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HOWARD RAHTZ, EDITOR STEVE ASHLEY, ASSOC. EDITOR ED NOWICKI, EXEC. DIR.

The ILEETA Use of Force Journal is published free of charge by the International Law Enforcement Educators and Trainers Association (ILEETA) on a quarterly basis, and is meant to share relevant information pertaining to the use of force by criminal justice professionals. The information does not necessarily reflect the opinions of ILEETA. Any material contained within this newsletter is brought to the readers in good faith and there is no intent to violate any copyright, trademark or other laws pertaining to intellectual property. As we have promised, we WILL NOT share anyone's e-mail address with anyone. We will honor this promise.

The purpose of this newsletter is to benefit and not to hinder the criminal justice community. The opinions of the various contributors, including the columnists, do not necessarily reflect the opinions of the ILEETA or its staff. Due to the litigious society that we live in, it is necessary for us to use this disclaimer. Is it a coincidence that there are over one million attorneys and that seventy percent of the world's attorneys are located in the USA? We think not. Please do not share this information with those that want to make the tough job of law enforcement even tougher.

We want to do all that we can to make this the best publication possible. In order to achieve that, we need your feedback so please e-mail me the editor, Howard Rahtz, at HowardRahtz@ileeta.org and let me know – good, bad or ugly. We may not respond to your e-mail due to time constraints, but we will read every e-mail, that's another promise!

We've assembled a great group of columnists who will contribute their columns each issue. We're honored to have people of this caliber be a part of The ILEETA Use of Force Journal. The columnists have also included their respective e-mail addresses, so feel free to contact them directly with any feedback.

There may be occasional grammatical or typographical errors. We will do our best to reduce these as much as we can. We cannot edit the respective columns nor any articles published for spelling or grammar due to our limited resources, so what you read is what we received for the writers. We also cannot guarantee the accuracy of the information, so keep that in mind. Remember, this is a free publication and we want to make sure that this newsletter has valuable information, so your feedback is important.

From the Editor

The Death of Police Officer Molly Bowden

"Police work gives you the test first, then teaches the lesson."

Oregon Sr. Trooper Bob Dent (Ret.)

Molly Bowden, a Columbia, Missouri Police Officer passed away on February 10, 2005. PO Bowden had been shot during a traffic stop a month earlier. The shooting was caught on the officer's in-car camera. The video shows Officer Bowden approaching the driver's side of the vehicle and then a shot being fired at her by the driver. Officer Bowden, not hit, quickly moves to the back of the car. The suspect exits the car and fires at Bowen again. across the trunk of the car, striking her in the neck and spine. Officer Bowden goes down and the suspect then approaches her body, stands over her, and shoots her twice more before fleeing the scene. The killer was found the next day and died in a shootout with police in which another officer wounded.

Per the video, 3.8 seconds elapse between the suspect's first shot at Officer Bowden and the incapacitating shot fired at her across the car. During that time, while she was seeking cover, Officer Bowden did not draw her weapon. An examination of her gun belt found the back snap of her holster undone as though she had attempted to draw the gun but had been unable. One of Bowden's fellow officers reported to *Calibre Press Newsline* that there was no belt keeper between her baton holder and rear snap and there are some who believe Bowden was unable to remove her weapon due to this obstruction.

The circumstances of Officer Bowden's death should be a wake up call for all of us. The proliferation of items to be placed on gunbelts over the past years has clearly reached its physical limits, particularly for smaller-waisted officers. As supervisors, trainers, and fellow officers, we have an obligation to ensure that access to our force tools, most importantly, the service weapon, is unimpeded. If officers are not drawing their weapons during a roll call inspection and/or supervisors are not checking weapons, our organizations have failed. While the primary responsibility always remains with the individual officer, good supervision and training must be in place to hold officers accountable without a tragic lesson.

Michigan Trooper Charged in Shooting

Michigan State Trooper Jay Morningstar has been charged with second-degree murder stemming from an on-duty shooting that occurred April 14, 2005. The trooper is accused of shooting Eric Williams outside a Detroit Bar. Williams, who has a history of mental illness, was involved in a confrontation with officers that was caught on videotape. Per the prosecutor, the video, not yet publicly released, was instrumental in the decision to charge Trooper Morningstar. The Michigan State

Police released a statement in support of Morningstar, noting "Trooper Morningstar's actions were based on the totality of the circumstances, including Williams' actions and the potential for personal injury."

With only the minimal information available, it is impossible to make a determination on the reasonableness of the shooting. I'd note, however, that the video,

however descriptive, does not tell the entire story. Video, in this case as in others, may only provide more material with which to second guess officers. No doubt the video will be slowed, enhanced and enlarged, and then used to attack the officer's perception of the situation. These situations are always easier to handle from the backend of a video remote than on the scene with a split second to make a decision.

COURT DECISIONS

Two very important decisions, one from the Supreme Court and one from the 9th Circuit Court, have been recently released. The 9th Circuit Court decision, *Smith v. City of Hemet*, which dramatically broadens the definition of deadly force, is reviewed in detail by our Michael Stone later in this Journal.

In the Supreme Court case, Brosseau v. Haugen, the Court overruled the 9th Circuit Court in deciding that an officer involved in a Washington state shooting of a suspect was entitled to qualified immunity.

The facts of the case are as follows – Officer Brosseau went to a 911 call reference men fighting. On arrival, one of the men, Kenneth Haugen, fled the scene. Officer Brosseau knew that Haugen was wanted on a no-bail felony warrant stemming from drug charges. Other officers, including a K-9 officer, joined in the search for Haugen. After about 30 minutes, Haugen, with Brosseau in foot pursuit, ran to his car. He managed to get in the car and lock the door before Brosseau could catch him. Brosseau believed Haugen had run to the car to retrieve a weapon.

Brosseau ordered Haugen, at gunpoint, to exit the car. Haugen ignored the command, started the car, and began to pull away. Brosseau fired one shot through the window striking Haugen in the back. Haugen survived, was convicted of felony eluding, and then sued Brosseau for excessive use of force.

Of the issue of qualified immunity, the 9th Circuit, a notoriously liberal court, ruled against Officer Brosseau, who appealed to the Supremes. The Supreme Court overruled the 9th Circuit, ruling that qualified immunity shields an officer from litigation when she makes a decision that, even if constitutionally deficient, reasonably misapprehends the law governing the circumstances she confronted.

Brosseau testified she shot as she was concerned that Haugen's attempt to flee posed a continuing threat to other officers and civilians in the area. The court noted that the officer's action fell in the "hazy border between excessive and acceptable force." (Isn't this where we live??)

The case is Brosseau v. Haugen, S. Ct., No. 03-1261, December 13, 2004.

MORE ON THE TASER

We received a lot of comments on the Taser article published in our last Use of Force Journal, including a request by Taser International to reprint the article on their website. We also got an e-mail from a reader in Great Britain who advised the same debate is raging on the other side of the Atlantic.

In the meantime, another study on the safety of the Taser has been released by The Potomac Institute for Policy Studies, a D.C. area think tank, using an interesting methodology. They used the same approach utilized by the Federal Drug Administration which considers risks relative to product efficacy. The approach recognizes that no product is risk free. One interesting statistic noted in the study was a comparison to airbags, which are estimated to save 50 people for each person killed by an airbag. The same ratio for Taser is estimated by the study to be over 700:1.

The entire study can be viewed at www.potomacinstitute.org.

In an interesting related note, the Scottsdale Police Department is providing Tasers for all 370 of its officers but has prohibited them from being tased as part of the training. Most departments have made a voluntary exposure part of the Taser training for two reasons. First, it gives officers confidence in the effectiveness of the Taser. Second, it provides a vivid glimpse into the importance of weapon retention. A suspect who manages to take away an officer's Taser becomes a deadly threat.

The possibility of injury cited by the Scottsdale Chief in this decision can be mitigated by proper safety practices. Our agency, the Cincinnati Police Department, had over 900 officers submit to a voluntary exposure without a single injury reported.

PLEASE FORWARD ARTICLES OR OTHER MATERIAL OF INTEREST TO THE EDITOR AT <u>HOWARDRAHTZ@ILEETA.ORG</u> OR SNAIL MAIL TO THE POLICE ACADEMY, 800 EVANS STREET, CINCINNATI, OH 45224. STAY SAFE.

In This Issue

Take your time!! This issue of The ILEETA Use of Force Journal contains over 40 pages of great information. There is info on legal cases, commentary on current issues, and a very special appearance by Lieutenant Colonel Dave Grossman, who sent us an excerpt from his most recent book, On Combat. We're honored to have Lt. Col. Grossman writing for us and he joins a distinguished group of writers covering a multitude of topics. This issue is not meant to skimmed over, but read and absorbed over time. Enjoy!

No Less Lethal?? – Laura Scarry is a former police officer and a full-time police defense attorney in the Chicago area. Laura is also a Charter Member of ILEETA. In this issue Ms.

Scarry reviews a case where the plaintiffs are claiming that the failure to provide officers with less lethal force options creates liability for the police department. Ms. Scarry's legal analysis of the case is instructive. Ms. Scarry can be reached at LauraScarry@ileeta.org.

AFTERFORCE – Jim Smith is a thirty year veteran of law enforcement and in this issue's AFTERFORCE column, Jim sounds off on media brutality and how to prepare for the aftermath of a force incident. Jim has served in law enforcement from cadet to chief of police. He is a graduate of NUTI's EMP session 94-01 and SPI's CODC 9th session. He has trained hundreds of law enforcement officers throughout the country. He is a Charter Member of both ILEETA and the Illinois Police Instructor Trainer's Association. He is currently a trainer/consultant in up state New York, and a Police Officer for the New York, Susquehanna & Western Railway Police Department. He can be reached via e-mail at: JimSmith@ileeta.org

Book Review – Joe Truncale provides us with a review of <u>On Combat</u>, by Dave Grossman and Loren Christensen. Joe is a Law Enforcement Trainer and ILEETA Board Member. He can be contacted at <u>JoeTrucale@ileeta.org</u>. Following Joe's review, we have an excerpt from the book.

Of Sheep, Wolves, and Sheepdogs – Lt. Col. Dave Grossman has been gracious enough to provide us this thought-provoking excerpt from his most recent book. Dave is a member of the ILEETA Advisory Board, and can be contacted at DaveGrossman@ileeta.org.

Deadly Force – Harvey Hedden reviews weapon-mounted lights and some of the new alternatives available. Harvey is a lieutenant with the Kenosha County, Wisconsin, Sheriff's Department, and is currently the commander of a multi-jurisdiction drug unit. He is also the Assistant Executive Director of ILEETA. An active firearms instructor and competitive shooter, Harvey has taught various use of force topics across the nation. Lieutenant Hedden can be reached HarveyHedden@ileeta.org

You Make the Call – Larry Smith discusses a high profile force incident and how a department might effectively handle it. Larry is a 35 year veteran of the San Diego Police Department (CA) and teaches arrest and control tactics nationally and internationally. He is judicially recognized as an expert witness on use of force issues. He can be reached at LarrySmith@ileeta.org.

Use of Force Training – Brian Kinnaird reviews the issue of trainer certification and liability. Brian A. Kinnaird is the Director of Justice Studies at Fort Hays State University in Hays, KS. He is also an author, police trainer and consultant in the field of use of force and defensive tactics. A former law enforcement officer, Dr. Kinnaird is a Charter Member of ILEETA, and can be reached at BrianKinnaird@ileeta.org.

K-9 – **Deadly Force** – **Michael Stone** reviews a recent 9th Circuit Court decision which redefines deadly force. Though the case applies directly only to those officers working in the 9th Federal Circuit, the implications are crucial for all of us. Michael P. Stone is a police defense attorney who has represented federal, state and local law enforcement officers and

agencies for 25 years. He teaches police discipline and civil rights for many California agencies. He is currently General Counsel for the Riverside Sheriffs' Association, Legal Defense Trust, the Los Angeles Police Command Officers Association (Deputy Chiefs, Commanders and Captains), and other Southern California Associations. Mr. Stone can be reached at MikeStone@ileeta.org.

Search and Seizure for Parolees – In a second article, **Michael Stone** reviews the rules for search and seizure related to parolees.

When Excessive Use of Force Occurs – Neil Trautman provides a review of some research that looks at the so called "Blue Curtain of Silence" surrounding police misconduct. Neal Trautman is the Director of the non-profit National Institute of Ethics. He has authored 12 published books, made 67 conference presentations and conducted over 600 ethics/leadership seminars. He chaired the IACP Ethics Training Committee, and co-chaired the IACP Police Image and Ethics Committee. He can be reached at NealTrautman@ileeta.org.

ILEETA Information and Ed Nowicki's Commentary – Find out how your association is doing and the latest info on the 2005 ILEETA Conference. The 2006 ILEETA Conference dates are also announced!



No Civil Liability in the Absence of Less-Lethal Weapons

by Laura L. Scarry

In today's column, I review a recent decision from the Third Circuit Court of Appeals that addresses the issue of whether a police department's failure to issue less lethal weapons amounts to a constitutional violation and therefore imposes civil liability. In Carswell v. Borough of Homestead, 381 F.3d 235 (3rd Cir. 2004), Tonya Carswell filed a federal lawsuit against the Borough of Homestead, Pennsylvania; the police chief, Mark Zuger; and Officer Frank Snyder alleging that the defendants violated her husband's constitutional rights when Officer Snyder shot and killed her husband.

The facts of the case are as follows: Tonya had been married to her husband, Gilbert, for approximately three and a half years. The marriage was plagued by domestic violence causing the couple to become estranged. Four months prior to the shooting (which occurred on November 18, 1999), Tonya applied for an order of protection from the court because Gilbert was "an immediate and present danger of abuse." Not long after obtaining the order of protection, the Homestead Police were called to the Carswell residence because Gilbert, despite the protective order, came home and punched Tonya. A couple of weeks later, Tonya applied for a second order of protection because Gilbert had ripped a telephone wire from the wall, broken a table, and threatened to hit her and sexually assaulted her. In August, the Homestead Police responded to the home after Gilbert struck Tonya, this time in the

face with his fist. In the middle of October 1999, the police were summoned again because Gilbert violated the order of protection. Gilbert escaped, ramming a police car in the process. A felony warrant was issued for his arrest.

Then in the late evening hours of November 17, 1999, Gilbert entered the house on four separate occasions. On



each occasion, the police were unable to apprehend him. After the second incident, Tonya armed herself with a butcher knife. After the third incident, a police officer stayed in the

house with Tonya for over an hour and the third shift decided to stay on duty and assist the midnight shift in case Gilbert made further attempts to come into the house. Gilbert, ever persistent, made a fourth entry into the house but was able to escape as he had on the prior occasions. To protect Tonya, an officer was stationed inside the house and several officers set up a perimeter around the house. Not long after, Gilbert was spotted a short distance away. An officer was able to corner Gilbert and ordered him on the floor of a porch of a nearby residence. Gilbert gave indications that he was voluntarily surrendering but then he suddenly jumped over the porch rail and escaped once again. Several officers pursued Gilbert.

At one point, Gilbert was running up an alleyway towards Officer Snyder, who was operating a squad car. Officer Snyder stopped his vehicle and positioned it diagonally across the alley. Officer Snyder

exited and went to the right rear bumper where he stood approximately 2-3 feet away from the car. Gilbert continued to run towards Officer Snyder despite being ordered to stop. As he was running, Gilbert had his hands extended out in front of him, about shoulder height, with his palms facing forward. Officer Snyder could see that Gilbert's hands were empty as he approached the front of the squad car. When Gilbert was approximately 2-3 feet away from Officer Snyder, Snyder fired one fatal shot into Gilbert's chest.

Officer Snyder only had his gun available as a weapon. He did not carry a baton or pepper spray, nor did the police department require these items to be carried. The police department authorized officers to carry these weapons but only after the officer successfully completed the training on the use of the equipment. Officer Snyder had not received any training on the supplemental equipment and therefore was only armed with his gun.

Tonya filed a federal civil rights lawsuit against Officer Snyder, the chief of police and the police department alleging that they violated Gilbert's constitutional rights when Officer Snyder shot and killed Gilbert. The case proceeded to trial where evidence was introduced that Officer Snyder did not know that Gilbert was unarmed. In fact, Officer Snyder believed that Gilbert may have had a weapon on his person. Officer Snyder also testified that if he had had less lethal force available at the time of the fatal shooting, he would not have pulled his gun out of his holster as he did. The chief of police also testified, stating that the police department's manual authorized the use of deadly force according to the use of force continuum. He also explained that the department's policy did not require that officers become qualified to use pepper

spray. The chief of police also stated that Officer Snyder had been an officer for 14 years and did not have any complaints against him.

After Tonya had presented her evidence, the defendants—Snyder, Zuger and the Borough—moved for judgment as a matter of law. The court granted the defendants' motion, finding that Officer Snyder was entitled to qualified immunity and that the granting of immunity relieved the chief of police and the police department from liability. Tonya appealed the trial court's ruling.

On appeal, the court affirmed the granting of qualified immunity to Officer Snyder. Without going into a detailed analysis for purposes of this article, the appellate court stated that qualified immunity can apply in circumstances where reasonable mistakes are made "as to the legal constraints on particular police



conduct If the officer's mistake as to what the law requires is reasonable, . . . the officer is entitled to the

immunity defense." Carswell, 381 F.3d at 242. The appellate court stated that it has followed this doctrine even in excessive force cases where the police have shot citizens. The court then found that in these circumstances, a reasonable police officer could believe that firing at the suspect was a proper response. "A reasonable officer would not be expected to take the risk of being assaulted by a fleeing man who was so close that he could grapple with him and seize the gun. Our recitation of these events is a discussion in slow motion of an incident that took place in a matter of

seconds. Officer Snyder had no time for the calm, thoughtful deliberation typical of an academic setting." Id. at 243.

The court concluded that at most,
Officer Snyder's conduct was a mistake that
was reasonable under the circumstances
stating that "we must never allow the
theoretical, sanitized world of our
imagination to replace the dangerous and
complex world that policemen face every
day. What constitutes 'reasonable' action
may seem quite different to someone facing
a possible assailant than to someone
analyzing the question at leisure."

Finding that Officer Snyder was entitled to qualified immunity, the appellate court affirmed the decision by the lower court that the chief of police and the municipality were not liable as well. Tonya's claims against the municipality were summed up as follows: 1) the police department failed to properly train its police officers in the constitutional use of deadly force and, 2) the police department failed to equip its officers with alternatives to lethal weapons.

In order to establish liability on behalf of the municipality/police department, the court stated that Tonya must demonstrate that the municipality was deliberately

"Mandating the type of equipment that police officers might find useful in the performance of their myriad duties in frequently unanticipated circumstances is a formidable task indeed."

indifferent to the rights of people with whom the police come into contact. In addition to proving deliberate indifference, Tonya must also prove that the inadequate training caused the constitutional violation. In this case, the appellate court found that the facts failed to establish deliberate indifference or causation. There was evidence at trial that Officer Snyder attended annual in-service training regarding the use of force continuum and that he reviewed the policy manual. In essence, the evidence failed to show that there was a lack of training on the use of deadly force that amounted to deliberate indifference.

With respect to Tonya's claim that the police department should have equipped its police officers with less lethal force to avoid resorting to the use of deadly force when other equipment would have sufficed, the appellate court stated that it has, "...never recognized municipal liability for a constitutional violation because of failure to equip police officers with non-lethal weapons." Id. at 245. In rendering that finding, the court cited Plakas v. Drinski, 19 F.3d 1143, 1150-51 (7th Cir. 1994): "We do

not think it is wise policy to permit every jury in these cases to hear expert testimony that an arrestee would have been uninjured if only the police had been able to use disabling gas or a capture net or a taser (or even a larger number of police officers) and then decide that a municipality is liable because it failed to buy this equipment (or increase its police force). There can be reasonable debates about whether the Constitution also enacts a code of criminal procedure, but we think it is clear that the Constitution does not enact a police administrator's equipment list." The appellate court also stated that "mandating the type of equipment that police officers might find useful in the performance of their myriad duties in frequently unanticipated circumstances is a formidable task indeed. It is better assigned to municipalities than federal courts."

I couldn't agree more.



SURVIVING THE AFTERMATH OF YOUR USE OF FORCE!

Ву

Jim Smith

This morning as I readied for my daily grind, I had the television in my bedroom tuned to the NBC's "Today Show." (Not my choice, I was overridden.) There on the screen was the ineffable Matt Lauer grilling Sheriff Lee Baca from Los Angles about his

deputies shooting at a suspect's vehicle several times. Mr. Lauer, no doubt a use of force expert in his own right due to the fact that, um well I don't quite know why

his is an expert but he seems to think he is. Whether he is or not is debatable but he does have the *power* to make your use of force decisions into racially motivated criminal



acts simply by his voice inflections, mannerisms and ambush style interviewing and as you know from my previous columns what I call "Media Brutality!" Anyone in an officer's shoes might ask, "Has Mr. Lauer ever walked down a dark alley in search of someone he knew would harm him if confronted? Has he ever run a foot chase, or chased a car at high speeds? Have his children or wife ever been scorned, ridiculed or even threatened? Have his wife and children ever looked at him with those eyes?" You know the kind of eyes I am talking about, the kind that say please come home safe? Well then I think that a use of force expert he is not.

The halo effect of 9/11 is gone; it lasted six months, maybe a year. It is okay to beat up on the cops again; in fact it is in vogue again. In every newsroom across the country, in the boardrooms of the Hollywood studios (and on every T.V. channel with some obvious exceptions) the rule of thumb seem to be, depict the cops any way you can that will turn a buck, win the sweeps, garner an Emmy, or Oscar, or win the Pulitzer.

Recently a new phenomenon has crept into the American lexicon called the "CSI Effect." I have not quite figured out just why evidence technicians are now lead detectives, chase suspects, interrogate suspects and have become individuals who possess in their own minds the combined knowledge of every science known to mortal man, but then again you probably are puzzled too. Just think of the kind of money they can make in the private sector as defense witnesses when they retire.

As funny as the CSI Effect might be to professional law enforcement people, it should also be viewed as deadly serious. Why? Simply because your future might someday hinge on what a jury believes. No matter how many CSI Miami's, Las Vegas's, New York's, Chicago's, Dallas's or

Podunk's there are or will be, and no matter where you are or where you go in law enforcement, we will always have "Dragnet" and "Just the Facts Ma'am!" that is the creed we all swear by.

Swearing or affirming "to tell the truth, the whole truth, and nothing but the truth, so help you _ _ _ (Just trying to maintain the political correctness of my column, you fill in the blanks) is a chore in itself because the dominant media has never let



the truth,
sworn to or
otherwise,
get in the
way of a
good story.
That is why it
is critical that
you
understand
what
AfterForce is,
how it affects
the facts,

how it affects you, your family, your department and even your communities.

Headlines that read like "LOS ANGELES (AP) - California officials promise a thorough investigation of yesterday's chase that ended in a barrage of police fire in Compton." are what AfterForce is all about. Most law enforcement use of force instructors and training programs teach the how to, the when to, and the why to applications of the use of force. For years an axiom in the use of force was, "Ask yourself are my actions court defensible?" When it comes to AfterForce maybe a better question to ask is; "will my actions be media defensible?"

Many law enforcement officers and administrators may disagree with that

statement, but there is not enough emphasis placed on the psychological effects of media brutality on officers, their families, their departments and their communities. The law enforcement officer must have his or her own CSI Effect, what I call the Critical Statement Index. Post shooting, post use of force applications statements from law enforcement executives, prosecutors, mayors and the officers themselves, weigh heavily upon how that use of force application will be viewed by the general public. What you say, how you photograph, and your mannerisms will all affect how you are heard.

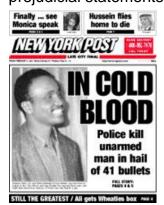
Rick Rosenthal, noted media expert and law enforcement trainer, in his media training for law enforcement makes the statement, "You must feed the animals", meaning you must give the media information. Although the problem is, do you give them a snack, a big lunch, or a seven course gourmet meal? This is where I think law enforcement loses sight of reality, especially in high media profile cases.

The focus is always on legalities, criminal and civil, and we always seem to lose sight of the health, safety, and well being of the officers involved, they become the bad guys and the focus in never on the suspect, and his decisions to violate the law. Ask yourselves when is the last time that you heard a press conference where a law enforcement spokesperson shifted the focus back to the causative factors of the application of the use of force?

When is an individual responsible for his or her own choices and decisions? Apparently never, except if you are a law enforcement officer! It is this writer's humble opinion that this tactic is rarely if ever used, because we have always lived

by another axiom, which is "Never argue with a man that buys his ink by the barrel!" Meaning of course a newspaper, although that meaning has now extended to all electronic media that reach the masses on a daily basis.

They saw it on TV, or read about it in the newspaper or read it on-line so it must be true. This is the CSI Effect and it is affecting the outcome of trials and the careers of all law enforcement officers, because the jury pool is polluted with prejudicial statements and the political



views of celebrities, who can get their face and their views on almost any media outlet, for any cause they might come up with. Remember the Amadou Diallo shooting in New York City? Even the Pro-Cop daily newspaper

the New York Post could not resist the banner headline "IN COLD BLOOD" as the photo above illustrates. Then after all was said and done and all four officers were exonerated the dominant media continued to fan the flames.

The much acclaimed PBS Network
News Hour with Jim Lehrer ran a story
about a year after the acquittal on what has
happened in New York City since the
acquittal of four police officers in the
shooting death of immigrant Amadou Diallo.
(http://www.pbs.org/newshour/bb/law/janjune00/diallo_3-3.html). In their coverage
they tout a New York Times /CBS News
poll which has 30% of the people polled
agreeing with the Diallo verdict, 50%
disagreeing and 20% undecided. Your CSI
Effect should be focused on those 20%
undecideds. The article attempts to be
balanced but in the end is an indictment of

law enforcement in general, even with the efforts of Patrick Lynch, the NYPD PBA President who is interviewed for the piece.

It is not just law enforcement antagonists like the Reverend Al Sharpton, who is quoted in the article as saying "You're talking about 41 shots -- four different cops -- and the jury says nothing is wrong. And it almost sends the signal that

New York Times/CBS News Poll
Opinion on the Diable Verdict

AGREE: 30%

DISAGREE: 50%

UNDECIDED: 20%

whatever a policeman says is enough and that police have the right, based on their

own imagined fears, no matter how unfounded they may be, to kill us -- excessively kill us -- and that there's nothing criminal about it. I think that that is what made the verdict so appalling to us because it's almost like you become the sitting duck to the whims of any police person."

It is music celebrities like Bruce Springsteens with his song <u>American Skin</u> 41 shots, whose lyrics go like this

"41 shots (repeat)

41 shots and we'll take that ride Across this bloody river to the other side 41 shots they cut through the night You're kneeling over a body in the vestibule Praying for his life

Chorus:
Is it a gun?
Is it a knife?
Is it a wallet?
This is your life
It ain't no secret
The secret my friend
You can get killed just for living in your American skin
41 shots (repeat)
Lena gets her son ready for school

You got to understand the rules
Promise me if an officer stops you'll always be polite
Never ever run away and promise mama you'll keep
your
hands in sight
(Repeat Chorus)
41 shots (repeat)
(Repeat Chorus)
41 shots and we'll take that ride
Across this bloody river to the other side
41 shots my boots caked in mud
We're baptized in these waters and in each other's
blood
(Repeat Chorus)
41 shots

-- "41 Shots" (aka "American Skin") by Bruce Springsteen"

Thank God for the four officers involved in the Diallo case, that the jury could not be polluted, but as you can see it is not only the news media that shape AfterForce and Media Brutality, it is often well placed lyrics in a song, like American Skin or lines in a movie.

Learn to develop your own CSI effect. McDonalds has its BIG MAC, I have my "IMAC's" (Is My Asset Covered) – more on my IMAC's in my next column.

Until then ladies and gentlemen remember and as always, do not let your guards down, stay alert, don't worry about what your detractors say, be liability conscious not liability paranoid.

Concentrate on the job at hand, don't allow political correctness to dictate how you perform your jobs, trust your instincts, and make us proud like we know you will. Most of all stay safe!! God Bless America and God Bless Each and Every one of you!!!

Any Comments or suggestions on this or other After Force columns can be sent to Jim Smith at JimSmith@ileeta.org

Book Review

by Joe Truncale

Sheep, Wolves and Sheep Dogs, Which Are You?

Lt. Col. Dave Grossman is one of the most well known trainers in the law enforcement and military community. He is a West Point psychology professor of military science. He was also an Army Ranger and is the author of numerous books on combat psychology. In his recent book. On Combat he relates how one Vietnam veteran once told him "Most people in our society are sheep. They are kind, gentle, productive creatures who can only hurt one another by accident." This is true. This not a put down of people who fall into the sheep category. Most people do not desire to hurt their fellow human beings. This is why the military uses various psychological methods to train their people to kill, when the situation demands such action. The sheep in our society would do fine, if it were not for the hard reality of the wolf. The wolfs in society are the predators. They are the criminals and psychopaths who seek out the sheep. You know what the wolves call the sheep? Dinner. The wolf agrees totally with the sheep when it comes to gun control. They want the sheep helpless, afraid and always unarmed. The sheep dogs are the ethical warriors in our society. They are the protectors of the sheep, even though the sheep do not trust or even like the sheep dogs. However, they are quick to hide behind the sheep dogs when the wolf is around. The sheep dog is not superior to

the sheep, but recognizes his vital role as protector without seeking credit.

In the same way the military and law enforcement community is despised and hated by a segment of society, so the sheep dog is distrusted by the sheep. This is because the sheep dog can be just as ruthless and aggressive as the wolf when the situation demands it. This upsets the sheep. The sheep, the wolf and the sheep dog example may seem simplistic to explain our complex society. Nevertheless, to a large extent it is true. Before I read and heard Lt. Col. Grossman's insights, I used to classify people in our society as predators, average citizens and warriors. Sheep, wolf or sheep dog, which are you?

Every law enforcement trainer, military trainer, and warrior arts teacher should get a copy of Grossman's fantastic book, *On Combat.* It is a must read for anyone interested in the psychology of combat.

FIVE STAR HIGHEST RATING

Editors Note – An excerpt from Colonel Grossman's book can be found following this review.

About Joe Truncale – Joe is a Law Enforcement Trainer and ILEETA Board Member. He can be contacted at JoeTruncale@ileeta.org.

Of Sheep, Wolves, and Sheepdogs

by Lt. Col. Dave Grossman

"Honor never grows old, and honor rejoices the heart of age. It does so because honor is, finally, about defending those noble and worthy things that deserve defending, even if it comes at a high cost. In our time, that may mean social disapproval, public scorn, hardship, persecution, or as always, even death itself. The question remains: What is worth defending? What is worth dying for? What is worth living for?"

WILLIAM J. BENNETT NOVEMBER 24, 1997

One Vietnam veteran, an old retired colonel, once said this to me: "Most of the people in our society are sheep. They are kind, gentle, productive creatures who can only hurt one another by accident. This is true. Remember, the murder rate is six per 100,000 per year, and the aggravated assault rate is four per 1,000 per year. What this means is that the vast majority of Americans are not inclined to hurt one another.

Some estimates say that two million Americans are victims of violent crimes every year, a tragic, staggering number, perhaps an all-time record rate of violent crime. But there are almost 300 million Americans, which means that the odds of being a victim of violent crime is considerably less than one in a hundred on any given year. Furthermore, since many violent crimes are committed by repeat offenders, the actual number of violent

citizens is considerably less than two million.

Thus there is a paradox, and we must grasp both ends of the situation: We may well be in the most violent times in history, but violence is still remarkably rare. This is because most citizens are kind, decent people who are not capable of hurting each other, except by accident or under extreme provocation. They are sheep.

I mean nothing negative by calling them sheep. To me it is like the pretty, blue robin's egg. Inside it is soft and gooey but someday it will grow into something wonderful. But the egg cannot survive without its hard blue shell. Police officers, soldiers and other warriors are like that shell, and someday the civilization they protect will grow into something wonderful. For now, though, they need warriors to protect them from the predators.

Then there are the wolves, the old war veteran said, and the wolves feed on the sheep without mercy. Do you believe there



are wolves out there who will feed on the flock without mercy? You better believe it. There are evil men in this world and

they are capable of evil deeds. The moment you forget that or pretend it is not so, you

become a sheep. There is no safety in denial.

Then there are sheepdogs, he went on, and I'm a sheepdog. I live to protect the flock and confront the wolf. Or, as a sign in one California law enforcement agency put it, "We intimidate those who intimidate others."

If you have no capacity for violence then you are a healthy productive citizen: a sheep. If you have a capacity for violence and no empathy for your fellow citizens, then you have defined an aggressive sociopath--a wolf. But what if you have a capacity for violence, and a deep love for your fellow citizens? Then you are a sheepdog, a warrior, someone who is walking the hero's path. Someone who can walk into the heart of darkness, into the universal human phobia, and walk out unscathed.

The Gift of Aggression

Everyone has been given a gift in life. Some people have a gift for science and some have a flair for art. And warriors have been given the gift of aggression. They would no more misuse this gift than a doctor would misuse his healing arts, but they yearn for the opportunity to use their gift to help others.

What goes on around you...compares little with what goes on inside you.

RALPH WALDO EMERSON

These people, the ones who have been blessed with the gift of aggression and a love for others, are our sheepdogs. These are our warriors.

One career police officer wrote to me about this after attending one of my Bulletproof Mind training sessions:

I want to say thank you for finally shedding some light on why it is that I can do what I do. I always knew why I did it. I love my [citizens], even the bad ones, and had a talent that I could return to my community. I just couldn't put my finger on why I could wade through the chaos, the gore, the sadness, if given a chance try to make it all better, and walk right out the other side.

Let me expand on this old soldier's excellent model of the sheep, wolves, and sheepdogs. We know that the sheep live in denial; that is what makes them sheep. They do not want to believe that there is evil in the world. They can accept the fact that fires can happen, which is why they want fire extinguishers, fire sprinklers, fire alarms and fire exits throughout their kids' schools. But many of them are outraged at the idea of putting an armed police officer in their kid's school. Our children are dozens of times more likely to be killed, and thousands of times more likely to be seriously injured, by school violence than by school fires, but the sheep's only response to the possibility of violence is denial. The idea of someone coming to kill or harm their children is just too hard, so they choose the path of denial.

The sheep generally do not like the sheepdog. He looks a lot like the wolf. He has fangs and the capacity for violence. The difference, though, is that the sheepdog must not, cannot and will not ever harm the sheep. Any sheepdog who intentionally harms the lowliest little lamb will be punished and removed. The world cannot work any other way, at least not in a

representative democracy or a republic such as ours.

Still, the sheepdog disturbs the sheep. He is a constant reminder that there are wolves in the land. They would prefer that he didn't tell them where to go, or give them traffic tickets, or stand at the ready in our airports in camouflage fatigues holding an M-16. The sheep would much rather have the sheepdog cash in his fangs, spray paint himself white, and go, "Baa."

Until the wolf shows up. Then the entire flock tries desperately to hide behind one lonely sheepdog. As Kipling said in his poem about Tommy, the British soldier:

While it's Tommy this, an' Tommy that, an' "Tommy, fall be'ind,"

But it's "Please to walk in front, sir," when there's trouble in the wind.

There's trouble in the wind, my boys, there's trouble in the wind.

O it's "Please to walk in front, sir," when there's trouble in the wind.

The students, the victims, at Columbine High School were big, tough high school students, and under ordinary circumstances they would not have had the time of day for a police officer. They were not bad kids; they just had nothing to say to a cop. When the school was under attack, however, and SWAT teams were clearing the rooms and hallways, the officers had to physically peel those clinging, sobbing kids off of them. This is how the little lambs feel about their sheepdog when the wolf is at the door. Look at what happened after September 11, 2001, when the wolf pounded hard on the door. Remember how America, more than ever before, felt differently about their law enforcement officers and military personnel? Remember how many times you heard the word hero?

Understand that there is nothing morally superior about being a sheepdog; it is just what you choose to be. Also understand that a sheepdog is a funny



critter: He is always sniffing around out on the perimeter, checking the breeze, barking at

things that go bump in the night, and yearning for a righteous battle. That is, the young sheepdogs yearn for a righteous battle. The old sheepdogs are a little older and wiser, but they move to the sound of the guns when needed right along with the young ones.

Here is how the sheep and the sheepdog think differently. The sheep pretend the wolf will never come, but the sheepdog lives for that day. After the attacks on September 11, 2001, most of the sheep, that is, most citizens in America said, "Thank God I wasn't on one of those planes. The sheepdogs, the warriors, said, "Dear God, I wish I could have been on one of those planes. Maybe I could have made a difference." When you are truly transformed into a warrior and have truly invested yourself into warriorhood, you want to be there. You want to be able to make a difference.

While there is nothing morally superior about the sheepdog, the warrior, he does have one real advantage. Only one. He is able to survive and thrive in an environment that destroys 98 percent of the population.

There was research conducted a few years ago with individuals convicted of violent crimes. These cons were in prison for serious, predatory acts of violence: assaults, murders and killing law enforcement officers. The vast majority said that they specifically targeted victims by body language: slumped walk, passive behavior and lack of awareness. They chose their victims like big cats do in Africa, when they select one out of the herd that is least able to protect itself.

However, when there were cues given by potential victims that indicated they would not go easily, the cons said that they would walk away. If the cons sensed that the target was a "counter-predator," that is, a sheepdog, they would leave him alone unless there was no other choice but to engage.

One police officer told me that he rode a commuter train to work each day. One day, as was his usual, he was standing in the crowded car, dressed in blue jeans, T-shirt and jacket, holding onto a pole and reading a paperback. At one of the stops, two street toughs boarded, shouting and cursing and doing every obnoxious thing possible to intimidate the other riders. The officer continued to read his book, though he kept a watchful eye on the two punks as they strolled along the aisle making comments to female passengers, and banging shoulders with men as they passed.

As they approached the officer, he lowered his novel and made eye contact with them. "You got a problem, man?" one of the IQ-challenged punks asked. "You think you're tough, or somethin?" the other

asked, obviously offended that this one was not shirking away from them.

"As a matter of fact, I am tough," the officer said, calmly and with a steady gaze.

The two looked at him for a long moment, and then without saying a word, turned and moved back down the aisle to continue their taunting of the other passengers, the sheep.

Some people may be destined to be sheep and others might be genetically primed to be wolves or sheepdogs. But I believe that most people can choose which one they want to be, and I'm proud to say that more and more Americans are choosing to become sheepdogs.

Seven months after the attack on September 11, 2001, Todd Beamer was honored in his hometown of Cranbury, New Jersey. Todd, as you recall, was the man on Flight 93 over Pennsylvania who called on his cell phone to alert an operator from United Airlines about the hijacking. When



he learned of the other three passenger planes that had been used as weapons, Todd

dropped his phone and uttered the words, "Let's roll," which authorities believe was a signal to the other passengers to confront the terrorist hijackers. In one hour, a transformation occurred among the passengers--athletes, business people and parents--from sheep to sheepdogs and together they fought the wolves, ultimately

saving an unknown number of lives on the ground.

Here is the point I like to emphasize, especially to the thousands of police officers and soldiers I speak to each year. In nature the sheep, real sheep, are born as sheep. Sheepdogs are born that way, and so are wolves. They didn't have a choice. But you are not a critter. As a human being, you can be whatever you want to be. It is a conscious, moral decision.

There is no safety for honest men except by believing all possible evil of evil men.

Edmund Burke

If you want to be a sheep, then you can be a sheep and that is okay, but you must understand the price you pay. When the wolf comes, you and your loved ones are going to die if there is not a sheepdog there to protect you. If you want to be a wolf, you can be one, but the sheepdogs are going to hunt you down and you will never have rest, safety, trust or love. But if you want to be a sheepdog and walk the warrior's path, then you must make a conscious and moral decision every day to dedicate, equip and prepare yourself to thrive in that toxic, corrosive moment when the wolf comes knocking at the door.

For example, many officers carry their weapons in church. They are well concealed in ankle holsters, shoulder holsters or inside-the-belt holsters tucked into the small of their backs. Anytime you go to some form of religious service, there is a very good chance that a police officer in your congregation is carrying. You will never know if there is such an individual in

your place of worship, until the wolf appears to slaughter you and your loved ones.

I was training a group of police officers in Texas, and during the break, one officer asked his friend if he carried his weapon in church. The other cop replied, "I will never be caught without my gun in church." I asked why he felt so strongly about this, and he told me about a police officer he knew who was at a church massacre in Ft. Worth, Texas, in 1999. In that incident, a mentally deranged individual came into the church and opened fire, gunning down 14 people. He said that officer believed he could have saved every life that day if he had been carrying his gun. His own son was shot, and all he could do was throw himself on the boy's body and wait to die. That cop looked me in the eye and said, "Do you have any idea how hard it would be to live with yourself after that?"

Some individuals would be horrified if they knew this police officer was carrying a weapon in church. They might call him paranoid and would probably scorn him. Yet these same individuals would be enraged and would call for "heads to roll" if they found out that the airbags in their cars were defective, or that the fire extinguisher and fire sprinklers in their kids' school did not work. They can accept the fact that fires and traffic accidents can happen and that there must be safeguards against them. Their only response to the wolf, though, is denial, and all too often their response to the sheepdog is scorn and disdain. But the sheepdog quietly asks himself, "Do you have any idea how hard it would be to live with yourself if your loved ones were attacked and killed, and you had to stand there helplessly because you were unprepared for that day?"

The warrior must cleanse denial from his thinking. Coach Bob Lindsey, a renowned law enforcement trainer, says that warriors must practice when/then thinking, not if/when. Instead of saying," If it happens then I will take action," the warrior says, "When it happens then I will be ready."

It is denial that turns people into sheep. Sheep are psychologically destroyed by combat because their only defense is denial, which is counterproductive and destructive, resulting in fear, helplessness and horror when the wolf shows up.

Denial kills you twice. It kills you once, at your moment of truth when you are not physically prepared: You didn't bring your gun; you didn't train. Your only defense was wishful thinking. Hope is not a strategy. Denial kills you a second time because even if you do physically survive, you are psychologically shattered by fear, helplessness, horror and shame at your moment of truth.

Chuck Yeager, the famous test pilot and first man to fly faster than the speed of sound, says that he knew he could die.

I was always afraid of dying. Always. It was my fear that made me learn everything I could about my airplane and my emergency equipment, and kept me flying respectful of my machine and always alert in the cockpit.

Chuck Yeager

There was no denial for him. He did not allow himself the luxury of denial. This

acceptance of reality can cause fear, but it is a healthy, controlled fear that will keep you alive.

Gavin de Becker puts it like this in <u>Fear Less</u>, his superb post-9/11 book, which should be required reading for anyone trying to come to terms with our current world situation:

"...denial can be seductive, but it has an insidious side effect. For all the peace of mind deniers think they get by saying it isn't so, the fall they take when faced with new violence is all the more unsettling. Denial is a save-now-pay-later scheme, a contract written entirely in small print, for in the long run, the denying person knows the truth on some level."

And so the warrior must strive to confront denial in all aspects of his life, and prepare himself for the day when evil comes.

If you are a warrior who is legally authorized to carry a weapon and you step outside without that weapon, then you become a sheep, pretending that the bad man will not come today. No one can be one 24/7 for a lifetime. Everyone needs down time. But if you are authorized to carry a weapon, and you walk outside without it, just take a deep breath, and say this to yourself... "Baa."

This business of being a sheep or a sheepdog is not a yes-no dichotomy. It is not an all-or-nothing, either-or choice. It is a matter of degrees, a continuum. On one end is an abject, head-in-the-grass sheep and on the other end is the ultimate warrior. Few people exist completely on one end or the other. Most of us live somewhere in between. Since 9-11 almost everyone in America took a step up that continuum,

away from denial. The sheep took a few steps toward accepting and appreciating their warriors, and the warriors started taking their job more seriously. The degree to which you move up that continuum, away from sheephood and denial, is the degree to which you and your loved ones will

survive, physically and psychologically at your moment of truth.

The article above is excerpted from On Combat, by Dave Grossman with Loren Christen.

Deadly Force

Being able to identify a deadly threat is important to officer survival. If we fail to recognize the threat, we may not have to be concerned about criminal charges or liability. But if we misidentify a threat and shoot someone based on poor sensory perception, the suspect, the officer, the



agency and the community may pay a terrible price. For this reason firearms instructors are revisiting flashlight

assisted shooting techniques in the hope of improving our ability to accurately identify threats in reduced light. On the street, officers typically use the light to identify threats, but once shooting starts it is rare to find officers who maintained such a stance.

In the past 5 years, weapon mounted lights have also become so popular that nearly every handgun manufacturer



by Lt. Harvey Hedden

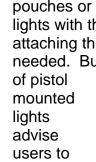
exclusive domain of tactical officers. But more street officers are adopting this equipment and some law enforcement agencies have actually provided it for all

their officers.



One of the problems with the pistol mounted light has been finding a

holster to accommodate the combination. As a result many officers have purchased



pouches or holders for their lights with the intention of attaching the light when it is needed. But manufacturers

only on an unloaded weapon. It is unlikely an officer will need his weapon but unload it prior to mounting the light and then reload it. Re-holstering also presents problems as the officer must remove the light first. Placing the hand in front of the muzzle

mount the light

during a high risk contact is a very dangerous condition.

Safariland is producing duty holsters that will accommodate weapon mounted lights. Other manufacturers are gearing up to meet this new demand. Plainclothes officers such as myself are somewhat limited in their choices. Fobus and Blade Tech currently make such a holster for the more popular police pistols. If you prefer leather you may have to look at a custom shop until the market dictates that production of a concealment holster is worthwhile.

Having used a weapon mounted light on duty and observing others using it, it is critical that we teach our officers that the weapon mounted light is not a tool of illumination but a weapon system. This sounds elementary but I have observed officers executing a search warrant begin searching the scene with their weapon mounted light after the all clear. They almost always corrected themselves but the potential danger and need for training in this area is clear. Officers must carry a flashlight, (and preferably a back up), for normal illumination duties and should not remove the weapon mounted light for this purpose. As with any new equipment, it is only as valuable as the training behind it.

Stay Safe



You Make the Call

By Larry Smith

Disclaimer: This scenario could be fictitious or factual and all evaluations of the incident are based solely on the information in print and not based on any hypothetical situations. The conclusion is strictly my opinion.

The Incident

James Farmer was an auto detailer and worked for several companies. He had an agreement with AAA Auto Auctions to do minor paint and body touch up for vehicles being readied for the auction. On the auction grounds he had a tent cover and a place to work. Here he stored thinners and hazardous waste products. Hazardous materials must be removed by a licensed HAZMAT company. Tiny Jones was his subordinate and worked at the auction lot.

Farmer received a call from Jones to tell him that the auction company wanted his hazardous waste removed from the property immediately. The auction used a forklift to lift two fifty-five gallon drums with hazardous waste onto his truck and ruptured one of the drums spilling the contents onto the truck and onto the ground. There was a falling out with Farmer and the management of AAA Auto Auction and they no longer wanted his services.

Farmer arrived at the auction yard and went into the main business office and was loud and boisterous toward the Controller, Alex Johnson. Farmer went into the auction yard and confronted another employee, Jim Jensen. Jensen had a good rapport with Farmer and gave him permission to enter the yard to get his vehicle and other property there.

Jones stayed with the vehicle and Farmer went back to the front of the offices to get his truck. Farmer drove through the guard gate without stopping and went to the area where Jones was. Meanwhile, Alex Johnson broadcast over the security radio that he wanted Farmer ejected from the yard. Security officers Tony Lopez and Jake Moreno responded to where Farmer was. Lopez was in plain clothes and Moreno was in a security guard uniform.

Rich Robertson, the security chief, had written policies that no was to enter the premises without signing in at the security entrance gate. Another policy stated that if a security officer had a verbal confrontation, to back off and call management.

Lopez must give a clear-cut message that Farmer was trespassing and order him to leave. Further, Farmer must be given adequate time to comply before an arrest.

Lopez approached Farmer's truck and Farmer was talking on a cell phone. Lopez told him he was making a citizen's arrest for trespassing. There was no immediate response from Farmer and Lopez opened the driver side door to the truck and grabbed Farmer by the left hand. Next Farmer struck Lopez in the face with his fist. Lopez, with the help of Moreno, drug Farmer out the truck. There were discrepancies as to whether Farmer landed on his buttocks on the ground or was pushed against the side of the truck for handcuffing.

In any event, Farmer was handcuffed and escorted to the front offices by Lopez and Moreno. The Police were called. When the police officer arrived there was discussion about the incident and the two parties, Lopez and Farmer, agreed not to take any legal action and Farmer was

released. They agreed not to make any police report and Farmer left with his equipment and products.

On the way home Farmer said his back was hurting and called the police from a place near the north city limits. The responding officer called back to the first officer that was at the auction yard and confirmed that no report was requested. The officer told Farmer this was a civil matter and he could pursue it in a civil court.

Two years later Farmer filed a lawsuit against the auction company for injuries sustained at the auction yard during the confrontation with Lopez.

The Investigation

During the investigation it was confirmed that Jensen had given permission for Farmer to enter the auction property. Farmer never stopped at the security gate nor complied with the rules by signing in. Alex Johnson was the person in charge and ordered Farmer off the property. Lopez, a private security officer, had only the right of any citizen to make a citizen's arrest. There was no clear-cut order given to Farmer to inform him that he was trespassing and he would be arrested if he remained. It was unclear if Farmer refused to leave, then threw a punch at Lopez or whether Farmer threw the punch when Lopez tried to get Farmer out of the truck. There were contradicting statements about Farmer landing on the ground or against the truck.

My Opinion

Obviously this incident occurred because of anger and a heated argument between Farmer and Controller Johnson.

More negotiating could have avoided this situation. I believe that Johnson could resend the policy and instruct the security guard to eject Farmer from the property. Lopez was not very skilled at enforcing the law. He never identified himself as a security officer before he took any action. Remember, Lopez was in plain clothes. He has to give a clear-cut admonishment that Farmer is trespassing and order him to leave. Lopez must then give him adequate time to comply before he can use force to effect an arrest, and only after Farmer actively resists. If Farmer struck Lopez

prior to any enforcement action, then obviously Lopez has every right to make a citizen's arrest for battery. In this case everything ran together and the legal steps were not defined. It is a legal decision to determine whether the injuries occurred during the incident or not, but if they did occur I believe AAA Action is liable.

That is my opinion, what is yours?

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Use of Force Training: Competence and Liability

By Brian A. Kinnaird, Ph.D.

If you pick up a trade publication or visit any professional organization's website today, you will more than likely find an advertisement on "how to



become a certified

(you fill in the blank). More and more, the industry is seeing a proliferation of specialized titles for those

who pay a rather large fee, submit an essay-style written examination and/or have experience in a designated area for a

specific amount of time. To a further degree, we are also seeing more training programs for practitioners that promote the ability *to* certify or *be* certified.

Holding a certification is central to anything one does in law enforcement. In fact, as will be discussed, certification leads to a whole new world of insight and perspective. The problem lies in the rhetoric of just what certification *means*? This question is best summarized through a familiar and simple inquiry-based methodology that considers the who, what, when, where, and why of certification.

Who is Certified?

Typically, "certified ______ (you fill in the blank)" or agency instructors are law enforcement officers who have been through recruit training, field training programs and have spent some time in the field or in the jail. Depending on agency circumstances, however, this is not always the case. For example, reserve and civilian officers, agency staff, and community liaisons may acquire certifications as

agency supplements in an effort to provide services. Agencies may also have reserve officers who have certifications such as "radar instructor" or "radar operator" who themselves do not have basic law enforcement certification. Other times, agencies may have an officer trained and assigned as a community policing officer who spends absolutely no time doing community policing. This is no different than an agency that sends their officers to pursuit driving training with a department policy that states that pursuits are forbidden.

It is important for agency administrators to identify specific variables when seeking out potential applicants for use of force training. Not only should the applicant share similar administrative philosophies about training and the dissemination of such skills, techniques and knowledge, but they should also exhibit a passion for the certificate. How many times are officers submitting training requests for expensive



and seemingly nontangible training for purposes of just satisfying annual training hours or providing a vacation out of town?

In addition to understanding the needs of their agency and resources available for

allocation, a savvy police chief, sheriff, training administrator (or their subordinates) should also have an intrinsic knowledge of their personnel: their weaknesses, their strengths, their interests, and their commitments to pursuits in their career.

From this, a comfortable (and worthwhile) decision may be made as to "who" gets to be certified and "what" that certification will entail.

What is Certification?

Certification is perhaps best described as credentialing personnel in an effort to provide an explicit display of competence, recognition, or achievement. It may also be considered as a simple tool for continued personal or professional growth and development.

Law enforcement officers attend basic recruit training and become certified to carry out specific duties and responsibilities under local, state and federal law. In doing so, officers may become certified to use projectile irritants such as oleoresin capsicum or the baton, taser and other methods of the use of force. Likewise, officers may become certified to handle a canine unit, head up a community policing initiative or become a drug recognition expert.

Certifications are most commonly documented through a basic certificate or letter that states that the individual has



completed a certain number of training hours, typically including written and practical proficiencies. Some

certifications are designated for instructortrainers, while other certifications may simply provide documentation that the officer is proficient enough to use the knowledge in a basic manner that is consistent with the certifying body, community standards, department policy, state and federal law. Careful attention should be given as to how the certificate is articulated. Is it a certificate of *completion*, certificate of *participation*, or *instructor certification program*? Certifications given to officers to instruct or simply use the knowledge are typically accompanied by words and phrases that give them such specific designation, too.

When is Certification?

Beyond typical recruit-based training programs, including the academy and field training programs which officers attend shortly after being hired, law enforcement officers usually observe a period of field work and experience before they are authorized to become instructors or "certified _____" in specialized areas. Contrastingly, there are a number of agencies who also try to get their officers into use of force programs immediately for purposes of accreditation, in-house training, or simply for professional development and competence.

Spending some time within the organization, learning both formal and informal rules, assists both the officer and their administrators in deciding whether or not the candidate is an acceptable choice for training/certification. It gives an administration time to identify specific needs within the agency and to further decide where and how to allocate funds (within positive fiscal parameters). This time also gives the officer a period of self reflection as to what their passion is within that organization, how their skills may work for the organization and where their current niche is or is not.

Where is Certification?

From a physical perspective, training and testing for certifications can occur essentially anywhere. From the confines of a police academy to the squad room of a law enforcement agency, certification rituals can be held anywhere people can get together. A contemporary event in the course of certification programs is the use of technology. Mediated equipment from PowerPoint™ presentations to videos and Internet programs allows the training environment to expand in depth. As a result, many certification programs today are set up in physical quarters whereby a projector screen or other equipment may be displayed and used to enhance the training. It is not typical, however, to have skillsbased training conducted through the use of "sit-down-lectures", at least all inclusively.

Why Certify?

Perhaps one of the most poignant questions asked about certification processes is its importance. Individual certifications in specific programs or certifications related to the agency as a whole may be required for some for purposes of accreditation or for monetary allocations offered by local, state, or federal commissions. Whatever the specific cause, certifications are inevitably obtained and held as a qualifying document of the officer or agency's proficiency and experience in the use of force area, they are also used to advance the overall knowledge of the practitioner in the field, ensuring that they are aware of current initiatives and approaches relative to the area of certification.

In today's litigious society where a lawsuit is around every corner, law enforcement is reminded daily of the impact of improper decisions or merely "good" decisions that affected the other party adversely. As a result, how is certification used to minimize liability for the trainer or trainer's agency for training (or lack thereof) provided to end users? Additionally, at what point is an officer's training certification or the fact that they are a training provider called into question negatively by opposing counsel?

The idea that trainers might be held liable because their instruction was somehow faulty appears to be a novel proposition and little to no information or cases exist on that kind of claim. This situation may simply be labeled as "negligent training." However, many lawsuits deal with the failure to train in which agencies or municipalities are alleged to have a policy of failing to train officers or failing to train officers adequately regarding tasks frequently performed.

The suggestion that little information exists on what is considered negligent training is due to the difficulty in meeting the

burden of proof. Therefore, it might be useful to examine a hypothetical lawsuit based upon the notion of negligent training in this

context.

The most likely plaintiff in this type of legal action against an instructor would be either the

student who took an instructor-training course or a third person claiming harm due

to a student-officer who applied a training technique in the field. Alternatively, the plaintiff might claim that a particular training initiative was missing from the instruction. What kind of legal claim would the plaintiff bring in a lawsuit? Most likely, the claim would arise in tort; more specifically, it would allege a claim of negligence.

Negligence is the breach of a duty owed toward those who may foresee ably be harmed. In a lawsuit for negligent training, the plaintiff's claim would assert that a trainer's instruction or failure to instruct created an unreasonable risk of harm to the plaintiff. The claim could further assert that the trainer failed to take into consideration changes in the law or simply failed to abandon a technique that had been shown to be invalid (either through scientific or medical scrutiny). It might be asserted that the instructor knew or should have known that a point of instruction was invalid or was excluded and that this resulted in harm to the plaintiff.

An important aspect of negligence is foreseeability. Although it is foreseeable that a training component or failure to include some aspect in training might lead to some harm in general, it might be argued that the requisite foreseeability required more specificity. For example, instruction for a use of force technique might be given and then applied inappropriately to an arrestee by a student-officer. Even though a plaintiff would try to argue that the negligence was foreseeable, the relationship between some unknown third party and the original trainer is somewhat attenuated. In other words, the likelihood that the harm was foreseeable to the plaintiff, specifically, is difficult to prove and it would depend largely on the facts and

circumstances of each case as governed by *Graham v. Connor* (1989).

Consider these factors: did the studentofficer retain reliable and valid training and
simply forgot something and applied it
inappropriately? Were there other
intervening or contributing factors for the
harm? Were there particular facts and
circumstances unique to the situation? Four
elements required for a negligence claim
are duty, breach of duty, causation and
harm (or damages). All four elements have
to be proven in order for the plaintiff to be
successful in a lawsuit. Each element is
discussed below in the context of the
previous hypothetical scenario.

Duty. Proving that the instructor had a duty to the plaintiff would not be outside the realm of possibility. A duty or obligation of reasonable care can arise out of statute. common law, policy, custom, contract, or relationship. For example, a third party such as an arrestee might have a weaker case against the trainer than the student-officer would have against the instructor. At least one obvious reason for this would be that the student had a better ground to claim that a duty arose to train effectively, which may include an argument based on duty arising out of custom, contract, or relationship. However, the third party arrestee would have to be craftier in developing an argument that the studentofficer owed him a duty because that relationship is more attenuated.

Breach of duty. A breach of duty implies that the instructor owed a duty but did not act in accordance with that duty. The instruction could be considered incompetent, unreliable or invalid. But how are training methods deemed

unacceptable? Who determines what is unacceptable? Regarding legality, training techniques are deemed unacceptable by determining reasonableness under the circumstances. Evidence that the training or lack thereof, was unreasonable or reckless would have to be attested to in court. Who determines, then, the standards for appropriate training techniques under a set of circumstances? Content experts such as professional trainers, consultants, and law enforcement or corrections officers themselves would be called upon. For example, there may be differences in



training courses and these individuals would have varying opinions as to which training courses

were best. Summarily, the reasonableness would depend on a variety of factors such as the testimony of the expert, specific facts and circumstances of each case or the jurisdiction.

The standards for certification are determined by those who sit on their boards. Do they consist of civilians, attorneys, administrators or city government or are they content experts, law enforcement officers and public safety trainers? The standards of what is competent and reliable training are largely controlled by the certifying bodies themselves.

Does it matter from which certifying organization instructor-training is received? While many instructor-schools have training

that does not conflict with state P.O.S.T. or non-P.O.S.T. commissions, theoretically, liability would not rest on whether instructors came from a certifying organization. The question would be the quality of the training and whether it was recognized in the field as reasonable under the circumstances. An instructor or administrator, however, would also want to make sure that the organization offering instructor training had comparable and nonconflicting training standards as those offered in similar instructor schools in order to reduce the risk for liability and the argument that the training was unreasonable. For example, is an essaystyle examination enough to qualify one as a "trainer"? Is law enforcement experience alone, without commensurate specialized instruction, testing or education enough to qualify one as trainer or "expert"? The answer to these question are found only through a generalizable, affirmative recognition by other trainers and certifying bodies regarding what is commonplace and acceptable as certification.

Causation. Causation is the link between the conduct of the officer and the resulting harm. In applying this element to our hypothetical situation, the plaintiff would try to prove that the trainer's instruction (or lack thereof) was the cause for harm. Causation asks, "but for the trainer's instruction (or lack thereof), would this harm have resulted?" An instructor defending himself or agency against a lawsuit would hope that despite their instruction, the harm would have resulted anyway. Although this question might only be answered based upon the specific facts, previous discussion regarding foreseeability demonstrates that proving that the instruction was the cause is, in indeed, difficult.

Damages. Lastly, damages are the resulting harm suffered by the plaintiff. Damages can be upon a person or property and be both physical and emotional. Such harm may include injury or death, medical expenses, pain and suffering, loss of comfort, loss of society, humiliation, loss of income or loss of expenses for property damage. A court presiding over the negligence claim must have a standard for which to measure the instructor's blameworthiness. Typically, a standard in negligence claims is the failure to exercise reasonable care under the circumstances. however, some jurisdictions apply a higher standard for which to assess conduct. This higher standard is termed "gross negligence" and is typically defined as acting with reckless disregard to the consequences of one's actions. The gross negligence standard forces the plaintiff to prove a higher level of blameworthiness on the part of the instructor. Instead of merely proving that the trainer acted carelessly or unreasonable under the circumstances, the plaintiff must prove that the instructor was reckless in their training. Obviously, the instructor would want their jurisdiction to apply the higher standard of gross negligence because this is more difficult to meet. The court in the specific jurisdiction defines the standard that must be applied in the liability area. If this situation has never come up before in the jurisdiction, the court will have to determine what the standard will be as well as to all future cases with the same kind of claim.

Here are a few suggestions for use of force instructors to help minimize their risk for tort liability:

- If providing in-house training to fellow officers, design training adequate to the tasks performed by officers in the agency on a regular basis;
- Develop course outlines, goals, learning objectives, and means of assessing the learning objectives. Keep updated course outlines and materials as changes develop in the law and training content;
- Offer updated training on a regular basis;
- Continue your own training on a regular basis, even if this is not required and even if it is only a refresher course.
 Keep a record of all training you have received. It is beneficial to keep the course training announcement with the dates, instructor(s), accrediting agencies and the training and methods used to instruct you.

If you have trained to be an instructor through a certifying program, it is beneficial to keep copies of their policies. This information will provide data on training sources they approve or accept as well as their credentials and standards. If your training is done through an organization that does not "certify", keep any material that describes their mission and goals, their means of accomplishing goals and information on their standards.

References

Graham v. Connor, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989).

Suggested Legal References for Additional Reading

Liability

42 U.S.C. Section 1983 Bivens v. Six Unknown Federal Agents

Training

City of Canton (OH) v. Harris Graham v. Connor (1989) Valdez v. Abney (1986) Whitney v. Warden Owens v. Haas (1979) Hays v. Jefferson County, Kentucky (1982)

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En Banc Ninth Circuit Revises the Definition of "Deadly Force" Under Civil Rights Laws

Police K-9 Bite Might Constitute Deadly Force Under Rule Announced

by

Michael P. Stone

The United States Ninth Circuit Court of Appeals recently re-defined the term "deadly force" to be applied in civil rights cases brought under Title 42, *United States Code*, §1983 ("42 *USC* §1983").

In Smith v. City of Hemet, 394 F.3d 689 (9th Cir. 2005) an en banc Ninth Circuit panel of 11 Circuit judges overruled recently-applied precedent in this Circuit (Vera Cruz v. City of Escondido, 139 F.3d 659 (9th Cir. 1998) by a margin of eight to three.

This case featured two separate issues: (1) The use of a K-9 as "deadly force" and (2) whether Smith could present claims under §1983 after he was convicted in a criminal court for violating *Penal Code* §148(a)(1) for willfully resisting, delaying, or obstructing a peace officer in the performance of his duties.

We shall examine the "deadly force" issue first, and employ the factual background taken directly from the opinion:

The facts of the encounter between Smith and the police are not seriously

disputed. To the extent that there is a difference between the parties, however, we look to the version most favorable to the plaintiff, the nonmoving party. On the night of August 26, 1999, Smith's wife placed an emergency phone call to the Hemet Police Department ("Department") reporting that her husband "was hitting her and/or was physical with her." Mrs. Smith informed emergency personnel that her husband did not have a gun, there were no weapons in the house, and he was clad in his pajamas. Officer Daniel Reinbolt was the first officer to arrive at the house in order to investigate the incident. He observed Smith standing on his front porch and "noticed Smith's hands in his pockets." The officer announced himself and instructed Smith to remove his hands from his pockets. Smith refused, responding with expletives and directing Officer Reinbolt to come to him. Officer Reinbolt informed Smith that he would approach, but only after Smith removed his

hands from his pockets and showed that he had no weapons. Smith again refused to remove his hands from his pockets and instead entered his home.

After Officer Reinbolt advised dispatch of what had transpired, Smith reemerged onto the porch with his hands still in his pockets. Officer Reinbolt again instructed Smith to show his hands. Smith complied with his instruction, but then refused to follow an order to "put his hands on his head and walk towards [the officer's] voice[.]" Instead, Smith again asked Officer Reinbolt to approach and enter the home with him.

Officer Nate Miller arrived in response to Officer Reinbolt's radioed request for assistance. Observing Smith's refusal to cooperate with Officer Reinbolt, Officer Miller contacted dispatch to request additional assistance, including a canine unit. Officer David Quinn, a canine handler with the Department, arrived shortly thereafter with "Quando," a police canine. Officer Aaron Medina also responded to one of the assistance calls.

*694 Officer Quinn instructed Smith to turn around and place his hands on his head. Smith again refused to obey the order, despite being informed that Quando could be sent to subdue him and might bite. Without further warning, Officer Quinn sprayed Smith in the face with pepper spray. Smith responded with expletives and attempted to reenter his residence. but the door had been locked by Mrs. Smith. Several more officers then moved onto the porch, grabbed Smith from behind, slammed him against the door, and threw him down on the porch; Officer Quinn ordered the canine to attack him. Quando bit

Smith on his right shoulder and neck area. At some point, either before or after the order to attack, the dog sank his teeth into Smith's arm and clung to it.

With at least four officers surrounding him and Quando's teeth sunk into his shoulder and neck, Smith agreed to comply with the officers' orders and submit to arrest. Although Smith submitted, he admits that he was "curled up" in a fetal position in an attempt to shield himself from the dog and that one of his hands was "tucked in somewhere," still out of the officers' view. As one of the officers attempted to secure both arms, Quando was instructed by Officer Quinn to bite Smith a second time; this time the dog bit Smith on his left side and shoulder blade. Upon Officer Quinn's order. Quando ultimately retreated, and the officers dragged Smith off the porch, face down. Once off the porch, Smith continued to shield one of his arms from the dog's attack. Officer Quinn then ordered Quando to bite Smith a third time. This time, the dog bit into Smith's buttock. While all this was transpiring, Smith was peppersprayed at least four times, at least two of which sprayings occurred after the police dog had seized him and broken his skin, and at least one after the officers had pinned him to the ground.

Eventually, the officers secured the handcuffs on both of Smith's arms. Officer Reinbolt then washed Smith's eyes out with water from a nearby hose, but did not cleanse the wounds he received as a result of the dog bites. Paramedics arrived shortly thereafter and attended to Smith's injuries.

Smith pled guilty in California Superior Court to a violation of California Penal Code §148(a)(1).

Since the 1989 Supreme Court decision in *Graham v. Connor*, 450 U.S. 386, it is clear that claims of excessive force in §1983 cases are analyzed under the Fourth Amendment, where the force is used to effect an arrest, overcome resistance, or prevent escape. The standard applied is whether the force used was "objectively reasonable" from the standpoint of a reasonable officer in the same or similar circumstances.

On the other hand, in another U.S. Supreme Court case, *Tennessee v. Garner*, 471 U.S. 1 (1985), the Court held that an officer may not use deadly force to apprehend a person, "unless it is necessary to prevent escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." *Id.* at 471 U.S. 3.

In the Ninth Circuit, following *Vera Cruz, supra*, the rule has been that "deadly force" means "force reasonably likely to kill." Arguably, *controlled* use of a K-9 service dog to bite a suspect is not "reasonably likely to kill."

But in *Smith*, the *en banc* panel seized the opportunity to re-visit *Vera Cruz*, and ultimately, to overrule it, substituting in its place a new definition of "deadly force": "...whether the force employed creates a substantial risk of causing death or serious bodily injury."

The Court reasoned that this definition brings the Ninth Circuit "into conformity with the other (seven) circuits" that have adopted this standard 394 F3d. at 705.

The Court stopped short however, of finding that the use of Quando in this case

constituted deadly force, and remanded the issue to the District Court.

Nothing of course in the law *prohibits* the use of deadly force in appropriate circumstances. However this case, by redefining deadly force to include the creation of a "substantial risk of causing death *or* serious bodily injury" will likely expand the range of force applications that will be considered "deadly".

The three dissenters noted that Quando's teeth had been previously capped and were incapable of inflicting deep puncture wounds, and that Smith's bite injuries were superficial and did not require any treatment beyond cleaning the wounds.

The other issue decided by the Court was whether Smith's §1983 suit was barred by the rule in Heck v. Humphrey, 512 U.S. 477 (1994). There, the Supreme Court held that a §1983 suit is barred if successful prosecution of the §1983 claim(s) would necessarily imply the invalidity of a state court criminal conviction. Put another way, if the plaintiff suffered a state conviction of a crime, say Penal Code §148, suing the police for the use of excessive force in overcoming the plaintiff's resistance to arrest would necessarily call into question the validity of the conviction, since if the officers were using excessive force, then they could not also be engaged in the performance of their duties – a necessary element of §148. So, if the conviction for §148 is final, then a claim under §1983 for the use of excessive force would be necessarily foreclosed by virtue of the valid conviction of §148.

Smith does not dispute this rule. However, the judges held that Smith could maintain a §1983 excessive force claim for any force used on him after he quit resisting. This is of course a highly factoriented analysis, to determine whether excessive force was used after the conduct

of Smith that constituted the crime under §148.

Trainers, experts and force policy writers will need to take this new definition into consideration when training officers in use of force, particularly with regard to continuums and policies that focus on the intermediate to deadly force options.

Policies on use of force should be reviewed to determine how this new definition might lead to liability issues when it is superimposed over existing policies which simply employ the term "deadly force."

Stay Safe!



"Search and Seizure" Parole Term Doesn't Necessarily Mean What It States

Ninth Circuit Holds That Even Parolees Subject to "Search and Seizure" have Fourth Amendment Rights

by

Michael P. Stone

We are all accustomed to encountering parolees and probationers who, as a term and condition of their supervised freedom, are subject to "search and seizure."

What this really means is that the parolee's or probationer's person, property and residence may be searched at any time by a parole agent or probation officer, or by a peace officer, without a warrant. We are also accustomed to believing that such a term and condition of supervised release vitiates any requirement that police (or parole or probation) secure a warrant prior to a search or otherwise worry about the Fourth Amendment. We may conclude that a parolee or probationer who is subject to "search and seizure" has no Fourth Amendment protections.

But a recent Ninth Circuit case, *Moreno v. Baca*, ____ F.3d ___, 2005 WL517851 (9TH Cir., March 7, 2005), shows the error in

assuming that the Fourth Amendment does not protect parolees and probationers, even those with "search conditions" attached to their freedom.

The opinion holds that officers must have, at a minimum, a "reasonable suspicion" of criminal activity and that the parolee or probationer is involved in that activity. Without at least that, the detention of a probationer or parolee is an unlawful seizure at the outset; and the subsequent discovery that the person is on parole or probation and subject to "search and seizure", does not transform an unlawful seizure into a lawful detention.

Deputies spotted Moreno in a "high crime" area walking at night. He was "startled" and "nervous" when the deputies approached. He was detained and searched. Then it was determined that he was on parole, subject to "search and

seizure", and that he had an outstanding warrant. The deputies also claimed he tossed a baggie of rock cocaine when they approached. He was acquitted of possessing the cocaine, and sued under 42 *USC* §1983, claiming that the initial detention and search violated the Fourth Amendment.

The Court found that the deputies did not have a reasonable suspicion necessary to justify their detention and search of Moreno – mere "nervousness" coupled with presence in a high crime area was insufficient to warrant the detention. Moreno disputed that he dropped or tossed any contraband. The subsequent discovery of the parole condition and warrant, unknown to the deputies at the outset of

their detention of Moreno, could not justify the stop at its inception, because these facts were discovered after the stop.

So, the rule of this case is simply stated: Even though a parolee or probationer is subject to "search and seizure" without a warrant as a condition of his/her supervised release, any detention of that person must initially be justified by a reasonable suspicion that the person is involved in some kind of criminal activity. Subsequently learned facts will not turn an unlawful detention into a reasonable one. Rather, the focus is on what the officers know or perceive at the time of the initial stop.

Stay Safe!



Confronting the Code of Silence: When Excessive Use of Force Occurs.

by

Neal Trautman, Ph.D.

Overview

The Code of Silence is the principle that an officer will not provide adverse information against a fellow officer. It is also known as the blue wall of silence and blue curtain. The phenomenon commonly referred to exists within virtually all organizations, for it refers to the bond of loyalty.

It is natural and expected for people who spend considerable time together, have the same responsibilities or share similar adversities to become loyal toward each other. The challenge that has never been achieved and validated is to be able to mold the culture of a workplace to where loyalty to honor and integrity truly becomes

more important than peer pressure and loyalty to another person.

A year long review of relevant research related to the code of silence confirms that relatively little research exists. That which has been conducted has resulted from commissions convened after a substantial scandal occurred. The law enforcement profession has totally neglected this subject as the focus of scholarly investigation. Although it is regrettable that a matter of such importance has been the subject of so little national study, there are several reasons why the absence of pertinent research is both understandable and

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¹ Allyson Collins, *Shielded From Justice*, Human Rights Watch, New York, NY, 1998, 108-110.

logical. The fundamental reason there has been so little research that has yielded data about the experiences of officers is that officers don't want to cooperate. Since employees do not wish to communicate about the misconduct of other workers, the probability that they would care to voluntarily participate in research that analyzes their refusal to communicate is understandably low.

In his paper "The Blue Wall of Silence: An Ethical Analysis," Kleinig criticizes the Mollen Commission, stating "My complaint about the Mollen Commission, and a number of other inquiries into police culture, is that you cannot affirm the loyalty that police have for each other without also affirming a code of silence." In other words, the code of silence and deep-seated bonds of loyalty among officers, are complex, interwoven and inseparable. Just as the same affiliations grow within the personal relationships of family members, close friendships and teammates in sports, loyalty toward each other is a legitimate, natural occurrence.² To deny the code's existence is just as illogical as denying the presence of loyalty among officers, for you will not have one without the other.

If an officer elects to "blow the whistle" on his own team, it is virtually certain that others in the workplace will view him as disloyal. Having been torn between a loyalty to fellow employees and the administration versus a loyalty to valued principles, the whistle-blower has chosen to be loyal to his values, rather than people. Unquestionably, this is a decision that almost always causes his ostracism, but his dignity and self-respect remains intact.

It should not be a priority of law enforcement or any other profession to mold a culture of whistle-blowers, for the turbulent consequences of whistle-blowing for minor indiscretions is often more harmful than the violations publicized. Instead, the goal must be to establish and perpetuate a culture that constantly analyzes to whom or where the loyalties of workers are committed.

When the highest loyalty of employees is to fellow employees, an educated administrator will then know that a destructive element of the code of silence is present within their agency. If they are committed to integrity, the leader can then conduct an integrity needs assessment to identify what is causing officers to be more loyal to each other, than traditionally honored values.

Recruits, the Use of Force and the Code of Silence

Twenty-five basic law enforcement academies from sixteen states helped me conduct research by administering and collecting 1,016 questionnaires during a sixteen-month data collection phase of February, 1999, through June, 2000. The goal was to determine the views of new officers about the code of silence. Here is a summary of the findings.

I think the code of silence is more justified when an incident of excessive force involves a suspect who is arrogant and abusive.

Strongly agree	29
Agree	194
Disagree	533
Strongly disagree	159

Of the 915 recruits who answered this question, 223 or 24% agreed or strongly agreed that they think the code of silence is more justified when an incident of

² John Kleinig, *The Blue Wall of Silence: An Ethical Analysis*, a paper presented at the Fortunoff Collquium, the New York University, 2000, page 9.

³ Tom Beauchamp and Norman Bowie, *Ethical Theory*, Prentice-Hall, New Jersey, 1983, 263.

excessive force involves a suspect who is arrogant and abusive.

Because the bond of loyalty among officers is so important, I don't really believe anything is wrong with lying to prevent another officer from getting in trouble.

Strongly agree	12
Agree	61
Disagree	628
Strongly disagree	315

I would participate in the code of silence if other officers threatened me.

Strongly agree	8
Agree	64
Disagree	641
Strongly disagree	302

I would tell on another officer for regularly smoking marijuana off duty.

Strongly agree	301
Agree	480
Disagree	207
Strongly disagree	27

I would be more likely to participate in the code of silence if my supervisor and the administration of my department treated employees with great disrespect.

21
223
618
155

I would probably ignore the fact that I saw another officer steal something if I knew he or she was going through a divorce and had severe financial problems.

Strongly agree	4
Agree	42
Disagree	654
Strongly disagree	315

Research Excessive Use of Force (other than lethal) and the Code of Silence

The goals of this research were to:

- To serve as a needs assessment upon which effective training may be developed;
- 2. Determine if the code of silence exists in law enforcement;
- Determine what factors within the organizational culture of law enforcement agencies influence officers to conceal the misconduct of other officers;
- 4. Develop conclusions and recommendations upon which effective, viable recommendations can be made.

Sampling Profile

The surveys were administered to eighty-one different small groups of participants during a sixteen-month data collection period of February, 1999, through June, 2000. The sampling was not totally random, in that the officers who were asked to participate were receiving ethics instruction from the National Institute of Ethics. The study was conducted by the National Institute of Ethics. The sampling was comprised of 2,657 fulltime officers. A total 1,116 of the 2,657 officers asked to participate, did so. This equates to a response rate of 42 percent. I was the primary researcher.

In response to the statement, "Please describe the first time you witnessed misconduct by another employee but took no action," 532 or 46 percent of the 1,157 who completed a survey stated they had witnessed misconduct by another employee, but took no action. In varying degrees, they provided details surrounding

the circumstances, on the survey instrument.

Incidents of Excessive Use of Force Prompted the Most Dishonesty

The types of incidents that prompted officers to take part in the code of silence have been divided into five separate categories: anger, lust, greed, peer pressure and other. The frequency of each category, ranked from most to least common, is:

Anger

Anger was the most frequent incident over which the code of silence occurs. Out of the of the code of silence, 217 were excessive use of force circumstances. Officers who withheld information about a anger related incident of misconduct admitted the reasons that they participated in the code of silence. The following is a list of their thirty different perceived consequences that motivated them to conceal what they knew about corruption. The corresponding numbers designate how many times a specific suggestion was made. They include:

- 1. I would be ostracized 86
- The officer who committed the misconduct would be disciplined or fired - 40
- 3. I would be fired from my job 32
- 4. I would be "blackballed" 27
- 5. I would no longer be "backed up" on calls 21
- 6. Administration would not do anything even if I reported it 17
- 7. I would be the victim of some type of retribution 11
- 8. It is unknown 11
- 9. No answer given 11
- 10. There would be no investigation 10
- 11.I am afraid to reveal the incident 9
- 12. I would feel empathy or sympathy for the officer I turned in 8
- 13. I did reveal the accident 7

- 14. It would be very difficult to work with the officer(s) who committed the misconduct - 7
- 15. I would be disciplined 7
- 16. I would be made to be miserable 6
- 17. I would be told to keep quiet about the incident 6
- 18. The officer who committed the misconduct would be arrested 5
- 19. The officer who committed the misconduct would resign or change assignment 5
- 20. My family would be threatened 5
- 21. I think the officer would be railroaded or somehow be treated unfairly 4
- 22. I think that I would be railroaded or somehow treated unfairly 4
- 23.I would be persuaded by my peers that no inappropriate action occurred 4
- 24. I would never reveal the incident 4
- 25. Answer is not appropriate for the question 4
- 26. I would be killed 2
- 27. I would probably be persuaded by my superiors that nothing inappropriate occurred 2
- 28. I would be afraid of civil litigation 2
- 29. I would have to quit and move away 1
- 30. I'd be forced to change careers 1

Anger Related Incidents

Of the 532 officers who stated they had taken part in the code of silence, a total of 217 were primarily motivated by anger. The following is a list of their forty-nine different suggestions for how the code can be controlled. The corresponding numbers designate how many times the specific suggestion was made. They include:

- Furnish more ethics training. It must begin with the administration of the department - 23
- 2. Expose it and let anyone who participates "pay the price." Be accountable 11

- 3. Every department should have an anonymous reporting system 7
- The entire profession must have zero tolerance for this misbehavior -
- 5. Better hiring of recruits and continue to enforce ethics 4
- Open door policies that allow upward communications would be a tremendous help - 4
- 7. Good department standards have to be developed 3
- 8. I'm not sure 3
- Communication within the department has to be improved 3
- 10. An emphasis has to be placed on team play, group awards and recognitions - 2
- 11. You can't control it or stop it 2
- 12. A change in laws to make the incident/crime more severe and there so less likely to occur as often 1
- 13. Lead by example 1
- 14. Have diversity in workplace: male, female, black and white, civilians and interns -
- 15. Be fair with citizen complaints, because many are unreasonable. Maybe officers wouldn't be on defensive as much 1
- 16. Don't know. I think it is a moral/value issue at personal level 1
- 17. This is a tough question. With the way the citizens attack the police (by complaints, etc. not physical) and the frustration of the court system, although not ethical, as long as things do not go too far force may be OK 1
- 18. This is not to say that I agree that a cop has free reign to do anything

- he/she wants, but sometimes "street justice" seems to be appropriate 1
- 19. This is a philosophy. How could you change or control a philosophy? This must be changed from the on-set, with new recruits. At the same time getting rid of the dinosaurs will be necessary 1
- 20. Strict and rigid control by supervisors is the best way to control the code of silence. 1

In the final analysis, the findings of this study reveal that not only is the code of silence prevalent, incidents of excessive use of force prompt officers to lie and take part in the code of silence more than any other type of misconduct. Consequently, every use of force trainer has an obligation to look for evidence of officers falsifying reports or lying during use of force investigations. Furthermore, all of us must have the courage to step forward and confront those who encourage or participate in "cover ups."

Failure to do so says a lot about someone's character and whether they are truly loyal to the principles for which thousands of good cops have died. We must always be more loyal to honor and integrity, than to another person.

Neal Trautman is the Director of the non-profit National Institute of Ethics. He has authored 12 published books, made 67 conference presentations and conducted over 600 ethics/leadership seminars. He chaired the IACP Ethics Training Committee, and co-chaired the IACP Police Image and Ethics Committee. He can be reached at NealTrautman@ileeta.org.



OFFICER SAFETY UPDATES

Wrist Sweatband Concealment

Officers in the Milliken (CO) P.D. recently contacted a juvenile female runaway.

During the contact the female wouldn't allow officers to scrutinize her wrist sweatband (shown at left). Due to her behavior officers removed the wristband and found a utility knife blade concealed inside the fabric.

This juvenile female was rumored to be a "cutter" but it was felt that this information was a significant officer safety issue and needed to be shared. Once again – don't ever take anything for granted and search those in custody or detained with this type of object in mind.



Milliken (CO) P.D. via 4'05 R.M.I.N. Bulletin

Handcuff Escape Method

Recently the Kern County Sheriff's Department in Bakersfield CA. experienced a security threat. While inmates were being held in a local court holding facility, they were able to escape from their locked handcuffs.





To facilitate their escape they used the round lip that is located on or around the spout of the drinking fountain section of the jail sink. They used the lip to pry open the handcuffs and pop out the pin that holds the handcuffs together.

This information was provided courtesy of Lieutenant Ron Bertrand, Kern County Sheriff's Department.









Hidden Compartment in Shoe

The shoe is an Adidas Tracey McGrady basketball shoe. These shoes do not have shoe laces. There is a special device that can be tightened to give a snug fit, thus replacing the shoe laces. The snap on the back opens up a compartment that holds the special key to tighten and loosen the shoes. As shown, a handcuff key can be easily concealed inside the compartment. Removal of the special tightening key would allow more space.

ILEETA Update

by

Ed Nowicki, ILEETA Executive Director

CONGRATULATIONS!!! Lt. Howard Rahtz, the editor of *The ILEETA Use of Force Journal*, has managed to fill this issue with great information relating to the use of force. The feature articles and regular columns contain information that is assembled only in this periodical.

The 2005 ILEETA Conference was just completed and it turned out to be a very special event. There were sixteen separate instructor certification courses, most related to the use of force. In addition there were many classroom topics that focused on the use of force. If you are concerned with uses of force issues, you would be hard pressed to find a conference with so many offerings.

There was never a law enforcement instructor conference held with the scope and magnitude of the 2005 ILEETA Conference. Think about it, sixteen separate instructor certification courses and two armorer certification courses. Plus, over 40 other topics presented by some of the world's most well-known and respected training professionals. We also stopped accepting registrations at 500, which kept the integrity of ILEETA intact. ILEETA is about the members, not the money!

As good as the 2005 ILEETA Conference was on all fronts, there's no doubt that the 2006 ILEETA Conference will be an even greater conference. We're doing all we can to expand the areas where we were successful, and to add even more to the quality and integrity of the 2006 Conference. The 2005 ILEETA Conference was very special, and if you couldn't attend,

you missed being a part of this very special event.

We would like to build upon the success of this year's ILEETA Conference for the 2006 ILEETA Conference. Based on the feedback, it seems like we were able to meet the needs of the ILEETA Members who attended the conference. (Yes, you MUST be an ILEETA Member to instruct and attend the conference. This is, after all, an ILEETA Conference!) Unfortunately, we had to stop accepting conference registrations 10 days before the conference, when we reached 500.

The 2006 ILEETA Conference will add additional sessions with up to 12 training sessions running simultaneously. The Instructor Certification Courses and Armorer Courses were very popular this year, and we actively seek proposals in both of these areas for '06. These courses should be eight hours or less in total length. These can be in any area, although our 2005 Conference Instructor Certification Courses dealt mainly with force related areas - WE WANT TO ALSO INCLUDE OTHER AREAS!! Instructor certification programs could include written and/or competency testing. We will offer as many instructor/armorer certification courses as possible, but our conference will never be a certification mill.

We also want proposals that can help as many of our members as possible, but you MUST remember that the focus of this training is the instructor - this is imperative. We'd like proposals on topics related to: managing the training function; PowerPoint usage - basic and advanced; using digital photos, video and animation; instructional research methods, including the Internet; presentation design and delivery skills; E-Learning issues and implementation; training simulation design; Instructional ethics and image; whole brain teaching and learning; the instructor as a leader; use of force and related areas; legal issues and updates; certification issues; how to market your training program; professional writing for trainers; how to be a training officer; and, any other relevant topic that has an instructor focus. Be creative!

You now have an opportunity to attend, for what will surely be, an even greater conference: The 2006 ILEETA Conference. Keep in mind that we can only accommodate 600 participants. Any more than 600 participants will take away from the quality and integrity of what this conference is about, which is our members and not the money. So, start planning now for April 25-29, 2006, in Arlington Heights, IL, when only 600 ILEETA Members will attend a very special event: the 2006 ILEETA Conference!

The ILEETA Use of Force Journal is a FREE publication and one of the benefits available to ILEETA members.

PLEASE help promote ILEETA!

The International Law Enforcement Educators and Trainers Association (ILEETA) membership has grown to over 2,000 members and it continues to grow at an even more rapid rate. If you are a law enforcement educator or trainer, i.e., an instructor, you will most definitely want to join ILEETA. Check out www.ileeta.org. Wondering about the benefits of being an ILEETA member (aside from the ability to interact with many of your fellow law enforcement trainers)? We're adding more all the time! Here's what we offer for only \$45 yearly (\$40 renewals), outside of the USA dues are \$55, and \$50 renewal.

- * FREE subscription to ILEETA's official quarterly periodical, *The ILEETA Digest*, which is sent to all members in two separate ways, via US Mail and via e-mail.
- * FREE subscription to *The ILEETA e-Bulletin*, which is periodically sent to members via e-mail and includes either late breaking information or other useful or timely information on an "as needed" basis.
- ▼ FREE subscription to The ILEETA Use of Force Journal.
- * FREE subscription to Law and Order Magazine.
- * FREE subscription to Police and Security News.

- * FREE subscription to Police Magazine.
- * FREE subscription to Law Officer (First Issue July, 2005).
- * FREE subscription to *Presentations* Magazine (Based on Qualifications).
- * FREE one-year membership in the American Women's Self Defense Association
- * Access to the "Members Gateway" on the ILEETA Web Site which includes over **500** FREE PowerPoint Programs and "tons" of other FREE information for downloading, including a **New "Royalty Free" photo library**.
- * Discounted subscription to *American Cop* Magazine (First issue to be published in September, 2005).
- ▼ Discounted subscription to Canada's Blue Line Magazine.
- Numerous training program and product discounts from ILEETA's Corporate Sponsors and others (more being negotiated all the time).

Don't wait - Recruit ILEETA Members Today!!

Just go to the ILEETA web site and download the ILEETA membership application at: www.ileeta.org/Membership Application.htm. There is also an ILEETA Membership Application at the end of this issue of *The ILEETA Use of Force Journal*.



That's it for this issue of *The ILEETA Use of Force Journal*. As previously mentioned, we cannot respond to all of your e-mails, but we will definitely read each one. We actively solicit your suggestions and comments. Good, bad or ugly, please let us know what you think about this issue. Remember, we DO NOT edit the submissions to us, so the opinions may not necessarily reflect those of ILEETA. We also DO NOT edit the composition or spelling of the columns or articles submitted to us, since, unfortunately, we have neither the time nor the financial resources to do so. If you have specific comments about any column, please contact the author directly. If your comments are of a general nature, contact Howard Rahtz, Editor of *The ILEETA Use of Force Journal* at HowardRahtz@ileeta.org.

Don't forget to check-out the ILEETA web site at www.ileeta.org If you are an ILEETA Member, you'll have access to over 500 PowerPoint Programs for FREE, and all previous issues of The ILEETA Use of Force Journal, dating back to 2001. There is also plenty of other information in the "Member Gateway" area of the ILEETA web site, which is for ILEETA members only.



ILEETA

International Law Enforcement Educators and Trainers Association

Membership Application

NOTE: New applicants – Please include proof, such as a current instructor certification, that you are a trainer or educator of criminal justice personnel. A copy of a current instructor certification and/or a letter from the head of a criminal justice agency, if different than your supervisor, will suffice. If we have any questions, we will verify your credentials.

Please CLEARLY print.

It's not what you see, it's what we see that's important, so it is imperative that we be able to read your printing.

PLEASE.

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Name	Rank/Tit	le
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Agency E-Mail	Agency Web Site	
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SEND CORRESPONDENCE TO MY (CI	RCLE ONE) HOME A	GENCY
	ertify that he / she is assigned to time, within the criminal justice	education or training duties, either full or system.
Name	Rank/Title	Signature
ILEETA sponsor (if any)	Sp	oonsor's ILEETA Number
	PAYMENT INFORMATION	
ILEETA MEMBERSHIP	DUES ARE \$45 ANNUALLY (\$55)	OUTSIDE CONTINENTAL US)
Renewal	Dues are \$40 (\$50 outside con	NTINENTAL US)
Method (circle one): Agen	cy PO Attached Check/Mon	ey Order Enclosed Credit Card
M/C or VISA Number	Exp	piration Date (mm/yyyy)
Name as it appears on card		Signature
QUESTIONS? CALL ILEETA HQ. AT 20	52.279.7879 or fax inquiries to 26	2.279.5758 E-MAIL AT INFO@ILEETA.ORG
PLEASE SEND COMPLETED FORM	го: ILEETA, P.O. Box 100	03, TWIN LAKES, WI USA 53181-1003

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