Training, Law, and Human Factors
in
High-Profile Litigation

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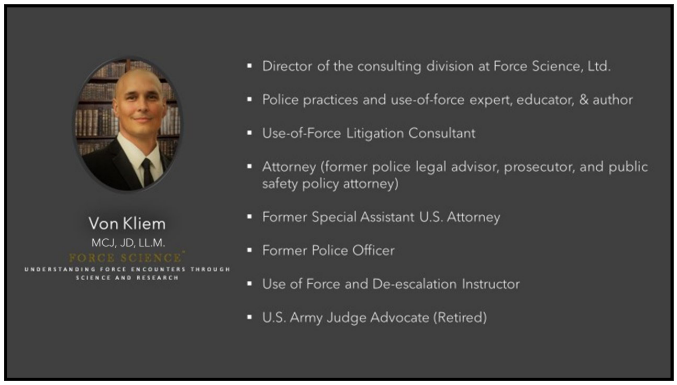
Von Kliem
MCJ, JD, LL.M.
FORCE SCIENCE
UNDERSTANDING FORCE ENCOUNTERS THROUGH SCIENCE AND RESEARCH
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Use-of-Force Litigation Consultant
Attorney (former police legal advisor, prosecutor, and public safety policy attorney)
Former Special Assistant U.S. Attorney
Former Police Officer
Use of Force and De-escalation Instructor
U.S. Army Judge Advocate (Retired)

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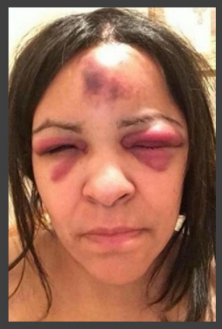
Eye of the Beholder

3



Reasonable?

4

Excessive?

5

Who's Winning?

Who Started It?

6

7

Unjust / Corrupt Accountability

Vague standards by which officers cannot predict the lawfulness of their conduct.

Expectations that are Beyond Human Performance Capabilities

8

TRADITIONAL LAW AND ORDER INTERESTS

PROGRESSIVE SOCIAL JUSTICE INTERESTS

9

Activist

"There will be riots. There will be fire, and there will be bloodshed," he threatened.

10

Civic Leader

"I don't care if it was justified. I don't care if it was reasonable. We didn't need to see another young black male getting punched by police on video."

11

Chief of Police

"I don't think I would have done anything differently. In close cases, I just send it to the trier of fact and let them decide."

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Honest Accountability

Clear standards that allow officers to predict the lawfulness of their conduct.

Expectations reflect Human Performance Capabilities

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Two Questions

Was their threat assessment reasonable?

Was their response to the threat reasonable?

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Video Literacy

Witness Statements

Memory
Attention
Perception
Bias
Fatigue
Sleep Consolidation
Confabulation
Deception
Interview Effects
Coercion

VS.

Video

Digital Witness
Novel perspective
Speed Effects
Aspect Ratio
Frame Rates
Technology Effects
Distortions
Obstructions
Light Enhancement

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Video Literacy

Witness Statements

Confabulation

VS.

Video

Digital Witness
Novel perspective
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Fast (Heuristic) Decisions and Memory

18

Fast (Heuristic) Decisions and Memory

(Impacts Witness Statements)

Attention
Perception
Bias for Action
Provoked Confabulation

19

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How far?
Why didn't you?
How many?
How long?
What did they say…exactly?

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Video Literacy

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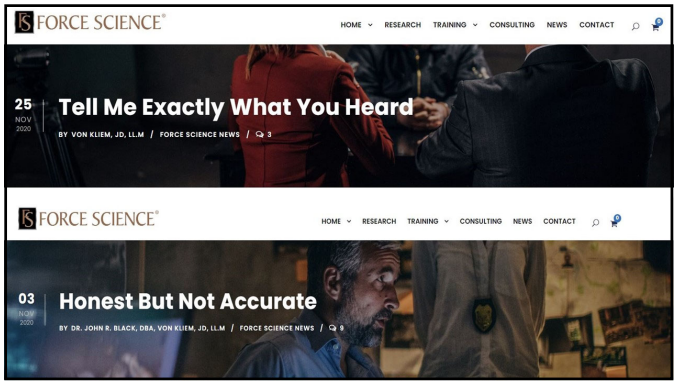
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Evaluating TASER-involved force encounters
AXON
TASER 7

26

AXON FLEE

27

AXON

17800 N 85TH STREET
SCOTTSDALE, ARIZONA 85255
AXON.COM

TASER INTERNATIONAL IS NOW AXON ENTERPRISE

Table 5.1.1- Event Log Events of [redacted] 2020

Seq#	Local Time EDT (Recorded)	Duration [seconds]	Detail
1424	[redacted] 2020 23:03:43	N/A	Armed; Bay 1 (left side user's perspective) contains 25' live cartridge, Bay 2 (right side user's perspective) contains 25' live cartridge.
1425	[redacted] 2020 23:03:43	5	Trigger; Bay 1 active, Bay 1 cartridge deployed.
1426	[redacted] 2020 23:03:43	5	Trigger; Bay 2 active, Bay 2 cartridge deployed.
1427	[redacted] 2020 23:04:23	N/A	SPPM ended Signal transmission.
1428	[redacted] 2020 23:23:55	N/A	20 Minute Power-Save shutdown

Table 5.1.2- Clock Drift Correction

Seq #	Recorded Time [EDT]	Clock Drift Correction [EDT]
1424	[redacted] 2020 23:03:43	[redacted] 2020 23:23:51
1425	[redacted] 2020 23:03:43	[redacted] 2020 23:23:51
1426	[redacted] 2020 23:03:43	[redacted] 2020 23:23:51
1427	[redacted] 2020 23:04:23	[redacted] 2020 23:24:31
1428	[redacted] 2020 23:23:55	[redacted] 2020 23:44:03

5.2. Pulse Log Analysis:

Based on the above Event Log and Pulse Graph information, details of each of the CEW activations on [redacted] 2020, and the associated Pulse Graph are below (the times listed do not include clock drift compensation):

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Failure to See

33 Reasons for Not Seeing
Dr. Mark Green

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Accommodation

Near or Far focus can drive our sensory perception.

Attention Generally

The focus of attention generally determines what a person can perceive, evaluate, assign meaning to, and potentially remember.

Satisficing

"I've seen enough."

Mental Workload

Attention consumed by one sense can impair (i.e., leave less capacity for) attention to others.

External Obstructions

Physical obstruction can block the field of view.

Tunnel Vision

When attention is focused on the center of a visual field, information in the peripheral vision is not noticed.

Inattentional Blindness

Intently focus on something and other highly visible objects or movements located in your visual field may not be seen or noticed.

Heuristic Decision-Making

"Rule of Thumb"

Stress Hypervigilance

Stress can cause people to focus their attention on a narrow set of information so that other information is not noticed.

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Dr. Mark Green

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"Rule of Thumb"

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Satisficing

"I've seen enough"

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