

Outline of Comments before Task Force

Terrence P. Dwyer, Esq.
Assistant Professor, Legal Studies
Western Connecticut State University
Division of Justice and Law Administration

- I.** Introductory remarks as to background, perspective and reason for appearing
- II.** Perception versus Reality in the use of force, particularly deadly physical force by police officers:
 - a)** Officer's subjective intent not relevant in 4th Amendment context
 - b)** Racial considerations as a by-product to the discussion but not the determinative issue
 - c)** Objective reasonableness standard as legal criteria
 - d)** Need to separate a 4th Amendment legal analysis from a potential 14th Amendment issue
- III.** Review of relevant literature on the police use of deadly physical force regarding shootings:
 - a)** RAND study, NYPD shooting policy (2008)
 - b)** Michigan Municipal Risk Management Authority, Deadly Force Project (2008)
 - c)** Common theme – education and training. Do we need to go beyond that which has been traditional? Identification and implementation of needed training
- IV.** What are we talking about here? Core of the issue is “mistake of fact” shooting, which is not a new phenomenon but the incidents which New York State has recently encountered of off-duty officers being shot and killed makes it subject to this forum (with tangible benefit to the whole topic as it relates to “mistake of fact” shootings of civilians).
 - a)** Training – job-related, contextual shooting
 - b)** Review of “mistake” shootings and analysis of the threat cues and conditions
 - c)** Aftermath issues in training – reports on use of force, justification, post shooting review, courtroom presentation
 - d)** Study of “mistake of fact” shootings at state level – what is tracked?
- V.** Police officer training – do we need to change the methodology? Is the curriculum reflective of the officer's needs when faced with the use of force, particularly deadly force – in other words has the training done enough?
 - a)** Reconciling the 4th Amendment standard with 14th Amendment concerns – how do we address race issues in training?
 - b)** Review of present curriculum as it relates to multi-cultural issues – do we need to strengthen this component?

c) Non-uniform officer (UC, off-duty, plainclothes) actions when confronted

VI. Post-shooting officer rights

- a) Discussion and concerns must not displace important constitutional protections afforded officers who still retain rights
- b) Politics of an issue must not interfere with bargained for protections and legal rules

VII. Suggestions:

- 1) Increase MPTC use of force training hours and mandate scenario based instruction which requires Pass/Fail grading.
- 2) Require education/training component on use of force and scenario based training to incorporate post force review, critique and officer-trainee justification –
 - a. Process from report writing to court room testimony
 - b. Mock post-shooting interview, debriefing (IAB, DA, etc.)
- 3) Specifically address off-duty or plainclothes (non-uniform) behavior cues
 - a. Uniform has primacy
 - b. Non-uniform must train to not pose a threat (neutralize threat cues)
 - c. Tactical retreat presented as an option
- 4) Develop officer critical thinking skills by teaching the law as it relates to situations like the use of force, search and seizure and right to counsel by relying less on formulaic announcements of case law and requiring case law analysis coupled with actual scenario review.
- 5) Develop a centralized body for reporting use of deadly physical force post-shooting findings and conclusions as in CT.