

Resistance And Response

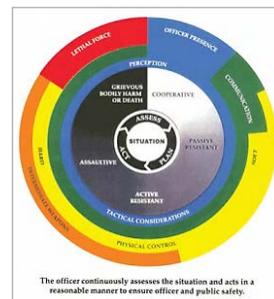
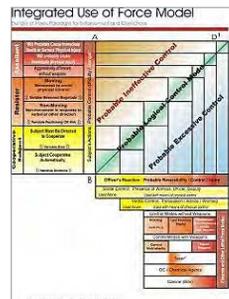
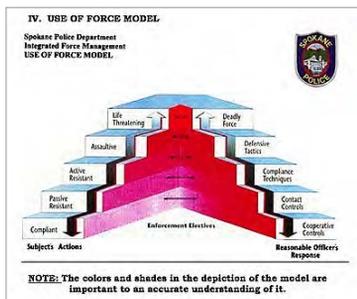
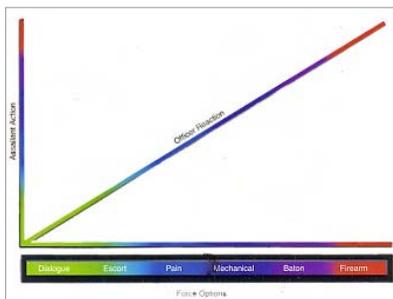
Reframing The Consequences
Of Non-Compliance

By Richard Kay

The ability to use force lawfully against the public is a key factor which distinguishes public safety officers in society. As a result of this responsibility, this aspect comes under close scrutiny.

In an attempt to define and clarify appropriate circumstances for lawful response, force continuums were developed to provide agencies a realistic means of evaluating force usage, and provide officers with reasonable guidance in determining what level of response is required and a means of documenting that response. They were initially developed to explain to officers the proper response to subject actions, the level of force used and circumstances under which it was exercised.

Examples of Force Continuums



While the continuum model has served as a useful instructional tool for officers over the years, it has some limitations as a tool for application in an operational environment. Officers engaged in encounters with non-compliant subjects may feel that they are legally obligated to climb the use-of-force ladder and de-escalate to compliance, hesitating to take safer immediate assertive actions to end unlawful resistance.

This article presents principles for understanding non-compliant encounters based on subject-centred decision making i.e. the subject is the primary decider of the process and outcome of the encounter.

Concentrate On Resistance Vs Response In Training And Reports

While this may not sound radically different than current practice, it is a contrast to the continuum doctrine, where officers are legally and morally bound to use no force where the possibility exists of avoiding it, and to use the least force theoretically possible in the least intrusive way for the shortest possible amount of time.

The reality is that when a subject is non-compliant, the officer has the legal and moral obligation to gain compliance as quickly and safely as possible. Rather than lowest force, officers should use the most effective response (in this context 'effective' means quickest and safest). The most effective means of gaining compliance may not be the least possible force, but it must remain reasonably necessary and in proportion to the officers' objective.

That which is most effective tends to result in shorter physical contact when a hands-on

response is inevitable. Briefer contact means less likelihood of injury to offender, bystander and officer. Therefore, application of effective means to end non-compliance is a moral imperative as well as tactically superior and justifiable.

While de-escalation is one of an officer's response options, it is not always plausible to attempt verbal calming. Some conditions contributing to non-compliance are medical emergencies dependent on brain chemistry that will not respond to calming techniques and get worse and less treatable over time. This does not argue against crisis intervention methods, but rather puts those strategies as available for use when appropriate and by-passed when they are not.

Reframe Language To Eliminate 'Use Of Force' From Policy, Training And Reports

The perception that accompanies this term unfairly colours any objective report. It implies that officer actions are suspect and brutal, and promotes the assumption that if force was used it was the officer's fault and they have some explaining to do.

With the concept that the decision to be non-compliant is with the subject, an officer's efforts to gain lawful compliance should be described in those subject-centred terms with the officer identified as the victim. The focus of the narrative should be the subject, not the officer. Putting emphasis on the behaviour of the subject and the context of the encounter more accurately portrays the subject's unlawful behaviour and minimises the perception of the officer as the aggressor. The use of force is imposed upon the officer by the subject.

Use of force reports are by nature defensive and carry the cloud of accusation over them. Documenting non-compliance puts the

burden where it should be – on the subject's behaviour in the context of an act of resistance. With subject-centred reporting, agencies may decide that separate forms for reporting use of force are unnecessary.

In using language to convey the circumstances of the event, officers should avoid passive language like 'they were then subdued' and avoid labels like 'resistive', 'combative', 'uncooperative' and 'non-compliant', unless providing specific descriptions of behaviour such as walking away, pushing, refusing to answer, fighting, etc.

Any efforts required to gain subject compliance should be part of the report narrative, fully documented in the accurate and comprehensive description of the subject's unlawful behaviour and the context of the contact. The subject-centred concept of non-compliance enhances officers' awareness of their victimisation which, in turn, will likely enhance the prosecutors' and juries' perceptions as well.

Context Is Critical To Outcomes

All actions, relational factors between parties and conditions surrounding a confrontation comprise the totality of the situation, and include officer/subject factors and special circumstances. Each relevant condition relates to the situation in determining the officer's course of action. The context of the encounter gives the officer facts that determine their course of action. These facts are generally unknown to the subject, but this ignorance must not justify their failure to comply.

The significance of environmental, social, and historical factors that colour officer perceptions of the encounter will escape the

reader of the report unless officers explicitly guide the reader to navigate the cumulative significance of those factors. All of the factual circumstances of the event and the officer's subjective interpretation of them must be communicated in the report.

Standard concerns such as time of day, number of persons, and knowledge of the subject's emotional disposition should be articulated. Officers should express to their fears and concerns even though documenting fear seems counter to our self-image. Those who read the officer's report should not be left to guess or assume the appropriateness of the officer's actions without a fully painted picture.

Use 'Contextual Compliance' Language And Imagery

The goal of an officer in a confrontation is subject control, and this must not be a 50/50 balance. If half the confrontations results in failure to control a subject, officers and the public, are put in danger.

Each response employed in a situation should be evaluated in terms of its likelihood to gain control compared to its likelihood to cause damage. Responses which offer a high degree of control and a limited potential for damage are preferred options (harm minimisation). In evaluating responses, consideration must be given to officer safety, which involves an officer's ability to disengage or escalate in response to subject non-compliance.

Stage and step compliance policies should be altered to recognise the rapid decision making and fluidity inherent in non-compliance situations. The 'tool kit' concept is more useful than a geometric graphic – tables, graphs, steps and wheels imply some rational orbit of events when a subject resists an officer. The process of deciding how to gain compliance is a logical one, not trial and error.

The continuum model is predicated on trial and error – if step 2 does not work, go to step 3, etc. It implies a willingness to err on the side of being ineffective. Achieving compliance efficiently is rational – the officer will select the response most likely to be effective in solving the issue of non-compliance.

Document Success

Officers tend to express in their reports that resorting to force was somehow a failure on their part. Lawful use of force is never a failure, except perhaps a failure of judgment

on the part of the offender.

The narrative regarding the efforts to gain compliance should be as positive as a realistic account can be. Is there a happy ending when somebody is subdued by officers and handcuffed? In a universal sense there was failure somewhere – family, school, religion, government, personal choices; all the things the criminologists study. But the officer's mission is direct: gain compliance effectively. If that was accomplished then say so in the report. Document all of the aftercare that followed the subject's resistance, including process explanations, checking restraint tightness, and obtaining medical care.

A properly documented report detailing a confrontation is the first step in minimising potential liability. Although report formats vary, the following is important when documenting non-compliance:

1. Time of day, location/environment, type of situation, number of persons involved.
2. Subject demeanour and attitude.
3. Officer dialogue and subject responses.
4. Subject actions and officer reactions.
5. Details of officer/subject injuries.
6. Details of neutral witnesses.

Include all officer/subject factors and special circumstances involved in the situation. This information not only aids in criminal proceedings, but also helps defend officer actions against a civil suit. Short, generic descriptions of a situation may cause a reader to mistakenly believe something is being hidden. Officers should avoid conclusive statements such as, "I used reasonable force to affect control", but rather use concrete, precise descriptions of non-compliance and response options used.

Policy makers should understand that past reactions to lawsuits and bad publicity have achieved their purpose. We must proceed with caution and be mindful of the potential for litigation and loss of public confidence while guarding civil rights. Officers need not agree with those opposed to public safety, nor apologise for gaining lawful compliance, using all the response options in their tool kit.

***Richard Kay** is an internationally certified tactical instructor-trainer, Director and Senior Tactical Trainer of Modern Combatives, a provider of realistic operational safety training for security and public safety agencies. For more information, visit www.moderncombatives.com.au*