

INSTITUTE FOR LAW ENFORCEMENT ADMINISTRATION
The Center for American and International Law
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REPORT

NATIONAL SUMMIT: POLICE USE OF FORCE

A Dialogue on Less-Lethal Weapons and In-custody Deaths

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REPORT ON THE NATIONAL SUMMIT ON THE USE OF FORCE

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INTRODUCTION

This Report for the Institute for Law Enforcement Administration is based on the **National Summit on Police Use of Force**, a two-day gathering of law enforcement leaders, managers, educators and trainers on January 23-24, 2006. The Summit was held at the Institute's headquarters at The Center for American and International Law in Plano, Texas. Chief William Bratton of the Los Angeles Police Department initially proposed the conference to explore and to encourage a national dialogue about the use of force in law enforcement, particularly the use of less-lethal weapons.

Goals for the Summit included the following:

Examine different policies and practices governing the use of force.

Create a forum where policy makers along with medical, legal, and law enforcement practitioners could engage in discussions informed by the latest scientific and legal knowledge regarding the use of force with particular emphasis on less-lethal devices.

Survey current practices to see if there was a consensus emerging in the law enforcement community regarding the deployment and use of less-lethal devices.

Dialogue about ethically-based concerns regarding the use of these less-lethal devices.

Although the Summit included presentations on different aspects of the use of force, the major focus of the sessions centered around the issues related to the use of electronic projectile muscular disruptive devices, commonly referred to as Tasers® or Stingers® (terms that represent corporate names). Other more neutral terms often employed for these less-lethal weapons are EMD (Electro-Muscular Disruption devices) or CEDs (Conductive Electronic/Energy Devices). For discussion in this report, the term used will be CEDs, meaning electronic devices that fire

dart-like projectiles, with attached wires, that embed in the subject's body and send electrical charge(s) causing a temporary disruption of muscular coordination. Such devices are now widely deployed by law enforcement personnel (estimated to be in excess of 8,000 agencies), often justified as an alternative to using deadly force when circumstances permit and commonly used in situations to gain control over non-complaint or resisting subjects.

Participants in the Summit included personnel from law enforcement communities across the United States and Canada. In addition, there were 19 presenters from the law enforcement, legal, academic and medical communities. A listing of the presenters is included in the Appendix of this Report. As part of the Summit, a survey instrument was administered to gather information about current deployment of these weapons and the policies governing their use in their respective agencies. The results of that survey are reported in Chapter One of this report. The second Chapter summarizes the majority of the conference presentations - both plenary and breakout - and conveys the substance of the discussions that were part of the Summit. The third Chapter brings together some overall observations and ethically-based concerns that were discussed during the two-day Summit.

Special thanks should be extended to Assistant Chief Michael Berkow of the Los Angeles Police Department who was the guiding hand behind the Summit's content, and who served as keynote speaker (edited portions of his remarks are in Chapter 2 of this Report). It should also be mentioned that Dr. Tory Caeti and Dr. Eric Fritsch of the University of North Texas gave of their time to gather and analyze the survey instrument during the Summit. A note of thanks must be extended to the Institute for Law Enforcement Administration and its Director, Daniel Carlson, for finding resources to support and administer such an important forum. And last, but

not least, the staff of the Institute for Law Enforcement Administration for their continuing, dedicated, behind-the-scenes hard work.

This Report, while completed under the auspices of the Institute, was written to convey a sense of the National Summit. Therefore, any errors and omissions are the fault of the writer of this Report, and any conclusions and recommendations are not necessarily the views or the policies of the Institute for Law Enforcement Administration or its parent organization, The Center for American and International Law. The writer takes full responsibility for the content of this Report.

Respectfully submitted,

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Chapter One

USE OF FORCE SURVEY

**Survey Data Gathered and Compiled by
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Policies and Practices Related to Less-Lethal Force Devices

As part of the Use of Force Summit, each of the 196 participants was provided with a self-administered survey instrument. It was designed to survey and assess the current state of deployment of less-lethal devices and analyze some of the most pressing policy issues regarding the use of these weapons. Although 211 law enforcement leaders, managers and trainers signed up to attend the Summit, 196 were actually in attendance. Of those, 87 returned surveys for a respectable response rate of 44.3%. The descriptive statistics are presented in tables below and except where indicated otherwise, the results presented are the percentage of “yes” responses to each question.

Authorization For Use and Deployment of Less-Lethal Weapons

The first set of questions in the survey asked respondents whether certain devices were authorized for use in their agencies. As illustrated in Table 1, almost all departments authorized the use of a collapsible baton (98.9%) and pepper spray (97.7%) for field use. Most departments also authorized the use of CEDs (61.9%), flash bang grenades (82.1%), and impact soft projectiles (78.6%). Few departments authorized the use of light (10.1%) or acoustic (7.5%) devices. For almost every device, agencies placed some restrictions on who is authorized to use the device. For example, less than half (45.3%) of the agencies that authorized the use of CEDs allowed all patrol officers to carry the device. Similarly, only 14.9% of the agencies that authorized the use of impact soft projectiles allowed every officer to carry the device. As

illustrated in the last column of Table 1, agencies rarely experienced in-custody deaths as result of using less-lethal devices, generally speaking. “Choke” holds (11.8%) and pepper spray (11.3%) were the most common devices used by departments that obtained the highest levels of in-custody deaths. It should be noted that no time-frame was used in the survey instrument, and CEDs are a relatively recent innovation without the lengthy history of deployment characteristic of many of the other devices surveyed.

Table 1 – Agency Authorization and Policies Covering Less-Lethal Devices (Percent "yes")

Device	Does your department authorize this device for field use?	Is your department considering this device for field use?	Can every officer carry this device in your agency?	Do you currently have policies governing the use of this device?	Has your department experienced an in-custody death resulting from use of this device?
Collapsible Baton	98.9%	72.7%	93.0%	96.5%	0.0%
PR-24 Baton	30.0%	6.1%	27.5%	51.0%	3.8%
Traditional Baton	45.0%	5.1%	56.6%	70.4%	0.0%
Conducted Energy Devices (i.e., TASERS)	61.9%	70.3%	45.3%	81.0%	9.7%
OC or Pepper Spray	97.7%	88.2%	97.6%	97.5%	11.3%
CS or Tear Gas	67.9%	17.9%	1.5%	81.0%	1.5%
Impact Rubber Bullets or Similar	55.1%	20.6%	1.7%	74.5%	0.0%
Impact Soft Projectile (i.e., Beanbag rounds)	78.6%	50.0%	14.9%	84.3%	1.4%
Light (i.e., Laser)	10.1%	1.8%	18.2%	8.8%	0.0%
Acoustic (i.e., Sound Disruption)	7.5%	4.9%	0.0%	12.9%	0.0%
Physical Restraint (i.e., Nets)	23.8%	4.1%	27.5%	45.0%	5.0%
“Choke” Holds	32.5%	7.0%	44.9%	68.8%	11.8%

Flash Bang Grenades	82.1%	24.0%	2.6%	83.6%	1.3%
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Reporting the Use of Less-Lethal Force

An additional series of questions (see Table 2) asked respondents for information on reporting and documenting the employment of less-lethal devices. It is unusual for police agencies to require patrol officers to seek advance supervisory approval in using weapons except in the specialized cases of tear gas, impact rubber bullets, impact soft projectiles and flash bang grenades. Such devices are almost always utilized in situations involving a planned response where there are anticipated circumstances such as crowd control, barricaded suspects, hostage situations or search-warrant entries. However, the survey revealed that it is common for departments to require documentation when some form of force was used, including situations where less-lethal devices were employed. The documentation was usually in the form of a standard incident report, although a separate use of force report was common as well. Most departments collected annual statistics on the number of times the devices were used but far fewer departments issued a report on the use of less-lethal weapons or tracked these events.

Based on the survey results in Table 2, most departments routinely required supervisory notification when the officer employed a less-lethal weapon. For example, 90.2% of the departments required notification when a collapsible baton was used and 88.9% required notification when a conducted energy device was used. It should be noted, again, that the use of force in such circumstances did not require prior notification and/or supervisory approval. Instead, agencies had the routine, reasonable requirement that when force was used to make an arrest or seizure, the supervisor was to be informed and/or formally notified after the fact.

Table 2 – Reporting Policies and Less-Lethal Devices (Percent answering "yes)

Device	Does the use of this device require advance supervisory approval prior to use?	Does the use of this device require documentation in your standard incident report?	Does the use of this device require a separate use of force report be completed?	Does your department collect annual statistics on the number of times this device has been used?	Does your department issue some type of report on the use of less-lethal weapons?
Collapsible Baton	3.6%	97.5%	82.5%	70.5%	43.0%
PR-24 Baton	2.6%	75.0%	68.6%	56.8%	39.5%
Traditional Baton	4.4%	86.4%	70.5%	65.1%	34.1%
Conducted Energy Devices (i.e., TASERS)	6.7%	91.2%	83.9%	77.2%	49.1%
OC or Pepper Spray	4.8%	96.2%	84.8%	68.4%	44.2%
CS or Tear Gas	83.1%	84.1%	75.8%	71.7%	46.7%
Impact Rubber Bullets or Similar	76.5%	85.7%	76.0%	73.5%	50.0%
Impact Soft Projectile (i.e., Beanbag rounds)	63.8%	92.3%	76.6%	72.1%	42.6%
Light (i.e., Laser)	17.6%	21.4%	7.1%	18.8%	17.6%
Acoustic (i.e., Sound Disruption)	31.3%	28.6%	28.6%	40.0%	17.6%
Physical Restraint (i.e., Nets)	34.5%	73.1%	57.7%	55.6%	37.9%
“Choke” Holds	10.8%	78.8%	64.7%	51.4%	28.6%
Flash Bang Grenades	83.3%	85.3%	68.7%	64.6%	33.8%

Training Practices in the Use of Less-Lethal Force

. The vast majority of departments required additional training, beyond academy training, on each device authorized for use within their agencies. The initial number of hours of

training varied by device but ranged from an average of 6 hours for pepper spray to an average of nearly 11 hours for the PR-24. Besides initial training, many departments required in-service training in order to continue to carry the device. For all devices reported, an average of less than 7 training hours was required to continue to carry the device and most departments required that officers periodically re-qualify to continue to carry the device.

Table 3 - Training

Device	If this device is used, are officers in your department required to notify a supervisor?	Beyond academy training, are you required to complete training on this device prior to carrying it?	How many hours of initial training are required in order to carry this device?	How many hours of in-service training are required to continue carrying this device?	Does your department require you to re-qualify to continue to carry this device?
Collapsible Baton	90.2%	82.1%	10.35	5.45	75.6%
PR-24 Baton	63.9%	65.6%	10.78	6.86	58.1%
Traditional Baton	76.1%	69.0%	10.12	7.24	55.0%
Conducted Energy Devices (i.e., TASERs)	88.9%	88.7%	9.34	5.41	73.1%
OC or Pepper Spray	90.9%	81.8%	6.27	3.67	55.4%
CS or Tear Gas	96.7%	94.9%	8.62	5.25	64.2%
Impact Rubber Bullets or Similar	89.4%	89.1%	8.12	4.64	71.8%
Impact Soft Projectile (i.e., Beanbag rounds)	95.5%	96.8%	7.14	4.18	84.2%
Light (i.e., Laser)	26.7%	8.3%			12.5%
Acoustic (i.e., Sound Disruption)	38.5%	25.0%	8.00	2.00	16.7%
Physical Restraint (i.e., Nets)	70.4%	66.7%	9.86	5.00	55.6%
“Choke” Holds	82.9%	69.7%	6.75	2.75	38.5%

Flash Bang Grenades	95.5%	95.2%	8.47	5.21	64.7%
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Less-Lethal Weapons and the Use of Force Continuum

When respondents were asked about their agency’s use of force continuum, there was substantial variability regarding where the various devices were ranked along the Use of Continuum (a graduated response to a perceived threat that is related to officer decision making about the type and amount of force to be employed and justified). In other words, there was no consensus among the reporting agencies regarding the placement of CEDs in the Use of Force Continuum. For example, 91.4% of the respondents reported that the use of pepper spray ranked as a physical control-level response or equivalent, but only 76.1% reported the same for conducted energy devices. The use of a collapsible baton was ranked as a physical control-level response or equivalent in 43.1% of the departments, and as a serious physical control method or equivalent by 84.2%. Since the survey addressed less-lethal devices, it was rare for any of the devices mentioned in the survey to be included as a deadly force-level on their use of force continuum or ladder; the one exception was the use of “choke” holds, with 58.3% of the respondents stating that it ranked as deadly force or equivalent in their department.

In summary, agencies in the survey reported that CEDs, by and large, were lower on the Continuum in seriousness than the collapsible, PR-24 and traditional batons, and primarily viewed it as the equivalent to the use of OC or pepper spray. While most agencies ranked CEDs as devices that fell into the range of physical control, a little over half - or 55% - placed them in the category of serious physical force. Generally speaking, most agencies tended to assign CEDs as a less-lethal option than most other devices, raising an interesting question: if CEDs are

considered a "safer" option than other less-lethal devices, why do some agencies tend to limit its deployment?

Table 4 – Use of Force Continuum (Percent answering "yes")

Device	There is currently no policy on this device	This device is not on our continuum or ladder	This device ranks as physical control or equivalent	This device ranks as serious physical control or equivalent	This device ranks as deadly force or equivalent
Collapsible Baton	21.7%	13.6%	43.1%	84.2%	4.8%
PR-24 Baton	34.3%	35.3%	33.3%	72.4%	0.0%
Traditional Baton	24.3%	17.9%	36.7%	78.9%	6.3%
Conducted Energy Devices (i.e., TASERs)	26.9%	19.1%	76.1%	55.0%	0.0%
OC or Pepper Spray	21.9%	15.0%	91.4%	21.8%	0.0%
CS or Tear Gas	30.6%	47.9%	66.0%	48.8%	2.2%
Impact Rubber Bullets or Similar	38.5%	52.6%	35.3%	84.6%	15.0%
Impact Soft Projectile (i.e., Beanbag rounds)	32.7%	35.6%	44.4%	86.8%	12.0%
Light (i.e., Laser)	65.2%	68.2%	14.3%	8.3%	0.0%
Acoustic (i.e., Sound Disruption)	69.6%	75.0%	16.7%	33.3%	0.0%
Physical Restraint (i.e., Nets)	50.0%	56.7%	63.6%	14.3%	4.3%
“Choke” Holds	36.8%	41.7%	37.0%	61.3%	58.3%
Flash Bang Grenades	28.0%	51.0%	44.0%	52.2%	1.9%

Policies Governing the Use of Less-Lethal Devices

Table 5 includes Summit participants answers about the policy restrictions agencies placed on the use of less-lethal devices. Agencies typically placed restrictions on the use of

many if not most of these devices on handcuffed subjects. However, restrictions due to age (either very young or elderly) were not widely included as a policy restriction. Prohibitions on the use of these devices involving intoxicated subjects were rare. For example, only 2.1% of the agencies prohibited the use of conducted energy devices on persons who were intoxicated.

Table 5 – Restrictions on the Use of Devices (Percent answering "yes")

Device	We are allowed to use this device on anyone to gain compliance.	We are prohibited from using this device on handcuffed subjects.	We have a minimum age at which we cannot use this device.	We have a maximum age at which we cannot use this device.	We are prohibited from using this device on persons who are intoxicated
Collapsible Baton	66.7%	55.7%	8.9%	5.1%	0.0%
PR-24 Baton	46.9%	48.4%	6.9%	0.0%	0.0%
Traditional Baton	56.8%	60.5%	5.4%	2.8%	0.0%
Conducted Energy Devices (i.e., TASERs)	50.0%	40.4%	22.4%	16.7%	2.1%
OC or Pepper Spray	79.5%	26.0%	10.5%	8.0%	0.0%
CS or Tear Gas	46.3%	58.3%	12.2%	8.2%	0.0%
Impact Rubber Bullets or Similar	42.1%	66.7%	13.9%	2.7%	0.0%
Impact Soft Projectile (i.e., Beanbag rounds)	52.7%	65.3%	8.0%	4.0%	0.0%
Light (i.e., Laser)	30.0%	14.3%	0.0%	0.0%	0.0%
Acoustic (i.e., Sound Disruption)	10.0%	16.7%	0.0%	0.0%	0.0%
Physical Restraint (i.e., Nets)	65.0%	15.8%	13.6%	9.5%	4.3%
“Choke” Holds	47.2%	50.0%	10.0%	10.0%	6.3%
Flash Bang Grenades	27.6%	71.2%	21.4%	10.7%	1.8%

Additional Policy Restrictions on the Use of Less-Lethal Force

With the exception of the traditional baton, “choke” holds, and flash-bang grenades, few agencies placed restrictions on the use of less-lethal devices on persons with physical health problems (see Table 6). The same was true for persons with mental health problems. Most agencies placed restrictions on the use of the traditional baton and flash bang grenades on persons with mental health problems, but such restrictions for other devices were rare. When CEDs, impact rubber bullets, or impact soft projectiles were deployed, the majority of departments required that the officer seek medical attention for the subject. Several departments also required that medical attention be sought when other types of less lethal devices were deployed. Interestingly, most respondents were unaware of any officers having been disciplined due to improper use of the less-lethal devices, and reported relatively few lawsuits filed against departments for improper uses of the devices. In comparison to other less-lethal devices, it was most common for departments to report knowledge of lawsuits involving “choke” holds.

In sum, based on the respondent's answers to questions about policy restrictions that take into account a subject's physical or mental conditions, it seems possible to conclude, based on these data, that – with the exception of the collapsible baton and the, so-called “choke hold” - agencies placed few restrictions of the use of less-lethal devices. Although lawsuits have remained relatively high for several of these weapons, the restrictions on their use and disciplinary actions against officers who may have violated policy remains relatively low.

Table 6 – Restrictions on Less-Lethal Force Related to Subject Factors (Percent "yes")

Device	We are prohibited from using this device on persons with physical health problems	We are prohibited from using this device on persons with mental health problems	We are required to seek medical attention for a person after using this device.	To my knowledge, we have had discipline officers due to improper usage of this device in the past.	To my knowledge, my department has been sued in the past over using this device.
Collapsible Baton	6.2%	0.0%	47.5%	28.0%	16.3%
PR-24 Baton	12.5%	3.3%	37.5%	16.7%	15.2%
Traditional Baton	56.8%	60.5%	5.4%	2.8%	0.0%
Conducted Energy Devices (i.e., TASERs)	17.0%	3.8%	75.0%	23.1%	18.5%
OC or Pepper Spray	13.3%	1.3%	46.8%	26.6%	13.2%
CS or Tear Gas	14.3%	5.5%	37.5%	5.4%	3.5%
Impact Rubber Bullets or Similar	9.5%	2.4%	67.5%	0.0%	9.8%
Impact Soft Projectile (i.e., Beanbag rounds)	8.9%	3.5%	74.1%	3.5%	8.8%
Light (i.e., Laser)	8.3%	8.3%	18.2%	11.1%	7.1%
Acoustic (i.e., Sound Disruption)	7.7%	7.7%	9.1%	0.0%	0.0%
Physical Restraint (i.e., Nets)	9.1%	0.0%	20.0%	15.0%	17.4%
“Choke” Holds	28.9%	13.5%	31.4%	31.6%	28.2%
Flash Bang Grenades	27.6%	71.2%	21.4%	10.7%	1.8%

General Comments Based on the Less-Lethal Survey

Since this is not a random sample of agencies or members of the law enforcement community, the findings could be misleading. And though caution should be used in interpreting

these data, they do capture some information about agencies and the use of less-lethal force that was not known before.

Chapter Two

Presentations at the Use of Force Summit

The Keynote Address was given on January 23, 2006 by Deputy Chief Michael Berkow, Commanding Officer of the Professional Standards Bureau of the Los Angeles Police Department. An edited version is reprinted here since it set the tone for the dialogue of the overall forum.

Chief Berkow's Keynote Address (Edited Version with Boldface Added)

I AM TRULY HONORED TO BE HERE TODAY. THE INSTITUTE FOR LAW ENFORCEMENT ADMINISTRATION IS AN INSTITUTION THAT HAS BECOME SYNONYMOUS WITH ETHICS, INTEGRITY AND QUALITY TRAINING. THEY ARE THAT UNIQUE INSTITUTE THAT IS WORKING TO SHAPE THE PROFESSION, TO MOVE US IN A POSITIVE WAY FORWARD. THEY HAVE BECOME THE NATIONAL LEADER ON ETHICS AND, MOST IMPORTANTLY, ON WORKING WITH STREET POLICE OFFICERS TO MAKE ETHICS TRAINING REAL AND FUNCTIONAL AND EFFECTIVE.

THIS CONFERENCE AROSE OUT OF A SIMPLE SET OF CIRCUMSTANCES. A GROUP OF US ACROSS THE COUNTRY WERE ALL DEALING WITH THE REALITY OF POLICE USE OF FORCE. ALL DEALING WITH CHANGING CIRCUMSTANCES, CHANGING TECHNOLOGY, CHANGING POLICE EXPECTATIONS—AND WE HAD AN ON-GOING DIALOGUE.

AS WE DISCUSSED OUR VARIOUS PROBLEMS, THERE WAS A REALIZATION THAT MOST OF THE GOOD WORK, THE THOUGHTFUL WORK, ON USE OF FORCE HAD BECOME DATED. WE HAD THE SEMINAL, *DEADLY FORCE WHAT WE KNOW*, BY GELLER AND SCOTT—1993. WE HAD THE “BADGE AND THE BULLET”, BY PETER SCHARF AND ALAN BINDER, FAMOUS FOR PROVIDING A GREAT SET OF FRAMES TO LOOK AT OFFICER INVOLVED SHOOTINGS WRITTEN IN 1983 AND JIM FYFE’S WORK IN 1982 AND OVER THE YEARS.

THERE ARE SOME OFT STATED TRUTHS ABOUT THE POLICE AND USE OF FORCE THAT ARE WORTH SAYING AGAIN. THEY HELP TO SET THE STAGE, TO PROVIDE THE ROADMAP FOR THE DISCUSSION THAT FOLLOWS.

FIRST IS THE REALITY THAT THE POLICE HOLD A VIRTUAL MONOPOLY ON THE USE OF FORCE AND ESPECIALLY DEADLY FORCE IN A DEMOCRATIC SOCIETY. WE ARE THAT SPECIAL GROUP OF CITIZENS, THAT SMALL GROUP, SELECTED TO WORK FULL TIME FOR THE COMMON GOOD. AND IN DOING SO, WE ARE GIVEN SPECIAL POWERS TO MAKE SURE THAT EVERYONE ADHERES TO THE RULE OF LAW.

THIS MONOPOLY HAS LONG BEEN THE SOURCE OF CONFLICT AND TENSION AND DISTRUST.

HISTORY IS REplete WITH ACTION—A POLICE USE OF FORCE, MOST OFTEN DEADLY—AND A REACTION: SOME FORM OF CIVIL DISORDER. WE CAN GO BACK TO RIOTS IN NEW YORK CITY IN 1943 SPARKED BY POLICE USE OF FORCE LET ALONE THE RIOTS THROUGHOUT THE UNITED STATES DURING THE 60S AND 70S WHERE USE OF FORCE BY THE POLICE WAS OFTEN THE SPARK THAT IGNITED SERIOUS CIVIL UNREST

IN THE 1980S MIAMI ALONE ERUPTED FOUR TIMES—ALWAYS AFTER A POLICE USE OF FORCE THAT WAS IN SOME WAY CONTROVERSIAL. REMEMBER THE MCDUFFY CASE IN 1979? THE SHOOTING OF A BLACK MOTORIST IN 1989? OR THE ACQUITTAL OF THE DRUG SQUAD IN 1990 FOR ALLEGEDLY BEATING A DRUG DEALER TO DEATH?

BIG CITIES—LOS ANGELES IN THE WATTS RIOT OF 1965 TO THE RODNEY KING RIOTS OF 1992—HAVE NO MONOPOLY ON THESE EVENTS. OUR COLLEAGUES FROM THE EAST COAST WILL REMEMBER THE DISORDER IN TEANECK, N.J. AFTER THE SHOOTING OF A UNARMED BLACK YOUTH AS WILL OUR COLLEAGUES IN THE SOUTH REMEMBER

SHREVEPORT, LOUISIANA ERUPTING AFTER A POLICE CONTACT WENT AWRY. JUST THIS WEEK, A POLICE ARREST IN A SMALL TOWN IN THE SOUTH RESULTED IN THE DEATH OF THE SUSPECT. WHAT HAPPENED? THE COMMUNITY WENT AND BURNED DOWN THE HOME OF THE POLICE CHIEF? I AM TALKING IN THE UNITED STATES. I AM NOT TALKING ABOUT HAITI OR SOUTH AMERICA.

I THINK THERE ARE A NUMBER OF KEY FACTORS THAT HAVE RECENTLY COME INTO PLAY THAT ARE CHANGING THE LANDSCAPE IN WHICH WE OPERATE AND THAT REQUIRE US TO RETHINK AND REWORK OUR ACTIONS. THESE NEW FACTORS COME INTO PLAY WITH HISTORICAL REALITIES—LIKE MOST COPS WORK ALONE; MOST OF OUR CRITICAL INCIDENTS, OUR DEADLY ENCOUNTERS OCCUR OUTSIDE OF THE PUBLIC VIEW, THEY TEND TO OCCUR AT NIGHT, IN TOUGH NEIGHBORHOODS, OUTSIDE OF VIEW OF SUPERVISORS AND NEUTRAL WITNESSES.

PERMIT ME TO EMPHASIZE THREE KEY AREAS. FIRST, I BELIEVE WE HAVE LOST THE BENEFIT OF THE DOUBT.

FOR YEARS EVERYWHERE—STILL IN SOME PLACES—THERE IS A TENDENCY TO GIVE THE POLICE THE “BENEFIT OF THE DOUBT.” IF THE OFFICER SAYS IT IS SO, IT MUST BE SO.

REMEMBER IT WAS ONLY WITHIN THE PAST TEN YEARS THAT JURY INSTRUCTIONS USED TO READ: “DON’T BELIEVE THE COP MORE THAN EVERYONE ELSE JUST BECAUSE HE IS A POLICE OFFICER”. THEY WERE PRECAUTIONARY, INTENDED TO LIMIT WHAT WAS SEEN AS OUR INHERENT EDGE WITH JURIES, OUR GREATER BELIEVABILITY.

THAT HAS CHANGED. EVERYONE REMEMBERS THE FAMOUS WORDS OF PRESIDENT RONALD REGAN WHEN TALKING ABOUT THE RUSSIANS AND NUCLEAR WEAPONS: TRUST BUT VERIFY. CASES LIKE ABNER LOUIMA IN NEW YORK AND THE RAMPART CASES IN LOS ANGELES HAVE CHANGED OUR WORLD AND THE WAY IN WHICH THE PUBLIC LOOKS AT OUR CASES—AND THEY NOW WANT VERIFICATION TO GO WITH OUR ASSERTIONS.

BEFORE LOUIMA, WHO WOULD HAVE BELIEVED THAT POLICE OFFICERS TOOK A PRISONER INTO A BATHROOM IN A POLICE STATION AND SODOMIZED HIM WITH A TOILET PLUNGER?

BEFORE THE OVIDA CASE, WHO WOULD HAVE BELIEVED THAT SOMEONE LIKE RAFAEL PEREZ COULD SHOT AN UNARMED MAN AND PLANT AN ASSAULT RIFLE ON HIM, PROSECUTE HIM FOR THAT AND PUT HIM IN PRISON? JUST LAST MONTH A POLICE OFFICER IN NEW YORK CITY PLED GUILTY TO MANSLAUGHTER FOR AN ON-DUTY SHOOTING OF AN UNARMED INDIVIDUAL.

THESE CASES HAVE REMOVED THAT BUFFER OF “THE BENEFIT OF THE DOUBT” THAT WE HAVE HAD FOR YEARS. NOW WE ARE IN THE AGE OF “PROVE IT.” SHOW ME THE PROOF OF WHAT OCCURRED, DO NOT RELY ON ME BELIEVING YOUR VERSION OF EVENTS ABSENT COLD HARD FACTS THAT PROVE IT.

THIS REALITY PUTS A TREMENDOUS BURDEN ON THE INVESTIGATION TO PROVE WHAT HAPPENED. WHEN YOU COUPLE THIS REALITY WITH THE CSI EFFECT—FOLKS IN THE REALM OF PUBLIC OPINION WANT MORE THAN JUST WITNESSES—THEY WANT SCIENTIFIC PROOF. THEY WANT BLOOD AND DNA AND ENHANCED VIDEO. THEY WANT SCIENCE NOT ART.

LOOK AT THE GROWTH OF CIVILIAN OVERSIGHT IN THIS COUNTRY. WHY? WHAT MAKES A CIVILIAN BETTER QUALIFIED TO INVESTIGATE THE POLICE THAN A PROFESSIONAL POLICE INVESTIGATOR?

NO ONE IS SURPRISED THAT THERE IS CIVILIAN POLICE OVERSIGHT IN BERKLEY, CALIFORNIA OR IN SANTA CRUZ. BUT BOISE, IDAHO? OR OMAHA OR KNOXVILLE, TENN? WHAT HAS HAPPENED TO SPREAD CIVILIAN OVERSIGHT FROM LIBERAL BASTIONS TO THE HEARTLAND OF AMERICA?

THIS NEW AND DEVELOPING REALITY TAKES US RAPIDLY INTO MY SECOND AREA AND THAT IS THAT THE PUBLIC HAS BECOME INTOLERANT OF POLICE MISCONDUCT AND EXCESSIVE FORCE. THE PUBLIC IS SAYING THAT THEY ARE NOT SATISFIED WITH OUR EFFORTS, BE THAT INTERNAL AFFAIRS INVESTIGATING COMPLAINTS OR ONE OF OUR OWN SHOOTINGS. WE HAVE TALKED ABOUT BEING A “PROFESSION” AND THE PUBLIC HAS ACCEPTED THAT, REWARDED THAT EXPECTATION WITH THE SALARIES AND STATUS OF A PROFESSION. THE PUBLIC NOW EXPECTS THE POLICE TO BEHAVE ACCORDINGLY.

IF YOU GO BACK TO 1985, THERE WERE ONLY A HANDFUL OF CIVILIAN OVERSIGHT BODIES WHILE OUTSIDE ENTITIES THAT ACTUALLY INVESTIGATED POLICE COMPLAINTS WERE RARITIES, LIMITED TO PLACES LIKE BERKELEY. NOW, 20 YEARS LATER, THE LANDSCAPE IS RADICALLY DIFFERENT.

THERE ARE CIVILIAN OVERSIGHT ASSOCIATIONS FROM THE UNITED STATES TO CANADA TO AFRICA. THERE ARE ANNUAL CONFERENCES WITH SEMINARS AND MEETINGS THAT LOOK LIKE MINIATURE IACP CONVENTIONS. AND THERE ARE INCREASINGLY LARGE SUMS OF MONEY DEDICATED TO THESE EFFORTS. A VIRTUAL CONTINUUM OF POLICE OVERSIGHT HAS DEVELOPED, RANGING FROM EXTERIOR AUDIT OF POLICE INVESTIGATIONS TO OUTSIDE ENTITIES THAT BOTH RECEIVE AND INVESTIGATES COMPLAINTS. THESE OUTSIDE INVESTIGATIVE BODIES IN EFFECT SUPPLANT A KEY FUNCTION OF A POLICE ORGANIZATION. ONE OF THE LARGEST AND MOST POWERFUL HAS JUST BECOME OPERATIONAL IN THE UNITED KINGDOM, THE INDEPENDENT POLICE COMPLAINTS COMMISSION (IPCC) WITH THE POWER TO MONITOR AN INVESTIGATION, MANAGE THE POLICE DEPARTMENT’S INVESTIGATION OR TO TAKE OVER THE INVESTIGATION COMPLETELY.

WHY? WHAT HAS FUELED THIS GROWTH? WHY THIS SEARCH FOR ALTERNATIVES TO INTERNAL POLICE CONTROL?

WE HAVE FAILED EITHER IN FACT OR IN THE PUBLIC PERCEPTION, TO DEAL WITH POLICE MISCONDUCT AND PROBLEMS WITH POLICE USE OF FORCE. AND THIS IS AN AREA WHERE WE ARE TRULY BOUND TOGETHER INTO 1 PROFESSION, NOT 18,000 LOCAL FORCES JUDGED INDEPENDENTLY. WHEN A POLICE SCANDAL OR AN ACT OF MISCONDUCT MAKES THE NEWS IN LOS ANGELES, IT AFFECTS MY BROTHER AND SISTER OFFICERS FROM MAINE TO FLORIDA. WHEN AN ACT OF POLICE MISCONDUCT ON THE EAST IS WIDELY REPORTED, WE FEEL THE RIPPLES ON THE WEST COAST.

INCIDENTS WHERE POLICE USE DEADLY FORCE ARE UNIQUE; THEY ARE NOT STANDARD CRIMINAL INVESTIGATIONS AND SHOULD NOT BE TREATED IN THAT FASHION.

POLICE USE OF FORCE CASES QUITE SIMPLY ARE "WHAT HAPPENED" NOT "WHO DONE IT." UNLIKE A ROUTINE HOMICIDE WITH A GUN, WE ARE NOT TRYING TO FIND A SUSPECT. RATHER WE ARE WORKING TO FIGURE OUT WHAT HAPPENED AND PROVE IT. WE HAVE TO "VERIFY" WHAT THE OFFICER TELLS US AND WE HAVE TO GO A STEP BEYOND THE NORMAL CRIME INVESTIGATION--WE HAVE TO DISPROVE OTHER ALTERNATE THEORIES OR RUMORS ABOUT WHAT OCCURRED.

THIRD, I WOULD LIKE TO MENTION A NEW PUBLIC PERCEPTION THAT IS DRAMATICALLY AFFECTING OUR OPERATIONS AND IMPACTING THIS ENTIRE DISCUSSION ABOUT THE POLICE USE OF FORCE IN A DEMOCRATIC SOCIETY.

THE ROOTS OF THIS CHANGE WERE FIRST SEEN IN THE WAY THE PUBLIC LOOKS AT THE MILITARY:WE HAVE COME TO EXPECT WAR WITHOUT CAUSALITIES.

I WAS ON THE GROUND IN SOMALIA THE WEEK AFTER THE RANGERS WERE KILLED. WE LOST 18 BRAVE MEN. ON THE OTHER HAND, IN THAT ONE BATTLE WE KILLED THOUSANDS OF SOMALIS. THEY WERE ON THE VERGE OF HANDING OVER ADIDI. THEY DID NOT WANT TO BE WIPED OUT. YET THE PRESSURE WHEN WE LOST THESE 18 SOLDIERS WAS SO INTENSIVE WE STOPPED, PACKED UP AND CAME HOME.

OUR MILITARY IS NOW OBSESSED WITH SOMETHING CALLED "FORCE PROTECTION." THAT IS THE KEY EVEN, MANY WOULD ARGUE, OVER THE MISSION. I SEE SOME OF THESE SAME EXPECTATIONS FILTERING INTO POLICE. I WOULD DESCRIBE IT AS THE PUBLIC'S EXPECTATION THAT WE DO "POLICING WITHOUT BLOOD." WE DON'T SHOOT ANYONE, WE DON'T BEAT ANYONE, WE GET THE JOB DONE SOME OTHER WAY.

WE ARE SEEING CASES IN LA NOW WHERE UNLESS THE POLICE HAVE TRIED A TASER AND THEN SHOT THE SUSPECT WITH A BEANBAG ROUND 3 OR 4 TIMES, ANY USE OF DEADLY PHYSICAL FORCE IS GOING TO BE A PROBLEM OR AT LEAST SERIOUSLY QUESTIONED.

AND WE ARE REACTING TO THIS. LOOK, TASER'S HAVE BEEN AROUND SINCE THE 1970S. VERY FEW DEPARTMENTS USED THEM. NOW LOOK AROUND. THE TECHNOLOGY IS BASICALLY THE SAME, A LITTLE MORE POWERFUL, THE PRODUCT IS THE SAME. BUT WE ARE—CORRECTLY IN MY OPINION—PUSHING THESE LESS LETHAL TOOLS OUT TO THE OFFICER IN THE STREET MUCH MORE AGGRESSIVELY AND PUTTING THEM TO USE MUCH MORE OFTEN.

I THINK THIS TREND OF THE PUBLIC DEMANDING "BLOODLESS POLICING" IS ONLY GOING TO EXPAND AND BECOME MORE COMMON.

SO WITHIN THIS FRAMEWORK—

- LONG HISTORY OF FRICTION WITH OUR COMMUNITIES OVER POLICE USE OF FORCE
- INCREASING SCRUTINY COUPLED WITH A LOSS OF OUR "BENEFIT OF THE DOUBT" BUFFER
- A PUBLIC EXPECTATION THAT WE CAN CONCLUSIVELY PROVE THE FACTS SURROUNDING AN EVENT SCIENTIFICALLY
- AND THE PUBLIC'S DISCOMFORT WITH POLICE USING FORCE IN THE FIRST PLACE, ESPECIALLY DEADLY FORCE

WHAT ARE WE SUPPOSED TO DO? I WANT TO LAY OUT FOUR BROAD AREAS OF INTEREST AND FOCUS. I BELIEVE THAT THESE AREAS ARE KEY IN THE CONTINUED ADDRESS OF THIS ISSUE.

FIRST - USE OF FORCE POLICIES. I AM NOT TALKING ABOUT THE LAW. THE LAW HERE IS RELATIVELY STATIC. THE LEGAL RULES ABOUT WHEN WE CAN USE FORCE, THE JUSTIFICATION, HAS NOT CHANGED IN SOME TIME. THE MOVEMENT OF THE LAW BY ITS VERY NATURE IS SLOW AND EVOLUTIONARY.

THE POLICIES THAT WE ALL WRITE AND THEN FOLLOW ARE KEY TO THE ACTIONS THAT OUR OFFICERS THEN TAKE. VIRTUALLY EVERY POLICE DEPARTMENT TODAY HAS WRITTEN POLICIES THAT ARE MORE RESTRICTIVE THAN THE LAW.

I WOULD SUGGEST THAT POLICIES NEED TO CHANGE WITH THE TIMES. THREE EXAMPLES:

- **SHOOTING AT VEHICLES.** THIS HAS BECOME ONE OF THE HOTTEST POLICE/COMMUNITY CONFLICTS OF OUR TIME. IT HAS ONLY BEEN IN THE LAST 3-5 YEARS OR SO THAT AGENCIES ACROSS THE COUNTRY HAVE MOVED TO A "YOU CANNOT SHOT AT VEHICLE PERIOD" STANDARD. REMEMBER BOSTON AFTER OFFICERS SHOT INTO A CAB DRIVING AWAY FROM THEM KILLING A YOUNG WOMAN? CHICAGO HAD ALMOST THE EXACT SAME SITUATION AND ON THE WEST COAST WE HAVE HAD OUR SHARE OF CONTROVERSIAL CAR SHOOTINGS.

THE REALITY IS THAT WE ARE CHANGING OUR POLICIES IN RESPONSE TO BOTH RESEARCH—WE NOW KNOW THAT BULLETS ARE SINGULARLY INEFFECTIVE AT STOPPING CARS—AND PUBLIC EXPECTATIONS.

LAST YEAR ON SUPER BOWL SUNDAY WE HAD AN OFFICER SHOT INTO A STOLEN CAR, AT THE END OF A PURSUIT THAT HAD BACKED INTO HIS PATROL CAR AND NEARLY MISSED KILLING HIM. THE DRIVER OF THE STOLEN CAR WAS 13 YEARS OLD. AS WE WERE INVESTIGATING THIS CASE, I WAS CURIOUS ABOUT OTHER SIMILAR CASES. A VERY UNSCIENTIFIC SEARCH ON GOOGLE FOUND AT LEAST 12 CASES A YEAR WITH KIDS, DRIVING STOLEN CARS, GETTING SHOT BY OFFICERS DURING THE COURSE OF EITHER PURSUIT OR ARREST.

- **TASERS.** I AM NOT GOING TO TALK IN DEPTH ABOUT TASERS AS WE HAVE A NUMBER OF GROUPS FOR THAT. BUT I WILL MENTION THEM AS AN EXAMPLE OF HOW WE NEED TO HAVE A POLICY DISCUSSION ABOUT THEM.

TASERS HAVE BEEN AROUND FOR YEARS; LAPD HAS BEEN USING THEM SINCE THE EARLY 1980S WITH A VERY HIGH RATE OF SUCCESS. BUT WE HAVE SOLD THE TASER ON WHAT BASIS? WHAT DID WE TELL THE PUBLIC OUR REASON FOR WANTING TO USE THE TASER WAS?

THE ACLU RECENTLY WROTE:

WHAT IS "TASERS are promoted as a less lethal alternative to firearms in cases where police
USED TO would otherwise use deadly force," Silverstein said. "But what many people are
AND SA unaware of is TASERS are used in numerous situations where even your most rogue
AT THE cowboy-type officer wouldn't even dream of pulling a firearm
TASERS.
DEALING WITH VERBAL NON-COMPLIANCE.

I AM FAMILIAR WITH ALL THE DATA ABOUT REDUCTION IN INJURIES TO SUSPECTS AND OFFICERS; I UNDERSTAND THAT. BUT IN A SOCIETY WHERE POLICING IS BASED UPON CONSENT, WE HAVE GOTTEN 'CONSENT' FROM OUR CUSTOMERS TO USE TASERS IN PLACE OF A FIREARM---NOT IN PLACE OF WRESTLING WITH SOMEONE OR HITTING THEM WITH A BATON OR USING OC. I AM NOT SUGGESTING THAT THIS IS WRONG, BUT I AM SUGGESTING THAT WE HAVE NOT FRAMED THE MATTER WELL WITH OUR RESPECTIVE COMMUNITIES.

I AM REMINDED OF GREG MEYER'S MASTER'S WORK IN THE 1980s WHEN HE STUDIED -- WHEN IS EFFECTIVE FORCE DEFINED AS PUTTING A SUSPECT ON THE GROUND. GREG'S FINDINGS THEN MIRRORED THE REALITY WE SEE TODAY. THE TASER WAS 1. HIGHLY EFFECTIVE; 2. DIDN'T INJURE COPS AND 3. DIDN'T INJURE SUSPECTS. THIS WAS IN DIRECT CONTRAST TO OTHER POLICE TOOLS LIKE FLASHLIGHTS THAT WERE 1. ALSO HIGHLY EFFECTIVE; 2. DIDN'T INJURE THE COPS A GREAT DEAL BUT 3. TENDED TO CAUSE SIGNIFICANT INJURIES TO THE PERSON BEING HIT.

- **TERRORISM.** AFTER THE BOMBING ON 7/7 IN LONDON, CHIEF BRATTON DIRECTED ME TO LEAD A TEAM TO LONDON TO WORK WITH THE MET AND LOOK AT WHAT THEY WERE DOING. SO, AS LUCK WOULD HAVE IT, I WAS THERE FOR THE SECOND SET OF BOMBINGS ON THE 21ST AND I WAS THERE FOR THE FAMOUS SHOOTING OF DE MENADES

THE REALITY OF THE SUICIDE BOMBER, NOW MOVED OUT OF PLACES LIKE ASIA AND THE MIDDLE EAST AND INTO WESTERN EUROPE, HAS US CONSIDERING COMPLETELY NEW JUSTIFICATION FOR THE USE OF DEADLY PHYSICAL FORCE. WE ARE CHANGING OUR RULES OF ENGAGEMENT IN RESPONSE TO THE WAR ON TERROR.

THIS IS SCARY STUFF. I KNOW THE SENIOR OFFICER WHO WAS RUNNING THE EVENT THAT DAY IN LONDON. THEY HAD JUST HAD 56 PEOPLE KILLED IN SUICIDE BOMBINGS TWO WEEKS EARLIER; THEY HAD FOUR PEOPLE TRY IT AGAIN THE DAY BEFORE AND THEY THOUGHT THEY WERE FOLLOWING ONE OF THEM, ONE OF THE BOMBERS WHO HAD FAILED ON THURSDAY NOT FOR LACK OF TRYING BUT FOR A PROBLEM WITH THE CHEMICAL MIX OF THE BOMB. AND NOW HE IS GOING ONTO THE SAME SUBWAY AGAIN. WHAT DO YOU DO?

THE SECOND AREA DEMANDING OUR ATTENTION IS TRAINING. HOW DO WE TRAIN OUR OFFICERS? WHAT ARE WE TRAINING THEM TO DO?

I WILL NEVER FORGET A TRAINING CLASS I WAS DELIVERING A COUPLE OF YEARS AGO AND I WAS JUST STARTING OUT AND I THOUGHT I WAS STARTING WITH AN EASY QUESTION: WHY DO WE SHOOT SOMEONE? LOOKING FOR THE "WE SHOT TO STOP THEM FROM COMMITTING SOME DEADLY ACT." AND I GOT INSTEAD "WE SHOOT TO KILL THEM."

WHEN I EXPLAINED THAT WAS WRONG, AND REALLY THEY WERE SHOOTING TO INCAPACITATE THEM, THE OFFICERS IN THIS DEPARTMENT EXPLAINED QUITE STRONGLY TO ME THAT MAYBE IN CALIFORNIA WE WERE SHOOTING TO STOP THEM, BUT IN THEIR CITY, THEY WERE SHOOTING TO KILL.

WE NEED TO PROVIDE QUALITY TRAINING—WE NEED TO MAKE SURE NOT TO CONFUSE TRAINING WITH QUALIFICATIONS. FIREARMS AND DEFENSIVE TACTICS ARE PERISHABLE SKILLS—USE THEM OR LOSE THEM. WE NEED TO CONSTANTLY BE WORKING ON THEM, ESPECIALLY THE JUDGMENT PIECE.

WE NEED TO THINK AND TALK AND UNDERSTAND THE DYNAMICS OF THE NEW WORKFORCE COUPLED WITH THE INCREASING FOCUS ON OFFICER SAFETY. WE NEED TO TRAIN TO THE REAL WORLD THAT WE ARE IN TODAY NOT TRAINING FOR YESTERDAY'S BATTLE.

THE CONVENTIONAL THINKING IS THAT MOST OFFICER INVOLVED SHOOTINGS ARE WITHIN 10 FEET. WELL I CAN TELL YOU THAT IS NOT THE CASE IN LA. WE DO GET SOME THAT ARE THIS CLOSE BUT WE GET LOTS THAT ARE 25 AND 30 AND 50 FEET. COULD THAT BE A RESULT OF OUR TRAINING WHICH STRESSES COVER AND DISTANCE GIVE YOU TIME? COULD IT BE A CHANGE IN HOW WE PERCEIVE THREATS AND MOVE MORE AGGRESSIVELY TO PROTECT OURSELVES?

I DON'T KNOW, BUT I DO KNOW THAT OUR TRAINING NEEDS TO BE CONSTANTLY REFRESHED TO REFLECT THE REALITIES OF THE STREET. ONE PRACTICE THAT WE USE IN LOS ANGELES: OUR TACTICAL TRAINERS RESPONSE TO EVERY OFFICER INVOLVED SHOOTINGS. AT A MINIMUM, THEY SEE THE SCENE AND ARE BRIEFED ON WHAT OCCURRED. THE FEEDBACK LOOP FROM INCIDENT TO CLASSROOM IS VERY SHORT.

THE THIRD AREA WE NEED TO FOCUS ON IS THE INVESTIGATION. IN ORDER TO DEFINE THESE, WE NEED A GOOD OFFENSE. WE NEED ALL THE FACTS, ALL THE DETAILS, AND ALL THE INFORMATION. OUR INVESTIGATIONS OF THESE CASES MUST BE TO PROVE "WHAT HAPPENED" AS WELL AS OFTEN TO DISPROVE WHAT DID NOT HAPPEN.

WE MUST TAKE STEPS IN OFFICER INVOLVED SHOOTINGS (OISs) THAT WE DON'T TAKE ON OTHER INVESTIGATIONS.

ON A STANDARD HOMICIDE INVESTIGATION, IF I INTERVIEW SOMEONE IN A NEIGHBORHOOD CANVASS AND THEY TELL ME THAT THEY DID NOT SEE OR HEAR ANYTHING, I AM NOT GENERALLY TAKING A TAPED STATEMENT. BUT IN AN OIS THERE IS A REAL NEED TO RECORD STATEMENTS.

MANY OF US HAVE BEEN IN THE SITUATION WHERE A WITNESS TELLS US DURING THE CANVASS ONE THING BUT WITHIN A DAY OR SO THE SAME WITNESS IS ON TELEVISION REPORTING HOW THE POLICE HAD EXECUTED AN INNOCENT INDIVIDUAL WHO WAS SURRENDERING OR LAYING ON THE GROUND OR WHATEVER HORRIBLE SCENARIO YOU WISH TO IMAGINE.

AND THESE INVESTIGATIONS ADD AN ELEMENT THAT, USING THAT WONDERFUL BRITISH PHRASE, ORDINARY DECENT CRIME DOESN'T. THESE INVESTIGATIONS ARE A MIXTURE OF CRIMINAL LAW AND EMPLOYMENT LAW. WE MUST CAREFULLY NAVIAGATE BETWEEN THE GREY LEGAL WATERS OF GARRITY AND COMPELLED INFORMATION AND THE POTENTIAL CONTAMINATION OF A CRIMINAL CASE WITH COMPELLED INFORMATION.

THE MOST STANDARD INVESTIGATION MODEL FOR OIS AND IN-CUSTODY DEATHS REMAINS HOMICIDE UNITS DOING A CRIMINAL INVESTIGATION WITH INTERNAL AFFAIRS UNITS DOING AN ADMINISTRATIVE INVESTIGATION.

THIS MODEL PERSISTS DESPITE A QUIET RECOGNITION THAT HOMICIDE UNITS DON'T LIKE TO INTERVIEW COPS, THEY ARE VERY UNCOMFORTABLE WITH THINKING OF A POLICE OFFICER AS A POTENTIAL CRIMINAL SUSPECT AND IA UNITS ARE OFTEN NOT EQUIPPED TO DO THIS TYPE OF INVESTIGATION.

I BELIEVE ONE OF THE GREATEST SERVICES A POLICE DEPARTMENT OWES—OWES—IT'S OFFICERS IS A COMPLETE, THOROUGH, TIMELY, ACCURATE INVESTIGATION. WE NEED TO PROTECT OUR OFFICERS WHEN THEY ARE RIGHT—THE VAST MAJORITY OF THE TIME. AND WE NEED TO HELP OUR OFFICERS IMPROVE WHEN THEY MAKE AN HONEST MISTAKE. AND WE NEED TO HOLD ACCOUNTABLE OUR OFFICERS IN THAT VERY SMALL PERCENTAGE OF THE TIME THAT THEY DO SOMETHING WRONG.

OUR INVESTIGATIONS NEED TO GET BETTER AND LOTS OF DIFFERENT PLACES AROUND THE COUNTRY HAVE RECOGNIZED THAT. FROM ROCHESTER, NY THAT CREATED A SPECIALIZED TEAM OF INVESTIGATIVE SUPERVISORS TO WASHINGTON DC WITH THE FORCE INVESTIGATION TEAM (FIT) TO LOS ANGELES PD WITH OUR INTEGRATED FORCE INVESTIGATION DIVISION.

PEOPLE ARE THINKING, TALKING, EXPERIMENTING AND WORKING ON DIFFERENT MODELS. JUST THIS WEEK I READ THE NEW POLICY FROM EDMONTON, CANADA WHERE, AFTER AN OFFICER INVOLVED SHOOTING, THEY WILL ASSEMBLE A JOINT, INTEGRATED TEAM TO INVESTIGATE, A TEAM COMPRISED OF SEVERAL POLICE DEPARTMENTS.

THIS PROTOCOL IS TO PROVIDE THE PUBLIC WITH A GREATER SENSE OF COMFORT ABOUT THE INTEGRITY OF OUR INVESTIGATIONS. AND WE ARE SEEING NEW EFFORTS:

- THE USE OF TOTAL STATIONS IN CREATING TO SCALE DRAWINGS
- THE USE OF AERIAL PLATFORMS TO TAKE OVERHEAD PICTURES TO SHOW POSITIONS
- THE USE OF POWER POINT TO PRESENT AND REALLY PROVIDE DETAILED BRIEFINGS TO DIFFERENT KEY AUDIENCES ABOUT WHAT HAD OCCURRED IN A PARTICULAR CASE
- A REAL FOCUS ON THE TRAJECTORY AND THE CRIME SCENE.

WE NEED TO LOOK AT OUR INVESTIGATIONS WITH A CRITICAL EYE MAKE SURE WE ARE APPLYING THE SAME CONCEPTS TO OUR ROUTINE INVESTIGATIONS THAT WE APPLY TO OURSELVES. WE NEED TO DO BETTER HERE.

EINSTEIN REPORTEDLY DEFINED INSANITY AS DOING THE SAME THING OVER AND OVER AGAIN AND EXPECTING A DIFFERENT RESULT. IN ESSENCE WE HAVE BEEN RUNNING OUR SYSTEMS THE SAME WAYS FOR DECADES. THE EVIDENCE IS CLEAR THAT THERE IS SIGNIFICANT DISSATISFACTION WITH EITHER THE RESULTS OR THE PUBLIC PERCEPTION OF THE SYSTEMS.

WE NEED TO CHANGE EITHER OUR SYSTEMS OR RISK LOSING ABILITY TO HANDLE OUR PROBLEMS OURSELVES.

I WOULD SUGGEST TO YOU THAT THIS IS A CONSTANT JOURNEY, ONE WITHOUT CONCLUSION. THAT WE NEED TO ENGAGE IN A CONSTANT SEARCH FOR: BETTER POLICIES; BETTER TRAINING; BETTER TOOLS. I WOULD ALSO SUGGEST THAT WE NEED TO BE RIGOROUS AND THOUGHTFUL IN OUR EFFORTS; THAT WE NEED TO APPLY SCIENCE AND BALANCE TO OUR WORK; AND THAT WE NEED TO CONSTANTLY REMIND OURSELVES THAT WE HAVE BEEN GRANTED THIS MONOPOLY ON THE USE OF DEADLY FORCE AND WE NEED TO TREAT IT WITH GREAT CARE AND RESPECT.

THANK YOU VERY MUCH.

PRESENTATION ABSTRACTS

The remainder of Chapter Two is a brief synopsis of presentations at the Summit and is not designed to be a comprehensive review of all of the material. It is based on abstracts written by the authors, notes from the participants and copies of the visual handouts provided. For further, and more detailed information the names, telephone numbers, and postal and e-mail addresses of the presenters are reprinted in the Appendix of the Report.

TASER TECHNOLOGY REVIEW, FINAL REPORT Office of the Police Complaint Commissioner Victoria Police Department Victoria, British Columbia, Canada

Presented by Mr. Bill Naughton
Deputy Chief of the Victoria Police Department

A presentation and discussion of the year-long examination of the use of TASERs by police in British Columbia. It included an assessment of the relative safety of TASER® use, and an overview of training, policy, and protocols. It also included identification of inappropriate use and circumstances in which TASER® use is contraindicated. Based on the study and medical evidence the following recommendations were written:

- Mandatory reporting of all TASER® use
- Consistent training across the province
- Training module on ED (*excited delirium* for police, paramedics and hospital staff)
- Extreme caution in using TASERs® while subject is restrained
- Extreme caution in using TASERs® in multiple applications
- Prohibition for use on people who are only passively resisting
- Caution on the use of TASERs® on pregnant women, elderly or children

The presenter took the position that information about effectiveness and results from the use of CEDs – when provided by manufacturers and privately contracted parties - is compromised by conflicts of interest, thereby raising ethical concerns. The Victoria Report is a valuable study for any agency considering deployment and policies regarding CEDs.

POLICE USE OF FORCE: CURRENT MEDICAL ISSUES AND CONCERNS

Presented by Christine A. Hall, MSc, MD FRCPC
Staff Physician
Department of Emergency Medicine
Calgary Health Region, Calgary, Alberta Canada

Dr. Hall discussed the past and present medical theories regarding sudden death proximal to police restraint and presented findings about the latest theory, ED or *excited delirium* and the symptoms which accompany the use of Conducted Energy Weapons (CEW). She explained the chemical and biological mechanisms that contribute to *relative hypoventilation* that appeared to be associated with ED. Dr. Hall further pointed out that the use of police restraints associated with ED can lead to cardiac arrest resulting in a failure to be able to resuscitate subjects. Presently there does not seem to be a medical protocol that can revive subjects who experience cardiac arrest following chemical- or mental-induced *relative hypoventilation*. The policy implications of ED became a central focus of many discussions during the Summit. Dr. Hall was part of the Victoria Police TASER® Study as a researcher and consultant.

USE OF FORCE POLICY AND PRACTICE: THE CHIEF'S PERSPECTIVE

Discussion by
David M. Kunkle, Chief, Dallas Police Department
and
Ralph Mendoza, Chief, Fort Worth Police Department

This session was an open forum about use of force concerns from the Chief's viewpoint. Chief Kunkle made the point that a major role of any police agency is that it "cannot allow officers to use techniques (use of force) that you can't protect them from." In other words, agencies have an obligation to equip and train officers in ways that do not expose them to unnecessary risk, both physically and legally. He saw TASERs® as a way to reduce fatalities in deadly force situations by providing a less-lethal alternative. Chief Mendoza emphasized the role of officers in protecting the Constitutional rights of citizens as a guiding star in the use of force. He mentioned that some Medical Examiners in Texas were concerned about the use of TASERs® and were ready to rule that on any fatalities following their use they would list "homicide" as the cause of death. He reviewed the different options and weapons in the use of force, but reminded the Summit that there is always the possibility of unintended consequences. In other words, despite our best efforts to protect Constitutional rights and restraint in the use of force, there will always be casualties that are unexpected and unintended.

IN-CUSTODY DEATH: TRAINING AND POLICY IN THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT

Presented by Mike Ault, Deputy Chief
Las Vegas Metropolitan Police Department

Chief Ault reviewed the history of in-custody deaths and the labels used to explain this phenomenon. He emphasized the studies of ED or *excited delirium* and raised the possibility that the force option used may not be related to the cause of death in most cases of in-custody fatalities. He used Morrison and Sadler's definition of ED as "A state of extreme mental and physiological excitement, characterized by extreme agitation, hyperthermia, euphoria, hostility, exceptional strength and endurance without apparent fatigue." He discussed policies, training, investigating, EMS protocols and Medical Examiner issues related to ED. Chief Ault gave a copy of the LVMD Procedural Order for officers dealing with ED.

POLICE USE OF FORCE: SYSTEMS FOR COLLECTION AND ANALYSIS OF DATA

Geoffrey P. Alpert, Ph.D.
Department of Criminology
University of South Carolina

Dr. Alpert discussed the legal environment, policy standards and the need to gather more systematic information about the use of force in law enforcement agencies. He noted that outside of a few limited studies, very little is known since information is not gathered nationally and some agencies have no system in place to analyze patterns and practices in the use of force. He listed information that was needed (data elements), and suggested ways to utilize and analyze use of force data. In his presentation, Dr. Alpert discussed the need for accountability and the trends in peer review, civilian review, management review and early warning systems. He concluded that this approach was an element of responsible risk management as well as effective management of police officers when it comes to the use of force.

BEST PRACTICES IN USE OF LESS-LETHAL WEAPONS

Steve Ijames, Major
Springfield, Missouri, Police Department
Springfield, Missouri

Major Ijames discussed the history of the past forty to fifty years in the search for less-lethal weapons for police. He explored the issue of TASER® weapons and the controversy about whether they are "safe," and the media "investigations" about the connection to over 150 deaths. He examined CEDs as an alternative to the use of deadly force and whether there should be operational deployment of these weapons. Major Ijames also outlined "rules of engagement" for encounters.

LESS-LETHAL WEAPONS: AN OVERVIEW OF EXISTING TECHNOLOGY

Charles Mesloh, Ph.D.

Assistant Professor

Director of the Weapons and Equipment Research Institute

Florida Gulf Coast University

Fort Myers, Florida

Dr. Mesloh presented a comprehensive overview of most of the widely used less-lethal weapons including impact, chemical agent, less-lethal munitions, electric, light and sound, compressed air and K-9s. His work and research covered several different aspects of these weapons in the arsenal of modern police agencies. He presented important findings regarding the effectiveness of TASER®-type weapons with respect to failures such as misses (38%), baggy clothes (32%), loose probes (22%), malfunctions and lost cartridges. He concluded that scientific research on less-lethal weapons continues and some of the answers will surprise both supporters and critics of many of these weapons.

TRAINING AND POLICY IN LESS-LETHAL WEAPONS

Greg Meyer, Captain

Los Angeles Police Department

Los Angeles, California

Captain Meyer reviewed a number of cases in which deadly force seemed to be the only alternative. The Los Angeles Police Commission directed the Department to search for less-lethal alternatives based on a number of media-heightened cases. The mission was to lower deaths and injuries to suspects and officers, reduce civil liability as much as possible, reduce disability time and pensions, and improve the public image. He looked at policy, training, equipment and tactics related to the use of less-lethal weapons, by conducting a study of 502 use of force incidents in the LAPD. Captain Meyer's master thesis study revealed a genuine and measurable impact in the use of TASERs®, and led to the current policy in his organization. His presentation reviewed the policy recommendations of the IACP and PERF as they related to the use of CEDs. Since there exist wide variations among departments in the deployment, use of force continuum and circumstances where CEDs are employed, he concluded with policy recommendations that every agency should consider in drafting their own policies.

A FORUM ON PROSECUTING AND DEFENDING POLICE USE OF FORCE CASES

Jason G. Schuette, J.D.
Assistant City Attorney
Dallas City Attorney's Office
Dallas, Texas

Along with
Robert W. Taylor, Ph.D.
Chair, Department of Criminal Justice
University of North Texas
Denton Texas

And
Tory J. Caeti, Ph.D.
Associate Professor
Department of Criminal Justice
University of North Texas
Denton, Texas

Attorney Schuette reviewed the major legal cases that involved exposure to risk for law enforcement personnel with regard to the allegations of excessive force, pointing out that the Lateral Vascular Neck Restraint is now largely limited to deadly force situations, or banned entirely as a result of liability cases. CEDs are now the next major target for litigation since there seemed to be some deaths associated with its use. In one case, the courts seem cognizant of the fact that CEDs "may well have prevented greater harm" and therefore can be defended against the allegations of excessive force. Mr. Schuette predicted that the use of "taser guns" will be treated by the courts through the familiar Fourth Amendment analysis of balancing the force used against the need for the use of force (the "objectively reasonable standard"). Dr. Taylor discussed the "objectively reasonable standard" and how difficult it was to apply. Dr. Caeti discussed examples of not only how difficult it was to apply the reasonableness standard, but that judgments often differ as to what is "objectively reasonable." All presenters agreed that, ultimately, these issues about the use of CEDs will be decided by the legal system and that there is a danger that excessive deployment and use will generate case law that, ultimately, may limit the discretion of officers and their agencies.

ISSUES IN LESS-LETHAL DEVICES: THE ETHICS OF ASSUMPTIONS

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Dr. Sykes discussed the "duty to investigate" when it comes to the deployment and use of CEDs in law enforcement. Since there are calls to ban CEDs or limit their use, there is a question about the association of CEDS with unexpected and conflicting rulings regarding the deaths of people

who have been subdued using such devices. He pointed out the professional obligation of police leaders to review all of the evidence in a scientific manner, and to defer to authorities that have no stake in whether we adopt certain policies with regard to CEDs. He suggested that the evidence at this point is not sufficient to warrant widespread deployment without restrictions on how and in what circumstances CEDs should be used. In other words, there is still a question about the level of risk associated with CEDs and further research is needed to determine its role as an operational tool in law enforcement.

Chapter 3 National Summit on the Police Use of Force

Observations and Suggestions

The widespread adoption of CEDs, commonly known as TASERs®, represents an innovation in weaponry as extensive as the transition to semi-automatic firearms which took place at the end of the 1980's and into the 1990's in north-American law enforcement. Although semi-automatic pistols were around since WWII, the transition took place in a very short time period. Similarly, though CEDs have been around for at least forty years, it has only been in the past five to seven years that they have dramatically expanded across the law enforcement landscape as widespread deployment took place. The factors driving this rapid diffusion in the use of less-lethal force has yet to be fully explained. Perhaps it is related to technologically-improved products, aggressive marketing by a major manufacturing firm and/or a move toward innovation that simply took time to gather momentum. Whatever the factors behind this change, it is apparent that CEDs are now the less-lethal weapon of choice within the law enforcement community.

This Summit was designed to explore the innovations in less-lethal force and the issue of in-custody deaths. Although there are a variety of less-lethal weapons, most of the discussion concerned the use of CEDs for at least three apparent reasons. First, there has been a national concern over deaths associated with, if not caused by, the use of these weapons. In fact, one organization, Amnesty International Inc., based on their research of in-custody-CED related deaths, called for a ban on the use of these weapons pending further research. Secondly, news organizations have conducted investigations and have raised serious questions about the circumstances in which police officers have used these weapons. And finally, within the law

enforcement community, a number of departments have assessed the relationship of CEDs to in-custody deaths as a matter of public trust.

The less-lethal force survey taken during the Summit does not represent a scientific sampling of law enforcement agencies since the respondents were self-selected by their attendance at the gathering. Therefore, it is not possible to conclude that this survey is representative of the law enforcement community as a whole. What this group does represent are larger police agencies that have extensive experience with less-lethal force and the accompanying expertise in the issues that were topics at the Summit. In addition, the departments represented cared enough about the issue to send their personnel to participate in a dialogue about the use of less-lethal force. In short, the participants represent the most professional and research-oriented agencies that are committed to improving law enforcement policies, training and practice.

Based on the speakers, research and evidence presented at the Summit, there was a consensus among the managers, leaders and trainers in law enforcement that the use of CEDs has a positive role to play in the police "toolbox." *The Victorian Police TASER® Report*, the *Madison Police Study of TASERs®* and the *Columbus Police TASER® Study*, all found that there was a significant preventive effect from the use of these weapons. In all three studies, when the circumstances permitted, the use CEDs was considered an important alternative to the use of more deadly force. The weight of the evidence seems to suggest that officer and suspect deaths and injuries can be reduced by the deployment of these devices. It would be fair to conclude that the use of CEDs will continue to expand due to their positive benefits. As a matter of fact, several participants during the Summit referred to this positive trade-off in their discussions and presentations.

However, the survey also indicated some hesitation among participating agencies regarding the deployment of CEDs. Among those agencies that authorized the use of these weapons, only 54.3 % allowed patrol officers to carry them as another tool to deal with situations where physical control was necessary. One explanation for this anomaly may be the concern about the relationship of CEDs and in-custody deaths so prevalent in the media. Another concern may be the liability exposure where the law remains unclear regarding the question of excessive force and whether CED use will be limited by court-derived standards. As the survey shows, in-custody deaths from CEDs were nearly as prevalent in agencies as in-custody deaths from OC-pepper spray and from "choke holds," a fact which may cause some hesitation about widespread deployment in many police departments.

Although there was a consensus about the use of CEDs as an alternative to more deadly force measures, the consensus was not as clear when it came to the use of CEDs in other arrest situations. One of the major topics of discussion among several speakers and participants was the belief that abuse of this tool could jeopardize its acceptance in the public's mind and in the courts. The survey revealed that training in the use of CEDs varied across agencies, that policy development in this area was not consistent across agencies, that few agencies had clear policy guidelines about when it was appropriate to use CEDs, that training in the recognition of *excited delirium* lagged in many agencies and that few policies had explicit limitations in the use of CEDs on children and elderly subjects. In other words, there was no consistency regarding the place this tool occupies on the Use of Force Continuum and there were significant differences among agencies as to the circumstances that permit or prohibit the use of CED's.

CEDs represent a relatively new use of force tool compared to such tools as the baton, PR-24, collapsible baton and OC-pepper spray, and the ultimate risk of their indiscriminate use without clear guidelines and limitations raises some ethical concerns. This may be one reason why some agencies are hesitant to authorize its use by patrol officers. Widespread deployment, according to several presenters, should be accompanied by extensive training to the agency's policies. It was also the opinion of many of the presenters that there should be clear policy elements that explain the circumstances under which the use of CEDs is appropriate and not appropriate..

One interesting finding of the survey was that few of the participants recalled someone from their agency being disciplined over an inappropriate use of less-lethal force. If this finding was accurate, it suggested that agencies needed to be more vigilant and take corrective action when some officers exceeded guidelines established by policies governing the use of CEDs. Failure to hold officers accountable can undermine the importance of this tool by enabling its abuse through lax accountability or poor supervision. As one presenter said, "if we abuse it, we lose it!" and further, "CEDs will go the way of the choke hold." Holding officers accountable for policy violations is a step in the direction of responsible use of an important tool.

The most talked about issue in many of the sessions was the medical discovery of *excited delirium* as an important explanation for in-custody deaths no matter the less-lethal weapon employed. Whether CEDs comprise a precipitating factor seems doubtful at this point in time, however, the research in this area is continuing. From the discussion, it is clear that multiple shocks using CEDs might increase the risks for subjects. Until more is known, it would be ethically responsible to limit the number of times CED shocks should be administered. The

Police Executive Research Forum policy recommendation is for officer to pause and to evaluate the CEDs effectiveness after the administration of the first charge.

It is impossible to summarize all of the important sessions and discussions that took place over the period of two days in January at the National Summit. Without question, it was a thoughtful and thought-provoking assembly. There was general agreement that there was a major role for less-lethal weapons, especially CEDs as an alternative to some situations in which deadly force would be justified. Such weapons hold the promise that if used in an "objectively reasonable" manner, their use will prevent the loss of life and serious injuries to both officers and those they come in contact with in confrontational circumstances. Further work needs to be done in many agencies in policy development, in training, in accountability and, in scientific circles, on the physiological responses to the use of less-lethal weapons.

During the summit, Professor Geoffrey Alpert pleaded for a national database, or at least some standardized data elements, about the use of force in policing. Such an effort could provide better information for policy development and training. Police agencies need to examine and analyze policies based on independent scientific research rather than waiting for the courts to decide based on "worst-case" incidents. Ethically speaking, police leaders, managers and trainers have an obligation to thoroughly research the methods they employ, especially if those methods may be associated with an increase in in-custody deaths, and especially if the justification for their use has the goal of saving lives. The indiscriminate deployment of less-lethal force without clear restrictive policies that are adhered to, and without extensive training, not only risks liability exposure, it ultimately could undermine the public's trust. In short, taking a step into the future with less-lethal weapons, going hand-in-hand with scientific research, is not only good practice, it is ethically defensible. This Summit was a positive step in that direction.

Appendix

NATIONAL SUMMIT ON POLICE USE OF FORCE

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