

Gracie News

Train Like Your Life Depends On It...

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Attorney David Demurjian, a use of force expert, recently wrote an insightful article on why maintaining your Defensive Tactics skills is not only important for your safety, but also for reducing the liability exposure of your agency and to you personally.

Though this article relates to law enforcement officers, those that are not in law enforcement can take away some useful information that relates to use of force because you never know when you will find yourself in a life and death situation.

TRAIN LIKE YOUR LIFE DEPENDS ON IT...BECAUSE IT DOES.

So you have undertaken a weekly mission that involves you potentially losing your life. If you are able to make it through the violence that you may encounter, there is a possibility you may be prosecuted, sent to prison and sued for something you may have done while on this mission. And the amount of money you are paid to take on this potentially fatal task is meager compared to the risk you are exposed to. And you do this because _____ (fill in the blank). That is basically the synopsis of the law enforcement mission.

Your primary mission mandate is simple: you attempt to stop bad people from doing evil things to good people. The bad people will resort to any level of violence to accomplish their goals. Yet, there you stand, stopping them from hurting the good people that you serve.

One can assume that the reason you undertook this job was your desire to help the underdog, the victim. However, though your motive is admirable, what have you done to accomplish your mission successfully? Have you trained mentally, emotionally and physically for that encounter? What is your sense of readiness?

The most reported aspect of law enforcement is the use of force by law enforcement personnel. Log onto any news site on the internet and one will see videos showing police officers involved in all types of force encounters: from a fist fight to a gun battle. Aside from the legal implications behind any application of force, the officer and the police agency will have to contend with the public perception issue in a highly publicized force case. Since most applications of force do not "look pretty", there is usually an outcry from a partially informed public.

Back in the 1950's, law enforcement had a "simpler" business model for a police officer doing his or her job. Simply stated, an officer carried a gun, a knife, a baton and a flashlight. His ability to complete the job came down to his "keen wit" and his prowess with his defensive tactics. Because it necessitated that the officer be capable of going "hands on", part of the hiring process

focused on a candidate's ability to defend himself/herself. As time progressed, new "compliance tools" were introduced into an officer's repertoire for compliance: conducted electrical weapons ("Taser") and Oleoresin Capsicum spray ("OC spray" or "Pepper Spray"). With the introduction of these types of tools, the hiring process changed and it no longer appreciated the ability of the recruit to go "hands on" with their defensive tactics.

Simultaneously, some police tactics changed and were premised on the theory that many times the suspect would comply with your lawful orders through your "tactical communications." Though tactical and respectful communications is an absolute necessity for every police officer, time has shown that there are many instances where these skills alone do not work with the resistive suspect.

With the advent of these new compliance tools, academy instruction did not focus their training on the basic defensive "hands on" tactics. Cadets were allowed to be less proficient with their defensive "hands on" skills since there was a Taser or OC spray to assist them in their mission.

Unfortunately, in many cases Taser and OC spray have failed in force encounters and the officer has had to resort to his baton, knife, firearm and defensive "hands on" tactics. It is usually the officer's "hands on" approach and the effectiveness of those tactics that have allowed the officer to survive.

As it pertains to police use of force, there is a growing trend by some of the courts to hyper-analyze the use of the Taser or OC spray by police officers when dealing with the "resistive" suspect. Some courts are examining whether the "intrusiveness of this type of force" caused by these tools was warranted in the situation. Reading some of these opinions, one could easily conclude that unless the suspect is "actively attacking the officer", the court would prefer a "hands on" approach. This type of reasoning is also being adopted by many politicians and has begun to infiltrate use of force policies for police agencies. In some cases, we are witnessing both courts and politicians performing hindsight analysis on the force encounter, a process that they are not supposed to engage in ever since the U.S. Supreme Court rendered its decision in *Graham v. Connor* (490 U.S. 386 (1989)). Accordingly, there has been an increase in verdicts finding the officer liable for his actions since the jury was able to second guess the decisions of the officer without taking into consideration that the encounter was "tense, uncertain and rapidly evolving."

The U.S. Court of Appeals for the Ninth Circuit in *Bryan v. MacPherson* (630 F.3d 805 (2010)) recognized that the Taser is a "non-lethal" weapon and its use by an officer is an "intermediate level of force" due to its "high levels of pain and foreseeable risk of physical injury." Using the Taser, according to the court, is only justified if there is a "sufficiently compelling government interest" that the officer is enforcing at the time. A closer reading of this decision along with similar use of force decisions, the Ninth Circuit created an "intermediate force level" which permits an officer to use the Taser, OC Spray or his baton only if the suspect's conduct is more than just "passively resistive." As for the "resistive" suspect, it would appear that the court prefers the use of "hands on" tactics versus the Taser, OC Spray or baton.

Much of this controversy involving Taser, OC spray and baton can be traced to the internet where there are hundreds of videos showing a "sensational" application of force by an officer with one of these tools. Unfortunately, the majority of these videos only show a suspect wreathing in pain as the force is applied while the most significant portion of the video, the suspect's conduct prior to the application of force, is missing. To the untrained viewing public, it appears that an officer is using a very intrusive and painful method of force merely because the suspect has not complied with an officer's simple request.

Accordingly, you must reevaluate your ability to gain compliance of the "resistive" suspect. Primarily, reassess your mental and physical commitment to succeed at the law enforcement mission. With this commitment comes the dedication to practice your "hands on" training. Realize that all compliance tools are an extension of your "hands on" ability to gain control. If your Taser or your OC spray fail to gain compliance, what is your next step to gain control? Sometimes your firearm may not be an appropriate level of force in that particular encounter.

You must consistently train your defensive "hands-on" tactics, including your tactical and respectful communications. The Taser, OC spray, and the baton are great compliance tools if you have them and if you are properly trained to use them. However, your ability to successfully complete your law enforcement mission is partially based on being proficient and effective with your "hands on" tactics. Based on current events, your proficiency with your "hands on" tactics may determine not only if you are able to come home at the end of a shift but also remain a free man.

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