

LAW ENFORCEMENT MANAGEMENT INSTITUTE

**Less than Deadly [Non-Deadly] Use of Force
Policy Creation and Implementation
for Small Law Enforcement Agencies**

A Research Proposal (Paper)
Submitted in Partial Fulfillment
of the Requirements for
Graduate Management Institute

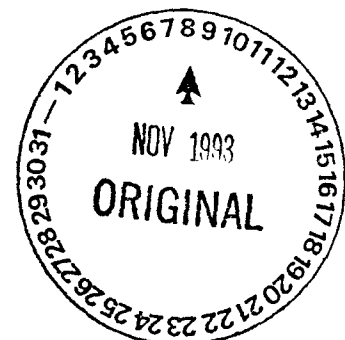
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Abstract

Officer liability, especially when using force, is arguably the most important issue in the Criminal Justice field today, and it comes under ever closer public scrutiny daily.

Research, training and less than lethal options are becoming more prolific. It is important for all law enforcement agencies, especially small law enforcement agencies, to stay abreast of this information.

The purposes of this study were to analyze current theories and court decisions involving less than lethal force, then identify the more prominent equipment and training options involving the use of less than lethal force.

This study focused primarily on how to identify the different levels or options of force in a policy that can be serviceable in a small law enforcement agency and outline an implementation plan that satisfies current court decisions.

INTRODUCTION

Officer liability and officer safety are probably the two most important issues that a law enforcement agency must address. It is no longer possible to ignore them and hope it doesn't happen to you or your agency. There are too many court cases, too many situations where deadly force is not called for, but some level of force must be used. Law enforcement or Police Science has made significant strides in identifying and measuring the different types and different levels of force that can be used in any given situation. This information now needs to be formalized and used to create a comprehensive use of force policy. Police departments that have policies probably have a deadly force policy. Those agencies that have deadly force policies, unfortunately probably have one similar to the International Association of Chiefs of Police [IACP] model policy. That policy defines non-deadly force as any force other than deadly force.¹ Such a definition just won't serve in today's courtrooms and on the streets of America. Officers need to have a wide variety of options available and the ability to use those options.

This report addresses this issue. The comments and suggestions that follow are made with small law enforcement agencies in mind. These agencies are defined by the IACP as having fewer than twenty-five (25) sworn peace officers.² The recommendations are equally appropriate for larger agencies and special enforcement agencies. As noted first, the concept of less than lethal/less than deadly/non-deadly force must be analyzed. It has and is being analyzed from many different perspectives. The information obtained needs to be used to create more options. It hasn't been too many years ago that the 'cutting edge' of training was using "shoot - don't shoot" scenarios. This black and white perspective has changed and must change

to include many shades of gray. These shades can represent the different less than deadly force options. After the different options or techniques are identified, they will be put into a format that can be presented to the agency personnel. This policy will address a number of issues in addition to the different shades of gray. Legal issues and administrative issues should be covered. Such a policy should outline the responsibilities of the officer, the supervisor, and the agency. This report ties these factors together by describing how training should be provided to cover the different force options and to cover the different portions of the policy.

USE OF FORCE THEORY

There are many different *Use of Force Continuum* theories. More precisely there are many different variations of one core theory. The *Use of Force Continuum* theory is actually a hierarchial organization of different types or degrees of force. The definition of force in this context is being the quantity and quality of action taken to either stop another's action or to gain compliance to directions given. There are two different ways of looking at the force continuum. The most common approach is a ladder or series of steps. The distinction is that one must follow the series of steps in sequence. The other looks at the situation globally, as a circle of sphere or tinker-toy like options. One can go from each option to any other option without being restricted to a specific sequence. Both of these identify the same basic levels or options, so we will discuss the two general theories before looking more closely at the different options.

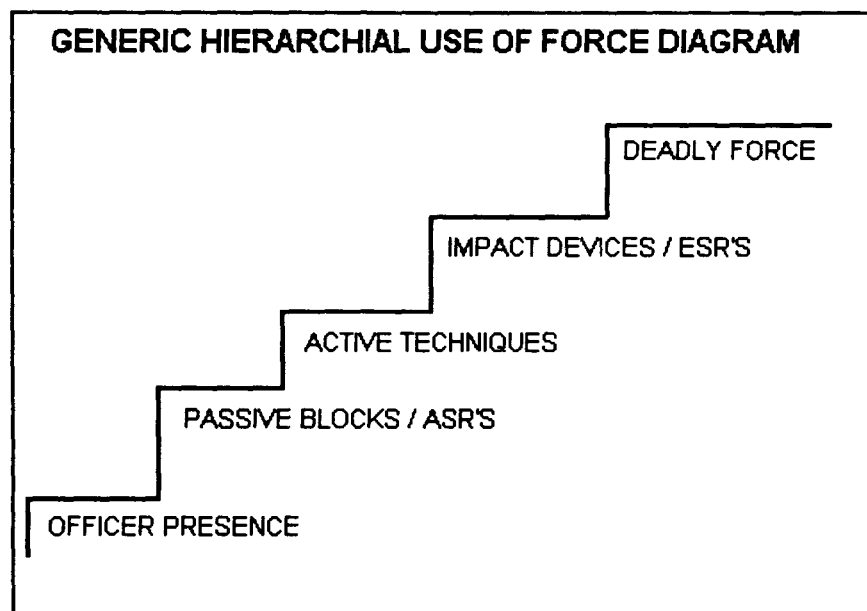
Hierarchial Force Paradigm

The hierarchial force paradigm is used by many of the more prominent and recognized Police/Law Enforcement training institutes such as: Defensive Tactics Institute (DTI), Pressure Point Control Techniques (PPCT), and Armament System Products (ASP). The teachings from each of these organizations have been "borrowed" by many others - spreading this paradigm throughout the law enforcement community. Again, while there are subtle differences between each of these organizations' teachings, the similarities are obvious.

The basic paradigm begins with the basic ladder or stair step organization. Each *rung* or *step* is a different level of force. The subtle insinuation is that each level must be used or

attempted before going to the next one. One can see some of the different ways of illustrating this concept in Appendix A. Perhaps the most recognized and well known illustration of this paradigm has been seen in Charles Remsberg's The Tactical Edge - Surviving High-Risk Patrol, published by Calibre Press.³ An equally well known illustration is the Defensive Tactics Institute's version as seen in John G. Peters jr.'s Tactical Handcuffing, published by Reliapon Police Products.⁴ All of these tactics start with the concept of "Officer Presence," and next is "empty hand techniques" or "passive blocks." From that level one progresses to "active techniques" such as using an Aerosol Subject Restraint [ASR], an impact device, or an Electronic Subject Restraint [ESR]. The final level the use of **deadly force**, such as a firearm. The following diagram illustrates a generic hierarchial *Use of Force* diagram.

FIGURE 1



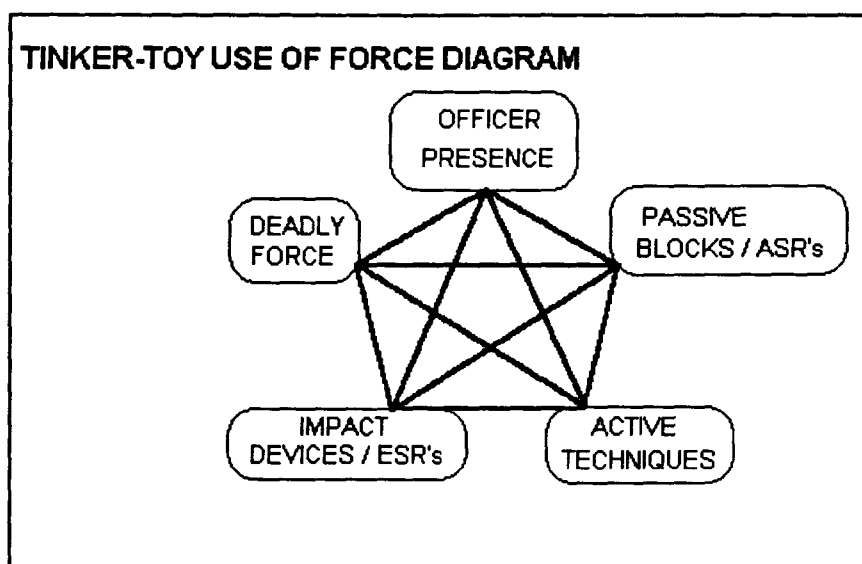
Tinker-Toy Force Paradigm

The tinker-toy force paradigm was first brought to public attention in John G. Peter Jr.'s book Tactical Handcuffing.⁵ While it may have been discussed in other venues, the most readily recognized version of this is in Peter's book. The "tinker-toy" is my own descriptive term for the manner in which these options are organized. The FBI uses a version of this in their Use of Force training. It is most likely that as use of force research and study continues this paradigm will gain wider acceptance and be recognized as a legally defensible theory.

The basic tenet focuses on the fact that there are different elements or options of force available and that the appropriate element or option should be chosen based on the totality of the circumstances at the time. This differs from the hierarchial paradigm, in which one should start with the least amount of force and escalate up the continuum. The tinker-toy paradigm proposes that the first option be chosen based on the immediate situation and other options may be chosen - both up and down the continuum - based on changes in the situation. A more fluid and flexible decision pattern can then be established. A peace officer confronted by a person with a gun or knife is a simple illustration. The peace officer should immediately go to a deadly force option - find cover and draw his/her duty firearm. A more complex illustration is an officer confronted by a person of the same approximate size and shape who is resisting arrest. Does the officer follow the hierarchial approach, trying one step before going to the next one, or does the officer evaluate the situation and estimate that the mere presence of loading his baton (an impact device) will probably gain compliance? If it doesn't work, the officer can then resort to using an aerosol subject restraint (pepper-mace or similar type device). The tinker-toy paradigm allows the

officer more flexibility in handling the situation. The following diagram should more easily illustrate the tinker-toy paradigm.

FIGURE 2



The basic elements of both of these paradigms are the same. It is only in the way they are perceived or used that they differ. These individual elements are very important and must be looked at individually and in greater detail. Where they fit on a continuum should not be ignored, nor should the idea of a continuum be held in greater importance than the individual components. The nature of this report lends itself to the fact that the whole is more important than the part. Before we continue with other aspects of the whole, let us take a closer look at the individual component parts.

ASPECTS OF LESS THAN DEADLY FORCE

As noted previously, there are five generally accepted elements in the Use of Force continuum. These are usually recognized as *Officer Presence*, *Verbal Dialogue*, *Passive Techniques*, *Active Techniques*, *Intermediate Weapons and Deadly Force*, or *Deadly Weapons*. All but the last of these are easily identified as Less than Deadly Force Options. The following section looks more closely at these different Less than Deadly Force elements and specific aspects of these different elements. One other aspect also addressed is using Less than Deadly Force options in a deadly force manner.

Officer Presence

One of the force options that is most often forgotten about when discussing force by police is the officer's mere presence. After *California v. Hodari*⁶ no one should forget about officer presence. In this decision the court on legitimized the use of an officer's mere presence. Part of the decision noted that an officer's presence includes the officer in a uniquely marked police vehicle, not just the officer's person. Peace officers need to remember that if they can be seen, they are already using an element of the Use of Force continuum. How this element is used or the intensity in which it is used, also comes to play when looking at any situation. Intensity can best be divided into four broad categories; low intensity, medium intensity, high intensity, and ultra high intensity.

Low Intensity officer presence is also the officer's "mere presence." A marked patrol car driving down an alley or pulling into a bar's parking lot at closing time is "mere presence."

An officer walking into that bar while it is open or walking through a shopping mall is also "mere presence." The officer doesn't even have to talk with anyone to make his presence known. Any officer can attest to the fact that events frequently calm down or disperse just by the officer's "mere presence." When an officer makes contact with, or talks to a person, the officer's presence may still be at a low intensity, such as when interviewing a victim or just visiting with people in the officer's patrol area. The intensity of the officer's presence can also be increased when needed.

Medium Intensity officer presence is best described by using a portion of the Armament Systems and Procedures Tactical Baton training.⁷ This is the interview stance, or the officer's positioning when talking to suspects, suspicious persons, or in less than ideal environments. This stance takes into consideration the officer's distance from the subject, and the officer's body position and placement in relation to the subject. In the interview stance, an officer's body is balanced and firmly planted. The feet are approximately shoulder width apart and the body is 'bladed' so a target is presented to the person being interviewed. The officer's hands are up, covering the core target area of the duty belt and chest. Such a position would probably be taken when walking into a bar or approaching a group of people congregating for an unknown reason. This level of intensity would be increased when the need arises.

High Intensity officer presence is the level or intensity frequently used by officers when making a traffic stop or when an officer is arresting a person. Returning again to Armament Systems and Procedures Tactical Baton training and the defensive stance described there in, the defensive stance describes the manner in which an officer establishes himself in a high intensity presence.⁸ When an officer must present a commanding and self assured presence. The officer

must appear in control. The officer's feet are a little wider than shoulder width apart, with knees flexed slightly so the officer is in a solid, balanced position. The officer's body is 'bladed' so a smaller target is presented to the subject and the officer's hands are either holding the appropriate tool or weapon, or are up in a defensive position ready to block any blows or strikes. In certain limited circumstances, an officer may need to use the most intense level of officer presence.

Ultra High Intensity officer presence is the level or degree of officer presence used in a high risk situation. Such a situation may include a subject resisting arrest or approaching a subject known to be assaultive with a history of resisting arrest. This level could also include special response situations with special response teams [SWAT]. The scope of this paper is limited to more routine situations, however. Ultra high intensity is not much different from high intensity presence, except other elements of the use of force continuum will more than likely be brought into play. Because the different elements are not unique and separate from each other, it is important to see also how they work together, such as combining officer presence with the next element of the continuum.

Verbal Dialogue

When discussing use of force many people also forget about verbal dialogue. Like officer presence it is hard for an officer to do much without using verbal dialogue. This illustrates an important point that frequently gets lost, the different use of force elements should and usually are used in conjunction with each other. Verbal dialogue is similar to officer presence, as it too can be used at different levels of intensity. Verbal dialogue, like officer

presence, is categorized into four broad categories; low intensity, medium intensity, high intensity, and ultra high intensity.

Low Intensity verbal dialogue is simply talking or conversing with others. An example of this would be answering questions, giving directions or talking with people in the patrol district. Like low intensity officer presence, this is the most frequently used level of force. An officer may use low intensity verbal dialogue to lull a suspect into divulging more information than intended. An interview may range in intensity with the officer starting at or going to low intensity dialogue from one of the other levels of intensity.

Medium Intensity verbal dialogue is similarly a more focused, more direct form of dialogue. This form would be used during interviews or other types of violator contact. The officer uses sternness or firmness to establish a specific authoritarian rapport. The importance of recognizing and shifting between the different intensities and levels should be identified in training, and will be discussed in detail later in this paper. Low intensity and medium intensity verbal are the two more interactive levels, that is, there is an expectation of exchange. The next two levels are more of a command nature.

High Intensity verbal dialogue is used when giving specific directions or commands. It would be used when words are needed to direct traffic or more frequently when arresting someone. During an arrest, an officer is expected to articulate to the subject that he is under arrest and what actions he needs to follow to prevent unnecessary injury. The commands are usually simple, short and distinct. The tone of voice is one that leaves no room for discussion or negotiation. Such an exchange would be high intensity. There are instances when even more is needed, however.

Ultra High Intensity verbal dialogue is for those few intense moments when nothing less will do. When an officer is directing a person to put the gun down or when an officer is making a felony traffic stop, those are the times for ultra high intensity verbal dialogue. The commands would be similar to those used in a high intensity situation. The tone would be loud and direct, however. Hopefully the times when ultra high intensity dialogue is needed would be minimal. The need and the level of intensity are very real. Verbal dialogue is frequently used when other elements of force are used. The intensity of the verbal dialogue depends on the other elements of force used and the situation in which it is used.

Passive / Empty Hand Techniques

It is at this point, in the hierarchial use of force continuum, that many versions of the paradigm part. Some focus on whether one is using bare hands or some kind of tool, device or weapon. Others focus on whether one is acting in a *passive* manner - simply protecting oneself, but doing nothing directly to the perpetrator, or acting in an *active* manner - doing something to the perpetrator to gain compliance. In almost every instance the situations on the street tends to blur the distinction, so the point is more an intellectual exercise than a practical one. With the advent of a new aerosol subject restraint [ASR] - Oleoresin Capsicum [OC] - and other new technologies, the distinction is bound to blur even more. For the purpose of this paper, basic passive actions, empty hand techniques and OC-ASR, will be explored and compared to basic active empty hand techniques. Other active techniques using different devices will be addressed in the next section.

Passive Techniques, as stated previously are generally accepted as those techniques that are used to simply protect oneself. The most common are blocks using one's hands, arms or legs, or even a baton. Some baton training includes using batons to block blows, while some baton training emphasizes the use of a unique baton to block blows. Some defensive tactics training includes diversionary blows to redirect the strikes toward the officer. These teach the use of arms, legs or batons to redirect the assailant's blow away from the intended impact area. Another new entry at this level is the use of an aerosol subject restraint [ASR] using Oleoresin Capsicum [OC]. The use of Oleoresin Capsicum in law enforcement gained acceptance only in the past ten years, although Oleoresin Capsicum sprays have been around since the mid seventies, used by postal delivery people and some park rangers against bears and other dangerous animals.⁹ Oleoresin Capsicum is different from other aerosols, such as mace®, CS, or CN gas, because of the manner in which the human body responds to it. Medically, Oleoresin Capsicum is generally accepted as being less dangerous than these other chemical restraints traditionally used in law enforcement. The concept behind using any of these techniques or devices can best be illustrated by drawing from a science fiction idea of putting up a force field. Think of the OC-ASR or blocks as the force field that will not {should not} let any aggressive action through. The OC and blocks are not directed toward any one individual but only to not allowing anything to get near the officer. This element can be tied to other techniques such as high intensity officer presence and ultra high intensity verbal dialogue. In fact, it is strongly recommended that the different elements be used together. The tinker-toy use of force paradigm starts to make sense when looked at in this manner.

Active empty hand techniques start the rest of the use of force continuum. From this point on the officers actions are directed toward and focused on the assailant's actions. Each of the officer's actions should be for one reason only, to gain compliance. Most schools of instruction in use of force and use of force techniques separate active empty hand techniques from active techniques using some kind of device, tool or weapon. Looking back to the definition for passive empty hand techniques, the obvious definition for active empty hand techniques is the use of hands, arms, legs, or other body parts to gain compliance from a specific individual. Simply put, the use of pain compliance techniques, joint manipulation and come-along techniques fall into the realm of active empty hand techniques. Lateral vascular neck restraint [LVN], a come-along technique, is addressed in another section because of the unique nature of the restraint.

There are many different sources of training in pain compliance techniques, joint manipulation and come-along techniques. Some have a strong martial arts influence, some appear to be based more on the experiences of police officers and what works on the street and what does not. Regardless of what the training is based on, it is important to remember officers must be properly trained and given the opportunity to practice what they have learned to get and maintain proficiency. Equally important, officers that have not been properly trained should not attempt these techniques, lack of training creates a liability concern for both the officer and the agency employing the officer. This very important concept will be discussed in more detail, later. As mentioned previously, the other aspects of the Use of Force continuum are all actively directed toward a specific target or individual. The use of different intermediate devices usually follows in the hierarchial paradigm.

Intermediate Weapons

Whether items are called weapons, tools or simply devices, all are items that can defend the officer's life or gain compliance from an uncooperative subject when properly used. There are four basic categories of intermediate weapons used today in law enforcement. All categories may not be used by a patrol officer and some may not be used at all by individual agencies, however, each must be included in any serious discussion of use of force options. These categories are Aerosol Subject Restraints [ASRs], Impact Devices, Electronic Subject Restraints [ESRs], and Less than Lethal Projectiles. ASRs were mentioned briefly in a previous section. This section looks at the whole arena of ASRs; OC, CN, CS, and any others that may fall into this category. Impact devices include the traditional night stick or billy club, along with expandable batons, side-handle batons, saps, and any other type of device that is used to strike the perpetrator with.

ESRs are relatively new to the law enforcement arena and as such their use is not wide spread. ESRs include TASERs and stun guns. Less than lethal projectiles have not seen much acceptance in the United States. They are used more in riot or crowd control situations and by special response teams [SWAT] currently, but they may see more use by patrol officers in the future and as such should be addressed along the other options. The following categories are the most frequently mentioned areas of use of force is mentioned.

Aerosol Subject Restraints [ASR] have been an accepted part of the law enforcement arsenal since the sixties. Until recently, CS and CN chemical agents were the most accepted ASRs. With the acceptance of Oleoresin Capsicum [OC] to the ASR arsenal, CS and CN have taken a back seat. Both CS and CN, with their chemical warfare origin, gained a bad reputation

in law enforcement over the past few years. The possibility of lethal medical complications or the possibility of their not working as anticipated has lessened their acceptance in the law enforcement community. OC acts differently on the human subject and has not had the notoriety of CN and CS. These are not the only ASRs, but they are the only ones generally accepted for use in a law enforcement environment. The others are still relegated to the military and warfare use. ASRs provide the user with relatively safety when used, as the user does not have to make direct contact with the perpetrator. The drawback with ASRs is the variability of wind conditions and other external influences such as a small enclosed area. ASRs can affect more than those intended in less than ideal circumstances. Other intermediate weapons, by their very nature, are not so broad in their application.

Impact Weapons include the most widely accepted less than deadly force weapons carried by a peace officer. It is generally accepted that an officer carries a baton or night stick along with his duty firearm. There have always been a broad range of impact weapons, from Britain's Bobbies and their billy club to the sap used by detectives twenty to thirty years ago. Traditionally, an officer's night stick is a cylinder approximately 24" to 26" long made of wood, plastic or lightweight metal. Today, the night stick comes in a range of sizes, shapes, and materials. There are polycarbonate clubs and other manmade compounds, along with new man-made metal alloys. Side-handle batons gained popularity approximately fifteen years ago with Monodnock's PR-24*. Monodnock has been a leader in impact weapon training for a long time.

Recently, expandable batons have been gaining greater influence in the impact weapon arena. Expandable weapons include those impact devices that are designed to expand or grow in size by use of springs or inertia. The most common are the ASP expandable baton,

Monodnock's expandable baton and CASCO's expandable baton. The strongest point of each of these batons is the ease of portability. It is easier to carry than standard batons, and if it is easier to carry, it probably will be carried more frequently. Other batons such as the handler-12 were designed for a unique purpose and those purposes are outside the realm of this paper.

The strong point of impact devices is they can be targeted to a specific person and specific area on that person's body. Generally speaking, impact devices are used when the subject is acting in an aggressive manner towards the officer. Usually an impact device is targeted toward that portion of the subject that is closest to the officer. In the early seventies, with the Lamb method, joints were targeted. The elbow, knee, and shoulder or clavicle were choice targets. More recently, nerve endings have become the target areas of choice. The common peroneal (outside thigh area), femoral (inside thigh area), radial and ulna (forearm area), along with the center mass of the chest or abdomen are the choice target areas currently taught by many baton instructors.¹⁰ The use of severe shock to a major nerve areas is used to decentralized the subject. It does not matter if the device is a wooden stick, a plastic side-handle baton or an expandable impact device made of metal. While this is the most traditionally accepted less than lethal weapon used currently, there are other devices available.

Electronic Subject Restraints [ESR] have been around for many years, but have not gained general acceptance in the law enforcement field. Electronic subject restraints are devices that use an electrical charge to stun or disorient the subject. There are two basic types of devices: those that project electrode or contacts and those that depend on close contact. TASERs are a device that projects two electrodes into the subject from a distance. After the contacts or prongs attach to the target, an electronic shock can be administered by the pull of

the trigger. There are many stun guns currently on the market. Stun guns are devices that can administer a shock when the attached electrodes are pressed against the subject. Using a stun gun entails getting close enough to the subject to touch him or her with the device. Just as certain ASRs have been known to cause certain respiratory problems and impact devices have caused broken bones and joints, ESRs have been accused of causing neural damage. It is probably because of the possibility of neural damage that the use of ESRs has been so limited. The last category addresses an area that has seen little use in main stream America.

Less than Lethal Projectiles have been used for a long time in other countries. The use of water cannons, CS/CN gas grenades and rubber or wooden projectiles have been used on a limited basis, in limited circumstances, in the United States. High pressure water gained notoriety in the sixties during the civil rights movement. It still has a place and a function in crowd control today. Chemical projectiles are usually used by special response teams [SWAT] in raids or assaults. The use of high pressure chemical sprays or fogs, especially OC, has gained prominence in the past few years. They have moved from the prison environment to the urban environment as a means of safe crowd control. As OC gains acceptance, it will probably be used in other situations when the need arises. Wooden or rubber projectiles are used on a regular basis by many law enforcement agencies in other countries. These devices are fired from cannons or launchers that fire them at a lower velocity than most firearms. They are usually fired with the intention to stun, disorient or incapacitate the targets. Most less than lethal projectiles are used in a crowd control situation, and as such, their use is a little more specialized than the other less than lethal options discussed in this paper.

Deadly Uses of Less than Deadly Force Options

In the hierarchial use of force paradigm, deadly force frequently follows the use of intermediate weapons. One important consideration is the use of the aforementioned use of force options in a deadly force manner. These actions get officers in trouble and create strong liability considerations for agencies. Lateral Vascular Neck [LVN] Restraints or "choke holds" and strikes or impacts to *illegal* areas are the most common sources of deadly use of less than lethal force options. The use of ASRs and ESRs in less than ideal circumstances can also fall within this area. *Los Angeles v. Lyons*, 102 S. Ct. 14 (1981) is perhaps the best illustration for deadly nature of the lateral vascular neck restraint.¹¹ Because of the potential for fatal complications, many agencies do not allow the use of the LVN restraint. Because of the questionable reliability along with the legal considerations, it can only be considered as a deadly force option and as such cannot be recommended, except in such instances where, or when, deadly force is authorized.

As mentioned previously, the three accepted target zones for impact devices are center mass of the leg, center mass of the arm and center mass of the upper torso. Strikes to areas other than these can entangle the officer in a legal nightmare. Strikes to the head, kidney or other vital areas could be construed as the deadly use of a less than deadly force weapon. Using unconventional impact devices, such as a flashlight, on such areas complicates the issue even further. Using an ESR in a similar manner or on similar targets could also be considered the deadly use of a less than lethal option. Other complicating actions would be using an ASR on a subject within a closed area, when there is little ventilation and no avenue of escape. The use of any less than lethal option or device in a deadly force manner cannot be recommended.

Again, the elements blur in practical use from the simple black and white of the theorist's page. It is for this reason that the possibility of use, or misuse, must be addressed in any thorough policy on less than deadly force.

IACP DEADLY FORCE POLICY

The International Association of Chiefs of Police [IACP] has published two different model deadly force policies, with the most recent being published in 1989.¹² A copy of this policy is included as Appendix B. The IACP has done a lot and is currently doing more to further the study of deadly force and less than deadly force. The use of force policy proposed by the IACP in 1987 addressed only the use of force and firearms. Published in the IACP journal, The Police Chief, it was only one page long.¹³ Two years later it was revised to include: deadly force, non-deadly force, firearms and non-lethal weapons. It was two pages long.¹⁴ Since that time the IACP, along with the Bureau of Justice Assistance, have supported a detailed study of less than deadly force considerations.¹⁵

Many police agencies have policies, general orders, or procedure manuals and most of them have one that addresses firearms or deadly force specifically. Most of these, like the IACP model, only pay a token interest to less than deadly force options. A more thorough and detailed account to what is available and how it should be addressed is needed.

The IACP model is divided into the standard four elements of a policy: Purpose, Policy, Definitions, and Procedures. The IACP model simplifies things by defining only deadly and non-deadly force. It further simplifies things by addressing in the broadest of terms the "parameters for use of deadly force" and the "parameters for use of nondeadly force," along with "training and qualifications," "reporting uses of force" and the "department's response." The IACP model discusses nondeadly force in very broad, simplistic terms. "Where deadly force is not authorized," "use only department-approved nondeadly force techniques" are the

breadth and scope of the less than lethal portion of the model policy.¹⁶ The policy addresses shooting or firearm aspects adequately, but it glosses over other force options - merely acknowledging their existence.

A LESS THAN DEADLY FORCE POLICY

A less than deadly force policy is vital to specifying and defining all of the options available to an officer. Just as firearms policies specify what can be carried and used, along with when it can be used, a less than deadly force policy would specify other less than lethal weapons. A satisfactory policy must be both broader and more specific than the one just described. Nondeadly force cannot remain defined as "any use of force other than that which is considered deadly force."¹⁷ This is similar to describing white as the absence of all color. The user still does not know what white is, only what it is not. A thorough policy will force an agency to determine what elements are accepted legally and what elements are accepted within the community they serve. Once this is established, the agency has certain responsibilities. However, once the agency meets these responsibilities, greater responsibility and freedom is given to the officer.

Such A Policy is Necessary

The time is long past when a law enforcement agency could stick its head in the sand and pretend there were no problems. Today's law enforcement agency has an obligation to both the community it serves and officers that serve within it. The obligation is to identify and specify acceptable and not acceptable behaviors. Officers need to be made aware of the different options available. More than this, they should be properly trained in enough use of force elements to allow good judgement and flexibility, based on the totality of the circumstances in any type of confrontation. The community must feel confident that the officers protecting and serving it are

adequately trained and prepared to handle any event in the most efficient and effective manner possible. The courts are the testing ground for what 'works' and what 'doesn't.' It is important that the policy take into consideration not only past and recent court decisions, but it should also be written with an eye to what may be decided in the future.

Officer Safety is probably one of the strongest driving forces in creating a well rounded use of force policy. Every police chief should want his officers to be well armed and adequately prepared for every contingency. A thorough use of force policy addresses the different elements of force and what devices and techniques are approved or not approved. This provides the officers with guidelines to obtaining training in needed areas and informs them what tactics and tools are not to be used. When an agency does not have a comprehensive use of force policy, officers may begin to use techniques or carry devices in which they are not adequately trained in or that have an inherent liability problem. Establishing a baseline criteria in such a policy eliminates some of these problems. Establishing guidelines also goes a long way in solidifying community relations.

Community relations are as important now as they ever were. To establish community support or to maintain community support, a police chief should be certain that the use of force policy stays within the realm accepted by the community. In some instances, especially with the advent of new techniques or devices, the agency's role also may include educating the public. The use of OC-ASR in recent history is a good example of where education gained acceptance. The poor press on the LVN restraint is a good example of bowing to public opinion and concern, and not allowing its use. Police agencies, particularly small agencies, are a part of the community they serve and as such, must be continually sensitive to the concerns and fears

of the community. By educating when necessary and accepting popular opinion when appropriate. The agency must also be alert to legal considerations and legal trends.

Legal considerations are a very real part of a comprehensive use of force policy. A good policy is fluid and dynamic. Policies are not written in stone; they can and should be changed when the need arises. As new court decisions are made concerning police use of force, policies should be changed to follow the guidelines. *Tennessee v Garner* (1985)¹⁸ is probably the most well known judicial decision affecting police use of force. This case addressed the appropriate use of deadly force and drastically changed police response in certain situations. *Graham v Connor* (1989) established the objective reasonableness standard, affecting both deadly and non-deadly use of force cases.¹⁹ There have been relatively few less than lethal force decisions. This is good, in that it means officer's actions have been proper in most cases. It is bad, in that it provides little legal guidance about the direction courts are going on such issues. Another organization has stepped in at this point and has established some guidelines for what should be included in a policy for an accredited agency.

Accreditation

The Commission on Accreditation for Law Enforcement Agencies, Inc. [CALEA] addresses the use of force and the use of less than lethal force in its Standards Manual.²⁰ There are four points in the use of force section [section 1.3] of the manual that address the less than lethal force aspect. Section 1.3.7 addresses the general need for a written directive governing the use of non-lethal weapons by agency personnel. Section 1.3.13 covers the need for a written report whenever there is an injury or allegation of injury or whenever a nonlethal weapon is

used. Section 1.3.14 addresses the need for administrative review of incidents where officers used a weapon. Section 1.3.15 supplements the previous section by including the need to submit the review findings to the agency's chief executive officer. The most important point is section 1.3.7.

Section 1.3.7 is why this report is written. There is a growing need for a comprehensive model policy addressing all of the less than lethal options currently available. Whether the agency is accredited, working on accreditation, or uninterested in accreditation, it should still have a complete, well written guide.

INTEGRATING A *LESS THAN DEADLY FORCE* POLICY WITH A *DEADLY FORCE* POLICY

As mentioned previously, when *use of force* is thought of in most police circles only deadly force is thought of. The IACP model policy is an excellent example of this thinking, where it defines less than deadly force as any force other than deadly force.²¹ This is no longer sufficient. Perhaps the ideal situation would be to create one 'mega' policy addressing every aspect of the use of force. Most law enforcement agencies already have a deadly force policy or a use of force policy that only addresses deadly force. Therefore, there is a need to incorporate or add to the less than deadly force aspect of the policy. Proposed is a way to add to existing policy with little or no changes to existing deadly force policies that may be in place by the law enforcement agency.

Most, if not all, deadly force policies establish what may be used, when it may be used and in what manner it may be used. A less than deadly force policy should do basically the same thing. A less than deadly force policy should specify the different tools or techniques that are authorized by the department and where they fit into the departmentally approved use of force continuum. While it is impossible to include every situation, a good policy should include sufficient guidelines to inform officers when different actions are acceptable and specifically when certain actions are not acceptable. A thorough policy should include enough information that officers reading the policy and abiding by the policy know what may be used, when it may be used, and in what manner it may be used. This can be as simple as specifying what type of training is authorized and informing that any other type of training is not acceptable by the department.

The policy should begin by establishing when the use of force is justified. This is done most simply by referring to the legal statute addressing that issue. Once it establishes when force, both deadly and non-deadly, is authorized, the policy can address different possible responses. A use of force continuum would best illustrate this point. This spells out the core of the agencies philosophy to the officers. It can also be referred to when specifying the specific tools, techniques or skills authorized for use by the department. This is the next and most detailed portion of the policy. It could be written in broad terms if there are sufficient supplemental orders to support it. For example, such a policy would have a section such as; "Only those ASRs issued and accompanied by authorized training are approved for use by departmental personnel. See attached supplement or see the Standard Operating Procedure on ASRs for specific guidelines." This is acceptable if there is an attached supplement or S.O.P. that gives those specific guidelines. The benefit of writing the policy this way is it will be easier to make necessary changes.

IMPLEMENTING THE *LESS THAN DEADLY* FORCE POLICY

A policy isn't worth the paper its written on if there is no explanation or training to go along with it. All too often, policies are planned, written, critiqued, published, and forgotten. The officers that are responsible for understanding and following the policy frequently receive little more than the written document. Many agencies seem to adhere to the idea that the officers can just read it, or have the policy read to them, and they understand all the reasoning behind the policy. If all the officer has is a written policy, the officer may or may not read it. If it is read, there is no guarantee that officer will interpret it in the same manner it was written or meant to be interpreted. Supplemental training, if nothing more than an explanation, should be mandatory. For a policy like a less than deadly force policy, the training needs to be multifaceted. The administration and legal bureau need to be trained on the theory and case law behind the policy. Officers need to be trained on the overall policy and on the application skills mentioned in the policy.

Training the administrators

There are some policies that are, by their very nature, complex and complicated. Use of force and emergency driving are policies that cannot be simplified and still address the necessary issues. These policies require more time and effort in training. Training should not be focused on just teaching the officer, but also explaining the subtle aspects and responsibilities to the different components of the agency. The agency administrative staff, up to and including

the chief administrator, should receive specific training in the liability and responsibility of the agency and the administrative duties that are addressed in the policy. If there are new or unique record keeping duties that coincide with implementing the new policy, the appropriate staff personnel need to be included in the administrative training. Supervisors should receive specific training in the areas that are their responsibilities as supervisors.

Training the Officers

Officers need training that explains the reasoning behind the policy and what is expected of them. Such training could start from the big picture, explaining the use of force continuum, and evolve to the finer details of the different skills, techniques, or tools approved. The training could also be done in sections. Officers could receive impact device training, with explanation of how that fits into the policy. They could then receive ASR training, with explanation of how that fits into the policy. Such training would continue until everyone has the same level of training in the same areas and each area is tied together with the policy. It is especially important with a policy such as a less than deadly force policy that the skills and techniques described in the policy be taught or offered to the officers. This could include everything from tactical communications to unarmed defensive tactics, to chemical deterrents [ASRs], to impact devices, etc.

The training aspect of a new policy is possibly the strongest liability part of implementing a new policy. For an agency to protect itself and its officers, it must show that the policy was not only made available to the officers, but that the officers demonstrated the knowledge, skills, and abilities necessary to adhere to the policy. The liability issue does not stop at the officer

level either, the administrative components of the agency will have to stay responsible for following the guidelines established in the policy.

CONCLUSION

Having an established less than deadly force policy should be mandatory for the wide assortment of reasons noted previously. With all of the court cases being decided, it is legally necessary to specify what is and what is not acceptable action on the part of officers. The community will, with all probability, respond favorably to such a stand. Even if not every aspect of the community agrees with every portion of the policy, they will probably respect the agency for "drawing the line." Officers would appreciate such a policy from a two pronged officer safety standpoint. They know what action is approved by the department, and hopefully be trained and capable of performing the appropriate action. It will also provide the officer a level of legal protection. By following the policy and following the training, the officer will be provided some protection in the courtroom. Small law enforcement agencies can no longer afford the luxury of ignoring the issue or denying the availability of other force options. It is important to address the issue well informed and well armed.

Law enforcement methods are no longer black and white. Law enforcement training has gone beyond the "shoot - don't shoot" scenarios of years past. The litigation currently going through the court system is the strongest indicator that no law enforcement agency, particularly a small law enforcement agency, can afford to operate in the "shoot - don't shoot" mode. There are too many devices, too many techniques, too much training available for anything other than a comprehensive use of force plan to be standard in any department, regardless of size. A comprehensive use of force policy would be ideal. Many agencies already have deadly force policies in place that meet their current needs. A less than deadly force policy that works with

the agencies current deadly force policy is the least an agency should have. An important concept to remember is that less than deadly force is **not** any force other than deadly force. Less than deadly force is specific and measurable.

The time has come for police agencies and their officers to work smarter, not harder. The future is clear, there will be a higher expectation for law enforcement officials to resolve situations with the least potential for injury to any of the parties involved. Current litigation indicates the need to have and know how to use less than deadly force options throughout the use of force continuum. Small law enforcement agencies and the officers that work for them must be familiar with the different levels of force and be able to effectively use different levels of force to protect themselves in both the street and the courtroom.

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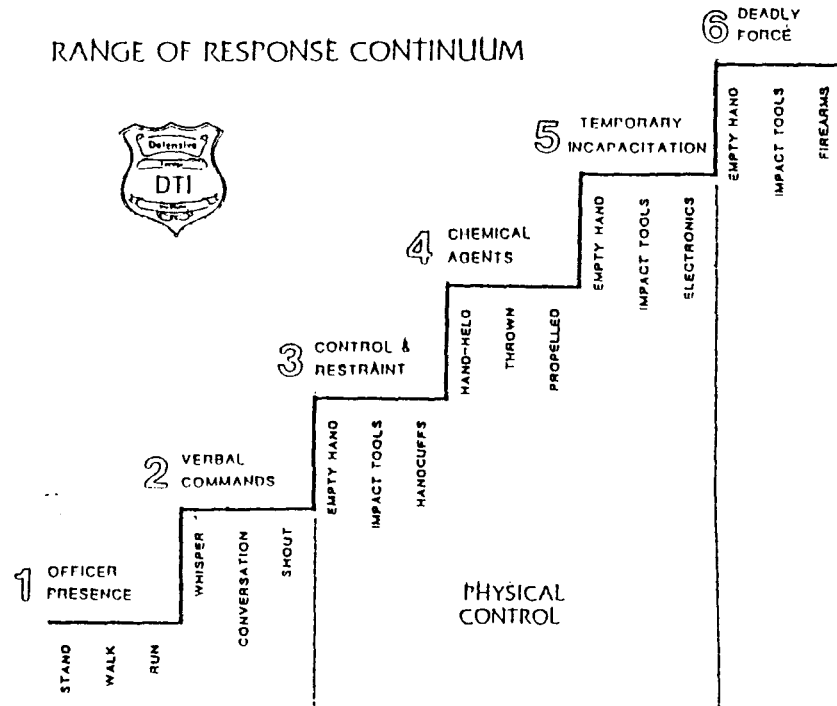
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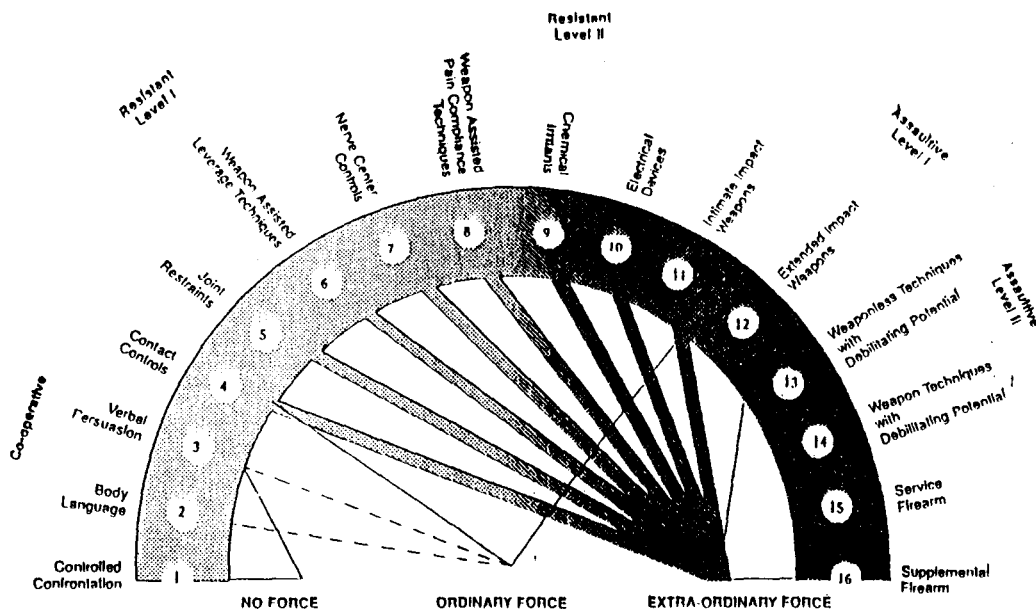
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APPENDIX A

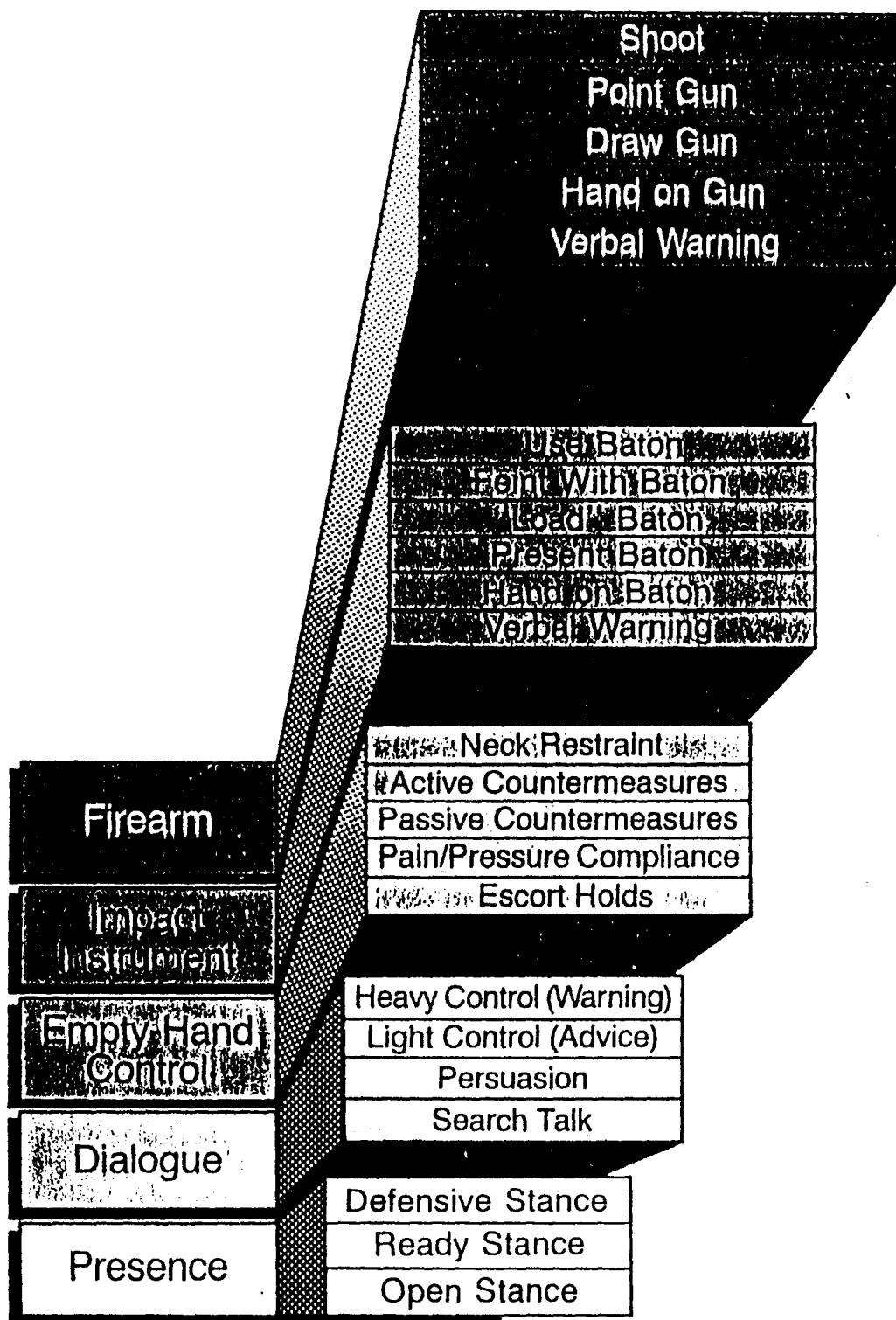
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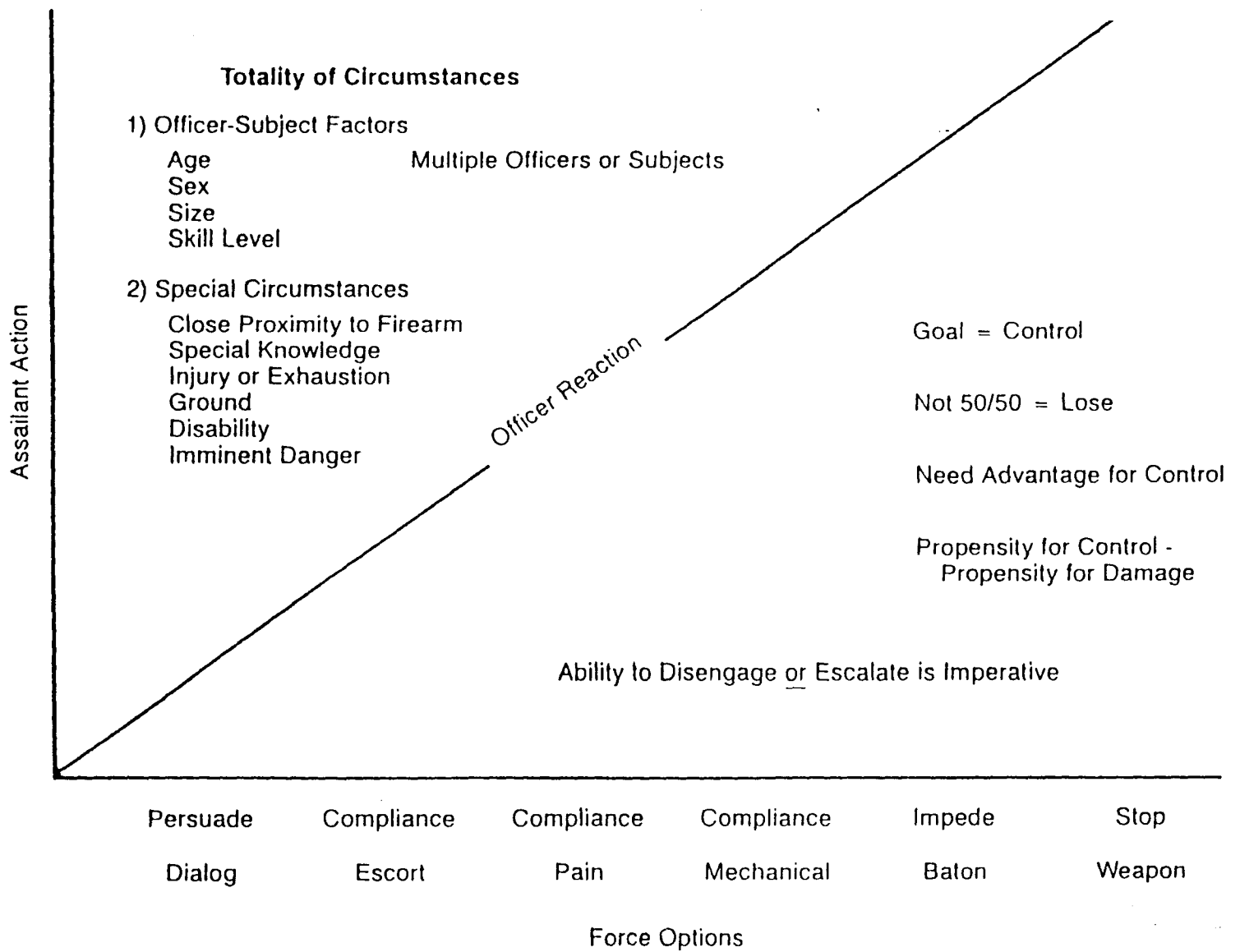


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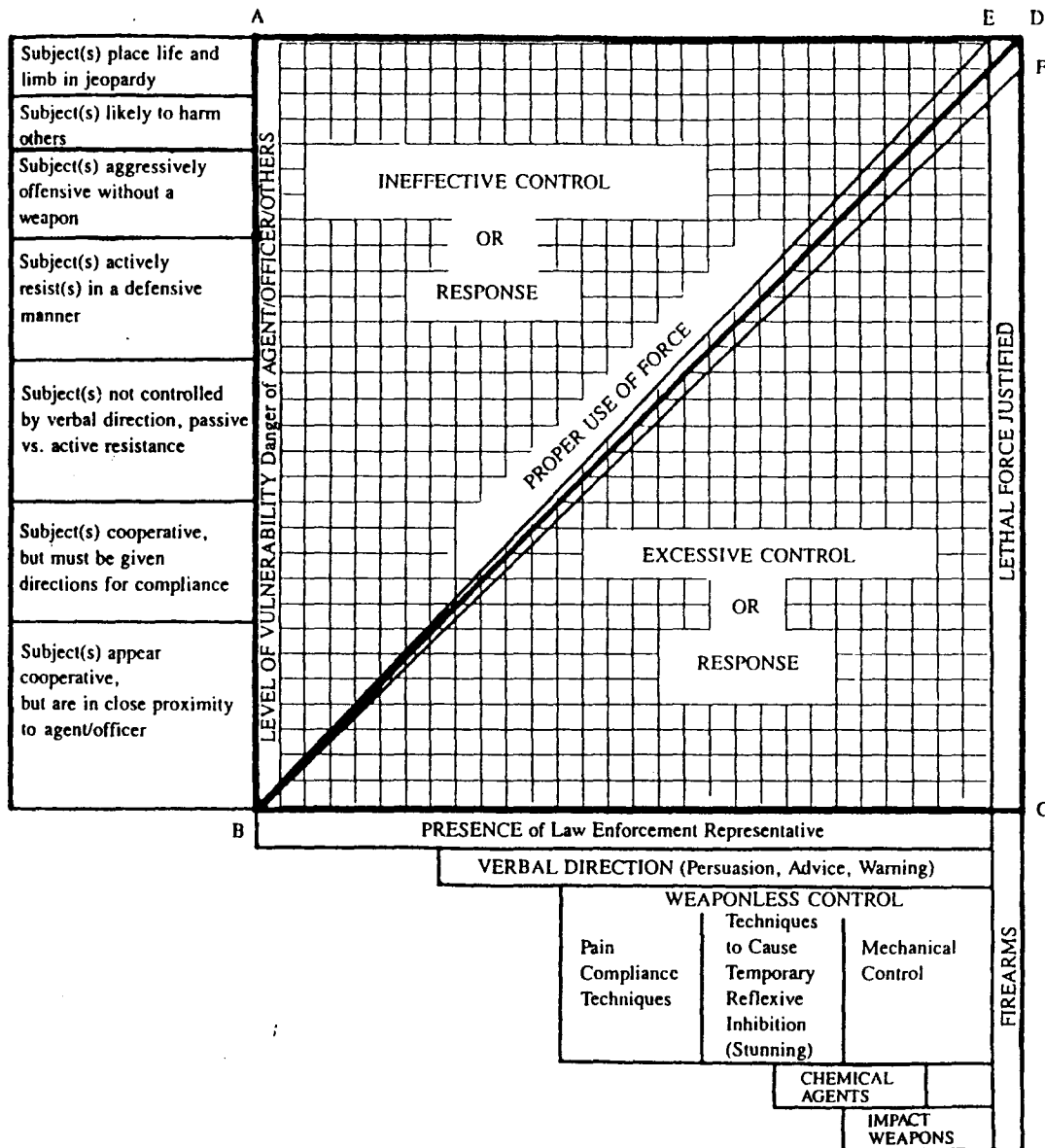
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APPENDIX B

IACP Use of Force Model Policy

I. PURPOSE

The purpose of this policy is to provide police officers with guidelines on the use of deadly and nondeadly force.

II. POLICY

This department recognizes and respects the value and special integrity of each human life. In vesting police officers with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required. Therefore, it is the policy of this department that police officers shall use only that force that appears reasonably necessary to effectively bring an incident under control, while protecting the lives of the officer or another.

III. DEFINITIONS

- A. *Deadly force*: Any use of force that is likely to cause death or serious bodily harm.
- B. *Nondeadly force*: Any use of force other than that which is considered deadly force.

IV. PROCEDURES

- A. Parameters for use of deadly force.
 - 1. Police officers are authorized to fire their weapons in order to
 - a. protect the police officer or others from what is reasonably believed to be an immediate threat of death or serious bodily harm; or,
 - b. prevent the escape of a fleeing felon whom the officer has probable cause to

believe will pose a significant threat to human life should escape occur;

- c. before using a firearm, police officers shall identify themselves and state their intent to shoot, where feasible.
- 2. A police officer may also discharge a weapon under the following circumstances:
 - a. during range practice or competitive sporting events;
 - b. to destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured.
- 3. Police officers shall adhere to the following restrictions when their weapon is exhibited:
 - a. Except for maintenance or during training, police officers shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to use the weapon in conformance with this policy.
 - b. Warning shots are prohibited.
 - c. Police officers shall not fire their weapons at or from a moving vehicle.
 - d. Firearms shall not be discharged when it appears likely that an innocent person may be injured.

B. Parameters for use of nondeadly force

1. Where deadly force is not authorized, officers should assess the incident in order to determine which nondeadly technique or weapon will best de-escalate the incident and bring it under control in a safe manner.
2. Police officers are authorized to use department-approved nondeadly force techniques and issued equipment for resolution of incidents, as follows:
 - a. To protect themselves or another from physical harm; or
 - b. To restrain or subdue a resistant individual; or
 - c. To bring an unlawful situation safely and effectively under control.

C. Training and qualifications

1. Deadly weapons
 - a. While on and off duty, police officers shall carry only weapons and ammunition authorized by and registered with the department.
 - b. Authorized weapons are those with which the police officer has qualified and received departmental training on proper and safe usage, and the at are registered and comply with departmental specifications.
 - c. The police department shall schedule regular training and qualification sessions for duty, off duty and specialized weapons, which

will be graded on a pass/fail basis.

- d. Police officers who fail to receive a passing score with their duty weapon(s) in accordance with department testing procedures shall be immediately reassigned to nonenforcement duties.
 - e. A police officer shall not be permitted to carry any off duty weapon with which he has not been able to qualify during the most recent qualification period.
 - f. A police officer who has taken extended leave or suffered an illness or injury that could affect his use of firearms ability will be required to requalify before returning to enforcement duties.
2. Nondeadly force weapons and methods
 - a. A police officer is not permitted to use a nondeadly weapon unless qualified in its proficient use as determined by training procedures.
 - b. The following nondeadly weapons are authorized:
- D. Reporting use of force**
1. A written report prepared according to departmental procedures will be required in the following situations:
 - a. When a firearm is discharged outside of the firing range.
 - b. When a use of force results in death or injury.
 - c. When a nonlethal weapon is

- used on a person.
- 2. A supervisor will be immediately summoned to the scene and will comply with investigative procedures as required by the department in the following situations:
 - a. When a firearm is discharged outside of the firing range.
 - b. When a use of force results in death or serious injury.
 - c. When a subject complains that an injury has been inflicted.
- E. Departmental response
 - 1. Deadly force incident
 - a. Where a police officer's use of force causes death, the officer shall be placed on administrative leave after completing all internal investigative requirements, and until it is determined by a mental health professional that the police officer is ready to return to duty.
 - b. The department shall conduct both an administrative and criminal investigation of the incident.
 - 2. Administrative review of critical incidents
 - a. All reported uses of force will be reviewed by the appropriate departmental authority to determine whether
 - (1) Departmental rule, policy or procedures were violated
 - (2) The relevant policy was clearly understandable and effective to cover

- the situation
- (3) Department training requires revision.
- b. All findings of policy violations or training inadequacies shall be reported to the appropriate unit for resolution and/or discipline.
- c. All use of force incident reports shall be retained as required by state law.
- d. There will be a regular review of use of force incidents by the appropriate departmental authority to ascertain training and policy needs.
- e. An annual summary report of use of force incidents will be published and made available to the public.

WARNING

This directive is for departmental use only and does not apply in any criminal or civil proceeding. The department policy should not be construed as a creation of higher legal standard or safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions.

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