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# NEWSLETTER

International Association of Directors of Law Enforcement Standards and Training  
3287 Tasa Drive; Meridian, Idaho 83642-6444  
<http://www.iadlest.org>

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**The Five Tenets:**

- Wear Your Belt
- Wear Your Vest
- Watch Your Speed
- WIN—What's Important Now?
- Remember: Complacency Kills!

## **PRESIDENT'S MESSAGE**

*by: Bill Muldoon, IADLEST President*



As I write this column, I have barely had time to unpack from the 2012 IADLEST annual conference held in Savannah. I had a great time and enjoyed meeting with the many of you while attending all the training and social

opportunities. A number of folks worked very hard to make this conference the success that it was, and they deserve mention and our sincere appreciation. There were over 129 conference attendees and representatives from counties of Albania, Bosnia, Herzegovina, Kosovo, Macedonia, Montenegro, Nigeria and Serbia

First round of thanks has to go to Ken Vance and the Georgia POST for all their work in hosting the conference and coordinating all the social events. Their efforts assured that everyone attending the conference knew that we were in the hospitable *Peach State* and added a social component that created more opportunities for networking and sharing information. It is often said that just as much learning occurs during the social interaction of conference attendees than during the training sessions themselves. They also share credit in bringing us our featured leadership speaker, Jack Enter, a Georgia resident. The Georgia Special Olympics benefited from the Fun Run/Walk and silent auction. I want to extend a special thank you to everyone who brought something to the auction.

A large thanks goes to Director Connie Patrick and the entire FLETC crew for all their contributions to the conference and training that they provided. FLETC pulled out all the stops in making the conference possible for many of us, then providing first-rate training. I particularly enjoyed the tour of the FLETC facilities. We learned about the crime of human trafficking with the DHS Blue Campaign, had a terrorist briefing, training on the Below 100 initiative and a legal presentation on "Brady/Giglio".

Thank you to all our vendors who provided informative breaks and lunches. Without their support, conferences such as ours would not be possible.

Thank you to the Redden Group for all their help in coordinating the logistics of the conference. Their efforts make day-to-day planning and logistics of holding a conference manageable for all. I am looking forward to their future participation as we plan the 2013 conference in Portland.

Thank you to the executive team of IADLEST and the efforts of our out-going president, Dick Clark. Under his guidance, IADLEST has hired a full-time executive director and has set this organization on a path for future success. I owe a great deal of gratitude to Dick and all the recent past presidents for making the tough decisions that have set this organization on a path of being the leader in peace officer standards and training.

Last, thanks to all who support the mission of IADLEST and have entrusted me with the presidency of this organization for the next year. It is my privilege to be a part of IADLEST, and I am looking forward to serving you as we fully execute our strategic plan and build on past successes.



*Savannah Georgia Conferees*

## - NOTICE - CALL FOR PRESENTERS

IADLEST is known for being the catalyst for law enforcement improvement; and each year, the annual conference showcases this commitment by focusing on the most pressing issues for training managers and executives. The IADLEST Conference will challenge delegates by examining emerging concepts and methods and providing access to:

- New ideas and approaches to law enforcement training
- Both leading-edge and topical presentations
- Opportunities to connect with key individuals and organizations across the law enforcement standards and training segment

**Presentation Topics:** The 2013 Conference will be held in Portland, Oregon, June 2-5, 2013, and will give you an opportunity to share your knowledge with peers. IADLEST is looking for approximately 20 professionals to present on a topic related to one of IADLEST's three major mission areas, including:

- Enhancing professionalism in law enforcement
- Increasing officer safety
- Reducing training costs & officer liability

**Suggested topics include (but are not limited to):**

- Effective methods/approaches to reduce officer injury and LODD (Line of duty deaths)
- New training approaches and technologies, including blended training, eLearning, simulation-based training, virtual worlds, and mobile learning, and practical exercises
- Adapting training and techniques to new student demographics
- Instructional systems design applied to law enforcement training, from design to validation
- Legal issues, such as certification/decertification practices, avoiding/mitigating officer liability
- Best practices in academy and POST operations, including compliance tracking
- Police officers as first responders and the implications for training
- New business models and approaches to fund and operate POST organizations and academies
- Legal issues impacting law enforcement training and standards
- Cyber security and cyber crime

**Submission Process: Submission Deadline:** October 31, 2012

**Submission options:**

1. An online form is available online, which can be filled out and submitted. Bios or resumes may be uploaded and submitted with the online form:  
<https://www.iadlest.org/LinkClick.aspx?fileticket=-3OibSTXa6E%3d&tabid=85&mid=419>
2. A fillable PDF form is also available at the end of this newsletter, which can be filled out and printed. Bios and resumes may be mailed or emailed with the form. The printed version can be mailed to:

IADLEST  
3287 Tasa Drive  
Meridian, ID 83642

*Call for Presenters continued*

A printed version can also be scanned and emailed to: mikebecar@yahoo.com

You will receive a confirmation e-mail within 72 hours of receipt of the completed form.

**Review Process:** The IADLEST Selection Committee will review abstracts during November 2012. During this time, the Committee will request more information from potential presenters, if needed.

Presenter selections will be based on the following criteria:

- Topic relevance to IADLEST's major mission areas and relevance to the majority of IADLEST members and conference attendees
- Clear statement of solutions to common challenges in the industry
- Extent to which attendees would benefit from your presentation
- Original work of the author/presenter
- Speaker's topic expertise and knowledge
- Speakers presentation experience and skill level

The selection of presenters will be announced, via e-mail by November 30, 2012. Selected presenters must sign a presentation commitment letter by December 14, 2012.

Corresponding papers will be published by IADLEST following the presentation at the 2013 Conference.

**Compensation:** Speakers will receive one night of lodging at the conference host hotel and will be provided complimentary lunch during the day of the presentation.

Travel expenses, IADLEST conference registration fees (optional attendance), and other expenses incurred will be the responsibility of the presenter.

**Training topics which have been discussed the past three years:**

**2011 – Nashville, Tennessee:**

- Risk management
- Developing Supervisors
- E-learning
- NDI
- NLEARN
- DDACTS

**2010 – Corpus Christi, Texas:**

- ADA Issues
- Protecting Your Brand
- Tools for the Trade
- She Said, He Heard
- Problems of Commuter Academies
- Problems of Residential Academies
- Professionalism in Training
- Practical Guide to Litigation
- Emerging Technologies in Training
- The TX Misconduct Enforcement Process
- Training Ethics & Integrity
- Law Enforcement Online

*Call for Presenters continued*

- Grant Writing
- International Police Training
- How Do Legislators Make Funding Decisions
- Practical Guide for Litigation
- Training for Rural Police and First Responders
- Unleashing the Leader

**2009 – Reno, Nevada:**

- Driver Training Study
- Flying Armed
- Physical Fitness Validation Study
- Discussion on Training Opportunities
- In Harm's Way

**Training suggestions from the 2010 Conference Survey:**

- There needed to be more of an emphasis on officer training trends, tactics, successes, and failures. Again Sheriff Don was great and I definitely got a lot out of his speech in addressing professionalism, leadership, character; and tenacity.
- Court decisions addressing training, delivery methods for student and career officers
- Legal Track - Litigation trends due to "failure to train." New pedagogical methods for LEO training, technology supporting training, and compliance management
- Presentations from our federal partners on subjects that will be of consequence to IADLEST Members in the future, e.g., anticipated changes to laws.
- Review of the Canadian training, i.e., invite speaker from the Ontario Police College
- I would like to see sessions where the POST Directors can talk about specific topics - more like organized, instructor-led discussions. I learned much more in those sessions.
- How to deal with an active shooter at a training academy, more time on commuter vs. resident academies, how to develop relationships with legislators, how to work with the media, the always needed funding sources.
- Stress management. Teaching the basics, should be called wellness training.
- Cultural competency perhaps... security/terror prevention strategies...
- More time for directors to discuss specific issues
- Maybe there could be more on methods and best practices in instruction
- Different approaches to leadership are always welcome. The leadership classes were relevant and very useful to my job as law enforcement academy manager. Also, I would like to see presentations regarding border security and homeland security issues on how they affect not just the border states, but nationwide.
- Addressing the impact of dash cam and the public perception of use of force.
- Border violence, human trafficking
- National Decertification is an emerging topic for IADLEST, and I think a topic or break-out discussion would be beneficial. Second, the use of Distance Learning Program for law enforcement training.
- Same...leadership, liability, new methods, techniques, etc., on training, roundtables
- More time for structured open round-table discussion on best practices, challenges, among training coordinators. Like joint participation between/among academy coordinators and state POST officials. Would like more idea exchanges with other countries (not just a presentation).
- Academy-related topics.

*Editorial Note: The IADLEST Newsletter is published quarterly. It is distributed to IADLEST members and other interested persons and agencies involved in the selection and training of law enforcement officers.*

*The IADLEST is a nonprofit organization comprised of law enforcement training managers and leaders. Its mission is to research and share information, ideas, and innovations that assist in the establishment of effective and defensible standards for the employment and training of law enforcement officers.*

*All professional training managers and educators are welcome to become members. Additionally, any individual, partnership, foundation, corporation, or other entities involved with the development or training of law enforcement or criminal justice personnel are eligible for membership. Recognizing the obligations and opportunities of international cooperation, the IADLEST extends its membership invitation to professionals in other democratic nations.*

*Newsletter articles or comments should be sent to IADLEST; 2521 Country Club Way, Albion, MI 49224; or [pjudge@att.net](mailto:pjudge@att.net).*

### MEETINGS SCHEDULED

IADLEST will hold its business meeting Saturday, September 29, and Sunday, September 30, 2012, in San Diego, California, in conjunction with the IACP Conference. The meeting location to be announced.

The next Executive Committee meeting is scheduled for January 31 and February 1, 2013, at the J. W. Marriott Hotel, Washington, DC.

The 2013 IADLEST Annual Conference is scheduled for June 3-5, 2013, in Portland, Oregon.

### 2013 IADLEST CONFERENCE PLANNED FOR PORTLAND, OREGON

The IADLEST Executive Committee has selected Portland as the 2013 annual conference site. The city has a population of 583,000 and is Oregon's most populous city. Approximately 2.2 million people live in the metropolitan area. "The city that works" is noted for strong land-use planning and investment in light rail, supported by Metro, and a distinctive regional government. Portland has been referred to as one

of the most environmentally friendly, or "green", cities in the world. It is a city the marked by warm dry summers.



Portland's Light Rail

### WELCOME NEW MEMBERS

The IADLEST is proud and privileged to add the following new members. These professionals complement our Association's already extensive wealth of talent and expertise. We welcome them to the IADLEST.

Charles Allen, MIPT, Oklahoma City, OK  
Cynthia Atwood, Asst Dir., FLETC, Glynco, GA  
David Bradford, Northwestern Univ., Evanston, IL  
Patrick Cronin, Lawrenceville, GA  
Edward King, Div. Chief, FLETC, Glynco, GA  
Lewis Medina, Director, POST, Santa Fe, NM  
Bruce Miller, FLETC, Glynco, GA  
Patsy Netherland, Alexandria, LA  
Bradley Smith, Dep. Asst. Dir., FLETC, Glynco, GA  
Joshua Vinehout, POST, Albany, NY

### 2012-13 IADLEST EXECUTIVE COMMITTEE INTRODUCTIONS

A new IADLEST Executive Committee was installed June 12, 2012, at the IADLEST business meeting held in Savannah, Georgia. The following is a brief biographical sketch of each of the Committee members.

**President:** William J. Muldoon was appointed Director of the Nebraska Law Enforcement Training Center in August 2006.

William started his law enforcement career over 32 years ago with the Omaha Police Department where he spent 25 years working various units, including accident investigation, background

investigations, criminal investigations, public information, and the Omaha Police Department Training. William retired from the Omaha Police Department as a lieutenant.

He accepted a position as the Chief of Police of the Nebraska City Police Department (NCPD) in 2003, where he gained valuable experience working with a rural police agency. As chief, he revamped policies, procedures, training, and updated equipment for the department. Policies and new focus combating domestic violence and underage drinking were implemented. When NCPD started a Citizen's Police Academy, Bill worked with the Otoe County Sheriff's Office and the Nebraska State Patrol to conduct a Citizen's Academy for residents countywide.

William has a long history of training, teaching as an adjunct instructor at the Nebraska Law Enforcement Training Center since 1992 and teaching the Public Information Workshop for NHTSA. More recently he instructed the Incident Command and National Incident Management programs. He published *Five Steps to a Successful Television Interview* in Police Chief Magazine, April 2001, and was co-author of *Media and Law Enforcement Relations during Hostage-taking Terrorist Incidents, A Cooperative Decision Effort* that appeared in Sheriff Magazine, March - April 1999. William holds a Bachelor of Science degree in Criminal Justice Administration from Bellevue University.

He is married to Mary Anne and they celebrated their 29<sup>th</sup> anniversary this June. They have a daughter, Patricia, who is a nurse in Omaha and a daughter, Regina, attending the University of Nebraska, Lincoln.

**First Vice-President:** Jon Bierne is a native of Aberdeen, South Dakota. He started his law enforcement career in 1988 as a law enforcement specialist in the US Air Force, serving at Offutt AFB, Nebraska, and Soto Cano AB, Honduras. He received a criminal justice degree from the University of Nebraska-Omaha in August 1994 and started as a patrolman with the Aberdeen, South Dakota, Police Department later that same year. In 1995, Jon was hired by the South Dakota Division of Criminal

Investigation as a Special Agent, assigned to the Huron, South Dakota, Field Office as a Narcotics Investigator. In 1999 Jon transferred to the Watertown, South Dakota, Field Office as a General Criminal Investigator.

In 2006, Jon was promoted to Supervisory Special Agent and transferred to DCI HQ in Pierre, South Dakota, where he currently is assigned as the Training Administrator. In that capacity, Jon supervises all basic and advanced training for law enforcement and 911 Telecommunicators. In addition, Jon oversees the certifications of all officers, and telecommunicators, and canine teams in South Dakota. Jon also supervises the recruiting, hiring, and field training process for newly hired DCI Agents, and any compliance investigations regarding complaints against certified officers.

Jon is a graduate of the 222<sup>nd</sup> Session of the FBI National Academy. He lives in Pierre, South Dakota, with his wife Scarlett and their three children.

Mr. Clark has earned an AA Degree in Pre-veterinary Science, a BA Degree in Biology, and has a Master's Degree in Psychology. Mr. Clark is also a graduate of the Northwestern University School of Police Staff and Command.

**Second Vice-President:** Kim Vickers is the Director of the Texas Commission on Law Enforcement Standards and Education. Kim served 27 years with the Abilene Police Department in a wide variety of capacities. He was Commander of the Critical Missing Response Team which gained nationwide attention when it handled and quickly solved the first Amber Alert case in Texas. Kim is also nationally recognized as an expert instructor and consultant in the area of Family Violence dynamics and law. He has drafted several pieces of Texas family violence law, has testified as an expert witness before Texas Senate and House Committees, and is currently a member of the Board of Directors of the National Council on Family Violence.

In 2006, Kim began working as a Field Service Agent for the Texas Commission on Law Enforcement as Director of Education and

Credentialing. In September, of this year Kim will assume the duties of Executive Director for TCLEOSE.

He has been married to his wife, Chrys, for 38 years and has two children; son, Eric, is a homicide detective with the Abilene Police Department, and Jennifer is a doctor in New York City. Kim has two grandchildren.

**Immediate Past President:** Richard Clark is the POST Executive Director for the Nevada Peace Officer Standards and Training Commission. He retired from the Los Angeles Police Department in 1991 as a Communications Division Watch Commander after 26 years of dedicated service. During his time with the department, he also served as a Patrol Officer, Traffic Officer, Investigator, and Supervisor.

He served four years with the L.A.P.D. Academy as a PT/Defensive Tactics Instructor and was a Field Supervisor for more than 22 years. During this time, he worked three years in deep undercover intelligence, 12 years as a motorcycle Sergeant, and three years as Chairman of the Department's Peer Counseling Program. He spent three years teaching L.A.P.D. Sergeant School Conflict Management, Counseling and Communication Skills for Supervisors.

Mr. Clark won Silver Medals in the Police Olympics in 1970 and 1971. He was a member of the Los Angeles Police Department's cross country team that set a world's record for the longest run in history. This run spanned from L.A. to Montreal, Canada, in 1976. In 1995 he won the Silver medal in "The Toughest Competitor Alive" category at the World Police and Fire Games in Melbourne, Australia.

After a brief tour during retirement as a consultant in Conflict Management for Law Enforcement, he began his second career in August 1993 with the Nevada POST Committee. He started as a training officer with the Nevada Law Enforcement Academy. In 1994, he advanced to the position of Chief of POST. In July 1999, he was appointed the Executive Director of the Nevada Commission on Peace Officers' Standards and Training.

**Secretary Lloyd Halvorson** is the Assistant Vice President Instructional Services Lake Region State College in Devils Lake, North Dakota. Lloyd has a Bachelor's and Master's Degree in Criminal Justice from Minot State University and over 1,600 hours of certified law enforcement training. He spent ten years (1992-2002) with the Bismarck, North Dakota, Police Department, serving as a patrol officer, investigator, accreditation manager, and patrol supervisor.

He was appointed to the North Dakota POST Board by the North Dakota Attorney General in October 2003. Lloyd completed his academy training in 1992 and is a licensed police officer in the state. In addition, he is a sworn Deputy Sheriff with the Ramsey County, North Dakota, Sheriff's Department, is a volunteer school district coach, and has previously held elected positions as both a school board president and ambulance service squad leader.

**Treasurer Charles "Chuck" Melville** joined the Kentucky Department of Criminal Justice Training after serving 30 years as a police officer, first with the City of Southgate, Kentucky, (1975-77) then at the Cincinnati/Northern Kentucky International Airport (1977-2005) eventually rising to the rank of Chief of Police. He has been with the agency since 2005 when he was appointed to the position of Executive Director of the Kentucky Community Preparedness Program (KCPP). Chuck served as the Branch Manager for Advanced Individual Training prior to his appointment as Director of the Training Operations Division in December 2007.

He received a B.S. degree in Police Administration from Eastern Kentucky University in 1977. Chuck is a graduate of the 151<sup>st</sup> Session of the FBI National Academy and the US Secret Service Dignitary Protection Program. Melville is a member of the International Association of Chiefs of Police. He has served as the president of the Northern Kentucky Police Chiefs Association and is a life member of the Kentucky Association of Chiefs of Police where he chaired the Professional Standards Committee which oversaw the

Kentucky Law Enforcement Accreditation Program.

He has served on the Executive Board for the FBI's Northern Kentucky Joint Terrorism Task Force and the US Attorney's Anti-Terrorism Advisory Committee for the Eastern District of Kentucky.

Currently, Mr. Melville serves on the Board of the Kentucky Law Enforcement Memorial Foundation and the Training Committee of the Kentucky Association of Chiefs of Police.

Chuck and his wife Tina have two adult daughters.

**Northeast Representative:** Chief Anthony J. Silva (ret.) is currently in his 32<sup>nd</sup> year of law enforcement and was appointed Director of the Rhode Island Municipal Police Academy in February of 2006. He retired from the Cumberland Police Department in April of 2006 after serving 9+ years as Chief of Police and retired from the Lincoln, Rhode Island, Police Department in 1997 after an 18-year career. Chief Silva holds a Master's Degree in the Administration of Justice from Salve Regina University, a Bachelor's Degree in Law Enforcement from Bryant University, and is a graduate of the Federal Bureau of Investigation's Law Enforcement Executive Development School.

Chief Silva has been a training staff member of the Rhode Island Municipal Police Academy for 25 years as an instructor of Patrol Operations, Police Ethics, and Community Policing and has taught Police Leadership Skills at the Executive Management Center at Bryant College and the Roger Williams University. In 1999, he was appointed by Governor Almond to Chair the Police Officers' Commission on Standards and Training which oversees recruit and in-service training at the Rhode Island Municipal Police Academy—a position he held for seven years.

An advocate for highway safety and mental health awareness, Chief Silva has taught many workshops for the RIDOT/RI Office on Highway Safety and the NHTSA, and organized numerous seminars on mental health topics for

law enforcement. He currently chairs the Training & Standards Committee of the Rhode Island Police Chiefs' Association and is the Chiefs' Association's liaison to the Rhode Island Commission on Prejudice and Bias. He has served on numerous promotional boards; and in 2008 and 2009, he was a member of a three-person committee responsible for selecting the Police Chiefs in the cities of North Providence and Cranston, Rhode Island.

Chief Silva teaches a graduate course on Leadership & Strategic Communication at Salve Regina University in Newport, Rhode Island. Since 1990, he has been an adjunct instructor in the Criminal Justice Studies Program at the Community College of Rhode Island. From 1994-2003, he served as Chair of the Violence Against Women Curriculum & Training Committee and is a member of the Attorney General's Task Force on Domestic Violence. Chief Silva served as President of the Rhode Island Police Chiefs' Association in 2001 and is currently a member of the Board of Directors of the New England Police Chiefs' Association. He is a member of the International Association of Directors of Law Enforcement Standards and Training, member of the International Association of Chiefs' of Police, member of the Rhode Island Police Chiefs Association, and member of the Board of Directors of the New England Association of Chiefs of Police. He is also a member of the Board of Directors of the Regional Community Policing Institute of New England and a member of the Advisory Board of the Roger Williams University Justice System Training and Research Institute.

**Southern Representative** Bill Floyd is a 27- year veteran of law enforcement and criminal justice. He began his career with the South Carolina Department of Juvenile Justice (then the South Carolina Department of Youth Services) in 1983. He was employed by the Richland County, South Carolina, Sheriff's Department from 1985 – 1990, serving as a Deputy Sheriff, Desk Sergeant, Communications Sergeant, and Shift Supervisor. Mr. Floyd has been employed with the South Carolina Department of Public Safety - Criminal Justice Academy Division since April 1990. He has served the Academy in several capacities ranging from instructor, Research & Development

Unit Manager (which included serving as the Grants coordinator/Administrator), to Technical Training Section Chief.

In May of 2006, the Academy was separated from the Department of Public Safety by an act of the South Carolina State Legislature. Mr. Floyd continued to serve in the position of Standards, Research, and Accreditation Manager with the South Carolina Criminal Justice Academy. In October of 2006, Mr. Floyd was named the Interim Program Manager of the Instructional Standards and Support Section of the Academy. This appointment became permanent in June of 2007. This position includes being responsible for the development and oversight of the various job-task analyses curriculum validation processes, advanced training needs assessment development and analysis; accreditation (CALEA) coordination; and assisting with Academy policy development. In addition, this position is responsible for the supervision and oversight of the Academic Testing Unit, the South Carolina Reserve Law Enforcement Program and the curriculum development and distribution for the South Carolina State Constable Basic and Advanced Training Programs. Mr. Floyd has also served as a faculty member of the South Carolina (Law Enforcement) Leadership Institute and as a lead instructor in the South Carolina State Constable Basic Training Program. Mr. Floyd holds a Bachelor of Arts degree in Psychology – General Experimental from the University of South Carolina (1982) and a Master of Criminal Justice – Law Enforcement from the University of South Carolina (1985).

**Central Representative** Dave Harvey is the Executive Director of the Michigan Commission on Law Enforcement Standards (MCOLES).

Prior to his appointment as MCOLES Executive Director, Dave served as the City Manager of Garden City, Michigan, (population of approximately 32,000) for six years. He served as the Chief of Police in Garden City during a 23-year career with the Department and also served as Chief of the Detroit Metropolitan Airport Authority Police Department, one of largest airports in the country.

Dave holds a Master's Degree in Public Administration and a Bachelor of Science Degree in Criminal Justice.

**Midwest Representative:** Arlen Ciechanowski is the Director of the Iowa Law Enforcement Academy. Arlen's career spans 36 years, first with the Ames Police Department and then the Story County Sheriff's Office. Arlen has served as an instructor and assistant director of the Iowa Law Enforcement Academy. He has a long, distinguished law enforcement training career and served previously as an IADLEST Midwest Regional Representative.

Arlen holds a Bachelor of Science degree from Iowa State University and a Master of Science degree in Criminal Justice Administration from Central Missouri State University.

**West Representative:** Lyle W. Mann is the Director for the Arizona Peace Officer Standards and Training Board (AzPOST). Lyle came to the AzPOST in August 1995 after 22 years with the Tucson Police Department, where he has risen through the ranks to the level of Captain. Prior to command assignments, he spent time in uniform patrol and as a detective.

While working for the AzPOST, he served as the Basic Training Project Manger, the In-service Training Manager, and the Compliance Manager. His current responsibilities include video projections, academy training, school calendar, emergency vehicle operator training, and instructor certification programs. He is also the Board's legislative lobbyist and is responsible for the Administrative Rules under which the Boards operates.

Lyle has holds a Bachelors of Science Degree in Public Administration from the University of Arizona, and a Master's in Leadership, is a graduate of the Arizona Law Enforcement Leadership Institute, and a graduate of the Senior Management Institute for Police presented by Harvard University's John F. Kennedy School of Government.

## TRAINING FOR REALITY

by Jeff DuPont, Program Specialist, Federal Law Enforcement Training Center (FLETC)

January 17, 2009, started out like any typical Saturday in the small town of Glasgow, located in northeastern Montana. On this particular day, it was clear and cold in the Big Sky country.

Abundant snowfall had carpeted the eastern plains and the below-zero temperatures had all of the area roads snow packed and icy. Residents were busy attending to many of the same things that they would ordinarily do on a Saturday morning; but little did they know, their lives were about to take a drastic turn for the worse.

The morning had turned to afternoon and at approximately 4:30 p.m., a lone sniper with no apparent motive, concealed near the parking lot of the local hospital decided to take his first shot. Moments later, a 37-year old Emergency Medical Technician and mother of four lay motionless on the icy ground, killed instantly from a lethal bullet wound. Upon hearing gunfire, a nurse who was on duty at the hospital, along with her husband, ran to the fallen victim to render aid, but were both hit themselves while attempting to rescue the victim, who unbeknownst to them, was already dead. Although both would-be rescuers were wounded, they were able to retreat to the cover of their vehicle where the husband retrieved his own weapon, contacted 9-1-1 and then returned fire, holding the gunman at bay until officers from the Glasgow Police Department arrived and engaged the shooter in a gun battle.

During the exchange of fire, the gunman was wounded, although not mortally, and then quickly retreated to the thick cover of the nearby Milk River, located approximately 40 feet away from where he initially started his rampage. Unsure of the gunman's location or his next move, Glasgow police quickly locked down the town and sent out a request for help from any and all available law enforcement.

At around 6 p.m. Ranger Alexandra Steven Burke, of the Bureau of Land Management, and a graduate of the FLETC, was headed to town to meet a friend for dinner following a well-

deserved day off. Ranger Burke is responsible for patrolling a vast area in the northeastern part of the state and after a long week, was looking forward to a quiet evening and some quality time with friends.

The roadblock that was set by the Glasgow Police was the first indicator that something was amiss as Ranger Burke approached and soon found out. The local police explained the situation to the off-duty Ranger who immediately called dispatch to go in-service. Ranger Burke quickly returned home, changed into duty gear and responded to the call for assistance. While enroute, Burke's friend and occasional co-worker, Phillip Wright of the U.S. Border Patrol was summoned and met with Ranger Burke and the two of them, along with a local officer and a canine, soon took up the trail of the killer.



Ranger Alexandra Burke

The tracking conditions were difficult. The canine was not a tracking dog, so Burke and Wright had to rely upon their skill as backcountry trackers to stay on the trail. The frozen ground had been tainted with signs from other officers,

livestock, and numerous wild animals, which made staying on track extremely difficult, especially under the stressful circumstances that come with knowing what may be waiting for them at the end of the trail. One thing that Burke and Wright used to their advantage was the subtle drops of blood that had been left on the newly fallen snow by the wounded gunman. Burke explained that at first, they noticed the blood around every forty yards or so, but eventually that diminished to around every four hundred yards or more.

After two and a half hours on the trail, Burke, Wright, and the canine officer found themselves down beside the Milk River, several miles away

from the initial incident. Their perseverance and determination to stay on the trail was about to come to fruition. Burke said that all of a sudden they experienced a “very weird sensation” sort of a “sixth sense” telling them that the killer was very close. They would later find out that he was less than 100 yards away when Ranger Burke made a call to dispatch, updating them on their present location and situation. At this point, Burke noticed several drops of fresh blood on the frozen ground and was in the process of telling the dispatcher that they were close, when Wright suddenly yells out, “Show me your hands. Show me your hands, knife!”

Following the verbal commands issued by Wright, the next sequence of events all happened in less than a minute, “very quickly” as described by Burke. Wright was in the lead, followed by the canine officer, then Burke, and an unknown local officer brought up the rear. Burke had relayed to dispatch that they had contacted the suspect and then quickly terminated the call and focused full attention on the direction where Wright was looking and shouting commands.

Without warning, the suspect exploded from his hiding place, running an erratic pattern toward the tracking party, with a knife in hand. At approximately 40 to 50 yards away, Ranger Burke yelled out “Shoot, shoot, I’m going to shoot,” as the canine officer simultaneously released his dog who attacked the armed assailant. Just as the dog was about to put the bite on the attacker, he recklessly and wildly swung the knife, cutting the dog’s mouth, breaking off one of its teeth, causing the dog to disengage as the attacker continued his advance toward the officers. As the suspect closed the distance, the canine officer fired a single shot but Ranger Burke noticed that the attacker didn’t react. The officer had missed and did not fire a second shot. At this point, Burke took over.

Ranger Alex Steven Burke—more precisely Alexandra Steven Burke—then stepped into harm’s way and shielded the other officers from any further onslaught. She leveled her Remington model 870 and fired a single round of buckshot, which delivered 15 pellets right on target. The threat was eliminated. Instinctively,

Burke reloaded and tactically approached the motionless suspect and handcuffed the now lifeless body. Although she knew the suspect was more than likely dead, she thought earlier during the search that the suspect they had been tracking could possibly have been wearing body armor, prompting her to take the extra precaution by applying the handcuffs. The search for the dangerous fugitive was now over, and all of the officers who had been involved in the sniper incident would safely be going home later that evening.

For her actions that night, Ranger Alexandra Burke was awarded the prestigious “Top Cop” award from the National Association of Police Organizations. She was also honored as a recipient of the Bravery Award given by the Federal Law Enforcement Officers Association. In May 2011, Burke was greeted by President Obama in a Rose Garden ceremony which recognized the annual Top Cop recipients. In May 2012, Ranger Burke returned to Washington, D.C., during Police Week and was honored once again. She will be recognized as the April 2012 officer of the month by the National Law Enforcement Officer’s Memorial Fund (NLEOMF) and be featured in their annual fundraising calendar.

Ranger Burke graduated from FLETC in February 2005. She was a member of the Natural Resources Police Training program class 501. The U.S. Bureau of Land Management Ranger credited much of her FLETC training for surviving the events of that fateful January night. She was quick to give credit to the other officers who were involved in the hunt for the fugitive, especially Border Patrol agent Phillip Wright, whose abilities and skill in backcountry tracking was described by Burke as “amazing.” Ranger Burke also gave praise to the FLETC staff who were instrumental in her training, especially those who instilled in her the “winning mindset” and gave her the tools to survive such a perilous situation. Ranger Burke extended her gratitude to the FLETC staff and said, “Thanks guys, for all of the training. If duty ever calls for me to do the same thing, I would do it all over again, knowing I’ve been trained by the best!”



President Barack Obama greets Ranger Alex Burke in regards to her receiving the prestigious "Top Cop" award from the National Association of Police Organizations.

**Author:** Jeff DuPont presently serves as a Program Specialist in the Driver and Marine Division's Marine Training Branch. Since joining FLETC in 2004, DuPont has served as a Driving Instructor and as a Senior Instructor in the MTB. DuPont has over 15 years of uniformed service as a Sheriff's deputy and as a trooper with the Georgia State Patrol. DuPont is a veteran of the U.S. Navy and also holds a U.S. Coast Guard Merchant Mariner's master's license. He has a bachelor's degree in criminal justice and is currently enrolled in the master's program at Troy University.



## MOTORCYCLE SAFETY AND ENFORCEMENT TRAIN-THE-TRAINER

The IADLEST has received NHTSA funding to provide one 2-day train-the-trainer

Motorcycle Safety and Law Enforcement Training (MCST) in each of the ten NHTSA regions. Funding for this training will expire September 30, 2012. IADLEST will provide the instructors and material at no cost to the host agency. Any POST agency interested in hosting a session is asked to contact Patrick Judge: [pjudge@att.net](mailto:pjudge@att.net).

Motorcycle Safety: Despite our best efforts to address the safety of motorcycles and their riders in the United States, motorcyclist fatalities have more than doubled since 1997. In the United States, motorcyclist fatalities increased 11 straight

years from 2,116 fatalities in 1997 to 5,312 fatalities in 2008, which was the highest number of motorcyclist fatalities on record since NHTSA has been tracking highway fatality data. Although motorcyclist fatalities decreased in 2009 to 4,462 fatalities, motorcycle safety is still considered to be a high priority issue and we have much more work to do in this area.



Officer Trainee Jason M. DePaulo  
Colonie, New York, Police Dept.

This Train-the-Trainer course will introduce the officer trainee to national and state specific motorcycle enforcement issues. What are the best

practices to reduce motorcycle fatalities and injuries? Critical enforcement issues covered are:

- Officer and Motorcyclist Safety
- Strategies for Stopping Motorcycles
- Avoiding Pursuit
- Motorcycle Laws
- DUI/Impairment Detection
- Licensing – Motorcycle Endorsements
- Required Motorcycle Equipment
- Non-compliant Helmets

The training material will be covered through an active training workshop environment. A variety of formats will be used that encourage discussion and participation to take advantage of the experiences of the participants. On day two, each trainer participant prepares themselves to share the course material with their fellow officers by presenting a portion of the course, share their specific state laws, and leave with the resources to address community motorcycle public education issues. For further information, contact Patrick Judge: [pjudge@att.net](mailto:pjudge@att.net).

## **BUILDING SAFER COMMUNITIES**

*by: David Cid, Executive Director of Memorial Institute for the Prevention of Terrorism (MIPT)*

Behind the classified curtain, embedded deeply within the intelligence community, are the highly technical sources that seek actionable intelligence from the tsunami of raw data that is swept up by satellites as they circle the globe. These technical sources have proven invaluable in times of war and serve an important purpose in contemporary homeland security. They are extremely expensive, require teams of experts to operate, and are well known to our adversaries who take pains to avoid them.

Because of their cost and technical complexity, they are limited in number; and their deployment and direction must be weighed against competing priorities, all of which have merit; and because of the constitutional protections we all enjoy, their use within our borders is tightly circumscribed.

Furthest from these highly technical sources is the line law enforcement officer. As a generalist, the line officer must solve multiple problems on a human level every day. Their primary role is not information collection but rather enforcing the law, maintaining the peace, and ensuring a civil society for those in the community. Nonetheless, the collection of information by the line law enforcement officer is vital for national security and for the prevention and suppression of crime. If we consider the officer's area of operation as his or her domain (area of thought, influence, and action), it is clear that, as a force for good, he or she must be the dominant force in the domain. To be dominant, the officer must have a finely honed situational awareness, be alert for the unusual or out of place that may suggest terrorism or other criminal activity, and must interact with the members of the community he or she serves, building relationships with people with goodwill. Such people can be found in any community, no matter how distressed.

An important element of ensuring officer competence in information collection is training. Every officer leaves the academy with tools of the trade: gun, badge, car, the ability to think clearly, and a hyper-alert state of mind. Over

time, complacency and habit can dull the edge, and effectiveness suffers. MIPT training takes the officer back to that early state of mind. Because demands on the officer's time are high and running from call to call may be a typical shift experience, the time to engage, thoughtfully consider, and report with detail, context, and nuance is limited. It is vital then that any process to enhance the collection of information integrates with day-to-day policing. The Service Marked concepts of Hypervigilance on Patrol, the 2-Minute Interview, and the Patrol Domain peak the participants interest and create an effective learning environment.

The Memorial Institute for the Prevention of Terrorism (MIPT) in Oklahoma City is dedicated entirely to training line officers. The core of their curriculum is a series of thematic and integrated training sessions that raises the level of competence in officers and improves their observation, detection, and reporting skills. Fully funded by the Department of Homeland Security/FEMA, all training is provided without cost to the participants. MIPT pays for travel, lodging, and related expenses as well.

The underlying assumptions of this training, called InCOP (Information Collection on Patrol), are simple; and because of this simplicity, they are powerful and effective. First, all crime and all terrorism are local. No matter how adept or talented the terrorist might be, in order to act with malice in your city or town, the terrorist must go there and engage in certain pre-incident actions that, if reported to or observed by a law enforcement officer, provide clues the able investigator can follow. But the officers must be alert for them, recognize, and report them.

Secondly, the line officer is the first collector and the bedrock of our national intelligence architecture. Only the line officer has the broad public mandate to simply drive around and observe. He or she is ideally suited to collect information.

Thirdly, we believe that training the entire cadre of uniformed officers improves their collection capacity and leads to improvements in the identification of emerging threats, the

suppression of resilient crime problems, and the prevention of terrorism. All of these problems are highly sensitive to good intelligence, and good intelligence is highly dependent upon robust collection.

Finally, enhancing a basic skill of any discipline leads to overall performance improvements. This is true of practicing your golf swing, practicing on the range, or line officer collection. Every officer collects information. Some do it well and others do not. The attributes of the effective collector can be learned; and when they are learned and internalized, the quality and quantity of reporting increases.

MIPT offers thematic and integrated training sessions that build upon one another, all leading the officer to high competence in information collection. InCop 1-Information Collection on Patrol (The Role of the Line Officer) focuses upon the reporting of suspicious activity and examines the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) in detail, while emphasizing the importance of privacy rights and constitutional protections.

InCOP 2-Build a Base helps officers engage the members of the community in a productive way and provides the skills to identify and develop human information sources.

InCop 3-Build a Bridge (The Analytic Perspective) is a four-hour course that continues the thematic progression of InCop 1 and InCop 2. This provides a new perspective and deeper understanding of the value of reports to investigators and analysts. It is an instructor-led presentation that ends with a group exercise demonstrating investigative and analytical techniques.

InCOP 4-Build a Shield enhances the understanding of terrorism operations and warnings and indicators that precede them. InCOP SAR is a one-hour course focusing upon the recognition of suspicious activity related to terrorism.

InCop 1 is also offered as a train-the-trainer course. MIPT training partners include the New York City Police Department, the Los Angeles

County Sheriff's Office, Denver Police Department, Miami-Dade Police Department, as well as the CIA police and the Pentagon police. The reaction to MIPT training speaks to its quality:

*"I thank the MIPT staff for the job that is being done to show the importance of the patrol officer in the fight against terrorism and the emphasis on gathering information while staying within our constitutional boundaries."*

**Officer Gregorie McKay, Milwaukee Police Department:** *"InCOP ... is far more valuable than other training because ... it will make our officers better all around police officers."*

**Chief Tim Dolan, Minneapolis Police Department:** *"The MIPT information will be incorporated into future Boston Police Academy trainings, which will benefit our officers department wide."*

**Commissioner Edward F. Davis, Boston Police Department**

The value proposition of MIPT is safer communities. MIPT has trained over 300 trainers and 13,000 officers. We welcome training inquiries to Charles Allen, Director of Training, at MIPT: [allen@mipt.org](mailto:allen@mipt.org) or 405-278-6329.

**About the Author:** *David Cid is Executive Director of MIPT in Oklahoma City, a nonprofit training and professional development center serving the line officer.*

*Prior to joining the MIPT in 2006 as Deputy Director, Mr. Cid was President of Salus International, a consulting practice providing Security, Crisis Management, and Business Continuity services. Clients included the United States Army, the FBI, the Department of State, and Fortune 500 companies. For two years, he was an advisor to foreign governments on counterterrorism in Europe, Asia, Africa, and Latin America. Mr. Cid is a 20-year veteran of the FBI, where he served as a counterterrorism specialist.*

*He was a member of the FBI International Crisis Response Team and while assigned to the New York field office, a member of the FBI Special Weapons and Tactics team. Mr. Cid has been on-scene commander in extortions, kidnappings, and acts of terrorism, and has led special events security planning for the World Series, the Special Olympics, and the U.S. Open. In 1996, he supervised the*

*first successful investigation and prosecution under the Biological Weapons Anti-terrorism Act, interdicting a plot to assassinate federal and local officials. A native of New York, Mr. Cid joined the FBI in 1981, retiring as an Inspector and Assistant Special Agent in Charge of the Oklahoma City Field Office. Prior to his FBI service, he was a Human Resources specialist for AT&T. He is a veteran of the Vietnam War, honorably discharged. MIPT is a non-profit training and professional development center serving the line officer.*

## **OREGON UPDATE**

*by: Eriks Gabliski, Director, Oregon POST*

Since the passage of Senate Bill 412 in 2011, four Oregon tribes have applied to have statewide law enforcement officer certification from the Oregon Department of Public Safety Standards and Training (DPSST). The Coos, Lower Umpqua, Siletz; Umatilla; Warm Springs; and Grande Ronde Tribal Police Departments have submitted the required paperwork to DPSST and have received formal approval of statewide peace officer status.

DPSST is working with the Oregon Liquor Control Commission (OLCC) to begin the work that will be necessary to develop a training and certification program for OLCC employees. This training for OLCC's investigators and agents will not be the same as the training offered for city, county, tribal and state police officers as OLCC staff will not be armed and have limited peace officer powers. It is anticipated that this program will be developed over the next two years.

The first member of the newly formed University of Oregon Police Department graduated with his colleagues in DPSST's 330<sup>th</sup> Basic Police Course. Chief Doug Tripp successfully completed the 16-week course and has returned to his agency to complete his field training. Two other officers are currently in training at DPSST, and more are to follow. Over the next five years, the University of Oregon Police Department hopes to build a professional organization of more than 30 law enforcement officers who will provide law enforcement services to the campus located in Eugene. This was the first class to have police officers from the University of Oregon. Senate Bill 405, passed during the 2011 Legislative

Session, allowed universities under the control of the State Board of Higher Education to establish police departments and commission employees as police officers after training and certification by DPSST. The University of Oregon received permission to establish a police department from the State Board of Higher Education at its meeting on October 6, 2011.

## **EXECUTIVE COMMITTEE MEETING MINUTES**

**Washington, DC**

**Thursday, January 19, 2012**

**CALL TO ORDER:** President Clark called the meeting to order at 9:00 am.

**ROLL CALL:** Members Present - Goodpaster, Clark, Muldoon, Halvorson, Floyd, Flink, Melville, Vickers, Silva, Sadler, Becar (Grants Manager), and Judge (Executive Director). Members Absent: Bierne.

**INTRODUCTION OF GUESTS:** Scott Kelberg, NSI (National SARS Initiative) was introduced and presented information on the Suspicious Activity Reporting system and provided a DVD of the training program that needs to get into the hands of every line officer in the nation. Joel Bolton from NHTSA reported on a very good meeting held with Dick Clark and Mike Becar on January 18. NHTSA is committed to the partnership with IADLEST. Dan Setzer was introduced by Mike Becar and the LEARN Advisory Committee Meeting was held from 9:10 am until 10:15 am.

**APPROVAL OF MINUTES:** MOTION by Halvorson to approve the minutes of the October 22, 2011 (special) Executive Committee. SECOND by Flink. MOTION CARRIED with all in favor. MOTION by Goodpaster to approve the minutes of the October 23, 2011 (special) Executive Committee Meeting. SECOND by Melville. **MOTION CARRIED** with all in favor.

**EXECUTIVE DIRECTOR BRIEFING:** Pat Judge reported new POST Directors were appointed in Florida, Wisconsin, and New Mexico. The Sourcebook initiative is

proceeding. Thirty-seven states have replied to the survey. Tom Jurkanin is continuing the effort to obtain responses from the remaining states. Registration will begin for the annual conference in Savanna, Georgia, this summer on February 1<sup>st</sup>. There will be an auction and a run/walk. Rooms will be included in the registration fee as FLETC has agreed to provide the rooms, a day of training, and a tour of their facility. We currently do not have a host lined up for our annual conference for 2013. The Sarasota, Florida, Herald has just completed a nine-part series on police misconduct. The association will need nominations for 2<sup>nd</sup> Vice President at the Executive Committee meeting on Sunday June 10<sup>th</sup> in Georgia. We will also need two members for the Training and Standards Committee.

**GRANTS MANAGER BRIEFING:** Mike Becar reported on the following grant projects. **Motorcycle Safety:** Ten more classes (one in each of the NHTSA regions) will be held, and then the content will be converted to an online format. **DDACS:** Nine workshops in first three months of 2012 will be held. Eight more will be scheduled after those are completed. They would like to pursue a website dedicated to DDACS. **Pursuit Policy:** IADLEST will be taking over the workshops once again from ALERT. Another 100-150 workshops will be funded. **SFST Assessments:** There is a new leader at NHTSA who has decided to end this program. **Driver Training:** We are awaiting word from NHTSA on our proposal to update and continue this initiative. **NDI:** California has ceased participation in NDI as their law does not allow decertification. Alaska entered its first officer into the system recently. Fred Wilson from NSA is very "pro" NDI and will present to the NSA attendees at the conference the value of the NDI.

**IADLEST TREASURY:** Chuck Melville presented the financial statement of assets and liabilities through November 2011, and Mike Becar and Pat Judge helped explain and clarify. The members were also briefed on the efficiencies and quality controls that have been put in place. **MOTION** by Silva to approve the Treasurer's Report. **SECOND** by Vickers. **MOTION CARRIED** with all in favor.

**ADMINISTRATIVE REVIEW:** IADLEST Reorganization and Employment Agreements: The subcommittee only received one application for Executive Director. Mike Becar applied and was interviewed.

**MOTION** by Silva to authorize the president to enter into an employment agreement with Mike Becar as the IADLEST Executive Director at a salary of \$100,000 and to establish a travel budget of \$30,000 per year for the Executive Director's Office. **SECOND** by Goodpaster. **MOTION CARRIED** with all in favor.

**MOTION** by Goodpaster to authorize the president to enter into an employment agreement with Pat Judge as the Association's Deputy Director at a salary of \$50,000 per year and for IADLEST to assume the expenses of the Deputy Director's office. **SECOND** by Flink. **MOTION CARRIED** with all in favor.

**MOTION** by Flink recommending that the bylaws be amended to indicate that an employee may only be removed from office by a majority vote of the Executive Committee. **SECOND** by Muldoon. **MOTION CARRIED** with all in favor.

**MOTION** by Muldoon to provide the president with the authority to terminate the current contracts of Mike Becar and Pat Judge at a date determined by the president. **SECOND** by Vickers. **MOTION CARRIED** with all in favor.

Audit: The Association's audit will be done soon. The audit is somewhat delayed. Becar stated that the auditors will conference with the audit committee, and then the audit committee will present the information to the Executive Committee and the general membership. Grant Writer: Becar has completed a RFP to hire or contract with a grant writer. Life Membership: **MOTION** by Goodpaster to award Mike Crews with life membership. **SECOND** by Flink. **MOTION CARRIED** with all in favor.

**REGIONAL REPORTS:** Northeast: Tony Silva stated that they will hold their regional meeting April 25-27 in Vermont. He reported that Rhode Island is planning a 20 million dollar new building to be built by 2014. Central: Sadler reported that the regional meeting will be March 26-28 in Ohio. Rusty stated that the academy in Indiana has purchased 150 Kindles for \$22,000 as a one-time expense to offset about \$50,000 in copying costs for handout materials in their academy. South: Bill Floyd is still trying to organize the regional meeting to be held in Columbia, South Carolina, in early March. Midwest: Regional Meeting is planned for Austin Texas May 20-22. Texas Commission on Law Enforcement is out of the curriculum development business due to budget cuts. As a result they are no longer creating their own training. They are shifting to a more regulatory role. West: Held regional meeting in San Diego, California, in December. Eight states were represented. Washington has moved to a system where the agency pays 50% of academy costs. They have lost all funding from fees and fines. Oregon is studying reserve training. Arizona is trying to increase their funding from fees and fines. Utah and Idaho are moving into Adobe Connect for webinars. California has created a very good distance learning course and is willing to share many of them. They have created an online search warrant writer that is accessible by agencies. Montana has been involved in several recent decertification cases. Nevada is putting several training courses online and has put together a background investigation course that includes a manual.

**ADJOURNMENT:** MOTION to Adjourn by Melville. SECOND by Goodpaster. **MOTION CARRIED** with all in favor.

## **ELECTRONIC STABILITY CONTROL WORKSHOP**

*by: Dane Piatarresi, President, Skidcar System, Inc.*

In the near future when people hear the acronym ESC, it may be a reference to more than just the escape key on the keyboard of the computer. EVOC instructors could be talking about a safety feature installed in all new police cars and

SUV's as of the 2012 model year. It is called the Electronic Stability Control System. An Electronic Stability Control system is a new safety technology designed to prevent rollovers and loss of traction by keeping a vehicle in contact with the ground during dangerous situations.

New 2012 police vehicles are here, and the challenges that Public Safety Driving Instructors face are not getting any easier. Training with new driver safety technologies must be included in current curriculum. Depending upon the type of vehicle being driven, possible changes in driving habits could be necessary. When used in an EVOC environment where we know drivers and vehicles are often used beyond their limits, ESC can influence and change the expected outcome of driver inputs.

Accidents can certainly be prevented to a certain extent with an active safety system including ESC, Antilock Brakes, and/or Traction Control systems. When a vehicle accompanied by ESC reads a complex situation such as curves or sudden swerves to avoid obstacles, it takes over and allows the driver a better chance to get through the situation, further improving the advantages of the Antilock Brake and Traction Control.

SKIDCAR System, Inc., now offers an ESC Workshop which will bring an up-to-date understanding of Electronic Stability Control systems installed in all new Police Vehicles as of the model year 2012. Although each manufacturer has different detail operations of their ESC System, they all work within the same premise and are therefore exposed, explained, and understood within the workshop.

According to preliminary NLEOMF statistics, 2011 was the first year in many that vehicle accidents were not the main cause of fatalities in Law Enforcement. Better driver training and safer vehicles could be contributing factors. It is practical to assume that with the advent of ESC, the vehicle accident rate of Law Enforcement officers will continue to fall and be a major contributor to the "BELOW 100" initiative.

Tuesday, November 6, 2012 - 8:00am to 5:00pm

The Orleans Hotel 4500 West Tropicana Avenue, Las Vegas, NV 89103.

Contact Skidcar System, Inc., for Workshop & Hotel Reservation Details (866) 754-3227 or [info@skidcar.com](mailto:info@skidcar.com)

**Course Outline - Based on a (1) Day Program:**

***Classroom Portion – (4) Four Hours -***

Classroom materials that are designed to simplify understanding of the technology will be given to attendees. A half-day classroom presentation will address a practical explanation of ESC and supply Power Point slides that can be used in the training academy environment. Every officer who is assigned a new vehicle with ESC should be advised of the new system and what should be expected if ESC is activated by adverse driving conditions.

**ESC/TC/ABS:**

- a. Influence behind the design
- b. How does it work?
- c. How does it impact EVOC curriculum?
- d. How to train with ESC/TC
- e. Factors to consider in operation of ESC/TC equipped vehicle
- f. Training for mixed fleet operations
- g. ESC/TC and P.I.T. (Pursuit Intervention Techniques)
- h. High performance, low speed direction changes and backing in ESC/TC equipped vehicles

***Behind the Wheel Exercises – (4) Four Hours -***

A short 30 – 45 second coned road course will be designed to easily and safely demonstrate the activation of ESC. Participants will be rotated through the SKIDCAR in this 4-hour block. The instructor can turn on and off the ESC/TC, enabling instant side-by-side comparisons of the new safety systems making practical application of the new information.

- a. Stable platform concepts and electronic stability control
- b. Use of braking and ESC
- c. Use of steering and ESC
- d. Driving with and without ESC

- e. Timed lapping sessions with and without ESC
- f. What is the traction control for?
- g. What does the traction control button do?

Because of the speed and safety considerations needed to properly expose how these systems work, a SKIDCAR™ equipped with Electronic Stability Control (ESC) Traction Control (TC) 2 and 4 wheel drive configurations and ABS braking systems will be employed. Only a paved area the size of a low speed EVOC course is needed for this simulated high-speed environment. Lunch and coffee breaks will be provided.

**FAAC'S DRIVINGFORCE®  
SIMULATION SYSTEM  
INSTRUMENTAL IN 2012 ILEETA  
CHALLENGE**

*by: Bill Martin, FAAC, Inc., Ann Arbor, Michigan*

FAAC Incorporated and IES Interactive announce the successful completion of the ILEETA Challenge competition at the recent ILEETA Conference in Wheeling, Illinois. The ILEETA Challenge is a physical exertion, driving, and shooting competition using the



FAAC DrivingForce® simulation training system. DrivingForce consists of both driver and force options training simulation systems. This year's challenge consisted of a period of physical exercise, a high-speed pursuit of a domestic assault suspect, followed by an active shooter interaction at the IES MILO force options simulator.

Drake Oldham, training officer with the Ohio Attorney General's office, was the winner of the 2012 Challenge. Oldham said the complexity of the scenario created by the simulation systems was as beneficial for the Challenge event as it was for the training room.

"We would definitely benefit from more of this type of simulation at the academy," Oldham said.

While it was difficult to provide an in-depth evaluation of the DrivingForce system after such a short interaction with it, Oldham said the amount of requirements necessary for a high score in the challenge was impressive. Use of seatbelts, radio communication, clearing intersections, handling traffic, and communicating with dispatch all served to create a high-stress, intense driving experience. He added that for a training program, he would put his state's driving codes into the training scenarios so officers could practice to the standard they will be held to on the road.

FAAC Public Safety Specialist Chuck Deakins, who created and conducted the challenge, said this event encapsulated the equivalent of a full-cycle training event in the FAAC DrivingForce® simulation training system.

"We started the challenge with physical exertion to increase the competitors' heart rates, similar a foot chase or a struggle with a subject," Deakins said. "Then, we introduced the scenario, in this case arresting a subject in a domestic assault. As the subject is being detained, the other half of the dispute drives by in a pickup, fires two shots and flees the scene. The competitors enter the driver training simulator and go into pursuit of the pickup. The pickup stops in a dead end, exits, and fires another round at the competitor. The competitor exits the driving simulator and moves into the force option simulator where a fire-fight ensues."

Students were scored on seatbelt use, activation of lights and siren, radio usage, navigating through traffic, and suspect neutralization.

"The level of competition was very high, and that is a testament to these officers' own

commitment to themselves and their skill sets," Deakins said. "In fact, we had to use a tie-breaker to determine the winner this year."

FAAC Business Developer Bill Martin said the DrivingForce system is a good tool to evaluate trainee responses to stressful events.

"One reason why DrivingForce is such a powerful training tool is that instructors can allow students to fail or act improperly in the scenario so an instructor can provide the proper remedy," Martin said. "Mostly, we learn from our mistakes, not our successes, so the simulator is the best training tool out there to unearth improper activity so it can be corrected before these officers face the same encounter on the street."

For more information on FAAC products and services, contact Bill Martin at 734-761-5836 or visit the website at [www.faac.com](http://www.faac.com). To learn more about DrivingForce, go here:

<http://www.faac.com/drivingforce/index.html>

For more information on IES Interactive products and services, contact Jesse Wimmer at 303-378-5283 or visit the website at [www.ies-usa.com](http://www.ies-usa.com).

## **TENNESSEE LAW ENFORCEMENT AND FIRE SERVICE ACADEMIES CONSOLIDATE TRAINING OPERATIONS**

*By: Cory Myers, Envisage*

Envisage Technologies, a Bloomington, Indiana-based high-technology firm, announced that the Tennessee Law Enforcement Training Academy (TLETA) and Tennessee Fire Service and Code Enforcement Academy (TFACA) have joined forces to standardize the management of emergency personnel, certifications and training operations statewide.

The intent of the shared platform is to reduce the cost of compliance by aggregating accurate training and certification information for all emergency responders. Collecting vital personnel *readiness* information will better prepare the State for critical incident response by identifying existing skills gaps among emergency responders and enable Tennessee to

quickly identify qualified personnel in the event of a crisis.

Tennessee becomes the second state to consolidate law enforcement, fire, emergency services and emergency responders in one system, providing visibility into available personnel resources. Envisage's Acadis Readiness Suite will serve as the central repository for these resources.

"The expansion of the Acadis Readiness Suite to our agencies will allow us to capture in-service training events in real time and provide online registration for scheduled courses, significantly lowering the cost of compliance for all our law enforcement agencies," stated Brian Grisham, Director of TLETA. "The system will help us efficiently schedule our training to ensure we have the right number of law enforcement personnel ready for response."

"Acadis is a significant evolution for TFACA. It will modernize our training operations, allowing us to do more with declining budgets. Perhaps more important, the consolidation of personnel records will allow us to achieve visibility of training needs across our state," stated Roger Hawks, Executive Director of TFACA.

"Our vision is to eliminate costly fragmented manual systems and implement innovative technologies for emergency responder organizations. Compliance management is essential for effective crisis response: Without it, we don't know what resources are available and authorized to respond to a critical incident," stated Cory Myers, VP Homeland Security Solutions. "By consolidating emergency response data, Tennessee is helping lead the way in what we believe will become a standard practice. We are honored to be of assistance to Tennessee in this vital consolidation project."

**About TFACA and TLETA:** TFACA and TLETA are administratively attached to the Department of Commerce and Insurance, which works to protect consumers while ensuring fair competition for industries and professionals who do business in Tennessee.  
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DURING TRAINING EXERCISE©**

*By Brian S. Batterton, Attorney*

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On May 7, 2012, the First Circuit Court of Appeals decided *Marrero-Rodriguez v. Municipality of San Juan, et al.*<sup>1</sup>, which was a case involving a tragic shooting of a police officer during a training exercise. This case is instructive regarding the *Fourteenth Amendment Due Process* liability as it relates to training injuries. The facts of the case are as follows:

Carlos Lozada-Vergara, a sergeant in the San Juan Municipal Police force, underwent training at the police headquarters around 10:00 p.m. on April 1, 2009. This training simulated the arrest of a suspect who did not speak Spanish. Sgt. Lozada played the role of the arrested suspect.

Defendant Lt. Angel A. Pacheco-Orta was a training supervisor. Defendant Officer Julio A. Santiago-Rodríguez, Lt. Pacheco's subordinate, was initially in charge of this training. Neither he nor Lt. Pacheco were certified instructors, nor were any certified instructors present.

The police facility in San Juan in which the training took place is a place where all who entered were supposed to discharge their weapons into a sandbox. This would ensure that all the weapons were empty before they were carried into the facility. But this requirement was not enforced. Further, in this facility, when "firearms" were needed for training, only "dummy guns," not real firearms, were to be used. This particular training was

supposed to have been conducted without firearms.

Santiago initially was the highest-ranked officer involved and gave the order that bulletproof jackets not be worn during the exercise. Lt. Pacheco was not present when the exercises involving Lozada started, but he came in while the training was going on and took over. Lt. Pacheco entered the training facility with a weapon but without discharging the bullets in his firearm into the sandbox. Santiago permitted Lt. Pacheco to enter the training area with a gun and a loaded gun at that.

Higher level police training officials who should have been present that day were not. Nor did any of them take any steps to prevent shootings from happening during such exercises, either in writing or orally, through protocols, training, or appropriate cautionary measures.

Lozada, who continued to play the role of a suspect, had been subdued; in fact, he was flat on the ground, face down, while another officer held him down by his back. Lt. Pacheco, having just arrived, said the training was not being done "properly." The other officer holding down Lozada got up, and Lt. Pacheco positioned himself on Lozada's back to do the training "properly." Lt. Pacheco had Lozada completely under control, on the ground face down; Lozada was motionless and obedient.

Without any form of warning and as part of "proper" training, Lt. Pacheco pulled out his weapon, put the barrel to Lozada's back, and pulled the trigger. The weapon was not empty. The bullet pierced Lozada's back and came out through his chest. Lozada was taken to a hospital where he died five days later from his bullet wound.

The plaintiff in this case was the wife of the deceased police officer. She filed suit § 1983 for violations of her deceased husband's *Fourteenth*

*Amendment Due Process* rights.<sup>ii</sup> The defendants were divided into three groups. The first group was the police trainers directly involved in the incident. The second group was the supervisory police officers who had some control over training but were not present during the incident. The third group of defendants was the City of San Juan and the Mayor.

The district court dismissed the case for all defendants because it stated that the plaintiff failed to meeting pleading standards in the complaint. The plaintiff appealed to the First Circuit Court of Appeals.

The First Circuit first stated that, in order to meet the elements of suit under *42 U.S.C. § 1983*, the plaintiff must show that the defendants (1) acted under the color of law and (2) violated a Constitutional right. Here, the court stated that clearly the life of Sergeant Lozada (the deceased officer) is protected under the *Fourteenth Amendment*. Further, the defendants were acting under the color of law in that they were in the performance of their duties as police officers during the training exercise.

Next, the First Circuit examined rules regarding *Fourteenth Amendment Due Process* claims. Particularly, a plaintiff must establish that the officer's misconduct "shocks the conscience."<sup>iii</sup> The court stated

While it is true that negligent conduct is categorically beneath the threshold of constitutional due process, it is also true that behavior at the other end of the culpability spectrum, i.e., conduct intended to injure in some way unjustifiable by any government interest, is most likely to support a substantive due process claim. When the culpability resulting in injury falls somewhere between these extremes, it is a matter for closer calls, and whether conduct is actionable as a due process violation will depend upon the context in which it occurs.

Still, it is also true that the Supreme Court has been firm in its reluctance to expand the doctrine of

substantive due process. As a result, the official conduct most likely to rise to the conscience-shocking level is conduct intended to injure in some way unjustifiable by any government interest.<sup>iv</sup> (internal quotations and citations omitted)

The court then analyzed each group of plaintiffs under the *Fourteenth Amendment* standard. First, the court looked at Lieutenant Pacheco, the individual who accidentally shot Sergeant Lozada, and training Officer Santiago, the other training officer present during the exercise. The court noted that there were numerous factors that weigh in favor of the plaintiff having met proper pleading standards regarding Lieutenant Pacheco. First, the court noted that the conduct of Pacheco shooting Lozada in the back was certainly likely to injure. Second, the court stated that no reasonable government interest was present to justify taking a firearm and placing it to the unprotected back of another officer, who was lying motionless. Third, the court stated that it was plausibly conscience shocking that Officer Santiago did not try to intervene with Lieutenant Pacheco when he placed the gun to Lozada's back. Fourth, this exercise was actually conducted by the highest ranking officer present, particularly Lieutenant Pacheco. Fifth, Lieutenant Pacheco did not clear his weapon or go through the required checkpoint in violation of training protocol. Lastly, the court noted that the force which Lieutenant Pacheco was trying to teach was clearly disproportionate to the need for force during the lesson. As such, the First Court held that as to the defendants that were actually present and participating at the training exercise, particularly Lieutenant Pacheco and Officer Santiago, the plaintiff sufficiently plead the facts for the case to proceed.

As to the second group of defendants, particularly, supervisory officers with direct responsibility for training, the court said the issue was less clear. While this was a close call, the court held that these supervisors did bear responsibility to implement policies, protocols, and correct training regarding the use of live firearms in order to prevent death in such exercises. Further, the court noted that these supervisors had some active involvement the training exercise that day and that at least some of those supervisors should have been present. As

such, the court held that the plaintiff's pleading was sufficient as to these defendants.

Lastly, the court considered the pleadings against the city and the Mayor. The court stated that the Mayor cannot be sued in such a circumstance merely because he is the Mayor. As such the pleadings were not sufficient to support the suit.

As to the pleadings regarding the city, the court stated

[T]o state a claim for municipal liability, a plaintiff must plead more than mere insufficiency of a municipality's training program. "[A] training program must be quite deficient in order for the deliberate indifference standard to be met: the fact that training is imperfect or not in the precise form a plaintiff would prefer is insufficient to make such a showing." *Young v. City of Providence ex rel. Napolitano*, 404 F.3d 4, 27 (1st Cir. 2005).

Thus, the First Circuit reversed the dismissal of the suit as to the first and second groups of defendants and upheld the dismissal for insufficient pleading as to the Mayor and the city.

It should be noted that the police department did have policy in place to prevent this type of training accident. Specifically, training regulations stated that before entering the training area, the officers were to clear their weapons at a sandbox, officers were only to use "dummy" guns in the training facility; and at this particular training, no firearms were to be used. However, this policy was not followed by Lieutenant Pacheco. The court then noted that, as the case proceeds, facts may later come to light that will result in summary judgment for additional defendants; however, at this time, the plaintiff has plead sufficiently for the case to proceed.

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<sup>i</sup> No. 11-1195, 2012 U.S. App. LEXIS 9273 (1<sup>st</sup> Cir. 2012)

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<sup>ii</sup> Note: The Fourth and Eighth Amendment claims were dismissed and will not be discussed in this article.

<sup>iii</sup> Id. at 7

<sup>iv</sup> Id. at 7-8

## FOURTH CIRCUIT UPHOLDS EVIDENCE FOUND DURING PROTECTIVE SWEEP<sup>©</sup>

By Brian S. Batterton, Attorney

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On May 3, 2012, the Fourth Circuit Court of Appeals decided the *United States v. Laudermil*<sup>1</sup>, which serves as an excellent review of the law pertaining to protective sweeps of residences. The facts of *Laudermil*, taken directly from the case are as follows:

On the rainy evening of February 27, 2011, at around 10 p.m., Shannalee Kuri placed a 911 call to report that Laudermil, who was her boyfriend, was threatening her and her family with a gun at his home in Wheeling, West Virginia. The Ohio County Sheriff's Department responded by sending five officers to the scene—Deputies Brooks, Costello, Moore, Bise, and Sergeant Ernest. Because the residence was located close to the campus of West Liberty University, an officer from that Department, Sergeant Olejasz, also responded. The officers were familiar with the residence because of past domestic disputes involving its occupants.



The officers arrived at Laudermilt's property in staggered succession and approached the house, which was located at the end of a lane atop a hill. Shortly after arriving at the property, Sergeant Olejasz and Deputy Costello initiated a traffic stop of a vehicle leaving the residence because they noticed there was an individual "slouched" down in the passenger seat. After confirming that Laudermilt was not the passenger, the officers permitted the car to leave and continued up the hill. Outside the house, the officers encountered Kuri, her brother, and her father. Kuri and her father informed the officers that Laudermilt was inside the house with a gun. After the officers' arrival, Laudermilt—unaware of the officers' presence—intermittently exited the house onto the front porch to threaten Kuri and her family, shouting he would "kill" her and that he was going to "f\*\*k them up." Although the officers never witnessed Laudermilt with a gun, on one occasion he exited the house, knelt down out of view, picked something up, and returned inside. The officers determined the best course of action was to seize Laudermilt the next time he exited the house without a firearm. When Laudermilt did so, the officers quickly moved in and took him into custody.

At that point, Deputies Costello, Brooks, and Moore, along with Sergeant Ernest, entered the residence to perform a protective sweep. Laudermilt shouted to Deputy Bise and Sergeant Olejasz—who were securing his arrest—that his 14-year-old brother, J. Lee Pritt, was in the house. Laudermilt also informed them that Pritt was autistic. The four officers performed a protective sweep of the upstairs of the house, with Deputy Costello and Deputy Moore covering the bedrooms on the right side of the house, and Deputy Brooks and Sergeant Ernest sweeping the bedrooms to the left. In performing the sweep, Deputy Costello quickly found Pritt, who was "shaking" and

talking on the phone with his mother, informing her of the police presence. Deputy Costello escorted Pritt downstairs, attempting to calm him. Costello initially walked Pritt outside but then returned him inside to the kitchen. By this time, Deputy Bise had entered the house and was sitting in the kitchen. As Pritt came into the kitchen and sat down, Deputy Bise asked him if he knew where the gun was. Pritt, who had been "freaking out" and "panicking," stood up and walked to a pantry off the kitchen and pointed to a rifle sitting in plain view on a gun rack. While Deputy Bise secured the rifle, Deputy Brooks and Sergeant Ernest continued to complete their sweep. The total sweep, from start to finish, lasted about five minutes.

At the time the officers conducted the search, there was conflicting information regarding how many occupants might be in the house. Deputy Brooks testified that, pursuant to the radio call he received, he believed Laudermilt and two other males were in the house, and that when he began the sweep, he believed two subjects might still be in the home. Deputy Costello testified that Laudermilt told him another person was inside, and that Deputy Bise later called out that Laudermilt's autistic brother was in the home. Deputies Moore and Bise testified that they believed only Pritt was inside, and Sergeant Ernest testified that the information about the number of occupants was unclear. As noted above, two individuals left the property as the officers arrived; and Kuri and her family were also on the premises.<sup>i</sup>

Laudermilt was indicted on federal firearms violations, and he filed a motion to suppress the firearm arguing that it was seized during a warrantless search in violation of the Fourth

Amendment. The Magistrate judge agreed and found that while the protective sweep was initially justified, the justification had ended by the time the firearm was seized because everyone in the house was under control at the time the firearm was seized. The District Court agreed and suppressed the firearm. The government appealed the grant of the motion to suppress to the Fourth Circuit Court of Appeals.

The Fourth Circuit noted various legal rules relevant to *Laudermilt's* case. The rules are as follows:

- One "well-settled" exception to the warrant requirement is a "protective sweep" under *Buie*. *United States v. Jones*, 667 F.3d 477, 482 (4th Cir. 2012). When police officers make an arrest at a home, they are entitled to perform a further "protective sweep" of the house when they have "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Buie*, 494 U.S. at 334.<sup>ii</sup>
- A protective sweep is limited to "a cursory inspection of those spaces where a person may be found" and should last "no longer than it takes to complete the arrest and depart the premises." *Buie*, 494 U.S. at 335-36.<sup>iii</sup>
- The [protective] sweep may last no longer than needed 'to dispel the reasonable suspicion of danger' and no longer than needed to arrest the suspect and leave the premises." *United States v. Green*, 599 F.3d 360, 376 (4th Cir. 2010) (quoting *Buie*, 494 U.S. at 335-36).<sup>iv</sup>
- [T]he "linchpin of the protective sweep analysis is not 'the threat posed by the arrestee, [but] the safety threat posed by the house, or more properly by unseen third parties in the house.'" *Jones*, 667 F.3d at 484 (quoting *Buie*, 494 U.S. at 336). Cf. *Mora v. City of Gaithersburg*,

519 F.3d 216, 226 (4th Cir. 2008) (upholding a preventive search when officers "did not and could not fully know the dimensions of the threat they faced").<sup>v</sup>

The court then sought out to apply these rules to the facts of *Laudermilt's* case.

### **Was the protective sweep justified?**

The court first noted that it agreed with the district court that the protective sweep was justified based on the facts of the case. Specifically, the court stated:

The officers were responding to a potentially volatile situation involving a firearm and a domestic dispute, and they personally witnessed *Laudermilt* threatening *Kuri* and her family. When the officers arrested *Laudermilt*, the firearm was unaccounted for and—even by *Laudermilt's* own admission—at least one other person was in the home. In addition, as the officers were arriving on the scene, two individuals were leaving in a vehicle, one of whom was "slouched" over in his seat. Clearly, these articulable facts would have led a reasonably prudent officer to believe a protective sweep was warranted.<sup>vi</sup>

### **Did the protective sweep legally end when the officers located the other person in the residence?**

As previously noted, the district court held that the officers should have stopped the protective sweep after *Pritt* was secured. The Fourth Circuit disagreed with the district court and held that the protective sweep did not end the moment *Pritt* was secured.

The Fourth Circuit noted that the district court placed much importance on the fact that *Laudermilt* told the officers that only *Pritt* was in the house. The court stated:

While this admission serves as an articulable fact justifying the protective

sweep, see *United States v. Cavely*, 318 F.3d 987, 996 (10th Cir. 2003) (noting protective sweep justified, in part, because homeowner arrested outside house informed officers a "friend" was inside), officers are not bound by a suspect's statement. See *Solis-Alarcón v. United States*, 662 F.3d 577, 582 (1st Cir. 2011) (noting, in upholding protective sweep for arrest suspect, that "[t]he officers were not required to accept plaintiff's word that [the suspect] was absent").<sup>vii</sup>

The Fourth Circuit then stated since at the time the officers seized Laudermilt they reasonably believed at least one other person and firearm were in the house, the protective sweep did not need to stop the moment Pritt was secured.

The court further stated:

The district court's ruling failed to "recognize that unaccounted-for third parties with access to firearms may present a grave danger to arresting officers." *Fishbein ex rel. Fishbein v. City of Glenwood Springs, Colorado*, 469 F.3d 957, 962 (10th Cir. 2006). That grave danger permitted the officers to conclude the sweep of the entire house.<sup>viii</sup>

Also, very significant, the court noted that the entire protective sweep only took five minutes and was not a situation where officers used the protective sweep as an over-broad excuse for a search.

**Is there any other justification for the additional search and seizure of the firearm?**

The Fourth Circuit noted that it was reasonable, based on the circumstances, to allow Pritt who was 14 years old and had special needs, to stay in familiar surroundings until his mother arrived. Further, the court noted that they have previously held that:

[I]t is an officer's "duty to look after the reasonable safety requirements of persons in their custody." *United States v. Gwinn*, 219 F.3d 326, 333 (4th Cir. 2000).<sup>ix</sup>

Thus, since it was the officers' duty to reasonably look out for Pritt's safety, and in light of the fact that he was "freaking out" and scared, the court stated:

It was not unreasonable for them to ask him about the firearm, because "it is not unreasonable to determine if the child may be safely left at its home." *United States v. Taylor*, 624 F.3d 626, 633 (4th Cir. 2011) (quoting *In re Dawn O*, 58 Cal. App. 3d 160, 128 Cal.Rptr. 852, 854 (Cal. Ct. App. 1976))<sup>x</sup>

Therefore, the court held that it was reasonable for the officers to inquire about and seize the weapon. The court summed it up as follows:

[T]he police officers' actions in this case are consistent with the Fourth Amendment. In a threatening domestic situation, with information that at least a special needs child was in the home, they conducted a properly circumscribed protective sweep, which yielded the discovery of a firearm as that sweep continued.<sup>xi</sup>

As such, the district court's order granting the motion to suppress was reversed.

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<sup>i</sup> Id. at 2-5

<sup>ii</sup> Id. at 8

<sup>iii</sup> Id. at 8-9

<sup>iv</sup> Id. at 9

<sup>v</sup> Id.

<sup>vi</sup> Id. at 9-10

<sup>vii</sup> Id. at 11

<sup>viii</sup> Id. at 12

<sup>ix</sup> Id. at 14

<sup>x</sup> Id. at 15

<sup>xi</sup> Id. at 17

## **FIREARMS, THE FOURTH AMENDMENT AND INVESTIGATIVE DETENTIONS©**

*By Brian S. Batterton, Attorney*

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On March 23, 2012, the Eleventh Circuit Court of Appeals decided the *United States v. Lewis*<sup>1</sup>, which is instructive regarding an officer's ability to lawfully detain individuals suspected of carrying firearms in public. The facts of Lewis, taken directly from the case, are as follows:

On the night of February 6, 2009, Deputy Noel Bojko was in uniform and on patrol with his field training officer, Deputy Scott Stiles. The two deputies were patrolling the Pine Hills area of Orange County, Florida. Around 8:50 p.m., the deputies entered the parking lot of the Seawinds restaurant, which was open for business at the time. No one disputes that the Seawinds restaurant is in a "high crime area" that is a "hotbed" of drug and gun activity.

As the deputies entered the parking lot, they observed four males standing in between two parked vehicles, one with a trunk open. The cars were parked perpendicular to the marked parking spaces in the crowded lot. At the suppression hearing, Deputy Bojko testified that the four men "were just hanging out in between the two cars," and that "[t]hey were moving around computer equipment in the . . . open trunk" of one of the cars. Both Deputies Bojko and Stiles observed that the men were just standing in the Seawinds parking lot and that there was no basis to conclude that the men were involved in the commission of a robbery, drug dealing, or any other crime.

The deputies did not immediately detain the four men, but instead

approached them and engaged in a wholly consensual encounter. Deputy Bojko asked "how you guys doing" and tried "to start a casual conversation." Deputy Stiles similarly testified that the deputies introduced themselves and said, "Hey, gentlemen, how is it going?" According to the officers, the four men responded that "they were just hanging out in the parking lot."

Apparently the very next question asked by Deputy Bojko was whether any of the men were carrying guns. Two of the four men, Carlos Evans and Charles McRae, each responded affirmatively. The other two men, including Lewis, said nothing in response to the deputy's question. Evans told the officers that he had a handgun in a backpack in the open trunk of a car parked nearby, and McRae told the officer that he was carrying a handgun on his person, in his waistband. Deputy Bojko could see the top of the backpack in the open car trunk. There was no indication or testimony that McRae made any attempt to reach for the firearm or made any other sudden movements.

The deputies did not ask any follow-up questions, such as whether McRae or Evans had a valid permit for the firearms. Rather, the officers immediately drew their weapons and ordered all four men to sit down on the ground and show their hands. There is no dispute that at this point, the consensual encounter had been transformed into an investigatory stop, and that the four men were not free to leave.

Three of the four men complied immediately. Lewis, however, took some ten seconds to comply. During those ten seconds, Lewis walked a few steps away from the other men. Lewis briefly had his back turned to

the officers and moved away from the trunks of the parked cars and towards the front of one of the vehicles. At some point after Lewis sat down, Deputy Bojko ordered him to slide over to the other three men, and he complied.

Around this time, Corporal Steven Scott Jenny, who knew that the deputies were headed to the Seawinds restaurant, arrived on the scene. He saw all four men sitting on the ground. Corporal Jenny testified at the suppression hearing that his attention was immediately drawn to Lewis, who "looked extremely nervous, wouldn't sit still, wouldn't keep his hands in one position where we could see them. His hands were moving to his sides, towards his pockets, towards his back. He was scooting his body around." Their concern heightened by Lewis's behavior, the officers examined the ground where Lewis was previously seated and saw a semi-automatic pistol underneath a vehicle. After observing the firearm, the officers had the four men lie prone and handcuffed all of them. The officers did not observe Lewis with the firearm on his person, nor did they observe Lewis discard the weapon. Corporal Jenny concluded, however, that Lewis was the only one of the men who was in a position to be able to discard the weapon in that particular spot.

At that point, Lewis was arrested and charged with carrying a concealed firearm in violation of Florida law. Subsequent testing found Lewis's DNA on the gun. The weapon was later determined to be registered to McRae. The officers searched Lewis incident to his arrest and discovered the car keys to a white Honda, which was also parked in the Seawinds parking lot. The Honda contained an empty gun box

that the officers concluded was used to house the firearm the officers had discovered under the car.

McRae and Evans were not arrested or charged. McRae produced a valid concealed-weapons permit at the scene. Evans, who had indicated that he had a gun in the backpack, did not have a permit but was also released. The third individual, Carlos Bayes, was released as well. Lewis was the only individual arrested and charged following these events.<sup>ii</sup>

Lewis was initially charged with a Florida firearms law violation but was later charged under federal law. He filed a motion to suppress the firearm in district court and argued that the officers did not have a reason to detain him merely because two of his companions admitted to possessing firearms. The district court agreed with Lewis and suppressed the firearm reasoning that even though McRae and Evans admitted to possessing firearms, the officers still did not possess sufficient reasonable suspicion to believe that the two men illegally possessed the firearms (i.e., without a permit) or were engaged in other criminal activity. Thus, the district court reasoned that the detention of all four men was unreasonable under the *Fourth Amendment*; therefore, the firearm used as evidence against Lewis should be suppressed. The government appealed the grant of the motion to suppress to the Eleventh Circuit Court of Appeals.

The Eleventh Circuit stated that there were two issues before the court. The two issues were

- (1) Whether McRae's admission to carrying a concealed firearm on his person provided the officers with reasonable suspicion to detain him under *Terry v. Ohio*; and
- (2) If so, whether it was reasonable based on the totality of the circumstances to detain the other three men, including Lewis, who were companions of McRae.

*Issue One: Did McRae's admission that he was carrying a concealed firearm on his person*

*provide the officers with reasonable suspicion to lawfully detain him under Terry?*

It should first be noted that this question is going to depend significantly upon the specific Florida concealed weapons statute at issue. Regarding the Florida concealed weapons statute, the Eleventh Circuit stated:

Under Florida law, "[a] person who carries a concealed firearm on or about his person commits a felony of the third degree." *Fla. Stat. § 790.01(2)*. Notably, the possession of a valid permit for a concealed weapon is not related to the elements of the crime, but rather is an affirmative defense. *Fla. Stat. § 790.01(3)*; *Watt v. State*, 31 So. 3d 238, 241-42 (*Fla. 4th DCA 2010*).<sup>iii</sup>

As such, the court stated that, based on McRae's admission that he was carrying a concealed firearm on his person, the officers had reasonable suspicion to believe he was violating Florida's concealed weapon law, since the permit is an affirmative defense to the charge (rather than the police having to prove the absence of a permit in order to prove an element of the crime).

Further, the Eleventh Circuit found it irrelevant to the reasonableness inquiry that the officers learned, upon detaining McRae, that he did in fact possess a firearms permit. Specifically, the court stated

Moreover, because reasonable suspicion analysis is not concerned with "hard certainties, but with probabilities," *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981), McRae's admission to carrying a concealed weapon was sufficient to justify briefly stopping him before inquiring further about whether he had an affirmative defense in the form of a valid concealed-weapons permit. The Supreme Court has made it abundantly clear that,

although an individual may ultimately be engaged in conduct that is perfectly lawful -- as turned out to be the case with McRae -- officers may "detain the individual[s] to resolve the ambiguity." *Wardlow*, 528 U.S. at 125 (*citing Terry*, 392 U.S. at 30).<sup>iv</sup>

Thus, since the court found that reasonable suspicion existed to justify a lawful detention of McRae, the court set out to analyze the second issue.

*Issue Two: Was it reasonable, based on the totality of the circumstances, to detain the other three men, including Lewis, who were companions of McRae?*

At the outset of its analysis of this issue, the court noted that, generally, individualized suspicion of criminal activity is required to justify an investigative detention (Terry Stop).<sup>v</sup> Individualized suspicion simply means that the officer has reasonable suspicion that the particular individual whom he is detaining is involved in criminal activity. However, the court noted that individualized suspicion is not always required for a detention to be reasonable. Specifically, the court stated:

[A]s the Supreme Court has also made crystal clear, individualized suspicion is not an absolute prerequisite for every constitutional search or seizure. *Samson*, 547 U.S. at 855 n.4. "The touchstone of the *Fourth Amendment* is reasonableness, not individualized suspicion." *Id.* Thus, in *Samson* the Court specifically observed that "while this Court's jurisprudence has often recognized that to accommodate public and private interests some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure, we have also recognized that the *Fourth Amendment* imposes no irreducible requirement of such suspicion." *Id.* (citations and internal quotation marks omitted).<sup>vi</sup>

The Eleventh Circuit then examined various court cases relevant to this issue. First, the court noted that the United States Supreme Court, in *Maryland v. Wilson*<sup>vii</sup>, allowed police officers to exercise control over vehicle passengers on a traffic stop even though the police had no reasonable suspicion that the passengers were engaged in criminal activity.<sup>viii</sup>

Second, the court examined an Eleventh Circuit case, *Hudson v. Hall*.<sup>ix</sup> In that case, the Eleventh Circuit stated:

[A] police officer performing his lawful duties may direct and control -- to some extent -- the movements and location of persons nearby, even persons that the officer may have no reason to suspect of wrongdoing.<sup>x</sup>

Third, the court examined another Eleventh Circuit case, the *United States v. Clark*.<sup>xi</sup> The court noted that this case was very similar to the incident in Lewis' case. In *Clark*, an Atlanta police officer observed two males fighting in the middle of a street. He also saw another male watching the fight from a sidewalk and a car parked nearby with open doors on the wrong side of the street. He detained the two men that were fighting as well as their companion who was watching from the sidewalk. During the detention, that companion (Clark) was seen discarding a firearm, and he was arrested. In *Clark*, the Eleventh Circuit held:

[T]he brief detention of the defendant (against whom there was no particularized suspicion and who was simply standing on the sidewalk when the officer encountered him) was lawful and reasonable under the circumstances in order to protect the officer's safety "while he conducted an investigation of reasonably suspicious violent conduct that occurred in his presence." *Id. at* 1285.<sup>xii</sup>

Regarding *Clark*, the Eleventh Circuit further stated:

[W]e observed that the prior panel "reasoned that an officer may

'control' persons not suspected of wrongdoing if they are near a street encounter with persons reasonably suspected of criminal activity." *Id.* We also emphasized that the encounter took place in a high crime area at night and that the defendant was associated with the individuals about whom the officers had reasonable suspicion. *Id.*<sup>xiii</sup>

The Eleventh Circuit then noted that, in *Lewis*, the officer's detention of McRae's three companions, which included the defendant Lewis, served the same safety-related purpose as discussed in *Clark*. Specifically, the court stated

The brief detention of Lewis in this case served exactly the same safety purposes discussed in *Clark* and in the traffic stop cases of *Wilson* and *Hudson* -- to control the movements of nearby associates and exercise command over the situation once the officers had reasonable suspicion of criminal activity that warranted further investigation. Once the officers had that reasonable suspicion, they were not obliged to let three of the four associated individuals walk about freely while they investigated McRae, in light of the officers' powerful concern for their own safety.<sup>xiv</sup>

The court also noted that it was significant, when considering the totality of the circumstances that this incident took place in a high crime area at night and the officers were outnumbered by suspects.

In conclusion, for the reasons stated, the court held that the brief detention of McRae's companions, including Lewis was reasonable. The court stated

In short, under the totality of the circumstances of this case, the officers were entitled to control the scene and exercise command over the situation in the course of briefly detaining McRae for

further investigation. A brief detention of all four associated individuals was reasonable, in light of the substantial risks to the officers' safety.<sup>i</sup>

As such, the firearm should not have been suppressed by the district court.

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<sup>i</sup> No. 10-13567, 2012 U.S. App. LEXIS 6073 (11<sup>th</sup> Cir. 2012)

<sup>ii</sup> Id. at 3-7

<sup>iii</sup> Id. at 14

<sup>iv</sup> Id. at 16 (see also *United States v. Arvizu*, 534 U.S. 266, 277, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002) ("A determination that reasonable suspicion exists . . . need not rule out the possibility of innocent conduct."); *Adams v. Williams*, 407 U.S. 143, 145, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972) ("The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape.)

<sup>v</sup> Id. at 19

<sup>vi</sup> Id. at 19-20

<sup>vii</sup> 519 U.S. 408 (1997)

<sup>viii</sup> Lewis at 21

<sup>ix</sup> 231 F.3d 1289 (11<sup>th</sup> Cir. 2000)

<sup>x</sup> Lewis at 22-23 (quoting Hall, 231 F.3d at 1297)

<sup>xi</sup> 337 F.3d 1282 (11<sup>th</sup> Cir. 2003)

<sup>xii</sup> Lewis at 24-25 (quoting Clark, 337 F.3d at 1285)

<sup>xiii</sup> Id. at 25-26

<sup>xiv</sup> Id. at 26

<sup>i</sup> Id. at 31

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**EIGHTH CIRCUIT UPHOLDS  
WARRANTLESS ENTRY BASED ON  
EXIGENT CIRCUMSTANCES©**

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On May 3, 2012, the Eight Circuit Court of Appeals decided *Burke v. Sullivan*<sup>1</sup>, which serves as an excellent review of the exigent circumstance exception to the warrant requirement as it pertains to entry into private premises. The facts of *Burke*, taken directly from the case are as follows:

Burke lives with her son, Jeffrey Burke (Jay), in Dardenne Prairie, Missouri. On June 27, 2009, Jay attended a party at a neighbor's house where he became intoxicated. When the hosts of the party asked Jay to leave, Jay refused. Later in the evening, a partygoer made a comment about Jay while Jay was lying on a couch. Jay jumped off the couch, ripped off his shirt, and started screaming and threatening to "beat everybody up." Several people tried to restrain Jay; but he continued to yell, curse, and threaten to fight people. Jay also threw a liquor bottle and another object across the room.

Sometime later, Burke awoke and heard voices and noise coming from outside her home. Burke also heard someone call her son's name. Burke went outside to investigate. Approaching one of the hosts of the party, Burke asked what was happening. The host told Burke about the problems with Jay, and Burke agreed to talk to Jay. Burke asked her son to leave. Jay refused. Burke then grabbed Jay by the left arm and told him to leave. Jay twisted away from Burke and broke her hold on his arm, causing Burke to fall and hit her head on a wall. Burke returned home without Jay.

After Burke left, a guest named Jamey LaRose approached Jay, wrapped his arms around Jay, and tried to drag him outside. A struggle ensued. During the struggle, Jay bit LaRose on the wrist between two and four times. Each bite was forceful enough to draw blood. During the struggle, Jay kicked or punched a table, which broke. The party guests then forced Jay out of the house. Jay ran across the street and went into Burke's residence.

At 12:42 a.m., in response to a call reporting a domestic disturbance, Deputies Sullivan and Nack and Corporal Bell arrived at the party. During their initial investigation, Deputies Sullivan and Nack learned Jay had become highly intoxicated, was asked to leave the party, would not listen to Burke when she tried to get him to go home and was verbally abusive to Burke, forcefully pushed Burke against a wall, got into a physical altercation with one of the guests, kicked and broke a table, was known to use illegal drugs and may have been under the influence of illegal drugs, and went into Burke's house across the street immediately before the officers arrived. Deputies Sullivan and Nack observed LaRose's bleeding bite wounds.

The officers went to Burke's residence, knocked loudly on the front door, but heard no response. Deputy Sullivan requested that the officers' dispatch operator contact Burke's residence by telephone. The dispatch operator responded there was no answer. At the same time, Corporal Bell and Deputy Nack entered Burke's backyard through a gate in the fence. Corporal Bell approached the rear door of the residence and shined his flashlight through the windows on the first and second floors of the residence.

Corporal Bell also attempted to gain the attention of anyone inside by shouting. Although there was no response, Corporal Bell could hear a dog barking. Burke, inside the house, heard voices in her backyard, but paid no attention to them.

The officers then entered Burke's residence through the rear door. The officers announced their presence and Burke responded. The officers told Burke to put down any weapons and come down the stairs with her hands up. Burke responded, "I don't have any weapons, but I have a 100 pound dog that I'm struggling to hold onto." Corporal Bell told Burke if she let go of the dog he would shoot it. Burke then secured the dog and went downstairs. Burke and the officers engaged in a verbal exchange, and the officers left. Fewer than two minutes elapsed from the time Burke first responded to the officers to the time the officers left her residence.<sup>i</sup>

Burke later sued and alleged that the officer's violated her rights under the *Fourth Amendment* by entering her home without a warrant and briefly detaining her. The district court held that the officer's warrantless entry was lawful and granted summary judgment for the officers. Burke appealed the grant of summary judgment to the Eighth Circuit Court of Appeals.

The issue before the court was *whether a reasonable officer could have believed that it was reasonable to enter Burke's residence without a warrant based on the specific facts of Burke's case, in light of clearly established law at the time of the incident.*

At the outset, the Eighth Circuit noted that, generally, searches (including entry into private premises) conducted without a warrant are per se unreasonable under the *Fourth Amendment*, with the exception of a few specific exceptions.<sup>ii</sup> The court then examined two possible exceptions that would be applicable in Burke's case.

The first exception is called the “emergency aid exception.” The court stated:

Under the emergency aid exception, law enforcement officers may enter a residence without a warrant when they have 'an objectively reasonable basis for believing that an occupant is . . . imminently threatened with [serious injury]. This is because [t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.<sup>iii</sup> [internal quotations omitted]

The second exception is called the “community caretaker exception.” Regarding this, the court stated

Under the community caretaker exception, [a] police officer may enter a residence without a warrant . . . [when] the officer has a reasonable belief that an emergency exists requiring his or her attention.<sup>iv</sup> [internal quotations omitted]

Under the community caretaking exception, the court noted that the United States Supreme Court has used the “reasonable belief” standard of proof, which is a less stringent standard than probable cause. [Authors note: A typical example of this is entry to evacuate apartment residents during fire or to provide aid to person facing a medical emergency.]

After having examined legal rules relevant to Burke’s case, the court then set out to apply the rules to the specific facts of the case at hand. The Eighth Circuit summed up the relevant facts as follows:

Jay had become highly intoxicated. Jay refused to leave the neighbor's party. Jay would not cooperate with Burke when she tried to take him home and was verbally abusive to Burke. Jay forcefully pushed Burke against a wall. Jay was involved in a physical altercation with one of the

party guests, seriously biting him. Jay kicked and broke a table. Jay was known to use illegal drugs and may have been under the influence of illegal drugs. Jay went into Burke's house across the street immediately before the officers' arrival. There was no response when the officers attempted to contact Burke by knocking on her door, shouting, shining a flashlight inside, and telephoning the residence. Burke, who had been thrown against a wall by Jay, was now in the home alone with a violent suspect.<sup>v</sup>

The Eighth Circuit then held that in light of the relevant facts above, it was reasonable for the officers to believe that either there was a threat of violence (implicating the emergency aid exception) or there was an emergency requiring attention (implicating the community caretaker exception).<sup>vi</sup> The court also held that since the entry into Burkes home was lawful, the brief, less-than-two minute detention of Burke in the home was also reasonable.

As such, the court affirmed the grant of summary judgment for the officers since they acted lawfully under the *Fourth Amendment*.

### **But...there is a little more**

In *Burke*, the plaintiff relied on the Eighth Circuit’s holding in *Smith v. Kansas City, Mo. Police Department*.<sup>vii</sup> In *Smith*, officers responded to a domestic dispute where a 93)

A female reported that her boyfriend, Terry Smith, Sr., had assaulted her. There were physical signs of an altercation such as the girlfriend’s clothes were disheveled, and she had scrapes and bruises visible. The girlfriend told the officers that Smith, Sr., had likely gone to his brother’s (Wilson Smith – the plaintiff in the case) house. Officers went to Smith, Sr.’s brother’s house and entered without a warrant in search of Smith, Sr. Ultimately, the Eighth Circuit held that

The presence of a domestic violence suspect, however, does not alone justify Malek's warrantless entry.<sup>viii</sup>

In *Smith*, in reaching the above conclusion, the court noted that the police did not articulate any specific facts that would indicate that Smith, Sr., posed a threat to anyone in the house in which the police entered without a warrant.

In *Burke*, the Eighth Circuit contrasted the facts of *Smith* to the facts of *Burke*. Specifically, in *Burke* the court noted that Jay had already assaulted his mother, who was in the home with Jay; and Jay had moments prior, acted violently and erratically and was involved in a physical assault of LaRose. As such, the officers had a reasonable belief that Jay posed a threat to Burke in the residence, whereas in *Smith*, the officers did not articulate any facts to indicate that Smith, Sr., posed a threat to anyone in the home.

Further, *Smith* had not been decided at the time of incident with *Burke*; as such, it is not proper to consider this case since it was not part of the clearly established law regarding warrantless entry at the time of the *Burke* incident.

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<sup>i</sup> Id. at 2-5

<sup>ii</sup> Id. at 7 (citing *United States v. Claude X*, 648 F.3d 599, 602 (8th Cir. 2011) [\*8] (quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967))

<sup>iii</sup> Id. at 8 (quoting *Ryburn v. Huff*, 565 U.S. , , 132 S. Ct. 987, 990, 181 L. Ed. 2d 966 (2012) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 400, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006)). *Brigham City*, 547 U.S. at 403 (quoting *Mincey v. Arizona*, 437 U.S. 385, 392, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978) (internal quotation marks omitted)); see also *Georgia v. Randolph*, 547 U.S. 103, 118, 126 S. Ct. 1515, 164 L. Ed. 2d 208 (2006) ("[I]t would be silly to suggest that the police would commit a tort by entering [a residence] . . . to determine whether violence (or threat of violence) is about to (or soon will) occur.")

<sup>iv</sup> Id. at 9 (*United States v. Quezada*, 448 F.3d 1005, 1007 (8th Cir. 2006) (citing *Mincey*, 437 U.S. at 392-93))

<sup>v</sup> Id. at 10

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<sup>vi</sup> Id. at 11

<sup>vii</sup> 586 F.3d 576 (8<sup>th</sup> Cir. 2009)

<sup>viii</sup> Id. at 580-581 (citing *See Singer v. Court of Common Pleas*, Bucks County, 879 F.2d 1203, 1206-07 (3d Cir. 1989) (noting that concerns of danger to police or others did not justify warrantless entry into the home of a domestic violence suspect as the victims were no longer present and were in no danger)



**VISUAL STRIP SEARCHES AT JAIL  
INTAKE OF PERSONS BEING  
PLACED IN GENERAL POPULATION  
NEED NOT BE SUPPORTED BY  
REASONABLE SUSPICION©**

*By: Jack Ryan, Attorney*

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In *Florence v. Board of Chosen Freeholders of the County of Burlington*<sup>1</sup> the United States Supreme Court examined whether or not jails can strip search all persons to be booked into general population, no matter how minor the offense, and without reasonable suspicion to believe they were hiding contraband or weapons. The Court's syllabus outlined the facts relating to the strip searches of Florence as follows:

In 1998, seven years before the incidents at issue, petitioner Albert Florence was arrested after fleeing from police officers in Essex County, New Jersey. He was charged with obstruction of justice and use of a deadly weapon. Petitioner entered a plea of guilty to two lesser offenses and was sentenced to pay a fine in monthly installments. In 2003, after he fell behind on his payments and failed to appear at an enforcement hearing, a bench warrant was issued for his arrest. He paid the outstanding balance less than a week later; but, for some unexplained reason, the warrant remained in a statewide computer database.

Two years later, in Burlington County, New Jersey, petitioner and his wife were stopped in their automobile by a state trooper. Based on the outstanding warrant in the computer system, the officer arrested petitioner and took him to the Burlington County Detention Center.

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<sup>1</sup> *Florence v. Board of Chosen Freeholders of the County of Burlington*, 2012 U.S. LEXIS 2712 (April 2, 2012).

He was held there for six days and then was transferred to the Essex County Correctional Facility. It is not the arrest or confinement but the search process at each jail that gives rise to the claims before the Court.

Burlington County jail procedures required every arrestee to shower with a delousing agent. Officers would check arrestees for scars, marks, gang tattoos, and contraband as they disrobed. Petitioner claims he was also instructed to open his mouth, lift his tongue, hold out his arms, turn around, and lift his genitals. (It is not clear whether this last step was part of the normal practice. Petitioner shared a cell with at least one other person and interacted with other inmates following his admission to the jail.

The Essex County Correctional Facility, where petitioner was taken after six days, is the largest county jail in New Jersey. It admits more than 25,000 inmates each year and houses about 1,000 gang members at any given time. When petitioner was transferred there, all arriving detainees passed through a metal detector and waited in a group holding cell for a more thorough search. When they left the holding cell, they were instructed to remove their clothing while an officer looked for body markings, wounds, and contraband. Apparently without touching the detainees, an officer looked at their ears, nose, mouth, hair, scalp, fingers, hands, arms, armpits, and other body openings. This policy applied regardless of the circumstances of the arrest, the suspected offense, or the detainee's behavior, demeanor, or criminal history. Petitioner alleges he was required to lift his genitals, turn around, and cough in a squatting position as part of the process. After a mandatory shower, during which his clothes were inspected, petitioner was

admitted to the facility. He was released the next day, when the charges against him were dismissed. [cites omitted]

As a result of the two strip searches, Florence filed a lawsuit. The case made its way to the United States Supreme Court after the United States Court of Appeals for the 3<sup>rd</sup> Circuit ruled that all persons being placed into a jail's general population could be strip searched without reasonable suspicion that they were hiding weapons or contraband and irrespective of the nature of their offense. The United States Supreme Court outlined the question presented as follows:

This case presents the question of what rules, or limitations, the Constitution imposes on searches of arrested persons who are to be held in jail while their cases are being processed. The term "jail" is used here in a broad sense to include prisons and other detention facilities. The specific measures being challenged will be described in more detail; but, in broad terms, the controversy concerns whether every detainee who will be admitted to the general population may be required to undergo a close visual inspection while undressed. [cites omitted]

The Court began its analysis by recognizing, as it had in previous decisions that the courts should pay deference to the decisions of corrections officials in their efforts to maintain order and security in jail facilities. Citing prior decisions, the Court pointed out that these decisions of corrections officials should be upheld when they serve a legitimate penological interest.

The Court wrote:

Maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of retained constitutional rights of both convicted prisoners and pretrial detainees. The task of determining whether a policy is reasonably related to legitimate security

interests is peculiarly within the province and professional expertise of corrections officials. This Court has repeated the admonition that, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.

In many jails, officials seek to improve security by requiring some kind of strip search of everyone who is to be detained. These procedures have been used in different places throughout the country, from Cranston, Rhode Island; to Sapulpa, Oklahoma; to Idaho Falls, Idaho. [cites omitted]

The Court outlined the dangers of not allowing strip searches at intake:

Correctional officials have a significant interest in conducting a thorough search as a standard part of the intake process. The admission of inmates creates numerous risks for facility staff, for the existing detainee population, and for a new detainee himself or herself. The danger of introducing lice or contagious infections, for example, is well documented... Persons just arrested may have wounds or other injuries requiring immediate medical attention. It may be difficult to identify and treat these problems until detainees remove their clothes for a visual inspection... Jails and prisons also face grave threats posed by the increasing number of gang members who go through the intake process... The groups recruit new members by force, engage in assaults against staff, and give other inmates a reason to arm themselves. Fights among feuding gangs can be deadly, and the officers who must maintain order are put in harm's way. These considerations provide a reasonable basis to justify a visual inspection for certain tattoos and other signs of gang affiliation as part of the intake process. The identification

and isolation of gang members before they are admitted protects everyone in the facility... Detecting contraband concealed by new detainees, furthermore, is a most serious responsibility. Weapons, drugs, and alcohol all disrupt the safe operation of a jail. Correctional officers have had to confront arrestees concealing knives, scissors, razor blades, glass shards, and other prohibited items on their person, including in their body cavities... The use of drugs can embolden inmates in aggression toward officers or each other; and, even apart from their use, the trade in these substances can lead to violent confrontations.

There are many other kinds of contraband. The textbook definition of the term covers any unauthorized item... Everyday items can undermine security if introduced into a detention facility... Something as simple as an overlooked pen can pose a significant danger. Inmates commit more than 10,000 assaults on correctional staff every year and many more among themselves... Contraband creates additional problems because scarce items, including currency, have value in a jail's culture and underground economy. Correctional officials inform us [t]he competition . . . for such goods begets violence, extortion, and disorder... Gangs exacerbate the problem. They orchestrate thefts, commit assaults, and approach inmates in packs to take the contraband from the weak. This puts the entire facility, including detainees being held for a brief term for a minor offense, at risk. Gangs do coerce inmates who have access to the outside world, such as people serving their time on the weekends, to sneak things into the jail.

It is not surprising that correctional officials have sought to perform thorough searches at intake for disease, gang affiliation, and contraband. Jails are often crowded, unsanitary, and dangerous places. There is a substantial

interest in preventing any new inmate, either of his own will or as a result of coercion, from putting all who live or work at these institutions at even greater risk when he is admitted to the general population.

Florence argued that persons arrested for minor offenses should not be subject to strip searches. The Court responded:

It is reasonable, however, for correctional officials to conclude this standard would be unworkable. The record provides evidence that the seriousness of an offense is a poor predictor of who has contraband and that it would be difficult in practice to determine whether individual detainees fall within the proposed exemption... People detained for minor offenses can turn out to be the most devious and dangerous criminals... Experience shows that people arrested for minor offenses have tried to smuggle prohibited items into jail, sometimes by using their rectal cavities or genitals for the concealment. They may have some of the same incentives as a serious criminal to hide contraband. A detainee might risk carrying cash, cigarettes, or a penknife to survive in jail. Others may make a quick decision to hide unlawful substances to avoid getting in more trouble at the time of their arrest. This record has concrete examples...

Even if people arrested for a minor offense do not themselves wish to introduce contraband into a jail, they may be coerced into doing so by others... This could happen any time detainees are held in the same area, including in a van on the way to the station or in the holding cell of the jail. If, for example, a person arrested and detained for unpaid traffic citations is not subject to the same search as others, this will be well known to other detainees with jail experience. A hardened criminal or gang member can, in just a few minutes, approach the

person and coerce him into hiding the fruits of a crime, a weapon, or some other contraband... Exempting people arrested for minor offenses from a standard search protocol thus may put them at greater risk and result in more contraband being brought into the detention facility... This is a substantial reason not to mandate the exception [Florence] seeks as a matter of constitutional law...

It also may be difficult, as a practical matter, to classify inmates by their current and prior offenses before the intake search. Jails can be even more dangerous than prisons because officials there know so little about the people they admit at the outset.

The Court concluded by upholding the blanket strip search policy at issue. The Court noted that this was not a case where officers intentionally humiliated a prisoner; it was not a case involving touching; and it was not a case where the prisoner was held by themselves for a short period of time without ever being placed in general population.

In upholding the right of jail officials to strip search all persons entering general population irrespective of how minor their offense and without reasonable suspicion, the Court has in one broad sweep changed the manner in which jails and prisons throughout the country may conduct searches in the booking process.

It is important to note that this was a five to four decision. Two of the majority votes, Chief Justice Roberts and Justice Alito added some points that jail administrators should consider. In a concurring opinion written by Justice Alito and joined by Chief Justice Roberts, it was pointed out that the opinion in this case allowed for the **Visual Strip Search** of all individuals who were being placed in general population.

Justice Alito described the Visual Strip Search as follows: "Officers may direct the arrestees to disrobe, shower, and submit to a visual inspection. As part of the inspection, the arrestees may be required to manipulate their bodies."

Justice Alito further pointed out that there may be cases where a strip search is unreasonable:

It is important to note, however, that the Court does not hold that it is *always* reasonable to conduct a full strip search of an arrestee whose detention has not been reviewed by a judicial officer and who could be held in available facilities apart from the general population. Most of those arrested for minor offenses are not dangerous, and most are released from custody prior to or at the time of their initial appearance before a magistrate. In some cases, the charges are dropped. In others, arrestees are released either on their own recognizance or on minimal bail. In the end, few are sentenced to incarceration. For these persons, admission to the general jail population, with the concomitant humiliation of a strip search, may not be reasonable, particularly if an alternative procedure is feasible.

Thus, the concurrence takes the position that some minor offenders should never make it into general population and thus never be strip searched.

Bottom Line:

The Court has authorized jail officials to visually strip search all individuals who are going to be placed in general population.

Jails should consider, based upon the concurring opinions in this case, whether minor offenders can be held separately in the short term until their release such that a strip search is unnecessary.





# Call for Presenters

*for the 2013 IADLEST Conference  
in Portland, Oregon: June 2 -5*

Submitter Contact Information	
Full Name	
Position/Title	
Agency/Org.	
E-mail	
Phone Number	
Proposed Presentation	
Title	
Format	
Desired length of time for presentation	
Summarize your presentation and how it relates to IADLEST's mission(s): <i>*must fit in space below, approximately 2,000 character limit</i>	

## Call for presenters, page 2

Explain how attendees would benefit from your presentation:

*\*must fit in space below, approximately 1,500 character limit*

Describe why the topic is relevant in today's world:

*\*must fit in space below, approximately 1,500 character limit*

## Call for presenters, page 3

Presenter(s) Contact Information	
Check here if the first presenter is the same as the submitter	
Full Name	
E-mail	
Phone Number	
Presentation experience/skills	
Full Name	
E-mail	
Phone Number	
Presentation experience/skills	
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Phone Number	
Presentation experience/skills	