

REDACTED COPY

CFS-17-00247593
05-22-2017

Civilian Witness #6 - packet

Written between May 12 thru 18, 2017

On May 9, 2017 I left work located on _____ at
approximately 4:45 p.m. and headed towards the town of _____ vicinity of my home.

As I approached Walgreens on my right hand side which was located on the corner of
Park Ave. and Fairfield Ave., I came to a stop with the rest of traffic due to a red light.

There were two entrance/exits to Walgreens on that side of the building; I was positioned
in between them.

I became aware of marked police cars parked in the Walgreens parking lot which had
their lights flashing as I approached the 2nd entrance/exit with the rest of traffic in preparation to
cross Park Ave. with my vehicle. It appeared to me that they were blocking the parking lot road
way, the path that would eventually wrap around to the drive through window.

They were not blocking the 2nd exit/entrance to Fairfield Ave..

I was in the lane closest to the parking lot. The day was sun and clouds as I recall it was
on the cool side.

There were several other cars on the road around me (in front of me, beside me and
behind me).

I recall looking to my right and seeing at least 2 marked police cars with flashing lights
but no sirens and at least 2 officers standing outside around them.

I intentionally observed long enough to make an assessment that I was not in imminent
danger; because there didn't appear to be an active confrontation taking place I felt somewhat
safe.

I did not see the officers trying to apprehend anyone. I did not see a car racing through
the parking lot. I did not hear a car crashing into another car. I did not see a vehicle striking

JK#877
8-1

REDACTED COPY

CFS-17-00247593
05-12-2017

another vehicle. I did not see a person striking another person. I did not see officers talking to civilians. I did not see anything out of the norm other than the two police cars sitting there.

The only unusual thing I saw was the marked police cars, their lights flashing and officers standing around them.

I thought the situation may have been in the resolution stage.

I was consciously observing the situation for my own benefit because I felt vulnerable as my back window which was facing the parking lot was missing due to a stone shattering it from a weed wacker 2 days before.

I was on my way to have it fixed as I purchased a used window in Bridgeport the day before but first I was going to stop home.

At that time I perceived it to be a non-threatening situation after purposefully looking for my own preservation and dismissed it turning my head back to the street light in preparation to continue driving.

A few minutes later, approximately 2 minutes(not sure), I was surprised to see a vehicle very slowly driving out of Walgreens 2nd exit/entrance(the one closest to Park Ave.) towards me and the cars next to me.

I did not perceive it to be a part of the flashing police cars/officers that were present.

I saw a young boy coming at me very slowly. He looked confused and nervous. He was not frantic or erratic. I perceived him to be looking beyond where he was going and failing to stop.

He drove right up to my car and the car next to me stopping when he gently tapped my vehicle with his. He was looking around for a place to navigate into with a dazed look on his face. I thought he may be a new driver. He may have been surprised to realize he was on a one way street.

I later saw that he created minimal damage to my front left headlight (a scrape on the casing and a scrape on the bumper, a crack in the bumper). I was surprised at the minimal damage because I felt the gentle impact and heard a crunch. The car next to me may have taken the brunt of the impact; I am not clear on that.

I was hoping he didn't try to go between me and the other car positioned next to me because he would have side swiped my car.

A vehicle clearly couldn't fit between myself and the car beside me but he was looking around.

JK+BT
P.2

REDACTED COPY

CFS-17-00247593
05-22-2017

He did not forcefully accelerate.

He did not try to plow through us in a frantic attempt of any kind. I did not feel threatened by him at the time. We made eye contact. He seemed confused. I recall him being young and pale.

In the near distance I saw the officers crawl down the 2nd Walgreens parking lot entrance/exit similar to the pace of the teen driver.

I began to get worried. I wasn't clear on how the police officers were involved in the situation that was evolving. I became guarded. The officer's quick approach and the presence of a gun impacted my emotional state right away. I was concerned for everyone. I didn't know what the level of danger was at this point regarding the presence of the teens in the car. The teen which seemed innocent, dazed and confused.

At first I thought the police may be curious like I was. The driver looked young and confused.

I did not know what context the officers would approach the boy in.

When I saw the gun and the conviction that the officer presented with I began to think that the people in the car may have been a part of what may have been going on earlier when I first observed the police cars sitting there in the Walgreens parking lot. The perspective that I approached the situation with drastically shifted once the police officer asserted his authority. I felt threatened because he appeared very threatened by the driver's behavior.

There was a young, possibly inexperienced and/or underage person behind the steering wheel of a car who looked pale and confused going the wrong way on a very busy primary one way street during rush hour traffic. The young driver very slowly approached and then proceeded to collide slowly with oncoming cars (me being one of them) that were at a complete stop. From my perspective, he then slowly backed up his car and knowingly or unknowingly came close enough to an officer that he had to jump out of its way. The car was stopped/stopping as the officer approached. It was unclear to me why the driver was behaving in this way. **I felt the officer approaching the car was attempting to stop this process from continuing.**

The teen backed up faster than he had driven towards me with one or two fast motions but still on the slower side. I did not perceive him as trying to run over officers purposefully. I did out of the corner of my eye see a police officer jump out of the way as his car backed up to him and approached the officer who was positioned to the left hand side but I had not seen the officer there prior to the car backing up to him. My eye was on the suspect's car and the police officers car closest to me. I really didn't see what was happening on the other side closest to Park Ave. .

Ju 0817
7.3

REDACTED COPY

CFS-17-00247593
05-22-2017

He wasn't zipping around frantically from my perspective. I felt it was a continuation of his original confused state, worried demeanor and/or disorientation.

I recall one marked police car stopping in the road not far from the teens' car near the Walgreens exit/entrance #2 the one closest to Park Ave. . . I was positioned closest to that exit/entrance on that side of the street.

The officers paused there for a moment inside of the parked police car.

I remember wondering what was going to happen next; there was a moment of opportunity for something to take place on either of their part.

The suspects could have ideally turned off the car and exited the car and been apprehended safely or perhaps ideally turned off the car, throw the keys out of the window and put their empty hands out of the windows before the officers got out of their police car. **Indicate in some way that they weren't going to continue to drive to eliminate that threat.**

I don't know if that would've endangered them perhaps this is why they did not make those choices.

I know I wanted it to end peacefully. I was waiting for them to comply with the officers eagerly, I could see the fear on the drivers face. I could not see the passengers face. The officer was asking over and over again for them to get out of the car. I did not hear or see another officer asking.

In the suspects' car, I could clearly see the driver but not the passenger and thought that there may have been a third person in the back behind the front passenger's seat. I thought I saw a boldly striped shirt.

I was relieved that they had backed up from my car as I didn't want to be so close to what was happening at that point. I was still very close. I could see inside the car and hear the yelling well. I don't know if I missed any talking conversations perhaps about removing the keys from the ignition of the car. I don't recall seeing mouths moving other than the yelling.

The next move came from the police.

What happened next from my vantage point and perspective was that one officer, the officer in the front seat passenger's side of the police car located by the Walgreens 2nd exit/entrance closest to Park Ave. as I mentioned before, quickly exited the police car. I think he may have left the door open. The driver did not exit the car from what I recall at that time.

He stepped out of the car and very quickly (briskly) walked around the front of the police car (not quite running but approaching running). He raised his gun with both hands and pointed it at the front of the suspects' car at the driver side window which was down. He was extremely intense and authoritative. He was very aroused. He was confronting them with what appeared to

JE 8/17
P.Y.

REDACTED COPY

CFR-17-00247593
05-22-2017

me to be confidence in his ability. I perceived him to be committed to getting them out of the car and stopping the driver's process. He seemed consistent in his approach. He seemed experienced. I felt as if he would be able to handle the situation but I was alarmed to see a gun pointed at the young, innocent looking confused, scared driver. He stood back from the car, I experienced that as him creating safety for the driver to get out of the car and perhaps for himself. He put distance between himself, the car and the suspects. I could see his feet on the ground.

He began ordering the suspects out of the car. He very seriously dictated, "Get out of the car! Get out of the fucking car." He repeated this over and over and over again. He had a very calculated look on his face. They did not comply.

He conveyed a very clear message that he was not participating in any kind of game playing or entertaining event.

To me he appeared to remain focused and prepared. He pursued the goal of getting the people out of the car and repeated himself over and over again until the car door hit him and knocked him off balance and then he shot his pistol.

The teen looked pale and nervous.

I could see a front seat passenger in the suspects' car and what I thought may have been someone in the back seat I wasn't sure if there was a third passenger. I saw a boldly striped shirt.

The police officer looked around and assessed the environment moving in on the car and continued to order the suspects to, "Get out of the car, Get out of the car."

I could see the teen driver leaning back on the passenger with a fearful look on his face.

I did not see him lash out at the officer. I did not see him raise a gun. I did not see him raise his hands as if he was surrendering.

I did not see him move to comply with the officers demands.

He looked scared.

The officer continued to yell at him to, "Get out of the car!" "Get out of the fucking car." At times it sounded more like a question than a directive. As if he was saying, "Are you really not going to get out of the car, COME on!, get out of the car. Don't make me say it again."

Next the officer opened the driver's side door and grabbed at the teen with his left hand as he was holding is gun in his right hand. He insisted that the teen, "Get the fuck out of the car!" I perceived him to be holding the drivers right arm and trying to pull him out of the car.

JR-077
P5

REDACTED COPY

CFS-17-00247593
05-22-2017

He attempted to pull the teen out by one arm but the teen continually resisted leaning back on the passenger. I don't know how he reached the pedals of the car at this time.

The car moved briefly causing the officer to be jolted by the open door knocking him off balance. He took a step to the right and released the drivers arm.

He quickly regained his stance and the car stopped moving.

The teen continued to look fearful. The officer continued to look menacing.

The officer continued to look agitated, authoritative and in control.

I did not expect for the officer to fly out of the car with such intensity and draw his weapon. The people in the car did not appear threatening or frantic to me. I began to wonder if they could have guns and if in fact they may be threatening at that time.

When the officer could not get the teen to comply with him he let go of the teens arm.

The car had just moved.

He had just been thrown off balance.

I believe he placed both hands on his weapon and shot at the teen once. There was a pause and then several shots rang out one after the other. I would say at least 6 if not more.

The driver's side door of the car was open and the officer shot at the people through the open driver's side door. I could not see anything taking place on the passenger's side of the car. From my perspective it looked like one officer was handling the situation.

I saw the teens face. I saw what I thought was the life going out of him. His head leaned back slowly and his eyes looked up slowly. His energy faded out as he relaxed his body. His expression was subtle. His presence was changed.

I did not see the passengers face clearly.

I backed up my car and gently bumped the car behind me after the shots were fired. I was not able to move far.

The next time I attempted to go backwards, I saw that the surrounding cars had moved away from me which enabled me to make a U-turn into the 1st entrance/exit of the Walgreens parking lot and I parked my car. As I was driving towards the entrance/exit I saw a black pick-up truck and a man was holding up his cell phone, it looked like he was videoing.

I exited my car and assessed the damage.

JL 8/11
p. 6

REDACTED COPY

CFS-17-00247593
05-22-2017

he was located
in the parking lot,

I glanced and saw the dead teen on the ground on his back in hand cuffs with his hands positioned on his stomach. I saw all white, I believe I viewed him from his waste up. I did not see blood. I questioned in my mind why he was in hand cuffs; he looked as if he was deceased. I thought he was elevated on something. Perhaps it was one of those medical boards that they carry people on when they are in an accident.

< xjt
to
Fairfield
Ave

I got back in my car and began to try to call people and made contact after some time, I was not successful at first.

The officer present directed me to leave the parking lot without questioning me and I did.

I observed a pack of kids on bicycles were crossing through the parking lot, other police cars arrived and the yellow tape was up and I'm not clear about the ambulance.

There were a lot of people as I was leaving; a lot of noise and sirens.

Call Log: May 9, 2017

Dad: 5:05, 5:26, 5:50 (2x)

: 5:09 Spoke right away

: 5:26

: 5:26, 7:19, 7:43

: 2:16, 2:20, 6:34, 6:51

: 8:50, 9:31

: 11:19

JL#877
P.7



STATE OF CONNECTICUT
 Department of Motor Vehicles
 Renewal Application and Registration

SAFETY
SECURITY
SERVICE



YOUR REGISTRATION EXPIRES ON 05/28/2017 FOLLOW INSTRUCTIONS BELOW TO RENEW (ADDITIONAL INSTRUCTIONS SEE REVERSE)

IMPORTANT NOTICE

- 1) MAKE SURE YOU PAY ALL LOCAL PROPERTY TAXES DUE AND FULFILL ANY REQUIREMENTS LISTED BELOW.
- 2) SAVE TIME RENEW ONLINE AT CT.GOV/DMV OR TEAR OFF BOTTOM STUB AND MAIL WITH YOUR PAYMENT.

SAVE TIME RENEW ONLINE AT CT.GOV/DMV YOUR PIN NUMBER IS _____

* This registration renewal will not be processed until the vehicle has been emissions tested. The emissions due date was 12/28/2014. Test results will be received by DMV electronically.

CPS-17-00247593 05-22-2017

KEEP IN VEHICLE R.I. 0051.51D4800341479 7AVEH900090002017052888

VALID ONLY AFTER RESOLVING ALL COMPLIANCE ISSUES

CONNECTICUT REGISTRATION CERTIFICATE
 KEEP THIS PORTION IN YOUR VEHICLE - DO NOT MAIL
 INSURANCE SHALL BE MAINTAINED AS REQUIRED BY CT LAW

VALID ONLY AFTER PAYMENT RECEIVED BY DMV

PLATE NUMBER	PLATE CLASS	EXP. DATE	VEHICLE IDENTIFICATION NUMBER	YR	MAKE	MODEL
	PASSENGER	05/28/2019		02	JEEP	GRAND CH
VEHICLE TYPE	REGISTERED USAGE	LIGHT WT	GVWR	DECLARED WT	STAND SEAT	AXLES
SUV	REGULAR					
HAZ MAT? TITLE	EMISSIONS DUE	REG FEE	PLATE TYPE	TOWN	TAX TOWN	
N	12/28/2014	\$80.00	STANDARD	057		3/27/2017

REDACTED COPY

JLH 8.8

Lesson Transcript

Instructor: *Natalie Boyd*

Natalie is a teacher and holds an MA in English Education and is in progress on her PhD in psychology.

When people talk about police brutality, what do they mean? In this lesson, we'll explore the idea of excessive force in police work, including the use-of-force continuum and the history of police brutality.

Police Brutality

Sammy is frustrated. Lately, it seems like the police have been using too much force on people from Sammy's neighborhood almost every day. Over and over, he hears about people being beaten or shot by the police, even when they don't have weapons and aren't armed.

Sammy thinks that what his neighborhood is dealing with is called police brutality. But what, exactly, is police brutality? And how can Sammy figure out if that's what's going on?

Excessive Force

There are several ways to define police brutality. One way is by seeing in terms of **excessive force**, or displays of power that are stronger than is necessary to keep a situation safe and in control. If a man from Sammy's neighborhood is not armed and calmly talking to police, then use of physical force is probably excessive. However, if that same man is waving a knife, screaming, and advancing on officers or civilians, then using physical force to disarm and restrain him is probably not excessive.

So, how can Sammy tell the difference, and how does he know if what his neighborhood is experiencing is unique or just part of keeping the city safe? To try to answer those questions, let's look at the use-of-force continuum and the history of police brutality.

Force Continuum

Sammy is worried that his neighborhood is dealing with police brutality. It sure feels to Sammy like the force being used is excessive, but he's not sure. How can he know?

Police are charged with keeping the country safe, and sometimes they have to use force to do that. While most police officers do not use excessive force, sometimes officers use more force than is necessary. To help officers (and civilians) know how police should respond to situations, law enforcement uses something called the **use-of-force continuum**, which is a scale of varying levels of force that law enforcement officers use. The goal is to always use the lowest level of force possible to keep a situation safe and in control.

The levels of the use-of-force continuum are:

✓ 1. **Police presence**. Sometimes, just having a police officer present can diffuse a situation. For example, last week a few teenagers were loitering outside Sammy's house and playing loud music. When a police officer showed up, they immediately dispersed, even before the officer said or did anything.

Police presence is always the preferred method of controlling a situation. However, sometimes officers have to do more than simply be present. When that's the case, they move up the continuum.

Sitting at walgreens

✓ 2. **Verbalization.** If the mere presence of an officer does not help to control a situation, the officer's next step is to use non-physical force. The first step of verbalization is to issue commands in a calm, non-threatening tone, like asking in a normal voice to see the identification of someone. If the situation is escalated, then an officer can raise his or her voice in order to gain compliance. For example, if an officer notices that someone is loitering suspiciously outside of a jewelry store where there have been robberies in the past, the officer may casually approach the person and ask what they are doing. But if the person shoves the officer and tries to run away, the officer may shout, 'Stop!'

Asked to get out of car

✓ 3. **Empty-hand control.** Sometimes, even verbalization doesn't work, and police need to use physical force. The first level of physical force is **empty-hand control**, which involves bodily force without any weapon to gain control of a situation. For example, Sammy's neighbors got into an argument last month, and one of them hit the other. When an officer showed up, the fight did not stop, and when the officer issued the verbal command to stop, the neighbor still kept hitting. The officer grabbed the person hitting and held their arms by their side so that they could not hit anyone.

There are two types of empty-hand control: the **soft technique** involves grabbing and holding in order to control the situation, whereas the **hard technique** may involve hitting, punching, or kicking to control the situation. As we've seen, the lowest level of force is preferable, so it is better to use the soft technique than the hard technique, though sometimes the hard technique is necessary.

? 4. **Less-lethal methods.** Sadly, sometimes even empty-hand control can't help officers gain control of a situation. In that case, they may need to use a weapon. A non-lethal weapon, such as a police baton or chemicals (like pepper spray), might be used to gain control of a situation. For example, Sammy heard about riots in another city, where the crowd got out of control and began attacking each other and the police. To control the crowd, the police used batons and tear gas.

Again, the aim is to use the least force necessary. If a police officer has a choice between using pepper spray or a baton on a person who can be restrained using non-weapon force, then they should use the non-weapon force. Otherwise, it becomes excessive force.

✓ 5. **Lethal force.** The highest level of force, and one that many officers never use in the course of their entire career, involves using lethal weapons to control a situation. Often, guns are the weapon of choice for lethal force. If a person pulls a gun and shoots at an officer or civilian, the police officer may decide that using his own firearm is the only way to control the situation, in which case he or she might use lethal force.

So, is Sammy's neighborhood seeing police brutality, or excessive force, being used? It's hard to tell. Probably some of the cases are not excessive. In other words, in many cases, Sammy's neighborhood police may be using the appropriate level of force. But there might be some cases in which civilians have experienced police brutality.

Statistically, it's also not easy to tell how Sammy's neighborhood fits in with the national picture. That's because the government only collects national statistics on police brutality and police killings on a voluntary basis, so many police departments are not included. Still, police brutality is not the norm. The Justice Department found that in 2008, only about 1.4% of people who came in contact with the police had force used or threatened against them in the most recent police interaction. Even if that's an underestimate of reality, it's still a low number!

Shot when feeling threatened (To public officers self)

<http://study.com/academy/lesson/what-is-police-brutality-definition-statistics-history.html>

First, what was the severity of the crime that the officer believed the suspect to have committed or be committing? — leaving a crime — possibly abandons the car?

- stolen car
- under age driver
- under the influence
- mental Health Issues
- resisting arrest
- Traffic violations
- endangering the public
- endangering officers
- possibly concealed weapons (not nec.)

- wasn't stolen?
- True
- ?
- possibly
- yes
- yes
- could have escalated
- yes struck vehicles
- could have escalated
- ? yes struck officers according to news

Second, did the suspect present an immediate threat to the safety of officers or the public?

- suspect did not stop the car to surrender the keys or get out willfully
- Suspect reversed his vehicle slowly after driving up a one way street to striking my car slowly and I perceived that an officer jumped out the vehicles way as to avoid getting run over.

- The officer attempted to get the driver to leave the car by non-lethal force pulling him out once he opened the door w/ his left hand. The officer was struck by the vehicle door when the car began to move which precipitated him removing his hand from the driver and placing it on his weapon.

Third, was the suspect actively resisting arrest or attempting to escape?

- The suspect drove through waistlines failing to stop. He shot the suspects.
- The suspect did not comply w/ the officer after he asked him several times to get out of the car.
- The suspect slowly drove up a one way street to my car looking for a path beyond my car and proceeded to bump my vehicle.

John Pill

REDACTED COPY

First, what was the severity of the crime that the officer believed the suspect to have committed or be committing?

Second, did the suspect present an immediate threat to the safety of officers or the public?

Third, was the suspect actively resisting arrest or attempting to escape?

How to ensure use of force is "reasonable and necessary" and avoid claims of excessive force

Sep 5, 2007

Ask a dozen people when "reasonable and necessary force" to effect an arrest or detention becomes "excessive force" and you will likely get a dozen different answers, none of them particularly helpful in measuring the proper amount of force. Several people may ultimately question an officer's use of force and each one may have a different idea of how to decide whether the force was excessive.

Force may be reviewed by an internal review board, supervisors and/or the chief, the district attorney screening the arrest for charges, an independent civilian review board, and perhaps even a judge and jury if a civil lawsuit for excessive force is filed. This column will help officers measure what force is permissible, and how to better report the use of force so that force investigations and lawsuits can be avoided, or at least made less painful.



What is permissible force?

Police officers in all states are granted authority to use force to accomplish lawful objectives, such as arrest, entry to serve a warrant or make an arrest, and detention. *Freeman v. Gore*, 483 F.3d 404 (5th Cir. 2007). All use of force lawsuits are measured by standards established by the Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989). In the *Graham* case, the Court instructed lower courts to always ask three questions to measure the lawfulness of a particular use of force. First, what was the severity of the crime that the officer believed the suspect to have committed or be committing? Second, did the suspect present an immediate threat to the safety of officers or the public? Third, was the suspect actively resisting arrest or attempting to escape?

RELATED CONTENT SPONSORED BY

The Supreme Court cautioned courts examining excessive force claims that "the calculus of reasonableness must embody allowance 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." The Court also stated that the use of force should be measured by what the officer knew at the scene, not by the "20/20 vision of hindsight" by a Monday-morning quarterback. In sum, the Court fashioned a realistically generous test for use of force lawsuits.

In the nearly two decade history of *Graham v. Connor*, courts have refined the three-prong *Graham* test and applied a number of additional factors. For example, courts consider the degree of threat posed by the suspect to officers or the public in light of relative numbers and strength. When officers are outnumbered or confronted with particularly powerful suspects, additional force may be justified. *Sharrar v. Felsing*, 128 F.3d 810 (3rd Cir. 1997). Courts may also consider the immediate availability of less-lethal tools. *Tom v. Volda*, 963 F.2d 952 (7th Cir. 1992). However, an officer or agency cannot be held liable for the agency's failure to purchase and deploy a particular less-lethal technology. *Estate of Smith v. Silvas*, 414 F.Supp.2d 1015 (D. Colo. 2006). The suspect's history of mental illness, or level of impairment from alcohol or drugs, also contributes to the analysis of the threat posed by the suspect. *Krueger v. Fuhr*, 991 F.2d 435 (8th Cir.), cert. denied, 510 U.S. 946 (1993); *Hunt v. County of Whitman*, 2006 WL 2096068 (E.D. Wash. 2006).

When does force become "excessive"?

An officer may use only that force which is both reasonable and necessary to effect an arrest or detention. Anything more is excessive force. *Payne v. Pauley*, 337 F.3d 767 (7th Cir. 2003). In addition to the questions asked by the *Graham v. Connor* test, courts consider the need for the application of force, the relationship between the need and amount of force used, and the extent of the injury inflicted by the officer's force.

The *Graham v. Connor* factors govern both the amount of force used, as well as the force method, tool, or weapon used. *United States v. Dykes*, 406 F.3d 717 (D.C. Cir. 2005). A federal judge noted that the use of a Taser and multiple baton strikes against Rodney King, including a PR24 baton strike to the face, were, if not reasonable, at least not criminally excessive force. Officers delivered some 50

powerful blows and strikes after King first resisted officers, he complied with commands. After King assumed a felony prone position, one of the officers kicked him and another struck him five or six times with a baton.

Even though officers used substantial force to compel King into a prone position, only the last few blows lead to criminal liability because King had complied with the order to assume a prone position and submit to handcuffing. *United States v. Koon*, 833 F.Supp. 769 (C.D. Cal. 1993), *aff'd in part*, 518 U.S. 81 (1996).

Deadly force is also measured by the *Graham* test, and is also limited by other constitutional considerations. Twenty years ago, the Supreme Court abolished the "fleeing felon" rule that permitted the use of deadly force against any fleeing felon (about half of the states had already abandoned the rule by statutory changes).

In *Tennessee v. Garner*, 471 U.S. 1 (1985), the Court suggested that there are three circumstances when an officer can use deadly force: first, when the officer is threatened with a deadly weapon; second, when the officer has probable cause to believe that the suspect poses a threat of serious physical harm or death to the officer or to another; or third, when the officer has probable cause to believe that the suspect has committed a crime involving threatened or actual serious physical harm or death to another person. The Court also noted that, when feasible, a warning should precede the use of deadly force.

Threat of serious physical harm to self or others

A fair evaluation of the use of force

Contrary to public belief, police rarely use force. Any veteran cop will tell you that he or she uses interpersonal communications skills infinitely more often than arrest control techniques. Research by the International Association of Chiefs of Police shows that officers use any degree of force in less than one out of every 2,500 calls for service. Nearly three decades ago, one of my training officers put it like this: "this job is 99% sheer boredom, followed by 1% pure terror." Experience has shown that he far underestimated the percentage of general "boredom."

All too often, use of force is evaluated by those who lack the necessary education and experience to make a fair assessment. The agency's use of force review will likely be completed by supervisors who understand the dynamics of violent encounters. However, civilian review board members, attorneys, and private investigators lack the experience to fairly examine use of force situations. Even well-meaning assessors are likely to be limited in experience to hundreds of hours

of television and movie cop training (how realistic is that!) and a few Friday night ride-along tours.

Some courts have long applied a skewed Monday-morning quarterback view that a suspect shot in the back is the victim of *de facto* excessive force. *McCambridge v. Hall*, 303 F.3d 24 (1st Cir. 2002) ("the fact that Doyle was shot in the back is itself evidence of excessive force"); *Samples v. Atlanta*, 846 F.2d 1328 (11th Cir. 1988).

Such a conclusion might seem reasonable to a person on the street, or even to an inexperienced police officer. However, long-overdue scientific research by people like Dr. Bill Lewinski of the Force Science Research Center is now changing conventional assumptions. Dr. Lewinski and his colleagues apply biomechanics to use of force analysis and demonstrate the critical relationship between a sound understanding of the dynamics of human factors in combat and a fair and objective analysis of use of force. ✓

Investigative approaches by Lewinski and others apply to far more than shots terminating in a suspect's back. Anyone claiming to provide an objective evaluation of police use of force must gain the necessary educational foundation to even ask the right questions in order to reach reliable conclusions. Agencies must broaden the vision of training, experience and education for those who analyze force situations and pass judgment on the reasonableness of force. Tactics for limiting liability ✖

✓ Any use of force lawsuit will at least scrutinize, and possibly challenge, an agency's use of force policies and training protocols. The first step to managing use of force liability is to maintain a legally sound, up-to-date policy. The use of force policy copied ten years ago from a friend who had a city attorney take a stab at drafting a use of force policy is probably out-of-date or legally insufficient, or both.

Some agencies are fortunate to have in-house legal counsel specializing in law enforcement issues, or at least have dedicated civil attorneys from the city or county counsel's office. Excellent alternatives are available to keep critical policies fine-tuned. Many western cities and counties rely on Lexipol (www.lexipol.com), a firm with attorneys with many years of specialized experience in defending use of force lawsuits and drafting sound policies.

A great policy is worthless if officers are not trained in constitutional limitations on the use of force and the parameters of the agency's policy. How many agencies

require firearms qualification two or more times each year, but never provide training on the latest court decisions or statute changes that govern use of force? How many agencies provide regular in-service training of non-lethal less-lethal perishable skills, such as defensive tactics? Are your agency's officers trained to recognize and respond to exited delirium syndrome?

Even though police use of force is statistically uncommon, tremendous liability and potential for injury comes with each force situation. No use of force should merely be reported. Each situation is an opportunity to evaluate the officer, policy, training, equipment, etc., and ask how to approach similar situations in the future. At a minimum, the agency should ask the following questions as risk management tools:

- Was the officer's intervention fully legal? Was the intervention based on a lawful objective, such as a valid arrest, detention, search, frisk, community caretaker custodian of mentally ill, defense of an officer or a citizen, or to prevent escape?

Yes

Yes
NO

- Was the use of force proportional to the person's resistance? Was there an urgent need to resolve the situation? Even though there is no duty to retreat, could the officer have used lesser force and still safely accomplish the lawful objective?

Yes NO

The officer could have shot less times. Less force could

- Was the officer well-trained, qualified and competent with all force tools authorized by the agency?

have been used to achieve the objective.

Yes
NO

- Does the officer's conduct appear to be objectively reasonable? Did the officer's conduct precipitate the use of force? Is the officer's language or behavior inappropriate or unprofessional?

Yes

Somewhat

He opened the door to use non-lethal force which lead to lethal force.

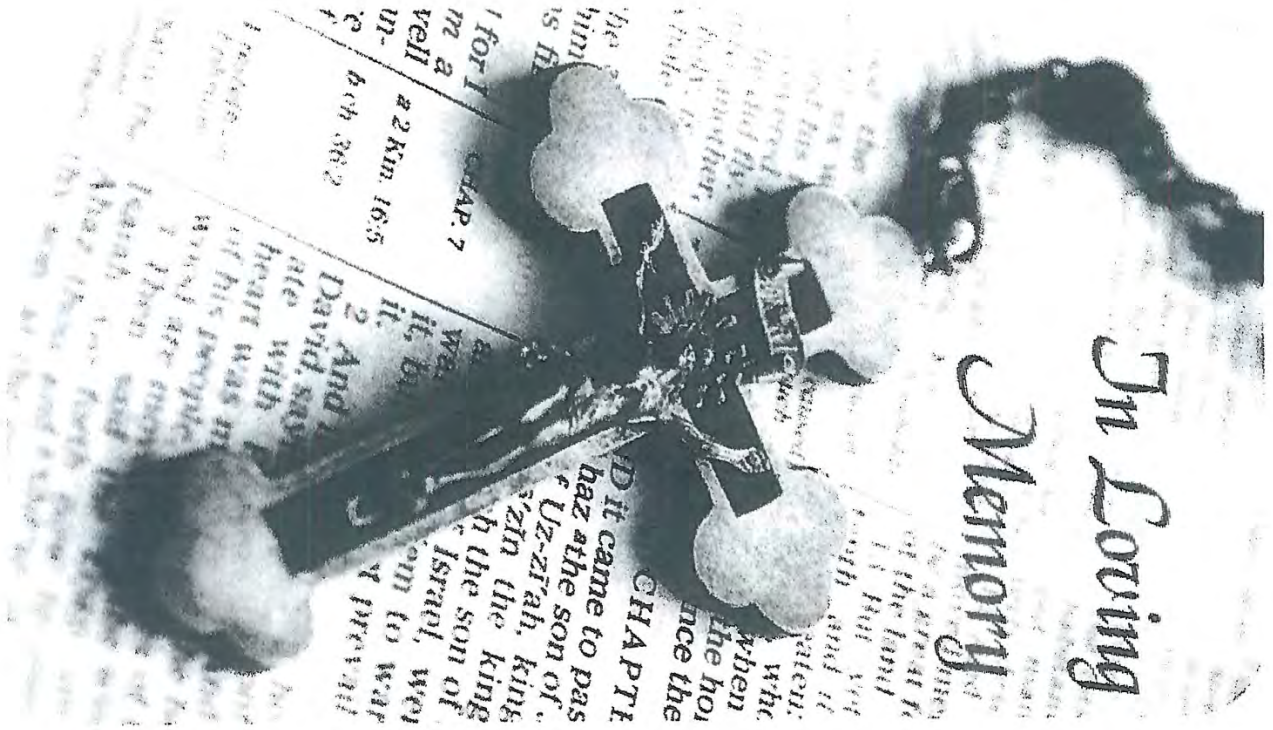
Act on the answers. Improve the policy. Enhance training. Get the best tools available. Support the officers involved. Stay safe.

Ken Wallentine is Vice President and Senior Legal Advisor of Lexipol LLC (www.Lexipol.com), the nation's leading provider of risk management policies and resources for public safety agencies. He is a retired chief and former prosecutor with over three decades of public service.

Contact Ken Wallentine

REDACTED COPY

CFS-17-00247592
05-23-2017



In Loving Memory of

Jayson J. Negron

September 16, 2001 - May 9, 2017

CLAYTON
P-17



Fill not your hearts with pain an sorrow, but remember me in every tomorrow. Remember the joy, the laughter, the smiles, I've only gone to rest a little while. Although my leaving causes pain and grief, my going has eased my hurt and given me relief. So dry your eyes and remember me, not as I am now, but as I used to be. Because, I will remember you all and look on with a smile. Understand, in your hearts, I've only gone to rest a little while. As long as I have the love of each of you, I can live my life in the hearts of all of you.

Funeraria Luz de Paz

426 E. Washington Ave., Bridgeport, CT
(203) 330-8081