On local streets
Police use of force in the war on terror

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The Command College Futures Study Project is a FUTURES study of a particular emerging issue of relevance to law enforcement. Its purpose is NOT to predict the future; rather, to project a variety of possible scenarios useful for strategic planning in anticipation of the emerging landscape facing policing organizations.

This journal article was created using the futures forecasting process of Command College and its outcomes. Defining the future differs from analyzing the past, because it has not yet happened. In this article, methodologies have been used to discern useful alternatives to enhance the success of planners and leaders in their response to a range of possible future environments.

Managing the future means influencing it—creating, constraining and adapting to emerging trends and events in a way that optimizes the opportunities and minimizes the threats of relevance to the profession.

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For just a moment imagine the following: You are the Chief of Police of a mid-sized police department. At 3:00 p.m. two of your officers are dispatched to a suspicious person call; a man dressed in a long coat in front of a very busy business venue on a hot summer day. The first police officer arrives and contacts the suspicious male. The second officer then arrives at the location and can see the first officer talking to the suspicious person. The second officer then sees the first officer begin wrestling with the suspicious male. As the second officer runs to help his partner, he hears the first officer exclaim, "He's wearing a vest bomb!,…He's wearing a vest bomb!" The officer and suspect are wrestling over control of what appears to be a switch, possibly a detonator; his partner sees what appears to be sticks of dynamite under the male's coat. Upon seeing this, the second officer draws his sidearm and fires a close contact gunshot to the head of the suspicious male, neutralizing the threat.

On the local television news at 5:00 p.m. a video, shot by a local college student, is played showing a local police officer "executing" a person who appears to be, in the words of the news anchor, a "local transient." The video is streamed to the national media, prompting a storm of calls from media outlets and the public about what they saw. You, as Chief, are concerned with your officers and community, and with the aftermath of an aborted terrorist bombing. Local elected officials are on hold, the FBI is enroute. Scratching your head, you wonder aloud what America's reaction will be to a true terrorist event.

We have all seen coverage of police actions in the media and we have seen public reaction to publicized police use of force. What kind of reaction might we expect from

the public, the media, and the legal system the first time the police use deadly force to end a terrorist event? How can police agencies effectively mitigate the adverse aspects of the reactions from their community and others whose perspectives have an impact on law enforcement? The answers to these questions are critically important to maintain a strong healthy police department, while fostering confidence in the community ahead of inevitable times of strife. The police need to look beyond their response to specific acts of terrorism to the larger question; how to restore and rebuild confidence in the wake of an event in their organizations and communities.

Community Members Weigh In

In December 2007, a group of community leaders; business owners, attorneys, risk managers, community based organization executives, local government officials, and law enforcement officials met to discuss and identify current trends and events related to the police use of deadly force and terrorism.[1] The group perceived that any police use of deadly force to end a terrorist event would be considered a heroic event on the part of the officer involved and the department, and each would be heralded as a credit to their profession. Then reality set in, and the group began to consider the bigger picture of the question posed. The curs of their study was; how will we deal with terrorism on a local front? Is it different than any other notorious crime? What training and protocols should the police have in place to prepare for the unthinkable? Their thoughts and observations were telling; they felt outside influences and the popular culture would drive the speed of

[1] In attendance were—a retired Assistant City Manager who was able to bring the perspective of the local governing authority to the table, a Risk Management Authority Claims Specialist, the owner of a local small business, a member of the board of directors for a local community based organization, the Chief District Attorney's Office Investigator for Yolo County, a Supervising Deputy District Attorney from the Yolo County District Attorney's Office, a former SWAT Team Commander for the Woodland Police Department, and the current SWAT Team Leader for the Woodland Police Department.

public response, and also the need to react quickly in the aftermath of an incident as described above.

The group identified the media (including print, electronic, and television) as the single greatest influence of public opinion and perception. Specifically, they noted the influence of the press on the perception of the population after the September 11, 2001 attacks on the United States. It was the group's consensus that media reports immediately following the attacks helped foster an increased sense of patriotism amongst Americans, and also enhanced relationships with our allies. As a result, the group concluded, countries were willing to openly come out in support of the United States. They also noted how media reports have now impacted the commitment level of some early supporters of the war on terror. Political leaders who initially supported the war on terror are now modifying their positions, in some cases based on criticism being brought forward by the media. The influence of the media on all matters will not wane. However, the influence of the media can be tempered by official response from governmental sources.

Public acceptance, or a lack of acceptance, of the use of deadly force is another significant trend related to the potential aftermath of a terrorist event. In discussing this trend, the group discussed the London bus bombing incidents and police response in July 2005. They recognized the police and their constituency in England have first hand experience dealing with terrorist events. The Irish Republican Army attacks throughout England and Ireland and the subsequent investigations, intelligence gathering, and interdiction on the part of law enforcement have allowed a *perceived* acceptance that, when dealing with terrorists, the use of deadly force by law enforcement is necessary.

In the London bombings, British police employed deadly force on a subject later determined to be uninvolved in the crime. The group discussed the “matter of fact” reporting of the event and the lack of sensationalism in the British press, and speculated about how a similar event would have been portrayed in the American press. Additionally, the concluded the civil process in the UK (where no suit was brought by the subject’s family) would differ from the litigation had the incident occurred in America.

Collateral damage was also discussed. How action, or inaction, on the part of the police, after learning of a terrorist threat with resultant damage or death, would be the fault of the police. An associated trend was a perception within some aspects of our society that the police would be wrong regardless of their actions.

Finally, the consensus of the panel was one event could, and probably will, mitigate any adverse effects from a police use of deadly force to end a terrorist event. That event would be another successful large-scale terrorist attack in the United States.

The dilemma

This is an interesting dilemma; law enforcement is expected to stop acts of terrorism, hopefully before they occur, yet they will be held accountable for all of their actions while dealing with an enemy who plays by no rules. While on its face these actions by the police appear no different than dealing with any other suspect, the magnitude of the potential outcomes can and will affect the decision making processes of the officers involved.

Law enforcement will be subject to the same scrutiny in a terrorist/WMD event as they are whenever they use deadly force; the rules of engagement are the constant. Imagine a scenario where deadly force is used, and the use of force is based on

intelligence information related to a specific target, at a specific time, by specific people using specific equipment. The intelligence information is corroborated, and the informant is reliable, but the information was just received and shared with local law enforcement. If officers encounter the alleged suspects based on the intelligence provided, and a deadly force incident ensues, this use of force will be dissected like no other officer involved use of force has ever been dissected.

The press will demand information about the investigation leading to the actions of officers involved. The public will want answers, while certain aspects of the community may be calling for the officer's arrest. The rights of the terrorists will be examined for any violations by the police. The question, "Were they afforded due process before deadly force was applied?" will be investigated, and then weighed against the reasonable officer standard. (Graham v. Connor, 490 U.S. 386 (1989)) It is possible there may be even more scrutiny of police actions in a terrorist event than in any other use of deadly force. This could easily result in new case decisions which will impact how law enforcement performs their duties.

Are we prepared to address the aftermath?

Since the events of September 11, 2001, there is a heightened awareness of the possibility of another terrorist event taking place within any community in the United States. While the FBI is specifically tasked with battling terrorism, they recognize the importance of local law enforcement in that struggle. According to the Executive Assistant Director of the National Security Branch of the Federal Bureau of Investigation, "Identifying these individuals and groups is a tremendous challenge, and the role of our partners in state and local law enforcement is critical in these efforts. Local police

officers, who are out on the streets, are on the front line of the war on terrorism. They often may be the first to detect potential terrorists."[2] We in law enforcement have accepted this responsibility, and continue to train our personnel to respond the terrorist threat. Following the National Response Framework guidelines developed by the Department of Homeland Security[3], primary law enforcement training in re acts of terrorism include:

- Prepare - pre-event preparation and planning,
- Respond - Event response by law enforcement personnel and the management of resources,
- Recover - Threat mitigation and event mitigation.

Prepare - Pre-event preparation and Planning

Law Enforcement agencies are constantly working to enhance their response to acts of terrorism. The Department of Homeland Security provides free training to every agency in the nation for the purpose of building the capability of each agency to respond to a terrorist event. This "capability building" is the overarching goal of the preparedness cycle[4] developed by the Department of Homeland Security. This cycle also includes planning; organizing, training and equipping; exercises, and evaluation and improvement. This is the first step in the system the Department of Homeland Security has developed to address terrorism. In other words, accomplish all of the steps outlined above, make adjustments as needed, and you are ready to handle an event.

In a presentation, "Tools for Tolerance for Command Staff," David Lapin made the following comment, "The United States is a great country for developing systems. Some

[2] Hulon, Willie T., Focus on Terrorism, FBI Law Enforcement Bulletin, December 2007, Page 1
[3] National Response Framework, Department of Homeland Security, January 2008, page 27
[4] Ibid, Figure 2. page 27

of the best systems in the world were developed here. The down side, as it relates to terrorism, is the United States is great at developing systems…check the box and move on. The safest airport in the world is in Tel Aviv. How is it the safest airport in the world, when passengers do not have to disrobe to get through security? People talk to each other, the responsibility for security and security screening in that airport is the responsibility of every employee in the airport. It is not a system driven security plan, it is communication driven."[5]

In law enforcement we present our officers with policies and procedures, rules and regulations, general orders and special orders and we tell them to study them and be prepared to be tested on the content. We give them the rules of engagement for any deadly force event (including a terrorist event), we test them, we "check the box" and we move on to the next project or system. We rely on the checked box to protect us, just as we relied on systems and checked boxes to protect us on the morning of 9/11.

How do we overcome this shortfall in our thinking? It is not enough to tell someone we were able to check the box, "I did my part, it is now someone else's responsibility to see it through to the end." Policing must periodically revisit policy and procedure, rules and regulations, general and special orders; and discuss the practical application of these with our personnel. Ongoing and open discussion with the acceptance of critical feedback and new ideas will enhance confidence in the rules of engagement and our application of the rules. We owe it to our personnel and our communities to be prepared to face every aspect of every incident, including the aftermath of the incident.

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[5] David Lapin, CEO Strategic Business Ethics, Tools for Tolerance for Command Staff, September 6&7, 2006, Museum of Tolerance, Los Angeles Ca.

In addition to the ongoing policy review noted, police personnel should know what to expect in the legal and civil arenas subsequent to any use of deadly force. Once again, this is an area where we tend to "check the box." We may provide our personnel with an overview of what they might expect after a use of force incident, but we tend not to revisit the information until such time as something has happened. As part of our "capability building" we should include training on Officer Involved Shooting investigations and the processes related to those investigations and subsequent actions with regularity to keep these considerations in mind.

An additional aspect of our preparation and capability building is the community aspect. Public Safety Agencies owe it to their organizations and governmental entities to establish contacts within the community and utilize these contacts to achieve the necessary community participation in community outreach or community training programs related to the National Response Framework. Current training entails the manner in which community resources assist emergency responders in the event of a terrorist attack or natural disaster, and typically the training responsibility rests with the fire service.

Law Enforcement executives and managers need to become involved in providing training to these community leaders, outlining police responses to various calls for service and the rules surrounding the use of force. The formality of these training sessions can and should vary with the communities being served, the focus of the training is education of the public regarding the rules of law enforcement.

After the initial training, these contacts should be engaged periodically in community forums to discuss various topics. According to law enforcement experts, "Departments

should encourage contact and educational opportunities with members of the public, the press, citizen groups, and other organizations about law enforcement's use of force. Dialogue and discourse about conflicts, perspectives, and potential divisive incidents before they occur can help improve the critical examination of the issues surrounding the use of force."[6]

Response and resource management

In the opening scenario the two patrol officers have encountered and neutralized a terrorist threat. According to the Department of Homeland Security, "Once an incident occurs, priorities shift – from building capabilities to employing resources to save lives, protect property and the environment and preserve the social, economic, and political structure of the jurisdiction."[7] After stabilizing the immediate scene and providing for the public safety, one of the first notifications will be to the FBI. This notification will start the federal response to the local incident. Once this notification is made to the FBI, through any Joint Terrorism Task Force established within the jurisdiction of the local FBI Field Office, State resources would also begin to respond to the incident, all in support of the local law enforcement jurisdiction.

These new resources introduced into the investigation will begin their own spin-off investigations, all intended to accomplish the following:

- ✓ Gain and maintain situational awareness
- ✓ Activate and Deploy resources and capabilities
- ✓ Coordinate responses

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[6] Supra, note 8, page 11. Shannon Bohrer, MBA., Harry A. Kern, M.Ed., Edward F. Davis, M.S., The Deadly Dilemma, FBI Law Enforcement Training Bulletin, March 2008, Page 11

[7] Supra, note 3, page 32

- ✓ And finally, Demobilize

In this scenario agents will begin intelligence gathering, identity record searches, phone record searches, search warrant preparation of the suspect's residence and storage facilities, vehicle record checks, and so on in hopes of identifying conspirators and stemming additional terrorist incidents. Additionally, the FBI will bring evidence teams to the scene to search, document, and collect evidence present at the scene in conjunction with your local criminal investigation.

In the event of a successful terrorist event, the FBI will also bring FEMA into the local jurisdiction to assist in event recovery efforts. Finally, these resources will also document and manage the demobilization of the resources called to the event allowing accountability for compliance with mutual aid and assistance provisions.

Recover – Threat mitigation and event mitigation

Recovery from a terrorist event includes threat mitigation; the identification and arrest of additional terrorism suspects and target identification and hardening. Event mitigation includes assisting the public in meeting basic need and returning to self-sufficiency, providing basic law enforcement services. In all of our training, after we deal with the threat we "recover" the community and the services the public need to function throughout their days.

But there is more to recovery than this, what is going to be the response of the community to this incident, and what is going to happen to the officer who fired the shot? To address these aspects of recovery we can "prepare" better. We should include community outreach and training programs for our citizens to better prepare.

The following is an example of a community outreach event that may have impacted the public response to a police use of force:

> In the fall of 2007 the Woodland Police Department held an Open House event where law enforcement equipment and programs were on display for the general public to see, touch and learn about. Officers were present to answer any questions about programs, equipment, staffing, etc.. The jurisdiction also conducted tours of their facility and demonstrated a deployment of the TASER on a silhouette target at scheduled times during the event. There were approximately 4 demonstrations and approximately 200 people watched the TASER demonstrations. The local newspaper was in attendance and reported on the entire event the following day. In all about 1000 people attended the open house.
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> In the late spring 2008, officers from this jurisdiction responded to a call for service involving a walk away from a local mental health facility. During the ensuing physical altercation between officers and the suspect the TASER was deployed three times before the suspect could be taken into custody. The suspect stopped breathing at some point during handcuffing and CPR was started within a minute of the arrest. The suspect was later pronounced dead. While the press reported the death associated with the use of the TASER. The only public reaction to the incident has been one protester with a sign decrying the police department and the TASER, and an on-camera interview with a mental health contractor talking about communications with the mentally ill. Further, an

editorial opinion in the local newspaper stated, "More information needed from police and investigators before reacting to individual's death." [8]

This example was cited to demonstrate the moderate tone of the press coverage and other potential positive impacts of community outreach programs and training related to police use of force. This Open House was in no way intended to address use of force issues related to the TASER, the goal was only to demonstrate the tool, yet it appears the department might have realized a positive impact, in that there was not more negative press and protests.

We should also provide recurrent training to our personnel related to our rules of engagement and what we can expect when we employ force, as part of our planning processes. As they have historically, law enforcement agencies will rely on policy and the law as the best defense from civil litigation and federal review for their officers. [9] To steal a construction analogy, policy and procedure and the law provide the footings upon which the foundation of the defense is built. This is part of our law enforcement system. Law enforcement officers must recognize that, "conformance with policy, as determined by the officer's agency, does not equate to an ironclad defense of qualified immunity nor does it require a court to later agree that no constitutional violation took place. Officers need to realize that a finding by their agency that a particular use of deadly force was within policy does not preclude a plaintiff from filing a civil rights claim or a negligence claim."[10] As Law enforcement executives and managers we must prepare our personnel

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[8] Daily Democrat, May 30, 2008, The Daily Democrat, Article ID # 9427099
[9] Jim F. Clark, Scott B. Wood, Esq, Constitutional limitations on the use of deadly force, The Tactical Edge, Summer 2007, page 26
[10] Supra note 10, page 28

for any potential outcome from any police action, including the use of deadly force in a terrorist event.

The Media

To further enhance recovery through planning, it is critically important to involve the media in these various training scenarios.

In the community outreach and training programs they can report on the training, providing positive press for the program, and participate through instruction by educating the public on how they go about doing their job, what they are looking for in an interview. This will also afford the press exposure to the opinions of those community members who may not generally be contacted by the press for input on a story.

In the training of our law enforcement personnel, it can not hurt for the press to learn some of the basics of our application of the law. Likewise, we can learn from them, what they need from us for a story. This interaction will allow the development of working relationships which can reap long term mutual benefit.

An educated citizenry that understands the rules of engagement and the legal parameters law enforcement must operate within, when dealing with any incident, may be much more open-minded and less judgmental in their initial reactions to a use of deadly force incident.

Conclusion

No one knows what will happen after the first police use of deadly force to end a terrorist event. Dealing with weapons of mass destruction has changed the playing field. Reaction to intelligence information regarding a WMD event will require different thought processes than an officer's reaction during a one on one confrontation with an

armed man; How close to the targeted venue is a WMD terrorist allowed to get before some action is taken to neutralize the threat? If experience has taught us anything it is that public reaction is unpredictable and is really predicated on the local community relationship with their law enforcement agency. Our best defense is to prepare, and to anticipate the response should an event occur. To do less is to prepare for failure, an outcome we cannot accept now that terrorism has announced its presence on the world stage. Never more has the adage “think globally, act locally” been more appropriately used.-