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Deployment of Less Lethal Devices by the Grand Prairie Police Department

**A Policy Research Project
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ABSTRACT

This project was designed to assess the feasibility of deploying low-lethality weapons systems at the patrol level of the Grand Prairie Police Department. This has become an important issue in American law enforcement over the past two decades. Many cases involving unnecessary or excessive force have led the media, the public and the courts to the perception that the police use too much force, too frequently. Regardless of the fact that police use force in a very small percentage of their contacts, and improper force in an even smaller portion, the perception must be addressed. In addition, advances in technology have made it possible to resolve some confrontations in a safer manner than in the past. These systems are not a universal solution to these issues, but they do provide an alternative that is effective and economical.

A review of the literature and practices of law enforcement in this area was undertaken. This review led to a solid conclusion that less lethal systems delivered by current police weapons were the best option for an agency like Grand Prairie P.D. Their cost is low and they have a good effectiveness record. Additionally, these weapons have real world testing credibility. Training is similar to the training that officers already have with these weapons. No new support equipment is necessary. These systems allow greater officer safety while preserving the life of subjects that previously would have been injured or killed. The reduction in liability and use of force complaints should have a positive effect on morale in an agency where use of force issues have been controversial morale busters in the recent past. Use of less lethal technology is a proactive step toward the partnership with the public that community policing strives for.

Introduction

Today's increasingly litigious society has created a more complex world for the police officer to operate in. A major issue in society today is the use of force, especially deadly force, by the police. As litigation and scrutiny increase, the police turn to technology for help. As technology expands, new alternatives to the use of deadly force are becoming available to the police. One of these alternatives is the use of less lethal devices (Meyer, 1992 and Rivetti, 1987).

Officers today face more subjects willing to use some degree of force against them. The Grand Prairie Police Department has used these devices at least twice in the past year with no policy to guide their use. During this period there has been a need to use these devices on several other occasions. Other force options, such as baton strikes and close quarters tactics had to be used in these instances. The incidents seemed to mirror the trends in the research. Nationally there appears to be an increase in the number of incidents where police use of force is questioned and the courts agree. In many of these cases the courts have cited the effectiveness and availability of less lethal devices. The Courts have increasingly held that an agency should use all means possible to avoid the use of deadly force. (National Institute Of Justice 1995) A policy should be developed to allow the use of this option by patrol officers, or patrol supervisors, after adequate training. This option would reduce liability and increase officer confidence, as well as increase the public's confidence of the police agency.

This research project is intended as a proposal to the Command Staff of the Grand Prairie, Texas Police Department to include less lethal devices in the Force Continuum provided in the Grand Prairie Police Department's written directives. The problem to be examined is the advantage versus the disadvantage of deploying these tools at the patrol level.

Information for this project was obtained from the written directives manual of the Grand Prairie Police Department. Additionally, professional journals, articles, books and policies of other police agencies were also used to research this topic. The project will review the benefits to the Grand Prairie Police Department in deploying less lethal devices. It will also review the controversy, liability and logistical issues surrounding these devices. The information in this proposal is intended to aid the Command Staff in deciding what role, if any, the less lethal device will be assigned in the Grand Prairie Police Department.

Historical and Legal Context

The use of force by police has been a controversial issue in America since the early history of this country. For the past forty years the use of force issue has plagued police departments across the country. For the past thirty years there have been sporadic attempts to find alternatives to traditional impact weapons and the use of firearms by police. During this period, all types of devices have been tried. These have included electrical, chemical, mechanical and impact devices, or a combination of these. Regardless of whether or not a magic weapon is invented, police use of force will always be controversial. The police are the only part of the government with the authority to use violence, even to the degree of taking a life, to further the aim of government. This is an awesome responsibility and a tremendous display of trust in the police by the citizenry. There is evidence of case law dealing with the use of force by police throughout the history of this country.

In 1985, the United States Supreme Court handed down a landmark decision regarding the use of deadly force by police. In Tennessee v. Garner (105 S.Ct. 1694) the Court ruled, "using deadly force to apprehend apparently unarmed, non-violent fleeing felon is an unreasonable seizure under the fourth amendment." This decision changed the use of force by

_police more than any decision in the previous twenty years. During this same period several conferences had been held to discuss alternatives to deadly force. There had not been very much progress made. In 1986, U.S. Attorney General Edwin Meese convened another of these conferences to discuss this issue in light of the recent Supreme Court decision and a trend in the appellate courts to rule in favor of limiting the use of force by law enforcement officials. One of the issues to be discussed was the development of less lethal force technology. (Trostle 1990)

This conference found that the only real research being done in this area was sponsored by the military for use in riots and limited warfare. This research covered a wide range of devices, but seemed to focus on chemical, electrical and low-impact launched munitions. Recent developments have refined these devices and added light, sound and laser weapons. Less lethal devices have been used in other countries with varying degrees of success for over twenty years. This field seems to be dominated by electrical, chemical, impact and hybrid weapons. Many of the weapons being developed have their roots in the military, and as such may not be suitable for use by civilian police agencies (National Institute of Justice, 1996).

The devices that appear to have the best suitability for police are the chemical and impact devices and their hybrids. None of these devices alone offer a solution to all of the problems associated with the use of force. Most of them offer promising alternatives to the current methodology. None of them will ever replace the use of deadly force, or even bodily force, in American policing. But, hopefully they will give officers another way to resolve some conflicts without inflicting lasting damage.

As discussed in the introduction, today's society is more litigious than ever. The live media coverage of current events and the media interest in police activity, have all contributed to the scrutiny of police use of force. By and large the police use any level of force, and especially

deadly force, in a small percentage of cases. An even smaller percentage of those cases involve illegal uses of force. The media in their role as watchdog has done an excellent job of publicizing those cases. Some of the uses of force that are legitimate may have been avoided with alternative force options (Blumberg, 1989). This increased scrutiny of police has resulted in an increasing trend for the courts to rule in favor of police using less force or alternative force in situations where traditional force would have been acceptable a few years ago. This trend is another important factor to consider when weighing the implementation of less lethal force technology (Biggs 1990).

In addition to these legal constraints, there is the public perception to consider. The public in general, and the citizens of Grand Prairie in particular, expect the police to perform in a professional manner. Citizens also expect the police to avail themselves of new technology that enhances their performance. They also have an expectation that the police will do everything they can to increase the safety of the public. The public expects police officers to do everything they can to protect themselves from the violent criminal, as well as the emotionally disturbed. One way to do these things is to pro actively embrace the less lethal devices that are economically available. This is another opportunity for the police to show the public that they are serious about our commitment to the philosophy of community policing. Use of these less lethal devices, while not a panacea, could go a long way toward changing the perception of the police in some communities.

These devices have many theoretical applications. From the deranged armed individual to the hostage taker to the barricaded person, less lethal technology is a possible solution. There are many pitfalls to this technology as well. They include unreasonable expectations by the public and the police that they will be a cure-all for the use of force. Some of these devices give the

impression that more serious violence is being inflicted than actually is the case. Like all other weapons, less lethal weapons will not be effective one hundred percent of the time. As seen with batons, stun guns, OC spray and even firearms, nothing works all of the time. Lethal weapons do not always kill, and less lethal ones sometimes do. Effective training, clear policy and good judgment are all necessary elements of the less lethal weapons system. These weapons systems are still in their practical infancy in this country. These weapons seem to offer an opportunity to reduce some of the controversy surrounding the use of force by police. The courts seem to feel that this type of device is the way to go. Most of the literature supports the trend toward implementation of these devices in police use of force policies (Hemenway 1994 and 1998).

Review of Literature or Practice

Most of the literature concerning the use of force is general in nature. Since this is an area of developing technology many researchers are not publishing their findings. The potential market for these devices is huge, so the competition is fierce to develop the best system. Much of the literature speculates on the future of this technology. The information available seems to support these devices for use by the police. The only controversy seems to be on which device, or devices, is best suited for use by police. The literature divides these devices into four basic categories: electrical, chemical, impact and hybrid. This project will focus on the devices most commonly used around the country. These are the chemical and impact weapons, with electrical being left out due to logistical and deployment problems with them. Another reason for the emphasis on chemical and impact weapons is that special units of the Grand Prairie Police Department currently deploy them. This project is intended to examine whether or not general patrol personnel of this agency should deploy these devices.

Chemical agents have gained widespread acceptance recently, after falling out of favor over the previous twenty years. The introduction of oleoresin capsicum (OC) spray sparked new interest in this area. This chemical was touted as a cure all for the difficult subject. It was advertised as effective on all types of people, in all conditions, without causing lasting effects. Field experience has shown that this weapon has been very effective. It is not, however, always effective. It has been shown to have some potential dangerous effects. This is true of any "weapon" used by officers. A severe limitation of this weapon is its limited range. It must be deployed from very close range, placing the officer too close to some of the subjects it could be used on. This weapon system should be limited to spontaneous situations where an officer is not confronting a subject armed with a gun. (Trostle 1990) This system is currently in use by the Grand Prairie Police Department with very good results. There is currently a longer-range weapon system utilizing OC under development. This system is large and bulky, so probably not viable for use by patrol officers under most circumstances. (Flynn, 1998) Chemical sprays are one component of the total weapon system.

The system used most frequently in police force encounters is the impact category. This includes batons, nunchakus and specialty impact munitions. The baton will not be discussed here, as it is already an acceptable part of the system. The specialty impact munition is the sub category that offers the most versatility to patrol officers. These systems can be deployed from shotguns or other specialized launchers. They come in a number of configurations including: beanbags, baton rounds, rubber bullets, stinger pellets and combination rounds that include chemical agents. They may be configured for short, medium and long-range. While these systems are called less lethal, they are not without their pitfalls. Shot placement is important, as

is choice of system to fit the situation. (Coates, 1967) The literature seems to lean toward the 12 gauge beanbag round as the most versatile of these systems for patrol use.

This system delivers a 40-gram bag filled with lead shot at 180-300 feet per second. The system uses a standard shotgun that should be marked for use with less lethal munitions only. They may be deployed at distances of six to thirty feet with good results. The target areas are the same as the baton, with the head, chest and groin being out of bounds. Accuracy is good, especially with ALS Technologies' Power Punch round. These devices are most effective when delivered at 240-300 feet per second from an improved cylinder choked barrel. (Flynn 1998)(ALS 6) A similar device used by the Los Angeles Police Department is the baton round.

The baton round is similar to the beanbag, but uses a semi-rigid baton instead of a flexible beanbag. This baton round may be delivered from a shotgun in the same manner as the beanbag. It has been shown to be slightly more effective in street use by the LAPD. It is also slightly more accurate due to its ballistic shape. The Los Angeles Police Department is the lead agency in the use of these types of weapons. In actual patrol use they report effectiveness of over 80% with the beanbag round and over 85% with the baton round. These reports include situations where more than one round was used to incapacitate the subject. (Meyer 1995)

Both the baton round and the beanbag round, in their evolving forms, have been in use for over ten years in the U.S. and other countries. They have shown to be effective, safe and economical. They are not a magic bullet, but they do provide the patrol officer another resource when dealing with a dangerous subject where deadly force is not acceptable. These systems are in use in many agencies throughout the world.

As previously mentioned above, the Los Angeles Police Department (LAPD) is the premier agency in the use of less lethal specialty munitions. LAPD deploys these weapons in a

variety of ways. The one of interest to this project is the deployment at the patrol level. LAPD deploys the 12-gauge beanbag and baton rounds in patrol supervisor's cars. These shotguns are kept in special cases and are plainly marked "less lethal only". They are not kept loaded and the officer assigned to deploy the device must physically check the weapon and ammunition to insure that is appropriate for the situation. At the scene of an incident the supervisor does not deploy the weapon. The supervisor assigns it to a trained officer at the scene. This is done in order to free the supervisor to oversee the operation. Whenever the less lethal system is deployed, a cover officer is assigned to protect the deploying officer in the event deadly force becomes necessary. The beanbag and baton rounds are used primarily against emotionally disturbed individuals, suicidal subjects, some disturbances and other situations where danger to officers or the public is high, but deadly force is not immediately necessary. A written report is submitted covering each use of these systems in order to evaluate effectiveness and the need for policy or procedure review (Meyer 1992 and Stevens 1994). There are many other agencies that use these devices, however the tactics, policies and procedures are not available due to concerns over litigation and media attention.

Most major agencies in the U.S. have some form of less lethal system policy. Many are modeled on the LAPD procedure described above. Many medium-sized agencies use these systems, mostly in a critical incident role. The individual agencies' practices and policies are governed by the law. Therefore they are not very different from one another. The main differences seem to be whether to use the systems, and if so, in what role. Many agencies prefer to relegate these systems to the specialized units role, much as Grand Prairie P.D. has. An increasing number of police agencies have recognized the missed opportunities to prevent injury and possibly death, while waiting for these systems to arrive (National Institute of Justice, 1995).

Discussion of Relevant Issues

There are many issues to consider while deciding if less lethal weapons systems, particularly the low-lethality projectiles should be deployed by field officers in patrol situations. One issue is the necessity of deploying these systems in this manner. Over the past few years the Grand Prairie Police Department has been involved in numerous encounters where distraught, intoxicated or otherwise emotionally disturbed individuals who have been armed or otherwise presented a danger to themselves, the public or officers. Police Officers have used force, up to and including deadly force, to resolve these incidents. A number of suspects and officers have been injured. In at least two instances a Tactical supervisor on the scene deployed the beanbag device. In both cases, the beanbag successfully incapacitated the suspect and he was taken into custody without further incident. On at least one occasion, officers were forced to use impact weapons and chemical spray against an armed suspect to avoid use of deadly force, while waiting for tactical units to arrive. This delay presents an issue of liability and safety. The technology is available, but only entrusted to special units that have a long response time.

Another issue that may be more critical is the issue of liability. How much, if any, liability does the agency incur by not deploying this technology? According to Greg Meyer in The Police Chief, agencies that do not avail themselves of reasonably available technology may face rising liability in the future. Some courts have held that an agency may be seen as deliberately indifferent if they knew, or should have known, of alternatives to the traditional use of force and did not implement plans to use that technology. This is the basis for some of the recent rulings against the police involving officers who were issued batons or OC spray but did not have them readily available (McEwen 1997).

Another issue is training for the deployment of less lethal systems. Training is an important issue for any new system. The training involved for these systems is no different. Officers must be trained not only to use the delivery system in a safe and efficient manner, but they must be trained to identify situations where this level of force would be appropriate. Training must be standardized so that all officers get the same information and will be able to work together under stressful circumstances. Training must stress understanding of the applicable policies and the ability to implement those policies in the field. Training should also address concerns of the officers on why this system is being implemented and it should allay their inevitable fears that they have to try this system before moving up the force continuum.

Policy issues are also very important in the use of force area. A clearly written concise policy is necessary to assure success and to limit liability of the officer and the agency. (Geis 1990) Policy should not only cover when use of these systems is permissible, but also when they are absolutely forbidden. The policy should also clearly delineate that the use, or attempted use, of these devices is not mandatory in all cases. Policy should allow for command review of each incident where less lethal devices are used. The purpose of this review is to insure compliance with guidelines and to determine the effectiveness of the devices and any future training needs (McEwen, 1997).

The use of the specialty munitions described in this project offer a number of opportunities for law enforcement. Any program that may reduce the use of force and injuries to the public and officers will be met with positive comments. Giving field officers another way to avoid the physical and mental dangers of using force will aid morale. The public and officers expect the agency to provide the safest environment possible. A proactive step that will reduce the use of chaotic and deadly force is a step in that direction. The deployment of these devices

may allow officers to maintain their distance from dangerous subjects that must be contained.

With the availability of the beanbag round there is less of a need to close on a suspect with an edged weapon who is distraught or otherwise impaired. The suspect could be disabled and taken into custody with a far smaller likelihood of injury to anyone. Deployment of these systems will send a message to the public that the agency is looking for a humane way to deal with dangerous subjects. The use of these systems will reduce liability in excessive force claims and send a message to the courts that the agency tries to use minimal force.

These weapons systems are not a "magic bullet". They are not appropriate in all situations, such as a subject with a firearm confronting a citizen or officers. Some citizens will believe that these weapons should be used all of the time and that no one should be injured through their use. Some officers will bemoan the reduction of their "discretion". Still others will feel that they must use these weapons before resorting to any other, putting them at greater risk. There is the risk that a serious injury or death could occur when using these devices. They are fired from a firearm and as a result could cause this type injury. Some citizens who are present when these devices are used may believe that the suspect has been shot. Their reaction may be hostile or condemning. Most of these can be addressed through training and education. The other major issue is cost.

One of the reasons this topic was selected to research was the cost issue. The use of the current police shotgun as a delivery system helps reduce the cost greatly. These munitions are available from a number of vendors. They are comparable in performance and cost about five to seven dollars each. ALS Technologies advertises they are researching ways to reduce cost and improve quality. If one of these systems was placed in each patrol supervisor's unit, or deployed on a geographic basis (such as in certain beats) the cost would be less than \$1000.00.

Costs for training would depend on how many officers are trained and how many rounds would be fired. Additional costs would be in getting the selected trainers trained to train others and marking systems or distinctive stocks for the shotguns. The benefit of this system is if this system saved one life it would more than pay for itself. What value could be placed on human life? Additional benefits would include reduced use of force complaints, reduced injuries to officers and suspects and a readily available alternative to deadly force.

Conclusion/Recommendations

The purpose of this research was to gather information to present to the Grand Prairie Police Department Command Staff in support of deployment of low-lethality projectiles for use at the field officer level in the patrol division. This topic has become part of the ongoing controversy over the use of force by police. Today's society has come to expect the police to find innovative ways to solve problems in the community. This project sought to find a solution to the perceived excessive use of force by police against dangerous subjects where deadly force is not acceptable to the community. The problem is the lack of readily available, viable alternatives to the traditional forms of force used by police.

This researcher concluded from the study that a satisfactory alternative to traditional weapons is available. This alternative is the low-lethality projectile category of less lethal weaponry. This device allows officers to maintain their distance from dangerous subjects such as suicidal persons and the emotionally disturbed. It also allows them to deal with these people without having to inflict permanent injury on them. These devices will provide the patrol officer with a tool that will prevent the unnecessary injury to officers or subjects when deployed in accordance with sound policy and good judgment. The Grand Prairie Police Department currently has these devices available to the Tactical Unit. This is an excellent place for the

deployment of the more specialized devices that require special weaponry and training to use. It is sound management to make full use of your resources. In many of the instances where these devices would be helpful, there is no time to wait for TAC to arrive. These situations are dynamic, fluid, complicated and not completely contained by officers at the scene. It is better to have the capability to use a less lethal device if necessary than to need it and have to resort to some other use of force because the needed device is secured in an armory.

Deployment of low-lethality projectiles in patrol will address the current issue of alternatives to deadly force. In those situations where deadly force would not be viewed as the best answer, these devices fill the void between tools carried on an officer's belt and their firearm. While they are not the ultimate answer to all situations, they do fill a void between the club and the gun. If one injury is avoided or one death prevented, the deployment will have been worthwhile. Police have recognized the need for these devices by placing them in the Tactical arsenal. It is a logical progression to deploy them in the hands of those most likely to need them. Cost and liability aside, this is a proactive step to avoid some uses of force that will improve the agency image in the community.

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