

Federal Law Enforcement Training Center

# FLETC

# *Journal*

Volume 4, Issue 2 ❖ Fall 2006



# FLETC Use of Force Training

Please examine the 9 posters included below and on the inside back cover of this issue.

Also, note the articles concerning Use of Force training and applications on pages 22 and 33.

## USE OF FORCE GRAHAM V CONNER

- SEVERITY OF CRIME
- SUSPECT IS IMMEDIATE THREAT
- SUSPECT ACTIVELY RESISTING ARREST
- SUSPECT ATTEMPTING TO EVADE ARREST BY FLIGHT

## USE OF FORCE OTHER GRAHAM FACTORS

- NUMBER OF SUSPECTS AND OFFICERS
- DURATION OF ACTION
- SIZE, AGE AND CONDITION OF OFFICER/SUSPECT
- FORCE APPLIED RESULTED IN INJURY
- VIOLENT HISTORY OF SUSPECT KNOWN TO OFFICER

## USE OF FORCE OTHER GRAHAM FACTORS

- SUSPECT'S MENTAL OR PSYCHIATRIC HISTORY KNOWN TO OFFICER
- INNOCENT BYSTANDERS WHO COULD BE HARMED
- AVAILABILITY OF WEAPONS, SUCH AS SPRAY, BATONS OR TASERS

## USE OF FORCE OTHER GRAHAM FACTORS

- SUPREME COURT STATED:
  - "OBJECTIVE REASONABLENESS"
  - "BASED ON TOTALITY OF CIRCUMSTANCES"
  - "NO PERFECT ANSWER WHEN USING FORCE"

## DEADLY FORCE TENNESSEE V GARNER

- OFFICER NEED NOT FEAR FOR HIS/HER LIFE
- CRIME CAN BE FELONY OR MISDEMEANOR
- WARNING, IF FEASIBLE
- NO NEED TO EXHAUST LESSER FORMS OF FORCE
- NO DUTY TO RETREAT

## DEADLY FORCE TENNESSEE V GARNER

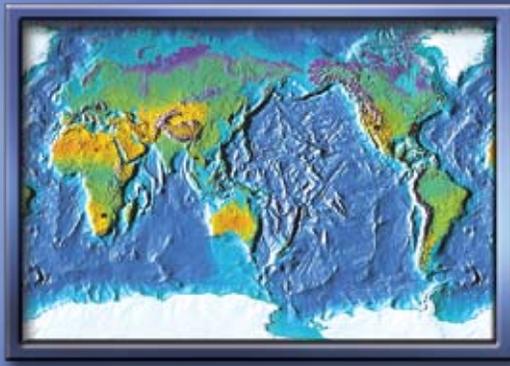
- OFFICER THREATENED WITH WEAPON OR LIFE OF OTHER IS ENDANGERED
- PC TO BELIEVE SUSPECT COMMITTED CRIME INVOLVING INFLICTION OR THREAT OF SERIOUS PHYSICAL HARM AND DEADLY FORCE NECESSARY TO PREVENT ESCAPE
- WHERE FEASIBLE, OFFICER GIVES WARNING

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## This Issue

The Dunlow Documents .....	5
Managing The Paper Tiger .....	9
Welcome To FIT .....	12
They Don't Look Like Monsters .....	16
De-Mystifying Distance Learning .....	19
Electronic Control Devices: Liability And Training Aspects .....	22
Follow The Money .....	27
FLETC Student Educational Employment Program (FSEEP) 'Pilot' Summer Program .....	31
Use of Force .....	33
Domestic Violence Here at Home .....	38
The Law Enforcement Advanced Interviewing Training Program (LEAINTP) .....	45



## The FLETC Journal

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Views and opinions expressed in this publication are those of the authors, and do not necessarily reflect the FLETC training policy or doctrine. Articles, photographs, and other contributions are welcomed from the law enforcement training community and academia. Publication depends on general topical interest as judged by the editors. No changes to submitted copy will be made without the concurrence of the author(s). The editors may be contacted at (912) 267-3849.

## The Editor's Desk



*Front Row (left to right): Andy Smotzer, Marie Bauer, Richard Hazzard, and Susan B. Thornton; Back Row: Rob Gray, William Norris, Steve Brooks, and Mark Ward. Not pictured Sam Webster.*

The FLETC Journal's mission is to provide a forum for exchanging information and sharing perspectives throughout the law enforcement training community. The editors attempt to select a range of articles and news items of interest to law enforcement trainers at all organizational levels, from large institutional training centers to small training departments. The Journal has been available in print since our first issue in Spring 2004, and to the FLETC staff and Partner Organizations through our Intranet. We are happy to announce that the Journal will soon be available electronically from the FLETC website at [www.fletc.gov](http://www.fletc.gov).

We take our commitment to law enforcement and training very seriously and strive for accuracy and integrity at all times. With this in mind, we must acknowledge and apologize for an error in our last issue. The 2006 Spring edition of the FLETC Journal listed an incorrect author for the article "What's Up with All the Smoke?" The article was authored by Scott Wells, the FLETC Forester/Natural Resources Manager. The corrected story is posted in our on-line edition.

Marie R. Bauer

# The Dunlow Documents

*By Charles Huyck*

It happens to every instructor who has spent more than a few hours in the classroom or training environment. You have just presented some information to the class and suddenly your brain decides this would be a good time to interject a personal account of an experience that happened to you. Unfortunately, the tactical concept you're providing is not covered in the lesson plan. The moment this thought takes place, you should see red lights flashing a warning signal of all the possibilities and repercussions that could come from deviating from the lesson plan.

It happened to me one day after teaching a class in the Physical Techniques Division at the Federal Law Enforcement Training Center (FLETC). A group of students approached and popped the question, "Mr. Huyck, we've been learning all this 'Mickey Mouse' stuff, how about you teach us some real stuff?" I responded, "What else do you want to learn?" A "choke hold" was the reply, with several other eager students chiming in their support. I hesitated while I collected my thoughts and scanned the otherwise vacant mat room. It was now just me and these few enthusiastic students. The students pressed, as if they could read all the possibilities running through my mind. "Yeah, a choke hold, you don't have to teach us here in the mat room, we can go over to the Student Center and you can show it to us over there, after hours!"

The students persisted, saying they were bored with all the basic defensive tactics they were being taught, and wanted to learn some "real street" survival tactics. I remembered in my basic training as a former U.S.



Drug  
Enforcement  
Administration (DEA)  
Special Agent, the defensive tactics

curriculum included the carotid restraint as a legitimate defensive tactic. However, the FLETC defensive tactics curriculum did not. Luckily, the warning lights switched on and I responded, "If I show it to you, then I taught it to you, and it doesn't matter if we are in the classroom or out of the classroom. A choke hold is not an approved defensive tactic per FLETC curriculum."

Before you think I'm being overly cautious or too concerned with teaching within the guidelines of the approved lesson plan, let me introduce you to Mr. Mike Dunlow. Mike is a former Internal Revenue Service Special Agent and current re-hired annuitant assigned to the Enforcement Operations Division (EOD) at the FLETC. The "Dunlow Documents" as I have termed them, is proof that every word you say and every concept you teach under the auspices of a professional law enforcement trainer could be used against you in a court of law! If this story doesn't make you think twice about your classroom demeanor and instructional responsibility, you may seriously want to consider other employment before the subpoenas start coming in. As we used to say in DEA, "somebody is going to get indicted; it is just a matter of time."

I first met Mike Dunlow after being transferred to the EOD in 2004. As Branch Chief for Law Enforcement Support in the EOD, I supervised Mike. It quickly became apparent to me that Mike was an outstanding instructor who took his duties very seriously – just how seriously will become even more apparent as you continue reading.

At first, Mike and I rarely conversed for more than a few minutes at a time, and mainly the conversation would center around Mike’s needing a few hours off every now and then to hone his golf skills, or a leave slip to take some time to spend with family and friends. We discussed a few lesson plans from time to time and he would provide me with insight and suggestions as how best to improve our current course offerings. We also discussed the weather (every employee and supervisor must discuss the weather: it’s mandatory).

All the superficial conversation changed one day when Mike came into my office and told me he would need some time off the schedule to travel to San Francisco to serve as a witness in a trial. “A trial in San Francisco?” I questioned. Mike had been out of the field for quite some time so I wondered what the trial was all about. He replied, “Well, do you have some time, this may take more than a few minutes?” Mike sat down in my office and the story that unfolded literally astounded me.

Thirteen years ago, in June of 1993, Mike was employed by the Internal Revenue Service and detailed to the Behavioral Science Division at the FLETC. In this capacity, Mike had taught an Interviewing class and an Ethics and Conduct class to students enrolled in the Criminal Investigator Training Program. The class went off without a glitch, another successful instructional period for a top notch instructor. And then it happened...

On a dreary San Francisco morning in February 2003, a Federal Protective Service (FPS) Uniformed Officer prepared for work and embarked for his duty assignment at the federal building. Sometime during the day, he and another officer were in their patrol vehicle outside the federal building when they observed an exotic sports car speed by the building at a very high rate of speed. The officers initiated a vehicle pursuit and stopped the car several blocks from the federal building. As the officers approached the vehicle, the suspect attempted to flee the scene. One of the officers opened fire on the vehicle, firing four shots into the suspect’s left front wheel area in an attempt to prevent the vehicle from escaping.

The officers filed a report of the shooting incident, citing the incident took place on federal property, and that the shots were fired to deter the driver of the vehicle from running over the officers, not to prevent the vehicle from escaping. A videotape of the federal building and surrounding areas came into play, which prompted further review of the incident. A FPS Special Agent was assigned to review the facts and the report. It soon became apparent that the officers’ report did not match the circumstances as portrayed, and in fact, the incident had taken place off of federal property.

As part of the review process, the officers involved were interviewed by the special agent. During the interview, one of the officers confessed to the fact that they had filed a false report.

In the report filed by the FPS Special Agent, the agent did not mention the confession resulting from his interview of the FPS Officer. Not only did he omit the confession, but he also left other crucial elements out of his report in an apparent attempt to conceal the truth. Within the year, the special agent was indicted by a federal grand jury and charged with “knowingly concealing, covering up, falsifying

**Every word you say  
and every concept you  
teach under the auspices  
of a professional law  
enforcement trainer could  
be used against you in a  
court of law!**

and making a false entry in a record and document with the intent to impede, obstruct, and influence an investigation,” in violation of 18 U.S.C Sect. 1519.

On May 27, 2005, the FPS Special Agent was found guilty of writing a false report after a week-long trial. Sentencing was scheduled for the offense, which held a maximum imprisonment sentence of 20 years and a fine of \$250,000.

Found guilty and facing a maximum sentence of up to 20 years imprisonment and a fine of \$250,000. This is not a position where any of us in the field of law enforcement want to find ourselves! In desperation, the defense went all out and focused part of their efforts on the training that the special agent had received at the FLETC some 13 years ago. To call in question the training that a special agent had been given was one thing, but to call the specific instructor that had provided that training was an eye opener and a shot heard around the world in the profession of law enforcement training.

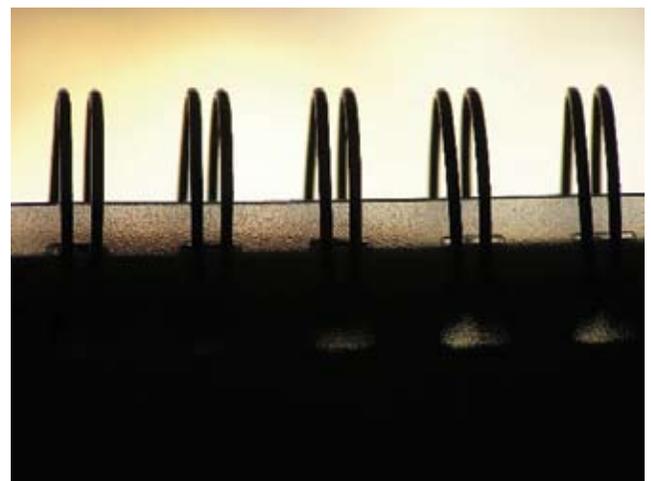
Most people do not recall much from 13 years ago. However, for those in the law enforcement profession, taking diligent notes and keeping factual and accurate records is a priority. For Mike Dunlow, the “Dunlow Documents” proved instrumental in shutting down this line of defense by the special agent, and shed light on just how critical it is to stay within the confines of the lesson plan when instructing.

In April 2005, the phone rang in Mike’s office. It was FLETC Legal Counsel advising Mike to come over to their office to speak with two attorneys from the Department of Justice (DOJ) Civil Rights Division. Their inquiry centered on the subject matter and lesson plan that Mike used to teach a class in 1993. It occurred to Mike, after the questioning from the DOJ attorneys, that apparently somewhere in the defense of the special agent the issue of falsifying a report was a key element, and the agent may well have stated that he had been taught by his FLETC Instructor that it was okay to omit certain aspects of an investigation in his report.

As part of the agent’s defense, he alleged that while attending classes at the FLETC, specifically interviewing and report writing, he had relied on the skills he had been taught at FLETC to further the investigation, which resulted in his omitting certain facts of the case. A check of the training records revealed that Mike Dunlow had been the instructor for the special agent’s Criminal Investigator Training Program (CITP) class 13 years prior.

The DOJ Attorneys wanted to know specifically what the agent had been taught. This is where Mike proved his professionalism and set the standard for all trainers in the field of law enforcement. The DOJ attorneys wanted to know what Mike taught about note taking, securing of notes, and the documentation of confessions. Apparently the notes from the agent’s interview of the FPS Officers were missing as well as the all important confession by one of the FPS Officers.

Mike reviewed the report by the agent and it was obvious to him that a confession had been made but omitted from the report. Mike verified that the lesson plan he had utilized to instruct the CITP class of 1993 stated that all notes had to be kept until all court proceedings were exhausted in the case. Mike also verified that the lesson plan stated that no facts of an investigation were to be omitted in a case for any reason, especially the fact that someone had made a confession. Mike also confirmed with the civil rights attorneys that he had followed the lesson plan without deviation.



What occurred next separates the men from the boys, so to speak. During preparation for the trial, the DOJ Attorneys asked Mike to locate the lesson plan from the FLETC archives that he had used to teach the class in 1993. Mike not only had a copy of the original lesson plan from 1993, but he also had copies of the slides he used to teach the class and notes he had taken on the class. The “Dunlow Documents” were in a file neatly stowed away in Mike’s office. The “Dunlow Documents” were evidence of the dedication and professionalism of Mike Dunlow, and the seriousness of which he took his responsibilities every time he taught a class of law enforcement students. I seriously doubt the fact that Mike retained all of these original documents went unnoticed by the judge and jury hearing the case. The credibility that Mike brought to the courtroom with the “Dunlow Documents” was truly outstanding, as well as his testimony during the trial.

**About the Instructor:** Mike retired from the Internal Revenue Service after a distinguished career as a Special Agent. Mike Dunlow still enjoys teaching at the Federal Law Enforcement Training Center as a reemployed annuitant in the Enforcement Operations Division. Mike can still be found on the links in his off hours somewhere in the Golden Isles chasing that ever elusive “birdie.”



The lessons to be learned from this story reach far and wide into the profession of training law enforcement officers. The story of the “Dunlow Documents” needs to be told, and re-told, on a consistent basis to all who bear the responsibility of training the next generation of law enforcement professionals. The best training is sometimes found in reviewing the basics. It is known as the fundamentals of the game.

So, be wise and remember to every now and then review the basics and fundamentals. If you do, then the next time you set foot in a classroom or get in front of an audience of law enforcement students, you will teach only that which is tried and proven, and only that subject matter contained within the confines of the official lesson plan. All trainers should learn from the “Dunlow Documents” that it never hurts to keep diligent notes and records - because you never know when you’ll need them.



**About the Author:** Charles Huyck is a former Special Agent for the U.S. Drug Enforcement Administration, former Instructor for the Federal Law Enforcement Training Center, and is currently a reserve Special Agent for the Coast Guard Investigative Service and Branch Chief for the Enforcement Operations Division at the Federal Law Enforcement Training Center.

# MANAGING THE PAPER TIGER

*Case Organization and Presentation*

*By Judi Langford*



Conducting investigations used to be a process of following leads, obtaining information, and writing a case report. Much like putting a puzzle together, we started out with a referral and used traditional investigative techniques to “make the case.” Unfortunately, much as the complexity of our lives has increased, so have the cases that we work. With the advent of the electronic age, there is no shortage of information. The challenge is not in collecting information, but in organizing, analyzing, and retrieving it. Computers are here to stay, and we should harness these tools not just as word processors, but to assist in storing and making sense of the data. Software companies have sprung up to fill this niche, but there has been a lack of training, and many investigators simply do not have the time or the resources to negotiate the new technology. Electronic case management is a fairly new field with new advances being made almost daily. In addition, more and more courts and prosecutors are realizing the benefits of digitizing cases and evidence, realizing that this results in a significant saving in trial time.

The subject of case organization can be broken down into several areas:

- *organizing and inventorying evidence*
- *digitizing paper through electronic scanning*
- *indexing masses of records for easy retrieval*
- *storing, analyzing, and compiling*
- *visually diagramming the case*

Without organizational and analytical tools, the information obtained during complex investigations becomes unmanageable.

In this article there are suggestions for tools to use in each of these areas and examples of appropriate software are

provided. This article is not meant to be an exhaustive list and is not an endorsement of any particular software. The goal is to give a broad overview of the tools available as well as advantages and disadvantages of each. Factors to consider before choosing a particular software are the types of cases being worked, the skill level of the investigators and administrative support, the cost, and of course, the investigator’s most critical resource, time. In short, there is no absolute right or wrong way to organize and present a case. Through training and some application, you should find the approach that works for you. Flexibility is the key to conducting a successful investigation.

## **Organizing and Inventorying**

If you are fortunate to work a case that easily fits in a standard file folder, then organizing it is a breeze. However, most investigations go beyond the file folder stage very quickly and move into boxes, then file cabinets, then into storage rooms, and perhaps ultimately into a warehouse. Time becomes a valuable resource for the investigator who needs to be able to find a particular document or item quickly. The investigator also needs to be able to answer some basic questions about the document, such as, where did it come from, what date was it received, where is it being stored, who can testify to it, and what relevance to the investigation does it possess. The answer to organizing your investigation is to employ an electronic database. The two most obvious choices available on most government desktop computers are Microsoft Excel and Microsoft Access. Other more sophisticated (and more complex) tools include Oracle, SQL Server, MySQL, DB2, and Paradox. Increasingly, there are commercial software available designed exclusively for organizing cases. Some of these are CaseMap, WinForce, and Analysts’ Notebook. These highly specialized databases are designed to offer an organized

way for storing, managing, and retrieving information with minimal training. Databases are actually much more powerful than spreadsheets in the way they are able to manipulate data. Here are just a few of the functions that can be performed on a database that would be difficult, if not impossible to perform on a typical spreadsheet:

- Retrieve all records from multiple sources that match certain criteria
- Update records in bulk
- Cross-reference records in different tables
- Perform complex aggregate calculations across multiple data sources

Notwithstanding the admittedly broad limitation of spreadsheets, an investigator could certainly use Microsoft Excel (for instance) quite effectively and it would accomplish most if not all of the functions needed in managing a typical case. Excel is easy to learn. It does have some limitations in handling large numbers of records, so if your case has or is likely to have over 65,000 records, you would be better served with another more powerful database program. In addition, Excel lacks security in that it only saves files when commanded by the user to do so, as opposed to a database program such as Microsoft Access which saves data after each transaction. Access does, however, require substantially more training and experience.

The bottom line is not that one program is better than the other. There are times when it would be appropriate to import records from Access to Excel and vice versa. (Note: these two sibling programs exchange data quite easily.) Once the investigator begins to collect a fair amount of items, then they should begin to electronically inventory them. A critical concept is to inventory EVERYTHING. All items received during the investigation should be entered regardless of its relevance or importance. This will help assure a thorough and objective investigation. The column headers for spreadsheets (or field names for the corresponding database) are the categories that the investigator will use to analyze the data. A question that should be asked at this point is who will be doing the inventory? If more than one individual will be assisting, then it is imperative that all entries are done consistently. This is particularly true when using Excel as a database. Once the investigator has used this Investigative File

Inventory (or IFI) a few times, a system will emerge of entering data to allow for the most efficient sorting and filtering. Experience has shown that when multiple users interact with common data sets – or files – database programs are generally more expedient than spreadsheets

Another important and time-saving consideration is to request whenever possible that records be given to you electronically. Certainly, there are instances when the original document is critical; for example, when a signature or notation is in question or the document is to be examined forensically for fingerprints or authenticity. However, having data in an electronic format will usually save time since it can be imported into your database without manual reentry.

Identifying the items to be collected in the investigation is a critical process and one that should be addressed at the earliest investigative stage. Although this can be a mundane and tedious process, it is the most important part of case organization. Each item collected should have

a unique identifier, which enables it to be retrieved quickly and easily. Consider using the term “ICN” (or Item Control Number) to signify this unique identifier. The form of this number may vary depending on the preferences of a prosecutor

or of the investigative organization. A generally accepted standard for the ICN is the use of three numerical digits followed by a decimal and then three more digits. This allows flexibility in the numbering process. Some investigators or prosecutors may want the use of letters along with numbers. The important point is that the numbering system makes sense to the various users and allows for flexibility. Therefore, it is not recommended that the number placed on the boxes be included in the ICN number. In addition, it is not recommended that search warrant or other numbers be included in the ICN. Having voluminous numbers defeats the purpose of making this investigative process useful.

In applying a document or item numbering system, it is recommended that similar things be grouped in the same category of numbers. For example, have you received several audits, reports, court documents, photographs, bank statements, etc.? Once you have received a number of items (this is usually at the point when a single file folder will no longer hold all of them), look at the broad

**Clarity of communication is always the goal of case management.**

categories and apply a numbering system which will allow the most efficient way of analyzing through sorting and filtering. This will vary among investigators in the types of cases that they work. For example, an insurance investigator and a money laundering investigator may have different types of documents and evidence although they are both financial crimes investigators. This is why flexibility is so crucial in establishing a viable numbering system. Once an investigator has, through trial and error, used a numbering system that has worked throughout an investigation, then it can easily be used in other investigations of the same type. A good system of tracking all items collected in the investigation will quickly answer the questions, “What do I have?” and “Where is it?”

Ideally, the investigator should number each item or document that is received. However, this is not always possible. Therefore, the packet, folder, or container should receive a number and then groups of items should receive a sub-number within that category. A particularly relevant or significant item or document should definitely have its own number within the group for easy retrieval. This item could be inventoried later and receive a number at that time. For example, suppose the investigator receives a folder of documents from an individual at a business. These records relate to merchandise ordered by the business. The investigator has chosen the 600.000 series to represent business records. Therefore, the inventory of this folder might be entered as 601.000 as the ICN, the Description field would list “Company Name Folder,” Date Received, and the Source as who the folder was received from. Subsequently, specific documents found within the folder would be assigned sub-numbers such as 601.001, 601.002, 601.003 .... Be mindful that the software

would see the numbers 601.1, 601.10, and 601.100 as the same numbers mathematically. By correctly formatting this field and entering the numbers accurately, this confusion would be avoided. It should also be noted that whenever entering text into the inventory, the first word entered should be the proper name or name that would provide the easiest and quickest sort.

In addition to creating an inventory of everything collected in the investigation, there will most likely be a need to create other types of databases as well. For example, subpoenas, witness lists, grand jury material, discoverable items, exhibit lists, evidence logs, and financial transactions should be entered and made available for subsequent analysis. These separate databases may or may not “talk” or relate to each other.

A legend sheet should be constructed that explains any industry-specific or otherwise ubiquitous acronyms. For example, does “MTG” stand for meeting or mortgage? Clarity of communication is always the goal of case management.

The Investigative File Inventory fields should fit on an 8.5”x 11” sheet, set up for landscape. The lateral dimensions of an IFI should allow an entire line to be entered and displayed. Although it is tempting to put in every possible field, having the inventory sheet print horizontally on more than one sheet creates unwieldy inventories that will not serve the investigator well. It is recommended to enter a sheet of data into an inventory, review it, and then manipulate the data to see if that format will be the most effective for the case. It is better to make adjustments early in the process than wait until numerous sheets have already been created.

***Example of Investigative File Inventory***

ICN	Location	Witness (1)	Witness (2)	Keyword Description	Date Received	Hyperlink	Agent Notes
2.001	File Tab 1	Doe, John	Ness, Elliot -SA	MOI & Notes	1/20/1928	EN1	Alleges that Al Capone is evading taxes
1.001	Evidence Locker	Doe, John	Ness, Elliot -SA	Doc—Capone finances “ledger”	1/20/1928	Smith, Doc 1	Provided by Smith during interview to support allegations
3.001	File Tab 2	Ness, Elliot -SA	N/A	S-Operation Plan	1/29/1929	SOPS1	Presented to task force 1/29/1929
4.001	File Tab 2	Ness, Elliot -SA	Borden, David -SA	S-Surveillance log	1/30/1929	SLog1	Capone meets Frank Nitti then boards plane for Florida

*continued on page 42*

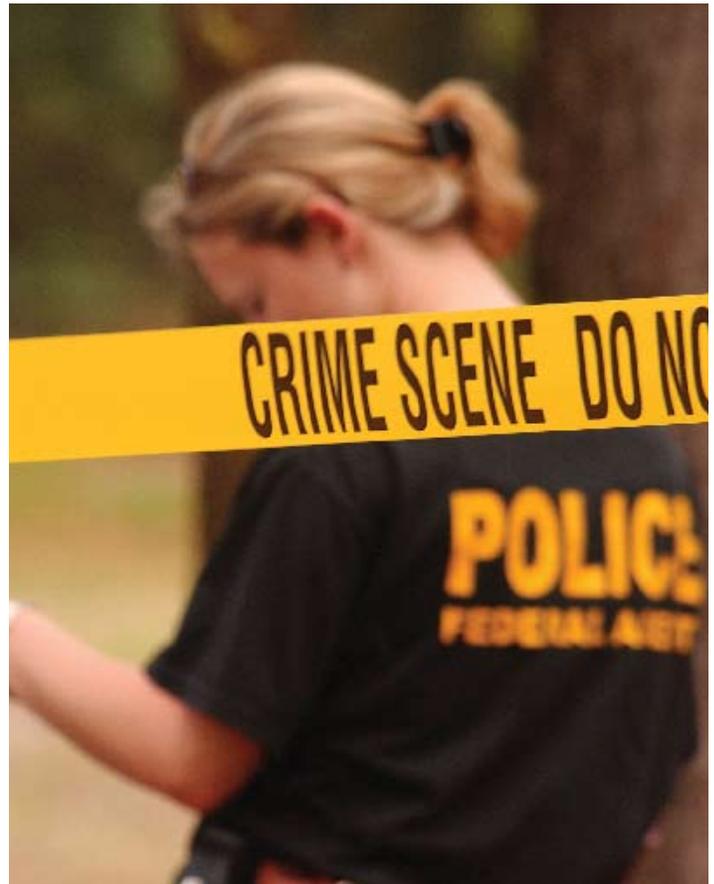


never go away. While law enforcement agencies may disagree on a definition of terrorism and how to combat it, that does not mean that it does not exist and does not represent a viable threat to our present and future law enforcement officers and agents. Criminals have not ceased their activities. In contrast, they are refining their schemes using techniques and technologies gathered from law enforcement incidents shown on television and in the movies.

### Why Forensics?

Forensics means the application of science to law. Almost every case students will investigate when they leave the FLETC will involve some type of evidence which will be used in a legal proceeding. FIT's job is to train students to recognize this evidence, correctly collect it, and properly analyze it using the latest legal and scientific methods available. How are we doing this? FIT developed several new programs within the past two years, many of them the result of meetings with partner agencies. Some of the new courses include Biometric Identification, Authentication of Documents, Environmental Crimes, Methamphetamine Laboratory First Responder, Night Vision, Advanced Forensic Techniques in Crime Scene Investigation Levels I and II, Wildland Fire Origin Cause and Determination, Internet Protocol Cameras, Covert Electronic Tracking, and Digital Photography using agency-specific cameras.

One of the most requested new programs is the Methamphetamine Lab First Responder Program. FIT is partnering with the U.S. Drug Enforcement



Administration and the State of Georgia Department of Public Safety training facility in Forsyth, Georgia, to exchange information and training concerning methamphetamine labs. Methamphetamine has become the drug of choice in the United States and is causing more harm to law enforcement officers than any other drug at this time. Because of this, FIT has designed and built a mock methamphetamine lab in one of the wooded areas of FLETC. The house is fully equipped and is a replica of what an agent or officer may encounter in the field. It is equipped with booby traps, cameras, chemicals, odors, and all the equipment normally used in the manufacture and production of methamphetamine. FIT also outfitted a vehicle adjacent to the house as a mobile methamphetamine lab, which is another new trend in methamphetamine manufacturing. Several incidents involving portable meth labs in the trunks of vehicles have been in the news lately.

### What are Investigative Technologies?

A U.S. Attorney once said that he would rather have 15 minutes of a video confession than one hour of verbal testimony. Capturing a suspect committing a crime or confessing on tape is precious to any prosecutor. Once



a jury actually sees a video of the suspect making the confession or committing a crime, it is difficult for the suspect to profess their innocence. FIT teaches the skills and techniques necessary to perform this task. Hidden video conveyances and body wire installations are another part of what FIT does in its Electronic Surveillance Programs. The instructors teach tech agents how to plant listening devices in a room or a vehicle and how to find devices planted by others. With the support of FLETC and the Department of Homeland Security Wireless Committee, FIT has purchased many neat "little toys" and some of the latest surveillance equipment to accomplish this training including a \$100,000 fully-equipped, state of the art surveillance van.

The days of three or four agents conducting surveillance by following a suspect in a vehicle like little ducks following their mother are gone for the most part. Agents can now place a small device on a vehicle and track its movements anywhere in the country including the target, speed, and location from their PDAs, laptops, or from a desktop computer anywhere they have access to the internet. A video feed of the vehicle can also be obtained if the Internet Protocol (IP) address of a camera located near the vehicle is known. Agents can also control that same camera from that same PDA, laptop, or desktop anywhere in the world where they can log

onto the internet. Agents today can place their own IP camera at a suspect's home or work address and watch and record everyone that enters or leaves. Most of the technology that we see in the hit television series 24 is currently available to our agents in the field. This WiFi and broadband communications technology is not new. The capability of downloading and uploading video and photographs to and from a PDA instantaneously is a technology that can greatly benefit an agent in the field. GPS tracking of cell phones and vehicles is an everyday occurrence to the average consumer, so why not to our agents in the field? By 2008, every cell phone will be required to have GPS tracking capabilities built into it due to the new 911 requirements.

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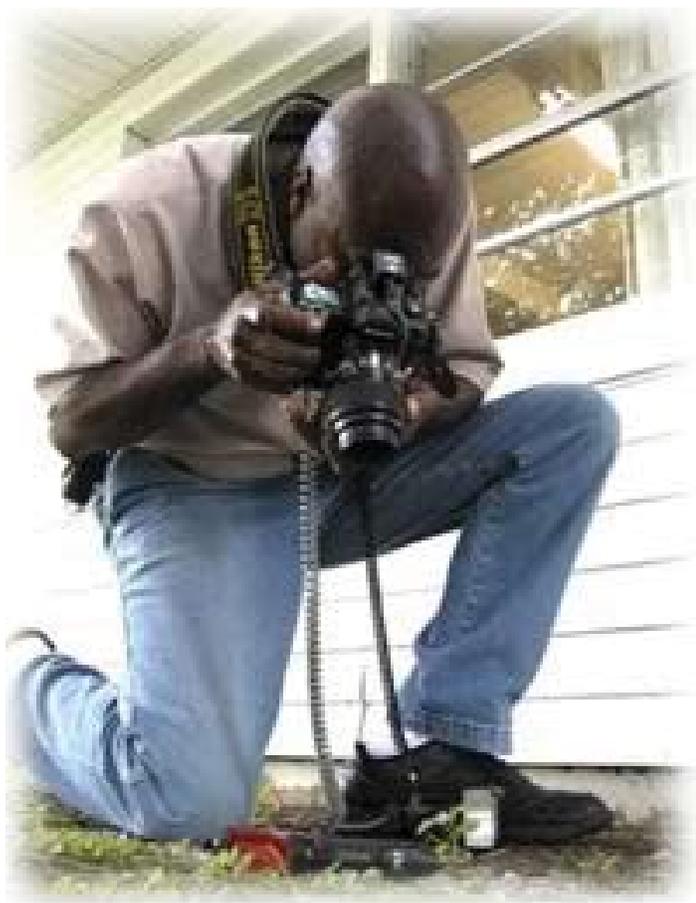
FIT has developed programs in each of these new technologies and is in the process of developing more programs. The new technology used by the division is in great demand by law enforcement agencies all across America and several of the programs can only be found at FLETC. Several non-partner agencies contacted FIT and requested a class on the use of IP cameras, and a program was developed specifically for DEA. When looking at what FIT and FLETC have to offer in equipment and instructors, coupled with the availability of resources such as raid houses and the low cost of housing for students, there is no place else where training can be done as effectively as it is done here at FLETC. When we add in the various terrains available including urban, rural, and wooded areas, FLETC is the best location for training found anywhere in the country.

With the heightened security concerns, there has been increased interest in using biometrics for identity verification, especially in the areas of visa and immigration documentation and government-issued identification card programs. This is evident here at FLETC with our new OPSEC requirements. FIT has conducted Questioned Document programs for several partner agencies, the Glynn County Tax Commissioner's office, and the FLETC Police staff on the new trends in counterfeit documents surfacing on the street.



Prints, Evidence Packaging, Description and Identification, Prisoner Processing, Sex Crimes Investigation, Death Investigation, Larceny from Motor Vehicles, Drugs of Abuse, Marijuana Cultivation and Eradication, Sequential Drug Testing, Crime Scene Preservation, Crime Scene Processing and Physical Evidence.

FIT has a vision of these future technologies, and we are implementing initiatives that will broaden our customer base. We are making training more predictable and dependable, while developing policies that will help to overcome the barriers to innovation by harnessing technology geared towards the future needs of our law enforcement students. Drop by our link on the web <http://www.fletc.gov/training/programs/forensics-and-investigative> to see what we do. I am sure you will be amazed.



The days of just using a photograph for identification purposes are gone. The U.S. Government and DHS have mandated a new identification card for employees using some sort of biometric identification. The techniques we saw in the James Bond 007 movies years ago, such as iris scanning and other new biometric identification systems are now becoming the standard of most government agencies. Biometrics are recorded measures of a unique physical or behavioral characteristic of individuals. They are thought to be more reliable and more difficult to forge, lose, steal, falsify, or guess since they are part of a person rather than an ID card, a personal identification number, or a password. Many companies are already using iris scanning, facial identification, and voice analysis for entry into their facilities. FIT was given approval to pursue a new training initiative covering new biometric identification programs using our existing Identix Fingerprint Systems which are already in place. We are developing these programs using some of this new technology in our training programs while improving the other programs we instruct.

FIT is responsible for: Digital Photography, Video, ARPA, Contraband Detection, Fingerprints, Latent



**Mr. Smith is the Division Chief for the Forensics and Investigative Technologies Division. He joined FLETC Glynco after retiring from the United States Park Police. His varied background includes almost every position in law enforcement, including foot patrol, narcotics, hostage negotiator, trail bike, ID Technician, criminal investigations and SWAT. He also served for seven years on the Protection Detail for the Secretary of the Interior, Bruce Babbitt. He is a member of the IAI, NATIA, NOBLE and the IACP.**

# THEY DON'T LOOK LIKE MONSTERS

*By Alex Graves*

He seemed like such a nice guy. Who would have guessed he was a stalker? A recent study by the National Institute of Justice found that stalking was far more prevalent than anyone had imagined, 8 percent of American women and 2 percent of American men will be stalked in their lifetimes. This equates to 1.4 million American stalking victims every year. The majority of stalkers have been in relationships with their victims. Significant percentages either never met their victims or were just acquaintances - neighbors, friends or co-workers.

Annually in the United States, 503,485 women are stalked by an intimate partner.<sup>a</sup> Eighty percent of women who are stalked by former husbands are physically assaulted by that partner and 30 percent are sexually assaulted by that partner.<sup>b</sup>

Intimate partner stalkers are typically known as the guy who "just can't let go." These men most often refuse to accept that a relationship is really over and that their affections are unwanted. Often, other people - even the victims - feel sorry for them. Studies show that the vast majority of these stalkers are not sympathetic, lonely people who are still hopelessly in love, but were in fact emotionally abusive and controlling during the relationship. These individuals are tacticians of power and control. Many have criminal histories unrelated to stalking. Well over half of stalkers fall into this "former intimate partner" category.

The victim may, in fact unknowingly, encourage the stalker by trying to "let him down easy," or by agreeing to see him "for the last time." Victims, their families, and friends must understand that there is no reasoning with stalkers. When the victim says, "I don't want a relationship now," the stalker

hears, "She'll want me again tomorrow. I just have to do something else to get her attention." When the victim says, "I just need some space," he hears, "If I just let her go out with her friends, she'll come back." "It's just not working out," is heard as, "It will be different this time; I promise." In other words, the only thing to say to the stalker is "no" - no explanations, no time limits, no second chances. There can be no negotiation.

A victim should only say "no" once and only once. If a stalker can't have his victim, he'll take whatever reaction he can manage to generate from her. The absolute last thing he wants is to be ignored. Sometimes, when not getting the attention they want, children will act out and misbehave because even negative attention is better than none at all. Former intimate partner stalkers have their entire sense of self-worth caught up in the fact that, "She really does love me." They can be persistent and tenacious. Since giving up his victim means giving up his self-worth, the stalker is unlikely to do so.

Delusional stalkers frequently have had little, if any, contact with their victims. They may have major mental illnesses like schizophrenia, manic-depression, or erotomania. What these stalkers have in common is some false belief that keeps them tied to their victims. In erotomania, the stalker maintains the delusion that the victim actually wants him. This stalker believes that he is having a relationship with his victim, even though they may have never met. Celebrity stalkers like the woman stalking David Letterman, the stalker who killed actress Rebecca Schaeffer, and the man who stalked Madonna were erotomaniac stalkers. These delusions can last up to an average of ten years.

Another type of stalker believes that he or she is destined to be with someone and that if they only pursue hard enough and long enough, the victim will eventually come to love them. These individuals develop an obsession with their victims.

These stalkers *know* they are not having a relationship with their victims, but firmly believe that they will someday. John Hinckley Jr.'s obsession with Jodi Foster is an example of this type of stalker.

What do stalkers look like? Typical behaviors of stalkers are that they are unmarried and socially immature loners, unable to establish or sustain close relationships with others. They rarely date and have had few, if any, intimate relationships. Since at the same time they are both threatened by and yearn for closeness, they target victims who are clearly unattainable in a myriad of ways. The potential victim may be married or has been the stalker's therapist, clergyman, doctor, or teacher. Those in the helping professions are particularly vulnerable to delusional stalkers. For someone who already has difficulty separating reality from fantasy, kindness shown by the targeted individual (the one person who has treated the stalker with compassion and sensitivity) is distorted into a deluded concept of intimacy. What these stalkers cannot attain is achieved through fantasy that for them becomes a reality; thus, the delusion becomes difficult to relinquish.

These delusional stalkers have almost always come from a background which was either emotionally barren or severely abusive. They grow up having a very poor sense of self. That history, combined with a predisposition toward psychosis, leads these stalkers to strive for satisfaction through another person. They yearn to merge with someone who is almost always perceived to be of a high socio-economic status (doctors, lawyers, teachers), who have achieved a recognizable level of success, or who are looked at as very socially desirable (celebrities). It is not unusual for this type of stalker to "hear" the soothing voice of their victim or believe that they are sending them messages through others.

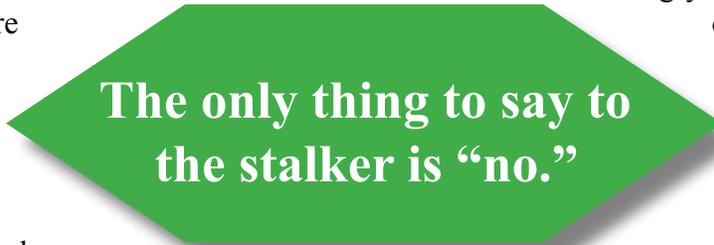
The final category of stalker is the vengeful stalker. This type of stalker becomes angry with their victims over some slight; real or imagined. Politicians, for example, get many of these types of stalkers who become angry over some piece of legislation

or program the official sponsors.

Disgruntled ex-employees can also stalk, whether targeting their former bosses, co-workers, or the entire

company. Some of these angry stalkers are psychopaths (i.e., people

without conscience or remorse). Some are delusional (most often paranoid) and believe that they, in fact, are the victims. They all stalk to "get even."



### What to do if you are being stalked

1. Avoid all contact. Clearly, directly and explicitly advise the pursuer that you're not interested in a relationship, and then avoid all contact. Handle any unexpected meetings or unavoidable phone calls calmly so as not to escalate the situation.
2. Don't react to the stalker no matter how frightened or angry you are. Stalkers thrive on your energy. They want to elicit attention either positive or negative from you. It's up to you not to feed the obsessive interaction.
3. Withdraw gently. When confronted with inescapable contact in person or on the phone, try to curb any actions or words that might provoke an angry reaction. Speak gently and slowly and say only one sentence before excusing yourself forcefully and totally. Your fallback sentence might be: "Please find someone else to focus your attention on. I have no interest in you." Then shut the door, lock it, or hang up the phone. Don't re-open the door or re-answer the phone.
4. Get a new unlisted phone number and private post office box. Use a private post office box for all mail and file a change-of-address card with your local post office. Mail should be kept as documentation should arrest and prosecution become necessary. Get a new unlisted phone number and keep the old one hooked up to an answering machine. Never pick up that line. Don't erase the stalker's messages

left on your answering machine. The recorded message is evidence of his actions and could be valuable toward successful prosecution.

5. Carry a cell phone with a charged battery for safety.
6. Protect your house -
  - Install a peep hole in your door.
  - Install deadbolt locks on all doors.
  - Keep your doors, windows, and garage locked.
  - Install motion detector lights outside your home.
  - Trim the shrubbery near your doors and consider planting thorny shrubs beneath windows.
  - Install curtains or blinds that make it impossible to see movement or people in your house.
7. Change your routes and routines. Vary the daily routes you take, whether by car or on foot, as well as your routines and social habits.
8. Keep your car locked and park in well-lit areas. Don't go into any parking structures unless you're on high alert. At airport garages and many other garages, security guards will escort you to your car.
9. Inform others. Let people around you, including family, friends, neighbors, household staff, co-workers, school officials know what's going on and enlist their help. Describe the threatening person, as well as any vehicle(s) they may drive. Photos of the stalker are excellent.
10. Paper won't stop bullets. No protective, restraining, or legal order of any kind can guarantee safety. These orders can be very important tools for law enforcement and the criminal justice system, and in some cases strong deterrents to active stalkers. However, initiation of legal remedies can provoke some perpetrators.
11. Consider moving/relocating. Avoid using well-known moving companies with easily remembered names on the side of the truck. Don't pick up your mail at a former neighbor's home or visit favorite haunts. Moving doesn't help if your activities still make you a target.
12. Remember, stalkers are persistent. They don't go away just because you want them to. Their need for

gratification is what drives them. It is about them first and foremost. Do not underestimate stalking behavior. Treat the uncomfortable behaviors and actions as serious and recognize the lethality levels involved.



*About the Author:* Alex Graves (Shoshone/Cherokee) joined FLETC after working for two years with Cangleska Inc., as a Law Enforcement Training Specialist. His responsibilities included curriculum development and implementation for law enforcement within the State of South Dakota and tribal law enforcement around the country. He was also a Special Investigator for the Oglala Lakota Attorney General. Prior to joining the staff of Cangleska, Inc., he served for twelve years as a Detective with the Hawaii County Police Department, where he supervised Area II (the West Hawaii) Criminal Investigation Section, Domestic Violence Unit.

At the FLETC Office of State and Local (OSL), Mr. Graves manages the Domestic Violence Indian Country Training Program. For more information on OSL programs, log onto [www.fletc.gov/osl](http://www.fletc.gov/osl).

<sup>a</sup> Patricia Tjaden and Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence*, National Institute of Justice, 2000

<sup>b</sup> Center for Policy Research, *Stalking in America*, July 1997

# De-Mystifying Distance Learning

*By Matt Hall*

How many of you have taken a course that was delivered by video teleconferencing or an on-line course and wished these courses were more interesting? Distance learning through video telephone or satellite broadcast can fail as an educational technique because the professors and instructors are not taught how to make it work. They are often told, “You just teach, and we’ll send your course to a distant location.” That means the distant location gets little if any of the instructor’s attention, and students at that location get to watch a continuous picture on a stationary box (television). So let’s try to make a difference and change the world of distance learning.

Some 10 years ago, I was given the assignment to develop the Distance Learning Instructor Training Program (DLITP). At that time, I had little knowledge of the distance learning concept. Here I sit, 10 years later, with a very successful program, a certification as a distance learning instructor (CDLI) from the Teletraining Institute, and a layman’s ability to author programs for e-learning. So if you want to make distance learning programs more interesting and change the end result, the DLITP is a way to develop your skills.

Distance learning should be full-blown productions that incorporate the same skills that glue you to your television set in the evening. There needs to be simple little changes that re-attract a viewer’s attention to that stationary box. There needs to be colors, shapes, and angles that make the viewing enjoyable. There needs to be interactivity with the distant class built in and constantly reinforced. You know how to make your classroom interesting. You make it interesting by putting a lot of your personal



experience and professional effort into inspiring students about your topic. Distance learning, properly prepared, does the same thing while teaching more people at once.

What about on-line learning? You can either provide lesson plan information so that someone else can put your **facts** on-line, or **you** can take a professional interest in inspiring more students through a well developed on-line presentation. You know how to inspire. You just don't know how to write it out for e-learning. Brace yourself! I'm going to tell you a secret about e-learning. Are you ready?

**It's a book!** Did you get that? It's a book! It is a special, electronic book that can take "readers" anywhere the author wants them to go. They can go to video, audio, graphics, choices of directions, or they can be channeled to one location, but it is still just a book. So why do we delegate our "authorship" to others who don't know and don't really care about our topic?

When you write a book, you begin with an outline and then expand on the chapters and create a plot once you see how the overall book will flow. When you write a class, you begin with a lesson plan and then expand on the enabling performance objectives to attract interest once you see where you want to go (Terminal Performance Objective). No author would give his/her outline to a publisher and say okay, use this to put out a book in my name, and they certainly wouldn't say write a movie about it.

Okay, so what do I mean by "it's a book"? Look at any webpage or computer based program. You begin on a title page. There is a table of contents which is also a navigational resource. If

you want to go to Chapter 10, or the directory, or the biography of the author, you simply click that button. All you are really doing is turning to that page as you would manually in a book. The advantage over a paper book, however, is that you can make that navigation go anywhere you want and back again.

Let's say you are trying to teach conflict resolution. You have a scenario spelled out that causes the learners to reach a decision point. You have some options for them in the form of buttons. If they select the wrong button, you can give them a pop-up page that simply says "WRONG!" or they can

be taken down a long line of decisions that will make them realize that they need to back up and rethink that decision. If we really learn by "doing," we can make the learners cognitively perform any task before they are faced with real time role plays or real life experiences.

With the increasing emphasis on simulations these days, we can make these "books" even more realistic and engaging. You don't have to know how to create a simulation. You don't even need

to know how to create a navigational button. You just need to be able to write the book with an eye to how you want the final product to progress. There are specialists that can make it aesthetically appealing and effectively linked.

I recently gave a presentation at the Society for Applied Learning Technologies (SALT) Conference in Orlando titled, "It's all about me: Successes in Motivating Instructors into Distance Learning." After the presentation, one member of the audience, a program developer, commented that he wished he could bottle my passion. I replied to him, "That's just the point. You can!" When the

**Technology will never replace teachers, but teachers who know technology will replace those who don't.**

most talented and impassioned instructors begin collaborating with equally talented producers and program developers, distance learning can become what it was designed to be.

Stephen King didn't write a book and say, "Let it be a movie." Someone read his book and decided to give it life as a movie. That producer/director then put Stephen King with a screenwriter who converted the drama to a script that became a movie. Take away the Stephen Kings and you take away the movies, but Stephen King doesn't have to learn how to produce a movie to be successful.

If you don't think that distance learning can be effective, sign up for the DLITP and see if our

Media Support Division and I can prove you wrong. If you don't think that e-learning can be effective, collaborate with one of the excellent program developers at Training Innovations Division with your passion and see how wrong you can be. If you write the book, they will make it flow and look good. You sell your topic in person every day. Are you too weak to sell it at a distance? I don't think that will be a problem.



**Every Instructor can benefit greatly by taking the Distance Learning Instructor Training Program at the FLETC.**

Let me add one final statement. Christine Melon said, "Technology will never replace teachers, but teachers who know technology will replace those who don't." I am an "old

school" instructor. I love the classroom, but I will never be locked to it.



**About the Author:** William M. Hall is a Senior Instructor in the Behavioral Science Division (BSD) at the Federal Law Enforcement Training Center. Matt has a combined total of 37 years in Federal law enforcement service with 23 of those years spent with the United States Park Police. Matt retired from the Park Police as a Lieutenant in 1995 and became a full time staff member of the BSD. He carries degrees in Police Science and General Studies with a Criminal Justice concentration as well as a Master of Public Administration. Matt has been certified as a Distance Learning Instructor by the Teletraining Institute in Stillwater, OK.

# Electronic Control Devices: Liability and Training Aspects

*By Edmund Zigmund*

Recent media stories have caused debate about the lethality of electronic control devices, sometimes called “tasers” or “stun guns.” This article is intended to outline the current legal principles regarding the deployment and use of such devices. Overall, the areas of constitutional law regarding the use of such devices are somewhat clear. However, aspects of potential liability under state tort claims of negligence are less than clear.

## **A Less-than-Lethal Device**

In general, electronic control devices have been defined as a form of less-than-lethal (non-deadly) force. In *McKenzie v. City of Milpitas*<sup>1</sup> the court explained:

[One type of electronic control device] is a hand held immobilizing device ... that is used by [police departments] to control uncooperative or dangerous subjects. [It] is operated by propelling two darts at a hostile subject. When the two darts ... strike the subject, so long as both [hooked barbs] remain in contact with the subject’s body and/or clothing, the officer can send an electrical charge through the wires. The officer can continue to send charges through the subject by depressing a button.... The current generated by the [electronic control device] causes involuntary muscular contractions in the subject, which in turn usually causes the subject to lose muscular control for a short period of time and to fall to the ground. Because the ... subject loses muscular control, an officer can establish control over an uncooperative or dangerous subject without

the need to resort to mace, batons, or personal combat techniques.

## **Landmark Case: *Graham v. Connor***

Despite being a form of less-than-lethal force, the use of electronic control devices by law enforcement officers must comply with constitutional standards. To comply with constitutional standards, law enforcement officers must be trained to make proper legal judgments about the amount of force to utilize in a particular situation. These judgments must be based on the facts and circumstances confronting that officer in the specific incident. The United States Supreme Court, in the landmark case of *Graham v. Connor*,<sup>2</sup> held that excessive force claims are properly analyzed under the Fourth Amendment’s “objective reasonableness” standard. The *Graham* Court said:

The right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.... 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.<sup>3</sup>

The Court further stated:

The calculus of reasonableness must embody 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.... The “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.<sup>4</sup>

The Court then outlined several factors that impact upon the “reasonableness” of a particular use of force:

Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application ... its proper application requires careful attention to the facts and circumstances of each particular case, including: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; (3) whether he is actively resisting arrest; or (4) whether he is attempting to evade arrest by flight.<sup>5</sup>

Since *Graham*, other lower courts have developed additional factors to consider in making the determination as to whether an officer’s use of force is “reasonable.” Some of these other factors include: (1) the number of suspects and officers involved;<sup>6</sup> (2) the size, age, and condition of the officer and suspect;<sup>7</sup>(3) the duration of the action;<sup>8</sup> (4) whether the force applied resulted in injury;<sup>9</sup>(5) a previous violent history of the suspect, known to the officer at the time;<sup>10</sup> (6) the use of alcohol or drugs by the suspect;<sup>11</sup>(7) the suspect’s mental or psychiatric history, known to the officer at the time;<sup>12</sup> (8) the presence of innocent bystanders who could be harmed if force is not used;<sup>13</sup> and (9) the availability of weapons, such as pepper spray, batons, or tasers.<sup>14</sup>

### **Constitutional Aspects: Use and Training**

Under constitutional principles, there is a distinction between active resistance and passive resistance. Active resistance is generally defined as threatening an officer;<sup>15</sup> shoving, striking, wrestling with and even biting an officer.<sup>16</sup> In contrast, passive resistance is described by the following suspect actions: (1) remaining seated, refusing to move, and refusing to bear weight;<sup>17</sup> (2) protestors going limp, or persons chaining themselves

together and covering their hands with maple syrup to impede the use of handcuffs;<sup>18</sup> (3) protestors employing lock-down devices that immobilize their arms and prevent their separation by police, although the protestors could disengage themselves from the devices.<sup>19</sup> The use of pepper spray upon passive resistors can be found to be excessive and therefore unconstitutional.<sup>20</sup> Likewise, it appears that the use of an electronic control device on a suspect who is merely passively resisting an officer can result in an unconstitutional use of force.<sup>21</sup>

Generally, the use of an electronic control device is constitutionally allowed when a subject is actively resisting the law enforcement officer. In *Draper v. Reynolds*,<sup>22</sup> a deputy sheriff lawfully used an electronic control device to subdue a tractor-trailer driver during a traffic stop. The court said that from the time the driver met the deputy at the back of the truck, the driver was hostile, belligerent, and uncooperative. No less than five times, the deputy asked the driver to retrieve documents from the truck cab, and each time the driver refused to comply. Instead, the driver used profanity, moved around and paced in agitation, and repeatedly yelled at the deputy. On appeal, the *Draper* Court said that there was a reasonable need for some use of force in this arrest. Although being struck by an electronic control device is an unpleasant experience, the amount of force the deputy used - a single use of the device causing a one-time shocking - was reasonably proportionate to the need for force and did not inflict any serious injury. The deputy’s use of the electronic control device did not constitute excessive force, and the deputy did not violate the driver’s constitutional rights in this arrest.

In *Hinton v. City of Elwood*,<sup>23</sup> an animal control officer reported that a suspect verbally threatened him. A police officer approached the suspect to speak to him. Thereafter, a struggle between police and the suspect occurred. Eventually, the police used an electronic control device to subdue the suspect. The suspect was taken into custody and charged with various crimes. Thereafter, the suspect filed a lawsuit under 42 U.S.C. § 1983 alleging excessive force. On appeal, the *Hinton* Court held that the arresting officers’ use of force did not rise to the level of a constitutional violation. Under *Graham*, some of the factors did not justify this use of force. The crime for which the suspect was initially stopped by the

police was the misdemeanor of disturbing the peace. The suspect did not constitute any type of immediate threat to the police or the public. There was no showing that he had a weapon or was under the influence of alcohol or drugs. In addition, he was outnumbered by the arresting officers. However, despite these factors, the third *Graham* factor of resisting arrest supported the officers' use of force as being objectively reasonable. The suspect refused to talk with the police when they requested him to stop, and he shoved the officer after the police told him to calm down and go home. Only after the suspect displayed this level of resistance did the officers make any initial use of force to subdue the suspect. This use of force was preceded by an announcement that the suspect was under arrest and consisted only of police grabbing the suspect to keep him from leaving. After grabbing the suspect the officers increased their application of force. Not only did they wrestle him to the ground but they used an electronic control device on him. However, at this point, the suspect was actively and openly resisting the officers' attempts to handcuff him, even to the extent of biting the officers. The police ceased using the device once the officers had succeeded in handcuffing him. Accordingly, the officers' use of force, even after grabbing the suspect, was not constitutionally excessive and therefore the officers were entitled to qualified immunity (which dismissed the lawsuit).

Inappropriate electronic control device training can result in potential liability for trainers. Generally, the reported training liability cases deal with municipal liability under 42 U.S.C. § 1983. In *Mateyko v. Felix*,<sup>24</sup> the court said that a municipality can be liable under § 1983 only if its "policy" or "custom" caused a constitutional deprivation. Inadequate training can form the basis for municipal liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact. In the *Mateyko* case, the court noted that police officers received approximately three to four hours of training in the use of electronic control devices and lacked information as to the device's voltage or its precise effect on the human body. However, the court said that these alleged inadequacies in training, without more, do not establish deliberate indifference to the rights of persons with whom the police came in contact. Failure to provide a lengthier training program suggests, at most, negligence

on the part of the City in miscalculating the amount of time necessary to adequately prepare its officers. However, the evidence does not show the City knew it was creating an unjustifiable risk to its citizenry and ignoring that risk. The same must be said of the City's failure to inform its officers of the exact voltage of the electronic control device or its precise effect upon the human body. As such, a directed verdict for the City regarding the constitutional claim was upheld by the appellate court.

In *McKenzie v. City of Milpitas*,<sup>25</sup> the court observed that the City's policy included: supplying tasers to officers with limited experience; allowing officers to carry tasers when making investigatory stops; not requiring officers to holster their tasers; allowing officers to resort to the use of tasers immediately after verbal warnings; and, inadequately training officers in the constitutional ramifications and health hazards of using tasers. The City's electronic control device policy was absolutely silent on arrest policy. In the end, the court denied the motions to dismiss the lawsuit filed by the municipality and its police chief. The court said that the plaintiffs must prove that the City failed to train its officers, and that there is a causal connection between this failure and violation of their constitutional rights. Although this is a heavy burden, the plaintiffs are entitled to present their case to a jury.

## **The Federal Tort Claims Act and Negligence**

In a non-deadly force situation, what if an unintentional death results after the use of an electronic control device? Under the Federal Tort Claims Act, federal employees can be sued for negligence while acting within the scope of their office or employment.<sup>26</sup> The elements of negligence are: (1) duty; (2) breach; (3) causation; and (4) injury/damages. A simple example illustrating these elements can be found in the case of *Sheehan v. United States*.<sup>27</sup> In *Sheehan*, a female arrestee fell with her arms handcuffed behind her as she was being led by officers up a ramp into the United States Capitol Police headquarters. As a result, she suffered a fracture and other injuries. The *Sheehan* court held that the government was liable for the plaintiff's fall. The court said that the female would not have fallen were it not for the officers' negligence. The officers were in sole control of the situation. It is common

sense that officers have a duty to assist persons walking up a ramp whose hands are handcuffed behind their backs to ensure that they do not fall. The officers breached that duty by failing to hold on to her securely to prevent her stumbling and by failing to break her fall.

The tort of negligence can be applied to incidents involving the use of an electronic control device. As previously stated, in *McKenzie v. City of Milpitas*,<sup>28</sup> the court recognized that an electronic control device training program that included three to four hours of training in the use of the device and lacked information as to the device's voltage or its precise effect on the human body could suggest negligence on the part of a City in miscalculating the amount of time necessary to adequately prepare its officers.<sup>29</sup> However, the case law in this area is less than clear.

In a civil lawsuit involving the tort of negligence, a main issue will involve determining the first element known as the "duty of care." What is the legal "duty of care" owed to a potential suspect when devising and implementing an electronic control device training program, and in using the device in the field? Despite the current use of electronic control devices by law enforcement agencies, medical professionals and others are currently debating the safety of the use of these devices by law enforcement. Most importantly, information from medical experts can be used to define the parameters of law enforcement's "duty of care."<sup>30</sup> In September 2005, one highly regarded medical expert, Dr. Fabrice Czarniecki<sup>31</sup>, conducted a presentation at the International Association of Chiefs of Police conference in Miami, Florida. Dr. Czarniecki provided his expert opinion regarding the use of electronic control devices by law enforcement officers. Some of the important medical recommendations by Dr. Czarniecki included the following: (1) if possible, limit the number of electronic control device exposures (three exposures is probably a reasonable number); (2) identify high-risk subjects: age extremes, pregnancy, and "excited delirium" (a condition often found in drug users); (3) if possible, avoid using such devices on pregnant women, elderly persons and very young persons; (4) train all officers in "excited delirium" recognition and its management; (5) immediately contact Emergency Medical Services if an electronic control device is used on a high-risk subject or if any person is subjected to more than three exposures; and (6)

avoid electronic control device exposure during training because employees may have hidden medical conditions that could result in their injury or death. It is also important to note that when an electronic control device is used on a suspect, law enforcement officers can employ a "hands-on" control technique during the apprehension. Despite its effects on the suspect, the device will not physically affect the law enforcement officer.

## Conclusion

Law enforcement agencies must initially decide whether to employ electronic control devices as an optional use of force tool. Under constitutional standards, it is fairly clear as to *when* a law enforcement officer can lawfully use an electronic control device. According to current legal precedent, electronic control devices can be constitutionally used in enforcement situations when a suspect is actively resisting an officer. In contrast, definitive medical information is lacking in the area of *how* to use the devices with total safety. This is compounded by the fact that case law is less than clear as to how negligence principles apply to the use of the devices. If electronic control devices are deployed, law enforcement officers must be properly trained under current, generally accepted standards of care before using them. For example, one suggested tactic based on Dr. Czarniecki's recommendations is to use the electronic control device to initially immobilize a suspect, then immediately apply a "hands-on" control technique. Using these techniques in combination can minimize the dangers associated with multiple exposures to the electronic control device, which could possibly lead to death. Overall, it appears that further litigation will occur in this area, especially when the use of an electronic control device results in the death of a suspect. To avoid liability based on a claim of negligence, the recommendations set forth by competent medical experts should be incorporated into the development of any electronic control device training program or agency policy.

<sup>1</sup> 738 F. Supp. 1293, 1296 (N.D. Cal. 1990); *See also, Russo v. City of Cincinnati*, 953 F.2d 1036, 1040 n.1 (6th Cir. 1992).

<sup>2</sup> 490 U.S. 386, 396 (1989).

<sup>3</sup> 490 U.S. at 396.

<sup>4</sup> 490 U.S. at 396-97.

<sup>5</sup> 490 U.S. at 396 (altered from original).

<sup>6</sup> See, *Sharrar v. Felsing*, 128 F.3d 810, 822 (3rd Cir. 1997); *Crosby v. Paulk*, 187 F.3d 1339, 1351 (11th Cir. 1999).  
<sup>7</sup> 128 F.3d at 822; 187 F.3d at 1351.  
<sup>8</sup> 128 F.3d at 822; 187 F.3d at 1351.  
<sup>9</sup> 128 F.3d at 822; 187 F.3d at 1351; See also, *Mellott v. Heemer*, 161 F.3d 117, 123 (3rd Cir. 1998), cert. denied, 526 U.S. 1160 (1999); *Jackson v. Sauls*, 206 F.3d 1156, 1170 n.18 (11th Cir. 2000); *Wardlaw v. Pickett*, 1 F.3d 1297, 1304 n.7 (D.C. Cir. 1993), cert. denied, 512 U.S. 1204 (1994).  
<sup>10</sup> *Martin v. Gentile*, 849 F.2d 863, 869 (4th Cir. 1988).  
<sup>11</sup> *Krueger v. Fuhr*, 991 F.2d 435 (8th Cir.), cert. denied, 510 U.S. 946 (1993).  
<sup>12</sup> *Deorle v. Rutherford*, 272 F.3d 1272, 1283 (9th Cir. 2001), cert. denied, \_\_\_ U.S. \_\_\_, 122 S. Ct. 2660 (2002); *Ludwig v. Anderson*, 54 F.3d 465, 472 (8th Cir. 1995).  
<sup>13</sup> *Dean v. Worcester*, 924 F.2d 364, 368 (1st Cir. 1991).  
<sup>14</sup> See, *Tom v. Volda*, 963 F.2d 952, 962 (7th Cir. 1992).  
<sup>15</sup> *Draper v. Reynolds*, 369 F.3d 1270, cert. denied, 125 S. Ct. 507 (U.S. 2004).  
<sup>16</sup> See, *Hinton v. City of Elwood*, 997 F.2d 774 (10th Cir. 1993).  
<sup>17</sup> *Forrester v. City of San Diego*, 25 F.3d 804, 814 (9th Cir. 1994).  
<sup>18</sup> *Amnesty America v. Town of West Hartford*, 361 F.3d 113 (2nd Cir. 2004).  
<sup>19</sup> *Headwaters Forest Defense v. County of Humboldt*, 276 F.3d 1125 (9th Cir. 2002).  
<sup>20</sup> See, 276 F.3d 1125.  
<sup>21</sup> See, 361 F.3d 113 (2nd Cir. 2004) (use of force on passive protestors consisting of pressing back wrists, throwing and dragging face-down to ground, placing a knee on a neck and ramming a head into a wall required denial of summary judgment for negligent supervision); 276 F.3d 1125 (9th Cir. 2002) (use of pepper spray on passive protestors unconstitutional).

<sup>22</sup> 369 F.3d 1270.

<sup>23</sup> 997 F.2d 774.

<sup>24</sup> 924 F.2d 824 (9th Cir. 1990).

<sup>25</sup> 738 F. Supp. 1293 (N.D. Cal. 1990).

<sup>26</sup> 28 U.S.C. §2679(b)(1).

<sup>27</sup> 822 F. Supp. 13 (D.D.C. 1993).

<sup>28</sup> 738 F. Supp. 1293 (N.D. Cal. 1990).

<sup>29</sup> 738 F. Supp. 1293 (N.D. Cal. 1990).

<sup>30</sup> See generally, *Johnson v. City of Cincinnati*, 39 F. Supp 2d 1013, 1019-20 (S.D. Ohio 1999) (finding that information existed in the law enforcement community which put officers on notice of the dangers of positional asphyxiation).

<sup>31</sup> Fabrice Czarnecki, MD, MA, MPH, is the Director of Medical-Legal Research with The Gables Group, Inc., a business intelligence and investigative consultancy based in Miami, FL, and the Director of Training of the Center for Homeland Security Studies, a non-profit corporation conducting training in counter-terrorism and intelligence for domestic law enforcement. He previously was an emergency physician of the Ambroise Pare Hospital, Boulogne, France, and currently practices occupational and emergency medicine in Baltimore, MD. Dr. Czarnecki is the Medical Advisor for the American Women's Self Defense Association, and the National Law Enforcement Training Center. He is the Medical Advisor for the American Society for Law Enforcement Training (ASLET), and a member of the editorial board of the "Journal of Security Education". Dr. Czarnecki served as a trainer and a consultant for several local and federal law enforcement agencies and the U.S. Marine Corps. He is a certified instructor in firearms, police defensive tactics, TASER, baton and in the use of deadly force. He co-authored the August 2003 issue of the "Clinics in Occupational and Environmental Medicine" dedicated to law enforcement worker health.



**About the author:** Instructor: Ed Zigmund is a Senior Instructor at the Federal Law Enforcement Training Center (FLETC) in Glyncro, Georgia. He is a Senior Instructor for the Legal Division for FLETC basic and advanced programs. Ed has been a law enforcement trainer for the past four years, and has instructed a variety of law enforcement topics such as 4th Amendment, Self-Incrimination, and Civil Liability. He was educated in Pennsylvania and worked there as both a police officer and Assistant District Attorney. Ed also was a Legal Instructor at the North Carolina Justice Academy prior to coming to the FLETC.

# Follow the Money

*By Germaine Perambo*



On August 1, 2005, a new partner organization joined the FLETC line-up, and one of its primary missions is to provide investigative assistance to federal, state, local, and international law enforcement. This organization was created to help criminal investigators enhance their investigations by providing new leads, expanding existing leads, networking agencies working on the same subjects, and tapping into international partners for possible case-related information. This agency does so strictly in the name of cooperation and information sharing - and without any hidden agenda such as stealing your thunder. You ask: Who? What? How? It is the Financial Crimes Enforcement Network (FinCEN), and it has recently established an office at FLETC to help spread the word about its valuable financial intelligence resources that are available to all levels of U.S. law enforcement.

FinCEN, located in Vienna, VA, was established in 1990 and is the largest overt collector of financial intelligence in the United States. It is also the United States Financial Intelligence Unit, or FIU. Its mission is to safeguard the financial system from the abuses of financial crime, including terrorist financing, money laundering, and other illicit activity. FinCEN achieves this by:

- administering the Bank Secrecy Act (BSA)
- supporting law enforcement, intelligence, and regulatory agencies through sharing and analysis of financial intelligence
- building global cooperation with our counterpart FIUs
- networking customers and Bank Secrecy Act information



As one of the government's smallest bureaus, it's often an unknown arrow in the law enforcement quiver. Despite its size (about 300 employees), FinCEN has tremendous assets and authorities to assist law enforcement in obtaining financial intelligence and other leads to enhance its investigations. Except for violent crimes and crimes of passion, just about every crime is committed for financial gain. Most often that financial gain is in the form of cash. The BSA is one of the nation's most potent weapons for preventing corruption of the financial system. The recordkeeping and reporting requirements of the BSA help to establish a financial trail for investigators to follow as they track criminals, their activities, and their assets. Through the use of technology, information is extracted from numerous data sources to which FinCEN has access. Intelligence analysts are then able to link various aspects of a case and provide valuable information such as suspect names, personal identifiers, addresses, financial transactions, previously unknown assets, and names of associates to law enforcement agencies.

Some readers may have heard of the BSA database but thought it was only of value for money laundering cases. BSA data, however, has provided key information to investigators on a wide range of cases to include: terrorist financing, embezzlement, fugitive apprehension, narcotics smuggling, procurement fraud, bank fraud, arson for profit, cigarette smuggling, foreign investment schemes, cattle fraud, cyber crimes, and asset forfeiture, to name a few. For those not familiar with the BSA, it was enacted in

1970 to help law enforcement get its arms around the vast amount of drug money that was flowing in and out of banks. The Act provided the first reporting requirement for banks to report any cash deposit or withdrawal in excess of \$10,000. This reporting requirement is known as the Currency Transaction Report – or CTR. Over the years the CTR has proven tremendously valuable in helping law enforcement follow the money moved by criminals. The report not only captures information about the specific cash transaction, it also reveals bank account numbers, names, addresses, DOBs, SSNs, doing business as (DBA) names, occupations, and names of associates who conduct banking transactions on behalf of others – all very valuable, prospective leads.

The BSA has evolved over the years and now includes approximately a dozen reporting requirements for financial institutions. One of these reporting requirements, the Suspicious Activity Report or SAR, allows banks, casinos, broker-dealers, and other financial institutions to file SAR's to describe activities by customers that they deem to be suspicious in nature. The report form includes a narrative section that allows financial institutions to describe, in detail, all the facts surrounding their decision to identify a transaction as suspicious. Suspicious Activity Reports have become a "golden nugget" for law enforcement intelligence in their counterterrorism initiatives. FinCEN maintains the SARs, CTRs, as well as all of the other Bank Secrecy Act forms in a database for use by law enforcement.

Through FinCEN, federal, state, and local law enforcement can access this information, either directly through its Gateway and Platform Programs or through direct requests for research by FinCEN analysts. The Gateway Program allows law enforcement, through an MOU process, to access BSA data through a secure web portal. A growing number of federal agencies are Gateway participants, including: DEA, ATF, U.S. Postal Inspection Service, FBI, DHS-OIG, EPIC, FDA-CI, OFAC, SSA, USMS, and U.S. Fish & Wildlife, to name a few. In addition to federal law enforcement agencies participating in the Gateway Program, a number of agencies detail full-time agents/analysts to FinCEN to conduct research for their respective agencies. These agencies include: AFOSI, Army-CID, ATF,

DEA, FBI, HUD-OIG, IRS-CI, NCIS, USDA-OIG, USPIS-OIG, and USSS.

FinCEN's Platform Program enables law enforcement agencies in the Washington, DC area to send a representative to FinCEN to conduct BSA research for agents in their respective field offices. These representatives come as often as needed to FinCEN's Operations Center to complete their BSA research.

For state and local law enforcement, investigators can also request Bank Secrecy Act data through the Gateway Program. Each state, along with the District of Columbia and Puerto Rico, has a state coordinator that is usually the state attorney general's office or state police department. Because of the volume of requests, several individual police departments have separate MOUs with FinCEN, such as the Fairfax County Police Department in Virginia and the Philadelphia Police Department.

Law enforcement agencies can also request assistance from FinCEN's talented intelligence analysts on their major cases, such as those involving domestic or international terrorism, terrorist financing, or cases that involve voluminous data or voluminous BSA data. On these complex/significant cases, law enforcement can expect multi-tier research, a narrative report describing research results and analytic opinions, database extracts, and link analysis/diagrams.

In addition to the valuable information FinCEN provides to law enforcement agencies, it also offers a unique networking feature between agencies. Whenever an investigator uses FinCEN or its Gateway system to query a name in the BSA database, FinCEN, in turn, checks the name against its databases to identify if any other agency has requested information on the same subject. If there is a match, FinCEN notifies the requester of the match and provides the name and contact information of the person who had

previously run the subject. The goal is to put the two agencies in contact with each other, not only to share information and combine resources against the same criminal(s), but also to minimize the likelihood of one agency unwittingly compromising the investigation or undercover operation of another. FinCEN does not disclose any investigative information to either party; it is up to the respective agencies to follow up and work together.

This networking feature has proven incredibly productive over the years. Recently the Pennsylvania

Attorney General's Office Asset Forfeiture and Money Laundering Section conducted proactive targeting research through FinCEN and identified two suspects. Research on those two individuals resulted in a Gateway Alert that revealed a

match with the Philadelphia INS (legacy) office. The two agencies combined their efforts and resources into one federal case. The PA AG's Office worked the money laundering aspects of the case, while INS investigated the specified unlawful activity aspects (harboring/transporting illegal aliens). The first phase of their joint investigation culminated in the execution of 10 search warrants in five states, court orders freezing 36 bank accounts, and the seizure of almost \$9 million. Undoubtedly, the networking capability of FinCEN proved quite valuable to both agencies.

There are two additional investigative resources that warrant highlighting: the Financial Intelligence Unit (FIU) process and the 314(a) information-sharing program.

As previously mentioned, FinCEN is the Financial Intelligence Unit (FIU) for the United States. Currently there are over 100 FIUs around the world that belong to the Egmont Group, an international network of countries that have implemented national centers, like FinCEN, to collect information on suspicious or unusual financial activity from the financial industry, analyze the data, and make it available to appropriate

**Law enforcement agencies can also request assistance from FinCEN's talented intelligence analysts on their major cases.**

national authorities and other FIUs for use in combating terrorist funding and other financial crime. FinCEN can assist investigators by reaching out to its international partners and request that the foreign FIU query its intelligence for information related to their case. This networking can provide additional investigative leads and information, thus expanding investigative capabilities.

The 314(a) information sharing program (mandated under the USA PATRIOT Act of 2001) is designed to encourage regulatory and law enforcement authorities to share information regarding individuals, entities, and organizations engaged in or reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities. Section 314(a) enables Federal law enforcement agencies through FinCEN to query the nation's banking system (more than 44,000 points of contact at more than 27,000 financial institutions) to locate accounts or transactions of persons who may be involved in terrorism or significant money laundering investigations. In essence, it casts a virtual investigative net over the nation's banking system to help law enforcement identify prospective leads. When agents hear about this relatively new tool, they often sit back and say, "Wow."

The information sharing process begins once FinCEN receives a request from a federal law enforcement agency. Following a review, the request is transmitted to designated contacts within financial institutions across the country once every two weeks via either a secure internet web site or facsimile. The requests contain subject and business names, addresses, and as much identifying data as possible to assist the financial industry in searching their records. The financial institutions must query their records for data matches, including accounts maintained by the named subject during the preceding 12 months and transactions conducted within the last six months. Financial institutions have two weeks from the transmission date to respond to 314(a) requests. FinCEN provides any "hits" to the requesting law enforcement agency, which then is responsible for following up with the financial institution using

the necessary legal tools to obtain the financial records. To ensure that Section 314(a) inquiries are being used for appropriate cases, FinCEN requires all requesters to submit a form certifying that the investigation is based on credible evidence of terrorist financing or significant money laundering. To date, the 314(a) process has yielded productive leads in investigations such as arms trafficking, alien smuggling resulting in fatalities, cigarette smuggling, nationwide investment fraud, and multi-agency drug trafficking investigations. Additional information on the 314(a) program can be found on FinCEN's website at [www.fincen.gov](http://www.fincen.gov).

If you believe agents in your agency could benefit from learning more about FinCEN while they're at FLETC in either basic or advanced training sessions, feel free to contact Special Agent Germaine Perambo (FinCEN Agency Representative) at (912) 267-2850. You can also visit FinCEN's website at [www.fincen.gov](http://www.fincen.gov) to learn more about the agency, its regulatory/law enforcement/international programs, and its investigative resources.



**Author:** Germaine Perambo



Students participating in the "Pilot" Summer Program at FLETC Glynco were officially sworn in by Director Patrick in a welcoming ceremony.

# FLETC Student Educational Employment Program (FSEEP)

## 'Pilot' Summer Program

*By Tina Goulet*

The FLETC recently conducted its first Summer Program for students in the local commuting areas of Glynco, Artesia, Cheltenham and Charleston. Students were hired for the summer to work in clerical positions all over the GLYNCO center, including the Counterterrorism Division, Physical Techniques Division, Enforcement Operations Division, Computer and Financial Investigations Division, Forensics and Investigative Technologies Division, Student Services Division, Media Support

Division, Critical Incident/Stress Management Program, Inspection and Compliance Division, Security and Emergency Management Division, Environmental and Safety Division, Facilities Management Division, Human Resources Division, Property Management Division, Strategic Planning and Analysis Division, Finance Division, Procurement Division, and the Office of State and Local Training, as well as the Administration Divisions of Artesia, Cheltenham and Charleston.

Summer jobs allow students to apply the skills they have learned in the classroom in a real-world environment while providing a valuable benefit to the employer. Not only do they learn basic skills needed in any job, many of them are able to get practical experience in areas they plan on majoring in.

Our students came to us from various high schools and colleges, such as the University of Georgia, Valdosta State University, Old Dominion University, Moorehead State University, Mercer University, Spelman College, Georgia State University and the National Institute for the Deaf.

During the summer program, students met weekly for lunch with Program Coordinators and to listen to representatives from among the FLETC's various Partner Organizations, such as the U.S. Marshal Service and the U.S. Secret Service. They also participated in training facilities tours, activities and demonstrations.

Although this was the first year for the program, initial results have been extremely positive, both for the students and the Center. Accreditation Manager Liz Truesdell stated that her student had an excellent attitude, great computer skills and was very innovative. Dr. Jannett Bradford, Chief of Strategic Planning and Analysis Division, stated that her students daily demonstrated an eager willingness to learn and work. "They are truly exemplary young adults and we were thrilled to have them share their summers with SPA". Gail London, Program Manager for the CISM, was very complimentary of the student assigned to the Critical Incident Stress Management program. "We really enjoyed having DeAnna as part of our staff.

**Not only do they learn basic skills needed in any job, many of them are able to get practical experience in areas they plan on majoring in.**

She was a hard worker and had very good computer skills. DeAnna worked on two projects that were very important to the CISM, updating the Resource Directory and logging statistics. She was excellent at both. She was a pleasure to have in the office." Branch Chief Mark Boswell stated that he is looking forward to having this program again next year.

The students returned to school in the fall with new skills and experiences. Summer jobs can be a big part of preparing for future success.



**About the Author:** Tina Goulet is the Acting Chief of Staffing in the Human Resources Division. She has a Masters of Education Degree in Instructional Technology and a Bachelor of Science Degree in Human Resources Management. Tina has 18 years experience in Human Resources with the Federal Government and came to the Federal Law Enforcement Training Center in 1988.

# Use of Force: Are Continuums Still Necessary?

by John Bostain

Those of us in the law enforcement community know them by many names, such as Use of Force Continuum, Use of Force Model, Use of Force Ladder, or Use of Force Matrix. Regardless of what they are called, visual models depicting progressive escalation and de-escalation of force have become a mainstay in the law enforcement community. There is a legitimate debate among police trainers, administrators and attorneys as to whether Use of Force continuums still serve a vital function in the modern law enforcement agency. The purpose of this article is not to take sides on the issue, but rather to examine the facts, and allow the reader to make an informed decision as to whether continuums still serve a purpose in their agency.

Use of Force Continuums have been used in law enforcement training for many years. According to Bruce Siddle, founder of PPCT Management Systems and author of “Sharpening the Warrior’s Edge”, the first Use of Force models were based on early models found in U.S. Army Military Police Manuals from the early 1960’s.<sup>1</sup> Siddle also indicated that those models may have been based on models developed by France in the mid 1940’s. According to police defense expert George Williams, “in the late 1960s, law enforcement trainers who sincerely desired to assist officers in properly employing force developed force continuums.”<sup>2</sup> The Federal Law Enforcement Training Center (FLETC) first developed its own Use of Force Model as a result of the Use of Force project which began in September 1990.

Regardless of when they were developed, Use of Force Continuums have been a foundational element of law enforcement training for the past twenty years.

Whether one is for or against the use of continuums in training, an objective look at most continuums will reveal a number of pitfalls that may limit their usefulness. The most obvious pitfall is that Use of Force Continuums are not typically based upon the standard established by the U.S. Supreme Court in Graham vs. Connor<sup>3</sup>. The *Graham* court established the standard for Use of Force that applies to all American police officers, regardless of jurisdiction. The *Graham* court held that Use of Force used by police officers is judged upon the “objective reasonableness” standard of the Fourth Amendment and incorporates the concept of the totality of the circumstances. In *Graham* the court specifically stated “the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application”<sup>4</sup>, but that is exactly what Use of Force Continuums attempt to do. Additionally, most Use of Force Continuums do not address the

concept of the totality of circumstances. Most continuums are structured in such a way that a specific subject action equates to a specific officer response, regardless of the totality of circumstances known to

the officer at the moment force was used. Experienced law enforcement officers know that Use of Force incidents do not occur in a vacuum. There are factors such as known violent history of the suspect, duration

See the Use of Force Charts  
inside front and back covers  
of this issue.

of the action, officer/subject variables, and other facts that make up the totality of circumstances. Rather than a specific response to a subject's actions, there may be a wide range of reasonable responses from which an officer may choose.

Another problem is there is no consensus on the definitions used in the various models. Passive resistance may mean many different things to many different officers. One officer may view passive resistance as a protestor who refuses to stand up, while another officer perceives that same protestor as actively resistant. Who is right? Active resistance is generally defined as threatening an officer;<sup>5</sup> shoving, striking, wrestling with, and even biting an officer.<sup>6</sup> In contrast, passive resistance is described by the following suspect actions: (1) remaining seated, refusing to move, and refusing to bear weight;<sup>7</sup> (2) protestors going limp, or persons chaining themselves together and covering their hands with maple syrup to impede the use of handcuffs;<sup>8</sup> (3) protestors employing lock-down devices that immobilize their arms and prevent their separation by police, although the protestors could disengage themselves from the devices.<sup>9</sup> In many instances, continuums define actions as active resistance which the courts have defined as passive resistance. These inconsistencies only add to the confusion an officer may experience when trying to apply concepts taught by a model in a dynamic Use of Force incident.

Finally, most Use of Force continuums are just not practical from an application standpoint. While they may certainly have benefit in explaining Use of Force to juries in a sterile, quiet courtroom environment, they hardly represent the "tense, uncertain and rapidly evolving"<sup>10</sup> circumstances faced by police officers in the field. Linear models, progressive models, or whatever name one may call them, encourage the officer to try to find the minimal amount of force necessary to control a subject's actions. What happens when that minimal amount of force fails to control the subject?

The officer now has to use even more force to control the subject, which is likely to lead to more injuries to both the officer and the subject who is resisting arrest. At a recent law enforcement trainer's conference this analogy was used:

"If there was a fire at your home, would you want the responding firefighters to attempt to calculate the minimal amount of water that is necessary to put out the flames, or would you prefer them to use the reasonable amount it would take to get the fire out? If they attempt to use the minimum amount of water, and it doesn't work, the fire will most certainly get worse"<sup>11</sup>

**Reduce hesitation  
by teaching officers what they can  
do rather than what they cannot.**

I think most of us agree that if it is our house burning to the ground, we want the firefighters to use the reasonable amount of water, not the minimal amount.

Some trainers attempt to compensate for this obvious flaw with continuums by employing what is often called the "one plus rule", which means the officer should employ a response that is one level above the subject's resistance. Under that theory, it could be argued that an officer would be justified in using deadly force against every assaultive subject. Such confusion does little to help officers to make reasonable decisions. There is little purpose for a Use



of Force continuum, if it requires modification such as the “one plus rule” to be useful. It should also be remembered that the “one plus rule” is yet another concept in Use of Force training, while longstanding, is not founded upon the prevailing case law set forth by the Supreme Court.

So how do we reduce the confusion that some officers feel when using force? The Federal Law Enforcement Training Center (FLETC) has dramatically changed its approach to Use of Force training in recent years. A visitor to the FLETC may notice that the FLETC Use of Force Model has been removed from the walls of the classrooms, mat rooms and firing ranges. They are being replaced by posters which show the constitutional standard regarding Use of Force as held by the Supreme Court in Graham vs. Connor and Tennessee vs. Garner. The FLETC approach is designed to encourage officers to make objectively reasonable decisions based upon the facts of a situation, rather than the subjective principles defined in the Use of Force Model.

Recognizing the potential pitfalls of using models and continuums, the FLETC approach helps students focus on making Use of Force decisions based upon the same facts that will be used by the courts to determine the reasonableness of a particular Use of Force.

The first step in the FLETC approach is legal understanding. All Use of Force training at FLETC is founded upon the U.S. Supreme Court case Graham vs. Connor and Tennessee vs. Garner. Rather than attempt to scare students with the threat of liability for using force, FLETC instead focuses on the pro-law enforcement language used by the *Graham* court, to teach students what the law tells them they can do, rather than what they cannot. FLETC instructors attempt to dispel the various myths regarding Use of Force such as “officers can never shoot someone in the back,”<sup>12</sup> “officers can never shoot an unarmed person,”<sup>13</sup> and “officers must exhaust all lesser means before using deadly force” by providing case law examples of where courts have determined such actions were reasonable based upon the totality of circumstances. Further myths that are

dispelled are “officers must give a verbal warning prior to using deadly force,”<sup>14</sup> “officers cannot use deadly force on suspects wielding an edged weapon until they are within 21 feet,”<sup>15</sup> and “officers must be in fear for their lives before using deadly force”. By dispelling these types of myths through the use of case law, students are less likely to hesitate during a Use of Force incident. A legal foundation, through the use of applicable case law, is the basis for the entire FLETC Use of Force approach.

The second step in the FLETC approach is to teach students to be mentally prepared to use force. Building upon the legal foundation, officers are encouraged to be proactive rather than reactive in their application of force. Students are taught that the early (proactive)

application of reasonable force will result in less overall force used, fewer injuries to suspects, and fewer injuries to officers. This is based upon the premise that if the subject is controlled earlier, the situation does not have a chance to deteriorate to a point where more force is

needed to control the subject. The mental preparation portion of the training also teaches officers to be aware of the factors that may cause them to unnecessarily hesitate in a critical incident. An unfounded fear of liability, overly restrictive agency policy, fear of the media, and personal beliefs are all factors that may cause hesitation in a Use of Force incident. Students are taught how to resolve these issues in order to make better decisions under stress.

The third step in the FLETC approach focuses on report writing. This aspect of the program is important, because it relates to reducing the officers exposure to civil or criminal liability. Many law enforcement reports are unintentionally filled with conclusions rather than facts. Officers tend to use “police language” to describe their actions rather than facts. Look at the following excerpt from a police Use of Force report:

“When I told the suspect he was under arrest he became non-compliant. When I attempted to handcuff him he became actively resistant. I

**Verbal warnings  
are Not  
Always Required.**



deployed my OC spray, which was ineffective, and caused the subject to become assaultive. At this time I deployed my baton and struck him three times, which caused him to go to the ground, where he was handcuffed”

Not a bad report, right? It could be better, but it has the basic facts, right? The problem with the above excerpt is that it actually contains very few facts. It uses conclusions such as “non-compliant”, “actively resistant” and “assaultive” to justify the officer’s actions. During report writing exercises, FLETC instructors specifically look for these types of conclusions, and make the officers rewrite the reports and articulate the facts upon which the conclusions are made. When they are finished, the report may look like this:

“When I told the suspect he was under arrest, he turned to me and stated ‘I’m not going back to jail’. As he faced me, his hands became clenched, and he was staring at me like he was looking right through me. His right leg was set back from his left, in what appeared to be a stance used by a boxer. I approached the suspect in an attempt to control him for handcuffing. When I touched his arm, he quickly pulled his arm away from me, and raised his fist up to nearly his eye level. I sprayed him with O/C spray to which he replied, ‘that ain’t gonna work on me,’ and rapidly closed the distance between us, with his fist still raised. I pulled

out my baton, opened it, and struck the suspect approximately three times, which caused his leg to bend, and go down to the ground. I then went in and handcuffed him.”

Is that a perfect report? Maybe not, but which report best illustrates the true nature of the event? By training officers to explain their actions by articulating facts, and not merely stating conclusions, they will stand a much better chance of obtaining a favorable outcome if faced with civil or criminal action.

In addition to articulating facts rather than conclusions, the FLETC report also makes the students articulate the factors outlined by the Supreme Court in Graham vs. Connor and Tennessee vs. Garner. The FLETC Use of Force form has blanks that make students articulate the severity of the crime, whether the subject was an immediate threat, active resistance of the subject and whether the subject was attempting to evade arrest by flight. It also contains an entire page dedicated to articulating the totality of circumstances known to the officer at the moment force was used. Each of the elements in the Use of Force form is designed to help the student articulate the incident consistently with the standards provided by the Supreme Court.

The fourth step in the FLETC process is practical application of the classroom information through the use of reality-based training. In addition to all of the other reality-based training they receive throughout their program, students have a four hour Use of Force laboratory, which is designed to test Use of Force skills specifically. Students respond to four scenarios, which require a wide array of force response options to be used. The students are purposely placed into situations that are designed to overcome some of the various myths previously discussed in the classroom. One scenario is designed to see if the students, when provided with adequate justification, will shoot a suspect in the back. Another scenario requires the students to be proactive in their Use of Force. If the student is not proactive, the situation develops into a shooting situation. At the conclusion of the four scenarios, students complete the Use of Force form. They receive immediate feedback from the instructors if they use conclusions rather than facts

in their report. The instructors also reinforce the case law that applies to their particular scenario.

In addition to the scenarios, students also participate in what are known as transition drills. These drills are designed to teach students how to move, shoot, and transition between their various force response options, all while fending off an attacker. Using Non Lethal Training Ammunition (NLTA), students make decisions and transitions under high stress, in close quarters. Again, the emphasis is on teaching them to be proactive. If they hesitate to use force, the situation generally deteriorates and becomes more difficult to control. Through the use of the scenarios and transition drills, students reinforce the legal and mental preparation principles they learned in the classroom.

All of the training in the FLETC program occurs without using a Use of Force Model or continuum. Rather than introduce a model that may potentially cause confusion and hesitation, the FLETC instead focuses on the standards provided by the Supreme Court: objective reasonableness based upon the totality of circumstances. All of the scenarios, drills, and report writing are designed to help students articulate themselves in accordance with the standards established in Graham vs. Connor and Tennessee vs. Garner.

The training is also designed to reduce hesitation by teaching officers what they can do rather than what they cannot. This philosophy negates the need for a “model”. The debate over whether continuums are still necessary is not likely to end soon. They may still serve a legitimate purpose for some agencies. Clearly the FLETC approach is just one way of teaching Use of Force, not the only way. But hopefully, an open debate of the issue will only result in better training for all law enforcement officers.

<sup>1</sup> Phone interview with Bruce Siddle, 06/07/2006

<sup>2</sup> Williams, George Force Continuums: A Liability to Law Enforcement?, FBI Law Enforcement Bulletin, June 2002 (p14-19)

<sup>3</sup> Graham vs. Connor, 490 U.S. 386 (1989).

<sup>4</sup> Id.

<sup>5</sup> Draper v. Reynolds, 369 F.3d 1270, (11<sup>th</sup> Cir. 2004)

<sup>6</sup> Hinton v. City of Elwood, 997 F.2d 774 (10<sup>th</sup> Cir. 1993).

<sup>7</sup> Forrester v. City of San Diego, 25 F.3d 804 (9<sup>th</sup> Cir. 1994).

<sup>8</sup> “Amnesty America v. Town of West Hartford, 361 F.3d 113 (2<sup>nd</sup> Cir. 2004).

<sup>9</sup> Headwaters Forest Defense v. County of Humboldt, 276 F.3d 1125 (9<sup>th</sup> Cir. 2002).

**About the author:** Instructor: John Bostain is a Senior Instructor at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia. He is the Senior Instructor for use of force for FLETC basic programs. John has been a law enforcement trainer for the past ten years, and has instructed a variety of law enforcement topics such as use of force, defensive tactics, firearms, defensive driving and others. John was previously with the Hampton Police Division in Virginia where he served as a uniform patrol officer, police academy instructor, patrol supervisor and SWAT team member. He is also an advisory board member of the International Law Enforcement Educators and Trainers Association (ILEETA).



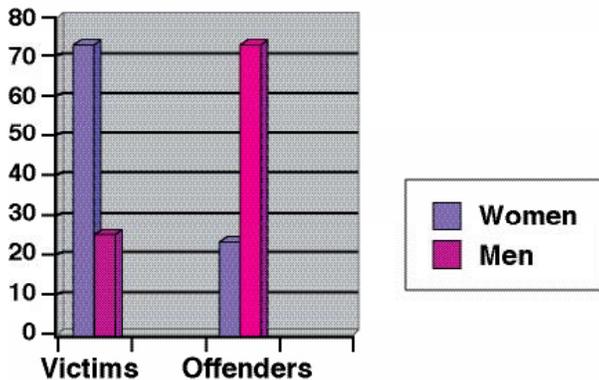
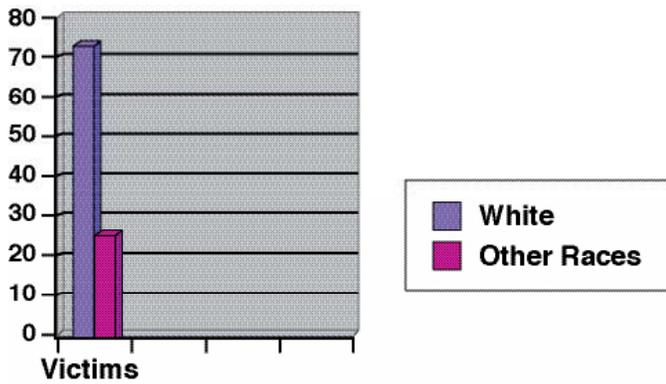
# Domestic Violence Here at Home

*By Scott Santoro*



**D**omestic violence cuts across all socio-economic lines. Around the world, at least one in every three women has been beaten, coerced into sex or otherwise abused during her lifetime.<sup>i</sup> According to Bureau of Justice Statistics, domestic violence

accounts for 11% of all reported and unreported violence. The majority of family violence victims are female (73%), white (74%) and were between 25 to 54 years of age (66%).<sup>ii</sup> Accurate information on the extent of domestic violence is difficult to obtain



because of extensive under-reporting.<sup>iii</sup> That said, approximately 1.5 million women and 834,700 men are raped and/or physically assaulted by an intimate partner each year.<sup>iv</sup>

### What is Domestic Violence?

Domestic violence is a pattern of behavior where one intimate partner exerts power and control over the other that includes both emotional abuse and physical abuse. Often times, the victim is forced to change their behavior in response to the abuse. Additionally, domestic violence occurs in current or former dating relationships, spouses and former spouses, heterosexuals, homosexuals, lesbians, bisexuals and transgender people.

Domestic violence usually occurs when the abuser seeks to control his or her victim by gaining and

maintaining power and control using actual and assumed power. Actual power is described by using physical force; assumed power is psychological or emotional abuse. Both types of power are characterized as strategic, abusive tactics to reinforce this control.

To put it another way, not all acts of domestic violence are criminal. This frustrates many in the criminal justice arena because one cannot arrest or prosecute another for bullying their partner, calling them names or isolating them from their families. However, all these power and control tactics are used by abusers daily. When acts of domestic violence become physical, such as hitting, shoving, stabbing, shooting and stalking another, then the criminal justice system can try to hold these abusers accountable.

One of the best ways to illustrate the effect of domestic violence on others is the Power and Control wheel or pyramid.<sup>v</sup> The wheel has as its center, or axis, all of the psychological tactics and emotionally abusive behaviors used by batterers. The spokes or outer rims describe tools, pressures and rationale utilized in justifying coercive and dominant behavior. This wheel provides “snapshots” of coercive techniques: physical and sexual violence, emotional abuse, intimidation, threats, economic abuse, use of male privilege, attempts to isolate victims, and manipulation and victimization of children.

**Quite frankly, batterers  
commit domestic violence  
because it works.**



## What Causes and Does not Cause Domestic Violence?

There is no one cause to domestic violence. Quite frankly, batterers commit domestic violence because it works. For years, society has believed that domestic violence is a family issue and should not be discussed. Some actually blame the victim for the violence, which ultimately strengthens the power and control exerted by the batterer over the victim.

Batterers make a choice to use violence; it is not a random act. The perpetrator directs the anger and abuse

toward a loved one, not to random actors. Finally, domestic violence perpetrators learn this behavior from the home and from witnessing abuse growing up.

On the other hand, there are many factors that do not cause domestic violence. For example, the victim's illness (such as bi-polar disorder) does not cause violence. Nor does the genetic disposition of the abuser; the behavior is learned through observation and reinforcement. A big misnomer is that alcohol causes domestic violence. Although present in many cases, alcohol does not cause this behavior because

the behavior is deeply rooted. A second myth is that one is always “out-of-control” when committing domestic violence. Actually, the opposite is true; one is very much in control when committing domestic violence.

### Don't Ask “Why the Victim Stays;” Ask “Why the Perpetrator Abuses”

Looking at the victim's behavior as an explanation for the violence takes the focus off the perpetrator's responsibility, and unintentionally supports the abuser's violent behavior. There are many barriers to a victim's safety when leaving a domestic violence situation. These include:

- The relentless behavior of the batterer and fear of what the batterer might do;
- Fear for the children;
- Financial dependence on the batterer;
- Conflicts with religious beliefs (marriage is forever);
- Isolation and lack of support from family and friends;
- Access to the batterer (Keep your friends close and your enemies closer).

As a reference, should you come into contact with a victim of domestic violence, here are 6 things to say to show that you care and are supportive:

1. I am afraid for your safety.
2. I am afraid for the safety of your children.
3. It will only get worse.
4. I am here for you when are ready to leave.
5. You don't deserve to be abused.
6. Domestic Violence is a crime!

<sup>i</sup>Heise, L., Ellsberg, M. and Gottemoeller, M. Ending Violence Against Women. Population Reports, Series L, No. 11., December 1999

<sup>ii</sup>Family Violence Statistics, US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, June 2005.

<sup>iii</sup>Domestic Violence, Administration for Children and Families, US Department of Health and Human Services, 2002.

<sup>iv</sup>Id.

<sup>v</sup>*Domestic Violence: The Law Enforcement Response*, Duluth Domestic Abuse Intervention Project and the Law Enforcement Resource Center, 1988 (revised 1998)



**About the author:** Scott Santoro is a Senior Program Specialist with the Office of State and Local Training, overseeing the Domestic Violence Training Program. Prior to coming to FLETC, Scott was a prosecuting attorney for over 15 years, working in the Seattle area. He began his career with the Seattle Law Department in 1990 and in 1997 was appointed director of the City of Everett's Domestic Violence Unit. During his seven years in Everett, conviction rates for domestic violence crimes increased from 35% to over 70%. This was attributed to an aggressive prosecution of these crimes, on-going training to law enforcement officers and involving the entire community to become more involved in stopping domestic violence.

More information on OSL's tuition-free programs can be found at [www.fletc.gov/osl](http://www.fletc.gov/osl).

## Document Management

Scanning documents has become much more widespread, and in many federal agencies has become a requirement for all investigations. Although scanning is a fairly straightforward operation, the output resolution and file type should be considered. This can have a dramatic effect on file sizes. In addition to scanning, technology can actually “read” the document as opposed to seeing it as a picture of a document. The technical tool which provides this service is “optical character recognition” software or OCR, which has improved significantly in quality over the last several years. OCR software allows the investigator to scan a document and produce editable text. Once again, this allows direct input without entering data by hand. OCR software is a standard tool on most scanners and can be used with varying degrees of reliability. However, there is now truly great OCR software on the market that will read documents with over 90 percent accuracy. Three examples of this are OmniPage Pro Plus Version 15, ABBYY Fine Reader®, and Canada’s own Adlib Software™. A good OCR package has the capability to educate or “train” the software on a particular type of document. This means that when you initially scan the document, you proofread what the software is reading and make immediate corrections. The software “remembers” the corrections and applies them to future documents of this type. Proofreading the data for errors is critical whether the investigator enters it manually or the computer reads it through the use of OCR.

The use of barcoding in document management is also becoming more prevalent. There are several software companies that market products that support barcoding. Barcoding is simply a type of font that is installed, and the two most common are 39 or 128. Once the barcode has been printed on the item, it can then be easily read by the reader “wand,” which is actually a type of scanner.

If documents are to be scanned, they can be numbered during that process with the use of electronic Bates

numbering software. This can be purchased very inexpensively. There are also more elaborate systems which will photocopy or scan as well as place a number on the copy or scan. Your agency or organization may not want an original marked. Many courts now readily accept the copies or scanned images. If these are used, the originals should always be kept and maintained in a secure location to be presented if necessary.

## Case Presentation

In addition to using computer technology to plan and organize the investigative product, the effective investigator realizes the value of creating visuals to assist him or her throughout the investigation. The days of drawing diagrams on a board or flip chart are gone, and the use of technology is critical to effective communication. Visuals can be used in briefing other agents for surveillances, search warrants, arrest warrants, meetings with supervisors, investigative planning, and selling your case to the U.S. Attorney’s office or other prosecutors.

PowerPoint and other presentation software have brought us a long way in a short time. No longer will flip charts and copied hand-outs suffice when we have the ability to create sophisticated visuals replete with color, animation, charts, graphs, and photographs. However, as with the case with all investigative products, the visuals must be accurate as inaccuracies will render the conclusion that you are incompetent or worse.

There are several different types of visual diagrams that can be used. The key is to determine the purpose of the diagram or presentation as well as identifying the concept to be communicated. Is the diagram going to be used for court presentation purposes or will it be serving only as a visual investigative aid? In presenting your case, does the visual explain the “who, what, where, when, and how?” Does the diagram indicate an accurate time line of events? The following are a few techniques used to visually present investigative findings:

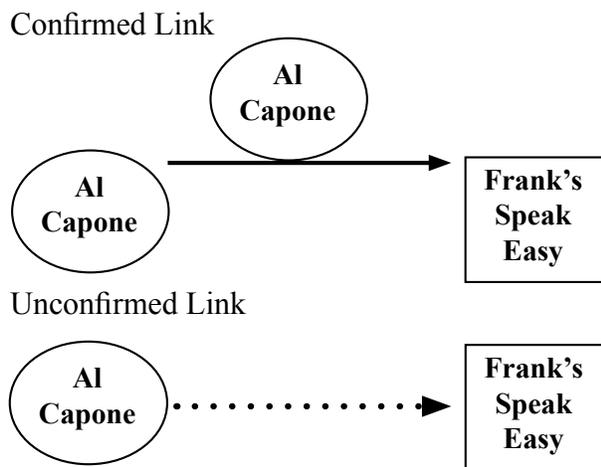
1. Link Analysis shows the relationships among entities (individuals, organizations, etc.)
2. Flow charting is employed to show the flow of some commodity (money, narcotics, stolen

goods, etc.) among a set of entities – people, places, organizations, and so on.

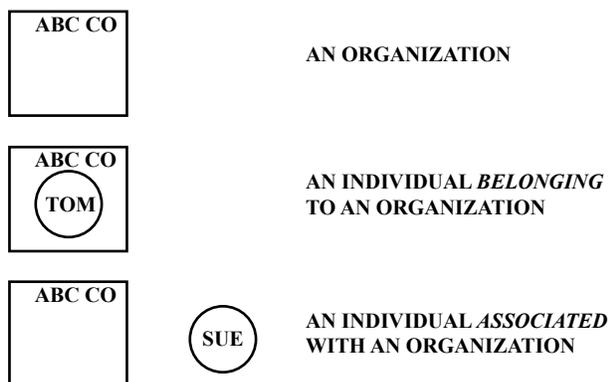
3. Event charting shows the chronological linkage among related events.
4. Activity charting shows the relationship among a set of related activities. It can be used to determine and describe the pattern or sequence of a criminal operation.

After you have decided which visual diagram to use, consider some of the following guidelines when you are creating your investigative diagram or your presentation:

1. Circles represent individuals.
2. Confirmed links are shown with solid lines and suspected links with dotted lines:



3. Squares represent organizations.



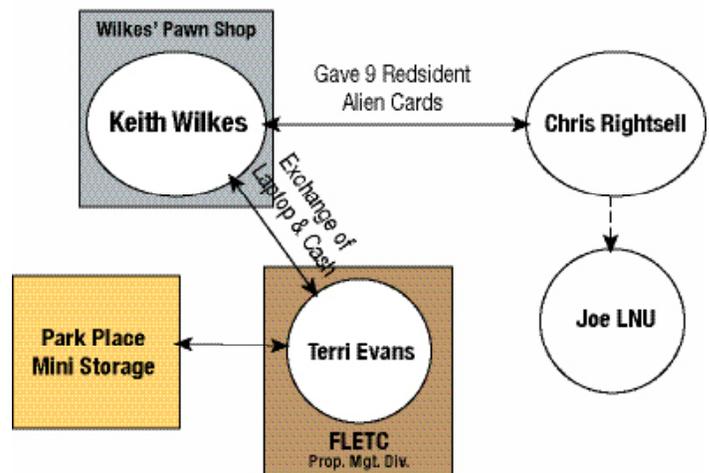
4. Avoid circling or crossed lines as they tend to confuse relationships.
5. Try to avoid the use of clip art, sound effects, spinning objects, too much text, and too many fonts.

6. Check your visual with spell check and make sure that the text is easily read.

In addition to PowerPoint, there are numerous other good presentation software which can be an effective tool for the investigator. A few are SmartDraw, Visio, RFFlow, TimeMap, Analyst Notebook, and SanctionII. SmartDraw, Visio, and RFFlow are drawing software. In addition, RFFlow can also do analysis of data such as telephone tolls as well as being a powerful tool for drawing flowcharts, organization charts, and other kinds of diagrams. The Department of Justice has purchased licenses for TimeMap, CaseMap, and SanctionII for all U.S. Attorney's Offices throughout the United States. SanctionII is an integrated document management and video presentation application for organizing and displaying videotaped depositions, transcripts, documents, audio, and text simultaneously.

### Example of Visual Diagram

#### Keith Wilkes' Investigation SGTF



There is a tremendous variety of software currently on the market that claims to work in law enforcement venues. These range in price from \$50 to well into the thousands of dollars. Investigators, agencies, and organizations considering the purchase of case management software should evaluate each for simplicity of learning, ease of use, flexibility, and cost

effectiveness. There are many interesting and useful software functions that sound great and have wonderful marketing value, but actually have little or no “real world” applications to the job you are doing.

### **Federal Law Enforcement Training Center Case Organization and Presentation Training Program (COPTP)**

Case Organization and Presentation Training Program (COPTP) is a one-week course designed for investigators in the local, state, and federal arena, who manage complex or voluminous cases. One of the most difficult problems investigators have is convincing a prosecutor or ultimately a jury that the defendant is guilty of the accused crime. In today’s environment, where the challenge is not in obtaining information, but in organizing and managing it, investigators need to digitize their evidence in a clear, organized multimedia presentation. In a complex case, this problem can be compounded by the need to present hundreds (or thousands) of exhibits to prove individual financial transactions. This training program teaches skills in organizing the relevant investigative leads, subpoenas, witness and attachment lists, as well as search warrant results. Thousands of evidentiary documents can be stored on a CD-ROM, projected as needed onto a screen, and they can be located and sorted using a database program. Video clips, digitized photos, and other images can also be linked to the document database and accessed instantly during the investigation and trial.

To address the issues for handling masses of documents used in cases, this training program integrates all

aspects of organizational software, charting and analysis software, and presentation (multimedia) software to give students the ability to formulate a winning case strategy and courtroom presentation. This program involves using basic software available to any investigator as well as training in state-of-the-art technology given to the students. The course culminates in a multi-faceted presentation of a case that has been created using the tools taught. This class is appropriate for any investigator with basic computer skills who investigates issues in the criminal, civil, or administrative realm.

Federal applicants should contact the FLETC Training Coordination Division at (912) 267-2421 for enrollment and pricing information. Federal applicants employed by an pg 7 General agency should call the Inspector General Criminal Investigator Academy at (912) 261-3759. Non-Federal and International applicants should contact the FLETC, Office of State, Local and International Training at (800) 743-5382. Upon acceptance in a program, a confirmation letter with details on housing, transportation, and schedule will be mailed to the participant.

*For additional information related to the COPTP program contact:*

*Program Coordinator  
Technical Investigations Branch  
Computer and Financial Investigations  
Federal Law Enforcement Training Center  
912 267 2394 tel 912 267 2500 fax*



**About the author:** Judi Langford is a former Senior Instructor in the Computer and Financial Investigations Division at FLETC and program coordinator of Case Organization and Presentation Training Program, a 36-hour advanced course designed to assist in managing complex investigations. She is a retired Senior Special Agent with the Secret Service. She has previously taught tactics and interviewing as well as numerous law enforcement classes at the Secret Service Academy and has most recently taught at the DEA Academy.

# The Law Enforcement Advanced Interviewing Training Program (LEAINTP)

*By Andrew Smotzer*



The Law Enforcement Advanced Interviewing Training Program (LEAINTP) is taught by the Behavioral Science Division (BSD) at the Federal Law Enforcement Training Center (FLETC). If you're an 1811 Criminal Investigator and have been working in the field for several years, you may want to come back to the FLETC in Brunswick, Georgia to attend this outstanding program! In the LEAINTP, interviewers will learn to use their own knowledge and experience to obtain additional and more accurate information from people. Although experienced personnel already have personal techniques or methods for interviewing

people, these can be increased by learning why certain techniques are effective, while others are ineffective.

Program instruction will teach participants how to obtain information effectively through a multi-disciplinary approach to combine linguistics, psychology, criminology, and sociology with the principles of influence, negotiation, and bargaining.

Throughout the LEAINTP, participants take part in lecture, laboratory, and practical exercise sessions. In a series of participatory exercises, the participants also evaluate their own potential strengths and weaknesses. Using the BSD laboratory facility, participants interview role players acting as victims, witnesses, and suspects. These interviews are videotaped to provide the participants an opportunity to critique their own performances and to observe other experienced interviewers.

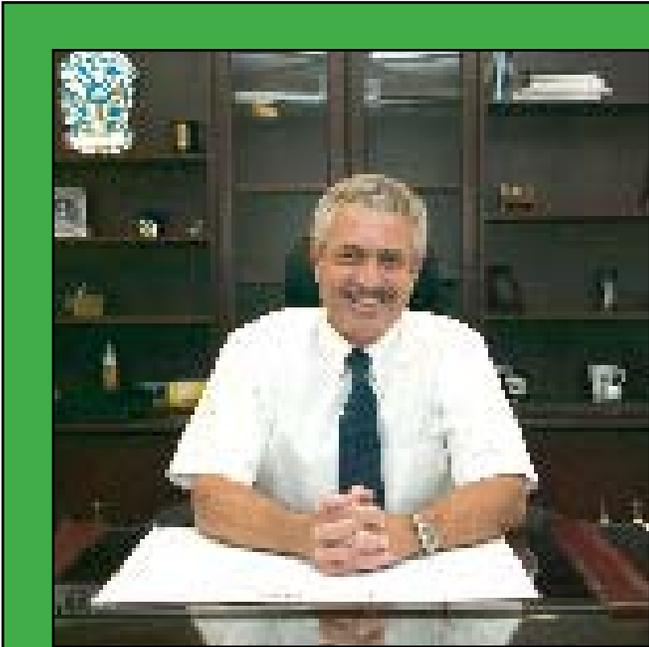
The LEAINTP is a 36-hour program that begins on a Monday and concludes on Friday. Each day will begin

with four hours of lecture. The lectures cover a variety of interesting subjects such as “Report and Baseline Establishment,” “Detecting Deception,” “Obtaining a Truthful Statement From a Subject,” “Self-Incrimination,” and “Current Issues in Law Enforcement Interviewing”. The last topic that addresses current issues is extremely interesting because information on the polygraph and personality inventories as they relate to Gitmo and the Middle East are shared. There are also three practice laboratories conducted in the afternoons. One scenario is an Internal Affairs Investigation Interviewing Laboratory, the second laboratory concerns Rapport and Baseline Establishment, the third laboratory is one of a criminal investigation nature, and the final exercise is a Confrontational Interviewing Practical Exercise where all students are critiqued.

In my opinion, the strength of this program lies in the experience and diversity of the instruction. The BSD staff has an outstanding reputation with experience levels that range from several years to four decades of law enforcement and criminal investigative experience. Members of our staff have worked with Federal, state, and local agencies and let’s not forget the military branches of service. Not only has our staff worked all over the United States, but many have worked internationally as well. The program has been rated highly by our students, and we are always looking at ways to enhance the training.

**If you’re an 1811 Criminal Investigator and have been working in the field for several years, you may want to come back to the FLETC in Brunswick, Georgia to attend this outstanding program.**

For more information concerning the program and how to register contact Senior Instructor Dave Proctor of the BSD at 912- 267-2741 or Branch Chief Andy Smotzer at 912-267-2669.



**About the Author:** Andrew A. Smotzer has served the FLETC for over 24 years. He is a former Secret Service Uniformed Division Officer and Firearms Instructor. At the FLETC, he has served as a Lead and Senior Instructor. He is currently a Branch Chief in the Behavioral Science Division at the FLETC in Glynco, Georgia.. He is a college graduate and author of numerous articles in several nationally published law enforcement magazines.

# FLETC Use of Force Training (continued)

## Frisk

### Justification

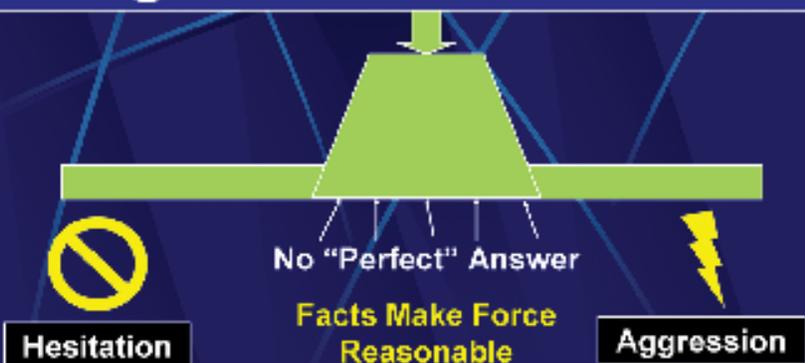
1. Reasonable Suspicion
2. Presently Armed and Dangerous

### Scope

1. Pat Down
2. Outer Clothing
3. Weapons

Facts, Not Conclusions

## Range of Reasonableness



Facts, Not Conclusions

## Conclusions vs. Facts

### Bad

Noncompliant

Threat

Fear

### Good

Ordered Twice to Drop Weapon

Two Men & Gun

Pointed at Me

Facts, Not Conclusions



## **FLETC Vision Statement**

**We must provide fast, flexible, and focused training to secure and protect America.**

## **FLETC Mission Statement**

**We train those who protect our homeland.**

## **FLETC Values**

**Respect  
Integrity  
Service  
Excellence**



**Homeland  
Security**

Federal Law Enforcement Training Center  
U.S. Department of Homeland Security  
1131 Chapel Crossing Road  
Glynco, Georgia 31524  
[www.fletc.gov](http://www.fletc.gov)



**Homeland  
Security**