s firearms

Improper use of weapons is a grave violation of the law. Those in law enforcement may incur criminal or disciplinary liability, depending on whether their misconduct constitutes a crime or just requires disciplinary measures.

However, it should be borne in mind that in practice there is a mistaken view that in cases of violations by police and other law enforcement agencies of rules of engagement that there are always repercussions. Such liability by law (Article 39, Criminal Code, 2009) may not occur if the employee violates the rules of engagement in extreme necessity, when the harm caused is less significant than the harm from preventable injury and is not violating other conditions of the legality of an act of extreme necessity.

Thus, there may be cases where the police officer is lawfully protected against criminal attacks on his health and life (Article 37, Criminal Code, 2009)—for example, when he operates in a state of legitimate defense while violating the rules of engagement (e.g., in violation of the Federal Law on Militsia’s [2007] use of weapons in crowded public places where this might affect outsiders). In some cases, a violation of rules of engagement may be justified by extreme necessity (Article 39, Criminal Code) in order to prevent more serious injury or harm to a legally protected interest (the order of service and use of weapons) and may cause fewer injuries.

For example, police officer S was assigned to an overnight shift to carry out the protection of public order on a street of the capital city. In curbing the criminal activities of three drunken hooligans, he was attacked by them. One of the criminals, despite the fact that S fired a warning shot into the air, tried to stab him. Protecting himself, S shot the hooligan, causing injury resulting in death. This criminal case went through a number of courts until the case was dismissed for lack of criminal action on S’s behalf. He had acted in a state of legitimate defense and did not exceed its limits (“Praktika Prokurorskojo Nadzora . . . ,” 1987, pp. 49-51).

But imagine that the above events took place in daylight on a busy square. As already noted, Article 15 of the Federal Law on Militsia (2007) and departmental regulations prohibit the use of weapons in a substantial crowd which could harm other individuals. This is certainly correct, but to the legality of self-defense, it does not have any relation. Unfortunately, the termination for lack of a crime on the basis of differentiated evaluation of law enforcement officers, and violating the legitimate defender with a force absolutely necessary in regards to rules of engagement does
not occur. This implies unwarranted involvement of police officers and other law enforcement officers in criminal liability. A recent survey in the Academy of Management of Ministry of Internal Affairs of Russia has shown that the vast majority (90%) of respondents indicated that a significant motive not to use their weapons is the internal affairs’ rule of self-defense and the fear of criminal liability for the use of firearms. By the same token, Article 24 of the Federal Law on Militsia (2007) states that “a police officer is liable to criminal law on self-defense, and extreme need.” No restrictions in this regard are provided by the legislature.

Approved firearm use applied in the following cases: officers who perform tasks for the protection of animals, officers who detain persons suspected of committing grave crimes, officers who apprehend offenders caught in protected sites, and officers who detain those trying to escape (Kaplunov & Milyukov, 2003).

As the research of application of use of force by police demonstrated,

Mainly weapons were used to apprehend criminals when they commit a serious crime and are attempting to escape or have armed resistance (38.5% of all cases), and to repel attacks against the police officers (45.1%). [Other] common cases of using the weapons are officers fired on vehicles (39.4%), to shoot dangerous animals (19.1%) and warning shots (5.1%), and alarming offenders of the intention to use weapons against them. The study of physical conditions and use of weapons by the local police indicated that most of the cases were extreme. They have to fire to prevent criminals from shooting first, without careful aim (68% of all cases), in limited time (83%) and in reduced visibility (82%). Shooting usually is in the close proximity and the short distances (84.4% of all cases), in motion (30%) and at the moving target (97%), after severe physical exertion (48.3%). We should not ignore the stress and pressures that affect the police officers. Critical psychological pressures can be considered and primarily the fear of officers to the possible negative effects from the use of his firearm by the courts. This factor suppresses the officer and did not give him an opportunity to move to more decisive action. (Kovalchuk & Ovchinko, 2006)

The law makes it possible for firearms to be used by police, by the Internal Troops, or by correctional officers if these individuals are in one of the following three circumstances:

1. The officer must observe the person himself in the process of a crime or be a direct witness of illegal acts. A person who is pursued on the basis of the testimony of victims and eyewitnesses of the crime (even if they directly pointed to him as the offender) or in connection with its similarity to wanted criminals cannot be recognized under the law unless they are caught in the commission of the crime. Consequently, the use of weapons in these cases is formally unacceptable. These detainees could be people who are not actually involved in the crime (Kopenkin, 1993). However, the Federal Law on Militsia (2007), Clause 4 of Part 2, Article 15, does not specify who these officers are who have observed the person(s) committing a crime (only this particular police officer or other persons such as other police officers, workers from private security agencies, the victims, etc.). Errors in the use of firearms in such cases occur, but they occur very rarely. In most cases, the use of weapons is recognized as lawful. An example is the following case. On 26 June 2000, patrol officer K from the local Police Division
Station, armed with a firearm and other special means, patrolled the Children’s Services Health Camp. Around 3:00 AM, a group of local residents reported three people attempted to break into the dorm of the camp. They were intoxicated. Patrol officer K stopped them and sent them to the exit. Following this group, there were other groups of two to three people who were also intoxicated. Fearing for the safety of the children, the officer remained next to the dorm. A few minutes later, from the direction where these individuals had exited, patrol officer K heard shouts and obscene language. In 10 minutes, a group of eight to ten people passed by patrol officer K leaving the camp. They were discussing something while using obscene language. Patrol officer K decided to escort them. At this time, the caregiver of the camp came up to the officer and reported that he had just been stabbed and asked for assistance. He was covered with blood. Patrol officer K and the caregiver followed this group of young men, caught up with them, and the caregiver pointed to the young man who had stabbed him. In the process of detaining this man, a group of ten violent individuals tried to attack the officer in order to grab his weapon. Patrol officer K fired two warning shots. Then, when the subject tried to escape, he fired a shot to kill, inflicting a gunshot wound to the head. The suspect suffered severe head injury, did not regain consciousness, and died. The use of a weapon in this case was recognized as lawful.

2. In this circumstance, a firearm may be used if a person who commits a serious crime against health, life, and property in the eyes of a police officer tries to escape or leave the scene using a vehicle; if a suspect or detainee tries to escape during his delivery by the police to the police station or during the suspect’s stay in the police station for the time necessary to deal with criminal procedure law concerning the suspect’s arrest or detention; or if a person attempts to escape after committing a crime, usually only during the period of direct pursuit or until the officer or trooper has arrested or permanently lost the suspect.

3. In this case, firearms may be used if the circumstances of an incident give an officer a reasonable basis for believing that the person has just committed (or attempted to commit) a serious or particularly serious crime against health, life, and property. In so doing, it must be stressed that weapons could be used to apprehend perpetrators only if the crime poses an increased public risk. The law does not bind the possibility of using a firearm to a mandatory upgrading of criminal actions.

In accordance with Article 15, Part 4, of the Criminal Code (2009), serious crimes are intentional acts for which the maximum penalty provided is more than five years’ imprisonment. It should be noted that the existing Criminal Code in addition to the category of serious crimes has identified a group of particularly serious crimes, which, in accordance with Part 5, Article 15, include intentional acts for which a criminal’s penalty of imprisonment is a term exceeding ten years. The Federal Law on Militsia’s (2007) last category is not used. It is obvious that at the scene, the officer has the opportunity to evaluate only the circumstances describing the external, objective side of these illegal acts. Therefore, this estimate may not coincide with the final qualification of the act, taking into account all elements of the crime.

Using the notion of a serious crime based on the specified period of deprivation of liberty as a condition of the legality of the use of firearms did not provide the
necessary degree of specificity of the foundation because this kind of legal evaluation of the offender by a police officer is impossible due to almost no time, insufficient information, or inadequate legal training to accomplish it. The introduction of the legal practice terms a serious crime and a particularly serious crime can create a very serious problem for the officers and troopers who were at the scene.

First, the act or its consequences may fall under the category of a particularly serious crime but, in accordance with the law, may not even be a serious crime. For example, it is very difficult to distinguish the most serious crime—murder (Article 105 of the Criminal Code, 2009)—from a murder committed in the heat of passion (Article 107, Criminal Code) or of causing death by negligence (Article 109, Criminal Code), which do not fall under the category of even serious crimes. In addition, in connection with the amended Federal Law of 9 March 2001, No. 25-FZ of Parts 3 and 4, Article 15, of the Criminal Code from the category of serious crimes, all the acts of reckless conduct are excluded regardless of the severity of the punishment for them. For example, the violation of the rules of traffic safety and the operation of rail, air, or water transport, which caused by negligence the death of two or more people (Part 3 of Article 263, Criminal Code); violation of traffic rules and a vehicle which caused by negligence the death of two or more people (Part 3 of Article 264, Criminal Code); and the violation of the rules for handling weapons and objects, representing an increased danger to others, which caused by negligence the death of two or more people (Part 3 of Article 349, Criminal Code) now fall under the category of moderate crimes despite the fact that the last of the articles establishes penalties of up to ten years’ imprisonment inclusive. This has caused many problems in the implementation of the grounds for the use of firearms because at the scene, it is often difficult to accurately determine the subjective side of the nature of a criminal offense.

Secondly, it could be that a grave crime is committed, but the external signs of it on the spot for such a conclusion are not enough. These are the crimes that are recognized by law as serious but do not always have obvious qualifying attributes (e.g., soliciting another person’s property is a serious crime, if committed, in particular, to obtain property worth a large or very large amount). A police officer who did not have evidence of the existence of such circumstances (often the reality) has no right to use firearms to arrest those caught in the commission of these crimes.

According to Part 3 of Articles 23 and 24 of the Federal Law on Militsia (2007), the legality of the injury caused by the use of firearms by police officers in the above-mentioned cases will be determined according to the requirements set by Article 38 of the Criminal Code (2009). Therefore, the excess of measures necessary to arrest a person who commits a crime should recognize the apparent inconsistency of their nature and the degree of public danger of the detained person and the circumstances of detention. This excess is known to lead to criminal liability only in cases of intentional injury.

In this regard, it could happen that when using a firearm in accordance with Paragraph 4, Part 1, Article 15 of the Federal Law on Militsia (2007) (e.g., to arrest a person caught in the commission of the burglary), a police officer may need to exceed the limits set by Part 2, Article 38, of the Criminal Code (fatally injure escaping suspect) (Kaplunov, 1998, pp. 59-60). Thus, the term a serious crime is a convenient reference point to have legal control for the courts rather than for decisionmakers on the use of firearms in the real situation of detention. However,
it is unwise to restrict the right to the use of firearms by police officers who by federal law are responsible for solving crimes and arresting perpetrators, especially those individuals who are caught in the commission of a socially dangerous act (Ponikarov, 1998, p. 23).

There is a discriminatory component in the purely technical rules requiring officers to notify the commander in chief of the police about the use of a weapon and, in some cases, even the prosecutor about the circumstances of its use. In fact, in the officer’s report, he must essentially prove that the circumstances of the situation gave him the right to resort to firearms. As a result, the criminal case, as a rule, will be initiated against an officer who used a weapon—not the perpetrator. This obligation implies shifting the burden of proving his innocence to the officer that is contrary to Article 14 of the Criminal Code (2009).

Another drawback of special regulations governing the use of weapons is that they allow such use only to a person escaping from persecution. Meanwhile, Article 38 of the Criminal Code allows using force on the offender who refuses to follow authority. Thus, a police officer who caught a criminal in uninhabited areas, in a basement, in an attic, or in a hostile illegal environment does not have the right to use his weapon in order to encourage the offender to follow him or at least to neutralize him.

So, the current legislation discriminates against police officers and other authorized persons in their use of firearms to apprehend those who committed socially dangerous acts. On the other hand, the use of firearms during detention is often not limited to such a critical condition as the opportunity to use another way to apprehend fugitives.

**Bibliography**


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