

A Less Lethal Options Program for Seattle Police Department

A Report with Recommendations

**submitted to R. Gil Kerlikowske, Chief of Police
submitted by The Force Options Research Group**

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September 2000

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INTRODUCTION

This report describes a Seattle Police Department initiative to examine, acquire and deploy a "less lethal" weapons and response capability.* The work supporting this initiative was undertaken following the April 2000 incident that resulted in the death of a former mental patient, David Walker. The proposed initiative will provide officers with alternatives to lethal force when circumstances warrant. At the outset, a few words of introduction are needed to set the context and describe the purpose of this less lethal initiative.

** "Less lethal" weapon is a term of art that refers to weapons that are designed to temporarily disable or stop a suspect without killing, thereby providing law enforcement and military personnel with an alternative to lethal force (typically represented by a handgun or rifle). These weapons are less lethal in the literal sense because none can be guaranteed to avoid fatalities.*

Two points are important by way of context. First, society has done a poor job of addressing the needs of persons with mental illness, particularly persons of limited means. Since the mid-1970s, when budget constraints (rationalized by the doctrine of community treatment) dictated the release from institutions of all but the most severely afflicted mental patients, it has become commonplace for individuals suffering from observable mental problems to be left to wander unsupervised day to day through the streets of our cities, often ending up homeless. Many of these individuals become the subject of law enforcement, either as perpetrators of minor offenses or, more commonly, as victims of criminal conduct. Occasionally, these individuals endanger their own lives or the lives of others in dramatic fashion.

The second point is that police, of necessity, have become the social agency of last resort for these mentally disturbed individuals. Particularly when these individuals threaten the safety of themselves or others, police must intervene to attempt to avert life-altering outcomes. In Seattle, during the last two years (April through March 1998-2000), approximately 5,000 incidents per year have been cleared by officers using one of the two MIR codes (220 or 221) that document incidents involving mentally disturbed individuals. A smaller number of cases are cleared using codes that denote specific offenses, such as assault. In total, between one and two percent of roughly 400,000 dispatched calls or on-view events annually will involve mentally disturbed persons.

Against this backdrop, brought into sharp focus by public concerns and the police Firearms Review Board inquiry surrounding the Walker incident - SPD initiated in late April 2000 an "objective and comprehensive analysis of less lethal force options." Toward this end, Acting Chief of Police Herbert V. Johnson constituted a small Force Options Research Group (FORG) to undertake the analysis. The purpose of this work has been to provide officers with options for containing and/or defusing situations involving mentally disturbed persons as humanely as possible, consistent with the need to ensure the safety of citizens (third parties as well as the mentally disturbed person) and the officers involved. By the end of the year 2001, the recommendations of the FORG presented below will yield significant results bearing on the problem at hand, as follows:

- * **CIT Trained Officers:** Upwards of 200 Patrol officers (one quarter of the force) will receive 40 hours of training in ways to handle the problems of mentally disturbed persons involved in police incidents; these Crisis Intervention Team (CIT) officers typically seek peaceful ways to defuse potentially dangerous situations.
- * **Patrol Familiarization:** Approximately half of all other Patrol officers will have attended training to familiarize them with problems of the mentally ill, to give them basic skills for communicating with these persons, and to orient them to situations in which it is appropriate to call for back up by CIT trained officers. The balance of the Patrol force will receive this training by the end of 2002.
- * **Less Lethal Weapons:** 260 less-lethal weapons systems will be deployed in the hands of fully trained officers (130 M26 Tasers and 130 Remington Beanbag Launchers); these systems may be employed in situations where less lethal force is appropriate.

Bottom Line: These results will establish Seattle Police Department as a state-of-the-art police agency thoroughly trained and familiarized with the problems of the mentally ill and equipped with less lethal technologies for law enforcement and order maintenance.

Executive Summary

The SPD Force Options Research Group (FORG) was convened in April 2000, under the direction of Chief of Staff Clark Kimerer. Its charge was to examine the state-of-the-art regarding less lethal force options and their deployment by law enforcement agencies, and where appropriate, to make recommendations to ensure that SPD is at the forefront in the training, deployment and use of such tactics and munitions. Drawing on the knowledge and expertise of sworn and civilian employees from across the

Department, the FORG began meeting in early May. Since that time, FORG members have pursued an aggressive work program, culminating in the following report.

The Report begins with a detailed discussion of **the methodology, approach and activities of FORG members**. As the Report makes clear, FORG members have been engaged in a wide-ranging work program. This work program has included review of relevant research literature, case and statutory law, and training and operational information; contact with vendors and distributors of less lethal weapons and devices; surveys of other law enforcement agencies concerning their training, equipment, and deployment practices; testing of various less lethal options; and consultation with national experts on less lethal force deployment.

Next the Report focuses on **the key legal and training issues** that shape the police use of force. Central to this discussion is an understanding of and appreciation for, the following:

* *The legal authority of police officers to use force, including deadly force, to protect themselves and/or others.*

* *The concept of the continuum of force, which guides officers in the application of reasonable and necessary force to resolve difficult situations with the least amount of risk of death or serious injury to all involved.*

* *The role of less lethal force options within the police response arsenal, not as a substitute for deadly force, but as a supplement to it under appropriate conditions and circumstances.*

* *How SPD trains and prepares officers to use force.*

The Report next discusses **recommendations to enhance the less lethal force options available to Seattle police officers**. The recommendations, include the following:

* *Expanded CIT training to include all patrol lieutenants and sergeants and to increase the number of CIT trained patrol officers to ensure that at least one CIT-trained officer is available per squad per watch on a 24x7 basis.*

* *Provision for refresher and skill building training for CIT officers which would include mandatory, annual classes.*

* *Purchase and deployment of the M26 Taser to ensure that there is one Taser-qualified officer in each patrol squad, on each watch, on a 24x7 basis and that patrol supervisors are trained and equipped to use the M26 Taser.*

* *Purchase and deployment of less lethal launchers using #23DS bean bag rounds to ensure that there is one qualified bean bag officer per patrol sector squad and that Patrol supervisors are equipped with less lethal bean bag kits.*

* *Implementation of a training program for qualification and certification of officers in the use of less lethal munitions to include a 4 hour training programs on both the M26 Taser and an 8 hour training program on use of the #23DS bean bag rounds.*

* *Provision for re-qualification and skill-building training on use of less lethal munitions to include mandatory, annual re-certification.*

* *Adoption of appropriate policy and directives governing the deployment of less lethal options and documentation of their use.*

* *Continuation of the FORG to oversee implementation of the less lethal program, to develop and refine Department policy and directives, to review deployments of the less lethal options recommended here, and to assess and recommend deployment expansions or new options for deployment.*

Implementation costs for the recommended less lethal program are discussed at the end of the recommendations section, along with estimated annual costs for program continuation. Also included is the **training timeline** detailing the number of officers expected to complete CIT and less lethal weapons-related training.

The comprehensive program recommended here will result in approximately 50% of the SPD Patrol force being trained or equipped with some form of less lethal weapon or crisis intervention option by the end of 2001.

FORG Approach and Activities

Overview. In order to accomplish its objectives in a relatively short period of time, the FORG adopted an approach consisting of the following: FORG members took on individual assignments in their areas of expertise, the Group met regularly to report on progress and reassess or refocus efforts as necessary, and the Group carefully documented all of its activities and all materials gathered and reviewed. Key aspects of the FORG approach and activities are summarized here.

FORG Meetings. From the time it was created by Interim Police Chief Herbert Johnson in late April 2000 (see the letter from Chief Johnson to Mayor Schell announcing the creation of the Group, at Appendix A), the FORG met regularly. Each of these meetings was documented as was the progress of the FORG work program. Since the FORG represented a cross-section of skills and areas of expertise in the Department, these meetings were an opportunity to learn from each other as well as from the results of the assignments being carried out by each FORG member.

The FORG was also diligent in keeping others apprised of its work efforts and progress. In July 2000, for example, FORG members briefed the Council Public Safety and Technology Committee on its activities and likely schedule for completion of its work. At that time, it was estimated that FORG members had already devoted approximately 1,200 hours of staff time to the Group's work program.

Contact with other law enforcement agencies. In order to assess how SPD's approach to less lethal force options compares with other agencies, a telephone survey was conducted. The purpose of the survey was to determine what special training in crisis intervention or other techniques is provided in those agencies and what less lethal weapons or devices are provided to officers. The deployment patterns for less lethal options were also documented for the agencies contacted. Twenty-five other departments were contacted as a part of this survey and the findings are summarized in a chart found at Appendix B.

Convening of citizens less lethal options work group. When the FORG was initially created, the suggestion was made that the Department should try to solicit the perspectives of community members as less lethal force options were considered. In order to accomplish this objective, a Community Work Group on Less Lethal Weapons Options was convened in June 2000. The work of this Citizens Group

was coordinated and facilitated by Director Harry Bailey of the Police/Community Partnership Program. The Citizens Group operated independently of the FORG, but FORG members met with the Citizens Group and provided information and demonstrations on request. In particular, the SWAT team members of the FORG provided a formal demonstration of all the less lethal options currently available in SPD for the Citizens Group. Crisis Intervention Training officers also met with the Group to explain and answer questions about the CIT training program. A report from the Citizens Group is imminent and is expected to be consistent with the recommendations contained in the FORG report.

Seminar attendance. In June 2000, three members of the FORG flew to Los Angeles to attend a two day seminar on the state-of-the-art weapons and tactics for addressing crisis situations. All of the latest weapons and technology were on display and vendor representatives and less lethal experts were available to discuss their recommendations. As a result of this conference, the M26 Taser was identified as a possible device for consideration by the FORG. A representative of Taser International later visited the Seattle area and provided a demonstration for the SWAT team, leaving one M26 Taser for further use and testing.

Expert consultation. In July 2000, Lt. Sid Heal of the Los Angeles County Sheriff's Office, an internationally recognized expert on less lethal force options, flew to Seattle to meet with the FORG. Lt. Heal described the approach he recommends in considering less lethal options and made concrete suggestions for consideration by the FORG.

Other activities. Other activities undertaken by FORG members included review of research information concerning police use of force and responses to it, demonstrations and tests of various less lethal devices (it is estimated that 12-15 such devices were examined by the SWAT team), and contact with area experts on crisis intervention techniques to identify additional resources for officer training. The results of all these activities are to be found in the recommendations contained in this report.

FORG timeline of events and activities. Below is a chronology of the activities of the Force Options Research Group. The FORG carefully documented all of its efforts and has catalogued the large amount of information gathered. These materials are available for review.

4-28-00: Chief Herbert V. Johnson sent a confirmation memo to Mayor Paul Schell formally advising that he had convened a Force Options Research Group (FORG) under the direction of Assistant Chief Clark Kimerer. The memo noted the FORG assigned staff, their expertise, and their purpose of conducting an exhaustive study, national in scope, of less lethal force options. In addition, their end product would ensure that our Seattle Police policies and procedures, training curricula, and the laws concerning the police use of force are summarized and available for review by the public.

5-2-00 FORG Meeting: In this initial FORG meeting, Assistant Chief Kimerer stressed the priority of the project and outlined the Group purpose and the specific roles envisioned for each member. The intent was to operate as a research team to document the legal, policy, training, equipment, and deployment options available to law enforcement. The Group was not expected to produce a formal report, but rather to provide a compilation of research and information. Lieutenant Clavadetscher was designated as the official repository for the Group's records.

5-19-00 FORG Meeting: Sergeant Eddy will attend a training program on crisis intervention techniques and will gather information on training programs of other departments. Officers Ward and Stockwell discussed tactics, deployment, and equipment and noted that the National Tactical Officers Association (NTOA) keeps information on the field experiences of reporting agencies. Officer Geoghagan provided portions of the lesson plans for the Basic Academy and the Officer Street Skills Class. Other members discussed their progress to date.

5-30-00: Mimi Walsh submitted a 1996 and a 1999 Department of Justice study including summaries of both to Lt. Clavadetscher.

6-2-00: Assistant Chief Kimerer submitted a copy of the Advanced Taser M26 literature.

6-5-00 FORG Meeting: Assistant Chief Kimerer announced that Director Harry Bailey, Seattle Police Office of Police/Community Partnerships, is working with a community advisory group for police use of force. Sergeant Paul McDonagh reported on deployment options used by other agencies around the nation and on conversations he had with Seattle Police supervisors regarding Patrol needs. Sergeant Liz Eddy discussed several issues related to Crisis Intervention Team (CIT) training and deployment and submitted a copy of her CIT training guide. Mimi Walsh discussed her research on police use of force studies. Other members reviewed their progress on gathering information and gave Lt. Clavadetscher copies of materials they had collected to date.

6-12-00: Officers Ward, Stockwell, and Geoghagan flew to Los Angeles for a two day seminar sponsored by Jane's, an organization internationally recognized for weapons expertise. The seminar, *Unconventional Weapons: The Response to Emerging Threats*, examined a wide range of potential urban threats and the state of the art weapons and tactics for addressing those threats.

6-29-00 FORG Meeting: Officers Ward, Stockwell, and Geoghagan reported on the unconventional weapons seminar they attended in Los Angeles and noted that while there they had the opportunity to meet with several national experts to discuss issues of interest to the Group. They reviewed what they learned, confirmed that FORG was aware of all less lethal options presently available, and stated that the experts seemed to agree that the Advanced Taser was a new weapon of high potential.

7-6-00: Officer Geoghagan submitted a detailed notebook on use of force policy, legal basis, training, and accountability.

7-10-00: Officer Ward submitted a catalog documenting the less lethal weapons and munitions examined by SWAT team members.

7-11-00: Rick Smith, President and CEO of Taser International, flew to Seattle and gave a presentation and demonstration of the Advanced Taser M-26 at the Seattle Police Range. Several FORG members attended including Swat Officer Steve Ward. Officer Ward was video taped first being subjected to an earlier taser model with non-disabling results and then to the M26 which was immediately disabling.

7-12-00 FORG Meeting: Officer Ward demonstrated the M26 to the entire group and we reviewed the previous day's demonstration at the range. Officers Ward and Stockwell reported they had made a less lethal options presentation to Director Bailey's Citizens Community Advisory Group.

7-18-00: Mimi Walsh submitted a copy of her summary of criteria for considering less lethal options.

7-19-00 FORG Meeting: We prepared for and gave a status presentation to the City Council Public Safety and Technology Committee.

7-20-00 FORG Meeting: We arranged for Los Angeles County Sheriff's Office Lieutenant Sid Heal, an internationally recognized expert on less lethal options for law enforcement, to fly to Seattle and address our group. Our discussion covered the full range of less lethal options and included the following key topics: 1) What less lethal options can and can't do, 2) You can train at a higher level than you can maintain, 3) Understanding and managing the risks with less lethal options, 4) A model deployment of

less lethal devices, 5) Technical issues with Extended Range Options, and 5) The Los Angeles Sheriff's Office Pilot Testing Model for Less Lethal Options

8-10-00: SWAT Officers Clay Stockwell and Steve Ward demonstrated the M26 Taser and numerous other less lethal weapons to several FORG members and Director Bailey's Citizens Community Advisory Group in the Public Safety Building Gym.

8-30-00 FORG Meeting: It became clear that the Group's efforts had become crystallized into a series of concrete recommendations that could be presented in a formal report. The Group discussed budget considerations and the final recommendations, format, and content of a final report. Responsibility for each part of the report was assigned. Sergeant Eddy discussed planned CIT training. Officer Ward reported and the Group discussed his detailed proposal for policy, deployment, and training for less lethal weapons, including an intranet to document every use of weapons. Also included in this meeting was a presentation of the draft recommendations of the Citizen Advisory Group, which expects to issue a report about the same time as FORG.

8-31-00: Mimi Walsh submitted a copy of the 2001-2002 Seattle Police Department Budget Issue Paper providing the rationale and estimated costs for a less lethal options program.

9-12-00 FORG Meeting: Final details of the draft report were determined and a review schedule established.

Legal and Training Issues in the Police Use of Force

LEGAL BASIS FOR POLICE USE OF FORCE:

U.S. Constitution (Bill of Rights):

The first ten amendments specifically enumerate rights that safeguard a citizen's liberties against governmental intrusion. Police officers as agents of local government are empowered to make arrests (AKA seizures/governmental intrusion). It's the 4th Amendment that addresses these seizures.

*The right of the people to be **secure in their persons**, houses, papers, and effects, **against unreasonable searches and seizures**, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

The use of force against a citizen constitutes a seizure. Paraphrasing, in terms of the use of force, people have the right to be secure against unreasonable seizures of their persons. Therefore, any force used by police officers must be **REASONABLE** as per the U.S. Constitution.

Who decides what's reasonable? Ultimately, both civilly and criminally, a judge or jury makes that determination. To do that they use a balancing test called the **OBJECTIVE REASONABLENESS STANDARD**. The test consists of a citizen's right to be secure against unreasonable seizures on one hand and the need for government intrusion on those rights (law enforcement). In other words, the force used by an officer must be balanced against the heinousness of a person's activities and the threat they pose.

Constitutional Case Law:

Whereas the U.S. Constitution provides the framework, constitutional law serves to define this standard. *TENNESSEE v. GARNER* is the first case in which the U.S. Supreme Court applied this "reasonableness standard" found in the 4th Amendment, to police use of force.

TENNESSEE v. GARNER, 471 U.S. 1 (1985)

Memphis Police Officer Hymon shot and killed an unarmed fifteen-year-old burglar (Garner), who was fleeing a residence. Hymon was "reasonably sure" that the suspect was unarmed. He stated that he shot to prevent the suspect's escape. The officer's actions were justified under an existing Tennessee statute. Garner's father filed a lawsuit in Federal Court alleging various civil rights violations. The following are the major points of the Supreme Court's decision:

* State statutes that allowed the use of deadly force against non-dangerous fleeing felons were unconstitutional.

* The 4th Amendment's "reasonableness" scrutiny is the appropriate measure for police use of deadly force against non-dangerous fleeing felons.

* Deadly force may be used if it is necessary to prevent the escape of a suspect **AND** the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others **AND** the officer gives a warning of imminent deadly force if possible. When deadly force used in this manner it is **REASONABLE**.

The decision in *TENNESSEE v. GARNER* only addressed the use of deadly force. The issue of non-deadly force was later examined in *GRAHAM v. CONNOR*.

GRAHAM V. CONNOR, 490 U.S. 386 (1989)

Graham, a diabetic, asked a friend (William Berry) to drive him to a nearby store for some juice to stave off an oncoming insulin reaction. At the store, Graham decided the line at the register was too long and opted to go to a friend's house for the needed juice. Charlotte Police Officer Connor saw Graham running from the store. Connor became suspicious and stopped Graham and his friend as they drove away. Connor then called for back-up. When approaching the car Berry told Connor that Graham was having a reaction. Connor directed them to wait. While waiting for the back-up Graham exited Berry's car running around it twice. Berry asked for Connor's help in catching and restraining Graham. In the ensuing confusion of the arriving back-up Graham was handcuffed. At one point after being handcuffed Graham passed out. Officers then placed Graham on the hood of Berry's car. Graham regained consciousness and requested the officer's verify his condition via the diabetic decal he carried in his wallet. Graham was told to "shut up" and was thrown head first into a police car. As a result Graham suffered various minor injuries. Graham later filed a lawsuit alleging officers used excessive force. Graham also argued that, deadly or not, in the course of an arrest, investigatory stop, or other "seizure" of a free citizen the force used should be analyzed under the 4th amendment and its reasonableness standard. The Supreme Court held that:

* The 4th Amendment reasonableness standard regarding seizures extended to all use of force (by an agent of the government) not just deadly force.

* The court also recognized that officers must often make, "split second decisions-in circumstances that are tense, uncertain, and rapidly evolving". Therefore, the court made it clear that the reasonableness standard was to be applied **AT THE TIME OF THE INCIDENT**. The court made it clear that in recognizing the dynamic situations that officers find themselves in, they should not be subjected hindsight. This understanding also takes into account that officers are not required to use the least amount of force required to accomplish the task, only a standard of reasonable force.

* The determination of reasonableness is based on the perspective of a reasonable officer facing the immediate threat. This is judged from an objective perspective rather than subjective. This means, would a reasonably prudent and well-trained officer make the same decision?

* An officer determines that a particular level of force is reasonable by considering the totality of circumstances surrounding the incident. In *GRAHAM v. CONNOR* the U.S. Supreme Court identified four factors that were inclusive in the totality of circumstances:

1. The severity of the crime;
2. Whether the suspect posed an immediate threat to the safety of officers or others;
3. Whether the suspect is actively resisting;
4. Whether the suspect is attempting to evade arrest by flight.

(This by no means is an exhaustive list of the circumstances that should be considered.)

State Law (Revised Code of Washington):

Non-Deadly Force: As we know, state law can be more restrictive than federal law. RCW 9A.16.010 through 9A.16.040 specifically addresses the use of force against another person. In terms of non-deadly force, aside from specific provisions allowing for the use of force when dealing with the mentally ill, incompetent, or disabled, during the commission of their duties an officer's use of force falls under the auspices of RCW 9A.16.020(1).

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

1. Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;

The essential part of this section is the term "necessary" which is defined in RCW 9A.16.010 (1).

In this chapter, unless a different meaning is plainly required:

1. "Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended.

* "Necessary" means that there may have been apparent alternatives to the use of force but they were not reasonably effective.

* "Necessary" means that there may have been reasonably effective alternatives. But these alternatives were not apparent to the officers on scene.

* "Necessary" means that the force used must be reasonable.

* "Necessary" means that there must be a lawful purpose for the use of force.

Deadly Force: The use of deadly force by a public officer is covered under RCW 9A.16.040. Section (1) identifies three cases when justifiable homicide or the use of deadly force is justifiable. Use of force by a law enforcement officer generally falls under Subsection (c).

(c)When necessarily used by a peace officer or person acting under the peace officer's command and in the officer's aid:

Subsection (c) then lists four specific examples during which the use of deadly force is justifiable:

(i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony;

(ii) To prevent the escape of a person from a federal or state correctional facility or in the retaking a person who escapes from such facility; or

(iii) To prevent the escape of a person from a county or city jail or holding facility if the person has been arrested for, charged with, or convicted of a felony; or

(iv) To lawfully suppress a riot if the actor or another participant is armed with a deadly weapon.

In addition to the use of deadly force having to be necessary, Section 2 states when the officer is considering to use deadly force they must have probable cause to believe that the suspect, if not apprehended, poses a "Threat of serious physical harm" to the officer or others. A "threat of serious physical harm" consists of the following:

(a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could be reasonably construed as threatening; or

(b) There is probable cause to believe that the suspect has committed any crime involving the infliction of serious physical harm

Lastly, the final words in Section 2 add that under these circumstances deadly force may also be used if it's necessary to prevent the suspect from escaping from the officer, where, if feasible, some warning is given.

COMMON QUESTIONS ABOUT POLICE USE OF FORCE:

1. What is a use of force continuum?

A use of force continuum is a teaching tool used by training instructors to teach new officers what would be considered by experienced officers as a REASONABLE amount of force. It is not a concrete directive that dictates a level of force that an officer must use during certain circumstances.

2. Don't police officers have to follow the continuum?

Actually, police officers are expected to use a REASONABLE amount of force. Whether the force a police officer uses is REASONABLE depends on all the facts and circumstances of the event.

* Does the Seattle Police Department have a use of force continuum?

No, several different use of force continuums have been created. A copy of the continuum that is currently in use at both the Seattle/King County Regional Police Academy and the Washington State Criminal Justice Training Center has been included in this notebook.

* Don't officers have to use the least amount of force?

No, the least amount of force implies subjectivity. It implies that there is always one effective alternative that utilizes the least amount of force. In reality it is impossible to believe that given the dynamics of a rapidly evolving incident that officers will always be able to discern which alternative would be the least

amount. Rather, officers are held to a standard of what is REASONABLE. (For supporting case law see Plakas v. Drinski 19F.3d 1143, 1146)

A section of SPD policy (1.145) requires Seattle police officers to use the minimum amount of force necessary to resolve a situation. However, language added to this section states that the minimum force requirement is only for departmental review and the entire section should not be construed as creating a higher standard than state law.

* What governs how much force a police officer is authorized to use?

Above all, the U.S. Constitution governs the amount of force a police officer is authorized to use. Specifically, the 4th Amendment. It is the 4th Amendment that limits the amount of force that a police officer is authorized to use to a REASONABLE amount. The reasonable concept is further defined in Tennessee v. Garner and Graham v. Connor. At the state level, the term NECESSARY is added. (See RCW 9A.16.010.) Lastly, SPD policies can also dictate the amount of force an officer is authorized to use.

* Who makes the determination of what is REASONABLE? In terms of criminal or civil liability, ultimately a judge or jury makes that decision. In terms of department discipline, a supervisor makes the decision. However, the Supreme Court made it clear in Graham v. Connor that for any party to make this determination, they must do so while considering the totality of the incident from the perspective of a reasonable police officer. In other words, to what extent would a reasonable police officer have made the same decision based on all of the factors and circumstances of the incident.

CONTINUUM OF RESISTANCE: OFFICER'S PERCEPTION OF VIOLATOR'S ACTIONS

VIOLATOR'S GOAL: ESCAPE/ASSAULT

NON-VERBAL

VERBAL

PASSIVE

ACTIVE

a violator who is trying to defeat your physical control

clenched fists, eyes stance

threats, statements that indicate an uncooperative subject

a suspect who will not move or "come along"

actively uncooperative static resistance, i.e. resistive tension is generated by the violator

egressive

a violator is attempting to escape control using reactive type movements

aggressive

the violator is attacking the officer and is attempting to injure the officer in the process of resisting or escaping

aggravated aggression

the violator has pre-planned the attack or is implementing weapons and/or tactics that are highly injurious or potentially lethal

LEVEL THREE TACTICS: LVNR, tertiary targets with impact weapons, firearms, etc.

LEVEL TWO DEFENSIVE TACTICS: strikes such as knees, kicks, and elbows, impact weapons (baton, flashlight, radio etc.) chemical agents in projectile forms, taser

LEVEL ONE DEFENSIVE TACTICS: pain compliance through distractions, counter-joint tactics, hair hold control tactics (OC Spray could be used at this level)

TOUCH CONTROL: guiding, escorting, and out muscling the individual who exhibits on minor resistance

VERBAL INTERACTION: dialogue, open questions, persuasion, advice, or lawful order

OFFICER PRESENCE: identification by: verbal announcement, badge, vehicle, uniform etc.

OFFICER'S GOALS: CONTROL

IMPEDE

STOP

CONTINUUM OF ENFORCEMENT: REASONABLE OFFICER'S ACTIONS

SUMMARY OF SPD USE OF FORCE TRAINING:

In-service training:

Currently the department is providing 1 hour of use of force training to each officer attending the SPD Street Skills course. During this time the following subjects are reviewed:

- * 4th Amendment to the U.S. Constitution
- * Tennessee v. Garner, 471 U.S. 1 (1985)
- * Graham v. Connor, 490 U.S. 386 (1989)
- * Totality of the Circumstances
- * Use of Force Continuum
- * RCW 9A.16.010 (Definitions)
- * RCW 9A.16.020 (Use of Force-When Lawful)
- *

RCW 9A.16.040 (Use of Deadly Force)

Basic Law Enforcement Training (BLET):

Currently all SPD recruits are attending the Seattle King County Regional Training Academy located at the former Sandpoint Naval Station. The BLET recruits receive 112 hours worth of defensive tactics training. This includes 10 hours of use of force training. The following subjects are covered during those hours:

- * 4th Amendment to the U.S. Constitution
- * Tennessee v. Garner, 471 U.S. 1 (1985)
- * Graham v. Connor, 490 U.S. 386 (1989)
- * Totality of the Circumstances
- * Use of Force Continuum
- * RCW 9A.16.010 (Definitions)
- * RCW 9A.16.020 (Use of Force-When Lawful)

- * RCW 9A.16.040 (Use of Deadly Force)
- * SPD Use of Force Policy

FORG Recommendations

Overview. The FORG did not initially anticipate that its work would result in the concrete set of recommendations found here. As the work progressed, however, some clear directions emerged, permitting development of a comprehensive and sustainable less lethal options program for the SPD. Though the proposed program recommends limited deployment of less lethal options, it is designed to put at least one such option in the hands of about 50% of all sworn officers in Patrol (including deployment of CIT-certified personnel). Furthermore, the program is designed to ensure that trained Patrol personnel are available to provide redundant, less lethal options capability on a 24 x 7 basis.

FORG members were guided in their consideration of less lethal options by a set of criteria that deserve mention here.

- * *Needs assessment* – identifies the routine and/or unusual situations in which officers might benefit from the availability of less lethal options and the characteristics of those situations (e.g., daytime/nighttime, outdoors/indoors) that might affect choices among options.
- * *Practicality/useability/deployability* – has to do with ease, effectiveness, and flexibility of use, any special environmental, transportation or deployment restrictions or limitations an option might present.
- * *Effectiveness* – concerns the range of use and the short and long range effects of a device, and in particular, how the effectiveness of a device is balanced against potential liability that may be associated with its use.
- * *Safety and Operational Efficiency* – refers to how reliable and controllable are the effects of various options, and the degree of safety provided to the officer who deploys them, suspects against which they are used, as well as any third parties who may be affected by use.
- * *Political and Legal Liability* – involves assessment of the risks of injury or death of various options (virtually all less lethal options have been "lethal" under certain circumstances), of the degrees of officer and public acceptance of different devices, and of how deployment may affect liability.
- * *Training/Policy and Procedure/Logistical and Maintenance Issues* – refers the level of training, guidance, maintenance required for safe and proficient use of a device as well as any special storage, testing or transportation requirements.
- * *Cost considerations* – involves assessment of start-up and ongoing costs, training expenses, savings/losses associated with reduced/increased liability for use of various options.

The specific recommendations made here reflect application of these criteria. In addition, as this less lethal program is reviewed, several caveats should be kept in mind.

First, ***the recommended program constitutes a limited deployment of less lethal options, i.e., these options will not be standard issue for all officers at all times.*** Cost considerations certainly played a role in this recommendation, but more important were issues associated with training, practicality, and need. Operational data from other agencies indicate that officers must receive proper training if they are to use any device proficiently and reliably and a department is best served by deploying only to the limits of its

training capacity. Similarly, until SPD's field experience with various devices is expanded, the need for and practicality of these options cannot be fully assessed. For these reasons, a limited deployment is prudent and justified. The practical implication of such a deployment, however, is that it will remain quite likely that there will be circumstances where less lethal options are not available initially to officers called to respond to specific incidents or situations.

Second, *the recommended deployment of less lethal options does not guarantee their use, even when available.* Situational dynamics, in particular the timing and volatility of an incident, will dictate the response of officers. A high risk, rapidly evolving situation will not lend itself to the application of a broad range of response options, even if some of these options happen to be available. Officers on scene will continue to exercise their best judgment in using reasonable force and will not be expected to deploy a less lethal option when such deployment is neither appropriate nor likely to be effective. Moreover, it is important to recognize that the capacity to deploy less lethal options safely is dependent upon the ready availability of lethal force as protection and back-up. Officers with tasers or with crisis intervention skills, for example, can only use them safely when other officers are available and in a position to support and protect them.

Third, *less lethal options must be clearly understood as supplements to – and not substitutes for – deadly force.* The paramount duty of police officers to protect themselves and the public does not change because of the deployment of less lethal options. In this regard, less lethal options do not constitute "first steps" in some progression of responses, nor are officers required to employ or exhaust all less lethal options before resorting to deadly force. Based on the circumstances, officers may still respond with the lethal options available to them if the situation warrants a deadly force response. The recommended deployment of less lethal options is intended in no way to compromise officer and public safety.

Finally, the less lethal program recommended here is *based upon the best information currently available.* FORG members were impressed with how fast-developing the marketplace for less lethal options is. For example, one weapon (the M26 Taser) that is being recommended for the SPD program was not available even six months ago. Six months from now, other devices may come on the market that hold even greater promise than those suggested here. Nevertheless, the FORG is confident that it has chosen a prudent course of action and that the limited deployment of various devices recommended here will give SPD the opportunity to consider other options, should they become available.

With these caveats and criteria in mind, the FORG recommends a three-pronged less lethal options program for SPD, consisting of the following:

- * *Expanded training in crisis intervention skills and techniques*
- * *Acquisition and deployment of less lethal weapons and systems*
- * *Continuation of the FORG as SPD's mechanism for planning and implementation, standards development, and review of less lethal options.*

Each of these recommendations is discussed further below.

Expanded Training in Crisis Intervention Skills and Techniques.

Specific Recommendations:

- * *Train an additional 60 CIT officers (the majority in Patrol) this fall.*
- * *Provide CIT training to all sergeants in Patrol.*
- * *Continue training to maintain 200 CIT-trained officers in Patrol at any time.*
- * *Provide mandatory, refresher and skill-building training to all CIT officers at least annually.*

- * *Provide mandatory, one-day CIT familiarization and orientation training to all sworn personnel in Patrol other than those receiving full CIT training.*
- * *Issue directives on callouts and deployment of CIT officers.*

SPD began its Crisis Intervention Team (CIT) program just over two years ago. The first class of officers to go through the 40-hour class graduated in February of 1998. Currently, there are 75 CIT-trained officers assigned to Patrol Operations. In addition, there are 47 other officers who have received the CIT training, who work in a variety of other assignments. All of SPD's hostage negotiators have also been through the CIT training. In addition to the initial 40-hour training course, one-day refresher courses have been offered at least one time/year for CIT officers to attend on a voluntary basis.

The 40-hour CIT course includes the following subjects: *Mental Disorders; Geriatric Mental Disorders; Understanding Mental Illness, a Family's Perspective; The Law and Mental Illness; Chronic Public Inebriates; The Crisis Cycle; Children's Crisis Response Team; Communication With Mentally Ill Individuals; Intervention in High Risk Situations (Suicides); Crisis Triage Unit.* These subjects are taught by local professionals who are experts in the specific subject matter.

At this time, there are plans for two more forty-hour classes before the end of 2000. Each class will have 30 attendees. Upon graduation of the second class, the number CIT-trained personnel in SPD will total 182. The majority of new graduates will be assigned to the Patrol Operations Bureau. Our recommendation is to maintain about 200 CIT-trained officers assigned to Patrol.

Additional plans for training for the remainder of the year 2000, include at least two one-day training sessions, directed to the non-CIT patrol officer, on how to communicate better with the mentally ill. Additionally, there are plans to do two, one-day refresher classes for those officers already trained in CIT. These one-day refresher classes will include training by a local expert, Dr. Ben Johnson, who will focus on skill enhancements in identifying and responding to aggression, officer safety, and situation management. It is strongly recommended that the one-day communication training for non-CIT officers and refresher training for CIT officers be mandatory.

Future training goals include training all patrol officers in the one-day, intensive course on how to communicate with mentally ill persons. In addition, on-going 40-hour CIT classes will need to be offered annually, in order to maintain the recommended number of CIT-trained patrol officers, as some will be lost because of attrition to other units and/or promotion.

There are plans to take advantage of free training whenever possible. One example is a twelve-week course offered by Washington Alliance for the Mentally Ill. The class is offered to families of mentally ill persons, but they are inviting officers to attend, to help gain some insight into what families with mentally ill persons have to go through. It is a FORG recommendation that supervisors provide CIT officers who wish to participate with training time to attend these evening programs.

Many situations have occurred over the last two years that were very likely resolved peacefully, due to the skills of the CIT officer. One extreme example, was a domestic violence assault, where a mentally disturbed man fled his house wielding a machete. The man was very threatening and hostile upon arrival of the police. CIT officers responded and were able to convince the man to put down his weapon and surrender. There have been numerous other calls involving weapons and threats of violence to which CIT officers were called, though we have no way of knowing for sure if the skills of the CIT officers who responded averted tragedies in those situations.

The future of CIT, and the best use of the Department's CIT-trained personnel, rests with those individuals responsible for making sure that CIT officers are called to the scene of critical incidents.

Currently, there is no manual directive specifying the types of situations likely to benefit from a CIT officer response. FORG members are in the process of developing a written directive on the use of CIT. Likely, this directive will specify the types of calls that would require that CIT be dispatched, as well as other recommendations for their use. For example, any call from radio that indicates mental illness is involved should require a response from a CIT-trained officer. Similarly, calls that could turn into stand-off situations should have CIT officers directed to the call as a first responder, to be followed up by Hostage Negotiation Team and SWAT officers, if necessary.

Support for the use of CIT officers by the Precinct Commanders and Watch Commanders is also paramount. Plans are being made to address the precinct Commanders about ensuring their Watch Commanders know how to utilize the CIT officers assigned to their precinct. In addition, the understanding and use of CIT trained officers is a projected agenda item on the patrol supervisor training program being developed by the Patrol Operations Bureau. Until SPD has enough CIT-trained officers to cover all squads, watches and precincts, it is the FORG recommendation that officers and sergeants request that Communications go outside of precinct boundaries to find a CIT-trained officer, when the need arises.

Other steps that might be taken to ensure the best use of the CIT trained officers would include formal recognition of the successful efforts of CIT-trained officers. This will accomplish two purposes: it will make those officers feel their training has been worthwhile; and it will educate other officers about the benefits of calling for a CIT officer when dealing with persons in crisis. Another step is to continue CIT participation in training for new police officers to ensure that these officers are equipped to deal with the mentally ill and/or to recognize how to get CIT officer help in those situations.

Partnerships are also important for advancing the CIT program. CIT should continue to work closely with the Mental Health Court, to ensure the best possible outcomes for low level, misdemeanor mentally ill offenders; and with the legislature and the community mental health professionals, to devise intervention strategies that ensure the safety of the public while addressing the needs and rights of the mentally ill.

A future direction for the CIT program might include an on-staff mental health professional (MHP) - perhaps an intern, working toward a doctorate - who would be interested in being part of a police/mental health professional partnership team. This team would be available to respond to crises in the field, such that the MHP would be able to make a field evaluation on the state of the mental illness, while the law enforcement officer could evaluate the situation based on the criminal laws.

Acquisition and Deployment of Less Lethal Weapons and Systems.

Specific Recommendations:

* *Purchase and deploy the M26 Taser to one officer in each patrol sector squad, on each watch, on a 24x7 basis, to bike squads, foot beats, ACT teams, Seattle Center squads, and to all sector squad sergeants.*

* *Purchase and deploy less lethal Remington launchers using #23DS bean bag rounds to ensure they are available to all patrol sector squads and sector squad sergeants.*

* *Implement a training program for qualification and certification of officers in the use of less lethal munitions to include a 4 hour training program on the M26 Taser and an 8 hour training program on use of the bean bag rounds.*

* *Provide re-qualification and skill-building training on use of less lethal munitions to include annual mandatory re-certification on technique and tactics.*

* *Adopt appropriate policy and directives governing the deployment of less lethal options and documentation of their use.*

Two less lethal weapons are recommended for purchase and limited deployment within Patrol and special response units in the Department. Each is discussed in turn. The overall deployment model applied to these weapons is to provide less lethal options at the lowest operational level in the Department since these units are most likely to be the first responders to any incident. First responders generally have the best chance of using a less lethal response before the situation escalates and a lethal response becomes necessary. Providing less lethal alternatives to first responders, then, increases the opportunity for these devices to be used successfully.

The M26 Taser. This weapon, developed by Taser International, is a laser-sited weapon that fires two prongs at a target up to 21 feet away. The two prongs deliver 26 watts of electricity at over 50,000 volts, overriding the target's motor and sensory systems. As a result, targets are unable to control large muscles and become totally compliant. The M26 delivers its electrical charge over a five second cycle, but once the weapon is turned off, the effects disappear immediately.

The M26 Taser is recommended for five reasons. First, the M26 delivery system is much like a service weapon, making it an easy system for officers to learn to use proficiently. Second, the M26 can be deployed at a safer range (up to 21 feet) than was true of earlier tasers. Third, the M26 provides instant compliance without injury or lasting effects to the target. (In over 40 deployments nationally, no injuries have been reported.) Fourth, the M26 is equipped with a dataport that automatically documents each use of the device and that can be downloaded into a computer. And finally, the initial cost and ongoing maintenance and munitions replacement expenses are moderate.

The recommended deployment of the M26 is as follows: one officer per squad per watch in Patrol, one officer per bike beat and foot beat, one officer per ACT team, and per Seattle Center squad, and all Patrol sector sergeants, for a total of 130 tasers deployed. The M26 will be individually assigned to officers who will have responsibility for their security and maintenance. Each Taser officer and sergeant will attend a 4-hour Taser User Certification Course that will include use of the device, department policy governing use, live fire qualification, and training scenarios. Course instructors will be SWAT team members. There will also be a mandatory annual qualification on the M26 for officers to retain certification in their use.

The #23 DS BeanBag. The #23DS (drag stabilized) BeanBag, developed by Defense Technology Corporation, is a less lethal round that can be deployed at a greater standoff distance (20-50 feet), with greater accuracy than previous less lethal munitions. In addition, this round has less potential for penetration of the body than other less lethal rounds examined.

The #23DS BeanBag is recommended for four reasons. First, it provides officers with a less lethal option that can be deployed at a safer range than the M26 Taser. Second, it provides officers with a less lethal alternative that has multiple rounds. The M26 does not. Third, the #23 DS BeanBag uses a Remington shotgun as its launcher, a weapon with which officers are familiar and have proficiency. Finally, the degree of accuracy and the lower potential for penetration with the #23 DS BeanBag reduce the chance of serious bodily injury or death when deployed.

Recommended deployment of the #23DS BeanBag is as follows: a total of 130 will be deployed, with approximately 30 per Precinct to be distributed among sector squads and sector squad sergeants at the discretion of the Precinct commander. The #23DS BeanBag systems would not be individually assigned, but would be available for check-out and use during each watch in each precinct by trained and certified officers and sergeants. Accountability for deployment of the BeanBag system will be on a sign-in/sign-out basis. Officers signing out these systems will be solely responsible for them and accountable for any deployment or use. Each BeanBag officer will attend an 8-hour training class in the use of the #23DS

Beanbag, which will cover classroom instruction, practical scenarios, and live fire qualifications. SWAT team officers will conduct the training. There will also be a mandatory annual qualification on the #23DS system to maintain certification for use. The plan is to train 130 officers and sergeants in each of the next two years, and then to continue the training program such that all Patrol officers and supervisors are certified in BeanBag use. In another aspect of the deployment, the less lethal launchers will have orange buttstocks and foregrips, and the rounds will be similarly designated to prevent officers from mistaking less lethal systems for traditional systems and vice versa.

Adoption of Appropriate Deployment and Documentation Policies. The FORG recommends adoption of formal policies governing use of the less lethal devices proposed here. Revisions to the Department Manual and to the use of force statement form will be provided separately for Command Staff review and approval. In addition, it is essential that officers and command staff learn from SPD's own field and operational experience with these devices. This will not only serve to build officer confidence in these options, but also signal the need for changes in training curricula or directives, where appropriate. It is suggested that the FORG would be the appropriate vehicle for undertaking periodic review of operational data and for making recommendations to Command Staff.

Continue the FORG as SPD's mechanism for planning and implementation, standards development, and review of less lethal options.

Specific Recommendations:

- * *Develop and execute an implementation plan* for the less lethal options proposed here.
- * *Modify the Department's use of force statement* to capture information relevant to less lethal force options deployments.
- * *Review and recommend revisions to Department manuals and directives* appropriate for less lethal options.
- * *Conduct periodic reviews of less lethal force deployments* to gain training, supervisory, and operational insights from field experience.
- * *Evaluate current and newly available less lethal systems on an ongoing basis*, to ensure that the Department is taking advantage of the best available options and technologies.

The less lethal force options program recommended here is both comprehensive and ambitious. Its success is important not only to our officers, but also to the public we serve. This success can be best assured by tasking specific individuals with the responsibility for carrying out the recommendations contained in this report. The FORG, it is suggested, would be the appropriate vehicle for taking on this responsibility. It is, therefore, recommended that the FORG be continued for this purpose. In addition to implementation of the recommended less lethal force program, continuation of the FORG will accomplish two other purposes. It will communicate within the Department the importance placed upon less lethal force options, and it will ensure that the Department remains current on the most recent developments in the rapidly changing less lethal options marketplace.

Costs and Training Timeline for the Recommended Less Lethal Options Program

Estimated costs. The recommended less lethal options program is estimated to cost approximately \$350,000. SPD requested an appropriation in this amount in the 2001-2002 budget, which the Mayor is supporting. The \$350,000 appropriation will cover less lethal weapons acquisition and related training as well as CIT program training and related costs. Of the total appropriation, about 46% (\$163,800) involves one-time costs for purchase of weapons and accessories; 28% (\$100,000) will be used for costs of instructors, materials, and other training-related costs; 26% (\$90,400) will be required for munitions and

consumable supplies, and for equipment repairs, replacement, and upgrades. The table below details the expenditures for the less lethal program in 2001 and 2002.

SPD Less Lethal Weapons and Training

Budget for 2001-2002

Item

Unit Cost

Units

Total Cost

Units

Total Cost

Total Cost

2001

2001

2002

2002

2001-02

Operational Stockage

M26 Taser

\$400

130

\$52,000

\$52,000

M26 Holster

\$100

130

\$13,000

\$13,000

M26 Cartridge

\$18

650

\$11,700

160

\$2,880

\$14,580

Remington Beanbag Launcher

\$760

130

\$98,800

\$98,800

#23DS Beanbag Rounds

\$5

1040

\$5,200

200

\$1,000

\$6,200

Subtotal

\$180,700

\$3,880

\$184,580

Training Munitions

M26 Cartridge

\$18

520

\$9,282

520

\$9,282

\$18,564

#23 Beanbag Rounds

\$5

2600

\$13,000

2600

\$13,000

\$26,000

Subtotal

\$22,282

\$22,282

\$44,564

Equipment Repair

\$5,000

\$5,000

\$10,000

Equipment Replacement

\$0

\$15,000

\$15,000

Training Costs

\$80,000

\$20,000

\$100,000

Total Cost

\$287,982

\$66,162

\$354,144

The ongoing, annual cost of the less lethal program is estimated at \$71,200, to include \$25,000 per year for training-related costs, \$46,200 for munitions and consumable supplies, and for equipment repairs, upgrades, and replacements. Costs associated with any new less lethal devices that may be recommended and acquired would be in addition to these estimates.

Training Plan. An integral part of the recommended less lethal options program is training to improve and expand crisis intervention and communication skills and to ensure proficiency and reliability in the use of less lethal weapons. Training for all weapons will be delivered by members of the SPD SWAT Team (Special Weapons and Tactics). All members of the SWAT Team will be trained and certified by the end of December 2000. Initial training and qualification for all weapons systems will be completed by the end of 2001, with mandatory refresher training scheduled for the following year. In total, 130 personnel will be trained on the M26 Taser and 130 on the Remington Beanbag Launcher. By the end of

2001, trained personnel will provide SPD Patrol Operations with redundant less lethal weapons capability 24 hours a day, seven days a week, throughout the year.

SPD also will train approximately 300 CIT (Crisis Intervention Team) officers by the end of 2001 to respond to calls involving mentally disturbed persons. We also will initiate a one-day program to familiarize all personnel assigned to Patrol Operations with the protocols for calling CIT officers to the scene. By the end of 2001, SPD Patrol Operations will have trained or familiarized approximately 60% of its assigned strength in CIT; the balance will receive familiarization training in 2002. In addition, all CIT trained officers will attend a one-day refresher class annually.

The table below details the training timeline associated with the recommended program for both CIT and weapons training.

SPD Less Lethal Weapons Training Timeline

2001-2002

Initial Training

Refresher Training

12/31/00

06/30/01

12/31/01

06/30/02

12/31/02

M26 Taser

- newly trained

30

50

50

65

65

- cumulative total trained

30

80

130

65

130

Remington Beanbag Launcher

- newly trained

30

50

50

65

65

- cumulative total trained

30

80

130

65

130

Crisis Intervention Team (CIT)

- newly trained

60

60

60

151

151

- cumulative total trained

182

242

302

151

302

CIT Familiarization

Initial Training (Cont.)

- newly trained

60

150

150

150

150

- cumulative total trained

60

210

360

510

660

Totals Trained per Period

180

310

310

431

431
