SENIOR LEADERSHIP PROGRAM

POLICE DISCRETION AND THE USE OF FORCE

A STUDY OF THE USE OF FORCE AMONG LAW ENFORCEMENT OFFICERS IN BREVARD COUNTY

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INTRODUCTION

This research project is about police discretion and the use of force; specifically, the use of force among law enforcement officers in Brevard County, Florida. Discretion in and of itself is not a bad thing, but the misuse of it has caused society to take a dim view of police who abuse their powers. Measures must be taken to establish clear and precise guidelines to govern the use of force by police.

One does not have to look far to find evidence of the abuse and misuse of police authority and power. Stories can be found in newspapers and on television regarding incidents of police corruption and the misuse of discretion daily. One case of police abuse of force is too many.

This paper shall discuss police discretion, constitutional guarantees against unnecessary force by police, landmark Supreme Court decisions relating to the use of force, state and federal civil liability, and police policy and a matrix relating the use of force to levels of resistance. Ethical considerations in relationship to the use of force by police will also be considered. A study of the use of force among law enforcement officers in Brevard County will also be discussed. Random samples of use of force incidents involving Brevard County law enforcement officers in 2000 were gathered and analyzed. A study of this type has never been done. It is expected that the results will aid administrators in better understanding when, why, where, and how law enforcement officers in Brevard County use force.

LITERATURE REVIEW

POLICE DISCRETION AND THE USE OF FORCE

Discretion can be defined as the power to make a choice. It has been said that police need discretion to maintain order in society. Discretion is that characteristic which allows police to balance the dynamic tension between civility and liberty in a democratic society (pegasus.cc.ucf.edu/~rwatkins/5105_lecture5.html). According to Kenneth Culp Davis, "a police officer has discretion whenever the effective limits on his power leave him free to make a choice among possible courses of action or inaction" (Davis 1969, p. 4). A police officer's discretion not to arrest represents the triumph of common sense over the excesses and 'unwisdom' of legislators. (Davis 1975, pp 62-66).

The function of the police is multifaceted. They are expected to enforce the law and maintain public order. The function of the police also extends beyond their law enforcement and peacekeeping roles to include a variety of services. According to observational data gathered during a study, it was found that the police on patrol, indeed, spend most of their time doing nothing at all—or in routine activities such as learning the beat or socializing with local people (Haller, 1976). Nevertheless, police officers find themselves conducting a variety of tasks—tasks that no one else cares to perform.

Regardless of how much time the police do or do not spend on each task, the matter still remains that they are unique in their role as enforcers. Bittner suggests that the police are a mechanism for the distribution of non-negotiable coercive force in accord with the dictates of an intuitive grasp of situational exigencies (Bittner, 1970).

"Discretion in criminal justice was 'discovered' by a remarkable research project, the American Bar Foundation Survey of the Administration of Criminal Justice." (Walker, 1993, p. 6). The survey began in 1953 in response to concerns about organized crime. The research team "discovered" discretion in the administration of criminal justice in 1956. It was found that many significant decisions were made from the time an

individual was introduced to the criminal justice system until the time he was released from it (Walker, 1993, p.6). With the "discovery" of discretion came the attempts to control it or abolish it. "Further research and discussion indicate that discretion is an inescapable reality, and the focus of reform shifts to efforts to regulate it" (Walker, 1993, p. 16).

Criticisms of how police exercise their discretion are not new or uncommon. Police officers have the authority to arrest. Authority is power. Oftentimes, police exercise that power in complex and chaotic circumstances. Police officers use force against people for a number of reasons, i.e. to detain, arrest, self-defense, in defense of others, in defense of property, to prevent escape or injury, to prevent destruction of evidence, and to quell riots. Although there are many reasons why a police may utilize force, there is but one basic purpose—to gain control of a person and to stop any threatening action by that person (http://laaw.com/uof6acc.htm).

It is important to realize that discretion is something that both an individual police officer and a police agency may exercise (Davis, 1969). Discretion is both a choice made by an individual officer and policy made by police administrators who govern and influence the actions of officers. Additionally, it should be noted that decisions made by individual officers and agencies are discretionary insofar as they retain the power to make them. An important issue about discretion is the importance of action or inaction by the police (Davis, 1969). When attempting to overcome actual or potential resistance, a police officer can rely on one or more types of domination and control: authority, power, persuasion, and force. The first three types of domination and control are achieved mentally. However, force is physical and the will of the person coerced is irrelevant (Klockars, 1984 pp. 529-544).

If the officer uses more force than is objectively reasonable, the officer will violate the person's 4th Amendment right to be free from unreasonable seizures, i.e. the unreasonable use of excessive force. (http://laaw.com/finalre2.htm).

There is much debate about how to control an officer's discretion. "There is no way to eliminate a patrolman's discretion. He must work alone, or with one other patrolman at most, and he must handle chaotic situations. The solution is to make the patrolman a person who is capable of handling the discretion and responsibility that is intrinsic to his job" (Chief James Ahern, New Haven PD, 1972).

Unfortunately, even competent and responsible officers have abused their discretion as it relates to the use of force. Therefore, it cannot be left up to the individual officer or his agency to exercise discretion in his use of force. Other external parameters must govern the use of force by police. How much force an officer can use against a "free citizen" is governed by the Constitution of the United States and by state law. Individual agencies also govern how much force their personnel can use through standard operating procedures. One such standard operating procedure governing the use of force by police mandates that officers will employ only that amount of force necessary to effect arrest, overcome resistance, prevent injury, or otherwise restore order (Cocoa Beach PD SOP 040, p 2).

"Discretion is not doing what you please. Discretion is bounded by norms—professional norms, community norms, legal norms, and moral norms. The future of policing as a profession depends upon whether discretion can be put to good use."(http://faculty.ncwc.edu/toconnor/205/205lect09.htm).

THE 4th, 8th, and 14th AMENDMENTS AND THE USE OF FORCE

A police officer is authorized to use force against individuals in society. This authorization makes policing a unique profession. The use of force includes the use of deadly force. "In some ways one can think of the use of force as a necessary evil…the choice of two evils. For example, to physically harm someone to prevent a greater harm" (http://web2.airmail.net/slf/summer94/force.html). According to the United States Supreme Court, an officer's use of force against a free citizen must be objectively

reasonable, based upon the totality of the circumstances known to him at the time (http://laaw.com/finalre2.htm).

Any use of force upon a free citizen by a police officer is governed by the 4th Amendment's "objective reasonableness" test:

(1) the severity of the crime at issue.

(2) whether the suspect poses an immediate threat to the safety of officers and others .

(3) whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

These three considerations fall under the umbrella of the "totality of the circumstances" known to the police officer at the time the force was utilized (http://laaw.com/finalre2.htm).

If the police officer uses an unreasonable amount of force, he may be liable under 42 USC § 1983 rulings for violation of the person's constitutional rights. Additionally, the officer could face federal criminal prosecution under 18 USC 242—Deprivation of Rights Under Color of Law (http: law.com/finalre2.htm).

If the police officer violates an individual's constitutional rights by the use of restraints, the officer's employer may also be liable as well. A policy and procedure must be in place regarding the use of restraints. An employer is responsible for training and supervising officers in the proper use of restraint devices. If the employer fails to have an adequate policy in place on the use of restraints, they may be held liable.

In *Canton v. Harris*, the United States Supreme Court ruled that the department is responsible for training officers in core tasks, e.g. the use of restraints (http:laaw.com/finalre2.htm). Harris was arrested and brought to the police department. She collapsed a few times while being booked. The officers decided to leave her on the floor so she would not hurt herself falling. She was not given any medical attention. After one hour, she was released from custody and transported to a nearby hospital. She

was diagnosed as suffering from emotional ailments and was hospitalized for a week (http:www.parma.com/police_civil_issues.html). Harris filed a due process suit under the 14th Amendment and claimed that the officers failed to provide her with necessary medical attention while in custody. The Supreme Court set the "deliberate indifference" rule in this case. It was found that the department's policy was valid, but unconstitutionally applied by its employees. "If policy-makers know to a moral certainty that a police officer will have to perform a certain duty and fail to provide the officer with proper training given the task to be performed, then the policy-makers are deliberately indifferent" (http: www.parma.com/police_civil_issues.html).

In order to determine whether or not an officer's use of force is justifiable or acceptable certain standards have been established by the criminal justice community that dictates how much force is justifiable to use. To be acceptable, a police officer's use of force must:

1. Be within the boundaries of the United States Constitutional and Statutory Law.
2. Be within the boundaries of the applicable state constitutional and statutory law if that state law is more restrictive than federal law.
3. Be within the acceptable limits of the applicable department policies, procedures, and training.
4. Be in compliance with applicable equipment manufacturers' guidelines (http: laaw.com/uof6acc.htm).

"Over the years the federal constitutional limits of a law enforcement officer's use of force have varied as the court's definitions have matured and become more detailed and the officer's ability to use force has come under greater scrutiny" (http: laaw.com/uof6acc.htm). Years ago the amount of force used by an officer was not controlled. "A 1964 survey found that the policies in ten of forty-five departments

merely advised officers to use 'good judgement' in shootings, while three had no written policies at all (Walker, 1993, p.26).

In 1974, Memphis Police Officer Elton Hymon shot and killed Edward Garner, a fifteen-year-old black male juvenile. In 1983, Garner's father contended that under 42 U.S.C. 1983, his son's constitutional rights had been violated so he brought his action before the Western District of Tennessee. The District Court ruled in favor of Hymon. The decision was reversed and remanded by the court of appeals. Eventually, the decision was brought before the United States Supreme Court (Israel, 1998, pp148-154). It was found that a police officer may not seize an unarmed, non-dangerous suspect by shooting him dead.

The Johnson v. Glick test was an analysis of the officer's use of force under the 14th Amendment's "due process clause." Whenever a law enforcement officer uses force on a person who is not "seized" "free citizen" the Johnson v. Glick test will be the federal analysis used. This test is "subjective" rather than the "objective" test of the 4th Amendment and asks four questions:

1. What was the need for the officer's use of force upon the person?
2. What was the relationship between the officer's need to use force and the amount of force that the officer used?
3. What was the extent of the injuries inflicted on the person by the officer's use of force?
4. (the "subjective" element of the test) Was the officer's use of force applied in good faith or maliciously and sadistically for the purpose of causing harm? (http:laaw.com/uof6acc.htm).

If an individual is convicted and incarcerated the standard is the "cruel and unusual punishment" standard under the 8th Amendment.

"In the years following Johnson v. Glick, the vast majority of lower federal courts have applied a four-part "substantive due process" test indiscriminately to all

excessive force claims lodged against law enforcement and prison officials under 1983, without considering whether the particular application of force might implicate a more specific constitutional right governed by a different standard. Many courts seemed to assume that there was a generic 'right' to be free from excessive force, grounded not in any particular constitutional provision but rather in 'basic principles of 1983 jurisprudence." (http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&vol=490&invol=386).

Later, the court rejected the generic standard notion in assessing excessive force claims brought under 1983. It was found that most claims would be about the 4th Amendment's prohibition against unreasonable seizures of the person or the 8th Amendment's ban on cruel and unusual punishment (http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&vol=490&invol=386).

"Determining whether the force used to effect a particular seizure is 'reasonable' under the 4th Amendment requires a careful balancing of the 'the nature and quality of the intrusion on the individual's 4th Amendment interests' against the countervailing governmental interests at stake" (http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=US&vol=490&invol=386). This test has become known as the "balancing test."

In 1989, the United States Supreme Court decided the case of Graham v. Conner. This case made it clear that an officer's use of force against a "seized" "free citizen" must be "objectively reasonable" based upon the 4th Amendment. This standard of "objective reasonableness" replaced the subjective shock the concise test when an officer uses force against a "seized" "free citizen" (http:laaw.com/uof6acc.htm).

In Graham v. Conner, a diabetic rushed into a convenience store to purchase some orange juice to offset an insulin reaction. Because too many customers were in line at the checkout counter, Graham decided to go to a nearby friend's home to get the orange juice. Officer Conner witnessed Graham entering the store and leaving it

abruptly. He became suspicious and made an investigative stop. Graham was handcuffed. Despite his attempts to explain the situation to the officers, several officers used excessive force against him. Subsequently, the Court agreed with Graham—the officers used excessive force (http: www.parma.com/police_civil_issues.html).

In summary, a police officer that uses more force than that which is objectively reasonable violates the individual's 4th Amendment right to be free from unreasonable seizures—the use of force. If an officer uses too much force, he can be held liable under 42 U.S.C. 1983 and he can be prosecuted in Federal Court. The officer can also be prosecuted in state court as well and in federal court. The employer of an officer that violates an individual's constitutional rights by the use of restraints, can be held liable for failure to train.

TODAY'S FEDERAL USE OF FORCE STANDARDS

Once a police officer decides to intervene in a situation, how he intervenes will be judged. Officers are empowered to use "necessary and proper" force to make an arrest, subdue an unruly person, or protect themselves or others. How he uses force and why he uses force will be judged (Wilson, 1978, p.44). Today, there are basically two legal standards governing the use of force by officers:

1. "Objective Reasonableness" standard which applies only to the amount of force used against "seized free citizens."
2. "Shock the Conscience" standard, which applies to "non-seized free citizens," "pre-trial detainees", and people who are "convicted and incarcerated."

The first standard is the most restrictive standard. The second and more lenient standard applies to any use of force by an officer that does not involve a "seized free citizen" (http://law.com/uof6acc.htm).

There are underlying requirements that must exist prior to an officer using force: the officer must have lawful authority, the officer must have a lawful objective for

taking action, and the officer need not retreat from a known threat (http:www.parma.com/police_civil_issues.html).

The parameters of "objective reasonableness" standard apply when an officer "seizes" a "free citizen" and consideration should be given to the following:

> "Balancing Test"—The balance involves the individual's right to privacy and physical integrity weighed against the government's legitimate interests in taking action against the individual. For instance, if an officer established that a crime existed, then an arrest would be appropriate based on probable cause. Likewise, if reasonable suspicion of weapon/threat or crime existed, then a Terry Frisk would be warranted.
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> "Objective" v. "Subjective"—What an officer believes is subjective and refers to the officer's intent. What others believe or conclude to be the acceptable use of force is objective. The officer's intent is irrelevant in determining the appropriateness of his actions. On the other hand, what the officer knows is critical in determining his actions. For instance, if an officer is confronted with a man that he knows is bigger, stronger, and in possession of a weapon, then these factors are relevant. Additionally, the officer must be "reasonably prudent and well-trained." The officer must know the legal limits of his authority without exception.
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> "Totality of the Circumstances"—An officer's use of force will be judged upon the "totality of circumstances" known by the officer at the moment the force was used. Information learned after the fact does not filter into the equation. The appropriateness of the officer's actions must be based upon the information the officer knew at the time he used the force. An officer may utilize background information to justify his use of force if known to the officer at the time of the incident.

"Not to be judged in Hindsight"—Because an officer has to make split judgment decisions, it is not fair to judge an officer in the "quiet sanctuary of a judge's courtroom." Consideration must be given only to the facts known by the officer at the time of the incident.

"Even Use of Force without Injury can be Excessive Force"—Just because an individual does not suffer injury as the result of force used by the officer, it does not defeat an excessive force claim.

"An Officer may NOT Assume the Negative"—A police officer cannot justify his use of force based upon the negative about a person if time and circumstances permit. An officer cannot use a negative assumption to justify the escalation in the use of force. A person may have nonviolent felony warrants out for his arrest. The officer cannot assume what the felony warrants are for and he cannot assume the negative to justify his use of force

"An Officer's Use of Force Does NOT have to be the 'Least Intrusive' Option Available"—An officer does not have to begin with the least amount of force available to him. Instead, he may select a level of force that is "objectively reasonable"

"An Officer's Use of Force will be Judged at the Moment the Force is Used"—In determining whether or not the police officer's use of force was acceptable, those facts that happen before and after its use is irrelevant. The outcome as a result of the force is not important.

"Deadly Force Standard"—There are six major use of deadly force standards and they are as follows:

- Tennessee V. Garner Standard—"The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. Where the suspect poses no immediate threat

to the officer or and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.

- Model Penal Code Standard—"An officer is authorized to use deadly force when it reasonably appears necessary…to apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed.
- Deadly Force Defense Standard—"An officer is equipped with a firearm to protect himself or others against the immediate threat of death or serious bodily injury.
- Defense of Life Standard/ CALEA Standard—"An officer may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life…in defense of any person in immediate danger of serious physical injury.
- Preservation of Life Standard—"Regardless of the nature of the crime or the justification for firing at a suspect, officers must remember that their basic responsibility is to protect life. Deadly force is an act of last resort and will be used only when other reasonable alternatives are impracticable or fail. Officers will plan ahead and consider alternatives, which will reduce the possibility of needing to use deadly force.
- Minimum Force that is Necessary Standard-–—"Officers should only use the minimum force that is necessary (http://laaw.com/psnews.htm).

There are many use of deadly force standards to guide and direct officers in the use of deadly force. When developing a deadly force policy, only one standard should be used. Although the primary topic of the research paper is police discretion as it relates to the use of non-deadly force, this author would be remiss not to mention the

major standards governing the use of deadly force. Any level of force used by police could escalate to the level of deadly force.

"A Person has the Right to Use Self-Defense Against an Officer's Excessive Force"—One does not have the right to resist an unlawful arrest unless the amount of force used by the officer is likely to cause serious injury or death. In self-defense a person can resist excessive force if the arrest is unlawful and he believes the force is life threatening (http:laaw.com/uof6accc.htm).

"The Reasonableness Inquiry"—The reasonableness of an officer's use of force is based upon the totality of circumstances known to the officer at the time the force was used (http://laaw.com/uof6acc.htm).

> Whenever an officer decides to use force, he must know that the use of force is justified regardless of the level of force utilized. Any force can be excessive force if it is not justified. There are many standards floating around that govern the actions of officers. Because of the many standards in existence, it is imperative that officers receive specific guidance from their respective agencies on the use of force.

STATE AND FEDERAL CIVIL LIABILITY AND THE USE OF FORCE

"Suing the government is the second most popular indoor sport in America, and police are often the targets of lawsuits"(http:faculty.ncwc.edu.to.connor/205/205lect12.htm). Police managers must take every possible course of action to prevent the abuse of power by their officers to minimize liability. The abuse of police power cannot be tolerated. Any force utilized by the police must be deemed as necessary force.

There are over 30,000 civil actions filed against police every year, between 4-8% of them result in an unfavorable verdict, where the average jury award is $2 million (http:faculty.ncwc.edu.to.connor/205/205lect12.htm). There are two ways to sue the police. "One, the lawsuit may be filed in state court as a tort law claim. Two, the lawsuit

may be filed in federal court as a violation of Title 42 of the United States Code, Section 1983. States cannot be sued in civil rights claim, but municipalities and sheriffs can be sued if they are (a) acting under color of state law, and (b) violating a specific amendment right in the constitution"(http:faculty.ncwc.edu.to.connor/205/205lect12.htm).

A governmental entity is liable for all negligent and intentional torts, unless they are committed outside the course and scope of the employee's employment or the officer was acting in bad faith, with malicious purpose or in a manner exhibiting willful disregard of human rights, safety or property. City of Fort Lauderdale v. Todaro, 632So.2d 655 (Fla.4th DCA 1994). The fact that an officer may have intentionally abused his office does not in and of itself shield the municipality from liability under Florida sovereign immunity law. Johnson v. Cannon, 947 F. Supp. 1567 (M.D. Fla. 1996).

Florida recognizes a state tort claim for "excessive force" in the context of a battery claim. However, "a presumption of good faith attaches to an officer's use of force in making a lawful arrest and an officer is liable for damages only where the force used is clearly excessive…a battery claim for excessive force is analyzed by focusing upon whether the amount of force used was reasonable under the circumstances. City of Miami v. Sanders, 672 So.2nd2d 46, 47 (Fla.3rd DCA 1996).

Florida Statute 766.085(1) provides a defense to any action for damages for personal injury or wrongful death or for injury to property, if such action arose from injuries sustained by a participant during the commission or attempted commission of a forcible felony. Gonzalez v. Liberty Mutual Ins.Co. 634 So.2d 178 (Fla. 2nd DCA 1994).

In Florida, either the officer is sued or the entity—never both. In the event of a bad arrest, there is either a "good faith" arrest, and the agency is liable, or there is malicious intent on the part of the officer, and the officer is liable. The most an entity will have to pay is $100,000.00, unless there are aggregate circumstances, in which the cap could raise to $200,000.00. The $100,000.00 cap does not apply when suing the individual officer.

"Federal Civil Rights Claims requires the plaintiff t allege and prove that the arrest was made "under color of law', and in all instances other than excessive force, that there was an absence of probable cause. 'Under color of law' means that person performing the unconstitutional action did so pursuant to the power of his office allegedly given by state law." U.S. v. Classic, 313 US 299, 326 (1941).

"The leading case in police department liability under federal law is Monell v. Dept. of Social Services (1978). Under this ruling, it must be shown that the department adopted or promulgated a 'custom' or policy that was the driving force behind the officer's violation of constitutional rights. A 'pattern' of constitutional violations and an awareness of them by high-ranking officials must be demonstrated. However, there is precedent holding departments accountable for one single act as fulfilling 'pattern' requirement" (http:faculty.ncwc.edu.to.connor/205/205lect12.htm).

In federal court, there is no cap as exists in state court. Furthermore, if a person loses in federal court, they still have recourse under state law.

THE USE OF FORCE MATRIX

The Criminal Justice Standards and Training Defensive Tactics Task Force developed a matrix identifying the use of force and levels of resistance. The matrix guides officers in selecting effective reasonable and legal force options in a verbal or physical encounter. When a person increases the level of resistance, the officer can increase his response until the resistance ceases and the officer is able to gain control (Flesch, 1994, p.5).

An officer must determine whether or not the individual poses an imminent a threat to himself or another party. The greater the level of threat allows for a greater level of force used by the officer. The matrix of force was established to assist police officers in defensive tactics training. A lack of consistency existed in the training of officers and a general lack of motor learning skills. Research was conducted and guidelines were established to assist and govern the use of force utilized by officers. "In criminal justice

work, the force used must fall under the guidelines established by the statutes and the department. If the officer steps beyond these guidelines, then the force used becomes excessive (Flesch, 1994, p 1).

"The Reasonableness Inquiry"—There are five determining factors that attribute to the reasonableness of an officer's use of force and they are as follows:

a. Imminent Threat to Officers and /or Others
    - PPCT's Force Continuum
    - Officers may not assume the negative
b. Actively Resisting Seizure
c. Circumstances are Tense, Uncertain, and Rapidly Evolving
d. Severity of the Crime at Issue
e. Attempting to Evade Seizure by Flight

The "totality of circumstances" rest primarily in the aforementioned five factors when determining the reasonableness of force utilized (http:laaw.com/uof6acc.htm).

The Task Force recognized the lack of direction provided to officers when confronted with various kinds of cooperative, passive, non-cooperative, hostile, aggressive and dangerous subjects (Flesch, 1994, p.2). The Task Force identified certain levels of resistance and arranged them in a hierarchical manner. Likewise, they identified the levels of force an officer may utilize. The two were combined into a matrix that established the proper relationship between levels of resistance and appropriate levels of response to that resistance. (See Appendix A—Use of Force/Levels of Resistance).

Police administrators realized that vague guidelines render an officer helpless and the officer's interpretation may not be the same as the administrations without proper guidelines. The development of the matrix was designed to end confusion and cover all situations. Without identifying types of resistance and appropriate responses to resistance, the amount of force necessary was left up to the officer's discretion. The matrix serves to prohibit the officer from over compensating his use of force.

ETHICAL CONSIDERATIONS AND THE USE OF FORCE

Police work is ethically complicated. Officers are the only persons permitted to use force as part of their occupation. Within split seconds, an officer must act as judge, jury, and sentencer. Police officers are expected to walk on moral and ethical terrain daily. Police officers are trained in criminal law and procedure, self-defense tactics, gun range training, vehicle pursuits, and other departmental policies. However, officers lack training in what is meant by "necessary," "justifiable," and "reasonable" (http:web2.airmail.net/slf/summer94/force.html).

"There is a growing body of literature on the importance of teaching ethics in criminal justice curriculums" (Braswell, 1996, p.83). In the past, officers were given a gun and a badge and sent out to do a job…it was hoped that the officer would use common sense and do the right thing. Officers were only trained in rudimentary tasks and they relied on their fellow officers as role models. Ethical learning rested with the values of the peer group. "Police leaders have a responsibility to make explicit their agency's ethical vision to guide officer discretion" (http://web2.airmail.net/slf/summer94/force.html).

"The majority of our nation's 700,000 law enforcement officers are honest, hardworking individuals who are willing to put their lives on the line to protect the public. If we want to end the few cases of police misconduct that do happen, we must both re-evaluate hiring practices and institute better training and education programs" (Law Enforcement Technology, May 1999, p.12). Training in ethics has to be at the core of police training curriculum. "Police officers should be prepared to use force in legal, technical, tactical, and ethical ways. To create a situation in which officers are left to find their own way can lead to many doubts and second guesses, organizational conflict and criticism from the many publics who monitor police activities" (http://web2.airmail.net/slf/summer94/force.html).

The need to control, direct and guide the use of force by officers is imperative. By implementing use of force policy and guidelines, departments can minimize officer discretion and thwart corruption. The abuse of discretion is corruption. One case of excessive force is one case too many. Understanding and managing the use of force should be a priority for all law enforcement executives. Thinking the negative consequences of a use of force incident usually strikes instant fear into the hearts of most ardent law enforcement managers. Law suites are costly. Managers should take proactive measures to minimize their liability.

"There are two ways to learn police ethics and the use of force. One way is to learn on the job, to make your moral decisions in haste under the time pressures of police work. This is by far the most common method of learning, the way virtually all of the half million police officer in the United States decide what ethical principles they will follow in their work. The other way may be a better way…in a removed setting" (Sherman, 1982, pp 10-20).

If police administrators fail to train their officers in the ethical use of discretion and force, then they risk loosing the public trust. Thomas Jefferson said, "I know no safe depositary of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. This is the true corrective of abuses of constitutional power" (http://wwwgeocities.com/CapitolHill/7970/jefpco50htm). In addition to losing the public trust, they will lose money—as the result of settlements and judgments.

RESEARCH METHODOLOGY

The research strategy was a document analysis. During the summer of 2001, use of force reports documented by law enforcement agencies in Brevard County, Florida were gathered from eleven agencies. A random table of numbers was utilized in selecting a 20% random sample of use of force reports from each participating agency. A random sample of 102 .use of force reports were gathered.

A codebook was created identifying fourteen theoretically derived variables. These variables were selected by determining several factors that could influence when, why, where, and how law enforcement officers in Brevard County use force and include: date of incident, month during the year, day of week, time of day, holiday, level of resistance, level of force, gender of the offender, race/ethnicity of the offender, age of the offender, injury sustained by the offender, injury sustained by the officer, and crime seriousness. The variables recorded were reviewed to enhance content validity. A codebook was then created using these variables and coding schemes were created.

Stratification and Data Entry.

Each use of force reports from the law enforcement agencies were searched separately. The reports were numbered and a 20% random sample was selected from each agency using the random table of numbers. A total of one hundred and two use of force reports were gathered.

Data Verification.

The gathered sample was reexamined. The use of force reports were examined for errors in interpretation and coding. Few errors were discovered and the data set was reexamined and corrected. Finally, the reports were re-read a third time to ensure the correctness of the data. These steps were taken to assure a clean and accurate data set.

FINDINGS

Table 1 presents the available demographic, charging and injury characteristics of all incidents involving the use of force by Brevard County Law Enforcement Officers during 2000. As shown in this table, 84.3% (N=86) of the offenders were male, while 13.7% (N=14) were female; only (2% N=2) of the offenders' gender were unknown.

In 74.5% (N=76) of the cases examined, the offender was found to be white and 22.5% (N=23) were black. In 2.9% (3) of the cases examined, the race of the offender was unknown. In the 102 cases examined, none of the offenders were found to be Asian, Hispanic, or another race.

There was only one variable (age of the offender) where a considerable loss of data existed in some of the use of force reports gathered. Therefore, secondary arrest data were examined. The ages of the offenders were extrapolated from the arrest data on file, which corresponded with the respective use of force incidents. For example, when an offender's date of birth or age were not provided on the use of force form, corresponding arrest data was researched in order to gather the age variable. If any doubt existed while researching and coding the data, the age of the offender was coded as "unknown."

Analyses of the gender of the offender showed that males (N=86, 84.3%) were more involved in use of force incidents than females (N=14, 13.7%). White offenders (N=76, 74.5%) were involved in use of force incidents than black offenders (N=23, 22.5%). Offenders in there twenties (N=31, 30.4%) were more often involved in use of force incidents than offenders of other age groups. The data revealed that 16.7% (N=17) of the offenders were less than twenty years of age. Of the reports examined, 30.4% (N=31) of the offenders were in their twenties, 21.6% (N=22) were in their thirties, 22.5% (N=23) were in their forties, 2.9% (N=3) were in their fifties, 1% (N=1)

was in his/her sixties. The age of the offender was "unknown" in nearly 5% of the cases examined. The youngest offender was found to be ten years old and the oldest offender was sixty-five years old.

Nearly twenty-seven percent of the reports examined revealed that the offender sustained some type of injury during the use of force incident (26.5%, N=27). However, only 5.9% (N=6) of officers sustained some type of injury during the use of force incident.

Most of the offenders were arrested on multiple charges (48%, N=49). Nearly eight percent (7.8%, N=8) of the cases involved non-violent felony charges; two percent (2%, N=2) of the cases involved violent felony charges; and, nearly twelve percent (11.8, N=12) of the cases involved "other misdemeanor" charges.

Separate misdemeanor variables were gathered of the following "stand-alone" charges: "RAWOV," Resisting Arrest Without Violence, "RAWV," Resisting Arrest With Violence, and "Battery LEO," Battery on a Law Enforcement Officer. Typically, "RAWOV" and "RAWV" were found as a companion charge. In other words, the offender violated another law and was placed under arrest. Thereafter, the offender resisted arrest and was then charged with resisting the arrest. Likewise, battery upon a law enforcement officer does not normally occur without a predicate offense occurring first. It was found that stand-alone "RAWOV" occurred 9.8% (N=10) in the cases examined. "RAWV" occurred 3.9% (N=4) in the cases examined. "Battery LEO" occurred 2% (N=2) in the cases examined.

In 6.9% (N=7) of the cases, an arrest warrant existed and 2.9% (N=3) of the cases involved Baker Acts. Only 4.9% (N=5) of reports examined involved no arrests. Despite the low number of "no arrests" incidents, these few cases may be the most controversial regarding the justification to utilize force against a free citizen.

Statistically significant differences were also found by month, day of the week, and time of the day. The majority of incidents occurred during the month of

November (N=14, 13.7%) and the least number of incidents occurred in September (N=6, 5.9%) and October (N=6, 5.9%). The majority of incidents occurred on Tuesdays (N=21, 20.6%) and the least number of incidents occurred on Mondays (N=12, 11.8%). The majority of incidents were found to have happened between midnight and six o'clock in the morning (N=41, 40.2%) and the least amount of incidents happened between six o'clock in the morning and noontime (N=6, 5.9%). There was only one incident involving the use of force which happened on a holiday.

--Table 1 About Here--

Table 2 presents the deposition of a cross tabulation test of the following: age of the offender variable and offense/charge variable; offender injury variable and officer injury variable; and, level of resistance variable and level of force variable.

The cross tabulation test conducted on the age of the offender variable and the charge/offense variable revealed that those offenders in their twenties were charged with the following: four offenders were charged with a felony; none for a violent felony; 4 offenders for "other misdemeanor;" two offenders for RAWOV; two offenders for RAWV; none for Battery LEO; fifteen offenders were charged with multiple charges; none for Baker; two were not arrested; and, two offenders were arrested on a warrant (Total N=31).

The cross tabulation test conducted on the offender injury variable and the officer injury variable revealed the following: twenty-seven offenders experienced some type of injury and seventy-five offenders experienced no injury. Six officers experienced some type of injury while ninety-six officers experienced no injury. There were only two incidents in which both the offender and officer were injured. There were seventy-one cases in which both the offender and the officer were not injured.

The cross tabulation test conducted on the level of resistance variable and the level of force variable revealed that there were 38 instances involving Level 4 Resistance

met with Level 3 Force. The Level of Resistance most often used was Level 4 (N=49). The Level of Force most often used was Level 3 (N=74).

DISCUSSION AND CONCLUSION

This paper began by stating that an analyses of the use of force utilized by law enforcement officers in Brevard County had never been conducted before. Furthermore, it was suggested that an analyses may assist and aid administrators in better understanding when, why, where, and how law enforcement officers in Brevard County use force.

The data in this study suggests empirically that certain variables are related to use of force incidents. First, the race, gender, and age of an offender appear to be statistically significant. The variables analyzed suggests that white male offenders in their twenties are more likely than others to be involved in use of force incidents. Second, the month, day of the week, and time of the day appear to be statistically significant. The variables analyzed suggests that more use of incidents happen in November than any other month. Tuesdays were found to be the most prevalent day of the week in which force was utilized. Use of force incidents primarily occur between midnight and six in the morning. Third, the majority of offenders resisting arrest rose to a Level 4 Resistance and the majority of officers responded to resistance by utilizing a Level 3 Force. Lastly, the majority of offenders arrested were charged with multiple charges; however, there were at least sixteen cases involving "stand-alone" Resisting Arrest or Battery LEO. Furthermore, there were five use of force incidents, which involved no arrests. As stated previously, these few cases may be the most controversial. Any use of force utilized against a free citizen must be justified.

Although the State of Florida developed the Use of Force Matrix for agencies to incorporate, examination of the standard operating procedures from each agency and the

various use of force forms prove that the agencies in Brevard County do no operate uniformly. This finding, in particular, is worthy of considerable more examination.

Other issues also warrant further research. First, in the sampling strategy, only a 20% random sample was examined. A different pattern may emerge if the entire sample was assessed.

Second, from a methodological view, input from the offender may not support the same findings. This could be achieved via a questionnaire sent to offenders involved in use of force incidents. However, the purpose of this study was primarily descriptive, not comparative.

Further study in each of these areas is certainly warranted and justified if administrators are to have a better understanding of the use of force by their officers. These preliminary findings support the need for additional research on the use of force among law enforcement officers in Brevard County.

TABLES

Table 1

CHARACTERISTICS OF USE OF FORCE INCIDENTS IN BREVARD 2000

	N	%	Missing/Unknown
Gender			
Male	86	84.3	2(2.0%)
Female	14	13.7	
Race/Ethnicity			
White	76	74.5	3(2.9%)
Black	23	22.5	
Age of Offender			
Less than 20	17	16.7	5(4.9%)
20-29	31	30.4	
30-39	22	21.6	
40-49	23	22.5	
50-59	3	2.9	
60-69	1	1.0	
Unknown			
Type of Charge			
Felony	8	7.8	
Violent Felony	2	2.0	
Other Misdemeanor	12	11.8	
RAWOV	10	9.8	
RAWV	4	3.9	
Battery LEO	2	2.0	
Multiple Charges	49	48.0	
Baker Act	3	2.9	
No Arrest/Charges	5	4.9	
Warrant	7	6.9	
Month			
January	7	6.9	
February	9	8.8	
March	12	11.8	
April	9	8.8	
May	8	7.8	
June	9	8.8	
July	7	6.9	
August	7	6.9	
September	6	5.9	
October	6	5.9	
November	14	13.7	
December	8	7.8	
Day of Week			
Monday	12	11.8	
Tuesday	21	20.6	
Wednesday	12	11.8	
Thursday	14	13.7	
Friday	15	14.7	
Saturday	15	14.7	
Sunday	13	12.7	
Time of Day			
0600-1200	6	5.9	8(7.8%)
1200-1800	20	19.6	
1800-2400	27	26.7	
2400-0600	41	40.2	

Table 2

CROSS TABULATION TESTS ON USE OF FORCE INCIDENTS IN BREVARD COUNTY 2000

AGE OF OFFENDERS

	Less than 20	20's	30's	40's	50's	60's	Unknown
TYPES OF CRIME							
Felony	2	4	1	1			
Violent Felony	1			1			
Other Misdemeanor	1	4	4	3			
RAWOV	1	2	2	1	1	1	2
RAWV		2	1				1
Battery LEO			1	1			
Multiple	8	15	10	12	2		2
Baker Act	2			1			
No Arrest	2	2		1			
Warrant		2	3	2			

OFFICER/OFFENDER INJURED CROSSTABULATION

	OFFICER INJURED		
	YES	NO	TOTAL
OFFENDER INJURED			
YES	2	25	27
NO	4	71	75
TOTAL	6	96	102

LEVEL OF RESISTANCE/LEVEL OF FORCE CROSSTABULATION

	FORCE					
	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5	LEVEL 6
RESISTANCE						
LEVEL 1		5	1			
LEVEL 2			3			
LEVEL 3		2	9		1	
LEVEL 4	1	1	38	7	2	
LEVEL 5			20	1	4	
LEVEL 6		1	2	2		
UNKNOWN			1			1

USE OF FORCE/LEVELS OF RESISTANCE MATRIX

As experienced criminal justice practitioners and defensive tactics instructors, the Task Force members recognized the lack of direction generally provided to officers by statute, court decisions and agency policy when confronted with various kinds of cooperative, passive, non-cooperative, hostile, aggressive and dangerous subjects. Moreover, the Task Force was also aware of the need for guidelines to assist officers in proper use of force decision making, about when to engage or disengage a subject and when to escalate or de-escalate the level of force applied.

Consequently, the Task Force identified various levels of subject resistance and arranged these levels in a hierarchical manner or a continuum, beginning with the lowest level and progressing to the highest level. The same approach was taken in the analysis and subsequent establishment of the levels of force an officer may employ. Finally, the Task Force combined the continua into a matrix that related specific levels of subject resistance to the appropriate level of force to be employed by officers responding to the subject resistance.

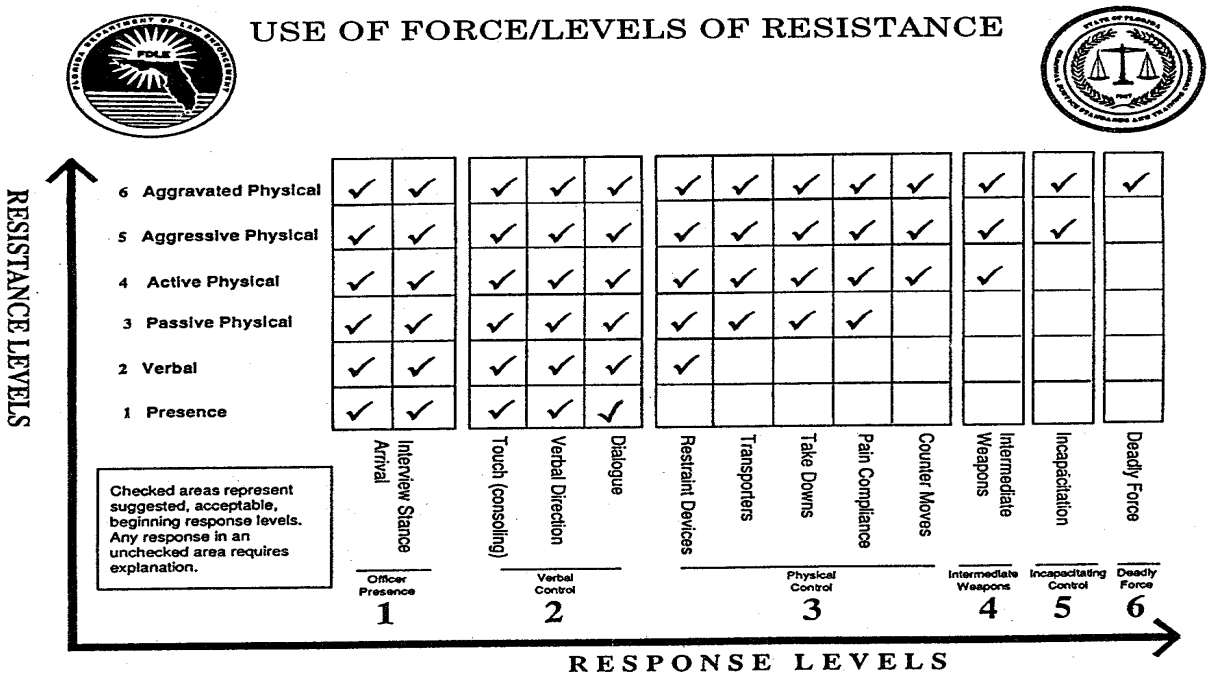

Figure 1

The following definitions were developed for each of the levels of resistance and officer response. They begin at the lowest level and progress to the highest level.

RESISTANCE LEVELS:

1. **Presence:** A subject is there, on the scene, in attendance of suspicious activity.
2. **Verbal Resistance:** A subject may verbally refuse to comply with an officer's requests or attempts to control the situation. The subject may threaten the officer with further resistance. Or, the subject may not respond to the officer.
3. **Passive Physical Resistance:** A subject physically refuses to comply or respond. He/she does not make any attempt to physically defeat the actions of the officer, but forces the officer to employ physical maneuvers to establish control. An example would be "dead weight."
4. **Active Physical Resistance:** A subject makes physically evasive movements to defeat an officer's attempt at control. This may be in the form of bracing or tensing, attempting to push/pull away or not allowing the officer to get close to him/her. No attempt to harm the officer exists at this level.
5. **Aggressive Physical Resistance:** A subject makes overt, hostile, attacking movements which may cause injury, but are not likely to cause death or great bodily harm to the officer or others.
6. **Aggravated Physical Resistance:** A subject makes overt, hostile, attacking movements with or without a weapon with the intent and apparent ability to cause death or great bodily harm to the officer or others.

OFFICER RESPONSE LEVELS:

1. **Presence:** The officer is there, on the scene, in attendance. This includes proper voice and/or other identification, body language and awareness by the subject that he/she is dealing with an officer.

1. **Field Interview Stance:** The officer adopts a stance outside of his/her danger zone that provides appropriate protection and forms the basis of an effective physical response if attacked. The average danger zone is 6 feet for empty hand confrontations. The danger zone is an area around the subject that the subject controls and from which the subject can reach the officer in one movement. If two

or more movements are needed to reach the officer, the officer is outside the danger zone. In such a position the firearm or strong side leg is back; the non-firearm or weak side leg is forward; the feet are about shoulder width apart; the knees are slightly bent giving balance, control, and a lower body center of gravity; the body weight is equally distributed; and the hands are up for guarding the upper body.

2. **Dialogue:** A two–way, controlled, non-emotional communication between the officer and subject, aimed at problem identification and/or resolution.

2. **Verbal Direction:** An officer tells or commands a subject to engage in, or refrain from a specific action or non-action.

2. **Touch:** An officer employs a soft, assisting touch when directing, or a firm, strong touch prior to escalating to a higher level of force.

3. **Transporters:** Techniques used to control and/or move a subject from point A to point B with minimum effort by the officer in order to gain and retain control over the subject. Transporters are techniques that move the joints beyond the normal range of motion. This will normally create enough pain in the subject to motivate him/her to comply with the officer's orders.

3. **Pain Compliance:** Techniques that force a subject to comply with an officer as result of the officer inflicting controlled pain upon specific points in the subject's body, such as pressure point techniques.

3. **Take Downs:** Techniques that, in a controlled manner, redirect a subject to the ground in order to limit his/her physical resistance and to facilitate the application of a restraint device. An example of this would be leg sweeps to the subject. At this level, it is the officer's responsibility to control the subject safely to the ground.

3. **Restraint Devices:** Mechanical tools used to restrict a subject's movement, such as handcuffs, flex cuffs, leg irons, belly chains, optional nylon restraining devices, etc.

3. **Counter Moves:** Techniques that impede a subject's movement toward an officer or others such as blocking, parrying, dodging, weaving, re-directing, striking, kicking, or avoiding, followed by appropriate controlling techniques.

hand tactics are not reasonable or failing but lethal force is not justified.

5. **Incapacitation:** Techniques that are intended to stun or render a subject temporarily unconscious, delivered with or without an impact weapon, such as a strike to a major nerve area, which results in moderate physical harm to the subject.

6. **Deadly Force:** Techniques that may result in imminent death or serious injury or permanent disfigurement, such as impact weapon strikes to head or use of firearms. Deadly Force techniques are a last resort.

The Use of Force/Levels of Resistance Matrix is meant to be used as a guideline for an officer to select effective reasonable and legal force options in a verbal or physical encounter. As a subject increases his/her resistance level from verbal to physical, an officer may have to increase the level of his/her response until the resistance ceases and the officer is able to gain control of the subject. As soon as the point of subject compliance is reached, the officer must de-escalate his/her response level to the minimum force necessary to control the subject.

In properly determining the appropriate response to a subject's resistance, several factors must be evaluated by an officer. For instance, an unarmed, small framed, female, juvenile subject may be displaying level 5 resistance, but would probably only require a level 3 response by the average officer. On the other hand, a single officer faced with a very large professional wrestler or football player may very well find that his/her response to even mild resistance must be escalated to a relatively high point on the matrix. It must be remembered that by law, an officer need not retreat in his/her efforts to lawfully control a subject, but may utilize the amount of force necessary to accomplish his/her task. This is not to say that a tactical retreat in the face of overwhelming odds may not be a wise choice.

Additional factors (variables) that must be considered when making use of force decisions include:

SUBJECT FACTORS:

1. Seriousness of crime committed by subject.
2. Size, age, and weight of subject.
3. Apparent physical ability of subject.
4. Number of subjects present who are involved, or who may become involved.
5. Weapons possessed by or available to the subject.
6. Known history of violence by subject.
7. Presence of innocents or potential victims in the area.
8. Whether the subject can be recaptured at a later time.
9. Whether evidence is likely to be destroyed.

OFFICER FACTORS:

- Size, physical ability and defensive tactics expertise of the officer.
- Number of officers present or available.
- Immediate reaction in the case of sudden attack.
- Weapons or restraint devices available to the officer.
- Legal requirements.
- Agency policy.

INJURY RATING:

- Slight physical harm - An injury that would NOT prohibit normal duty/activity.
- Moderate physical harm - Can NOT perform normal duties; medical treatment necessary.
- Serious physical harm - Great bodily harm (see statute).

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