

# Use of Force Continuum: A Debate

When one civilian uses deadly force against another civilian, the results are obviously tragic. However, such an act is unlikely to have a significant impact on those who did not know the victim or the perpetrator. Certainly, it can be argued that anyone's death by violent means diminishes us as individuals and as a society, but reality reflects that these individual acts occur multiple times on a daily basis across the world with hardly a blip on the collective consciousness of the population. However, when a police officer uses deadly force against a civilian, the societal ramifications can be significant. Like a stone thrown in a pond, the ripple effect can cause civil unrest that results in the loss of substantial life and property.

Until 1985, it was difficult for citizens to claim a constitutional violation of their rights when police allegedly used excessive force against them. In *Tennessee v. Garner* (1985), the U.S. Supreme Court reframed such actions by police to fall under the Fourth Amendment. The court commented that, “Whenever, an officer restrains the freedom of a person to walk away, he has seized that person...there can be no question that application of deadly force is a seizure subject to the reasonableness requirement of the fourth Amendment.” This case essentially abolished the over-broad use of the “fleeing felon” doctrine by striking down the use of “all necessary means” to apprehend fleeing suspects. For example, deadly force may not be used against a fleeing felon unless the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, a purse snatcher, who appears unarmed, and jumps

over a fence, shouldn't be shot in the back. Additionally, when feasible, the subject must first be warned before deadly force is used.

The Garner case was extended in 1989 (Graham v. Connor, 1989) with the concept of "reasonableness." This is, was the officer's use of force reasonable, given all the current and past circumstances known to the law enforcement agent when he took action? This standard is determined from the perspective of a reasonable officer on the scene of the crime.

While these cases have addressed the proper behavior expected of a law enforcement officer under specific situations, it should also be recognized that when approached by a duly qualified police officer who gives a lawful command, the person being arrested or questioned has a duty not to resist such detainment or arrest. If the person chooses

not to comply, the officer may lawfully use that amount of force needed to overcome this resistance.

Other than those in the military, police officers are the only organized group given the authority to commit institutional homicide. That is, based solely on the premise of being a sworn law enforcement agent, an officer can use his or her discretion to take another life, within legal and departmental guidelines. This was not always the case. Police officers did not routinely carry firearms until the 1850's (Miller, 1975). Since then, virtually all police departments have regulated those special circumstances under which deadly force can be utilized. Such requirements closely emulate the legal definition for justifiable use of force.

# Frequency of Use of Deadly Force By Police

In general, justifiable fatal shootings by police have been decreasing (Sherman & Cohn, 1986). However, it should be noted that each time a police officer shoots at a suspect, the intent is to stop the person's aggressive actions. This may or may not result in death. The idea of "shooting to wound" is the stuff of TV fantasy and certain civilian groups' naivete. Police officers are trained to shoot at the "center of mass" of a subject issue really misses the point. An attempt to statistically quantify this slippery issue really misses the point. The vast majority of police contacts with citizens do not result in the use of deadly force.

The probability of any one police officer becoming involved in a fatal shooting is proverbially less than being struck by lightning. For example, given that the average officer retires after 25 to 30 years of service, a police officer employed in Jacksonville, Florida would theoretically have to be on duty 139 years before being involved in a fatal shooting (Sherman & Cohn, 1986). In Portland, Oregon, an officer would have to work 193 years (Snell & Long, 1992). Even in New York City, the use of firearms by police against civilians is rare. Of 1,762 events in which physical force was used to subdue a subject, officers resorted to the use of a firearm on only five occasions (New York State Commission of Criminal Justice, 1987). In the entire state of New Jersey in 1990, police responded to approximately 8.5 million calls. Officers fired their weapons on 167 occasions (Sullivan, 1992).

The FBI estimated that during 1990, almost 1.8 million individuals were arrested for what could collectively be viewed as violent crimes (assaults, robbery, murder, and rape). Yet, as described previously, less than 1/20 of 1% of all encounters with citizens resulted in a fatal shooting committed by a police officer (FBI, 1991).

## Use of Deadly Force Models

Multiple police tactics exist that can be construed as deadly force. For example, a police car ramming a fleeing vehicle can obviously cause it to crash and kill the occupants (or innocent bystanders). One technique for halting a fleeing vehicle is called “precision immobilization” and is

used by some law enforcement agencies (Pearson, 1992). While theoretically, such a tactic may be sound, fleeing felons often don't obey the rules of the road.

The U.S. Supreme Court has reviewed a procedure that is known as the "dead man's roadblock." This occurs when a roadblock is intentionally erected by the police on the roadway so that the fleeing person's observation of the impasse is restricted until it is unlikely that he or she can avoid it and the vehicle crashes (Brower v. the County of Inyo. 1989). There are other police interventions that can result in deadly force, intentional or not.

Police officers always have a range of options from which to choose in a confrontational (tactical) situation.



These levels are often described in terms of a “use of force continuum.” Desmedt and Marsh (1990) have defined the following levels of officer response in a use of force continuum:

- Social Control
- Verbal Control
- Weaponless Control Techniques
- Pain compliance holds
- Control (short stick) instruments
- Stunning Techniques
- Direct Mechanical Techniques
- Neck Restraint Immobilization Techniques
- Electrical Shocking Devices
- Chemical Agents
- Impact Weapons
- Firearms

As a way to help officers apply use of force guidelines in practice, a number of agencies have adopted a “use of force continuum,” which suggests the range of appropriate officer responses based on the level of subject resistance (Desmedt & Marsh, 1990; Graves & Connor, 1992; Kazoroske, 1987). The potential value of this visual and conceptual aid is that it provides an example or model that the officer can use to evaluate and plan his or her response. However, the utility of a continuum depends on two key variables—defensibility and applicability. That is the continuum must be consistent with a defensible departmental policy that has adequately considered appropriate legal standards, and it must be easily understood and applied by officers in field situations.

# What Kind of Police Officer Uses Excessive Force

The use of excessive force by a police officer is a complex, interactional event and cannot be explained solely by the officer's personality dynamics. Scrivner (1994), however, described the following five profile type of violence-prone officers, listed in ascending order of frequency.

**Chronic Risk Group** – these individuals appear to have a lifelong, ingrained pattern of problematic behaviors that bring them in conflict with others. They are threat-sensitive and manipulative, and may abuse psychoactive substances. They tend to project blame onto others for their problems

and because they don't seem to learn from past experiences, are likely to get into trouble repeatedly.

**Job Related (Traumatic) Experience Group** – Officers involved in critical incidents, such as fatal shooting, often have difficulty reintegrating into routine police work. Such incidents may leave officers more vulnerable to “acting out” if proper psychological debriefing and follow-up treatment are not initiated.

**Early Career Stage problems Group** – Some police agencies only require a high school education for employment. Young officers are often “gung ho.” They like the power and authority given to them.

**Inappropriate Patrol Style Group** – As some officers, progress in their career, they become more cynical. They believe that using force will bring most situations under

control. Because this style often “works,” they ignore a more problem-solving orientation. However, these officers will often to interventions by the agency, because their interpersonal style is acquired over time, rather than resulting from fixed personality traits, as seen in the chronic risk group.

**Personal Problems Group** – For these officers, their “emotional glass” may have already been almost full. When faced with a personal loss, such as divorce or perceived change in job functioning, their behavior may deteriorate. Such officers may exhibit pre-incident behavioral characteristics that can be detected by an early-warning system.

# Who Gets Shot and Why

The rate of fatal police shootings is not evenly distributed across the country, or even within a given jurisdiction (Geller & Karales, 1981; Horvath, 1987). Indeed, some of the most seemingly tranquil parts of the country (San Diego, California) report among the highest rates of fatal shootings per 1,000 police officers (4.1). The New York Police Department reports among the lowest (0.7) (Geller & Scott, 1992).

Many of the fatal shootings by police take place in Black communities. Black perpetrators were 7.7 times more likely to be shot at than Whites in St. Louis, Missouri (St. Louis Police Department, 1992), six times more likely than Whites in New York

(Fyfe, 1981), and four times more likely than Whites in Chicago (Geller & Karales, 1981). Between 1970 and 1984, the number of Black civilians killed by police dropped significantly (Sherman & Cohn, 1986). In general, fatal shootings by police have decreased over the past decade.

In conclusion, I would like to borrow something from one of the Police Foundation “Ideas in American Policing” publications. Police Departments as learning laboratories (Maguire 2004). Policing in America has been around for almost 150 years and what have we learned and how has it helped us be better police officers and servants in our respective communities. All of the research and information on these very important issues and concerns regarding the use of force raises questions that I believe should be part of the

discussion and dialogue for this session. I have listed several of the questions that come to my mind.

How have the missteps and mistakes of the past and present help prepare for the future?

Are the results of the investigations regarding missteps and mistakes made a part of the training for the next group for the education and prevention?

What happens to the investigation information surrounding shooting (police/civilians) once errors are found to contribute to the situation?

Is the fire arm training in our police departments free of unintentional biases?



## References

Brower v. County of Inyo, 109 S. Ct. 1378 (1989). California Tort Claims Act. (California Government Code 5.800).

Desmedt, J. C., & Marsh, J. F. (1990) The use of force paradigm for law enforcement and corrections.

Federal Bureau of Investigation. (1991). Crime in the United States, 1990. Washington, DC: Federal Bureau of Investigation

Fyfe, J. J. (1978) Race and extreme police citizen violence. In R. L. McNeeley & C. E. Pope (Eds.), *Race, crime and criminal justice* (pp. 89-108). Beverly Hills, CA: Sage.

Geller, W. A., (1986). *Deadly force: A study guide*. Washington DC: National Institute of Justice (Companion to NIJ videotape entitled "Deadly Force," a discussion moderated by James Q. Wilson).

Geller, W. A., & Karales, K. J., (1981) *Split-second decisions: Shootings of and by Chicago*: Chicago Law Enforcement Study Group.

Geller, W. A., & Scott, M. S. (1992). *Deadly force: What we know*. Washington, DC: Police Executive Research Forum.

Graves, F. R., & Connor, G. (1992, February). The FLETC use of force model. *The Police Chief*, 56, 58

Kazoroski, R. (1987, August). Use of force: A model for the real world of modern policing. *The Florida Police Chief*, pp. 32-35.

New York State Commission on Criminal Justice and the Use of Force (1987). Report to the Governor, Vol. I. Unpublished report.

Pearson, T. L. (1992, September). Focus on police pursuits: The precision immobilization technique. *FBI Law Enforcement Bulletin*, 8-9.

Scrivener, E. M. (1994). The role of police in controlling excessive force. Washington, DC: National Institute of Justice Research (NCJ 146206).

Tennessee v. Garner, 105 S.Ct. 1694 (1985)

# Use of Force Continuum:

## A Debate

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