

Practical issues of the Use of Force Training

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February 4th, 1999, at 1:30 am, four New York City Street Crime Detectives confronted man outside the vestibule of his apartment building on Wheeler Ave in the Bronx. The officers, reacting to the actions of this man, perceived as a deadly threat, defended themselves by shooting at this man 41 times, hitting him 19 times. One of those rounds, and only one, killed him.

The man's name was Amadou Diallo, and the case became one of the most high-profile excessive force/ murder trials in the history of law enforcement. I was one of four experts donating over 1 year of time, stress, and brain power to insure that the jury in Albany New York had a complete and honest presentation of the facts of that tragic incident.

Police shootings, no matter how just and necessary, are rarely seen as good things. Killing a human being, no matter how justified, is something most officers wish never to experience. Those who do may not be able to continue their careers, their marriages, and in some cases, their very lives. The development and refinement of alternatives for gaining compliance from those who simply do not wish to comply, have given dimension to an officer's force options. In cases like the Amadou Diallo shooting, deemed justified by the Albany County Jury, less lethal options would not have been appropriate due to officer safety issues.

In another New York City Police shooting, also in 1999, an Orthodox Jew, Gidone Busch, attacked officers with a claw hammer. While the officers tried to contain and control this man, who was suffering from mental defect, his attempt to strike an officer with that claw hammer resulted in 12 to 14 shots fired by officers, killing Mr. Busch and causing outraged protests by the Jewish Community in which he lived. Would the TASER device that the on-scene sergeant was authorized to use, have worked to contain and control this man? It is very possible that it would have, if it wasn't locked in the trunk of the sergeant's patrol vehicle. Only sergeants were authorized to use the TASER device. A mentally disabled man dies, a police agency gains more negative press and scrutiny, and a police officer now lives with a man's death on their souls. An outcome better avoided.

Less Lethal: a definition –

Less Lethal force is force, under the circumstance in which it is used, is *less* likely to cause death or serious physical injury.

Examples of Less Lethal force may be:

- Using impact tools i.e. batons, baton rounds, bean bag rounds,
- Applying pain compliance to force a subject into submission.
- Application of Pepper Chemical

Training directives and protocols require that the head and other sensitive parts of the human anatomy are avoided. Should an errant baton strike unintentionally hit a head, or a baton or bean bag round strike a subject in “Red Zones” - areas that are likely to cause severe injury or death, the result is a poor one for the subject, and for the officer and the department.

There have been cases, for instance, in which a bean bag (lead filled) fired from a standard 12 gauge shotgun did not fly flat. It flew on its edge, penetrating the chest wall of the non-compliant subject, killing him. These incidents are rare, but must be considered when other options are available.

Can Pepper Spray kill? – Yes. The ACLU stated that 1 death per 600 applications occur each year, If the subject has a compromised heart muscle, or has respiratory compromise (asthma), death is possible. Since an officer is not given a medical history of the offender prior to his/her use of force in an encounter, it is difficult to know what the final outcome of the force option will be. Each year subjects die post Oleoresin Capsaicin applications.

Is Pepper Spray effective? As a chemical deterrents instructor, it is my opinion that Oleoresin Capsicum has a spotty track record. It cannot be depended upon to control subjects. This due to the anesthetizing effects of drugs, including alcohol, in which pain is reduced by the haze of the psychoactive. Additionally, an offender’s extreme desire to accomplish his/her act, fueled by emotions, may defeat a chemical deterrent. Aspects of Psycho Physiology- Sympathetic Nervous system anomalies in which adrenalin and epinephrine are released into the body, allow for desensitizing to pain combined with enormous strength with blood flowing to the large muscle groups (Fight or Flight)

My friend and colleague, Phil Mesina calls the mind over pain enigma, ‘Goal Orientation’. An example of Goal Orientation might be this:

I place you on the 1-yard line of a firing range. I ask you what amount of money you would like to have in life. I then tell you (and you believe me) that I will give you that amount of money if you allow me to inundate you in high quality Oleoresin Capsicum, and then have you to run to the 50 yard line, stabbing 14 balloons hanging 4 feet apart from each other.

If you are successful, you get your heart’s desire, MONEY! You can believe that anyone

given that mission would EASILY accomplish it. They would feel the pain later, after they achieved their goal. Those of us familiar with trained dogs know that, if a dog is sprayed with pepper, it will react to it – until the dog is given an attack command. The dog will not react to the pepper until the command to yield is given. *Pepper spray does not separate the brain from the body* – dangerous, should one depend solely on the pepper to control a combative and dangerous subject.

Less Than Lethal: a definition –

Less Than Lethal tools are tools that, when properly used, do not cause death or serious physical injury. An example might be odoriferous pellets. The pellets, fired from co2 powered marker guns, contain the most horrific odors known to man. The horrific material clings to clothing and skin, and does not remove easily. A person hit with one of these pellets will not die, no matter how much they wish they could!

Another Less Than Lethal option, in this author's expert opinion, is the Thomas A. Swift Electronic Rifle, commonly known as the TASER gun. While hundreds of lawsuits have been brought against the TASER Corporation for wrongful death, not one has been successful. Some have suffered cardiac arrest and died as result, after being tasered, but the TASER device was not the primary cause of death. In most cases the subject had extreme mental disturbance due to intoxication by a psychoactive, or the lack of medication when a subject stopped taking prescribed drugs, or if the subject is profoundly mentally disturbed

No matter what the compliance tool used, it would act as a catalyst in the subject. With the addition of natural drugs provided by God (adrenaline, epinephrine) and a heart rate that is beyond medical safety, any stimulus added to this mix might cause the heart to short circuit, resulting in a death.

In the majority of subjects, the TASER device cannot kill, even if the subject is wearing a pacemaker or has other variants such as age (very young or very old) or has other medical challenges. The TASER, with its fifty thousand neuro-muscular volts, short circuits the electronic pathways from the brain to the muscle. No matter how much you want to stab those damn balloons, great sums of money or not, your body is unable to comply with your brain during the 5 second cycle of the TASER gun.

Other options, used more and more frequently by the military conducting operations in populated civilian areas, present little risk of permanently harming civilian populations. Sticky foam, sprayed from devices that look like flame throwers, actually glue rioting mobs to the ground. They are literally immobilized and cannot accomplish mischief. Mischief that previously may have resulted in their deaths as US troops defended themselves with their primary tool, an M16.

Use of Force Generally:

Force begins with officer presence, moves to verbal commands (first you ask, then you tell), to soft hand, hard hand (pain compliance) , impact tools, TASER, Chemicals and finally, Deadly Physical Force.

Patrol officers must be expert threat assessors. *They must be able to quickly determine the Subjects:*

Ability – *two arms and two legs, physically capable of carrying out a threat*

Opportunity – *Time, Distance and Awareness, and*

Jeopardy – *and overt act which leaves no doubt that you will be injured or suffer a serious physical injury or death.*

For instance, protruding bellies may mean the offender is on or recently off psychotropic medication. This medication causes thirst. Many do not drink water to quench this thirst; they may use alcohol (beer). Patrol Officers need as many force options as possible to contain and control a non-compliant and /or physical combative subject

Should a person be an EDP (VERY Dangerous Person), ***officer*** and ***subject*** safety are of great concern. The tool chosen to contain and control this person, and the amount of force needed, must be considered. Usually, instantaneous and assertive force must be employed to control the subject before he/she can react. Should an officer hesitate, be slow to react, lethargic in response, or not use enough force at the inception of the confrontation, greater force may be required as the incident continues and the subject reacts.

The 1983 Eleanor Bumpers incident in New York in which a 63 year old grandma was shot and killed by ESU (Emergency Services Unit) of the NYPD is an interesting case. This woman weighed over 300 lbs., had profound mental illness, and was cooking petroleum jelly mixed with lye when officers knocked on her door to evict her. The “napalm” was her special surprise for the ESU. An Officer attempted to use a Y- bar to pin her to the wall (she was holding a large butcher knife). One of the involved officers, when interviewed stated, “we underestimated this woman. We did not use the force necessary. We treated her like a 63 year old grandma.” The result was this very strong and angry woman pushing away the Y bar, lunging at an officer with the knife.

Officer Steve Sullivan was forced to fire his shotgun twice at Ms. Bumpers, killing her and causing a massively controversial trial and rift between NYPD and the minority community. This case, until Diallo, was the most high profile police shooting involving NYPD. Sullivan’s career ended hard, nearly placing him in prison for murder.

Marksman in the Use Force

Officers are required to be expert “marksmen” when it comes to the type and amount of force applied to a citizen.

Example:

Hero test pilot Chuck Yeager. Chuck broke the sound barrier with the famous X-1 plane in 1947. The plane could not fly in the atmosphere due to friction from the gasses we breathe. The plane would have burned. It could also not fly too far outside the atmosphere or it would end up in outer space. Chuck needed to find something referred to as the “envelope”- an area between inner and outer space that has rarefied air – very thin atmosphere, which would allow him to break the sound barrier while not “burning his toast”.

Using this analogy –

‘Between under reaction (inner space) and over reaction (outer space) is justifiable action’ –

Draw a bull’s-eye between the two, and that very small, hard to hit spot is what society demands officers hit accurately, each and every time he/she uses force on a citizen.

Force options and operator skill will be determining factors when articulations of justification are argued, post event.

From toxic spices flung at enemies 2000 year ago in China, to water cannons used during the race riots 50 year ago, to the choice of pepper spray first introduced in 1976 and approved for use by the FBI in 1989. (it was subsequently discovered the agent involved in the approval had an extra \$50,000.00 deposited in his bank account, and was arrested), and now, conductive energy devices, less lethal and less than lethal tools have provided an important, necessary and effective dimension given to our modern coppers. Along with the myriad of benefits these tools provide, the most important being that of conserving human life, come use issues, (we don’t use chemical fogger units in hospitals) and of course, legal issues to include justification for deployment.

A recent and profoundly effective addition to the chemical deterrent force option for line officers is now being used by numerous law enforcement and security agencies.

The Crotega Company has developed a chemical deterrent combining Ammonium Propionate and Propionic Acid delivered by ballistic stream in standard Mark 3, Mark 4 and Mark 9 canisters. The chemical has NO Capsicum. It is ocular, effecting the eyes. It has NO area contamination issues for which pepper spray is well known, and may be safely used in hospitals, schools, crowded venues with no effect on anyone other than the offender who is sprayed. The bar room, patrol vehicle or hospital emergency room does not need to be decontaminated with uninvolved people needing to be evacuated, and the 70% water based product does not enter internal HVAC systems. The decontamination process involves 1/2 to 1 bottle of drinking water

With no lasting effects in the contact area or subject.

I recently trained representatives of over 20 public agencies at a New York Police

Academy. When I asked how many have used a pepper chemical only two responded with one using it in 2005 and the other in 2006. Police and security officers are not using this force option due to the issues of secondary, area and operator contamination, and the thirty to forty minutes of time needed to decontaminate the subject

Conclusions:

Those who train private and public societal protectors with tools developed to achieve compliance from those who are non-compliant need tools which work assertively while causing minimal harm to the non-compliant subject(s) and innocents who may be in close proximity to the incident. They must also add a safety barrier for the officer(s) involved to avoid injury to them.

- **TASER Guns** have had great success as an aimed device, limiting the potential harm to others. They are now being produced to add multiple shot capability (TASER 7 and 10) But are still limited in range.
- **Impact tools** i.e.: collapsible batons, PR 24 control sticks etc. work through pain compliance, but post Rodney King have a poor image on cell phone videos, no matter how justified the use. Additionally, using pain to gain compliance has the effect of increasing the body's alarm reaction/ adrenaline dump which increase the subject's resistive strength and resistance to the pain.
- **Pepper Chemical** has had a spotty and problematic history for professional use. It contaminates a large area in and around the application site, contaminates contact and control officers and innocent bystanders, and has caused death in some subjects. The chemical can be overcome by goal oriented subjects. Those who train with Pepper Chemical must go through a chain of instructors using kicks and punches, hold cover on a suspect etc. before they are permitted to decontaminate. This leaves opportunity for dangerous subjects to accomplish serious and deadly goals, even though they are doing these deeds in pain.
- **REPULS-** allows for immediate incapacitation by slamming the eyes shut and impossible to open. The subject's breathing is not compromised. With eyes closed, pain is mitigated, allowing for better verbal decontamination. Only the subject is contaminated. There is no area or secondary contamination

Use of Force instructors want our trainees to have effective tools available to use in civilian society with reduced chance of harm to innocents. The tool used on the officers' tool belt must have the power to deactivate a human being while not causing a serious physical injury or death to that subject.

Since Star Trek Phaser Guns are not yet available, the search for less lethal or non-lethal

devices/chemicals in an increasingly violent society is a priority.

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