

Federal Law Enforcement Training Center

# FLETC

## *Journal*

Volume 5, Issue 1 ❖ Spring 2007



# Sensory Experience

THE NEW FLETC SIMULATION LAB

# The Next Generation of Training



# Contents

## **5 WHAT IS AL-QAEDA?**

Understanding this global terrorist threat

## **9 MEET THE PARTNERS: NCIS**

A look inside the *guardians of the war fighters*

## **13 THE FOURTH AMENDMENT**

Ruling results from the Supreme Court's 2005-2006 Term

## **19 WELCOME TO STUDENT SERVICES**

A behind the scenes look at the division where life begins for students at the FLETC

## **22 PASSING IT ON**

One instructor reflects on his duty to share his knowledge, skills and experience with the students he teaches

## **24 COMPUTER-BASED TECHNOLOGY AND SIMULATION**

Read about the newest FLETC training using computer graphics simulation technology

## **35 LAWSUITS: THE OVERBLOWN WORRY**

Why lawsuits against federal officers are not as threatening as they sound

## **38 SHARING LESSONS LEARNED**

How the importance of experience can benefit others through the Lessons Learned Work Group

## **40 TRACKING DEVICES**

New federal rule of criminal procedure addresses warrants for tracking devices

## **42 NEW BUG IN TOWN**

How to protect yourself against staph infection (methicillin-resistant staphylococcus aureus)

## **45 LESS THAN LETHAL BUT STILL LETHAL**

Stunning report on dynamic entry and distraction devices may now pose legal liabilities



## 24 Simulation

Val Atkins, Division Chief, Training Innovation Division welcomes the FLETC staff to experience the newest computer based training simulations technology



## 9 NCIS

Learn about the diverse mission responsibilities of this partner organization to the FLETC



45

## Less Than Lethal

Why flash bangs may pose a liability potential

# Having Words



**EDITORIAL STAFF.** Front row (left to right): Steve Brooks, Marie Bauer, Susan B. Thornton, Lynn Mercer, and William Norris; Back row: Fred Charles, Andy Smotzer, Sam Webster, Mark Ward, Richard Hazzard.

This issue of the FLETC Journal reflects how dramatically the world and law enforcement training have changed in the 37 years of FLETC's existence. We have articles about threats – Al Qaeda and potentially fatal staph infections – that were not law enforcement issues in the 1970's. We also have articles addressing new legal trends and technologies that will help us meet the new and emerging threats. In 1970, we trained in a classroom environment with largely static training. We now provide dynamic training in realistic environments, using adult-centered learning techniques.

This Spring, FLETC opened a new building at the Glynco campus devoted entirely to the development, adaptation, research, evaluation and implementation of simulation technology in training. Simulation already enables us to provide a wide range of realistic scenarios in firearms training, without risk to our students and staff. Computer-based training gives students an opportunity to learn at their own pace. Technology continues to expand our reach beyond the classroom and simulation will enable us to teach students how to handle dangerous situations while the students remain in a safe environment. New threats and challenges to law enforcement come at us fast, and it is our mission to prepare our students to meet them.

The Journal has been available in print since our first issue in Spring 2004, and to FLETC staff and Partner Organizations through our Intranet. We are happy to announce that the Journal is now available electronically from the FLETC website at [www.fletc.gov](http://www.fletc.gov).

*Marie R. Bauer*



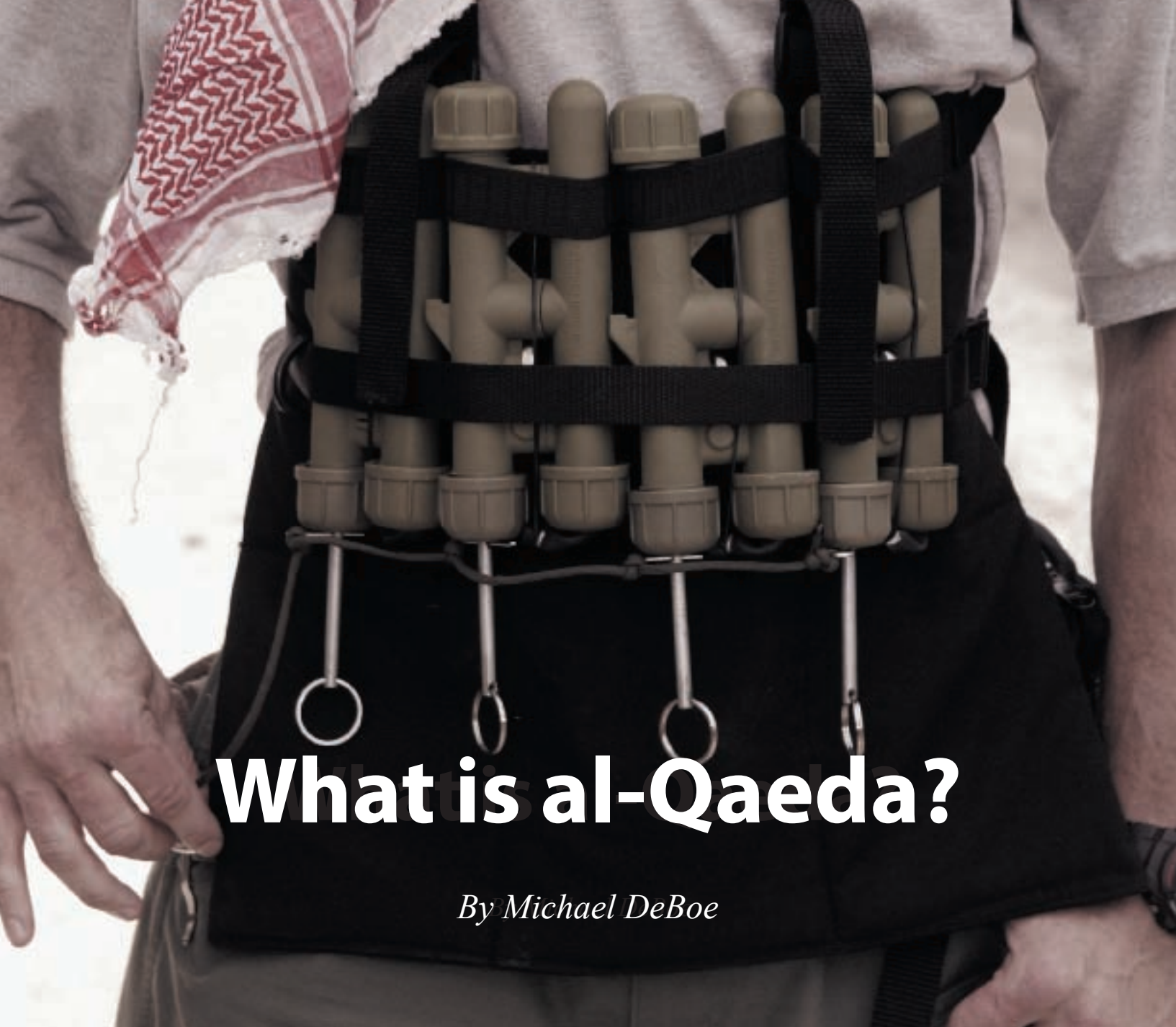
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# What is al-Qaeda?

*By Michael DeBoe*

This question poses many possibilities, one of which is an evolution of terrorism for the 21<sup>st</sup> century. Terrorism's ultimate goal is to create fear through the use of abnormal force. Gone are the days of hijackings and kidnappings associated with terrorist events of the 1970s and 1980s, though isolated incidents still do take place. Attacks using very effective weaponry have emerged. An evolution to another type of smart bomb system, the suicide/homicide bomber, is very effective in its targeting effects and with generating media coverage.

Many associate al-Qaeda with Osama bin Ladin or the War on Terror. However, understanding these terms requires not a western perspective, but an understanding of Jihad,

gravitating away from the term "Holy War," the Kharwarij, and understanding that asymmetrical warfare is the type of fight America's adversaries will choose in the 21<sup>st</sup> century.

Over time, the term "Holy War" has been translated into Jihad, either intentionally or unintentionally. This translation is not correct according to Islam, and separation of these two terms is necessary for further understanding. "Holy War" originated during the Crusades by European Christians who sought the liberation of Jerusalem and other Christian holy sites from the Turkish rule. The actual Arabic translation for Holy War, though, is "Harbun Muqaddasatu." The Koran makes *no* reference that Jihad is synonymous with Holy War.

Within the Koran, Jihad is striving in the way of Allah by the pen, tongue, hand, media, and if inevitable, with arms. Jihad in Islam does not include striving for individual or national power, dominance, glory, wealth, prestige, or pride. Jihad evolves around two principles: inner or greater Jihad “a personal or inner struggle”; and outer or lesser Jihad “an external battle or war against aggressors.” Islamic law allows the right to self-defense, but regulates this so it cannot be abused; the basic premise is another’s injustice does not excuse one’s own injustice.



Many Muslims consider outer Jihad and the use of suicide bombers for martyrdom extremely controversial. The Ulema (Body of Professional Scholars of Islam), must sanction this form of outer Jihad based on an Ijma, or consensus from a Mufti (General Counsel to provide/approve ruling). An example of a properly sanctioned “Jihad” occurred during the Soviet Union’s invasion of Afghanistan during the 1980s.

Currently, the use of terrorism by al-Qaeda and other extremist groups are at odds with Islamic law. Modern Muslim terrorist groups are more rooted in national liberation ideologies of the 19<sup>th</sup> and 20<sup>th</sup> centuries than they are in the Islamic tradition.

Overall, the majority of Muslims do not condone the use of terrorism and feel that a select small minority of separatists have misused these traditions of Islam. This small minority is composed of the dissenters called Khawarijites. The root word Khawarij (pronounced Ka-wat-tage) means to secede.

During early Islamic history, the death of the Prophet Mohammed caused a split in Islam forming the Sunni and Shi’a (aka Shiite) sects.

The cause for this division was a disagreement over who would succeed Mohammed as the next leader. The Sunnis believed the leadership should go to the most capable leader based on the Ijma of the Umma. The Shi’as believed the leadership should remain within Mohammed’s family, going to his eldest son, or a male descendant.

In the year 656, a further split in Islam took place. Prior to the Battle of Siffin, both leaders agreed to resolve their dispute by arbitration of the Koran instead of conflict. Muawiyya, the governor of Damascus, proposed this arbitration, and Ali, the fourth Caliph, accepted.

Ali’s acceptance created animosity with some of his followers who felt Ali had lost face and that he had shamed and disgraced them before Allah. The followers who felt betrayed seceded from Ali and created a further division in Islam. Those who seceded were Khawarijites, who demanded Jihad as the only way to settle God’s will. This succession and diversion from mainstream Islamic thinking is similar with the rhetoric and ideologies of present day groups such as al-Qaeda and the Islamic Jihad. These

groups are autonomous through self-imposed authorities and interpretations of the Koran to justify their Jihad.

Another self-imposed interpretation with the Khawarij involves the unification of all Muslim countries under the rule of the “Islamic Caliphate.” The Islamic

Currently, the use of terrorism by al-Qaeda and other extremist groups are at odds with Islamic law.



Terrorism is a deliberate attempt to create terror through a symbolic act involving the use or threat of abnormal lethal force for the purpose of influencing a target group or individual.

Caliphate would adhere to strict Muslim traditions and reeducate moderate Muslims who had strayed. The Islamic Caliphate would also consider Jihad to regain Muslim holy sites within Jerusalem. The Taliban in Afghanistan was the first modern day attempt at establishing an Islamic Caliphate. However, most Muslim countries have no desire to unify under such restraints, preferring the modernity associated with the 21<sup>st</sup> century.

Where does this context of hatred originate? One possible reason lies with the Kharwarij's incompatibility between modernity and traditionalism. Muslim culture has often played an important and influential role throughout history, but advancements in technology and the globalization of the late 20<sup>th</sup> century created significant gaps between the haves and have-nots. While the haves, represented by the oil rich countries of the Middle East, are modern and prosperous, many Islamic extremists consider them puppets of Western culture. The have-nots are usually the failing, failed, or collapsed countries which have few, depleted, or no natural resources to enhance prosperity. Subsequently, they have become disenchanting, and are the prime recruiting targets for extremist groups promising a better life. This is a common technique used by the Islamic

Jihad and other terror groups in their war against the Israeli occupation in the West Bank and Gaza. The leadership of these groups have learned how saying the right thing at the right time is key as to why and how disgruntlement develops into hatred. Anger and depression work in a continuous cycle if left

untreated, and, in this situation, create the ideal conditions for "persuasive influence through relative deprivation."

Relative deprivation is the discrepancy between value expectations (individual wants) and capabilities (what an individual has). Tension develops from this discrepancy and disposes men to violence.

For most U.S. citizens, terrorism before Sept. 11, 2001 was distant, usually occurring outside of the United States. Since terrorism is now a concern inside the United States, Americans must understand terrorism and its goals.

Terrorism is a deliberate attempt to create terror through a symbolic act involving the use or threat of abnormal lethal force for the purpose of influencing a target group or individual.

Throughout the ages, terrorist acts have played a role in warfare. These are asymmetrical in nature, in that an inferior force, either in size or technology, will employ terrorism to negate the position of the superior force.

The differences between symmetrical and asymmetrical warfare usually has to do with the scale and type of engagement. Symmetrical warfare involves conventional engagements between massed militaries using each other's strengths and weaknesses through offensive and defensive actions to see which side has the endurance to outlast the other. It is usually governed by either a chivalrous code or rules of war, which both sides acknowledge. Today, the U.S. military operates by a set of international conventions called the Law of Armed Conflict. Most other militaries also acknowledge these conventions and have an established set of rules they follow. The Geneva Convention, the Law of Armed Conflict, and other established rules protect noncombatants, holy sites, hospitals, schools, and other off-limit areas. Asymmetrical warfare involves unconventional military forces, guerrilla forces, freedom fighters, and terrorists who exploit and attack the weaknesses of the stronger foe. These weaknesses might include targets that are off limits in symmetrical warfare.

Asymmetrical threats are: Unusual in our eyes; irregular and unrecognized by the laws of warfare; unmatched within our arsenal of capabilities and plans; highly leveraged against our assets (particularly military and often civilian targets); intended to work around, offset, and negate what in other contexts are our strengths; difficult to respond to in kind; difficult to respond to in a discriminate and proportionate manner.

Those who engage in asymmetrical warfare consider warfare as a continuous activity; Westerners on the other hand, view distinct separations between peace and war. Western powers typically see a formal declaration of war, a period of combat operations, and then a conclusion represented by a cease fire or surrender. Terrorists, such as al-Qaeda, understand this war is based upon "attrition and evasion" and have the will to fight when it best suits them and hide when it does not. Countering asymmetrical

threats will require an identification and rectification of vulnerabilities within our laws and security oriented practices and procedures. It will also require the effective employment of U.S. resources, including intelligence, counterintelligence, and law enforcement agencies working together. Additionally, the United States must truly learn to understand the adversary's culture, social structures, history, ethnic diversity, religious parameters, and psychological factors to exploit their weaknesses. Once these are understood, a coordinated effort by the United States and its allies can then effectively fight terrorism. The pursuit and neutralization of problems in countries and regions where instability and lawlessness breed discontent and promote terrorist recruitment must remain a long-term high priority. These efforts could take a decade or longer.

Terrorists, such as al-Qaeda, understand this war is based upon "attrition and evasion" and have the will to fight when it best suits them and hide when it does not.

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**About the Author:** Michael J DeBoe graduated from Bellevue University and the Joint Military Intelligence College. He has been with the United States Air Force's Office of Special Investigations (AFOSI) since September 1998, deployed in support of Operation Iraqi Freedom, and assigned to the AFOSI Academy in August 2004. He has been a detailed instructor assigned to the Counterterrorism Division, since September 2005.





# Meet the Partners

## NCIS: GUARDIANS OF THE WAR FIGHTERS

*By Phyllis U. Wade*



In a dangerous and complex world, threats against America and its military forces continue to proliferate and evolve. Standing between these threats and the people, families, and assets of the United States Navy and Marine Corps is a unique, highly-trained, and effective team of special agents, investigators, forensic experts, security specialists, analysts, and support personnel: the Naval Criminal Investigative Service, better known as NCIS.

NCIS traces its roots back to the early days of the Office of Naval Intelligence (ONI). In anticipation of the United States entering World War I, ONI was reorganized and given responsibility for investigating espionage and sabotage directed against Department of the Navy (DoN) assets. The ONI agents assigned to these missions were the forerunners of the present day special agent corps of NCIS. In 1966, the name Naval Investigative Service (NIS) was adopted to distinguish the organization from the rest of ONI. In 1992, the first civilian director was appointed and the name of the agency changed to the Naval Criminal Investigative Service.

This team of federal law enforcement professionals is dedicated to protecting the U.S. Navy and Marine Corps

worldwide. Being a member of the NCIS family could take an agent from working in the small town of Pascagoula, Mississippi, to New York City; from the decks of the USS Dwight D. Eisenhower (CVN 69) to the war zone of Baghdad conducting a variety of investigations, operations and performing a plethora of missions.

The demands on NCIS special agents and support personnel are many but the rewards numerous.

NCIS employs over 2400 personnel, 1200 of whom are special agents. The agency maintains a worldwide presence with offices in 165 locations that are aligned under 16 field offices. Four of the field offices are located overseas in Europe, Singapore, the Middle East, and Far East.

NCIS is unique within the Department of Defense (DoD), as its charter covers law enforcement as well as counterintelligence; counterterrorism, antiterrorism/force protection; personnel and information security, and cyber investigations. NCIS is the primary law enforcement and counterintelligence arm of the DoN and is the Navy's primary source of security for the men, women, ships,



planes, and resources of America's seagoing expeditionary forces around the globe. NCIS performs a broad and expanding set of services for the DoN. For example:

- Today, most Navy ships cannot enter a port unless NCIS has completed an on-the-ground threat assessment and vulnerability assessment.
- NCIS agents were the first U.S. law enforcement personnel on the scene at the Cole bombing ... the Limburg bombing ... and the terrorist attack in Mombassa, Kenya.
- NCIS' Cold Case unit has solved 50 homicides since 1995—one of which was 33 years old.
- NCIS has conducted fraud investigations resulting in over half a billion dollars in recoveries and restitution to the U.S. Government and the U.S. Navy since 1997.
- NCIS has agents assigned to all of the Navy's 12 aircraft carriers and several expeditionary strike group vessels.

NCIS agents were the first U.S. law enforcement personnel on the scene at the Cole bombing ... the Limburg bombing ... and the terrorist attack in Mombassa, Kenya.

homicide, rape, child abuse, arson, procurement fraud, and more.

In support of its mission—to prevent and solve crimes that threaten the war fighting capability of the U.S. Navy and Marine Corps—NCIS pursues three strategic priorities: Prevent Terrorism, Protect Secrets, and Reduce Crime.

“Prevent Terrorism” includes a wide range of offensive and defensive activities designed to detect, deter, and disrupt terrorism and related hostile acts against DoN forces and installations.

“Protect Secrets” includes safeguarding classified information, vetting personnel for trustworthiness, and protecting classified information within industry. NCIS

NCIS works closely with other local, state, federal, and foreign agencies to counter and investigate the most serious crimes: terrorism, espionage, computer intrusion,



has exclusive investigative jurisdiction into actual, potential, or suspected acts of espionage, terrorism, sabotage and assassination, or aural, suspected, or attempted defection by DoN personnel.

“Reduce Crime” includes the investigation of all major criminal offenses (felonies) — those crimes punishable under the Uniform Code of Military Justice by confinement of more than one year.

In 1984, special agents began training at the Federal Law Enforcement Training Center (FLETC). Sixteen years later, in 2000, NCIS moved its training division from its headquarters in Washington, D.C. to FLETC. The NCIS Training Academy’s mission is to serve as the premier provider of training for all NCIS employees and to provide each and every employee the tools to plan and execute a successful and rewarding career path. The academy has responsibility over all basic, advanced, and in-service training programs, and is responsible for providing relevant, timely, substantive, and cost-effective training programs to build a highly skilled workforce.



**NCIS personnel are deployed to Iraq, Afghanistan, Kuwait, Horn of Africa, and Guantanamo Bay, Cuba, in the support of the Global War on Terrorism.**

NCIS special agents are trained as investigators. Their skills – interviewing and interrogating; processing crime scenes; developing informants; conducting protective security details; administering polygraphs; presenting cases for prosecution and more placed them on high demand when the nation responded to the events of 9/11/2001. On any given day, NCIS personnel are

deployed to Iraq, Afghanistan, Kuwait, Horn of Africa, and Guantanamo Bay, Cuba, in the support of the Global War on Terrorism. Over 400 special agents have deployed to these locations in the last three years. They have worked



while in high-stress situations. The HROTP is one of the academy's premier training programs as NCIS continues to support the Global War on Terrorism.

References:  
NCISHQ Office of Communications, Washington, DC  
NCIS website - [www.ncis.navy.mil](http://www.ncis.navy.mil)

protective service operations, criminal investigations, and counterintelligence, and served as interviewers and interrogators with small groups of Special Forces.

The demands placed on NCIS to provide personnel overseas to support the war on terrorism led the training academy to design a course to prepare NCIS personnel for deployment to very high-risk areas such as Iraq. The High Risk Operations Training Program (HROTP) is conducted several times each year at FLETC to meet the requirements of NCIS deployments. This course provides in-depth familiarization and training with weaponry and driving tactics necessary to deploy in a hostile environment. It is a tactical, performance-based program that not only teaches the student the importance of being proficient, but uses the building-block method of instruction, fostering confidence in ability and culminating in the exhibition of learned skills



**About the Author:** Phyllis U. Wade has been a special agent with the NCIS for 19 years. She has served domestically, abroad, and aboard an aircraft carrier. She joined the NCIS Training Academy in July 2006 as the Division Chief for Training Operations.



# The Fourth Amendment

## Results from the Supreme Court's 2005-2006 Term

*By Jeff Fluck*

With two new members (Chief Justice Roberts and Justice Alito), the Supreme Court's last term drew an even larger audience than usual. The Court's Fourth Amendment cases are natural attention-getters. No other kind of case more plainly controls the intersection where government power and citizen rights meet and sometimes collide. Ordinary citizens do not study the nuances of Fourth Amendment jurisprudence. They may never expect to be arrested or searched. But they can easily imagine themselves on the receiving end of these actions and the loss of freedom, dignity, privacy, and possessions they entail. The Fourth Amendment is personal.

Of course, law enforcement officers must follow Fourth Amendment cases far more closely. The Supreme Court had five Fourth Amendment cases last term. Three trends are apparent in these decisions.

First, there is good news about the new members. Both Chief Justice Roberts and Justice Alito supported law enforcement actions in all of the Fourth Amendment cases in which they participated.

At the same time, Justice Kennedy has replaced retired Justice O'Connor as the tie-breaker of the nine-member Court. He voted with the majority in all five cases, both the four which supported law enforcement actions and the one which did not.

Second, the idea that generalized reasonableness is the true "touchstone" of the Fourth Amendment continued to gain ground. Overall, reasonableness has been used to admit more evidence. In particular, the Court used reasonableness this term to justify police actions taken to avert future harm.

Third, the Court continued to relax its earlier reflexive use of the exclusionary rule to assert tight control of search and seizure. One important reason is the Court's trust that modern law enforcement strives to and does follow the Constitution. An examination of each case follows.

### **Proactive Entries – *Brigham City v. Stuart*<sup>1</sup>**

**Facts:** Here is a case on which all Justices agreed. Late on a Saturday night, local police followed up on a noise complaint and

found a loud party fueled by lots of alcohol. As they went up the driveway to approach two drunken juveniles in the backyard, the officers could hear shouts inside the house. Once in the backyard, they saw four adults in the kitchen struggling to restrain another juvenile. While the officers watched, the juvenile punched one of the adults in the face hard enough to draw blood.

The officers entered through a screen door, quelled the disorder, and eventually arrested several of the adults for disorderly conduct, drunkenness, and contributing to the delinquency of a minor.

Lower courts suppress evidence: The Utah courts suppressed all evidence found after the officers entered, holding that (1) the officers had entered in order to make arrests rather than render aid; and (2) the single punch was not sufficiently serious to invoke the emergency aid or exigent circumstances doctrines.

Supreme Court decision: Chief Justice Roberts wrote the opinion, his first for a Court majority in a Fourth Amendment case. First, he reminded us that entering a home without a warrant is “presumptively unreasonable,” but since “the ultimate touchstone of the Fourth Amendment is ‘reasonableness,’ the warrant requirement is subject to certain exceptions.”<sup>2</sup>

Second, he noted that, even if the officers entered primarily to make arrests, their subjective intent was simply not relevant. This kind of Fourth Amendment question turns on the objective facts and whether they gave the officers sufficient reason to enter.<sup>3</sup>

Third, he resolved the ultimate issue with a few crisp sentences:

“the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning. Nothing in the Fourth Amendment required them to wait until another blow rendered someone ‘unconscious’... or worse before entering. The role of a police officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised stop a bout only if it becomes too one-sided.”<sup>4</sup>

With incisive clarity, the Chief Justice endorsed this proactive police entry in the same way that earlier cases have supported proactive decisions to stop, frisk, enter, and inspect in order to

prevent a variety of escalating or future harms. Inaction in these situations is unreasonable. The need to take proactive steps now to prevent or minimize future harm is the linchpin of a number of doctrines excusing full Fourth Amendment compliance.

Thus, warrantless entries are permitted to deal with exigent circumstances before hostages are injured and render emergency aid before victims lose more blood. Stops can be made on less than probable cause when crimes are about to be committed, and frisks can be conducted when the stopped individual may be armed and later endanger the officer. *Stuart* uses that logic.

### **Dueling Consenters – *Georgia v. Randolph***<sup>5</sup>

*Georgia v. Randolph* veered sharply from the course that many lower courts had been following.

Facts: Scott Randolph practiced law in Georgia. His wife, Janet, and son had left him and went to Canada. When Janet and the child returned more than a month later, the couple argued, and Janet called the police. The police came, and Janet said that Scott had cocaine in the house. Police Sergeant Murray asked Scott for permission to enter the house and search it. Scott “unequivocally refused,” so Sergeant Murray asked Janet for consent. She granted it. Sergeant Murray found a straw with what appeared to be cocaine residue on it. The officer then left the house, called the local prosecutor, and applied for a search warrant. When Sergeant Murray tried to reenter the house, Janet withdrew consent. The search warrant was granted, more drug evidence was found, and Scott was indicted. The trial court refused to suppress the evidence.

Initial appeals: Both Georgia appeals courts directed that the evidence be suppressed.

Supreme Court decision: The Supreme Court (5-3, Justice Alito not participating) agreed that the evidence was inadmissible: “in the circumstances here at issue, a physically present co-occupant’s stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him.”<sup>6</sup> Justice Souter reasoned that “widely shared social expectations”<sup>7</sup> can help determine whether a given outcome meets the Fourth Amendment standard of reasonableness. In his view, a guest would not come in if confronted at the threshold with a wife saying, “Enter,” and a husband saying, “Stay out.” Hence, it is constitutionally unreasonable for police to enter when confronted with the same situation.

Explicit qualification: Both Justice Souter’s lead opinion and

The officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning.

Justice Breyer's concurrence emphasize limiting the ruling to the facts presented in this case. First, the dueling consenters have to be equal co-tenants – a six-year-old son's, "Stay out," does not trump his father's, "Come in." And the lead opinion, admitting that they are "drawing a fine line," is careful not to impose a duty on officers to seek out and consult co-tenants who are not lucky enough to be awake and physically present at the front door.<sup>8</sup> Justice Souter uses two earlier cases (discussed in the next two paragraphs) to illustrate the limits of *Randolph*.

Snooze and lose: In *Illinois v. Rodriguez*,<sup>9</sup> a man beat his girlfriend. She got the police and used her key to let them into the apartment. They found her drug-dealing assailant asleep inside along with plainly-viewed drugs and paraphernalia. *Randolph* creates no duty for police to knock on the door, wake any or all who may be inside, and conduct a referendum on whether police should enter and search.<sup>10</sup>

Timing matters: In *United States v. Matlock*,<sup>11</sup> police arrested a bank robbery suspect in front of the house in which he shared a room with his girlfriend. Police handcuffed him and put him in their car. They knocked on the door and were met by the suspect's girlfriend. She let police search their room, where they found \$4,995 in a diaper bag. "So long as there is no evidence that the police have removed a potentially objecting tenant from the entrance for the sake of avoiding a possible objection," *Randolph* does not create a duty to return to the squad car and consult the suspect.<sup>12</sup>

Chief Justice Roberts' dissent: Even if the case's majority holding may mildly disappoint law enforcement, the logic, tone and sheer force of Chief Justice Roberts' dissent is heartening. Observing that pertinent social expectations are less widely-held than wildly variable, Chief Justice Roberts would use a doctrine supported by the Court's previous cases to admit the evidence against Scott Randolph. That doctrine posits that once a person chooses to share information, records, or a place with someone else, he can no longer expect that the matter remain private. Thus, "[a] person assumes the risk that his co-occupants — just as they might report his illegal activity or deliver his contraband to the government — might consent to a search of areas over which they have access and control."<sup>13</sup>

#### **Anticipatory Search Warrants – *United States v. Grubbs*<sup>14</sup>**

*United States v. Grubbs* involved an anticipatory search warrant for child pornography. Like a standard "forthwith" search warrant, an anticipatory warrant specifies which items are expected to be found in the place to be searched. The difference is that the applicant for an anticipatory warrant does not claim that the items

are there already. Instead, the applicant swears they will be there once something (a "triggering event") happens.

Facts: Jeffrey Grubbs ordered a videotape called "Lolita Mother and Daughter." He had seen it advertised on the Internet and sent \$45 cash with a note attached that read, "I hope this makes it to you please send film ASAP thanks Jeff Grubbs." Unfortunately for Grubbs, he had placed his order with a website operated by postal inspectors.

While arranging for a controlled delivery, postal inspectors also obtained an anticipatory search warrant. The warrant was on the standard "forthwith" form. The preprinted language stated that "there is now concealed a certain person or property, namely..." after which the following language was added, "the records and

materials described in Attachment B to the attached Affidavit." This attachment, but not the affidavit, was made a part of the search warrant. "ANTICIPATORY" had been written across the top of the form.

The affidavit made the anticipatory nature of the warrant clear:

"Execution of this search warrant will not occur

unless and until the parcel has been received by a person(s) and has been physically taken into the residence.... At that time, and not before, this search warrant will be executed by me and other United States Postal Inspectors."<sup>15</sup>

But the affidavit, although part of the search warrant application, was not attached to the warrant; hence, this triggering condition was not identified in the warrant itself.

Two days after the warrant was issued, an undercover postal inspector delivered the videotape at the Grubbs' house at 7:20 a.m. Mrs. Grubbs signed for it and took it inside. About four minutes later, Jeffrey Grubbs left the house and was stopped by postal inspectors. The search team arrived and found the tape. While the search proceeded, Grubbs was presented with the search warrant (but not the affidavit specifying the triggering event).

Trial and initial appeal: Grubbs entered a conditional guilty plea, was convicted, and was sentenced to 33 months in prison and three years of supervised release. Grubbs appealed and the Ninth Circuit reversed, holding that, "[t]he failure to present the affidavit designating the triggering events... of the search warrant rendered the warrant constitutionally invalid and the search illegal."<sup>16</sup>

Supreme Court decision: The Supreme Court reversed the Ninth Circuit. Justice Scalia wrote the opinion and addressed two

They knocked on the door and were met by the suspect's girlfriend. She let police search their room, where they found \$4,995 in a diaper bag.

questions: (1) Does the triggering event have to be described in the part of the warrant provided to the suspect? and (2) more fundamentally, are anticipatory warrants constitutional? All eight Justices (Justice Alito took no part in the decision) agreed that the search was legal.

Anticipatory warrants are constitutional: All eight Justices agreed that a search warrant can be issued when there is probable cause that: (1) the triggering event will occur; and (2) once the triggering event occurs, the items to be seized will be in the place to be searched. As Justice Scalia pointed out, all search warrants are necessarily based on predictions. The anticipatory search warrant ratifies the prediction that once the triggering event occurs, evidence will be there. The traditional “forthwith” search warrant ratifies the prediction that once the warrant is executed the evidence will still be there.

Probable cause required that the triggering event will occur:

Although obviously met in the context of a controlled delivery, the opinion also makes a point that often is veiled in other contexts. There must be probable cause that the triggering event will occur. Otherwise, “an anticipatory warrant could be issued for every house in the country, authorizing search and seizure *if* contraband should be delivered — though for every single location there is no likelihood that contraband will be delivered.”<sup>17</sup>

Timing and the ten-day rule: Rule 41(e)(2)(A) of the Federal Rules of Criminal Procedure requires that a search warrant be executed no longer than ten days after it is issued. What should be done if probable cause exists that the triggering event will occur, but the timing of that event is outside law enforcement control and may happen more than ten days out? Unlike the timing issue raised by nighttime execution, Rule 41 contains no authority for the issuing magistrate to modify this limitation.

Two courses of action exist. One option is to renew the warrant every ten days until the triggering event occurs. The other option is to capitalize on the telephonic search warrant authorized by Rule 41(d)(3) – the search warrant application, proposed duplicate original warrant, and original warrant can be prepared and approved beforehand. Issuing the warrant can be accomplished with a phone call to the issuing magistrate. Of course, agents should be prepared to brief the magistrate on any new evidence bearing on probable cause at that time.

This second option may be the better choice if the opportunity is expected to be fleeting. For example, law enforcement officers may know that bomb-making components will be delivered to a location sometime in the next six weeks. Uncertainty about the

delivery date does not change the fact that the warrant must be executed quickly before bombs are assembled and deployed. A telephonic search warrant supports speedy execution in these circumstances. Warrantless entry to deal with the exigent circumstance is also in play. Early coordination with the local U.S. Attorney’s Office is wise.

In this case, the triggering event did not have to be stated in the warrant itself. Five of the eight justices held that the warrant’s failure to recite the triggering condition did not render the search unconstitutional. Their conclusion rested on the language of the Fourth Amendment itself, which states that a warrant must only specify two things: (1) the items to be seized, and (2) the place to be searched. The remaining three justices, while not finding it necessary to include the triggering event in the warrant in this

particular case, were not willing to say that omitting the triggering event would never lead to an unconstitutional search. That reservation is ample reason for the cautious investigator to ensure that the triggering event is described in the warrant itself.

**Parolee Searches - *California v. Samson***<sup>18</sup>

Facts: A California statute provides that “every prisoner eligible for release on state parole

‘shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant, and with or without cause.’”<sup>19</sup> A police officer, acquainted with the suspect’s parole status, stopped Samson on the street and searched him “[b]ecause it’s a condition of his parole.”<sup>20</sup> He found a baggy with methamphetamine in a cigarette box in Samson’s shirt pocket. Samson was convicted of drug possession and sentenced to seven years imprisonment. His appeals were denied by the California appellate courts.

Supreme Court decision: Justice Thomas wrote the opinion (6-3), holding that the evidence was admissible because the California statute was constitutional. The case is significant because the familiar reasonableness balancing analysis has been extended.

Reasonableness determined by balancing competing interests: Starting with *Camara v. Municipal Court*<sup>21</sup> and *Terry v. Ohio*<sup>22</sup>, the Court has often decided whether a given government action is reasonable under the Fourth Amendment by using a cost-benefit analysis: Identify the government need met by the action, assess the importance of that need, and compare it to the value of the personal right that the action compromises. A government action is reasonable in Fourth Amendment terms when the balance tips its way. In such cases, traditional Fourth Amendment requirements such as warrants and probable cause can be reasonably and constitutionally modified.

There must be probable cause that the triggering event will occur. Otherwise, “an anticipatory warrant could be issued for every house in the country. . . .”



Reasonableness balancing contexts: Reasonableness balancing has been applied in a number of contexts. One class springs from meeting governmental special needs other than “general ‘crime control’ purposes.”<sup>23</sup> Often called inspections or, lately, programmatic searches, this class includes airport boarding inspections, border searches, certain government workplace searches, and the like. Their primary purpose is other than gathering criminal evidence from suspects. They do not require full Fourth Amendment compliance; hence, inspections proceed without judicial warrants and often without requiring any particularized suspicion about the possible wrongdoing of those being inspected. To prevent these inspections from being misused as a subterfuge to evade these traditional Fourth Amendment requirements, the scope of inspections is carefully predetermined, and features are added which remove discretion to choose who will get inspected.

With some overlap, a second class is defined by the proactive prevention of future harm. Stops and frisks can be found here, and *Stuart*, discussed above, follows this logic. Judicial warrants are not required and something less than particularized probable cause sometimes suffices. These government actions are constrained by requiring that officers have particularized suspicion that the harm they seek to prevent is, based on the facts of the particular situation they confront, a distinct possibility.

Reasonableness balancing a third way: The California statute approved by *Samson* extends the realm of reasonableness further by jettisoning the checks of each approach. Removal of officer discretion checks the government’s inspection power, but this statute gives officers the power to decide which parolees get searched. The careful scoping of an inspection is also jettisoned - the officer’s power to “search or seize” is unqualified. Finally, the requirement that the officer have some particularized suspicion before initiating a proactive search to prevent future harm is eliminated as well - an officer may search “with or without cause.”

What tipped the scales so decisively when Justice Thomas sought the balance between the parolee’s privacy interest and the state’s need? In Justice Thomas’s view, Hudson’s “status as a parolee [and] the plain terms of the parole search condition,”<sup>24</sup> sharply reduce the released parolee’s expectation of privacy. A parolee could have chosen to stay in jail where his expectation of privacy is essentially nonexistent.

Proactive prevention of future harm: Justice Thomas noted that the recidivism rate for California parolees is 68-70%. It follows that the state’s need to maintain an intense regime of suspicionless searches is great. By increasing the chance that he will be caught

with the evidence, the California scheme hopefully discourages the parolee from committing new crimes once he is released.

Trust in law enforcement professionalism: The opinion’s closing paragraph expresses the majority’s confidence that this broad grant of authority will not be abused because law enforcement can be expected to obey the statute’s bar on searches “for the sole purpose of harassment.”<sup>25</sup>

### **Knock and announce – *Hudson v. Michigan*<sup>26</sup>**

Facts: With a search warrant for drugs, about seven members of the Detroit police arrived at Hudson’s home. On the way to the door, one yelled, “Police, search warrant.” Three to five seconds later, they opened the door and went in. Michigan conceded at trial that this violated knock-and-announce. The officers searched Hudson and found five rocks of crack cocaine in his pocket and a gun in the chair where he sat.

The Court did split 5-4 . . . holding that excluding evidence found after a violation of the knock-and-announce rule was “unjustified.”

Hudson’s motion to suppress the cocaine was eventually denied. He was convicted and received a sentence of probation.<sup>27</sup>

Supreme Court arguments: The United States Supreme Court heard argument on January 9 and heard additional argument on May 18. Many speculate that the matter was set for a second round

of argument because Justice Alito, who assumed his duties in February, was needed to break a 4-4 tie between the eight justices who heard initial argument.

Supreme Court decision: The Court did split 5-4 (Justice Kennedy concurring in most of the majority opinion and the result), holding that excluding evidence found after a violation of the knock-and-announce rule was “unjustified.”<sup>28</sup> Justice Scalia offered two reasons. Both start by emphasizing the heavy cost imposed on society and its law enforcement professionals by the exclusionary rule — those who should be convicted for committing crimes are freed to commit more.

First, this heavy cost should only be imposed to “vindicate”<sup>29</sup> rights directly jeopardized by the unconstitutional way the evidence was obtained. That close connection does not exist in a knock-and-announce violation. This continues a theme most recently advanced by Justice Thomas to avoid excluding a gun found as a result of a *Miranda* violation in *United States v. Patane*.<sup>30</sup>

Second, this heavy cost has to be assessed in light of its ultimate goal — the deterrence of constitutional violations by law enforcement. Justice Scalia found that modern law enforcement officers are better trained and more professional than their predecessors. Deterrence may have been necessary in the past,

but “forcing the public today to pay for the sins and inadequacies of a legal regime that existed almost half a century ago” is no longer smart.<sup>31</sup>

### Summary

Overall, the last term’s Fourth Amendment cases went well for law enforcement. The one case which did not (*Randolph*) was carefully limited to its facts. Two cases (*Brigham City* and *Samson*) underwrite police authority to act proactively in order to reduce the potential for future harm.<sup>32</sup> These cases signal, along with *Hudson*, a willingness to rely on law enforcement integrity and professionalism to curb constitutional violations. *Hudson* shows that the Court will even refrain from using the exclusionary rule to do so. So long as law enforcement polices itself, the Court may be willing to move further in the favorable direction signaled this past term. But the converse is also possible. If the Court is later forced to conclude that its current trust in law enforcement integrity was misplaced, it might well react by retaking the reins in the most forceful of ways.

### (Endnotes)

- 1 *Brigham City v. Stuart*, 126 S. Ct. 1943 (May 22, 2006).
- 2 *Brigham City* at 1947.
- 3 *Brigham City* at 1948.
- 4 *Brigham City* at 1949.
- 5 *Georgia v. Randolph*, 126 S. Ct. 1515 (March 22, 2006).
- 6 *Randolph* at 1519.
- 7 *Randolph* at 1521.
- 8 *Randolph* at 1527.
- 9 *Illinois v. Rodriguez*, 497 U.S. 197 (1990).
- 10 *Randolph* at 1527.
- 11 *United States v. Matlock*, 415 U.S. 164 (1974).
- 12 *Randolph* at 1527.
- 13 *Randolph* at 1536 (Roberts, CJ, dissenting).
- 14 *United States v. Grubbs*, 126 S. Ct. 1494 (March 21, 2006).
- 15 *Grubbs* at 1497.
- 16 *United States v. Grubbs*, 377 F.3d 1072, 1080 (3rd Cir. 2004).
- 17 *Grubbs* at 1500.
- 18 *California v. Samson*, 126 S. Ct. 2193 (June 19, 2006).
- 19 *Samson* at 2196, citing Cal. Penal Code Ann. § 3067(a) (West 2000).
- 20 *Samson*, Brief for Petitioner at 5, citing J.A. 37.
- 21 387 U.S. 523 (1967).
- 22 392 U.S. 1 (1968).
- 23 *Illinois v. Lidster*, 540 U.S. 419, 423 (2004), citing *Indianapolis v. Edmond*, 531 U.S. 32, 41 (2000). Different facts instructively led to different results in these two inspection cases. In *Edmond*, the Court rejected admitting drugs found incident to a vehicle checkpoint inspection because the purpose of the checkpoint was “to detect evidence of ordinary criminal wrongdoing.” *Id.* at 41. By contrast, *Lidster* approved a checkpoint whose purpose was not to find drugs or other contraband in the vehicles stopped at the checkpoint, but was instead designed to see if any of the vehicles’ occupants had witnessed an accident at the checkpoint location at the same time and day of the week before.
- 24 *Samson* at 2199.
- 25 Cal. Penal Code Ann. § 3607(d) (West 2000).
- 26 *Hudson v. Michigan*, 126 S. Ct. 2159 (June 15, 2006).

- 27 *People v. Hudson*, 2004 Mich. App. LEXIS 1681
- 28 *Hudson* at 2168.
- 29 *Hudson* at 2165.
- 30 542 U.S. 630 (2004).
- 31 *Hudson* at 2167.
- 32 Two lower court cases decided as this article was being finalized illustrate the reach of this idea. *United States v. Black*, 2006 U.S. App. LEXIS 26670 (9<sup>th</sup> Cir. 2006) arose as follows. The victim of a recent domestic assault asked police to meet her outside the apartment she’d been beaten in. When the police arrived she was not there. The assailant was. In the course of an unsuccessful search of the apartment, police saw a gun, obtained a warrant for the gun and seized it. The Ninth Circuit deemed the initial proactive entry reasonable to ensure the victim had not been left in the apartment after being beaten again. *United States v. Elder*, 2006 U.S. App. LEXIS 27054 (7<sup>th</sup> Cir. 2006), supported admitting evidence incident to proactive entry under the following circumstances. Someone at a farm called 911 and said, “I think we got meth out here” and added that ‘suspicious’ people were ‘flying like quails.’” Then the phone hung up. Responding police could find no one in the lit farmhouse and entered an outbuilding to ensure the caller hadn’t been taken hostage or hurt. They found the meth lab later admitted into evidence. Citing *Brigham City*, the Seventh Circuit approved the admission: “[c]onsiderations of safety -- the caller’s and the officers’-- made a look-see prudent.”



**About the Author:** John Jeffrey Fluck graduated from Haverford College and Washington and Lee Law School. He entered active duty with the Army Judge Advocate General’s Corps in 1981. While on active duty, he received an LL.M. from the Judge Advocate General’s School. Army deployments included Desert Shield/Storm to Saudi Arabia with the 2d COSCOM in 1990-1 and Vigilant Warrior to Kuwait with the 24<sup>th</sup> Infantry Division in 1994. He has been a FLETC Senior Instructor at the Legal Division since July, 2001.



# Student Services Division: Factio Actio Obtingo or “Making it Happen”

*By Stephen Brooks and Rick Hazzard*

**We deliver.** A fleet of buses moves students from the dorms to classrooms and training sites. Buses also transport students to weekend recreational events and locations off center.

Services are often overlooked, but always needed. This is especially true in training support here at the Federal Law Enforcement Training Center (FLETC). FLETC exists to train federal law enforcement officers and agents. That is our number one mission. But what does it take to ensure that the training takes place? Who ensures that the students get to their training venue on time, where they are supposed to be, with the proper training uniform, in good health, and after a hearty meal? Let us take a minute to reflect on what it takes “behind the scenes” to make this work as seamlessly as it does.

On a given day 325 dozen eggs; 400 pounds of bacon, ham, and sausage; 625 pounds of fruit; 60 dozen muffins; 450 sweet rolls; 60 loaves of bread; and 330 gallons of milk, juice, and coffee are consumed. That is just one morning meal at FLETC Glynco cafeteria! And we do this three

times a day, seven days a week. This does not count the boxed meals that are prepared and taken into the field to be consumed during surveillances and practical exercises.

On any given day from 7:30 a.m. until 10:30 p.m., you can find at least 85 roleplayers working for some 20 different agencies and divisions, assisting with the training of our future federal officers. They are being held up, ripped off, interrogated, thrown to the ground, arrested, processed, pulled over for traffic stops, handcuffed, and shot with simunitions should the circumstances warrant such a response from the students.

Over 253,000 items are kept in our uniform inventory, consisting of every size known to exist; over 2.5 tons of laundry is washed, dried, and folded on any given day to be placed back into inventory to be reissued or placed back



**Room Service.** *Over 1800 rooms are cleaned including sheets and towels sent to the laundry five-days a week.*

in the dorms for use by the students. Over 1800 rooms are cleaned, with sheets and towels being inventoried and sent for cleaning 5 days a week.

Every day, the Ed Aide contractors prepare over 100 transcripts, special awards, and replies to special requests to students, former students, and in preparation for graduations.

A fleet of over 150 cars and vans for staff and students are maintained for use in training, to be ready at a moments notice. Buses provide service for students on a daily basis to get to work, to arrive at the next classroom building or training site, to get home in the evening, trips downtown on nights and weekends, and trips back and forth to the airports. In order to keep this fleet of vehicles operating, there is also the management of the fuel and repairs needed to keep training on schedule.

The Health Unit screens all students, provides immediate response to medical emergencies on-center, and makes the diagnoses that sends those injured or ill to an emergency room as needed, and takes care of the walking wounded on a daily basis.

Students may play in volleyball tournaments, softball games, use the indoor and outdoor pools, go horseback riding, attend a Faith Hill concert, a Jacksonville Suns game, a Jaguars game, cookouts, and deep sea fishing. And that is just in one week!

All of the above and more are overseen by a staff of 14 people in Student Services. These Contracting Officers Technical Representatives (COTRs), and Recreation Specialists are the support center that ensures that staff and students can take care of training without worrying about everyday needs such as food, shelter, transportation, and recreational activities.

COTRs oversee the contract once the contract has been established on the center. They assist the Contracting

Officers (COs) in procurement by inspecting, monitoring, asking the right questions, and ensuring that the contractor is performing in accordance with the contract, which includes reports of good and poor performance. They are the ones that see the good, observe the poorly performed, and hear the initial complaints from the contractor and the users of the contract. They are the first point of contact for the government, and a good COTR is invaluable in assisting

...over 2.5 tons of laundry is washed, dried, and folded on any given day to be placed back into inventory to be reissued or placed back in the dorms for use by the students.

COs in ensuring the government is getting what they paid for, and also assisting in modifications to that contract if needed.

Our three Recreation Specialists do an excellent job of having activities for the staff and students seven days a week. Trips to Jacksonville or Savannah are almost always accompanied by a cookout of some type. They work closely with the FLETC Recreation Association whose board assists with some of the funding of these events. Every time someone uses the FLETC store, or the Student Center, or one of the snack bars or drink machines around the center, they are supporting our recreation association and our recreational

opportunities, as a portion of the funds go directly to student support through the Recreation Association. These three Recreation Specialists are always looking for new events and, if they have ten people that are interested in an event, they will do their best to get transportation lined up so that everyone enjoys themselves. The Recreation Specialists strive to provide the greatest variety of opportunities for recreation and leisure activities for those attending training at the FLETC.

Recreation Specialists strive to provide the greatest variety of opportunities for recreation and leisure activities for those attending training at the FLETC.

Services: often overlooked, but always needed. The Student Services Division, first and foremost a services organization and known for "Making it Happen."



**About the Author:** Steve is in his 7th assignment with FLETC as the Chief of the Property Management Division at Glynco. Prior to his current assignment Steve has served as a supervisor and/or a manager in the Student Services Division (SVC), Training Management Division (TMD), the Legal Division (LGD), and the Behavioral Science Division (BSD). Steve was also a Branch Chief in the National Center for State and Local (OSL) Law Enforcement Training.

Prior to joining the supervisory ranks of the FLETC Steve was a lead and a Senior Instructor in the Security Specialties Division (SSD) for 10 years where he was the Subject Matter Expert (SME) for the topical area of Antiterrorism for 7 years of those years. During this time Steve was assigned to instructor in the Seaport Security Antiterrorism Training Program (SSATP) wherein he instructed on the topics of Antiterrorism, OPSEC, and Criminal Intelligence and Information at FLETC as well as in such venues and locations

as Yorktown, VA, Little Creek, VA, and Egypt and Morocco.

Steve has earned his Juris Doctor Degree Law from the Florida Coastal School of Law and is a graduate of the U.S. Naval War College (CCE) Command and Staff. Steve is also a published author on the topic of antiterrorism and hostage/barricade incidents; and is a former member of the National Advisory Board of Hostage Negotiators of America.



**About the Author:** Mr. Hazzard has been with the FLETC for almost 10 years. He is presently the Printing Library Branch Chief, but during his time there he has been the Branch Chief of Technology Support Branch (TSB), and the acting Chief for Student Services (SVC), Media Support Division (MSD), and Property Management Division (PMD). Rick retired from the Navy as a Communications Officer before joining the federal government, and his formal education has been geared toward training.

# “Passing It On”

*I was inspired to write this article by a colleague of mine in the Behavioral Science Division (BSD) at the Federal Law Enforcement Training Center (FLETC). Bob Bean and I were having a discussion on learning, teaching, and sharing of information. We were sitting down one day having a cup of coffee and talking about being professional trainers. The information we shared that day was interesting and made a lot of sense. So I would like to thank Bob for suggesting that I write this article and encouraging me in writing this message.*

*By Andrew A. Smotzer*



The discussion that Bob and I had on that day was about the staff at FLETC and the changes in the staff over the years. I told Bob that when I first arrived at FLETC in January of 1982, the FLETC staff seemed so young. Back then the majority of the instructors were in their thirties and forties; however, there were a few exceptions. Today those numbers have changed. Now the FLETC staff is a much more mature group. According to our Human Resources Division figures, many of our staff will be eligible to retire within the next five years. This means that much of the institutional knowledge, along with subject matter expertise, will be lost as soon as these folks retire! This scenario, by the way, is government wide and is a major concern of senior management.

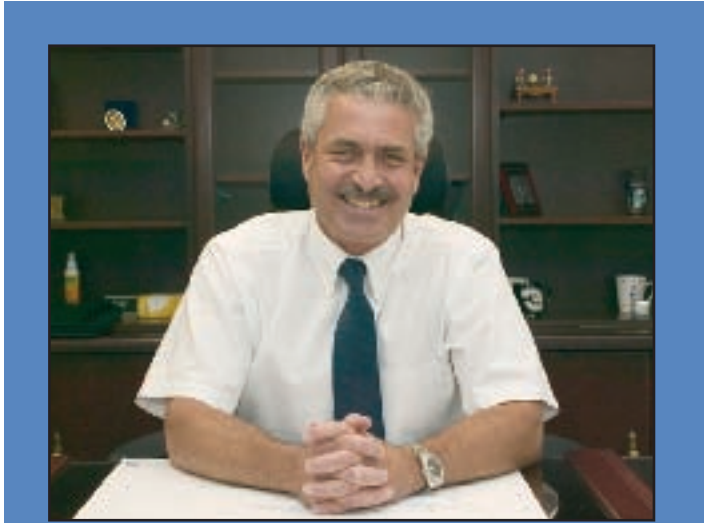
I told Bob about when I first started out as a professional trainer (working in the Firearms Division here at FLETC) and how lucky I was working with an outstanding group of professionals who were totally dedicated to their profession. Of course, being new at this business, I didn't know a whole lot, but was very anxious to learn. By letting everyone know that I was new to this game helped, even though it would not have taken the guys long to pick up on how little I knew back then. The mindset I had seemed to encourage the staff to go even more out of their way to help. As a result of this learning environment, having a passion for the firearms business, and having a positive attitude, my skills as an instructor were developed quickly.

After spending most of my adult life in the firearms discipline (over 22 years), my knowledge and skills naturally developed to a higher level. I became the training officer for many of the new instructors and gave them the same time and attention the guys gave me when I first started out. I also included those "secrets of the trade" some veterans have a hard time giving up. Thinking back, I remembered having a similar discussion with my father in regards to the same subject of "secrets of the trade." My father told me that when he started out in his chosen profession, his training officer was extremely knowledgeable and was willing to share everything he had learned over the

years, including many of the little secrets that very few knew. The reason why very few people knew these secrets was because they were never passed on to the next generation. My father explained to me the reasons why he felt this way. If this type of information was passed on, the student may get as good as or even better than the one teaching this skill -- meaning the trainer may lose the competitive edge. However, my father didn't feel that way, and he believed the teachers were duty bound to provide all knowledge and information to the next generation and hope they would get better than us. So remember,

no matter what position you may have, don't hold anything back. Let the person you are training know everything you know, so they can excel like you. It's our duty to pass it on!

...many of our staff will be eligible to retire within the next five years. This means that much of the institutional knowledge, along with subject matter expertise, will be lost as soon as these folks retire!



**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.



# Computer-Based Simulation: The Road Ahead

*By Ronald S. Wolff*

*The Federal Law Enforcement Training Center (FLETC) vision is to provide fast, flexible, and focused training to secure and protect America. Since its modest beginning in 1970, FLETC has earned the reputation as a world class learning institution and is recognized around the globe as providing some of the best law enforcement training available. But with each day that we commit to train those who protect our homeland, the challenges before us continue to increase due to the complex political climate, both here and abroad. Nevertheless, we are expected to continue our high level of service while working within budget and within demanding time constraints. It is also important that we continue to maintain a safe environment and a system that promotes instructor/student morale by providing access to the most advanced teaching facilities, techniques, and technologies available.*

## **MILITARY MODELING, SIMULATION, AND TRAINING**

For the past thirty years, the Department of Defense (DoD) has made a consistent investment and commitment to the development and integration of advanced modeling and simulation technology for training. The military has recognized the value of computer-based training and simulation as the most effective, safest, and least expensive means to supplement its current and future training programs. Unfortunately, due to the high cost of modeling and simulation, it was not initially adopted by the non-military sectors as a viable training option. However, with recent technological advances, cost reductions, and leveraging of existing technology, there has been a significant move among government, corporate America, law enforcement, and academic institutions to

*Continues on page 29*



# The Ribbon Cutting



More than 100 attendees, including representatives from several of the 83 federal partner organizations FLETC serves and local community leaders, were able to participate in several hands-on demonstrations after the ribbon cutting ceremony. Demonstrations included driving simulators, firearms simulators, Advanced Use-of-Force Training simulator, and Sight Alignment Aimpoint Simulation (SAAS).

“ This training format will enhance what we have already been doing for many years to give our law enforcement personnel the best basic and advanced training possible. ”

**CONNIE PATRICK  
FLETC DIRECTOR**



# Inside Driving Simulators



**Cameras monitor student reaction to driving scenarios**

**Computer-aided console tracks real time driver progress while simultaneously recording on instructor's server for after action course critique**

**FLETC Instructor can give one on-one instruction or monitor and change training scenario from their own computer station**



Three large flat panel monitors provide students a realistic panoramic view during their training experience

Driver's cockpit can be adjusted to optimize individual student training performance

Instrument console is configured like a regular patrol car complete with radio and switches for emergency lights and sirens

The Federal Law Enforcement Training Center celebrated the grand opening of its new Simulation Laboratory, February 14. The facility is a culmination of a two year project, which is part of the FLETC Director's goal of integrating technology and simulation into law enforcement training here.



# Stimulating Training

FLETC team members will test and evaluate new simulations systems within the approximately 40,000 square-foot lab. The \$5.4 million facility features an open-bay area for simulators, and eight classrooms designed to facilitate tabletop, computer-based simulation exercises, and a staff areas with 13 offices.

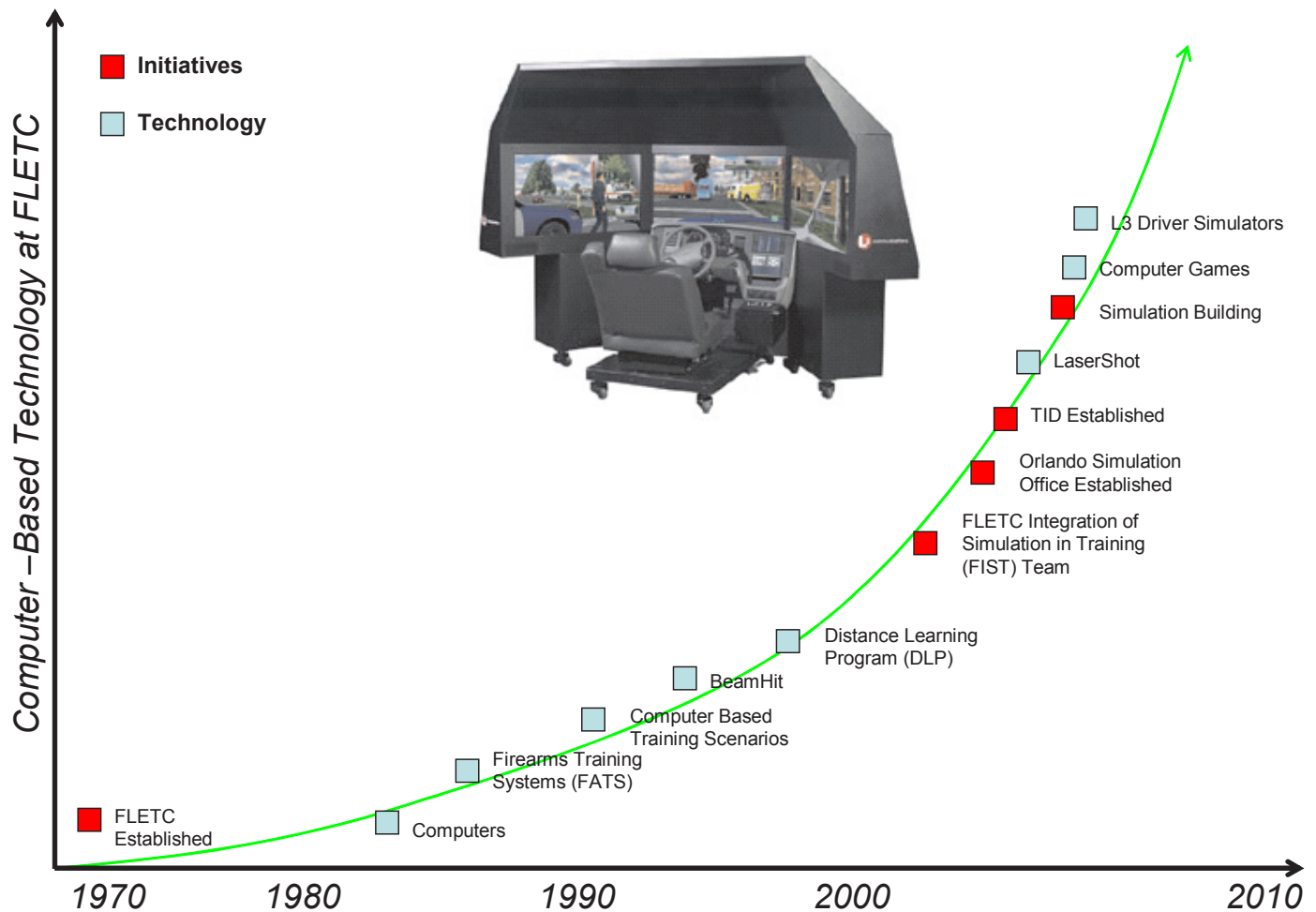


Figure 1. History of computer-based technology at FLETC.<sup>2</sup>

integrate modeling and simulation technology into their training and education programs. Recently, a new genre of simulation and training systems known as Serious Games has emerged which combine elements of both gaming and DoD simulation technology.

### FLETC TECHNOLOGY HISTORY

The FLETC leadership recognized early on the potential benefits of both simulation-based training and e-Learning as viable options to enhance their current training programs. The FLETC involvement in computer-based simulation started in 1988 with the integration of the Firearms Training System, Use of Force Simulator. FLETC was one of the first users of the Firearms Training Systems (FATS) and even participated in the prototype development and evaluation of the FATS, Use of Force Simulator in 1985. The FLETC involvement in e-Learning started in 1999 with the Distributed Learning Feasibility Conference, which ultimately led to the FLETC Distributed Learning Program.<sup>1</sup> As a result of this effort, FLETC established and implemented a Learning Management System, an in-

house e-Learning and Computer-Based Training (CBT) development capability, and a wide range of interactive video-based scenarios including crime scene investigation, Fourth Amendment, interviewing skills, judgmental use of force, and others.

### THE SIMULATION INITIATIVE

While FLETC has made a consistent effort to incorporate computer-based technology since its humble beginnings back in 1970, it wasn't until 2004 that Director Patrick and the FLETC Executive Team decided to make technology and computer-based simulation a high priority initiative within the organization (see Figure 1). Since that time there has been no turning back. With Director Patrick's vision and the leadership of the FLETC Executive Team, FLETC has recently completed several important simulation initiatives, including the construction of a new 40,000 square foot simulation building, the acquisition of 28 L3 driver simulators, the evaluation of several new Serious Games for training, and the development of a Sight Alignment and Aimpoint Simulator.

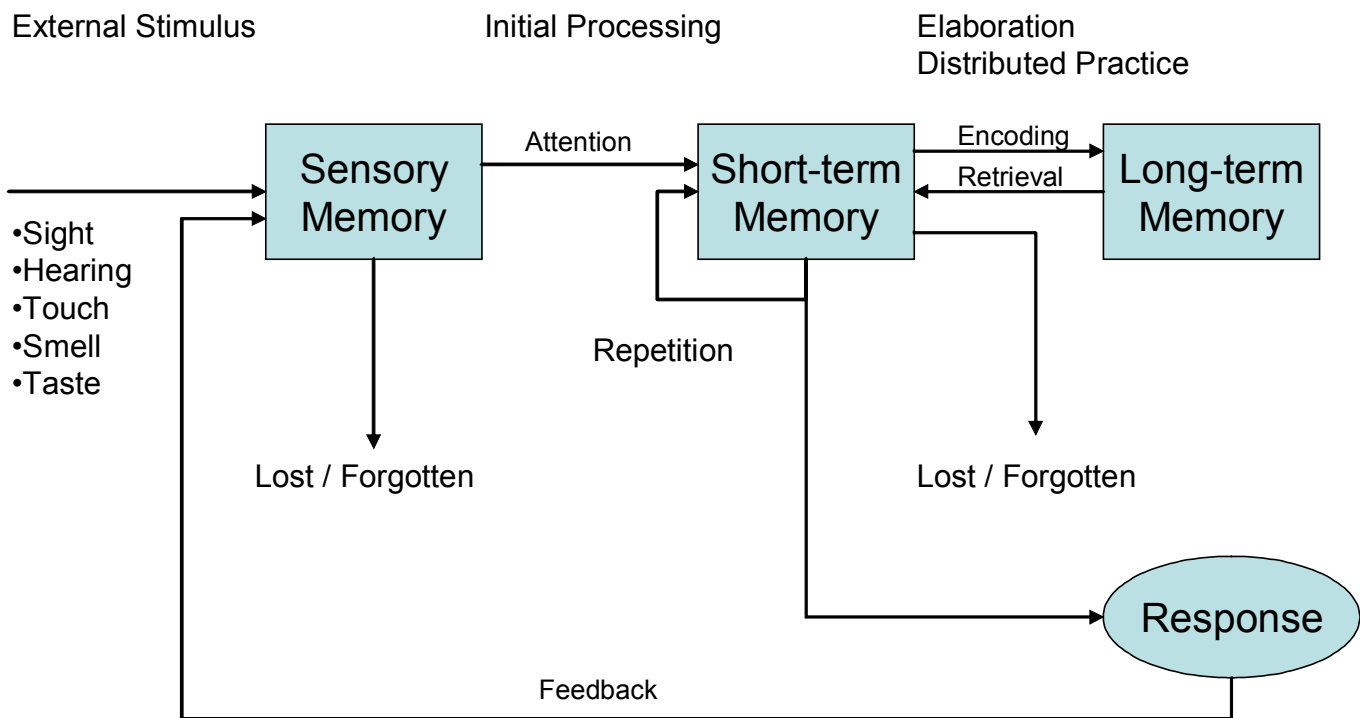


Figure 2. Modified three-stage memory model with feedback.

## MOVING FORWARD

To understand how we can most effectively integrate technology and computer-based simulation in the training curriculum, we must first understand the science of how we learn. FLETC's ultimate selection of training technology must be based on sound theory guiding the instructional design.<sup>3</sup> A fundamental premise underlying instructional design is that different instructional approaches are necessary to produce different learning outcomes.<sup>4</sup> Based on Bloom's taxonomy of learning domains,<sup>5</sup> there are three distinct, but overlapping learning domains: Cognitive (knowledge), Affective (attitude), and Psychomotor (skills). What makes training especially challenging at FLETC is the fact that so much of the learning is grounded in all three learning domains.

Computer-based simulation, while capable of supporting all three learning domains, typically has the highest return on investment when primarily focused on the cognitive learning domain. However, it should be kept in mind that there is significant overlap in the previously defined learning domains, and even the development of psychomotor skills has a cognitive or knowledge component that can be augmented with computer-based simulation.

The most widely accepted cognitive theory of learning is often referred to as the "stage theory."<sup>6</sup> The "stage theory" suggests that information is serially processed, in a discontinuous manner, as it moves through three distinct stages: sensory memory (SM), short-term memory (STM), and long-term memory (LTM). Based on this model, effective learning can be considered as the acquisition, storage, retrieval, and application of information from long-term memory (See Figure 2).

Therefore, to effectively learn something, one must first recognize and process an external stimulus via their external sensors in a very rapid timeframe (e.g., less than ½ second for vision; about 3 seconds for hearing). Moving data from SM into STM requires stimulus that is interesting and recognizable based on prior knowledge. Once data is moved into STM, it will only stay there for a short period of time (i.e., 15-20 seconds) unless it is repeated or rehearsed. Short-term memory is also called the working memory since it relates to whatever we are processing at the moment. If the data is not effectively moved into LTM, we cannot expect to access this information after about 20 minutes. Moving data from STM into LTM requires elaboration and distributed practice, also referred to as periodic review. Long-term memory is organized in one

or more structures: declarative (things we can talk about), procedural (process/steps), and/or imagery (pictures). Our ability to recall LTM data is directly related to our success in moving data from STM to LTM. A complex, biochemical feedback loop within the brain ensures that the entire process runs smoothly.

Extensive research, based on the cognitive theory of learning, has shown that there are distinct cognitive learning principles that will facilitate our ability to learn. In the white paper titled, "The Use of PC Simulations for Navy Training," the authors have identified, from a wide body of research, the following important cognitive learning principles that lay the foundation for understanding how PC simulations can support learning:<sup>7</sup>

### Cognitive Learning Principles

1. Cognitive resources are limited. Students, especially novice students, can only effectively process small amounts of information at a time.
2. Prior knowledge is the basis of new learning and provides a framework by which a student organizes new information.
3. Distributed practice strengthens learning. Cognitive and psychomotor tasks trained to automaticity will be performed quickly, with little conscious processing, freeing resources for other tasks as needed.
4. Feedback improves learning and performance and is regarded as an essential factor in the acquisition and retention of desired response patterns. Feedback can be intrinsic, e.g., changes in the environment, or augmented, e.g., instructor feedback.
5. Transfer of training, i.e., performance, is better when features of the training environment closely resemble those of the on-the-job environment in which the trained skill will be applied.
6. Rehearsal is critical to moving data from short-term memory into long-term memory. Rehearsal is typically either maintenance rehearsal (repetition of information) or elaborative rehearsal (active rehearsal where the student identifies relationships between previous knowledge and the target





information to be learned).

7. Solutions to higher-order thinking tasks require the student to recall knowledge from multiple domains, engage in effortful information processing, and select the best strategy.
8. Experts and novices process information differently. As a result of their practice, the expert's skill performance has moved from being effortful, requiring a great deal of attention and control, to being automatic and effortless.

The extent to which the training curriculum recognizes and addresses these fundamental principles of learning will dictate the overall success of the training program. For each of the previously discussed cognitive learning principles, it has been recognized that computer-based technology and simulation can provide the following benefits to training:<sup>8</sup>

1. Supplement the current training curriculum by providing additional information through multiple modalities (audio, visual, text, kinesthetic, etc.).
2. Accommodate different knowledge types by adapting training methodologies and content to the student needs by providing a wide range of instructional approaches and presentations.
3. Enhance learning by providing varying levels of difficulty and allowing students to control their learning environment and learn at their own pace.
4. Provide consistent, standardized, and validated instruction.
5. Provide both intrinsic and augmented feedback, an essential factor in the acquisition and retention of desired response patterns.
6. Provide a safe environment for exercising 'what-



if' scenarios and learning from one's mistakes.

7. Provide deliberate practice (repetitive performance of intended cognitive or psychomotor skills) in specific domains.
8. Bridge the gap between knowledge-based learning, e.g., classroom environment, and skill-based learning, e.g., role playing.
9. Reduce training time and can mimic real time or non-real time events.
10. Mimic the actual work environment, thus producing better retention of learned skills.
11. Compress time, allowing learners to observe the effects of their actions on dynamic systems.
12. Allow learning to take place without the need for using expensive operational equipment, thus reducing life-cycle cost.

#### CANDIDATE TECHNOLOGY SELECTION

Perhaps the greatest challenge facing us today is not the development of the technology itself, but rather the proper selection and application of technology so that we can ensure that we most effectively utilize technology when and where it makes the most sense. We must not simply use technology for the sake of using technology. The decision to use PC simulation for training and the subsequent technology selection process should be based on sound human performance engineering practices. To determine if PC simulation is a candidate technology to meet a training need, the following steps are recommended:<sup>9</sup>

1. Establish a need from the human performance and instructional systems design perspective.
2. Determine the minimal level of interactivity, fidelity, and immersion needed to meet the training need.
3. Determine the appropriate simulation implementation mechanism to meet the training



The decision to use PC simulation for training and the subsequent technology selection process should be based on sound human performance engineering practices.

need, e.g., browser-based simulator, stand-alone simulator, or distributed simulation.

4. Select the categories of PC simulation that are appropriate to the training needs.
5. Conduct a Return On Investment (ROI) analysis.

#### CHALLENGES

The adoption of emerging technologies and the integration of training simulation systems at FLETC will no doubt present challenges. However, as with any new endeavor there are always challenges that need to be overcome. To be successful, FLETC will have to address these challenges:

1. Reconsidering the course curriculum in light of new instructional tools and media choices.

2. Removing the perception that simulation will somehow replace instructor training. This is simply not possible – Simulation does not replace training, but rather supports the instructors in their role so that they can become more effective.
3. Educating the users on how to effectively integrate simulation into the curriculum for the optimal blending of instruction methodologies.
4. Overcoming the fear of change. To reach new plateaus, both individually and organizationally, we must be willing to reach out beyond our comfort zone and explore new techniques and methods.

The challenge that lies ahead for FLETC is to understand when and how best to apply technology within the training curriculum...

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**THE ROAD AHEAD**

The technological foundation for the road ahead is well laid. We are fortunate to live in a time where so many technologies have come together simultaneously in forming the “perfect technological storm.” Computers, video gaming, the internet, modeling and simulation, and serious gaming have all developed to a high level of maturity and are ready for prime time integration. We are only limited by our imaginations, motivation, and ability to utilize these technologies to create unprecedented learning environments for our students. The challenge that lies ahead for FLETC is to understand when and how best to apply technology within the training curriculum so that we can ensure that we are improving our product while increasing efficiency and reducing the overall cost of training per student.

This is truly an exciting time to be at FLETC.

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# Lawsuits - The Overblown Worry

*By Keith E. Hunsucker*

During training and throughout their careers, many federal officers and agents worry about being sued for actions related to their job. This worry can cause officers to dangerously hesitate when action is necessary.

This worry is unnecessary. The odds of a federal law enforcement officer (FLEO) being successfully sued are very low, because lawsuits against FLEOs are hard to win.<sup>1</sup> Given the high cost of litigation, few people will hire a lawyer to pursue a civil suit with little chance of success. Lawyers who work on contingency, that is, for a percentage of the judgment, are not anxious to take a case where the judgment is likely to be zero.

The two primary reasons that FLEOs are unlikely to be personally sued are the Federal Tort Claims Act<sup>2</sup> (FTCA)

and the legal concept of qualified immunity.

## **The Federal Tort Claims Act**

The FTCA is a law which specifically covers federal employees for acts committed within the scope of their employment. This law serves a dual purpose. First, it insures that individuals who are injured by federal employees acting on behalf of the government are fully compensated for their injury. Secondly, this law protects federal employees from personal liability for acts committed within the scope of their employment.

For example, a federal employee is driving from City A to City B on federal orders. The employee is negligent, causes an accident, and injuries result to a third person. The injured person would not sue the federal employee,



but would instead sue the United States under the FTCA. The federal employee benefits because they do not have to pay the damages. The injured person benefits because the United States unquestionably has sufficient funds to pay for their injury, whatever the amount.

Any federal employee could have an accident while in the scope of their employment. However, if the ordinary employee intentionally injured someone, they would be outside the scope of their employment and not covered by the FTCA. Because of the unique nature of law enforcement, FLEOs are sometimes required to apply force to individuals as part of their job. The FTCA recognizes this, and therefore FLEOs are covered for both negligent and intentional acts committed within the scope of their employment.

The FTCA is the exclusive remedy for an injured party to receive compensation from the government for injuries caused by federal employees in the scope of their employment. Even if the injured party

wanted to sue the FLEO personally, they are prevented from doing so by the FTCA. If the injured party filed such a suit personally against the FLEO, it would be dismissed once the FLEO demonstrated he was acting within the scope of his employment.

### Qualified Immunity

If the injured party filed such a suit personally against the FLEO, it would be dismissed once the FLEO demonstrated he was acting within the scope of his employment.

Under the Supreme Court decision in Bivens v. Six Unknown Named Agents of the Bureau of Narcotics<sup>3</sup> (Bivens), FLEOs can be personally sued for violating an individual's Constitutional rights. However, the Supreme Court has only allowed Bivens suits where violations of the Fourth (false arrest, unlawful search), Fifth (due process violations), or Eighth (cruel and unusual punishment) amendments are alleged.

Therefore, in any Bivens lawsuit, the first question is whether the plaintiff alleged a violation of his Fourth, Fifth, or Eighth amendment rights. Some Bivens suits are brought by criminals against individual officers

solely to harass or intimidate them. Unless the suit alleges a Fourth, Fifth, or Eighth amendment violation, it is subject to summary dismissal.

Even where the suit alleges a Fourth, Fifth, or Eighth amendment violation, the officer is still entitled to “qualified immunity.” Qualified immunity simply means that the officer is immune from suit with the qualification that he was acting “reasonably.” Any actions taken by an officer are deemed reasonable unless it would be “clear to a reasonable officer that his conduct was unlawful in the situation he confronted.”<sup>4</sup>

Importantly, this does not mean the officer must be correct. Officers are entitled to qualified immunity as long as their actions were reasonable in light of the facts and law, even if their judgment was mistaken. The Supreme Court put this best when they observed: “[t]he qualified immunity standard ‘gives ample room for mistaken judgments’ by protecting ‘all but the plainly incompetent or those who knowingly violate the law.’<sup>5</sup> This accommodation for reasonable error exists because ‘officials should not err always on the side of caution’ because they fear being sued.”<sup>6</sup>

## Conclusion

Federal agents and officers are required to make many decisions which impact on the rights of others. The law does not expect the officer to make perfect decisions, only reasonable ones based on the facts and circumstances known to the officer.

Federal employees are not civilly liable for acts committed within the scope of their employment. As long as the FLEO is acting within the scope of his employment, the United States is liable for anything that goes wrong.

Where the FLEO is arguably outside the scope of his employment, he might be subjected to personal liability under Bivens. To avoid summary dismissal, the plaintiff must allege that the FLEO violated his Fourth, Fifth, or Eighth amendment rights. Even then, the officer is immune from personal liability if he shows he was acting as a reasonable officer.

It is extremely difficult to successfully sue a FLEO for actions he committed in his official capacity. Because of this, such suits are relatively rare. A successful suit is much rarer.

FLEOs can be required to make split-second decisions in an often uncertain and dangerous environment. Hesitation in this environment is a very bad thing. The

law recognizes this. The law enforcement officer needs to remember this, and not worry about a lawsuit which is unlikely to ever happen.

(Endnotes)

- 1 Precise statistical data is not available. However, the author routinely teaches experienced federal law enforcement officers in advanced training courses. By way of demonstration, a show of hands is requested by any officer who has been sued under Bivens. In a typical class of 30 to 40 officers, it is rare that more than one or two have been sued under Bivens. It is extremely rare to meet a federal officer that has been successfully sued under Bivens. The author encourages officers to conduct this same inquiry among their coworkers. It is unlikely they will ever meet a federal law enforcement officer who had to pay a judgment as a result of any job-related action.
- 2 28 U.S.C. §§ 2672 et. seq.
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- 6 Hunter at 229, quoting, Davis v. Scherer, 468 U.S. 183 (1984)



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# Sharing Lessons Learned

*By Mike Poillucci, photos by Rick Edwards*

National Park Service (NPS) conducting fishing license checks in San Francisco.

Law enforcement officers sharing information about their own experiences, whether positive or negative, is vitally important in fighting the war on crime, drugs, and terrorism. For over 20 years the Federal Law Enforcement Training Center (FLETC) has hosted guest speakers who have given their own lessons learned presentations which have benefited the law enforcement community in officer safety and survival practices. These presentations have enhanced the survival mindset of law enforcement officers and have made a significant impact on developing law enforcement curriculum.

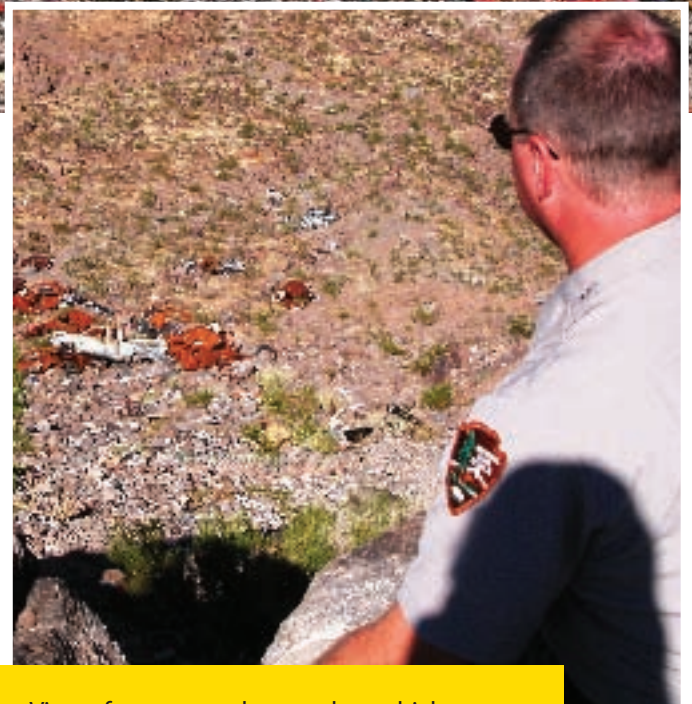
In 1983, FLETC established a Lessons Learned Committee, now known as the Lessons Learned Work Group (LLWG), consisting of representatives from FLETC; Partner Organizations; and state, local, and international law enforcement agencies around the globe. Since its inception, the LLWG has facilitated numerous information sharing presentations. Some of these presentations include: *Lesson Learned on the WACO Incident*, Bureau of Alcohol, Tobacco and Firearms; *Rifle Assaults against Police Officers*, Georgia State Patrol and Lowndes County Sheriff's Office; *The Will to Prepare to Win*, National Park Service; *Capture of the "BTK" Serial Killer*, Wichita Police Department; and *A*

*Hunt for Justice*, U.S. Fish and Wildlife Service. These are just a few of the many presentations that have been accomplished, along with an *Officer Survival Colloquy - The Trainers' Forum*, which involved many federal, state, and local law enforcement organizations from around the country.

Today, the LLWG continues with information sharing to ensure that we provide our brother and sister law enforcement officers with state of the art training and to offer insight into future situations which may save the life of an innocent person or a law enforcement officer.

The purpose of the LLWG is to thoroughly examine recent incidents or situations that have occurred in the field to either improve and/or validate current training methodologies. The LLWG makes arrangements for guest speakers to come to FLETC to conduct lessons learned presentations. After reviewing these incidents, course and program developers: (1) determine the type of training that might be needed which may not be currently provided; (2) determine ways to improve existing training; and (3) evaluate the effectiveness of the training that the law enforcement officer may have

Illegal make-shift shooting range near Lake Mead-Bureau of Land Management (BLM).



View of a canyon where stolen vehicles were dumped (NPS).

already received. Lessons learned information is then disseminated to training personnel and to our Partnering Organizations for their action. This type of after-action review is paramount in ensuring that trainers continue to provide state-of-the-art training to the law enforcement community and that law enforcement officers have the knowledge, skills, and attitudes needed to successfully accomplish organizational goals and objectives in a highly effective manner.

We ask for your support in joining efforts in information sharing. The LLWG can only be effective through the full participation and cooperation of the law enforcement community. If you have been involved with or have knowledge of an incident, the LLWG needs your help. **Your lessons learned may very well save the life of one of our brother or sister law enforcement officers.** Please visit the LLWG web site at: <http://www.fletc.gov/training/lessons-learned-work-group>.



# Federal Rule of Criminal Procedure Addresses Warrants for Tracking Devices

*By Keith Hodges*

On December 1, 2006, Federal Rule of Criminal Procedure 41 was substantially revised. The modifications set forth the procedure for federal law enforcement officers and agents to obtain, process, and return warrants to install and use tracking devices to include GPS.<sup>1</sup>

Below is a summary of the new provisions. Agents and officers are encouraged to read the text of the change for themselves. A clean version of the new rule and other changes to the Rules are available at [http://uscourts.gov/rules/supct1105/CR\\_Clean.pdf](http://uscourts.gov/rules/supct1105/CR_Clean.pdf)

## **A. Authority to issue the warrant - Rule 41(b)(4)**

A magistrate judge in the district where the device will be installed may issue a warrant to install a tracking device. The issuing magistrate judge may authorize tracking in both the district where the device will be installed and any other district.



## **B. Contents of the warrant - Rule 41(e)(2)(B)**

The warrant must contain the following:

- Identity of the person or property to be tracked.
- Identity of the magistrate judge to whom the return on the warrant will be made.
- A reasonable period of time that the device may be used.
- The time will not exceed 45 days.
- Other extensions for not more than 45 days may be granted for good cause shown.<sup>2</sup>
- A command that the device be installed:
- Within 10 days or less from the time the warrant is issued, and
- During the daytime unless the magistrate for good cause shown authorizes another time.
- A command that there shall be a return on the warrant.



**Warrant Requirements – GPS Installation – No Tracking in REP area.  
(Tracking in an REP area will require a warrant.)**

Location <b>OFF</b> Vehicle during Installation	In REP area	Not in REP area	In REP Area	Not in REP area
Location <b>ON</b> Vehicle	In REP area (Internal installation)	Not in REP area (External installation)	Not in REP area (External installation)	In REP area (Internal installation)
Officer action	Warrant required.	No warrant required.	Warrant required.	Warrant required.

**C. Return on Warrant - Rule 41(f)(2)**

Within ten days after use of the device has ended, the officer executing the warrant must make the return to the magistrate judge specified in the warrant. The return must contain the exact dates and times of both installing the device and the period in which it was used. The return must be served on the person who was tracked, or whose property was tracked, within ten days after use of the device has ended.<sup>3</sup>

**D. Delays in the Return - Rule 41(f)(3)**

Upon request of the government, the magistrate judge may delay providing the notice required by the return.

The new rule does NOT address whether law enforcement officers need a warrant to install or monitor a tracking device. Whether a warrant is required to install a tracking device, or track a vehicle or other object, revolves around expectations of privacy (REP). If an intrusion into REP is necessary to install the device,<sup>4</sup> or the vehicle or object will be tracked in an area where one has REP, a warrant is required. If there is no intrusion into REP to install the device *and* the item or vehicle will not be tracked in an REP area, a warrant is not required. An overview of the warrant requirement is represented above.

(Endnotes)

- 1 18 U.S. Code Section 3117 defines a tracking device as an electronic or mechanical device which permits the tracking of the movement of a person or object.
- 2 If the results of the tracking device thus far disclose evidence of criminal activity, that fact should always be mentioned in the request for an extension.
- 3 Any delay in the required notification must be one “authorized by statute.” See 18 U.S.C. § 3103a (2006).

- 4 An intrusion into REP may be necessary to reach the vehicle, as when it is parked within curtilage, or to complete on internal GPS installation that would require access to the vehicles passenger compartment or internal wiring.



**About the author:** Keith Hodges is an attorney and Senior Instructor in the Legal Division at the FLETC. Prior to joining the FLETC, Mr. Hodges served in the U.S. Army for 29 years retiring in 2000 as a Colonel in the Judge Advocate General’s Corps. While a Judge Advocate, he served as a prosecutor and defense counsel as well as a Staff Judge Advocate. he spent his last nine years of active duty as a Military Judge. Mr. Hodges was an Adjunct Lecturer of Law in Evidence and Trial Advocacy at the College of William and Mary for one year. Mr. Hodges has made presentations to the IACP and other national conferences, and has served on two forensic technology working groups, and he is currently a member of the Scientific Working Group on Imaging Technology (SWGIT)

# A New Bug in Town

## An Article on Protecting Yourself from Methicillin-Resistant Staphylococcus Aureus (MRSA)

*By Steve Yates and Lynn Mercer*

Bacteria live on everyone's skin and usually cause no harm. However, when staphylococcus bacterium gets into your body through a cut or an abrasion in the skin, it can cause a "staph" infection. A staph infection usually develops into a pimple, mild rash, blister, or a boil which can be treated with proper cleaning and, if necessary antibiotics. Over the past several decades, however, staph infections have become harder to treat as the bacteria has developed resistance to antibiotics. This new resistant form of staph infection is called "methicillin-resistant staphylococcus aureus (MRSA)." If not treated appropriately, skin infections from MRSA and other resistant staph, can develop into more serious, even life-threatening conditions.

MRSA has, up until now, mostly affected hospitals, nursing homes, and health care facilities. MRSA has been reported in increasing numbers among otherwise healthy persons of all ages without these traditional risk factors (e.g., exposure to the bacterium while in a health-care facility and among persons with histories of repeated or long-term antibiotic therapy). These new MRSA infections are referred to as community-associated MRSA (CA-MRSA). MRSA is now the single cause of most common skin infections in the United States, with an estimated 100,000 people in the United States hospitalized each year with CA-MRSA.<sup>1</sup> The Centers for Disease Control have also documented the increased incidence of CA-MRSA in specific areas and close quarter contact environments such as correctional institutions, military installations, health clubs, homeless shelters, specific life style and ethnic populations, athletic teams,<sup>2</sup> and law enforcement training facilities.

### **What does an MRSA infection look like?**

- Symptoms may include redness, swelling, pus, skin tenderness, pimples, boils or blisters.
- Often misdiagnosed as a spider or bug bite – but it is NOT caused by a spider or insect bite.
- MRSA- infected skin lesions (sores) can change from skin or surface irritations to abscesses or serious skin infections.
- If left untreated, MRSA can infect blood and bones.

### **How is MRSA spread?**

- MRSA is almost always spread by direct skin-to-skin contact.
- Drainage (pus) from skin sores can spread bacteria to other body parts or to other people.
- MRSA can also spread through touching of objects such as towels, sheets, workout areas, and sports equipment that have MRSA germs on them.

### **How do I know if I have MRSA?**

- Only a health care provider can determine if you have MRSA. A sample of the infected wound is used to grow the bacteria in the microbiology laboratory. This is called a culture. If the staph germs that are cultured cannot be killed with standard antibiotics the infection is called MRSA.

### How are staph infections (including MRSA) treated?

- Several antibiotics can be used to treat most staph infections, including MRSA. If antibiotics are prescribed, patients should complete the full course and call their doctors if the infection does not improve.
- Additionally, many MRSA infections can be treated by draining the abscess or boil and may not require antibiotics. Only healthcare providers should drain sores.

### How can I prevent staph or MRSA skin infections?

Good personal hygiene helps prevent staph and MRSA skin infections. Specific recommendations include:

- Wash your hands often with soap and running water. Rub vigorously for at least 20 seconds and include wrists and under fingernails. Washing hands also helps prevent colds and flu.
- Keep cuts and abrasions clean and covered with clean, dry bandages until healed.
- Avoid contact with other people's wounds or anything contaminated by a wound.
- Avoid sharing personal items such as soap, towels, razors, and clothing that has come into contact with a wound.
- Clean and disinfect objects (such as gym and sports equipment) before and after use.
- Wash dirty clothes, linens, and towels with hot water and laundry detergent. Using a hot dryer, rather than air-drying, also helps kill bacteria.

### FLETC Initiatives to Prevent CA-MRSA

In response to increased cases of CA-MRSA at other law enforcement training facilities in 2004, FLETC initiated a proactive review of potential areas most at risk for harboring the CA-MRSA bacteria. The primary focus was on student uniforms, towels, porous and non-porous protective equipment used for defensive tactics, role player equipment, and facilities such as student locker rooms, bathrooms, showers, mat rooms, weight rooms, cardiovascular training

rooms, and athletic training room. Given the increasing number of MRSA cases identified throughout the county, FLETC has further stepped up efforts within the last few months to ensure all commonly shared equipment is properly cleaned and disinfected after each use.

All FLETC training sites areas (Glynco, Artesia, Charleston, and Cheltenham) were consulted regarding proper cleaning, maintenance, and storage of porous and non-porous training equipment. Specific inspections were conducted at the Physical Techniques Division, Behavioral Science Division, Forensic and Investigative Technologies Division, Counterterrorism Division, Firearms Division, Enforcement Operations Division-Practical Applications Branch, and Computer and Financial Investigation Division. These inspections involved the review of Standard Operating Procedures for the cleaning and maintenance of porous and non-porous equipment with special attention given to particular cleaning procedures, frequency cleaned, and disinfectants/cleaning agents used that contain anti-bacterial and anti-viral agents. The disinfecting policy, cleaning frequency, and chemicals utilized were also examined for the indoor and outdoor aquatic training facilities.

In response to this review, FLETC has taken the following action:

- Increased awareness and education of the dangers of CA-MRSA to students and staff through posters and pamphlets showing photographs, signs, and symptoms of CA-MRSA. This information is also included in the student orientation packet.
- The FLETC Health Unit carefully monitors students and staff for skin infections. This includes mandating that students and staff with suspicious skin infections be evaluated by a healthcare professional.
- Students and staff must have all abrasions, cuts, and scrapes properly covered and bandaged at all times until healed.
- Wall mounted antimicrobial hand sanitizers have been strategically placed outside of at-risk areas of physical contact such as mat rooms and workout areas.

MRSA is now the single cause of most common skin infections in the United States, with an estimated 100,000 people in the United States hospitalized each year

- Disinfectant gym wipes and spray bottles have been placed in each weight room and cardiovascular training areas to be utilized in the wiping and spraying after each use.
- Established a standard of practice for the cleaning of all porous and non-porous equipment with regard to personnel, procedures, and products in all FLETC facilities.
- Frequency of cleaning schedules regarding mat rooms and equipment were examined and adjusted to meet the demanding use of these facilities. Extra protective equipment such as boxing gloves, grappling gloves, chest protectors, and helmets were purchased to allow for proper cleaning and disinfecting thus providing at least 24 hours drying time between classes.

- Continued emphasis on the practice of good personal hygiene among students and staff.

It is everyone's responsibility to prevent the spread of CA-MRSA. To date, FLETC has not had a major problem with CA-MRSA. FLETC remains committed by identifying, initiating, and implementing safety measures ensuring the health, safety and welfare of all students and staff in the prevention and control of CA-MRSA. Education, washing one's hands, and practicing good personal hygiene remain key elements in the prevention and fight against CA-MRSA.

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**About the Author:** Mr. Yates has been with FLETC at the Physical Techniques Division for over 4 years. He has been a Certified Athletic Trainer by the National Athletic Trainers Association for 35 years. He was Head Athletic Trainer at the Virginia Military Institute for 9 years and Wake Forest University for 16 years. He was also a teaching faculty member of the Bowman Gray School of Medicine-Department of Orthopedic Surgery of Wake Forest University for fourteen years. He was named Most Distinguished Athletic Trainer by the NATA in 1999. Mr. Yates has also published book chapters and over twenty articles nationally in the field of Athletic Training and Sports Medicine. Steve has a Bachelors Degree from West Virginia University and a Masters Degree in Sports Medicine from the University of Virginia.



**About the Author:** Ms. Mercer joined FLETC in October 2006 as the Deputy Assistant Director, Office of Training Support (OTS). Lynn comes to us from the Centers for Disease Control and Prevention (CDC) where she held various positions with AIDS and other infectious disease programs, grants management, financial management and business support functions. Lynn holds two Master's degrees a Master of Public Administration from the University of Georgia and a Master of Public Health from Tulane University.



# LESS LETHAL... BUT STILL LETHAL

*By Vic Sikes*

*In the world of law enforcement, the officers must evolve and adapt to the changing times. In response to the violence demonstrated by many offenders in the drug culture, more and more police tactical units are conducting dynamic entries in the service of narcotics search warrants.*



Dynamic entries have become so common in many jurisdictions that officers tend to develop a somewhat casual attitude about distraction devices.

The use of light/sound distraction devices, more familiarly referred to as “flash-bangs” or “stun grenades”, has become a common tactic in such “high-risk” entries. The device’s job is to stun violent offenders momentarily, via a blinding flash of light and a violent explosion, giving tactical personnel an advantage during entry. There are several configurations of distraction devices, the most common of which is the grenade type device. This article addresses the use and misuse of that configuration. When deployed properly and under appropriate circumstances, flash-bangs are necessary and effective tactical tools. However, when deployed improperly or under inappropriate circumstances, the potential liability is huge. At some point, officers need to be reminded of the dangers inherent to the devices and the accompanying legal issues.

Dynamic entries have become so common in many jurisdictions that officers tend to develop a somewhat casual attitude about distraction devices. Some officers mistakenly believe that the only effects of distraction devices are the loud noise and bright flash. Indeed, those effects are created by flash-bangs (hence the name), but there are other less desirable effects, namely; thermal, fragmentation, and blast. In creating the desired levels of flash and percussion, the flash-bang relies on confined deflagration of a flash powder mixture inside. Deflagration refers to the combustion of a material which burns rapidly and produces a large quantity of hot gases. Gunpowder is one of the better examples of a material that deflagrates.

In form and function, flash-bangs are grenades. They consist of a hollow body

filled, in this case, with a pyrotechnic mixture and a fuse body or fuse assembly fitted into the grenade body. The fuse body contains a primer (much like a shot-shell primer), a spring-powered, rotating striker, and a lever or spoon and a pin. The spoon holds the striker in a rearward or cocked position. The pin secures the spoon to the fuse body. When the pin is pulled and the grenade thrown, the spoon is pushed away by the striker which is allowed to rotate under spring tension. The striker completes the rotation and strikes the primer, which ignites the burning fuse. The fuse burns for one to two seconds into an initiating charge which ignites the pyrotechnic filler of the device.

There are two basic configurations of flash-bangs available to law enforcement. The first is, in essence, a very large firecracker. The pyrotechnic powder is contained within a heavy cardboard or light plastic tubular body, which is fully encapsulated. The fuse body is secured in one end of the device. The other type consists of a heavy steel body, in which a cardboard cartridge containing pyrotechnic powder is secured. It should be noted that the steel body configuration requires much less pyrotechnic powder than the cardboard cartridge to achieve the same effects, but blast pressure, heat generation, and fragmentation hazards are inherent to all. All commercially manufactured distraction devices are carefully designed to minimize hazardous effects

When a deflagration is confined, a great deal of pressure is created in an instant within the space of the device. The pressure naturally escapes via the path of least resistance. In the cardboard body devices, there is not a path of least resistance, therefore a mechanical over-pressure occurs, and the cartridge explodes, creating blast pressure. In the steel body flash-bang, the pressure created by the

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deflagration seeks the path of least resistance and naturally escapes through the large hole in the base of the body. In that process, a great deal of pressure builds rapidly (up to 30,000 psi), and the hot gases exit the device at super-sonic speed, creating the loud noise desired, again with blast pressure. The pressure within the steel flash-bang body is comparable to pressures achieved in the chamber of a firearm. In fact, the device functions in the same manner as a gun firing a blank cartridge, but on a much larger scale. If a part of a person's body is within close proximity of either type of device when it functions, the pressure release can cause great injury.

The fragmentation effect is inherent with explosions. Fragmentation can be generated by either pieces of the device or objects in close proximity to the device being propelled by the blast pressure. Diversionary devices present a low risk of fragmentation injuries, but any time blast pressure exists, there is a danger of objects being propelled through the air. The cardboard cartridge device can propel the grenade fuse body at considerable velocity. Additionally,

shreds of cardboard move at high velocities for a very short distance. The release of pressure from the steel body type flash-bang tends to propel the heavy grenade body at a velocity which can cause injury if it should strike a person. This particular problem has been somewhat alleviated in the later versions of the device by the addition of a number of vent holes in the top of the body, surrounding the fuse body, or by a number of holes in the steel body through which pressure is released. The release of pressure from these vent holes tends to counteract the pressure released from the larger vent in the base, which limits the distance and velocity of the movement of the grenade body.

Yet another undesirable effect of distraction devices is the thermal event or heat, which creates the brilliant flash of light. High temperatures are needed to generate the desired bright flash. The source of the heat is the deflagration or burning of the flash powder. Metals such as magnesium and aluminum are used in such mixtures to create the white-hot flash. The thermal event associated with a flash-bang is of very short duration, (which is a good thing) but persons and objects within close proximity to the device at the time of the explosion are subject to severe burns from the thermal event or flash. There is a great potential for the flash-bang to start fires when in close proximity to combustible materials. It should be stressed that distraction devices should never be deployed in environments where volatile or combustible materials are present, with an emphasis on clandestine drug labs. In an atmosphere of volatile fumes, the deployment of a flash-bang can initiate a much larger, more destructive secondary explosion.

Injuries from distraction devices can be caused by any or all of the effects previously discussed. Incidents seem to result from careless handling, lack of training, and inappropriate deployment. The prescribed procedure for deploying a flash-bang is as follows:

1. Hold the grenade in the throwing hand, securing the spoon firmly in the web of the hand between the thumb and forefinger.

2. At the time the grenade is to be deployed, pull the pin from the fuse body with the index or middle finger of the non-throwing hand.
3. Throw the grenade.

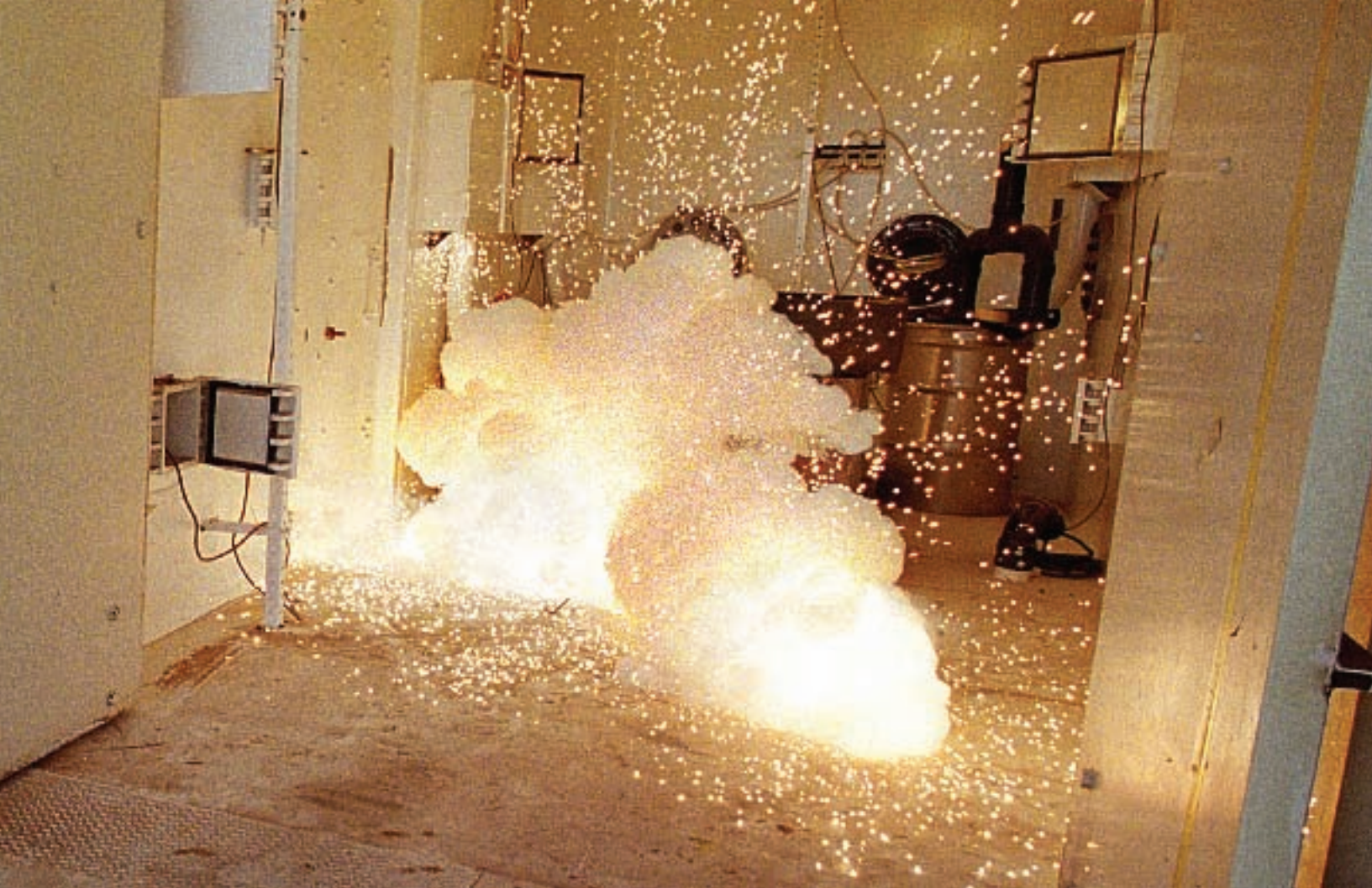
It is as simple as that. Injuries have been caused by individuals doing such things as fully or partially releasing the spoon while the device is still in his/her hand. Distraction devices have a one to two second time delay, unlike fragmentation grenades which can have up to a five second delay. They are designed to function quickly so that there will be no time for anyone to approach or handle them. Standard deployment of a flash-bang is to toss the device at a low trajectory along the ground or floor so that it will be in contact with the surface almost immediately. Officers and agencies have created techniques and attachments for distraction devices to suit tactical needs; however those tactics and modifications will not be discussed here.

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Officers have been injured by distraction devices that have been thrown against solid objects and bounced back at the persons throwing them. With the short time delay, the individual has no time to get away from an activated flash-bang. Numerous reports of injuries and damage have been the result of flash-bangs being thrown, intentionally and unintentionally at persons, with devices functioning in direct contact with or in close proximity to the person's body. The intentional deployment of one of these devices at a person amounts to an application of deadly force due to the nature of distraction devices. All efforts should be made to deploy distraction devices a distance of at least six feet from any person.

On rare occasion, distraction devices fail to function for a variety of reasons. Agencies that use distraction devices must, for the sake of safety and liability, develop and implement misfire procedures for the eventuality of a device misfire or failure to function. When a misfire occurs, the device is not to be approached or handled for at least 30 minutes, in the event the burning time delay in the device is burning or smoldering. In a tactical situation, officers are usually





forced to continue operations until all subjects at the location are secured. During that time, they should anticipate that the device will function at any time and maintain a safe distance from it, if possible. Once subjects are secured, all personnel should evacuate until the appropriate wait time has elapsed. In the training environment, all personnel should immediately evacuate the area of the misfired device and observe the wait time. Handling of misfired ordnance should be done by EOD or Bomb Squad personnel, who are trained and equipped to do so safely and efficiently. Disassembly, manipulation or any attempt to re-fire a misfired flash-bang should be strictly prohibited. Misfires can result from a striker component hanging up in some fashion. Handling

Recent criminal cases have resulted in convictions and possible imprisonment of law enforcement officers. The incidents in question involved individuals taking, transferring, storing and using distraction devices outside the exemptions. . .

Distraction devices are not available to the public at large without special permitting. Recent criminal cases have resulted in convictions and possible imprisonment

may cause it to release and function the device.

#### THE LAW

Distraction devices currently in use by Federal, state and local law enforcement are categorized as “destructive devices” in the United States Code. Flash-bangs are readily available to law enforcement agencies, who are exempted from the Federal statutes regulating receiving, possessing and storing them. The exemption does not relieve officers and agencies from liabilities created by improper storage, security and accountability of the destructive devices.

of law enforcement officers. The incidents in question involved individuals taking, transferring, storing and using distraction devices outside the exemptions granted law enforcement in the U.S. Code. A number of incidents have occurred in the country in recent years. The following is a high profile example of misconduct leading to criminal convictions.

### HOUSTON TEXAS

Charles A. Malouff Jr. pled guilty in U.S. District Court for the Southern District of Texas in August 2006, to one count of Unlawful Transfer of a Destructive Device, which can carry up to a 10 year sentence. His sentencing was scheduled for January of 2007. The case against Malouff was the result of an investigation of an incident which occurred in Magnolia, Texas in August of 2004. The incident involved severe injuries to an individual caused by a flash-bang grenade which was thrown into a group of people at a bachelor party in a private residence.

Eugene H. Williams Jr. deployed the flash-bang as a “prank” at the bachelor party inside his own residence. It functioned near the foot of Steven Crosby, the assistant Fire Chief of Huffman, TX, literally blowing off a portion of his foot. At the time of the incident, Williams was a reserve police officer, an employee of a tactical EMT organization. As an interesting side note, he is also a former ATF special agent. A Federal District Court jury found Williams guilty of: Possession of an Unlawfully Transferred Firearm, Possession of a Firearm Not Identified by Serial Number, Improper Storage of Explosives and three counts of Possessing Unregistered Firearms which can result in a sentence of up to 11 years in prison. His sentencing in U. S. District Court is scheduled for March of 2007.

State charges of Aggravated Assault and Tampering with Evidence are pending against Williams. Allegedly, persons present at the party had removed evidence of the distraction device from the room, prior to the arrival of investigators. Following the incident, investigators were told by those present that the injury to Crosby was a result of a “chainsaw accident”. The story then changed to a “fireworks accident”. According to Texas state law, a person commits Aggravated Assault if he intentionally, knowingly, recklessly or with criminal negligence causes serious bodily injury to an individual.

Another earlier incident was documented during which Eugene H. Williams Jr., as a joke, deployed a flash-bang under the patrol vehicle of an on-duty police officer on a restaurant parking lot. No injuries or damage were documented, but the incident occurred during a major

event and attracted a lot of attention. This incident was not reported or documented until the investigation of the latter incident uncovered it.

Eugene H. Williams Jr., obtained the flash-bangs from Charles A. Malouff Jr., who admitted to taking a number of flash-bangs from two police agencies he previously worked for. He then gave the devices to Williams, who kept them in his office. Following the events at the bachelor party in Magnolia, investigators recovered seventy- eight flash-bang devices and other items from Williams’ office in the building of the Tactical Medic service by which he was employed.

### SUMMARY

The use of distraction devices by police agencies provides tactical officers with a tool that gives them the advantage over armed and dangerous suspects. In legal and practical terms, however, flash-bangs are explosive weapons, classified as destructive devices by Federal statute. As such, agencies must maintain strict accountability of and security for them. Irresponsible or malicious use of distraction devices has resulted in severe injuries to innocent persons and unnecessary property damage, not to mention public embarrassment and censure of police officers and agencies. They are high risk tools for high risk operations and must be used sparingly and appropriately to avoid unnecessary injuries and liability. Policies and procedures must be in place regulating the receipt, storage and use of distraction devices. Further, safety procedures for both the tactical and training environments must be in place and enforced.

**About the Author:** Vic Sikes is a former instructor for the FBI/U.S. Army Hazardous Devices School at Redstone Arsenal, Alabama. There he was a subject matter expert in the areas of recovery and disposal of explosive materials, safety and control of explosives and booby traps. Prior to that time he was a contract instructor for the Texas Engineering Extension Service, Weapons of Mass Destruction Incident Command Structure program, after retiring from the Police Department in Odessa, Texas where he was a Detective Lieutenant and Bomb Squad Commander. Vic served as an active bomb technician for nearly 20 years. Vic Sikes is currently a Senior Instructor for the General Training Branch at the Federal Law Enforcement Training Center in Artesia, New Mexico.



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1. The Glyco Port of Entry provides the backdrop for the 126 top executives who participated in the 2007 U.S. Customs and Border Protection Leadership Retreat (photo: The Darkroom).

2. CBP Commissioner Ralph Basham tests a new FN303 Pepperball Launcher during the 2007 CBP Leadership Retreat (photo: Rachel Torres, CBP Field Operations Academy).

3. CBP Commissioner Ralph Basham is processed into the United States at the CBP Field Operations Academy Port of Entry by CBP Basic Officer Perez (photo: Rachel Torres, CBP Field Operations Academy).

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