

# SHOOT/DON'T SHOOT STUDY GUIDE 2003



This study guide is designed to provide the law enforcement Explorer with basic principles. The guide is not all inclusive, and does not delineate specific techniques that must be used. The focus of this guide is to provide principals that are flexible and adaptable to various law enforcement situations.

Following the basic principals in this guide should allow the law enforcement Explorer to successfully handle various law enforcement training activities safely and professionally.

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## **INTRODUCTION**

One of the greatest trusts placed upon a law enforcement officer is the responsibility of balancing the constitutional interest of an individual against the interest of a society that believes the use of force against an individual is constitutionally permissible, when reasonable and necessary requirements, under the law, have been met. This balance of responsibility holds law enforcement officers strictly accountable for the discriminate use of force based on the lawfulness of the officer's decision. Law enforcement officers must be ready to justify their use of force, within the constitutional and judicial standard of reasonableness, at the instant the force was used.

Every use of force application by an officer will be reviewed, critiqued and ultimately judged by society, the courts (civil/criminal) and the law enforcement officer's agency or department. This evolving standard mandates a reasonable decision, by the officer, when confronted with a situation where use of force is applied. In most cases, this decision must be made in a split second, in circumstances which are tense, uncertain and rapidly evolving. (Training Key #249, Taking Prisoners into Custody.)

No decision to use force is more difficult or critical than the decision to use ultimate or "deadly" force. While the term "deadly force" can be defined as any force, exerted by a law enforcement officer, that could purposely or unintentionally result in loss of life, this study guide will restrict its application to the force applied with a law enforcement firearm. (Training Key #277, Use of Deadly Force.)

The standards of conduct controlling the law enforcement use of deadly force are based on common law statutes, modified common law statutes and model penal code. These standards are further modified by individual state and federal statutes, on-going court decisions and departmental or agency policy and guidelines. The law enforcement officer must know what the laws, policies and guidelines of his jurisdiction are, how they govern his use of deadly force and how that use of force may result in departmental action or civil/criminal actions against him in state or federal court (Training Keys #278, Improper Use of Deadly Force; #324, Police Shootings and the Law; #325, Police Shootings and Department Policy.)

## **TOTALITY OF THE CIRCUMSTANCES**

Any use of force decision, including use of deadly force, by law enforcement officers must be made within the “totality of circumstances” surrounding each specific incident the officer confronts. There are many considerations within this totality that affect the necessity to use reasonable and appropriate force. They may include, but are not limited to:

Can the subject who is resistant, physically comply with the issued commands or directions?

Does the officer have the ability to disengage or engage a contact?

Will the officer’s actions or tactics precipitate a higher use of force level?

Will the use of force that is presently appropriate have the desired results?

Is the officer placing himself or herself in a position of disadvantage by using a tactic, even though consistent within the reasonable officer response and perception confines, that is not appropriate for the threat being presented, such as in multiple assailant contacts?

What is the ability, age, gender, physical condition and size of the officer compared to that of the subject?

What is the law enforcement experience level of the officer?

What are the numbers of officers, compared with the numbers of subjects?

What is the environment (night, day, rain, snow, ice, heat, water, terrain, etc) of the contact?

What available weapons are in the immediate vicinity of the subject?

What is the distance from the officer to the subject?

What is the background or history of the subject?

What is the severity of the crime that led the officer to be in contact with the subject?

Was the subject attempting to evade arrest by flight, stealth or hiding?

What is the officer’s intended result from the escalating force?

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Is there an immediate presence of innocent bystanders?

Answering these questions may assist the officer in justifying and/or determining the necessity for the escalating or de-escalating of the reasonable use of force level. The officer must keep in mind that these considerations can change at any time and must be mentally aware and able to adapt to the changing circumstances.

## JEOPARDY TRIANGLE

In conjunction with the totality of the circumstances, the application of force by an officer will be based on meeting the requirements of what may be called the Jeopardy Triangle. The triangle exists within the necessity to escalate the use of force. The principle or concept of the Jeopardy Triangle can apply to the officer, other people, an arrest or an enforcement action. The Jeopardy Triangle does not necessarily mean the officer is in jeopardy. The three sides making up the triangle are: Ability/Capability, Opportunity and Intent.

**Ability/Capability** addresses the subject's ability or capability to carry out a threat he/she has insinuated.

Example:

An assailant in physical possession of a gun has ability/ capability because he has a gun and can pull the trigger; however, it would be highly unlikely that an assailant who can use neither arms nor legs would be capable of carrying out a threat of physical battery. The ability/capability to carry out any threat professed must be logical.

**Opportunity** indicates that the threat perceived by the officer is imminent, but not necessarily instantaneous.

Example:

An assailant is throwing rocks at an officer who is standing 40 feet out of the range of the thrown rocks. The assailant has the ability/capability, but lacks the opportunity because the officer is out of range. At this point, there is no imminent danger of being struck by the rocks. An assailant saying, "I will shoot you tomorrow" or "one of these days" does not constitute opportunity because the threat must be in the present and the danger or action must be imminent.

**Intent** can be expressed or implied by the initiation of an overt act in the furtherance of the threat or action.

Example:

An officer approaches a subject who is armed with a knife. The subject has a cutting instrument and is able bodied, so the ability or capability is present. The subject will have opportunity as the officer approaches and the threat becomes imminent due to proximity, but no intent has been established because the subject has not done anything against the officer other than a possible

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warning. Now, holding the knife in a threatening manner and looking intently at the officer, the subject begins moving towards the officer, making stabbing and slicing motions as he moves. Intent has now been demonstrated by the initiation of the overt acts in the furtherance of the threat or action.

Each time the use of force is escalated, the triangle for jeopardy must exist. The level of force the officer determines to use must be reasonable and based on the officer's perception of the threat/risk and the necessity to act.

## USE OF DEADLY FORCE

Setting policy and/or guidelines for the use of deadly force that would encompass and adhere to all federal, state, local statutes and all departmental and agency policies is not only beyond the scope of this study guide, it would be an impossibility. Therefore, for the purpose which this study guide was developed:

“Law enforcement officers may use deadly force only when **necessary**, that is, when the officer has a **reasonable belief** that the subject of such force poses an **imminent danger** of **death or serious physical injury** to the officer or to another person.”

### **Necessary (Necessity)**

Necessary means no other reasonable alternative is available to you. All other available means of preventing imminent and grave danger to you or other persons have failed or would be likely to fail. There is no safe alternative to using deadly force, and without it, you or others would face imminent and grave danger of death or serious physical injury.

An officer is not required to place him or herself, another officer, a suspect or the public in unreasonable danger of death or serious physical injury before using deadly force.

### **Reasonable Belief**

Probable cause or a reason to believe, for purposes of this guide, means, facts and circumstances, including inferences drawn by the officer when deadly force is used, would cause a reasonable officer to believe that the point at issue is probably true. The reasonable belief or decision must be viewed from the perspective of the officer on the scene, who may often be forced to make split second decisions in circumstances that are tense, unpredictable and rapidly evolving. Reasonable belief is not to be viewed from the calm vantage point of hindsight. Included in the totality of circumstances used to determine reasonable belief are the following factors:

#### **Ability**

The suspect must have the ability to inflict serious bodily harm or death. This ability must be depicted by a deadly weapon (gun, knife, etc.) or the person's overwhelming physical advantage (size, fighting skills [karate, boxing, etc.]).

#### **Opportunity**

The suspect must be in a position in which the suspect can use his/her ability to threaten human life,

i.e., a person threatening to kill an officer with a baseball bat stands 50 feet away. Although this suspect has the ability, because of the distance he/she is from the officer, there is no opportunity.

**Manifest Intent**

The suspect must demonstrate, through words and/or deeds that the suspect intends to inflict serious physical injury or death to the officer or other persons. The intent of the perpetrator is sometimes nebulous and will require the officer to articulate all the surrounding facts, both direct and circumstantial.

**Imminent Danger**

Imminent danger, as used in this context, has a broader meaning than immediate or instantaneous. The concept of imminent danger should be understood to be elastic, that is, involving a period of time dependent on the circumstances, rather than the fixed point of time implicit in the concept of immediate or instantaneous. Imminent danger may be easier understood when the totality of the circumstances are considered. This includes the previously mentioned use of force considerations. Thus, a subject may pose an imminent danger even if he or she is not at that very moment pointing a weapon at the officer. For example, if he or she has a weapon within reach or is running for cover carrying a weapon or running to a place where the officer has reason to believe a weapon is available.

An example may be a knife attack from five feet away versus thirty five feet away. Five feet is clearly self-defense and imminent. You are not required to await the imminent thrust. From 35 feet away, the attacker may not necessarily pose an instantaneous threat, but the threat can still be imminent. It is crucial that each law enforcement officer be able to articulate the presence of the elements of the policy forcing him to utilize deadly force.

**Death or Serious Physical Injury**

The necessity to use deadly force arises when all other available means of preventing imminent and grave danger to officers or other persons have failed or would be likely to fail. Thus, employing deadly force is permissible when there is no safe alternative to using such force, and without it the officer or others would face imminent and grave danger. An officer is not required to place him or herself, another officer, a suspect or the public in unreasonable danger of death or serious physical injury before using deadly force.

Determining whether deadly force is necessary may involve instantaneous decisions that encompass many factors, such as the likelihood that the subject will use deadly force on the officer or others if such force is not used by the officer, the officer's knowledge that the subject will likely acquiesce in arrest or recapture if the officer used lesser force or no force at all, the capabilities of the subject, the subject's access to cover and weapons, the presence of other persons who may be at risk if force is or is not used, and the nature and the severity of the subject's criminal conduct or the danger posed.

### **Warning Shots**

Firing a weapon should be with the intent of rendering the person at whom the weapon is discharged incapable of continuing the activity prompting the agent or police officer to shoot. Warning shots, therefore, are prohibited.

This guideline simply means that when a law enforcement officer fires his/her weapon at someone, the officer doesn't shoot to kill, doesn't shoot to wound, but shoots to stop the suspect's activity, thereby eliminating the imminent danger.

### **Moving Vehicle**

Firing at a moving vehicle with the intent of rendering it incapable of being operated poses a formidable danger to innocent parties. The possibility of a ricochet is greatly increased when the target is a car body or a spinning tire. Utmost caution must be exercised when considering such action.

This doesn't suggest that one cannot fire at a moving vehicle. If an officer has reason to believe that a driver or occupant poses an imminent danger of death or serious physical injury to the officer or others, he/she may fire at the driver or an occupant only when such shots are necessary to avoid death or serious physical injury to the officer or another, and only if the public safety benefits of using such force reasonably appear to outweigh any risk to the officer or the public, such as from a crash, ricocheting bullets, or return fire from the subject or another person in the vehicle.

### **Fleeing Felon**

Firing at a fleeing person will not be considered justified unless the officer reasonably believes that the person he/she is considering shooting poses an imminent danger of death or serious physical injury.

The word unless indicates the fact that an officer can shoot at a fleeing person in certain situations. For example, if a person fired on an officer, turned and ran with the gun still in hand, the officer could shoot at him/her. The rationale would be that the person still depicted an imminent threat by retaining his/her weapon. The person could be running to cover or could turn and fire at any time. If the person turns to fire, action being faster than reaction, the probability of the officer firing first is unlikely.

### **Public Display of Weapons**

As a general rule, when in the presence of the public, a handgun should be drawn only when the police officer has sufficient cause to expect the handgun will be used and the officer is preparing for its use. Shoulder weapons (long arms) may be displayed when the appropriate situation dictates its possible use.

There are times when simply drawing the weapon is inappropriate. Once the weapon is drawn, and the situation de-escalates or wasn't what it appeared to be, the officer can re-holster. This is especially true in the presence of the public.

### **Bystanders**

The authority to bear firearms carries with it an obligation and responsibility to exercise discipline, restraint and good judgment. The law enforcement officer must keep in mind that when firing a weapon, a danger to innocent parties always exists. As a general rule, when there are innocent people behind or near the perpetrator who may be endangered by the officer's returned fire, the officer should not return fire but should take cover. (Position of Advantage)

If the perpetrator is firing at innocent bystanders, they are no longer considered bystanders. They are now innocent victims. The officer should fire at the perpetrator (even at the risk of injuring one of the victims), to stop the perpetrator from continuing this activity.

## **PROCEDURES FOR CONDUCTING SHOOT/DON'T SHOOT**

Participants are considered in uniform and easily recognized as law enforcement officers.

The "officer" will stand approximately twelve feet from a projector screen, on to which a series of short situations will be projected by a computerized training system. They will be using a specially designed weapon. This weapon may be a real revolver or semiautomatic pistol, altered to fire a harmless infrared laser beam, or replica weapon designed for this purpose. If holsters are not available, the weapon may be placed in a pocket or held down to the side before each scene until such time as the officer reasonably believes that he/she or another person is or is about to be placed in imminent danger of death or serious bodily injury.

Preceding each scenario, a narrator will give a short description of the situation. The narration will be brief and will place the officer in the situation as the scene starts. Although the scenes are short (about one minute), there will be reasonable time to determine whether or not the elements that constitute a shoot situation are present. The officer is the lens of the camera and is to become part of the scenario. If a character in the scenario is talking into the camera lens, he/she is talking to the officer. The officer should interact with the scenario, using verbal commands, drawing on and challenging suspects appropriately-- in effect, being part of the scenario.

The officer should draw (or raise) his/her weapon whenever he/she has reasonable cause to expect it will be used and is preparing to use it. The drawing of the weapon, for the purpose of this exercise, will be the same as in real life. The weapon may be drawn based on the situation in the scenario or possibly even the narrator's description of the situation.

The participant will be scored on gun handling skills, timely reaction, verbalization, accuracy of the shot, and foremost, judgment according to the guidelines set forth in the Study Guide and Training Keys.