

**Texas Commission on Law Enforcement Officer  
Standards & Education  
Continued Professional Training**

November 13, 2012

Speaker: Gordon Graham

**American Law Enforcement - 2012:  
Ethical Decision Making**

Thanks so much for inviting me here to Texas to speak about our chosen profession – law enforcement operations. I welcome this brief opportunity to speak to you and to give you my take on what you need to be doing today to maximize your safety and that of your personnel, minimize liability exposure and simultaneously provide the best service you can to your community. My focus during this three hour block of instruction is Ethical Decision Making.

For those of you I have met before, you know my focus is on Risk Management. On past visits with you here in Texas, I have discussed many different topics – and hopefully the content of those programs was of some benefit to you.

I have spent a huge amount of time studying tragedies. I got interested in this topic during graduate school – one of my professors was the “guru” on maritime tragedies. How do ships end up on the bottom of the ocean? From there we graduated to train tragedies, bridge collapses, refinery explosions, nuclear power plant tragedies, aviation tragedies and other tragic events in the news.

Also, during same time, I was fortunate to be a contributor to “The Hurt Report” – perhaps the most significant publication ever on how motorcycle tragedies occur. If you ride – you need to read this report. Professor Harry Hurt was the lead author on this piece – and each of the above three rules regarding risk management was proven over and over and over again in this report.

Risk Managers study tragedies with one goal. If we can identify the cause of the tragedy, perhaps we can put together “control measures” to prevent similar tragedies from occurring.

Sadly, too many people have never been taught that a given tragedy will have multiple causes – including proximate cause, contributory causes, root causes and other “problems lying in wait” – that people knew about or should have known about and no one did

anything about it. As a result of this lack of knowledge, the “control measures” we put in place oftentimes do not address the real cause of the problem.

And at the risk of boring you early on in the program, I will remind you that there are three basic rules of Risk Management. They are:

1. **There are no new ways to get in trouble.**
2. **There is always a better way to stay out of trouble.**
3. **Things that go wrong in life are predictable – and predictable is preventable.**

So where do we get started. I often speak of the value of the “Risk Assessment”. Where are the problems going to occur? You can get this information for your organization by using your own internal records. You can further your assessment of risk by studying other similarly situated agencies and looking at their nasty consequences. Or you can study national and statewide trends occurring in other law enforcement organizations like yours around America.

Regardless of how you approach the risk assessment, you will get the same results. Your personnel get in trouble for two things, and only two things. Some of our problems come from intentional misconduct, where bad people do bad things on purpose knowing what they did was bad when they did it.

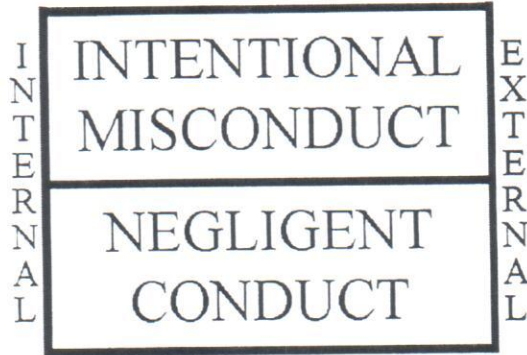
And, these “intentional” acts may be generated by people “outside” of your operations – murderers, rapists, arsonists or even “terrorists” who want to further their nefarious schemes in trying to hurt Americans. While this is not my focus today, I would like to remind you of the importance of being “vigilant” – and also quickly comment on the value of “random irregularity”.

Continuing on, some of these “intentional” events are generated by our own personnel. Certainly, we have had a number of these on the law enforcement side – and we have had a number of these in California where our own people sexually assault prisoners in their custody, those who steal from storeowners, steal dope from drug dealers, perjure themselves in court and on written reports, falsify evidence and those who have a warped sense of “right and wrong” and who will actually torture people in their custody.

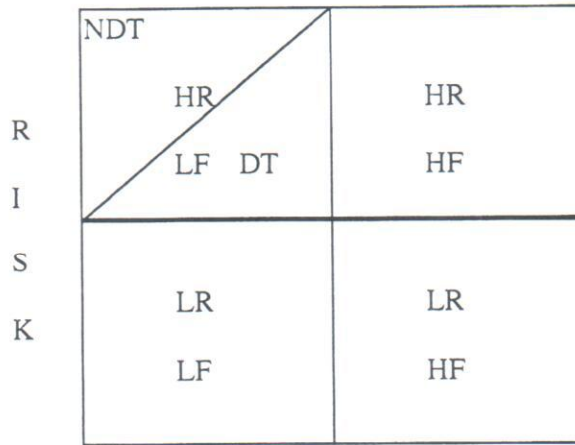
What can we do about this? I think most of this could be prevented if we did a better job of screening out losers up front – prior to hire. Law Enforcement agencies are not “evil cauldrons” that hire good people and turn them into bad people.

My belief is that we occasionally hire bad people – put them in a position of public trust and they continue to perpetrate their bad behaviors. I could give you examples of this from around America, but you are acutely aware of this. This is not a class on Background Investigations today – but please take them seriously.

Some of our problems come from negligence, where otherwise good people make a mistake. And once again, these mistakes can have their genesis from the outside – and this is very rare – or the inside – which is my focus today. Frankly, most of your nasty tragedies have their start with “internal error. Here is a chart for your consideration.



Once we eliminate the intentional misconduct, all we have to worry about is the negligence, or the errors. James Reason of the UK (one of the great writers on Risk Management today) describes different types of errors. Kb, Rb, Sb (knowledge based, rule based, skill based). He goes on to talk about how errors, lapses, omissions, mistakes happen in any given workplace.



FREQUENCY

This chart is known as the “risk/frequency” analysis. Everything that gets done in every job in your operations (and specifically in your job description) can be put into one of these four boxes. And if you understand this chart, you can predict where “most” mistakes will occur. And please remember that “mistakes” are the cause of most of your internal problems.

Most of the things you and your people do in your job in your organization are High Frequency, and your past experience will show you how to do it right the first time. This brings up the topic of **RPDM**, or Recognition Primed Decision-Making. Of you want to read all about this, please pick up a book by Dr. Klein, "Sources of Power" and read all about it. The principals of **RPDM** are as follows.

Consider your mind as a "hard drive", or for those of you over 50, a slide tray. Your daily experiences help load this drive. Everything you do and experience is loaded into your hard drive. When you get involved in any task or incident, your magnificent brain quickly scans your hard drive and looks for a close match or what Dr. Laurence Gonzales calls a "memory marker" or a "behavioral script".

Bottom Line: Give me a good woman or man and put them in a high frequency event, and there is a darn high probability that they will do the task right this time.

There are exceptions to this rule. Occasionally you will find that errors occur on high-frequency events. When this occurs and you look for what caused the tragedy, there are three issues that keep on popping up. They are:

**Complacency   Fatigue   Distractions**

**Hubris   Risk Homeostasis**

But even when you factor these in, rarely do mistakes occur on the high frequency events. However, if you put a good person in a low frequency event – particularly one that is high risk in nature, and I hear trains coming. When you get back to work later this week, I want you to start the practice of RPM – Recognition, Prioritization, and Mobilization.

First, you must recognize the tasks that fall into the top left box in the job description(s) that you manage. This requires the "actuarial risk assessment" I spoke of earlier. Now you must "prioritize" these risks. Here are some thoughts on this process.

Please recognize that this top left box has been divided into two areas. Some tasks need to be done immediately (NDT), and some give us time to think (DT). The top left portion of the top left box scares me a lot, as these tasks truly give you no time to think.

Included here are workplace violence incidents, chemical spills, shoot don't shoot, earthquakes and other natural disasters, and similar events. These are the tasks that have higher priority in my way of thinking, as they have a higher probability of getting you in trouble. These are the events (tasks) that need the regular and ongoing training.

This is the mobilization component of RPM and it is very important that every day is a training day and you must focus your efforts on the "core critical tasks" – those tasks in the top left portion of the top left box.

The good news here is that in an average career of 30 years, less than one hour is really spent on this type of task. The bad news here is that in an average career of 30 years, less than one hour is really spent on this type of task.

With this in mind, and because of the high level of risk involved in the given task that falls into the top left corner of the top left box, these need to be covered regularly to make sure people know what to do if they ever get involved in the HR/LF/NDT family of tasks.

The excellent news is that most of the tasks in the top left box are not NDT, but rather DT meaning that you have time to think before you act. That may include asking someone who does the task at a higher frequency (and that may mean only once more than you) how to do it so it gets done right.

Law Enforcement operations can be very complex. However, **most** of the incidents you get involved in are ones that you have done a lot (HF) or ones that give us **total discretionary time**. If you have the time to think, please use it. Failure to use discretionary time when available is over represented in subsequent problems.

## Blink vs. Think

You have to remember the thoughts of Dr. Zeller including “there are no new ways to get in trouble”. There are plenty of people in your profession who have done the involved task before, and they know how to do it correctly. Individually, you know a lot about your job. Collectively, this group present today knows a lot more than any one individual. Slow down and think before you act.

Your role in Texas Law Enforcement operations is making sure that you and all of your people in each and every job description are fully and adequately trained for the tasks that give you no time to think (the Core Critical Tasks in every job), and that you (and they) understand the value of thinking things through when they are involved in a discretionary time task.

So what do you do with this “discretionary time” to think things through prior to taking action. Simply stated, you use this time to “think” so that the proper decision is made to assure that “things” get done right. Good decisions are an essential component of getting things done right.

And every task, incident or event encountered by your personnel requires the making of a decision. So how many of your people have had a class on how to make a decision? If 5% of the hands go up in any given class I am speaking to, I am surprised. So here we

are in the most complex profession in America with no training on how to make decisions. I hear a train coming!

Some people think this is not an issue because most decisions we make are good ones. Very true, primarily because most decisions you make you make on a regular basis, meaning you do the underlying event at “high frequency”. In this situation, your friend and ally **RPDM** kicks in and things get done right.

I am not worried about how you make high frequency decisions, as you do so all the time and if you were not doing it correctly, you would know about it by now. I am very concerned about how you and your people make “low frequency” decisions.

How do you make decisions? Do you have a systematic approach to this process, or do you use the “whatever sounds right” at the time approach. Hastily made or poorly thought out decisions can have dramatic and permanent consequences.

I never received a “decision making process” until I got to law school – and there I was taught IRAC. What is the **ISSUE**? What is the **RULE** of law regarding this issue? How can you **APPLY** the rule to this issue? Reach a logical **CONCLUSION** based on the application of the rule to the involved issue.

I am not intimately familiar with all that goes on here in the Texas law enforcement operations, but in so many initial training programs, we train our personnel how to do specific tasks, but we do not teach them how to think. So how can IRAC be of assistance to you?. I expanded it slightly and made it more specific to what we do so here is my ten-step decision making process.

When facing a *low frequency* task, and the setting of this task does not matter, please analyze as follows:

- #1.** Identify and clarify the issue. What is this incident all about, and what am I being asked to do? You cannot make the right decision if you are addressing the wrong problem. Listen to what is being communicated to you and ask clarifying questions as necessary. Don’t let RPDM get in the way. RPDM can generate “cognitive lock”.

This is a nasty phenomenon where we make up our mind based on little information. This is a problem area. Study after study has demonstrated that the more time you spend identifying what is really going on, the higher the probability you will make a good decision.

Check out [www.theinvisiblegorilla.com](http://www.theinvisiblegorilla.com) for some interesting thoughts about this issue – and how it applies to your law enforcement operations.

One last thought. I worry that some people in here today will view this request to “think” as an opportunity to excessively delay performance of given tasks, incidents and events. Please do not do this. You have a job where things need to get done – so please do your job.

- #2.** Am I able to address this issue? If yes, then handle it now by moving on to #3. If it is not within your current job description, then get the issue to someone who can handle it now, and follow up to make sure it got handled.

If it is a fire department issue, get it to them. If it is a DPS issue, then get it to them. If it is a fire department issue, get it to them. And whenever possible – follow through to make sure the need was taken care of.

This is called closing the loop in the customer service world and is an excellent technique for creating loyal customers.

- #3.** Is there discretionary time or not? This is so, so important. If you have it on a low frequency event, then use it to think the issue through using the next four steps of this process.

Failure to utilize DT when available is over represented in subsequent problems. There is no excuse for a poor decision when there is time to think the decision through.

Those tasks that are truly NDT need the regular and ongoing training. You are responsible to make sure you are fully capable of handling these events should they ever occur.

But most things give us time to think – and if you have that time, the next four steps are the core of the decision making process.

- #4. \* What is our current department policy regarding the involved issue? What does the manual say about this task. If there is a written rule, it has to be followed!

And when your boy and girl wonders come up to you and inquire as to how to do something, rather than dazzling them with your significantly loaded hard drive of past experience, the smartest thing you can do for them is to teach them how to look it up.

And if you do not have a policy specific to the task, incident or event in which you are involved – please remember the “Mission Statement” or the “values and vision” of your department.

- #5. \* What is our past practice regarding this issue? You may have never had this event before, but someone else in your agency may have some “memory markers” as to how it needs to be handled. Use this “discretionary time” to ask someone who has done this incident before so that your behavior today is consistent with “past practice”.

Failure to treat people as others have who were similarly situated were treated or performing a task in a manner inconsistent with past performance is the easiest way to really make people angry.

If you are going to deviate from the norm, you have to have specific, articulable facts to justify this deviation from the way you normally do this type of task.

And for those of you who serve as supervisors and managers in your department- you have a key role in being consistent in the way you do your job.



**#6.\*** Is it the right thing to do under the circumstances? What are the ethical considerations of this event? Every task we get involved in has an ethical concern, so every decision we make has got to include the ethical analysis.

**#7.\*** What are the potential consequences of my decision? This is a Generational specific concept. You have got to make sure that you understand and analyze potential consequences in advance of our decision.

Consequences include intended, unintended, short term, and long-term issues. What is the impact on the customer, your co-workers, your organization and our profession is something we need to ask before we do something.

This is a huge issue with the newer employees, as they have grown up in a world devoid of consequences and thus many not understand the “gravity” of what they are doing

And not to beat this to death, but there is not a month that goes by that I don’t have someone in my law office in big trouble for not considering consequences prior to acting.

And with the huge unemployment and economic issues our Nation faces today, getting “fired” would be a life-changing event.

So with this in mind, if you are involved in an “ethical dilemma” please, please do not try to make the “call” by yourself. Ask a co-worker or supervisor for their advice.

And if you don’t feel comfortable talking about your planned behavior with others – then perhaps you are headed in the wrong direction with your thinking.

**#8.** Make and implement your decision. And it is not too late to go back to number one of this process to assure that you are still headed in the right direction. It is much

easier to start over than it is to attempt to undo something that was done incorrectly.

- #9. Document as necessary (this is the lawyer in me) Record keeping and report writing are essential components in this process and must be done as incidents develop.
- #10. Learn from and share your experiences (this is the Risk Manager in me). If you learn something, share this new “memory marker” it with your peers so all can benefit from your “new” knowledge.

And I recognize that there are many other approaches to making good solid decisions, and I do not care which one you use, but get a structured approach to thinking things through. Also, share this with your people, as it will allow them to make better calls.

With respect to #6 above, “is it the right thing to do under the circumstances”, this query raises the ethics issue. More and more people, both inside and outside of law enforcement operations are looking at your profession and raising the “ethics” question. What is “ethics” all about?

Webster defines ethics as follows:

1. the discipline of dealing with what is good and bad and with moral duty and obligation.
2. a set of moral principles or values

Further, “ethical” is defined as “conforming to accepted professional standards of conduct”.

America has been sliding down the slippery slope of decreasing ethics and integrity for decades. Not taking this seriously has eroded public confidence. We have got to rethink how ethical behavior is achieved, and sending people to a class (this is lawyer thinking) on ethics is not the total answer.

Many organizations use it as a crutch to show that they care and that they have a piece of paper saying that someone went to a class. Having a piece of paper saying that some cop has been to ethics training does not mean much to me.

What we should do regarding ethics training is to employ the principals of Risk Management.

**First**, if we truly want to maximize ethical behavior, we have to start by hiring people who have integrity. This requires comprehensive background investigations. Spending wisely on the background investigation process is absolutely necessary. Past habits will become future habits. The best predictor of future behavior is past behavior. You cannot train the immoral to be moral, so do not waste your time on them.

**Second**, after hiring, we have to train our good new people regarding ethics. And if you are taking a close look at the next generation of employees coming on board, they have substantially different values than most of us, so some re-tuning of the hard drive may be necessary. Classes on ethics during initial training are essential, but again not the total answer.

**Third**, recognize that every incident encountered by law enforcement personnel has ethical considerations. With this in mind, each class we instruct needs to have a discussion regarding the ethical considerations of this particular task or incident. It will cost you nothing to do make ethics a part of every class taught.

**Finally**, when rules are not being followed, there needs to be action. When supervisor or managers ignore wrongful behavior, they have encouraged future wrongful behavior. You who serve as the supervisors or managers must be “out and about” and taking a look at what is going on in your workplace – and if you see something that is not right, you must act.

It is not the intent of this class to give the “right thing to do” in any given situation, for your job is complex, and the number of permutations of possible incidents is innumerable. It is the intent of this class to maximize the level of interest in the concept of ethics and to instill in each attendee that ethics plays a role in each decision you make.

It is also my intent to again stress the value of “systems” and to give you a structured approach to determining if what you are doing is the “right” thing to do. Here are some considerations that I stressed with your people this morning and these four rules apply to you also as the supervision and management team.

1. Always obey the law and follow the policy. If you have the law and policy on your side, you are probably in good shape.
2. If it smells bad, it probably is bad. Even if your planned behavior is consistent with law and policy, it might not be the right thing to do. It is essential that we give it the smell test, both personally and externally. How will it read in the paper tomorrow is a necessary consideration.

However, this only applies if you have “discretion” in what you are doing. In the world of law enforcement operations, some of your functions are “mandatory” meaning shall and further meaning you have to do the task a certain way. If you are involved in such a

matter, follow the letter of the law or policy regardless of the smell.

3. When questioned after the fact, always be up front and honest. America and Americans are very forgiving, but only if you are up front and honest about what really happened. This is the most complex job in the world, and mistakes are going to happen. Don't compound the mistake with a cover up.
4. Ethical actions speak louder than ethical words. You are the leaders in your Department and our profession and you must set the proper example. Law Enforcement is a noble endeavor. Please take it seriously. We all need to act like the professionals we are even when no one is looking and there is no chance our behavior will be noticed.

Thanks for coming to this program. If you ever need anything, please let me know.

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