

Managing Use of Force Investigations

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Abstract

The use of force clearly impairs an agency's credibility in enforcing the law. Police agencies commonly work to build their image as law enforcers and encourage respect for the law. A single incident of force by an individual officer can undermine that entire effort and erode community confidence in a police organization.

This study is designed to prepare the law enforcement executive to protect the agency; also, it is designed to assist an executive from suffering any damages for an unauthorized act committed by a subordinate.

Introduction

During the 1960's and the 1970's, law enforcement agencies in this country were subject to much scrutiny and discussion. A good deal of this focused on concerns about police response to social problems. Through much of those two decades, the United States witnessed numerous civil rights marches, urban rioting, antiwar demonstrations, and large scale movements for social change.

Now, in the last decade of the 20th century, an unanticipated proliferation of social problems such as increasing rates of drug and alcohol addiction; juvenile and adult crime and its accompanying high recidivism rates; and a seemingly greater propensity for violence -- challenge the police profession. The police have been given a major responsibility in providing solutions.

Although law enforcement chief executive officers, particularly in urban areas, recognize the impact of these social problems and experience the pressure they exert, it is the individual line officer who is particularly impacted (Goldstein, 1977). An officer's inappropriate response may pose an additional set of problems for the law enforcement executive when it results in an unauthorized use of force.

There are over 16,000 police agencies that enforce the law in the United States. Each of these agencies, at one time or another, has had to deal with the issue of force. Until the Rodney King incident in Los Angeles, charges of police brutality were viewed rather ambivalently by the general populace. As a result of what occurred in Los Angeles, all law enforcement agencies are "under the microscope." It is also safe to say that over 16,000 law enforcement executives have not found easy answers. Nevertheless, these agencies must address the issues surrounding the use of force, not only because of increased media scrutiny, liability concerns, and pressure from external sources, but also because of our efforts at achieving the goal of professionalism. Perhaps, more importantly, absolute police integrity requires it.

Statutory Authority

The rule enunciated by Florida statute, shown at left, is essentially a statement of the English common law. Florida statute does not directly authorize the use of deadly force in making an arrest. Instead, this is supplied by case law, most of which comes from as far back as the turn of the century.

776.5 Law enforcement officers; use of force in making an arrest. – A law enforcement officer or any other person whom he has summoned or directed to assist him, need not retreat or to desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force:

- (1) Which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest.
- (2) When necessarily committed in retaking felons who have escaped; or
- (3) When necessarily committed in arresting felons fleeing from justice.

However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

- (a) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or
- (b) The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.

776.051 Use of force in resisting or making an arrest; prohibition.-

- (1) A person is not justified in the use of force to resist an arrest by a law enforcement officer who is known, or reasonably appears, to be a law enforcement officer.
- (2) A law enforcement officer, or any person whom he has summoned or directed to assist him, is not justified in the use of force if the arrest is unlawful and known by him to be unlawful.

Two questions are key: *when is deadly force necessary?* and, *who decides whether that necessity is apparent enough to make it justified?* It has been held that a police officer making an arrest has the right to use that degree of force which appears necessary, and that there is a right to kill the person being sought if the offense involved is a felony and deadly force is apparently necessary (Klotter & Kanovitz, 1991).

Although common law allowed a law enforcement officer to use deadly force as a last resort to apprehend a fleeing felon, that rule has been restricted by the courts and through statute. Some states, such as Illinois, began to classify felonies and restrict the use of deadly force to enumerated offenses. In 1985, the U.S. Supreme Court decided *Tennessee v. Garner*, 105 S.Ct. 1694. A Memphis police officer shot Garner, who was a nighttime prowler. Although the officer had no reason to believe the youth was armed, he fired to apprehend the suspect. Ten dollars and a purse taken from a woman's home were found alongside the body.

The *Garner* case holds that deadly force may only be used "where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer, or to others." A violation of this standard constitutes an "unreasonable seizure" under the Fourth Amendment. Shooting regulations that violate

the *Garner* standard expose the municipality or county to civil rights suits, in that a shooting in violation of *Garner* is allowed under policies or rules of the department.

Stress Factors Affecting the Likelihood of Force

The nature of police work and the people who perform it have changed radically in the past decades. Communities expect much more police involvement in social exchanges. With this has come greatly increased exposure to stressful or risky situations. Police now often respond to domestic or neighborhood disturbances, medical or personal emergencies, or other circumstances that might place citizens in jeopardy.

Officers are expected to deal with essentially any circumstance and then move to the next, without time to recoil, process information, or discuss the matters with others. The policing community has overlooked the need to discuss issues of stress openly and to identify reasons why officers use inappropriate levels of force, including deadly force. Contributing factors include:

- unreasonable fear
- racial/cultural fear
 - lack of exposure to the community's culture
 - community mannerisms that threaten the officer's value system
 - snobbish or resentful feelings toward the community and the way the residents interact with each other and with the officer
 - frequency of crime
 - a way of life that differs strikingly from the pattern of life to which the officer is accustomed
- peer pressure and the need for approval
- new officers
- supervision and discipline
- resistance to change
- personal life

Helping personnel manage stress

Law enforcement executives should not dismiss the escalating forces of stress on their personnel. Thus, they may need to make special efforts, such as implementing some form of support program or stress management training, to overcome the potentially adverse effects of stress. It is imperative, however, for the agency's leaders to firmly commit to helping their personnel. Ideally, this commitment should involve writing and reinforcing a general policy statement and forming a credible employee assistance program. Such a commitment should also include ensuring confidentiality.

Law enforcement executives, with the aid of a competent, professional provider of psychological services, can plan effective stress management interventions to maximize the chances of success. It simply boils down to understanding the needs of their personnel and responding appropriately.

Sudden Death Syndrome

Sudden death syndrome describes an increasingly common phenomenon that is

becoming a frequent occurrence. Every year, a very small percentage of subjects that fight with the police while in custody die unexpectedly. These types of in-custody deaths are noted to occur from 30 minutes to a few hours after the violent confrontation with authorities or jail staff. In many of these cases, the specific cause of death can not be determined, but will be related to the type of control used to subdue the criminal as opposed to relating it to the actions of the criminal.

A cocaine addict who demonstrates very bizarre behavior and is highly combative must be restrained by force of numbers -- three or more police officers control the violent subject by applying mass weight in an attempt to minimize injury. Death can occur in minutes or even hours. When no other cause of death, such as a crushed esophagus or broken neck and/or spinal cord injury is apparent, the autopsy will often list probable cause of death as "acute exhaustive mania due to police neck hold," or words to that effect. It would be just as accurate to state the probable cause of death as acute exhaustive mania "due to the subject's self-induced cocaine overdose," or "due to the subject's illegal and violent resistance to a lawful arrest or custody."

The truth is that the neck restraint or carotid or sleeper hold is the only method that can be applied to a violent subject that will not cause injury the majority of the time it is used. It is probably the single-most humane method of controlling a violent subject. In some cases, injuries to the trachea area have occurred, causing death. These cases are very rare. Literally tens of thousands of violent, combative subjects have been subdued by the neck restraint with only a few, probably much less than one percent, suffering serious injury or death. Compare this figure with the number of deaths that can occur with the use of a baton, taser, firearm, tear gas, and other forms of restraint.

When death is unexpected and occurs suddenly, it is usually the result of the loss of either the cardiac or respiratory function. Deaths that indicate questionable trauma are divided into three categories:

1. Death due to heart disease: emotional stress and/or physical exertion. Coronary insufficiency is present and a sudden situation causing stress precipitates death.
2. Death caused by a blow: induced vagal inhibition. Blows against the carotid sinus or solar plexus might cause death, though no reliable research is available to demonstrate this as a fact (e. g., Little League player is struck in the chest with a pitched baseball, his heart stops and he dies.)
3. Death possibly due to trauma: insignificant bruises and abrasions may be the only external signs of force. The autopsy then looks for "internal" injuries in an attempt to assess causation between trauma and death.

The exact cause of death can be difficult to substantiate in each of the above categories.

The cause of death may lie to some degree in emotional factors, which either slowly create in one's heart a predisposition for death or in crises, abruptly cause it. The heart malfunction can be triggered by some unknown chemical, probably an enzyme or neuropeptide. This chemical interferes with

the brain's ability to determine if a flight-or-fight response is appropriate. During extreme stress, the adrenal glands and sympathetic nervous system release chemicals called catecholamines. The chemicals may rupture the cardiac muscle fibers and constrict minute coronary vessels. Traumatic emotional reactions such as anger and rage may weaken the heart over a period of time (Major City Chief Administrators, 1991).

Certain people may possess characteristics that would make them more susceptible to Sudden Death Syndrome. Emotional causes have been cited as creating a predisposition in some people. Psychological theories cite overwhelming stress, hopelessness, preoccupation with death and life changes that are perceived as extremely negative. Physiological theories cite hypertension, cardiac rhythm, myocardial neurosis, arteriosclerosis and more. Sudden death in recreational cocaine users is an example. These characteristics have been studied and confirmed, and yet not much is known about Sudden Death Syndrome. What is known is that it happens, and if the investigation is not complete, the police can be blamed for a death when they have done nothing improper.

The Investigation of Deadly Force

An officer-involved shooting is not "just another homicide," and it is a mistake to handle it as one. Officer-involved shootings are almost always controversial and can initiate a crisis, the outcome of which can make a significant difference for better or worse.

The first step in managing a controversial incident is to have a process in place; the most important part of that step is the administrative investigation structure that has been developed, tested, and staffed.

The next step is to gather all of the facts and analyze them thoroughly to develop a complete picture of what happened. Since civil litigation is likely, it is necessary to ask and answer every conceivable question and to address every conceivable issue from a "devil's advocate" perspective. If there are differences in witness and officer statements, these discrepancies must be identified and explained.

A controversy over a police shooting doesn't have to be based upon fact or truth. The most trivial piece of information can generate a controversy about the incident that can totally overwhelm attention to substantive issues of fact. A misstatement, a poorly written phrase, rumors, a quote out of context, transposed numbers, two slightly different versions of the same story, or a simple misunderstanding are all fuel for a controversy.

There have been several cases when multiple witnesses have recounted their observations of an officer shooting a suspect without cause, and the facts proved otherwise. These same witnesses **believed** they were accurate in their statements. They were programmed to see a bad shooting and they did. Several professional investigators of deadly force incidents have personally witnessed this phenomenon. Absent physical evidence to the contrary, two or three persons wrongly describing a shooting could send an innocent officer to jail. This reemphasizes the need for a complete, unbiased, professional search for the truth, with physical evidence at the core of the findings.

Officers themselves may inaccurately describe a deadly force incident. They can not recall the number of shots they fired, the lighting, or the distance. Psychiatrists inform us that these audio and perceptual distortions are to be expected in a highly stressful situation; therefore, one should not conclude that the officer attempted to lie unless, of course, it is supported by evidence.

Once all of the facts are gathered, the time, place, method and person selected to announce the agency's official position on the controversy is almost as important as what is said. What is said should be determined by all of those parties that have reason and authority to make that decision. This may vary from agency to agency and in some cases, incident to incident. A suggested grouping would be the chief of police, the primary investigator, the department person most closely associated with the segment of the community involved, and if possible, the officer. If criminal misconduct is involved, however, the officer is not involved.

The role of the officer involved in the investigation of the use of deadly force needs to be addressed not only in the interest of fairness, but because the field officer is the key to this difficult issue. The officer's assistance and cooperation in putting together the facts of a deadly force incident are of paramount importance. The officer and the agency he serves need each other's support in order to determine the facts, inform the public, and provide professional police services to all of the citizens in the community (Mahoney, 1985).

One myth is that it is in the best interest of the agency to refuse to make any comment about the incident "because upon the advice of the attorney (city or county attorney), and because of civil litigation arising from the incident, we can not make any comment at this time." Such a statement could and will be interpreted as a cover-up. If the attorney for the agency is concerned about what is said, a written statement of the facts can be drafted and read, with no further comments made or questions answered. Saying nothing affords the public no chance to hear the police explanation, thereby lending support to the critics of a lawful, necessary use of deadly force. A statement should be made because the public needs to know why the police are shooting people. If the police are not willing to properly inform the public, who else will?

A community's trust in a police agency can only be structured on the knowledge that the agency is doing the right thing. Saying "no comment" does not accomplish this. Presenting the facts five days later does not usually accomplish the desired effect. Concealing or delaying facts is absolutely wrong. When no police misconduct is found to be involved in an incident, it ceases to be news. It then becomes a minor story, to be buried on the fourth page of the second section of the same paper that previously had printed the same incident for several days on the front page with banner headlines (Thibault, 1990).

The Community Relations Service (1987) suggests that the police make every effort to work within the community on a regular basis to develop meaningful associations to help establish trust. They are on target in one of the most important areas that relate to police use of deadly force and how that force is perceived by the community. If the community does not trust the police, every single incident will be viewed as controversial. If the community does trust the police, every incident will be viewed as proper. If the incident is viewed as proper, but in fact is not, the agency must say that and explain why. That is how trust will be maintained and an agency will be

believed.

External Influences

Personalities and politics may cause the press to attack the police, and police use of deadly force is the vehicle for that attack. The position of police chief is a highly visible one, and the chief may suddenly be interviewed and quoted by the press.

The chief may be depicted as incapable of managing a police department. This can be done by publicly implying that the police are guilty of excessive force or improper use of deadly force, and that the chief's poor leadership is responsible. Some politicians may readily respond to unfounded and repeated accusations by irresponsible persons or special interest groups by criticizing the police to ensure votes, but they will rarely, if ever, admit they were wrong when the police are later vindicated (Leonard, 1964).

The popular myths regarding deadly force issues are numerous and must be dispelled. A law enforcement agency can be its own worst enemy. A five-day assault of media coverage describing "alleged" police misconduct becomes "believed" police misconduct by much of the community when the agency doesn't help itself.

There are presently too many "experts" in the area of use of force who are providing research without sufficient explanation or documentation; this can result in misunderstanding, misinterpretation, or misuse. Many of these researchers are ill-prepared, lacking in experience and/or training to evaluate this complex issue properly. Some apparently want to be published and receive press recognition, but they are not providing enough data to fairly evaluate what they are researching. For example, a researcher cites statistics that show that blacks are shot and killed by the police in numbers disproportionate to their numbers in the general population. This is an accurate figure, but if it is the only data studied or available, people are likely to assume that, because police officers shoot blacks more often than Hispanics or whites, they are biased against blacks. Respected researchers, however, have gathered additional data that, nationally, would indicate that blacks, Hispanics, and whites are shot in proportion to their involvement in violent crime. Although this also is a true statement, it is rarely quoted in concert with the first statistic.

Conclusion

The investigation of any use of force by the police is necessary. Hard questions have to be asked and their answers found. Law enforcement leaders have an obligation to work aggressively toward controlling unauthorized force, no matter how frustrating or costly the task may be.

The skilled law enforcement executive must view the problem not as unmentionable, but rather as a natural and expected challenge to administrative ability. An essential first step is to explore the problem thoroughly, both independently and with fellow police administrators.

The police community greatly needs a more open exchange of views, experiences, and ideas. Law enforcement executives have to resolve and negotiate the often conflicting signals of supervisors, officers, community, politicians, media, and outside organizations. Such decisions are never clear-cut and require great thought and skilled diplomacy. They must recognize the position and perspective of people

inside the organization to effectively control cultural values that adopt minimal use of force as paramount to the police mission. The realities of police work in modern society will always create uncontrollable incidents and problems. Successful law enforcement executives must respond to each incident with skill and reliance on relationships established through months and years of careful, adept leadership.

In the final analysis, law enforcement executives are always accountable, regardless of personal responsibility for the incident itself. Their acceptance of accountability will control the events surrounding any controversial use of force.

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