POLICY ESSAY

Perceptual distortion and reasonableness during police shootings: Law, legitimacy, and future research*

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The decision by a police officer to use deadly force is among the most difficult, pressure-filled, and consequential of any required in a civilian occupation. Except for the rare case of the police sniper who lies in wait for the command to engage his target, police shootings almost always unfold suddenly and under conditions of fear, panic, and chaos. Indeed, the stress of these events is so great that reality itself distorts for the officers involved in deadly force encounters. As reported by Klinger and Brunson (2009, this issue), 94% of officers involved in 113 shooting incidents described some altered perception of reality either before or during the firing of their weapons. This and similar findings reviewed by Klinger and Brunson have important implications for criminal and civil litigation that develops from police shootings, and for public perceptions of police legitimacy following a deadly force incident. Klinger and Brunson's findings also suggest avenues for future research on how to reduce perceptual distortions and the unintended consequences that may result from them.

The “Reasonable Officer” in the Litigation Context

The concept of reasonableness or of the hypothetical “reasonable person” is well established in American tort law. A person who acts unreasonably and thereby causes injury is potentially liable for damages under the tort of negligence. The standard of reasonableness is objective and applies to all persons equally, regardless of their individual strengths.

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or weaknesses. The determination of whether someone acted unreasonably is a factual inquiry left to the trier of fact (usually the jury) in civil cases. The reasonable person standard is flexible and allows jurors to determine whether the defendant acted with ordinary care and as a reasonable person would have acted under similar circumstances. If the jury determines that the defendant acted unreasonably, and if the other required elements for the tort of negligence are present (i.e., duty, causation, damages), then liability ordinarily will attach (American Law Institute, 2008, § 283).

In the case of a defendant who practices a particular trade or occupation, such as a police officer, the reasonable person standard is modified slightly. In this case, the professional is required to exercise the amount of care that an ordinary member of the profession would exercise under similar conditions. A police officer involved in a shooting, for example, must act with the judgment and skill commonly possessed by other police officers under the circumstances (American Law Institute, 2008, § 299A).

As Klinger and Brunson (2009) acknowledge, the U.S. Supreme Court has held that all federal claims of excessive force brought against the police must be analyzed under an objective test for reasonableness rooted in the Fourth Amendment to the Constitution (Graham v. Connor, 1989). The Court’s admonition that the “reasonableness of force must be judged from the perspective of a reasonable officer on the scene” is nothing more than a restatement of the long-standing rule in professional negligence cases that members of an occupation must act with the skill and judgment possessed by ordinary members of the profession (Graham v. Connor, 1989:396).

Thus, whether judged under state law negligence standards or under the Fourth Amendment, police officers who use deadly force must act as reasonable members of the profession would act under similar circumstances. Moreover, lawsuits that develop from police shootings typically contain both federal and state law claims. Federal claims are usually based on Section 1983 of the Civil Rights Act of 1871 (2008), a federal statute that allows a private citizen to recover damages for a constitutional violation committed by someone (e.g., a police officer) acting under color of state law (Smith, 1995). In the case of a police shooting, the constitutional violation is based on an alleged breach of the Fourth Amendment’s prohibition against unreasonable seizures. Pendant state law claims typically allege negligence, wrongful death, and/or assault and battery.

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1. The Fourth Amendment states that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . .”
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Relevance of Expert Testimony

Arguably, given the empirical findings on perceptual distortions experienced by police officers during shooting events, expert testimony on the existence and effects of such distortions should be allowed in lawsuits that develop from deadly force incidents. Under the Federal Rules of Evidence, expert testimony that will assist the trier of fact is admissible if “(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case” (Fed. R. Evid. 702). Klinger and Brunson’s (2009) findings and those of other researchers discussed in the article, document that police officers involved in shootings experienced perceptual distortions during deadly force events. In the case of Klinger and Brunson’s research, these perceptions were documented using well-established techniques (i.e., surveys and interviews) routinely employed by social scientists and were gathered for purposes of research and not for litigation. Expert testimony about these findings could help inform juries about matters that lie outside the common knowledge and experience of lay people, which is the touchstone for the admissibility of such testimony (Wright and Gold, 2008).

Under common-law rules of negligence and the reasonableness standard from Graham v. Connor (1989), police officers should be held only to the standard of due care that can be expected from reasonable officers under similar circumstances. Klinger and Brunson (2009) reported high percentages of officers who experience distortions in time, visual acuity, and hearing during shootings. These findings seem highly relevant to a jury determination of whether a particular officer acted reasonably in drawing and firing his or her weapon. A misperceived weapon in the hands of a suspect or an errant shot could be the tragic consequence of an involuntary physiological response to stress and fear on the part of the defendant officer. Expert testimony regarding this possibility may be appropriate under the facts of a particular case. Problematic in the use of criminological expert testimony, however, is that social science research cannot determine whether officers actually experienced perceptual distortions—they can only determine that most officers surveyed about their use

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2. Under Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993), expert testimony is admissible in federal court if the testimony’s reasoning and underlying methodology is scientifically valid and if the testimony is otherwise relevant.

3. Evidence is relevant under the Federal Rules of Evidence if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence” (Fed. R. Evid. 410).
of deadly force incidents recalled experiencing forms of perceptual distortions. This critical issue regarding potential differences in actual behavior and incident recall of that behavior is discussed later in this essay.

**Police Legitimacy and Deadly Force**

Use-of-force events, in general, and police shootings, in particular, are among the greatest challenges to police legitimacy. Distrust of the police is high among some minority groups and is endemic in many inner-city neighborhoods. These communities can become flashpoints for violence and civil unrest after a police shooting, and police effectiveness—which depends on public trust and support—can be severely compromised (Smith, 1994).

Overall, police agencies spend too little time educating the public about the use of force. Most people have never confronted an armed and threatening person and have never attempted to subdue a physically resistant subject. Too often, people form beliefs about how the police can and should use deadly force based on fictional television shows and movies. Their perceptions are not anchored in reality but rather are informed by second-hand stories and images from the media. Layer on top perceived abuse, inequality of treatment, and cultural distrust, and a crisis of legitimacy can derive from a single incident of deadly force. When such an incident occurs, police in most cases will not have laid the groundwork for an accurate public understanding of shooting events or of the difficulties faced by officers confronted with an imminent threat of death or serious injury.

Police agencies can do much to improve community awareness and understanding of deadly force events. For example, many agencies now administer citizen police academies. Open to citizens who want to learn more about policing or their local law-enforcement agencies, these academies usually discuss, to a greater or lesser degree, how officers use force, the lethal and less lethal weapons at their disposal, and the legal and administrative rules that govern how force is used. Too often, however, these citizen academies simply preach to the already converted. People who choose to attend citizen police academies in the evenings after work are already favorably disposed to the police (Palmiotto and Unnithan, 2002). Reaching those community members who are more distrustful of the police is a more difficult proposition. An alternative approach used in Cincinnati, Ohio, involves having officers go into the communities to present information regarding the use of force at citizen community groups
and council meetings (Cincinnati Police Department, 2008). Presumably, these meetings are likely to include residents with less positive attitudes toward the police compared with those who self-select for citizen academies.

An even stronger approach for managing potential conflict would be for police agencies to reach out to community leaders, activists, and even departmental critics and begin an ongoing dialogue about the use of force that could pay dividends when a critical incident occurs. The Boston Ten Point Coalition is an example of how the Boston Police Department (BPD) used a group of influential—and initially critical—black ministers to help the agency successfully implement a program to reduce youth and gang-related violence in the city. Although the purpose of the BPD in partnering with the Ten Point Coalition was not specifically to address the use of force by police, the group was helpful in mediating community conflict after the erroneous beating of a black undercover officer by other BPD officers and the accidental death (by heart attack) of a retired black minister after a botched drug raid (Braga and Winship, 2005).

Likewise, in the aftermath of civil unrest stemming from a white police officer shooting of a black suspect in Cincinnati in 2001, the Cincinnati Police Department (CPD) developed several mechanisms to assess and respond better to community concerns regarding police use of force. First, the CPD created a civilian position of Manager of Police-Community Relations that is equivalent in rank to an Assistant Chief. This individual is responsible for implementing, improving, and sustaining strategies designed to positively impact police-community relations. The CPD also conducts a series of monthly community forums held in communities where multiple topics, which include police use of force and racial profiling, are presented to the community by CPD personnel. When a police shooting occurs, a press conference is convened by the police department as quickly as possible to inform citizens of the facts surrounding a use-of-force incident (J. Whalen, Assistant Police Chief, Cincinnati Police Department, personal communication, November 24, 2008). For high-profile uses of force, the CPD Chief and Manager of Police-Community Relations contact key community leaders to provide additional insight and assess community concerns. These police officials also meet directly with a coalition of black ministers to share information regarding the incident that may not be provided to the media (S. G. Baker, personal communication, November 24, 2008). Finally, the City of Cincinnati developed the Police-Community Partnering Center, which is a group that facilitates direct communication between neighborhood officers and concerned community residents. Each of these mechanisms has been successfully used since 2001 with praise from police administrators, city officials, and concerned community members.
This type of proactive engagement of community leaders and department critics could now include a discussion of the empirical findings on perceptual distortions that often occur during deadly force events. One could even imagine putting community leaders through a modified training course that would help expose them to the realities of deadly force and the stress that accompanies the split-second decision by a police officer to fire his or her weapon. The CPD currently partners with the local branch of the Urban League to allow future African-American leaders engaged in a leadership development program to go through shooting simulators (S. G. Baker, personal communication, November 24, 2008). As in Boston, Massachusetts, and Cincinnati, Ohio, the idea would be to do the hard work up front and thereby earn the agency some community trust and understanding if a police shooting were to occur. The findings regarding perceptual distortions that are likely to occur to police officers during shooting situations should become part of these ongoing dialogues.

Work by some civil rights groups, which include the American Civil Liberties Union (ACLU), also has attempted to inform citizens regarding how they should act during encounters with police. The purpose of educating the public is both to inform citizens of their rights and to reduce incidents that might escalate into uses of force. For example, a pamphlet titled “What To Do if You’re Stopped by the Police” gives citizens information that can reduce the likelihood of police use of force, which includes “think carefully about your words, movement, body language, and emotions,” “keep your hands where the police can see them,” “don’t run,” “don’t touch any police officer,” and “don’t resist even if you believe you are innocent” (ACLU, 2004). Although these generic recommendations will likely not cause significant reductions in situations where police must use force to gain citizen compliance, they are a step in the right direction to educate citizens. A more effective strategy would be to provide additional information through these outlets regarding officers’ perceptions of particular types of citizens’ actions and behaviors. Likewise, the distribution and understanding of the findings related to officers’ perceptual distortions during serious police-citizen encounters may help to alter at least some citizen behaviors that may be viewed mistakenly by officers as threatening or dangerous.

Future Research on Perceptual Distortion

Unfortunately, one of the most important issues in this line of research has not been addressed, and it is likely the key to improving our understanding of officer behavior in use-of-deadly-force situations. Do the perceptual distortions reported by officers after the event actually impact
their behavior/reactions during the event? For example, although officers report recalling situations as occurring in slow motion, it is possible that this perceptual distortion is their recall of a stressful event rather than what happened during the actual event itself. One of the implicit messages in Klinger and Brunson’s (2009) work is that officers’ behaviors are altered based on perceptual distortions. Yet, this question can only be answered through simulation and laboratory research. One of the critical questions to address is whether perceptual distortions actually degrade shooting accuracy, alter officers’ judgments, and ultimately impact their decision making. Furthermore, it would be important to know which perceptual distortions have the most severe impact on officers’ reactions and behaviors. This type of information is critical not only to understand the officers’ use of deadly force but also to provide relevant training on use-of-force situations. Eventually, the findings from simulation research may provide insight regarding how to reduce perceptual distortion during shooting events.

It is also important to consider how memories and recall of stressful events change over time. In similar research that examined officers’ perceptual and memory distortions during shooting incidents, Artwohl (2002) reported asking officers to wait to complete their research surveys until after they had attended a group debriefing, which typically occurred 2 to 4 weeks after the incident. According to Artwohl, the purpose of waiting was because she had discovered “in the course of conducting numerous group debriefings that many officers do not fully realize the extent of their own memory and perceptual gaps and distortions until confronted with evidence to the contrary” (p. 20). Furthermore, some evidence suggests that cognitive interviewing techniques are more likely to facilitate memory recall for stressful events (Fisher and Geiselman, 1992). The officers’ abilities to recall shooting incidents accurately have a profound impact on both internal and external investigations of police use of force. In addition to increasing citizens’ understanding of perceptual distortions as advocated by Klinger and Brunson (2009), it is also imperative that both civilian and sworn investigators understand the implications of perceptual distortions during shooting incidents, along with the likely gaps and inaccuracies in memory recall regarding these events.

Absent from Klinger and Brunson’s (2009) research is a discussion of the accuracy of officers’ recall about shooting incidents. Although Klinger and Brunson’s research informs the body of research available on reports of perceptual distortions during shooting incidents, their findings do not address the larger issue of the accuracy of officers’ recall. The literature regarding the impact of stressful events on memory recall is complex and offers mixed findings. Whereas some research has reported reduced accuracy of memory recall regarding stressful events (e.g., Christianson, 1992;
Dalenberg, 1997; Schooler, Ambadar, and Bendiksen, 1997), other research has found enhanced memory recall for stressful events (e.g., Burke, Heuer, and Reisberg, 1992; Christianson, 1992; Libkuman, Nichols-Whitehead, Griffith, and Thomas, 1999). Simulation research that examined the impact of simulated shooting incidents on officers’ memory recall found that the stressfulness of the situation impacted memories differently for different elements of the crime scene (Beehr, Ivanitskaya, Glaser, Erofeev, and Canali, 2004). Specifically, Beehr et al. reported that the officers’ memory recall of stressful simulation events was more accurate for armed suspects compared with unarmed suspects and unrelated objects at the scene. Furthermore, they found enhanced memory recall when elements of the crime scene were “rehearsed” by officers over time. Importantly, the research demonstrated that officers’ confidence in their memories was not related to accuracy—officers were similarly confident in their recall of stressful simulated events regardless of the accuracy of these recollections. This and other research demonstrates the difficulty in disentangling actual behavior during stressful events from individuals' perceptual distortions as they occur during events, along with the accuracy of recall of both behaviors and the perceptual distortions experienced.

An additional consideration for future research is to understand perceptual distortions as individual or situation specific. Klinger and Brunson’s (2009) research focuses on the shooting incident as the unit of analysis, rather than on the officer. As such, Klinger and Brunson reported findings regarding 113 shooting incidents involving 80 officers—21% of the officers surveyed reported on multiple shooting incidents. Future research should consider whether the types of perceptual distortions reported are person specific and/or situation specific. Does the same officer report different types of distortions across shooting incidents, or are the perceptual distortions simply an individual physiological response that is consistent across stressful events? Relatedly, what can be learned from the less than 10% of officers across studies that report no perceptual distortions? Is this a function of the individual officer’s physiological makeup or something linked to particular types of shooting situations? Future research should attempt to address these issues by examining differences in reports of perceptual distortions by the same officers across multiple incidents, along with research that directly addresses the factors that may be linked to no (or reduced) perceptual distortions.

A final consideration for future research is to examine whether uses of force other than shootings evoke the same types of perceptual distortions. For example, does the deployment of electro-muscular disruption devices elicit the same response, or is it only situations that involve the use of
deadly force that increase individuals’ stress levels to the point of experiencing physiological responses that include perceptual distortions? Similar questions might be considered for car and foot pursuits. What is the stress threshold for perceptual distortions, and what implications does this have for police training?

Conclusion

Klinger and Brunson’s (2009) most recent confirmation of the perceptual distortions experienced by police officers during deadly force incidents adds to the previous literature by considering when these distortions occur during shooting incidents and how different types of distortions are clustered together. Their findings have implications for civil and criminal litigation that develops from shooting events and for the relevance and admissibility of expert testimony regarding perceptual distortions. Similarly, their findings underscore the need for more education and communication between police and communities before deadly force incidents occur that could undermine police legitimacy. Finally, and like most good pieces of research, their findings raise more questions than they answer. Additional research is needed to explore whether and how perceptual distortions impact officers’ behavior and reactions during shooting incidents, the accuracy of officers’ recall of stressful events and how that accuracy may change over time, and the differences in types of distortions experienced across shooting incidents that involve the same officer. Much of this information will be gained only if scholars who examine police use of force expand their methodological and analytical strategies to include qualitative and simulation research.

References


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**Statutes Cited**


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