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**Incorporating the Injury Based Use of Force Continuum
Into Use of Force Policy**

**A Policy Research Paper
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Abstract

The purpose of this paper is the incorporation of an Injury Based Use of Force Continuum into a comprehensive use of force policy. This Continuum was developed by Lt. Greg Meyer of the Los Angeles, California Police Department in the wake of the highly publicized Rodney King incident. Recent abuses of police use of force have made it necessary for police administrators to develop use of force policies that clearly define acceptable levels of force options and appropriate applications of those options. The Injury Based Use of Force Continuum has two foundations on which it is based; the actions of the subject and the force options deployed on the continuum based on the risk of injury to the subject and the officers. The research came from a study of relevant articles from police journals and magazines, as well as a study of department policies and law enforcement models.

Each police agency should have a clearly written use of force continuum policy that can be adapted to new technology as it becomes available. Traditional use of force options include; Command Presence, Verbal Persuasion, Weaponless Control Tactics, Chemical or Electrical Means, and Deadly Force. Misuse of these options may subject a department to liability for perceived or real abuses.

Any policy regarding the use of force by police should include a Use of Force Continuum and be accompanied by an aggressive, dynamic training program in order to be effective. The best written policy is worthless if it is not presented to the members of an organization with education and a clear understanding of what is intended.

Introduction

The use of force by police, both lethal and less-than-lethal, is a major concern for both law enforcement officials and the public. Recent abuses by the police have magnified the public's concern over excessive use of force. The purpose of this research project is to develop a competent and comprehensive police use of force policy model that 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, after he conducted an extensive job task analysis of police use of force. The issue to be examined in this research project is the adaptability of the Injury Based-Use of Force Continuum to police departments' needs and the incorporation of this Continuum into a comprehensive Police Use of Force Policy Guideline. Having a complete and comprehensive written Use of Force Policy Guideline including a Continuum model of force options is essential to today's police departments and administrators. Therefore, the intended audience of this research project includes police department administrators, policy-makers, trainers, and officers. It is crucial that police departments train their officers in all aspects of force: options, strategies, risks, and liabilities. The sources of information used in this research project were police policy reviews, current training information and guidelines, police books, documents, periodicals, and journal entries. Use of force policies should address the options of lethal and less-than-lethal force in relation to both stages of active resistance and risk of injury to officers and citizens. It is the intended outcome of this research to develop a comprehensive use of force policy which incorporates the Injury Based-Use of Force Continuum Model.

Historical, Legal or Theoretical Context

Police, throughout history, have been criticized for their excessive use of force to maintain public order and apprehend law violators. During the 1800's, most law enforcement was comprised of local sheriffs and town marshals, who had only one operational theory: use force to obtain compliance with the law as they saw it. The first form of organized state police was formed in 1835, as the Texas Rangers. They operated much as early sheriffs did. Early lawmen were often criticized for being too brutal. For instance, they replaced Wyatt Earp as Dodge City marshal, because town leaders believed that he had become too brutal in his application of the law.

In most recent years, police have been widely criticized over apparent abuses of force. The media has magnified this criticism and contributed to the skepticism of the American public through "media blitzes" of these use of force incidents. On the evening of March 3, 1991, the media broadcast a video of four white Los Angeles police officers who engaged in excessive force by beating Rodney King after a high speed pursuit. A bystander videotaped this incident. As a result of this, a riot occurred throughout the Los Angeles region. Civil lawsuits were filed against the officers and the Los Angeles Police Department, and two of the four officers involved were eventually convicted in federal court of violating Rodney King's civil rights. This incident brought police use of force to the forefront of public concern regarding law enforcement procedures and policies.

April 1, 1996, a KCAL-TV news team videotaped two Riverside County Sheriffs' deputies beating several illegal aliens after a high speed pursuit in Southern California. The incident became a news item across the country through both video and print media. This incident has again brought the possible abuse of force by police back into the public arena to be scrutinized and criticized.

In response from the Rodney King incident, Lt. Greg Meyer of the LAPD created a use of

force model that was court defensible and more in line with the public views on police use of force. His development of the Injury-based Use of Force Continuum was the result of extensive research and analysis of many police use of force incidents by LAPD officers. It is his use of force model that is the basis for this research project.

The main objective of a use of force policy is to ensure that police use only a reasonable amount of force to obtain a legitimate law enforcement objective. “But, 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.”(Desmedt, 1984:171). Police use of force is governed, wholly or in part, by some state or federal statute, case law and department policy. Although policy in use of force is governed by statute, individual application is mostly discretionary. “The use of force, a decision making process, is an individual task (Davidson, 1981) and that choice of which type and what level of force is to be employed will ultimately be the responsibility of the individual officer.”(Trostle, 1990:27).

A comprehensive policy, inclusive of a model use of force continuum, is very important to every law enforcement administrator, the agency and its officers. This policy should be coupled with an aggressive, dynamic training program that encompasses all aspects of the policy, the model continuum, and the liabilities in the improper application or abuse of force. Court decisions have dealt not only with policies, but standards and training as well. Court decisions have a direct influence in the discretionary use of force by police by setting standards of force (*Graham vs. Connor*, 109 S.Ct. 1865 (1989)), standards of training in the use of force (*Popow v. City of Margate*, 476 F.Supp. 1237, 1246 (N.J. 1979)), and the role of written policies affecting police liabilities (*DeLong v. City and County of Denver*, 530 P.2d 1308 (Colo. App. 1947), Affirmed 545 P.2d 154 (1976)). One of the major cases relating to the use of force by police was *Tennessee v. Garner*, 471 U.S. 1, (1985). “Relying in large

part on the assessment of current state laws and departmental policies, the Court determined that ‘shooting nondangerous fleeing suspects is (not) so vital as to outweigh the suspect’s interest in his own life’” (Walker, 1992:99).

There is an extensive body of research being conducted in the development and deployment of “less than lethal” alternatives to the use of deadly force (Hamdorf, 1993, Hunter, 1994, Meyer, 1981, Meyer, 1995, Stevens, 1994, Rogers, 1993). “The phrase “*less than lethal*” rather than “*non-lethal*” was adopted to recognize the fact that *any such weapon is potentially lethal if used inappropriately*.(Sweetman, 1987:2, cited in Trostle, 1990:28).” One of the most successful “less than lethal” intermediary weapons of law enforcement is the deployment of Oleoresin Capsicum spray (OC or Pepper Spray). This is a significant breakthrough in “less than lethal” force options; when used correctly it has very little risk for injury while providing controllable incapacitation of a potentially violent suspect (Meyer, 1995). Police agencies, who now use OC, believe that fewer injuries may occur to officers and suspects as compared to the use of force incidents prior to acceptance of the OC spray.

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.

Review of Literature

In the early 1980’s, the use of force model or continuum was developed by Agent John C. Desmedt, United States Secret Service, and published in 1984 by The Journal of Police Science and

Administration. "In the Use of Force Model, the subject's threat/resistance level determines the necessary amount of force the officer uses."(Desmedt, 1984:172). This explanation of how the use of force continuum operates is the simplest example of the analysis of police use of force. Since the initial publication of the Desmedt's Use of Force Model Continuum, it has undergone numerous revisions. In 1991, Greg Connor revised Desmedt's model. Connor's use of force continuum model has 16 different force option levels arranged in an arc pattern, which is very complex and difficult to understand. As technology develops newer less than lethal force options, the continuum will remain forever changing. L.C. Trostle made revisions to the Desmedt's use of force continuum in 1990 when he included less than lethal force options: Talon and Source, two electrically charged stun weapons and impact weapons such as Ring Airfoil Grenade "Rag": "a soft rubber ring fired from an M-16 rifle with or without a CS or CN chemical agent charge."(Trostle, 1990:29)

"Pepper spray" was introduced as a less than lethal force option in the early 1990's. John C. Hunter, a Chief Deputy with the Skagit County , Washington, Sheriff's Office suggested the expansion of the Use of Force Continuum on two levels of less than physical force (neutralizing agents such as OC Spray and Electrical weapons) in his article "Pepper Spray" published in the FBI Bulletin of May 1994. "One advantage of pepper spray is that it can applied to handcuffed, resistant, and violent persons during transport, in lieu of the hog-tying method."(Hunter, 1994:25). This is an important factor as a number of in-custody deaths have recently been attributed to a phenomenon known as *positional asphyxia*. Positional asphyxia can occur when a suspect's body is positioned in a manner that compresses the diaphragm or chest cavity so that the suspect actually suffocates.

In an article on the search for less than lethal weapons, Captain Kathryn J. Stevens of the

Allen County, Indiana, Sheriff's Office notes "Each agency's "use of force continuum" should be a clearly written document."(Stevens, 1994:34). Law enforcement agencies should put all of their force options into proper order prior to their implementation. All of the members of an agency should have a clear understanding of which force options may be used, and what situations may dictate the use of a given force option. The placement of force options on the "use of force continuum" may decrease the chances of police misuse of force, public controversy, media bombardment, and instances of disciplinary actions or litigation. It is the court defensibility aspect that appeals to the policy makers and the primary reason why the use of force continuum should be incorporated into a comprehensive departmental policy on police use of force.

In surveying the policies and practices of other departments, I have found that while many departments have comprehensive use of force policies, others have vague and obscure policies regarding the use of force. In researching the use of continuum in policy, I have found no quantifiable field studies on this topic. In reviewing the policies of various departments, I have found that most of them do not have a use of force continuum within their respective policy framework. This is represented on the table below.

Table 1

Department	Policy	Continuum	Continuum and Policy Together
Armstrong Co. S.O.	Yes	No	No
Dallas P.D.	Yes	Yes	No
Dumas P.D.	Yes	No	No

Department	Policy	Continuum	Continuum and Policy Together
Fair Oaks Ranch P.D.	Yes	Yes	Yes
Ft. Worth P.D.	Yes	Yes	Yes
Houston P.D.	Yes	Yes	Yes
League City P.D.	Yes	No	No
Travis Co. S. O.	Yes	No	No
Webster P.D.	Yes	No	No

It is evident from Table 1 that all of these departments have a use of force policy. Some of these departments did have an accepted use of force continuum; however, only three of these departments had the use of force continuum and the use of force policy in a single comprehensive framework.

Discussion of Relevant Issues

It is important to note the force options of an agency and place them on a model or continuum, so that a clear understanding of purpose may be achieved for the members of the agency. The Texas Commission on Law Enforcement Standards and Education (1995) recognizes the following force options:

1. Command Presence
2. Verbal Persuasion
3. Empty Hand Control or Weaponless Control Tactics

4. Chemical or Electrical Means
5. Impact Weapons
6. Deadly Force

Command presence is the force of change that occurs when a police officer enters onto a scene. The dynamics of any scene will change when a new factor is introduced to the situation.

Verbal persuasion is the act of using words or communication skills to influence another. In this particular case, I am referring to the influencing of another's behavior through the use of communication skills. It is not just the words, but includes the tone of voice, gestures, surroundings, and many other factors that are involved in the process of communicating.

Empty hand control or weaponless control is basic hand to hand defensive tactics. This includes any physical skill that an officer is proficient in, that will safely and effectively neutralize his opponent. There are many different types of defensive tactics that can be employed against an opponent: stunning blows, swarm movements, joint manipulation tactics, pain compliance maneuvers, and many others that would fall into this level of force option.

Chemical or Electrical means refers to incapacitating devices of an electrical or chemical nature. An electrical device is one that is capable of emitting an electrical charge intended to cause a disruption or temporary impairment of the central nervous system. There are many devices that would fall into this level of force: Talon, Taser, and The Source. Chemical means are chemical agents that are designed to irritate or inflame the mucous membranes and cause the affected party to become unable to continue an attack. These agents, traditionally, have included such weapons as CN and CS tear gas and MACE. The drawback to these agents is that it is necessary to transport a neutralized suspect to a medical facility for decontamination. The newest "replacement" for these traditional weapons is OC or

“Pepper” spray. Pepper spray is an organically based compound that is derived from certain types of peppers. “Its ingredients are generally 90 to 95 percent inert, making it safe for use at close ranges.”(Hunter, 1994:25). Pepper spray has a very high effectiveness rating, above 95%, and has relatively no side effects of long lasting duration, when proper decontamination procedures are followed (Boatman, 1993).

Impact weapons are intermediary striking weapons that are designed for controlling violent persons without resorting to deadly force. There are several types of baton weapons that would fall into this level. Recent advances in technology have produced impact weapons that can be propelled by air or a powder charge, causing a type of blunt trauma impact designed to be less than deadly force , i.e. The Raven.

Deadly force is the use of force that is intended to, or by nature of its use will cause serious bodily injury or death. Deadly force is the highest level of force on most use of force continuums.

It is clear that these are readily accepted force options throughout the legal environment, the police agencies and the court system. What makes police vulnerable in the defensibility of force options is the order in which the options are dispersed along the use of force continuum, if one exists for a given agency in policy or practice.

“However, despite these advances, insufficient training is given to one area in use of force training: the mental and psychological factors involved in stressful confrontations” (Borum, 1993:22). It is important to remember that in clearly identifying an agency’s force options, training the officers of that agency in the proper application and all the factors involved in a use of force encounter is an extremely critical issue. Policy will accomplish nothing if it is not

disseminated to those charged with carrying it out through proper training and preparation. Various police agencies and governmental entities have recognized the importance of training. In 1985, the Ohio Governor's Office of Criminal Justice Services published a report on Model Use of Force Policy and Model Legislation, which included a section on training in the model policy. "Every law enforcement executive should establish written policy requiring documentation that all officers are thoroughly trained in the law as it applies to the use of force, the agency's shooting policy, and the vicarious liability of the agency (Ohio, 1985). "Trainers must recognize that our critical concern for safety must focus beyond the actor (suspect) and more directly upon the actions of the individual" (Connor, 1991:30).

The use of force continuum developed by Greg Meyer, The Injury Based Use of Force Continuum, rearranges the order of the force options acceptable to the Los Angeles Police Department (see Appendix A). This force continuum was developed after the actual use of force policies and practices of the LAPD came under fire in the wake of the Rodney King incident. "This use of force continuum was developed using an extensive body of research into use of force incidents from the Los Angeles Police Department incident reports."(Meyer, 1995) In examining the use of force continuum, I would make certain adaptations for the League City Police Department's Use of Force Continuum (see Appendix B). These adaptations would take into account the risk of injury to both officers and suspected persons and the approved levels of force that the League City Police Department now employs.

Some policies, such as the Armstrong County Sheriff's Office Use of Force policy, are very situationally specific regarding the situations in which deadly force may be applied, but still lack a comprehensive situational definition of less than lethal force options. The presence of a use

of force continuum should provide general, yet situationally specific, levels of force options that are both comprehensive and court defensible. Few police departments throughout the country have a use of force continuum as a part of their department's use of force policy (see Table 1). The League City Police department's use of force policy is very vague, while the policy regarding Pepper spray is lengthy and more specific. The incorporation of both of these policies and a model use of force continuum would be more specific, understandable, and less likely to be misinterpreted by those having to employ these force options. It is suggested that a Use of Force Continuum be developed by each agency and included in a clearly defined policy affected by the continuum. It is far more prevalent that agencies have use of force policies that are vaguely defined. While they may specify force options, they seldom have a situational reference and are subject to court interpretation for their defensibility.

The major limiting factors or constraints to this policy change include education and the factor of change itself. In any organization, change is met with some form of resistance. The strength of the resistance is tempered by the manner in which the change is imposed into the organization. Resistance can be overcome by an aggressive education program that stresses the benefits to the individual as well as the benefits to the organization. As understanding increases, change is more readily accepted as part of the institution.

The cost of a policy change along these lines would be relatively minor in comparison to the liability of a major use of force lawsuit against an organization that has no defensible use of force policy. Legal awards from these types of lawsuits can range in the millions of dollars, while education and prevention of such abuses of force can range in the hundreds of dollars or less per officer.

Conclusion/Recommendations

The purpose of this project was to research the adaptation of a use of force continuum into a comprehensive and competent use of force policy model that will meet department needs. The use of force by police is a highly controversial and discretionary topic. Recent events have had a profound impact on the perceptions of the public in what is an acceptable use of force during a given situation. The issue to be examined is the adaptability of an injury based use of force continuum within department needs and methods and its incorporation into the police department's general use of force guidelines.

My recommendations for a use of force continuum are similar to the Injury based Use of Force Continuum that was developed by Greg Meyer of the LAPD. This is a highly adaptive model that can include all levels of force options currently used by a police department. I would also recommend that the specified chemical agent be OC (Pepper Spray). This highly effective product is relatively safe with no long lasting effects and is believed to be highly successful in agencies that currently employ this agent in areas of personal defense and crowd control. This policy change, continuum adaptation, and chemical agent adoption should be coupled with an aggressive, dynamic, and intensive training program that would continue to refine the skills of the individuals to department standards, while improving their abilities to do their jobs safely and effectively.

These recommendations may lead to a comprehensive use of force policy that will enhance the officers' and agency's abilities to control the criminal element as well as protect the public for which they serve.

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Appendix A

Injury-Based Use-of-Force Continuum

<u>Suspect's Actions</u>	<u>Officer's Response</u>	<u>Typical Injuries</u>
Deadly or GBI Attack, or Fleeing Felon Rule	Deadly Force	Death or Serious Injury
Attacks Officer, You Can't Use OC/Taser	Baton Kick Other Impact	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"	Firm Grip or Passive Compliance Holds	None
Cooperative	Verbalization	None

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

Moderate Injuries = significant lacerations, welts, contusions, bruises

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

Appendix B

Proposed Use of Force Continuum for League City Police Department

<u>Suspect's Actions</u>	<u>Officer's Response</u>	<u>Risk of Injury</u>
Deadly assault or Fleeing Felon Rule	Deadly Force	Death or Serious Bodily Injury
Attack on Officer, Can't Use OC or Electrical Device	Baton or Other Impact Weapon Stunning Blows/Kicks	Moderate to Serious Bodily Injury
Aggressive Resistance, OC or Electrical Means not Available	Tackles, Sweeps or Aggressive Compliance Holds (Joint Manipulation, PPCT, Other Defensive Measures)	Minor to Moderate
Bizarre Resistance, Unsafe to Approach, Psycho, Drug Abuser	Electrical Means Swarm, Group Overpowering	No risk to Moderate
Defiance combined with Threat and means to follow through	OC Spray	None to Minor risk
Passive resistance, Drunks, etc.	Passive Defensive Measures Physical Compliance	None
Cooperative	Command Presence Verbalization Skills	None

Minor injuries = Pain compliance, redness, scratches

Moderate Injuries = significant lacerations, contusions, bruising, Taser Darts

Serious Bodily Injury = Broken bones, concussions, sprains/strains, incapacitating injuries.