

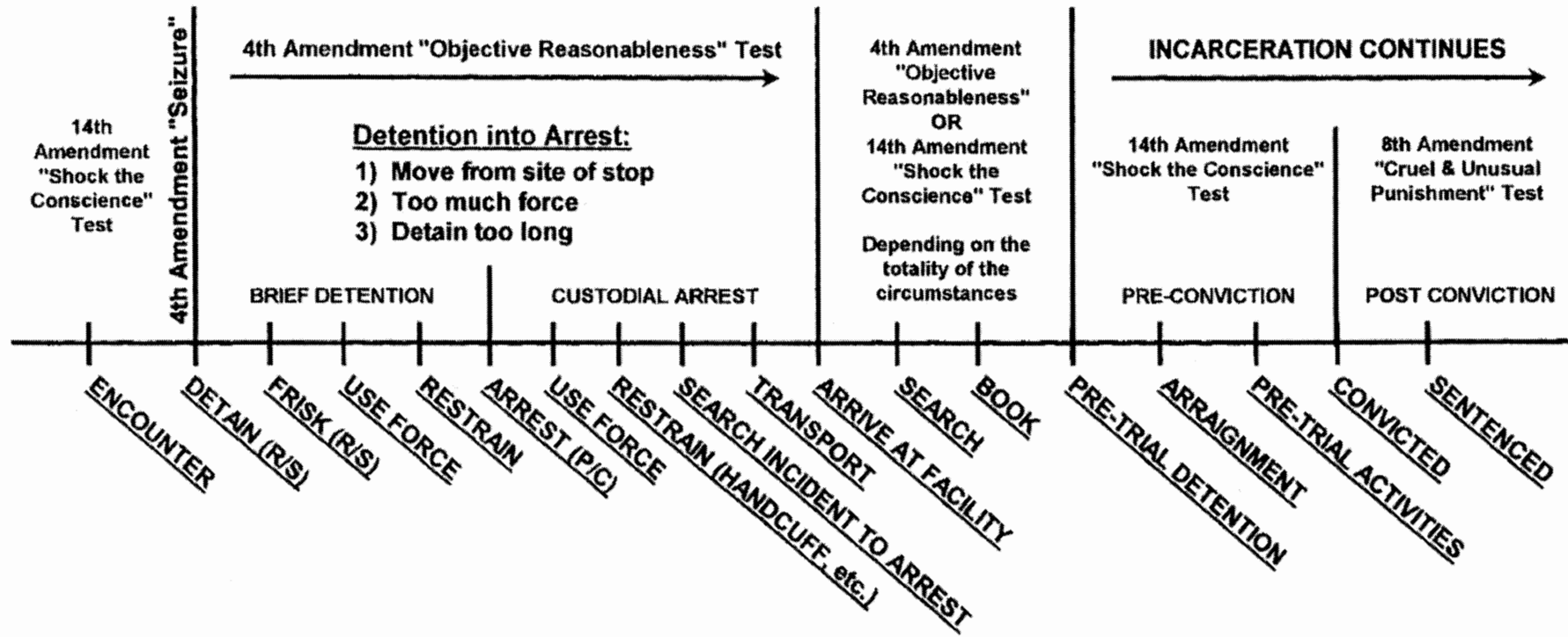
Step 1 - Create Incident Time Line:

Jurisdiction

Justification T-Scale - Concept — Everything that an officer does that has a negative impact on a person, property, etc. must be justified under the applicable established standards.

Jurisdiction, Action, Conduct, Injury, etc.	Compliance - Federal Standards (civil and criminal)	Compliance - More Restrictive (than Federal standards) State Standard(s) (civil and criminal)	Compliance - Policy, Training, Supervision, FTO Standards
1. Jurisdiction?			

USE of FORCE CONSTITUTIONAL STANDARDS TIMELINE



Medical Care Issues -- 14th Amendment "Due Process"
Test -- "Deliberate Indifference" to person's "Serious Medical Needs"

Use-of-Force Recipient Status Matrix

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Force Recipient	Free Person		Pre-Trial Detainee	Incarcerated and Convicted Person
	Seized Person - 4th Amendment	Not Seized Free Person Under 4th Amendment		
Constitutional Amendment	4th Amendment	5th Amendment - Federal Officers 14th Amendment - State Officers		8th Amendment
Use-of-Force Standard	Objective Reasonableness Test (Objective Test)	Due Process Clause Shock the Conscience Test		Cruel & Unusual Punishment (Subjective Test)
Leading Cases	<u>Graham v. Conner</u> , 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989); <u>Tennessee v. Garner</u> , 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985); <u>Brower v. County of Inyo</u> , 489 U.S. 593, 109 S.Ct. 1378, 103 L.Ed.2d 628 (1989); <u>Chew v. Gates</u> , 27 F.3d 1432 (9th Cir. 1994); <u>Saucier v. Katz</u> , 533 U.S. 194, 121 S. Ct. 2151, 150 L.Ed.2d 272 (2001).	<u>County of Sacramento v. Lewis</u> , 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998); <u>Johnson v. Glick</u> , 481 F.2d 1028 (2 nd Cir. 1973), <i>cert denied</i> , 414 U.S. 1033, 94 S.Ct. 462, 38 L.Ed.2d 324 (1973) <u>Bell v. Wolfish</u> , 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979); <u>Rochin v. California</u> , 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed.2d 183 (1952). See also <u>Brothers v. Klevenhagen</u> , 28 F.3d 452 (5 th Cir. 1994); <u>Valencia v. Wiggins</u> , 981 F.2d 1440 (5 th Cir.), <i>cert. denied</i> , 509 U.S. 905, 113 S.Ct. 2998, 125 L.Ed.2d 691 (1993); <u>Neal v. St. Louis</u> , 217 F.3d 955 (8 th Cir. 2000).	<u>Hudson v. McMillian</u> , 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992); <u>Wilson v. Seiter</u> , 501 U.S. 294, 111 S.Ct. 2321, 115 L.Ed.2d 271 (1991); <u>Whitley v. Albers</u> , 475 U.S. 312, 106 S.Ct. 1078, 89 L.Ed.2d 251 (1986); <u>Estelle v. Gamble</u> , 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); <u>Hope v. Pelzer</u> , 536 U.S. 730, 122 S. Ct. 2508, 153 L.Ed.2d 666 (2002).	
Use-of-Force Test Parameters	<p>- A "seizure" occurs when there is a "governmental termination of freedom of movement through means intentionally applied. <u>Brower</u>, 489 U.S. at 597. The 4th Amendment addresses "misuse of power," not the accidental effects of otherwise lawful conduct. <u>Brower</u>, 489 U.S., at 596.</p> <p>- Are the officers' actions "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation?</p> <p>- Reasonableness is determined by balancing the nature and quality of the intrusion with the countervailing governmental interests.</p> <p>- Reasonableness contemplates (<u>Graham</u>):</p> <ol style="list-style-type: none"> 1. Is the suspect an immediate threat to officers and/or others? 2. Is the suspect actively resisting seizure? 3. Are the circumstances tense, uncertain, and/or rapidly evolving? 4. What is the severity of the crime(s) at issue? 5. Is the suspect attempting to evade seizure by flight (trying to get away)? 	<p><u>County of Sacramento v. Lewis</u> - Police officer does not violate substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender. Holding - in such circumstances, "only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation." Two standards:</p> <p>(1) Where a state actor is afforded a reasonable opportunity to deliberate various alternatives prior to electing a course of action, the chosen action will be deemed "conscience shocking" if the action was taken with "deliberate indifference." <u>Lewis</u>, 118 S. Ct. at 1719.</p> <p>(2) In rapidly evolving, fluid, and dangerous situations which preclude the luxury of calm and reflective deliberation, a state actor's action will shock the conscience only if the actor intended to cause harm. See <u>Lewis</u>, 118 S.Ct. at 1720.</p> <p><u>Johnson v. Glick</u> - Four-Part "Shock the Conscience Test"</p> <ol style="list-style-type: none"> 1. The need for the use of force; 2. The relationship between that need and the amount of force that was used; 3. The extent of the injuries inflicted; and 4. Whether the force applied was in good faith or maliciously and sadistically for the purpose of causing harm. 	<p><u>Whitley</u> held that only an "unnecessary and wanton infliction of pain" and "actions taken in bad faith and for no legitimate purpose" are a cruel and unusual punishment. <u>Hudson</u> stated that the <u>Whitley</u> standard applies in both prison-riot and non-riot contexts. <u>Hudson</u> also held that all excessive force claims must show malice, sadism, and intent to cause harm. <u>Hudson</u> also held the 5th Circuit's "significant injury" requirement was improper under the 8th Amendment analysis. <u>Hope</u> - The policy and practice of cuffing an inmate to a hitching post or similar stationary object for a period of time that surpasses that necessary to quell a threat or restore order is a violation of the Eighth Amendment.</p>	

SEIZURE CHART

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<p align="center">Encounter (No Basis for "Seizure")</p>	<p align="center">4th Amendment Seizure (4th Amendment "Seizure" of a "Free Person")</p>		
<p align="center">DO NOT - STOP DO NOT - DEMAND ID DO NOT - USE FORCE</p> <p align="center">DO - ASK TO TALK DO - ASK FOR ID DO - ASK FOR EXPLANATION</p>	<p align="center">Detention/Frisk <u>Terry v. Ohio</u>, 392 U.S. 21, 88 S.Ct. 1868 (1968) "Reasonable Articulate Suspicion"</p>	<p align="center">Arrest "Probable Cause"</p>	
	<p align="center"><u>Brief Detention</u></p> <p>- While the officer diligently investigates his/her suspicions</p> <p align="center">"Reasonable Articulate Suspicion"</p> <p>To believe that:</p> <ol style="list-style-type: none"> (1) a crime has been committed, (2) a crime is being committed, or (3) a crime is about to be committed; AND (4) the person about to be stopped is the person who did one of the above. <p align="center">The Procedure:</p> <ol style="list-style-type: none"> (1) After identifying as a police officer (2) an officer may stop a person: <ol style="list-style-type: none"> (a) in a public place (b) for a reasonable period of time (c) when the officer reasonably suspects that such person is committing, is about to commit, or has committed a crime. (3) Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped <p>The officer must diligently pursue his/her suspicions.</p>	<p align="center"><u>(Pat) Frisk - for Weapons</u></p> <p>AFTER - Lawful Detention "Reasonable Articulate Suspicion"</p> <ol style="list-style-type: none"> (1) The officer reasonably believes (2) that the lawfully detained person (3) is armed and/or dangerous or that the officer or another is in danger of physical injury, (4) the officer may search (pat frisk) such person for weapons or any instrument, article or substance readily capable of causing physical injury and of a sort not ordinarily carried in public places by law abiding persons. (5) If the officer finds such a weapon or instrument, or any other property possession of which he reasonably believes may constitute the commission of a crime, or which may constitute a threat to his safety, (6) the officer may take it and keep it until the completion of the questioning; (7) at completion of the questioning the officer shall either return it, if lawfully possessed, or arrest the person so questioned 	<p>Probable Cause - a "fair probability" that a crime has been committed and the person being seized has committed it</p>

How Many Ways Can You Get Into Legal Trouble?

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Position (Defendants)	Admin. Sanctions	State Violations			Federal Violations		
		Criminal	Civil		Criminal	Civil	
			Official	Personal		Official	Personal
<u>Political Subdivision:</u> - Federal - State - County - City/Village			Only if allowed by statute			If the official policy is the moving force behind the constitutional violation - unconstitutional policy or custom	
<u>Law Enforcement Agency</u>						Not a viable party	Not a viable party
<u>Final Policy-Maker:</u> - Sheriff - Chief - Other	Violation of Policy					If "deliberate indifference"	If "deliberate indifference"
<u>Supervisor/Trainer (Not at scene)</u>	Violation of Policy					If "deliberate indifference"	If "deliberate indifference"
<u>Officers</u> - including supervisors/trainers at scene	Violation of Policy	Assault Battery False Arrest Exces. Force Homicide Theft Conversion	Intentional Tort - assault - battery - false imprison Negligence - discretionary immunity.	Intentional Tort - assault - battery - false imprison Negligence - discretionary immunity.	18 U.S.C. §§ 3, 1001, 241-245 - Civil Rights - Conspiracy - Neglect to prevent - False reports - Perjury	42 U.S.C. §§ 1981 - §1988 - Search - Seizure - Arrest - Detention - Privacy - Rescue - Protection - Conspiracy - Others	42 U.S.C. §§ 1981 - §1988 - Search - Seizure - Arrest - Detention - Privacy - Rescue - Protection - Conspiracy - Others

Federal/State Liability Threshold Matrix

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"Deliberate Indifference"
(Training/Supervision)
(Canton v. Harris, Farmer v. Brennan)

"Unconstitutional Policy/Custom"
(The Moving Force)
(Monell claims)



Constitutional Rights Deprivation

PUNITIVE DAMAGES
(Against the officer - personally)

ATTORNEY'S FEES
(42 U.S.C. § 1988)

Federal Civil Rights

(42 U.S.C. §§ 1981 - 1988)

State Tort Violations

Violating State Constitution

Violating State Statutes

Policy/Training Increasing Standards of Care

Intentional:

- Assault
- Battery
- False Arrest
- False Imprisonment
- Theft
- Malicious Prosecution
- Perjury/False Swearing

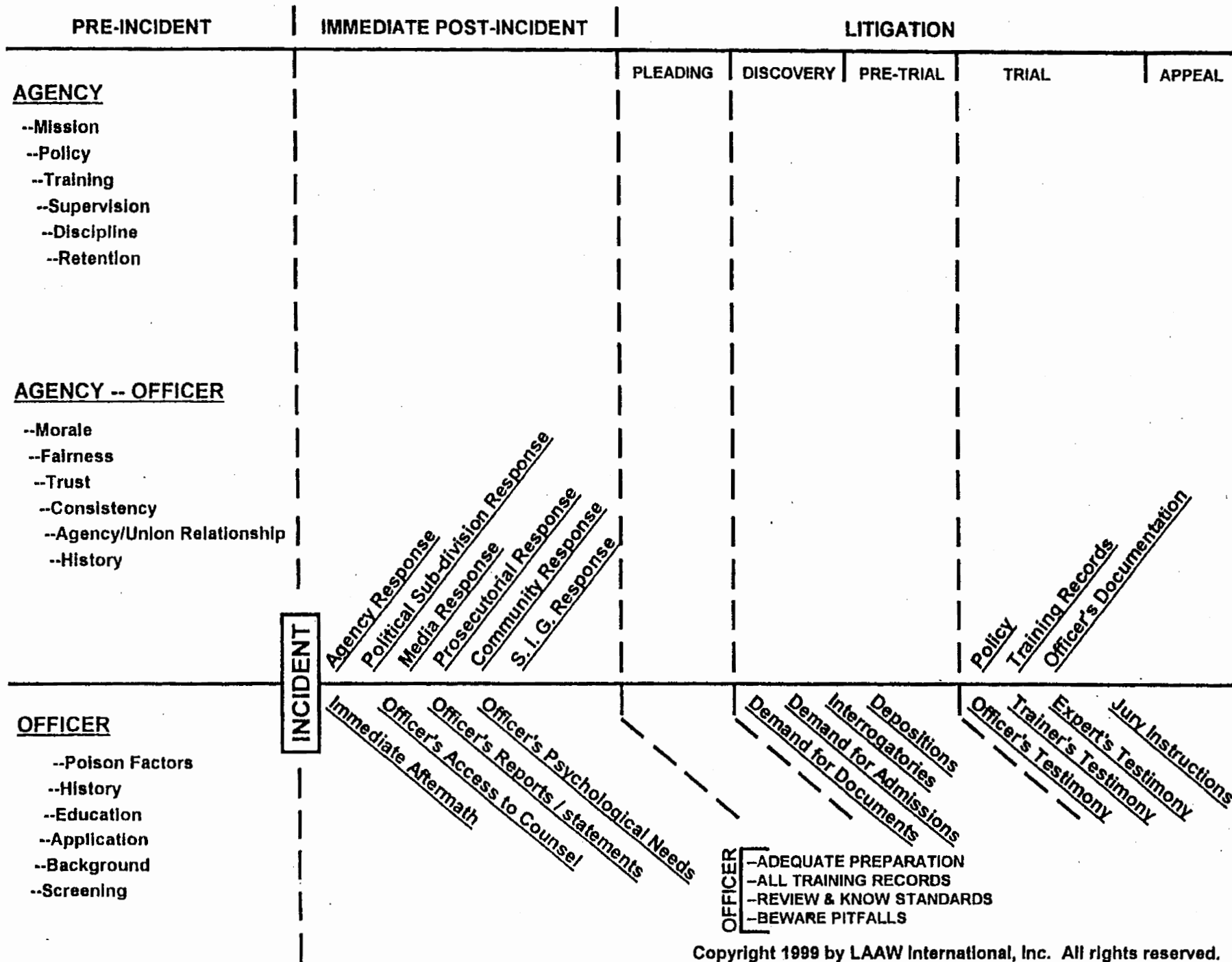
Ministerial Duties:

- Policies
- Specific Statutes e.g.
 - incapacitation by alcohol
 - mental incompetent
 - domestic assault
 - mandatory arrest
 - medical emergency

Standards of Care:

- "Wilful/Wanton"
- "Purposeful"
- "Intentional"
- "Knowingly"
- "Reckless Disregard"
- "Gross Negligence"
- "Negligence"
- "Due Regard"
- "Strict Liability"

Figure 1 Federal/State Threshold Matrix



<p>Perils (Exposures to risks of injury, damage, or loss during a use-of-force event.)</p>	<p>Hazards (Danger/Peril - Conditions that make possible a loss from a given peril)</p>	<p>Loss Exposures (A loss can be economic, personal (including incarceration), property, etc.)</p>	<p>Accountability (A societal assignment of responsibility for damage, injury, inappropriate action)</p>	<p>Risk (Loss) Reduction (Does not necessarily reduce “risk,” rather it reduces the possibility of “loss”)</p>
<p>Injury, Damage, Allegation of Inappropriate Force, During a Law Enforcement Officer’s Use of Force to/by:</p> <ul style="list-style-type: none"> - Innocent person - Non-innocent free person - Seized free person - Non-Seized free person - Pre-Trial Detainee - Persons Convicted & Incarcerated <p>Broad Law Enforcement Activities:</p> <ul style="list-style-type: none"> - Investigation Interaction - Detention - Arrest - Incarceration - Self-Defense - Defense of Others - Defense of Property - Providing Medical Aid - Jurisdictional issue(s) <p>Examples of Specific Use-of-Force Incidents:</p> <ul style="list-style-type: none"> - Innocent Person in Vicinity of Interaction with Force Recipient (e.g. hostage, innocent bystander) - Resisting Person - Threatening Person - Attacking Person - Searching Person - Restraining Person - Pursuit of Person - Providing Aid to Person - Transporting Person - Assisting Another Agency - Off-Duty Event 	<p>Legal Accountability Standards:</p> <ul style="list-style-type: none"> - Lack of provable knowledge and competence <p>Societal Hazards:</p> <ul style="list-style-type: none"> - Inappropriate scrutiny - Special interest group(s) <p>Agency Created/Enhanced Hazards: Less than perfect:</p> <ul style="list-style-type: none"> - Screening - Hiring - Entrustment - Direction - Training - Assignment - Supervision - Discipline - Retention <p>Moral Hazards:</p> <p>Officer:</p> <ul style="list-style-type: none"> - Inappropriate attitudes - I am “God” attitude - the law does not apply to me or my behavior <p>Suspect:</p> <ul style="list-style-type: none"> - I can disregard officer’s orders/commands - Assaulting, fighting, resisting officers <p>Supervisor:</p> <ul style="list-style-type: none"> - Self survival at any cost. - Push in Front of Bus Syn <p>Government Entity:</p> <ul style="list-style-type: none"> - Lack of objective fairness - Officers are fungible 	<p>(In addition to Societal Accountability Mechanisms)</p> <p>Officer Perils:</p> <ul style="list-style-type: none"> - Death - Permanent Injury - Temporary Injury - Psychological Injury - Inappropriate Criticism - Property Injury - Employment Injury - Economic Injury - Future Career Injury - Familial Injury - Societal Injury <p>Force Recipient Perils:</p> <ul style="list-style-type: none"> - Death - Permanent Injury - Temporary Injury - Wrongful Incarceration - Psychological Injury - Property Injury - Economic Injury - Familial Injury <p>Supervisory Perils:</p> <ul style="list-style-type: none"> - Economic Injury - Employment Injury - Future Career Injury <p>Government Entity Perils:</p> <ul style="list-style-type: none"> - Economic Injury. - Budgetary Injury - Property Injury - Political Injury - Special Scrutiny/Oversight - Federal Involvement 	<p>Involved Officers:</p> <ul style="list-style-type: none"> - Fed. Criminal Prosecution - State Criminal Prosecution - Fed. Civil Liability <ul style="list-style-type: none"> - Incl. Punitive Damages - State Civil Liability - Internal Discipline/Action - Loss of Officer License - Career Ending <p>Other Officers/Supervisors:</p> <ul style="list-style-type: none"> - Fed. Civil Liability <ul style="list-style-type: none"> - Incl. Punitive Damages - State Civil Liability - Internal Discipline/Action - Political Demise - Loss of Officer License - Career Ending <p>Government Entity:</p> <ul style="list-style-type: none"> - Federal Civil Liability <ul style="list-style-type: none"> - No Punitive Damages - State Civil Liability - Employment Practices - Workers’ Compensation - Loss of Insurance - Budget/Resource Decline - Additional Outside Scrutiny or Oversight <ul style="list-style-type: none"> - Community Oversight - Federal Oversight - State Oversight - Committee Oversight <p>Other Scrutiny:</p> <ul style="list-style-type: none"> - Community Chastisement - Media Criticism - Special Interest Groups - Political Injury 	<p>1st Tier (Reduce Indirect): <u>Monell</u> (Direction) Issues</p> <p><u>Canton/Farmer</u> Issues:</p> <ul style="list-style-type: none"> - Screening - Hiring - Entrustment - Direction - Training - Assignment - Supervision - Discipline - Retention <p>2nd Tier (Reduce Direct): Eliminate KNOWING Misconduct: - By ensuring:</p> <ul style="list-style-type: none"> - Professionalism/Training - Integrity/Credibility - Fairness/Objectivity - Accountability - Knowledge <p>Eliminate UNKNOWING Misconduct:</p> <ul style="list-style-type: none"> - Guidance - Entrustment - Training - Supervision <p>3rd Tier (Reduce Internal):</p> <ul style="list-style-type: none"> - Morale Deficiency - Trust and Fairness <p>4th Tier (Reduce Perceptual):</p> <ul style="list-style-type: none"> - Media Relationships - Community Partnerships - Community Outreach - Special Interest Groups - Immediate Aftermath Mgt.

MANAGING LAW ENFORCEMENT USE-OF-FORCE (“UOF”) RISK

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PRE INCIDENT		INCIDENT	POST INCIDENT	
Direction/Training	Management/Supervision	(Immediate Aftermath)	Aftermath	Legal Action
<p>Use-of-Force Policy:</p> <ul style="list-style-type: none"> - Mission Statement/Priorities - Risk vs Non-Action - Risk vs Minimal Action - Expendable entities - Force reporting procedures <p>Use-of-Force Standards:</p> <ul style="list-style-type: none"> - Choosing appropriate stds. - Clear delineation of stds. - Educating on standards - Documenting standards - Documenting legal standard deviations (restrictions, increases) <p>Education (Training):</p> <ul style="list-style-type: none"> - Legal limits/requirements - If UOF more restrictive by agency actions/policies <p>Force Alternatives:</p> <ul style="list-style-type: none"> - Alternatives available - Inaction - Special force options <p>Establish:</p> <ul style="list-style-type: none"> - Expectations of accountability - Attitude of respect - Attitude of duty - Increase morale - Set fairness code <p>Prepare for the Unusual:</p> <ul style="list-style-type: none"> - Mentally challenged (EDP) - Drug/alcohol influenced - Domestic abuse/restraint - Sudden unexpected death - Interacting hearing impaired - ADA - Perceptual Opposites 	<p>Officer UOF Training:</p> <ul style="list-style-type: none"> - Academy training - Initial training - In-house training - Update/In-service training - Simulations/decisions - Roll-play training - Training updates - Training documentation <p>UOF Training Includes:</p> <ul style="list-style-type: none"> - Legal parameters of force - Force option competence - Force options/alternatives - Force verbal de-escalation - Force reporting - Force aftermath expectations <p>Supervising Force Events:</p> <ul style="list-style-type: none"> - Force reporting - Force event review - Force event action - Correction/discipline options - Aftermath procedures <p>Documenting Force Events:</p> <ul style="list-style-type: none"> - Officer's rights - Statements/reports - Recorded (audio/video) - Timing - How taken <p>Event Information Mgt:</p> <ul style="list-style-type: none"> - Designated PIO - Alternate PIOs - Privacy training/documents - Public statements - Press releases - Including photographs - Community meetings 	<p>Threat Neutralization</p> <p>Medical Care and Transport</p> <p>Protect, collect, & preserve all known event-related evidence & information:</p> <ul style="list-style-type: none"> - Event scene - Communications materials - Involved officer information - Relevant dept. records <p>Identify & contact witnesses</p> <p>Involved Officers:</p> <ul style="list-style-type: none"> - Minimal officer statement(s) - Evidence collection (gun) - Removal from scene - Psychological care - Statement protection - Representation - Counsel - <u>Garrity</u> - Union - <u>Weingarten</u> <p>Notify Government Officials:</p> <ul style="list-style-type: none"> - Agency - as needed - Government attorney - Risk manager <p>Family, and others, notice and support:</p> <ul style="list-style-type: none"> - Department Chaplains - Department psychologist <p>Public Information Officer:</p> <ul style="list-style-type: none"> - Continuously available - Collect information - Ensure privacy - Prepare news release(s) - Arrange community mtg(s) 	<p>Criminal and/or internal investigation:</p> <ul style="list-style-type: none"> - Separation of issues - Firewall protection <p>Involved Officer's Statement(s) &/or Report(s):</p> <ul style="list-style-type: none"> - Timing - Atmosphere - Persons present - Individual or combined - Minimize the number - Form (verbal or written) - Recorded (audio/video) - Clarity of issues - Avoid unnecessary items - Importance of officer's rights - <u>Garrity</u> - <u>Weingarten</u> - Union/employee contract - Police Bill of Rights - Constitutional (fed and st) <p>Assistance to Involved Officers:</p> <ul style="list-style-type: none"> - Psychological - Mental health professional - Caution - privileged comm.? <p>Incident Review:</p> <ul style="list-style-type: none"> - Timeliness (quickly) - Full & appropriate analysis <p>Expect Litigation/Scrutiny:</p> <ul style="list-style-type: none"> - Organize agency records - Collect officer training records <p>Notification to Officers:</p> <ul style="list-style-type: none"> - Keep officers informed 	<p>Officers Must be Informed:</p> <ul style="list-style-type: none"> - Unknown is destructive - Officer needs answers - Who can (s)he contact - Importance of truth and complete (privileged) disclosures as early as possible - Do not make statements - Do not discuss the case - Litigation contacts - Importance of reporting adverse/opposition contacts - What to expect - What are his/her exposures - What can (s)he lose - Importance of preparation - What about settlements <p>Communications:</p> <ul style="list-style-type: none"> - Assigned agency litigation contact (for all communications) - Agency never interacts directly with opposition - List of case contacts <p>Agency (at defense counsel's request and as privileged):</p> <ul style="list-style-type: none"> - Collection and organization of all relevant training records - Collection and organization of all relevant direction and policy statements, records, documents - Collection and organization of all relevant officer involved personnel records <p>Discovery Preparation</p>

USE OF FORCE RESTRICTIVENESS CHART

**MORE
RESTRICTIVE
STANDARD**

Extreme Reverence for the value of Human Life

Always Utilizes Extreme Caution

Minimum Force Necessary

Exhaust All Alternatives

Assaults that "Are not likely to have Severe Results"

Only when there is Clear and Present Danger

Preservation of Life Standard

Defense of Life Standard (CALEA)

Deadly Force Defense Standard

Model Penal Code

4th Amendment "Objective Reasonableness"

Graham v. Connor,
490 U.S. 386
104 L. Ed. 2d 443,
109 S. Ct. 1865 (1989)

Tennessee v. Garner,
471 U.S. 1
85 L. Ed. 2d 1,
105 S. Ct. 1694 (1985)

14th Amendment Sacramento v. Lewis

**LESS
RESTRICTIVE
STANDARD**

8th Amendment – Non-Riot

8th Amendment – Riot

THE OFFICER'S HIGH JUMP!

"The Ladder of Inflated Standards Disaster"

PLAINTIFF'S ATTORNEY'S STANDARD

PLAINTIFF'S EXPERT'S STANDARD

FAMILY'S STANDARD

ADVOCACY GROUP STANDARD

SPECIAL INTEREST GROUP STANDARD

MEDIA STANDARD

CITY COUNCIL/COUNTY BOARD CRITICISM/STANDARD

CRITICISM OF OFFICER'S ACTIONS BY SOMEONE IN AUTHORITY

ACADEMY TRAINING STANDARD

DEPARTMENT TRAINING STANDARD

ADMINISTRATIVE SANCTIONS – POLICY VIOLATIONS

42 U.S.C. § 1981 – 1988 FEDERAL VIOLATION OF RIGHTS – CIVIL

STATE CIVIL LAW LIABILITY

STATE CRIMINAL VIOLATIONS (ASSAULT, BATTERY, FALSE IMPRISONMENT)

18 U.S.C. § 241, 242 – FEDERAL VIOLATION OF RIGHTS – CRIMINAL