LEGALLY JUSTIFIED; BUT WAS IT AVOIDABLE?

Introduction

What the Seminar Isn't: Not intended to disparage or unreasonably criticize individual officers or their actions, tactics and decisions in the moment.
What the Seminar Is: Designed to improve performance and save lives of both officers and citizens as well as careers by analyzing actual force events. It will discuss and examine responsibility in four areas:

1. Culture (Systemic Issues)
2. Training (Agency & Individual)
3. First Line Supervision
4. Individual Officers

Why the Seminar: While the police evaluate use-of-force cases from the perspective of the *"Graham Standard"* and *objective reasonableness*, citizens, the media, pundits and politicians look at uses of force and place blame on the police by asking, *"Was it avoidable?"*

Force Mitigation Opportunities

Mitigation: *the process or result of making something less severe, dangerous, painful, harsh or damaging*
In the Moment: Do we miss opportunities to calm the individual? Do we - perhaps unconsciously – intensify the stress during the interaction and escalate the emotions of the other persons(s) that contributes to the need for force?

Objectively Reasonable vs. Necessary

While purported by some to be the same - *they are not* - at all. What is *objectively reasonable* in the moment may, in the aftermath, be found not to have been necessary after all facts are learned.

For instance, in the aftermath we find that a gun pointed at an officer was actually a replica and not operable. The shooting of the subject therefore may not have been *necessary*, but in the moment, it was objectively reasonable.

Therefore, the *Graham Standard*, which adheres to 4th Amendment *objective reasonableness,* is sound, judicious, wise and practical.

LEGALLY JUSTIFIED; BUT WAS IT AVOIDABLE?

Avoidable?

A use of force by an officer may have been completely and legally justified - *at the moment* - but the questions we will consider in this Seminar are:

1. Did the officer's behavior, conduct, tactical decisions, overreaction, hastened and mistaken judgement contribute to the necessity of the moment?
2. Could the moment have been avoided?
3. Was the officer's conduct a product of the agency's culture, leadership and training philosophies?

Consideration of Human Performance Science in Force Events

- How fast can someone move, raise a gun, point and pull the trigger?
- How long does it take an officer to pull a trigger after the brain recognizes the need?
- How fast will an officer pull the trigger and for how long under high stress?
- How long does it take an officer to recognize a threat is over and how long to stop pulling the trigger?
- How often do officers contribute to the temperature and the stress of an encounter with uncooperative, irrational and emotionally charged people?

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LEGALLY JUSTIFIED; BUT WAS IT AVOIDABLE?

Four Classifications of Police Shootings/Uses of Force:

1. ***Legally Justified***
2. ***Legally Justifiable but perhaps, avoidable***
3. ***Legally Unjustified but, the officer believed they were acting lawfully***
4. ***Criminal Intent/Negligence***

1. Legally Justified

- Unavoidable and inevitable because of the offender's conduct which created the absolute need for an officer at that moment to take immediate deadly force action.
- The officer needed to use deadly force in order to save his/her life or the life of others because of the imminent danger posed by the offender.

2. Legally Justifiable but perhaps, avoidable?

- At the moment force was used it was objectively reasonable, necessary and legally justified based on the standard set by the Graham v. Connor 490 U.S. 386 (1989) decision.
- There was no malice or evil intent on the part of the officer. The officer needed to use force in the moment to protect him/herself (or another) because of the imminent danger posed by the offender.
- That said, in hindsight, could the officer have done something different that would have led to, perhaps, a different moment?
- Did the officer's language, improper tactics and/or aggressive behavior incite an already agitated person?
- For example: Did the officer unnecessarily move towards when backing away was the better tactical option?
- Easy to see in hindsight (Graham says hindsight is to be disregarded).

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3. Legally Unjustified *but, the officer believed it was justified*

- Gross negligence on the officer's part but, there was also true belief by the officer that – at the moment – his/her use of force was necessary, legal and justified.
- There was no intention to commit a crime and there was no belief on the part of the shooting officer that his/her action would be considered outside of the law and/or the legal parameters concerning the use of force, even if later, they were determined to be so.
- However, when that moment is viewed objectively, it did not meet the standards that allow for the use of deadly force. This type of force event is often the result of an officer overreacting to a stress event.

4. Criminal

- The officer's behavior was outside any manner of reasonableness and/or the use of force/shooting was an intentional or reckless criminal act at the moment the force was used.

The Graham Standard: Graham v Connor 490 US 386 (1989)

- Officer's use of force is analyzed under the 4th Amendment *Objective Reasonableness* Standard
- "The test for reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application."
- "Allowance must be made for the fact that "…police officers are often forced to make split-second judgments in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation."
- Behavior is judged from the perspective of a reasonable officer "on the scene" rather than with the 20/20 vision of hindsight.
- The officer's actions are based on the "totality of the circumstances" at hand.

Officer Created Jeopardy

- Officers needlessly putting themselves in danger, committing an unforced tactical error that makes them vulnerable—and then using deadly force to protect themselves.

Practical Perspectives for Peace Officers

- **Peelian Principle #7:** *"The police are the public and the public are the police."*
- ***Balance:*** *Guardian Heart & Warrior Spirit*

Myths, Facts & Statistics

- Are agencies overreacting to media, political and activist beliefs?
- What are the real numbers when it comes to national uses of force by the police?

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Our True Faults in Law Enforcement: Commitment

1. Leadership
2. Training & Tactics (*Sudden Onset of Acute Stress*)
3. Human Behavior & Communication Skills
   - Leaders need be involved especially at the first line level. They must constantly learn and educate. Bosses need to be knowledgeable in all areas of vulnerability for their officers, the agency and the citizens they protect and serve.
   - Police administrations must be committed to continual training opportunities especially concerning tactics and the realities of acute stress.
   - A ***Culture of Trust*** is imperative with an understanding of the role of the police within the community as peace officers.

Deescalation

- Misunderstood and mischaracterized leading to unrealistic expectation in and out of the profession.
- Not a phrase, a tactic, a technique and/or a magic word.
- ***IT IS A GOAL!***

The Keys to Deescalating the Irrational & Noncompliant

1. Understand that behavior is dictated by emotions
2. Be an expert in 360° communication
3. Listen to what the individual needs/wants
4. Control the self & Focus on your ***Professional Goal***
5. People are unique individuals with inherent worth

An Officer's Professional Goal?

1. Safety for All!
2. To control, redirect, and/or influence other people's immediate behavior.
3. Don't give em' any ammo to use against you!

Behavior *is dictated by emotions!*
Officers must begin by controlling your own!

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The Importance of 360° Communication

The Interaction Stages

1. Observe (Learn how to consciously read the body & listen correctly)
2. Assess/Evaluate
3. ***Judge***
4. Decide
5. ***Behave***
    - *Communication Style*
    - *Use of force options*

Training Quotes:

- *"The body will not go where the mind has never been."*
- *"Under stress in a crisis, you instinctively revert to the way you have trained."*
- *"If not trained properly, if no procedural memory is imbedded, instinctive responses will dictate behavior."*

Human Performance Science, Acute Stress & Force Events

- *"Bad decisions are not made through a lack of skill or innate judgement: they are made because of an inability to handle pressure at the pivotal moment." LEGACY by James Kerr*
- In sports they train for those moments over and over and over. Something we rarely do in law enforcement.
- In Law Enforcement: *We just hope that common sense and an untaught / unlearned skill set, just magically kicks in at the most stressful of times.*

Mistakes, Judgement, Decisions under Stress

- Most mistakes are made because of a lack of understanding and preparation to deal with the sudden onset of *acute stress*
- When under stress an officer will respond in one of two ways:
- ***The way they have trained***
- ***Instinctively***

- If not trained adequately to the point where procedural memory is established, instincts will kick in
- An instinctive response often results in behavior that is tactically unsound, dangerous and unnecessary
- Unconscious behavior and/or reactions such as moving in too quickly, taking things too personally, screaming, swearing, standing in front of a vehicle, etc.

Officers need to Focus on …

- Lowering the Temperature!
- *Avoiding becoming part of the conflict*
- *Listen/Observe to find out what the other person wants*
- *Using dignity & respect*
- *Reading & Listening to People*
- *Developing confidence in control tactics (Boxing & Martial Arts)*

Poor Tactics by Police Officers & Why

1. Policies & Protocols

- Make sense?
- Communicated?
- Understood?
- Trained?
- Realistic? (Sleep, schedules, equipment)

2. Training

- Communication Skills
- Human Behavior
- Tactics
- Use of Force
- Scenario based experience with acute stress
- Focus on Procedural Memory
- Consistent
- Formal and informal

3. First-Line Supervision

- Trust & Communal Spirit
- Teamwork
- Relationships
- Individuality
- Involvement

4. Organizational Culture

- Commitment to Training
- Assess Vulnerability
- Atmosphere of Trust
- Interrupt Poor Decisions & Tactics
- Communal Spirit

5. 360° Communication

- Reading People
- Stages of Interaction
- Two-Way

6. Acute Stress

- Base Understanding
- Regular Exposure/Practice
- Exposure to Current Videos
- Cognitive Degradation & Decision Decline
- Instinctive Responses
- Perceptual & Memory Distortions

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The Physiological/Psychological Threat Response:

- ***Hypothalamus***
- ***Prefrontal Cortex***

Hypothalamus

1. Primitive part of brain controls primal emotions and response to external stress & threats
2. Makes us fear when survival threatened
   - Officers too often perceive a personal challenge or insult and a real threat

Prefrontal Cortex

1. Gives us reasoning & self-control
2. Helps us plan, determine right from wrong
3. Regulates socially acceptable and inappropriate behaviors

Brain Under Threat: Real or Perceived

1. Reasoning and self-control in prefrontal cortex can be suppressed by the hypothalamus
2. Suppression of cautious, reasonable processing functions
3. This will happen if there is a lack of training, exposure and understanding of acute stress in the moment of conflict
4. Taking the personally interprets any challenge as a threat
5. Check Ego at the Door!

Sensory Overload:

- Perceptual distortions
- Chronological confusion
- Time distortion
- Memory glitches
- Inability to assess
- Cognitive deterioration
- Decision decline

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Unconscious *Selective Attention*:

- Danger causes a focus on the threat
- Filters out what it considers to be unnecessary stimuli and information
- Tunnel Vision
- Auditory Exclusion
- Results in very limited information being processed
- Loss of focus on professional goal
- Poor tactical decisions

Common Tactical Mistakes:

- Getting too close
- Moving in needlessly
- Breaking cover
- Unwarranted display of weapons
- Taking the interaction personally
- Not listening and paying attention
- Losing temper
- Yelling, screaming, excessive profanity
- Issuing orders pointlessly
- Giving unnecessary ultimatums
- Refusing to readjust or disengage
- Reaching into cars
- Getting in front of vehicles
- Ignoring stress & inappropriate behavior of other officers
- The closer you are spatially…the more intense the interaction!
- The more intense the interaction…the higher the level of stress!
- High levels of acute stress causes…Cognitive Deterioration & Decision Decline

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The Two-Brain Theory:

1. ***Guardian Brain: Focused***
2. ***Barney Brain: Diverted***

1. Guardian Brain: *Focused*

- In control & patient
- Listens & learns
- Has the ability to assess clearly
- Cognizant of the totality
- Flexible & adaptable
- Disengages if necessary
- Takes advantage of time!

2. Barney Brain: *Diverted*

- Takes things personally
- Anxious
- Aggressive
- Panicked
- In a hurry
- Moves in too quickly
- Tactics go out the window
- Distracted from the overall goal of the interaction
- Fixated on a Task/Step instead of the end result
- Stuck in a negative content and/or behavioral loop

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Interaction Essentials:

- **Dale Carnegie:** *"The only way on earth to influence others is to talk about what they want and show them how to get it."*
  - Recognize that people will tell you what they need
  - Maintain reasonable/tactical/practical distance
  - Listen and watch person's behavior
  - Professional not Personal Perspective

Language & Orders During Force Events

Tactically, are you prepared – have you practiced – what to say to a subject while you are experiencing a high level of stress?

- Orders must be practiced
- Limit movement of subject
- "Freeze don't move" not "Drop the gun" or "Put the gun down"
- One officer gives orders
- Control out-of-control officers!!
- Contact/Cover Tactics

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