Executive Summary
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• Call your F.O.P. attorney
Police Culture and Stress
• Police officers lead extremely stressful lives
• Police officers work unpredictable schedules
• Police officers do not talk about their feelings
• Police officers face the threat of potential violence every day
Common Stressors

- Shift work
- Concerns about manpower
- Time pressures
- Working with civilians
- Lack of communications/consultation
Common Stressors

- Long hours
- Work overload
- Inadequate resources
- Demands of the job interfere with family
John Wayne Syndrome
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• Expectation of an authoritarian and a tough outlook on life and a constant pressure to appear efficient
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- Controlling one's emotions considered essential not only by fellow colleagues, but also by residents of the community
John Wayne Syndrome

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Stress on Law Enforcement Officers

- Alcoholism: 23
- Health Condition: 36
- Marital Problems: 37
Critical Incidents
Critical Incident

• Traumatic events that involve the potential for severe injury, death and/or devastation

• An event requiring an extraordinary degree of adaptation by the individual who experiences it

• An event that causes of person to have unusually strong emotional reactions that have the potential to interfere with his or her ability to function either at the scene or later
Critical Incident

- Any sudden event involving a police officer that results in an immediate investigation with no advance notice for the subject officer and potentially resulting in the arrest, suspension, or termination of the subject officer and include:
  - Shootings
  - In-custody deaths
  - Use of force/weapon discharge
  - Car accidents
  - Any allegation of duty-related criminal conduct
Law Enforcement Officer Fatalities - NLEOMF.ORG

- Shot/Stabbed
- Other

Year | Shot/Stabbed | Other
--- | --- | ---
2009 | 49 | 73
2010 | 59 | 95
2011 | 72 | 91
2012 | 27 | 43

Sunday, August 26, 12
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On average, over the past decade, an officer is killed every 53 hours.

More felonious fatalities occurred on Tuesday than any other day of the week. The fewest number of felonious incidents occurred on Monday.
Graham v. Connor
490 U.S. 386

- The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. *Terry v. Ohio*, 392 U.S. 1, 20 (1968).

- 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 question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their intent or motivation.
The person making a lawful arrest may use reasonable force to effect the arrest and detention, and also to overcome any resistance of the person being arrested or detained. LSA C.Cr.P. Art. 220

The use of force when necessary to make an arrest is a legitimate police function. But if the officers use unreasonable or excessive force, they and their employer are liable for any injuries which result.
Kyle v. City of New Orleans
353 So.2d 969 (La. 1977)

- Whether the force used is reasonable depends upon the totality of the facts and circumstances in each case. A court must evaluate the officer's actions against those of ordinary, prudent, reasonable men placed in the same position as the officers and with the same knowledge as the officers.

- Several factors to be considered in making this determination are the known character of the arrestee, the risks and dangers faced by the officers, the nature of the offense involved, the chance of the arrestee's escape if the particular means are not employed, the existence of alternative methods of arrest, the physical size, strength, and weaponry of the officers compared to the arrestee, and the exigencies of the moment.
Justifiable Homicide

LSA R.S. 14:20

- A homicide is justifiable:
  - When committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger.
  - When committed for the purpose of preventing a violent or forcible felony involving danger to life or of great bodily harm by one who reasonably believes that such an offense is about to be committed and that such action is necessary for its prevention. The circumstances must be sufficient to excite the fear of a reasonable person that there would be serious danger to his own life or person if he attempted to prevent the felony without the killing.
Justifiable Homicide

LSA R.S. 14:20

- A homicide is justifiable:
  - When committed against a person whom one reasonably believes to be likely to use any unlawful force against a person present in a dwelling or a place of business, or when committed against a person whom one reasonably believes is attempting to use any unlawful force against a person present in a motor vehicle as defined in R.S. 32:1(40), while committing or attempting to commit a burglary or robbery of such dwelling, business, or motor vehicle.
  - When committed by a person lawfully inside a dwelling, a place of business, or a motor vehicle as defined in R.S. 32:1(40), against a person who was attempting to make an unlawful entry into the dwelling, places business, or motor vehicle, or who has made an unlawful entry into the dwelling, place of business, or motor vehicle, and the person committing the homicide reasonably believes that the use of deadly force is necessary to prevent the entry or to compel the intruder to leave the premises or motor vehicle.
Use of Deadly Force

• The officer must be able to articulate the specific facts and circumstances that led to the use of force. The articulation must be in the context of both state law and the employer's rules.

• The fact that a supervisor directed an officer to use force does not transform an improper use of force into a lawful one.
The Chain Reaction
The Chain Reaction

• Criminal Investigation
  • Your own agency
  • "Farmed out" to another agency
  • State attorney

• Internal Investigation
  • Mandatory cooperation
  • Paid Leave
  • Administrative Reassignment - "Desk Duty"
The Chain Reaction

- Media
- Civil Litigation
- Civilian Review/Independent Police Monitor
The Homicide Investigation

• The shooting will be investigated as a homicide by:
  • Your agency
  • A neighboring agency
  • Another agency
  • All of the above
• Only the state's attorney can:
  • Grant immunity
  • Make a filing decision
  • Clear the shooting (grand jury)
Four Things You NEVER Do

• NEVER Give a Voluntary Statement
• NEVER Take a Polygraph
• NEVER Give Blood or Urine
Four Things You NEVER Do

• NEVER talk to:
  
  1. Crisis Response Person/Team
  2. Victim Advocate
  3. Debriefing Team
  4. Peer Groups
Confidentiality

• NO confidentiality unless covered by state statute

• Chaplains = NO confidentiality
Louisiana Confidentiality


- A person upon whom the law confers a privilege against disclosure waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. LSA C.E. Art 502

- Each spouse has a privilege during and after the marriage to refuse to disclose, and to prevent the other spouse from disclosing, confidential communications with the other spouse while they were husband and wife. LSA C.E. Art 504
Louisiana Confidentiality

- In a criminal case for a commitment or interdiction proceedings, a witness spouse has a privilege not to testify against the other spouse. This privilege terminates upon the annulment of the marriage, legal separation, or divorce of the spouses. LSA C.E. Art. 505

- Attorney-Client Privilege LSA C.E. Art. 506
Louisiana Confidentiality

- Health care provider - in a criminal proceeding, the patient has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication made for the purpose of advice, diagnosis or treatment of his health condition between or among himself, his representative, and his physician or psychotherapist, and their representatives. LSA C.E. Art. 510
Louisiana Confidentiality

- Clergy - a person has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual advisor. LSA C.E. Art. 511

- A "clergyman" is a minister, priest, rabbi, Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.

- A communication is "confidential" if it is made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.
Peer Support - a trained peer support member shall not, without consent of the emergency responder making the communication, be compelled to testify about any communication made to the trained peer support member by the emergency responder while receiving peer support services. The trained peer support member shall be designated as such by the emergency service agency or entity, prior to the incident that results in receiving your support services. The privilege only applies when the communication was made to the trained peer support member. LSA C.E. Art. 518
On Scene

• Officer involved must:
  • Secure the scene and preserve as much evidence as possible
  • Notify Communications/Dispatch or Command
  • Contact EMS
  • Contact FOP rep and Attorney and...
REMAIN SILENT!!!
On Scene

- The FOP Rep or Attorney and uninvolved officers must:
  - Ensure subject officer is okay (Assume Not)
  - Assist subject officer in contacting FOP Rep/Attorney
  - Standby subject officer until Rep/Attorney arrives
  - Do not talk about the facts
  - Provide Rep/Attorney with as much information as possible
  - Remind subject officer to **REMAIN SILENT!**
On Scene

- Little things mean a lot
  - Put subject officer in an air-conditioned or heated car - NOT in the back of a patrol car
- Get plenty of water
- Get food
- Notify family
- Have paramedics check if necessary
- Talk about trivial matters
- Ask Command to be released from the scene ASAP
What To Do As A Suspect

• Do what all suspects should do:
  • Ask for an attorney
  • Speak only to your attorney
  • Do not answer ANY questions without your attorney present
  • Do EXACTLY what your attorney tells you to do
What To Expect

• You will be "detained" for many hours, unless you are injured
• Your weapon(s) will be seized
• Your uniform may by seized
• You may be "processed"
  • Photographed
  • Swabbed
• You will be put on paid administrative leave/administrative reassignment
• You will see media reports
What You Will Feel

- Taking a life is the worst event in the life of any human being
- There will be an adrenaline rush, followed by exhaustion, followed by euphoria, followed by depression, followed by ...???
- Your memory will take days, if not weeks to fully come to you.
- You will begin second-guessing yourself
- YOU WILL WANT TO TALK (always consider confidentiality)
- This is no time for John Wayne Syndrome.
What The FOP Will Do

- The FOP will ensure you are legally protected
- The FOP will provide for any resources or services you and your family need
- The FOP will deal with the bureaucracy
- The FOP will stand with you. Not just behind you or at your side, but in front of you as well.
Internal Affairs

and The Bill of Rights
What You Must Ask

• Is this a criminal or administrative investigation?

• Am I ordered to be here and to participate?

• Can or will I be disciplined for refusing to answer questions?

• Where is the Garrity form? (Please read the Garrity warning on tape)
Weingarten

• The right of an employee to have a representative present during questioning by the employer has, over the years, been limited to union members where collective bargaining law provides for mutual aid and protection.

Representation

• Some civil service laws provide for representation by coworkers and attorneys.

• States with a police officers Bill of Rights should check that statute for rights relative to representation.

• In Louisiana, a law enforcement officer under investigation has the right to representative, attorney, or both.
Garrity v. New Jersey

Compelled incriminating statements cannot be used

Employee cannot be terminated for refusing to self-incriminate

Garrity v. New Jersey

385 U.S. 493 (1966)
Garrity Rule

- A law enforcement officer has a right to be free from compulsory self-incrimination in the disciplinary process.
- The Garrity rule requires the agency or department to:
  - Order the officer to answer the question under the threat of disciplinary action;
  - Ask questions which were specifically, directly, and narrowly related to the officer's duties for the officer's fitness for duty; and
  - Advise the officer that the answers to the questions will not be used against the officer in a criminal proceeding.
**Garrity**

- If an officer refuses to answer the employer's questions, the officer may be disciplined for insubordination.

- It is essential to the application of the *Garrity* rule that the employer actually orders the employee to respond to questions, and that the employee be compelled by the threat of possible discharge for failure to respond to requests.
Garrity

• When and how does *Garrity* attach?

• A Garrity warning or rights are actually read to the subject officer; or

• The officer is threatened with the loss of employment for refusing to speak, rendering the responsive statement compelled.
Garrity

• The officer faces a choice of:
  • Self-incrimination;
  • Lying; or
  • Injurious silence (termination)
Garrity

- Scope of immunity:
  - A compelled statement under Garrity gains immunity in a subsequent criminal proceeding.
  - However, a statement given under Garrity can be used for a wide variety of other purposes.
Garrity

- A statement under *Garrity* can still be used:
  - Against the officer in a disciplinary process;
  - In a civil lawsuit brought against the officer;
  - Criminal prosecutions of the other officers; and
  - Against other officers.
"Implied" Garrity

- In circumstances where the employer does not actually give an affirmative guarantee of immunity before demanding answers, there is a split among jurisdictions on whether and an implied immunity applies.
"Implied" Garrity

- A minority of courts hold that Garrity attaches in the absence of an overt threat of termination if:
  - The employee subjectively believes that failure to answer questions will result in his or her loss of job; and
  - Employees believe is objectively reasonable at the time the statement is made.
"Implied" *Garrity*

- **Majority** of courts hold an employer must expressly warn the officer that failure to respond could lead to disciplinary action.

- Law enforcement officers must remember that the agency or board asking the questions must have the power to compel the officer to answer the questions under the threat of termination.
Garrity Immunity

- Use and derivative use immunity provides an officer immunity from the use in a subsequent criminal proceeding of his or her statements and the fruits of those statements made in an administrative interrogation.
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