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Performing Pretrial Services: A Challenge in the Federal Criminal Justice System *James R. Marsh*

A Sanction Program for Noncompliant Offenders in the District of Nevada *John Allan Gonska*

Recruitment and Retention in Community Corrections: Report From a National Institute of Corrections *National Institute of Corrections*

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This Issue in Brief

Performing Pretrial Services: A Challenge in the Federal Criminal Justice System.—Contending that “the Federal release and detention process is far from routine and mundane,” author James R. Marsh explains in depth the challenges Federal pretrial services officers face daily. He discusses the responsibilities inherent in pretrial services—to assess the risks defendants pose, to complete investigations and prepare reports for the court, and to supervise defendants released pending disposition of their cases—and the challenges that accompany such responsibilities.

A Sanction Program for Noncompliant Offenders in the District of Nevada.—When probationers do not comply with the terms and conditions of supervision, probation officers must report the noncompliant behavior and take steps to correct it. Author John Allan Gonska describes how the U.S. probation office in the District of Nevada addressed the issue of noncompliance by creating a sanction program. The author explains how the program was developed and how it works, giving examples of violations and appropriate sanctions for them under the program.

Recruitment and Retention in Community Corrections: Report From a National Institute of Corrections Conference.—With a changing workforce and a changing work environment, how do community corrections agencies recruit and retain qualified employees? The National Institute of Corrections sponsored a conference to explore this issue with a group of community corrections managers from around the country. This article reports on the group’s discussion—which focused on probation and parole image, the recruiting market, qualifications, training, and motivation—and offers the group’s recommendations.

Pretrial Diversion: A Solution to California’s Drunk-Driving Problem.—Author Lea L. Fields explains how California currently has an array of pretrial diversion programs to address offenses ranging from drug abuse to domestic violence to sexual molestation but has no such program for drunk driving. The author examines drunk-driving diversion programs in

Oregon and Monroe County, New York, explains the benefits of these types of programs, and tells how a diversion program for drunk drivers could be set up in California.

The Continuum of Force in Community Supervision.—In these times of increased emphasis on offender control, some community corrections agencies may be providing their officers with lethal weapons such as revolvers and less-than-lethal weapons such as stun guns and personal defense sprays with little or no guidance as to when their use is appropriate. Author Paul W. Brown stresses the importance of proper training and describes the “continuum of force,” the primary tool for providing guidance to officers in the use of force. He explains how the continuum of force works, focusing

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The Continuum of Force in Community Supervision

BY PAUL W. BROWN

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FOR MANY years, the field of community supervision¹ was dominated by the medical and casework treatment model, and the desired academic credential for a probation or parole career was the master's degree in social work. In recent years, however, community corrections has emphasized control and accountability and deemphasized casework and rehabilitation. For example, the Federal probation system adopted an enhanced supervision model several years ago that states the "supervision mission is to execute the sentence, control risk, and promote law-abiding behavior (Probation and Pretrial Services Division, 1993).

Along with control and enforcement supervision models has come the perception by many in community supervision that both the offenders they supervise and the communities they live and work in are more violent and hostile than in earlier years. The result has been a drastic change in the orientation of supervision officers, who now want to be armed with firearms, personal defense sprays (pepper, Mace, tear gas, and various combinations such as pepper and tear gas), stun guns, radios, cellular phones, handcuffs, and impact weapons (Brown, 1990; Linder, 1992). Thornton and Shireman (1993) comment on the changed role:

Traditionally, community corrections workers have been complacent in matters of personal safety. They have seen workers retire from the system who have never been involved in a physical attack or a situation involving use of physical force. Since the primary focus was on rehabilitation, it was hardly likely that an offender would assault someone who seldom represented a threat to his or her freedom. However, with increased emphasis on enforcement and accountability, the role of the community corrections worker has changed. Too often, neither workers nor managers—both a product of earlier, less violent times—have adjusted their thinking or behavior accordingly.

Unfortunately, some agencies may be providing officers with lethal weapons such as revolvers and less-than-lethal weapons such as impact weapons, stun guns, and personal defense sprays with little or no guidance or training as to when their use is appropriate. Such situation is unfair and potentially unfortunate for everyone: the officer, the agency, the community, and the offender. The consequences of improper training can be serious. The officer because of lack of training may not use deadly force when appropriate and may be seriously injured or killed as a result. Or, the officer may use a higher level of force than required because the officer is unaware of inter-

mediate alternatives. Besides the obvious human tragedy, lawsuits for improper use of force are a consideration. As Nowicki (1994) explains,

The use of force by police officers is a privilege that can only be used in limited circumstances. Officers are accountable for their use of force and may be judged by their departments, the public, or by the courts for any force they use. Generally, the higher the level of force used by an officer, the more scrutiny that incident will receive. Since you are accountable for anything that you do, you must be prepared to justify your conduct.

The primary tool for providing guidance to officers in the use of force is called the continuum of force or the force continuum. The American Probation and Parole Association (APPA, 1994) in a position statement on weapons stated that "[w]ithin the focus on staff safety, community corrections agencies must develop a continuum of responses appropriate to the realities of service delivered, the specific tasks performed by all staff, and the existing statutory authority."

What is the Continuum of Force?

What is this thing called the continuum of force? Geller & Scott (1992) explain the continuum of force as "a spectrum of control tactics from body language and oral communication to weaponless physical control to nonlethal and lethal measures." Remsberg (1986) reports that a trained officer who is facing a critical situation which might call for the use of force can mentally review the continuum of force options in a fraction of a second and come up with the proper reaction. According to Thornton and Shireman (1993):

A use of force continuum is a model by which an officer can choose verbal and physical reactions to a subject's behavior from a range of options and adequately stop the subject's hostile behavior and establish command and control of the subject, but no more. The ultimate goal is to control the subject and situation, without over-reaction.

Most continuum of force models are similar and use the concept of a pyramid or a ladder. At the bottom are the least forceful and most reversible techniques and at the top, the most forceful and the least reversible. If there is a starting point or beginning in the continuum of force, it is usually the officer's mere presence. At the top is lethal force, usually illustrated by the use of a firearm. Dorriety (1994) gives an example of a traditional law enforce-

ment continuum of force, starting with the least force option at the bottom:

Deadly Force
Intermediate Weapons
Empty-Hand Control
Verbal Direction
Officer Presence

After presence or command presence, as it is called in some models, force increases to body language and verbal commands. These are appropriate when offenders offer low-level resistance and present minimal danger to the officer. In traditional law enforcement models, the next level is usually control techniques and physical defense tactics followed by personal defense sprays as the threat to the officer becomes more serious. To be able to use control and defense tactics effectively, officers must practice them regularly and realistically. If they do not, personal defense sprays such as oleoresin capsicum (pepper spray) might be a safer option. When used properly, the oleoresin capsicum personal defense sprays appear to have fewer harmful consequences than either Mace or tear gas. Numerous Federal and local law enforcement agencies have replaced Mace and tear gas with pepper sprays. Using sprays rather than empty-hand techniques to control an offender also reduces the chance that either the officer or the offender will be injured.

Next on the continuum of force are striking and jabbing instruments (batons, expandable batons, and blackjacks), which generally are not approved for use by most community corrections agencies. The final level on the continuum of force is deadly or lethal force. We generally think of firearms when lethal force is mentioned, but a lethal force response could involve any available weapon such as a baseball bat, a knife, or a vase.

Because community corrections agencies generally do not have the same mission to respond and react to law violations as do traditional law enforcement agencies, most community supervision agencies expect the officer to withdraw safely from critical incidents rather than use severe force. Several misconceptions exist about using the continuum of force. One is that the officer determines the amount of force to use in a critical incident. The officer only responds to the force or resistance that the offender initiates. Once the offender ceases being aggressive, the officer stops or deescalates the use of force. Because of the structure of most continuum of force models, the misconception exists that the officer is required to start with the least force and move through each of the levels to arrive at the maximum force. Such is not true. The officer responds with the amount of force necessary to maintain his or her safety. What may begin with a mild verbal command could immediately jump to the use of

a firearm, deadly force, if the offender, for instance, draws a knife and moves toward the officer (Brown, 1994).

Williams (1994) offers an innovative concept that dispels the misconception that an officer has to escalate thorough the continuum to reach the proper level of force. Instead of thinking of the continuum as a pyramid or ladder going from the lowest level of force to the highest or most severe, Williams uses the concept of a wheel with the officer in the center, facing the aggressor. The wheel spins both ways. Instead of escalation or deescalation of force, there is only "reasonable force." The options in Williams' wheel are command presence, voice commands, controlling force, injuring force, and deadly force. Williams gives the following explanation of how the wheel works:

For example, the officer receives information on a suspect who has been involved in a disturbance. The officer confronts the suspect. At this point, no weapons have been observed by the officer. The wheel of force will spin to a stop at Command Presence and Voice Commands and the officer identifies himself and tells the suspect to stop.

As the suspect realizes the officer is speaking to him, simultaneously recognizing the officer as a threat to his freedom, he reaches in his waistband and attempts to draw a partially concealed handgun. The butt of the weapon is now visible to the officer. The wheel of force now spins to Deadly Force. The officer's weapon is drawn and leveled at the suspect. Meanwhile, the suspect reaches toward the handgun, but instead of drawing it, succeeds in pushing it through his waistband where it promptly falls through to his ankle, and onto the ground. The officer observes the suspect give up his attempt to draw a weapon, just before the officer's trigger is pulled. The wheel spins to Controlling Force, and the suspect is given Voice Commands at gunpoint, and is safely taken into custody. The wheel of force will move in any direction based on the officer's reasonable perception of the suspect's apparent threat at any given moment.

There are no hard and fast rules in the continuum of force; it is flexible and relative. Such flexibility may seem confusing in something that is supposed to serve the officer as a guide to the proper use of force. Flexibility is important, however, because, the standards that might justify force by one officer will not necessarily justify force by another officer. For example, in handling an aggressive, unarmed offender, a small nonathletic officer who has no defensive tactics training might be justified in using a higher level of force than a much larger, stronger officer who has extensive martial arts training. Also, the officer's response may be determined, in part, by the officer's knowledge of the offender's temper, background of hostility and violence toward authority figures, propensity to carry and use weapons, and martial arts skills. As Brown (1993) indicates, "The usefulness of such knowledge is one good reason for being familiar with the backgrounds of the persons you supervise. A history of violence is usually considered to be the most reliable predictor of future use of violence."

If an officer must resort to force, an agency continuum of force that is well designed and well thought out will not only give the officer the necessary guidance but will assist both the officer and the agency if a lawsuit results from the use of force (Stewart & Hart, 1993). On the other hand, if the officer exceeds the proper use of force, then the continuum of force can provide documentation that the officer used a higher level of force than prescribed by the agency and can be used against the officer (Remsberg, 1986).

According to Dorriety (1994), *Johnson v. Glick*, 481 F.2d 1028, 1973, is a leading case in establishing guidance to law enforcement on the use of force. In this case, the United States Court of Appeals, Second Circuit, examined a civil rights action brought by an inmate on the use of excessive force. The court offered the following guidelines:

In determining whether the constitutional line has been crossed, a court must look to such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted, and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.

The Federal Model

Beginning in 1991, the Federal Probation and Pretrial Services System incorporated a continuum of force model in training at its firearms instructors schools. Since 1993 the use of force model developed by the Federal Judicial Center (see figure 1) has been incorporated in a 2-day officer safety seminar conducted by the Federal Judicial Center for all Federal probation and pretrial services officers. The force model begins with the officer's presence and then escalates to verbal commands, Cap-Stun (the personal defense spray approved for use by officers in the system), empty-hand control, and lethal force.

Presence

Although commonly not thought to constitute force, the mere presence of the officer represents authority and control. Presence is the proper level of force when the offender is basically compliant without additional direction from the officer. Kinesics, nonverbal behavior or body language, is part of the concept of presence. How an officer presents himself or herself to the offender is just as important—if not more important—as what the officer says to the offender. In fact, in interpersonal communications, 10 percent of what is communicated is communicated verbally. The remaining 90 percent is communicated nonverbally (Ouellette, 1993a).

Just as an officer should be aware of what his or her body language conveys, the officer should be able to read the offender's body language. Being able to do so

can clue the officer that an attack is imminent, can allow the officer more response time, and can provide the officer justification for the use of force. Physical danger signs indicated by the offender's body language can provide a more accurate indication of the offender's intentions than what the offender actually says. As Ouellette (1993a) points out, "It is easier for people to lie with words than with their body language. Body language is much harder to control than words." Ouellette further advises that "[w]hen verbal and non-verbal communications conflict, we should rely on the non-verbal signals." He gives three categories of non-verbal signals: 1) space, 2) eye contact, and 3) gestures and posture.

How the officer stands is also important. The interview stance provides the officer maximum protection for most encounters. In the interview stance, the officer steps back with the strong-side foot to a 45-degree angle. This position provides more stability than having the feet next to each other (the open stance). Also, if the officer is armed, this stance places the officer's weapon further away from the person the officer is interviewing and allows the officer to move quickly. The officer should place his or her hands and arms at a raised level between the officer and the contact to provide further protection and separation as well as to allow the officer to react more quickly if he or she needs to avoid or block a blow. The officer can experiment with various hand and arm positions to develop several that appear natural rather than threatening. One example is the thoughtful or "Jack Benny" position. The strong side arm is vertical in front of the body with the hand under the chin and the weak side arm is horizontal in front of the abdominal area. This position both provides many of the vital body organs with additional protection from a blow or weapon attack and puts the hands and arms in a position to block an attack or counterstrike more quickly.

Normally, the officer should stand 3 to 5 feet away from the offender to give the officer time to react if attacked—this is known as the reactionary distance. With practice, the officer can assume the interview stance naturally in a nonthreatening manner. The defensive stance comes into play if the contact becomes threatening. The officer drops his or her center of gravity, and thus adopts a stronger stance, and raises and extends the arms to a more defensive position. This is a combat position for when attack is imminent.

Verbal Force

The mind is the officer's most powerful weapon, and verbal skills are one way in which the officer uses the mind to prevent or deescalate a crisis. The officer uses verbal force when the offender is initially resistant but becomes cooperative in response to verbal direction

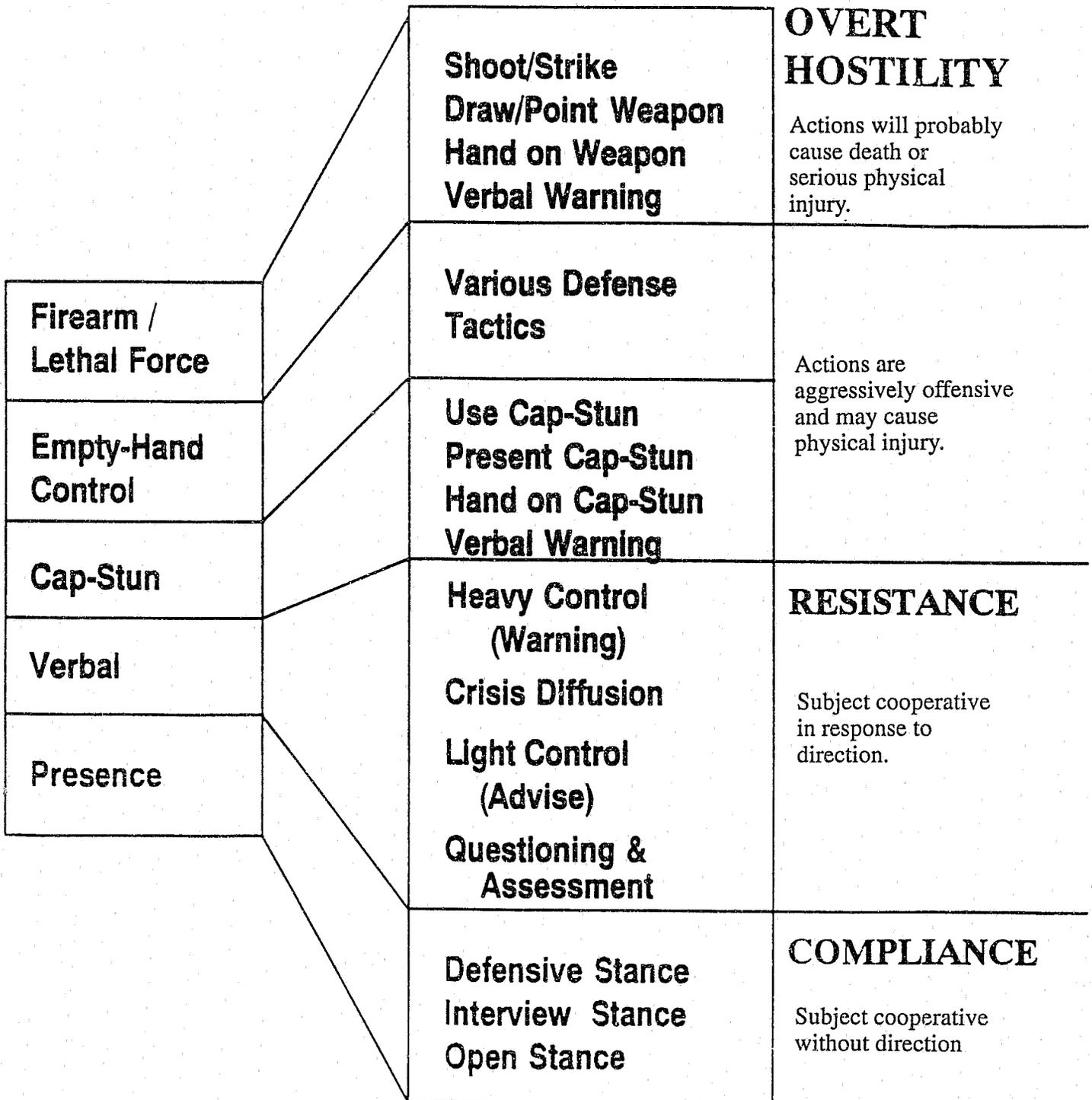


FIGURE 1. CONTINUUM OF FORCE MODEL DEVELOPED BY THE FEDERAL JUDICIAL CENTER (reprinted with permission)

from the officer. Once the officer gets the offender's cooperation, no further force is necessary. During the early stage of the contact, the officer goes through a process of questioning and assessment to determine the status of the offender—hostile, friendly, cooperative, or suspicious. From questioning and assessment, the officer may escalate to light control commands if the offender resists court orders or officer instructions. For example, the officer may advise the offender that if the offender does not maintain employment, the officer will submit a violation report. If the offender reacts aggressively rather than cooperatively, the officer uses verbal skills to deescalate the crisis before it becomes serious. Verbal techniques include using loud, heavy control commands or warnings such as "Stop! Do not come any closer." If the offender displays more resistance and hostility, the officer should consider terminating the contact.

Cap-Stun

Cap-Stun is one of the many pepper sprays used for personal defense. Although some continuum of force models place agents such as Cap-Stun, Mace, and tear gas after empty-hand techniques (or defensive tactics), the Federal Probation and Pretrial Services System puts Cap-Stun before physical force in its model. It does so for several reasons. Federal probation and pretrial services officers do not routinely learn defensive tactics, although more are doing so. Therefore, using defensive tactics is simply not an option for many officers. Also, the use of Cap-Stun is less likely to result in injury to either the officer or the aggressor than is the use of empty-hand techniques. Even when officers are properly trained in defensive tactics, resistant offenders—who, frequently, because of mental illness or drug or alcohol abuse, are immune to pain and continue to struggle and resist—can injure officers.

The use of Cap-Stun is appropriate when the actions of the offender are offensively aggressive and may cause physical injury to the officer. More specifically, Cap-Stun should be used when an officer is facing injury less than serious bodily injury or death, which would justify the use of lethal force. Using Cap-Stun would be appropriate, for example, when an offender shifts from being verbally aggressive to making threats to harm the officer and moves with arms raised toward the officer. In such a case the officer should order the offender to stop and threaten to use Cap-Stun if the offender does not immediately cease the aggressive behavior.

Empty-Hand Control

The officer should use empty-hand techniques to defend himself or herself from the offender's blows or

strikes by using blocks, strikes, and evasive techniques and to control an aggressive or resisting offender with techniques such as wrist locks. As with Cap-Stun, empty-hand control or defensive tactics are used when the offender's actions are aggressively offensive and may cause physical injury. In other words, the same level of force used against the officer will generally justify either Cap-Stun or empty-hand techniques. If the officer is proficient in defensive tactics and can easily control an aggressive offender, then for that officer empty-hand techniques might be a more viable option than Cap-Stun. However, it is important to remember that once touched, an initially calm offender could become extremely agitated or resistant to the control technique. The television series *Cops* often shows noncriminal types who are resisting control and handcuffing but are not overtly fighting the officer; it takes four or five officers to control them. It is important to practice defensive tactics regularly in order to be able to use them without having to think about their mechanics and application. Without regular practice, significant physical skills can be lost in as little as 3 months after intensive training (Whetstone, 1993). Empty-hand techniques may have to be used by the officer who is unable to draw his or her Cap-Stun, or, in some cases, who is unable to draw a revolver when it would otherwise be justified to use one. For this reason, it is wise for an officer to be proficient in several controlling, blocking, and striking techniques.

Because the Federal Probation and Pretrial Services System has not approved impact weapons or stun guns for use by officers, they are not part of the system's continuum of force. On most continuum of force models, impact weapons fall between defensive tactics and lethal force.

Lethal/Deadly Force

Lethal or deadly force is justified when the actions of the offender will likely cause death or serious bodily injury to the officer. Lethal force and firearms are generally thought to be synonymous, but they are not. Many objects can be used to inflict deadly force. A motor vehicle is a good example of a potential lethal force instrument. For instance, if an officer is about to drive away from a contact when someone stands in front of the vehicle and begins to shoot at the officer, the officer may be justified in driving over the aggressor if a safe retreat is not feasible. To hit someone with a 3,000-pound vehicle is unquestionably lethal force. Another example of lethal force is an officer striking an offender with a baseball bat after the offender attacks the officer with a knife during a home visit.

Before using lethal force or any physical force, an officer should attempt to retreat if the officer can do so without further endangering himself or herself. In a

situation where an aggressor with a knife is threatening to kill the officer and is closing in on the officer, an armed officer would not be expected to retreat if the offender is likely to pursue and stab the officer in the back.

The use of lethal force is something that no officer ever wants to face but should be prepared for by the nature of the job. It is important to know when lethal force is justified on the continuum of force and to be prepared both mentally and physically to react with deadly force. One overlooked reality is that there are armed officers who simply are not prepared to take another person's life, even in a clear case of self-defense. Mental preparation not only includes mentally rehearsing possible "what if" scenarios but also the mental preparation to take another life. If the officer is not prepared to do so, then the officer should not carry a firearm which could be used against the officer and which the officer would not use as expected to defend the life of a partner.

Conclusion

The continuum of force is a vital element of officer survival training because it can "enhance an officer's reaction time under combat stress" (Remsburg, 1986). The two main perspectives or theories in use of force training are to provide a large number of alternatives and, on the other hand, to minimize the options. Siddle (1994) prefers the latter option:

The second theory maintains a more simplistic approach of keeping the response options to a minimum. The proponents of this system focus on a small number of techniques which officers can learn quickly and easily while developing skill and confidence. Although there are strong arguments for both views, the effects of stress and reaction time on decision making processes suggest that keeping the response options to a minimum are preferred.

Siddle examined several studies of reaction time in relation to the number of response techniques and concluded that research confirms the concept that a smaller number of techniques are likely to increase officer survival. If such conclusion is valid, then agencies should concentrate on teaching officers a few techniques which they can easily master and retain rather than a large number of complicated techniques which can slow down officers' response time.

The continuum of force is a relatively new concept to community corrections. With the increasing momentum to enhance the officer's arsenal of weapons, more guidance must be provided to the officer on using these weapons. For some officers, the systems in which they work may not provide them with much more than the authority to use command presence and verbal commands. Others may have most of the weapons available to traditional law enforcement. In some cases acceptance of weapons has been gradual, perhaps starting

with crisis intervention or verbal judo training, then adding defensive tactics and personal defense sprays, and finally including striking instruments such as the expanding baton and firearms. According to Thornton and Shireman (1993):

The logical conclusion is that, if an agency is going to have officers involved in specific job functions (arrest, search, field contacts, electronic monitoring) and authorize the use of specific equipment (personal defense sprays, batons, firearms), the agency has a responsibility to train. The base for any training in the above areas is the use of force continuum.

Frequently officers receive technical training in using the weapons because the training obligation has been well established by case law. Unfortunately, however, officers may not be given adequate guidance as to when the weapons can be properly used. The latter type of training is difficult because the question of *when* to use a weapon does not have as clear an answer as *how* to use a weapon. Fundamentals of shooting techniques or reloading procedures are relatively straightforward.

Agencies may have clear-cut policies on the use of force. For example, in the Federal Probation and Pretrial Services System, lethal force can only be used when the officer is faced with great bodily injury or death and retreat is not a reasonable alternative. How to apply the policy generates dozens of "what if" scenarios, and these scenarios may be the best way to teach the continuum of force. One training technique is to video tape a scenario depicting a realistic incident and then discuss the scenario in a group setting. Pertinent questions for group discussion include: What alternatives are open to the officer? What did the officer do that is right or wrong? What is known about the offender? What should the officer's reaction be in the scenario? Then the group looks at variations of the scenario, changing the knowledge the officer had going into the scenario (for instance, stipulating that the offender had an assaultive history against authority figures) and increasing or decreasing the officer's safety skills or level of weapons.

The scenario method is probably the best way to get the officer to begin thinking about proper use of force. Unless the officer has given use of force some thought, the officer may panic if he or she has to make a split-second decision and may consequently make a poor and costly decision. Proper training is the best way to help ensure that the officer makes the right decision when facing a situation that calls for force. The best way an agency can equip its officers is to establish a continuum of force policy and then require training based on that policy.

NOTE

¹For convenience, the term community supervision will be used generically in the article to refer to probation, parole, and pretrial services supervision and investigation.

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