



# Reporting Use Of Force (UOF) Incidents

## Deter, Detect, Defuse, Defend, and...DOCUMENT!

By **Richard Kay**

**A** critical portion of any use of force (UOF) program must include training in documentation. A properly documented report detailing a street confrontation is the first step to minimising potential liability.

Essential content of incident reports include:

- Time of day, physical setting, and type of situation
- How officers came into contact with subjects
- Number of persons involved in the situation
- Subject demeanour and attitude
- What the subject said and what the officer said
- Subject actions and officer reactions
- A detailed report of injuries, including photographs
- Details of neutral witnesses not involved in the situation.

General principles for incident reports include:

- Present facts only (what you know is true)
- Present the situation in a logical timeline (assists recall and review)
- Include all factors and circumstances involved in the situation
- Be accurate, objective, open and honest

- Use precise descriptions of the situation and the options used
- Avoid assumptions, technical jargon or conclusionary statements.

This information aids authorities and helps defend officer actions should litigation develop as a result of the situation. Short, generic descriptions of a situation may cause people to mistakenly believe something is being hidden, as may explanations that are overly technical.

### The 48-Hour Rule

Under conditions of survival stress, it is common for people to have difficulty remembering what happened or what they did during a confrontation (critical stress amnesia). After a critical incident, recall of events is commonly 30% in the first 24 hours, 50% in 48 hours, and 75–95% in 72–100hrs.

A suggested process for reporting critical incidents is to wait approximately 48 hours before submitting an official report or statement. This process ensures accurate representation for officers involved while also meeting agency reporting policy.

A general overview of the 48-Hour Rule is as follows:

- **Day One (30% recall)** – After the situation, make notes of what happened. If required by agency policy, write a report and submit as appropriate, but keep this report simple and brief. View it as an introduction to the incident. At the end of this report write ‘full and complete report to follow in 48 hours’. This links the report to the official incident statement, rather than it being separate from it.
- **Night One** – Get a minimum eight hours sleep.
- **Day Two (50% recall)** – Review notes, correcting errors or filling in gaps, as appropriate. Liaise with legal representation, company representatives, and counselling services, as appropriate. Refer all information relating to the incident to investigating authorities and company officials only.
- **Night two** – Get a minimum eight hours sleep.
- **Day Three (75–95% recall)** – Review notes again, adjusting as appropriate. When satisfied, write the official report or statement, using final notes and with legal and/or company representation for guidance, as appropriate.

### Reporting Critical Incidents

An important aspect of UOF training, and one that is often overlooked, is reporting.



Consider how technical terminology might look to a jury. Every profession has technical terms and jargon. It is shorthand that makes communication within the profession more concise and efficient. UOF instructors use this kind of terminology for two additional reasons – to enable precise description, and to differentiate between trained techniques and ‘brawling’.

#### **a) Precise Description**

As litigation has motivated improvements in UOF training, it has also prompted a push for precision in describing what actually happens during a confrontation. A term like ‘focused strike’ rather than ‘punch’ affords more accuracy in distinguishing, for example, a blow with a closed fist from a ‘diffuse strike’ with an open hand. We have also become better at understanding the physiological effects of physical tactics. We know, for example, that if we hit and ‘stick’ – allowing the ‘weapon’ to remain in contact for a moment rather than bouncing off – the blow will cause more fluid-shock, and the person may be unable immediately to fight back – in other words, we have ‘caused muscular dysfunction’. On the other hand, a blow with an open hand to the brachial plexus of nerves on the neck may cause ‘temporary disruption of the neural pathways’ – and the person may momentarily lose consciousness.

Clinical language is a way to help officers understand exactly how the techniques they’re learning work and provides a means to describe them accurately.

#### **b) Trained Techniques Versus ‘Brawling’**

The operational environment has become more professional in recent decades, and use of force is held to a higher standard of training. If officers are expected to use force in the course of their duties, agencies have a duty to train them, and failure to train can result in legal liability. Accordingly, officers learn to describe their use of force to show whenever possible that they used trained techniques. Being able to refer to those trained techniques in reporting use of force makes it easier to show that the officer’s use of force was objectively reasonable under the circumstances. It is particularly helpful to be able to refer to trained techniques because particular techniques are often taught as a response to certain levels of behaviour by a subject. Both these reasons are good ones. Officers generally use force appropriately to gain control of persons for legitimate aims. So why shouldn’t they use precise terminology? After all, nobody ridicules the coroner who describes observing ecchymosis instead of ‘bruising’.

The problem is that when officers describe their use of force, they may be doing so to

a ‘suspicious’ jury. Officers today generally use force less than they did a generation ago. What has changed is that we are much more aware of how much officers use force and are much less tolerant of needless force. Indeed, it seems that society is becoming intolerant of even legitimate use of force. To a jury already predisposed to expect officer brutality, describing taking a person to the ground as ‘decentralising the subject’ may only reinforce the suspicion that the officer is trying to cover up an improper use of force. Terms that convey precision and professionalism to an officer may sound like euphemisms to a civilian. They make officers seem evasive and may call into question other aspects of their testimony.

#### **Putting Ideas Into Practice**

There is no need to abandon UOF terminology and the advantages of precision and accuracy that it offers, but we do need to be aware that it is technical language and is not well understood by the public. UOF instructors need to make sure that officers learn not only to apply force appropriately but also to articulate it properly.

Here are two simple things instructors can do to help officers survive, operationally and legally:



- Have them practice describing their actions, in everyday language
- If you use scenario-based training (and you should), have them write reports.

### Have Them Describe Their Actions

If you read officer reports, you will find that officers are usually very good at describing in detail what led to a use of force. They have been trained that any use of force must be objectively reasonable based upon the totality of the circumstances, so they become skilled at describing the circumstances that led to the use of force in order to justify its reasonableness. But often they are not very good at describing the actual use of force itself.

Officers have trouble describing use of force for several reasons. One is that the physiological effects of stress make it difficult to remember the details of what happened – memory can be fragmented. Another is that most confrontations are over very quickly; it is difficult to recall exactly what took place when it all happened fast. Nevertheless, it is crucial that officers learn to describe their actions accurately and in detail – and they do get better with practice.

When you put officers through training, ask them to give a verbal description of what they saw and what they did. When you conduct simulations, ask officers to describe their actions. One of the best techniques is to have the officer mentally ‘rewind the tape’ and give a play-by-play account of what took place. Have them describe their actions in everyday language, but language that is also specific and precise. This is an essential element of training and critical reason for debriefing.

For example, instead of saying ‘I decentralised the subject’, have officers describe exactly what happened – ‘I used a pull/push technique to take [subject] to the ground. I pulled him toward me and stabilised his forehead against my chest, by locking my arms around the back of his head. Then I stepped back, and used my hands to direct him to the ground, while verbally commanding him to get down.’

A description like that ‘paints a picture’ and makes it clear that the officer was not only using reasonable force, but was also using a trained technique. The officer appears open and honest about what happened and the description is specific to the event. The more

specific the language of a description, the tougher it is for a defence attorney to make it sound like something it wasn’t.

### Have Them Write Reports

The next level after a verbal description is a written one. If you use scenario-based training, you have the perfect opportunity. After the officers go through a simulation, have them spend a few minutes writing the report, focusing especially on the use of force.

If you videotape scenarios, it can be very instructive for them to compare what they could recall for the written report to what the tape shows actually took place. Rather than reading all those reports and commenting on them yourself, you can have officers read each other’s use-of-force descriptions and imagine how they would sound to a jury. Feedback from peers is often more effective than critique from an instructor. Either way, officers hone their skills at articulating use of force in a training setting, so that when it comes to the real thing, they will do a more effective job.

Most officer use of force is both appropriate and reasonable, despite media allegations to the contrary. If officers learn to articulate their use of force in specific, everyday language, the reasonableness will become more apparent. A good report can make a lawsuit less likely to be filed in the first place, and if it does go to court, less likely to be successful. UOF instructors have a duty to teach officers to use force effectively so they can survive on the job, but if they are not also taught to report it effectively, they may not survive in court. It’s about total training, preparing officers to survive all aspects of their operational environment, physically and legally. ■

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