

# JAIL BULLETIN

Number 57

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## USE-OF-FORCE TACTICS AND NON-LETHAL WEAPONRY - PART I

### The Progression of Force

Law enforcement officers are permitted to use the degree of force that is reasonably necessary to accomplish their lawful objectives and to overcome any unlawful resistance. The progression of force can be depicted graphically, such as the "Confrontational Continuum" developed by Kevin Parsons, Ph.D. and similar models developed by others. These models describe what have often been vague policies on this subject. Such models are also useful in litigation; they explain to the jury why an officer responded in a particular fashion. They also give the jury a standard by which they can judge whether the use of force was correct. Figure 1 depicts the **Parsons Continuum**, which is a linear acceleration through a progressive series of steps. (See last page.)

The usual first step is verbal persuasion; the second is manual escort. If unsuccessful or inappropriate, the next step is pain compliance. Usual methods of pain compliance include the wrist lock, arm bar or other "come-a-long" technique. It is only when mechanical control methods are ineffective (or not appropriate) that the force applied escalates to the use of impact weapons.

The principal police impact weapon is the baton. It is the intermediate step between hand-applied force and the ultimate force of firearms. It should be noted that most police trainers will consider it a poor practice or even negligence not to issue and train officers with a baton (except those few departments whose officers are not armed at all). The alleged negligent act is allowing officers to escalate from hand-holds and pain compliance directly to deadly force, when the application of a greater degree of non-lethal force would likely have accomplished the objective of overcoming resistance.

Certain circumstances may warrant an accelerated reaction using a higher degree of force when initiating a contact with a violent or dangerous person. Combative behavior or the influence of alcohol, drugs or controlled substances (such as PCP) could justify greater force in the initial stages.

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## How Control Techniques are Measured

On the one side is the likelihood of gaining control of an individual; on the other is the likelihood and extent of injury. In general, techniques which have a high propensity for causing tissue damage, hematoma or clotting and have a low potential for control should be rejected. Conversely, methods or weapons that have a low likelihood of causing injury, but a high potential for control, should be encouraged.

Parenthetically, it should be noted that some trainers have suggested that any device is suitable for use if a training program and certification accompany that weapon. Many court cases have demonstrated the fallacy of that view. While compliance and control training is an absolute necessity, injuries or death may still occur because of the human factors of misapplication, miscalculation, and excessive strength.

## The "But-For" Argument...Failure to Assess Alternatives, Too Hasty a Response?

Often a law enforcement officer is placed in a situation where he must resort to the use of a weapon in defense of himself, fellow officers, or a citizen. If litigation follows the event, an expert may testify that the officer failed, in the initial stages of the contact, to de-escalate or avoid the confrontation, and that the ensuing and predictable injury or death could have been prevented by:

- (a) different or improved training in the use of psychological persuasion, or
- (b) the initial avoidance of conflict with the combatant - that is, the officer should have kept distant in a secure position until reinforcements or specialists arrived on the scene.

In this way, superior officers (such as the chief, sheriff, or director of training) may be held personally liable for a tragic event, even though they did not directly authorize the officer's action or conduct, and were not present at the time it occurred. Such is the nature of the tort of administrative negligence.

## IMPACT WEAPONS

In 1987, the International Association of Chiefs of Police (IACP) surveyed 2,914 police agencies, most of which were in the U.S. A series of questions related to the types of weapons issued or permitted; the percentage of agencies that had approved each weapon mentioned is indicated below:

- 89% 3 to 6 cell flashlights
- 16% Saps, blackjacks or sap gloves
- 75% Night sticks
- 54% PR-24 batons
- 50% Mace (chemical irritants or tear gas sprays)
- 15% Stun guns

AELE does not approve or disapprove of the use of any of these per se. We have attempted to list some of the major strengths and weaknesses of each of these, to assist the law enforcement community in decision-making in this controversial area.

### The Flashlight

#### **Strengths**

1. It is usually readily available, especially at night; it is considered standard equipment.
2. It does not give the outward appearance of an offensive weapon.
3. It can be used with minimal reaction time, if held in one's hand.
4. The light can temporarily disorient or impair the sight of an opponent.
5. It is "effective" as an impact weapon, in that it will deliver a heavy blow.

#### **Weaknesses**

1. Manufacturers are reluctant to approve or endorse the use of their flashlights as impact weapons. One manufacturer stated that "... it would be irresponsible to use a flashlight for striking, jabbing or other offensive moves...Our company has never advocated the use of the flashlight as a weapon, nor to our knowledge has any responsible flashlight manufacturer."
2. Flashlights have too short a reach for effective use as a tactical weapon.
3. Flashlights provide a slower response than batons; the recovery time is not rapid enough.
4. Flashlights have sharp edges that will cut a person.
5. Multi-cell lights are very heavy; a blow to the head can be fatal or cause permanent paralysis.
6. An officer who carries a weighted flashlight and a baton will be reluctant to drop his light and pull the baton. If the officer does discard the light, it could be used as a weapon against him. He may therefore strike the offender with the light (which is already in his hand) instead of using the baton, as he was trained.

#### **Litigation Examples**

1. A Los Angeles man recovered a jury verdict of \$1,250,000 from a flashlight blow to his head during a scuffle, following a routine traffic stop for having a loud muffler.

2. A Pennsylvania woman and her mother recovered \$175,000 for dizzy spells resulting from a flashlight blow.
3. A Virginia man received a judgment of \$1,500,000 to compensate him for speech impairment and paralysis, following a flashlight blow received during a DUI traffic stop.
4. A Minnesota man was awarded \$35,000 in punitive damages against an officer who struck him with a flashlight at a tavern disturbance; his injuries were minimal (only \$2,000 in compensatory damages were awarded).
5. A Michigan man received \$200,000 for his injuries and another \$250,000 in punitive damages against a police officer who broke up a bar fight. The plaintiff proved the officer struck him in the face with a flashlight, breaking his nose.
6. Because officers are trained not to strike a person in the head with a weighted flashlight, there is the risk of criminal prosecution of officers who, under stress, react with a blow to the head of the resisting person. In such cases, the indictment may be for a felony (assault with a deadly weapon).

### **Blackjacks, Saps, and Billies**

In years past, many officers carried, in their back pockets, a blackjack made of stiff leather, a sap or similar weapons. A billy is a short stick, like a truncheon. The use of these weapons has generated controversy in recent years.

#### **Strengths**

1. They are readily concealable weapons, of low cost.
2. They are easily carried, and are lightweight.

#### **Weaknesses**

1. They are too short to be an effective weapon.
2. They have sharp edges.
3. Many saps have loops, which constrict an officer's hands.
4. Because of the flexible nature of the design, they fail to generate enough shock waves to be effective.
5. They tend to be used with facial/head blows, with the same kind of trauma associated with flashlight injuries (see above).

## **Litigation Examples**

1. A federal court in Washington refused to dismiss a suit against the chief of the D.C. Police Dept. by an injured man for allowing officers to carry blackjacks without adequate training.
2. A Connecticut man was awarded \$227,500 for head injuries caused by an officer-inflicted blow with a pocket-sized stick; \$100,000 was in punitive damages against the city for the negligent failure to provide adequate training.

## **The Baton**

The typical baton is a round stick of various lengths, and is made of hardwood, aluminum or plastic composite materials.

## **Strengths**

1. It is a lightweight weapon, and inexpensive.
2. The public is accustomed to seeing police officers and security guards routinely carry them.
3. It has greater reach than blackjacks, short billies or flashlights; it has greater utility and flexibility as an impact weapon.
4. A blow with a baton can immobilize a combative person; it can disarm him if he is carrying an offensive weapon.
5. Competent training is available from a multitude of public and private trainers.
6. The baton can be used as a "come-along" device in some situations.
7. A baton can be used in a non-offensive blocking fashion, to ward off blows or to push back an attacker.
8. Manufacturers recommend their products as impact weapons.

## **Weaknesses**

1. They are cumbersome, and therefore, are often left in the car.
2. They are not concealable, and are not well suited for plainclothes officers.
3. They are often in the way when an officer is running.
4. They can be lost if they fall from a belt ring, and create a hazard.

5. It is difficult or impossible to avoid head strikes in all cases, particularly in combat situations. Although intensive training minimizes this risk, it cannot entirely eliminate it. Paralysis or death may result, even days later, caused by subdural or bilateral hematoma.
6. Facial strikes often cause lacerations and substantial blood loss. This impairs the department's public image, when citizens observe blood-splattered injuries on TV news programs, or at the scene of arrest, or while visiting a hospital emergency room.
7. Departments must periodically retrain officers to maintain baton proficiency.

### **Litigation Examples**

1. An Illinois man accepted a \$127,000 settlement for a skull fracture caused by a baton strike received during a tavern brawl with police officers.
2. A Michigan man received \$35,000 in punitive damages, \$5,000 for mental anguish and \$5,000 for pain and suffering. Officers struck him in the groin and on his back when he assumed a "fighting stance".
3. Four California residents received \$43,000 from officers who broke up a loud party using batons, causing a fractured vertebra and a broken wrist.

### **The "Come-along" Hold**

Although some agencies train officers in (and some manufacturers advocate) the use of the baton as a "come-along" device, substantial field experience indicates that officers rarely use their batons for that purpose. While trainers are able to demonstrate the use of batons for pain-compliance purposes in a sterile classroom setting, there are marked differences between a static demonstration and the dynamics of a hostile field confrontation. Specifically, officers frequently state they are unable to get a disobedient or resisting person to stand still long enough to properly apply a baton come-along hold.

A cautionary note is in order concerning the training of officers in the use of a baton for come-along holds. In at least one case, a police officer (who was a certified baton trainer) testified in a personal injury suit that it was negligent for an officer to use a side-handle baton as an impact weapon, without first attempting to apply come-along holds with the baton. Another expert witness, who specializes in use-of-force training, testified that it was proper for the defendant officer to initially resort to the use of his baton as an impact weapon, without first attempting compliance with baton-assisted come-along holds. Fortunately, the jury agreed with the second witness, and found no liability against the officer or his employing municipality.

Should officers be trained in the use of a baton for come-along holds? If the department provides such training, but officers routinely avoid using the technique, this behavior will be criticized by the plaintiff's lawyer. Opposing counsel will suggest that since officers were and are presently trained in the use of batons for come-a-long holds, it was negligence not to utilize these holds before employing the baton as an impact weapon.

Thus, a good argument can be made for NOT TRAINING officers in the use of baton-assisted come-a-long holds, if batons are not routinely used for such purposes in field confrontations. As was previously mentioned, many officers avoid using their batons for come-along holds, because the dynamics of a hostile confrontation make it difficult, if not impossible, to successfully apply these holds to a resisting person. Moreover, many trainers believe that hand-applied pain compliance techniques are tactically superior to baton-applied come-a-long techniques.

### The Baton Design Controversy

In 1974, the traditional straight baton was optionally modified by adding a side handle. The leading manufacturer of side-handle batons publishes training material, and also trains and certifies instructors. However, many professional trainers continue to prefer the traditional "straight baton". Aside from the potential use of a baton for come-along holds, both batons are effective weapons.

Those trainers who prefer the side-handle baton believe it:

1. generates more power,
2. is easier to control,
3. is more versatile, and
4. is less likely to be seized by an opponent.

Those trainers and officers who prefer the straight baton believe that it:

1. generates greater fluid shock waves (which inflict more trauma but cause less damage to tissue),
2. is superior when used in confined locations,
3. is easier, quicker and more economical to train officers to a satisfactory level of competency,
4. is no more likely to result in unintended head strikes than the side-handle baton,
5. has a shorter recovery time (for additional strikes), and
6. is more effective when used by shorter and smaller officers, particularly the new small-diameter lightweight models.

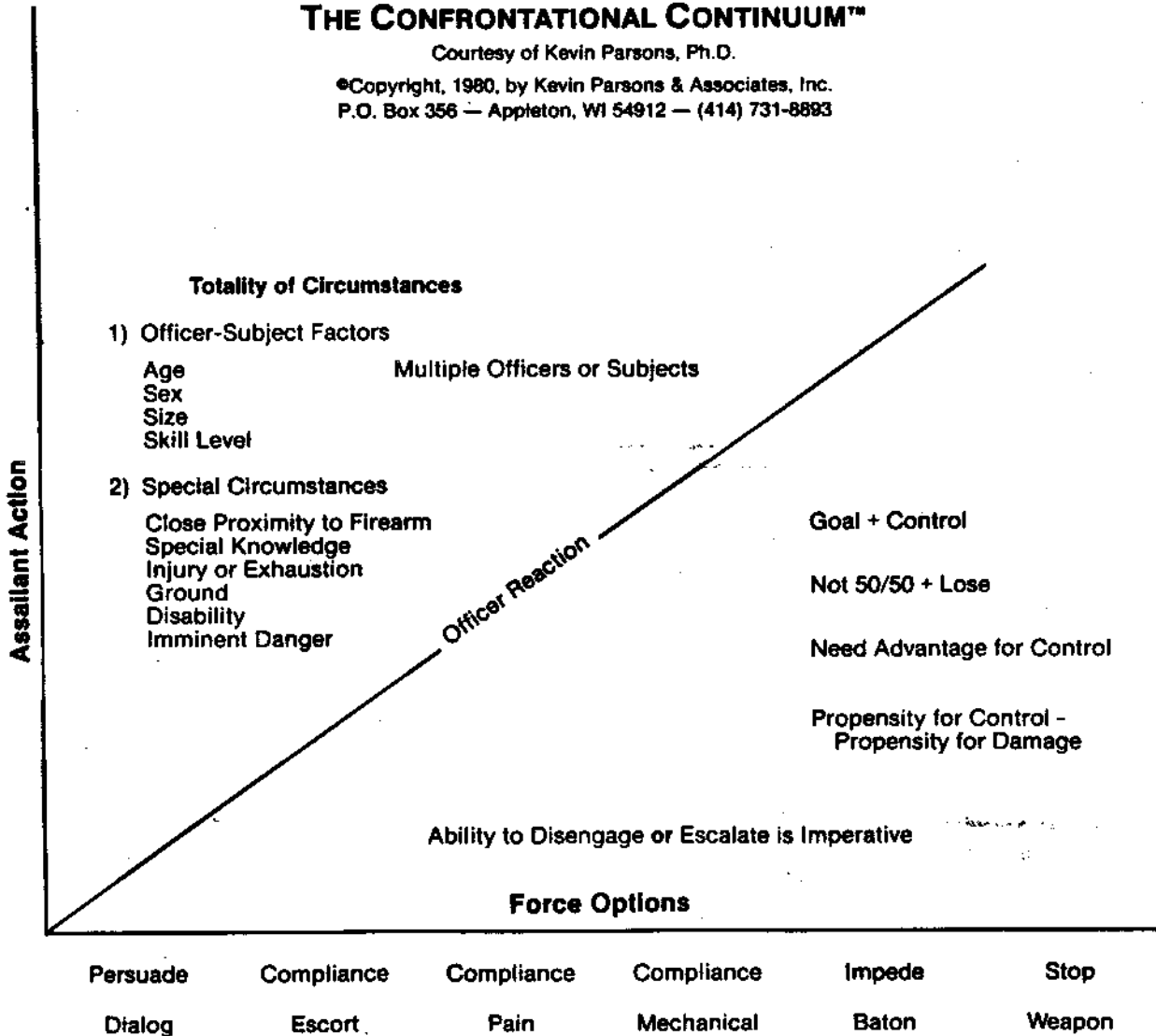
An expandable model of the straight baton is available, and is particularly suitable for plainclothes and special duty officers. An all-metal tokushu keibo collapsible/extendable baton has been in use by some Japanese police officers since 1966, and is currently issued to members of the Secret Service and U.S. Capitol Police. Japanese experience indicates the weapon is more effective than the wooden baton and causes less bodily harm.

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## THE CONFRONTATIONAL CONTINUUM™

Courtesy of Kevin Parsons, Ph.D.

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P.O. Box 356 — Appleton, WI 54912 — (414) 731-8883



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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 I      NAME \_\_\_\_\_

NUMBER 57      DATE \_\_\_\_\_

1. What are the first three steps in the Parsons Continuum?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The \_\_\_\_\_ is the principle police impact weapon.

3. Superior officers may be held personally liable for a tragic event, even though they did not directly authorize the officer's action or conduct, and were not present at the time it occurred.

\_\_\_\_\_ TRUE      \_\_\_\_\_ FALSE

4. \_\_\_\_\_ % of police agencies surveyed approved the use of a flashlight.

5. \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ tend to be used with facial/head blows, with the same kind of trauma associated with flashlight injuries.

6. There is a good argument for \_\_\_\_\_ officers in the use of baton-assisted come-along holds.

\_\_\_\_\_ TRAINING      \_\_\_\_\_ NOT TRAINING

7. Which is more effective when used by shorter and smaller officers....side-handle baton or straight baton? \_\_\_\_\_

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

ANSWER SHEET SHOULD BE RETAINED BY JAIL ADMINISTRATOR.

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manual escort  
pain compliance

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XX TRUE           FALSE

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