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The Justification for the Modernization of the
Use of Force Policy for the Galena Park Police Department

A Policy Research Project
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By
Kennith A Ponder

Galena Park Police Department
Galena Park, Texas
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ABSTRACT

One of the high liability issues that police administrators face today is Use of Force. Police officers must use force on occasion to maintain order, but certain legal and moral issues demand only that force necessary to ensure compliance and overcome resistance. At the same time they must provide for their own safety and the public's safety.

The purpose of this research is to analyze the current Galena Park Police Department Use of Force policy. Policy should include choices of tactics, equipment, application and training.

The method of research included local surveys, recently published periodicals, and case law. The current policy was found to be out of date and the recommendation is to modernize it and include a Use of Force Continuum.

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Introduction

Use of force by police officers continues to be a high liability issue in today's society. The Galena Park Police Department Use of Force policy should be modernized to reduce vicarious liability. Police administrators are faced with excessive use of force complaints daily. A modern policy for street officers to use as a guide would certainly give them the background to use the proper amount of force in a given situation and reduce the amount of complaints received by administration.

A modern Use of Force policy incorporates the Injury Based-Use of Force Continuum Model. This model was developed by Lieutenant Greg A. Meyer of the Los Angeles, California Police Department. A modern policy would reference the Texas and U.S. Constitutions and case law such as *Tennessee v. Garner*. Use of Force policies should address the options of lethal and less-than-lethal force relative to the resistance encountered and risk of injury to officers and citizens. Training recommendations complete the modern policy.

Reducing vicarious liability, insuring that citizens are treated within the bounds of the law, and maximizing officer safety is the intended outcome of this research project. The public is growing tired of making millionaires out of convicted criminals and others who choose to resist arrest. Police officers are empowered to use force when necessary and properly guided officers will limit the misuse of force. Therefore, the intended audience of this research project includes police department administrators, policy makers, trainers, and officers.

Historical, Legal or Theoretical Context

A system of law and law enforcement began earlier than 2000 b.c. as a means of controlling human conduct and enforcing society's rules. About the time of Christ, the Roman emperor Augustus established the Vigiles of Rome. They are sometimes referred to as the first civilian police force and kept the peace very ruthlessly. It is from these Vigiles that we derive the word *vigilante*.

Modern policing began in 1829 when Sir Robert Peel proposed sweeping reforms in the Metropolitan Police Act that created the Metropolitan Police of London. One of Peel's reforms was that police officers be accountable for their actions. Another was that no quality is more indispensable to a policeman than a perfect command of temper; a quiet, determined manner has more effect than violent action. Present day law enforcement officers maintain these attributes, but unlike Peel's "bobbies", they are equipped with and confronted with many more weapons. But like Peel's "bobbies", present day law enforcement officers are accountable for their actions and must have the tools necessary to avoid criminal and civil prosecution.

The current Galena Park Police Department Use of Force Policy was implemented in 1985. It states that officers may use or threaten to use force to accomplish the goals of the department when such force is justified under the provisions of Chapter 9 of the Texas Penal Code. It mentions the use of physical strength, skill and/or baton (issued by department or approved by the Chief). The policy admonishes officers to use "no more force than is necessary to accomplish the desired purpose and to

provide for their own safety. Officers, if circumstances permit endeavor to minimize the pain and injury that may result from the type and degree of force they use." The policy also recommends that officers review the provisions of the Texas Penal Code, Chapter 9 at least once a year. "As law changes occur, the administration furnishes copies of the changes to personnel and conducts training classes as necessary." Officers are directed to supervisors including the chief of police for any questions they may have on this Use of Force policy. The officers are admonished that they are responsible for their actions even if justified under the Texas Penal Code, Chapter 9, and that Chapter 9 does not abolish or impair prosecution in a civil tort.

Force is defined in Webster's as capacity to do work or cause physical change, power made operative against resistance, to move something against resistance. According to the Pasadena, Texas Police Department Use of Force training manual deadly force is force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing death or serious bodily injury. Reasonable or necessary force is the minimum amount of lawful aggression sufficient to achieve a legitimate law enforcement objective.

According to the Colorado Springs, Colorado Use of Force policy police officers are given the unique right to use force, even deadly force, against others for legitimate law enforcement purposes. The right to use force carries with it a heavy responsibility not to abuse it. Police agencies have an obligation to provide their employees with the policies, training, and tools necessary to accomplish their mission. An articulated continuum of force options, selectively applied based on the skills, knowledge and ability

of the individual; the perceived threat and amount of resistance offered by a subject; and structured within a situational framework, will enhance the department's ability to manage the use of force and will benefit the officer by providing guidance, resources, and options.

According to Roush, the use of force by law enforcement is necessary to maintain order and peace within a community. Police must use a certain amount of reasonable force to ensure compliance and overcome resistance. To the public, however, any use of force is disturbing to see. The force spectrum currently in practice is useful to law enforcement because it provides a scale of reasonable guidelines and parameters to help determine what type of force is appropriate and when to use deadly force.

One of the most important cases relating to use of force by police was Tennessee v. Garner, 471 U.S. 1, (1985). Memphis police were answering a burglary in progress call and observed Edward Garner running from the burglary scene. A Memphis officer shot Garner in the back as he attempted to climb a fence. Using deadly force against a fleeing felon was allowable under Tennessee law. The Supreme Court ruled that the police may not use deadly force to prevent the escape of a suspect unless it is necessary and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or to others.

Another landmark case is Graham vs. Connor, 109 U.S. 396 (1989). Graham, a diabetic, was seen entering and then quickly leaving a store by a police officer. He was injured while he was detained before officers determined that he had committed no crime.

The Supreme Court held that police officers may be held liable under the Constitution for using excessive force. The test for liability is "objective reasonableness" rather than "substantive due process."

Review of Literature or Practice

Meyer said, "If we can put a man on the moon and return him safely to Earth, why can't we put a man on the ground and take him safely to jail?" An interesting question and one that has pushed police administrators to refine their use of force policies. David Boyd, the director of the Science and Technology Divisions of the National Institute of Justice said, "Police still have the same choices Wyatt Earp had. They can talk a subject into cooperating, they can beat him into submission or they can shoot him. What police need are better alternatives." One such innovation is the Use of Force Continuum. Webster defines a continuum as something consisting of a series of variations or of a sequence of things in regular order. There are two different ways of looking at the force continuum. The ladder or series of steps is the most common approach. An officer must follow one step at a time in sequence. A refined approach is to look at the use of force options globally. Roush said, "The use of force continuum is used by law enforcement agencies to manage, train, control and respond to its needs with regard to the use of force by its officers. The continuum is designed to encourage an officer to respond to the amount of resistance met with an equal amount of force to stop resistance or ensure compliance."

There are many different models of continuums. The problem with most of them is that they are too complicated for the street officer to understand and implement. Lt.

Greg Meyer of the Los Angeles, California, Police Department created a use of force model that was court defensible and more in line with the public views on police use of force. He developed the Injury base Use of Force continuum after extensive research and analysis of many police use of force incidents by LAPD officers (see Appendix A). Reasonableness in the amount of force is the main objective in a use of force policy. According to Honing, "If a policy is to be truly helpful for officers, it should clarify what level of force is appropriate *before* a situation becomes critical, *before* deadly force is applied." Honing continues, "The premise of Meyer's model is that levels of progressive force are based on the risk of injury to the officer as well as to the suspect. By accounting for the risk of injury in establishing the increasing levels of force, the Injury based Use of Force Continuum allows for protection of the public as well as the officers and the agency."

Out of nine agencies surveyed by Honing, only four had an accepted use of force continuum, but only three of those had the use of force continuum and the use of force policy in a single comprehensive framework. Such a framework is necessary to promote officer safety and community relations. Lack of a modern use of force policy may lead officers to begin using techniques or carry devices they are not trained for and create a liability problem.

Discussion of Relevant Issues

The Pasadena, Texas Police Department training manual list four elements of Title 42.U.S.C. 1983, The Civil Rights Act of 1871 that are relevant to the study of use of force:

- a. The Civil right Act of 1871 was originally passed to protect the civil rights of

- the recently freed slaves in the south.
- b. It is often referred to a "Section 1983" suit because it is found in Title 42 of the United States Code under Section 1983.
 - c. Section 1983 is the most important federal civil rights statute involved in actions against the police.
 - d. Section 1983 provides that every person shall be liable to the party who, under color of state law, subjects or causes to be subjected any citizen or inhabitant to the deprivation of any rights, privileges or immunities secured by the Constitution and laws.

A police department's written directives have a very important role in an officer's liability. Written directives of an agency may be used against the officer and/or the agency. Written directives of an agency may be used to support the officer and/or the agency. An officer using more force than the agency's written directives allow is increasing his vulnerability to legal liability. The good faith defense for an officer is greatly enhanced when following the written directives of the department.

Many Supreme Court decisions that effect use of force have been handed down. The most relevant of these use reasonableness of the action that officers had used to determine the constitutionality of that action. In *Tennessee v. Garner*, the Supreme Court ruled that it was unreasonable to use deadly force to prevent the escape of an unarmed felon that posed no threat to officers or others. The court based the decision on the Fourth Amendment, saying that "there can be no question that apprehension by the use of force is a seizure subject to the reasonableness requirement of the Fourth Amendment."

Another Supreme Court case involving unreasonable action was *Graham v. Connor*. Graham was a diabetic and had asked a friend, Berry, to drive him to the store to buy orange juice to counteract the onset of an insulin reaction. Graham ran into a store and after seeing the long line at the checkout ran back outside to Berry's car. He asked

Berry to drive him to a friend's house. A police officer observed Graham's actions and stopped Berry's car and ordered them to wait while another officer's checked the store. The officer called for backup units and Graham was handcuffed. The officers ignored his attempt to explain his actions and Graham sustained multiple injuries. Graham brought a Section 1983 lawsuit against the police alleging a violation of his Fourth Amendment constitutional protection from excessive force. The Supreme Court decision held that police officers may be held liable under the Constitution for using excessive force. Such liability must be judged under the Fourth Amendment's "objective reasonableness" standard, rather than under a "substantive due process" standard. The officer had probable cause to stop Berry's car but this case forced the court to consider whether the officer acted in "good faith" or "maliciously and sadistically for the very purpose of causing harm."

Officers must be trained that their actions may be considered unreasonable under the U. S. or State constitution. Administrators on the other hand must hand down policies that are usable by the officers. Meyer said, "the federal civil jury awarded King 3.8 million tax dollars from the Los Angeles city treasury for general damages but not a dime from the involved officers for punitive damages. The jury learned during the punitive damages phase that the roots of the King beating were to be found in poor policy which encouraged Los Angeles police officers who encountered resisting suspects to hit them with metal pipes." Meyer continues, "the public, the courts, and the media must insist on a more constitutional, more rational use-of-force process than Los Angeles experienced in the early 1980's. Giving an officer a metal pipe as a primary tool, then telling the

officer to do the job humanely, is schizophrenic. It should not be accepted by the public and the press, or by political leadership. It simply cost too much."

Conclusion/Recommendations

The purpose of this project was to research the need for modernizing the Use of Force policy for the Galena Park Police Department. Use of force is a high liability issue that demands careful planning and execution. Use of force is a highly emotional issue with the public and recent incidents and case law leads police administrators to aggressively update their policies and educate the public and officers.

A recent article from the Chicago Tribune relates a police shooting of an unarmed Harvey citizen. A movement fueled by charges of harassment by Harvey police officers led residents to march on city hall, some carrying signs to protest the shooting. Though the officer may have been following procedure according to his administration, less-than lethal options may have not been available to the officer. The Houston Chronicle reported a shooting of a San Antonio man who was unarmed but made a sudden movement from his back. Nineteen grams of cocaine were found on the man and citizens are supportive of the officer involved in the shooting. Another Houston Chronicle article reports the use of unnecessary force by Houston officers after a kidnap and robbery suspect was captured after a lengthy slow speed chase. A local television station filmed the officers beating and kicking the suspect. It's easy to see that publicity after a use of force incident is inevitable and the prepared administrator can defend his officers in court and to the media. The public must have the confidence in their police department to maintain order and only use that force morally and legally applicable.

The Galena Park Police Department Use of Force policy was written more than a decade ago and should be updated to include recent case law and newer less-than-lethal weapons technology. It should also include a use of force continuum based on LAPD Lt. Meyer's model to allow the officers more flexibility and support in civil court.

An update of this policy would cost very little to implement and train the officers in its deployment. The alternative may be an expensive civil court settlement that the city could ill afford.

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Appendix A

Injury-Based Use-of-force Continuum

SUSPECT'S ACTIONS	OFFICER'S RESPONSE	TYPICAL INJURIES
Deadly or GBI Attack, or Fleeing Felon Rule Attacks Officer You can't Use OC/Taser	Deadly Force Baton Kick Other Impact	Death or Serious Injury Moderate to Major
Aggressive Resistance, You Can't Use OC/Taser/Swarm	Tackle Leg Sweep Or Aggressive Compliance Holds (e.g., PPCT/Carotid/LVNR)	Minor to Major
Bizarre Resistance, Unsafe To Approach, PCP/Psycho/Etc.	Taser Swarm	None to Moderate
Defiance of Verbal, Plus Credible Threat	OC (Pepper Spray) Stun Gun	None to Minor
Passive Resistance, "Drunk Pick-Up" Cooperative	Firm Grip or Passive Compliance Holds Verbalization	None None

Minor injuries = pain complaints, redness, scratches, Taser darts

Moderate Injuries = significant lacerations, welts, confusions, bruises

Major Injuries = breaks, concussions, large lacerations or confusions, sprains, strains