



## COMMENTARY

# THE ARTICULATION PROBLEM

BY RANDY OLSBERG

Law enforcement is facing its toughest challenges in decades, with no apparent relief in sight. There is widespread disenchantment with law enforcement across the country. This disenchantment seems to have risen to all-time, historic proportions in the post-Ferguson world. The allegations are many, from over-militarization, to institutional racism, and excessive use of force. Detractors, though, are often short of facts or evidence, relying instead on hearsay and innuendo. Some of our detractors are professional oper-

atives who seek to defame and spread disaffection as part of a larger purpose. These detractors will never listen to reason or view the evidence within the context of the law. Having said that, there also are others who are genuinely expressing disenchantment or outrage at what they truly believe are wrongful actions on the part of law enforcement.

My belief is that law enforcement is not quite as reviled as the news headlines would have us believe. This is not to say that there aren't problems or issues that we need to confront.

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**IF WE ARE TO BE HONEST WITH OURSELVES, USE OF FORCE AND ITS ARTICULATION ARE AT THE HEART OF THE SEEMINGLY HISTORIC LEVEL OF DISENCHANTMENT WITH LAW ENFORCEMENT.**



One of the most significant issues over the years has been our inability to appropriately articulate our actions.

If we are to be honest with ourselves, use of force and its articulation are at the heart of the seemingly historic level of disenchantment with law enforcement. It is my personal belief that the majority of law enforcement's uses of force are logical and objectively reasonable. This is not to say that law enforcement does not have issues with excessive use of force. My belief is that most instances that are excessive are the result of either ineffective or non-existent training or a lack of proper supervision. Excessive use of force based on pre-disposed factors such as ill intent is statistically very rare.

If you are in a command-level position, ask yourself, where do your first-line supervisors spend most of their shift? Are they buried behind a mountain of clerical work or on the street with your line officers? If your first-line supervisors are not on the

street, they will not be in a position to intervene in a positive manner in the opening moments of a critical incident where they can have an immediate, positive impact.

Merriam Webster defines articulate as, "expressing oneself readily, clearly and effectively." All the elements of this definition are important. *Readily* means in a timely manner, with no significant delays in explaining what happened. *Clearly* is written or spoken in a way the public or a jury can understand. *Effectively* means ensuring that the explanation is logical and persuasive, using the elements of the offense and law that are relevant.

The problem with law enforcement articulation is multi-faceted. From my perspective, there are two preeminent problems. One is often the inability to effectively articulate why a use of force was both logical and objectively reasonable by our line officers. The second is often ineffective messaging by law enforcement agencies. Law enforcement

surrenders the public narrative to those who would impugn our motives even when there are no substantiating facts. Both reasons are interconnected and cannot be separated from one another.

The heart of the problem lies with use-of-force articulation by our officers. By proxy, this extends through the ranks of our agencies. If we were not able to effectively articulate a use of force as a line officer, it is unlikely in most cases that this will improve as one moves up through the ranks.

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As a law enforcement trainer teaching a wide variety of courses, including basic and advanced SWAT, active shooter instructor, tactical command and less-lethal executive review, I have covered use of force extensively. Over the years I have questioned multiple participants regarding their knowledge of what in Illinois is titled Peace Officers Use of Force in Making Arrests. The results have been nearly universal, whether the participant is a patrol officer, sergeant, lieutenant, etc. The officers generally could not effectively summarize the statute even in layman's language. When questioned about their use-of-force general order, the result is the same. In a recent class involving less-lethal concepts, several command-level supervisors performed no better than the line officers.

This failure to articulate use of force, however, does not necessarily translate into officers using an inappropriate level of force. Officers have a very good general grasp of what they can do. Ask a police officer what specific force tactic they can use in almost any situation, and they will answer with a perfectly reasonable option. Ask the same officer to articulate the use-of-force option in writing or verbally, and the result will most often be problematic to one degree or another. The truth is that most line officers and their immediate supervisors do not have an appropriate level of training on legal articulation and critical incident report writing.

If you accept the premise above, then add in the immense amount of stress and fear involved in having to fight for one's life, as well as all the post-event physiological factors that accompany it. The result is often a perfect storm of what may seem to be inconsistency on the part of the officers.

The public will never be able to fathom how difficult it is to accurately

recall these events that have happened so quickly, without warning, often in low light or involving multiple suspects. Combine these factors with what is poor public messaging on the part of law enforcement in the aftermath of a controversial event, and the result is where we are today. Should you disagree with the premise above, the test is a simple one: Ask one or more of your officers the following questions and the problem will most likely be crystal clear.

1. Explain the state statute on use of force.
2. Explain your agency's use-of-force policy.
3. Explain under what circumstances force can be used.
4. Explain the Graham test.

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## THE TRUTH IS THAT MOST LINE OFFICERS AND THEIR IMMEDIATE SUPERVISORS DO NOT HAVE AN APPROPRIATE LEVEL OF TRAINING ON LEGAL ARTICULATION AND CRITICAL INCIDENT REPORT WRITING.

Teaching the law in academies and our agencies has often been generic and boring, consisting of the reading of statutes or significant case law without appropriate context or bringing life to what many consider to be a boring topic. In many cases during ongoing training, the significant case law has been the Cliff Notes version. This may lead to inappropriate conclusions about what we can or cannot do going forward.

These are issues that our agencies have direct control over. Even if the

academy instruction has its limitations, this can be corrected at the agency level. We simply need to choose to do it. The articulation process begins with classroom training but cannot end there. It has to move forward and become part of your field training program and scenario-based training exercises. After the scenario has ended have your officers articulate why their actions were logical and objectively reasonable. Budgets being what they are, most agencies will not be able to routinely include report writing in this process all the time. It should, however, be done as often as is possible. This will be a time-consuming process involving writing and re-writing reports.

You can expect that in the beginning there will be room for significant improvement. Building this base of knowledge takes time. It is unfortunate that often in law enforcement, we do not have the time or resources to do it right the first time. However, after a poor outcome in court, a lawsuit or a media-driven embarrassment, we then often magically have the time and resources. Far too often, we see training budgets cut during difficult financial times. We need to become proactive. It is not a matter of *if*, but *when*. Law enforcement must stop being reactionary, driven solely by poor outcomes. We need to become proactive, solving problems before they occur.

## PUBLIC MESSAGING

Knowledge and articulation skills are just one facet of the problem we face. Messaging and public contact by the executive levels of law enforcement are just as important. We can no longer afford to cede the narrative to those who would recklessly slander law enforcement officers when devoid of substantiating facts.

Far too often we hear nothing in defense of officers' actions. At times, the only response is that "we are in-

vestigating" or "we cannot comment due to pending litigation." When there is a clear initial basis to believe our officers acted in good faith, with their actions within the law and policy, we need to say so, even if it will not be popular. The men and women of law enforcement on the street each day deserve no less.

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## LAW ENFORCEMENT MUST STOP BEING REACTIONARY, DRIVEN SOLELY BY POOR OUTCOMES. WE NEED TO BECOME PROACTIVE, SOLVING PROBLEMS BEFORE THEY OCCUR.

A statement such as the following one would be appropriate: "Based on the facts as we know them at this time, it would indicate that our officer acted within the law and policy. Please keep in mind that this investigation is in its early stages and there is much left to do. We will keep you apprised of any new information as it becomes available." This statement does not lock the chief or public information officer into any long-term point of view.

When a sufficient factual basis has been established, the executive levels of law enforcement must step up and provide a more detailed level of articulation to the public. This should be conducted in layman's language correlating the actions within the law and agency policy that everyone can understand. Properly crafted, this can be done without jeopardizing the criminal or potential civil case.

The other side of the coin is that in those cases where there is a clear

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basis to believe there has been a tragic mistake or inappropriate conduct on the part of an officer, the public also deserves to be informed.

Law enforcement must begin the process of learning how to effectively get its message out, through both the traditional media and social media. Law enforcement can no longer sit back and remain silent, ceding the narrative to our detractors. It is time become proactive.

Law enforcement must do a better job of training its men and women in effective articulation and media

response. If we fail to do so, the problems law enforcement faces today will only magnify over time.

**ABOUT THE AUTHOR**

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