

STATE OF OHIO)
)
COUNTY OF MADISON)

SS: AFFIDAVIT OF
SAMUEL D. FAULKNER

I, Samuel D. Faulkner, state under oath as follows:

1. I am a Law Enforcement Training Specialist for the Ohio Peace Officer Training Academy.
2. My qualifications and credentials are as they are listed in the attached expert report and resume.
3. The opinions stated in the attached expert report are based upon my review of the facts and data listed in the attached expert report.
4. The opinions stated in the attached expert report are based upon my knowledge, experience, training, and education.
5. I hold the opinions stated in the attached expert report with a reasonable degree of scientific certainty.

FURTHER AFFIANT SAYETH NAUGHT.


Samuel D. Faulkner

SWORN TO before me and subscribed in my presence on 1/23/04


NOTARY PUBLIC
PATRICK L. SHADE, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date.
Section 147.03 O. R. C.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

GEORGIA BICKERSTAFF,

Plaintiff,

v.

CASE NO 1:03CV240
JUDGE PAUL MATIA

EDWARD LOHN, et al.,

Defendants.

COUNTY OF CHAMPAIGN
STATE OF OHIO

PRELIMINARY EXPERT REPORT OF SAMUEL D. FAULKNER

I, Samuel D. Faulkner, do depose and say the following:

I am a former Deputy Sheriff, commissioned with the Portage County Sheriff's Office, in Ohio, a former Police Officer for the City of Kent, Ohio, currently hold a commission with the Madison County Sheriff's Office, and am commissioned and perform uniform patrol duties two times per month for Port of Columbus Airport Authority Police Department. My full time employment is with the Ohio Peace Officer Training Academy, a section of the Ohio Attorney General's Office. My job title is a Law Enforcement Training Specialist, in what is probably the most active training academy in the nation. My primary areas of instruction include:

- * Use of Force
- * Defensive Tactics Instructor Course
- * ASP Baton Instructor Course
- * Fitness Specialist Course
- * Peace Officer Survival Training
- * Police Officer Tactical Awareness and Response Course
- * Introduction to Fitness and Survival Course
- * Tactical Vehicle "S.T.O.P.S." Course
- * Defensive Driving
- * Weapon Retention / Shot Avoidance
- * Developing A Winning Attitude
- * Developing A Street Ready Mind
- * Communication Response Tactics
- * Becoming A Leader Your Officers Want To Follow
- * State Discipline Chairperson in Defensive Tactics for Basic Peace Officer Training, State of Ohio
- * State Discipline Chairperson in Physical Conditioning for Basic

Peace Officer Training, State of Ohio

The Following is a partial listing of the organizations or institutions I have instructed:

- * Ohio Department of Natural Resources
- * Ohio Bureau of Criminal Identification and Investigation
- * Ohio Bureau of Workers Compensation
- * Ohio State Highway Patrol
- * Kentucky Office of the Governor Criminal Justice Training
- * West Virginia State Police
- * Montana Attorney General's Office
- * Montana State Police
- * Federal IRS Investigators
- * State of Ohio Department of Rehabilitation and Corrections
- * Ohio Military Reserve
- * USMC Military Police
- * US Navy Military Police
- * International Association of Law Enforcement Firearms Inst.
- * Michigan State Police
- * International Association Of Firearms Instructors (IALEFI)
- * Georgia Association Of Firearms Instructors (GALEFI)
- * Maryland State Police
- * Michigan State Police
- * Personnel from a majority of the Police Departments and Sheriff's Offices throughout Ohio

The following is a partial listing of my publications:

- * Ohio Police Magazine
- * The Defensive Tactics News Letter
- * Working The Streets, Mid-West D.T. News Letter
- * The State of Ohio Basic Training Curriculum for Defensive Tactics
- * The State of Ohio Corrections Basic Training Curriculum for Defensive Tactics
- * The Action - Response Use of Force Continuum
- * Law and Order Magazine
- * National Sheriff's Magazine
- * Tactical Edge Magazine
- * Police Science
- * Police Magazine
- * The Buckeye Badge
- * Training Aids Digest
- * FBI Law Enforcement Bulletin
- * FBI Journal
- * American Journal Of Criminal Justice
- * Numerous programs on the Law Enforcement Television Network
- * *Reasonable Force Defined*, a book Published through the Ohio Attorney General's Office

- * The BACKUP
- * POLICE.Com1

The following are additional facts, honors, or works that are offered for the Court's consideration:

- * Author of the Use of Force Model adopted for Advanced Peace Officer Training, Basic Peace Officer Training, Corrections Training and Private Security Training for the State of Ohio
- * Expert witness for the Ohio Peace Officer Training Commission and the State of Ohio Attorney General
- * Presenter/Discussant for the 1992, 1993 and 1997 Annual Meeting of the Academy of Criminal Justice Sciences
- * Instructor at Regional and National AFSCME Correction United Conferences
- * 1997 Research Project with the U.S. Justice Department, National Institute of Justice defining reasonable use of force for law enforcement
- * Consultant to National Institute of Justice on Force Issues
- * Consultant to Calibre Press, Street Survival on Use of Force and Control Tactics
- * 1998 Research Project with Stephen T. Holmes, Ph.D., University of Central Florida, Department of Criminal Justice and Legal Services and the Ohio Department Of Youth Services defining reasonable responses to juvenile resistance/aggression.
- * Presented the force model to the United States National Standards in Training Association 2001 annual meeting
- * Presented the force model to the 2001 National Association of Attorney Generals
- * Presented the force model to CALEA, The Commission on Accreditation for Law Enforcement Agencies in 2002
- * Presented the force model in 2003 to IPAC, CALEA for the Midwest
- * Presented the force model to the 2003 National Gang Taskforce Annual Conference

I have been retained and consulted in over 200 police related cases, providing case analysis, development, and expert witness testimony. I have been qualified in State and Federal Courts, in Defensive Tactics/Subject Control, and Police Procedure.

In formulating my opinions I have reviewed the following documents and materials:

1. Pleadings and Discovery Responses;
2. Plaintiff's expert report;
3. Witness reports and police officer reports concerning interviews with witnesses;
4. Form 1s and Supplemental Reports from the Cleveland

- Division of Police;
5. Documents from the Internal Affairs Department investigation;
 6. Coroner's reports, including trace evidence report, autopsy protocol, coroner's verdict, and copies of photos;
 7. Forensic lab reports concerning the decedent's firearm and the firearms of the two officers;
 8. Decedent's medical records from January 26, 2002;
 9. Personnel file of Officer Antonia Montijo;
 10. Personnel file of Officer Raymond Chipgus;
 11. FBI investigation file;
 12. Documents relating to the decedent's criminal history;
 13. Photographs of the crime scene and photos from film submitted by a witness;
 14. Cleveland Division of Police General Police Orders concerning use of force.

----- BRIEF OVERVIEW OF EVENTS -----

Cleveland Police Officers Chipgus and Montijo were in a two-officer zone car. At approximately 7:50 a.m. they received a dispatch to 10811 Lee, stating that a male was breaking into an auto. A description of the suspect was given informing the officers that the suspect was wearing a black sweatshirt and black jeans. The officers responded to the area and when they got to the intersection of East 105 and Lee, police radio informed the officers that the suspect was leaving. Right after that the officers saw a subject who matched the description given. When the suspect saw the officers he tried to avoid them by cutting across the grass and entering quickly into an apartment building.

The officers got out of their zone car, went to the apartment building, and opened the door. They spoke with the suspect and asked him to come back to the zone car with the officers. The suspect was wearing a black sweatshirt, black jeans, and black batting gloves. The suspect was verbally combative, but did go to the car. Officer Chipgus asked the suspect to put his hands on the zone car, and the suspect refused. The officer then asked for identification and the suspect gave the officer his driver's license. The suspect was identified as Mr. Bickerstaff.

Officer Chipgus asked Mr. Bickerstaff again to put his hands on the zone car and again Mr. Bickerstaff did not comply. The officer then tried to physically place Mr. Bickerstaff's hands on the hood of the car so the officer could perform a frisk on Mr. Bickerstaff. Officer Chipgus then told Mr. Bickerstaff to have a seat in the back of the zone car. Mr. Bickerstaff used both of

his hands to push away Officer Chipgus. Mr. Bickerstaff then ran in front of the zone car, and across the street. Officer Chipgus caught up with Mr. Bickerstaff and tried to tackle him. Mr. Bickerstaff threw Officer Chipgus off and swung at the officer causing him to fall to the ground. Officer Montijo radioed for assistance, drew her ASP Baton, and ordered Mr. Bickerstaff to get on the ground. Officer Chipgus grabbed Mr. Bickerstaff's leg and Mr. Bickerstaff started dragging the officer across the street. Officer Montijo used her baton and struck Mr. Bickerstaff several times. Officer Chipgus got back to his feet and grabbed Mr. Bickerstaff's left arm in an attempt to get him down on the ground. Officer Chipgus was inadvertently struck in the elbow by Officer Montijo's baton.

Officer Chipgus was pulled across the street from the zone car before he was able to get Mr. Bickerstaff on the ground. Officer Chipgus yelled to Officer Montijo for her to pepper spray Mr. Bickerstaff, which she did. Mr. Bickerstaff was still dragging Officer Chipgus toward a residence. Mr. Bickerstaff pushed Officer Chipgus away from him and threw something in the direction of the residence. Mr. Bickerstaff was yelling for a subject who was on an upstairs porch to come down and help Mr. Bickerstaff. Officer Montijo told the subject not to come down but to stay where he was.

Officer Chipgus was now on the back of Mr. Bickerstaff. Mr. Bickerstaff continued to drag Officer Chipgus closer to the residence by some bushes or flowers. Officer Montijo moved closer to Mr. Bickerstaff to spray him again. That is when she noticed that Mr. Bickerstaff had a gun in his hand. Officer Montijo yelled to her partner that Mr. Bickerstaff had a gun. Officer Chipgus instantly pushed away from Mr. Bickerstaff and the officer drew his firearm. Mr. Bickerstaff was at that time on his back, and he started to turn over. Now Officer Chipgus saw the gun in Mr. Bickerstaff's hand. Fearing for his life, Officer Chipgus fired his service weapon at close range as Mr. Bickerstaff was starting to get up. Officer Chipgus thought he fired one round, then as Mr. Bickerstaff got to his knees the officer fired again. Actually, it was discovered that the officer had fired a total of five rounds.

Officer Chipgus radioed dispatch to inform them that shots had been fired, a male was down, and EMS was needed. Cleveland Officers arrived as back up shortly after the shots had been fired. The male who been on the porch earlier became belligerent and was placed in the back of a zone car. Two EMS units arrived at the scene. One unit treated Mr. Bickerstaff, and the officers went to the other squad unit. Officer Montijo suffered strains, and pulled muscles, and Officer Chipgus had abrasions on both of his knees, right elbow, back, and shoulder. The officer also had discomfort in his neck and an injury to his left leg. Mr.

Bickerstaff was treated at the scene, and transported but died at the hospital.

----- STATEMENT OF OPINIONS -----

1. Officers Chipgus and Montijo had reasonable suspicion and made a correct decision to detain and attempt to identify Mr. Bickerstaff.
2. Officers Chipgus and Montijo detained Mr. Bickerstaff in a reasonable manner.
3. Mr. Bickerstaff's assaultive actions gave Officers Chipgus and Montijo probable cause to attempt to arrest Mr. Bickerstaff.
4. Officer Chipgus and Officer Montijo used reasonable responses in relation to Mr. Bickerstaff's resistive, assaultive, and finally life threatening actions.
5. The follow up by Officer Chipgus and Officer Montijo after Mr. Bickerstaff was shot was reasonable.
6. The investigation by the Cleveland Division of Police of the Bickerstaff shooting was reasonable, and in compliance with national training guidelines.

----- BASIS FOR OPINIONS -----

1. Officer Chipgus and Montijo are peace officers certified by the State of Ohio and commissioned through the Cleveland Division of Police. As such, they have taken an oath to enforce the laws of the state and of their city. When they were given a call for service the officers had an official duty to respond. The radio dispatch received by the officers was for a male breaking into an auto, which is considered a high-risk call. The area that the officers were responding to was one in which they knew there was frequent drug activity and weapons violations. The description given of the suspect was a black male, with a black sweatshirt and black jeans. Radio then informed the officers that the suspect was leaving the area in which the crime had been committed.

Officers Chipgus and Montijo saw a black male wearing a black sweatshirt and black jeans in the general area of the call. The officers also saw that Mr. Bickerstaff was wearing batting

gloves, the type that would not have been worn to keep one's hands from the cold. The officers further noticed that when Mr. Bickerstaff saw the officers, he quickly cut across a grassy area and into an apartment building. Mr. Bickerstaff's actions made the officers believe that Mr. Bickerstaff was attempting to avoid the officers. It is my opinion that any reasonable officer would have believed that there was reasonable suspicion to stop, detain, and identify Mr. Bickerstaff, and to investigate if he was the suspect that the officers were searching for.

2. It is my opinion that Officers Chipgus and Montijo detained Mr. Bickerstaff in a reasonable manner. The officers first asked Mr. Bickerstaff to come over to the zone car, which he did. Officer Chipgus then asked Mr. Bickerstaff to place his hands on the hood of the zone car and Mr. Bickerstaff did not comply. Officer Chipgus did not over react, he just asked Mr. Bickerstaff for identification. Mr. Bickerstaff gave his driver's license to the officer. In situations such as this, officers are trained that it is not safe to continue an interview of this type without doing a frisk on the suspect. This police/citizen contact could not go any further safely without a frisk being done. Officer Chipgus again asked Mr. Bickerstaff to place his hands onto the car, and again Mr. Bickerstaff refused. Officer Chipgus then tried to place Mr. Bickerstaff's hands on the car hood, and he resisted. Officer Chipgus then told Mr. Bickerstaff to have a seat in the back of the zone car. At this point Mr. Bickerstaff escalated his actions by physically attacking Officer Chipgus. Up to this point Officer Chipgus took on the role of the contact officer and Officer Montijo acted as a cover officer. The procedures Officer Chipgus and Officer Montijo followed in detaining Mr. Bickerstaff were in compliance with how officers are trained throughout the nation.

3. When Officer Chipgus tried to place Mr. Bickerstaff's hand on the zone car, Mr. Bickerstaff stepped back, pulled away, and pushed the officer back. Mr. Bickerstaff used both of his hands and struck the officer in the torso, pushing him back and making him lose his balance. With the assaultive actions Mr. Bickerstaff demonstrated the original reason for the contact was overridden. Officer Chipgus and Officer Montijo now had probable cause due to Mr. Bickerstaff's violation of Ohio law committed in the officer's presence. It is my opinion that Mr. Bickerstaff's assaultive actions established probable cause for the Cleveland Officers to attempt to affect an arrest.

4. Millions of federal research dollars have been spent over the past few years to better understand how police use and implement force. This cost outlay actually has produced little

useful information to explain the dynamics of police and citizen confrontations. One reason for this failure is that the number of encounters in which law enforcement officers use force is rare. It is believed that force is used in fewer than 3 percent of all police-citizen encounters (Friedrich, 1997; Fife, 1995; Garner, 1995; Klockers, 1995; Reiss, 1967, Worden, 1995). The *Police-Public Contact Survey*, of 1996 found that out of the estimated 45 million face-to-face contacts between police and the public, only 1 percent of those contacts resulted in force being threatened or used by the police (Greenfield, Langan, and Smith, 1997).

The standard that all law enforcement officers must follow in the use of any type of force against a citizen is derived from the Supreme Court case *Graham v. Connor*, 490 U.S. 386, 104 L.Ed 2d 443, 190 S.Ct. 1865 (1989). As the Supreme Court stated, "all claims that law enforcement officers have used excessive force - deadly or not- in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' approach." 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 calculus of reasonableness must embody an allowance for the fact that police officers are often forced to make split-second judgments, in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation. It is my opinion that there was no seizure made of Mr. Bickerstaff by Officer Chipgus or Officer Montijo. The Fourteenth Amendment protects citizens against intentional, malicious, and/or sadistic responses by police officers. My analysis of the responses of Officer Chipgus and Officer Montijo will follow the more demanding standard of the Fourth Amendment, showing that they acted reasonable. It logically follows, that if the actions of Officer Chipgus and Officer Montijo were reasonable, they could then in no way have been intentional, malicious, or sadistic.

For the past fifteen years, I have conducted a series of national research projects to determine what law enforcement officers, as well as civilians and corrections officers, consider to be reasonable responses to the types of resistance, aggression and assaults officers must face. I have conducted another similar study with the U.S. Justice Department, National Institute of Justice on this topic. Most recently I have completed a research project involving the Ohio Department of Youth services in which we surveyed juvenile correction officers, juvenile probation and parole officers, law enforcement officers, and juvenile judges in order to ascertain what they felt were reasonable responses to resistance, aggression and assault by

juvenile offenders. The end result of these research projects is the Action - Response Use of Force Continuum, a copy of which is included with this report. This continuum has become the recommended model for Basic Peace Officer Training, Advanced Peace Officer Training, Corrections Training, Private Security Training, and Bailiffs Training for the State of Ohio. Numerous Police departments and Sheriff's Offices throughout the United States also use it. The Ohio Attorney General's Office has published my research in a book titled, *USE OF FORCE, DECISION MAKING AND LEGAL PRECEDENCE*. The book has been distributed throughout Ohio, as well as the rest of the nation. I will use the Action - Response Use of Force Continuum to analyze the actions of Mr. Bickerstaff and the responses of Officer Chipgus and Officer Montijo.

This situation started out in the BLUE area of the continuum. The officers used their uniformed presence and verbal directions to try to control Mr. Bickerstaff. Mr. Bickerstaff refused to comply with the officer's directives or commands. Officer Chipgus then tried an escort technique to place Mr. Bickerstaff's hands on the zone car hood. Mr. Bickerstaff escalated the situation to the YELLOW/ORANGE area with what could be described as a two-hand check strike to Officer Chipgus's torso. Mr. Bickerstaff then fled across the street. Officer Chipgus' response was from the GREEN area of the continuum, catching Mr. Bickerstaff and attempting to take him down.

Mr. Bickerstaff escalated the confrontation to the ORANGE area by wrestling with and swinging at Officer Chipgus. Officer Chipgus kept holding onto the legs of, and was being dragged across the street by Mr. Bickerstaff. Seeing the way her partner was being attacked, Officer Montijo drew her ASP Baton and gave Mr. Bickerstaff commands to get on the ground. Officer Montijo said, "The suspect kept pushing my partner around, swinging him like he was a rag doll." Officer Montijo used her ASP Baton and struck Mr. Bickerstaff a number of times in target areas where the officer had been trained to strike. The strikes had no noticeable affect on Mr. Bickerstaff. Officer Chipgus was able to get back to his feet and he continued to try to get Mr. Bickerstaff on the ground. Officer Chipgus was inadvertently struck in the elbow by his partner's baton.

Across the street from the zone car, Officer Chipgus was finally able to get Mr. Bickerstaff on the ground. Officer Chipgus was up on the back area of Mr. Bickerstaff, and the officer yelled for his partner to pepper spray the suspect, which she did. Mr. Bickerstaff's actions still placed him in the YELLOW/ORANGE area of the continuum, and Officer Montijo's response was to use pepper spray. Aerosol agents are located in the YELLOW area of the continuum and are certainly appropriate and the preferred responses for this level of resistance. Mr.

Bickerstaff, "pushed me (Officer Chipgus) up like a rag doll like I wasn't even on his back." Mr. Bickerstaff then, "threw something in the direction of the yellow house." Officer Chipgus remembers hearing the object hit the ground.

By this time, Mr. Bickerstaff was back on his feet and dragging Officer Chipgus toward the porch. Officer Montijo pepper sprayed Mr. Bickerstaff again, without any noticeable effect. While Mr. Bickerstaff was fighting, Officer Chipgus was able to trip Mr. Bickerstaff and get him back to the ground. Officer Chipgus was again on Mr. Bickerstaff's back and Mr. Bickerstaff crawled toward a flowerbed in front of the residence. Officer Montijo moved closer to Mr. Bickerstaff to attempt to spray him again, and at that time she saw a gun in Mr. Bickerstaff's hand. Officer Montijo yelled to her partner, "Ray he has a gun." This instantly escalated the confrontation to the top of the RED area on the continuum. Officer Chipgus saw the firearm in Mr. Bickerstaff's hand. In response, the officer pushed off of Mr. Bickerstaff. Officer Chipgus then drew his service weapon and fired as Mr. Bickerstaff turned in the officer's direction. When Mr. Bickerstaff went down, Officer Chipgus called radio dispatch to inform them that shots had been fired, a male was down, and they needed EMS.

Throughout the confrontation the officer's responses were reasonable as defined by the Action - Response Use of Force Continuum, as well as by the officer's departmental policy. Officer Chipgus only went as high as the GREEN area of the continuum, even though Mr. Bickerstaff's actions placed him in the ORANGE area. Officer Montijo used an aerosol, which is found in the YELLOW area and baton strikes which are in the ORANGE area. Officer Montijo did use repeated baton strikes to the legs and torso of Mr. Bickerstaff. These are the exact target areas that officers are trained to strike when faced with threats similar to those that Mr. Bickerstaff presented. Officers are trained not to target the head with baton strikes. There was no evidence that Mr. Bickerstaff was struck in the head. In terms of officer responses, there are basically two options, to reuse the same level of control, or escalate to a higher level. Officer Montijo tried to avoid resorting to the use of a firearm, so she repeated using her baton and her aerosol agent in an attempt to stop Mr. Bickerstaff's attack.

Officer Chipgus attempted lower levels of control on Mr. Bickerstaff, but they were not effective. Officer Montijo did the best that she could but there was a tremendous size and strength advantage on the side of Mr. Bickerstaff. Mr. Bickerstaff was taller than either officer, and he weighed 409 pounds. The officers were both shorter than Mr. Bickerstaff and they were each less than half the weight of Mr. Bickerstaff. We know that Mr. Bickerstaff had PCP in his system at the time of

this incident. PCP had long been a major concern for law enforcement officers because one of the properties of that drug is that it often makes a user impervious to pain. Another problem with the drug is that it can give a suspect incredible strength. Both officers stated that Mr. Bickerstaff threw Officer Chipgus around like a rag doll. The drug may also be the reason that the pepper spray and the baton strikes by Officer Montijo had no effect on Mr. Bickerstaff. Additionally, the officers were concerned about the subject who was on an upper level of the residence that Mr. Bickerstaff was moving toward. Mr. Bickerstaff yelled to that subject to come and help him. Both of the officers had more than they could handle attempting to control Mr. Bickerstaff, much less having to worry about an additional subject interfering.

A firearms response was the correct option in relation to the threat imposed by Mr. Bickerstaff. The case of *Martinez v. County of Los Angeles*, 47 Cal. App. 4th 334 (1996), illuminates the factors to be considered by the court in situations such as this in an easily understood manner. An officer is reasonable in using deadly force when he/she, "(1) confronts an armed subject, (2) in close proximity, (3) whose actions indicate an intent to attack. In these circumstances the courts cannot ask an officer to hold fire in order to ascertain whether the subject will, in fact, injure or murder the officer." This wording has already become a part of many law enforcement agencies' departmental policies. It is certainly applicable in this situation. A subject who was armed with a firearm confronted officers Chipgus and Montijo. The officers did not know if Mr. Bickerstaff had the firearm on him just before he drew it, or if he had thrown it toward the house, having it land in the bushes, and then moving to retrieve it. There is no question in the minds of either Officer Chipgus and Officer Montijo that Mr. Bickerstaff had a firearm in his hand. There is absolutely no credible evidence that Mr. Bickerstaff did not have a firearm. No witness who was in any position to see the event could state with conviction that Mr. Bickerstaff did not have a weapon, and the evidence from the crime scene corroborated that Mr. Bickerstaff did have a firearm. The criminal record of Mr. Bickerstaff also shows that he consistently carried a concealed firearm. The records further show that Mr. Bickerstaff had no respect for the law, and no compulsion about fighting with the police. Mr. Bickerstaff was in close proximity to the officers at the time of the shooting. Officer Chipgus had just pushed off of the back of Mr. Bickerstaff, and Officer Montijo stood only a few feet away. Finally, the fact that Mr. Bickerstaff either pulled a firearm, or originally threw it away, and then moved his position to recover it, dragging an officer with him in the process, most definitely indicated an intent to attack. A suspect who produces

a firearm while fighting with officers would make any reasonable officer afraid for their life. We will never actually know what the ultimate intent of Mr. Bickerstaff was, but it would be unreasonable to ask Officer Chipgus to hold fire, quite possibly asking him to surrender his life, and the life of his partner due to excessive deliberation and hesitation.

Officer Chipgus was correct in shooting when he did. If the officer would have hesitated until Mr. Bickerstaff turned to face the officers, in terms of human reaction time principles, the officers would not of had a chance to shoot before Mr. Bickerstaff could have shot them. (See included article *How Did I Shoot Him In The Back*) Even if an officer could get the first shot off, there is no guarantee that it would prevent Mr. Bickerstaff from returning fire. Officers are shown a video of a South Carolina State Trooper who stops a motorist. The stop is recorded on the trooper's car video recorder. The trooper states to the subject that he is letting the subject go with a warning.

The trooper then asks the subject for permission to check in the trunk of the vehicle. The subject agrees, and the officer states that as their protocol, he needs to do a quick frisk of the subject. The subject has one of his hands in his pocket and the trooper asks him to remove it. The subject does not comply and the trooper tries to remove the hand. The subject pushes the trooper down and draws a firearm that he had concealed in his pocket. The subject shoots the trooper once, but the round is deflected by the trooper's vest. The trooper draws his firearm and shoots the subject five times, center mass, with 357, Plus P, steel jacketed ammunition. After being shot five times, the subject raised his gun again, and the trooper turns to move for cover. The subject fires one round that penetrated through the armhole of the troopers vest, through a rib, and severs the trooper's aorta. On the tape you watch the trooper stagger to the front of the subject's car, and die. None of the five rounds the trooper fired struck any of the subject vital organs, and he is in prison still today. Rounds do not necessarily stop suspect's actions at the time the officer needs the actions stopped. It is my opinion that Officer Chipgus and Officer Montijo used reasonable responses in relation to Mr. Bickerstaff's resistive, assaultive and finally life threatening actions.

5. Immediately after Mr. Bickerstaff was shot, Officer Chipgus called for backup and for EMS. The officers then stabilized the crime scene until help arrived. When other officers and EMS arrived, Officer Chipgus, and Officer Montijo removed themselves from the scene and were themselves treated in one of the squads. It is my opinion that the officers followed their training and acted reasonably after Mr. Bickerstaff was shot.

6. After the shooting the Cleveland Police Department secured the area and treated it as a crime scene. Evidence was collected, and internal affairs and SIU interviewed the officers and any witnesses. The information was given to the prosecutor's office and it was determined that there was no criminal action on the part of the officers. The FBI examined the records and found no wrong doings on the part of the officers, and the investigation conducted by the Cleveland Police Department found no policy violations by either Officer Chipgus or Officer Montijo and the officers were exonerated.

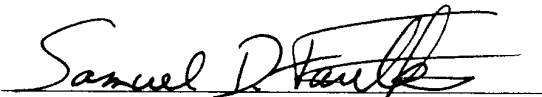
In the statement given by Officer Chipgus, he stated that he thought he fired two times. The evidence actually shows that there were a total of five rounds fired. This type of perceptual error occurs a lot more frequently than one might think. In times of high threat and stress like this, the brain is insulted and often experiences sensory distortions. (See three included articles by Alexis Artwohl) The same type of occurrence is seen every day at auto accident scenes. People who are involved in accidents often cannot remember what happened right in front of their faces. If they can remember, it is often in partial facts, or with events out of order, or with a slow motion perspective, or from exaggerated perceptual distances. I am not surprised at all that Officer Chipgus does not remember accurately the number of rounds that he fired. It is not uncommon at all for law enforcement officers involved in life threatening situations to experience many types of sensory, or perceptual distortions. It is my opinion that the investigation by the Cleveland Division of Police of the Bickerstaff shooting was reasonable, and in compliance with national training guidelines.

It is my understanding that additional materials may be in the process of being produced, or may be requested. I would request that this report be considered a statement of my opinions, with the understanding that these opinions are subject to reassessment, based upon review of other materials.

My professional charges for this work are a retainer of \$1,500.00 to be used against the first 10 hours of work on this case, an hourly rate of \$150.00 per hour for all time spent, plus any actual expenses, and a deposition fee to the Plaintiff of \$1,000.00, based on a four hour allotment of my time, plus travel time and actual expenses.

Exhibits and demonstrative materials are as follows:

- * Professional resume
- * List of cases in which I have testified in the last four years
- * Action - Response Use of Force Continuum
- * Selected pages from the ASP Baton Instructor Certification Manual
- * Selected pages from *Deadly Force Encounters*, by Alexis Artwohl
- * *How Did I Shot Him In The Back*, The Law Enforcement Trainer, November/December, 1998
- * FBI Article by Dr. Alexis Artwohl
- * *No Recall of Weapon Discharge*, Law Enforcement Executive Forum, by Alexis Artwohl, PhD.


Samuel D. Faulkner
December 17, 2003

PERSONAL RESUME

Samuel D. Faulkner
8865 Davisson Road
Mechanicsburg, Ohio 43044
(937) 834-7002

Employer: Ohio Peace Officer Training Academy
1650 St. Rt. 56. (P.O. Box 309)
London, Ohio 43140
(614) 466-7771

Education :

Ridgewood High School, New Jersey, June 1967
Hiram College, Hiram, Ohio;
Bachelor of Arts in Education, June 1971;
Major: Health, Physical Education and Biology;
Phi Beta Kappa Educational Honor Fraternity;
Taught Martial Arts and Self-Defense for P.E. Department.
Kent State University, Kent, Ohio:
Masters Degree in Physical Education, Exercise Physiology area of Concentration, August, 1979;
Instituted and taught martial Arts and Self-Defense Programs:
Led KSU Noon Exercise Program for local businessmen and professors which was part of a 20
year fitness study initiated by Dr. Larry Golding;
Set up Cardiac Output testing procedure for the KSU Exercise Physiology Lab;
Did fitness testing for KSU Athletic Department for cardiovascular fitness, strength, flexibility,
and body composition;
Also taught at Hiram College and Ursuline College.
Wright State University, Post-Masters work and study in the Department of Adult Education,
1991 - Present.

Law Enforcement/Teaching Experience:

State Discipline Chairperson in Defensive Tactics for Basic Peace Officer Training, State of
Ohio;

State Discipline Chairperson in Physical Conditioning for Basic Peace Officer Training, State of
Ohio;

Ohio Peace Officer Training Academy, Commander for Basic Training.

FitForce Instructor/Trainer

Areas of Instruction:

Defensive Tactics Instructor Course:
Baton Instructor Course:
ASP Expandable Baton Instructor Course:
Fitness Special Course:
Diet, Nutrition, and Weight Control:
Fitness Assessment and Programming Course:
Use of Force Liability Risk Reduction Course:
Peace Officer Survival Training:
Police Officer Tactical Awareness and Response Course:
Introduction of Fitness and Survival Tactics for Police Officers:
Defensive Tactics for Female Officers:
Tactical Vehicle S.T.O.P.S. Course:
Defensive Driving:
Communication Response Tactics:
Developing a Winning Attitude:
Developing a Street Ready Mind Survival Fitness Training:
Becoming A Leader Your Officers Want To Follow.

Prior Teaching Experience:

Ohio Department of Natural Resources:
Bureau of Criminal Identification and Investigation;
Ohio State Capital Guards;
Ohio State Highway Patrol;
Lexington, Kentucky SWAT Team and Riot Squad;
Lexington, street officers;
Richland County ASORT Team;
Miami Valley Joint Task Force SWAT Team;
Ohio Women in Policing Seminar;
Miami Valley Correction Officers;
City Center Security Guards, Columbus, Ohio;
W.O.R.T.H. Correctional Facility, Lima, Ohio;
Holzer Medical Center;
Guest lecturer in Use of Force for the Kentucky Office of the Governor Criminal Justice Training;
Train the Trainers Course for the State of West Virginia;
Train the Trainers Course for the Commonwealth of Kentucky;
Consultant to the Kentucky Department of Criminal Justice Training in a state-wide Advanced Training Defensive Tactics Program;
Consultant to State of Ohio Department of Rehabilitation and Corrections on Use of Force;
Ohio Military Reserve.
Montana Attorney General's Office
Montana State Police

International Association of Law Enforcement Firearms Instructors
Michigan State Police
The majority of law enforcement agencies throughout the State of Ohio

Adjunct Professor - Clark State University
Instructor at:
Muskingum Technical School;
Montgomery County Joint Vocational School;
Akron University;
Kent State University;
Sinclair Community College;
University of Rio Grande;
University of Illinois at Chicago.

Educational Work Related Experience:

320 Hours Police Academy Basic Training;
Certified Police Academy Instructor, State of Ohio;
Active Countermeasures Instructor;
Pressure Point Control Tactics Instructor;
Baton Instructor;
Defensive Tactics Instructor;
Instructor/Trainer in Defensive Tactics for PPCT Management Systems;
Physical Crisis Intervention;
Officer Tactics and Advanced Field Tactics;
PR-24 and Kubaton Instructor;
State Certified Semi-Automatic Firearms Instructor;
Ripp Restrainer Instructor;
CAP-STUN Aerosol Spray Instructor;
ASP Expandable Baton Instructor;
ASP expandable Baton Instructor/Trainer;
Close Quarter Personal Control Instructor;
Close Quarter Personal Control Instructor/Trainer;
Vehicle S.T.O.P.S. Instructor;
Vehicle S.T.O.P.S. Instructor/Trainer;
Defensive Driving Instructor;
Defensive Driving Instructor/Trainer
Principle Based Response Tactics Instructor;
Personal Based Response Tactics Instructor/Trainer.
Master Ground Defense Instructor

Court recognized expert witness in Use of Force, Defensive Tactics and Police Procedures, in both civil and criminal cases.

Author of Use of Force Model adopted by Advanced Police Training, Basic Peace Officer

Training, Corrections Training, and Private Security Training for the State of Ohio.

Expert advisor and witness for the Ohio Peace Officer Training Commission and the State of Ohio Attorney General.

Member of Governor's Office of Criminal Justices Services Law Enforcement Use of Force Liaison Committee.

Presenter/Discussant for the 1992, 1993, and 1997 Annual Meeting of the Academy of Criminal Justices Sciences.

Instructor in Forum For Comparative Correction Program. Topic: Use of Force in the Correctional Environment.

Instructor at the 1992, 1993, 1996, 1997, 1998, and 2000 Attorney General's Conference on Law Enforcement. Topic: Use of Force, and Leadership.

Instructor at the 1994, and 1999 American Society of Law Enforcement Trainers annual meeting. Topic: Use of Force and the Action - Response Use of Force Continuum.

Instructor at Regional and National AFSCME Corrections United Seminars. Topic: Use of Force in a Correctional Environment.

Research Project in 1997 with the U.S. Justice Department, National Institute of Justice defining reasonable use of force for law enforcement.

Research Project in 1998 with Ohio Department Of Youth Services developing a use of Force Model for control of juvenile violence.

Consultant to National Institute of Justice on Use of Force issues.

Consultant to Calibre Press, Street Survival Seminars on Use of Force, and control tactics.

Consultant to President Clinton on Use of Force issues.

Consultant to hundreds of police departments and sheriff's offices on use of force policies.

Presented the Action - Response Use of Force Continuum model to the 2001 National Association of Attorney Generals Conference in San Diego CA.

Publications in:

Ohio Police Magazine;

The Defensive Tactics News Letter;

Working the Streets, Mid-West D.T. News Letter;

The State of Ohio Basic Training Curriculum;
The Action - Response Use of Force Continuum;
Law and Order Magazine;
National Sheriff's Magazine;
Tactical Edge Magazine;
Police Science;
POLICE Magazine;
The Buckeye Badge;
Training Aids Digest;
Close Quarter Personal Control Basic & Instructor Manual;
Strategies & Tactics of Patrol Stops (S.T.O.P.S.) Basic & Instructors manual;
FBI Law Enforcement Bulletin;
FBI Journal.
American Journal Of Criminal Justice
Numerous programs on the Law Enforcement Television Network (LETN)
Author of a book published by the Ohio Attorney General's Office.
USE OF FORCE, DECISION MAKING AND LEGAL PRECEDENCE.
2001 Ohio Chief's of Police Magazine on writing Response to Resistance Policies

Police Experience:

Homicide investigation;
Undercover drug investigation; Warrant service;
Interstate and Intrastate transport of prisoners;
Developing and teaching Rape Prevention Seminars;
Team leader in Hostage Negotiation Programs;
Wrote and implemented Use of Force Policy for Robinson Memorial Hospital Police Department, Ravenna, Ohio;
Developed Use of Force Model used by departments throughout Ohio.
Uniform Patrol work at Port of Columbus Airport Police Dept.

Honors and Other Activities:

Speaker at Ohio Chiefs of Police Fitness Seminar.. 1989;
Helped establish and perform initial fitness assessment for the Richland County ASORT Team;
Speaker at seminar for Safety and Security Officers in health care organizations;
Elected by Buckeye State Sheriff's Association to establish a defensive tactics curriculum for state-wide mandated correctional officers training program, and to teach the trainer of trainers course in same;
Medalist in 1985 Ohio Law Enforcement Olympics in Martial Arts;
Double gold Medalist in the 1986 Ohio Law Enforcement Olympics;
Participant in 1986 International law Enforcement Olympics.
Honorary Kentucky Coronel
1997 Ohio Attorney Generals Professionalism Award

USMC Basic Training at Paris Island:

PFC Meritoriously:

Platoon Dress Blue Honor Man:

National Spirit Honor Medal from Congress awarded to 1 in 10,000 Marines:

First person in the history of Marine Corp Boot Camp to graduate with perfect Proficiency and Conduct evaluation marks:

USMCR Instructor in hand-to-hand combat and physical training.

CASES IN WHICH SAMUEL D. FAULKNER HAS CONSULTED, OR
TESTIFIED AT TRIAL OR DEPOSITION THE PAST FOUR YEARS

1. Michael L. Crocket vs. Scott Fishburn et al., Case No. 1:96CV1097,
U.S. District Court for the Northern District of Ohio, Eastern District
 2. Paul Childress vs. Lucas County, et al.
 3. Jamil Hegwood, Katrina Hill and Earl Robinson, Plaintiffs vs. City of
Cleveland, Michael Simmons, Kirk Tranchita, T. Schaefer, Douglas Natoche
and Zachary Reed, Defendants, Case No. 295079, Court of Common Pleas,
Cuyahoga County Justice Center
 4. Candido Martinez and Mary Martinez, Plaintiffs vs. City of Albuquerque,
Lance Fleming, Cisco Martinez, Wayne Jones, J.A. Mosher and Joseph
Polisar, Defendants, Case No. CV 96-587,
Second Judicial District Court, County of Bernalillo, State of New Mexico
 5. Richard R. Swain vs. Holiday Inns, Inc., et al., Case No. 96CVC-12-9483,
Franklin County Court of Common Pleas, Judge Dale Crawford
 6. Pollard et al. vs. Noble et al., Case No. 5:95CV0432,
United States District Court Northern District-Eastern Division
 7. Allegra Wolfe, Administrator of the Estate of Matthew S. Plummer, vs.
Matthew M. Carper and Mark A. Salyer, Case No. C-3-95-427,
United States District Court
 8. Ernest Seurkamp et al. Vs. Kevin Cooper et al., Case No. C-1-97-0274,
United States District Court southern District Of Ohio Western Division
 9. Evert Spencer vs. Department of Rehabilitation and Correction, North Central
Correctional Institution, Case No. 97-SUS-01-0007
State Personnel Board of Review
 10. Thereas Geist, et al. V. Village of Shawnee Hills Police Department., et al.,
Case No. C2-96-538, United States District Court For The Southern District
Of Ohio, Western Division
 11. Davis v. City of Casa Grande, Case No. CIV 96-2406 PHX ROS (SLV)
 12. Paula Lawrence, et al. V. QHG of Ohio, Inc, et al., Case No. 96 CVH03-2009,
Court of Common Pleas, Franklin County, Ohio
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13. Muncie Police Officer Larry Robbins, Jr., Testified before the Grand Jury, July 24, 1997, In shooting of Patricia Porter, Delaware County Prosecutor, 46th Judicial Circuit of Indiana
14. Ogletree v. Montgomery County Sheriff's Department, et al., Case No. C-3-97-215, United States District Court For The Southern District Of Ohio Western Division
15. Steve Gutierrez v. County Of Los Angeles, et al., Case No. VC 020 934, The Superior Court Of The State Of California In And For The County Of Los Angeles
16. Timothy A. Nared vs. City Of Washington Court House, et al., Case No. 2:96-CV-242, United States District Court For The Southern District Of Ohio Eastern Division
17. Doris Floyd for Lorenzo Collins, Deceased v. City Of Cincinnati, et al., Case No: C-1-97-0317, United States District Court Southern District Of Ohio Western Division
18. Amos Yellowback, Jr. ,Special Administrator of the Estate of Brian Yellowback, Deceased v. City of Sioux Falls and Dave Dunteman, Case No. 95-1765, State Of South Dakota In The Court For The County Of Minnehaha Second Judicial Circuit
19. Ava Gordon, et al v. County Of Los Angeles, et al., Case No. BC 168683, Superior Court Of The State Of California For The County Of Los Angeles
20. Oliver Manual Vargas, et al. v. County Of Los Angeles, et al., Case No. CV 96 4784 DT (Jrx), United States District Court For The County Of Los Angeles
21. Dorothy Allen Ribbey, v. Gregory A. Cox, Case No. CL 00 71849, Iowa District Court For Polk County
22. State College Police Association (Snietka) v. State College Borough, Arbitration
23. Betty Rolander vs. James Frey, (sic), Etc.,et al., Case No. C-3-96-499, United States District Court For The Southern District Of Ohio Western Division
24. Jeffrey Hemphill vs. City Of Albuquerque, Case No. CV-96-10184, Second Judicial District Court County Of Bernalillo State Of New Mexico

25. Jack Clark, et al. Vs. Officer William Mueller, et al., Case No. C2-97-196, United States District Court For The Southern District Of Ohio, Eastern Division
 26. Robert Coy Arbitration v. City of Xenia and FOP/OCL, Xenia City Building, Xenia, Ohio
 27. Angela Cox vs. The Village Of Waterville, et al., Case No. 3:97CV7152, United States District Court Northern District Of Ohio Western Division
 28. Wesley Combs vs. Officer Sloan, et al., Case No. 97-CV-1835, In The Common Pleas Court Of Montgomery County, Ohio, Civil Division
 29. Anthony White v. Donald D Ebie, et al., Case No. 96CV1314, United States District court, Northern District, Eastern Division, Judge L. Wells
 30. Scott A. Sigley v. Roger Kuhn , Case No. 5:97CV3028, United States District Court, Northern District, Eastern Division, Judge Gwin
 31. Douglas J. Wilson v. William Atyeo, Case No. CIV 96-5031, Rapid City, South Dakota, Attorney Douglas P. Knudsen
 32. Gladys Bolden, Administratrix Of The Estate Of Darryl Price, Deceased v. City Of Cincinnati, Officer Igel, et al. , Case No. C-1-97-592, United States District Court, Southern District Of Ohio, Western Division
 33. The State Of, Ohio v. Eric P. Mueller, Case No. 98CR-I-04-113, Court Of Common Pleas, Delaware County, State of Ohio
 34. Gregory K. Borders, et al. v. The City Of Huntington, et al., Case No. 3:98-0150, United States District Court, For The southern District Of West Virginia
 35. Timothy Keith Nichols v. City of Williamson, et al., Case No. 93-C-742, In The Circuit Court of Mingo County, West Virginia
 36. Robert Ellison v. City Of Bluefield, St. Paul Claim No: GP03400344-37A008
 37. Randy Ervin, Deceased v. Babell County Commission, St. Paul Claim No: GP03400294-37006
 38. Craig A. Burdine v. Bruce M. Szilagyi et al., Case No: 3:98-CV7094, United States District Court Northern District Of Ohio Western Division
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39. Regina Johnson and Keisha Boykin v. Gary Haines, et al., Case No: C-3-98-0034,
United States District Court Southern District Of Ohio Western Division At Dayton,
Ohio
 40. Herbert G. Hood v. BWC, Claim No: 98-396874
 41. Charles W. Hall v. Eli Mitchell, etc., et al., Jenks, Surdyk & Cowdrey Co., L.P.A.
File No.: 2814.164, United States District Court for the Southern District of Ohio,
Western Division
 42. Rodney Nealeigh, et al. v. Shawn J. Babb, and Village Of Pleasant Hill, et al.,
Case No.: 96-416, In The Common Pleas Court Of Mimi County,
Ohio General Division
 43. Vincent Johnson v. GMM, Inc. dba Inn The Woods, et al.,
Cuyahoga County Case Number: 3512219
 44. Officer James Jardine, #1577, Police-Involved Shooting, Homicide Case File 97-9,
Date: December 28, 1997
 45. Randy Williams v. Peter Ragone, et al., Case No: 96-5068
 46. Christopher Smith v. Charles Maier et al., Case No. 1998 CVO 1701,
In The Court Of Common Pleas, Stark County, Judge Reinbold
 47. David A Scott v. City of Columbus, et al., Case No. 98CV1103-2366
 48. Ohio Patrolmen's Benevolent Association and City of Parma, (John Galinas
Discharge Arbitration, Parma Police Department Internal Investigation
No: 98-12681
 49. Betty Smith, Mother and Natural Guardian on behalf of Brandy L. Martin v. City of
Dayton, Michael McDonald, and Ronald Lowe, Sr., Case No. C-3-90-332,
United States District Court for the Southern District of Ohio Western Division
 50. Roberts and Sifford v. Officer Dunham and Franklin Police Department,
Case No: C-3-98-249, United States District Court Southern District Of Ohio
Western Division
 51. Jack Massengale v. Anthony DiPuccio, et al., Case No: C-1-98-163,
United States District Court Southern District Of Ohio Western Division
 52. Suron Jacobs v. Village of Ottowa Hils, Officer Miller & Officer Knallay,
Case No. 3:99CV7082, United States District Court for the Northern District Of
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Ohio Western Division

53. Anthony F. Scott v. City of Bexely, et al., Case No. C2-98-119,
United States District Court Southern District Of Ohio Eastern Division
 54. Glenn W. Phelps, Jr. v. Robert M. Coy, Jr. et al., Case No. C 3-98-369,
United States District Court Southern District Of Ohio Southern District
 55. Craig Burdine v. Bruce M. Szilagyi, et al., Case No. 3:98CV7094,
United States District Court For The Northern District Of Ohio
Western Division
 56. Estate of Reifel v. Officer Kenneth James, et al., Case No. 98-5088,
United States District Court Southern District Of South Dakota
Southern Division
 57. Joseph C. Ritorto, III v. Village of Wakeman, et al., Case No. 3:99CV7196,
United States District Court, Northern District, Western Division
 58. James Emerick, et al. Vs. Derk Brown and Jeff Eldridge, Case No. 95-CI-00598,
Kenton Circuit Court, Third Division
 59. George Henry Lockman, III v. Gary L. Perdue, Case No. 2:98-1187,
United States District Court, Southern District Of West Virginia
 60. Anthony Molinar v. City Of Columbus et al., Case No. C2-98-922,
United States District Court
 61. Raymond E. Porter, et al. v. City of Muncie, et al., Case No. IP98-1491 C-H/G,
United States District Court, Southern District Of Indiana, Indianapolis Division
 62. Allen Joseph Cody v. James R. Chamberlin, and Wayne Godwin, Sheriff of
Harrison County, Case No. 1:99CV38, United States District Court, Northern
District of West Virginia, Elkins Division
 63. Kevin Neiswonger and Taunia Neiswonger v. Officer B.K. Hennessery and
Morgantown City Police Department, Case No. 1:99CV62, United States District
Court for the Northern District of West Virginia
 64. Donald R. Arnold, Jr. v. City Of Lorain, et al., Case No. 1:99CV0010,
United States District Court Northern District Of Ohio Eastern Division
 65. Robin James Towne v. John M. Fitzgerald, et al., Case No. 2:99CV40,
United States District Court for the Northern District of West Virginia
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66. Stephanie Jean Smith, M.D. and Marcus Karim Jordan v. Lexington-Feyette Urban County Government, et al., Case No. 98-314, United States District Court for the eastern District of Kentucky At Lexington
 67. Debra Burbridge, et al. v. City Of Columbus, et al., Case No. Franklin County Court of Common Pleas
 68. Shirley Wingrove, et al. v. Captain Chris E. Forshey, et al., Case No. 99-TR-223, Court Of Common Pleas Of Washington County, Ohio
 69. Agust S. Thorbjornsson v. Patrolman Rustad, et al., Case No. C-3-99-233, United States District Court for the Southern District Of Ohio Western Division At Dayton
 70. Kenneth Tackett and Clifford Hager v. City of Huntington, et al., Civil Action No: 3:99-0645, United States District Court for the Southern District of West Virginia
 71. Jeff Lutz v. Hocking College, et al., Case No: 97 CI 000028, Court of Common Pleas, Athens County, Ohio
 72. Lisa J. Johnson, Administratrix of Estate of Tarver B. Johnson, v. Jay Sliwinski, et al., Case No: CIV 99-5078, United States District Court, Western Division, South Dakota
 73. Cunningham et al. V. Winters et al., File No. 8217.21249, United States District Court, Northern District of West Virginia
 74. Billy Joe Webb et al., v. City Of Portsmouth, et al., Case No: C-1-99-444, United States District Court, Southern District Of Ohio, Western Division
 75. Shawn Gilhuys, Brian K. Liggett, and Craig M. Malcolm v. Jerry I. Judy, et al., Case No. 2:99CV125, U.S. District Court, Northern District of West Virginia
 76. Patti Gallo, et al., v. Duane Kelly, PORTAGE COUNTY SHERIFF, et al., Case No. 5:96 CV 1688, U.S. District Court for the Northern District of Ohio, Eastern Division
 77. Jim E. Thompson, Sr. et al., v. Lawrence County Board of Commissioners, et al., Case No: CIV 99-5081, U.S. District Court for the District of South Dakota, Western Division
 78. Diedre Manning v. Polaris Amphitheater, et al., Case No: 99 CVC08-6292, Court of Common Pleas of Franklin County, Ohio
 79. Cheryl D. Lyons v. The City of Xenia, Ohio, et al., Case No: C3-99-603, U.S. District Court for the Southern District of Ohio
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80. Jamie Fissel v. City Of Mansfield, et al., Case No: 1:99CV1317, U.S District Court for the Northern District, Eastern Division
 81. Hungerman v. Planet Wheeling, Inc., DBA Lion Head Night Club, John Bailey, Brock Bandi, et al., Case No: 99-C-49, Circuit Court Of Ohio County, West Virginia
 82. Jammie L. Traylor, et al. v. Village of Woodlawn, et al., Case No: C-1-99-472, U.S. District Court, Southern District of Ohio
 83. Jimmy D. Brown, et al. v. The Town Of Smithers, et al., Case No: 2:00-0408, United States District Court, Southern District of West Virginia, At Charleston
 84. Primo F. Dalporto, v. City Of Smithers, et al., Case No: 00-C-142-V, Circuit Court Of Fayette, West Virginia
 85. Joseph Jackson v. Town Of Smithers, et al., Case No: 00-C-184-V, Circuit Court Of Fayette, West Virginia
 86. William and Gary Peyton v. State Of Ohio, Donald White, Prosecuting Attorney, Clermont County Municipal Court
 87. First Star Bank, Administrator of the Estate of Simmie Weaver, et al. v. James Jardine, et al., Federal Court in Columbus, Case No. C2-00-00075
 88. Charles Sowards, Jr. v. Officer K. L. Lanam, et al., Case No.: 99CVH-04-3039, Franklin County Court Of Common Pleas
 89. Fannie Rollins v. Jeffrey E. Barlow, et al., Case No. 2:00-CV-0881, United States District Court
 90. Josh Surdell vs. Perrysburg Township, et al., Case No. 00 CV 073, Wood County Court Of Common Pleas
 91. State Of Ohio vs. Paul Smith, Case No. 2000-CR-173, Ashtabula County Court of Common Pleas
 92. Steven J. Swabb v. Sgt. Aric Yates et al., Case No. C2-99-236, United States District Court, Eastern Division
 93. Richard Craw v. Deputy Wolford and Mercer County Sheriff's Office
 94. Amanda Dailey, et al., vs. City Of Dayton, et al., Case No. C-3-98-561, United States District Court, Southern District, Western Division
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95. Saundra Martin v. City Of Silverton, et al., Case No. C-1-00-300,
United States District Court, Southern District, Western Division
 96. Steven House vs. City of Cleveland, et al., Case No. 1:99 CV 2456,
Court of Common Pleas, Cuyahoga County
 97. Sybil Hernandez v. Bret Jarman, et al., Case No. CIV 00-5115,
United States District Court, District of South Dakota, Western Division
 98. Josh Surdell v. Perrysburg Township, et al. Case No. 00 CV 073,
Common Pleas Court Of Wood County
 99. Naomi R. Littleton, et al. v. Belmont County, Ohio, et al. Case No C2-00-1108,
United States District Court, Southern District Of Ohio, Eastern Division
 100. Robert Winfrey and Ellen Thomas, Administrators v. The Estate of Rodney Robinson, et al.
Case No. 00-C-620-B, Raleigh Circuit Court
 101. Richard Hummel v. City of Carlisle, Ohio, et al., Case No.: 00C-539,
U.S. District Court, Southern District of Ohio, Western Division, Dayton
 102. Jeffrey W. Tonkin v. Sgt. Richard Depuccio and Union Township Police Department,
Case No.: C-1-00, U.S. District Court, southern District of Ohio, Western Division
 103. Chad A. McKinley v. City of Worthington et al., Case No.: 00-433,
U.S. District Court, Southern District of Ohio, Eastern Division
 104. Georgia Weigner, Administratrix for Henry Weigner, v. L.H. "Larry Helmick, et al.,
Case No. 98-C-118, Circuit Court Of Monongalia County, West Virginia
 105. William Lester Peyton, et al. v. Raymond C. Snyder, et al., Case No. C-1-01-081,
U.S. District Court, Southern District Of Ohio
 106. Carla R. Collin v. Robert Stephenson, et al., Case No. C2-00-494,
U.S. District Court, Southern District Of Ohio, Eastern Division
 107. Okeke v. Officer John Rose, et al., Case No. 00-7400, U.S. District Court,
Northern District Of Ohio
 108. David Grant v. Paul Sutter and Ray Eggleston, Case No. 00-5125, U.S. District Court,
District Of South Dakota, Western Division
 109. Debrah Denise Burbridge, et al. v. City of Columbus, et al., Case No. 97CVC-01-2137,
Franklin County Court of Common Pleas, Ohio
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110. Scott Matthes v. Ashland Police Department, Ashland County Court of Common Pleas
111. Donna K. Williams v. Gary L. Edgell and K.S. Dickson, Case No. 98-C-2564, Circuit Court Of Kanawha County, West Virginia
112. Cynthia Hampton, et al. v. Ross County Sheriff Nickles et al., Case No. :200-CV-1317, United States District Court, Southern District, Eastern Division
113. State Of Ohio, v. Scott A. Matthes, Case No. 01-CRI-08077, Court of Common Pleas, Ashland County, Ohio
114. Timothy Kennedy v. Kim Wolfe, et al., Civil Action No.: 3:01-0376, United States District Court, Southern District, West Virginia
115. Robert B. Jorg v. State of Ohio, Case no. B0009502, Court Of Common Pleas, Hamilton County, Ohio
116. Bryant E. Jones v. City of Iaeger, et al., Civil Action No.: 1:01-0070, United States District Court of West Virginia, to Bluefield
117. Timothy Kennedy v. Kim Wolfe, et al., Civil Action No.:3:01-0376,
118. McGee v. Village of Lockland, et al., Case No. A012767, Court of Common Pleas, Hamilton County, Ohio
119. State Of Ohio v. Michael Albright, Case No. 2001CR10-098, Court Of Common Pleas, Madison County, Ohio
120. Ray B. Powers v. Jamie L. Norris and The Ohio State Patrol, Case No. C-3-00-622, United States District Court, Southern District Of Ohio, Western Division
121. Debra L. Johnson vs. Gary Keith Messenger, II, West Virginia Dept. of Public Safety, Case No. 1:01-CV-99, U. S. District Court, Southern District Of West Virginia
122. Ferguson v. Leiter, et al., Case No. 00-7779, United States District Court, Northern District Of Ohio, Western Division
123. City of London And OPBA, Termination of Michael Albright
124. Jill Farris v. Jeffrey L Robinson, et al., Case No. 1:01CV1787, United States District Court, Northern District of Ohio, Eastern Division
125. State of Ohio vs. Theodore Wynn Hodge, Case No. 2001-CR-1415, Montgomery County Court Of Common Pleas

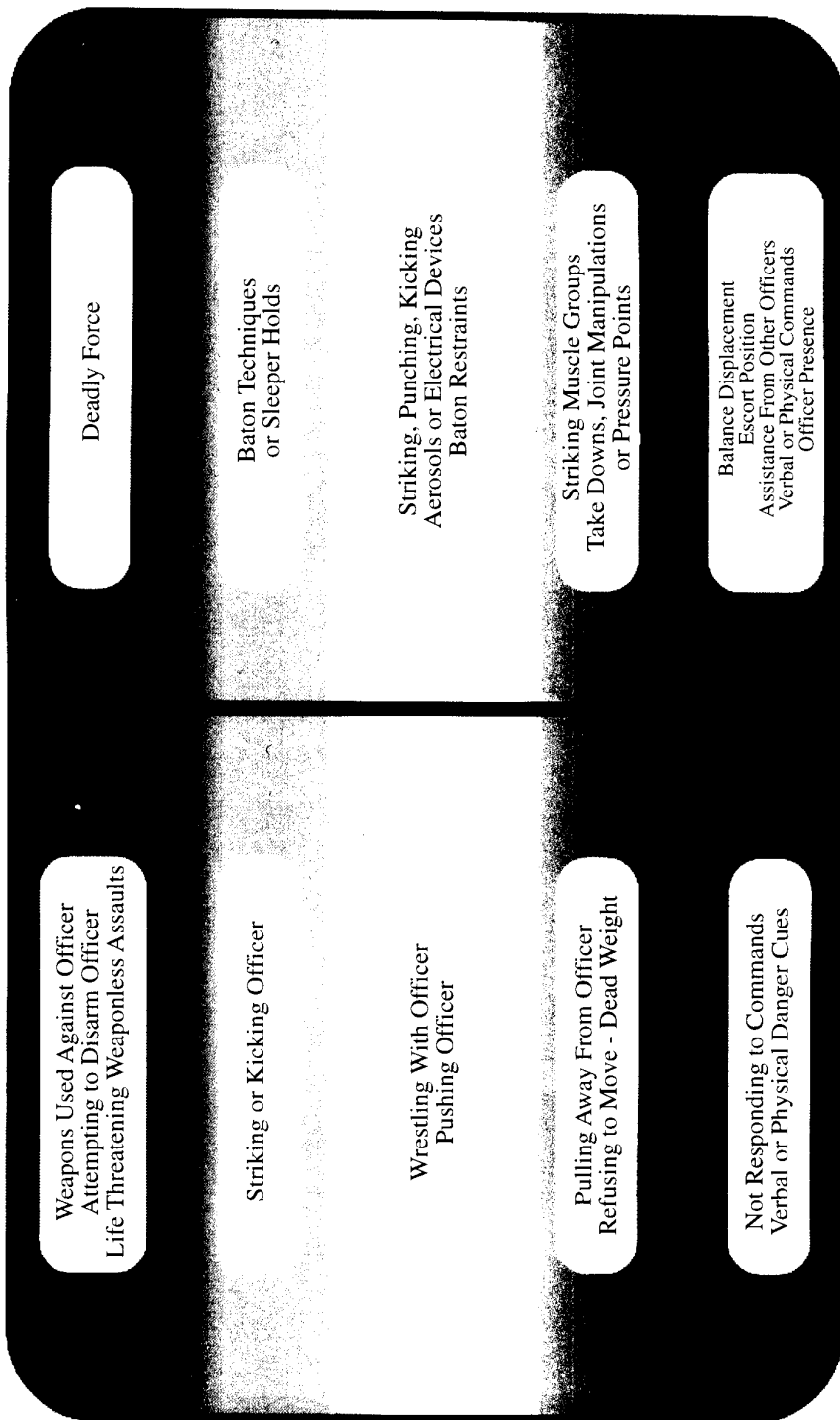
126. Hatim Damara, et al., vs. Lt. Officer Kim Cornachio, Case No. 1:00 CV 2009, United States District Court, Northern District Of Ohio, Eastern Division
 127. Thomas William Browning v. Kanawah County Sheriff's Office et al., Civil Action No. 2:00-0619, United States District Court, Southern District of West Virginia, Charleston
 128. Donald Maclay, et ux. V. Ronald C. Jones, et al., Case No. 99-CV-266-F, In The Circuit Court Of Mercer County, West Virginia
 129. Mary Watkins, et al. v. Sgt. Shearer, et al., Case No. C-1-01-624, United States District Court, Southern District Of Ohio, Western Division
 130. McGhee vv. City of South Charleston, et al., Civil Action No. 2:01-1308,
 131. D. Bumgardner v. Rodighiero, et al., Civil Action No. 2:01-0685,
 132. Eddie Bryan Blanenship v. G.A. Syres, T.A. Bailey, and The City Of Princeton, Civil Action No. 1:00-1146, United States District Court, Southern District Of West Virginia At Bluefield
 133. Dennis J. Milko v. City of Weirton, et al., Civil Action No. 5:01CV28, United States District Court, Northern District of West Virginia
 134. Annie Bradberry et al. v. Madison Township, et al., Case No. 01CVC12 12903 Franklin County Court Of Common Pleas, Franklin County, Columbus, Ohio
 135. John C. Sconish, et al. V Robert K. Lane, et al., Civil Action No. 01-C-170, Circuit Court of Marion County, West Virginia
 136. Fred Johnson v. Ohio Division of Natural Resources, Division of Wildlife, et al., Case No. C 3 01- 414, United States District Court, Southern District Of Ohio, Western Division
 137. Kenneth Marcus vs. City Of Hazelton, et al., Civil Action No. CV 01-1444, United States District Court For The Middle District Of Pennsylvania;
 138. Calvin H. Thorne v. West Virginia Department Of Public Safety, et al., Civil Action 2:01-CV-481, United States District Court, Southern District Of West Virginia At Charleston;
 139. Rodney Eads v. The West Virginia State Police, et al., Civil Action No. 00-C-2508, Kanawha County Circuit Court, West Virginia;
 140. State Of Ohio v. Sgt. James Zimomra, Trumbull City Case;
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141. Patricia Carter, et al. v. Daniel W. Beck, et al., Case No.: 3:01 CV 7437,
U. S. District Court, Northern District of Ohio, Western Division;
 142. Ptl. Frank Steven Lesinski v. State of Ohio;
 143. Heston Cuffy v. Maj. Larry A. Van Horn, et al., Case No.: 3:99CV7726,
U.S. District Court, Northern District of Ohio, Western Division;
 144. Billy J. Dunfee v. Ronald J. Greenwood, et al., Case No.:C2-02-315,
U.S. District Court, Southern District, Eastern Division;
 145. Kim D. Hickson v. Kevin L. Sawyers, et al., Civil Action 2:02-C4-41,
U.S. District Court, Northern District of West Virginia, Elkins Division;
 146. Dennis Williby and Rebecca Mae Willby v. City Of Princeton, et al.,
Civil Action No 00-C-278-K, Circuit Court Of McDowell County, West Virginia;
 147. Amanda Carnes v. Coshocton County Sheriff's Department, et al., Case No.:C2-02-062,
U.S. District Court, Eastern Division;
 148. Christopher C. Hanson v. The City Of Parkersburg, et al., Civil Action No.: 01-C-524,
Circuit Court Of Wood County, West Virginia;
 149. Theresa Sheets, et al. vs. Sergeant Howard Mullins, et al., Case No. 00 CV 158,
Gallia County Common Pleas Court, Ohio;
 150. State of Ohio v. Jameel Talley, Case No.: 430942,
Court of Common Pleas, Ohio;
 151. Carolyn E. Houchins, Personal Representative for the Estate of Joseph Houchins v. City of
South Charleston, and J. A. Compton, Case No. 03-C-1037,
Circuit Court Of Kanawha County, West Virginia;
 152. Mark A. DiBlasio v. John P. Shoopman, et al., Case No. C2-02-349,
United States District Court, Southern District of Ohio, Eastern Division;
 153. Robert A. Hunter v. Village of Attica Police Department, et al., Case No. 54838,
Court Of Common Pleas, Seneca County, Ohio;
 154. Vincent Darling v. Dick Clark's American Bandstand Grill,
 155. Michael A. Ferrante, et al. v. George M. Peters, et al., Case No. 1:02 CV 1333,
United States District Court, Northern District Of Ohio, Eastern Division;
 156. Nicholas Sargent v. City of Toledo Police Department, et al., Case No. 3:03CV7261,
United States District Court;
-

157. Steven Fryer v. Jeffrey Woofter, Sheriff, Case No.: 01-C228-R,
Circuit Court of Hancock County, West Virginia;
 158. Georgia Bickerstaff v. Edward Lohn, et al., Case No. 1:03CV240,
United States District Court, Northern District of Ohio, Eastern Division;
 159. Bonnie Prater, Administratrix of the Estate of Alexander L. Wright, Jr. v Town Of Was,
and Scott Dingus, Civil Action No. 02-C-247-S, Circuit Court of McDowell County,
West Virginia;
 160. Estate of Willian J. Bing v. City of Whitehall, Ohio, Case No. C-2-03-510;
 161. Martin Morelock and Brian Lunsford v. C/O Watlet Bender, Case No. C-1-03-047
-

ACTION - RESPONSE CONTINUUM

IMPORTANT - The list of officer responses is **not** intended to be in any specific order, but reflects on the amount of resistance encountered. The officer will choose the necessary response to gain control of the situation based on departmental policy, his physical capabilities, perception, training and experience.



OFFICER - SUBJECT FACTORS

1. Age
2. Sex
3. Size
4. Skill Level
5. Multiple Subjects/Officers
6. Relative Strength

SPECIAL CIRCUMSTANCES

1. Closeness of a Weapon
2. Injury or Exhaustion
3. Being on the Ground
4. Distance From the Subject
5. Special Knowledge
6. Availability of Other Options
7. Environmental Conditions
8. Subject Handcuffed

INDIVIDUAL'S ACTIONS OFFICER'S RESPONSES

Continuum of Arrest: Control – Handcuff – Search – Evaluate – Transport



Instructor Certification (AIC) Course Syllabus



TOPIC

NOTES

There are two Modes for the ASP Tactical Baton:

7:05a Closed: The baton is fully closed within the handle of the weapon.

7.05b Open: The baton is fully extended and locked in place.

7.06 Target Areas *(See Overhead K)*

All techniques are designed to deliver one or more strikes to the center mass of the presented threat:

- Center mass of the arm
- Center mass of the leg
- Center mass of the body

These areas were selected for their physiological vulnerability combined with their less lethal potential as a baton target.

When striking a subject, the officer should target those areas which are likely to inflict injury to the officer. Most frequently, this is the arms and legs. These targets are the vehicles which transport force against the officer.

Therefore, strikes to the center mass of the extremities effectively disable an assailant's "**delivery system**." Strikes to the center mass of the body generate fluid shock waves.

Open Mode Strikes are delivered to target areas with the last three inches of the shaft or tip. Closed Mode Strikes are delivered to target areas with the cap or fist.

Strikes to the primary "center mass" target areas have a high potential for control and a low potential for fatal injury. These targets are also "forgiving" targets. If the assailant moves or a strike misses its target, surrounding targets also have a high potential for control and a lesser potential for damage.

WARNING

DO NOT TARGET STRIKES
TO THE HEAD, NECK, SPINE, STERNUM OR GROIN



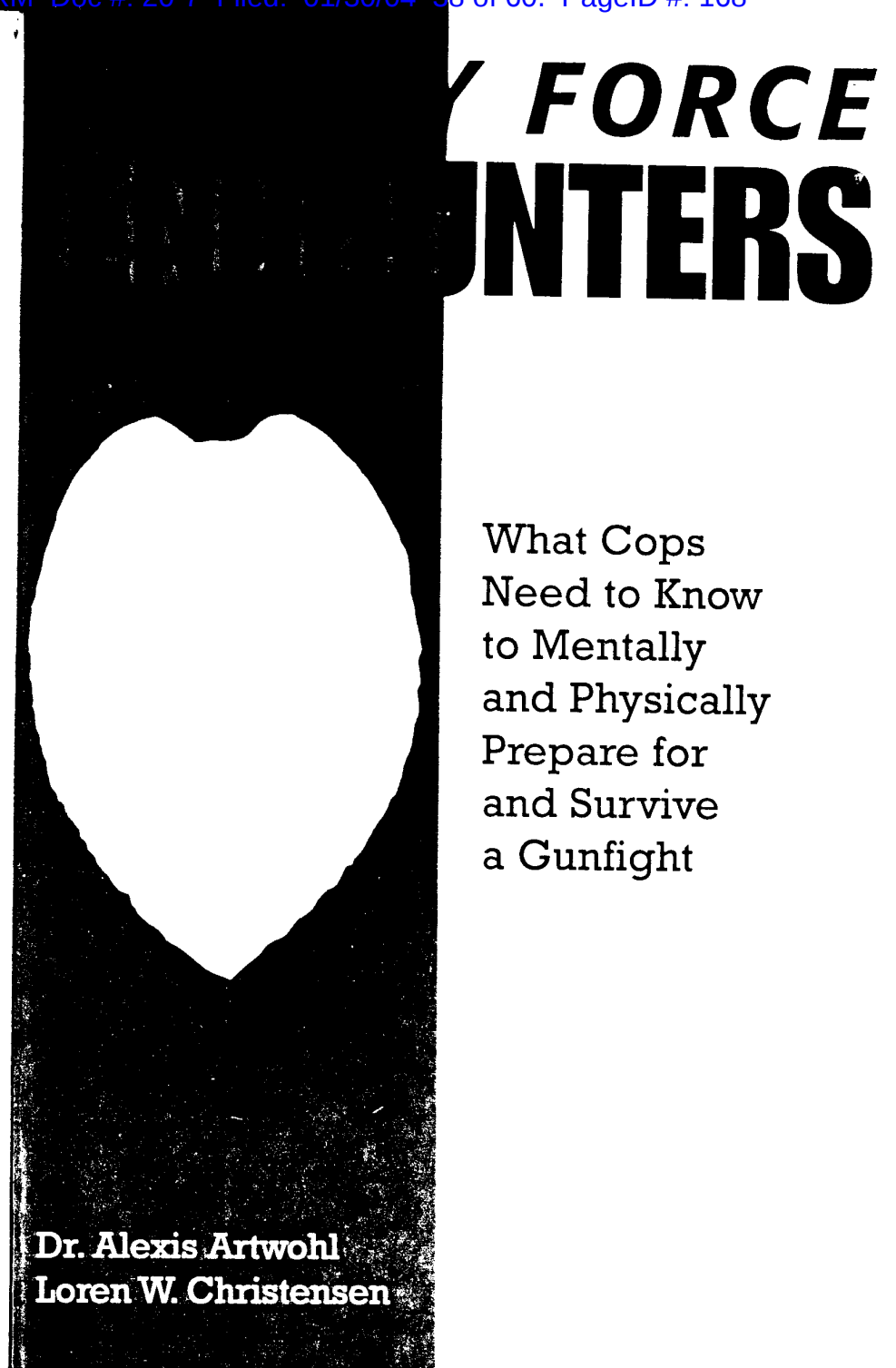
Strikes to these areas may produce injuries which are eventually fatal, while not effectively terminating assailant resistance.



TARGET AREAS

OVERHEAD K





MENTAL FORCE COUNTERS

What Cops
Need to Know
to Mentally
and Physically
Prepare for
and Survive
a Gunfight

Dr. Alexis Artwohl
Loren W. Christensen

44 Deadly Force Encounters

thoughts that may not be immediately relevant to the current tactical situation. You might think of your family, some future event, or a previous event that reminds you of the present one.

I remember thinking, "I don't know this guy. Why is he doing this to me?" I thought that if my family could see this, they would be very upset and frightened.

.....

I had a fleeting thought as I pulled the trigger that I would get into trouble with my department. The shooting happened in a park on a holiday and there were hundreds of people present. I had a sense that I was on a stage.

- **Memory Distortions:** You may think you saw, heard, or experienced something during the event, but later you find out it happened very differently or never really happened at all.

A suspect with a gun got the drop on my partner and was getting ready to shoot him. As I shot the suspect, I could see blood spurting out of my partner as the suspect shot him. After the suspect had been neutralized, I ran over to help my partner, praying that he would survive his gunshot wound. As it turns out, he had also shot the suspect but the suspect had never got off a round. My partner was not only fine but a little annoyed by my overly zealous concern for his welfare.

.....

A heavily armed gunman had invaded an office building and we had him contained in an office with glass walls. Now and then he would crank off a round or two, and I kept expecting to see bullets come through the glass wall in our direction. Well, sure enough, I saw the glass shatter when rounds came flying our way. But when I

Fear 45

peeked out from behind my cover, I was shocked to see that the glass was still intact.

In my mind, I can still see it breaking.

.....

A suspect pointed a gun at me and I could feel a bullet hitting my body. Fortunately, I already had my gun out and I returned fire. I injured the suspect and he threw down his gun and gave up. After I cuffed him, I stepped back to check my own wounds. There were none. The suspect never got a round off.

Cognitive changes that are a result of high arousal states have been outlined in an article written by Dr. Seymour Epstein in the *American Psychologist*, August 1994. Dr. Epstein points out that there are two kinds of thinking: experiential (high arousal) and rational (low arousal).

Rational thinking is the kind you choose to do when you are not under an immediate threat and are in a low arousal state. Under this condition, you have the luxury of taking your time to think things through. Rational thinking is conscious, deliberate, reflective, unhurried, and is not action oriented. It allows you to think before you act as you consciously examine all the facts and evidence to reach a logical conclusion based on careful analysis. Your thinking patterns follow a step-by-step deductive reasoning process that you can easily explain to others. Think of it as *Star Trek's* Mr. Spock method of thinking.

Experiential thinking is the kind of thinking that will automatically kick in whenever you perceive a threat and your body is flooded with natural drugs that induce the high arousal state. Under threat conditions, experiential thinking will dominate and reduce or even eliminate your ability to think in a rational, creative, and reflective manner. It's effortless, automatic, lightning quick, action-oriented, and much more efficient (but not necessarily more accurate) than rational thinking. It's experienced as much more compelling than

rational thinking, which is why we tell people who are angry not to make hasty decisions "Wait until you have calmed down," we tell them, "You'll see things differently," or, "Count to ten before you say or do anything."

Experiential thinking is also what you do when you follow your gut instinct. There is nothing mystical about gut instincts, sixth sense, or intuition. Our brain is an incredible computer constantly analyzing subtle bits of information to reach conclusions, information that may not be obvious to our conscious awareness. You know your conclusion is right, but you can't explain exactly how you know that (of course, your conclusion could also be wrong).

Experiential thinking does not follow a step-by-step process to reach a conclusion but reaches it quickly without your knowing how it got there. You must rely on this type of thinking when you don't have enough time or information to reach a carefully reasoned, logical conclusion. Street officers have to rely heavily on their experiential thinking to keep themselves and others safe because they can't be guaranteed the luxury of time and irrefutable evidence to slowly reason their way through all situations.

Deadly force encounters often happen suddenly and unexpectedly and involve irrational and dangerous suspects. Since there is not enough time for rational thinking, you can't count to ten and wait until you and the suspect have calmed down. Instead, you will shift to experiential thinking based on gut instincts, training, and automatic responses to keep you alive.

Dr. Epstein summarizes the two different types of thinking in the following chart.

EXPERIENTIAL		RATIONAL	
		Fear 47	
1. Based on overall impression	1. Based on thoughtful analysis		
2. More compelling, driven by emotion	2. Less compelling, driven by intellect		
3. Behavior determined by "vibes" from past events (including training)	3. Behavior determined by conscious analysis of current facts		
4. Reality is concrete, based on senses and perceptions	4. Reality is abstract, based on words and symbols		
5. Rapid, efficient information processing	5. Slow, less efficient information processing		
6. Oriented toward immediate action	6. Oriented toward delayed action and reflection		
7. Change based on repetitive or intense experience (including training) and slower to change	7. Change based on speed of thought and is quick to change		
8. Based on generalizations and stereotypes	8. Is more analytical and specific		
9. Less integrated; more memory gaps and more scattered	9. More integrated: Fewer memory gaps and more coherent		
10. More subconscious: we are "Seized by our emotions"	10. More conscious: we feel in control of our emotions and thoughts		
11. Self-validating: "Experiencing is believing"	11. Not self-validating: requires justification via logic and evidence.		

Dr. Epstein points out that when thinking experientially, you will respond to what you are perceiving at the moment. Your response will be mostly automatic and strongly based on your past training, experiences, and beliefs. It would be rare for you to think creatively under stress and devise all new responses. That is why it's essential that your training *programs you to win*.

Understanding the cognitive, perceptual, and behavioral changes brought on by the biochemical changes from a high arousal state is not only important for your physical survival but

for your legal and psychological survival as well. After the shooting is over, your performance will be reviewed and second guessed by everyone: you, your peers, the media, the courts, your agency, and the community. While you were forced to respond to a sudden, deadly threat based on experiential thinking, your performance will be judged based on rational thinking criteria. Things can look differently in hindsight, especially when hours are spent analyzing the situation from a place of safety and comfort.

It's important that everyone who chooses to judge an officer's performance in a high-threat situation such as a shooting, understand these differences. If they don't, they may harshly judge the officer for not making rational decisions, though the situation was a high-threat one that called for an immediate response.

For instance, it's common for an officer to be criticized for shooting a suspect threatening, crouching, and reaching as if for a gun. If the officer waits to see the gun come out of a jacket, he may be making a fatal error. If the officer shoots, based on his past experience that the suspect's behavior is indicative of someone reaching for a concealed weapon, but it turns out the suspect was not armed, the officer may be criticized for overreacting.

In a nonthreatening situation, the officer would have the luxury of wondering if the suspect was reaching for a gun or just had a sudden urge to pull out a pack of gum. He would have the luxury of taking the time to actually see the gun so he could make a logical decision based on careful analysis of the facts. But in a high-threat situation, that kind of delay could get the officer killed. "It is better to be judged by twelve than carried by six," goes the law enforcement axiom.

Although many street officers may not have read Dr. Epstein's article, those who have faced a deadly threat know the difference between the two types of thinking. All of us who judge their performance should understand it too.

As part of our research for this book, we asked officers who had been involved in deadly force encounters to fill out a survey to find out what percentage of them had experienced some perceptual and cognitive distortions mentioned above.

Seventy-two officers volunteered to fill out the survey with the following results.

PERCEPTUAL DISTORTION SURVEY

Number of officers responding to survey: 72

Percentage Who Answered in the Affirmative—Distortion

- 88 DIMINISHED SOUND: You did not hear some sounds at all, or the sounds had an unusual distant, muffled quality. (This applies to sounds you ordinarily would hear, such as gunfire, shouting, nearby sirens, etc.)
- 82 TUNNEL VISION: Your vision became intensely focused on the perceived threat and you lost your peripheral vision.
- 78 AUTOMATIC PILOT: You responded automatically to the perceived threat, giving little or no conscious thought to your actions.
- 65 HEIGHTENED VISUAL CLARITY: You could see some details or actions with unusually vivid clarity and detail.
- 63 SLOW MOTION TIME: Events seemed to be taking place in slow motion and seemed to take longer to happen than they really did.
- 61 MEMORY LOSS FOR PARTS OF THE EVENT: After the event you came to realize that there were parts of it that you could not remember.
- 60 MEMORY LOSS FOR SOME OF YOUR ACTIONS: After the event you came to realize that you could not remember some of your own actions.
- 50 DISSOCIATION: There were moments when you had a strange sense of detachment, as if the event were a dream, or like you were looking at yourself from the outside.
- 36 INTRUSIVE DISTRACTING THOUGHTS: You had some thoughts not directly relevant to the immediate tactical situation, such as thinking about loved ones, future plans, etc.

50 Deadly Force Encounters

- 19 MEMORY DISTORTION: You saw, heard, or experienced something during the event that you later found out had not happened.
- 17 INTENSIFIED SOUNDS: Some sounds seemed much louder than normal.
- 17 FAST MOTION TIME: Events seemed to be happening much faster than normal.
- 11 TEMPORARY PARALYSIS: There was a brief time when you felt paralyzed.

HARNESSING THE POWER OF FEAR

What can you do to harness the awesome power of these changes Mother Nature has given you?

You can learn to survive a stressful situation by *inoculating* yourself against it. Just as you receive vaccinations to inoculate yourself against getting a disease, you can inoculate yourself against being overwhelmed by a stressful situation through a process called Stress Inoculation Training (SIT). SIT is a concept developed by psychologist Donald Meichenbaum, Ph.D, which is based on research on the psychology of how people learn. Using well-known principles, SIT outlines methods of teaching people the cognitive, behavioral, and emotional skills they need to cope effectively with a predicted stressor, in this case a deadly force encounter. You can use SIT to prepare yourself for any kind of stressor.

SIT consists of three phases:

- Conceptualization of the stressor
- Skills acquisition and rehearsal
- Application and follow-through

**PHASE ONE: CONCEPTUALIZATION
OF THE STRESSOR**

During this phase you should try to do three things:

- Anticipate the stressor

Fear 51

- Understand the problems it will present to you
- Assess your current skill level

You need to have a clear idea of what you are up against, both externally and internally, so that you can formulate your survival plan based on real threats. This phase can include the following:

- Understand and accept the effects of fear: Rather than thinking of fear as a negative, think of it as a warning device that keeps you alert and prepares you to survive. Fear is a positive and powerful source of energy and strength, as opposed to panic, which is poorly managed fear.

Once you understand all the physical, cognitive, perceptual, and emotional changes caused by the biochemistry of the high-arousal state, you will not fear them, be confused by them, or be distracted by them. To help control your arousal level, learn the controlled breathing techniques and physical relaxation methods described in this section to help keep your arousal level down and your energy focused.

I've been involved in three shootings. Before the first two, I had no training in what to expect. I performed well, but felt shocked, disoriented, confused, and at times out of control by all the weird stuff that I experienced during and after the shooting. I didn't know what to think, and that made it harder to cope during and after the event. After the second shooting, I sought counseling and learned about all that weird stuff I'd been experiencing. The doctor also taught me the principles of Stress Inoculation Training and I started using it to prepare myself for the future.

Then when I got into another situation, that training made all the difference in the world. This time I knew what to expect and I was even able to control and compensate somewhat for the tunnel vision, sound distortions, and other strange things my mind and emotions were going through. I also bounced back a lot quicker because I knew I wasn't crazy and I knew what to do to take care of myself.



HOW did I shoot him in the BACK

An officer responds to a disturbance call involving a domestic dispute between a husband and wife.

The disgruntled husband approaches an officer with a metal post and threatens the officer ordering him to leave. The husband's anger escalates as the officers attempt to calm the situation. The husband loses control and violently swings the metal post using it like a baseball bat. The officer was able to successfully side step away from the swing but draws his handgun expecting the attack to continue. Verbal commands to "Stop—Put the pole down" are not successful and the husband draws the pole back as if to swing again. At the instant the officer recognizes forward motion, the officer fires two consecutive shots from the handgun. When the incident was over, the husband was dead. One shot struck the shoulder and one shot struck the back.

Prosecutors and administrators at first believe that the officer deliberately fired into the back of the husband. Physical evidence clearly shows a shot did indeed impact the back. At the time the husband has his back turned to the officer, no immediate threat existed to the officers life. The justification for the use of deadly force at that point may be determined to be non-existent.

Interviews of the officer conducted for the criminal investigation and later the administrative investigation establish that the officer *insists* that the subject was facing him at the moment he fired. Is the officer lying? Is the officer really relating the incident as he remembers it? Has the officer really related what occurred or is he influenced by the fact that criminal charges are being considered against him?

Most of the time substantive independent evidence is not really available. Eye witness accounts are often inaccurate or are contaminated by outside influences. Can there be a scientific explanation that what the officer says is the truth and he really did fire while the husband was facing him?

Until now most instructors were left with just saying that it was possible the subject turned before the shot was actually delivered. These assertions were often looked upon by administrators and prosecutors with raised eyebrows and skepticism. This subject has now been explored by training experts, forensic pathologists and wound ballistic experts. At least one of these examinations has come to some pretty important conclusions. The conclusions may have a

The evidence of a shot in the back may not indicate malicious intent on the part of the officer.

great impact upon the decisions of prosecutors or administrators when determining if criminal charges should be filed or administrative sanctions imposed. Recently just such a study was conducted by Ernest Tobin and Dr. Martin Fackler with the conclusions being published in *The Wound Ballistics Review*. This journal is the official publication of the International Wound Ballistics Association. The study, as conducted by Tobin and Fackler, explains just how that shot could wind up in the back side of a suspect.

The study was conducted using 46 students at the Georgia Public Safety Training Center. It was discovered that on average it took .365 of a second to fire a shot starting with the trigger finger on the trigger after hearing an audible start signal. Placing the trigger finger in a position outside the trigger guard and firing a shot upon hearing an audible shot signal increased the time to .677 of a second. These times as reported are averages of the data collected. It should be remembered that this in effect does mean

that some test subjects were faster and more importantly, some were slower in responding to the signal. Most agencies train officers to keep the trigger finger off the trigger until the sights of the firearm are on target and a conscious decision to fire has been made.

How fast can someone turn around? The question was answered when Tobin and Fackler videotaped the 46 students performing turning movements for the experiment. The performances involved having the students turn 90 degrees and 180 degrees. Timing the video tape, frame by frame, established that it took the following times to complete the turns

Time to turn 90 degrees: .310 of a second
Time to turn 180 degrees: .676 of a second

Again these numbers represent averages of the data collected. Some participants were faster and more importantly remember that some were slower. When we compare the information learned from the Tobin and Fackler study we can clearly see that it is indeed possible that a subject could turn before actually being struck by a bullet. It's not that the subject can turn faster than a speeding bullet. It just means that by the time the officer perceives the life threatening event, and formulates the complete response of pulling the trigger, the subject can turn before the officer recognizes a turn has taken place.

Trigger finger on the trigger: .365 of a second
Time to turn 90 degrees: .310 of a second

Trigger finger off the trigger: .677 of a second
Time to turn 180 degrees: .676 of a second

Yes, as one attorney told the author we are splitting hairs. Life and death decisions are truly made in fractions of a second. It is now clear that it is possible a subject could turn and be struck by a bullet even if the officer initiated the trigger pull before the subject began the turn. Individuals that are in positions to review and pass judgment upon instances of officer involved shootings need to take into account the findings of this study. The information may be of great value to attorneys attempting to defend officers and agencies involved in litigation over a shooting. The evidence of a shot in the back *may not* indicate malicious intent on the part of the officer. When the officer asks, "how did I shoot him in the back?" we now have an answer.

About the Author: Dennis M. Connor is a twenty-one year veteran of the Kansas City, Kansas Police Department. While serving the department he has been assigned to patrol operations, the tactical response unit, the police academy and is currently the department rangemaster. He is certified as a firearms instructor by the NRA, and the Sigarms Academy. Dennis is also a member of IALEFI, NTOA and the International Wound Ballistics Association. ☺

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Sam Faulkner

From: LtColDaveG@aol.com
Sent: Wednesday, November 13, 2002 8:03 AM
To: undisclosed-recipients
Subject: FBI Article by Dr. Alexis Artwohl

Friends,

Many of you know (probably from my presentations) about the superb work by Dr. Alexis Artwohl in the field of "perceptual distortions" in combat. Her book, "Deadly Force Encounters" (co-authored with Loren Christensen) is a true classic in the field.

Now Dr. Artwohl has had an article on this topic published in the FBI law journal. I have included the article below, and you can also read it on her web site, www.alexisartwohl.com

This is really "hot stuff," now published in one of the most prestigious journals. I commend it to your attention.

Hooah!

Dave

FBI Law Enforcement Bulletin

Oct. 2002, p.18 - Research Forum
(IACP Net document No. 564080)

Perceptual and Memory Distortion
During Officer-Involved Shootings

Article in PDF format at www.fbi.gov/publications/leb/2002/oct02leb.pdf

By Alexis Artwohl, Ph.D.

Artwohl@cs.com

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- . Background
- . Previous Research
- . Present Research
- . Past and Present Survey Results
- . Implications for Investigators
- . Implications for Training
- . Conclusion

"If 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.¹

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.² 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."³

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,"⁴ an obvious advantage in a 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."⁵ 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."⁶ 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.⁷ 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.⁸ 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.⁹ 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 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," 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.¹⁰ 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.¹¹

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" 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."¹² 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 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."¹³ 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.¹⁴ 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."¹⁵ This means that the survivors of traumatic experiences will find it challenging to 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."¹⁶ 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.¹⁷

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."¹⁸

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.¹⁹

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.²⁰

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 judgments 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

1. 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 or access her Web site at <http://www.alexisartwohl.com>
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 18. Supra note 2.
 19. Charles Humes, "Lowering Pursuit Stress," *Police*, June 2001.
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- ...the law enforcement profession must remain rigorous in its training, realistic in its expectations, and cognizant of the demands of emergency situations.

Sam Faulkner

From: James D. Daniels
Sent: Tuesday, October 21, 2003 8:22 AM
To: Sam Faulkner
Subject: FW: No recall of Weapon discharge-Law Enforcement Executive Forum Art
Sam:

Thought you might need this.

Doug

-----Original Message-----

From: Williams Mike [mailto:williams_m@mail.chattanooga.gov]
Sent: Monday, October 20, 2003 12:13 PM
Subject: No recall of Weapon discharge-Law Enforcement Executive Forum Art icle

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No Recall of Weapon Discharge

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Abstract

It is possible for police officers to discharge their weapons in the line of duty yet have no memory of having done so. Case histories of such events are presented. Research on perceptual and memory distortions during critical incidents is reviewed, along with the research on involuntary discharges. Both areas of research offer explanations why it is possible for officers to fire their weapon during a critical incident yet have no memory of it. The implications for the training police officers and the investigations of officer-involved shootings are discussed.

CASE HISTORIES

The following are actual case histories of police officers who discharged their weapons during the line of duty but have no memory of having done so:

Three patrol cars blocked in the car of suspect they were attempting to apprehend. The suspect began to ram the vehicles, presenting a deadly threat to some of the officers on the scene. Three officers opened fire on the suspect. The suspect jumped out of his vehicle, refused to show his hands, and continued to behave in suspicious manner. The officers continued to fire until the suspect gave up. He was taken into custody with minor injuries. A sergeant was standing in the vicinity of the three officers who initially opened fire. When the homicide detectives arrived the three officers who fired reported discharging their weapons. The sergeant did not report firing

10/22/2003

his weapon nor did any of the officers report hearing the sergeant's weapon go off. After providing a brief description of his involvement in the incident, the sergeant went home and performed his cursory daily wipe down of his weapon then went to sleep. The next day he was called in by the detectives to explore the possibility that he had fired his weapon at the scene. The sergeant reported no recollection of firing his weapon but conceded it was, of course, possible. It became apparent that the detectives had obtained physical evidence indicating that the sergeant had indeed discharged his weapon. They did not believe the sergeant could not remember having done so and immediately suspected him of untruthfulness. They were further bothered by the fact that the sergeant admitted wiping down his gun and believed this was part of his cover-up. The sergeant was placed on administrative leave and within a week received a notice of intent to terminate letter based on the allegations that he had been untruthful and had attempted to cover up firing his weapon. His association informed the police department they intended to file legal action on the sergeant's behalf for unlawful termination. A deal was struck to delay the sergeant's termination and he was granted a stress-related medical retirement.

A deputy stopped a drunk driver as the driver was pulling into his home's driveway. The driver got out and went inside his home. The deputy called for back-up and asked the driver to come outside. The driver refused, telling the deputy to come inside, which he did. The deputy found the driver sitting on a couch with a gun next to him. The deputy retreated, yelling for the driver to not touch the gun. Confused, the deputy wound up going into the basement. The driver followed, gun in hand. The deputy called for help and got out of the basement. The driver was found dead at the top of the stairs. The deputy swears he did not shoot, but it was later discovered the deputy had in fact fired four rounds. The deputy saw the muzzle flashes but thought they were coming from the driving shooting at him. The deputy was cleared but retired because of stress.

A male gangster was holding a couple in their 90's as hostages. A patrol sergeant shot the suspect along with two other officers. He remembers seeing a muzzle flash and thought it was the suspect firing at him. He was shocked to find out the suspect had not actually shot at him. It was really his own muzzle flash that he saw. He had to look at his own magazine to see if he had really fired or not.

An officer stepped out of his squad car after pursuing an offender who spun out on a slick entrance ramp. As he stepped out he slipped and fired a round through the offender's windshield. The round barely touched the offender's neck. The officer insisted he did not have his finger on the trigger or consider shooting.

An officer shot a suspect twice with a shotgun to prevent him from entering a residence and taking a hostage. It was a justified shooting but the officer only remembers firing one of the two rounds. The shooting review board found one round "in policy" and one round "out of policy". Their reasoning was that both rounds were justified, but since he couldn't remember one of them, it must be out of policy.

There were two incidents in which officers fired unintentionally and did not immediately realize they had done so. But once their brains sorted out the incoming data (i.e., I'm bleeding, my gun is smoking, and there is no one else here) they realized what had happened.

An officer was involved in a shooting with another officer and suspect in which over 20 total rounds were fired. Immediately after the shooting she couldn't remember if for sure if she had fired her weapon.. She remained unsure until around one hour later when she and her

lieutenant checked her weapon and actually counted the rounds.

Additional cases are available in the research report written by Klinger (2001). His extensive interviews of 80 officers involved in 113 separate shootings revealed additional cases of officer who fired their weapons but did not realize they were doing so as it happened:

An officer was shot at close range by a suspect who then immediately fled the location. The suspect was captured nearby after losing a gun battle with the injured officer's partner. It was discovered during the post-shooting investigation that the first officer had fired one round that struck the suspect during the initial confrontation in which he himself had been shot. However, the first officer had no recollection that he had fired his gun.

In one case the only reason an officer knew that he had fired four rounds is that he knew that he carried four rounds in his shotgun, which he emptied at the suspect. He did not recall firing four rounds, he just deduced from his empty shotgun he had done so.

In another case, an officer knew that he had fired his semi-automatic handgun only because when he looked down the frame to obtain a sight picture on an armed suspect he saw that the hammer was cocked back, which could only have happened if he had already fired.

Solomon (1997) reported two additional cases:

Two officers confront a suspect who takes one of them hostage. The suspect forces the hostage officer into the police car with the officer behind the wheel and orders him to drive off. As he turned on the ignition the other officer shot the suspect through the windshield. The next thing he remembers is helping the officer out of the car. The suspect is dead. The investigation revealed that the suspect was killed by shots fired through the drivers side window. However, the officer said he only fired through the windshield and did not know shots had been fired through the side window or who could have fired them. However, the hostage officer confirmed that the officer had in fact fired two shots through the side window after firing through the windshield. The officer had no recollection of going to the side of the car or firing his weapon there until six years later at a critical incident workshop.

Several officers were in pursuit of an armed suspect, when he crashed his car. As an officer approached the car the suspect got out, weapon in hand. The next thing the officer remembers is standing over the suspect who was fatally shot. Witnesses and physical evidence clearly show the officer shot the suspect. The officer, however, does not recall shooting him.

In addition to these on duty incidents, Trooper Mike Conti of the Massachusetts State Police Academy reported the following in a personal communication:

Have built a new firearms training program for Mass State Police; the "New Paradigm" we call it. Incorporated in the program is a Stress Inoculation Training program called the "House of Horror". Over 2300 people trained so far, one at a time. Six minutes long. Eight stations where they must decide on what to do while operating with a pistol in their hands. True high arousal state induced 100% of the time. Physical and Psychological effects consistently observed. Documented memory gaps experienced by 85% to 90% of all who have participated. Not remembering what they did, if they shot at particular stations, etc. THIS IN TRAINING, never

mind actual situation. Also tunnel vision, auditory exclusion, etc., experienced by all who participate.

Trooper Conti and his colleagues are to be commended for their innovative and reality based training program.

RESEARCH ON PERCEPTUAL AND MEMORY DISTORTIONS

Research by Artwohl (1997, 2002), Solomon (1986, 1997), Klinger (2001), Grossman and Siddle (1998), Honig and Roland (1998), all confirm that officers experience perceptual and memory distortions during critical incidents, including officer involved shootings.

Artwohl (2002) in her survey of 157 officers involved in shootings, found that 52% of the officers could not remember some of the event and 46% could not remember some of their own behavior. Solomon (1986) reported that 32% of the 44 officers whom he studied who were in on-duty shootings could not remember some parts of their experience. In addition to memory gaps, 21% of the officers in Artwohl's study experienced memory distortions in which they saw, heard, or experienced something during the event that they later found out had not really happened.

This lack of recall of one's own behavior can include inaccuracies in the recall of how many rounds were fired and even the failure to remember having fired one's weapon at all. Klinger (2001), in addition to his above reported cases where officers were unaware of firing their weapons, found that in 33% of the 113 shootings he studied, officers could not accurately recall the exact number of rounds they had fired. He found that the accuracy of officer's recall decreased as the number of rounds went up: from 81% accuracy when officer fired five or fewer rounds, down to 29% accuracy when they fired six to nine, and down all the way to 0% accuracy when they fired 13 or more. His research confirms the clinical experience of police psychologists who routinely observe during debriefings that officers frequently cannot accurately remember the number of rounds they fired during an officer involved shootings. Artwohl (2002) found that 84% of officers involved in 157 shootings experienced the perceptual distortion of diminished sound, meaning that they could not hear loud sounds such as gunshots that ordinarily would not be missed. The failure to hear the gunshots could contribute to the officers not realizing they had a weapons discharge or not knowing the exact number of rounds that were fired.

The distorted and/or missing memories that officers experience during critical incidents is not surprising given that the basic research on memory has confirmed that human memory is rarely perfect even under the best of circumstances. This includes eyewitness testimony in legal cases (Terry, 1997). Furthermore, as multiple researchers have pointed out, memory impairment is an inherent part of critical incidents. The memory of a highly stressful event can often be fragmented, disorganized, out of order, or contain gaps where the person has no memory at all. DSM-IV (1994), the Diagnostic and Statistical Manual published by the American Psychiatric Association, points out that one of the features of post-traumatic stress disorder is the "Inability to recall an important aspect of the trauma."

Epstein (1994) a researcher in the area of stress and fear, points out that when people are in a highly emotionally aroused state they process information in a fundamentally different way than they do when they are in a low state of arousal. Their reactions under stress are more likely to include decreased conscious awareness, fragmented memory, perceptual distortions, and be based on instinct and previous learning experiences instead of rational conscious thought. All of these documented phenomena could contribute to the failure to consciously remember firing their weapon, especially in the suddenness, noise, confusion, and fear that often characterizes deadly force encounters. Consistent with Epstein's

research, Artwohl (2002) found that 74% of 157 officers involved in shootings reported that they responded automatically to the perceived threat, giving little or no conscious thought to their actions. Officers will often make comments such as: "My training just automatically kicked in without my thinking about it." or "My gun just appeared in my hand on its own."

Dissociation, defined as "a disruption in the usually integrated functions of consciousness, memory, identity or perception of the environment" (DSM-IV, 1994), is an experience people are prone toward experiencing in a high stress situation. Artwohl (2002) found that 39% of 157 officers involved in shootings experienced dissociation as defined by "there were moments when you had a strange sense of detachment, as if the event was a dream and not real, or like you were looking at yourself from the outside." Solomon (1986) reported that 9% of 44 officers involved in shootings reported dissociation to the extent of having out-of-body experiences. During dissociation, people can become psychologically detached from their bodies or aspects of the experience, resulting in lack of awareness of pain, loss of memory for parts of the event, feeling numb and detached from their emotions, and other strange experiences that can interfere with conscious awareness of their behavior and their ability to recall what they did.

Because of memory distortions, dissociation, and automatic reactions to stimuli during high arousal states, it is well documented in the trauma literature that people in extreme stress situations can engage in behavior that appears to be a purposeful reaction to sudden threats but which they have no memory for.

RESEARCH ON UNINTENTIONAL WEAPONS DISCHARGE

If officers have no recollection of having fired their weapons when, in fact, they did, it is safe to assume that in some cases the discharge of the weapon was involuntary, at least at the conscious level. Therefore, the research on involuntary discharges may also offer some useful insights:

Enoka (2003) points out that there is no doubt that unintentional discharges are possible and are caused by involuntary muscle contractions. He discusses physiological phenomenon that can contribute to unintentional discharges including sympathetic contractions, loss of balance, and startle reactions.

Messina (1994, 2000), Messina & Czarnecki (2002), and Demetriou (1994) did research on what they term the "fist reflex" to address the issue of involuntary discharges. The fist reflex is defined as "a response which occurs when an individual psychologically associates making a fist with a high stress confrontational situation". They point out that although the fist reflex may be a natural instinct at birth, it can be further reinforced by sports such as boxing and the martial arts, and through on the job training using fist defensive tactics. Their research indicated that a high percentage of participants who had involuntary discharges had studied martial arts systems that emphasized making a fist under stress, with boxers foremost in this category.

IMPLICATIONS FOR TRAINING

Enoka (2003) points out that there is scientific evidence to support the hypothesis that interactions between limbs contributing to sympathetic contractions can be modified with training. Since these interactions appear to be task specific, he recommends that firearms instructors study the problem and devise innovative ways to minimize the physiological phenomenon contributing to involuntary discharges.

Grossi (1993) discusses Enoka's research and makes recommendations for law enforcement training including training and practice in the "Universal Cover Mode" (keep the finger off the trigger and

outside the trigger guard). Like Enoka, he encourages firearms instructors to integrate Enoka's information into their training programs and devise progressive training methods to help minimize involuntary discharges.

Messina (1994, 2000, 2002), based on the research confirming the phenomenon of the "fist reflex", completely removed all fisted strikes from their law enforcement programs with positive results. Messina states that no officer certified by his training company after 1993 has had an involuntary discharge in either high stress simulations or in the line of duty, a result he attributes to switching his training from fisted strikes to open-handed striking techniques. He and his colleague Demetriou advocate open-handed striking techniques as a training method that can minimize the fist reflex and help reduce the number of involuntary discharges.

Given the contribution that stress and the startle reflex can contribute to involuntary discharges and the inability to remember what happened, it is recommended that training for critical incidents be founded upon the principles of Stress Inoculation Training, (SIT) first documented by Meichenbaum (1983, 1985). This means that officers are best trained to perform effectively in high stress situations by training them under stressful training conditions that simulate as much as possible the external stimuli and high levels of physiological arousal they will experience in an actual critical incident. This includes training and practice in learning to control their arousal levels and becoming more stress resistant in an actual event. This also allows State Dependent Learning (SDL) to occur. SDL, confirmed by research, means that a learned behavior will be performed better if it is learned under the same external and internal state in which it will be performed. Therefore, if officers will be performing under the influence of adrenaline and other stress hormones in an actual critical incident, they should learn and practice under the influence of these same stress hormones. Simulating the external demands and stressors will also help officers achieve peak performance during the real event.

IMPLICATIONS FOR INVESTIGATIONS

Officers who discharge their weapons obviously must be held accountable for their use of deadly force and it is appropriate that these events undergo a thorough investigation. All those involved in judging the aftermath of an officer involved shooting should be trained in the existence of memory and perceptual distortions so they understand that these are normal phenomena during critical incidents. This would include the officers themselves, investigators, command staff, district attorneys, juries, journalists, and any other individuals who will be second guessing the behavior of the involved officers. It should never be assumed that the witnesses and participants of any event, including officers, are automatically lying if their memories of an event do not coincide the physical evidence or other witness accounts. This includes the failure to remember firing their weapon.

It is standard operating procedure that the weapons of officers who discharged their weapons in the line of duty are examined to determine how many rounds were fired. This is a wise policy given that officers frequently are not able to accurately recall the exact number of rounds they fired. However, based on evidence that officers may have no memory of discharging their weapon at all it is recommended that the weapons of ALL officers at the scene of any deadly force encounter have their weapons routinely examined to see if they have been fired. This will help maximize the accuracy and thoroughness of the investigation and protect officers from accusations of "covering up" a weapons discharge if it is discovered later that officers had experienced a weapons discharge that they did not notice or remember.

Fisher and Geiselman (1992) have done extensive research on the "Cognitive Interview", the memory enhancing interview technique developed to help cooperative witnesses such as crime victims recall what happened. Officers involved in shootings would typically fall into this category. Fisher and Geiselman developed this technique based on the recognition that victims of traumatic events such as

crimes often have difficulty recalling exactly what happened no matter how much they want to. Therefore, it is the investigator's task to help facilitate their memory recall as much as possible. Multiple research studies have demonstrated that investigators using the Cognitive Interview technique are able to obtain 30% to 70% more information from cooperative witnesses than the standard interrogation techniques used for recalcitrant criminal suspects who are more likely to be lying and deliberately withholding information. It is recommended that investigators who interview officers and other crime victims familiarize themselves with the Cognitive Interview.

SUMMARY

In summary, incidents in which the officers do not remember discharging their weapons will continue to be a fact of life for law enforcement. This will include situations during which officers will have involuntary discharges, a phenomenon that hopefully can be reduced by research and better training. When officers have failed to remember having a weapons discharge, it is a mistake to automatically assume that the officer must be lying. There is ample psychological research which shows that memory gaps and distortions are a normal part of critical incidents. Investigators interviewing cooperative witnesses involved in shootings and other high stress events are encouraged to familiarize themselves with the memory enhancing interview technique, the Cognitive Interview, developed by Fisher and Geiselman.

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