

Police Use of Force

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ABSTRACT: *This essay examines how and why police use force when encountering violent suspects. The essay describes several factors that contribute to the success or failure of officers involved in these encounters. These factors include: justification and the reasonableness of force, officer training in the use of force, department and officer liability in the use of force, why some officers are reluctant to use deadly force, and how reluctance to use deadly force may be changed. These factors can have a severe impact on officer safety and public perception of law enforcement officers and their departments. This essay attempts to describe why these factors have such an impact and how departments and officers can minimize the liability placed on them and risk to the officer's safety during a violent encounter.*

Introduction

The use of force is inevitable in police work. In many situations the lives of officers or civilians can be taken by not using force when necessary or using it improperly. Many factors come into play when an officer decides to use force. These include: is the use of force justified, has the officer been properly trained to use force, and will the department be held liable if the force is used improperly?

After the Rodney King incident in the early nineties, law enforcement agencies across the country began to re-evaluate their use of force policies and training. Many officers had to change their belief about the treatment and mistreatment of suspects. A Gallup poll in March 1991 concerning mistreatment by police and the use of excessive force during contacts with the public, asked respondents if they had ever been abused or mistreated by the police. Of the respondents 5% of the total polled and 9% of minorities said they had been abused or mistreated. In addition, 20% said they knew someone who had been physically abused by the police (Alpert & Smith, 2001). These numbers indicate an alarming trend of mistreatment by police and the use of excessive force during civilian contacts. The public outcry over the 1991 Rodney King incident and others thrust police conduct regarding the use of force into the public view. Policy and training changes along with reaffirming when the use of force is justified had to be applied to protect the public, as well as officers and their departments.

The justified use of force: when is force reasonable?

The justification of the use of force is the most important determination an officer must make before deciding to use force on a suspect. The Texas Code of Criminal Procedure states "in making an arrest, all reasonable means are permitted to be used to affect it. No greater force however, shall be resorted to than is necessary to secure the arrest and detention of the accused" (Texas Code of Criminal Procedure). In general, the use of force is justified when it is necessary to make an arrest, detain a suspect, or to protect an officer or a third party. In 1995 Attorney General Janet Reno approved a deadly force policy that applied to all law enforcement officers within the Department of Justice. The Department of the Treasury has since adopted the same policy (Hall, 1996). The policy states that a "law enforcement officer of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person" (Hall, 1996, p.25). The amount of force used cannot exceed what a reasonable person would deem necessary to make the arrest, detain the suspect, or protect an officer or third party.

The term reasonable, when used to justify the use of force, is sometimes difficult to interpret. A general definition of reasonable in relation to the use of force is any action that a reasonable and prudent person would believe to be necessary to complete the required task. According to most experienced officers, reasonableness can be easily determined. However, in a civil or criminal case, the

officer is not the one that has to determine if the force was reasonable, but rather, the citizens sitting on the jury will be tasked with determining the reasonableness of the force used by the officer. Police officers have to remember that the public perception of what is reasonable is extremely important.

Once the decision is made by an officer that the use of force is necessary, there is a broad range of force that can be deployed depending on the situation. In the past many police departments chose to use the *force continuum* method to determine the amount of force required. This force continuum was arranged from the least amount of force to the greatest as follows: mere presence, verbal commands, hands on techniques, impact weapons or oleoresin capsicum (O.C.) spray, and finally deadly force. However, departments have begun to do away with the term continuum and replace it with the term *options*. This is partly because the term continuum implies that the officer must always begin with the least amount of force in the continuum and progressively work upward until the actions of the offender are stopped. The problem with this approach is that the blind application of the force continuum from least to greatest without consideration of the specific situation or the sudden escalation of the offender may not be the appropriate response. For instance, if an officer is approached by a suspect armed with a weapon, it is unreasonable to think that the officer should start with mere presence and work his or her way up through the continuum before the option of deadly force is reached while the suspect is trying to cause them serious bodily injury or death. Force options allow the officer to immediately use the option that best suits the situation. Following the force options in the above scenario the officer would immediately use deadly force to handle the situation instead of working their way up the force continuum.

Training

Teaching officers when it is appropriate to use force and which options are best suited for different situations can only be achieved through training. Use of force training must be accompanied by clear and concise department policy. The policy must outline when the use of force is permissible, what tools may be used, and what training methods will be used so that the officer is clear about what is expected of them.

The training must be twofold: the officer must be trained in how to assess a threat, as well as, how to coun-

ter a threat (Hall, 1996). Threat assessment can be done in a classroom setting beginning with instruction on policy and its interpretation. Scenario based instruction can be used to show the officers how the policy is practically implemented.

Practical application of the scenarios is completed following the classroom sessions. Scenarios involving all of the force options must be employed so that the officer is comfortable with each option and when the specific option should be used. The practical training must be completed in an environment that allows officers to become comfortable with the use of force techniques. In scenarios involving the use of deadly force, tools such as simulated ammunitions, or paint firing weapons can be used to simulate gunfire. These tools expose the officer to what it is like to be shot at, as well as what it is like to fire a weapon at a suspect. The psychological aspect of this deadly force training also allows the officer to experience what happens in an officer involved shooting.

Liability and the use of force

Liability is always a major concern for law enforcement agencies, and agency administrators are always looking for ways to shield themselves from liability. Good policies and procedures, following legal mandates, maximizing performance, and the use of control documentation, help protect the department in the event of a civil suit. Here a policy is defined as “a definite course or method of action to guide and determine present and future decisions or a guide to decision making under a given set of circumstances within the framework of corporate objectives, goals, and management philosophies” (Kinnaird, 2007, p. 202); a procedure is often defined as “a particular or consistent way of doing something” (p. 203). Although both policies and procedures hold the department accountable for their actions, policies tend to be considered more legally significant (Kinnaird, 2007). For example, if an officer fails to follow a departmental policy, the officer and the department can be held civilly and criminally liable. However, if the same officer violates a given procedure, that violation may or may not hurt the officer.

A study of the San Francisco Police Department 1998 identified the worst and best police policy practices (Kinnaird, 2007). Among the worst practices were:

- policy is formulated strictly at the top of the organization, with little or no input from those who must implement the policy;
- policy statements are vague or poorly written;
- there is no clear, concise reason for the policy;
- policy statements were written for the wrong reason, resulting in a detraction from effectiveness rather than the facilitating of achieving agency objectives;
- policy statements are a product of evolution; each administrator adds to the policy without subtracting anything (Kinnaird 2007, 203).

Some of the best practices were:

- policy that was the product of thoughtful analysis;
- policy statements that provide goals and guidance for the officers;
- policies that are designed by using the same guidelines for setting priorities as those used in the design of training programs;
- policies that were short, general guidelines;
- policies that are accurate statements of the organization's values and philosophies;
- policy that understands that there is a limitation on human memory;
- policies that were the result of standardization or accreditation (Kinnaird 2007, 203).

Along with establishing effective policies and procedures, updating the officer's knowledge of legal mandates related to training will also protect a department from liability. Most states, including Texas, have established mandates pertaining to the number of training hours the officer must receive every cycle. Many of these courses involve required training in the use of force. For example, before an officer can carry or use O.C. spray, the officer must show a proficiency in its use and be certified by an approved instructor. The officer must also complete a required amount of training every two years in the use of O.C. spray. An officer failing to meet these and other mandates could lose his or her state certification and that might be severely detrimental to the department and the officer. The officer and the department could be held liable for the lack of training should force be applied inappropriately.

Maximizing performance refers to preparing officers with better judgment and discretionary capabilities (Kinnaird, 2007). Being well prepared for situations which could call for the use of force helps officers make the right decisions more quickly and keeps the officer

from second guessing his or her actions. Maximum performance is best accomplished through training. Repetitive training makes use of force techniques second nature and gives officers more confidence in their ability.

Control documentation can give administrators early warning of possible officer misconduct. If an administrator can identify an officer that has tendencies to improperly use force, he can correct the officer's behavior by retraining, counseling, or using disciplinary action. Some forms of control documentation that can be used to identify these traits in officers are incident reports, performance evaluations, use of force reports, background checks, statistics, and employee assistance programs (Kinnaird, 2007).

A department's willingness to establish guidelines, prepare their officers with training and legal updates, use maximum performance to instill confidence in their officers, and be observant of the warning signs that an officer's actions are inappropriate can save a department from civil and criminal liability. Preparing and supporting the department employees can also keep the officers from becoming reluctant to use force, putting a risk on officer safety.

Why are officers reluctant to use deadly force?

Every officer knows there is always the possibility he or she will have to use deadly force during the course of their duties. Most officers go through their entire career and never have to use deadly force. However, some officers are faced with life threatening situations where the only answer is the use of deadly force to protect themselves or someone else. Some officers are reluctant to use deadly force when their life is threatened. Reasons for this reluctance have been studied at length. We now know that these behaviors can be changed through training.

Studies of combat concluded there is an innate reluctance among human beings to take the life of another human (Williams, 1999). Research conducted by the U.S. Army shows that only 15% to 20% of military soldiers fired their weapons at exposed enemy soldiers (Williams, 1999). Most soldiers feared having to kill an enemy soldier more than they feared being injured or killed themselves. Some who refused to fire on the enemy would still expose themselves to enemy fire to save another soldier, however they would not participate in taking another's life. By changing their training methods, the U.S. military increased the number of sol-

diers who would actively participate in combat to more than 95%.

How do we change the officer's reluctance to use deadly force?

The military used the Pavlovian and operant conditioning methods to effectively change the behavior of their soldiers during combat (Williams, 1999). Law enforcement uses the same methods to condition their officers to overcome their natural reluctance to use deadly force (Williams, 1999).

In a law enforcement setting, conditioning of officers begins early in their training. Desensitization techniques are used to dehumanize suspects. Instructors refer to suspects as "dirtbags" or other derogatory terms conditioning officers to think of suspects as less than human, giving their life less meaning. The reward for officers in training was respect from their commanding officers and more experienced colleagues (Williams, 1999). Although this type of conditioning may not always be intentional it is necessary for officers to become able to use force. In fact, without desensitization officers may not be able to use any type of force that might cause injury to another human being (Williams, 1999).

Law enforcement agencies also use a technique referred to as operant conditioning (Williams, 1999). This technique reprograms the officer's reflexes to provide the correct response in a given situation. In the use of force instruction we refer to this as building muscle memory. Through repetition the body begins to react properly to the situation. Whatever technique being taught becomes instinctual. These repetitive responses are stored in the midbrain. The midbrain is the primitive area of the brain and is capable of only one of two responses, fight or flight. Once the officer is conditioned to the desired response, it simply becomes a matter of stimulus-response or threat-fire (Williams, 1999).

During firearms training a variety of methods are used to develop operant conditioning. Reactionary targets such as moving targets, shoot/don't shoot targets, and shoot houses are a few of the many options available to firearms instructors. Using these tools teaches the officer to perform under stressful situations and gives the officer much needed confidence in their abilities. The approval of the instructors provides the positive reward needed to complete the conditioning.

Conclusion

To police officers, use of force is a necessary part of the job. No officer knows if or when the use of force must be applied until the situation presents itself. Preparing the officers through training in department policy and procedures and classroom instruction and practical training in the use of force reduces criminal and civil liability on the officer and department in use of force cases. Maximizing performance and utilizing legal mandates can prepare officers to use force appropriately. Control documentation allows a department to determine if an officer is engaging in misconduct early so that the behavior can be corrected through re-training, counseling, or disciplinary action.

By following these principles law enforcement agencies can protect themselves and their officers from the many problems that can arise from the use of force. As long as agencies strive to prepare their officers for incidents involving the use of force, the amount of civil and criminal liability will decline. It will also begin to sway the public's opinion of officers in relation to the use of force.

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