

Federal Law Enforcement Training Center

FLETC

Journal

Volume 6, Issue 1 ❖ Spring 2008

WELCOME TO
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COMMANDING GENERAL

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Report from Iraq

A FLETC EMPLOYEE ON MARTIAL JUSTICE AND
A NEW LEGAL SYSTEM FOR THE IRAQI MILITARY



Model Training

- Instructors that are experienced law enforcement officers equipped with formal and mandatory FLETC instructor training programs.
- Educational and academic professionals provide curriculum design and development, and standardized training.
- Unique training facilities that benefit 83 federal law enforcement organizations, plus state and local agencies.
- FLETC trains those who protect our homeland.

Experience where it counts

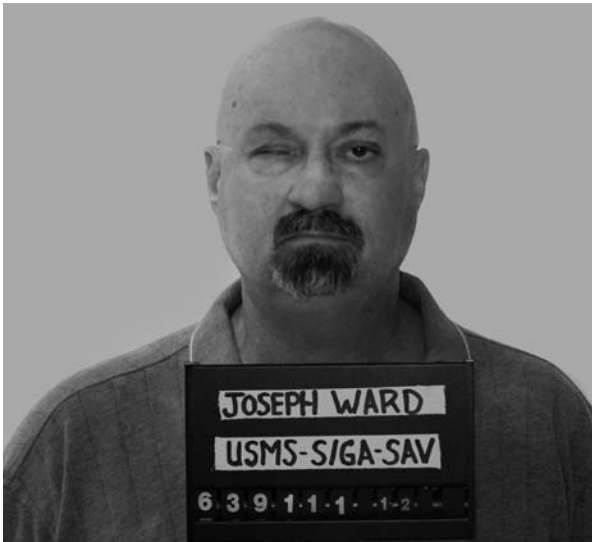
The Federal Law Enforcement Training Center

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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.

The people of the FLETC are deeply committed to our mission: “We train those who protect our Homeland.” We train the people who stand at our borders to protect our Nation from dangerous people and dangerous goods. We train the people who protect the Nation’s critical infrastructure. We train the people who guard our National monuments, parks, and federal lands. We train the people who investigate crime that have occurred and who investigate to prevent crimes from occurring.

The people who perform this training are a mix of professional trainers with substantial law enforcement experience and current federal law enforcement professionals detailed from their agencies. We are keenly aware that, as trainers, we do not work in the front lines of protecting this Nation – and we are keenly aware that we bear a great responsibility for the effectiveness of the people that do. Many of our instructors will return to their agencies and work side by side with their former students – a strong motivator to provide world-class training.

The FLETC Journal provides a glimpse of the diversity and talent of the people who train those who protect the Homeland. We also take a moment to acknowledge a small and very special part of our FLETC family – the reservists and agency personnel who deploy to war zones. These are people who can proudly say: “We are those who protect the Homeland.” We are proud to count these colleagues and friends in our numbers and rejoice at their safe return.

Marie R. Bauer



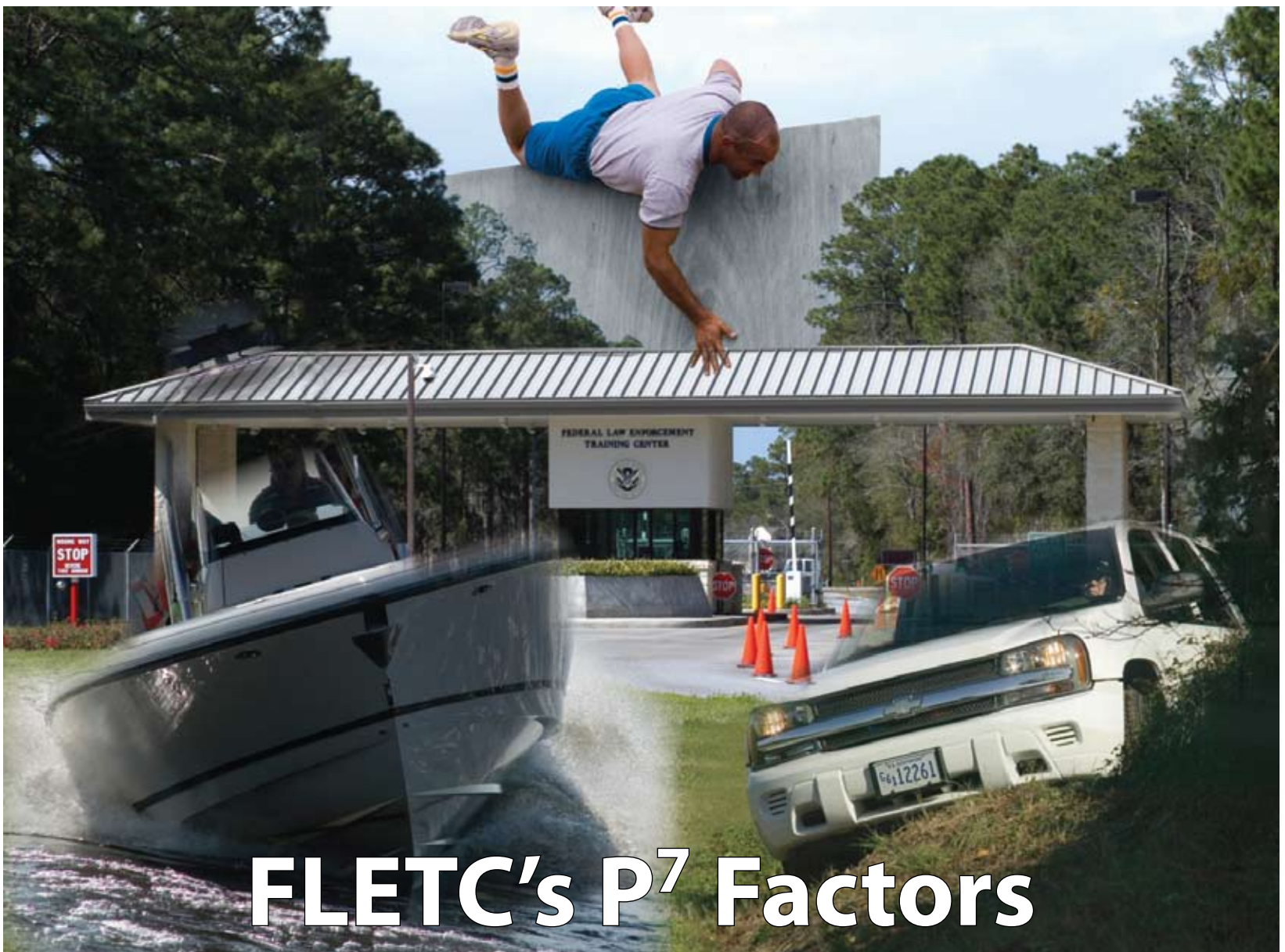
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FLETC's P⁷ Factors

By Michael R. Hanneld

Assistant Director for Training Innovation and Management

Federal Law Enforcement Training Center

“How did FLETC get to *be* so good?” It wasn’t a question I was expecting from the woman sitting across the table from me: a distinguished Associate Professor and the Director of Research at Johns Hopkins University’s Division of Public Safety Leadership. Dr. Phyllis P. McDonald and her small team were wrapping up their site visit at Glynco, and my close-out interview was part of the benchmarking review that FLETC had hired Johns Hopkins University to do for us. Our goal was to get an independent, third party assessment of how we stacked up against others in the law enforcement training community. We were also seeking advice on where we could find opportunities to improve. We fully understood that, like any organization, FLETC could al-

ways get better. But even as we worked at doing just that, I somewhat immodestly acknowledged to myself that, all in all, FLETC really *is* pretty good already. Consequently, I found Dr. McDonald’s question very intriguing, but, until she posed it, not one that I’d actually thought about much.

Obviously the answer to Dr. McDonald’s question is complex, and it has so many facets that no single person can be aware of them all. Nevertheless, here’s what I’ve come up with in my efforts to answer Dr. McDonald’s question. Of course, this answer only reflects my own point of view, and others could come up with altogether different constructs that would be just as valid.

I'm now up to seven elements: P⁷ - which is a handy way to help me remember the seven factors I think are keys to FLETC's success. P⁷ is also an appropriate metaphor because each of the "Ps" really *does* multiply the effect of the other six. So "P to the 7th power" is, I think, a pretty accurate way of depicting the synergy of these P⁷ factors:

1. **People** - FLETC's strength is its workforce.

- Virtually all our instructors are experienced law enforcement officers (LEOs). Our philosophy has always been that we can teach experienced LEOs to be trainers, but we can't give trainers LEO experience. This is especially important in basic training, where students judge credibility by experience and where experienced LEOs introduce students to the law enforcement culture and its values.
- FLETC's unique blend of detailed agency instructors and permanent FLETC trainers provides recentness of law enforcement experience while balancing it with the maturity and stability derived through comprehensive training expertise.
- Almost since FLETC's inception, we have had among us a small group of educational professionals who usher us along the straight-and-narrow path to educational soundness and academic legitimacy. Though seldom fully embraced by the LEOs, these somewhat alienated and occasionally disaffected academicians have nonetheless exerted a powerful and very positive influence on FLETC, compelling us to build the systems (e.g., some of the "Programs" described below) that have given structure and validation to our training program development and maintenance processes.

2. **Places** - I suppose you can train *without* excellent facilities, but they sure do help!

- Over the years we've built on the world's premier law enforcement training facilities - many of which are completely unique.
- Because we've done so much of it for over 3 1/2 decades, we've really gotten pretty good at designing, constructing, and utilizing superb training venues. Also, our unparalleled experience helps us do it at the lowest possible cost with the minimum risk.
- And the old adage really is true - in general, a dollar invested at single-agency training facili-

FLETC'S P⁷ Factors

P¹ = People

P² = Places

P³ = Programs

P⁴ = Partnerships

P⁵ = Passion

P⁶ = Practice

P⁷ = Philosophies

ties like the Secret Service's Rowley Training Center or the Customs and Border Protection's Harpers Ferry Training Center only accrues to the benefit of one agency, while a dollar invested at FLETC benefits 83 federal law enforcement organizations (plus a host of state and local agencies).

3. **Programs** - FLETC's training management systems afford us extraordinary consistency and help ensure the quality of the training we deliver.

- Instructional systems design - rigorous curriculum development and curriculum review processes ensure that FLETC training is current, relevant, educationally sound, and targeted to essential job skills.
- Formalized, mandatory in-house instructor training programs have created a professional training culture. Since its earliest days, FLETC trainers have "cut their teeth" on Robert F. Mager's *Preparing Instructional Objectives*. More recently, new trainers have been indoctrinated with Peter Renner's *The Art of Teaching Adults*. Mandatory instructor training - not just for permanent staff, but for detailees as well - has helped ensure that FLETC trainers are properly prepared. It has also enabled FLETC to drive innovations such as student-centered learning, experiential methodologies, interactivity in training, and the integration of technology into training environments. And FLETC's instructor training isn't just a "check-the-box" exercise - it's a thorough, intense, and demanding program.

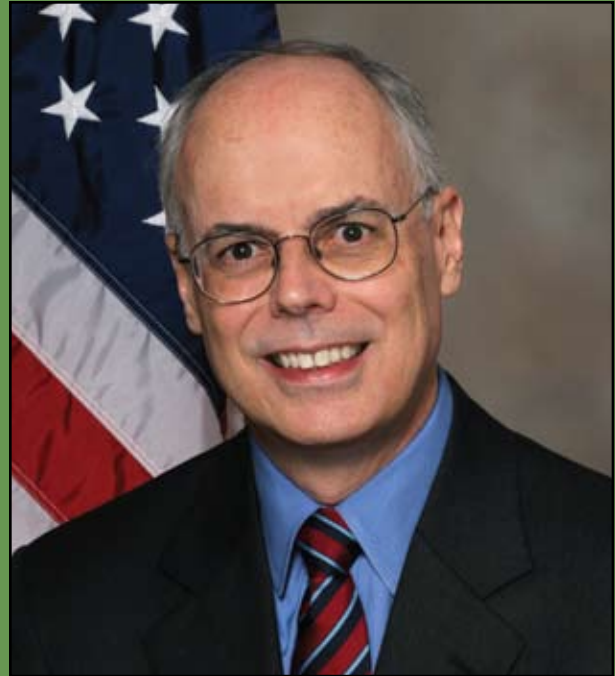
- Training outcome feedback loop based on “FATES” - the FLETC Automated Testing and Evaluation System comprised of a student feedback system (SFS), an automated testing system (ATS), a practical exercise assessment system (PEAS), and a training program continuous validation process (CVP). In the Kirkpatrick evaluation model, the first of these four FATES components (SFS) provides Level I feedback. The next two (ATS and PEAS) give us Level II feedback - in a written testing environment and a practical applications environment, respectively. The last component (CVP) offers Level III feedback.
 - FLETC research to identify the most effective law enforcement training techniques, methodologies, and tools benefits the entire training community. There may be nobody else in the law enforcement training community with the talent pool, relationships, and resources necessary to conduct the type of research FLETC is doing.
 - Accreditation through FLETA is compelling us to take care of business, ensuring that we have documented our work in detail and tied up any loose ends as we develop proofs of compliance with FLETA standards.
4. **Partnerships** - At the end of the day, it always comes down to relationships!
- FLETC’s “customers” are true partners in curriculum design, development, and delivery.
 - Strengths of individual agencies benefit all 83 partners (e.g., Capitol Police experience with bike patrols helps all agencies that train at FLETC on bike operations; Customs and Border Protection experience with marine interdiction and boarding helps all agencies that train at FLETC in marine law enforcement programs; Park Police experience in emergency response driving benefits all agencies that participate in driver training at FLETC; ATF experience with explosives improves training at FLETC for all agencies that could encounter improvised explosive devices - the list of such examples is almost endless).
 - If one agency develops a new “best practice,” consolidated training at FLETC facilitates its rapid adoption throughout the law enforcement community.
 - FLETC provides a forum for relationship building among agencies. This is true not only of students (who often establish friendships at FLETC that endure throughout their careers), but also of staff detailed to or assigned at FLETC. Such relationships extend beyond training and often carry over into operations in the field. FLETC offers a practical opportunity to give real effect to the saying, “The critical incident is not the ideal time or place to be exchanging business cards.”
5. **Passion** - “We train those who protect our homeland” - it’s a mission that’s easy to get excited about.
- Lives are at stake. And since all our trainers and most of our Executive Team have “walked the walk” as LEOs, they understand the impact of training - good or bad - and the difference it makes.
 - Training is a force multiplier - FLETC instructors shape the face and character of law enforcement in America (and around the world, for that matter) for decades to come.
 - As current or former LEOs, FLETC trainers *will* accomplish the mission, regardless of the obstacles placed in their way!
6. **Practice** - FLETC does a lot of training (over 50,000 students a year), so we get to do it until we get it right.
- Though small by DHS component standards, FLETC is huge by law enforcement academy standards. This gives us a lot of practice. We have a lot of opportunities to make mistakes, but also a lot of opportunities to learn from them.
 - Because we will see things once a month that smaller law enforcement academies may see only once a year, we begin to discern patterns, and that enables us to build systems for process improvement and error prevention.
 - We have 4 domestic and 2 international training sites. This facilitates the discovery and enterprise-wide adoption of “best practices.”
7. **Philosophies** - With 37 years in the business, FLETC’s culture and value system have become well established.
- Focus on the students - it’s all about learning. Everything else cascades down from that exclusive focus. We can keep focused because

our sole mission is training; there are no operational demands competing for our resources.

- Teaching counts for nothing unless learning occurs. To know if learning actually takes place, we have to have good evaluation and feedback mechanisms. And to know if the learning that did take place was, in fact, what actually needed to be learned to do the job, we have to have good training validation processes.
- Train the way you'll work - if agencies train together they'll be more effective when they're called on to work together. Training standardization is invaluable when lessons must actually be applied in the field - often in the context of multi-agency operations.
- We've come to fully appreciate that, though some preliminaries are necessary, learning actually comes from doing. As a result, over half the training received by our basic students is delivered outside the classroom.
- Largely as a result of our own learning from our Canadian friends in the RCMP, we've adopted adult learning principles throughout our training programs. This has led us to emphasize problem-solving techniques, to design curriculums to instill principles rather than to teach checklists, and to employ delivery methods that are holistic instead of fragmentary (i.e., weaving multiple disciplines into training scenarios instead of artificially isolating training disciplines in a way that adheres to FLETC's table of organization).

Are there other "Ps" out there that have contributed to FLETC's success? Absolutely! But from the perspective of someone who's worked with and for FLETC for over 30 years, I think these seven "Ps" are the most essential ingredients. I have enjoyed the opportunity to observe FLETC from both inside and outside the fence line. As the training director for one of FLETC's oldest Partner Organizations (PO), I've been a FLETC customer. I've also been a detailed instructor and a PO on-site representative. And as a FLETC employee, I've been a permanent instructor, a first- and second-line supervisor, a mid-level manager, and a member of the Director's Executive Team. I've been a trainer, in training support, and in administration, serving in more than fifteen different roles at FLETC. And at the end of the day, I believe my experience has prepared me to answer Dr. McDonald's question: "How did FLETC get to be so good?" The answer is really pretty simple:

it's found in the P⁷ - it's FLETC's people, its places, its programs, its partnerships, its passion, its practice, and its philosophies.



Mr. Michael R. Hanneld serves as the Federal Law Enforcement Training Center's Assistant Director for Training Innovation and Management, a position he has held since March 2004. Prior to that Mr. Hanneld served the FLETC in a variety of senior positions including: Assistant Director for Administration, Assistant Director for Training, Chief Financial Officer, Deputy Associate Director for Planning and Resources, and Assistant Director for Training Support.

Mr. Hanneld began his federal career in 1969 as a police officer with the United States Capitol Police in Washington, DC. He holds a B. A. degree in American Studies from George Washington University, and received a J.D. degree, summa cum laude, from the John Marshall Law School. Mr. Hanneld is also a graduate of the Senior Executive Fellows Program at Harvard University's John F. Kennedy School of Government. He is also a member of the Georgia Bar and Federal Bar, and is in the Senior Executive Service.



Take Control of Your Future!

By Andrew A. Smotzer

I first arrived at the Federal Law Enforcement Training Center (FLETC) in January of 1982. Back then most of our staff were in their thirties and forties; however there were a few exceptions. Today those numbers have changed; our staff is a much more mature group. According to our Human Resources Division numbers, many of our staff will be eligible to retire within the next five years. This scenario is government-wide and a major concern of senior management. The FLETC Journal continues to address issues of concern to “senior staff”. A recent article focused on staff members passing down their experience and knowledge to others so they can excel further in their chosen profession. In this issue we also focus on the

importance of a successful retirement for our staff and our students. Our focus this time around is looking forward to a successful retirement.

Planning

I’m one of those fortunate people that are eligible to retire within the year. Yes, this can be an exciting time in my life but also very stressful. I find myself asking questions like, do I have enough money and do I have enough activities to keep myself busy? I know it’s important for us to look at retirement not as an end, but as a new beginning. With this said, how do we plan this next phase in our lives?

I highly recommend going to some pre-retirement seminars. The Center has offered some very good seminars during the past few years. I did attend one during the summer of 2007, which was an eight-hour seminar and was very pleased with the information given. I have talked to several people who have attended seminars out of town that are usually two or three days in length and are highly recommended. I suggest going to both. I also suggest taking advantage of your agency's pre-retirement seminars if offered, or make arrangements to attend one.

Before I attended the pre-retirement seminar, I read a very interesting article concerning retirement in Fortune magazine titled "Secrets to a Happy Retirement", by Stanley Bing. It was very entertaining, so I'm going to share some of his ideas and humor with you as we explore this important issue.

Stanley starts out saying, "It's going to be great!" you tell yourself. "Wake up at noon every day like I did when I was a teenager! Have a bagel! Play 36 holes! Couple of drinks at the 19th green! Wake up and do it again the next day! That's what I call living!" Right. Have you thought about what 25 years of that will be like? "Get this: A life of incessant recreation and indolence is enough to drive any business entity like you or me mad after 3.5 years. He suggests you must pursue a strategic plan, that retirement is a job, and you need to plan as such. He also talked about a friend of his who had a passion for golf and played every day when he could for ten years after he retired. Well, as time went on his game started to naturally deteriorate, and he became aggravated and quit playing. Now he just hangs out and doesn't play anymore, so make sure you keep your hobbies [as] hobbies after you retire."

Here's a side note: Please plan your week so you take care of all your personal business like grocery shopping, car repairs, etc. during the week. Keep the weekends open for those who have to work. I find it very annoying standing in line with several retired people being checked out at the register in front of me on a Saturday or Sun-

day. Remember, for those of us who are working, our time is very valuable to us because we have so little of it. When you are retired every day is like a Saturday! So be considerate and thoughtful to those poor souls who still have to work.

Fitness & Diet

During this past year my wife got me interested in jogging. She had run in the Jacksonville River Run the year before and encouraged me to run in the next one. I did run the race even though I wasn't in very good shape, and I'm proud to say I finished. However, I continued to run after the race and I've stayed with it. We run on the average of 3-4 times a week, and our distance is about 10-15 miles total. Our running depends on how busy our schedules are for that week. I lost 20 pounds, reduced stress, and sleep better. We are both careful in our runs so we don't over do it and hurt ourselves. We apply the "Long Slow Distance" technique also known as LSD. As Stanley says, "I can't tell you how many guys I've known who keeled over about a week after they told me they were running 25 miles a week and were in the best shape of their life." So plan on exercising in retirement but please use some common sense. As we all know, exercise can be good for us: it reduces stress, keeps our weight down, and helps us sleep.

Let's discuss diet, eating, and perhaps drinking, which will be one of the bad habits you're going to want to maintain. The key to a healthy diet is variety and moderation. Everyone has a food or drink that they don't want to give up. It could be candy, ice cream, greasy foods, beer, etc. No matter what your desires are you don't have to give these vices up altogether. Just re-

member to apply some control and don't finish off the whole carton of ice cream. At meals try to stay away from second helpings. A well-balanced diet will consist of whole grains, fruits and vegetables, lean protein-rich foods, and drinking plenty of water. If you can, try to combine a well-balanced diet with cardiovascular and strength training.

So plan on exercising
in retirement... it reduces
stress, keeps your
weight down, and
helps us sleep.

As you go forward in your busy and fulfilling retirement, avoid contact with physicians by any means necessary. The purpose of doctors is to supervise the long decline and demise of retired people.

I suggest taking advantage of your own physical training staff for help in this area or, if you're assigned here at the FLETC, ask our Physical Techniques Division (PTD) for help because those guys are great in what they do.

Health & Appearance

Remember what Stanley said earlier in this article, "I can't tell you how many guys I've known who keeled over about a week after they told me they were running 25 miles a week and were in the best shape of their life. This was possibly because they were under the care of doctors. As you go forward in your busy and fulfilling retirement, avoid contact with physicians by any means necessary. At your age, the purpose of doctors is to supervise the long decline and demise of retired people. Your goal is to go down face first in a 28-ounce T-bone at the age of 90. Extensive exposure to doctors will eliminate that possibility." As my old friend Larry Tully of the Firearms Division always would say, doctors are practicing medicine and many of them have signs posted in their office saying that. However, remember they are practicing on us!

Always try to look your best. We have already talked about exercise and diet to keep our weight down, but let's not forget about appearance. Proper grooming and dress will enhance our looks. Guys get haircuts regularly, even if you don't have hair. Unless you already have a beard, don't grow one. Only wear a jogging suit if you plan on jogging, try to stay away from sweat pants, and coordinate your colors. When going out wear a belt but make sure it's leather or cloth, not

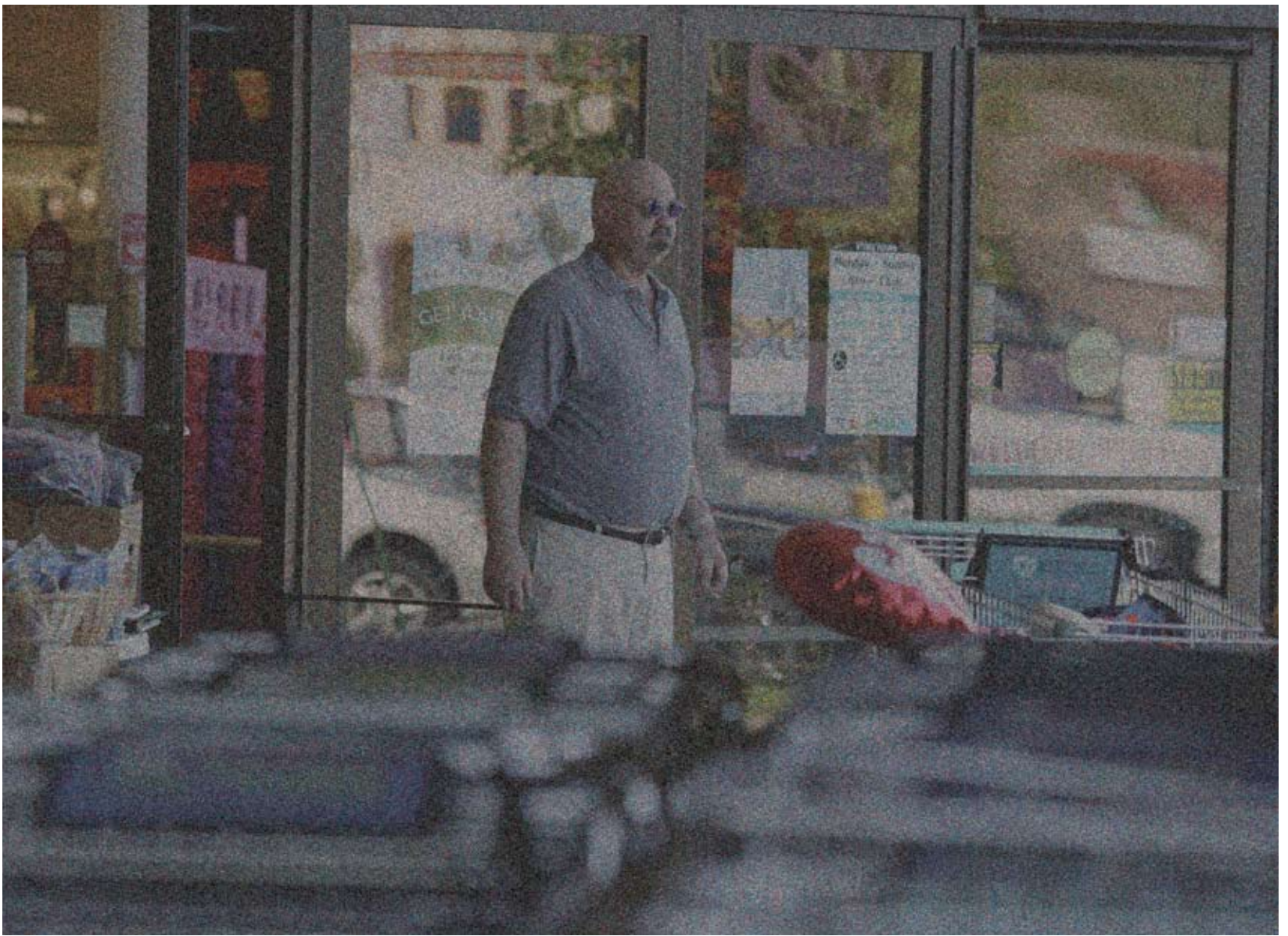
shiny plastic. So when I see you in the mall after you retire, I hope you're not wearing black socks along with your tennis shoes, yellow shorts, a tee shirt, and enjoying an ice cream cone.

Spend Your Money

Go out there and buy! Enjoy the money you have accumulated. At first this will hurt, but push through this and enjoy your life. Vacation, buy a new car, or build a new house. Hey, why not do both? You're in the zone! As Stanley says, "That's it! You're well fed. You're in the groove, baby, spending and wending your way around the world that was made for you. And when you get tired of all this and run out of money, like everybody told you that you would? Get a job, pal. You didn't think this nonsense was going to last forever, did you?"



Mr. Andrew A. Smotzer has served the FLETC for over 26 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 in the Firearms Division. He is currently a Branch Chief in the Behavioral Science Division at the FLETC in Glynco, Georgia. He is a graduate of the University of Maryland and author of numerous articles in several nationally published law enforcement magazines.



Caught on Tape

**THE USE OF SURVEILLANCE CAMERA FOOTAGE IN
CRIMINAL INVESTIGATION AND PROSECUTION**

By Ed Zigmund

Surveillance cameras are prevalent in our society. Some estimates indicate that in the United States, persons can be videotaped up to 30 times per day. When a crime occurs, law enforcement officers often check to determine if any surveillance cameras are in the vicinity. Surveillance footage can be used to identify, prosecute and convict perpetrators of crime. For example, in February 2004, Joseph Smith, age 39, accosted 11-year-old Carlie Brucia as she was walking home from a friend's house in Florida. The abduction was taped by a car-wash surveillance camera. Her body was found five days later. The police obtained surveillance footage from the car wash. At trial, Smith was convicted after the jury saw the videotape and heard testimony from several witnesses who said they recognized Smith in the video. What, then, are the legal parameters for using surveillance camera evidence during a criminal investigation, and in a subsequent criminal prosecution?

Under due process considerations, anytime a victim or witness is shown a single photograph during an identification procedure, the danger of an impermissibly suggestive identification producer is present.

Constitutional Aspects

The constitutional aspects involved in identifying suspects are firmly established. The United States Supreme Court has indicated that a show-up is any one-to-one showing of a suspect to a witness.¹ Under due process considerations, anytime a victim or witness is shown a single photograph during an identification procedure, the danger of an impermissibly suggestive (unconstitutional) identification procedure is present.² Show-ups inherently involve a great risk of prejudice because they provide only one person that the witness can identify, and that person is usually in police custody.³ The procedure is inherently suggestive because, by its very nature, it suggests to the witness that the police think they have caught the perpetrator of the crime.⁴

Is showing surveillance camera footage to a witness, in order to obtain a suspect identification, an impermissible show-up procedure? Generally, the answer is "no."

In *United States v. Beck*, an FBI agent employed a procedure of showing eyewitnesses a bank **surveillance** photo of a robber before each witness scrutinized a "photospread."⁵ A photospread is an identification procedure that consists of showing a number of photographs of different persons to a witness.⁶ The Ninth Circuit Court of Appeals held that the agent's procedure was not **impermissibly suggestive**.⁷ The Court stated that the rights of an accused are not jeopardized when the recollection of an eyewitness is refreshed by the use of photographs of the crime itself.⁸ The **surveillance** photograph that

the agent showed to the witness depicted the actual robber as he left the bank.⁹ There is little possibility of misidentification arising from the use of photographs depicting the likeness, not of some *possible* suspect in the police files, but of the persons who *actually* committed the robbery.¹⁰ The photospread did not become **impermissibly suggestive** by virtue of the prior disclosure to witnesses of the **surveillance** photo of the actual bank robber; to the contrary, the procedure adopted permissibly protected the rights of the accused.¹¹ In a previous case, *United States v. Stubblefield*, the Ninth Circuit also held that the rights of an accused were not jeopardized because, in part, the photographs shown to the witnesses were those of the *actual* robber.¹²

When surveillance camera footage is discovered, law enforcement will likely seek witnesses who may be able to make a "positive" identification. Officers may show the surveillance footage to persons, including police officers, who might recognize the suspect. For example, police officers who work a particular geographic area may recognize the suspect depicted in the footage. Law enforcement might also release the surveillance footage to the media, so that it will be broadcast to the public on television. Witnesses who know the suspect may contact the police and identify the suspect. Based on *Beck* and *Stubblefield*, it appears unlikely that a due process violation will result because the potential witnesses are viewing the actual perpetrator of the crime.

Federal Rules of Evidence

If law enforcement discovers a witness who can identify a person depicted in surveillance camera footage, will this “opinion” evidence be admissible in federal court? Under Federal Rule of Evidence 701, a lay witness may give an opinion regarding the identity of a defendant depicted in a photograph, if that witness has had sufficient contact with the defendant to achieve a level of familiarity that renders the lay opinion helpful to the jury.¹³ Because of this level of familiarity, the witness is more likely to correctly identify the defendant from the photograph than is the jury.¹⁴ To establish a sufficient level of familiarity, the extent of contact with the defendant must be based upon the witness’s personal observation and recollection of concrete facts.¹⁵ It should not be based on the witness’s review of photographs of the defendant and other witnesses’ descriptions of him, as this is nothing more than the evidence the jury would have before it at trial.¹⁶

There are several factors a court will consider when deciding whether a lay opinion is helpful to the jury, based upon the totality of the circumstances, includ-

ing: (i) the witness’s familiarity with the defendant’s appearance at the time the crime was committed;¹⁷ (ii) the witness’s familiarity with the defendant’s dress that is similar to the dress of the person depicted in the photographs;¹⁸ (iii) whether the defendant had either disguised his appearance at the time of the offense, or altered his appearance prior to trial;¹⁹ (iv) whether the witness knew the defendant over time, and in a variety of circumstances, such that the witness’s lay **identification** testimony offered to the jury a perspective it could not acquire in its limited exposure to the defendant;²⁰ (v) the degree of clarity of the surveillance photograph;²¹ and (vi) the quality and completeness with which the subject is depicted in the photograph.²² The absence of any single factor will not render such testimony inadmissible.²³ However, lay opinion identification testimony is more likely to be admissible, for example, where the surveillance photograph is of poor or grainy quality, or where it shows only a partial view of the subject.²⁴

Based on these legal principles, whenever a law enforcement officer discovers a lay witness who may be able to identify a perpetrator from surveillance camera



footage, it is important for the officer to thoroughly interview that witness. The facts and circumstances that substantiate the witness' familiarity with the perpetrator, both before and during the time frame in which the crime was committed, should be completely and accurately documented. In *United States v. Dixon*, despite two witnesses being indisputably familiar with the defendant's general appearance, the court ruled that their testimony was properly excluded from the trial, in part, because the evidence failed to establish that either witness was familiar with the defendant's appearance at the specific time of the offense.²⁵

What types of persons can have sufficient familiarity with a defendant to allow this type of opinion testimony?

- Family members and friends of a defendant (whether current or former) can have the requisite degree of familiarity.²⁶ In *United States v. Jackman*, the defendant's ex-wife and two other persons identified the defendant from surveillance photographs at his trial.²⁷ On appeal, the court said that these witnesses had known the defendant for extended periods of time, and had seen him on multiple occasions under a variety of circumstances. They had seen the defendant numerous times wearing various clothing that resembled clothing worn by the robber, and were familiar with his carriage and posture. As such, their testimony was properly admitted in the trial.
- Co-conspirators and accomplices often have the requisite degree of familiarity.²⁸ In *United States v. Ellis*, an accomplice identified the defendant in a bank surveillance photograph during the defendant's trial.²⁹ On appeal, the court ruled that this testimony was properly admitted because the accomplice: (i) had known the defendant for approximately five years; (ii) he saw the defendant on the day before and the day of the robbery; (iii) he met the defendant a few days after the robbery; and (iv) he traveled with the defendant thereafter. As such, the witness's ability to recognize the defendant by the "shape of his body" was helpful to the jury, and thus was properly admitted into evidence at his trial.
- Repeat acquaintances can have the requisite degree of familiarity.³⁰ In *United States v. Holmes*,

the appellate court ruled that a witness's opinion testimony, identifying the defendant from surveillance photographs, was properly admitted at the defendant's trial because (i) she met the defendant on at least six prior occasions; (ii) each of these meetings lasted at least 30 minutes; and (iii) in one instance, the defendant spent the night at her mother's house while she was there.³¹ These contacts provided the witness with sufficient opportunity to observe the defendant's physical appearance. Due to the lack of clarity of the surveillance photographs, and that none of the photographs showed a full frontal view of the defendant's face, the court said the witness's testimony would aid the jury.

- Employment supervisors can have the requisite level of familiarity.³² In *United States v. Pierce*, the appellate court ruled that witness opinion testimony, identifying the defendant from a still photograph taken from a bank surveillance videotape of a robbery, was properly admitted at his trial because: (i) the witness had served as the defendant's workplace supervisor for the five or six months prior to the defendant's arrest; and (ii) during that time, the witness had seen the defendant wearing sunglasses and a baseball hat, the same items worn by the robber depicted in the photograph.³³ In view of the disguise worn by the robber pictured in the photograph, and the level of familiarity with the defendant's appearance that the witness possessed, the lay opinion identification testimony was helpful to the jury.
- Law enforcement officers can have the requisite level of familiarity.³⁴ In *United States v. Beck*, after a robbery, a federal probation officer was shown a photograph from the bank's surveillance system.³⁵ The probation officer said he believed the defendant was the person shown in the photo. At the defendant's trial, the officer testified that he had a "professional relationship" with the defendant, and that he believed the defendant was the person shown in the bank surveillance photo. On appeal, the court ruled this testimony was properly admitted in the trial because the probation officer's lay opinion was rationally based and helpful to the jury. The officer had sufficient contacts with the defendant as he had met with the defendant four times, in a two-month period, for a total of more than seventy minutes. As such, his perception of

the person in the bank surveillance photo was helpful to a clear understanding of the identity of the person in the photo.

Does the witness have to be 100% certain that the person depicted in the surveillance footage is the defendant before the witness is able to testify during a trial? In *United States v. Pierce*, a 90% level of certainty by a witness that the robber depicted in the photographs was the defendant was sufficient to render the witness's opinion helpful to the jury.³⁶ Overall, courts are likely to admit such testimony when there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph, than is the jury.³⁷ It is a basic rule of evidence that witnesses need not assert that they are certain of their identification beyond a reasonable doubt.³⁸ Although an uncertain, in-court identification will not support a conviction where that identification is the *only* evidence offered on the issue of identity, such tentative nature of an identifica-

Courts are likely to admit such testimony when there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph, than is the jury.

tion is not fatal, if there is other sufficient evidence of identity.³⁹ Also, issues like the amount of time the witness had to previously observe the defendant, goes to the **weight** to be accorded to the testimony by the jury, rather than to its admissibility.⁴⁰

Conclusion

The prevalence of surveillance cameras in our society can be useful to criminal investigators, especially when this technology leads to identifying criminals who are "caught on tape." Law enforcement officers should al-

ways canvas the area of a crime scene to determine if surveillance cameras are in the vicinity. When surveillance camera footage is discovered, it will be important to locate any witnesses who can identify the suspect in the surveillance footage. The basis of knowledge that a lay witness uses to identify a person depicted in surveillance footage is particularly important if the witness testifies in court. As such, investigators must strive to develop the required information from potential witnesses during their investigation, based on the legal principles involved, to effectively use this valuable evidence.

(Endnotes)

- 1 *See, Neil v. Biggers*, 409 U.S. 188, 195-98 (1972); *Moore v. Illinois*, 434 U.S. 220, 229 (1977).
- 2 *See, United States v. Dailey*, 524 F.2d 911, 914 (8th Cir. 1975).
- 3 *See, Id.*; *Moore*, 434 U.S. at 229.
- 4 *United States v. Brownlee*, 454 F.3d 131, 138 (3rd Cir. 2006); *See also, Clark v. Caspari*, 274 F.3d 507, 511 (8th Cir. 2001).
- 5 418 F.3d 1008 (9th Cir. 2005).
- 6 *See, Beck*, 418 F.3d at 1012.
- 7 *Beck*, 418 F.3d at 1013.
- 8 *Id.*
- 9 *Id.*
- 10 *United States v. Stubblefield*, 621 F.2d 980, 983 (9th Cir. 1980); *United States v. Evans*, 484 F.2d 1178, 1186 (2d Cir.1973).
- 11 *Beck*, 418 F.3d at 1013.
- 12 621 F.2d at 983.
- 13 *Beck*, 418 F.3d at 1014; *See also*, Federal Rule of Evidence 701 (non-expert witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness; and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue).
- 14 *United States v. Pierce*, 136 F.3d 770, 774 (11th Cir. 1998); *United States v. Jackman*, 48 F.3d 1, 4-5 (1st Cir.1995); *United States v. LaPierre*, 998 F.2d 1460, 1465 (9th Cir.1993); *United States v. Towns*, 913 F.2d 434, 445 (7th Cir.1990); *United States v. Robinson*, 804 F.2d 280, 282 (4th Cir.1986); *United States v. Farnsworth*, 729 F.2d 1158, 1160 (8th Cir. 1984); *United States v. Borrelli*, 621 F.2d 1092, 1095 (10th Cir.1980).
- 15 *Beck*, 418 F.3d at 1015.

- 16 *Pierce*, 136 F.3d at 774; *LaPierre*, 998 F.2d at 1465.
- 17 *Beck*, 418 F.3d at 1015; *United States v. Jackman*, 48 F.3d 1, 5 (1st Cir. 1995); *United States v. Allen*, 787 F.2d 933, 936 (4th Cir. 1986), *vacated on other grounds*, 479 U.S. 1077 (1987); *Farnsworth*, 729 F.2d at 1160; *United States v. Barrett*, 703 F.2d 1076, 1086 (9th Cir. 1983); *Borrelli*, 621 F.2d at 1095; *United States v. Brannon*, 616 F.2d 413, 417 (9th Cir.), *cert. denied*, 447 U.S. 908 (1980).
- 18 *Beck*, 418 F.3d at 1015; *Pierce*, 136 F.3d at 774; *Towns*, 913 F.2d at 445; *Borrelli*, 621 F.2d at 1095.
- 19 *Pierce*, 136 F.3d at 774-75; *See also*, *United States v. Ellis*, 121 F.3d 908, 927 (4th Cir.1997), *cert. denied*, 118 S. Ct. 738 (1998); *Towns*, 913 F.2d at 445; *Borrelli*, 621 F.2d at 1095.
- 20 *Allen*, 787 F.2d at 936.
- 21 *United States v. Dixon*, 413 F.3d 540, 545 (6th Cir. 2005).
- 22 *Dixon*, 413 F.3d at 545.
- 23 *Beck*, 418 F.3d at 1015.
- 24 *See*, *Jackman*, 48 F.3d at 4-5; *Allen*, 787 F.2d at 936.
- 25 *Dixon*, 413 F.3d at 545-46.
- 26 *Jackman*, 48 F.3d 1; *Robinson*, 804 F.2d 280 (defendant's brother); *United States v. Lucas*, 898 F.2d 606 (8th Cir. 1990) (defendant's girlfriend); *Barrett*, 703 F.2d 1076 (defendant's girlfriend); *United States v. Ingram*, 600 F.2d 260 (10th Cir. 1979)(friends of defendant); *Borrelli*, 621 F.2d 1092 (defendant's stepfather); *Towns*, 913 F.2d 434 (defendant's former girlfriend).
- 27 48 F.3d 1.
- 28 *Ellis*, 121 F.3d 908.
- 29 *Id.*
- 30 *United States v. Holmes*, 229 F.3d 782 (9th Cir. 2000); *United States v. Jackson*, 688 F.2d 1121 (7th Cir. 1982) (two bank employees and a third witness - even though the third witness had only met the defendant once, a few months before the robbery).
- 31 229 F.3d at 788-89.
- 32 *Pierce*, 136 F.3d 770.
- 33 136 F.3d at 775-76.
- 34 *Beck*, 418 F.3d 1008 (9th Cir. 2005); *United States v. Butcher*, 557 F.2d 666, 667 n.3 (9th Cir. 1977) (police officer who knew the defendant for 1 1/2 years and met him about 3 times for a total 2 1/2

hours; police officer who knew defendant for 5 months and observed him for a total time of 2-3 hours; and parole officer who met the defendant for over 1 year and met him 12 times each meeting between 15-30 minutes); *United States v. Stormer*, 938 F.2d 759, 762 (7th Cir. 1991) (police officers who had worked with the defendant for several years and were familiar with his appearance).

- 35 *Beck*, 418 F.3d 1008.
- 36 *Pierce*, 136 F.3d at 774.
- 37 *Pierce*, 136 F.3d 770; *Farnsworth*, 729 F.2d at 1160; *Jackman*, 48 F.3d at 4-5; *Robinson*, 804 F.2d at 282; *Towns*, 913 F.2d at 445; *LaPierre*, 998 F.2d at 1465; *Borrelli*, 621 F.2d at 1095.
- 38 *United States v. Guerrero*, 169 F.3d 933, 940-41 (5th Cir 1999).
- 39 *Guerrero*, 169 F.3d at 941.
- 40 *Jackson*, 688 F.2d at 1125; *United States v. Lawson*, 653 F.2d 299, 303 n.15 (7th Cir. 1981), *cert. denied*, 454 U.S. 1150 (1982).



Mr. Ed Zigmund is a Senior Instructor in the Legal Division of the Federal Law Enforcement Training Center. He has a B.A. in Criminal Justice from King's College, PA and a J.D. (magna cum laude) from Widener University School of Law, PA. He served as a Police Officer, Sergeant, and Detective Lieutenant with the Wilkes-Barre City Police Department, PA. He was an Assistant District Attorney in Lackawanna and Cumberland Counties, PA and a Police Legal Instructor at the North Carolina Justice Academy.



FLETA/FLETC EMPLOYEE PRESENT AT **First Iraqi Post-Conflict Court Martials**

By Steven L. Argiriou, Lt. Col, USAFR

I'm Steve Argiriou of the Federal Law Enforcement Training Accreditation Board (FLETA), Office of Accreditation, Glynco, Georgia. I am currently on a military leave of absence from FLETA / FLETC and writing this from my deployed location in the International Zone (IZ - formally known as the Green Zone) in Baghdad, Iraq. I have been here since July of 2007. My "home station" Air Force Reserve assignment is as the Staff Judge Advocate (SJA) for the 413 Flight Test Group, Air Force Reserve Command, (ARFC), Robins AFB, Georgia. The Deputy Staff Judge Advocate (aka JAG) for my "home" unit is Captain Bradley Lawrence, USAFR, who you may know as a Senior Legal Instructor assigned to the FLETC Legal Division.

I thought it might be of interest to the FLETA / FLETC community to see the concrete accomplishments of the training / transition mission here in Operation Iraqi Freedom (OIF) and how many government employees are participating. I think this is especially relevant in light of the fact that FLETA / FLETC has been such a model employer regarding support to the many FLETC (and in my case FLETA) and partner agency employees who have deployed in support of the Global War on Terrorism (GWOT). Of course, the US Department of Homeland Security (DHS) has many other deployed personnel out here in both military and civilian status. Many reservists, Guardsmen and active federal law enforcement officers, who are part of the DHS family, are out here contributing to the OIF mission every day. My story is just one of many.

I am currently deployed to Iraq on a six month tour (extended to twelve) and assigned as the Chief, Operational Law / Military Justice for the Multi-National Security Transition Command-Iraq (MNSTC-I) Office of the Staff Judge Advocate (OSJA) located in the IZ, Baghdad, Iraq. In the course of my duties, I was present at the first post-conflict court-martials of the new

Iraqi Armed Forces using the recently enacted Iraqi Military Penal Code and Procedural Law that serve as the Iraqi version of the American Uniform Code of Military Justice (UCMJ). This historic courts-martial was held in the newly built Baghdad Central Military Courthouse located "outside the wire" at the Old Muthana Airfield adjacent to Headquarters, 6th Iraqi Ground Forces Division in Baghdad. The MNSTC-I OSJA played a pivotal role in obtaining the funding for and advising / supervising the site selection, design, construction, equipping and training of many key court personnel (including the judges) for this court house as well as the nearby Iraqi Military Court of Cassation (Appeals) and several other military court complexes nationwide.

MNSTC-I is a true joint command, but very "Army heavy." It is the primary training command for Operation

Iraqi Freedom and is commanded by Lieutenant General James Dubik, USA. The command staff for MNSTC-I includes ten flag officers from the Army, Navy, Australian, and Danish military as well as Brigadier General Robert R. Allardice, USAF, the Deputy Commanding General, Coalition Air Force Training Team. The MNSTC-I training mission in Iraq is diverse. It includes not just the delivery of actual training, but also

the mentoring of Iraqi forces so they can conduct their own training, help with infrastructure development, operational mentoring, ensuring Iraqi forces have the needed equipment and logistical support elements to become fully independent, and more.

The MNSTC-I Office of the Staff Judge Advocate (OSJA) consists of six Judge Advocates, one contract employee, and two local national employees. The office is currently organized as follows:

Staff Judge Advocate: Colonel Kent R. Meyer, US Army, Active Duty

FLETA/FLETC has been such a model employer regarding support to the many FLETC and partner agency employees who have deployed in support of the Global War on Terrorism.



Chief, Administrative Law: Lt Colonel Charles Huguellet, USAFR

Chief, Operational Law / Military Justice: Lt Colonel Steven L. Argiriou, USAFR

Deputy Chief, Operational Law / Liaison: Lt Colonel John Coughlin, NH Army National Guard

Chief, Fiscal / Contract Law: Major Eugene Kim, US Army, Active Duty

Deputy Chief, Fiscal / Contract Law: Captain Ed Riffle, Army Reserve

Bi Cultural Advisor / Iraqi Attorney: Mr. M. Soby (US citizen / contractor)

Two Translators – Iraqi citizens

As the Chief, Operational Law / Military Justice, I am the primary staff officer, under the direct supervision of the Staff Judge Advocate, responsible for all operation-



al law issues in connection with MNSTC-I operations throughout Iraq as well as all military justice matters related to the good order and discipline of the command. The Operational Law Division also conducts liaison / mentoring operations with the Iraqi Ministry of Defense, Office of General Counsel, and the Iraqi Joint Military Headquarters, Senior Legal Advisor. It was as the Chief, Operational Law, that I had the good fortune to assist and provide oversight for LTC John J. Coughlin's outstanding efforts in these matters bringing new Iraqi military courthouses on line and mentoring the Iraqis in deploying their new military legal system. I replaced Lt Col Jerry Parrish, USAFR, in July of 2007, who had done a great deal of work laying the foundation for the work that we carried on.

Many of the operational law taskings I work, like other deployed Judge Advocates (JAGs) include many issues

of first impression with no "textbook" answer. Issues such as what type and degree of support is lawful and advisable for local nationals serving as contract translators under credible death threats due to their service; does a contract private security company have a valid Iraqi business permit if they applied for a renewal as required in a timely manner, but due to overwhelming backlogs the Iraqi Ministry of Interior has not reviewed, approved, or extended any of the submitted renewals; how do you handle an allegation by an Iraqi member of Parliament that an unidentified US soldier wrongfully and rudely confiscated his handgun at a checkpoint somewhere in Baghdad; what do you do with a request by a person who served as a translator for US Forces in 2003, who is now lawfully temporarily in the United States and petitioning your flag officer in Iraq for a statutorily required General Officer Letter of Recommendation in connection with the Special



Visa Program for Iraqi Translators; what training is needed for Iraqi legal advisors using a new criminal justice system that never existed before, etc, etc.

Due to unusual lines of military authority, almost every disciplinary matter ends up being resolved through a complex web of inter service coordination and referral. A typical Article 15 (a military nonjudicial punishment (NJP) disciplinary action) may involve an offending member 100 - 150 miles to the south of me, witnesses 20 miles to the north of me, an NJP authority 5 miles to the east of me with a "servicing" SJA office 10 miles farther east at yet another base. Many "remote" units I support have no DSN (military defense network telephone system) phones, some of their cell phones may or may not be able to "talk" to my cell phone, and some have limited e-mail capability making simple communication not so simple. Due to security issues, driving around from

base to base is not an option due to the extraordinary time, manpower, planning, and costs involved.

Assistance was also provided in developing military justice related standard forms and assisting the Iraqis to fully exploit modern office technology...

By the time I arrived in Iraq, there was still work that needed to be done mentoring the senior Iraqi legal leadership and completing the finishing touches on the construction and equipping of the Baghdad Central Military Court House and Court of Cassation. Continued mentoring of the Iraqi legal leadership, to assist them in fielding their new justice system, was a priority. Concepts

that American JAGs take for granted, such as tracking and reviewing the number of crimes committed and the number of disciplinary actions initiated, were new to the Iraqis. Assistance was also provided in developing military justice related standard forms and assisting the Iraqis to fully exploit modern office technology such as computers, digital copying equipment, internet connectivity, as well as developing training





programs. As a result, LTC Coughlin and I (along with other staff and unit members) made bi-monthly site visits to the Baghdad Central Military Courthouse and the Court of Cassation, as well as frequent visits to the Iraqi Ministry of Defense Building to coordinate with Iraqi legal leadership. Our duties consisted of inspecting construction, overseeing the delivery of all furnishing (from waste baskets to executive desks) and all office equipment for both the Baghdad Central Military Courthouse and the Court of Cassation. One of the unique design features of both courthouses is the inclusion of living quarters, kitchens and bath facilities for staff due to security needs. Office visits to senior Iraqi legal leadership concerned observing office operations, discussing legal management “best practices” and mentoring sessions on a variety of topics including tables of organization; field reporting requirements; training needs and career management.

I had the pleasure of working closely with the Senior Judge for the Iraqi Court of Cassation (an Iraqi Major General), the Chief Judge of the Baghdad Central Military Court (Brigadier General) as well as many other Iraqi legal advisors ranging in rank from first lieutenant to full colonel. I found the Iraqi legal advisors,

regardless of rank or age to be intelligent, educated, polite, in good humor and dedicated to the rule of law to the point where they risk their life by simply wearing their uniform in public.

1st Post Conflict Court-Martial: 22 November, 2007, Baghdad Central Military Courthouse

The new Iraqi Military Penal Code became effective this last summer and the new Iraqi Military Justice Procedural Law became effective September, 2007. These laws were designed to create a fair and efficient military justice system designed to preserve the good order and discipline of the Iraqi Armed Forces, while honoring the rule of law. Using these new laws, the Iraqi Armed Forces conducted the first court-martial since the fall of the Saddam Hussain regime. This historic legal proceeding was the result of a long partnership between Coalition Forces and the senior leadership of the new Iraqi Armed Forces, working jointly toward the rule of law in the Iraqi military.

The Iraqi military justice system is different from the American UCMJ, but it is thorough and fair. In Iraq, Judge Advocates are usually referred to as “Legal Ad-



visors.” Only persons qualified as Iraqi attorneys may be appointed as an Iraqi Legal Advisor in the military service. Only military legal advisors may be appointed as judges. In Iraq, a law degree is awarded after four years of what we would call undergraduate study with a concentration in law. There are about 35 law schools in Iraq with most located in Baghdad. The most well known Iraqi law school, “The Baghdad Law School,” recently celebrated one hundred years of continuous operation. The Iraqi military justice system operates under the “Judicial Tribunal” system. There are no juries but rather three military judges that hear all cases. Charges are typically investigated under command direction and referred to an investigating officer or board of officers. Upon completion of the investigation, the case file is forwarded to the servicing Legal Advisor (currently assigned at the Army Brigade and Division levels). The Legal Advisor will review the matter, confer with the commander, and, if appropriate, refer

the case for court-martial. Interestingly, there is little capacity for a dedicated law enforcement element conducting a criminal investigation. Most investigations are conducted by the appointed line officers or board of officers who can call upon crime scene and/or forensic support, as needed and available.

The Iraqi military procedural code permits the military judges to be very active during the proceeding. Typically, the Chief Judge (in this case a brigadier general) swears in all witnesses and questions them under oath with inputs from the other two voting military judges (in this case two full colonels) and the permanently assigned Court Prosecutor (in this case a major). The accused is entitled to a defense counsel but may waive that right.

The accused stands in a symbolic wooden cell in the courtroom under the watchful eye of the unarmed court bailiff (a noncommissioned officer).

FIRST COURT-MARTIAL: The first court-martial was referred to court by an Iraqi Army Division Legal Advisor holding the rank of full colonel. The accused was an Iraqi private (known as a “jundi”) who was accused of committing a battery on an Iraqi Army First Lieutenant and being insubordinate. The court began with three witnesses, including the victim, taking the stand and being questioned by the Chief Judge. In this case, the jundi waived his right to silence and, on occasion, was asked questions by the Chief Judge during the examination of the witnesses. I observed the Chief Judge question the witnesses while carefully referring to a case file and comparing previous statements given by the witness and others during in-court statements. While I don’t speak or understand much Arabic, there are some facial expressions and tones of voice that seem to be universal to all JAGs. It appeared that the Chief Judge was having a hard time believing some of the witnesses, including the victim.

After about six hours of questioning, the Chief Judge called a recess to deliberate with the other two judges. After deliberations, the Chief Judge called for a week-

long recess and directed the case be investigated further at the Division level. The Chief Judge later explained that after hearing the witnesses, he was concerned the alleged victim officer may have been culpable for conduct unbecoming an officer and/or participating in a mutual affray. After the case was investigated further, the court was reconvened. The jundi was eventually convicted and sentenced

The Chief Judge later explained that after hearing the witnesses, he was concerned the alleged victim officer may have been culpable for conduct unbecoming an officer...





to three months confinement. The Chief Judge, however, is currently reviewing the supplemented case file and considering charging the officer victim with conduct unbecoming an officer. In the Iraqi system, a judge can prefer charges on his own.

The decorum in the court was much like any Air Force courtroom. The accused was treated with care and consideration and all parties conducted themselves with military bearing. The courts are open for public view and the courtroom has a series of bench seats in the rear for this purpose.

Once the court was recessed, the Chief Judge told our party that he was honored to have presided over the first post-conflict court-martial and have U.S. military JAGs present. He said that he had waited decades for a return to a fair and just military justice system in Iraq and thanked us for the support Coalition Forces provided to build and equip the modern court over which he now presided. I'm pretty sure I heard his voice crack with emotion as he told us this. On the days

when I think about the family separation, spartan living conditions, dangers inside and outside the wire that all deployed members experience, and whether or not I should have retired from the Air Force Reserve six years ago when I was first eligible, I think of that day when I was able to observe the first post conflict Iraqi court-martial and hear what the Chief Judge had to say. The importance of the work we are all doing (active duty, reserve, home support employers, co-workers and family) in support of this effort is then very clear to me. Without the support of employers like FLETA and FLETC and the dedication of the co-workers left behind to fill the void left by deployed members, we might not have been able to achieve so much here in Iraq. At one point, reserve and Guard forces made up 45% of the combat and operational strength in Iraq. Of course, I must also mention the sacrifice of family members left behind. They are the ones who bear the heaviest burden. Nonetheless, I am confident that some day my children and / or grandchildren will read in the history books how the United States military (active and reserve components) helped bring back the rule of law to the Iraqi military during Operation Iraqi Freedom. The footnote will be that the reserve components contributed significantly to this mission and model employers like FLETA / FLETC made it possible.

PostScript: The senior management of FLETC, the Journal staff, and all partner agencies would like to thank all that have served or are presently serving our country. There is no greater sacrifice than to leave family and friends for an unspecified time frame to go into a war zone to help provide freedom for others. We salute all of you.

Mr. Steven L. Argiriou is a program manager and law enforcement specialist for the Federal Law Enforcement Training Accreditation Board, Office of Accreditation, FLETC Glynco, GA. He wrote this article while deployed in Baghdad, Iraq within the International Zone (formally "Green Zone"). He is an Air Force Reserve Staff Judge Advocate for the 413 Flight Test Group, Air Force Reserve Command, Robins AFB, GA.



MASTERING THE ART OF The Suspect Interview

By Robert C. Wells

For over three years, the Federal Law Enforcement Training Center (FLETC) has provided our Criminal Investigator classes with unique opportunities to develop or sharpen their skills in suspect interviewing. During both a laboratory and practical exercise, students are provided with a completed investigative file and are tasked with conducting an interview with the subject of their investigation. The goal of each interview is to properly confront the subject with the evidence developed and obtain a legally sufficient confession of guilt. A group of trained experienced role players add to the authenticity of the exercise.

For over twenty years, I have instructed on the subject of interviewing at the FLETC. As a Senior Instructor in both basic and advanced interviewing, exercises like the ones just described have provided unique opportunities to examine suspect interviews up close and personal. I have personally witnessed hundreds of

interviews conducted by first time novices, as well as experienced veterans.

As an observer and passive participant in the complex process of a suspect interview, I have reached a number of conclusions concerning the actions taken by the interviewer that both add and subtract from his or her chances of obtaining a full confession of guilt.

The interviews I have observed have clearly shown that each suspect being interviewed is unique and must be considered first as an individual. The approach the investigator ultimately develops needs to be tailored to fit not only the person being interviewed, but the evidence collected against this person and the crime which they committed.

Throughout the process that unfolds, the subject will continually mentally weigh the consequences of his



actions and the justifications developed for those actions.

Successful suspect interviews ultimately require the subject to trust and confide in the interviewer. Remember, people never confide in those who judge their behavior. Instead, they confide in those who seek to understand and accept it. In the stressful environment of a suspect interview, understanding and acceptance often become critical elements if rapport is to be maintained and the suspect is to be completely truthful with the investigator.

Successful suspect interviews often require the investigator to skillfully:

- Develop rapport
- Present evidence
- Manage resistance
- Secure an admission
- Develop a legally sufficient confession

The complex process that unfolds during a suspect interview may be thought of in the same manner as another significant emotional crisis ...the loss of a loved one. In both cases, a person is likely to travel through the emotional stages of:

- Denial
- Anger
- Bargaining
- Depression
- Acceptance

A good interviewer recognizes that each of these stages is likely to play out during confrontation. **Denial** may come as early as the knock on the door or the phone

call from the investigator. **Anger** may play out during a period of resistance as a method for reducing stress or as a tactic for persuading the interviewer that he/she is wrong. During **Bargaining**, the subject is often taking a hard look at what alternatives remain and will often seek to negotiate their outcome. During **Depression**, the subject becomes more submissive, and eye contact may be lost. Often **Acceptance**, once reached, may be signaled by a deep sigh indicating the internal struggle is over.

During the interview, it is common for the subject to move back and forth between these stages. The interviewer must remain patient and confident during this often volatile period.

Ultimately, people confess when they perceive the benefits of admission as outweighing the consequences of continued deception. The job of the investigator is to showcase the benefits of admission and full cooperation. This requires a level of persuasion that is best built on a solid foundation of trust and rapport.

There are any number of actions the interviewer can take to manage resistance and move the subject toward cooperation. These actions include:

- Showcasing confidence in the case facts presented
- Showing confidence in the subject's involvement
- Showing understanding of the subject's motivation
- Showcasing resolution of the situation
- Appropriate use of space and movement
- Appropriate use of silence

Throughout the process, the interviewer must be able to convince the subject that his/her foremost concern is to help the subject resolve this issue so that he can move forward with his life. The subject needs to see that the benefits gained from a full admission of guilt far outweigh any benefit derived from continued deception. He also needs to recognize that he is being viewed as simply someone who made a mistake in judgment that he needs to put behind him.

Some form of denial is likely to surface during the period of resistance. How the interviewer controls denials will either add to or subtract from his or her chances for success. Any interviewer seen as unconvincing or indecisive will increase the time and intensity the subject devotes to denials.

During the period of resistance, each action by the in-

interviewer is being carefully weighed by the subject. For example, when interviewers ask too many unnecessary questions in a confrontational interview, what this practice often says to the subject is: "They don't have it all figured out. They haven't done their homework." When this becomes the perception of the subject, the benefit of denial is seen as clearly out-weighting the benefits of admission. While some questions are necessary during such interviews, it is important that each question asked have a purpose for the interviewer.

Resistance has been shown to increase when interviewers:

- Showcase punishment rather than resolution
- Use silence too early in the interview
- Provide incorrect or incomplete case facts
- Provide incriminating case information too early
- Provide incriminating case information too quickly
- Use justifications for the subject's behavior too early in the interview

Denials and other forms of resistance are less likely to surface when the interviewer is seen as:

- Thorough
- Straightforward
- Confident
- Knowledgeable
- Trustworthy

Ultimately the purpose of the suspect interview laboratories and practical exercises is to assist students in practicing the skills they will work their career to master. Our goal for these exercises is to assist each student to:

- Develop skills in preparation for confrontation
- Build overall confidence
- Improve skills at creating rapport
- Improve skills at managing denials
- Foster patience
- Foster flexibility
- Deepen their understanding of the difference between first admission and final confession statement

The art of interviewing is learned, polished, and improved only through practice and constant evaluation. FLETC offers our students two programs in advanced interviewing designed to enhance this important skill: The Law Enforcement Advanced Interviewing Training Program (LEAINTP), designed for Criminal

Investigators, and The National Investigative Interviewing Training Program (NIITP), developed to meet the advanced interviewing needs of all other federal investigators, investigative assistants and analysts. Please visit the FLETC website for more information and a schedule of upcoming classes.



Mr. Robert C. Wells has been an instructor with the Behavioral Science Division of FLETC since 1987. Since then, Bob has trained more than 100,000 officers, investigators, prosecutors and judges in more than 40 states. He is one of America's most experienced trainers in Advanced Interviewing Techniques.

Bob's training assignments have included the FBI Academy, the International Law Enforcement Training Academy in Thailand and Department of Defense in Germany. Bob has taught Advanced Interviewing to criminal investigators from Russia, Jordan, Turkey and Columbia.

Bob continues to provide operations support as requested to law enforcement agencies in the analysis of written statements and taped interviews.

Bob's more than thirty-five years experience includes positions in patrol, investigation, corrections, management and planning. He has a B.S. Degree in Criminology from Florida State University and an M.S. degree in Criminal Justice from Nova University. Bob is a regularly published author in publications that include; the FBI Journal, Police Chief, Police Magazine and the FLETC Journal.



Four Questions to Mentally Prepare for Testifying

By Keith Hunsucker

Despite what is often portrayed on television, the courtroom is not a place where mysteries are solved. If you're in law enforcement, you should know this. After all, did you arrest the wrong guy? Are you asking the prosecutor to seek a conviction against a potentially innocent person? Of course not.

"Mental preparation" and "attitude" are frequent subjects in law enforcement training. Usually, they are applied to physical attributes, such as confronting suspects and using force. However, these skills are just as necessary when testifying at trial.

Consider this example: You are serving a warrant when a large male suspect rushes at you with a knife raised in his hand. Would you run and hide? Tell the suspect you're not feeling well? Doubt whether or not the suspect is really a threat? Yet, the equivalent behavior occurs in court when an officer testifies with a voice too soft to hear, needlessly qualifies answers ("to the best of my recollection"), or appears unsure of himself on cross-examination.

Much of this is learned behavior. Ask a five year old about Santa Claus and you'll likely get an extremely

assertive response on everything from presents to Rudolph. While their basis of knowledge might be lacking, they are confident and assertive in their testimony.

Now picture the last math class you ever had. It was likely the hardest, and you were probably given problems which you couldn't solve. You showed your work, you wrote down the formula, you told the teacher how hard you studied, and the teacher graded on a curve. So, when you answered 8 but the answer was -432.59, you got a C. You learned that even if you were wrong, you could pass as long as you tried hard.

If you think that's the real world, try telling the knife-wielding suspect that you worked real hard in firearms training but never quite got the hang of it. Try telling the judge you took good notes in evidence class but you just forgot to properly bag the evidence. Try convincing a judge or jury that you're a credible witness if you qualify your answers, forget details and unprofessionally display emotion from the witness stand.

All this can be overcome with solid mental preparation. You will likely never be asked any of these four questions. However, you should answer them before you testify in any case:

1) Do you think the Defendant is guilty? You should answer “yes” without hesitation. Why do you think the Defendant is guilty? Did he confess? Did you see the crime committed? Did others identify him as the criminal? Did you find evidence of the crime on his person or property?

No judge or jury is going to convict a defendant if the prosecuting police officer isn't even sure of his guilt. Go to some quiet spot and literally explain out loud the evidence which you know proves the defendant's guilt. It is very unlikely you will ever be asked whether or not you think the defendant is guilty, but verbalizing the evidence of the defendant's guilt will put you in the right frame of mind to testify.

2) Have you ever told a lie? The textbook answer is: “I have never told a lie under oath.” If you commit perjury and lie on your arrest reports, you should - and this is important - go and resign right now. You should also immediately report all of your previous false official statements to the police and prosecutors so they can get the falsely accused out of prison and put you there in their place.

Whoa, you say. I don't lie in my official capacity. Good. Then don't allow a defense attorney to make you look like you do. Defense attorneys will seldom accuse you of outright lying, but they will try to get you to change your answers. This can make you look like a liar or an idiot. Here's an example:

No judge or jury is going to convict a defendant if the prosecuting police officer isn't even sure of his guilt.

Question (from Defense attorney): “You testified when you first saw the defendant he was standing approximately 30 feet from the front of the liquor store. Is that correct?”

A: Yes.

Q. Could it have been 35 feet?

A. Possibly.

Q. 25 feet?

A. Maybe.

Q. Maybe even 40 feet?

A. Perhaps.

The original answer was “approximately thirty feet.” How did it become somewhere between 25 - 40 feet? Because the witness was afraid of “lying” and therefore changed his answer to suit the defense attorney. If the answer is “approximately 30 feet,” don't change it to suit the defense attorney. Here's how this line of questioning should actually go:

Question (from Defense attorney): “You testified when you first saw the defendant he was standing approximately 30 feet from the front of the liquor store. Is that correct?”

A: Yes.

Q. Could it have been 35 feet?

A. I don't believe so.

A good defense attorney won't have any more questions on this topic. If you're not facing a good defense attorney, then here's what may happen:

Q. Why couldn't it have been 35 feet, you said approximately?

A. In my judgment it was 30 feet, but since I didn't have the opportunity to measure the distance I said approximately 30 feet so as not to mislead the judge or jury.

3) Have you ever broken the law? I'll bet you have. I did an informal study on this years ago by asking this question of federal agent trainees in a mock trial exercise. A surprising amount instantly replied “no.” It went something like this:

Q. Have you ever broken the law?

A. No.

Q. Do you have a driver's license?

A. Yes.

Q. And you've never gone over the speed limit, turned without signaling or committed any other type of traffic offense?

A. Well, I've probably done some of those things.

Q. But you've never violated any more significant law?

A. That's right.

Q. Except for the perjury you just committed when I asked you if you'd ever broken the law?

Wait a minute, you've never seen this line of cross-examination? That's because it's stupid and doesn't impress anyone. It's just a trick that doesn't make any valid point. The real point is this: Are you worried about this type of question when you testify? If so, talk to the prosecutor about it. I've had law enforcement witnesses perform terribly on the witness stand, looking unsure of themselves and visibly nervous. Afterwards, I asked them what the problem was. I usually got answers like: "Thank goodness he didn't ask whether I'd ever smoked dope," or "I was afraid he'd ask me about that trouble I got into in high school."

Does previous marijuana use or a high school vandalism conviction make the defendant any less guilty? Of course not. Those matters are legally irrelevant. The problem is that witnesses who are worried about these questions make lousy witnesses. If you have a past filled with criminal activity, then you shouldn't be in law enforcement. But if you're afraid of some embarrassing event from your past coming up, talk with the prosecutor. Odds are it is totally irrelevant and will never be mentioned in court. We've all "broken the law." Don't let an unreasonable fear of embarrassment make you a bad witness.

4) Did you talk to anyone about the case before coming here today to testify? When the defense attorney words it this way, it sure seems like the answer should be "no." However, it obviously should be "yes." You should have talked with your fellow officers to make sure that there is no detail which you have forgotten. You should also have met with the prosecutor and discussed your testimony in great detail.

Take ample time to critically review the entire case, and bring any procedural mistakes or evidentiary weaknesses to the attention of the prosecutor. Never assume the prosecutor is aware of these weaknesses or keep quiet in the hope the defense won't discover them. You and the prosecutor are on the same team, and it is essential you communicate freely with one another to present the best possible case. Contrary to being wrong, this type of preparation is essential to being a good witness.

Review your answers to the above questions. You are confident of the defendant's guilt. You are neither a liar nor a criminal, but a credible professional. You have reviewed the facts of the case and are thoroughly familiar with them. Good luck, you are now mentally ready to testify.



Mr. Keith Hunsucker is currently a Senior Instructor in the Legal Division. He is a graduate of the University of Akron (B.A., cum laude, 1984), and the University of Akron School of Law (J.D., cum laude, 1987). Prior to coming to FLETC, Mr. Hunsucker was an attorney with the U.S. Department of Justice for over ten years. During this time he questioned thousands of witnesses in the courtroom. He has received numerous commendations, including being selected the 1994 Immigration and Naturalization Service Attorney of the Year.



The IG Academy

TRAINING THE INSPECTOR GENERAL COMMUNITY

by Angela Hrdlicka

The Federal Law Enforcement Training Center (FLETC) partners with more than 80 Federal law enforcement agencies, but can you name them all? It might help to know that 31 of them are Offices of Inspectors General (OIG). The Inspector General Criminal Investigator Academy (IG Academy) is similar to FLETC, though on a smaller scale, in that it serves multiple agencies with different missions. The IG Academy has more than 60 partners who share its vision to improve integrity, accountability, and excellence in government. The mission of the IG Academy

is to train those who protect our nation's taxpayers from fraud, waste, and abuse.

In the 1970s, government scandals, oil shortages, and stories of corruption in the media took a toll on the American public's faith in its government. The U.S. Congress knew it had to take action to restore the public's trust. Federal programs and operations needed more oversight. The people expected its Government to run with economy, efficiency, and effectiveness, but there wasn't an independent set of "eyes and ears" in

place to evaluate and promote the efficiency and effectiveness of government programs.

In response, President Jimmy Carter signed into law the landmark legislation known as the *Inspector General Act of 1978* (IG Act). The IG Act created independent Inspectors General (IG), who would:

- Protect the integrity of government
- Improve program efficiency and effectiveness
- Prevent and detect fraud, waste, and abuse in federal agencies
- Keep agency heads, Congress, and the American people informed of their findings

Congress has amended the IG Act several times since 1978, progressively broadening the authority of the IGs and extending the statute to cover more federal agencies. In 2003, the *Homeland Security Act* granted statutory law enforcement authority to Presidentially-appointed OIGs.

Today, 63 agencies have statutorily authorized IGs. Twenty-nine of them are Presidentially-appointed IGs, and are members of the President's Council on Integrity and Efficiency (PCIE), which was created by Executive Order 12301 in 1981. The remaining 34 IGs are appointed by their agency heads and are members of the Executive Council on Integrity and Efficiency (ECIE). Executive Order 12805 created the ECIE in 1992. Most of the ECIE IGs do not have statutory law enforcement authority, but are granted access to FLETC through their partnership with the IG Academy. The IG Academy trains OIG investigators and other personnel from both the PCIE and ECIE organizations.

Federal agencies make more than \$2 trillion in payments to individuals and a variety of other entities each year. An improper payment occurs when the funds go to the wrong recipient, the recipient receives the incorrect amount of funds, or the recipient uses the funds in an improper manner. According to the Office of Management and Budget, in fiscal year (FY) 2006 the *reported* rate of improper payments was 2.9 percent, or more than \$40 billion. One could assume that the *ac-*

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tual rate of improper payments is significantly higher than is reported. In FY 2006, according to the PCIE/ECIE's Progress Report to the President, OIG activities resulted in \$6.8 billion in investigative recoveries, 8,400 successful prosecutions, and more than 24,000 closed investigations. The most frequent subjects of OIG investigations are recipients of government benefits, contractors, grant recipients, and federal em-



ployees. OIG investigations and audits often result in recommendations to strengthen financial management controls so that federal agencies can better detect and prevent improper payments, helping to ensure that taxpayer dollars are spent wisely and efficiently.

The IG Academy was officially established at FLETC, Glynco, Georgia, in February 1994 per a Memorandum of Understanding (MOU) between FLETC and the PCIE. The MOU acknowledged “the significant benefits of efficiency and effectiveness which are derived from a consolidated approach to training.” In November 2000, the IG Criminal Investigator Academy was established in Public Law 106-422 “for the purpose of performing investigator training services for Offices of Inspectors General created under the Inspector General Act of 1978.” The Investigations Committee of the PCIE is recognized as the board of directors for the IG Academy, subject to general review and oversight of the PCIE. The IG Academy Director is designated as the agency representative at FLETC for the PCIE/ECIE members that do not have onsite agency representation.

Although the IG Academy formerly enjoyed a staff of 17, in the aftermath of a failed restructuring in 2006, the future of the IG Academy was uncertain. FLETC management went above and beyond to support the remaining staff and helped ensure the IG Academy would train another day. The current staff includes four energetic employees from four different agencies, detailed to the IG Academy at FLETC/Glynco. These motivated individuals are dedicated to serving the IG community’s training needs. The IG Academy strives to develop and deliver quality, timely, and cost-effective training that will enable its partners to accomplish their missions. The IG Academy enjoys the support of many experienced subject matter experts in the field who willingly share their expertise as facilitators and instructors. The IG Academy is also fortunate to reside at FLETC/Glynco, where it takes full advantage of the world class training facilities, role players, instructor staff, and support.

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Ms. Angela Hrdlicka has been a criminal investigator since 1990, when she began her law enforcement career with the U.S. Secret Service in their Washington Field Office. She was also assigned to their Intelligence Division and the James J. Rowley Training Center at Beltsville, MD, and FLETC/Glynco. She has been a law enforcement trainer since 1999. As the Executive Director of the IG Academy since August 2006, she is responsible for the development and administration of law enforcement training for more than 60 Offices of Inspectors General. She received her B.A. degree from Duke University in 1988.



“Hey... What’s Up With That????”

by Darrell R. Walker

Along with a befuddled look of bewilderment, this is the verbal reaction of many shooters as they look at their targets after the firing of several rounds. This look is even more profound when shooting at longer distances. It is difficult for the shooter to fathom what has just happened, everything looked good, or so they thought when the gun went off. However, the “proof is in the pudding.” The impact holes that they see (or don’t see!) indicate where the sights were when the shot broke. The targets don’t lie. While we can’t read the shooters minds, their reactions via their body language and facial expressions show exactly what they are thinking ... I don’t get it.

In Volume 1, Issue 2 of the FLETC Journal, my article entitled, “*Talk to Yourself ... Are You Crazy??*,” addressed the shooter error of anticipation and offered a suggestion on overcoming this normal human reaction that many shooters experience. Anticipation is where they brace themselves in preparation for the “explosion” that is about to take place between their hands and they push into the weapon and move the sights out of alignment.

This article continues the topic of shooter errors and how to correct them. Analyzing and correcting shooters is not difficult; however, it does require understanding the fundamentals of marksmanship and the ability to

convey “constructive correction.” Just telling someone to hold the gun a certain way, use the sights, and not “jerk” the trigger is not enough. The shooter can’t correct what they don’t understand. Correction can sometimes be achieved when the shooter observes a demonstration by an individual with a patient demeanor, who “rolled up his or her sleeves,” and allowed the shooter to experience proper grip, sight alignment, or trigger control. Because shooting is such a mental process, yelling at someone for not hitting the center of the target is not conducive to achieving a positive response and outcome. This is one of the lessons we learned from the “Survival Scores Research Project.” This research identified the importance of how the instructor provided feedback. Those students who received supportive constructive feedback performed better than those who received “lectures” from the instructor. However, this does not mean that an instructor should not be “firm” with the shooter and point out necessary correction. This is especially true if it is determined that the shooter is not individually motivated to apply the techniques shown.

First hand instructor observation is certainly the preferred method of identifying the shooter’s “errors of his/her ways.” Watching a shooter’s hands can more often than not tell the whole story. Watching the hands allows for scrutiny of the grip, trigger finger placement, and follow through. It also provides an opportunity to examine if any “extracurricular activity” is taking place during the act of shooting. This “extracurricular activity” can consist of hand separation during recoil, squeezing or pulling with either the strong hand fingers or support hand fingers during the manipulation of the trigger. The recommended grip is thumbs forward, support thumb high on the frame, and both thumbs pointed in the direction of the muzzle at the target, with the palms of the hands providing the pressure on the stocks. The trigger finger

obtains contact with the trigger in the middle of the first pad. Shooters should be instructed to keep contact with the trigger and not take the finger off the trigger after the shot goes off and then the subsequent trigger reset. If contact is lost after the shot breaks during the rapidly evolving process of making multiple shots, the shooter risks not being able to control the trigger pull when contact is reestablished during the next shooting cycle. When contact is lost, the shooter is prone to snapping or, as it is commonly referred to, “jerking” the trigger. The instructor needs to help the shooter understand that it takes less pressure to pull the trigger after the initial shot and the trigger is reset for second, third shots, etc. Pulling the trigger after the reset with the same amount of pressure used on the first shot can

cause the sights to move out of alignment. Careful observation of the shooter’s trigger manipulation allows for this diagnosis. When abrupt trigger manipulations change the sight alignment the rounds will impact the target somewhere other than where the student’s sights were originally lined up.

Another observed issue, is after the shot breaks and during recoil, the shooter’s support hand separates from the gun or the gun flops in the strong hand because there is insufficient pressure

when forming the grip. When this happens, the shooter readjusts his/her hands on the gun between shots and because it is in the active shooting cycle there is a very good chance that the hands do not go back where they began, or belong. Now there is a possibility that the hands are placed on the gun differently, and if the observed issue is strong hand related, the location of the finger on the trigger could also change. Now with more or less finger on the trigger a new shooter error issue has developed. Changes in finger placement can cause the shooter to manipulate or pull the trigger (sideways) to the strong side if too much finger is on the trigger,

Because shooting is such a mental process, yelling at someone for not hitting the center of the target is not conducive to achieving a positive response and outcome... Those students who received supportive constructive feedback performed better than those who received “lectures” from instructors.



or push the trigger (sideways) toward the support side if too little finger is on the trigger. In other words, there is a definite possibility that if the trigger finger has lost contact with the trigger or hand separation has occurred during recoil that the readjusting of the hands on the gun could cause trigger finger fluctuation. Marksmanship requires consistency in grip, trigger manipulation, and sight alignment. Changes in any of these components either during or between shots cause expanded or inconsistent groups.

Dry-fire exercises are essential training for the shooter to get repetitive opportunities to practice many of the fundamentals of marksmanship. One dry-fire exercise that I include in my class training sessions is trigger reset drills. Two students are paired up and one is the “shooter” and the other is the “slide operator and critical observer.” On command the shooter draws, presents the weapon toward the threat area, while obtaining sight alignment and sight picture coupled with the pulling of the trigger under control. When the arms get to a natural point of extension the “simulated” shot breaks

as the hammer or striker falls. Immediately after that, the student observer works the slide to allow the shooter to practice trigger reset while re-acquiring sight alignment. The trigger reset drill incorporates the following fundamentals: stance, grip, sight alignment, and trigger control. When the slide is worked, the shooter will “rock” back on their heels if their stance and weight distribution is incorrect, and it can identify if their grip breaks during this action as well. It also helps with the draw and weapon presentation. Many essential skills can be identified if they are flawed and then corrected when this exercise is performed properly. All this is accomplished without firing a live round. This dry-fire exercise also benefits the “slide operator” by developing critical observation skills.

Another issue to look for is the squeezing or pulling with either the strong hand fingers or support hand fingers during the manipulation of the trigger. This is an unconscious activity that shooters usually don't recognize on their own unless it is brought to their attention by a keen observer. By focusing on the shooter's wrists, it can be observed if squeezing or pulling is taking place. The initial trigger pull is often harder and longer than after the trigger reset. Because of this, shooters may squeeze their strong hand fingers in order to “assist” with the pulling of the trigger. This causes the front sight to be pulled out of alignment and the shot impacting to the shooter's strong side of the target. Another possibility of shooter error is the pulling of the support hand fingers during the manipulation of the trigger which causes the shots to impact the target on their support side. Impact holes that are high on the target could be the heeling of the handgun by pushing the heel of the hand into the back of the pistol grip during the trigger manipulation. Grip consistency is essential, and the keen observation of the shooters hands cannot be stressed enough. These “extracurricular activities,” which is doing anything with the hands other than firmly holding the gun, cause the sights to move out of alignment.

When the opportunity to observe a shooter's performance is not readily available, target analysis can be a useful tool to diagnose mistakes and offer solutions. Target analysis, when used in conjunction with shooter observation, can substantiate the shooter's error diagnosis. Earlier in this article, it was mentioned how shots impact the target to the shooter's strong or support side. During target analysis, shot placement on

the target is commonly compared to time on a clock. An example of this is when a right-handed shooter is pulling with his/her support fingers, the rounds impact around nine o'clock, and it would be three o'clock if a left-handed shooter did the same thing.

If trigger manipulation error or hand movement during shooting is identified, “constructive correction,” a comprehensible explanation, all used collectively with a hands-on visual demonstration for the shooter, will go a long way to eliminate the shooter errors described in this article.

The next article will touch on sight alignment, sight picture, and follow through ... all important for accurate shooting.



Mr. Darrell R. Walker has a Bachelors Degree from Niagara University and has served in several capacities in both Federal and local law enforcement for twenty-one years. Darrell is currently a Senior Instructor in the Firearms Division at the Federal Law Enforcement Training Center (FLETC) where he teaches marksmanship and the tactical applications of firearms during law enforcement encounters. Darrell has provided instruction at the FLETC in both Basic and Advanced firearms training for over twelve years. Presently, Darrell is the firearms division representative for both the Criminal Investigator Training Program (CITP) and Uniform Police Training Program (UPTP).

The Right Kind of Feedback

By Dr. Terry Wollert



Introduction

Your students have just completed a reality-based, force-on-force training scenario. You blow the whistle, and yell “Out of Role.” Now, what should your next step be? A key element of any training exercise is the incorporation of feedback as part of the instructional process. Well-defined and delivered feedback can increase learning as well as provide for a comprehensive scenario evaluation. The student’s perception of their ability is directly influenced by the instructor both verbally and non-verbally, prior to, during, and after the scenario. This influence can have a positive or negative effect on future performance depending on the instructor’s ability to provide effective feedback. Effective feedback enhances the training experience and the student’s ability to produce the desired result by increasing the student’s confidence and competence to perform similar tasks in the future.

This article provides law enforcement trainers with insight concerning feedback, evaluation tools, and techniques to improve student performance. These techniques are an outcome of the Federal Law En-

forcement Training Center’s (FLETC) Survival Scores Research Project (SSRP). The SSRP is ongoing research on human performance during dynamic, high-risk, law enforcement scenarios that objectively measures use of force decisions and applications. The “Student Centered Feedback” model presented here is part of the Scenario Training Assessment and Review or “STAR” performance assessment model. The article discusses (a) student pre-brief, (b) performance observation, (c) performance evaluation and documentation, (d) a method of reviewing the experience in order that learning can be derived (e.g., an ‘after action review’) as basic tools in a trainer’s toolkit to improve student performance during reality-based training scenarios.

Background

Literature reviews on how feedback improves training are readily available; however, most studies focus on the type of information feedback to the student rather than the process by which the instructor presents the information. A common theme throughout the literature review suggests that individualized, formative feedback offers the most promising way of improving



the student's performance. This requires information about observing, documenting, and summarizing a student's performance, which is then fed back to the student. Li, Lee, Purvis, & Chu (2007) identified that the amount, content, frequency, precision, and type of feedback were the critical components of effective training feedback. They also reported that feedback that focuses on student performance rather than the outcome of the performance provides a more effective skill development. The STAR process actively engages the student in higher order learning (thinking, problem solving, and reasoning) through analysis, synthesis, and evaluation. The techniques associated with "Student Centered Feedback" reflect a Socratic Method of teaching. Paraskevas & Wickens (2003) describe the Socratic Method as a form of structured discourse using systematic questions, inductive thinking, and the formulization of general definitions with more emphasis on the process and less on content. By developing these skills, students can expand their experience as well as prepare themselves to solve a wider range of complex problems and issues. By keeping students actively engaged there is a better chance they will retain these abilities and experiences than if they had received the information in a more passive manner. Ef-

By keeping students actively engaged there is a better chance they will retain these abilities and experiences than if they had received the information in a more passive manner.

fective student centered feedback requires a combination of qualities, skills, and some type of structure. Ultimately, feedback is about communication. The skills are generic: active listening; asking a balance of open, reflective, facilitating, and open-ended questions; challenging; and summarizing. Giving student centered feedback requires more than just providing judgment or an evaluation. Wollert, (1990) identified observing, listening, and communicating as three critical feed-

back skills in the development of a trainer. Rodgers (2006), identified fighting back the urge to fix along with observing, listening, and communication as part of an effective feedback session.

The design of the STAR process is an active training style that builds upon the student's strengths while correcting performance deficiencies. It is to provide insight. Without insight into their own strengths and limitations, students cannot progress or resolve difficulties. Thus, key instructor skills are to listen and ask; not, as is often the temptation, to tell and provide solutions.

Student Pre-brief

The FLETC model for Student Centered Feedback starts with the instructor providing a pre-brief of the scenario that the student is about to experience. Because this is only a training environment, it is essential that the instructor establish the significant factors the student would have known if this were an on-the-job encounter. These factors include the role the student has during the exercise, suspect description, radio/phone communication requirements, scenario conditions (i.e., time of day, facility information, etc.), and other relevant information (i.e., administer an arrest warrant, routine patrol, witness interview, etc.). The pre-brief is a canned statement to establish essential scenario parameters for totality of circumstances. The pre-brief is also an excellent opportunity to review specific skills the student needs to be developing. Instructors need to resist the temptation of providing too much information. The focus of the pre-brief is to provide information the student would know prior to beginning a scenario but not information they should obtain through observation or communications. It is important that the pre-brief not change from student to student. Reading a canned statement makes the pre-brief the same for each student. This process limits "coaching" the student through the scenario ahead of time.

Performance Observation

Prior to the scenario, the instructor must allow time for preparation steps. Preparation starts with a review the applicable lesson plan(s) and scenario guides to identify expected student behaviors. This will provide the instructor with critical information to ensure they can effectively administer the scenario. This review

also identifies guidelines to ensure that role-players are prepared to act in accordance with the lesson plan. Becoming familiar with the scenario and essential student behaviors helps the instructor identify observation positions that will provide an optimum vantage point without interfering with the student or role-players actions. When possible select a position near to the side (left or right) and slightly in front of the student facing at a 45-degree angle to the student. Risk, student capability, expected behaviors, and the dynamics of the scenario determine the distance between the instructor and student. The more familiar the instructor becomes with the scenario the better they are prepared to observe the student. Remember, the student's focus should be on the role-players and not the instructor.

Performance Evaluation and Documentation

To complete this phase of the process, the instructor must be familiar with the score sheet and possess trained observation skills in order to document the subject's performance. It is unreasonable to expect perfect performance for a successful outcome. However, it is critical that the student demonstrate the critical knowledge and skills associated with the performance objective associated with the scenario. Clearly defining performance expectations before the student participates is critical to evaluate the student's performance during scenarios. It is possible to have observed these students demonstrate their capability during individual skills assessments. However, these individual skill demonstrations typically do not account for the environmental difference in what it takes to perform these tasks under the conditions imposed by the job. Environmental difference is the degree that equipment, motion cues, visual cues, and other sensory information match the real-world task. An example of environmental difference is shooting a qualification course of fire in a training environment versus what it takes to perform the task of engaging an active shooter in a hazardous or high-demand environment, such as a school setting. Both tasks require target engagement however scoring center mass hits on a moving target that is shooting back is considerably more stressful and difficult.

Effective scenario objectives reflect a realistic encounter and require students to make decisions and apply a variety of tactics under dynamic conditions. The performance evaluation criteria should reflect the actions



as a reasonable officer. Establishing the evaluation criteria for successful completion requires identifying expected student action/sequence of events (what is going to happen), student performance stimulus (when/cues it is going to happen), and expected student performance-evaluation criteria (how the student is expected to respond). The assessment scale used during the SSRP for scoring the student's performance used the following scale:

Rating	Description
0. not applicable	does not apply or is not observable,
1. not acceptable	actions are not consistent with legal standard, creates significant risk, or did not perform,
2. least desirable	actions generally acceptable but create identifiable risks,
3. acceptable	actions are consistent with training but not most effective method or tactic, and
4. desirable	actions demonstrate sound and effective tactics.

Using a risk based rating scale allows for less than perfect performance, and scores the student on the level of risk associated with their actions. An example of this type of rating would award the student with a "4" (Desirable) if they successfully and timely performed a "Tap, Rack, and Ready" during a weapon malfunction requiring a primary immediate action procedure.

They would receive a “3” (Acceptable) if they cleared the malfunction in a timely manner but failed to “Tap” before racking the slide. They would receive a “2” (Least Desirable) if they failed to recognize the weapon malfunction in a timely manner or took an extended amount of time to clear the malfunction and re-engage. They would receive a “1” (Not Acceptable) if they required multiple attempts or failed to clear the weapon.

The student’s performance for both labs and practical exercises should be recorded on an evaluation form. The evaluation form should allow for documenting instructor comments. The combination of the risk assessment and instructor comments facilitates the debriefing process. Documenting student performance also assists in keeping the feedback focused on critical performance issues.

Reviewing the Experience

The STAR’s Student-Centered Feedback is a systematic approach for encouraging participants to reflect on their experience and share their insights. An underlying principle of feedback is that students tend to self-regulate and actively seek information to assess their progress and performance (Bandura, 1986). Ken Murray (2004), in his book *Training at the Speed of Life*, emphasized that the purpose of reality-based training scenario feedback is to develop student confidence and competence.

The Student-Centered Feedback model has four distinct steps and is used at the conclusion of the scenario. The first step the instructor takes is to ask the students to identify their actions during the scenario. Generally, this starts by asking the student, “From the time you began the scenario until we started this debriefing, describe what happened?” The instructor may ask other leading questions such as; “How did you become involved?”, “What information did you collect prior to arriving on the scene?”, and “What was your initial assessment of the situation?” Using a structured series of open-ended questions will help to focus the student on what they did and why they did it. The purpose of this phase of the model is to allow the students to identify their actions and for the instructor to get a feel of the subject’s perception of the situation and why they chose their actions. A good trainer must be able to recognize the nonverbal signals, body posture of the student, and their words in order to assess the thinking behind



the response as well as its truthfulness (Stone, 1999). Such information is important to determine how and why the student is making decisions, identifying skill or knowledge deficiency, or confusion on how to do a particular task. Ericsson and Simon (1980) indicated that “verbal probing” (open ended interview questions) is an effective technique to gain an understanding of the cognitive processes employed during the activity. More specifically, they specified a technique called “retrospective verbalization” where the instructor asks students to describe their actions immediately after the exercise. They recommend this as a means of probing without affecting the performance during the exercise and for conducting critical incident debriefings. The premise of this segment is not to pass judgment but to retrieve information. Rodgers (2007) stressed that instructors must establish an environment where the feedback is about the student’s learning and not the instructor’s teaching in order to establish a trusting relationship. She further suggests that while instructors can use written, oral or both feedback techniques, the use of oral verbalization opens the discussion to follow-on questions and often leads to solutions that are more creative. Instructors can also conduct these sessions one-on-one or in groups.

Once students have identified what they did and why they did it, the instructor initiates the second step by asking what the strengths of their performance were during the scenario. In other words, what they did well. The purpose of this phase is twofold. One is to guide students down the path that focuses on the positive aspects of their performance. This makes the feedback session a positive and fruitful learning experience. The second purpose is to identify if students thought they were performing elements well, and if they recog-

nized that there were areas that needed improvement. This allows the instructor to provide reinforcement for those areas where the student has performed well, and correct any student misconceptions.

The third step of the model focuses on areas for improvement. During this time, the instructor will present the student with the question, “If you were to encounter this scenario again, what would you do differently?” This allows students to relive the experience and identify their own ways to improve their performance. This technique encourages the student to examine their actions while developing critical problem solving skills. Again, the trainer has an opportunity to correct misconceptions and provide additional corrections as necessary.

The last step of the model is to identify alternate solutions. It is important during this time that instructors not identify too many alternate solutions. The focus needs to be on one or two alternate solutions and allow the subject to do some problem solving and planning. This is also a time to provide an opportunity for the student to ask questions on areas that they are uncertain. At the conclusion of this final step, the instructor

The focus needs to be on one or two alternate solutions and allow the subject to do some problem solving and planning.

should focus on lessons learned and identify goals for improvement. The feedback process begins again on the next activity, or retest on a similar scenario, to correct any identified performance issues.

Conclusion

The feedback session should begin with non-judgmental statement that asks the student to provide an account of the scenario. Using a statement like, “From the time you began the scenario until we started this debriefing,

describe what happened?” will provide insight to the student’s perspective of the scenario. Student-Centered Feedback is designed to reinforce or change behavior. Dr. Wood (2000) offers these suggestions to produce a more positive effect on students’ performance:

- Comments should be based on observable behavior and not on assumed intentions or interpretations
- Positive comments may be provided first to give the learner confidence
- Feedback should emphasize the sharing of information; both parties contribute
- Feedback should be given at an appropriate time and place
- Feedback should include specific, subjective data but not so detailed or broad as to overload the learner
- Feedback should deal with behaviors the learner can control and modify; it should deal with decisions and actions
- Learners should be asked to verify feedback
- Feedback requires preparation and the ability to tolerate discomfort and criticism

In addition to Dr. Wood’s suggestions, formally documenting both positive and negative issues that arise throughout the observed performance is important. Excuses such as, “too little time to provide praise or corrective feedback,” tell the student that the instructor believes that he or she is not capable of doing the work right (Stone, 1999). The role of the instructor is to communicate openly and honestly about any performance issues. Students appreciate feedback that is specific to their performance and disregard nonspecific evaluative feedback (e.g. ‘good job’) (Moorhead, Maguire, Thoo, 2004). The quality of the training encounter is clearly linked to feedback. Effective feedback should illustrate the student’s effective and ineffective behaviors as well as providing guidance on how to improve their performance.

The techniques associated with Student-Centered Feedback actively engage the student in higher order learning through analysis, synthesis, and evaluation. Student-Centered Feedback reflects a Socratic Method

of teaching using systematic questions, inductive thinking, and the formulization of general definitions with more emphasis on process and less on content. Student centered feedback emphasized critical thinking, problem solving, and creative solutions. The instructor's role during Student-Centered Feedback is to facilitate knowledge development. By developing these skills, students can expand their experience and prepare themselves to solve a wider range of complex problems and issues. Ultimately, feedback is about communication. The primary communicator during Student-Centered Feedback is the student, thereby providing an active learning environment to build confidence. While being supportive, the instructor provides corrective feedback to the subject to develop competence. The instructor's focus is on critical subject performance deficiencies and allows the subject to identify possible corrective actions. During the SSRP students receiving Student-Centered Feedback demonstrated a more adaptive pattern of behavior exerted more effort, and persisted in the face of difficulty.

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Tour Moments

DHS DEPUTY SECRETARY PAUL SCHNEIDER ENJOYS FLETC VISIT

DHS Deputy Secretary (Acting) Paul Schneider visited FLETC Glynco in January at the invitation of FLETC Director Connie Patrick. While he is somewhat familiar with the FLETC, this is his first visit. The Deputy Secretary observed several demonstrations all at the FLETC headquarters, and met with the FLETC Executive Team and on-site Partner Organization representatives. The Driver Marine (DMD) and

Counterterrorism (CTD) Divisions gave a joint training demonstration at the Counterterrorism Operations Facility's International Site for the DHS official. The Deputy Secretary was able to observe Customs and Border Protection trainees during their final practical exam at the Port of Entry. Deputy Secretary Schneider was also briefed on FLETC programs at the Simulations Laboratory and the Flying While Armed training area.



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