

**THE BILL BLACKWOOD  
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

The Future Force Continuum:  
Bridging the Gap With  
Less-Lethal Weapons

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by

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## **INTRODUCTION**

The use of force is a constant concern to police administrators. In recent years, the media, public and courts, have become less tolerant of police use of deadly force. The purpose of this Policy Research Project is to present the issue to police executive level administrators of alternative force applications in police weaponry concerning less than deadly or less lethal force. Researching material on this emerging topic will provide information to facilitate the decision process of police agency executive staff considering this option in the force continuum.

The issue facing civilian law enforcement concerning the use of force has two factors. An increasing general disapproval of deadly force usage by police agencies responding to situational emergencies, and indoctrination of new "less-lethal" force technology into the police use-of-force continuum. These are critical issues police executives will be forced to address.

This policy research project targets police executive staff personnel who must establish policy and direction of their respective agency while responding to the demands of society.

As an emerging contemporary topic, minimal published material exists for historical research. As a result, the bulk of research material on this topic is derived from recent journals and periodicals. Publications from the U.S. Department of Justice were

also utilized.

The expected outcome of this project is to provide information to police executive staff and assist the decision process concerning the use of less-lethal weapons options in policing.

## **Historical, Legal or Theoretical Context**

Less-lethal force is a contemporary and emerging field in American law enforcement. Should law enforcement agencies explore less-lethal force options? Should police agency administrators embrace the concept and implement operational policy? Does society's expectations of law enforcement oblige agencies to expand force options? These questions pose philosophical and operational dilemmas for law enforcement administrators across the nation.

Law enforcement officials have long recognized that a wide and dangerous gap exists in the range of tools that are available to them. The most common law enforcement tools, the nightstick and the gun, may either be too weak or too strong a response to many police situations (McEwen, Frank 13). For many years these two tools were the only options available to police agencies. Police departments relied on physically large, ex-military, male officers to present an authoritative image in attempt to gain a psychological edge. This type of officer probably rarely needed any other force options.

As law enforcement evolved, the ex-military, brute (in appearance) officer also evolved to a more diversified police population. The nature of law enforcement evolved from an authoritative model to a kinder, friendlier model. However the environment of crime has become increasingly violent. The criminal element rarely respects the badge of authority and has become increasingly violent to victims and law enforcement officials. As police officers responded to increasingly violent situations, it became clear that they did not have the tools on their belts to fix every situation. The wide and dangerous gap became larger. The problem lies in the fact that police officers do not have at their disposal the necessary variety of force options to meet these situations (Casey a. 7).

Over the years, the courts have continued to refine the definition of force and develop more specific guidelines for its appropriate use, moving further and further away from the broad

parameters of yesterday that permitted greater chance of abuse or misinterpretation (Roush 46). For years, officers have been taught that the use of force must be only that which is necessary to stop a suspect's hostile act and not more (*Wise v. Bravo* 1981). Deadly force is defined by Black's Law Dictionary as "force likely or intended to cause death or great bodily harm". Non-deadly force is that force which is not likely or intended to result in death or great bodily injury (Kaune 1). As police officers encountered increasingly difficult situations, the public became more aware of the level of force being used on them.

Control of an actively uncooperative but not visibly armed suspect can create a major problem. The mentally disturbed and those under the influence of drugs are notable examples (Casey b. 7). Officers realized the need for options between handheld impact type weapons and deadly force. In *Wise v. Bravo* (1981), the court found the force used excessive if: it causes severe injury, the injury was grossly disproportionate to the need for action under the circumstances, and/or the action was inspired by malice to that it amounted to an abuse of official power. Courts awarded huge amounts for damages because of society's interpretation of use of force.

Police have been forced to search for new technology in developing options to the traditional non-firearm weapons (Flynn 75). Police officers, police departments and their parent jurisdictions have been forced to pay the price in civil liability suits and insurance premiums (Casey c. 7). In *O'Neal v. DeKalb County, Georgia* (1988), a dissenting magistrate offered a strongly worded opinion criticizing the agency for failing to train and equip its officers in the use of "alternative, less drastic measures". These legal actions and the unrest of the 1960's caused a stir in law enforcement philosophy and planted the idea of additional force options.

The need for less-than-lethal weapons was first widely discussed during the anti-Viet Nam war demonstrations of the 1960s (Casey d. 7). The Kent State University shooting of student

protesters by the National Guard brought the issue of force used by authorities on protesters to national attention. In *Tennessee v. Garner* (1985), the United States Supreme Court ruled that the police cannot use deadly force to prevent the escape of an apparently non threatening suspect. This forced law enforcement to begin to explore alternatives to deadly force. There was a clear need for a level of force beyond hand held impact weapons, a level that was not designed to cause death. This ruling led to the formation in the Department of Justice of a less than lethal weapon development program (Hemenway, Weil 97). A report from an Attorney General's conference defines "Less Than Lethal" weapons as "devices or agents used to induce compliance with law enforcement without substantial risk of permanent injury or death to the subject" (Sweetman 2). This definition fits the recognized need of a weapon system that will bridge the gap in the force continuum relating to the reasonableness of force for law enforcement. The concluding note of the Report on the Attorney General's Conference on Less Than Lethal Weapons states: "In summary, the development of improved less than lethal weapons for close proximity encounters was viewed as the most urgent need for law enforcement agencies" (March 1987). This report legitimized law enforcement's need of a weapon system that was capable of controlling dangerous situations and suspects where deadly force was not the appropriate response but was often used for lack of other options.

Development of less-lethal technology progressed slowly. Some of the reasons for the slow evolution were; a diminutive market for the products, expensive research and development, product liability, and the reluctance of law enforcement to embrace something new. Company engineers faced a relatively small market for such an expensive product to research and develop. Product liability was an obstacle unto itself. Law enforcement is well known for its' reluctance to adopt a new concept. Despite the obstacles, development persisted and less-lethal products became available to the law enforcement market.

Less-lethal projectiles can be employed to save lives and reduce serious injuries during volatile confrontations between officers and citizens (Klinger 6). Police agencies now have the option to bridge the gap in the force continuum from hand held impact weapons to deadly force (originally developed by Dr. Graves and Professor Connor in 1981).

### **Review of Literature or Practice**

The use of force, especially deadly force, has come under fire in recent years. The Courts and the media are demanding that police agencies become kinder and more gentle in an increasingly violent world (Flynn 77). It has become quite common in the news media to publish or broadcast, in eyewitness account, the image of a standoff between the police and a suspect. Often the suspect may be mentally impaired by substance or disease and armed with a knife or a type of club. The officers face a no-win situation because although they may be “legal” in the use of deadly force against such a suspect, the public will forever condemn the death of the suspect at the hands of the police. In *York v. City of San Pablo* (1985), the court ruled that even though a suspect was armed and refused to obey police commands to drop his gun, “there appeared to be some doubt as to whether the decedent’s hand was raised in shooting position”. The shooting was ruled to be an excessive use of force. Every major study conducted of law enforcement’s use of deadly force has recommended greater restrictions on the use of deadly force while encouraging the increased use of less lethal force (McEwen, Frank b, 1). These recommendations are becoming a banner of reform for American law enforcement.

Law enforcement agencies are now faced with the decision to continue a “wait and see” attitude about less-lethal force options, or to adopt and use the less-lethal force options in the department training and operations. Some agencies have chosen the less-lethal path because they believe that there is a legal obligation (James 76). These agencies have viewed court cases as



mandates to adopt the less-lethal technologies in an attempt to reduce deaths of suspects and ultimately reduce the incidence of costly litigation. Monetary damages are often in the millions of dollars for a single incident (Kappeler 55).

There are many “victims” in a police deadly force confrontation. Some agencies are exploring the use of less-lethal force options because of the ethical implication that “it’s the right thing to do”, for not only the public they serve, but for the officers too, who are forced into resolving difficult and often violent confrontations (Ijames 77). Police officers often bear the psychological and emotional scars of a deadly force confrontation. No one more than the officer on the street wishes for an alternative that may be utilized when deadly force is not the morally and ethically correct solution. Less-lethal weapons are not likely to replace today’s police firearms but they can fill a void in those situations in which the police cannot effectively use deadly force and have no other means of physical apprehension (Coates 1,4). Although today’s police officers are well trained and willing to address almost any type of situation, they must have the proper equipment to keep themselves, the public, and the suspect safe in addition to performing the job that society expects (Graham 68).

Most deadly force confrontations are very brief; usually a matter of seconds to minutes, and officers must be prepared and equipped to respond (Graham 67). Officers facing a lengthy response time of a specialized and equipped unit to handle these situations will often venture into untested waters in attempt to resolve the problem, often with regretful results. Less-lethal projectiles are now available that will operate in launch platforms already familiar and accessible to today’s police officers. Less-lethal projectiles can be used in an effort to temporarily incapacitate potentially dangerous individuals as safely as possible to the individual and police officers, while allowing apprehension without death or serious injury (Ijames 77).

One of the greatest restrictions to an officer attempting to take charge of a hostile incident is range. In far too many cases, the officer is forced to come in close physical contact with an uncooperative subject, which dramatically increases the chances that both officer and subject will be injured (Hepler 8). Less-lethal projectiles provide a safety or buffer zone by increasing the range from the officer to the subject. The officer is capable of delivering an incapacitating blow without physically coming in contact with the subject. Officers should use less-lethal projectiles to de-escalate potential deadly confrontations while reducing the likelihood of serious injury of death to all individuals involved in the situation (Ijames 82).

According to the United States Department of Justice National Data Collection on Police Use of Force (1996), minimal information is available on incidents in which the use of less-lethal force made it possible for police to avoid applying deadly force. Such information would be infinitely valuable to law enforcement policy makers. Since the spring of 1996, the Phoenix Arizona Police Department has fired on suspects with less-lethal projectiles (beanbags) to successfully end confrontations in nineteen situations (Nichols 1). Phoenix officers have developed confidence in less-lethal projectiles despite historically cynical police attitudes to new concepts. Other agencies are experiencing similar results with less-lethal projectiles on project evaluation trials. Some departments are beginning to implement the use of less-lethal projectiles in everyday operations. Even smaller agencies, like the Midland Texas Police Department, recognized the benefits of less-lethal projectiles in daily operations although the incidences of actual use are significantly reduced.

### **Discussion of Relevant Issues**

Several key issues are relevant to this topic and will be identified and summarized in the following discussion.

The issue of the use of force by police officers is very important to society and is a key issue of this topic (Prach 80). As society progresses, it becomes more concerned with the treatment of its members by all aspects of government. This is especially true with law enforcement. Individual rights are a principle on which this nation was formed and have remained in the limelight throughout history. The large number of Supreme Court cases that deal with rights of individuals supports this notion.

Moral and legal constraints require law enforcement officers to use the minimum amount of force reasonable and necessary to control a confrontation (Meyers 16). Officers are taught in academies across the nation that "reasonable force" is defined as the level of force necessary only to overcome resistance or establish control of the situation. Any level of force in addition or beyond is considered excessive (*Graham v. Connor* 1989). Reasonable force is not static in that it changes moment to moment and situation to situation. Law enforcement officers must be able to define the point where reasonable force becomes excessive in controlling situations and individuals.

The public has an increasingly negative attitude toward police use of force. It is safe to assume that law enforcement will face additional challenges in the future concerning the use of force (Flynn 77). Law enforcement agencies must explore options to the traditionally accepted methods of utilizing force.

The problem lies in the fact that law enforcement officers do not have at hand, the necessary variety of force options to address dangerous and confrontational situations (Meyers 12). The previously stated traditional weapons, nightsticks and guns, are very often inappropriate levels of force in dealing with dangerous and confrontational situations. A dangerous suspect is, generally an armed suspect. Suspects armed with guns, knives, and flashlights have been determined by the courts to be "dangerous" (*Ealy v. City of Detroit* 1985,

*Butler v. City of Detroit* 1985, *Rhiner v. City of Clive* 1985). Chemical sprays have become more utilized by law enforcement agencies in recent years but certainly are not a panacea. Chemical sprays are found to be approximately 80% effective. They are especially ineffective on substance abusers, highly emotional persons, and the mentally impaired (National Institute of Justice 1994). These persons pose a high risk of danger to police officers and themselves in a confrontational situation. The traditional weapons of force are often not appropriate in dealing with individuals of this sort. These individuals are capable of inflicting serious injury or death to law enforcement personnel. The traditional weapons require either close range contact to strike the individual, or to utilize deadly force by shooting.

Less-lethal tools can successfully end such confrontations without the use of force that is, by design, likely to cause death (Flynn 76). Less-lethal weapons are designed to bridge the gap from the handheld impact or spray weapon to deadly force weapons by providing an additional level of force. Having street level officers trained and equipped with less-lethal technology would heighten their ability to resolve high-risk situations (such as suicide by cop) without deaths or serious injuries (Flynn 76).

The courts are beginning to recognize the value of non-lethal and less-lethal weapons as injury reduction devices. Attorneys for plaintiffs in police brutality cases are making the argument that it is negligent for agencies to use conventional force when less injurious types are available (Meyers 17). In the near future, we will see more of these cases, as the public becomes more educated in the availability of less-lethal technology.

Today's devices are workable, realistic, solutions, and they can become an important part of officers' weapons arsenal (Pilant a 38). It can certainly be argued that police officers are involved with incidents that require less than deadly force far more often than in situations which require the use of deadly force (Prach 91). This is where the less-lethal technology offers law

enforcement a clear advantage. Not only does it reduce the risk of injury or death to officers in the field, it minimizes the chances that officers will be forced to kill someone that they don't want or need to (Nichols 6). However law enforcement agencies continue to regularly train in use of guns (deadly force), without embracing less-lethal technology as an alternative.

One of the more important reasons that less-lethal technology should be embraced has to do with liability (Pliant b 38). In almost every case the suspect is alive when the situation is resolved. There is a widening gap between an officer's duty to arrest violent people and the ability to do so without being second guessed, sued or even indicted.

This leads to discussion of cost and benefits analysis. In virtually every police action that results in the death of an individual, a wrongful death suit will follow. These cases are very costly to defend regardless of merit. These legal actions impart a toll on the officer and jurisdiction resources. If the officer and agency are found negligent, the damages may be in the millions of dollars. The personal and emotional tolls may be great to the officer who is compelled to use deadly force for lack of a more appropriate weapon. These considerations alone may more than justify an agency's implementation of less-lethal technology.

Departmental costs to implement less-lethal force options are very reasonable. Equipment currently available is cost efficient to purchase and train personnel in its applications. Budget impact to most agencies will be minimum.

Major benefits to adopting less-lethal technology include:

1. enhanced ability of police officers to deal with violent individuals/situations without causing death or serious injury,
2. support of the public who may demand that law enforcement agencies adopt less lethal weapons,
3. reduced civil litigation costs,
4. reduced stress on personnel involved in deadly force situations, and
5. minimal implementation costs.

## **Conclusion/Recommendations**

This Policy Research Project targets law enforcement executive administrators. The purpose is to present the issue of less-lethal applications of force to facilitate the decision making process for adopting less-lethal technology.

This topic is of current relevancy to law enforcement administrators across the nation. Use of deadly force by police agencies is under intense scrutiny by the courts. The public has increasingly negative attitudes toward the use of deadly force by police agencies. Moral and legal constraints require minimal levels of force in arrests and apprehensions. Technology has produced an additional level of force that is greater than hand held impact weapons, but less than deadly force by design and application. This technology application can be effectively incorporated into the law enforcement force continuum.

Traditionally, there has been a lack of options to deadly force where deadly force may be lawful, but not always the moral or ethically correct application. Traditional applications of less than deadly force were often ineffective and created a dangerous situation for participants.

Several conclusions can be drawn about less-lethal technology:

1. today's less-lethal devices are realistic solutions for force options,
2. less-lethal technology can end confrontations and save lives,
3. failure to adopt less-lethal technology will likely increase liability and damage settlements in legal actions against police agencies, and
4. society will demand less lethal applications of force by law enforcement.

Law enforcement administrators must recognize the potential of less-lethal force technology as an option to deadly force. Equipment is available at reasonable costs and minimal training is necessary for implementation into street level operations. Although current less-lethal technology is not the panacea, it is most certainly the future course of law enforcement force options.

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