

Introduction

Hi. I'm Tim Miller. I'm the Subject Matter Expert for Use of Force at the Legal Division for the Federal Law Enforcement Training Centers (FLETC). The FLETC instructs Basic and Advanced students on both the law and the application of the use of force by law enforcement officers.

The Basic students receive a 2 hour block of instruction on the Legal Aspects of Use of Force from my division. We introduce students to the Fourth Amendment's objective reasonableness standard, as laid out by the 1985 Supreme Court decision in Graham v. Connor.

Students are taught by a legal instructor that an officer's use of force will be judged under Graham's objective standard. In short, the court will examine the totality of the facts and circumstances through the lens of a reasonable officer and without the vision of 20/20 hindsight.

Because the standard is objective, students are taught the critical importance of articulating the factual basis for a use of force rather, than relying on just their subjective opinions or making mere conclusions. Students begin to learn to paint the picture. Mere conclusions like, "He threatened me" are replaced with factual statements like, "He grabbed a knife."

FLETC teaches the legal standards for using force and not agency policy. We teach over 90 Partnering Organizations plus countless state and local agencies. It isn't possible to teach (or even to know) all these different policies. And as a practical matter, courts judge police officers under the Fourth Amendment's objective standard, and not policy.

Immediately following the legal instruction, basic students receive 4 additional classroom hours of Use of Force training from an Enforcement Operations Division (EOD) instructor. In this block, the legal aspects are reiterated, reinforced and utilized in explaining in more detail how the Fourth Amendment applies to an officer's decision.

Students learn that there are a *range* of reasonable force options; and, there is no one "right" answer. We provide examples of officers acting unreasonably in two different extremes. One may be a situation where an officer was too aggressive. In another, the officer may be too *hesitant*.

Additionally all basic students learn about the "human performance factors" on using force. For example, how does stress contribute to sensory distortion? Tunnel vision and auditory exclusion may affect an officer's recollection of what

Introduction

happened. It may explain why the officer's story is different than the body camera's or the one recorded by the by-stander's I-Phone.

Another factor is that action is always faster than reaction? Some may remember the old television westerns where the good guy always let the bad guy go for his gun first. The fact is, action is faster than reaction. Letting someone reach for a gun may be too late for the officer. Graham's objective standard allows officers to react to the threat of violence rather than violence itself.

Later in training programs, students are given hands-on experience in utilizing force. This is our scenario based training. By this time students have learned how to use the array of weapons available to them.

During scenario based training, a Legal Division instructor is present with an Enforcement Operations Division instructor. Both play vital roles. Together they emphasize not only the law, but the practical application of using force on the street. Teaching use of force is a team effort.

Scenario based training starts with tightly scripted "fragmentation drills" that make students react to a certain basic fact patters. For example, if the student sees a role-player reach for a knife she needs to do *something*.

Students progress to more loosely scripted drills. These scenarios require the students to use good judgment. By now they should be selecting appropriate force options against the threat facing them.

And finally, students are placed into fully interactive scenarios utilizing role players. They may be given an arrest warrant for John Doe and told to use reasonable force to arrest him. Afterwards, the students are required to factually articulate the force option chosen.

Instructors need training too. FLETC's Use of Force Instructor Training Program (UOFITP) is a "train the trainers" program. The UOFITP is not only offered to FLETC staff, it is also available to partner organizations, as well as state, local and tribal officers. It is a two week program that gives advanced students an in-depth working knowledge of both the legal and practical aspects of use of force. The goal is for the graduates to take what they learned back with them.

We at the FLETC hope that you find our podcast series on the Legal Aspects of Use of Force informative and useful. Your comments may be delivered to me, at Tim.Miller@dhs.gov. God bless you for what you do and be safe.