

JAIL BULLETIN

Number 58

October, 1989

USE-OF-FORCE TACTICS AND NON-LETHAL WEAPONRY - PART II

NECK RESTRAINTS

Many neck holds used by officers trace their origin to sport judo. The most traditional restraint is the arm bar which applies pressure with the forearm across the front of the neck. Because this technique cuts off the victim's air supply, it has been widely rejected by police trainers. As with a drowning swimmer, the procedure sometimes precipitates resistance as the person fights for air.

The carotid restraint is taught by many law enforcement agencies. It involves application of the forearm to one side of the neck, and the bicep area of the arm to the opposite side of the neck. The crux of the elbow is positioned at the front of the throat, with particular care so as not to apply pressure to the esophagus.

The (Kansas City) lateral vascular neck restraint is distinctive, in that three levels of control are present. Unlike the carotid restraint which produces unconsciousness, this method emphasizes capturing an arrestee's balance, and the application of pressure in an escalating series of steps. The procedure is also characterized by a more dynamic "pull through" application method, than the fixed compression technique of the carotid restraint.

Strengths

1. Neck restraints are effective, regardless of the size of the officer relative to the person to be controlled.
2. Unlike batons, the procedure does not require a lot of room for striking distance; it is possible to employ grappling procedures and neck restraint in close contact, in narrow or cluttered premises.
3. Neck restraints are an attempt to provide "humane" means of controlling combative persons without the necessity of striking them, thus minimizing the risk of broken bones, lacerations and other impact-related trauma.

Weaknesses

1. Neck restraints, if applied improperly, have caused death or paralysis.
2. Due to the dynamics of a violent struggle, it is often difficult to correctly apply such methods.
3. Several instances of "unexplained" death have followed purportedly proper application of the technique, unaccompanied by any discoverable physical injuries. This phenomena, known as "custody death syndrome," is not fully understood, and research is still ongoing.
4. Perpetual and time-consuming training is needed to maintain minimum levels of proficiency.
5. During litigation, it is difficult to precisely explain to a jury the physiological effects of neck restraint procedures, due to an inadequate base of undisputed medical evidence. Even within the medical community, there are disagreements regarding the mechanism that causes unconsciousness.
6. It is difficult for an officer to monitor and control the amount of pressure applied during the procedure.
7. Once the restraint has been applied, there is a need to closely monitor the arrestee. This may be impractical when the individual is booked into a detention facility operated by another agency.

Litigation Examples

1. A Chicago family accepted a \$500,000 settlement for the death of a man who died from a bar-arm hold. The city offered the settlement despite the fact it did not authorize the hold and instead teaches the carotid restraint method.
2. Claiming a bruise and humiliation, an off-duty California sheriff's deputy received \$13,360 after being choked by city police officers who did not know he was a peace officer and believed him to be armed.
3. A male homosexual received \$250,000 for abnormal brain waves, following a choke-hold applied by officers who precipitated a confrontation. The officers observed him kissing a male friend and asked for his ID, which started a verbal confrontation, leading to his forcible arrest.
4. Responding to a domestic disturbance, D.C. police officers used a baton to apply pressure to the back of a man's neck, while he laid face-down on the floor—causing death by asphyxiation. Although PCP, marijuana and hashish were found in his system, the jury awarded \$950,000 to his estate, widow and daughter.

CHEMICAL AGENTS

Several sprays and gases have been on the market for many years, and are marketed under various trade names. In some states, aerosol tear gas is purchasable by any citizen, and may be lawfully carried. Some states restrict sales and possession to citizens who have taken a four or eight hour training course.

Strengths

1. Tear gas canisters are inexpensive.
2. They are lightweight, and easily carried and concealed. They can be used by uniform and plainclothes officers.
3. Sprays do not require extensive training.
4. No physical contact is needed.

Weaknesses

1. Chemical agents are not effective on many individuals, especially the mentally disturbed, those who are intoxicated, and persons under the influence of certain drugs.
2. Some individuals may become more combative when they experience the discomfort associated with chemical irritants.
3. There is a time lag between application and effect; they may not stop aggressive behavior rapidly enough.
4. A person with a knife or blunt instrument who has impaired vision from the spray may lash out in an indiscriminate manner.
5. Some individuals who suffer from pre-existing respiratory problems may experience serious medical problems.
6. The sprays can seriously irritate and harm one's eyes, unless the eyes are thoroughly washed.
7. Wind direction can cause the officer to be inadvertently affected by the spray, and make him vulnerable to a potentially fatal attack.
8. Officers may object to transporting prisoners who have clothing saturated with a chemical irritant.

Litigation Examples

1. A farmer who was part of an organized farm protest in Washington drove his tractor on a sidewalk. D.C. Police officers threw a tear gas capsule inside, which caused permanent vision loss in one eye. The jury awarded him \$400,000.
2. A federal court in Virginia upheld the use of tear gas on a prison inmate who was vandalizing his cell. The procedure minimized potential resistance to corrections officers, who subdued him.

ELECTRICAL WEAPONS

Recent technology has allowed the development of small batteries and improved discharge units. Typically, such devices discharge a high voltage spark (50,000 volts) at very low amperage (0.3 joules). One such hand-held device is pressed against the combatant, who is quickly downed. Another device (the Taser) fires small darts, connected to wires, accomplishing the same objective at a safer, non-contact distance.

Strengths

1. These devices are easily carried. They are lightweight and affordable.
2. Extensive training is not required.
3. They may be more effective on persons under the influence of PCP and other drugs who do not respond to chemical irritants.
4. They are especially useful for controlling non-criminal violent behavior, such as persons who are mentally impaired, or under the influence of mind-altering substances.
5. It may be unnecessary to resort to firearms to control a person armed with a knife or blunt instrument. The Taser is effective at distances of up to 12-15 feet.
6. The Los Angeles Police Dept. has extensive experience in using the Taser, beginning in May of 1980. As of early 1987, the L.A.P.D. possessed 550 Tasers and had employed the device 775 times.

Weaknesses

1. There are allegations the electrical spark can cause scars or burn marks.
2. Long-term medical studies are non-existent. In a California study of 218 persons stunned with the Taser, three persons died—although these individuals may have perished from the effects of PCP.
3. The spark can cause a fire hazard if flammables are present. In Ontario, California, a man soaked with gasoline was incinerated when officers shot him with a laser.
4. Hand-held devices have been misused to produce discomfort, when administered by sadistic officers.
5. Media and constituent representatives have labelled the devices as "cattle prods," associated with civil rights demonstrations in the Sixties.
6. The manufacturers of electrical weapons may be unwilling to provide testimony or litigation support services.
7. They may not carry product liability insurance at the time the suit is filed, or the policy may not be effective for the period when the device was manufactured or sold.

Litigation Examples

1. A federal civil rights suit filed in Atlanta complains a Stun Gun “burned permanent, ugly, disfiguring scars into the flesh of the plaintiff’s body”. The suit alleged the “brutal attack” caused pain, suffering, mental anguish and public humiliation. The cost of defending such suits must be considered before electrical weapons are issued or authorized.
2. A Federal Court in Nevada ruled for prison officials in a suit brought by an inmate who objected to the use of the Taser to control obstreperous prisoners. The court upheld a prison regulation that allows the use of the Taser or stun guns when inmates refuse to vacate their cells. The court said the weapons are more suitable than batons, and would inflict less discomfort on others than tear gas.

RECOMMENDATIONS

1. Collect and preserve all brochures and other literature published by the manufacturer and distributor for each type or model of weapon purchased.
2. Create a written memorandum-style record of any conversations with sales personnel concerning the merits of their product, its suitability for specified purposes, and any statements made which are intended to alleviate your questions concerning civil liability; attach a copy of the memo to the purchase order for the product.
3. Insist on receiving a photocopy of the products liability insurance policy issued to the manufacturer and/or distributor.
4. Require vendors to provide a list of all former and pending claims and litigation against the product under consideration, including names of legal counsel and the result or status of each claim.
5. Ask your legal counsel to consider a third-party claim against the manufacturer and/or distributor of any product which is the subject of a claim or lawsuit against your agency or personnel.
6. Don’t wait for a lawsuit before preparing your defense. The time to line up expert witnesses in support of a particular weapon or tactic is now. If possible, get written recommendations from any consultants used, and a commitment from each consultant that he will appear in court to defend his recommendations, if necessary.
7. Law enforcement administrators should unhesitatingly initiate disciplinary action against subordinate officers who carry or use unauthorized weapons (or who use unauthorized control techniques), even if otherwise appropriate or excusable under the particular circumstances. Disciplinary action should fit the offense and egregiousness of the conduct; in some cases, a written reprimand will be sufficient, in others, more severe action is warranted. The failure to administer cautionary discipline can itself predicate the liability of a law enforcement agency. It will be easier for plaintiff’s counsel to prove that superior officers knew (or should have known) such weapons or techniques were likely to be used in the instant case.

CONCLUSIONS

The use of force and weapons by law enforcement officers is one of the most visible and controversial aspects of policing. It is likely to remain so.

A law enforcement agency must carefully choose the various devices and techniques it will authorize for the protection of its officers and the public. In making policy decisions in this area, an agency should consider existing court decisions and litigation trends.

No matter what policies an agency adopts, the use of force by officers should be carefully monitored on a continuing basis. An agency should not hesitate to alter its policies when circumstances so indicate.

In our efforts to continually assist the law enforcement community, AELE welcomes comments, information and suggestions. We are especially interested in lawsuits, verdicts and testimony by expert witnesses.

This document was co-authored by an experienced police defensive- tactics instructor and an attorney who specializes in law enforcement liability research. It was formally reviewed by two outside legal counsel; one is an instructor at a nationally prominent university-based police training center, and the other serves as chief legal counsel to a large police agency. It was also reviewed by a trial lawyer who has more than 20 years experience in defending police use-of-force lawsuits.

This paper does not attempt to raise all of the strengths or weaknesses of any non-lethal weapon or control tactic. The litigation examples merely illustrate the kinds of civil actions that have been brought against law enforcement agencies and personnel; they are not intended to discourage the proper use of any accepted defense or control tactic, method or commercially marketed product. AELE has provided this summary as a starting point for the ongoing discussion and debate over the weapons, techniques and tactics described herein.

This article is from ALERT, a complimentary training guide provided by:
Americans for Effective Law Enforcement, Inc.
5519 N. Cumberland Ave., #1008
Chicago, Illinois 60656-1471
(312) 763-2800

QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in-service training each year. The Jail Bulletin may be used to supplement in-service training if an officer studies the Bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspection.

SUBJECT: USE-OF-FORCE TACTICS - PART II

NAME _____

NUMBER 58

DATE _____

1. What are the three types of neck restraints?

2. In some states _____ is purchasable by any citizen and may be lawfully carried.

3. _____ may be more effective on persons under the influence of PCP.

4. It is a good idea to receive a photocopy of the products liability insurance policy issued to the manufacturer and/or distributor.

____ TRUE ____ FALSE

5. Law enforcement administrators should initiate disciplinary action against subordinate officers who carry or use unauthorized weapons.

____ TRUE ____ FALSE

CREDIT: 1/2 HOUR CREDIT FOR JAIL IN-SERVICE TRAINING REQUIREMENT.

ANSWER SHEET SHOULD BE RETAINED BY JAIL ADMINISTRATOR.

QUIZ

Nebraska Jail Standards require that jail staff receive eighteen (18) hours of in-service training each year. The Jail Bulletin may be used to supplement in-service training if an officer studies the Bulletin, completes the quiz, and this process is documented by the jail administrator for review during annual jail inspection.

SUBJECT: USE-OF-FORCE TACTICS - PART II

NAME _____

NUMBER 58

DATE _____

1. What are the three types of neck restraints?

- arm bar
- carotid restraint
- lateral vascular neck restraint

2. In some states aerosol tear gas is purchasable by any citizen and may be lawfully carried.

3. Electrical weapons may be more effective on persons under the influence of PCP.

4. It is a good idea to receive a photocopy of the products liability insurance policy issued to the manufacturer and/or distributor.

TRUE FALSE

5. Law enforcement administrators should initiate disciplinary action against subordinate officers who carry or use unauthorized weapons.

TRUE FALSE

CREDIT: 1/2 HOUR CREDIT FOR JAIL IN-SERVICE TRAINING REQUIREMENT.

ANSWER SHEET SHOULD BE RETAINED BY JAIL ADMINISTRATOR.