



Use of Force Encounters on Campus

Investment in Training is the Key

LMU

Lincoln Memorial University
HARROGATE, TENNESSEE

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About the Presenter

- Cesar Gracia
- 28 years L.E. Experience
- K.P.D., T.B.I., Regional Law Enforcement Training Academy Director, LMU Dean of Campus Safety Operations/Chief of Police
- Use of Force Expert (Federal Courts, State of Tennessee, and Commonwealth of Virginia)
- Force Science Institute Certified (Biomechanics of Force Encounters)
- TN. POST Certified Use of Force Instructor
- FLETC and TN. POST certified DT Instructor
- FLETC and TN. POST certified Firearms Instructor
- NRA and TN. POST Certified Patrol Rifle Instructor
- GRACIE and TN. POST certified Ground Defense Instructor

Performance Objectives

- This block of instruction is intended to train the participants on the importance of properly training their officers on the latest use of force laws. Interactive discussions will be conducted on the latest use of force training trends and benefits to include the most recent Supreme Court decisions regarding police use of force cases. Intermediate weapons and their proper legal deployment will be discussed based on recommendations from recent court decisions.
- This is a class participant interactive training module, designed to encourage discussion on the most recent use of force trends and how to avoid lawsuits.

Takeaways

- Most recent Supreme Court Decisions on Use of Force cases.
- Graham v. Connor, Scott v. Henrich, McLenegan v. Karnes will be discussed in detail.
- Recent cases pertaining to colleges and university police.
- Qualified Immunity and other topics that will assist campus police departments in defending their designated use of force options.

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Use of Force Policies

- Least amount of force
- Force continuum
- +1 model
- Reasonable Force
- How often do you train your officers in regards to use of force policy
- What is expected by the courts

Graham v Connor

- Diabetic goes into store to buy orange juice, unable to do so due to long line.
- Runs out of store and speeds off towards his residence.
- Officer across the street thinks armed robbery has occurred.
- Traffic stop is initiated and a scuffle ensues, Graham suffers a broken wrist.
- Officers soon realize a robbery did not occur, and is released.
- Graham sues.

Scott v Henrich

- Shots fired in the area.
- Officers show up and are directed to the apartment, where the shooting originated from.
- Officers confront subject who is still armed. Subject points gun at officers, officers shoot subject.
- Officers sued, claiming they should have used the least amount of force necessary.
- Were the officers required to use the least amount of force?

McLenegan v Karnes

- DUI checkpoint, suspects are taken to a warehouse for processing.
- Magistrate is armed, leaves the room to use restroom and leaves handgun on top of desk.
- A prisoner takes the handgun and chaos ensues.
- Bailiff tries to flee and a handcuffed, unarmed prisoner follows close behind her.
- Officer enters building and runs into the handcuffed prisoner following the bailiff.
- Unarmed, handcuffed prisoner is a shot by officer (wrong person).
- Was the force reasonable?

Recent College/University Decisions

- **Thomas v Dillard, 818 F .3d864 (9th Cir. 2016)**
- Officer responds to possible domestic dispute.
- Upon arrival both deny any altercation.
- Officer request subject to a weapons check, subject denies request.
- Subject is tased, handcuffed, and arrested. No weapons were found.
- Charges were consequently dropped.
- Was the amount of force reasonable.

Recent College/University Decisions

- **Felarca v Birgeneau, No. 11-cv-05719-YGR, 2014 WL 7140262 (n.D. Cal. 12/12/14)**
- Occupy Protest, police break up the rally once.
- Police allow protestors to stay but they must take down their tents.
- Protestors refuse to take down tents and police in riot gear show up at 10:00 p.m. It was alleged that police struck protestors on the heads with batons.
- Protestors sue four officers but only one could be identified, the suit was allowed to proceed on the identified officer.
- Your thoughts.

Recent College/University Decisions

- **Collar v. Austin, 659 Fed. Appx. 557 (11th Cir. 9/2/16)**
- Intoxicated student (designer drug) approaches police station naked and pounds on windows.
- Officer goes outside and while the student is jumping up and down, he charges towards the officer.
- Officer gives commands to “get on the ground,” the student takes a knee and says “shoot me,” then he sprang up and continued advancing on the officer.
- Officer continues to give commands as the student is advancing and he shoots the student.
- Was the force reasonable?

Recent College/University Decisions

- **Nelson v. City of Davis, 685 F .3d 867 (9th Cir.2012)**
- 1,000 person party at apartment complex on city property. They begin rocking cars and setting off bottle rockets. City police ask UCPD to assist their officers.
- Officers show up in riot gear but the crowd doesn't disperse.
- The officers did not provide any audible warning prior to shooting pepper gas pellets towards the unarmed and compliant students, and never informed the young partygoers how to appropriately extricate themselves from the apartment complex in order to avoid becoming the target of police force.
- One student was shot in the eye, lost visual acuity, eventually lost his athletic scholarship, and quit school. It is alleged that the police did not provide medical care to the student.
- Was the force reasonable?

Recent Decisions

- **Garza v. Briones, 943 F.3d 740 (5th Cir. 2019)**
- Suspect is in vehicle with what eventually turns out to be a BB gun.
- Suspect points weapon at officer, officer fires first.
- “the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.”
- 61 shots fired by police, 18 hit their target.
- “if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until that the threat has ended.

Recent Decisions

- **Studdard v. Shelby Cty., 934 F.3d 478 (6th Cir. TN August 12, 2019)**
- Victim is holding blade to his own throat, he had bloody wrists from where he had attempted to kill himself.
- Officers warn him that if he doesn't drop the knife, they will shoot him.
- When he raises the knife to his neck he is standing approximately 34 feet from the police officers.
- Officers open fire and kill the subject.
- Can an officer shoot a person who only poses a threat to himself?

Recent Decisions

- **Vanderhoef v. Dixon, 2019 U.S. App. LEXIS 24897 (6th Cir. TN Aug. 21, 2019)**
- Teens wreck into off-duty part time reserve officer's vehicle.
- Officer holds the teens at gun point for approximately 2 minutes?
- Officer does not identify himself and is asked by a witness to put his gun up. He eventually let's them go when witness threatens to call police.
- Was this reasonable?

Recent Decisions

- **Shanaberg v Licking County Ohio, 936 F. 3d 453 - Court of Appeals, 6th Circuit 2019**
- Drunk driver is reported, vehicle information checked and it comes back as a stolen vehicle. The suspect's name also came back: Brandon Scott Powell. Powell was allegedly "armed and dangerous."
- Vehicle is located parked on side of the road. Driver is instructed to lay on the ground, he gets on his knees and puts his hands up but refuses to lay on the ground until told what he's done wrong.
- While kneeling on the ground he attempts to reach into vehicle, but returned his hands to the air after Stetson told him to do so. Deputy gives orders to lay on the ground nine times, each time, the driver became more belligerent.
- The driver refused every command to lie on the ground despite three warnings that they would tase him if he did not obey.
- Deputy ends up tasing him.
- Thereafter, the deputies learned that the driver was not who they thought he was. Instead, he was the vehicle's owner: plaintiff, Ty Shanaberg. As it turned out, Brandon Scott Powell had allegedly stolen the vehicle months before, but the police later recovered it. After recovery, however, the police accidentally re-entered the vehicle into the stolen-vehicle database.
- Was the amount of force reasonable?

Recent Decisions

- **Baker v. City of Trenton, 2019 U.S. App. LEXIS 26207 (6th Cir. MI Aug. 29, 2019)**
- Teenager tripping on acid grabs a lawnmower blade and comes toward officers that were searching his residence.
- Officers believed that he was holding his mother hostage and was possibly armed with a shotgun.
- Teenager strikes an officer with the blade, cutting the officer.
- Officer fires weapon and kills the teenager.
- Was the force reasonable?

Recent Decisions

- **Kelsay v. Ernst, 933 F.3d 975 (8th Cir. NE August 13, 2019)**
- Witnesses misinterpret horse play as a domestic assault, and police are called.
- The Chief arrests male subject for domestic assault, female argues and interferes with police. She is charged with interfering.
- Their child gets into an argument with another pool patron and the female walks back towards the pool to confront the person arguing with her son.
- Police tell her to stop several times and when she refuses, she is body slammed into the ground breaking her collarbone.
- Was the force applied reasonable?

Qualified Immunity

- Two prong test:
 1. Has a civil rights violation occurred?
 2. Was it a clearly defined at the instant that the force was applied?
- If the answer is no to either one of the prongs, the officer will be afforded Qualified Immunity and be removed from the lawsuit.
- Be mindful that when seeking Qualified Immunity, the courts will review the case in light most favorable to plaintiff.

How can we avoid these issues?

Training is the key

- How often do you provide Use of Force Training?
- When was the last time you reviewed your Use of Force policy, who was the initial author? Who is responsible for the review (credentials)?
- How often is your Use of Force Policy updated?
- Stay up to date on recent Use of Force cases.
- Subscribe to the Department of Homeland Security “The Informer.”
- Provide your training officer(s) with the most up to date proven training available. Make certain and go thru a vetting process of the person or company providing training for you personnel.
- Higher Education Law in America
- An ounce of prevention is worth a pound of cure!
- Document all training

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Questions?