Duty of Care

Unraveling the Duty of Care in Law Enforcement Amidst Moral and Legal Dilemmas

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Duty of Care

- As we stand at the juncture of change and responsibility, we must address the pressing, highly controversial question:
- **"Do officers have a duty to care to intervene in crises, and what constitutes this duty in the contemporary landscape of law enforcement?"**

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Duty of Care

- What legal duty and liability during police intervention in non-criminal mental health incidents, and particularly with persons threatening suicide?
- What is the legal duty of the officer to intervene?
- We are not recommending that you walk away – while that is an option as the 4th Circuit has said and it may be the best legal advise - but not operationally sufficient.
- **Public Duty** - general duty to all citizens no particular duty to one citizen
- Arises when we create a special create a special relationship – specifically special treatment.
- Confusion of a legal duty with a moral duty.

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Training Objectives

- Intended purpose of 2021 reform Legislation
- Understanding Duty of Care
- Moral Duty v. Legal Duty
- Suspect v. Subject
- Public Duty Doctrine
- Duty to Act – State Created Danger
- Disengagement Policy

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Why We Must Improve Police Responses to Mental Illness

- Work with the Media to Spread Awareness
- Provide Training to Improve Officer Response
- Collaborate and Create Beneficial Partnerships
- Share Information and Resources to Strengthen Community Response

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2021 Police Reform Legislation

- Federal Law v. State Law – Which Applies
- What is the effect of State Legislation?
- Negligence – Tort Law
  - Duty of Care
  - Breach of a Duty of Care
  - Proximate Cause
  - Resulting harm

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Increasing level of public awareness…and scrutiny

- Increasing presence of veterans with PTSD
- High-profile use of force incidents involving persons affected by mental illness
- Persons affected by mental illness and their families expect that law enforcement officers will afford them respect and compassion
- Societal expectation that vulnerable persons will be treated accordingly

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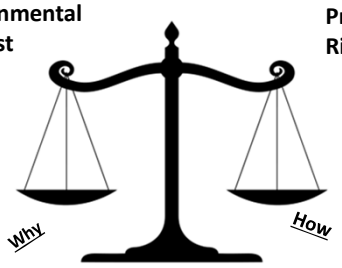
4Th Amendment

Reasonable

Governmental Interest

Privacy Rights



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Moral Duty vs. Legal Duty

- A sworn oath to serve and protect the community does not automatically translate into a legal obligation to shield individuals from their actions or the actions of others.
- Duty of Care brings to the fore the multifaceted challenges officers encounter daily, requiring officers to navigate the thin line between moral obligation and legal duty.
- This balancing act demands both knowledge and training. Transitioning from historical approaches, which often inclined towards direct intervention and the possible culmination in deadly force, to modern strategies that prioritize de-escalation and scrutinize the role of armed officers during crises.

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Suspect vs. Subject

The choice between "**suspect**" and "**subject**" can guide decisions about force application, determine governmental interests, and set the desired outcomes.

- **Government Intrusion VS. Fourth Amendment Privacy Right to be Free from force or seizure.**
  - We must understand the fine line between governmental intrusion and individuals' 4th Amendment rights to privacy and freedom from force or seizure.
  - **Escobedo v. Bender, 600 F.3d 770, 7th Cir. (2010):**
    - Officers responded using force on a non-suicidal subject, threatening harm only to themselves, resulting in the death of the individual subject.
    - On notice that this type of response to a non-criminal subject posing harm only to themselves will result in liability for the officers involved.

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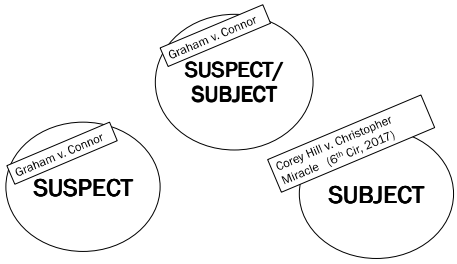
NTOA / National Standards Classification



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Corey Hill v. Christopher Miracle

6th Cir 2017

- 911 call from the Plaintiff's girlfriend claiming Hill may be having a diabetic emergency.
- Four EMS personnel began treating Hill but after a short time Hill became combative and disoriented.
- At one point a Paramedic was able to prick Hill's finger and determine that Hill's blood sugar was extremely low
- When Hill continued his combative behavior, the Deputy applied the Taser to Hill's thigh in "Drive-Stun" mode

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Hill

- The Court determined that applying the *Graham* standards in this situation **"was equivalent to a baseball player entering the batter's box with two strikes already against him"**.
- The Court went on to determine that because the factors in *Graham* are not applicable in medical cases, it is necessary to identify a different set of factors for evaluating an officer's actions in non- criminal cases.

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Hill - Test

- 1. Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others?
- 2. Was some degree of force reasonably necessary to ameliorate the immediate threat?
- 3. Was the force used more than reasonably necessary under the circumstances (i.e., was it excessive?)

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Evolving Responses to Armed Crises

As the landscape of law enforcement changes, so do the strategies employed in handling crises, mainly when weapons are involved:

- **No Response Strategy:** Some agencies, like in certain counties in California, now choose to refrain from responding to calls if the individual poses harm only to themselves.
- **Alternative Response Teams:** In places like Washington State, instead of sending armed officers, agencies deploy unarmed crisis response teams, even when a weapon is mentioned in distress calls.
- **Traditional Response Methods:** Despite newer approaches, some agencies continue to respond traditionally, aiming to assist based on the principle of "wanting to help."

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Criminal and Non-Criminal Scenarios

Non-Criminal:

- In a service call where there is no crime, mentally ill, suicidal subject.
  - **Due Diligence Required:** Officers must educate family, Red flag laws in some states, don't make promises, don't create reliance
  - Instances where there's no crime, such as service calls for mentally ill or suicidal individuals, require officers to exercise due diligence, educate the family, and be aware of related laws.

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Criminal and Non-Criminal Scenarios

Criminal/Threats:

- If an individual begins to start making threats… **turns criminal**
  - **Due Diligence Required:** Verify threats, verify the situation, BUT officers are not obligated to prevent an individual from carrying out suicide
  - When **threats** are made, it becomes a criminal matter.
    - However, officers are not legally obligated to prevent an individual from carrying out self-harm, though due diligence remains a priority.

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Case Law: Public Duty Doctrine

Historically, several landmark cases have defined the boundaries of the **duty of care** in law enforcement:

- ***South v. Maryland*, 59 U.S. 396 (1855)** emphasized that the duty of police agencies is to the general public and not to specific individuals unless a particular relationship exists.
- ***Warren v. District of Colombia*, 444 A.2d 1 (D.C. 1981)** clarified that while there's a moral duty to serve and protect, it doesn't translate to a legal duty to protect individuals from potential harm.
- ***DeShaney v. Winnebago County*, 489 US 189 (1989)** highlighted that the government isn't liable when third parties harm individuals unless a special relationship with the state exists or the state has created the danger.
- ***Adams v. City of Fremont*, 80 Cal.Rptr.2d 196 (Cal App. 1998)** held that there is no duty to prevent suicidal individuals from harming themselves.

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South v. Maryland, 59 U.S. 396 (1855)

The 1855 case, *South v. Maryland*, initiated the conversation around this duty, establishing the concept **that a duty to all is a duty to no one**.

FACTS: After the plaintiff was kidnapped and held for ransom, the individual argued that the town Sheriff knew about the incident but neglected to "protect and defend" him.

HOLDING: The Supreme Court explained that the Sheriff owed no duty to the plaintiff because the individual plaintiffs' rights were not "restrained or hindered by the malicious act of the sheriff." Instead, to prevail, the Plaintiff must show that a police agency had a **specific duty to the individual plaintiff** rather than the public at large.

TAKEAWAY: The Court emphasized the Sheriff's duty to the general public is to act reasonably and that while law enforcement has a generalized duty towards the public, this doesn't equate to a particular legal obligation towards individual citizens.

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Warren v. District of Colombia
444 A.2d 1 (D.C. 1981)

Building off the principle established in *South v. Maryland*, the Court's decision in the 1981 case, *Warren v. District of Columbia, reinforced the idea that law enforcement's general duty to the public to act reasonably* **does not equate to a legal obligation to individual citizens.**

FACTS: Upon noticing that an intruder had entered their boarding house, three women called police during the intrusion. Police arrived at the home, but the officers left when no one answered the door.

HOLDING: Because the Plaintiffs had no special relationship with the police department, there was no duty upon the police officers working for the department to provide protective services to the women. No special relationship between the women and the officers had been established in this case. Absent the existence of a special relationship, no specific legal duty exists.

TAKEAWAY: This case emphasized that the duty to offer public services is to the collective public and not to distinct individuals, which often shields the police from potential liabilities.

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DeShaney v. Winnebago County, 489 US 189 (1989)

In 1989, the Supreme Court tackled a critical question: **When is the state, or by extension, a law enforcement agency, responsible for harm caused by a third party?**

FACTS: A young boy was living with his father the father's second wife reported potential abuse to the Department of Social Services (DSS). Although DSS initially took the child into protective custody after an incident, they returned him to his father, citing insufficient evidence for ongoing state involvement. The DSS made several attempts to check on the boy, but the father consistently provided reasons for their inability to see him, like the child being unwell. The situation took a dark turn when the boy was later hospitalized after a severe beating from his father, which left him in a coma. The child's mother sued the DSS, stating they failed to protect her son.

HOLDING: The Court ruled that the State, and by extension, agencies like DSS, are not automatically responsible for protecting citizens from harm caused by a third party, private individuals, unless there's a specific relationship that existed or if the state played a role in creating the risk.

TAKEAWAY: This case established the proposition that the Due Process Clause does not impose a special duty on law enforcement for harm caused by third parties.

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State-Created Danger Doctrine

- The context for state-created danger case law arose from Supreme Court decisions that held that the government has no duty to protect people from privately inflicted harm.
  - DeShaney v. Winnebago County Dept. of Social Services,489 U.S. 189 (1989)
- Exceptions:
  - Duty to protect a person physically in governmental custody
  - Duty if the government is responsible for creating the danger (Tactics)

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State-Created Danger

Don't make statements that might not be true!
Don't make promises you can't keep!

- DeShaney v. Winnebago County Dept. of Social Services,489 U.S. 189 (1989)
- Dwaresv. City of NY,985 F.2d 94 (2nd Cir. 1993)
- Pena v. DePrisco, 432 F.3d 98 (2nd Cir. 2005)
- Hayes v. County of San Diego, 305 P.3d 252 (Cal. 2013)

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Do Officers Have a Duty to Prevent Suicide?

- One Judge wrote, **"law enforcement will learn soon enough that sins of omission are generally not actionable."**
- Even more direct the caution that "sins of omission" don't create liability is one court's explicit rejection of the notion that officers have a duty to prevent a suicide. *Adams v. City of Fremont*, 80 Cal.Rptr.2d 196 (Cal.App. 1998).
- **However, once officers decide to intervene, they may be liable for tactical decisions.**

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Adams v. City of Fremont 80 Cal.Rptr.2d 196 (Cal App. 1998)

This 1998 case clarified the **duty owed by law enforcement when responding to an individual contemplating self-harm**.

FACTS: A person with suicidal tendencies and armed with a gun found himself in a standoff with the police. The individual, amidst the chaos, shot himself before he was shot by officers who mistakenly believed that the individual was shooting at them. The Court considered the city's liability for not preventing the death of an armed, suicidal person during a police standoff.

HOLDING: The Court held that Police officers responding to a crisis involving a person threatening suicide with a loaded firearm have no legal duty under tort law that will expose them to liability if their conduct fails to prevent the threatened suicide from being carried out.

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Case Law: Duty to Prevent Suicide

- ***Hayes v. Cnty. of San Diego,*** **305 P.3d 252, 263 (Cal. 2013)**
- ***Roberts v. Spielman*****, 643 F.3d 899 (11th Cir. 2011)**
- ***Vielma v. Gruler*****, No. 18-15162 (11th Cir. Apr. 6, 2020)**

Takeaways:

- ***If officers are outside an Active Shooter***
  - They will Make entry – but take an extra five seconds to use proper decision-making.
- ***If officers are outside a Barricade***
  - They MAY make entry, individual tactician choice to make entry on the non-criminal barricade.
  - The law is not telling you to make entry.

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Hayes v. Cnty. of San Diego
305 P.3d 252, 263 (Cal. 2013)

FACTS: Deputies responded to a report of screaming at Shane Hayes' residence. Hayes' girlfriend informed them that Hayes had tried to harm himself earlier in the night by inhaling car exhaust and had a history of self-harm. Concerned for his safety, the deputies entered the house. They encountered Hayes in the kitchen, advancing towards them with a raised knife. Both deputies fired their weapons, resulting in Hayes' death. Hayes' daughter filed a lawsuit claiming that the deputies were negligent based on their tactical decisions before the shooting.

HOLDING: California Supreme Court ruled that the officers could be held liable for allegedly precipitating the circumstance that caused the deputies to shoot Hayes.

RULE: Police officers can face legal exposure for their tactics in trying to prevent a suicide, even if doing nothing might have resulted in no liability. Once officers decide to intervene, they may be liable for tactical decisions.

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Roberts v. Spielman
643 F.3d 899 (11th Cir. 2011)

FACTS: Huckabee, concerned for sister-in-law Sandra Roberts, called the Sheriff's Office for a welfare check. Roberts had a history of suicide attempts and was on medication for bipolar disorder. Despite the deputy's repeated knocking and even opening the back door slightly, Roberts refused to answer and was found inside her home. Roberts yelled at the deputy to get out of her house. The deputy was unsuccessful in their attempt to calm her down and pulled Roberts by her arm from the door of the home to the garage. The deputy tried to explain his reason for checking on Robert's welfare.

The Deputy told Huckabee (sister-in-law who requested wellness check) that he couldn't take Roberts for an evaluation because she didn't threaten suicide in his presence.
Roberts sued the deputy for a warrantless entry into her home, but the officer had barely reached the back door of the home.

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Roberts v. Spielman
643 F.3d 899 (11th Cir. 2011)

HOLDING: The deputy's intrusion on Roberts' home was proper. Although a private home is protected from warrantless intrusion under the Fourth Amendment, the **exigent circumstances doctrine** justified the entry.

- Police may enter private premises and conduct a search if 'exigent circumstances' mandate immediate action.
- Emergency situations involving endangerment to life fall squarely within the exigent circumstances exception.

RULE: The **exigent circumstances doctrine** permits warrantless entry when there are both exigent circumstances and probable cause.

- The probable cause requirement may be met where officers reasonably believe a person is in danger. Even then, the warrantless entry or search must be strictly limited to addressing the exigent circumstances presented.

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Vielma v. Gruler
No. 18-15162 (11th Cir. Apr. 6, 2020)

FACTS: After the Orlando Pulse nightclub shooting in Florida, Plaintiffs' sued Officer Gruler, alleging that his inaction of not immediately re-entering the club during the shooting violated the victims' Fourteenth Amendment rights to be protected from harm.

The District court granted qualified immunity to the officer.

On appeal, the Plaintiffs' made two arguments:

- The officer had an **affirmative duty to protect** them from the shooter.
- The state's prohibition on carrying weapons in a nightclub created a **custodial relationship**, placing an affirmative duty on the officer to protect them.

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Vielma v. Gruler
No. 18-15162 (11th Cir. Apr. 6, 2020)

HOLDING: Upheld the lower court's decision, confirming qualified immunity for Officer Gruler based on the absence of a clearly established constitutional right that he violated.

RULE: The Fourteenth Amendment does not require state officers to protect individuals from private acts of violence unless in state custody.

- **DeShaney v. Winnebago County**: Established that the government is not obligated to protect individuals from private violence outside of custody.
- No binding precedent established a duty for officers to intervene in active shooter situations in nightclubs.

The plaintiffs failed to demonstrate a clearly established right that Officer Gruler violated, resulting in the court granting him qualified immunity.

There was no previous legal precedent that would alert Officer Gruler that his specific conduct (not re-entering the club) was unconstitutional.

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Case Law: Use of Force – Suicidal Subjects & Mentally Ill Individuals

- *Glenn v. Washington Cnty.*, 673 F.3d 864, 9th Cir (2011).
- *Tabares v. City of Huntington Beach*, No. 19-56035 (9th Cir. 2021).
- *Leonard v. Silva*, et al., No. 23-10244 (11th Cir. 2023).

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Glenn v. Washington Cnty., 673 F.3d 864, 9th Cir (2011)

FACTS: Glenn called 911 for help with her distraught and intoxicated 18-year-old son, Lukus, who was threatening to kill himself with a pocketknife. Upon arrival, two sheriff's deputies aimed guns at Lukus, screamed at him, threatened to kill him, and then fired beanbag rounds, causing him to retreat. When Lukus moved towards the house, the deputies fired eleven rounds, killing him instantly. Witnesses described one deputy as "angry, frenzied" and the other as "frantic."

The Washington County Sheriff's review found that the deputies had "performed as trained," despite Glenn's perception of them as "angry" and fears for her son's safety. Glenn filed an action against the County and Deputies.

The District Court granted summary judgment to the defendant officers, finding them entitled qualified immunity.

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Glenn v. Washington Cnty., 673 F.3d 864, 9th Cir (2011).

HOLDING: The Court of Appeals reversed the district court's judgment. It held that the district court erred in finding no triable issues of fact concerning the reasonableness of the deputies' use of both non-lethal and lethal force against Lukus.

- The court found that the use of beanbag rounds was not indisputably reasonable, given the facts known to the deputies at the time, including that Lukus had no history of threats to others and showed no signs of immediate harm.
- The court also noted that Lukus was not accused of any crime, and he was neither actively resisting nor attempting to flee.
- The use of beanbag rounds, although intended to be non-lethal, must be compelled by a strong governmental interest due to their dangerous capabilities.

TAKEAWAY: Lack of an immediate threat, absence of crime, lack of resistance, the sequence of force used (including the escalation from non-lethal to lethal) play a vital role in determining whether their conduct violates an individual's Fourth Amendment rights.

- "No published cases holding it reasonable for officers to use a significant amount of force to try to stop someone from attempting suicide."

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Tabares v. City of Huntington Beach, No. 19-56035 (9th Cir. 2021).

FACTS: Huntington Beach Police Officer, Eric Esparza, encountered Dillan Tabares at an intersection, noting his abnormal behavior. Esparza approached Tabares, leading to a verbal exchange that escalated into a physical altercation.

Esparza tasered Tabares with no effect, and Tabares punched Esparza. During the struggle, Tabares grabbed Esparza's flashlight. Esparza retreated and shot Tabares six times, fatally wounding him. The district court granted Esparza's motion for summary judgment on both the §1983 and negligence claims.

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Tabares v. City of Huntington Beach, No. 19-56035 (9th Cir. 2021).

HOLDING: The Ninth Circuit Court of Appeal reversed the district court's summary judgment on the negligence claim, ruling that a reasonable jury could find Esparza acted negligently in dealing with a potentially mentally ill person under the broader formulation of reasonableness in California law.

Officer Esparza should have suspected Tabares had mental health issues and that he unreasonably failed to follow police protocol when dealing with potentially mentally ill persons before using force.

Finally, Officer Esparza's decision to shoot Tabares without warning six times––and then a seventh––could be found by a jury to be unreasonable.

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Leonard v. Silva, et al., No. 23-10244 (11th Cir. 2023).

FACTS: Jarvis Randall, a patient with bipolar depression, became violent after learning of his father's death. Armed with a pencil and plexiglass shards from the property he destroyed, he threatened staff and patients at a Florida mental health facility. Two Deputies responded to the call and attempted de-escalation.

Randall's statements made clear his suicidal intentions as he grew more confrontational by the second. Officers called in for backup, and Deputy Wilson DeJesus arrived with a "less-lethal" bean bag launcher. Despite negotiation attempts, Randall remained aggressive. Officers later shot him during a confrontation.

District Court's Decision: Granted qualified immunity to the officers, concluding their use of force wasn't excessive considering Randall's violent behavior and potential for escape.

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Leonard v. Silva, et al., No. 23-10244 (11th Cir. 2023)

HOLDING: The Eleventh Circuit affirmed the officers' qualified immunity, supporting the decision that the use of deadly force was lawful under the circumstances.

- Weapon Threat: Randall's possession of sharp plexiglass posed a legitimate threat.
- Containment: Randall was not effectively contained and had a potential escape route.
- De-escalation Efforts: Officers' actions were justified even with other possible techniques available.
- Communication: Randall's statements indicated a lack of intent to engage in dialogue and a threat to officers' lives.
- Legal Justification: Officers' actions are judged based on the reasonableness under immediate threat.
- Operational Strategy: Highlights the importance of assessing the threat and containment levels in use-of-force situations, especially during mental health emergencies.

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USE OF FORCE RESEARCH: ARE CIRCUIT COURTS REDEFINING THE ELEMENTS OF REASONABLE USES OF FORCE?

- The need for force is one of the most if not the most important factor under *Graham v. Connor*. Whether an arresting officer used excessive force is determined by assessing the need for force in light of all the surrounding circumstances.
- When feasible, a warning before use of deadly force is a critical component of risk assessment and de-escalation.

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Notable Patterns

- The Courts often analyze the concepts need for use of force (or need for force) and whether the use of force was proportional together.
- Courts have a tendency to discuss de-escalation in situations when officers are dealing with individuals known to have or that appear to be suffering from mental illness or when individuals are suspected or are under the affects of excited delirium.

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Be Safe and Healthy!



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