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**The Bill Blackwood  
Law Enforcement Management Institute of Texas**

**Less Than Lethal Weapon**

A Policy Research Project  
Submitted in Partial Fulfillment  
Of the Requirements for the Professional Designation  
Graduate, Management Institute

by  
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Dallas, Texas  
September, 1998

# 653

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## TABLE OF CONTENTS

Section	Page
Abstract	
Introduction	1
Historical, Legal or Theoretical Context	2
Review of Literature and Practice	5
Discussion of Relevant Issues	8
Conclusion/Recommendations	11
Bibliography	
Appendices	

RESERVE

## Abstract

Police use of force is arguably one of the most explosive issues facing the Peace Officer Profession. Police agencies must be on guard against excessive use of force by it's officers on a daily basis. This fact alone necessitates that police officers be equipped with the proper tools to effectively handle potentially violent situations.

The availability of such weapons will enhance our officer safety and provide a sense of comfort to our personnel.

This project focuses primarily on the weapons accepted by citizens, that are readily available to each officer while on patrol duty. Specifically, an evaluation as to whether batons are appropriate for the officers of Dallas Area Rapid Transit .

Research into the use, availability, and effectiveness of less-than-lethal force and weapons is limited. However, it was determine that the lack of an immediate level weapon is an open invitation for liability. The paper found that the ASP Baton is the proper tool for our officers.

It is recommended that D.A.R.T. develop reporting guidelines for use of force and provide batons for use by it's officers.

RESERVE

## Introduction

All occupations require tools for task facilitation and accomplishment of organizational objectives. The police occupation is unique in that various tools are required not only for task performance but are necessary for providing safety and security for themselves and the citizens they are obligated to protect and serve. (Cox et al. 362).

The need for LTL weapons derives from the fact that law enforcement officers encounter situations that require some type of coercive action or force, but not deadly force. Some common scenarios include close encounters (e.g. breaking up bar fights and intervening in domestic disputes), flights by suspects, hostage situations, barricades and crowd control. Officers clearly respond to many situations where less-than-lethal force is appropriate action. It is therefore important that agencies select the most appropriate less-than-lethal weapons for their officers, provide the necessary training, and develop clear policies and procedures for weapon use. (McEwen 39)

As Dallas Area Rapid Transit (DART) Police Administrators, we must provide the means for increased officer safety. This is evident based upon the August 19, 1998, incident (DTP H6737-I) involving Corporal Satyra Williams. The officer, after confronting a hostile subject, followed department procedure and used oleoresin capsicum (pepper) spray. A fight ensued and the officer had no other alternatives available, short of deadly force. The use of deadly force in this situation would not have been appropriate or sanctioned by the department. This project is an investigation into less-than-lethal alternative weapons available for use, particularly police batons. DART currently does not have these means available, or allow its peace officers to use

batons.

The sources used in this policy research paper will include journal articles, books and surveys. The project will review historical and new generation police batons. It will also examine the liability of officer availability and/or non-availability to less-than-lethal weapons, as well as the training and use of this weapon. The intended outcome of this policy research paper will be the effects upon officer safety, if such weapons are approved or not approved. The intended audience of this policy research paper will be the command staff of DART and will provide sufficient information to determine the feasibility of using such non-lethal weapons.

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

"Since the dawn of time, people have sought to control their environment and punish the behavior of their fellows. History is replete with accounts of our attempts to protect ourselves from a hostile environment. Indeed, the history of civilization is a history of our weapons" (Hubach & Peak 1).

The original weapons used by our ancestors were the stick and rock, with the rock being the crude progenitor of several other weapons. The club, the sword, the spear, the arrow and the bullet all evolved from the humble beginnings of the stick. And from this same primitive weapon evolved the baton, which would become increasingly useful in modern police arsenals (Hubach & Peak 2).

"Suffice to say that impact weapons were among the first self-defense tools of American police, dating back to the European-style truncheons of the night watchers. (The very first police weapons were muskets in the hands of pilgrims on sentry duty.) In the patrol context,

impact weapons techniques do not go back beyond Charles Gruzansiels and others who brought their World War II - learned martial arts stick - fighting principles to the United States Police Service" (Ayoob 156).

The baton, an "intermediate range," non-lethal, defensive police tool, is placed on the force continuum between verbal commands and weaponless tactics (e.g., the carotid and "come-along" holds) and lethal force. (Hubach & Peak 2)

The privilege to use force is a tremendous power given to police. It is not the privilege of authority to use force, which creates problems, but the proper application of that power and force (Alpert & Dunham 83). Citizens had delegated to police officers the obligation to use that level of force which is reasonable or proportionate to effect an arrest and to overcome unlawful resistance (Jones & Ross 250). The judicial branch of government has been given the duty of defining constraints on the use of police force (Kaune & Tischler 90).

The people have four constitutional amendments that offer protection from the use of excessive force by the government: the Eighth, Fifth, Fourteenth, and Fourth amendments. The Eighth amendment prohibits cruel and unusual punishment; the Fifth and Fourteenth amendments guarantee due process of law, and the Fourth amendment establishes the right against unreasonable searches and seizures (Kaune & Tischler 91).

The courts have established a number of judicial tests to determine when a violation of due process exists. These tests or standards identify elements that are common to all instances of excessive force. These standards or hurdles are measuring rods for determining the boundaries of constitutionally violent behavior. They are not static and are subject to change over time. In Rochin Vs. California (342 U.S. 165, 1952), for example, the Supreme Court created the "shocking to the conscience" standard. This subjective standard was later revised in Johnson vs.

Glick (481 F.2d 1028 2d. Cir. 1973). Four elements were established by the court, which were used to determine if a constitutional violation existed. These elements were: (a) the need for force; (b) the relationship between need and the amount of force used; (c) the extent of injury inflicted; and (d) whether force was applied in a good faith effort to maintain discipline or was applied maliciously and sadistically. The Fifth and Seventh circuit courts take different views regarding the Glick Standard. These courts took into consideration the amount of force used in relationship to the situation at hand, the injuries suffered, and the intent of the officer. The Seventh Circuit requires that all three factors must cross constitutional boundaries, while the Fifth Circuit asserts that one element, of adequate severity, will suffice to invoke constitutional rights (Kaune & Tischler 92-93). These two court opinions serve to indicate the complexity of situations encountered by police officers while carrying out their day to day duties.

The Supreme Court made further re-alignments to the standard of force limit by its decision in Graham vs. Connor (490 U.S. 396 1989), stating that reasonable force should be evaluated according to three factors: 1) the severity of the crime; 2) whether the suspect poses an immediate threat to the safety of the officers or others; and 3) whether the suspect is actively resisting arrest or attempting to evade arrest. This places an obligation upon the officers to be aware of the changing dynamics of a situation when deciding to use force (Jones & Ross 250).

While training has helped officers in deadly force situations, training in less than lethal force tactics/weapons lags far behind and has received little attention from police administrators and professionals. Less-than-lethal force tactics and weapons are the least researched but are the most frequently used tool by police in arrest situations (Jones & Ross 251).

To bring officers into line with court rulings they must receive ongoing training in assessing various arrest situations and using tactics and measures to control the situation. Thus,

the need to train officers in the constitutional use of less-than-lethal force is so "obvious" that the failure to train could properly be characterized as "deliberate indifference" to the constitutional rights of the citizen (Jones & Ross 252).

## **Review of Literature or Practice**

The arming of police officers is a topic that has received many hours of thought and debate, and has resulted in numerous decisions as to what is most appropriate (Biggs 37). Collecting, analyzing and interpreting information on the use of force by police is an ongoing problem for police managers and researchers. This data though critical to the police, public, governmental agencies and courts remains difficult to collect, measure, and interpret objectively. The Violent Crime Control and Law Enforcement Act of 1994 (Sec. 210402) requires the U. S. Attorney General to collect information on Law Enforcement officers' use of force (Alpert & Dunham 1).

The recommendation for investigations and research with regard to non-lethal police weapons is complex. In part, this results from the fact that many of the weapons already extensively in use have never been subject to explicit, detailed, and comprehensive evaluation as to their effectiveness, applicability, limitations, cost, etc. This is also complicated by the fact that progressive police forces are more enthusiastic than others in trying out and adopting new ideas and concepts are. Consequently, there is no broad-based standard practice in evaluating, documenting or recording information in this area. The results of evaluations often are not available or made in a way appropriate for presentation or transmission to other police agencies (Coates 6).



"The selection of non-lethal weapons for police use depends upon the proportion and importance of different situations in which they could or should be employed to enhance the officer's capability." However, the data is not available that which would allow sufficient research in order to determine the effectiveness of the application of non-lethal weapons in the day to day operations of a police officer. To further compound this, little is known of the specific daily activities of a patrolman, in reference to the distribution of his activities, relevant to the development of new or improved weapons, the particular patterns of employment of existing weapons, and the particular patterns of behavior in situations in which weapons are useable or used -- these are all areas of substantial ignorance. Therefore, this is further indication of a need for a systematic study to establish the distribution and kinds of situations which the individual police officer faces (Coates 19).

The use of less-than-lethal weapons by Texas agencies is an essential question in order to compare the deployment of such weapons to this agency. A survey was conducted of this LEMIT class in regards to availability. The class represents a cross section of Texas with various size agencies represented. Eighty-five percent (23) responded to the questionnaire. Table 1 indicates the response to the survey:

<b>Table 1: Less-Than-Lethal Weapons Survey Availability</b>	<b>Number</b>	<b>Percent</b>
Issue OC Spray	18	78
Issue Batons	14	61
Guidelines for the use of OC Spray	17	74
Guidelines for the use of Batons	13	57
Use of Force Policy	22	97

The final question on the survey asked respondents if their agency had a reporting

guideline policy for the use of force. Seventy percent (16) of the agencies indicate that they have some type of procedure for the review of force reported by the officers. Twenty-six percent (6) of the agencies have no policy in place to examine the use of force by their officers. After examining the variables found in reporting requirements one can understand why information as it relates to research and statistics into less-than-lethal force is limited (Glover 1998).

The function of the police is not to injure or kill. The use of "curbstone justice" by the police, inflicting pain and injury to punish for past crimes or deter future ones, is repugnant to our legal system. The public has authorized the police application of force only to compel obedience with a valid police order or to protect officers, citizens, or property from illegal harm. Police officers must be able to determine and use only the amount of force necessary to achieve the particular lawful objective. That is describing the legitimate use of force in a given situation.

Police officers are placed in a variety of situations, which they now have no alternative except to permit a threat to continue or to exert deadly force. This level of force may be resorted to because there is not other equally effective means of removing a serious threat to human life, property, or the public order (Labovitz, et al 12).

The availability of non - lethal weapons offers an opportunity to save life and to avoid the uncomfortable and sometimes devastating consequences that can accompany police shootings (Binder & Geis 1 & 2). Weapons are available that are better guns, in terms of harm and danger, that are available for particular kinds of situations. Although, each may exhibit significant limitations for a number of police/citizen encounters (Binder & Geis 6).

One of the most effective weapons in the hands of the policeman is the nightstick, yet after the initial training in police work few officers receive any retraining with this weapon. In a police officer's career, the nightstick will be used hundreds of times for every time a pistol

or firearm is used (Coates 41).

The suitability of available less - than - lethal weapons is crucial in determining an officer's effectiveness in hostile or potentially hostile situations. To aid in the determination of this factor a survey was conducted of the LEMIT class on the use of these weapons. Eighty-eight percent (23) responded to the questionnaire. Table 2 displays the results of the survey.

<b>Table 2: Suitability Less-Than-Lethal Weapons</b>	<b>Two years</b>	<b>Percent</b>	<b>Five years</b>	<b>Percent</b>	<b>Ten Years</b>	<b>Percent</b>
Pepper Spray	3	8	19	19	44	37
Baton	29	74	74	75	66	55
Firearm	7	18	6	6	9	8

This survey coincides with the conclusions reached by Joseph Coates. Ninety-two percent of this LEMIT class interactions over a ten-year period used less-than-lethal weapons opposed to eight percent having used deadly force in their police - citizen encounters (Glover 1999).

Police officers can be equipped with an effective non-lethal weapon that is accepted by both the public and the officer. The nightstick exhibits the three degrees of intimidation, which should be found in any non-lethal weapon: its very presence carries a threat to safety; it can be used to physically harass and bring about various degrees of incapacitation. The stick is intended to be used physically for defense and counterattack. It will stun or temporarily disable by poking, prodding, and jabbing (Coates 51).

## Discussion of Relevant Issues

Police administrators must address the areas of officer safety, training, and liability issues that can arise when adequate protection for our officers and citizens is not provided. This remains an inherent danger if these issues are not addressed.

Police use of force is necessary and often an unavoidable aspect of policing in America. Police officers may use various amounts of force to control citizens' behavior and ensure the public order. The privilege or authority to use force is not the problem but the proper application of that power and force must be managed, controlled, and regulated to avoid its' misuse. Police training has been developed around the continuum of force which describes an escalating degree of force up to and including death or great bodily harm as a result of an offender's action and conduct. Criminal offenders would probably escape from an officer if no physical force were available, making it occasionally necessary for police to use some degree of force to take suspects into custody and to stop them from injuring others (Alpert & Dunham 83).

Police officers by the nature of the job are placed in dangerous situations where the use of force is often necessary for their protection and or the protection of others, therefore an appropriate utilization of force based on a continuum must be learned. Emphasis must be placed on both the final frames of an interaction and the causes leading up to the physical confrontation. Knowing when to use force is a skill that is necessary to teach and re-teach (Alpert & Dunham 86).

Advancements in technology hold the promise of making lives safer in police-citizen encounters. Also, many police professionals are convinced that less-than-lethal weapons have the potential of considerably reducing the number of citizens who are killed by the police

(Bailey 536).

It is the responsibility of police managers to provide to their officers all the practical means available for their safety, perceived or realized. Officers often develop this perception of vulnerability, when access to common police weapons, such as batons, is denied. Police administrators could face liability by allowing officers to escalate from hand-holds and pain compliance directly to deadly force, when the application of a greater degree of non-lethal force would likely have accomplished the objective of overcoming the resistance.

It is crucial that policies and procedures are established that define, limit, and explain the manner in which force should and should not be applied. Further, these policies and procedures must be consistent with community desires. Once officers understand the moral and ethical issues, specific training must emphasize the departmental policy, restraint, control, and alternatives to the use of force. The applications of force must also be taught and officers must be prepared to defend themselves and others (Alpert & Dunham 85, 86).

The police agency's "use-of-force continuum" must be a clearly written document. The officers' ability to utilize this information to its' fullest extent provides that officer with ample options in "use-of-force" decisions. It establishes a standard by which our thought processes can and should distinguish between the "imaginary" and the "gruesome truths" of "reality". A clear understanding of the situations in which any weapon may be used, and exactly where it is placed on the "use-of-force continuum" will greatly decrease the probability of: 1) misuse of equipment, 2) disciplinary action incidents, 3) injury or death, 4) public or media controversy, 5) litigation or 6) financial erosion (Stevens 34).

The responsibility to identify, implement, and defend their equipment is placed squarely on the shoulders of law enforcement officials (Stevens 30).

"As with other occupations, the more restrictions placed upon the resources one can use in accomplishing organizational and social goals, the less effective personnel will be in accomplishing those goals. In policing, these restrictions may impact the safety of officers" (Cox et al 244).

## **Conclusion/Recommendations**

The purpose of this project was to examine the liability of officer availability and/or non-availability to less-than-lethal weapons, as well as the training and use of this weapon. The objective of this research was to determine the effects upon officer safety, if such weapons are approved or not approved.

Research indicates that the appropriate use of force is a relevant, explosive, and ongoing issue for police organizations. The quest to provide the means for just the force necessary is evident in policies and procedures of police organizations as well as the development of less-than-lethal weapons. Police administrators who fail to provide a common police weapon may be vulnerable to litigation in the courts. Police administrators must not demonstrate deliberate indifference to training needs as it relates to the tasks the particular officer must perform. The court looking for such a link between training and use of force capabilities is determining the extent and priority of police work. In other words, task analyses and empirical assessments of police duties may be used to establish training needs (Alpert & Smith 23).

"It seems plausible that if law enforcement personnel are equipped properly with less-than-lethal weapons, a savings of citizen lives would occur. Less-than-lethal weapons

should be especially effective in (1) taking "difficult" suspects into custody, (2) responding to combatants with a weapon other than a firearm, (3) responding to many types of hostage situations, (4) transporting and managing difficult prisoners, and (5) responding to group disorders and riots" (Bailey 536).

I recommend the issuance of batons to alleviate the concerns of liability and officer safety.

"The public has the right to the reasonable expectation that when law enforcement personnel are confronted with a violent individual that they will have been adequately trained to deal with such an encounter and that these personnel will be armed with state-of-the-art "tools" to effectively handle such an encounter with a minimal use of force and minimal injury to the individual and to the officer" (Trostle 24).

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RESERVE



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RESERVE

**APPENDIX 1**  
**SURVEY FORMS**

RESERVE

# **Less - than - Lethal Weapons Survey**

The following survey questions will aid in the preparation of a policy research paper on less than lethal weapons. Please, answer the questions from your department perspective.

Does your department...

- |    |   |     |    |
|----|---|-----|----|
| 1. | Issue O.C. spray?<br>If so, what type _____   | Yes | No |
| 2. | Issue baton(s)?<br>If so, what type _____   | Yes | No |
| 3. | Have a Use of Force Policy?   | Yes | No |
| 4. | Have guidelines for the use of O. C. spray?<br>Brief summary of guideline/policy. _____<br>_____              | Yes | No |
| 5. | Have guidelines for baton use?<br>Brief summary of guideline/policy. _____<br>_____                           | Yes | No |
| 6. | Allow your officers to carry various brands and/or types of O. C. spray?<br>If so, list types. _____<br>_____ | Yes | No |
| 7. | Allow your officers to carry various brands and/or types of batons?<br>If so, list types. _____<br>_____      | Yes | No |
| 8. | Policy include reporting guidelines?<br>If so, brief summary of policy. _____<br>_____                        | Yes | No |

Agency Name: \_\_\_\_\_

Rank of Respondent: \_\_\_\_\_

Please return completed survey to Michael Glover or Betty Frey.

RESERVE

## Less – than – Lethal Weapons Survey

The following survey questions will aid in the preparation of a policy research paper on less than lethal weapons. Please, answer the questions from your personal experience as a police officer.

1. During the first two years of my street experience I used the baton approximately \_\_\_\_\_ times.
2. During the first two years of my street experience I used pepper spray approximately \_\_\_\_\_ times.
3. During the first five years of my street experience I used the baton approximately \_\_\_\_\_ times.
4. During the first five years of my street experience I used pepper spray approximately \_\_\_\_\_ times.
5. During the first ten years of my street experience I used the baton approximately \_\_\_\_\_ times.
6. During the first ten years of my street experience I used pepper spray approximately \_\_\_\_\_ times.
7. During the first two years of my street experience I used my service firearm approximately \_\_\_\_\_ times.
8. During the first five years of my street experience I used my service firearm approximately \_\_\_\_\_ times.
9. During the first ten years of my street experience I used my service firearm approximately \_\_\_\_\_ times.
10. I have \_\_\_\_\_ total years as a police officer.

NAME: \_\_\_\_\_

DEPARTMENT: \_\_\_\_\_

Please return completed survey to Michael Glover.

RESERVE

**APPENDIX 2**  
**SURVEY RESULTS**

RESERVE

**Table 1  
Survey Results  
Availability**

	Department Issue	Department Approved Personal	Not Allowed	Use Guidelines	No Use Guidelines
<b>OC Spray</b>	18	2	4	17	4
<b>Batons</b>	12	8	3	13	5

**Reporting and Policies**

	<b>YES</b>	<b>NO</b>
<b>Use of Force Reporting Guidelines</b>	16	6
<b>Use of force Policy</b>	22	1

**Table 2  
Survey Results  
Suitability**

<b>Table 2: Suitability Less-Than-Lethal Weapons</b>	<b>Two Years</b>	<b>Five Years</b>	<b>Ten Years</b>
Pepper Spray	3	19	44
Baton	29	74	66
Firearm	7	6	9
Total police service years --- 404			

RESERVE