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**Editor**

John E. Ott

**Associate Editors**

Cynthia L. Lewis  
Bunny S. Morris

**Art Director**

Denise Bennett Smith

**Assistant Art Director**

Stephanie L. Lowe

**Staff Assistant**

Linda W. Szumilo

This publication is produced by members of the Law Enforcement Communication Unit, William T. Guyton, chief.

**Internet Address**

leb@fbiacademy.edu

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Send article submissions to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.



# FBI Law Enforcement

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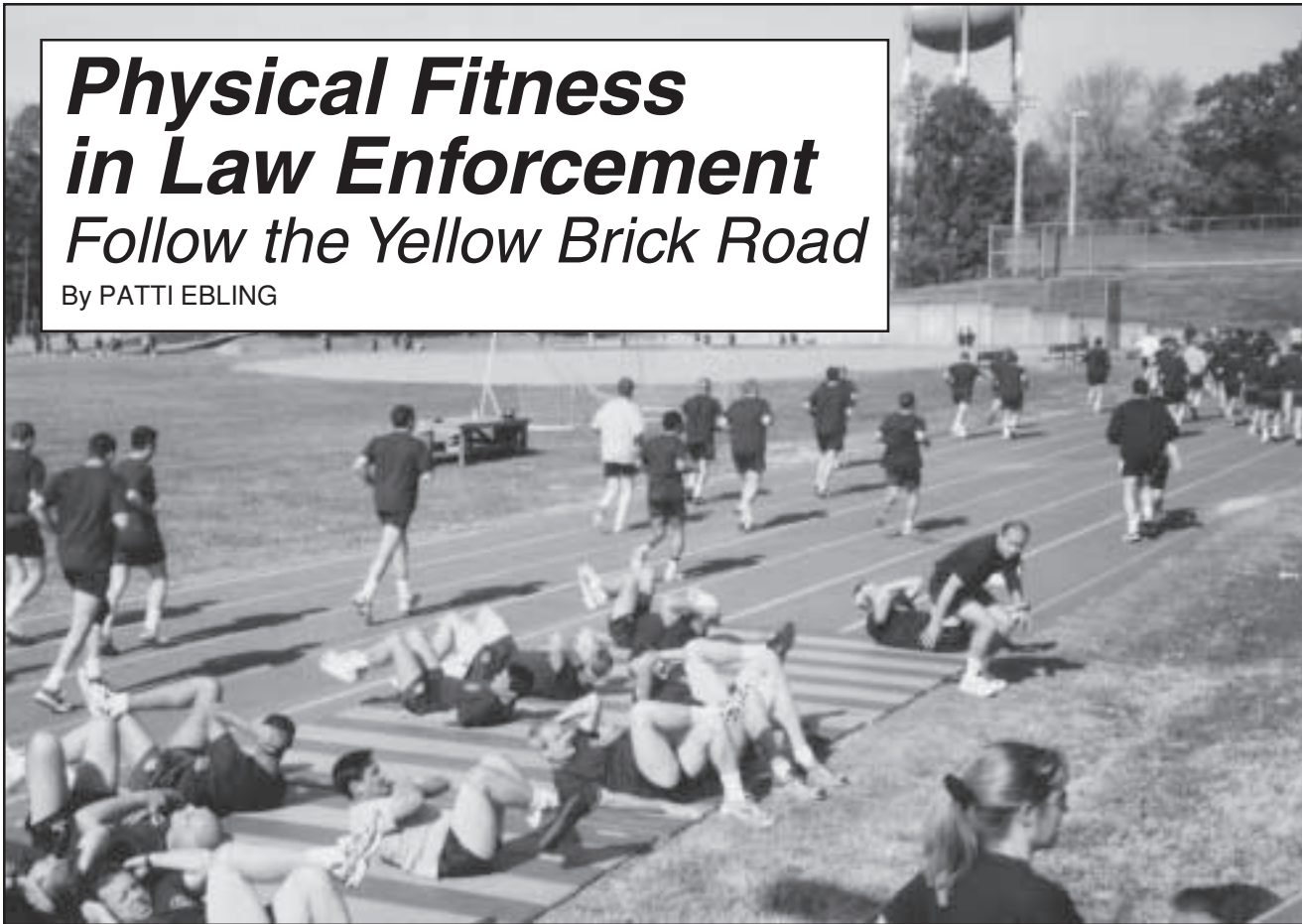
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# *Physical Fitness in Law Enforcement Follow the Yellow Brick Road*

By PATTI EBLING



**E**arly on a cold, rainy morning, four veteran law enforcement officers faced a serious challenge to their physical and mental abilities as they waited to hear the clang of a bell. One officer thought, "If I had any brains, I wouldn't be here." The second pondered, "I know I haven't got the heart for this." The third officer worried, "My courage will fail me," and the fourth kept saying to herself, "I wish I'd stayed home!"<sup>1</sup> What terrible fate awaited these highly experienced, streetwise officers? The Yellow Brick Road.

These officers illustrate what many attendees of the FBI National

Academy (NA)<sup>2</sup> feel when they participate in the obstacle course and runs that comprise the FBI's Yellow Brick Road Fitness Challenge. Why do they subject themselves to such a task? Why do so many consider taking home their yellow brick as important as the academic skills, friendships, and professional contacts they garner while attending the NA? The varied and complex answers hinge on a quote from America's third president, Thomas Jefferson: "Exercise and recreation are as necessary as reading; I will say, rather, more necessary because health is worth more than learning."

Thomas Jefferson's peers described him as being well formed, indicating strength, activity, and robust health. He appeared strong, active, and in full possession of a sound mind. To this day, his firm belief in the importance of exercise inspires many officers through his words engraved on a bell left as a legacy from the 195th session of the NA. Law enforcement officers from around the world stop to reflect on these words before beginning a run at the FBI Academy.

For several decades, the FBI has trained law enforcement professionals and, in the process, has created a testament to the importance

of physical, as well as mental, preparedness. Fitness and the FBI have become nearly synonymous not only because law enforcement officers must remain physically capable to perform their duties but also because exercise can help them combat the stress associated with the emotional pressure of their profession. However, “as an occupation, law enforcement holds the distinction of having the highest rate of heart disease, diabetes, and suicide out of 149 professions.”<sup>3</sup> This unfortunate statistic belies the importance of physical fitness in the law enforcement profession.<sup>4</sup>

While most law enforcement agencies recognize the importance of physical fitness for their officers and encourage them to exercise and maintain an adequate level of fitness, many find it difficult to implement a fitness program. To this end, the FBI’s program may provide agencies with an example that they can adapt for their personnel.

## EXAMINING THE FBI’S FITNESS CHALLENGE

The FBI’s Focus on Fitness program emphasizes cardiovascular and strength training. The agency tests its agents on their physical fitness and encourages them to maintain these fitness levels throughout their careers. Law enforcement officers who remain physically fit prove more readily able to cope with the day-to-day stress of the job and are better prepared to handle critical incidents. Realizing this, the FBI established the Focus on Fitness program to promote the health and wellness of its special agent population, which then led to the inclusion of the NA into the program and the development of the FBI Fitness Challenge.

### History

In 1981, the FBI Academy implemented the Fitness Challenge. The Physical Training Unit<sup>5</sup> started the Challenge as part of a class for

the NA. Only a handful of students showed up for the first few Challenges. They would meet at 5 p.m. in the gym and go for a run. Normally, these runs were longer than the runs that they had in their physical training classes. Eventually, the Challenge grew and became a combined effort of the National Academy Unit and the Physical Training Unit. It subsequently evolved into a structured series of seven physically challenging runs, culminating in the ultimate Yellow Brick Road endurance feat. The 154th session of the NA received the first yellow bricks, beginning a tradition that survives today. In fact, physical training (PT) instructors estimate that they have awarded over 14,000 yellow bricks to NA students who have completed the Challenge. These bricks, painted yellow and bearing the number of the NA session, serve as a vivid reminder of the recipient’s success in overcoming physical, mental, and emotional challenges.

### The Oz Connection

Why did the FBI go to Oz to find a name for part of its Fitness Challenge? Several years before the FBI became involved, the U.S. Marine Corps at Quantico, Virginia, designed a running course for its trainees. As a safety feature, painted yellow rocks showed runners the way through the wooded trail. Instructors told trainees to follow the yellow rocks along the way, and, soon, runners began calling the trail the “Yellow Brick Road.” Over the years, participants coined names for some of the runs, such as the “Hump Run” and the “Belly of the Beast,”



*Ms. Ebling is a physical training instructor in the Operational Skills Unit at the FBI Academy.*

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***No winners or losers should exist in a well-developed physical fitness program, just participants doing their best.***  
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based on the terrain. However, to maintain a cohesiveness, the FBI decided to name the runs in the Challenge after characters and events in *The Wizard of Oz*.<sup>6</sup>

The first run of the Challenge, Not in Kansas Anymore, consists of 1.8 miles and occurs only 2 weeks after the NA students arrive at the FBI Academy. It reminds them that they have started on a new adventure. The next run, the Tin Man Trot, winds through the woods for 2.6 miles, while the third run, the Gates of Oz, goes down a gravel road and then through the woods for 3.1 miles. The midpoint of the Challenge, the Cyclone, consists of 30 minutes of circuit training on the track. All of the NA students and PT instructors run for 30 minutes, stopping along the way to do crunches, push ups, and dips. The fifth run, the Lion's Leap, increases the miles to 3.4 and takes runners on the main road around the FBI Academy. Finally, the Munchkin Trail consists of a 4.2-mile run through the woods, while the Return to Oz, the last run before the Yellow Brick Road, is 5.2 miles and includes a hill that proves demanding even for seasoned runners. Gradual inclines on this seemingly endless trail make it very deceiving on the return run to the academy.

During the Challenge, the NA students run in color groups according to their initial 1.5-mile run time that the PT instructors record at the beginning of training. The color groups—jet black, black, gold, red, green, blue, and silver—each run with their own color-coded flag and develop a special group comradery. Running groups prove motivational

and helpful for many students. Some assume the role of leaders in their groups and help others along the way. All of the students work together to accomplish a common goal—a yellow brick, the symbol of their achievement.

NA students keep track of their own runs by initialing their log books in the gym after each run. Basing their performance on the honor system truly challenges those



students who have less than stellar physical abilities. However, the PT instructors have found that the comradery that develops among the participants during such demanding activities creates an atmosphere of trust and integrity that no one dares to destroy.

### **The Yellow Brick Road**

The Yellow Brick Road is the final test of the Fitness Challenge. Its wooded trails, 3 walls, 6 ropes, and 26 obstacles make it the ultimate challenge for everyone. Students either must run out to or back from the Yellow Brick Road for a

total of 6.1 miles. Some runners opt to run both ways for a total of nearly 9.5 miles.

Once at the site, students face a bear trap, barbed wire, and numerous hills that wind through rough terrain. Running such a demanding course unites the students who help each other through the tough spots. They soon realize that it is not a one-person challenge but a team effort. Sometimes, students take a wrong turn and find themselves on an unsolicited tour of the Virginia countryside. PT instructors round them up and get them back on the correct trail. Climbing over walls, running across creeks, jumping through simulated windows, and scaling sheer rock faces with the help of ropes present physically demanding tasks for the runners, but belly crawling through a muddy trench reminds them that getting dirty actually can be fun. As the students make their way up the historical Yellow Brick Road, the main attraction on the course, they reflect on the markers left by prior NA session attendees. Everything from concrete lions to fire hydrants have found a home on this site and serve as memorials to those who conquered the Yellow Brick Road.

Next comes the most well-known obstacle—the cargo net made famous in the motion picture *The Silence of the Lambs*. Flipping over the top of the net, approximately 10 to 12 feet above the ground, offers a tough but exhilarating test for everyone. After accomplishing this, most students stop to take photographs, get a drink of water, and catch their breath before continuing the last three quarters of



a mile, which includes a combat crawl under barbed wire in muddy water, to the finish line. As they reach the end of the hard-fought course, the students cheer, hug, and congratulate each other. The participants have survived a physical challenge and, in the process, learned some interesting lessons about themselves.

### **The Wizard's Lessons**

PT instructors have received a great deal of feedback from NA students who have participated in the FBI Fitness Challenge. Most participants remarked on how the Challenge influenced their desire to maintain the level of fitness that they achieved while attending the NA. For example, one student from the 206th NA session said, "The fitness program has been one of the most challenging aspects of the NA. It has reawakened my realization of the importance of physical fitness. I did not think I could run as far as I have, nor did I think I could ever feel as well as I do." Another

student from the same session stated, "I found that through regular exercise my stress level was reduced substantially and my energy level has been great."

Besides the physical improvement of their bodies, many participants stated that the teamwork and comradery that developed because of sharing a challenging experience proved more valuable. One student in the 206th session said, "The single most important thing that the Challenge did for me was to reemphasize teamwork. It's not that anyone was the fastest, slowest, finished first, or last, but that each goal was accomplished with teamwork and helping friends." Another remarked, "The program has allowed me the opportunity to develop relationships, relieve stress, keep focused academically, and build comradery with my classmates. Not enough can be said in regard to the benefits I have received." Finally, one student summed up his experience by saying, "The Yellow Brick Road is a mystery. We had all heard

of it prior to our arrival. Its name epitomizes the completion of the FBI Fitness Challenge. Of course, there is more to the NA than the Yellow Brick Road, but it is unique in its mystique. It is surrounded with an aura that is symbolic of physical achievement, not ego or speed, just achievement."

Such statements reveal the true meaning and worth of physical challenges by showing participants far more about themselves than their mere physical endurance. The mental and emotional resolve they need to go beyond perceived limits and prove that they can succeed at a task they thought impossible reflects the true meaning of a challenge. However, many participants also have discovered the necessity of balancing their desire to achieve with their physical limitations. This may represent the most important lesson of all.

### **CREATING FITNESS PROGRAMS**

In developing fitness programs, agencies should stress the idea of accomplishing each officer's personal best, not competing against others who are younger or have greater athletic abilities. This foundation must exist in physical fitness programs; otherwise, they become fraught with problems inherent in competitions. If agencies emphasize competing over teamwork, they will create atmospheres where officers push themselves beyond their limits, resulting in physical injuries and emotional traumas from competition-induced peer pressure.

Instead, agencies must ensure that their officers understand the

importance of a team approach. A fitness program is not about the fastest runners. It is about the fastest runners completing the course and returning to the end to encourage the slowest ones to do their best—in essence, running twice to help their fellow officers. It is about all participants waiting at the finish line until the last one completes the event and cheering that person as heartily as the first. It is about going out in the rain, snow, or oppressive heat and continuing to train and improve. It is about transforming a group of individuals into a team, changing “I’ll try” to “We’ll try” and, ultimately, to “We did it.”

This sense of accomplishing a difficult task as a team represents the fundamental aspect of the FBI’s yellow brick—a token given in recognition of each participant’s personal success and a reminder of those who helped that person attain it. Any item would work as well. By emphasizing cooperation, not competition, agencies can demonstrate to all of their officers, regardless of skill or age, that improving everyone’s fitness level constitutes the goal that all personnel should work toward. No winners or losers should exist in a well-developed physical fitness program, just participants doing their best.

## CONCLUSION

Today, everyone knows the importance of a healthy, active lifestyle. However, physical fitness for law enforcement officers is important not only for their personal well-being but also for their survival in a profession fraught with danger and high levels of stress.

To help officers remain physically strong and mentally alert to perform their duties and protect their communities, law enforcement agencies should encourage their officers to exercise and maintain a healthy diet.

The FBI has long held that the physical fitness of law enforcement officers ranks equal with their mental preparedness. To this end, the FBI Academy offers its Fitness Challenge, including one course

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that has become nearly legendary over the past 20 years. The Yellow Brick Road may have begun in the imaginary land of Oz, but it has shown many law enforcement officers the way to a healthier lifestyle and, more important, a sense of pride in achieving a difficult goal through personal effort and teamwork. Just like the four officers at the beginning of this article, many felt beaten before they started. But, with the help of their friends and the wisdom gained from facing their fears, they discovered resources

within themselves that even a wizard could not have provided. In short, they all found the brains, heart, and courage to achieve a much-sought-after goal and to return home with the knowledge that they did their best. ♦

## Endnotes

<sup>1</sup> Any resemblance to the four characters (the Scarecrow, the Tin Man, the Cowardly Lion, and Dorothy) in L. Frank Baum’s classic children’s tale *The Wizard of Oz* is intentional and acknowledged by the author. The subtitle of this article came from the musical score of the film version, E.Y. Harburg and Harold Arlen, *We’re Off to See the Wizard* (New York, NY: Leo Feist, Inc., 1939).

<sup>2</sup> The FBI hosts four 10-week sessions each year during which law enforcement executives from around the world come together to attend classes in various criminal justice subjects, including physical fitness.

<sup>3</sup> Ronald J. Getz, “You Can’t Afford Not to Have a Fitness Program,” *Law and Order*, June 1990, 44-50.

<sup>4</sup> For a comprehensive overview of the physical benefits of exercise, see Wayne Westcott, *Strength Fitness* (Dubuque, IA: Brown & Benchmark, 1995); Jack Wilmore and David Costill, *Physiology of Sport and Exercise* (Champaign, IL: Human Kinetics, 1999); Everett Aaberg, *Resistance Training* (Champaign, IL: Human Kinetics, 1999); and Kenneth Cooper, *The Total Aerobics Program for Well-Being* (New York, NY: Bantam/M. Evans & Co., Inc., 1983).

<sup>5</sup> Due to organizational restructuring, the FBI Academy recently combined physical training with practical skill instruction to form the Operational Skills Unit. For clarity in the article, however, the author maintains the original title of the unit charged with providing physical training at the academy. She also gratefully acknowledges the assistance of all of the physical training staff members in the preparation of this article.

<sup>6</sup> L. Frank Baum, *The Wizard of Oz* (New York, NY: Grosset & Dunlap, 1956).

# Focus on School Violence

## Bomb Threat Assessments

By Ronald F. Tunkel, M.C.J.



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When investigators analyze an anonymous threat, they have a broad range of behavioral science techniques available to them, such as statement analysis, psycholinguistics, and forensic stylistics. They also rely on the more traditional forensic sciences, including document examination, finger- and voiceprinting, and DNA analysis.

When assessing school bomb threats, investigators first should question whether the threat passes the *reality* test, which they should apply to both the threatener and the threat. Though only a trained professional is qualified to render a psychological diagnosis, most people can recognize if an individual is grounded in reality. If the offender makes such claims as “The spacemen inside my head are telling me to blow up the school” or his language is a salad of unrelated or nonsensical words, he may have mental health issues, which could lessen the credibility of the threat.<sup>1</sup> Further, the threat itself may not be grounded in reality. A recent case centered on a well-written note threatening to explode a device at a high school. However, the writer claimed that he would use plutonium, an extremely difficult and dangerous

substance to obtain, process, and store. His threat failed the reality test, and neither the school nor the town was evacuated.

Further, threats from purportedly well-organized, violent groups rarely are grounded in reality. In fact, anonymous threateners often invoke the presence of a group, peppering their communications with the pronoun “we” or claiming to have an extensive network conducting surveillance or preparing to carry out the threat. Some threateners believe that having the power of a group bolsters credibility with their victims. In reality, to investigators involved in threat assessment, such language usually suggests a lone offender.

Studying the language of the threat plays a critical role in the second avenue of analysis, looking for *evidence of commitment* to the threat by the threatener. Statement analysis involves studying a subject’s language, verbal or written, to detect indicators of deception; uncover hidden, disguised meanings or motivations; or discover areas of sensitivity to the subject. The use of first person active tense and unequivocal language signals a good indicator of commitment. The statement, “At the next pep rally, I will throw a homemade pipe bomb filled with black powder after I light the fuse,” would carry more weight than “An upcoming pep rally *may* be disrupted by our group carrying *some* high explosives, like gunpowder.” In the latter example, the subject uses the passive tense “be disrupted” and equivocation in the statement through the qualifiers “may” and “some.” This language suggests a lack of commitment on the subject’s part.

Investigators also may see evidence of commitment, or the lack thereof, in the details provided by the offender. Has the offender put time, energy, resources, or effort into his plan? For example, does he appropriately describe school security measures and how they may be defeated? Likewise, something as simple as an incorrect address or misspelling of an addressee’s name may signal a lack of commitment to the threat. Certainly, if individuals seriously plan to commit a potentially life-threatening crime and expose themselves to criminal prosecution, they would have done some research on their targets.

The details that the subject provides also may assist in the third area of analysis, the *offender’s*

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*ability* to carry out his threat. An offender demonstrates ability when he provides appropriate and accurate details about his plan or weapon. To individuals assessing threats, providing these essential details establishes the credibility of the threatener. In the previous example of the lesser threat, an error exists in the details; gunpowder is not a high explosive. It sounds scary to say “high explosives,” but this statement would reflect the threatener’s lack of knowledge, again suggesting low commitment and lack of ability to carry out the threat. In the more serious example, the suspect provided accurate details when describing a basic pipe bomb recipe: pipe, viable explosive filler, and a fuse to initiate the device. He shows that he has knowledge to make a device, and it suggests that he put time, energy, and resources into his plan.

The fourth area of focus is evidence of a *motive*. Does there appear to be a justifiable mission/goal behind the threat? “I’m tired of the jocks picking on younger kids and getting away with it. Because none of the teachers will do anything about it, I’m going to bomb them!” Investigators should consider this type of statement more seriously than, “Everyone in this town must die, and we’ll start with bombs in the high school.” The first threat gives an understandable reason for the threatened action. It is specific and targets one group. The second statement is broad and lacks motive. Does this threatener not feel that his friends, family, and even himself fall into the category of “everyone in this town?” Sometimes, people vent their anger and frustration through broad, bold talk. It dissipates the energy that an offender otherwise might use for harmful intent. The first threat also raises interest because the threatener seems to have considered, but run out of, the usual peaceful options when he says, “*Because none of the teachers will do anything about it...*” Research suggests that when a subject feels he has no peaceful alternative or means to communicate his grievance, the likelihood that he will act out violently dramatically increases.

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Fortunately, in most cases, the motive for these bomb threats involves some type of excitement or gain for the offender and simply making the threat with no intention of ever carrying it out meets the offender’s needs. Some people feel a sense of thrill and empowerment if the entire population of a school is evacuated, people feel afraid, and such authority figures as police and fire personnel arrive at the scene. And, if it is a beautiful spring day, or if school is canceled on a Friday or on a test day, an evacuation can benefit the students as well. The research also suggests that the axiom “most threateners don’t bomb and most bombers don’t threaten” appears true in most cases. In fact, only a very small percentage of bomb threats to schools results in the deployment of an actual, viable device. Most anonymous bomb threats at schools usually are false alarms.

This information provides only a brief, summary outline of how investigators should assess anonymous bomb threats at schools. It is not intended for those assessing a potential mass act of violence. Applying these principles may help administrators and law enforcement personnel accurately assess the viability and credibility of a threat and appropriately gauge their response. Any credible evidence provided by teachers or peers that one or more students are planning a mass homicide of their schoolmates and teachers needs to be assessed with different measures and afforded a graver concern than the more typical anonymous bomb threat. ♦

#### Endnotes

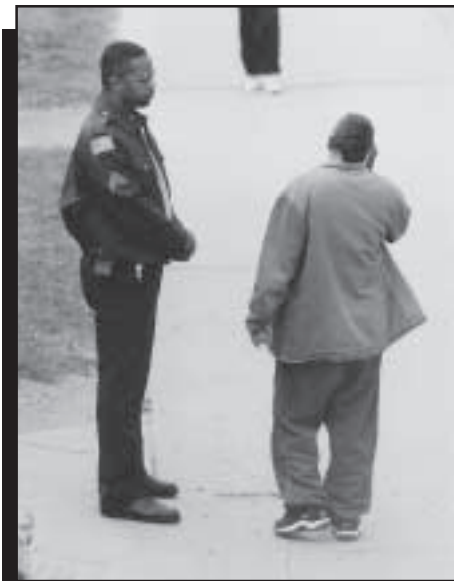
<sup>1</sup> For illustrative purposes and to avoid confusion in the article, the author sometimes refers to subjects as males.

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*Special Agent Tunkel serves with the Arson and Explosives Programs Division, Bureau of Alcohol, Tobacco and Firearms and currently is assigned to the FBI’s National Center for the Analysis of Violent Crime at the FBI Academy.*

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# ***Safety Awareness for Public-Contact Employees***

By JACQUELINE B. WHEELER and CHRISTOPHER M. LANDO

Unlike sworn law enforcement officers, most public safety employees, such as parole and probation officers, truant officers, building inspectors, or social workers, do not have enforcement powers. However, these employees face similar threats to their safety because they, like law enforcement officers, often deal with individuals who have stepped across the boundaries of society's laws.

To help its county government employees who have frequent public contact, the Prince William

County, Virginia, Police Department has developed a training class on safety awareness.<sup>1</sup> Instructors designed the class, offered as a 1-day training session at the Prince William County Criminal Justice Academy, to increase the awareness of county employees of the potentially hazardous people and situations that they can encounter while on duty.

## **CLASS DESIGN**

The training does not cover defensive tactics. It does not advocate the use of force, teach how to use

weapons, or provide self-defense techniques. Rather, instructors teach various strategies to help prepare county employees for their encounters with the public. These strategies include the use of the field interview stance (i.e., how and where to position themselves); what physical cues or body language to watch for that could indicate a potential attack; contact and cover or "safety-in-numbers" strategy (i.e., one employee talks with the subject while another ensures safety); and how employees can communicate any hazard they perceive to their

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coworkers so they can both react and escape from potentially hazardous situations. The instructors incorporate a combination of lectures, handouts, videos, and computer presentations into the training to keep it interesting, as well as educational.

Divided into several categories with various objectives, the training session specifically teaches employees to be wary of certain warning signs that indicate an attack may be imminent. Follow-up discussions provide methods of diffusion or escape should the employee feel the situation is becoming dangerous. The training then covers ways employees can avoid placing themselves in such potentially hazardous situations. Finally, the session teaches certain practices that employees can implement to increase their safety while interacting with county residents.

### **Early Warning Signs of a Potential Attack**

Employees may detect some early warning signs of an attack. For example, do the subjects have a known violent background? Do they ignore authority by turning and walking away? Do they glance at a particular object or in a certain direction, perhaps toward a kitchen knife, an avenue of exit, another person, or toward another item that they may use against the employee? Are they standing with arms crossed or hands placed on hips? Perhaps, even more telling, do they clench their fists or take a defiant stance? These examples all serve as potential preassault indicators. If any occur, employees immediately should attempt to get away.

Instructors of the class also teach the participants to recognize signs that can indicate possible alcohol or other drug use, such as bloodshot eyes, unfocused vision, impaired balance, slurred speech, odor of alcohol, hallucinations, or wild or incoherent statements. Because the attitude and reaction of a person using alcohol or other drugs easily can change without warning, employees never should attempt to interview or reason with a person who may be under the influence.

### **Methods of Diffusion or Escape**

The ability to reduce stress during an encounter remains an important trait for employees having contact with the public. To de-escalate a situation, employees quickly must identify when someone becomes upset, begins to show signs of agitation, or reveals any warning signs and help decrease the individual's level of agitation.

However, if employees believe their safety is in jeopardy, they should return later with coworkers, conduct the interview in a safer environment, or obtain police protection so that they can quickly, and safely, resume the questioning.

Another tactic, screening, involves consciously placing barriers or objects between the employee and the interviewee. If employees conduct the interview outside, they may want to meet in a driveway where they can place the front of their cars between themselves and the subjects. When conducting interviews inside, employees can try to keep a table or desk between themselves and the subjects when conducting the interview. By creating this barrier, employees can hinder an attack and give them some time and distance to react or escape should an attack occur. If two employees attend a meeting, each employee should use available



*First Sergeant Wheeler is assigned to the Operations Division/Patrol of the Prince William County, Virginia, Police Department.*



*Special Agent Lando serves with the FBI's Asheville, North Carolina Resident Agency.*

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barriers. With good positioning, an attack becomes less likely because the subject cannot reach two people separated or shielded by obstacles.

When employees determine that they need to escape, versus attempting to diffuse a situation, they must act immediately. When a threat or perceived threat has made them concerned for their immediate safety, employees should escape quickly and without explanation. They should not take time to close the interview, collect any unfinished paperwork, or pack their briefcases. They simply must exit the scene as quickly as possible.

### **Ways to Avoid Potential Hazards**

The instructors recommend a strategy of prevention and avoidance, including identifying potentially hazardous persons or situations *before* becoming involved in the situation. Employees can accomplish this by researching any previous history of the location that they are going to, as well as the background of the persons they will meet. In doing so, employees can avoid any situation that may appear dangerous. The employees are instructed to watch for telltale signs of potential danger (e.g., loud music, an ongoing party, yelling, or a domestic dispute) as they approach their destination. Employees also should listen at the door for any signals not readily apparent from the outside. After completing these assessments and with no indicators existing, the employees can knock and announce their presence.

Identifying the type of individuals that employees face ranks as a top priority. The instructors

describe individuals as either “yes,” “no,” or “maybe” type of people. How can employees tell the difference? Employees easily can identify “yes” individuals as cooperative subjects. Clearly, in the initial contact, such individuals accept employees as authority figures and comply with their directions.

Employees also easily can identify “no” people. “No” individuals make it clear from the start, whether by phone or in person, that they do not want to have any interaction

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***...instructors teach various strategies to help prepare county employees for their encounters with the public.***

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with employees. They do not want to listen to employees and have no intention of cooperating with them. When encountering such individuals, employees can take numerous steps to help avoid confrontations. For example, employees simply can change the meeting place. They can tell the person that they will have to meet at a business office or building lobby, rather than in a home or secluded area. Employees can include coworkers or supervisors in the interview, based on the “safety-in-numbers” concept. Employees can call the local police if a subject becomes disorderly as it remains better to have law enforcement

responding before an incident becomes an emergency. As another alternative, employees can request a police escort for the necessary contact. This proactive approach emphasizes avoiding negative contact through preparation. In the event of a physical confrontation, employees should focus their efforts on getting away and avoiding any physical contact with the individual unless in self-defense.

“Maybe” individuals can prove difficult to recognize. This type can become a “yes” or “no” person depending on the employee’s ability to communicate and deal with the situation. If in doubt, employees should treat a “maybe” person as a “no” for safety reasons, remembering that if a “maybe” person becomes a “no” person, they should leave the area. When communicating, employees should remember to talk quietly, which often forces the individual to calm down and listen to what the employee has to say. Employees can point out how others (e.g., family members) are affected by the individual’s conduct. Also, showing the individual a written policy can reassure the person that the employee is following agency procedures.

### **Practices to Improve Safety**

The instructors tell the employees to give proper identification and introduction and to maintain a professional demeanor at all times. The class participants learn to keep a safe distance (4 to 6 feet) during contact and the importance of appearing confident and maintaining eye contact. Also, the instructors emphasize that employees should avoid becoming too involved in

## Early Warning Signs of a Potential Attack

- **Conspicuous ignoring:** As employees talk, subjects give no sign of understanding the conversation or dialogue. They avoid eye contact and will not answer questions. They may ignore facts specifically pointed out to them. They may be formulating their plan of attack or withdrawal.
- **Repetitive inquiries:** Individuals will keep repeating the question posed by employees, even after having been provided a satisfactory response, to help buy time to formulate a lie or develop a plan of attack.
- **Looking around:** Subjects may be attempting to find a way out of the situation. In their minds, the employees are the ones who placed them there and made them feel this level of discomfort. This is different than target glancing in that their heads swivel to find “any way out,” including through the employees.
- **Exaggerated pacing:** This speaks to their level of agitation and could indicate that they are warming up for a withdrawal or an attack.
- **Ceasing all movement:** This is the reverse of exaggerated pacing and is better known as “the calm before the storm,” but possibly could indicate some type of action by the subject.
- **Actual threats:** Employees should take these seriously. They should not minimize actual statements or threats made by subjects. They should take such subjects at their words or actions and respond appropriately. They also should document the threat.
- **Flight versus fight:** Because it remains difficult to tell whether any of these actions are made in an attempt to withdraw or as a precursor of an attack, it is only prudent to assume that they may be indicating a possible attack and to react accordingly. It is not worth the employee’s safety to risk not responding.

completing paperwork and possibly missing any type of warning signs.

The training also emphasizes that all public-contact employees should plan what they will do when a dangerous situation occurs. If they remain prepared, it will take them less time to react to such an occurrence. As employees approach each location, they should remain alert and observe the surroundings for the closest escape routes, available barriers or obstacles, any presence of weapons, and the location of the nearest telephone. Should the need arise, having a predetermined plan will help them move quickly and easily execute their plan. Employees can use

simple, effective techniques to help get themselves out of danger. For example, employees can say phrases, such as “I just got a page,” “I have to check in with my boss,” or “My coworkers should be arriving soon and I need to let them know...” to allow them to use the telephone. If employees can reach a telephone, rather than calling their office in an emergency, the instructors tell them to call the police emergency number. If needed, employees can conduct a fake conversation with the dispatcher to signal that a problem exists. Employees should remember that if they use a cellular telephone to place the call, the emergency service cannot

identify their location. Keeping an open phone line may help the dispatcher locate employees if they cannot provide their exact whereabouts. Employees should inform other coworkers of their schedule and location each day. The instructors stress that employees must remain vigilant of their safety, and they must be ready to use any tool, plan, or scheme to get them out of a dangerous environment and notify police, if necessary.

Such tactics also can apply when employees are working at their offices. Personal safety in the workplace involves several risk factors, including exchanging money with the public and working alone

or in small numbers, before or after normal business hours, and in high-crime areas. When money is present, the risk of potential violence increases. Employees must remain aware of the risk and take steps to minimize the "obviousness" of cash by limiting the amount of personal property they bring into the workplace; securing valuables in a locked drawer or in the trunk of their vehicles; and keeping purses, wallets, and valuables out of sight. Because employees face greater danger before and after normal working hours and in high-crime areas, they should employ recognized safety practices, such as parking near the door in well-lighted areas, scanning the area prior to entering or leaving buildings, calling home prior to leaving, not advertising that they are working alone, locking their office doors, leaving in teams whenever possible, and walking with purpose and exuding confidence. Visitors to the workplace also present dangers. Employees should ensure that their office has a policy for identifying authorized visitors, such as displaying an approved visitor badge, and that a policy exists to report and handle unauthorized persons.

Finally, because a person's level of confidence may decrease the chance of being victimized or increase the chance of survival should an attack occur, the instructors also emphasize the importance of physical fitness. Employees should strive to maintain a level of fitness to increase their health, which could help project a higher level of confidence to a person who

may be thinking about possibly attempting an assault. They should attain fitness gradually and should initiate any fitness program only after consulting with a doctor if any health concerns exist. In addition, should an escape or defense become necessary, being physically fit will increase the level of their performance in what may be a dynamic situation.

### CONCLUSION

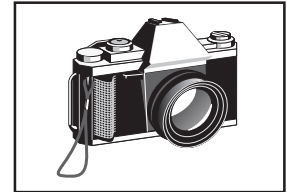
While many public-contact employees do not have enforcement powers, they do meet individuals who often take umbrage with them while they are carrying out their assigned duties. To avoid possible confrontations and increase their level of safety, these employees should receive training in how to recognize and deal effectively with these types of individuals.

The Prince William County, Virginia, Police Department has developed a 1-day training session to provide its county government employees who have frequent public contact with strategies that can help them deal with potentially dangerous incidents. Although no employee can predict when, or if, a situation will "go bad" for them, by thinking ahead, having a well-thought-out plan, and rehearsing it, they can improve their chances of surviving a dangerous situation or, ideally, even preventing such an attack. ♦

#### Endnote

<sup>1</sup> For additional information on the program, contact Chief C.T. Deane, Prince William County, Virginia, Police Department at 703-792-6650.

## Wanted: Photographs



**T**he *Bulletin* staff is always on the lookout for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. We suggest that you send duplicate, not original, prints as we do not accept responsibility for prints that may be damaged or lost. Send your photographs to:

Art Director, *FBI Law Enforcement Bulletin*,  
FBI Academy, Madison  
Building, Room 209,  
Quantico, VA 22135.

## Drugs and Crime

The National Institute of Justice (NIJ) presents *ADAM Preliminary 2000 Findings on Drug Use and Drug Markets: Adult Male Arrestees* (NCJ 189101). This research report features original data from NIJ's Arrestee Drug Abuse Monitoring (ADAM) program using a new probability-based sampling method, a poststratification weighting strategy, and a redesigned survey instrument. The redesigned methodology gives researchers and policymakers greater confidence in ADAM data. Information in this NIJ research report was culled from sites in the ADAM network as a result of new questions about heavy alcohol use, mental health and drug treatment, the need for treatment of drug dependency, and characteristics of drug markets. The questions are based on items from other national surveys and allow researchers to "crosswalk" between ADAM and other ongoing, large-scale research studies. To obtain a copy of this research report, visit <http://www.ojp.usdoj.gov/nij/pubs-sum/189101.htm> or call the National Criminal Justice Reference Service at 800-851-3420.

## Law Enforcement

*Reducing Gun Violence: The Boston Gun Project's Operation Ceasefire* provides a 78-page overview of Operation Ceasefire, a unique problem-oriented policing initiative that tasked both academics and practitioners with reducing homicide victimization among youths in Boston. This National Institute of Justice research report details the issues and processes of the project's implementation and design and discusses findings from an evaluation study. The study concluded that Operation Ceasefire likely was responsible for the significant decline in the city's rates of youth homicide and gun violence in the 1990s. Moreover, although the project was highly customized to Boston, certain process elements generally should be applicable to similar problem-solving efforts in other jurisdictions. This report (NCJ 188741) is available electronically at <http://www.ojp.usdoj.gov/nij/pubs-sum/188741.htm> or call the National Criminal Justice Reference Service at 800-851-3420.

**Bulletin Reports** is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 209, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

## **Bulletproof Dogs The Canine Ballistic Vest Phenomenon**

By Charlie Mesloh, M.P.A., and  
Jennifer James-Mesloh, M.P.A.

**T**he impact of news stories and the concentration of media attention in an area can create a public perception that previously did not exist. For example, numerous cases of the media's involvement in criminal justice issues have created new public perceptions, which can be referred to as "social construction" or "framing an issue."<sup>1</sup>

This scenario is evident in the news stories that transpired after the 1998 death of the New Jersey State Police dog Solo, mortally wounded in the line of duty. The brutal killing of Solo grabbed the media's attention, and the story spread nationwide. As a reaction to the shooting, a 14-year-old girl in California responded by organizing a program to fund the purchase of protective vests for police dogs. Many believed that if Solo had been wearing ballistic armor, he would have survived the shooting.

The New Jersey legislature also responded to the media's attention generated by Solo's death and enacted new state legislation enhancing the penalties for injuring or killing a police animal. The legislation, referred to as Solo's Law, represented an effort to honor the fallen canine. The media was charmed by the emotional outpouring toward a police canine and continued to cover the story, further promoting the reputation of Solo who had become a national figure.

### **Perceptions**

Once media organizations realized the appeal of police canines produced by the Solo incident, they looked for similar stories in their local news markets. By constructing news stories that focused on canine protective vests, the media generated a public perception that such gear was a necessity and that those responsible for the protection of others should be equally protected. These stories tapped into the emotional reservoir of a nation. They sparked the inherent goodness that exists in children and fueled the creation of organizations dedicated to protecting

those in law enforcement with ballistic vests. The reporting of such events only perpetuated the growing perception that protective vests for police officers and police canines would prove the difference between life and death.

A review of media stories indicated that police canines are viewed in a positive manner by most people and often portrayed as the "four-footed community police officer of the 21<sup>st</sup> century."<sup>2</sup> However, the formation of public perceptions created by the media's framing of police canine issues has contributed greatly to establishing protective vests in the public's mind as the solution to all death and injury scenarios for police service animals. While the basis for providing vests is generated from human kindness and the goodness of children, it also raises some concerns that the law enforcement community should address.



*Mr. Mesloh, a former law enforcement officer and canine handler and trainer, currently instructs at the University of Central Florida in Orlando and is pursuing a Ph.D. in public affairs.*



*Ms. James-Mesloh, a former public relations practitioner who has experience with the Florida legislature, currently is pursuing a Ph.D. in public affairs at the University of Central Florida in Orlando.*

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## Concerns

The phenomenon of socially constructing an issue and then spinning the public's perception of it seems to have occurred over the use of protective vests for police canines. For example, although no research currently exists documenting the extent of protection that a vest would provide a police canine, the public's perception and the continued reporting by the media champion the use of such equipment. Research, however, does exist that evaluates social construction and its linkage to criminal justice issues. It was from this point that two researchers analyzed the progression of news articles reporting on police canines and the use of protective armored vests.<sup>3</sup> These researchers identified a total of 2,022 newspaper articles from a Boolean search that included the words *police dog* for the years 1994 through 2000.<sup>4</sup> They intended to identify major trends and changes in the socially constructed image of police dogs and their activities over this 7-year span. During the course of a content analysis of newspaper articles regarding police dogs, the researchers noted a substantial trend in the number of stories focusing on the purchases of ballistic vests to protect police animals.<sup>5</sup> Ninety-six articles over the 7-year period focused specifically on body armor for police dogs. Articles regarding canine vests were rare prior to the high-profile canine deaths, especially that of Solo's in 1998. However, a sharp increase began in early 1999 and continued through the end of the study.

During that time, the media framed police dogs in a positive context and, when linked with specific articles, constructed a perception that implied a need for public involvement. This need for public involvement has taken the form of purchasing ballistic vests. Although the use of such equipment has obvious effects for police officers, the same may not hold true for canines. While canines can benefit from wearing vests, they also can encounter some unstated hazards.

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**A vest will not protect a dog under all circumstances nor will it eliminate the need for deadly force against criminal suspects.**

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A likely scenario involves a police canine deployed to apprehend a fleeing suspect who then fires a gun at the dog. However, when imagining this scenario, the suspect would be standing and firing the gun at a downward angle to hit the target (the dog), which would be running toward the suspect. A problem arises because protective vests are designed to cover the chest and back region of the dog, leaving the head area completely exposed and vulnerable to a gunshot wound. Obviously, the head presents the most likely target, as it is closest to the suspect. It also remains unclear whether ballistic vests offer sufficient protection against blunt trauma injury as

the researchers could find no studies demonstrating the effectiveness of the material to disperse projectile energy on a dog's physiology. Further, the additional weight and bulkiness of the vest may reduce the speed and maneuverability of the canine, while offering the suspect the ability to use the vest as a gripping point during a physical confrontation.

In addition, no reports of a canine ballistic vest saving the life of a police animal have occurred in the United States. As a result of the positive social construction revolving around protective vests for canines, harm actually may come to police dogs because of placing so much faith in the ballistic vest. To this end, agencies may begin to place dogs in a wider range of functions that inherently prove more dangerous. Finally, the public, at some point, may expect agencies to deploy vest-protected animals in tactical operations as an additional nonlethal option. Although special weapons and tactics (SWAT) and canine unit interaction is commonplace in many containment scenarios, the perception of the dog as “bulletproof” by the public possibly raises future issues, particularly in incidents where officers must employ deadly force. Inevitably, someone will ask why the “armored dog” was not sent to subdue a barricaded and heavily armed individual.



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This represents an example of “framing an issue” that was meant to be positive, but, instead, suffers from negative externalities.

### Recommendations

With these concerns in mind, agencies should use caution when they accept donations of canine body armor. Although these gifts symbolize community support toward the canine unit and the police department as a whole, they may carry unreasonable expectations that a dog and vest cannot fulfill. A vest will not protect a dog under all circumstances nor will it eliminate the need for deadly force against criminal suspects. Realistically, a vest provides a police dog with an added level of protection but also has some negative features that only a canine handler can truly judge in the final analysis. Clearly, documented policy and procedures for deployment and an understanding of the canine’s abilities and limitations may reduce future problems between communities and their law enforcement agencies.

Moreover, regardless of how agencies may consider canine vests, they should support a national study to gather statistics about the number of dogs saved by these vests. By examining the benefits and risks associated with canine protective vests, the law enforcement community can gain a clearer, less emotionally charged view of the issue, rather than relying on the media’s interpretation of the tactical use of police dogs. This is similar to the use of protective vests for law enforcement officers. Over the years, the number of officers saved by wearing body armor has grown as more officers and agencies have seen the benefits derived from them and have implemented their use. However, equally well known is the tragic number of officers who have lost their lives even though they were wearing a protective vest at the time.<sup>6</sup> By examining these incidents, manufacturers have made great improvements in the design, material, and



comfort level of body armor for officers. The same should be done for police service animals, especially supplementing the vest with some type of head covering or helmet device to protect the dog’s most vulnerable target zone. Additionally, researchers should obtain input from canine officers. Because police dogs cannot speak for themselves, their handlers must provide as much information as possible as to whether canine protective vests can save the lives of these highly trained and devoted animals. Finally, with accurate data on the benefits and risks associated with the use of protective vests for police service animals, the media can present a true picture of the

issue to the public. News organizations still can cover stories of heroic actions of police dogs, but they also can demonstrate to the public that these brave animals have the best and most up-to-date equipment, training, and human guidance.

### Conclusion

In today’s world of advanced technology and instant communication, the media can focus the public’s attention on many issues and often change how people perceive them. The issue of protective vests for police

canines illustrates this concept very well. Brave animals sacrificing their lives for the public’s safety can seize the media’s attention unlike little else. In their zeal to cover such stories, however, news organizations may create incorrect perceptions of the solution to these tragedies. To avoid this, the law enforcement community must determine if the benefits of this solution outweigh the risks.

Primarily, law enforcement agencies can support a national study of the effectiveness of canine protective vests, research into improving the design of such equipment, and a continuing dialogue between canine handlers, vest manufacturers, and the media. Such actions would create an environment that promotes the safety of the animals, their handlers, and the public they serve and stand as a fitting memorial to all

of those, like Solo, who have given their lives in the line of duty. ♦

#### Endnotes

<sup>1</sup> R. Surette, *Media, Crime and Criminal Justice*, 2d ed. (New York, NY: Wadsworth, 1992); G. Barak, *Media, Process and the Social Construction of Crime* (New York, NY: Garland Publishing, 1994); and R. Fox and R. Van Sickel, *Tabloid Justice: Criminal Justice in an Age of Media Frenzy* (Boulder, CO: Lynee Rienner Publisher, 2001).

<sup>2</sup> C. Mesloh and R. Surette, "Analysis of News Media Coverage Regarding the Law Enforcement Canine," 2001, pending publication.

<sup>3</sup> Ibid.

<sup>4</sup> A Boolean search, named for the British mathematician George Boole, uses "operators," such as *and* or *or*, to define a relationship between terms. A search for police *and* dogs locates every article in which both words appear. A search for police *or* dogs finds every article in which either of the words appears. The researchers conducted their Boolean search by accessing <http://www.newslibrary.com>.

<sup>5</sup> Supra note 2.

<sup>6</sup> From 1991 through 2000, 293 law enforcement officers were shot and killed in the line of duty while wearing body armor, with gunshot wounds to the head accounting for 168 of those deaths; U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted 2000* (Washington, DC, 2001), 15.

## Crime Data

### *Violent Crime Offenses Remained Relatively Unchanged*

**P**reliminary 2001 data from the FBI's Uniform Crime Reporting Program indicates a 2 percent increase in the nation's Crime Index from the 2000 figure. The Crime Index is composed of murder, forcible rape, robbery, aggravated assault, burglary, larceny-theft, and motor vehicle theft. The Modified Crime Index includes the property crime of arson.

Including the offenses surrounding the events of September 11, 2001, preliminary data show that the 2001 Crime Index remains at the 2 percent increase from the 2000 figure; the volume of violent crime increased .6 percent; and the murder volume increased 26.4 percent. However, the FBI advised that the figures reflecting the offenses from the events of September 11 are not included in the trend data because they are statistical outliers that will affect current and future crime trends.

Preliminary figures for 2001, excluding the data mentioned above, suggest that the volume of violent crime offenses remained relatively unchanged—a .3 percent increase—when compared with data for 2000; however, the volume of property crime offenses rose by 2.2 percent.

Among violent crimes, robbery showed the greatest increase, 3.9 percent. Murder rose 3.1 percent, and forcible rape showed a minimal increase of .2 percent. Aggravated assault, which is the most frequently occurring violent crime in the Index, was the only violent offense to show a decrease from the 2000 volume—1.4 percent. In the property crime category, motor vehicle theft increased 5.9 percent, and burglary rose 2.6 percent. Arson and larceny-theft increased 2 percent and 1.4 percent, respectively.

Collectively, law enforcement agencies in three of the nation's four geographical regions reported increases in their Crime Index totals. Agencies in the West recorded a 4.5 percent increase; agencies in the South, a 1.9 percent increase; and agencies in the Midwest, a .9 percent increase. Northeastern agencies collectively noted an overall Crime Index decrease of 1.2 percent.

For the complete preliminary annual *Uniform Crime Report* press release, access the FBI's Internet site at <http://www.fbi.gov>. ♦

## **Perceptual and Memory Distortion During Officer-Involved Shootings**

By Alexis Artwohl, Ph.D.

**“I**f it hadn’t been for the recoil, I wouldn’t have known my gun was working. Not only didn’t I hear the shots but afterward my ears weren’t even ringing.”

“I saw the suspect suddenly point his gun at my partner. As I shot him, I saw my partner go down in a spray of blood. I ran over to help my partner, and he was standing there unharmed. The suspect never even got off a shot.”

“When I got home after the shooting, my wife told me that I had called her on my cell phone during the pursuit of the violent suspect just prior to the shooting. I have no memory of making that phone call.”

“I told the SWAT team that the suspect was firing at me from down a long dark hallway about 40 feet long. When I went back to the scene the next day, I was shocked to discover that he had actually been only about 5 feet in front of me in an open room. There was no dark hallway.”

“During a violent shoot-out I looked over, drawn to the sudden mayhem, and was puzzled to see beer cans slowly floating through the air past my face. What was even more puzzling was that they had the word *Federal* printed on the bottom. They turned out to be the shell casings ejected by the officer who was firing next to me.”

These representative samples, taken from actual officer-involved shootings, exemplify the quirky nature of perception and memory. Law enforcement officers fully realize that their superiors, legal authorities, and the public they serve will hold them completely accountable for their every action during an officer-involved shooting. These same individuals also will scrutinize the accuracy and truthfulness of statements made by officers taking part in such incidents. Therefore, it becomes important to understand that expecting officers to have perfect recall of

any event is not realistic. Indeed, the body of research on perception and memory supports the fact that people rarely are capable of total and perfect recall of events.

Although the underlying physical processes of perception and memory continue as a matter of research and debate, empirical observation of human behavior can shed some light on the behavioral consequences of these processes. To this end, the author focused her research on the self-reported perceptual and memory distortions experienced by officers involved in shootings.<sup>1</sup>

### **BACKGROUND**

Germane to this topic is how trauma and other highly emotional experiences can impact perception and memory. A noted researcher in the area of stress and fear conducted a comprehensive review of this topic.<sup>2</sup> He came to the conclusion that people have two distinctly different modes of processing information. One, the rational-thinking mode, happens during low emotional arousal states, whereas the second, the experiential-thinking mode, occurs during states of high stress and emotional arousal, such as would occur during an officer-involved shooting.

He pointed out that when people are not under high levels of stress, they have the ability to calmly engage in the conscious, deliberative, and analytical cognitive processing that characterizes rational thinking. However, when a perceived emergency requires quick action, they cannot afford this luxury. Instead, their cognitive processing system automatically switches over to experiential thinking. He stated that “people are angry, sad, or frightened not as a direct result of what objectively occurs but because of how they interpret what happens. The automatic, preconscious construals that are the effective instigators of such emotions are made so automatically and rapidly as to preclude the deliberative, sequential, analytical thinking that is characteristic of the rational system.”<sup>3</sup>

He delineated the differences in rational and experiential thinking, including the concept that experiential thinking represents a system that “automatically, rapidly, effortlessly, and efficiently processes information,”<sup>4</sup> an obvious advantage in a

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life-threatening situation demanding an immediate response. Along with facilitating automatic, rapid responses, he pointed out that experiential thinking is more likely than rational to have such characteristics as—

- fragmented memory instead of an integrated narrative;
- based on past experiences instead of a conscious appraisal of events;
- intuitive and holistic instead of analytic and logical;
- oriented toward immediate action instead of reflection and delayed action;
- highly efficient and rapid cognitive processing instead of slow, deliberative thinking;
- “seized by emotions” instead of “in control of our thoughts”;
- or
- “experiencing is believing” instead of requiring justification via logic and evidence.

He continued with, “In most situations, the automatic processing of the experiential system is dominant over the rational system because it is less effortful and more efficient and, accordingly, is the default option.”<sup>5</sup> He noted that people frequently engage in experiential thinking during everyday events simply because it is more efficient, but “emotional arousal and relevant experience are considered to shift the balance of influence in the direction of the experiential system.”<sup>6</sup> This clearly applies to officers involved in shootings and other high-stress situations.

## PREVIOUS RESEARCH

To understand this connection more thoroughly, the author reviewed previous research relative to officer-involved shootings. In the process, she concentrated on three main studies.

In 1986, two researchers were among the first to publish data specific to officer-involved shootings.<sup>7</sup> In their study of 86 officers involved in shootings, they

found that 67 percent of the officers saw the incident in slow motion, while 15 percent observed it as faster than normal. Fifty-one percent heard sounds during the event in a diminished manner, whereas 18 percent of the officers said that the sounds were intensified. Thirty-seven percent had tunnel vision, while 18 percent experienced greater visual detail.

In 1998, two other researchers studied a variety of reactions in 348 officers involved in shootings.<sup>8</sup> They administered their surveys within 3 to 5 days after the incident, just prior to each officer’s participation in a mandatory debriefing. They found that 41 percent of the officers thought that time slowed down, while 20 percent perceived that it sped up. Fifty-one percent

said that sounds seemed quieter, whereas 23 percent reported sounds as being louder. Forty-five percent of the officers had tunnel vision, while 41 percent experienced an increased attention to detail. In addition, 22 percent of the officers reported memory loss for part of the incident.

A recent researcher did a comprehensive survey of officer-involved shootings that consisted of detailed interviews with 80 municipal and county law enforcement officers who reported on 113

separate cases where they shot citizens during their careers in law enforcement.<sup>9</sup> While his report contained a wealth of information, it also set out specific data relative to perceptual and memory distortions. He found that 56 percent of the officers saw the incident in slow motion, while 23 percent thought that it happened quicker than normal. Eighty-two percent reported that sounds diminished, whereas 20 percent thought sounds intensified. Fifty-six percent experienced heightened visual detail, while 51 percent had tunnel vision. In addition, 13 percent of the officers reported other types of distortion during the event.

## PRESENT RESEARCH

From 1994 to 1999, the author supplied a written survey to 157 officers involved in shootings from multiple agencies. Although approximately two-thirds

“  
...independent studies...found that memory and perceptual distortions, in fact, did occur to some degree in officer-involved shootings.  
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of the officers received the survey during their individual mandatory debriefing within 1 week after the shooting, the author told them not to fill out the survey until they had attended a group debriefing (which typically occurs 2 to 4 weeks after the incident, allowing time for agencies to complete their investigations). The author did this because she discovered, in the course of conducting numerous group debriefings, that many officers do not fully realize the extent of their own memory and perceptual gaps and distortions until confronted with evidence to the contrary. During a group debriefing, as officers tell their versions of what happened, the complete picture begins to emerge. Participating officers enjoy the benefit of finding out what really happened overall and how their own version might differ. Even for officers who were the only officer present, their later perusal of investigation reports, including physical evidence and eyewitness statements, can educate them as to the lack of completeness and total accuracy of their memories of the event.

By contrast, the author collected the remaining one-third of the surveys from mental health or law enforcement professionals who gave the surveys to officers who they knew had been involved in shootings. With these surveys, the length of time that had passed since the shooting occurred varied more than those collected after group debriefings.

In addition, the sample did not represent a “clinical” population; these officers were not seeking treatment for post-traumatic stress disorder (PTSD), although some may have been experiencing a certain degree of PTSD. The majority of the officers who completed the surveys collected by the author were doing well emotionally by the time their group debriefing occurred. The officers voluntarily filled out the surveys, and the great majority of the officers returned them to the author.

Overall, the author’s research revealed that 62 percent of the officers viewed the incident in slow motion, while 17 percent said that time appeared to

speed up. Eighty-four percent of the officers noted that sounds seemed diminished, whereas 16 percent thought that sounds were intensified. Seventy-nine percent had tunnel vision, while 71 percent experienced heightened visual clarity. In addition, 74 percent of the officers stated that they responded on “automatic pilot,” with little or no conscious thought. Fifty-two percent reported memory loss for part of the event, and 46 percent noted memory loss for some of their own behavior. Thirty-nine percent recalled experiencing dissociation (i.e., the sense of detachment or unreality); 26 percent had intrusive distracting thoughts; 21 percent noted memory distortion (i.e., saw, heard, or experienced something that did not really happen or it happened very differently than they remembered); and 7 percent reported having temporary paralysis.

## DISCUSSION

### Past and Present Survey Results

*Diminished sound* refers to the inability to hear very loud sounds that a person ordinarily obviously would hear, such as gunshots. It ranges from not hearing these sounds at all to hearing them in an odd muffled, distant manner. This may contribute to the findings of previous researchers, as well as the author, indicating that officers often do not know exactly how many rounds they fired, especially as the number of shots increases.

*Tunnel vision* denotes the loss of peripheral vision. This, combined with *heightened visual clarity*, can result in the odd combination of officers seeing with unusual detail some stimuli within their narrowed field of vision, but remaining visually oblivious to the surroundings that they ordinarily would see with their peripheral vision.

Although 7 percent of the officers reported *temporary paralysis*, such a reaction is unlikely to represent “freezing” to the point of dysfunction during the event. In cases where the author debriefed officers who were angry at themselves for “freezing,”

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she found that, in fact, this was simply the normal “action-reaction” gap that occurs because the officers can shoot only after the suspect has engaged in behavior that represents a threat.<sup>10</sup> Although this gap occurs in a very brief span of time, because of the common perceptual distortion of slow-motion time, it can seem to the officers as if they stood there forever after perceiving the threat and before responding. While it remains possible that some of the respondents did, in fact, totally “freeze,” it is unlikely that as many as 7 percent did. Perhaps, none did.

*Intrusive distracting thoughts* are those not immediately relevant to the tactical situation, often including thoughts about loved ones or other personal matters. In addition, memory gaps and perceptual distortions can result in “flash-bulb” memories, where the individual has a series of vivid images burned into memory, with the rest of the event somewhat fuzzy, a bit out of order, or even missing.

The author found one notable aspect about all of the studies. None quantified other perceptual distortions that can occur, such as distance distortion, color distortion, face recognition distortion, or lighting distortions.

Overall, although some of the studies found similar results on various items, inconsistencies also occurred in several items from study to study. Regardless of the methodological differences that might have contributed to these deviations, the most important finding remained the same for all. That is, independent studies using different methodologies found that memory and perceptual distortions, in fact, did occur to some degree in officer-involved shootings. Therefore, those who analyze the actions and statements of officers involved in shootings must take these findings into account. Two researchers stated this clearly after finding that 22 percent of officers in their survey experienced memory loss.

While other studies have reported even higher numbers, 22 percent remains a highly significant amount given that the officers will be expected to

testify regarding their actions sometime in the future. What appears to be a relatively common perceptual disturbance following involvement in a critical incident has the potential of opening up the officers to accusations of either outright lying or withholding the truth. This is particularly relevant should subsequent interviews result in additional observations or clarifications, as is often the case.<sup>11</sup>

### Implications for Investigators

These researchers accurately pointed out that memory is not a flawless “videotape” that can play back exactly the same way each time a person tries to remember a past event. Rather, memory is a creative and not entirely understood process. If an officer’s recollection of an event is not a totally accurate representation of reality, it does not necessarily mean that the officer is lying or trying to engage in a cover-up. Likewise, it is normal for memories to change somewhat over time, and the changed or new memories may or may not represent reality more accurately. The same concept applies to other eyewitnesses and the suspects as well. No one should accuse an individual of lying simply due to inaccurate, inconsistent, or missing memories. While some individuals will choose to be untruthful, investigators should reserve this accusation for those cases where additional evidence exists to indicate that the person deliberately lied.

The author found that 21 percent of the officers “saw, heard, or experienced something during the event that I later found out had not really happened or happened very differently than how I remembered it.” All participants in an event, including the suspect, eyewitnesses, and officers, have the potential to see, hear, feel, or experience things that did not actually happen. A wide variety of factors, including perceptual distortions, biases, beliefs, expectations, and prior experiences, influence people’s perceptions. An interesting aspect to these memory distortions that the author repeatedly has observed is that they can “feel”



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more real to the witness than what actually happened. This remains consistent with the observation that experiential thinking is “self-evidently valid: ‘seeing is believing,’” as opposed to rational thinking, which “requires justification via logic and evidence.”<sup>12</sup> When confronted with a videotape that conclusively proved that he saw things that did not happen, a veteran SWAT officer told the author, “Doc, I now intellectually know that what I thought I saw didn’t really happen, but it still *feels* more real to me than what I saw on the tape.” Some witnesses sincerely and vehemently will insist that their perceptions and memories are accurate when, in fact, they may not be accurate at all.

The differences between rational and experiential modes of thinking also have implications in the postshooting aftermath. Clearly, officers need to be held accountable for all of their on-duty behavior, especially if they must use deadly force. However, those who conduct postshooting analyses should keep two things in mind. First, while officers usually have only seconds (or less) to decide about using force, all of those doing postshooting analyses will have hours, weeks, months, or even years to contemplate all of the evidence and decide what the officers really should have done. Although postincident analysis can prove very helpful as a learning exercise, it was not an option available to the involved officers at the time of the shooting. Second, research indicates that officers will be in the experiential-thinking mode because it is the default option, especially in emotionally laden situations. On the other hand, all of those engaged in postshooting analyses have the ability to analyze the officers’ behaviors in rational-mode thinking, a different cognitive process altogether and a luxury that the officers did not have during the shootings. This does not suggest that officers be given carte blanche to behave in any way they want during a high-stress situation. It does imply, however, that the law enforcement profession must remain rigorous in

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...it is normal for memories to change somewhat over time, and the changed or new memories may or may not represent reality more accurately.  
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its training, realistic in its expectations, and cognizant of the demands of emergency situations.

Another research review found that “traumatic situations will inevitably result in memory impairment.”<sup>13</sup> These researchers pointed out, and the author agrees, that officers may make more thorough and accurate statements if they wait at least 24 hours, during which time they should get some sleep, before participating in their formal interview with investigators. Research evidence suggests that REM (rapid eye movement) sleep, in particular, helps integrate memories and facilitate learning and memory retrieval. Some officers might appear unusually calm shortly after an incident and may prefer to give an immediate full statement. Often, however, it is best for officers to sleep first and give their statements later. This does not preclude their providing enough brief information during an immediate on-scene “walk-through” to get the investigation started. But, investigators must conduct these initial sessions in a sensitive manner that does not compromise the officers’ legal rights.

Given that perceptual and memory distortions are an integral part of traumatic events, investigators may find research on the cognitive interview technique helpful.<sup>14</sup> The developers of this method found that how investigators interview individuals can significantly impact the ability of the witnesses to remember and report the details of an event. Their research indicated the cognitive interview as the most effective technique for facilitating memory retrieval with cooperative witnesses. Using proper interview techniques is particularly important for high-stress situations because during experiential thinking, the individual is more likely to be dissociative and “encodes reality in concrete images, metaphors, and narratives,” whereas, in rational thinking, the individual is more logical and “encodes reality in abstract symbols, words, and numbers.”<sup>15</sup> This means that the survivors of traumatic experiences will find it challenging to

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translate the dissociated concrete images and metaphors they experienced during the high-stress event into the sequential, verbal, abstract, and logical narrative required by an investigative interview and courtroom testimony. Skilled investigators can help witnesses with this difficult task.

### Implications for Training

Seventy-four percent of the officers that the author surveyed reported, “I responded automatically to the perceived threat giving little or no conscious thought to my actions.” This finding coincides with the experiential-thinking mode, described as an “automatic, intuitive mode of information processing that operates by different rules from that of the rational mode” that “occurs automatically and effortlessly outside of awareness because that is its natural mode of operation, a mode that is far more efficient than conscious, deliberative thinking.”<sup>16</sup> This has profound implications for training because experiential thinking is based on *past experiences*. Therefore, under sudden, life-threatening stress, individuals likely will exhibit behavior based on past experiences that they automatically will produce without conscious thought. This means not only training officers in appropriate tactics but also providing sufficient repetition *under stress* so that the new behaviors *automatically* will take precedent over any previously learned, potentially inappropriate, behaviors that they possessed before becoming an officer.<sup>17</sup>

Another implication of the author’s study, as well as other research, is that it supports the concept of reality-based training that all tactically minded officers and trainers know represents the foundation for reliable performance in high-stress situations. “Information obtained from textbooks and lectures is of a different quality from information acquired from experience. Experientially derived knowledge often is more compelling and more likely to influence behavior than is abstract knowledge.”<sup>18</sup>

This is especially critical in sudden, high-stress situations requiring instant physical performance. Abstract knowledge obtained in lectures and books can be very useful in rational-thinking mode situations, such as formulating policies and analyzing situations. However, when officers face sudden, life-threatening incidents, their reality-based training *experiences* most likely surface.

Reality-based instruction that subjects the participants to high levels of stress during training also will help officers develop coping mechanisms to compensate for perceptual and memory distortions. For instance, to compensate for tunnel vision, many officers have learned to practice visually scanning the tactical environment during high-stress situations, such as pursuits and high-risk entries. Training under stress also will help officers learn to control their arousal level. As their physiological agitation escalates, so might their susceptibility to perceptual and memory distortions. Thus, learning to control arousal level can help reduce distortions. Therefore,

officers should receive training in and regularly practice ways to control arousal levels in high-stress situations. One process, the combat breathing technique, has proven highly effective in this area.<sup>19</sup>

Officers and their family members also should receive training on what reactions they can expect during and after high-stress situations, such as shootings. Providing officers and their family members with information on what to expect can help them cope better with highly stressful events.<sup>20</sup>

Finally, those who analyze or participate in the aftermath of officer-involved shootings should receive training as well. Such individuals could include attorneys, association representatives, peers, juries, journalists, command staff and supervisors, mental health professionals, employee assistance personnel, worker compensation employees, and any others who have a vested interest in these events. This will better enable them to make informed, reasonable

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judgements about the officers' behaviors and advocate for the type of training and postincident care that the officers will need to best serve and protect their communities.

## CONCLUSION

The observations of the officers at the beginning of this article effectively portray how perception and memory can influence an individual's understanding of a particular incident. One officer did not hear the sound of his gun discharging. Another did not remember calling his wife just prior to being involved in a shooting. Three others observed things happening in ways that did not actually occur. All of the officers were involved in the highly stressful and emotionally laden process of using deadly force and, therefore, subject to later scrutiny by their agencies and the citizens they serve for their actions.

Although highly trained in accurately describing events and uncovering facts pertinent to criminal investigations, law enforcement officers face the same difficulties that all people do when trying to recall what happened in high-stress situations. Research has revealed that people rarely can remember such events with total accuracy. The author's study, along with other research she examined, demonstrated that this finding holds true for officers involved in shootings. With this in mind, the law enforcement profession must realize the implications this has for officers and those who analyze their actions. Because critical incidents demand split-second decisions, officers must receive the best training that will help them react appropriately in high-stress situations. Likewise, those who analyze these events must understand the demands placed on officers during such incidents and maintain realistic expectations concerning what officers perceived during the events and what they can recall accurately afterwards. In the end, recognizing the perceptual and memory distortions that officers can

have during a shooting can go a long way toward helping officers deal with such difficult situations and, perhaps, reduce their occurrence. ♦

## Endnotes

<sup>1</sup> Officers can contact Dr. Artwohl, coauthor of *Deadly Force Encounters: What Cops Need to Know to Mentally and Physically Prepare for and Win a Gunfight* (Boulder, CO: Paladin Press, 1997), at [artwohl@cs.com](mailto:artwohl@cs.com) or access her Web site at <http://www.alexisartwohl.com>.

<sup>2</sup> Seymour Epstein, "The Integration of the Cognitive and Psychodynamic Unconscious," *American Psychologist* 49 (1994): 709-723.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> R.M. Solomon and J.M. Horn, "Post-Shooting Traumatic Reactions: A Pilot Study," in *Psychological Services for Law Enforcement*, eds. J.T. Reese and H.A. Goldstein (Washington, DC: U.S. Government Printing Office, 1986).

<sup>8</sup> A.L. Hoenig and J.E. Roland, "Shots Fired: Officer Involved," *Police Chief*, October 1998.

<sup>9</sup> David Klinger, U.S. Department of Justice, National Institute of Justice, *Police Responses to Officer-Involved Shootings*, NCJ 192285 (Washington, DC, October 2001).

<sup>10</sup> Bill Lewinski, "Why Is the Suspect Shot in the Back?" *The Police Marksman*,

November/December 2000.

<sup>11</sup> Supra note 8.

<sup>12</sup> Supra note 2.

<sup>13</sup> D. Grossman and B.K. Siddle, *Critical Incident Amnesia: The Physiological Basis and Implications of Memory Loss During Extreme Survival Stress Situations* (Millstadt, IL: PPCT Management Systems, Inc., 1998).

<sup>14</sup> R.P. Fisher and R.E. Geiselman, *Memory Enhancing Techniques for Investigative Interviewing* (Springfield, IL: Charles C. Thomas, 1992).

<sup>15</sup> Supra note 2.

<sup>16</sup> Supra note 2.

<sup>17</sup> Charles Humes, "The Flashlight Dilemma," *Tactical Edge*, 1992.

<sup>18</sup> Supra note 2.

<sup>19</sup> Charles Humes, "Lowering Pursuit Stress," *Police*, June 2001.

<sup>20</sup> D. Meichenbaum, *Stress Inoculation Training* (Boston, MA: Allyn & Bacon, 1985).

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*Dr. Artwohl, a retired police psychologist, currently provides law enforcement training and consultation throughout the United States and Canada through a private firm based in Las Vegas, Nevada.*

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# ***Use-of-Force Policies and Training A Reasoned Approach***

By THOMAS D. PETROWSKI, J.D.

**T**his is the first of a two-part article examining law enforcement policies and training related to the use of force. It will provide an overview of the constitutional constraints on the use of force by law enforcement, address the inherent hesitation of police officers to use significant levels of force, and make recommendations regarding the ubiquitous force continuum and other training considerations.

The United States is currently experiencing an unprecedented level of violence. For example, the per capita rate of aggravated assaults has increased nearly 500% since 1959.<sup>1</sup> This growth in violent crime forever has altered

training in the use of force by law enforcement. While there has been a decrease in the number of law enforcement officers feloniously killed each year,<sup>2</sup> injury to any law enforcement officer who is a victim of attack is unacceptable. In reviewing felonious assaults on law enforcement officers resulting in death or injury, one common denominator often is conspicuously present—the victim officer hesitated in responding with force. During postincident review of assaults on police, victim officers often indicated that they were uncertain about what force options were permissible under law or department policy and that they did not perceive their attacker to be a

serious threat until it was too late. This hesitation is tragic and often avoidable.

## **Constitutional Limits**

The seminal case defining the modern constitutional constraints on law enforcement use of force is the 1989 U.S. Supreme Court decision in *Graham v. Connor*.<sup>3</sup> The case involved an investigative detention of an individual and the use of nondeadly force by the detaining officers that resulted in injury to the detainee. While the U.S. Supreme Court did not decide whether the use of force by the detaining officers was constitutionally permissible,<sup>4</sup> the Court defined how use of force by law enforcement



Special Agent Petrowski is a legal instructor at the FBI Academy.

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**...an unreasonable use of force is one that no objectively reasonable law enforcement agent would have used.**

should be constitutionally evaluated. The decision demonstrates that the Court understands the dynamics of violent encounters and the practical safety issues law enforcement officers face. The Court makes clear that the law profoundly distinguishes between the dangerous and the endangered and pays great deference to officers who use force to defend themselves or another.

The Court held in *Graham* that the use of force by law enforcement while making a seizure—to include force used in self-defense or defense of another—is evaluated under the Fourth Amendment. Such conduct, therefore, is analyzed for reasonableness since the Fourth Amendment prohibits “unreasonable searches and seizures.”<sup>5</sup> The test of what is reasonable is a common sense evaluation of what an objectively reasonable officer might have done in the same circumstance. The Court held reasonableness is an objective standard viewed from the officer’s perspective:

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, nor by the mistaken execution of a valid search warrant on the wrong premises. With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers often are forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is neces-

sary in a particular situation. As in other Fourth Amendment contexts, however, the “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them...<sup>6</sup>

The legal question is whether an objectively reasonable officer could have taken the action in issue. Put another way, an unreasonable use of force is one that no objectively reasonable law enforcement agent would have used. It *does not* involve any subjective information regarding the officer who used the force, such as training, age, or experience. For example, in *McLenagan v. Karnes*,<sup>7</sup> the Fourth Circuit Court of Appeals applied the *Graham* objective reasonableness standard. In *McLenagan*, a police officer shot an individual he perceived to be armed and posing a deadly threat (the individual turned out to be neither armed nor posing a threat). Within moments after shooting the plaintiff, the defendant police officer realized he had shot the wrong person and then—for no reason offered in the opinion—fired two rounds through a closed door where the subject may have been. Those two rounds, while not injuring anyone, were clearly unreasonable.

In finding the use of force by the officer against the plaintiff to be reasonable, the court noted: “To ascertain whether probable cause existed for [the police officer] to fire his weapon, we consider the particular circumstances confronting

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the official at the time of the questioned action...if a reasonable officer possessing the same particularized information as [the police officer] *could* have...believed that his conduct was lawful, then [the actions of the police officer were reasonable].”<sup>8</sup> With respect to the two additional rounds fired after the plaintiff was shot, the court noted that “...such conduct might be indicative of an officer’s propensity for ill-considered actions...[h]owever, in *this* case, [the officer] had no time to consider anything at all—except his and the public’s immediate safety. At the moment of truth, [the officer] acted well within the range of behavior expected of a police officer. What happened after the critical time had passed is simply irrelevant.”<sup>9</sup>

The court in *McLenagan* also addressed the fundamental Fourth Amendment principle that law enforcement officers need not be correct—only reasonable—in their decisions to use force. The court held: “We will not second-guess the split-second judgment of a trained police officer merely because that judgment turns out to be mistaken, particularly where inaction could have resulted in death or serious injury to the officer and others. Although it is extremely unfortunate that [the plaintiff] was seriously injured, [the law] does not purport to redress injuries resulting from reasonable mistakes.”<sup>10</sup>

The Court in *Graham* made clear that the determination of reasonableness requires a common-sense pragmatic approach<sup>11</sup> from the perspective of an objectively reasonable law enforcement officer

to determine whether an officer’s conduct was constitutional. The legal constraints on the use of force by law enforcement are based on practical considerations unique to each circumstance. Unlike other Fourth Amendment contexts, officer’s actions are not based on a specific rule set out by the Court. The Court prefers to give bright-line rules when possible, particularly in Fourth Amendment matters.<sup>12</sup> When such specific guidance is given by the Court, it is important that department policy and training reflect that guidance. However, the

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***In use-of-force training, legal and practical considerations are not two separate subject matters; they are complementary.***

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constitutional restrictions on law enforcement use of force are not—because they cannot be—bright-line rules. It is critical that use-of-force policy and training not be based on strict rules or, as the Court said in *Graham*, “mechanical applications.” The law is defined by the realistic functional aspects of each case. In use-of-force training, legal and practical considerations are not two separate subject matters; they are complementary.

In recognizing that an officer’s decision to use force occurs in

“circumstances which are tense, uncertain and rapidly evolving,” the Court underscored that law enforcement agents are *reacting* to a subject’s refusal to voluntarily comply with the law. It is the subject that dictates what use of force, if any, is necessary and reasonable. Federal case law recognizes the short critical time period in which law enforcement officers must make use-of-force decisions.<sup>13</sup> This also takes into account the effects of adrenal stress,<sup>14</sup> which is an involuntary reaction with substantial psychological and physiological results that significantly affect a person’s capacity to react, perceive information, and recall details.

The Court in *Graham* also noted that use of force by police has two distinct justifications. The first is in response to a suspect posing an immediate threat to the safety of the officers or others, and the second is to prevent the escape of a subject.<sup>15</sup> While the use of force under both justifications is evaluated for Fourth Amendment reasonableness, the practical considerations—and, thus, the approach to training—can be quite different. In responding to a subject who is attempting to escape while not posing an immediate danger to the seizing officers, there may be time, albeit seconds, to contemplate force options. However, in response to immediate threats to safety there is virtually never that luxury of time. Training in the use of force must address this distinction. Unfortunately, many use-of-force curricula address both force justifications with the same approach.

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## Hesitation: The Ever-Present Adversary

More than 25 centuries ago, Sun Tzu, in his classic military treatise *The Art of War*, noted that “the worst calamities that befall an army arise from hesitation...”<sup>16</sup> The notion that one must not hesitate in the face of a dangerous threat seems elementary in use-of-force training, but in some training contexts, hesitation is exactly what is encouraged or expressly prescribed.

Empirical data indicate that law enforcement officers responding to a threat hesitate to use force, particularly deadly force, even in the face of an imminent threat. Studies of military conflict confirm that the vast majority of individual soldiers in combat refused to kill an identified enemy even when they knew that doing so would endanger their own lives.<sup>17</sup> Review of FBI officer victimology studies and information provided by victim officers’ departments<sup>18</sup> indicated that approximately 85 percent of law enforcement officers feloniously killed in the line of duty never discharged their service weapons. Review of individual case studies revealed that victim officers often hesitated—even in the face of an immediate threat.

FBI Uniform Crime Reports (UCR) data indicated that only a small portion of law enforcement officers who are violently assaulted respond with deadly force.<sup>19</sup> UCR data for the years 1991 through 2000 indicated that 644 law enforcement officers were feloniously killed in the line of duty. The data also indicated an annual average of 60,307 documented assaults on law

enforcement officers. An annual average of 10,994 of these assaults involved a dangerous weapon; an average of 49,313 involved the attacker using personal weapons. It should be noted that these numbers represent assaults documented by a department *and then* reported to the U.S. Department of Justice. Further, while there are more than 17,000 law enforcement agencies in the United States, the average number of agencies reporting documented assaults was only 8,985. It is safe to assume that these assault statistics are very conservative, if



not grossly underreported. UCR data also indicated that during the period 1994 through 2000, law enforcement officers in the United States intentionally killed an annual average of 364 felons while in the line of duty.<sup>20</sup> This number does not address those individuals nonfatally shot by law enforcement officers.<sup>21</sup>

There are certainly legitimate reasons that could have prevented officers from using deadly force when it clearly was justified. There could have been tactical reasons to

not introduce a service weapon into a conflict; officers may have been murdered with their own weapon,<sup>22</sup> been ambushed,<sup>23</sup> or selflessly chose not to shoot because of a danger to a third party. However, the annual rate of fatal use of deadly force by law enforcement officers (364) compared with the annual reported assaults on law enforcement officers (60,307—10,994 of which involved a deadly weapon) is telling. These data, supported by the historical military studies and officer victimology reports, clearly indicated a reluctance on the part of officers to use significant force even when confronted with an imminent threat of death or serious physical injury.

Compounding the inherent hesitation officers have in using significant levels of force is the instinctive tendency to quickly close with subjects and place themselves between the offender and those they protect.<sup>24</sup> Officers are quick to put themselves in harm’s way but are then reluctant to use significant force. Use-of-force training should take this into account and strive to reduce officer hesitation to use force when it is clearly necessary. Unfortunately, some use-of-force training takes the opposite focus of encouraging officers not to use force, particularly deadly force, unless it is preceded by unrealistically lengthy deliberation.

### The Use-of-Force Continuum: A Strategy for Hesitation

In *Graham*, the Court’s insightful statement, “...the test of reasonableness under the Fourth Amendment is not capable of precise

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definition or mechanical application...”<sup>25</sup> was meant to illustrate the notion that every situation involving the use of force by police is unique and that it is impossible to define specific applications of force options. Unfortunately, many law enforcement agencies have adopted training in the guise of a “force continuum,” which is precisely the mechanical application that the Court proscribed for use by lower courts because it is inconsistent with the concept of reasonableness.

Most use-of-force continua indicate a reflective approach to a menu of force options with the goal of selecting the least intrusive option. The typical force continuum begins with the presence of the officer or with verbal commands and then lists use-of-force options in order of increasing intrusiveness, ending with deadly force. Usually, accompanying language suggests that officers should consider which force option is appropriate and includes the suggestion of “escalating” their response to a subject with a view toward “de-escalating” the threat posed by the subject. The continuum also usually contains language that suggests officers consider progressing up or down the force continuum. While virtually every force continuum provides that such progressing through force options may not be appropriate in all use-of-force situations, the seed of hesitation is inescapably planted. The word *continuum* implies a sequential approach.

The force continuum can be superficially very attractive, particularly when provided in the form of a euphonic acronym. This

purports to make it easy to remember the steps of the continuum—which is exactly what it does—resulting in guaranteed hesitation in the face of a threat. The force continuum is most problematic when it is necessary for an officer to apply deadly force or a higher nondeadly force option. An officer trained to progress through a force option menu inevitably will hesitate too

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***Empirical data indicate that law enforcement officers responding to a threat hesitate to use force, particularly deadly force, even in the face of an imminent threat.***

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long to eliminate all less intrusive force options.

There may be situations where the progressive escalating force option approach is logical, such as when a subject poses no immediate threat of serious physical harm to anyone while attempting to escape. When there is no immediate threat, officers may have the luxury of time to escalate through force options to use the least intrusive force option. But, to require such an escalating approach when faced with an immediate serious threat is contrary to common sense and the specific direction of the Supreme Court.<sup>26</sup> It assumes a propensity by police to

use unnecessary force when the empirical data show that the common response is to hesitate. The force continuum purports to provide a mechanical application when officers should be making a subjective threat assessment. It encourages officers to “wait and see,” in the hope that either the aggressors will abruptly change their minds or the assessment of threat by the officer will become very simple. While it is often a prudent practice for departments to have policies that are more restrictive than the law requires to ensure compliance with the law, mandating force continua risks more than the loss of evidence—it risks the lives of officers. While this approach may reduce use of force by police, the risk to officers is significant and not constitutionally required.

Some departments and vendors take the force continuum even further, employing what they call a “less-lethal” option. That is, while the force option constitutes deadly force, it is less intrusive than other deadly force options. This practice requires that once it is determined (consistent with a review of force options on the continuum) that deadly force is necessary, then a review of options within that level be undertaken. This creates a continuum within a continuum, making an unacceptably long decision process even longer.

### **The Least Intrusive Alternative**

The goal of force continua—using the least intrusive means to respond to a threat—simply is not constitutionally required. The law does not require officers to select

the minimum force necessary, only a reasonable option. The Seventh Circuit Court of Appeals said in *Plakas v. Drinski*,<sup>27</sup> “[t]here is no precedent in this circuit (or any other) which says that the Constitution requires law enforcement officers to use all feasible alternatives to avoid a situation where deadly force can justifiably be used. There are, however, cases which support the assertion that, where deadly force is otherwise justified under the Constitution, there is no constitutional duty to use nondeadly alternatives first.”<sup>28</sup> Choosing the least intrusive alternative is not legally required because it is an impossible standard to apply to hold law enforcement. The U.S. Supreme Court and every federal circuit in this country recognize this. It is an obvious point that use-of-force trainers and policy makers should heed.

## Conclusion

The constitutional constraints on the use of force by law enforcement require reasonableness. The Supreme Court has identified a number of considerations lower courts should look at in determining reasonableness that emphasize looking at the practical circumstances facing the officer who used force. Each case should be evaluated in light of the particular unique facts from the perspective of the officer at the time the decision to use force was made. The law provides that there cannot be bright-line rules (“mechanical applications”) regarding what force an officer may use. It is the practical considerations that inform the law.

Hesitation commonly plagues police who are victims of attack. Use-of-force training regarding immediate self-defense differs from use of force to effect a seizure when an officer does not face an imminent threat. When training officers to use force in self-defense or defense of another, the focus must be on removing hesitation. The use of

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***The law does not require officers to select the least intrusive force option, only a reasonable one.***

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a force continuum perpetuates hesitation and exacerbates a natural reluctance to apply significant force even when faced with a serious threat. The progressive escalating approach—with the goal of using the least intrusive force—should never be applied to defense-of-life training. *Next month, the FBI Law Enforcement Bulletin will feature the second part of this article which will address specific use-of-force training strategies and policy considerations.* ♦

## Endnotes

<sup>1</sup> According to U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States*, aggravated assaults in 1959 occurred at the rate of 67.3 per 100,000 inhabitants. In 1999, the rate was 334.3 per 100,000 inhabitants. The murder rate in 1959 was 4.8 per 100,000 inhabitants and 5.7 in

1999. Obviously, aggravated assault is a better indicator of the increase in violent crime because it shows how often people in this country actually are committing serious acts of violence. The murder rate as an indicator of society’s capacity to be violent is skewed by the significant advances in health care over the past 40 years. This increase in violent crime is particularly cogent in light of recent positive influences on violent crime, such as the legalization of abortion. See John J. Donohue III and Steven D. Levitt, “The Impact of Legalized Abortion on Crime,” *The Quarterly Journal of Economics*, MIT Press, Harvard University’s Department of Economics, Cambridge, MA. See also David A. Grossman, *The Bullet-Proof Mind* (Carrollton, TX: Calibre Press, 1999).

<sup>2</sup> During the period 1971 through 1975, the average annual number of law enforcement officers feloniously killed was 128. The annual average for the period 1996 through 2000 was 57. See U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted* for the indicated years. The reduction in law enforcement officers killed has been caused primarily by the increased use of bullet-proof vests and improvements in kevlar technology. Other factors that may have contributed to the reduction are better training and police practices.

<sup>3</sup> 490 U.S. 386 (1989). The *Graham* decision is relevant only to Fourth Amendment cases. Use-of-force matters involving incarcerated convicts are brought under the Eighth Amendment, and Fourteenth Amendment claims can be brought for use of force by law enforcement that do not apply to either the Fourth or Eighth Amendments.

While there have been numerous applications of the *Graham* decision by the Supreme Court and in every federal circuit, in 2001 the Supreme Court generally readdressed the issue in *Katz v. Saucier*, 121 S. Ct. 2151 (2001). The Court in *Katz* was extremely prolaw enforcement and made clear that in evaluating the use of force by law enforcement great deference must be paid to the risks assumed by law enforcement and strongly reinforced its previous decisions in police use of force cases. The *Katz* decision is replete with references of deference to law enforcement in both qualified immunity and constitutional contexts. For example, at 2158: “We set out a test that cautioned against the “20/20 vision of hindsight” in favor of *deference* to the judgment of reasonable officers on the scene. Citing *Graham*, at 396. Emphasis added.

And, at 2158-2159:

The *deference* owed officers facing suits for alleged excessive force is not different in some qualitative respect from the probable cause inquiry in [search cases]. Officers can have reasonable, but mistaken, beliefs as to the facts establishing the existence of probable cause or exigent circumstances, for example, and, in those situations, courts will not hold that they have violated the Constitution. Yet, ...even if a court were to hold that the officer violated the Fourth Amendment by conducting an unreasonable, warrantless search, Anderson still operates to grant officers immunity for reasonable mistakes as to the legality of their actions. The same analysis is applicable in excessive force cases, where in addition to the *deference* officers receive on the underlying constitutional claim, qualified immunity can apply in the event the mistaken belief was reasonable.

Emphasis added.

<sup>4</sup> The Court remanded the case back to the trial court to apply the Court's new guidance in determining the reasonableness of police use of force. A jury found the actions of the officers to be reasonable and, thus, constitutionally permissible.

<sup>5</sup> The Fourth Amendment to the Constitution of the United States.

<sup>6</sup> *Graham* at 396.

<sup>7</sup> 27 F.3d 1002 (4th Cir. 1994).

<sup>8</sup> *McLenagan* at 1007.

<sup>9</sup> *Id.* at 1008.

<sup>10</sup> *Id.* at 1007.

<sup>11</sup> The Supreme Court has always reduced the determination of probable cause and reasonableness to a laymen's view: "[a]rticulating precisely what ... "probable cause" means is not possible. [It is a] ...commonsense, nontechnical conception that deals with the factual and practical considerations of everyday life on which *reasonable and prudent men, not legal technicians, act.*" *U.S. v. Ornelas*, (U.S. Supreme Court) 517 U.S. 690, 695 (1996) (emphasis added), citing two previous decisions.

<sup>12</sup> For examples, see *Chimel v. California*, 395 U.S. 752 (1969) (officers always may search an arrestee, to include the wingspan area, incident to arrest); *Pennsylvania v. Mimms*, 434 U.S.106 (1977) (driver of a vehicle always may be ordered to exit vehicle incident to traffic stops); *Maryland v. Buie*, 494 U.S. 325 (1990) (incident to an arrest in a structure, officers always may conduct a protective sweep of the room in which the arrest occurs and all rooms adjacent thereto);

*Michigan v. Summers*, 452 U.S. 692 (1981) (officers always may detain occupants of a residence where a search warrant is executed). These cases illustrate the substantial deference the Court gives to those who put themselves in harm's way by making arrests and conducting searches. The Court tries, where it can, to give law enforcement clear guidance to prevent the difficult decision making that occurs in the "tense, uncertain and rapidly evolving" circumstances of most searches and seizures. However, with respect to review of use-of-force matters they have mandated that each case be individually evaluated, giving great deference to those making such difficult decisions.

<sup>13</sup> "The time-frame [an officer has to respond to a subject] is a crucial aspect of excessive force cases. Other than random attacks, all such cases begin with the decision of a police officer to do something, to help, to arrest, to inquire. If the officer had decided to do nothing, then no force would have been used. In this sense, *the police officer always causes the trouble. But it is trouble which the police officer is sworn to cause, which society pays him to cause and which, if kept within constitutional limits, society praises the officer for causing.*" *Plakas v. Drinski*, 19 F.3d 1143, at 1150 (emphasis added) (7th Cir. 1994).

The notion that an individual attacked will not have time to evaluate responses is not new to the courts. In 1921, the Supreme Court in *Brown v. U.S.*, 41 S. Ct. 501, related at 502: "*Detached reflection cannot be demanded in the presence of an uplifted knife. Therefore, in this Court, at least, it is not a condition of immunity that one in that situation should pause to consider whether a reasonable man might not think it possible to fly with safety or to disable his assailant rather than kill him.*"

<sup>14</sup> See generally Alexis Artwohl, Ph.D. and Loren W. Christensen, *Deadly Force Encounters: What Cops Need to Know to Mentally and Physically Prepare for and Survive a Gunfight* (Boulder, CO: Paladin Press, 1997).

<sup>15</sup> *Graham*, at 396. For a discussion of the legal aspects of use of force to effect an arrest or to prevent escape, see John C. Hall, "Use of Deadly Force to Prevent Escape," and "Police Use of Nondeadly Force to Arrest," *FBI Law Enforcement Bulletin*, March 1994, 27-32 and October 1997, 27-32, respectively.

<sup>16</sup> Numerous translations of *The Art of War* are available. See translation and commentary by Lionel Giles, published by *Indypublish.com*, 2001, or translation by Samuel B. Griffith,

Oxford University Press, London, England, 1963.

<sup>17</sup> See generally David A. Grossman, *On Killing* (Boston, MA: Little, Brown and Company, 1996), nominated for a Pulitzer Prize. See also George T. Williams, "Reluctance to Use Deadly Force," *FBI Law Enforcement Bulletin*, October 1999, 1-5.

<sup>18</sup> A 1992 FBI Uniform Crime Report (UCR) study of law enforcement officers feloniously killed in the line of duty indicated that 85 percent of the officers killed never discharged their service weapons. A review of 148 incidents of law enforcement officers killed from 1998 through 2000 indicated that 125 (84.5 percent) of the victim officers never fired a round at their killer. See U.S. Department of Justice, Federal Bureau of Investigation, *Killed in the Line of Duty* (Washington, DC, 1992); and U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted* (Washington, DC, 1998, 1999, and 2000).

<sup>19</sup> See U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted* (Washington, DC, 2000).

<sup>20</sup> See U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States* (Washington, DC, 1998 through 2000).

<sup>21</sup> For a discussion of extrapolating the number of individuals shot (fatally and nonfatally), see generally William A. Geller and Michael S. Scott, "The Prevalence of Shootings," in *Deadly Force: What We Know* (Washington, DC: Police Executive Research Forum, 1992).

<sup>22</sup> During the period 1991 through 2000, 51 of the 601 law enforcement officers killed with firearms were killed with their own weapon (8.5 percent). See U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted* (Washington, DC, 2000).

<sup>23</sup> During the period 1991 through 2000, 89 of the 644 slain law enforcement officers were ambushed (13.8 percent). See U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted* (Washington, D.C., 2000).

<sup>24</sup> See Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, "Escape from the Killing Zone," *FBI Law Enforcement Bulletin*, March 2002, 1-7.

<sup>25</sup> *Graham* at 396 (quoting a prior Supreme Court decision).

<sup>26</sup> By adopting unnecessarily restrictive policies, departments also may be holding



themselves to a higher legal standard. While mere policy violations normally do not give rise to civil rights lawsuits, some courts have held such actions may be viable when the policies have been adopted for the benefit of those ultimately injured. The Ninth Circuit Court of Appeals said in *Scott v. Henrich*, 39 F.3d 912 (9th Cir. 1992), "Assuming internal police guidelines are relevant to determining whether use of force is objectively reasonable,...they are relevant only when one of their purposes is to protect the individual against whom force is used. Thus, if a police department limits the use of chokeholds to protect suspects from being fatally injured,...or restricts the use of deadly force to protect suspects from being shot unnecessarily,...such regulations are germane to the reasonableness inquiry in an excessive force claim." *Id.* at 915. Even if the above policy-

based suit fails, a department that adopts overly restrictive use-of-force continua probably will expose itself to "expert" witnesses who will opine that lack of compliance with a department's policies indicates an unreasonable use of force.

<sup>27</sup> 19 F.3d 1143, at 1148 (7th Cir. 1994).

<sup>28</sup> The first time the U.S. Supreme Court expressly asserted that Fourth Amendment reasonableness did not require the least intrusive alternative was in *Illinois v. Lafayette*, 462 U.S. 640 (1983). For other examples of courts finding that a law enforcement officer need not select the least intrusive option, see *U.S. v. Sokolow*, 490 U.S. 1 (1989); *Roy v. Lewiston*, 42 F.3d 691 (1st Cir. 1994); *Salim v. Proulx*, 93 F.3d 86 (2nd Cir. 1996); *Elliott v. Leavitt*, 99 F.3d 640 (4th Cir. 1996); *Collins v. Nagle*, 892 F.2d 489 (6th Cir. 1989); *Tauke v.*

*Stine*, 120 F.3d 1363 (8th Cir. 1997); *Schulz v. Long*, 44 F.3d 643 (8th Cir. 1995); *Scott v. Henrich*, 39 F.3d 912 (9th Cir. 1994); *Warren v. Las Vegas*, 111 F.3d 139 (9th Cir. 1997); *Wilson v. Meeks*, 52 F.3d 1547 (10th Cir. 1995); *Manual v. Atlanta*, 25 F.3d 990 (11th Cir. 1994); and *Medina v. Cram*, 252 F.3d 1124 (10th Cir. 2001). See also the reference to *Brown*, *supra* note 13.

*Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.*

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# The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



*Officer Foito*

While working an evening shift, Officer Daniel E. Foito of the Clinton, Connecticut, Police Department responded to a call of a disturbance at a motel. As Officer Foito pulled into the parking lot, he was confronted by a young woman, who was 8 months pregnant and had been stabbed repeatedly in her abdomen, chest, and neck. When Officer Foito questioned her about what happened, the woman pointed to a man exiting one of the motel rooms. The suspect, the woman's boyfriend, was covered in blood that was a mixture of the woman's and some that came from a self-inflicted knife wound across his throat. He held a knife wrapped in bloody hair pulled from the woman's head. As the suspect approached and advanced toward them, Officer Foito pushed the woman behind him, shielded her with

his body, and retreated across the parking lot. Drawing his weapon, Officer Foito repeatedly told the suspect to drop the knife. He activated the laser sighting system attached to his weapon, and the red dot appeared as a warning on the suspect's chest. The suspect ignored the warnings and continued to approach Officer Foito and the woman. Backed against a large trash bin, Officer Foito and the woman were unable to retreat further, while the suspect continued to advance toward them. When the suspect was within a few feet, Officer Foito fired his weapon and fatally wounded the suspect. The woman was airlifted to a trauma center where she received medical treatment to her throat injuries, which affected her ability to breathe and speak. Subsequently, she delivered a healthy, unharmed baby boy by emergency cesarean section. Officer Foito's courage in a dangerous confrontation saved the lives of two innocent victims.



*Officer Thompson*

Officer Tom Thompson of the Fife, Washington, Police Department was on patrol when he heard the faint buzz of the fire alarm at an apartment complex. After he got out of his car, he followed the sound to an upstairs unit in the building. He forced open the door and immediately became engulfed in smoke. Officer Thompson found the tenant, who was suffering from

smoke inhalation and trying to extinguish a large grease fire with clothing. Officer Thompson brought the subject outside to safety, but when he turned around to get the fire extinguisher from his patrol car, the tenant had returned to his apartment. Officer Thompson went back upstairs and found the subject, who was in shock, carrying the hot pot of scalding grease in his arms. Officer Thompson ordered the subject to put down the pot. The tenant complied, but he already had received third-degree burns on his arms and chest. Officer Thompson escorted the subject outside again and officials took him to the hospital for medical treatment. Officer Thompson's selfless actions saved the life of the tenant and helped prevent the fire from spreading to additional units in the building.

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## ***Patch Call***



The steam locomotive on the Watertown, South Dakota, Police Department patch depicts the first railroad built in the state. Also featured are the Mellette House, the home of the last governor of the Dakota territory and the state's first, and the Big Sioux River, which flows through the town. The Black Hills spruce trees, the state tree, helped designate the town as "The Tree City." The motto denotes the department's purpose, while 1880 is the year of the town's founding.



The patch of the Pickerington, Ohio, Police Department features a covered bridge representing the last of the operational covered bridges in the area. The large sycamore tree and purple violets illustrate namesakes, such as the main waterway and the designation of Pickerington as the Violet Capital of Ohio. The date, 1815, signifies the year Pickerington was incorporated.