Use of Force: Totality of the Circumstances

The goal of this training program is to provide law enforcement with a depth of understanding and confidence in applying the laws regarding the use of force. This training will increase the effectiveness of officers in recalling and articulating the totality of the circumstances under which the force was used.

This facilitation guide is intended to assist in the delivery of the video material in an interactive and thought-provoking manner. It provides suggestions to help facilitate most sections of the video; however, it is not a comprehensive guide for every aspect of the video. The videos do not necessarily depict a correct or incorrect way to handle a situation. The goal is for the students to engage in discussion of the topic and how it relates to them and to their agency. The guide may be used by facilitators of all experience levels to help the students get the most out of the material.

This guide contains the following sections: 1) Video Viewing Options and Features, 2) a Brief Overview of the Scenarios with key learning points, 3) an Expanded Content Guide, and 4) a Student Study Guide Answer Key.

The Video Viewing Options and Features section describes how the video is formatted and organized for use by facilitators or individual trainees.

The Brief Overview of the Scenarios describes each scenario and lists the key learning points for each section. It can assist a facilitator in quickly getting up to speed with the material.

The Expanded Content Guide is designed for use in a traditional training session where more time is available to explore the subject in depth. The expanded guide contains the same information as the brief scenario overview, plus provides suggested questions to facilitate most sections of the video, sample learning activities for small groups, and additional learning points that are often found in the interview comments.

A Student Study Guide Answer Key, which is a completed version of the Student Study Guide, is included at the end of this document. To receive credit, individual students review their completed Student Study Guide with the designated training manager or supervisor.

The facilitator should view and become familiar with all the material and key learning points in this course before use with students. This video is intended as a guide for discussion. Scenarios do not necessarily depict correct responses, and may not include a response at all. The goal is to create a venue for discussion and student interaction. The conclusion of the discussion should focus on the law and your specific agency policies.

This video is designed to give the facilitator different viewing options. The video may be watched in its entirety in a single session or broken up into shorter segments. Each video section is approximately 15 minutes long, making it ideal for facilitation in a briefing or roll call setting.
Video Viewing Options and Features

The video will open with two different viewing options: **Facilitated Group Course** or **Informational/Individual Viewing**.

**Facilitated Group Course**
The Facilitated Group Course option should be selected when the video is being used in a classroom or briefing setting and an instructor or supervisor is present to facilitate the course. The material may be delivered in a single session or broken up over several days, such as delivery during briefing settings. The material is divided into tabbed sections that the facilitator may play in whatever order they feel best meets the training need. Once the material has been covered in its entirety, the supervisor or training manager (as designated by the department) may submit a completed training roster via EDI to POST for CPT credit for trainees who have completed the training.

**Informational/Individual Viewing**
The Informational/Individual Viewing option should be selected when an officer is viewing the video alone or without an instructor or supervisor present to facilitate the delivery of the material. This option should not be used in a group training session. This option is intended for officers who work in a remote location or for a smaller agency that cannot readily access group training, or for an officer who is simply interested in viewing the video for informational purposes. The viewer will be guided through the video without facilitator interaction.

At the discretion of the department designated training manager or supervisor, individual viewers may receive training credit for viewing this video. To receive credit, individual students must be provided with the student study guide that is attached as a PDF file on the DVD-ROM disc. The student watches the video and completes the study guide as they follow along. They then submit their completed study guide to the designated training manager or supervisor, who discusses the video and the student’s responses with them. Once the training manager or supervisor is satisfied that the student has demonstrated an understanding of the concepts of the video, the supervisor or training manager may submit a completed training roster via EDI to POST for CPT credit. Supervisors and/or training managers should contact POST’s Training Delivery and Compliance Bureau at (916) 227-7748 for questions about completing and submitting rosters for video viewing. A completed version of the student study guide (Student Study Guide Answer Key) is included at the end of this document.

**Navigating the Video**
On-screen tabs appear across the bottom of each section of the video and allow the facilitator to select in what order the students will view the information. If in doubt about which tab to select, the information will flow logically if the tabs are selected in order from left to right. Once a facilitator is familiar with the content, they may find it more comfortable to deliver the material in an order of their own choosing.

**Scenario Tabs**
Scenario tabs appear at the start of each section and indicate a video scenario that is used for that section.

**Task Tabs**
Task tabs appear after scenarios or discussion tabs and are simply on-screen questions or statements available to use for group discussion.

**Discussion Tabs**
Discussion tabs appear after each scenario. They show a sample facilitation of the scenario in a briefing setting. They are optional. If the facilitator feels comfortable delivering the key learning points of the material, they may do so on their own. If they are not comfortable with the learning points or their own facilitation skills, they may either view the sample facilitation in advance to help become familiar with the material, or show the sample facilitation to the class to help spur further discussion.

**Interview Tabs**
Interview tabs appear after task questions. These are interviews with the Subject Matter Experts who provide additional discussion on the material. This commentary contains more information than what is delivered in the scenarios.

**Menu Tab**
Selecting the menu tab at the bottom right of the screen will take the viewer from the specific section they are in and return them to the main menu of the video where all sections are listed.
Brief Overview of the Scenarios

Overview

- Use of force is much more than simply which force option, weapon or tactic to use
  - Evaluating circumstances and making reasonable, lawful decisions
  - Being able to articulate in detail the circumstances under which and reasons why force was used
  - Understanding when officers have the legal authority to use force
  - Critical analysis of force incidents within lawful parameters
- Goal of the program
  - Provide a systematic approach for officers to effectively evaluate when force can lawfully be used
  - Accurately recall and articulate the totality of the circumstances that led to the decision to use force
  - Empower officers with an understanding that the most significant factor in deciding whether use of force was objectively reasonable under the totality of the circumstances is whether there was an immediate threat to the officer’s safety or the safety of others
- The Force Equation
  - Any force must be objectively reasonable under the totality of the circumstances
  - Number one factor in determining objective reasonableness is an immediate threat to the safety of the officer or the safety of others
    - 835^2 (eight-thirty-five squared)
      - 8 officer-subject factors
      - “I knew this one old SWAT guy, he was beat up, crazy, used to stand in the rain with his gun”
        1. “I knew” - prior contact(s)
        2. “One” - number of officers vs. number of subjects
        3. “Old” - age, size, gender, relative strength
        4. “SWAT guy” - specialized knowledge skills or abilities
        5. “Beat up” - injured, exhausted
        6. “Crazy” - under the influence of alcohol or drugs, mentally ill
        7. “In the rain” - environmental factors; footing, sound, light
        8. “With his gun” - proximity to weapons
  - 3 levels of force
    - Non-deadly
      1. Force with a minimal risk of injury
      2. Typically includes command presence, verbal commands, soft-empty hands, TASER drive-stun, etc.
    - Intermediate
      1. Force with a significant risk of injury
      2. Typically includes pepper spray
      3. Taser probe deployment, baton strikes, canine, etc.
      4. Requires active resistance and a threat
    - Deadly
      1. Force with a substantial risk of serious bodily injury or death
  - 5 Graham factors
    - Immediate threat to the safety of officers or others
    - Active resistance
    - Split-second decision-making
    - Crimes involved (severity)
    - Evade/escape
- 5 Instances when force can be used
  - Effect an arrest
  - Overcome resistance
  - Prevent escape
  - Defense of self
  - Defense of others
  - Survive the incident and survive the aftermath
    - Physically
    - Mentally
    - Legally

- Officers have only one chance to tell their story for the first time
  - Create a movie that you are proud of, depicting the event
  - Systematically recall and articulate what and why
  - Articulate the training and experience that is the basis for decisions and actions
  - Comprehensive approach to proper report writing
    - Accurate with details
    - Rationale on why you decided to use force
    - Confidence in understanding of policy, laws, and training

- Confidence that you are competent with your actions
  - Before, during and after the incident
  - Confident, well-trained officers conduct themselves more safely
  - Hesitation and over-reaction are less likely to occur when officers are self-confident
  - Actions taken are in accordance with the law and policy
  - Public support of officers is increased by competence

- De-escalation is an inherent consideration in the objectively reasonable use of force
  - Limitations and considerations
    - Consider the level of crime
    - Consider the potential for re-occurrence and/or threat to the public
    - Consider alternatives to physical arrest

- Reporting use of force
  - Document everything and don’t hide anything
  - The whole story, including feelings
  - Paint an accurate picture of what happened
  - How to remember what happened and prepare for court
  - What to expect if an arrest-related death occurs
    - Statement vs. interview
  - Interview techniques
  - What matters is how you tell your story the first time
  - Document thoroughly and include details

- Perfectly lawful constitutional use of force
  - If poorly documented
  - If poorly investigated
  - Years later in a courtroom, officer could lose career or even freedom
Scenario 1
Legal Standards

A dispatcher broadcasts a BOLO on auto burglaries in a neighborhood. An officer working night patrol sees a male looking into cars and trying the car door handles. When the officer contacts the suspect and questions him about being in the neighborhood, the suspect turns and flees on foot.

- Legal authority
  - Sometimes referred to as “the platform”
  - Allows the officer to progress
  - Starts with initial contact
  - Then detention if applicable
  - Then arrest if applicable
  - Use of force if it appears necessary
  - Know why you are there and if you can use force
    - Consensual encounter
    - Investigative detention
    - Arrest
  - Legal authority (platform) should be included in the report

- When officers understand their authority for the encounter
  - They have more confidence
  - They communicate more effectively
  - They make better decisions
  - If force is used it is articulated properly

- Many use of force incidents are challenged on the platform
  - What was the legal basis for the contact?
  - Must be prepared to support the platform in court

- Know the authority for use of force
- Know when you don’t have the authority to use force
- Other options, other considerations
  - Even if the law allows for use of force
    - Is it the right thing to do?
    - At the right time?
    - For the right reasons?
    - These are all part of the decision-making process
    - Can officers take action through follow-up?
  - Officers are not required to take action
    - It is sometimes okay to walk away
    - Officers don’t sign up to not take action
      - Doesn’t feel right
    - Public Duty Doctrine
      - There is almost always no duty to protect individuals
      - There is only a duty to protect the public at large

- Use of force is rare and must be objectively reasonable
  - Public generally believes force is used 35% of the time
  - Accepted estimates are between .05 percent and 2 percent in custodial arrest situations
  - It is always a potential
  - Always be prepared for a use of force encounter
  - Understand the legal standards for the various force options
• Use of force requires close observation and constant evaluation
  o Is there a crime?
  o What is the threat?
  o Has the threat ceased?
  o Know the legal standards for use of force and laws of arrest
  o There may be multiple decision points in any contact
    ▪ A consensual encounter may change if the subject becomes aggressive
    ▪ Evaluate the threat by the subject at that moment and adjust accordingly
      ♦ Can cause an escalation of force
      ♦ Can also cause a de-escalation when appropriate
  o Consider a use of force worst case scenario
    ▪ Does the platform you have support a worst case?
      ♦ Consider a jaywalking case
        - Officer is forced to use a wrist lock to detain the person
        - The person suffers a heart attack
        - Not suggesting we don’t stop jaywalkers
        - Simply presenting a reminder to consider worst case
Scenario 2
Resistance and Force Options

A River County Sheriff’s deputy makes a traffic stop for a seat belt violation and observes that the driver displays objective symptoms of being under the influence of an alcoholic beverage. The driver is initially cooperative; however, when the deputy attempts to place the subject under arrest, the subject raises his fists and challenges the deputy.

Key learning points:

- The Force Equation
  - Any force must be objectively reasonable under the totality of the circumstances
  - Number one factor in determining objective reasonableness is an immediate threat to the safety of the officer or the safety of others
    - $835^2$ (eight-thirty-five squared)
      - 8 officer-subject factors
      - Aid to remember the 8 officer-subject factors: “I knew this one old SWAT guy, he was beat up, crazy, used to stand in the rain with his gun”
        - “I knew” - prior contact(s)
        - “One” - number of officers vs. number of subjects
        - “Old” - age, size, gender, relative strength
        - “SWAT guy” - specialized knowledge skills or abilities
        - “Beat up” - injured, exhausted
        - “Crazy” - under the influence of alcohol or drugs, mentally ill
        - “In the rain” - environmental factors; footing, sound, light
        - “With his gun” - proximity to weapons
  - 3 levels of force
    - Non-deadly
      - Force with a minimal risk of injury
      - Typically includes command presence, verbal commands, soft-empty hands, TASER drive-stun, etc.
    - Intermediate
      - Force with a significant risk of injury
      - Typically includes pepper spray
      - Taser probe deployment, baton strikes, canine, etc.
      - Requires active resistance and a threat
    - Deadly
      - Force with a substantial risk of serious bodily injury or death
      - 5 Graham factors
        - Immediate threat to safety of officers or others
        - Active resistance
        - Split-second decision-making
        - Crimes involved (severity)
        - Evade/escape
      - 5 Times when force can be used
        - Effect an arrest
        - Overcome resistance
        - Prevent escape
        - Defense of self
        - Defense of others
  - Consider your options should your choice of force option(s) not be successful
• Continued verbalization techniques
  o Communicate with the subject prior to a use of force
  o And if force is used, continue to communicate
  o Continue the narration
• Give warnings
  o Clear direction on what you want the subject to do
  o Allow time for them to comply
    ▪ Recover from pain
    ▪ When officer safety allows
  o Warn the subject of what will happen if he or she does not comply
• Active levels of resistance
  o Cooperative
  o Passive, non-compliant
  o Active resistance
  o Assaultive behavior
  o Life-threatening
• Medical treatment offered/given once it becomes safe to do so
  o Once the event is under control, you are responsible for that individual
  o They cannot care for themselves
  o Need to provide humane treatment
  o Medical attention
  o Another level of service if applicable
• Force must be objectively reasonable under the totality of the circumstances
  o It does not have to be necessary
  o It must appear to be necessary
    ▪ If an officer shoots someone because they thought they had a gun
    ▪ If the gun was a toy
    ▪ It appeared to be necessary, but was not actually necessary
  o Force must be objective not subjective
    ▪ What you knew or should have known at the time-objective
    ▪ Whether it was necessary can become irrelevant-subjective
Scenario 3
Totaling up the Force Equation

Officers arrive on the scene of a call reporting a suspicious, possibly emotionally disturbed male. The first officer confronts a male wearing no shirt, with bloody hands, standing next to a car with a broken window. The officer calls for emergency assistance when this male does not respond to commands. The second officer arrives on scene and begins to slow the situation down and make a plan for resolution.

Key learning points:

- The Force Equation.
  - Any force must be objectively reasonable under the totality of the circumstances
  - Number one factor in determining objective reasonableness is an immediate threat to the safety of the officer or the safety of others
    - \(835^2\) (eight-thirty-five squared)
  - 8 officer-subject factors
    1. Prior contacts
    2. Number of officers and number of subjects involved
    3. Age, size, gender, relative strength
       - Young or old
       - Relative size in comparison to the officer
       - Gender-female officer, male suspect
       - Relative strength, body builder type
    4. Special knowledge or skill
       - Mixed martial arts fighter
       - Displays martial arts stance
    5. Injury or exhaustion
       - Officer exhaustion-can no longer overcome resistance
    6. Mentally ill or under the influence
       - Non-responsive/non-compliant to verbal commands
       - Heightened pain tolerance
       - Accelerated strength
    7. Environmental factors
       - Footing
       - Weather
       - Lighting
       - Crowds
       - Sound conditions
    8. Proximity to potential weapons
       - Subject is in a kitchen
       - Potential for arming themselves
  - Important to assess the Graham factors
    - Immediate threat to officers or others
    - Active resistance
    - Split-second decision-making
    - Crimes involved (severity)
    - Evade/escape
Use of Force: Totality of the Circumstances

- Platform
  - Consensual encounter
  - Detention
  - Lawful reason for being there
  - Legal authority (platform) should be included in the report

- Slow the event down
  - Allows time to think more clearly and narrate the events
    - Remain cognitively engaged
    - Allows better ability to tell the subject what is required of them
      - With clarity of command
      - With a narrative voice
      - Be the quarterback (lead and call the shots)
    - Allows more time to make more effective decisions

- Mental health crisis
  - Does not always mean that officers need to use force
  - A goal should be to get this person the help that they need
  - Pain tolerance of the individual may be abnormally high
  - The individual may have accelerated strengths
  - The individual may be slow or fail to respond verbal commands
  - Mental health emergency or criminal act
  - Agitated chaotic event
  - Excited delirium

- Medical Treatment
  - Life-saving measures
  - After care

- Thought process from time of call
  - Make a plan
  - Try to build and/or maintain time and distance
  - Resources
    - Intelligence
    - Additional officers/ resources
    - Supervisor
    - Air support, if available
    - Supervisor
Scenario 4
Make a Good Movie

Officers arrive on the scene of a domestic violence call for service. As they walk toward the house they see a male and female in the front yard, arguing. The female sees the officers and begins to flee on foot. As the officers give chase, they notice that the male has blood on his shirt and they can see a knife in the hand of the female as she is running. They catch and confront the female on the side of a house where she unsuccessfully tries to jump a fence. The officers command her to drop the knife but she continues to challenge them and the officers must use force to overcome her resistance.

- Narrative
  - Use words to narrate the situation
  - Communicate with your partner through narration
  - Give warnings
    - Clarity as to what you want the subject to do or not do
    - Allows time for compliance when safe to do so
    - Potential for de-escalation of force
    - Gives the subject the opportunity to change their course of action
    - Tells everyone that you are giving the subject the opportunity to change their actions
    - Tells everyone what your intentions are
    - May direct onlooker attention to specific concerns and the fact that the subject is resisting
  - Verbalization techniques
    - Communicate with the subject prior to a use of force
    - And if force is used, after the use of force
    - Continue the narration
  - Assisting officers need to also narrate what is happening
  - Proper tone and voice
    - Clear, calm speech is more effective
    - Calm and in control is apparent on recordings
  - Tactically sound and professional as if you were making a movie and directing all persons on camera
  - Articulating concerns and giving commands such as “drop the gun,”
    - Provides strong evidence as to the totality of the circumstances confronting the officer
    - The present sense recollection is recorded
- Slow the event down
  - Allows time to think more clearly and narrate the events
    - Remain cognitively engaged
    - Allows better ability to tell the subject what is required of them
    - With clarity of command
    - With a narrative voice
    - Be the quarterback
    - Allows more time to make more effective decisions
- Escalation/de-escalation
  - Just because you can doesn’t always mean you should
  - Transitioning between force options
    - Transition can be to a higher level of force when appropriate
    - Transition can be to a lower level of force when appropriate
- Social media
  - Cameras are “always on” law enforcement action
  - There are cameras everywhere now
    - The public has camera record capability at their fingertips
    - Body cameras
    - Security cameras
- Make a good movie
  - Make the movie that you want to reflect your professionalism
  - You can describe through narration what is happening
  - Angry voice, angry words, angry face, sends the wrong message
  - Angry narration will give the viewers (public, courtroom, etc.) the impression of what you thought of the subject
  - Narration is now more important than ever
  - The subject’s actions and your reactions can be described
Scenario 5
Telling Your Story for the First Time

An officer (from the incident in Scenario 4) is in the police station following a use of force incident, sitting down at a computer and preparing to write a report. When a supervisor walks by, the officer seeks guidance on how best to write the report. The officer then reviews a body camera recording of the incident and begins writing the report. The same officer is then shown as she testifies accurately and repeatedly to the facts of the case in several different venues.

Key learning points:

- Reporting tactics for a use of force incident
  - Should start with the platform
    - May also start with the formation of the platform
    - The platform should be thoroughly and accurately explained
      - What was your lawful reason for being there?
      - Were you there with permission?
      - When or how did that change?
  - Step-by-step narrative of how the incident progressed
  - Complete truthfulness
    - Many incidents are captured on video
    - Complete truthfulness builds community trust
    - Being perceived as fair by the community is critical to an agency’s legitimacy
  - Avoid “canned” language
    - The subject was non-compliant
      - This provides a label
      - It does not describe the action
      - Write the action
      - For example, he balled up his fists
    - The subject was verbally non-compliant
      - This provides a label
      - It does not describe the action
      - Write the words the subject used
      - For example, the subject told me that if I tried to arrest him he would “kick my ass”
  - Explanation of the basis for use of force decisions
    - Force should not and is not based solely on that moment
    - Force should be based on the totality of the circumstances
    - Should be based on the facts leading up to and including the moment force was used
  - Report the critical details - like writing a novel or a movie script
    - A thorough and clearly articulated report provides the foundation for consistent and accurate recall of the incident
      - When interviewed by the department professional standards unit
      - When interviewed by the department attorney
      - When testifying at a deposition
      - When testifying in court
      - Preliminary hearing
      - Court trial
      - Appellate courts
      - Can be years later that officers are testifying to a use of force report
- Officers can be sued and/or criminally charged for a lawful and justified use of force incident
  - When it is not properly documented
  - When it is not properly and thoroughly investigated
- Emphasize effective communication skills that were employed
- Emphasize those things that demonstrated fairness to the subject
  - Commands that were given
  - Time allowed to comply with commands
- Create a timeline for the incident
- Write a thorough account of the totality of the circumstances the first time
  - You may be testifying to the incident multiple times over the course of several years
  - However, you get only one chance to tell your story for the first time
  - Anything after that may be perceived as “spin” or “fabrication” by the public and/or defense attorneys
  - If you testify to a fact that is not written in your report, it may be discounted by juries and/or judges
    - Even if it’s something you forgot or didn’t think was important at the time
    - Defense attorneys will make the argument that you are now testifying to facts “after talking to your attorney”
    - Juries and judges may determine whether they trust and believe you based on these facts as well
- Follow your department policy regarding use of force reporting
- Utilize the Force Equation to ensure various aspects of the incident are addressed and included in your report where appropriate
  - Any force must be objectively reasonable under the totality of the circumstances
  - The number one factor in determining objective reasonableness is an immediate threat to the safety of the officer or the safety of others
  - The Force Equation
    - $835^2$ (eight-thirty-five squared)
      - 8 officer-subject factors
        - Prior contacts
        - Number of officers and number of subjects involved
        - Age, size, gender, relative strength
          - Young, or old etc.
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          - Lighting
          - Crowds
          - Sound conditions
Use of Force: Totality of the Circumstances

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  - Split-second decision-making
  - Crimes involved (severity)
  - Evade/escape
Expanded Content Guide

Overview

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  o Evaluating circumstances and making reasonable, lawful decisions
  o Being able to articulate in detail the circumstances under which--and reasons why--force was used
  o Understanding when officers have the legal authority to use force
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• Goal of the program
  o Provide a systematic approach for officers to effectively evaluate when force can lawfully be used
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- Prevent escape
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- Defense of others
- Survive the incident and survive the aftermath
  - Physically
  - Mentally
  - Legally

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    - Confidence in understanding of policy, laws, and training

- Confidence that you are competent with your actions
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  - What to expect if an arrest-related death occurs
    - Statement vs. interview
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- Perfectly lawful constitutional use of force
  - If poorly documented
  - If poorly investigated
  - Years later in a courtroom, officer could lose career or even freedom
Scenario 1
Legal Standards

A dispatcher broadcasts a BOLO on auto burglaries in a neighborhood. An officer working night patrol sees a male looking into cars and trying the car door handles. When the officer contacts the suspect and questions him about being in the neighborhood, the suspect turns and flees on foot.

- Legal authority
  - Sometimes referred to as “the platform”
  - Allows the officer to progress
  - Starts with initial contact
  - Then detention if applicable
  - Then arrest if applicable
  - Use of force if it appears necessary
  - Know why you are there and if you can use force
    - Consensual encounter
    - Investigative detention
    - Arrest
  - Legal authority (platform) should be included in the report
- When officers understand their authority for the encounter
  - They have more confidence
  - They communicate more effectively
  - They make better decisions
  - If force is used it is articulated properly
- Many use of force incidents are challenged on the platform
  - What was the legal basis for the contact?
  - Must be prepared to support the platform in court
- Know the authority for use of force
- Know when you don’t have the authority to use force
- Other options, other considerations
  - Even if the law allows for use of force
    - Is it the right thing to do?
    - At the right time?
    - For the right reasons?
    - These are all part of the decision-making process
    - Can officers take action through follow-up?
  - Officers are not required to take action
    - It is sometimes okay to walk away
    - Officers don’t sign up to not take action
      ♦ Doesn’t feel right
    - Public Duty Doctrine
      ♦ There is almost always no duty to protect individuals
      ♦ There is only a duty to protect the public at large
- Use of force is rare and must be objectively reasonable
  - Public generally believes force is used 35% of the time
  - Accepted estimates are between .05 percent and 2 percent in custodial arrest situations
  - It is always a potential
  - Always be prepared for a use of force encounter
  - Understand the legal standards for the various force options
• Use of force requires close observation and constant evaluation
  o Is there a crime?
  o What is the threat?
  o Has the threat ceased?
  o Know the legal standards for use of force and laws of arrest
  o There may be multiple decision points in any contact
    ▪ A consensual encounter may change if the subject becomes aggressive
    ▪ Evaluate the threat by the subject at that moment and adjust accordingly
      ♦ Can cause an escalation of force
      ♦ Can also cause a de-escalation when appropriate
  o Consider a use of force worst case scenario
    ▪ Does the platform you have support a worst case?
      ♦ Consider a jaywalking case
        - Officer is forced to use a wrist lock to detain the person
        - The person suffers a heart attack
        - Not suggesting we don’t stop jaywalkers
        - Simply presenting a reminder to consider worst case

Additional learning points:

• Should officers tell the subject they are being detained and/or the reason they are being detained?
  o Telling the person can often benefit the officer
  o Provides clarity to the person detained that they are not free to leave
  o Documents this fact when using body camera or other recording device
  o Clarifies the circumstances to witnesses and bystanders and to any recording devices they might be using
• Ongoing training in briefings
  o As often as possible
  o Roll call type training
    ▪ Can be discussions
    ▪ Can be video critiques
    ▪ Can be scenario-based critiques
  o Policy reminders
    ▪ Body cameras
    ▪ Supervisor notifications for use of force
    ▪ Supervisory investigative steps
    ▪ Any other callout procedures
    ▪ Does the level of force or injury change callout procedures?
    ▪ Any policy changes
    ▪ Recent case law

Suggested facilitation questions and common responses:

What is “the platform” and why is it so important in a use of force incident?

• Legal authority
  o Sometimes referred to as “the platform”
  o Allows the officer to progress
  o Starts with initial contact
  o Then detention if applicable
  o Then arrest if applicable
  o Use of force if it appears necessary
Use of Force: Totality of the Circumstances

- Know why you are there and if you can use force
  - Consensual encounter
  - Investigative detention
  - Arrest
- Legal authority (platform) should be included in the report
- When officers understand their authority for the encounter
  - They have more confidence
  - They communicate more effectively
  - They make better decisions
  - If force is used, it is articulated properly
- Many use of force incidents are challenged on the platform
  - What was the legal basis for the contact?
  - Must be prepared to support the platform in court
- Know the authority for use of force
- Know when you don’t have the authority to use force

What are other options and/or other considerations when presented with a use of force situation?

- Other options, other considerations
  - Even if the law allows for use of force
    - Is it the right thing to do?
    - At the right time
    - For the right reasons
    - These are all part of the decision-making process
    - Can officers take action through follow-up?
  - Consider a use of force worst case scenario
    - Does the platform you have support a worst case?
      - Consider a jaywalking case
        - Officer is forced to use a wrist lock to detain the person
        - The person suffers a heart attack
        - Not suggesting we don’t stop jaywalkers
        - Simply presenting a reminder to consider worst case
  - Officers are not required to take action
    - It is sometimes okay to walk away
    - Officers don’t sign up to not take action
      - Doesn’t feel right
    - Public Duty Doctrine
      - There is almost always no duty to protect individuals
      - There is only a duty to protect the public at large
Suggested learning activity:

Divide the class into small groups of three to six per group. The following process may be used for three groups and can be slightly altered and then assigned to larger classes with additional groups:

1. Ask each group to create a hypothetical consensual contact between a uniformed patrol officer and a tall, heavyset male. The instructor should allow only a minute or two for the groups to come up with this hypothetical. The instructor should then suggest to the group that after approximately one minute of consensual conversation, they are able to see that the subject is exhibiting objective symptoms of being under the influence of a controlled substance. Next, the instructor should ask them to justify a step-by-step progression of the platform for this encounter. Each group should be able to clearly articulate at what point the subject was free to leave and at what point the subject was detained. Did the groups indicate that they would tell the subject he or she was now being detained? The groups should also be able to indicate at what point force would be legally justified, should it be needed. And finally, if the instructor wishes, he may choose to ask the groups what action they would take if the suspect turned away from them and began running away. Would they pursue? Why or why not?

2. Have each group assign a scribe to take notes on the answers to the questions listed above. The instructor may select groups to present their hypothetical and progression to the class, with the understanding that feedback may be given and should be given in a non-judgmental manner. There are very few absolute right and wrong answers to this scenario but the instructor should be prepared to correct any wrong answers given.

3. The goal of this activity is to advance the class’ critical thinking ability in analyzing and defending a platform and why platforms are so important to a use of force incident. Additional discussion may cause the class to begin thinking about and analyzing when or why they might choose to not use force and/or not pursue a suspect fleeing on foot.
Scenario 2
Resistance and Force Options

A River County Sheriff’s deputy makes a traffic stop for a seat belt violation and observes that the driver displays objective symptoms of being under the influence of an alcoholic beverage. The driver is initially cooperative, however when the deputy attempts to place the subject under arrest, the subject raises his fists and challenges the deputy.

Key learning points:

- The Force Equation
  - Any force must be objectively reasonable under the totality of the circumstances
  - Number one factor in determining objective reasonableness is an immediate threat to the safety of the officer or the safety of others
    - $835^2$ (eight-thirty-five squared)
    - 8 officer-subject factors
      - Aid to remember the 8 officer-subject factors: “I knew this one old SWAT guy, he was beat up, crazy, used to stand in the rain with his gun”
        - “I knew” - prior contact(s)
        - “One” - number of officers vs. number of subjects
        - “Old” - age, size, gender, relative strength
        - “SWAT guy” - specialized knowledge skills or abilities
        - “Beat up” - injured, exhausted
        - “Crazy” - under the influence of alcohol or drugs, mentally ill
        - “In the rain” - environmental factors; footing, sound, light
        - “With his gun” - proximity to weapons
  - 3 levels of force
    - Non-deadly
      - Force with a minimal risk of injury
      - Typically includes command presence, verbal commands, soft-empty hands, TASER drive-stun, etc.
    - Intermediate
      - Force with a significant risk of injury
      - Typically includes pepper spray
      - Taser probe deployment, baton strikes, canine, etc.
      - Requires active resistance and a threat
    - Deadly
      - Force with a substantial risk of serious bodily injury or death
      - 5 Graham factors
        - Immediate threat to safety of officers or others
        - Active resistance
        - Split-second decision-making
        - Crimes involved (severity)
        - Evade/escape
    - 5 Times when force can be used
      - Effect an arrest
      - Overcome resistance
      - Prevent escape
      - Defense of self
      - Defense of others
- Consider your options should your choice of force option(s) not be successful
• Continued verbalization techniques
  o Communicate with the subject prior to a use of force
  o And if force is used, continue to communicate
  o Continue the narration
• Give warnings
  o Clear direction on what you want the subject to do
  o Allow time for them to comply
    ▪ Recover from pain
    ▪ When officer safety allows
  o Warn the subject of what will happen if he or she does not comply
• Active levels of resistance
  o Cooperative
  o Passive, non-compliant
  o Active resistance
  o Assaultive behavior
  o Life-threatening
• Medical treatment offered/given once it becomes safe to do so
  o Once the event is under control, you are responsible for that individual
  o They cannot care for themselves
  o Need to provide humane treatment
    ▪ Medical attention
    ▪ Another level of service if applicable
• Force must be objectively reasonable under the totality of the circumstances
  o It does not have to be necessary
  o It must appear to be necessary
    ▪ If an officer shoots someone because they thought they had a gun
    ▪ If the gun was a toy
    ▪ It appeared to be necessary, but was not actually necessary
  o Force must be objective not subjective
    ▪ What you knew or should have known at the time-objective
    ▪ Whether it was necessary can become irrelevant-subjective

Additional learning points:

• Use of force requires close observation and constant evaluation
  o What is the threat?
  o Is it continuing?
  o Transition if applicable
  o Has the threat ceased?
  o Only legally justified to use force when there is resistance
    ▪ The moment the subject complies, it becomes unconstitutional to continue to use force
  o Know your case law and laws of arrest
  o What force options are available
    ▪ Know your department policy
    ▪ Training
  o There may be multiple decision points in any contact
    ▪ A consensual encounter may change if the suspect becomes aggressive
    ▪ When giving commands, allow time for them to comply
    ▪ Evaluate the threat by the subject at that moment and adjust accordingly
    ▪ Can cause an escalation of force
- Can also cause a de-escalation when appropriate
- Assess the effectiveness of any level of force being used and select another option if/when applicable
- Don’t become overly reliant on one tool

Suggested facilitation questions and common responses:

What are the elements of the Force Equation?

- The Force Equation
  - Any force must be objectively reasonable under the totality of the circumstances
  - Number one factor in determining objective reasonableness is an immediate threat to the safety of the officer or the safety of others
    - 835\(^2\) (eight-thirty-five squared)
      - 8 officer-subject factors
      - Aid to remember the 8 officer-subject factors: “I knew this one old SWAT guy, he was beat up, crazy, used to stand in the rain with his gun”
  - 3 levels of force
    - Non-deadly
      - Force with a minimal risk of injury
      - Typically includes command presence, verbal commands, soft-empty hands, TASER drive-stun, etc.
    - Intermediate
      - Force with a significant risk of injury
      - Typically includes pepper spray
      - Taser probe deployment, baton strikes, canine, etc.
      - Requires active resistance and a threat
    - Deadly
      - Force with a substantial risk of serious bodily injury or death
  - 5 Graham factors
    - Immediate threat to safety of officers or others
    - Active resistance
    - Split-second decision-making
    - Crimes involved (severity)
    - Evade/escape
  - 5 Times when force can be used
    - Effect an arrest
    - Overcome resistance
    - Prevent escape
    - Defense of self
    - Defense of others

Using the memory aid, “I knew this one old SWAT guy, he was beat up, crazy, used to stand in the rain with his gun”, describe in detail the eight officer-subject factors to be considered in a use of force incident.
  - “I knew” - prior contact(s)
  - “One” - number of officers vs. number of subjects
  - “Old” - age, size, gender, relative strength
  - “Swat guy” - specialized knowledge skills or abilities
  - “He was beat up” - injured, exhausted
  - “Crazy” - under the influence of alcohol or drugs, mentally ill
  - “In the rain” - environmental factors; footing, sound, light
  - “With his gun” - proximity to weapons
Suggested learning activity:

Divide the class into small groups of three to six per group. The following process may be used for three groups and can be slightly altered and then assigned to larger classes with additional groups:

1. Play part 1 of the scenario in this section. Based on what they just watched, ask one group to identify and explain the applicable officer-subject factors from the Force Equation. Ask a second group to identify and explain the 3 levels of force that may be used and which of these was applicable in this scenario (and if more than one was applicable). A third group may be asked to explain and justify the 5 Graham factors and which of them (may be more than one) was applicable in this scenario.

2. The instructor should allow approximately 10 minutes for discussion within the groups. The groups should be encouraged to list the information on an easel chart for later report out to the class. If more than one group has been assigned the same task, the instructor may ask each table to share one or two items from their list. This allows other groups to share their information as well, rather than having the first table or two list all the possible answers. The instructor may ask each table to report out on their findings until all tables have shared their information. The instructor may then facilitate an entire class discussion on the learning points within this exercise.

3. The instructor may next play the second part ("Pause for discussion, Part 2 to follow") for the class. The instructor can have each group look at their findings and report on what, if anything, has changed now based on the different features of the subject.
Scenario 3  
Totaling up the Force Equation

Officers arrive on the scene of a call reporting a suspicious male, who is possibly emotionally disturbed. The first officer confronts a male wearing no shirt, with bloody hands, standing next to a car with a broken window. The officer calls for emergency assistance when this male does not respond to commands. The second officer arrives on scene and begins to slow the situation and make a plan for resolution.

Key learning points:

- The Force Equation.
  - Any force must be objectively reasonable under the totality of the circumstances
  - Number one factor in determining objective reasonableness is an immediate threat to the safety of the officer or the safety of others
    - \(835^2\) (eight-thirty-five squared)
  - 8 officer-subject factors
    1. Prior contacts
    2. Number of officers and number of subjects involved
    3. Age, size, gender, relative strength
      - Young or old
      - Relative size in comparison to the officer
      - Gender-female officer, male suspect
      - Relative strength, body builder type
    4. Special knowledge or skill
      - Mixed martial arts fighter
      - Displays martial arts stance
    5. Injury or exhaustion
      - Officer exhaustion-can no longer overcome resistance
    6. Mentally ill or under the influence
      - Non-responsive/non-compliant to verbal commands
      - Heightened pain tolerance
      - Accelerated strength
    7. Environmental factors
      - Footing
      - Weather
      - Lighting
      - Crowds
      - Sound conditions
    8. Proximity to potential weapons
      - Subject is in a kitchen
      - Potential for arming themselves
  - Important to assess the Graham factors
    - Immediate threat to officers or others
    - Active resistance
    - Split-second decision-making
    - Crimes involved (severity)
    - Evade/escape
  - Platform
    - Consensual encounter
    - Detention
    - Lawful reason for being there
    - Legal authority (platform) should be included in the report
• Slow the event down
  o Allows time to think more clearly and narrate the events
    ▪ Remain cognitively engaged
    ▪ Allows better ability to tell the subject what is required of them
      ♦ With clarity of command
      ♦ With a narrative voice
      ♦ Be the quarterback (lead and call the shots)
    ▪ Allows more time to make more effective decisions

• Mental health crisis
  o Does not always mean that officers need to use force
  o A goal should be to get this person the help that they need
  o Pain tolerance of the individual may be abnormally high
  o The individual may have accelerated strengths
  o The individual may be slow or fail to respond verbal commands
  o Mental health emergency or criminal act
  o Agitated chaotic event
  o Excited delirium

• Medical Treatment
  o Life-saving measures
  o After care

• Thought process from time of call
  o Make a plan
  o Try to build and/or maintain time and distance
  o Resources
    ▪ Intelligence
    ▪ Additional officers/ resources
    ▪ Supervisor
    ▪ Air support, if available
    ▪ Supervisor

Additional learning points:

• Narrative
  o Use words to narrate the situation
  o Communicate with the subject prior to a use of force
  o And if force is used, after the use of force
  o Continue the narration
  o Assisting officers need to also narrate what is happening
  o Proper tone and voice
    ▪ Clear, calm speech is more effective
    ▪ Calm and in control is apparent on recordings
  o Give warnings
    ▪ Clarity as to what you want the subject to do or not do
      ♦ Allows time for compliance when safe to do so
        - Potential for de-escalation of force
      ♦ Gives the subject the opportunity to change their course of action
      ♦ Tells everyone that you are giving the subject the opportunity to change their actions
      ♦ Tells everyone what your intentions are
      ♦ May direct onlooker attention to specific concerns and the fact that the subject is resisting
Suggested facilitation questions and common responses:

In a potential use of force incident, what might be some considerations if you feel the subject may be suffering from a mental health crisis?

- Does not always mean that officers need to use force
  - A goal should be to get this person the help that they need
  - Pain tolerance of the individual may be abnormally high
  - The individual may have accelerated strengths
  - The individual may be slow or fail to respond to verbal commands
  - Mental health emergency or criminal act
  - Agitated chaotic event
  - Excited delirium

Suggested learning activity:

Divide the class into small groups of three to six per group. The following process may be used for three groups and can be slightly altered and then assigned to larger classes with additional groups:

1. Based on the scenario they just watched, what is the importance of slowing the situation down? What steps might they take to do this, in addition to or in place of what was seen during the scenario?
2. The instructor should allow approximately 10 minutes for discussion within the groups. The groups should be encouraged to list the information on an easel chart for later report out to the class. The instructor may ask each table to share one or two items from their list. This allows other groups to share their information as well, rather than having the first table or two list all the possible answers. The instructor may ask each table to report out on their findings until all tables have shared their information. The instructor may then facilitate an entire class discussion on the learning points within this exercise.
Scenario 4
Make a Good Movie

Officers arrive on the scene of a domestic violence call for service. As they walk toward the house they see a male and female in the front yard, arguing. The female sees the officers and begins to flee on foot. As the officers give chase, they notice that the male has blood on his shirt and they can see a knife in the hand of the female as she is running. They catch and confront the female on the side of a house where she unsuccessfully tries to jump a fence. The officers command her to drop the knife but she continues to challenge them and the officers use force to overcome her resistance.

- Narrative
  - Use words to narrate the situation
  - Communicate with your partner through narration
  - Give warnings
    - Clarity as to what you want the subject to do or not do
    - Allows time for compliance when safe to do so
      - Potential for de-escalation of force
    - Gives the subject the opportunity to change their course of action
    - Tells everyone that you are giving the subject the opportunity to change their actions
    - Tells everyone what your intentions are
    - May direct onlooker attention to specific concerns and the fact that the subject is resisting
  - Verbalization techniques
    - Communicate with the subject prior to a use of force
    - And if force is used, after the use of force
    - Continue the narration
  - Assisting officers need to also narrate what is happening
  - Proper tone and voice
    - Clear, calm speech is more effective
    - Calm and in control is apparent on recordings
  - Tactically sound and professional as if you were making a movie and directing all persons on camera
  - Articulating concerns and giving commands such as “drop the gun,”
    - Provides strong evidence as to the totality of the circumstances confronting the officer
    - The present sense recollection is recorded
- Slow the event down
  - Allows time to think more clearly and narrate the events
    - Remain cognitively engaged
    - Allows better ability to tell the subject what is required of them
      - With clarity of command
      - With a narrative voice
      - Be the quarterback
    - Allows more time to make more effective decisions
- Escalation/de-escalation
  - Just because you can doesn’t always mean you should
  - Transitioning between force options
    - Transition can be to a higher level of force when appropriate
    - Transition can be to a lower level of force when appropriate
- Social media
  - Cameras are “always on” law enforcement action
  - There are cameras everywhere now
    - The public has camera record capability at their fingertips
    - Body cameras
    - Security cameras
Use of Force: Totality of the Circumstances

- Make a good movie
  - Make the movie that you want to reflect your professionalism
  - You can describe through narration what is happening
  - Angry voice, angry words, angry face, sends the wrong message
  - Angry narration will give the viewers (public, courtroom, etc.) the impression of what you thought of the subject
  - Narration is now more important than ever
  - The subject’s actions and your reactions can be described

Additional learning points:

- The Force Equation
  - Any force must be objectively reasonable under the totality of the circumstances
  - Number one factor in determining objective reasonableness is an immediate threat to the safety of the officer or the safety of others
    - 835² (eight-thirty-five squared)
      - 8 officer-subject factors
        - Prior contacts
        - Number of officers and number of subjects involved
        - Age, size, gender, relative strength
          - Age - young, old etc.
          - Relative size in comparison to the officer
          - Gender - female officer, male suspect
          - Relative strength, body builder type
        - Special knowledge or skill
          - Mixed martial arts fighter
          - Displays martial arts stance
        - Injury or exhaustion
          - Officer exhaustion - can no longer overcome resistance
        - Mentally ill or under the influence
        - Environmental factors
          - Footing
          - Weather
          - Lighting
          - Crowds
          - Sound conditions
        - Proximity to potential weapons
          - Subject is in a kitchen
          - Potential for arming themselves
  - 3 levels of force
    - Non-deadly
      - Force with a minimal risk of injury
      - Typically includes command presence, verbal commands, soft-empty hands, TASER drive-stun, etc.
    - Intermediate
      - Force with a significant risk of injury
      - Typically includes pepper spray
      - Taser probe deployment, baton strikes, canine, etc.
      - Requires active resistance and a threat
    - Deadly
      - Force with a substantial risk of serious bodily injury or death
5 Graham factors
- Immediate threat to the safety of officers or others
- Active resistance
- Split-second decision-making
- Crimes involved (severity)
- Evade/escape

5 Times when force can be used
- Effect an arrest
- Overcome resistance
- Prevent escape
- Defense of self
- Defense of others

Suggested facilitation questions and common responses:

- What do you think is meant by the term, “make a good movie?”
  - Make the movie that you want to reflect your professionalism
  - You can describe through narration what is happening
  - Angry voice, angry words, angry face, sends the wrong message
  - Angry narration will give the viewers (public, courtroom, etc.) the impression of what you thought of the subject
  - Narration is now more important than ever
  - The subject’s actions and your reactions can be described

Why is narration during a use of force incident so important in today’s video world?

- Narrative
  - Use words to narrate the situation
  - Communicate with your partner through narration
  - Give warnings
    - Clarity as to what you want the subject to do or not do
    - Allows time for compliance when safe to do so
    - Potential for de-escalation of force
    - Gives the subject the opportunity to change their course of action
    - Tells everyone that you are giving the subject the opportunity to change their actions
    - Tells everyone what your intentions are
    - May direct onlooker attention to specific concerns and the fact that the subject is resisting
  - Verbalization techniques
    - Communicate with the subject prior to a use of force
    - And if force is used, after the use of force
    - Continue the narration
  - Assisting officers need to also narrate what is happening
  - Proper tone and voice
    - Clear, calm speech is more effective
    - Calm and in control is apparent on recordings
  - Tactically sound and professional as if you were making a movie and directing all persons on camera
  - Articulating concerns and giving commands such as “drop the gun”
    - Provides strong evidence as to the totality of the circumstances confronting the officer
    - The present sense recollection is recorded
Suggested learning activity:

Divide the class into small groups of three to six per group. The following process may be used for three groups and can be slightly altered and then assigned to larger classes with additional groups:

1. Based on the scenario they just watched, ask one group to identify and explain the narration that occurred in the scenario. Ask them to be as specific as possible. Ask a second group to list and report on what additional narration they felt might have been helpful and/or effective. A third group may be asked to describe how the narration relates to the concept of “make a good movie.”

2. The instructor should allow approximately 10 minutes for discussion within the groups. It is recommended that the instructor visit with and listen in on the groups as they work through this task, offering advice and encouragement as appropriate. The groups should be encouraged to list the information on an easel chart for later report out to the class. If more than one group has been assigned the same task, the instructor may ask each table to share one or two items from their list. This allows other groups to share their information as well, rather than having the first table or two list all the possible answers. The instructor may ask each table to report out on their findings until all tables have shared their information. The instructor may then facilitate an entire class discussion on the learning points within this exercise.
Scenario 5
Telling Your Story for the First Time

An officer (from the incident in Scenario 4) is in the police station following a use of force incident, sitting down at a computer and preparing to write a report. When a supervisor walks by, the officer seeks guidance on how best to write the report. The officer then reviews a body camera recording of the incident and begins writing the report. The same officer is then shown as she testifies accurately and repeatedly to the facts of the case in several different venues.

Key learning points:

- Reporting tactics for a use of force incident
  - Should start with the platform
    - May also start with the formation of the platform
    - The platform should be thoroughly and accurately explained
      - What was your lawful reason for being there?
      - Were you there with permission?
      - When or how did that change?
    - Step-by-step narrative of how the incident progressed
  - Complete truthfulness
    - Many incidents are captured on video
    - Complete truthfulness builds community trust
    - Being perceived as fair by the community is critical to an agency’s legitimacy
  - Avoid “canned” language
    - The subject was non-compliant
      - This provides a label
      - It does not describe the action
        - Write the action
        - For example, he balled up his fists
    - The subject was verbally non-compliant
      - This provides a label
      - It does not describe the action
        - Write the words the subject used
        - For example, the subject told me that if I tried to arrest him he would “kick my ass”
  - Explanation of the basis for use of force decisions
    - Force should not and is not based solely on that moment
    - Force should be based on the totality of the circumstances
    - Should be based on the facts leading up to and including the moment force was used
  - Report the critical details - like writing a novel or a movie script
    - A thorough and clearly articulated report provides the foundation for consistent and accurate recall of the incident
      - When interviewed by the department professional standards unit
      - When interviewed by the department attorney
      - When testifying at a deposition
      - When testifying in court
      - Preliminary hearing
      - Court trial
      - Appellate courts
      - Can be years later that officers are testifying to a use of force report
  - Officers can be sued and/or criminally charged for a lawful and justified use of force incident
    - When it is not properly documented
    - When it is not properly and thoroughly investigated
Emphasize effective communication skills that were employed
Emphasize those things that demonstrated fairness to the subject
- Commands that were given
- Time allowed to comply with commands
Create a timeline for the incident
Write a thorough account of the totality of the circumstances the first time
- You may be testifying to the incident multiple times over the course of several years
- However, you get only one chance to tell your story for the first time
- Anything after that may be perceived as “spin” or “fabrication” by the public and/or defense attorneys
- If you testify to a fact that is not written in your report, it may be discounted by juries and/or judges
  ♦ Even if it’s something you forgot or didn’t think was important at the time
  ♦ Defense attorneys will make the argument that you are now testifying to facts “after talking to your attorney”
  ♦ Juries and judges may determine whether they trust and believe you based on these facts as well
Follow your department policy regarding use of force reporting

Utilize the Force Equation to ensure various aspects of the incident are addressed and included in your report where appropriate
- Any force must be objectively reasonable under the totality of the circumstances
- The number one factor in determining objective reasonableness is an immediate threat to the safety of the officer or the safety of others
- The Force Equation
  - $835^2$ (eight-thirty-five squared)
  - 8 officer-subject factors
    - Prior contacts
    - Number of officers and number of subjects involved
    - Age, size, gender, relative strength
      - Young or old etc.
      - Relative size in comparison to the officer
      - Gender - female officer, male suspect
      - Relative strength, body builder type
    - Special knowledge or skill
      - Mixed martial arts fighter
      - Displays martial arts stance
    - Injury or exhaustion
      - Officer exhaustion - can no longer overcome resistance
    - Mentally ill or under the influence
      - Non-responsive/non-compliant to verbal commands
      - Heightened pain tolerance
      - Accelerated strength
    - Environmental factors
      - Footing
      - Weather
      - Lighting
      - Crowds
      - Sound conditions
    - Proximity to potential weapons
      - Subject is in a kitchen
      - Potential for arming themselves
3 levels of force
- Non-deadly
  - Force with a minimal risk of injury
  - Typically includes command presence, verbal commands, soft-empty hands, TASER drive-stun, etc.
- Intermediate
  - Force with a significant risk of injury
  - Typically includes pepper spray
  - Taser probe deployment, baton strikes, canine, etc.
  - Requires active resistance and a threat
- Deadly
  - Force with a substantial risk of serious bodily injury or death

5 Graham factors
- Immediate threat to safety of officers or others
- Active resistance
- Split-second decision-making
- Crimes involved (severity)
- Evade/escape

Additional Learning Points

- Department policy
  - Report should document your actions in relation to your department policy on use of force
  - Notifications to supervisors
  - Agency medical aid requirements
  - Body camera recording
    - Does agency policy allow the officer to review body camera video before writing the report?
    - Does agency policy require an officer to write a report before reviewing body camera video and then allow a supplemental report to be filed after viewing the video?
  - If your recollection of the incident is different than the body camera recording
    - There are professionals who can explain human factors
    - Your perception of the incident is what is most important to the incident
  - Interview vs. statement for the officer
    - Follow department policy
    - If you are interviewed, you are only answering questions asked
      - Be mindful of questions that weren’t/aren’t asked
    - If you give a statement you are more likely to recall and document a fuller accounting of the information
- Supervisor sign-off
  - Supervise the investigation
    - Review all steps taken in the investigation
    - Your job is to ensure it is done fairly and justly
    - Check on the wellness of the officer
      - Notifications to chain of command
      - Notifications to the officer’s family
    - Ensure evidence was located and properly processed
    - Ensure that all witnesses have been located and properly interviewed
  - In-depth review of a report when reviewed at the supervisory level
  - Insisting on full, accurate and complete reports from your subordinates
    - Protects them in future interviews and testimony
    - Protects the agency as well
Use of Force: Totality of the Circumstances

- This is the best place to check for clarity, content and thoroughness in the report
- Ensure the narrative provides a step-by-step accounting of the incident
- Supervisors (all the way to the top) may be held liable for improper use of force
- A lawful and proper use of force can fall apart in court if a report poorly documents the circumstances
- Look for training opportunities for the entire department
- Consider the welfare of the officer involved in a use of force incident
  - Any injury
  - Any mental wellness factors

Suggested facilitation questions and common responses:

- Describe some suggested, effective reporting tactics when force was used in an incident.
  - Should start with the platform
    - Or even what transpired before the platform was established
    - The platform should be thoroughly and accurately explained
    - Step-by-step narrative of how the incident progressed
  - Complete truthfulness
    - Many incidents are captured on video
    - Complete truthfulness builds community trust
    - Being perceived as fair by the community is critical to an agency’s legitimacy
  - Avoid “canned” language
    - The subject was non-compliant
    - The subject was verbally non-compliant
  - Explanation of the basis for use of force decisions
    - Force should not and is not based solely on that moment
    - Force should be based on the totality of the circumstances
    - Should be based on the facts leading up to and including the moment force was used
  - Report the critical details
    - A thorough and clearly articulated report provides the foundation for consistent and accurate recall of the incident
    - Officers can be sued and/or criminally charged for a lawful and justified use of force incident
  - Emphasize effective communication skills that were employed
  - Emphasize those things that demonstrated fairness to the subject
  - Create a timeline for the incident
  - Write a thorough account of the totality of the circumstances the first time
  - Follow your department policy regarding use of force reporting
  - Utilize the Force Equation to ensure various aspects of the incident are addressed and included in your report where appropriate
Suggested learning activity:

Divide the class into small groups of three to six per group. The following process may be used for three groups and can be slightly altered and then assigned to larger classes with additional groups:

1. Based on the scenario they just watched, ask one group to explain the steps taken by the female officer that provided her the ability to accurately and completely recall specific details of the use of force incident when testifying in court, at a deposition, and when she gave statements to investigators. Another group should identify the steps taken by the female officer in writing the report that aided her in documenting the incident in such a thorough manner. Another group can be tasked with identifying the steps taken at the supervisory level that supported the officers’ efforts both at the scene and in writing the report, leading to a successful outcome.

2. The instructor should allow approximately 10 minutes for discussion within the groups. It is recommended that the instructor visit with and listen in on the groups as they work through this task, offering advice and encouragement as appropriate. The groups should be encouraged to list the information on an easel chart for later report out to the class. If more than one group has been assigned the same task, the instructor may ask each table to share one or two items from their list. This allows other groups to share their information as well, rather than having the first table or two list all the possible answers. The instructor may ask each table to report out on their findings until all tables have shared their information. The instructor may then facilitate an entire class discussion on the learning points within this exercise.

Conclusion

This facilitation guide provides information needed to assist the instructor in delivering an interactive and goal-oriented training session. After completing this course, students should have general and specific information on how to better prepare for and then to report on a use of force incident. Students should have a stronger knowledge base of the laws that justify and allow officers to use force as well as case law that prescribes specifically how the law is applied in use of force cases. Officers will understand why narration during a use of force incident is so important in documenting and memorializing the professional work done by California law enforcement each and every day.
Student Study Guide – Answer Key

A blank copy of the Student Study Guide is attached as a separate document for individual viewers wishing to work with the agency designated trainer or supervisor for POST CPT credit. This is not a formal testing tool. Although sample answers are listed below, there are sometimes additional correct answers with which a student may respond. All answers should be evaluated by the trainer. The following answers match the video content and are listed for general guidance.

In the “Force Equation,” what does “835 squared” refer to? **C**

A. Eight force options available to most officers, three legal instances where force may be used, five Graham factors to consider when using force, and five levels of force that may lawfully be applied

B. Eight instances when force may lawfully be applied, three levels of force to consider, five court cases that relate to Graham vs. Connor, and five force option tools officers may use

C. **Eight officer-subject factors, three levels of force, five Graham factors, and five incidents when an officer may lawfully use force**

D. Eight Graham factors that allow officers to lawfully use force, three methods of force application granted by the Penal Code, five environmental factors that may be considered when employing force, and five levels of resistance that would justify using force

Why is it important to give subjects time to comply with commands directing them to cease their resistance? **F**

A. It increases the possibility that less force will be necessary

B. This is one of the required “8 Graham factors” for a use of force incident

C. It demonstrates to the public and to courtroom professionals that you exhibited fairness in your use of force

D. It gives the subject the opportunity to absorb your commands and act on those

E. All of the above

F. **A, C and D only**

Explain your understanding of “objectively reasonable under the totality of the circumstances.”

**Any time an officer uses force, that force must be objectively reasonable based on the totality of the circumstances. The totality of the circumstances can and should include the platform (legal reason) for the stop and all factors related to the “Force Equation.” The Force Equation refers to 835 squared. 8: officer-subject factors: Prior contacts, number of officers/subjects, age/size/gender/relative strength, specialized skill/abilities, injured/exhausted, under the influence/mentally ill, environmental factors, proximity to weapons. 3: levels for force-non-deadly, intermediate, deadly. 5: Graham factors: Immediate threat, active resistance, split-second decision, severity/crimes involved, evade/escape. 5 (squared): Times when force can be used: Effect an arrest, overcome resistance, prevent escape, defense of self, defense of others.**
What are the levels of force as defined by the 9th Circuit Court of Appeals?

A. Active, passive, intermediate, deadly, and non-deadly
B. Non-deadly, intermediate, and deadly
C. Voice, hands, intermediate tool, deadly
D. Active, passive, intermediate

What is meant by the term, “make a good movie?”

A. Law enforcement can showcase their professionalism through narration during a use of force incident recorded on video
B. Law enforcement can memorialize professionalism in giving clear appropriate commands to an individual to cease their resistance
C. With constant narration, law enforcement can essentially point out to the public and other viewers the resistance of the individual
D. Law enforcement can demonstrate the desire to de-escalate a situation through proper commands and then pausing to allow the subject time to comply with the commands
E. All of the above
F. A, B and C only

Why is narration so important during a use of force incident?

It provides communication between partners as well as providing clarification to onlookers of what they are seeing. When officers give warnings, it demonstrates professionalism to the onlookers as well as later in court, particularly when officers allow time for the subject to comply. Warnings and time to comply increase the possibility that less force or no force will be used. This also demonstrates fairness. Officers may also narrate their own intentions such as “Drop your fists and stop coming at me or I’ll use force to defend myself.” Warnings also give the subject the opportunity to change their course of action, again demonstrating fairness on the part of the officer. Clear, appropriate warnings and commands given in the proper tone, also demonstrate and memorialize professionalism, calmness and control to onlookers and later in court on video. Commands such as “drop the gun” also give strong evidence as the officer’s state of mind during the incident.

Which of the following clarifies the term, “you only get one chance to tell your story for the first time?”

D
A. Anything you add or change later may be perceived as “spin” or “fabrication” by the public and/or defense attorneys.
B. Defense attorneys may make the argument that you are now testifying to facts after talking to your attorney.
C. Judges and/or juries will be judging your truthfulness, and testifying to facts not in your report may have an adverse effect on their judgment of you.
D. All of the above
E. A and C only