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Less-Lethal Munitions for Patrol Officers

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ABSTRACT

The increase in situations involving “suicide by cop”(mentally-ill or irate subjects armed with a club or a knife, and having to use deadly force to resolve these kind of high risk situations) will almost guarantee public scrutiny and civil litigation against police departments, even though deadly force was found to be justified.. The Midland Police Department does have some less-lethal capabilities such as O.C. spray and an asp, but these may not work in the above described situation and the options available may cause undo harm to the officers or the public at large. The use of or attempted use of various less-lethal munitions, such as bean bag rounds, might lessen the litigation against a department as well as improving the public’s perception in showing that alternative means were used instead of prior to the use of deadly force to resolve the situations. Currently, the Midland Police Department Swat team are the only unit that has a limited supply of less-lethal munitions such as bean bag rounds or rubber baton rounds on hand. Being a part-time team, the team may not arrive before some action must be taken. The paper addresses the history, development, training and legal basis for having and using less-lethal munitions. Specifically, the paper explores the viability of integrating less-lethal munitions into the shotguns of the Midland Police Department. The paper also discusses the costs and benefits for the Department of converting current shotguns to a less-lethal role only and supplying the patrol officers with the guidelines, training, and reporting procedures when less-lethal munitions are used by the patrol officers.

This paper recommends that less-lethal munitions be made available to patrol officers to be used as another option to deadly force in certain situations.

Introduction

With the rise of “suicide by cop” incidents (incidents where an irate or mentally-ill subject provoke Officers into using deadly force) and civil litigation when officers use deadly force in these situations, the Midland Police Department needs to explore the possibilities of the use of less-lethal munitions at the patrol level. The Midland Police Department already has several documented cases of incidents that could have turned out badly and did place the officers as well as the public in danger. The access to and use of less-lethal munitions could have given the officers another option in resolving these incidents without resulting to deadly force as the only option.

Technology today has come up with several affordable and useable less-lethal munitions that can be issued to the patrol officers so they can have that less-lethal capability with them in their performance of their duties.

The purpose of this paper is to form a policy on getting less-lethal munitions to patrol officers and having the officers receive the proper training in when and how to use the less lethal munitions.

The problem identified is that the Midland Police Department has a very limited less-lethal option. Currently, the Midland Police Department’s SWAT team is the only unit who currently have a small amount of less-lethal munitions to use on critical incidents. But, in a crisis situation, SWAT officers may not arrive at the scene before actions must be taken. The availability of less-lethal munitions for patrol officers gives an officer another option, especially when addressing subjects who want “suicide by cop” or subjects who are mentally-ill and are armed with objects such as knives, clubs etc...or for dangerous felons who refuse to peaceably

surrender. Less-lethal munitions can also enhance the response for riots and mobs during civil unrest.

The intended audience for this proposal is the Command staff and the training division of the Midland Police Department.

The sources used in this policy research paper will be drawn from independent research, periodicals from police and tactical magazines, journals, and legal opinions .

The intended outcome of this project is to allow Midland Police Department officers to have and use, when needed and justified, less-lethal munitions that can be used in assigned shotguns. The Midland Police Department already has a patrol rifle policy, but shotguns have been overlooked or have been forgotten as a useful tool for officers. Less-lethal munitions, such as bean bag rounds or flexible baton rounds for shotguns, would give a patrol officer another option if needed, instead of deadly force.

Historical Context

After the civil riots and the racial disturbances of the 1960's, there was a definite need in developing weapons for civilian law enforcement as well the military, that were either less-lethal or non-lethal. "In 1972, the U.S. Department of Justice, in conjunction with the National Science Foundation, sponsored a national conference on research needs for non-lethal weapons, coercive devices and agents that could subdue without creating substantial risk of permanent injury or death."(Sweetman, 1987, p.1). Fourteen years later, no significant strides in less-lethal or non-lethal weapons had been made. "In June, 1986, Attorney General Edwin Meese convened a conference to reassess the progress of less than lethal weapons development, to examine recent advances in technology, and to explore issues to be considered in future development

efforts.”(Sweetman,1987, p. 1). This conference was attended by federal, state, and local law enforcement officers, military representatives, scientists and scholars. “The conference not only focused on the use of the less-lethal or non-lethal weapons against problems of crowd control, but also looked at a range of law enforcement needs such as: to avoid serious injury and death of fleeing felons; to deal with hostage-terrorist situations; to decrease the number of law enforcement officers shot with their own weapons; to provide adequate force options for the increasing number of women officers; to respond effectively to potentially violent emotionally disturbed persons; and to decrease high insurance rates and lessen the number of lawsuits involving police officers.” (Sweetman 1987 p.1-2).

The 1986 conference decided to focus on two goals. The first was to develop new ideas and devices and the second was to encourage and recommend a plan for future research and development. The conference also defined less-lethal devices as; “devices or agents used to induce compliance with law enforcement personnel without substantial risk of permanent injury or death to the subject. Also, in an attempt to quantify less-than-lethal, the conference decided on a level of 95 percent successful usage without a fatality in order to classify a weapon as less-lethal weapon” (Rivetti, 1987, p.7).

To achieve the second goal of this conference was to get the military, private industry and law enforcement to work as partners in developing new, improved less-lethal technology. The military has been experimenting with launchable less-lethal projectiles such as rubber bullets, bean bags and rubber baton rounds, since the 1970's. The problem during that time was some of these military projects were classified and the information was not being disseminated to private industry or to law enforcement. In regards to private industry during the 1970's and 1980's was

there was no market or profit for them to develop less-lethal rounds. In regards to law enforcement, less-lethal rounds or devices required certain requirements to be used in performance of their duties. "Future development of less-lethal weapons must meet law enforcement requirements such as: multiple shots; easy/fast reload; as accurate as a handgun; reliable and effective; uncomplicated; acceptable to officers and public; not prone to abuse; and affects only intended target" (Rivetti, 1987, p. 16-17).

"In 1991 there was a small, high-level conference where selected academic and law enforcement leaders were assembled to chart the next round of NIJ research on less-than-lethal weapons. In addition, NIJ recently awarded a dozen grants totaling more than \$2 million to develop new less-than-lethal technologies. This type of research remains an agency priority for the 1995-1996 funding." (Bailey, 1996, p.536). These grants have helped promote private industry to get involved in developing new, improved less-lethal technology with open markets to the military as well as law enforcement. The military has released prior test results and law enforcement presented their requirements that were needed to perform their duties in the field.

Two major court cases also helped push for the need for updated less than lethal technology. These two cases set up a need for law enforcement to develop another step before the use of deadly force to resolve high risk situations. "In 1985, the Federal Supreme Court decision *Tennessee v. Garner*, 471,U.S. 1, 11-12, limited the use of deadly force against fleeing felons. "The court held that the use of deadly force to apprehend an apparently unarmed, non-violent fleeing felon is an unreasonable seizure under the Fourth Amendment" (Miller, 1999, p.23). In other words, it is not justified to use deadly force on a subject who is not armed or has not committed a violent act and is fleeing from the officer, other means must be used to

apprehend the subject.

The second case was decided in 1989 in *Graham v. Connor*, 490 U.S. 386, 394. "In deciding *Graham*, the Court reaffirmed the use of the Fourth Amendment's reasonableness standard for all cases involving excessive force claims. Reasonableness, however, is to be determined by objective measures without regard to the officers' motivations. Motivation is important, however, in that liability requires that the use of force, but not excessive force, be intentional, and not negligent." (Miller, 1999, p.24).

The Midland Police Department has several documented cases in which deadly force was used and the public questioned if there was another option to use other than deadly force to resolve the situation. In one case an irate man at a domestic disturbance call was armed with a knife. The officers tried several times to get the man to put the knife down, but the man charged at one of the officers and the only option the officer had was to use deadly force to stop the attack.

Another case involved another domestic disturbance in which a man armed with a hatchet ran from the scene. As officers chased the subject, the subject stopped and confronted the officers. An officer then tried to disarm the man and, in the attempt, the officer slipped. The man then lunged at the officer swinging the hatchet at him. A second officer then shot the man to keep him from striking the downed officer with the hatchet.

A third recent case once again involved a domestic disturbance with a mentally- ill female who was armed with a knife. The officers valiantly got the children of the female away from danger, but at that time, the female lunged at one of the officers with the knife and a second officer shot the female.

In the above cases, the officers were perfectly justified in using deadly force, but with these situations becoming more common, the use of less-lethal projectiles or other devices could give an officer another option in resolving the above described situations before the use of deadly force. These cases also ended up in civil suits due to the use of the deadly force.

The recent court cases involving the use of deadly force, the conferences pushing for new development of less-lethal technologies to be affordable and available to the military as well as law enforcement, a possible profit for private industry, the increasing cases of high risk situations facing officers having to use deadly force as a last option, as well as the public perception in the alternatives of using deadly force, are all influencing factors that will require police departments to look into supplying their officers with more varieties of less-lethal devices to peacefully resolve some of these high risk situations without the last resort of deadly force.

Review of Literature

In reviewing the available literature, especially literature written about the 1986 Attorney General's conference, the following recommendations were made in considering the development and use of less-lethal devices were as follows; 1) Operational requirements for less than lethal weapons need to be carefully defined for the various situations in which such weapons may be needed; 2) Design and implementation efforts need to consider the weapons' acceptability to law enforcement personnel; 3) Adequate testing and evaluation of existing and new non-lethal weapons is required; 4) Dissemination of public information on less than lethal weapons must be careful and candid; 5) Liability issues must be considered in the design and use of less than lethal weapons; 6) Existing information relevant to less than lethal weapons needs to be compiled and analyzed; 7) Guidelines for the use (and controls against the abuse) of

non-lethal weapons are required; 8) Careful consideration should be given to the necessary means of funding research and development and marketing less than lethal weapons; and 9) Cooperation is required among scientists, law enforcement officials and manufacturers in the development of less than lethal weapons. (Sweetman, 1987 p. 21-28).

In regards to acceptance to law enforcement, some officers and other criminal Justice professionals feel that using less-lethal can expose officers and citizens to further danger. Dr. David Klinger, an assistant professor of Sociology at the University of Houston wrote; "The use of less-lethal munitions can lead officers to take risks that place their lives in extreme jeopardy." (Klinger, 1998, p.6). I feel these risks as Dr. Klinger described in his article can be reduced by the use of proper training with less-lethal munitions. As any officer knows, there is no "magic bullet that is 100% safe and 100% effective." (Klinger, 1998, p. 6). But any officer should know that as technology changes, so does tactics and training.

Other major concerns in reviewing the literature was civil liability and public perceptions and expectations of their law enforcement departments.

Civil liability has become a major motivating factor in the development and use of less-lethal technology in law enforcement. In today's society, almost every situation involving force that causes serious bodily injury or death will end up in civil litigation which will cost the city thousands of dollars to litigate. The use of less-lethal technology hopefully will reduce the number of lawsuits filed due to the use of these less-lethal devices to resolve high risk situations in a manner that does not cause serious bodily injury or death. Since this is a new field to law enforcement, there is not much data collected on the use of less-lethal munitions and their results

including civil litigation after the use of less-lethal munitions. But recently the National Institute of Justice has sponsored a data collection program to fill this documentation void. "The data base will be set up to input, distill and export useful data which documents the actual effects of less-lethal impact munitions on suspects during actual encounters. The project is designed to collect a sizable amount of data to establish the foundation for conceiving sound conclusions. The conclusions should relate to the actual effectiveness of currently available less-lethal technologies and tools, as well as, provide direction for future less-lethal technologies" (Hubbs, 1998, p.16). This information, in turn, would be useful in evaluating and justifying the use of less-lethal munitions and can be brought into a court if needed in civil litigation.

Another factor is what the public perceives during these high risk situations. Due to the abundance of media coverage and shows showing the new less-lethal technology, the public will begin to expect law enforcement to be current with technology and when deadly force is used in a high risk situations, the public will automatically ask if the Department did everything in its power and were properly equipped and trained to use all the options available before using deadly force.

In checking with the surrounding agencies such as the Odessa Police Department, the Midland County Sheriff's office, and the Abilene Police Department. The use of less-lethal projectiles are primarily a SWAT function, not a patrol function. These Departments also have part time teams and admittedly takes some time for the teams to form during a high risk situation. Now, out of state agencies such as the Los Angeles Police Department and the San Diego Police

Department do issue less-lethal rounds to their patrol officers as part of their less-lethal equipment.

Even though data is still being collected, newer less-lethal devices are being developed, and the questions pertaining liability issues, the Midland Police Department should take the lead in the Permian Basin to utilize available less-lethal technology at the patrol level and to constantly search for better less lethal technology in the future.

Discussion of Relevant Issues

The focus of this proposal is to allow patrol officers to be equipped with less-lethal projectiles, such as the bean bag round, for use on the streets. Several issues need to be addressed before issuing officers such rounds.

The first issue is what kind of system would be acquired or used to launch less-lethal rounds. The Midland Police Department now has a rifle policy in which patrol officers can carry a department approved rifle. With this policy, more officers choose to carry rifles instead of shotguns. Currently, 44 rifles both personal and Department owned are issued to officers. The Department shows to have 90 shotguns on inventory of which 53 are issued to officers. The shotguns have been basically overlooked or shunned as a useful weapon due to buckshot rounds that can stray off and hit innocent bystanders or the use of slugs which have a problem of over penetration. Switching all or a portion of these shotguns to a less-lethal role only would give the officers another tool as well as would be more acceptable to the public.

The second issue is what type of bean-bag round or which company to obtain the rounds from. There are now several companies to chose from and their test data is available for their

particular round. The Department can also request from these companies to send rounds for the Department's own testing by the Range master and other firearms instructors with the Department.

A third issue is the policy itself. The Department needs to outline a policy that sets standards and guidelines on when and how to use the less-lethal rounds. The policy needs to include the training, qualifying, and reporting procedures to be followed when less-lethal projectiles are used. The policy must dictate the times that less-lethal projectiles are appropriate and when they are not and should be included in the Department's force continuum policy. The policy should dictate that the incident involving less-lethal projectiles be reviewed in accordance with the Department's General Orders involving any officer involved shooting. This will ensure that the policy will be reviewed and evaluated properly.

A good policy must explain the training to be used. The Department will need to develop a course for training and use of the less-lethal projectiles. The course could be taught during the 40 hour in-service training or scheduled as squad training. A qualification course should be developed and used as part of the quarterly firearms qualification courses currently conducted by the Department. Officers and Sergeants would need to be trained on when the use is appropriate, reporting procedures, as well as medical treatment requirements after the use of the less-lethal projectile. The officers need to know that the less-lethal round is another tool and that it should not be abused nor should it replace the option to use deadly force when such situations dictate the use, but does help fill the gap where non-traditional weapons such as clubs and knives are used and there is a distance problem. The less-lethal projectile will give the officers a chance

to subdue or knock down the subject and give officers a chance to secure the subject before the subject knows what happened.

Another part of the policy will designate who will carry and use less-lethal projectiles. It is recommended that all buckshot and slug rounds be collected and these rounds be only for the swat team and that less-lethal rounds will be the only rounds issued for patrol shotguns. An alternative would be to issue only less-lethal rounds to patrol officers who wish to carry a properly marked, less-lethal shotgun and that those would be the only rounds carried by that officer.

A policy must contain a provision for public relations. The Department needs to work with the media to help promote and explain about less-lethal munitions and when and what situations it can and cannot be used. The public needs to be aware of the conversion of certain shotguns to less-lethal rounds only, so there would be less concern when shotguns are seen by the public in some situations. In the past, some complaints were generated by citizens when they saw the officers carrying shotguns at disturbances or other calls.

The cost of converting the shotguns to less-lethal rounds is minimal. The shotguns are already on hand. Most of the cost will be for the ordering of the rounds and training. Currently there are several companies that have developed less-lethal projectiles on the market. The price of these rounds has become more affordable for the Department. One estimate showed the rounds could be purchased for as little as \$4.43 per round when bought in bulk (Lewis, 1999). The training cost is basically the personnel hours needed to train the officers. There are currently several officers in the Department that are familiar with less-lethal projectile training and could

be the principal instructors for the training.

The benefits include; Giving officers another option before the use of deadly force, increased officer safety in high risk situations due to distance, a better image for the Department in regards to public safety and welfare, low costs for converting to the less-lethal rounds, and less civil litigation due to not using deadly force.

Conclusion/Recommendations

The purpose of this paper is to recommend that the Department convert all or part of patrol shotguns to the use of less-lethal rounds for the patrol officers. Recently, less-lethal rounds and technology have improved and have become affordable to law enforcement departments. In this age of civil liability and publicity of the less-lethal rounds, the public expects a progressive department, such as the Midland Police Department, to research and acquire less-lethal technology to be used by the patrol officers in high risk situations. Currently, patrol officers have O.C. spray and an asp as their only less-lethal options. Less-lethal rounds for shotguns are limited to members of the Midland Police Department's Swat team. In some situations, time is a factor and the Swat team may not arrive before action needs to be taken.

This proposal will allow patrol officers to have another option before the use of deadly force. This proposal will also improve public relations and perceptions of the department, decrease liability issues and improve officer and public safety. The facts are that the less-lethal technology is out there and is publicized in the media. The public is going to expect its law enforcement departments to be equipped with this technology. There is a push for the development of less-lethal devices, but for now, it is recommended to use the less-lethal

projectiles, such as bean bag rounds, until other compatible less-lethal devices are available.

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