

# Surviving a Lethal Force Encounter

The Physical, Emotional, and Legal Issues  
That Accompany a Lethal Use of Force

by  
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Law enforcement tends to focus on tactical training driven by anticipated incidents or by actual events from the past. In this paper we will examine events that occur after a lethal force encounter and how officers can prepare to meet the challenges they will face after such an incident.

In statistics gathered by the Psychological Services of the Los Angeles Sheriffs Department in the early 1980s, researchers found that of officers involved in lethal force situations, a third of the officers reported experiencing no negative reactions following the incident. Another third reported moderately severe, but relatively short-term effects following their shootings. However, the final third reported severe symptoms that were resistant to extinction (Blum).

## Three Elements of How Officers Will React to Using Lethal Force (Blum, 2000).

Many factors impact how officers respond to the effects of a lethal force encounter. While it may be impossible to predict with any degree of certainty an officer's reaction, there are numerous elements that dictate possible, even likely responses.

### A. The Characteristics of the Incident

The nature of the incident leading up to the use of lethal force may be the single most important factor in how an officer processes the use of force after the incident. For example, if an officer responds to the report of an armed robbery in which shots have been fired and victims are wounded, the necessity of stopping this suspect before he injures or kills someone else is imperative. If the suspect is then shot and killed by an officer, other officers, the general public, and the media will likely hail the officer as a hero. In those cases, the officer's reaction to the incident will likely be minimal.

On the other hand, if the suspect is involved in an incident that may be viewed as minor in nature, or the validity of the shooting is questioned extensively by the public or media, the officer is more likely to experience negative reactions to the use of force.

B. The Way an Officer is Handled or Treated After the Incident.

The way that an officer is treated after the incident will impact how the officer comes to view his/her handling of the incident. For this reason, it is vital to have protocol in place and that individual officers are aware of what is happening at each stage of the investigation and why certain actions are taking place. The high state of arousal brought about by the incident can last from 24 hours to several days. The officer may not be mentally able to process everything that is taking place post-incident in a logical manner. Therefore it is important that all actions be explained simply in a manner that can not be misunderstood.

In addition to how the officer is treated by the agency, how the following interact with the officer afterwards will impact the officer:

- Loved ones
- Peers
- Media
- Courts/Judicial system

C. The Officer's Pre-event Personality Characteristics

An officer's pre-event personality, and mental and emotional preparedness for a lethal force encounter, is the final factor that will determine how an officer will react to a lethal force incident.

Mental preparation for has been well discussed in tactical training. But in spite of much discussion, many officers never truly consider that they may be involved in a lethal force encounter and definitely do not consider how they will deal with the aftermath. The thought that "I never thought this would happen to me" fuels feelings of helplessness and loss of control that characterize critical incident stress.

In contrast, an officer who thinks "I always knew this might happen. Now I have to deal with it" is much more likely to process all the emotional issues subsequent to a use of force in a healthy manner.

Officers who are dealing with worries, frustrations, and other stresses may find that these pre-incident issues may compound the emotional effects of the shooting tremendously.

### Trauma Related Stress

Tactical trainers are well aware of the effects of stress. We use stress based scenarios in training so that officers can become familiar with how their bodies will react in high stress situations. These effects include sensory distortion and perceptual narrowing

(auditory exclusion, tunnel vision, and time distortion), increased heart and respiration rates, and the loss of gross motor skills. The chemical and hormonal secretions that cause these physical effects can continue to affect officers after a high stress incident. These effects are manifest within two wide categories.

Critical incident stress is based on a single, specific incident. The psychological and physical discomfort from the effects of critical incident stress may last from two days to four weeks. This type of post-incident stress is experienced by 85% of all emergency workers (police, firefighters, dispatchers and rescue personal) who are exposed to a traumatic event. Most officers experience this to varying degrees on a fairly common basis. For example, an officer who was involved in a high speed chase may have trouble sleeping that night as the officer mentally replays the chase over and over and considers the many "what ifs." Or an officer that investigates an accident involving a young person the same age as the officer's own child may be overly protective for several weeks after the initial accident.

Post Traumatic Stress Disorder (PTSD) is major distress in response to a critical incident or incidents that has a long lasting, disruptive effect on a person's life. The effects of critical incident stress can be compounded with repeated exposure and result in PTSD. Recent news accounts have reported high instances of PTSD in troops returning from duty in Iraq with the number varying between 10%-15% of returning troops. However, some units that have been experienced multiple deployments reports PTSD figures approaching 30%. PTSD is experienced by 15% of all emergency workers.

#### **Four Basic Principles of Trauma Related Stress (Kirschman, 1997)**

##### **A. Trauma is in the Eyes of the Beholder**

While some events are universally traumatic, trauma experienced from the same event may vary from officer to officer. Officers on the scene of the same incident may have slightly different perspectives due simply to their physical positions in relation to the suspect, and therefore have different reactions to the incident. There is a widely circulated adage that the eyes are the windows to the soul. So one officer who is making eye contact, and in that sense "looking into the suspect's soul" may have a completely different reaction to the killing of the suspect than the officer who was positioned outside of eye contact.

In a similar vein, an officer who goes into an incident expecting a routine encounter but is suddenly faced with the use of lethal force will likely react differently (post-event) than a backup officer who responds to a call of assistance from a fellow officer who is being fired upon.

B. Traumatic Responses are the Normal Reactions to an Abnormal Event

The signs and symptoms of traumatic response occur in four areas: our emotional and spiritual life, our physical well being, our behavior, and our intellectual functioning. Below are examples of possible behaviors, though responses will vary widely with individuals. It is important to note that a deviation from normal behavior is what draws our attention.

Emotional

- Irritability/anger/increased aggression
- Overreaction/under reaction to events
- Preoccupation with the event and one's role in the event
- Guilt
- Anxiety
- Emotional numbing
- Loss of faith in God

Physical

- Stomach problems/indigestion
- Headaches
- Chest pain/difficulty in breathing
- Elevated blood pressure
- Hyper alertness/easily startled
- Excessive trembling
- Changes in sex drive

Behavioral

- Impulsiveness/excessive risk taking/recklessness
- Silent/withdrawn
- Problems sleeping/nightmares
- Changes in personal or work habits
- Changes in eating or use of drugs or alcohol
- Flashbacks of the incident when confronted with similar calls

Intellectual

- Difficulty making decisions
- Poor concentration
- Memory problems
- Difficulty with details
- Confusion
- Difficulty with mental tasks

C. Traumatic Stress is a Psychobiological Event

Just as stress can cause reactions during the actual stressor, the effects of the chemicals that bring about those reactions linger in our bodies for a period of time which varies with individuals. It is important for officers to know that what they are experiencing after a high stress incident is not just “in their heads.” Much of what is taking place with the officer is biological in nature and will dissipate over time.

D. What You Resist, Persists

While many of the post-event, biological symptoms will lessen with time, other symptoms strike more to the officer’s perception of self and the job. Pretending that there isn’t a problem does not make the issues disappear. Instead, suppressed issues tend to be brought to the surface at unfortunate times. For example, officers are taught early in their training to seize control on a situation and to remain in control throughout the encounter. An officer involved in an perceived “routine” encounter that suddenly spins into a lethal force incident will likely experience frustration at not being able to control the situation before it escalated to deadly force (this can be reinforced by supervisors, administrators, or the media who focus on what alternatives the officer could have used). This same officer may secretly vow to never let that happen again and become unnecessarily “heavy-handed” with the public so as to always remain in control.

### The Post-Incident Investigation

The post-incident investigation of a lethal force incident begins virtually as soon as the shooting stops. The investigation will follow two separate, but parallel paths; the internal, agency initiated investigation and the investigation conducted by the State Bureau of Investigations (SBI). While the investigations are separate, they will likely intersect at key points.

A. Internal Investigation

The internal investigation will focus on issues involving agency policy and procedure. However, supervisors and other officers arriving to assist should be aware that statements made by the initial officer may be used in a criminal case against the officer. Therefore, on scene questions should be limited to the following areas:

- Type of force used
- The direction and number of shots fired by the officer and suspect
- The officer’s physical condition. During high stress incidents blood pressure can be elevated to dangerously high levels and

remain high for several hours after the incident. So even though the officer may not be suffering from any apparent injuries, the officer's physical condition should be monitored. Carefully evaluate whether professional medical attention is needed.

- The suspect's physical condition.
- Are there any other suspect's that may have escaped?
- The location of witnesses
- Is there evidence that should be secured before others arrive on the scene? The scene of this event will likely be chaotic for a time and crucial evidence may be destroyed or contaminated by responding officers or emergency personal.
- Does the officer need you to contact anyone such as a spouse or parent? Will the spouse need assistance getting to the hospital or with child care if the officer is transported to the hospital?
- Any other information necessary to ensure officer and public safety, and assist in the apprehension of outstanding suspects

The first assisting officer on the scene should contact supervision if this has not already taken place and give a brief overview of the situation. This officer should secure the scene and keep dispatch apprised of the situation.

When the supervisor arrives on scene, he/she will check the condition of the initial officer and the suspect. Being mindful that how an officer is treated after an event is directly correlated to the post incident trauma the officer experiences, the supervisor should talk with the officer in a positive tone while reminding the officer that the matter will be thoroughly investigated as a matter of routine. As part of that investigation the officer's weapon will be secured for any subsequent investigation by the SBI. As stated earlier, the effects of the actual incident may carry over for several days. Concerns for self-protection and protection of the officer's family will be foremost in his/her mind. The supervisor can help alleviate this fear by offering the officer his/her own weapon and telling the officer that they will receive a replacement as soon as possible from the Raleigh office. This action communicates trust in the officer by the supervisor and can not be overstated.

In the event of death or serious injury to the suspect, it is preferable that the initial officer be taken from the scene as soon as possible to a neutral location. This removes the officer from the scene on which relatives or friends of the suspect(s) may be present. Another officer should accompany the initial officer and be mindful of their discussion.

Research has shown that officers' "shock disruption period" last from a few minutes to a week or longer depending on the individual. Therefore, a

statement given 24 -72 hours after a high stress incident may be more accurate than one given immediately after an incident.

### The Officer's Statement

#### Garrity

The agency can require an officer to give a full account of the events of any type of incident. Failure to do so can result in the termination of the officer. This is a fact that is not mentioned so as to appear intimidating. Instead it is noted because this fact is vital to the full understanding of the officer's right against self-incrimination.

In *Garrity v. New Jersey*, 385 U.S. 493 (1967), officers were advised that they must answer questions concerning an accusation of ticket fixing subjecting them to criminal prosecution or risk termination of their jobs. The U.S. Supreme Court found that officers could not be compelled to answer questions as a condition of employment when those answers may be used against them in subsequent criminal prosecution in court. The ruling also specified that the questions asked of the officer are narrowly directed to the officer's participation or knowledge of the specific accusation.

In layman's terms this means that if an officer is compelled to give an account of the incident in question, that statement can not be used against the officer in criminal prosecution. The SBI is aware of this protection and will steer away from any internal statements made by officers.

See the attached Garrity Warning.

#### Reasonableness

In *Graham v. Connor*, 409 U.S. 386 (1989), the "reasonableness" standard is spelled out as it applies to an officer's use of force. In this landmark case, the U.S. Supreme Court warned lower courts in reviewing use of force cases to consider that, "the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."

The terms "tense, uncertain, and rapidly evolving" should guide an officer when giving or writing his/her use of force statement. While it is not necessary to use those terms specifically, the statement should describe an incident that fits that description.

In addition, the Court instructed lower courts to always ask three questions concerning the use of force:

- What was the severity of the crime that the officer believed that the suspect committed?
- Did the suspect present an immediate threat to the safety of the officer or others?
- Was the suspect actively resisting the officer, or attempting to escape?

### Writing the Report

The use of force statement should differ somewhat from a traditional law enforcement statement. Generally those statements are terse and concise with minimal details outside of the facts of the case. Such reports are sometimes driven by “check the block” incident forms.

Instead, the officer should approach the report as though telling a story. There should be background information, pre-incident information that outlines why contact with the subject took place, all events leading up to the use of force, and what happened immediately afterwards. The goal is to write a report so that a non-law enforcement reader would determine that he/she would have taken the same actions as the officer.

See the attachment Disturbance Resolution Model for a checklist. This is included as a guide and it should not be perceived that all of these questions must be answered.

### B. Criminal Investigation

An investigation by an outside agency, usually the SBI, is virtually assured in a lethal force encounter regardless of the outcome. This investigation can be requested by the agency of the officer involved or by the local district attorney. If the agency does not request the investigation, the District Attorney’s (DA) office certainly will.

The SBI investigation is conducted to evaluate whether the officer used the appropriate force as dictated by statute. It is a criminal investigation. The agents can handle the incident in one of two ways; they can only investigate the facts surrounding the actual use of force or, at the agency’s request, they will investigate the entire incident. The agents will strive to remain neutral throughout the investigation and present their findings without judgment to the local DA.

The SBI agent(s), if contacted immediately after the incident, will be concerned with securing the scene and any evidence, and processing the scene. The agents will try to interview the officer and any other witnesses



involved as soon as possible after the incident. The SBI has a manual that they use for officer involved shootings and will follow in page by page so as to ensure there is no accusation of preferential treatment of the officer.

#### Officer Interview

The officer may or may not be advised of his/her Constitutional rights as covered by the Miranda Warning. The officer will be asked if anyone (supervisors, agency personal, etc.) has told the officer that he/she must talk with the SBI. The manual lists questions to be asked of officers and some agents will follow that outline to the letter.

Officers may chose not to answer any questions at the time of the incident. This response will be noted in the SBI report. It is suggested that the officer give a reason for the delay and then ask that the agent include that reason in his/her report. Examples of positive delays are:

- “I feel like everything is good with this shooting, but I would feel more comfortable having an attorney present while I am being questioned.”
- “I have never experienced anything like this in my career and emotionally and mentally I am pretty rattled. I feel like I can give you a much better statement tomorrow.”
- “I want to talk, but...”
- In the event the officer has been hospitalized, the physician can issue a statement to the investigating agent stating that the officer should wait before giving a statement and state a medical reason (elevated blood pressure, emotional state, sedation, etc.)

It is also suggested that after the officer is interviewed, that the officer close by saying that the statement given is his/her best recollection of the incident in question, but they would like to have the opportunity to clarify any point in the future as they recall other details of the incident. We have had training in interview techniques and know that in high stress incidents, details may be recalled over a period of time. An example of such a statement is:

- “That is everything the best I can remember. But I know from our interview training that in high stress incidents details may continue to be recalled over a period of time. I would like to give you a call back and give you those details later if that occurs.”

The investigating agents will also ask the officer to sign a release of the officer’s personal records.

Of course all other witnesses, responding officers, the suspect(s) will be interviewed as well.

At the conclusion of the SBI investigation, the agent(s) will present their findings to the DA. The DA can find that the use and level of force was justified and no further criminal action will be taken. The DA can find that the use and level of force was excessive or unjustified and bring criminal charges (this would occur when there was an issue with when the next Grand Jury would convene). Or the DA can present the findings to the Grand Jury and allow them to make a determination as to whether there is probable cause for criminal charges.

The entire process of conducting the investigation(s) and the review by the DA can take from several days to several months. Officers may be put on administrative leave during this period. This administrative leave should not be construed as an indication of the agency's lack of support or question as to the appropriateness of the officer's action.

### **Critical Incident Debriefing**

Critical Incident Stress Management (CISM) has relied heavily on peer led debriefings for over twenty (20) years. CISM began in the early 1980s in response to emergency responders having no means of dealing with the stress that accompanies critical incidents. Most debriefings now consist of a structured, seven (7) step process that can include all persons involved from emergency personal, law enforcement officers, and telecommunicators. Most agencies consider participation in these debriefings as voluntary except in cases that are especially horrific.

Most county emergency management agencies have debriefing teams in place and are available to any agency. The North Carolina Highway Patrol also has a Critical Incident Debriefing team. A discussion within these groups is confidential. There are studies that question the effectiveness of CISM and others that tout it's merit.

The agency of an officer involved in a lethal force incident can also request that the officer submit to a Fit for Duty examination if the officer's supervisor has concerns about the officer's mental or emotion wellness.

### **Conclusion**

The use of lethal force can be the source of emotional, physical, behavioral, and intellectual trauma for the officers involved. The extent of that trauma can vary widely with individual officers. While the characteristics of each incident are uncontrollable, a uniform and knowledgeable response by supervisors and the agency can dissipate the sense of helplessness and lack of control that sometimes accompanies these types of incidents. In addition, the officer's knowledge of what to expect post-event including psychobiological symptoms of stress and from an investigations standpoint can help ease the long-term effects of this stress.

Ours is a job that is inherently dangerous. The risk of injury is always near and we live in a litigious society. Therefore it is crucial that trainers continually work to create an environment where officer survival, both in the field and afterwards, overrides any fear of litigation or criminal prosecution.

### Bibliography

- Artwohl, Alexis. (2002) Perceptual and Memory Distortion During Officer-Involved Shootings. FBI Bulletin, October 2002.
- Blum, Lawrence N. (2000). Force Under Pressure, How Cops Live and Why They Die. New York. Lantern Books.
- Gilmartin, Kevin M. (2002) Emotional Survival for Law Enforcement, A Guide for Officers and Their Families. Tucson, Arizona. E-S Press.
- Kirschman, Ellen (1997). I Love a Cop. New York. Guilford Press.
- Klugiewicz, Gary T. Legal Insight: How to Report the Whole Story, PoliceOne.com. Retrieved from <http://www.policeone.com/writers/columnists/gary-klugiewicz/articles/1233798/>
- Rider, Randy. Garrity – How It Works, Officer.com. Retrieved from [http://www.officer.com/web/online/Investigation/Garrity--How-It-Works/18\\$35064](http://www.officer.com/web/online/Investigation/Garrity--How-It-Works/18$35064)
- Wallentine, Ken. How to Ensure use of Force is “Reasonable and Necessary” and Avoid Claims of Excessive Force, PoliceOne.com. Retrieved from <http://www.policeone.com/writers/columnists/ken-wallentine/articles/1271618/>
- Willis, Brian and Leggatt, Darren. The Art of Articulation, PoliceOne.com. Retrieved from <http://www.policeone.com:80/police-products/training/services/articles/1712531-P1-Exclusive-The-ART-of-Articulation/>

## **Disturbance Resolution Model**

### **Use of Force Documentation Checklist**

- I. Background Information.
  - A. Day/date/time:
  - B. Location/address/specific area:
  - C. Officer(s) involved:
  - D. Subject(s) involved:
  - E. Witness(es):
- II. Approach Considerations.
  - A. Decision-making -- why did you initiate contact, i.e. justification and desirability?
    - 1. Dispatched / duty assignment / uniformed?
    - 2. Reasonable Suspicion.
    - 3. Probable Cause.
    - 4. Other reasons.
  - B. Tactical Deployment -- how did you approach?
    - 1. Control of distance.
    - 2. Positioning.
    - 3. Team tactics.
  - C. Tactical Evaluation -- what were your perceptions?
    - 1. Threat Assessment Opportunities?
      - a. Levels of Resistance - Describing what the subject is doing.

- (1). Unresponsive (Subject apparently unconscious).
- (2). Non-responsive (Subject conspicuously ignoring).
- (3). Dead-weight tactics (Subject's decision not to Assist. his/her movement).
- (4). Resistive tension (Subject tightening up muscles).
- (5). Defensive resistance (Subject attempting to get away).
- (6). Aggressive / active resistance (See note below).
- (7). Physical assault (Subject's personal weapons striking at officers).
- (8). Great bodily harm assault (Subject's actions/ability to cause harm).
- (9). Life-threatening assault (Subject's ability to cause death).
- (10). Life-threatening weapon assault (Subject's ability to cause death).

**Note:**

*“Active resistance” occurs when an officer encounters behavior that physically counteracts his or her attempt to control, and which creates risk of bodily harm to the officer, subject, and/or other person.*

b. Early Warning Signs? Explain.

- (1). Conspicuously Ignoring.
- (2). Excessive Emotional Attention.
- (3). Exaggerated Movement.
- (4). Ceasing All Movement.
- (5). Known Violent Background.

c. Pre-attack Postures? Explain.

- (1). Boxer Stance.
- (2). Hand Set.
- (3). Shoulder Shift.
- (4). Target Glance.
- (5). Thousand-yard Stare.

d. Subject apparently "Emotionally Disturbed", i.e. mentally ill, under of influence of a drugs and/or alcohol, or is obviously in crisis and out of control? Explain.

- e. Weapon Threat Assessment -- what weapons have you brought to the scene? What weapons has the subject brought to the scene? What other weapons are available? Explain.
2. What were the Officer(s) / Subject(s) Factors?
    - a. Number of Participants?
    - b. Individual Factors     Officer             Subject
      - (1). Relative Ages.
      - (2). Relative Strengths.
      - (3). Relative Sizes.
      - (4). Relative Skill Levels.
  3. Were there any Special Circumstances? Such as:
    - a. Your Reasonable Perception of Threat.
    - b. Sudden Assault.
    - c. Your Physical Positioning.
    - d. Subject's Ability to Escalate Force Rapidly.
    - e. Your Special Knowledge about the Subject.
    - f. Your Injury or Exhaustion.
    - g. Other Special Circumstances.
  4. Describe the Level/Stage/Degree of Stabilization achieved at each point of the disturbance:
    - a. Presence Stabilization -- describe type and degree to which the officer's or officers' physical presence stabilized the scene.
    - b. Verbal Stabilization -- describe type and degree to which the officer's verbal commands stabilized the scene.

- c. Standing Stabilization -- describe type, degree of stabilization, and if restraints were on yet.
- d. Wall Stabilization -- describe type, degree of stabilization, and if restraints were on yet.
- e. Ground Stabilization -- describe type, degree of stabilization, and if restraints were on yet.
- f. Special Restraints -- describe type, degree, and degree of immobilization.

**Note:**

*Your decision-making, tactical deployment, and tactical evaluation should include utilization of the tactical communication which should be used in both verbal testimony and written report to articulate why you moved beyond words.*

III.	Intervention Options.	<u>Officer</u>	<u>Subject</u>
	A. Presence.		
	B. Dialog.		
	C. Control Alternatives		
	D. Protective Alternatives		
	E. Deadly Force		

**Note:**

*The use of any force option is dependent on the officer's Tactical Evaluation of the situation, based on Threat Assessment Opportunities, Officer(s) / Subject(s) Factors and Special Circumstances.*

**Summation of what happened in chronological order ...**

- IV. Follow-thru Considerations.
  - A. Stabilization -----> Application of Restraints, if appropriate.
  - B. Monitoring / Debriefing.

- C. Searching, if appropriate.
- D. Escorting, if necessary.
- E. Transportation, if necessary.
- F. Turnover -----> Remove Restraints, if necessary.

Additional comments ...

V. Investigative Findings.

- A. Background Information.
- B. Medical / Psychological History.
- C. Booking Information.
- D. Post-booking Information.
- E. Other Information.

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North Carolina Wildlife Resources Commission  
Internal Investigation Statement

1. You are being directed to provide a statement as part of an internal investigation by the Enforcement Division of allegations of acts of personal misconduct by you, as has been explained to you.
2. You may or may not have previously invoked your Miranda rights on the grounds that you might incriminate yourself in a criminal matter. However, no statement given by you, nor evidence derived from any such statement, may be used against you in any criminal proceeding, except for perjury or false swearing.
3. You must now provide a statement that addresses specifically, directly and narrowly, your involvement in, or knowledge of, these allegations as they relate to performance of your official duties pursuant to Division policy or your fitness for continued certification as a sworn law enforcement officer.
4. If you refuse to give such statement, you may be subject to discipline for that refusal which can result in your dismissal from this agency.
5. Anything you say may be used against you only in a subsequent disciplinary action within the agency and/or by Training and Standards [INSERT FULL LEGAL TITLE] to determine your fitness for continued certification as a sworn officer.

By signing this statement, you acknowledge only that the foregoing has been read to you, and that you have received a copy of this document.

Signature: \_\_\_\_\_  
Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Location: \_\_\_\_\_  
  
Witnessed by: \_\_\_\_\_