

## NON-LETHAL... REAL OR IMAGINED?

In the industry of providing non and less-lethal alternatives to law enforcement there is a constant controversy over the terms non-lethal, less-lethal and less-than-lethal.

Can we bring this to a close? Not as long as manufacturers trying to penetrate law enforcement and consumer markets conveniently blur the distinction between what is less-lethal and what is really non-lethal. Inherently manufacturers try to position their products in their target markets with marketing campaigns that present their products in their best possible light and provide documentation to law enforcement and government agencies that may provide a defensible position for the purchaser. Depending upon which companies and what government entities you are dealing with... the terms mean something quite different. The United States Marine Corps represents the United States Armed Services in the Joint Non-lethal Weapons Program defines it one way and major pundits from the law enforcement community label another way. <sup>1</sup>

The truth is you must evaluate each product in the context of its performance, mission, and deployment risk. We suggest that a risk evaluation also contain a financial risk analysis. For instance, if you use a less lethal or non-lethal weapon what is the follow-on cost in terms of physical compliance, injury and recovery. If for instance, you use a non-lethal electro-shock weapon, barbs entering the skin must be surgically removed...what is the cost of ambulance, doctors and hospital costs? What is the cost of potential legal liability? What is the cost of public perception?

In considering the use of non-lethal and less lethal products, a definitive understanding is necessary to understand the effects of the product:

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<sup>1</sup> Department of Defense policy defines non-lethal weapons as "weapon systems that are explicitly designed and primarily employed so as to incapacitate personnel or materiel, while minimizing fatalities, permanent injury to personnel, and undesired damage to property and the environment." This definition does not include information warfare, electronic warfare, or any other military capability not designed *specifically* for the purpose of minimizing fatalities, permanent injury to personnel, and undesired damage to property and the environment, even though these capabilities may have non-lethal effects.

It is important to note that Department of Defense policy does *not* require or expect non-lethal weapons "to have a zero probability of producing fatalities or permanent injuries." Rather, non-lethal weapons are intended to *significantly reduce* the probability of such fatalities or injuries as compared with traditional military weapons which achieve their effects through the physical destruction of targets.

- Kinetics: How hard an object will impact a suspect?
- Electronics: How much voltage and/or amperage a human body can take?
- Chemical agents: What are the human effects characteristics of each chemical?;
- Public opinion: What is perceived public reaction in terms of each products application in terms of appropriate use of force, and;
- Precedent court decisions: What recent court decisions restrict or defining necessary use of force, and what is the legal liability exposure in the context of each particular product?

We believe that if you are armed with that knowledge you can make informed decisions and not have to rely solely on the manufacturer's claims. These considerations are also important in considering possible litigation defense in response to legal challenges of appropriate use-of-force and known product effects. When sitting in front of a jury and your only response to a question is that the manufacturer told me that it wouldn't hurt anyone; you may be very embarrassed if you relied on the manufacturers statements alone.

Generally you can use these terms to describe the level of injury a tool is designed for:

- Non-lethal is a device that does not have the potential to kill anyone if properly deployed. The percentage of fatal outcome is practically non-existent and the percentage of serious injury is very low.
- Less-lethal is a device that is designed to not kill anyone if properly deployed but does have the potential to cause serious injury or death. The percentage of a fatal outcome is low but the percentage of serious injury is high.
- Less-Than-Lethal is a confusing term meaning the same thing as Less-lethal.

The U.S. Military have authored their own definition of non-lethal. They don't make a distinction between less-lethal and non-lethal. The military has a different mission than law enforcement. When the military takes an action a certain percentage of casualties are acceptable. When law enforcement undertakes an action no casualties are acceptable. That doesn't mean we will not use deadly force when it is justified. It just means we can't start with the idea that a certain percentage of our forces or suspects will become casualties.



Manufacturers of impact munitions such as bean bags, sponge munitions, etc. will tell you that "non-lethal" is a myth. They will tell you, in an effort to promote their own products, that everything can be lethal so how can you have a "non-lethal" product. As in every lie a little truth goes a long way. Their little truth is that anything has the possibility that it may be used to kill someone. The pen in your pocket, your baton, your clip board, all could be used to kill someone but we don't refer them as less-lethal. The lie is that there is nothing out there that is non-lethal. Will a suspect one day die from exposure to a "non-lethal" product? The answer is certainly, yes. Does that make it less-lethal? The answer is certainly, no.

Non-lethal products are designed to be just that, non-lethal. An anomaly will certainly happen one day. The anomaly will be a suspect with a malady that we cannot predict, an anaphylactic reaction to OC with no Atropine on the scene to help or a purposeful misuse of a low impact projectile by a police officer.

On the other hand, using less-lethal projectiles you will eventually cause serious injury or death. It has already occurred in many jurisdictions on many occasions. That's why it is termed less-lethal. Although we don't want a suspect to die at our hands it will happen.

Force, by any name, should not be applied unless it is reasonable and necessary for the circumstances surrounding its use. The least amount of injury inflicted on a suspect in stopping his illegal actions is the preferable alternative we should choose. Make that choice through an informed decision on your part. When should you make that decision?

#### WHEN IS LESS-LETHAL INAPPROPRIATE?

The preservation of order and the observance of law are best achieved through voluntary compliance rather than force or compulsion. The higher the level of public voluntary compliance and cooperation the less need for the use of any force. To that end, the use of force must always be considered secondary to the desirability of voluntary compliance to law. When that compliance doesn't take place other tools must be used.

A university student who lost an eye after being injured during a riot was shot in the head by police with a bag of lead, authorities confirmed. The Assistant Police Chief