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[Pause]

16

[OFFICER CHARLES DiCHIARA, Sworn.]

17

THE COURT: Good afternoon.

18

THE WITNESS: Good afternoon.

19

20 THE COURT: You can stand, sit, whatever's most comfortable  
21 for you. And if you are comfortable doing so, you may remove your  
22 mask, or you can leave it on, whatever you prefer.

22

THE WITNESS: Thank you.

23

DIRECT EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA

24

BY MR. TARRANT:

25

Q Okay, sir. Can you please state your name, spelling both

1 your first and last name?

2 A Yes, sir. Your Honor, if it pleases the court, my name is  
3 Charles DiChiara. Last name is D-I-C-H-I-A-R-A.

4 Q Sir, are you employed?

5 A Yes, sir, I am.

6 Q Where do you work?

7 A I work for the city of Waltham police department.

8 Q And how long have you worked for the city of Waltham police  
9 department?

10 A 33 years total.

11 Q And can you just briefly go through -- What's your  
12 educational background, your education?

13 A My educational background? I went to North Andover school  
14 systems.

15 And when I graduated, I went to a reserve police academy in  
16 Tewksbury.

17 Then I embarked on a college career as a police officer. And  
18 I graduated with a B.S. from Springfield College, in criminal  
19 justice.

20 Q And you're currently a police officer with the Waltham police  
21 department?

22 A Yes, sir.

23 Q And so what's your current assignment with that department?

24 A My current assignment is: I am assigned to training fulltime.  
25 I oversee training for the police department, 160-man department,

1 everything from brand-new recruits to our senior in-service police  
2 officers.

3 Q And how long have you been in this assignment?

4 A Probably about 6 years.

5 Q Okay. And what specific areas do you train police officers  
6 in?

7 A I train them in mostly physical skills, physical fitness,  
8 arrest and control, police baton, firearms, less-lethal force,  
9 taser, police use-of-force in general.

10 Q And prior to that assignment, what did you do for the Waltham  
11 police department?

12 A I worked nights on patrol for probably about 27, 28 years.

13 Q Okay. And can you describe what specialized training you  
14 have as it relates to firearms, defensive tactics, and use of  
15 force?

16 A Well, I'm -- I'm an instructor for the state in firearms and  
17 defensive tactics, a Level 4 or state coordinator in those  
18 disciplines.

19 So, I went to the basic police academy, where I received my  
20 standard 80 hours of training in self-defense and defensive  
21 tactics. Following that, I became defensive tactics instructor,  
22 was -- which was a 12-day class to be an instruct in those areas,  
23 followed by a 5-day class in order to teach in the police academy.

24 And then in the last -- I've been doing it for probably over  
25 20 years. I've probably been -- I probably have a couple thousand

1 hours of specialized training in this area.

2 Q And do you have any certifications in that regard?

3 A Yes, I do.

4 Q And what are they?

5 A I am certified as a Level 4 instructor in use of force,  
6 firearms, and defensive tactics for the Commonwealth of  
7 Massachusetts.

8 Q And how many different levels are there to being an  
9 instructor of that nature?

10 A There are four, technically.

11 Q So, four being which? The top --

12 A Four is the highest. One, two, three, and four.

13 Q And how many Level 4 instructors are there in Massachusetts?

14 A Maybe 10 across the state.

15 Q And approximately how many police officers have you trained  
16 in the use-of-force defensive tactics?

17 A I'd say from Massachusetts -- And I've trained  
18 internationally and across the country. So probably -- probably  
19 well over 10,000.

20 Q Do you have national certifications?

21 A I do.

22 Q What are they?

23 A I am certified as a master instructor through the Safariland  
24 Training Group, which is a international group of police officers  
25 that trains officers from the United States, Canada, Switzerland,

1 England, and Columbia.

2 Q In addition to being a Waltham police officer, do you have  
3 any other special assignments that you do?

4 A Yes, I do.

5 Q And what's that?

6 A I've been -- For the last 30 years, I've been assigned to the  
7 NEMLEC SWAT team.

8 Q What is NEMLEC?

9 A NEMLEC is a -- stands for Northeast Massachusetts Law  
10 Enforcement Council. And it's a consortium of 64 cities and towns  
11 in Essex County and Middlesex County. And it's a 35-man,  
12 basically, SWAT team that responds to special situations, hostage  
13 situations, barricade, suicidal individuals, high-risk warrant  
14 service, drug raids, that type of stuff.

15 Q Okay. So what's your duty or responsibility as a member of  
16 the NEMLEC SWAT team?

17 A I'm on the -- I'm on the primary entry team. And I'm one of  
18 the trainers for the unit.

19 Q Are you employed by any other agencies?

20 A Just as the Commonwealth of Massachusetts -- as a -- as a  
21 state coordinator.

22 Q Okay. And are you an instructor at any other -- at any  
23 police academies?

24 A Yes, sir.

25 Q Which ones?

1 A I am a lead instructor at the Lowell police academy, the  
2 Randolph police academy, the -- Merrimack College has a --  
3 Merrimack College has a new police academy, Northern Essex  
4 Community College, and I assist at the Reading police academy.

5 Q And, sir, directing your attention to January 5th, 2021, did  
6 you respond to an incident in Newton, either as a member of the  
7 Waltham police department or NEMLEC, on that day?

8 A I believe I -- I had gotten a call, but I did not respond.  
9 It cancelled pretty quickly. So, we -- I got the call over  
10 my phone. And then I got it cancelled pretty quickly after that.

11 Q Okay. Did NEMLEC, to your knowledge, respond?

12 A I believe -- It got called off fast. I believe there was  
13 maybe one or two officers there. And that was only and officer  
14 from Newton that I think was there. I think he was there quickly  
15 because he was from Newton. And then there was a sergeant from  
16 Watertown. I think he'd arrived or he was -- might have been en  
17 route. But that was -- that was it. One -- One to two, at the  
18 most.

19 Q Okay. And so it's fair to say when NEMLEC gets a callout  
20 officers are coming from different areas?

21 A That's correct.

22 Q And I'm just curious, really: the -- when NEMLEC responds, do  
23 you first group-in at an essential area, or does everybody respond  
24 to the scene at the call [sic]?

25 A So, it depends on the situation. If it's something that's

1 happening rapidly, the first officers will go there and they'll  
2 set up an IAT, which means "Immediate Action Team." So, the first  
3 five or six or seven guys will go right to the scene to help that  
4 agency assist with whatever they might need. And then the other  
5 officers will respond to a staging area, and they get assignments  
6 from there.

7 Q Does the staging area differ depending on where the call is  
8 made?

9 A Yes, sir. Correct, yes.

10 Q And how is the staging area designated?

11 A They just try to pick a place that's -- you can park  
12 vehicles, because we don't do a great job of --

13 Q Okay, so --

14 A -- parking vehicles. So it's -- it's offsite.

15 Q It always depends on the geography of the scene?

16 A Correct, yes.

17 Q And, sir, have you testified previously in courts of the  
18 Commonwealth?

19 A Yes, sir, I have.

20 Q And has your testimony essentially been on the use of force  
21 or defensive tactics of police officers?

22 A Yes, sir.

23 Q And, sir, how is "use of force" defined, as a training  
24 instructor --

25 A We --

1 Q -- on that topic?

2 A We define it as the amount of effort required by police to  
3 compel compliance from an unwilling individual.

4 Q And how is -- how would you define "deadly force"?

5 A We would define "deadly force" as force, physical force,  
6 which is likely to or intended to cause death or serious bodily  
7 injury.

8 Q And so what dictates the amount of force an officer is  
9 authorized to use in a given situation?

10 A We're -- We're trained. And everything that we're trained in  
11 is -- is to use a set of standards and -- and guidelines as -- to  
12 help us determine what level of force to use.

13 Q Okay. Is there a difference between your standards and  
14 guidelines?

15 A Standards would -- we would describe as the -- as  
16 clearly-established case law. Like, "This is what the law says  
17 about the amount of force that you should be using and -- and how  
18 it should be judged."

19 And then from there, we have a guidelines. And the  
20 guidelines is different. Guidelines would be, like, the  
21 use-of-force model that we teach officers. Or it would be your  
22 police department's policy and procedure.

23 Q And is there a particular case law that you rely upon in  
24 making those determinations?

25 A Yes, sir, we do.



1 Q And what is that?

2 A The case that we train police officers in is the federal case  
3 from the United States Supreme Court, Graham vs. Connor. And that  
4 case sets the standard for how a police officer will be judged on  
5 what level of force they should use.

6 Q And so can you just describe the proposition for which that  
7 case stands for?

8 A So, the case basically means that a -- a police officer  
9 should use the amount of force only that's objectively reasonable.  
10 And "objectively" means based on facts but objectively reasonable  
11 based on the scenario that's in front of them. And there's  
12 factors that determine -- You know, there's -- there's factors  
13 that determine what amount of force we should use.

14 Q And are the standards different between federal, state, or  
15 other jurisdictions?

16 A They're somewhat, yes.

17 Q And as part of the training that you do, do you teach police  
18 officers the law as well as standards and guidelines? Is that  
19 what you do?

20 A Yes, sir.

21 Q And do you use specific teaching tools or teaching methods?

22 A Yes. In addition to teaching case law, we also -- in  
23 Massachusetts, we use a use-of-force -- some people call it "the  
24 use-of-force continuum." I would call it "the use-of-force  
25 model."

1 Q And so what is the use-of-force model?

2 A The model is just to give the officers a visual tool of  
3 factors they should be looking at to determine what levels of  
4 force they should use. So they use the model coupled with  
5 something we call "the totality triangle."

6 Q And what is the totality triangle?

7 A So, the totality triangle is -- is three-pronged. And what  
8 we do is we try to get the officers to -- In order so that they  
9 can choose a -- a reasonable force option that's within the law,  
10 the first thing they look at is going to be your perceived  
11 circumstances. That's the first part of that category, is  
12 perceived circumstances, which is your risk assessment.

13 The second portion is the subject's actions, the person and  
14 what you're dealing with, is "What are their actions?"

15 And then the -- And if you analyze a -- A good analysis of  
16 risk coupled with what the subject is doing will help you make a  
17 good decision.

18 And that third part of the category is the officer's  
19 responses.

20 Q And so how is the totality triangle employed out in the field  
21 or during a situation?

22 A We teach an officer to respond to the totality of the  
23 circumstances. And that's everything from the -- the "why he's  
24 there in the first place" to the time of the day to "does he have  
25 backup?" to the officer's skillset.

1           So under totality of the circumstances, we teach the officer  
2 to first analyze his -- his risk, his -- his -- the risk of the  
3 arena that he's operating in, all the danger cues and what's going  
4 on as far as risk factors.

5       Q     And so is that -- is the use-of-force model different than  
6 the totality triangle?

7       A     So, yes and no. So, what -- what -- The way it's -- The way  
8 it's taught is the -- It's both. So the -- the use-of-force  
9 continuum has five levels. But if you were to -- if you were to  
10 drop the totality triangle into the use-of-force model, it's --  
11 it -- it -- it -- it's all-encompassing. So it's -- There's three  
12 levels on the -- There's five levels on the use-of-force model.

13       Q     Okay. And --

14       A     But it's broken down into three subsections. And those  
15 subsections are the totality triangle.

16       Q     Okay. So what are they? What are the categories of the  
17 use-of-force model?

18       A     So, the five levels is first a -- So, you want from "the  
19 subject's actions" or "threat perception"? So --

20       Q     My -- I'm assuming "perception," at this point.

21       A     Okay. So, on the -- The first category on the five levels  
22 deals with -- with the officer's responding to his risk.

23           So, level -- first level is "strategic."

24           Second level is "tactical."

25           The third level is "volatile."

1 And the top, level five, is "lethal."

2 Q And what do -- So what are the risk perception categories?

3 A So, those -- those are the risk perception categories:

4 strategic, --

5 Q Oh, those are --

6 A -- tactical, volatile, harmful, lethal.

7 So when -- An officer is taught in training to first respond  
8 to the -- everything that's going on. So, it would be "Is it a  
9 volatile situation? Are we past that? Is it harmful? Is it a  
10 potentially lethal situation?"

11 Q Okay. And then where do you move on from there, in your  
12 analysis?

13 A Once you're analyzing risk, then we analyze what the subject  
14 is actually doing. And that would be the section in the totality  
15 triangle that says "subject's actions."

16 Q Okay. And are there different levels of that, of subject's  
17 actions that you consider?

18 A Correct. There's also five levels on that.

19 Q And what are they?

20 A The first level is "compliant," a compliant individual.

21 The second level is "passive resistant."

22 The third level is "active resistant."

23 The fourth level is "assaultive." And -- "assaultive, slash,  
24 'bodily harm.'"

25 And the fifth level is "assaultive, serious bodily harm or

1 death," level five.

2 Q Okay. So can you explain how the risk perception categories  
3 and the subject's actions categories relate to an officer's  
4 response?

5 A Yes. So, you -- What you should be analyzing -- Officers are  
6 taught and trained to analyze -- to respond to the risk and the  
7 subject's actions. So, I'll just -- I will give an example:

8 If -- If a person is dealing with a either domestic -- The  
9 first thing they would respond to is the arena that they're  
10 operating in, so: if it's a -- it's a volatile situation. And  
11 then they could analyze the subject's actions from there.

12 So the way the totality triangle works is you're -- it's a  
13 constant analysis of the risk factors coupled with what the  
14 subject is doing. And if they can analyze those two together, it  
15 will help the officer make a good decision on what level of force  
16 he should be using.

17 MR. ANDERSON: I'm sorry; this is on page 2 of Exhibit 18,  
18 what he's -- I just didn't know if you --

19 THE COURT: Thank you.

20 BY MR. TARRANT:

21 Q So, when you discussed looking for a balanced or reasonable  
22 response, how -- where do you begin when determining what level of  
23 response? Meaning:

24 What is the lowest response to the highest response? When  
25 you're looking for a balanced response or a reasonable response to

1 a situation, where does that begin?

2 A So, do you mean, like, at the bottom level of Level 1? Or  
3 just -- It starts when -- the minute --

4 Q Well, --

5 A -- we respond to the call.

6 Q Okay. Well, I mean, what are the different responses and how  
7 do they -- from the most minimal response to the most aggressive  
8 response?

9 A Okay. So, a -- "Tactical" would be more or less a mindset.  
10 So, a tactical risk perception is, like, a baseline perception of  
11 occupationally accepted risk. So if a police officer comes to  
12 work -- and the fact that he's wearing a uniform and a gun and a  
13 badge, he should have a tactical mindset. So that's Level 1, just  
14 responding.

15 Level 2, when we get into a tactical response, that's any  
16 time we have a series of risk increases. So say I had to go to  
17 a -- even pulling over a motor vehicle for a Chapter 90 vehicle,  
18 for a moving violation. Now the fact that I'm going to pull a car  
19 over -- now I have to switch, and my risk assessment becomes more  
20 tactical because there's risk factors involved.

21 So the way it works is we would teach the officer to go to a  
22 tactical risk assessment and then start to deploy safety  
23 strategies: call for another cruiser, look for a safe place to  
24 stop the car, call in a description of the plate. So that would  
25 be tactical, is when we start to deploy safety factors based on

1 the call that we're going on.

2 Q And then how do you determine -- What are the levels of  
3 control that you would employ?

4 A So, on -- on a -- on the first level is -- We would call that  
5 "cooperative controls." And those are your Level 1 responses.  
6 And that really just deals with, you know, people that are  
7 doing -- people that are compliant. And your cooperative  
8 controls, your officers' responses are your verbal skills, calm  
9 presence, professionalism, compliant handcuffing. Those are your  
10 Level 1 responses.

11 Q And then is there a Level 2?

12 A Yes, sir.

13 Q What would be Level 2?

14 A Level 2, we would call "contact," C-O-N-C-A-T [sic] -- C --  
15 "contact controls." And that is just low level of force. And it  
16 deals with light touch tactics: push, shove, guide, drag. We call  
17 it "light hands-on tactics," for Level 2. And those are called  
18 "contact controls."

19 Q And is there a Level 3?

20 A Yes, sir.

21 Q What is that?

22 A Level 3 response is -- Now that the situation has escalated  
23 and -- Now we would use -- If we're dealing with a person that is  
24 now noncompliant and their noncompliance is met with physical,  
25 actual energy-based resistance, we could use a high level of

1 responses. And those would be called "compliance techniques."

2 Q And are those just hands-on techniques?

3 A Yeah. Compliance techniques actually refers to pain  
4 compliance techniques. And that would entail distractionary-type  
5 techniques, joint manipulations, causing pain to a joint. It  
6 could be -- Pepper spray is listed as a pain-compliance technique.

7 The taser is deployed two different ways, but the first way  
8 is at Level 3, where you'd use a -- where they would call it  
9 "drive stun," where you don't deploy probes. You just press the  
10 taser against the person. And the pain is more localized, but  
11 you're not -- you're not launching any projectiles. That would --  
12 We would call that "a drive stun." That would be a Level 3 pain  
13 compliance response.

14 Q And what would be Level 4?

15 A So Level 4 is -- Now that's -- It's a more intense  
16 interaction. And the resistance level is higher. If you're  
17 dealing with an assaultive individual, our intent is to get them  
18 to stop fighting immediately, or stop their violent behavior. So  
19 it's a high level of force. So, on -- on Level 4 responses, we  
20 would refer to it as "defensive tactics."

21 Q And so what are some of the defensive tactics that you would  
22 employ?

23 A Defensive tactics refer to -- It's just what is described as  
24 "impact." So, personal weapons or intermediate weapons.

25 Your personal weapons would be punches, kicks, elbow strikes,



1 knee strikes, basically weapons of the body, to respond. So  
2 you're using -- You're using striking-type techniques with your  
3 personal weapons of the body.

4 And then your intermediate weapons would be -- Your police  
5 baton would fall in that Level 4. And your taser, firing the  
6 probes, would be at Level 4. Or using a B-gun, less-lethal-type  
7 shotgun, would be Level 4 but rising to a Level 5.

8 Q Okay. And what is Level 5?

9 A And Level 5 is just considered deadly force. It's not too  
10 specific. If an officer is -- If an officer or somebody else's  
11 life is placed in immediate peril, we -- we call it "imminent  
12 harm." If an officer is faced with imminent harm of himself or  
13 another person, then they're taught to use -- taught that it's  
14 reasonable to use deadly force in that situation.

15 And deadly force is any force that could stop a violent  
16 attack immediately. It could be a firearm, which is what most  
17 people think. But it could be -- It's not tool-specific. It  
18 could be every -- other items.

19 Q And, well, with respect to firearms, in a deadly force  
20 scenario --

21 A Yes, sir.

22 Q -- is an officer trained -- and do you deal with this in your  
23 training, that when they discharge their firearm -- where to aim  
24 the firearm?

25 A Yes. All police officers are taught and trained to shoot to

1 stop and to shoot at center mass.

2 Q Okay. And why is that? Why is center mass always the  
3 target?

4 A Well, the first reason is accuracy. You want to -- You're --  
5 If you're -- You can only use deadly force if you're dealing with  
6 immediate-threat situations, imminent harm. So in that situation,  
7 it's important that you hit where you're shooting at. So we try  
8 to teach center mass of available target for accuracy and also to  
9 stop the person that's violent.

10 And the third reason, also, is: police officers, we're  
11 responsible for every round that leaves the weapon. So it's  
12 important that we hit our target, because every round that doesn't  
13 hit our target could hit an innocent person.

14 Q And are police officers trained on how many shots to fire  
15 when they discharge their firearm?

16 A They're not trained to count the number of rounds in a  
17 stressful situation. They're taught and trained that -- to shoot  
18 to stop. And when the -- when the action that caused you to shoot  
19 stops, you should stop shooting. But we don't teach officers  
20 under stressful situations to count their rounds, no.

21 Q And, sir, what -- Do you train on lethal and nonlethal cover?

22 A Yes, sir.

23 Q What is nonlethal cover? What would that be?

24 A So, if time -- if time and opportunity affords itself, a --  
25 Preservation of life is our core value. So if we can preserve

1 life and protect life, we will. So even a deadly force situation,  
2 if we have time and opportunity presents itself, we will always  
3 have less-lethal cover, because if we can use less-than-lethal  
4 cover or a less-than-lethal response what we'll do in a deadly  
5 force situation is try to mitigate the need to use deadly force,  
6 if possible. So we try to deescalate and we try to use tools that  
7 are less-than-lethal, if possible.

8 Q And if you're employing less-lethal cover, are you also  
9 employing lethal cover?

10 A Yes, you have to, yes.

11 Q Why is that?

12 A Well, if you're deploying -- If it's a lethal situation, you  
13 can just use less-lethal tools, because if it -- if the  
14 less-lethal tool doesn't work or if things go badly quickly, then  
15 it's putting the officers' lives or other people's lives in peril.  
16 So the way it's taught is to, if possible, always have a lethal  
17 option and less-lethal option if possible.

18 Q Okay. And do you train on the use of pepper spray?

19 A Yes, sir.

20 Q And is pepper spray an effective method of quelling deadly  
21 force?

22 A For deadly force situations, I would not say -- I would say  
23 no, because it's a Level 3 response against a -- in a Level 5  
24 situation. So it would be -- It's not to say you can't do it, but  
25 you would be putting yourself and others at risk because pepper

1 spray does not work immediately. It takes -- It takes time. And  
2 it has a different effect on everybody. Some people, it doesn't  
3 affect at all. And if you used it in a lethal situation and it  
4 didn't work, then it could be -- it could be very problematic for  
5 innocent people and for the police officer.

6 Q Okay. Do you also train on the use of tasers?

7 A I do.

8 Q Are tasers an appropriate tool for quelling deadly force?

9 A It could be. It could be, as a less-lethal option. We've  
10 used tasers multiple times in -- in situations where it would --  
11 it would work. So, it's a -- it's a -- it's an applicable option.  
12 We will use taser if possible.

13 Q Okay. Are you familiar with what's called a "less-lethal  
14 shotgun" or a beanbag gun?

15 A Yes, sir.

16 Q Do you train on that?

17 A I do.

18 Q And what would you say -- Essentially the same question: is a  
19 less-lethal shotgun an appropriate tool for trying to quell deadly  
20 force?

21 A So, it's a good -- it's a good secondary option. We -- We  
22 use them quite a bit on the SWAT team. And what it is is it's --  
23 it's similar. It's "impact." So it's similar to hitting somebody  
24 with a police baton but from a distance. So, it's a safer  
25 distance. So, we use beanbag shotguns as a secondary option.

1           So, it's the same thing: if we had a deadly force situation  
2 and we could use a less-lethal shotgun, we absolutely would  
3 because, again, we're trying to -- we're trying to mitigate the  
4 need to use deadly force if possible.

5           However, if it was a deadly force situation and I was there  
6 by myself or -- I would not have a less-lethal shotgun. It would  
7 be a lethal situation until -- The -- The -- The less-lethal  
8 options are secondary options if you're involved in a deadly force  
9 situation.

10 Q       Okay. So is it fair to say when involved in a deadly force  
11 situation a less-lethal option would always be backed up by a  
12 lethal option?

13 A       Correct.

14 Q       All right.

15           MR. TARRANT: I think that's all I have, Your Honor.

16           **CROSS EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA**

17 BY MR. ANDERSON:

18 A       Good morning, sir.

19 Q       Good afternoon, Officer DiChiara.

20           In terms of related weapons, when you teach at the academy,  
21 do you teach officers how to respond to situations where somebody  
22 has an edged weapon, a knife, per se?

23 A       Yes, sir.

24 Q       And what type of training do you give someone? What are they  
25 supposed to be mindful of in those situations, if they're

1 confronted with somebody who's got a knife?

2 A Well, they -- they got -- they got to be mindful of the  
3 person's intent; environmental conditions like distance, space,  
4 time, and that type of stuff, barriers; how much space is between  
5 them; if there are other innocent persons in the area.

6 Q And is there a certain distance that officers are trained to  
7 have a certain level of awareness about?

8 A So, the -- the number that comes up is 21 feet. And  
9 that's -- that's going back 35 years, where people call it "the  
10 21-foot rule." It's not really a rule. It doesn't have any --  
11 doesn't have any legal basis. But it's -- officers have heard it  
12 so long.

13 We address the issue. And the 21-foot rule comes from a test  
14 long ago where a -- a defensive tactics instructor like myself  
15 wanted to analyze how fast, how much distance a -- a person could  
16 close by the time an officer recognized a threat and pulled out  
17 his firearm. So that's where the 21-foot rule comes from.

18 But we teach -- So, officers know that 21 feet is kind of the  
19 guideline for a safe distance. So that's what most officers are  
20 aware of.

21 Q Now, the situation that we're dealing with today involved a  
22 situation where somebody was within at least 13 feet, if not  
23 closer to a door where there were some officers located in an  
24 apartment. It's fair to say that would fall well within that  
25 21-foot rule?

1 A Yes, sir. 15 feet is very close.

2 Q And what type of level would that rise to on that pyramid  
3 that you told us about? If someone has a knife, threatening to  
4 shank people, threatening to kill themselves, waving that knife  
5 violently, waving a fire extinguisher violently?

6 A So, if an officer has taken in those type of factors, he --  
7 he absolutely would be -- we would describe it -- you're in the  
8 lethal arena. It doesn't mean you have to use deadly force. It  
9 means your threat perception is the -- the -- scenario that you're  
10 on has a potential to cause you or somebody else death or serious  
11 bodily injury.

12 Q And in that situation, you talked about -- you would often  
13 have -- want to have less-lethal and then also lethal cover?

14 A Absolutely. Yes, sir.

15 Q And the goal is hopefully preservation of life, --

16 A Correct.

17 Q -- correct? And you want to arrest that person before they  
18 do harm to themselves or they come and harm others?

19 A Correct.

20 Q And in terms of the less-lethal shotgun, under the Newton  
21 policy -- this is Exhibit 18, page 9, Section 5A -- it says, "The  
22 tool is intended to incapacitate the subject and prevent  
23 incapacitate the subject and prevent further aggressive action."  
24 Is that how you view how a less-lethal shotgun would work?

25 A Yes, sir.

1 Q And they describe it in here as -- on the following page, on  
2 page 10: "The blunt trauma force from a projectile has been  
3 determined to be greater than that of a thrown baseball by a Major  
4 League baseball pitcher." Is that accurate?

5 A That's correct, accurate.

6 Q And in what context would you use a less-lethal gun on  
7 someone who may either have a knife to their throat, may have a  
8 knife that they've dropped to the ground right by their feet, or  
9 may have a knife in their hand? How would you deploy that?

10 A So, we -- we would deploy it -- At first, we're -- we're  
11 always going to try to do some talking and deescalate and slow  
12 things down.

13 But the officer that has less-lethal cover is taught that,  
14 you know, if an opportunity presents itself -- So, time is good;  
15 we always try to slow things down and use time to our advantage.  
16 But if an opportunity presents itself...

17 So, it might be 5 minutes into it, and a -- and -- and the  
18 opportunity presents itself. So the person turns to go back into  
19 an apartment or drop a -- There's a bunch of variables. But if  
20 you have an opportunity to end it with less-lethal force, then we  
21 try to teach an officer to do that.

22 Q And if someone were to come out and take a shot from a  
23 distance of 13 feet or closer to somebody, with a less-lethal  
24 round, what would you expect to happen to the individual who's  
25 struck with that round? What would their response be?



1 A It -- It's like with any use-of-force option. There could  
2 be -- There could be a bunch of things. But my experiences  
3 with -- with hitting people with beanbag rounds is it's similar --  
4 If you hit them once or twice, it's similar to getting hit with a  
5 baton strike. And a lot of times, the people think they've been  
6 shot, and they comply and they give up, and they're not shot. But  
7 it gives -- it gives blunt trauma, like getting hit with a  
8 96-mile-an-hour baseball. So if you -- if you hit them once or  
9 twice, a lot of times that helps to gain compliance without any  
10 serious injury.

11 Q Okay. And the mechanics we've heard about, these less-lethal  
12 shotguns, it's a pump action, and you can fire multiple rounds  
13 from one weapon?

14 A I believe so. I'm not sure what Newton carries. There's  
15 different weapons systems. But most of them are a pump-type 870  
16 shotgun.

17 Q Okay. And if I told you that we've heard testimony that they  
18 carry five rounds and that you could get out five shots fairly  
19 quickly, is that consistent with your knowledge of these weapons?

20 A That sounds accurate, yes, sir.

21 Q And if someone were to try to engage that weapon on someone  
22 who had a knife or had just dropped the knife down by their feet,  
23 would it be appropriate in that situation to have lethal cover for  
24 that individual?

25 A Yes, sir.

1 Q Now, this hasn't come up today, and I don't know what further  
2 testimony we're going to have; but in terms of someone wearing a  
3 ballistic vest, what's the design of a ballistic vest? Are you  
4 familiar with how they work?

5 A Somewhat.

6 Q Okay. And is a ballistic vest going to stop a knife from  
7 penetrating?

8 A No, sir. They make a different type of vest that would, but  
9 not the -- The common vest the police officers wear in patrol is  
10 not stab-resistant. No, sir.

11 Q And in a situation where somebody were 13 feet away, with a  
12 knife, and then they begin approaching with a knife up over their  
13 head, and get within a distance of somewhere between 1 and 5 feet,  
14 what level would that rise to in that situation?

15 A We would put that at Level 5, sir.

16 Q Okay. And that would be a case where deadly force would be  
17 appropriate?

18 A That's correct.

19 MR. ANDERSON: If I can just have a moment.

20 [Pause]

21 MR. ANDERSON: I don't have any further questions.

22 MR. MCDONALD: No questions; thank you.

23 THE COURT: Thank you.

24 Attorney West?

25 MS. WEST: Thank you.

## 1 CROSS EXAMINATION OF WITNESS, OFFICER CHARLES DICHIARA

2 BY MS. WEST:

3 Q Good afternoon.

4 A How are you, ma'am?

5 Q I'm well. My name's Kim West, and I am the attorney for the  
6 family.

7 A Okay.

8 Q A couple times in your testimony, you've mentioned  
9 de-escalation, --

10 A Yes, ma'am.

11 Q -- right?

12 A Yes.

13 Q Can you give me the definition of "de-escalation"?

14 A De-escalation, there's -- there's a lot of different  
15 definitions. But I would use it as -- as using proactive  
16 techniques and tactics to try to help stabilize a situation, to  
17 mitigate the need to use force or a higher level of force. And  
18 there's a bunch of different techniques and tactics we would use.19 Q Okay. And, those tactics, can you give me some examples of  
20 those tactics?21 A Some of it's body language. Try to develop a rapport with  
22 the person you're talking to, slow things down, contain the  
23 situation from getting any worse, utilize distance, space, time,  
24 barriers.

25 Also, use -- We use advocates quite a bit now, mental health,

1 if -- if possible. Or at least -- We don't -- We don't always get  
2 to use them. But we try to have them at -- on the scene if  
3 possible now.

4 Q Did you review Newton police department's de-escalation  
5 policy?

6 A I did not.

7 Q Did you review any policies?

8 A I did not review any documents in this case.

9 Q Okay. You're familiar with the International Association of  
10 Chiefs of Police, correct?

11 A Yes, ma'am.

12 Q And how are you familiar with that?

13 A I'm a member. And I read a lot of their stuff. And that's  
14 where we -- When I got the definition from Massachusetts that we  
15 use for use-of-force, I use it from the IACP. So we're -- we read  
16 a lot of their stuff.

17 Q Okay.

18 MS. WEST: Your Honor, can I remove my mask?

19 THE COURT: Yes.

20 MS. WEST: Thank you.

21 BY MS. WEST:

22 Q So, the definition you just gave of "de-escalation" is  
23 actually quite close to IACP's definition, right?

24 A Probably, I believe.

25 Q And you've used -- In previous testimony, you have cited to

1 IACP before, haven't you?

2 A I believe so.

3 Q And you consider IACP to be sort of a well-respected  
4 organization in the field of use-of-force?

5 A I do.

6 MS. WEST: Your Honor, may I approach?

7 THE COURT: Yes.

8 BY MS. WEST:

9 A Thank you.

10 Q So, I just put in front of you what's called "The National  
11 Consensus Policy and Discussion Paper on the Use of Force."  
12 It's -- It was revised in July 2020. Are you familiar with this?

13 A I am. I've seen it.

14 Q Okay. And if you go to page 2, there it talks -- on the  
15 right-hand side of page 2, it talks about de-escalation. And it  
16 gives a definition.

17 MR. ANDERSON: Judge, if I can object to this line of  
18 questioning. I think this would have been maybe more appropriate  
19 for the witnesses who testified -- were involved in this  
20 situation, to see if they were aware of this. I don't -- I'm not  
21 sure how this assists the court, if the actual participants were  
22 never trained in any of this.

23 THE COURT: Go ahead.

24 MS. WEST: May I be heard, Your Honor?

25 THE COURT: Yes.

1 MS. WEST: This gentleman has indicated that much of his  
2 training is mirrored by IACP. He has cited that definition that  
3 is clearly from IACP in his past testimony. He has used it. He  
4 has not reviewed any Newton police department policies. And this  
5 court has heard information that Newton police does not have a  
6 de-escalation policy. So in order to understand his testimony, I  
7 think it would be helpful to look through what he bases some of  
8 his testimony on.

9 THE COURT: All right. I'm allowing the testimony.

10 MS. WEST: Thank you.

11 BY MS. WEST:

12 Q So if you can look at the de-escalation definition.

13 A Yes, ma'am.

14 Q You see that? It says, "Taking action or communicating  
15 verbally or nonverbally during a potential force encounter in an  
16 attempt to stabilize the situation and reduce the immediacy of the  
17 threat so that more time, options, and resources can be called  
18 upon to resolve the situation without the use of force or with a  
19 reduction in force necessary. De-escalation may include the use  
20 of such techniques as command presence, advisements, warnings,  
21 verbal persuasion, and tactical repositioning."

22 Do you agree with that definition?

23 A I do.

24 Q What is tactical repositioning?

25 A It could be just changing the angle. It could be moving to a

1 different place of cover. It could be backing off, backing up,  
2 depending on the situation. So it's just taking a different  
3 position of advantage.

4 Q And when you say "back off," do you mean, like, physically  
5 putting more distance in between them?

6 A Correct, yeah, yes.

7 Q You -- Earlier in your testimony, you said "distance"; I  
8 think you said "barriers"; and you said "time." Can you speak  
9 about those three concepts and give the court a sense of what that  
10 means?

11 A Well, what -- Tell me which one you want me to hit first, and  
12 then --

13 Q Why don't you start with "distance."

14 A Distance. So, distance is -- distance is -- is good. We  
15 create distance if possible. It depends on the situation, but --  
16 And the environment helps out.

17 But we try to create some distance because, one, it gives you  
18 more time to respond to a threat. And, two, it actually -- it can  
19 lower the officer's heartrate as well. And you tend to make good  
20 decisions when you're -- when you're heartrate is lower. So we  
21 try to do it for the officer's point of view and safety-type  
22 stuff. So we try to create distance if possible.

23 Q Okay. And if you're in a confined area and you can't create  
24 distance but you could use a barrier, would that make sense?

25 A If there's a barrier there, yes, we would -- we would teach

1 that, barriers, as well. Yes.

2 Q Yeah. And let me back up. I should have just asked you: can  
3 you tell us what --

4 A Yeah.

5 Q -- a barrier us?

6 A Yeah. The same -- same type of thing. If me -- If we're out  
7 in the street and you have a knife, I -- I would try to put a --  
8 a -- a police car in between us, or a fence. So, any kind of --  
9 any kind of barrier that you could use so that you could buy  
10 distance and time to -- to make a decision and to keep yourself  
11 safe.

12 Q And a barrier would also include a shield, right?

13 A If possible, yes.

14 Q And it could include a door, couldn't it?

15 A It could.

16 Q The third concept you mentioned was time.

17 A Yes.

18 Q Can you talk about that?

19 A As far as time, like, my experiences with these -- these  
20 things sometimes is: right in the beginning, when the event kicks  
21 off and everybody's emotions are high, and if -- If it gets  
22 brought to a head sometimes in the beginning, it -- it can go  
23 badly.

24 So we kind of use time like -- We try to use time to our  
25 advantage. Like, okay, if we -- The -- The more time that you



1 buy, historically, you can get some resources, and things tend to  
2 slow down. You can try to develop a rapport if possible.

3 So, with the time thing, it just seems -- It's not always,  
4 but sometimes the more time you have in between can help to  
5 diffuse the situation. That's all.

6 Q And it's also -- So, as you said, time can give you an  
7 opportunity to get more resources, right?

8 A Correct.

9 Q And in a situation where NEMLEC was called, getting that time  
10 would give NEMLEC more time to get there, right?

11 A It could, yes.

12 Q Can you turn to page 12, please? And do you see the part  
13 under "de-escalation"?

14 A Yes, ma'am. 8? I'm sorry; B.

15 Q B, yes.

16 A My eyes are going.

17 Q It says, "Procedurally, whenever possible and appropriate,  
18 officers should utilize de-escalation techniques consistent with  
19 their training before resorting to use -- using force or to reduce  
20 the need for force. In many instances, these steps will allow  
21 officers additional time to assess the situation, request  
22 additional resources, and better formulate a response to the  
23 resistant individual, to include the use of communication skills  
24 in an attempt to defuse the situation."

25 Do you agree with that, those sentences I just read out?

1 A Sure.

2 Q And here it focuses on communication skills in an attempt to  
3 diffuse the situation. Can you tell us a little bit about that  
4 and what that means?

5 A Well, we've -- we've gotten better in law enforcement over  
6 the last 10 -- 10 years on -- on teaching, you know, effective  
7 communication and -- and slowing things down and not screaming and  
8 yelling, and lowering your tone and -- and trying to have positive  
9 body language, and asking people to do -- to do something, rather  
10 than telling them.

11 So just -- we've -- we've -- we've worked on effective  
12 communication skills quite a bit. We do it from use-of-force to  
13 patrol tactics. We include communication skills in just about  
14 everything we teach.

15 Q And if the officer, say, is negotiating, the negotiator is  
16 having a conversation with the person, communicating with that  
17 person, and that person is beginning to corroborate [sic], would  
18 you consider that de-escalation technique to be working?

19 "Cooperate."

20 A If they're building a rapport and things -- and -- and  
21 nothing bad is happening and --

22 Q Yeah.

23 A -- it's slowing down? I would say that's good, yes.

24 Q So if they're complying, like, if the officer is saying, "I  
25 would like you to do this," and they actually do that, would you

1 consider that "cooperation"?

2 A Yes, ma'am.

3 Q If you can turn to page 9 on this. Top right-hand. It says,  
4 "Another de-escalation technique is tactical repositioning. In  
5 many cases, officers can move to another location that lessens the  
6 level of danger. An example is an instant involving an individual  
7 with a knife. By increasing the distance with the individual,  
8 officers greatly reduce the risk to their safety and can explore  
9 additional options before resorting to a use of force,  
10 notwithstanding the need to control the threat to others."

11 So, this again mentions the issue of repositioning that you  
12 mentioned before. Can you just tell the court a little bit more  
13 about what repositioning actually means?

14 A Well, it's -- it's a -- it's a pretty generic term. I mean,  
15 it could be something as simple as -- as -- as backing out or  
16 backing off or taking a different angle of approach.

17 But that's what I would -- that's what I would use to  
18 describe -- That's what it would mean to me. But it might mean  
19 different things to different officers, as well. It's a very --  
20 It's a very subjective term.

21 If I said -- If -- If somebody was in -- is in a bathroom  
22 with a -- with a knife, and I close the door and back out, I could  
23 call that repositioning.

24 So it means a lot of things to a lot of different people.  
25 But I would just say using a change in your -- a change in your

1 angle and -- and try -- try to give yourself a tactical advantage.

2 Q Okay. But you don't disagree with any of the statements I  
3 just read?

4 A I don't disagree with that, no.

5 Q Okay. And if you had a confined hallway with an individual  
6 in that hallway, with a knife, and a police officer in that  
7 confined hallway, without a shield, without a barrier, a  
8 repositioning technique would be to bring that officer into a  
9 room, correct?

10 A If -- So, I -- If I'm -- I'm not -- I don't know of any  
11 specific event.

12 Q Yeah. I --

13 A But it -- it --

14 Q Understood, understood.

15 A So I -- because I don't have -- I have read no reports on  
16 this, so I'm not sure what you're -- you're asking me.

17 Q So let me start over again.

18 A Okay.

19 Q And my apologies.

20 A Oh, no problem.

21 Q Imagine a confined space, with a person with a knife at one  
22 end. And the space is about 15 feet long, and it's about 4 feet  
23 wide. And there's an officer in that space. And there's no exit  
24 from that space except a door that goes into another room.

25 Would you consider putting that officer inside the door to be

1 | this repositioning that we've been talking about, this concept of  
2 | repositioning?

3 | A     Sure.

4 | Q     Is it fair to say that bad tactics prior to the use of deadly  
5 | force can escalate a situation?

6 | A     That's fair to say.

7 | Q     And can you give me an example of one?

8 | A     Oh... So, I saw a case where there was a suicidal woman in a  
9 | vehicle. And she had -- she had a firearm. They knew she had a  
10 | firearm. And she was -- she was threatening to hurt herself.

11 |       And the officer -- One officer was trying to talk to her and  
12 | got behind cover, was speaking to the woman.

13 |       And then another officer left cover and went right up to the  
14 | car to talk to the woman.

15 |       And she turned and pointed the gun at the officer.

16 |       And he shot her.

17 |       So the shooting was reasonable and justified, but it -- it  
18 | probably didn't have to happen. So I would call that -- I would  
19 | give that example of bad tactics leading to a use-of-force. There  
20 | may be better tactics. We don't know. We don't have a crystal  
21 | ball. But maybe better tactics could have helped the situation.

22 | Q     And perhaps better tactics might have been, in that  
23 | situation, to have some sort of barrier in front of that person?

24 | A     Sure, yes.

25 | Q     Or better tactics --

1 A I mean "yes, ma'am." I'm sorry.

2 Q Yeah. Better tactics would have been to not have that person  
3 even actually go up to the car to begin with?

4 A Correct.

5 Q I think you said earlier you have not looked at any of the  
6 Newton police department's regular or -- policies, right?

7 A Yes, ma'am, that's correct.

8 Q But you yourself do have some training and instruction  
9 experience in shotgun beanbags, right?

10 A Yes, ma'am.

11 Q And on what occasions would you use a beanbag?

12 A The last time I -- I used one was a person that was trying to  
13 blow his house up and had had a -- broke all the windows and was  
14 cutting himself and came out onto the porch. And he was close to  
15 us, so I hit him with a -- with a beanbag in his leg, I think  
16 twice. And we took him into custody.

17 So that -- that would be an example. But we've used them in  
18 deadly force situations and non-deadly-force situations.

19 Q Can you explain generally how it is that you load a beanbag,  
20 if you can?

21 A So, there's, like, 10,000 cops in Massachusetts, and they  
22 probably all load it differently. So --

23 Q Mm-hmm.

24 A I would just -- I would -- What I would do is I would throw  
25 one round into the port and -- and put it forward. And then I

1 would stuff the other four rounds into the barrel.

2 But people load them different. People do a combat load.  
3 People just -- People sometimes have a shotgun loaded, but not  
4 loaded and ready to go. They don't have a round in the chamber.  
5 So it's just -- It's pretty -- It's pretty generic, on how you  
6 load a beanbag shotgun. You know?

7 Q If we can go back to that example that we were talking about  
8 in a hallway, and you had an individual there who had a knife, and  
9 it was in a narrow hallway and you made a decision to use a  
10 shotgun beanbag, what would be your expectation would happen to  
11 this person if they were hit by the projectile?

12 A It -- It really depends. But the expectation would be that  
13 it would cause some kind of a -- some kind of a stoppage. But  
14 I -- We've hit people with beanbags seven times and it didn't do  
15 anything. And we've hit them one time and it works. So it's --  
16 it's -- it really is situation-driven. You know, sometimes --

17 Q Okay.

18 A -- it's clothing, sometimes it's distance. A lot of times  
19 it's where you hit the person. So all that stuff comes into play.  
20 They're all -- There's a lot of variables when you're using  
21 less-lethal force.

22 Q And is one variable that you would consider that if they had  
23 a knife in their hand and they were hit by the projectile and they  
24 fell, the knife too would fall to the ground?

25 A That could happen as a variable.

1 Q And would you consider that while you were putting together a  
2 plan, and think about what the next step would be, like: what are  
3 you going to do after that?

4 A Correct.

5 Q And what would you do after that?

6 A After we --

7 Q He fell to the ground, but the knife is right next to him.

8 A If he fell to the ground and the knife was -- After we hit  
9 him with a beanbag?

10 Q Yeah.

11 A Then we would try to do an apprehension if we -- if possible.  
12 If we had a shield or we had an arrest team, we would try to take  
13 him into custody. If -- If you have, like, a -- If you have a  
14 stop in the action and you have an opportunity to take the person  
15 into custody, we would do that.

16 Q Can you go to page 12 on the IACP consensus? Under -- You  
17 see "Less-lethal force"?

18 A Yes, ma'am.

19 Q "In situations where de-escalation techniques are either  
20 ineffective or inappropriate and there is a need to control a  
21 noncompliant or actively resistant individual, officer should  
22 consider the use of less-lethal force."

23 Do you agree with that?

24 A I do.

25 Q Okay. And a need -- I want to focus on the language of "a



1 need to control a noncompliant or actively resistant individual."

2 So then my question to you is: would you -- if a subject was  
3 being compliant at that moment and was not actively resisting  
4 anything, was being cooperative, could you then use less-lethal on  
5 them?

6 A You could.

7 Q And why could you?

8 A Because when we're teaching less-lethal options, again, with  
9 the -- The -- The way we teach officers responding to these calls  
10 is preservation for life -- preservation of life is the most  
11 important goal, is to take this person into custody without loss  
12 of life. So if you have a chance to use less-lethal force at any  
13 time and the opportunity presents itself, then we would do that.

14 So even if a -- So, it's an ongoing event. It's not -- It's  
15 not chunk-things [sic] going on. It's an ongoing event. So if a  
16 person is -- If you're in a lethal situation and the person is --  
17 is resisting and not compliant, he might be compliant for a  
18 second. But if he drops the knife, you could -- you could say  
19 he's noncompliant at that moment, but it is not -- it's -- it --  
20 it's a -- it's a second, it's a split second. So even though he's  
21 noncompliant at that moment, we would still try to deploy a taser  
22 or a beanbag because it's so -- it's such a low level of force  
23 that if we had a chance to end the incident, we would.

24 Q So let me ask you a question: what if he had two things in  
25 his hand? What if he had a knife in one and a firearm [sic] in

1 one and the negotiator had some conversation with him, was  
2 talking, and as a result of that conversation they put the knife  
3 to their waist? Let's stop there.

4 A Okay.

5 Q Then conversation continued, and they put the knife on the  
6 ground. Conversation continued, and then they put the fire  
7 extinguisher on the ground.

8 Would you consider that those acts of the subject suggested  
9 that the conversation was working, that it was progressing, and  
10 that maybe the conversation should continue before less-lethal was  
11 used?

12 A It could, yes.

13 Q Can you go to page 10, please.

14 During your testimony, you spoke about force models. You  
15 were speaking about the triangle, use-of-force continuum. And as  
16 you said, it has different names.

17 Are you familiar with the criticism of that type of  
18 use-of-force model?

19 A I am.

20 Q And you know IACP strongly discourages use of the continuum?

21 A So, it's an ongoing -- It changes. So, in -- A lot of states  
22 have gotten rid of use-of-force continuum. And they just teach  
23 the law, Graham vs. Connor. So, across the country, there was a  
24 movement, and a lot of states got rid of use-of-force continuums  
25 or use-of-force models, because officers get confused sometimes.

1 And there's a -- there's a -- there's a debate, whether to use  
2 them or not.

3 But now, after the -- after the incidents out in Minneapolis,  
4 now the national movement is to make every department have a  
5 use-of-force model. So we went from use-of-force models and  
6 continuums to "let's get rid of them" to now --

7 In Massachusetts, we've never gotten rid of it. We've talked  
8 about it. We've been involved in the conversations.

9 But now, after the "8 Can't Wait" Minneapolis situations they  
10 want police to focus on, one of the biggest things out of "8 Can't  
11 Wait" is: officers have documented use-of-force continuum and  
12 training. So we're right back to use-of-force continuums.

13 And not -- And I'm not sure where we're going to go in  
14 Massachusetts. I think we're going to keep teaching it. But it  
15 changes from time to time, ma'am.

16 Q But in regard to IACP, have they changed their view on  
17 use-of-force continuums?

18 A I don't know.

19 Q Okay. Earlier, with Mr. Anderson, you spoke about the  
20 21-foot rule. You said it goes back 35 years. And is it taught  
21 nowadays?

22 A' So, it's taught. It's mentioned and explained, and we teach  
23 it because so many officers have heard it. Like, if I got to a  
24 police academy class on day one and I ask them about the 21-foot  
25 rule, there's -- a bunch of people have heard it, a bunch of

1 people have a different -- have misconceptions about it. So I try  
2 to address it in terms of "This is the 21-foot rule. This is what  
3 it means. But always go back to doing what's right. And every  
4 situation is still totality of the circumstances."

5 It could be a situation where a person is 30 feet away and  
6 deadly force is authorized and -- and should be the situation.  
7 And there's situations where a person could be, you know, 15 feet  
8 away if it's a -- if it's a homeless drunk person and they're not  
9 a threat. They might be 15 feet away, but if they're not a  
10 threat...

11 So we try to teach more totality of the circumstances and  
12 doing what's right versus -- versus distances. But the distance  
13 is important, and that's what they have in their mind as -- as the  
14 distance in space. Like, "21 feet" is in every officer's mind,  
15 that that's unsafe.

16 Q Right. But that 21 feet has to do with the amount of time to  
17 cover it, which would include the officer recognizing the threat,  
18 unholstering their firearm, and shooting, right?

19 A Yes, ma'am.

20 Q Okay. In a situation where the shotgun is already up and  
21 it's focused, then the 21-foot rule isn't necessarily applicable.

22 A Correct.

23 MS. WEST: Your Honor, I would move to admit the consensus  
24 policy.

25 THE COURT: All right.

1 MR. ANDERSON: I was going to object for the record, but I  
2 have --

3 THE COURT: You can object. I'm going to --

4 MR. ANDERSON: Okay.

5 THE COURT: -- allow it.

6 MR. ANDERSON: So I can stand all the way up.

7 THE COURT: That's all right. You needed to stretch, maybe,  
8 too.

9 [IACP Consensus Marked as Exhibit No. 33]

10 MR. ANDERSON: If I could just --

11 THE COURT: Yes.

12 **RE-CROSS EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA**

13 BY MR. ANDERSON:

14 Q Sir, just going back, quick: you being part of NEMLEC, you  
15 know the other members on the team?

16 A I -- Yes, sir.

17 Q And this situation happened, I guess, in Newton Highlands.  
18 Where would the other members be responding from, to get there?  
19 Who would -- Like, what cities and towns were people coming from?

20 A Well, we're -- we're picked -- we're spread out throughout  
21 the -- Northeast Mass. part of the state. So we have  
22 cops/officers coming from Lowell, Methuen, Waltham, Methuen [sic],  
23 Dracut. And we have some officers who might be in the area:  
24 Watertown, Belmont, Waltham. So -- But we're spread out quite a  
25 bit.

1 Q And in this one -- Like, for instance, if a call came out  
2 right now, it's almost one o'clock. For you to go to a call, you  
3 wouldn't be able to go to that call; is that correct? Or you  
4 would go after leaving here and changing out of your suit?

5 A Yes. I would go if I -- if you let me go.

6 Q Okay. You have to ask --

7 A If you would let me go.

8 Q So, it's fair to say there are times when calls come up and  
9 people just simply aren't able to respond.

10 A Correct.

11 Q And then people are coming from various distances, correct?

12 A That's correct.

13 Q And in your situation, you were in Waltham, you got the call,  
14 but by the time you were getting ready to -- to travel there, it  
15 had already been disengaged --

16 A Yes.

17 Q -- or called off?

18 A That's correct.

19 Q Okay. And so you don't know what the timing was from when  
20 you first got the call to when it was called off?

21 A I do not know.

22 Q And in terms of the procedure for a call going out to NEMLEC,  
23 say a lieutenant on the scene calls into Newton dispatch and says,  
24 "Can you active NEMLEC," do you know what the process is in terms  
25 of notifying people?

1 A I do.

2 Q And how does that work?

3 A So, there's three control chiefs. One is from Concord, one  
4 is from Sudbury, and one is from Gloucester. And what happens  
5 is -- is when they request SWAT, a call goes to the North Andover  
6 police station, which is the dispatch, central dispatch. Then  
7 they get ahold of the chief, and they tell them what the -- they  
8 have. And the chief uses, like, a -- a matrix at the time to  
9 determine if it's a SWAT callout or not. And then they make the  
10 decision, and then they put out the call to us.

11 Q And does that come by cell phone or --

12 A Yes. They put up --

13 Q And is it like a group text? Like, "We have a barricaded  
14 suspect in Burlington at the high school," and then everybody  
15 grabs their gear and then goes?

16 A Correct.

17 Q Okay. So the timing for when people could actually respond  
18 to a call in Newton, that could be anywhere from 15 minutes to an  
19 hour?

20 A Yes, correct.

21 Q And then you get there, assemble, there's a group that would  
22 kind of be the initial action team, and then the other group would  
23 kind of get a more formulated plan?

24 A Correct.

25 Q Okay. And in terms of the number of calls that you get

1 called out to and then once you start getting there the situation  
2 ends, does that happen often?

3 A It does.

4 Q And if you get a call for someone who's got a knife to their  
5 throat, it's possible by the time you get there that person could  
6 have already slashed their throat?

7 A Correct.

8 MR. ANDERSON: I have nothing else.

9 THE COURT: Anything else?

10 CROSS EXAMINATION OF WITNESS, OFFICER CHARLES DiCHIARA

11 BY MR. MCDONALD:

12 Q Mr. Conlon, you were asked by counsel for the family about  
13 changing positions and taking other tactics during the course of a  
14 negotiation; do you recall that?

15 A I do, sir.

16 Q And isn't it fair to say that that's really up to the  
17 judgment of the negotiator, whether there would be any change of  
18 position or change in tactics based on the progress of the  
19 negotiation?

20 A Yes. It's -- It's from the perspective of the officer that's  
21 there, what he feels is reasonable.

22 Q Right. And if an officer seems to be having success in the  
23 conversation, would there be any need to change position or engage  
24 in any further tactics other than what he was employing already?

25 A If he's doing well and he's comfortable, he -- he could stay



1 there. That's fine.

2 Q Okay.

3 MR. MCDONALD: Thank you. That's all.

4 THE COURT: Anything else for this witness, anyone?

5 MR. TARRANT: No, Your Honor; thank you.

6 THE COURT: All right. Thank you so much. You may step  
7 down.

8 [Witness steps down]

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