



Perspective

Excessive Force 101

By Dan Montgomery, M.S.



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Being assaulted or killed in the line of duty represents a reality faced by every law enforcement officer who pins on a badge, and it happens every day. For the 10-year period from 1993 through 2002, 706 officers were feloniously slain in the line of duty in the United States and its territories, including 70 who died on September 11. Every 5 days, an officer is murdered. In 2002, 58,066 were assaulted in the line of duty, an average of 160 every day.¹

On a daily basis, officers also face the reality of the occasional allegation of excessive force levied while making arrests, detaining people, and neutralizing dangerous situations. The entertainment and media industries, which I refer to collectively as the “entermedia,” often prefer to use the term *police brutality* when describing allegations of excessive force. After all, it is more entertaining and

evokes more emotion. Plaintiffs’ attorneys sometimes use this expression as well, even though it rarely is applicable and too often paints a distorted, premature, and inaccurate picture of competent officers simply doing their jobs. As a law enforcement officer for 42 years, I know that most people do not understand the dynamics that come into play when officers use force, and they know very little, if anything, about the subject. All they have is what the entermedia reports, and, unfortunately, the entermedia’s knowledge of the dynamics often prove inadequate.

Research has indicated that less than one-half of 1 percent of all police encounters (.0361 percent) involve the use of physical force and, in the majority of cases where officers use force, it is reasonable, lawful, and appropriate.² In *Graham v. Connor*, the U.S. Supreme Court established one major test for determining whether an officer uses appropriate physical force—whether the force is *reasonable* in light of the facts and circumstances present.³ The Court also ruled that the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. Most important, the Court ruled that the measure of reasonableness must consider allowances for the fact that officers often are forced to make split-second decisions in tense, uncertain, and rapidly evolving circumstances and that such factors are important in determining the amount of force necessary in a particular situation.

In *Smith v. Freland*, the Court even went on to say, “We must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes reasonable action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.”⁴

Levels of Force

When law enforcement officers find it necessary to use physical force, they typically employ or should employ what I like to call the use-of-force spectrum. This concept is simple to understand not only from a law enforcement training standpoint but from a lay perspective as well. It involves five graduated *alternative* levels of force used to compel compliance.

1. The goal of level one force is to simply *persuade* someone to do something. The means to achieve this is *verbal dialogue* (e.g., advice, warnings, requests, and orders). An officer who tells someone to stay in his vehicle, warns a person to take his hands out of his pockets, or orders an individual not to move is using level one force.⁵ Purely verbal in nature, it does not involve any hands-on application.
2. The goal of level two force is to achieve *compliance* and involves actual *physical contact*, including physically escorting or carrying someone from point A to point B. An officer who takes someone by the arm, escorting him to a different location, or carries a demonstrator from one place to another is using level two force. For example, if an individual interferes with a crime scene and refuses an officer's orders to stay back, the officer would be justified in escalating the force to level two and physically escorting the person away from the scene.
3. The goals of level three force are *compliance* and *control* using *compression techniques* or *control devices*. Compression techniques include wrist locks, arm bars, physical control holds, and the use of pressure point control tactics. Control devices consist of such tools as handcuffs, restraints, pepper spray, canines, Tasers, and stun guns. For example, an individual escorted at the level two stage suddenly starts resisting efforts to take him

away. At this point, the escorting officer now is justified in increasing the level of force used to level three to get the subject to *comply* and to bring him under *control*. Using any of the techniques or devices available in level three is acceptable.

4. The goal of level four force is *self-defense* and can include *personal* and *impact weapons*. Officers frequently are assaulted, so, to defend themselves and prevent or neutralize such attacks, they resort to personal weapons (e.g., hands, fists, and feet) to hit or kick. Or, they can use impact weapons, such as batons, flashlights, and kinetic energy projectiles (e.g., shotguns that fire beanbag rounds or rubber bullets). In the level two example, if the individual starts hitting and kicking the officer, the officer would be justified in using any of the tools listed in level four to defend himself.

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5. Last, the goal of level five force is to *stop* someone. To accomplish this, officers can employ *deadly force*, which includes the use of a firearm, another deadly weapon, or a roadblock. All of these forms of force are potentially lethal. If the escorted individual in the level two stage grabs the officer's baton and starts striking him, or he moves toward the officer preparing to strike him, in this case, the officer would be justified in escalating to level five and using deadly force to stop the imminent threat. Or, if the demonstrator in level two manages to obtain a gun or knife and attacks or is about to attack the officer, the use of deadly force would be justified.

The Decision-Making Process

Officers constructively should weigh the circumstances of each case, respond accordingly, and use a level of force objectively reasonable and appropriate at the time. They may find themselves suddenly thrust into a dangerous situation where a high level of force immediately is justified, or, as a physical encounter escalates over a period of time, they may have to elevate the levels of force used to maintain control of the situation.

If officers lose these encounters, offenders may hurt either them or someone else or take an officer's firearm. If that happens, the result may be an armed offender, a wounded or dead officer, or an injured or dead citizen. No fair fight exists when it comes to a physical encounter between an officer and someone who needs to be controlled and subdued. The officer must prevail and use force reasonable and appropriate to compel compliance, even if it takes two or more officers to subdue and

neutralize an out-of-control individual. People get hurt in one-on-one confrontations, especially when someone violently resists or fights.

Most law enforcement officers are honest, ethical, and hardworking individuals, and part of their jobs involve the use of force—it is inevitable. When officers use force or when bruises or other injuries are visible on individuals in such circumstances, more often than not, officers have appropriately employed the use-of-force spectrum. In these situations, concerned citizens should ask, “Was the force used reasonable given the totality of the circumstances?”

Unreasonable Force Issues

Statistically, approximately 10 percent of excessive force complaints by citizens are valid. From my experience, generally four reasons exist why the use of force by officers may be unreasonable and, therefore, excessive and inappropriate.

1. Inadequate training: Law enforcement officers expose themselves to dangerous situations if they do not continually receive in-service use-of-force training from their agencies or if they do not apply the use-of-force spectrum as a decision-making tool. For the employing agency, the civil risk is enormous as well. Continual use-of-force training is absolutely essential.
2. Accidental application: Occasionally, while involved in a physical altercation, an officer accidentally may apply force that, in most circumstances, would be considered unacceptable. For example, an officer who defends himself with a baton in a fully involved level four force application appropriately attempts to strike the suspect's forearm. The suspect suddenly moves, and the baton strikes his

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neck, causing injury. Normally, a neck strike with a baton would be inappropriate. But, in this situation, because of the sudden movement, the neck strike was an accident, which occasionally can happen in highly charged situations.

3. Adrenalin overload: Sometimes, officers may “lose it,” and, because of the adrenalin overload, the heat of the moment, the anxiety, and the combat-like atmosphere, the officer may apply too much force given the circumstances. This occasionally happens in pursuit situations where, after a long, dangerous chase, adrenalin overload takes over when the pursuit comes to a conclusion, and the suspect is arrested. The civil risk here is enormous and, again, officers receive the training to understand the emotional and physical dynamics that occur in these highly-charged situations.



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4. Retribution: Sometimes, a situation occurs where an officer decides to “take care of business” and administer what I call “curbside justice.” Although rare, these scenarios do happen. Such actions are not simple mistakes of the mind but of the heart. Agency heads should deal with these officers quickly and severely. It is never the job of officers to punish people, and those who do so need to be criminally prosecuted.

When deciding whether or not to file criminal charges against officers for excessive force (usually in the form of assault or official misconduct charges), prosecutors have a proof standard, and,

to be successful in their prosecution, they must prove the case *beyond a reasonable doubt*. This can be a difficult standard to meet at times, and, consequently, prosecutors often decline to file criminal charges. Instead, they may defer to the employing law enforcement agency for the imposition of administrative sanctions (e.g., corrective actions, written reprimands, suspensions without pay, demotions, and employment terminations). In such circumstances, managers need to prove the administrative case by a *preponderance of the evidence*

(at least a 51 percent or higher probability that the officer in question did violate policy and procedure and use force excessive in nature). And, managers must be convinced that if imposed, administrative sanctions will survive a personnel board hearing, civil service commission hearing, or judicial review. In cases where the officer’s property rights are involved (e.g. suspension without pay, a demotion, or an employment termination), huge civil consequences can occur. Law enforcement officers have constitutional rights, too, and

managers simply cannot impose disciplinary sanctions capriciously.

Understanding the standard of proof for a criminal prosecution and for the imposition of an administrative sanction is crucial. When prosecutors and administrators decline to take action because of standard-of-proof problems, public outcries often happen, which can prove painful for everyone.

Conclusion

Law enforcement officers face dangerous situations every day. Moreover, they often have only a

limited amount of time in any encounter to decide how much force to use. Most people do not thoroughly understand the legal and practical dynamics involved in use-of-force situations. Further, they may not know about the use-of-force spectrum that officers use in their decision-making process. An understanding of this concept may assist citizens analyzing use-of-force situations and questioning whether the force that the officer used was reasonable given the circumstances.

Unfortunately, sometimes officers use inappropriate and excessive force. But, by providing adequate training, helping circumvent accidents

from happening, handling adrenalin overload, and renouncing retribution, agencies can help ensure that their officers are prepared for the dynamics of any highly charged situation. ♦

Endnotes

¹ U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted*, 2002 (Washington, DC, 2003).

² International Association of Chiefs of Police, *Police Use of Force in America*, 2001.

³ 490 U.S. 386 (1989).

⁴ 954 F.2d 343 (6th Cir. 1992).

⁵ For clarity purposes, the author employs masculine pronouns throughout the article.

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The *Bulletin* invites criminal justice professionals to submit reviews of recently published nonfiction books they have read on topics relative to their field of expertise for possible inclusion in its Book Review department. The magazine publishes only positive reviews of between 350 and 500 words or 1½ to 2 pages double-spaced. As with article submissions, the *Bulletin* staff will edit book reviews for style, length, clarity, and format.

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