



Dunderheads?

Did you realize that 52 percent of Categorical Uses of Force are Administratively Disapproved for at least one officer, and usually more than one? The standard for Administrative Disapproval is that an officer has “substantially deviated from Department policy or training without justification.” A 52 percent failure rate in private industry would immediately result in the termination of every manager involved. In the government, however, you know what rolls downhill instead.

On the surface, LAPD officers must all be dunderheads who cannot be trained to have a failure rate that high. Eighty-eight Categorical Uses of Force for 2015 have been posted on the Police Commission’s website. Forty-six contain Administrative Disapprovals for one or more officers. Since the Categorical Use of Force protocol takes around 10 months to complete, 2015 is the last complete year of adjudications. The 2016 figures are not yet completed, but of the 40 cases posted so far on the Commission’s website, 19 of them contain Administrative Disapprovals for one or more officers (47.5 percent failure rate). There is little reason to believe that 2016 will end up any different than 2015.

For review, the road to Administrative Disapproval goes like this. A Categorical Use of Force occurs. Officers are all separated and Force Investigation Division (FID) responds and interviews everyone involved and conducts an investigation. All interviews are transcribed and included in a report that addresses every aspect of the incident (often approaching 1,000 pages). The investigation goes to the officer’s commanding officer (CO), who reviews it and determines what his/her recommendation will be in three areas: tactics, drawing and exhibiting a weapon, and the use of force itself. The CO makes recommendations in each of the three areas to the Use of Force Review Board. The Use of Force Review Board makes a recommendation to the Chief of Police, and the Chief makes his recommendation to the Police Commission. The Police Commission makes the final decision and posts that decision on the internet, minus the officer’s name. The initial recommendation of the Use of Force Review Board is almost always accepted by the Chief, and the Chief’s recommendation is almost always accepted by the Police Commission. Cases that have gone political are the exception.

Administrative Disapprovals are not good for your career (see the March 2017 Warning Bells article for a full discussion). So, how do we fix this? The first step is to identify the problem. Is it

a lack of training? Is it that LAPD officers are untrainable? Is it that the adjudicators (Use of Force Review Board members, Chief of Police and Police Commission) themselves do not understand the policy? Is it that the adjudicator's expectations of perfection cannot be attained by officers who are human beings? Is it political in that Department managers want to appear to be tough on uses of force to make themselves look good to Police Commissioners who will be selecting the next Chief of Police, and who know that the Police Commission has never seen a use of force that it likes? Is it the Police Commissioners who have never been in a dark alley where someone is trying to kill them and have no frame of reference to understand the conditions under which officers make the use of force decisions they make? Who are the dunderheads?

LAPD officers are probably the best trained in the nation. Given the catastrophic failure rate in use of force adjudications, it is obvious that there is no familiarity with the troops on what the standards are upon which they will be judged. Lawyers learn how to predict results in legal cases by reading the appellate court's decisions and trying to find the common factors used to arrive at their adjudications. Maybe the same thing needs to be done by street officers.

With that in mind, I analyzed all the Administrative Disapprovals (ADs) posted by the Police Commission in 2015. The short story of each use of force and the reasons for the adjudication are posted on my website, including a summary chart of reasons for the AD. The overwhelming number of ADs are from officer-involved shootings (59 percent), followed by a tie between law enforcement-related injuries (LERIs) and unintentional discharges (UDs) at a distant 15 percent. Of the three areas being adjudicated—tactics, use of force and drawing and exhibiting—tactics capture the most ADs (85 percent), with use of force coming in second with 26 percent. An analysis of the reasons for the AD adjudication reveals that the big four reasons mentioned are 1) failure of partners to communicate during the incident (33 percent), 2) no Code 6 (26 percent), 3) no discussion of tactics prior to the incident (22 percent), and 4) failure to wait for additional resources before acting (22 percent). There were 37 additional sets of reasons that I could also identify, ranging from failure to wear vests through separation issues. The number of ways to screw up, in the Police Commission's view, appear to be endless.

My advice is that officers should read the facts and adjudication reasons of as many Administrative Disapprovals as they can. What happened to others can (and will) happen to you. You may not always agree with the adjudications, as I often do not, but your agreement (and mine) is irrelevant. The reality is that this is what the Police Commission is doing, and you need to understand the lay of the land. It may help you avoid stepping on a land mine.

Doing this will not be a morale builder when you see the many ways that you can end up on the wrong side of a use of force, but it will make you more realistic in determining whether to use force, or how much force to use, and realize how your tactics are put under a microscope because of the use of force protocol. In the meantime, Officer Representation Section challenges many of these adjudications in Administrative Appeal Hearings, and it is not unusual for the League to finance a writ in the Superior Court challenging the Department's decisions.

A 52 percent failure rate is a management failure. The Police Commission should be beating up management, not street cops. Officers are beaten up enough on the street when they try to enforce the law. The danger is that the Police Commission will make enforcing the law so

hazardous to an officer's career that proactive police work is discouraged. That is not good for the Department or the people of Los Angeles.

Be legally careful out there.

Links to various things in this article are at www.warningbells.com.