

Use of Force; Policy Matters (pre and post incident)

As a Use of Force instructor for the past several years, as well as an expert in human factors and an experienced video analyst, I have seen first-hand the critical differences between the intended purpose of a policy and how that policy is actually applied in the aftermath of a critical incident, particularly where an officer is expected to use reasonable tactics and objectively reasonable force. This is true especially for the pressing subject matter of police involved Use of Force.

Nineteen years ago, as a new employee with my department, I was taught that policy is a parameter, a guideline if you will, and should be carefully studied and applied when it concerned a police Use of Force. When I started with my department in 1997, even as a new officer, I had questions about policy. As a new officer, however, those questions remained on lock down until I could figure out what I was doing within this career path. Regardless of my questions, I always managed to use reasonable force, even before the policy reflected Graham v. Conner standards and the Calculus for Objective Reasonableness. Use of Force always seemed to be very *common sense* oriented, and was reasonable based on my views of what the 4th Amendment meant to *me* in my application of newly acquired police authority. I remember a performance rating in those early days stating, "I had a very good grasp of the 4th Amendment and related policies concerning search, seizure and Use of Force." Back then, I wasn't any more into policy than any other new employee. I had read it and struggled with understanding it just like everyone else. So, I attributed that "rating" to life experience and common sense. With consideration given now, to the onset of cameras and cell phone video, the game of law enforcement has changed significantly, and policies need more thought and scrutiny than ever before. Many years later, I found myself as the "Use of Force" specialist for my department and immediately found it necessary to revamp our departments Use-of-force policy. The first change was simply to get it into the current century. Our Use-of-Force policy had not been updated with any significance in nearly 16 years.

After months of research, my first step was to rid our department of the Use of Force continuum, or anything resembling a continuum; as it turned out my department was one of the last hold outs in removing the continuum from policy in the country. These decisions were not made of my own volition, rather they were made by entrenching myself in the pressing subject matter of Use of Force, Human Factors, and police procedure, along with the support and vision of my Chief of Police. Significant changes were made to the policy, and it was vetted

out by the department's unions and membership, approved by upper management, and subsequently submitted, proactively, to the ACLU and other watchdog groups, that closely monitor existing and changing police policies, and ultimately accepted by those groups as well.

How do we train Use of Force Policies?

No matter how well we know policy as police officers, from the line level to command staff or "upper management," this knowledge doesn't change the fact that critical incidents are rapidly evolving, requiring split second decisions with extreme consequences; decisions being made by police officers who are subject to human factors and limitations. During these critical incidents, policy and procedure and trained techniques may fall by the wayside, as they may not be safe or have a low probability of success based on the circumstances. In these uncommon scenarios, where an officer is forced to make decisions in fractions of a second, or a "split second decision" as described in *Graham v. Conner*, these decisions are based on what an officer is faced with at the time force is employed. For instance, if an officer is in a fight for his/her life, or the consequences of the subject escaping outweigh the safety of the public or officers, the officer may not have a "policy perfect scenario" from which to derive his/her chosen response.

If the officer uses an improvised response in this case, it must be articulated in the officer's account of the incident. An improvised response includes a tactic or technique that falls outside of policy, or that is not a specifically trained technique, or a variation of a specifically trained technique, that the officer has adapted to survive, de-escalate or to protect the public. To that end, policy must be written to allow for an officer to operate outside of policy guidelines in those infrequent occasions when officers are faced with the most dangerous, dynamic and rapidly evolving scenarios that create ambiguity in the subsequent application of policy.

In consideration of the above, I believe training should be focused on creating officers who can make thoughtful and balanced, reasonable decisions in a time of crisis. Training the mechanics of a policy as it were does not create officers with good decision making skills, who are expected by all to perform at a super human level; humans expected to transcend the human factors that affect us all. The true task and challenge at hand is creating thoughtful officers, who can think and respond quickly and effectively, and subsequently recall and report "why, where,

when, and how” a Use of Force was used and *what* drove the officers’ decision to use such force.

The task of decision making in a critical and time compressed incident, is one laced with superhuman expectations; not only by the public but by our own peers, supervisors, investigators, management, legal representation and decision makers. The perception that police officers can and are expected to make perfect decisions is not a condition prescribed by law. This is a volatile mix, combining an officer’s need to use force in a critical incident, and a policy that disallows an officer to make an effective split second decision by placing limitations on tactical choices within the reasonable range of responses. The courts have soundly and consistently prescribed that police officers are not to be held to this unreasonable standard of making perfect decisions in the application of force. This solution is based on limited departmental training and limited application experience, considering the infrequency of these types of events. Policy should not limit an officer’s thought process; rather, enable the officer to think outside of the box, defeating the dire results of an improper focus of attention and subsequent improper or unsafe decision.

What about the Policy:

Example policy verbiage -

“Officers may not use force or any compliance technique that they have not been trained to use. If an officer uses an improvised technique or tactic, in a dynamic and rapidly evolving situation, the officer will specifically articulate the need to do so. Also, the officer shall articulate and describe the improvised technique or tactic.”

The purpose for this or similar verbiage in policy is ***not*** to excuse unreasonable, unnecessary or excessive force. The purpose is to allow officers to be decisive based on available training and limited experience; where an officer is subject to human limitations in perspective and perception and action/reaction, and forced to effectively respond to a violent offender in fractions of a second. In these uncommon critical incidents, the officer’s decision is very possibly the difference between life and death for the officer, or the public, or detention and escape of an otherwise violent offender.

In the climate of today’s policing, there does exist a need to prohibit certain police behavior. For this reason, policy is normally focused on the lowest common denominator. This prohibition opens the door for learning and improving a department’s approach to Use of Force, and give officers a *guideline* as to what is reasonable, if the common-sense gene is missing for some reason. However, with this caveat in a police Use of Force policy, it will allow an officer to

articulate his/her actions in the Use of Force based on a range of responses, not a force continuum. With knowledge of this policy verbiage, officers are more likely to act decisively and reasonably in a fast paced and dynamic incident. This then allows those responsible for investigating the officer's Use of Force to approve, disapprove, or identify potential issues with the Use of Force. This process is also instrumental in identifying elements that may be driving the officer's decision during the incident, which is ultimately where we derive any valuable lessons learned to better our officers and our department.