USE OF FORCE CONTINUUM FROM A LAW ENFORCEMENT PERSPECTIVE

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CHAPTER 6

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EDUCATION

B.S. in Education, Texas A&I (A&M) University, Kingsville, Texas
Criminal Justice Graduate Studies, F.B. I. National Academy, University of Virginia
Emergency Medical Technician, Texas Department of Health
High School Diploma, Falfurrias High School

PROFESSIONAL EXPERIENCE

Commander/Director of Training, Texas Department of Public Safety Training Academy
Law Enforcement Consultant
Lieutenant, Texas Department of Public Safety Training Academy
Training Officer - Texas Department of Public Safety Academy
Texas Highway Patrol
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SPECIALIZED TRAINING

F.B.I. Defensive Tactics Instructor Certification
Firearms Instructor
Tactical Baton Instructor
OC (pepper spray) Instructor Certification
Use of Force and Deadly Force
Pursuit Driving and Emergency Response
Blood Analysis/Blood Spatter
Management of the Forensic Sciences
Semi-Auto Pistol and Revolver Armorer
Shooting Scene Reconstruction
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SUBJECTS TAUGHT IN UNITIED STATES, CANADA, & MEXICO

Use of Force and Deadly Force
Investigations of Police Officer Involved Shootings
Internal Affairs' Use of Force Investigations
Arrest and Control Tactics
Arrest, Search, and Seizure
Firearms
Patrol Procedures
Pursuit Driving and Emergency Response

MEMBERSHIPS AND ASSOCIATIONS

FBI National Academy Graduates Associates
American Society of Law Enforcement Trainer's Association
International Law Enforcement Trainers and Educators Association
Texas Police Association
Texas Sheriff's Association
Department of Public Safety Officers' Association

USE OF FORCE CONTINUUM FROM A LAW ENFORCEMENT PERSPECTIVE

I. Presently, numerous law enforcement agencies, trainers, and expert witnesses are questioning the need for Force Continuums. There are also questions regarding whether force continuums should be contained in Use of Force Policies? Answers to these questions vary from agency to agency and trainer to trainer. Throughout the United States there are growing concerns that Force Continuums have served their purpose and are no longer needed. There are also concerns that Force Continuums are creating an escalation of liability exposures and more frequent disciplinary measures taken against officers accused of using excessive force.

II. In the 1960s and into the 1970s, Defensive Tactics Instructors now commonly referred to as Arrest and Control Tactics Instructors taught boxing, wrestling, karate, judo, or some other fighting art. Arrest and control tactics were instructed as a stand alone program and were often at odds with baton and firearms instructors. There was no continuity of training in the Defensive Tactics/Arrest and Control Tactics arena. Street officers often times carried a variety of unapproved weapons and used improvised methods of control in force situations. In the past, law enforcement officers basically did whatever it took to get the job done. During that time period, the United States judiciary failed to provide clear guidance about the type and amount of force a law enforcement officer could use in any given situation. In essence, a *"grey area"* existed about the type and amount of force a police officer could use well into the 1980s.

Due to the lack of specific guidance in the "grey area," force continuums were created. Continuums were designed from the simple perspective of attempting to identify "officer tools" and provide some continuity of use of force training. The idea was that law enforcement, like other professions, have certain *"tools"* of the trade, thus force continuums were viewed as nothing more than *"tool boxes."* Force continuums simply outline/contain the force options/tools that law enforcement officers have available to them to deploy when necessary. In short, force options are nothing more than tools that law enforcement officers may use in stopping, neutralizing, and controlling situations that require the use of force.

The development of early Force Continuums were attempts, by innovative and responsible trainers, in addressing the *"grey area."* Trainers used continuums to provide guidance in the type and amount of force that could be used in any one given law enforcement use of force situation. Early use of force continuums also provided a visual which assisted in the instruction of force subjects. Force continuums were also used to explain to officers "when" to use force as opposed to only instructing "how" to use force. Force continuums also were used to provide operational guidance to officers regarding when and how much force can be applied in given situations. Today, more than 50 use of force ladders, circles, stair steps, wheels and other uniquely shaped continuums are used as visual training aids to assist officers in learning how much force to apply in the indefinite combination of situations that law enforcement officers may encounter.

III. The Texas Commission on Law Enforcement Officers Standards and Education (TCLEOSE) Basic Peace Officer Training Curriculum outlines specific force options that law enforcement officers in Texas are required to be trained on for licensure. The force options outlined by TCLEOSE are:

1. Professional Presence
2. Verbal Communication
3. Weaponless Strategies
    a. Takedowns
    b. Joint manipulation
    c. Stunning techniques
4. Weapon Strategies
    a. Chemical/electrical means
    b. Mace
    c. Stun guns
    d. Baton/impact weapons
5. Deadly Force

TCLEOSE's curriculum specifies instruction not only "how" to use the force options but also "when" to use certain force options. The most common instructional concept used by law enforcement agencies is the "One Plus Theory." The "One Plus Theory" allows the use of

one level of force higher than the resistance/threat level that the suspect is presenting. The "One Plus Theory" concept is applicable in most use of force situations, but not in all. In order to appropriately apply the "One Plus Theory" officers must be trained and should be able to identify resistance/threat levels, thus instruction includes the identification of resistance/threat level. Resistance/threat levels have been referred to by a variety of terms to include the following:

A. Psychological Intimidation
B. Verbal/Physical Non-Compliance
C. Active Resistance
D. Assaultive Resistance
E. Threat to Serious Bodily Injury or Death

The aforementioned resistance/threat levels are commonly referred to as Subject Actions. Force options are responses that officers may use, an officer's response is going to be dependent on the subject actions. In short, for every situation in which an officer may encounter resistance or threat, there is a corresponding "tool" that is appropriate/reasonable to control, stop, neutralize the resistance/threat. Officers must identify and evaluate the resistance/threat level and use his/her judgment and discretion in selecting the appropriate force option.

IV. The concept of Subject Action versus Officer Response appears deceptively simple and seemingly straightforward. Continuum proponents argue that Subject Action versus Officer Response allows for better understanding the application of reasonable force. Continuum critics argue that the resistance/threat levels merely identify the subject actions and not necessarily the totality of the circumstances. The Fourth Amendment requires that the facts and circumstances confronting the officer(s) be considered from the vantage point of a reasonable officer on the scene. The analysis of reasonableness must take into account the following:

A. severity of the crime
B. whether the suspect poses an immediate threat to the safety of the officers or others
C. whether the suspect is actively resisting or attempting to evade arrest by flight
D. the information the officer had at the time of the incident

Consequently, the emphasis cannot be placed merely on what the subject/suspect is doing at the time the officer decides to use a particular force option. The assaultive resistance presented by a 90 year old lady or a 12 year old child is going to be somewhat different than the assaultive resistance presented by Shaquille O'Neal. Continuum critics argue that the analysis of the totality of the circumstances obviously includes much more than the subject/suspect's current actions. Continuum proponents take the position that the instruction on the Subject Action versus Officer Response is not the end of the evaluation process in determining the appropriate force level. Trainers that use and instruct the Subject Action versus Officer Response continuums address the issue of the totality of the circumstances with the instruction of what the totality of the circumstances may include in a use of force situation. This instruction is tackled in a variety of ways, to include listing out numerous factors that must be evaluated in determining the appropriate amount of force to use, i.e. suspect size vs. officer size, etc. Another method used is with the instruction of the following simple formula:

Subject Actions + Circumstances = Totality of the Circumstances/type of and amount of force

The aforementioned formula also requires the listing out of the circumstances, i.e. type of offense committed, etc. The formula not only identifies the totality of the circumstances, but obviously also identifies what force option(s) would be reasonable from an on the scene reasonable officer's perspective.

V. Many critics of force continuums argue that use of force continuums are no longer needed because the United States Judiciary has provided adequate guidance, in 1985 and in 1989, about how much force officers can use to seize a free person, to stop an assault, or to restrain a prisoner. Such guidance comes from two United States Supreme Court cases, *Tennessee v. Garner* and *Graham v. Connor* Continuum opponents argue that the Fourth Amendment's "objectively reasonable" standard is the only legal standard that needs to be articulated in an agency's policy or be instructed to officers regarding the seizures of free persons.

Critics indicate that a recurring problem with continuums is that in some cases, Plaintiffs' attorney attempts to represent to juries that the continuum is a step ladder and that step one must be used before step two, i.e. Weaponless Strategies before a Weapon Strategies. The Fourth Amendment reasonableness does not require that an officer use the least intrusive

means, whereas the continuum concept invites and may compel people to conclude (in error) that a stair stepping officer force escalation is required.

VI. Law enforcement agencies throughout the United States are wrestling with the question as to whether Force Continuums should be contained in an agency's written use of force policy. There is also a growing consensus among law enforcement trainers and expert witnesses that an agency's written policy should not be any more restrictive than a statement of constitutional standards/state law. It is believed that by having a force continuum as part of the agency's use of force policy, it unnecessarily subjects law enforcement officers to liability exposure and/or disciplinary action, if an officer's response does not follow the agency's continuum policy. Numerous agencies, trainers, and expert witnesses support the idea of having only the constitutional legal force standards/state law as the agency's written policy on the use of force, i.e. "*An officer's use of force shall be objectively reasonable based upon the totality of the circumstances known or perceived by the officer at the time force was used*." Rather, an officer's reaction should based upon the officer's perceptions, abilities, and available equipment at the time of the incident. Many disagree and believe that telling an officer to adhere to legal precedence gives officers little practical guidance in when to use a baton versus (their) hands or a firearm. It is also believed that having the constitutional legal standards/state law as the only guidance on the use of force requires law enforcement officers to be lawyers in order to properly apply such a standard. Continuum proponents argue that force continuums are practical training tools which officers can understand." Many agencies do not use force continuums as part of their use of force policy, but rather use them as a training aid in conjunction with *Graham's* adjectively reasonableness standard.

VII. The general consensus is that, at a minimum, Force Continuums can be used as training aids. Continuums aid in teaching the principles of escalation, de-escalation, and re-escalation and the basic rules of the application of use of force. Every police officer must be given similar training on use of force situations. Continuums were never designed to replace departmental policy on the use of force rather assist in explaining the policy. Law enforcement trainers and expert witnesses agree that all professional law enforcement agencies need to have Use of Force written policies and procedures in place. Policy and training should not serve as different entities. Policy should be the driving force for training and training should establish departmental policy. Law enforcement agencies that have adopted a force continuum and use in training may wish to have a disclaimer that the continuum is designed merely to serve as a training aid and it is in no way created to enlarge the legal standards.