



The Case Head

The Official Publication of the Massachusetts Law Enforcement
Firearms Instructors & Armorer's Association

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JIM RING
1937 - 2010

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The official publication of the
Massachusetts Law Enforcement Firearms Instructors & Armorers Association
P.O. Box 253, Princeton, MA 01541-0253

MISSION STATEMENT

The Massachusetts Law Enforcement Firearms Instructors' & Armorers' Association was formed to promote professionalism, continuing education, improvement in training methods and techniques of the proper law enforcement use of firearms in the Commonwealth of Massachusetts.

The Association strives to promote and foster mutual cooperation between instructors. Through discussion and a common interest in law enforcement firearms training, officer survival and tactical skills, MLEFIAA hopes to keep the members at the forefront of firearms training. Through our monthly meetings and annual training conference, we provide a means for the exchange of ideas and information regarding law enforcement firearms training, training methods, educational activities and new firearms technologies.

MLEFIAA currently has over 400 members. While mainly from Massachusetts, our membership extends internationally to countries as far away as Sweden. The Association endeavors to secure new members from the law enforcement training community who are engaged in the field of firearms training, maintenance, education or related fields. Our goal is to continuously upgrade the level of firearms training of law enforcement personnel here in the Commonwealth of Massachusetts.

MEMBERSHIP INFORMATION

Membership is offered at two levels - Active & Associate. Active membership is open to all duly sworn law enforcement officers of any local, county, state, federal or specialized law enforcement agency within the Commonwealth of Massachusetts; whose official duties include the training of law enforcement personnel in the proper use of firearms; or whose duties involve the maintenance and repair of firearms for their respective agencies.

Associate membership is open to sworn law enforcement firearms instructors and armorers from agencies outside of the Commonwealth of Massachusetts, non-sworn firearms instructors & armorers working within an agency within the Commonwealth of Massachusetts and representatives of private industry who are engaged in the design, development, manufacture, or training in firearms, ammunition and other related technologies designed for law enforcement use.

Complete details can be found at our website: www.MLEFIAA.org

Articles & Letters to the Editor

Articles and letters should be no more than 1000 words in length and submitted in MS Word. Any photos should be in JPEG format. MLEFIAA encourages a healthy discussion of training issues but we require that you keep it level headed and respect opposing views. You do not have to agree, but we will not publish articles that are inflammatory or otherwise do not uphold the reputation of this Association.

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Monthly Meeting Calendar

January 26, 2010
Smith & Wesson
Springfield, MA
(elections)

February 23, 2010
Maynard PD

March 23, 2010
MSP Troop F
Logan Airport

April 27, 2010
Randolph PD

May 25, 2010
Lancaster PD
Instructor Recert

June 22, 2010
Riverside Gun
Club, Hudson
Instructor Recert

July & Aug 2010
No meeting -
Summer Vacation

September 2010
Annual Training
Conference

October 26, 2010
Location TBA

Nov. 23, 2010
Location TBA

December 2010
Merry Christmas

*Watch your E-mail for
last minute changes and
details*

MPTC Firearms Instructor News

By Todd Bailey

In February, the MPTC approved minimum standards for qualification and training of all municipal police officers here in the Commonwealth whether full time, reserve or intermittent. The standards are broken down into Qualification and Training.

Qualification is intended to document existing marksmanship proficiency and safe firearms handling skills. Training is intended to improve the officer's marksmanship, reaction and decision making skills under stress in a variety of potential shooting situations as well as to enhance officer safety and the safety of the public. It should be remembered that these are minimum standards only. Nothing in them restricts a department or agency from exceeding them.

Under the standards, every officer must fire the MPTC Pistol Qualification course (with movement) annually and obtain a minimum score of 80%. You don't have to shoot duty ammo but you must shoot the same caliber must be identical to your duty ammo. In other words, if your duty caliber is .45ACP,

you can't qualify with 9mm. You must also use the standard MPTC approved target. This can be the traditional MPTC "Q" or the IALEFI Q-P target.

The annual training requirements consist of three elements. Annually, each officer must:

1. Receive instruction and review in legal issues and department policy on deadly force, safe handling and storage of firearms.

2. Complete two separate training sessions.

- Fire at least 50 live fire rounds for training purposes other than the MPTC Pistol Qualification Course. It is intended these rounds will be fired as part of multiple training drills.

- Additionally, complete a second training session which could be live fire or be conducted with Simunitions®, Airsoft, Simulator (Range 3000), plastic rounds or Red/Blue guns.

Training shall be realistic in nature and include judgmental shooting, reduced light, multiple targets, moving targets and shooting while moving. Live fire drills shall be varied from session to session to enhance skill diversity. The training should be scenario based

where practical and incorporate use of cover, shooting from a variety of positions and the use of both sighted and point shooting techniques. You can use any target but the use of reactive steel is encouraged where practical. Departments are encouraged to use MPTC certified firearms instructors when conducting this and other training programs.

There has been a great deal of confusion on this especially with what is required and how it is going to affect your budget. Ideally this training would be spread out over the year on different dates but that is not a requirement.

This training can be achieved in two sessions. You can schedule a range day where you can complete the 50 round Qualification and 50 round Training requirements. Later in the year, a second training could be conducted where you meet your Deadly Force Policy, Firearms Safety and Safe Storage requirements in addition to conducting some type of training with Airsoft, Simunitions, a simulator or Blue guns.

It is important to note that there is no time requirement on any of these training sessions.

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MLEFIAA LOSES A GOOD FRIEND

Our Association lost an old and honored friend on March 15th when Jim Ring passed away quietly at home surrounded by his family.

Jim was born in Waltham, MA on September 3, 1937, son of the late James P. and Mary F. (Ormond) Ring. He attended Concord public schools and graduated from Concord High School in 1955, where he lettered in football, baseball and track. He then attended Bates College in Maine and also Boston University. He was a life member of the Concord Rod & Gun Club, the Harvard Sportsman's Club, the NRA and MLEFIAA. Jim had a lifelong love of American History and was an avid sportsman. He enjoyed telling stories and finding the humor in everyday life. He leaves his beloved wife Martha L.(Riel) Ring of 52 years; two sons, Michael J. Ring and his wife Joan of Largo, Florida, and Dennis P. Ring and his wife Brenda of Fitchburg, a daughter, Mary L. Ring of Suwanee, Georgia, three grandchildren, Bryan and Kevin Ring both of Fitchburg, and Jami Ring of Largo, FL.

Jim served on the Concord Police Department for 32 years, retiring at the rank of Inspector in 1993. Following his retirement from the police force, he spent the next 13 years as the statewide coordinator for firearms training for the Massachusetts Criminal Justice Training Council and later



the Municipal Police Training Committee. Jim joined MLEFIAA in 1994 and became very active with the association's training in the late 90's. During this time he was appointed as one of our Training Coordinators and was instrumental in expanding MLEFIAA's presence here in the Commonwealth. The Association's Firearms Instructor Course Manual and later our instructor training program was approved by the MPTC thanks to Jim's efforts.

During the 2001 conference there were logistical problems with the ranges at Fort

Devens. Jim was instrumental in relocating the range activities for the final days to the nearby Harvard Sportsman's Club. This set up worked so well that the range portion of the conference has been held here since then. From that point on Jim served as Rangemaster for the conference and was a fixture cruising around the ranges in his mini van. His familiar "How's it going young fellow?" is going to be sorely missed.

Upon his retirement from the MPTC due to health issues 2007, he received national recognition from both the U.S. Senate and House of Representatives as the longest serving firearms instructor in the United States.

Despite nagging health issues Jim remained keenly interested in the day to day activities and goals of MLEFIAA. He also continued to participate with the MPTC Firearms Training Committee working to institute the changes he envisioned with firearms training. It goes without saying that Jim's advice and humor will be sorely missed especially by the Executive Board. We extend our condolences to Jim's wife Marty and the rest of the Ring family.

The Ring family has requested that memorial donations be made to Health Alliance Home Health & Hospice, 25 Tucker Drive, Leominster, MA.

Rest in peace old friend

James F. Ring Outstanding Firearms Instructor Award

In November, a proposal was made to the Executive Board to create some type of award which would acknowledge a MLEFIAA firearms instructor whose efforts had made a significant impact in advancing the state of firearms training in the Commonwealth of Massachusetts. At the same time, it was suggested that it would be appropriate to name the award in honor of Jim Ring our longtime MLEFIAA Training Coordinator. Jim was an immeasurable asset to the Association over the years. Through his efforts, MLEFIAA gained a greater role in firearms training in Massachusetts through a closer relationship with the MPTC and expanded training conferences.

The next step was to identify the most deserving recipient for the inaugural award. A lengthy discussion followed which included input from Jim. The Executive Board reviewed possible candidates for the award and decided that Sgt.

Bill Leanos, MPTC Statewide Firearms Coordinator, was, by far, the choice to receive the inaugural award. Since being named to the position, Bill Leanos has made significant strides in upgrading the level of firearms training.

He immediately established an ad hoc committee which would serve as a sounding board and think tank to implement changes to the training program. His first goal was to improve the standard pistol qualification course of fire. Most significant here was the introduction of realism and movement.

The Instructor program was upgraded to include a higher level of proficiency. Instructors were expected to get all their shots on target at the closer ranges and to achieve 100% round accountability overall. A more formalized Instructor/Trainer program was established with I/T recerts.

The recruit firearms program was completely revamped and a program for Re-

serve/Intermittent officers was initiated. A new Patrol Rifle course of fire was also introduced which incorporated many of the facets of the pistol course such as movement, realism and in this case - more rounds down range.

Bill has indicated that more projects are in the pipeline such as an improved shotgun program and a generic less lethal munitions program which will focus on 12 gauge and 40mm options.

It is clear that Bill's efforts to improve firearms training here in Massachusetts put him at the top of a very short list. The members attending the February meeting voted approve the E-Boards choice. The Executive Board then tasked the Awards Committee Chairman - 3rd VP Bill Peterson to design and produce the award. Using a graphic from noted police and military artist Dick Kramer, a tasteful award was crafted and will be presented by Jim's widow Marty Ring at a later date.

Is Firearms Identification A Local Option?

For many years the courts accepted a sworn affidavit from a qualified firearms examiner as proof that a gun submitted as evidence of a crime was a firearm, rifle or shotgun under the law. All of that changed in June 2009 when the Supreme Court of the United States handed down their decision in the Melendez-Diaz v. Massachusetts appeal.

In this case, the defendant argued that the Commonwealth's submission of sworn certificates (in this case for drugs) violated his Sixth Amendment rights to cross examine a witness. Under Crawford v. Washington (541 US 36), a witness testimony against a defendant is inadmissible unless the witness appears at the trial or, if unavailable, the defendant had a prior opportunity for cross examination. The Supreme Court ruled that Melendez-Diaz was entitled to be confronted with the persons giving this testimony at this trial.

After this decision, several District Attorneys put out memos stating they anticipated difficulties in getting convictions due to the limited number of firearms examiners and large case load. The memos suggested that the courts would interpret the ruling in the Melendez-Diaz case to apply to firearms and local police departments should consider testing firearms seized as evidence. This became reality with the Commonwealth v. Chery case in October 2009.

In response to this predicament, MLEFIAA began to examine the viability of conducting firearms examiner training for our members. During the discussion at the November meeting, it was brought up that the BATFE has a program to provide basic level firearms examiner training. At this time, we are exploring options with the BATFE in how to best conduct this training. In the meantime, we were able to talk with the State Police regarding this topic.

Thanks to the efforts of MLEFIAA member Bill Duggan (Maynard PD), members got a tour of the Firearms Identification Section of the Massachusetts State Police Crime Lab at the February meeting. Members got a very comprehensive look at the various aspects of the Firearms ID section and got to spend about a half hour in the 'reference library' which would make any serious gun collector salivate.

Detective Lieutenant Michael Coleman spent some extra time with MLEFIAA Board Members Bert DuVernay and Todd Bailey to explained how the Melendez-Diaz case has affected them and how the lab is meeting its obligations. In response to an offer to author an article for the Case

Head, Det. Lt. Coleman submitted a letter to MLEFIAA.

Dear Chief DuVernay,

It was a pleasure having members of the MLEFI&AA tour our ballistics lab in Maynard last month. There's nothing we enjoy more than getting together with a group of knowledgeable firearms people and talking guns.

During the tour you asked "What effect the Melendez-Diaz decision has had upon our section and our ability to continue to provide services to local police agencies?" I'm sure many of your contemporaries have similar concerns. I'll do my best to answer that question.

One of the services which we have provided to local law enforcement agencies has been the test firing and certification of crime guns. The certificate which we provided was admissible in court as prima facie evidence that the suspect weapon was in fact a working firearm. The Melendez-Diaz decision, which has been in effect since June 2009, now requires the certificate to be entered into evidence by the person who prepared it, giving the defense the opportunity to cross-examine.

Working with the district attorney's offices and the AG's office we've attempted to come up with strategies to mitigate the impact of the decision. After countless meetings, we came to the conclusion (in the words of Bill Parcels) "it is what it is" and we will have to learn to live with it.

The Firearms Identification Section will continue to test fire all submitted weapons and continue to furnish the submitting agency reports and certificates. A member of the Firearms Identification Section will make every effort to be available for court testimony, if necessary. If the ballisticsian is not available to testify on a given day due to scheduling conflicts or availability the court will be notified, allowing time for an officer from the submitting agency to perform an additional test firing. This officer will then testify as to the weapons capability.

I feel that it is worth noting that, up to this point in time, members of the Mass State Police Firearms Identification Section have been available and responded to all requests for court appearances.

There are several reasons why I feel it is important for these weapons to continue to be submitted to our section for testing. Any semi-automatic weapon which is submitted to the Firearms Identification Section is automatically entered

into the N.I.B.I.N. (National Integrated Ballistic Information Network) which checks for any links to other shooting incidents in the region. We maintain an inventory of factory fresh ammunition to be utilized for test samples to be entered into N.I.B.I.N.

With the financial situation today I don't think it's practical for most agencies, especially the smaller departments, to establish an inventory of ammunition for test firings and N.I.B.I.N. entries.

If a weapon is in non-working condition due to a minor malfunction, under the Bartholomew decision, 326 Mass. At 220.93 n.e. 2nd at 552, law enforcement officers are allowed to perform minor repairs to weapons to return them to working order. The Firearms Identification Section maintains an inventory of spare parts for the most common weapons which we encounter, enabling us to replace the defective part and perform the test firing.

Melendez-Diaz, like many court decisions, certainly hasn't made our job any easier. However, we refuse to allow these decisions to negatively impact the quality of service which we provide to the law enforcement community.

Sincerely,

*Detective Lieutenant Michael F. Coleman
Firearms Identification Section
Massachusetts State Police*

Det. Lt. Coleman's letter makes it clear that the MSP is not taking this new twist sitting down. They have met their obligations to date and endeavor to continue to do so. The state lab also maintains a stock of parts so that a 'minor repair' can be readily made to meet the standard established by the Bartholomew decision. We do not know how much leeway the court would allow a local agency if they had to order parts to make a firearm operable.

The initial fear that the state's bleak economic situation would prevent ballisticsians from making court dates was premature. That said, he did leave the door open that there could be situations where the ballisticsian may not be able to testify and that a local officer from the submitting agency may have to conduct an additional test firing. Should this be the case, it is likely a local officer would benefit from some additional training in this field. For that reason, MLEFIAA will continue to look at options to provide this training for our members.

The Association would like to thank the MSP Firearms Identification Section and especially Det. Lt. Coleman for their input and cooperation with this project.

Verbal Warning - A Potential Deadly Trap

By Jeff Chudwin

(Courtesy of Law Officer Magazine, Volume 6 / Issue 1, Jan 1, 2010)

An officer arrives on the scene of an active shooter. As he enters a school building, he sees bloodied victims on the floor and runs toward the gunfire. He clears a corner and sees a man with a rifle firing at children who run down a hallway. The officer raises his patrol rifle and, without a word, shoots the offender.

In another deadly event, an officer arrives at a traffic accident. One of the drivers is armed with a handgun and, unknown to the officer, was on his way to murder his girlfriend. A citizen shouts to the officer that the driver is holding a pistol. The officer shouts to the armed man to step away from his pickup truck and show his hands. The offender steps from the vehicle, and the officer shouts repeatedly for him to "drop the gun." The gunman lowers his handgun and then, without warning, snaps his arm up and fires. The bullet creases the officer's head from 60 feet away. A gunfight ensues, and the officer kills the offender.

In one case, no warning is issued, and the threat stopped immediately. In another, there's a warning with a near disastrous result. Are police officers required to always give warning before the use of deadly force? If not, what are the rules?

Consider Your Basic Training

Every police officer is taught from day one that communication skills are key to successful law enforcement. We learn to speak in a manner that commands attention in order to gain compliance, or simply to give and get information.

In all we do, speech is in play and this is very much true in use-of-force incidents. In the vast majority of confrontations, officers are identifying themselves, giving lawful commands and making custodial arrests. Verbal commands are ingrained into the fabric of who we are and what we do.

We prize good communications but must recognize that there will be times that demand action, not talk. In the classes I instruct that focus on police use of deadly force, officers view on-scene film where verbal commands went unheeded by the armed offender. Instead, the gunman fired first and murdered the officer. The use of verbal commands when facing an immediate threat to life—yours or others—is, at times, a deadly vestige of our training.

Under high stress, correct and proper verbalization can be difficult. What I call "peanut butter mouth" kicks in, and all that

comes out is a confused jumble of words at high volume, followed by profanity. Remember your first foot or auto pursuit? It takes realistic training and correct practice to slow down, and keep a cool head and clear tongue.

Achieve Control & Win

Sgt. Phil Messina (NYPD, ret.) is the founder of Modern Warrior, a highly regarded school that trains officers for the hardcore reality of fights they'll face in their careers. As a regular presenter at the Illinois Tactical Officers Training Association Conference, Messina has proven to us that achieving control and winning against violent offenders is a time-driven process.

Similar in concept to Col. John R. Boyd's OODA (observe, orient, decide and act) loop, Messina dissects the fight sequence in terms of positive and negative time-framing. Negative time works against the officer as he's seeking to catch up to the actions of the offender. A basic truth is that action beats reaction. When the command is "drop the gun," it's implicit in the timeframe that the offender is armed and capable of firing. He'll either put the gun down as commanded or use the time allowed by the officer to fire on him. This issue of "presumed compliance" has been well explained by combatives trainer Tony Blauer, who details the risk we take when issuing verbal commands and then waiting for the response. We surrender the timeframe to the offender and stand at great risk unless we are doing more than simply speaking and waiting.

As we work through the tactics and responses, first we must understand the law. The foundation of warning an offender before the use of deadly force is the 1985 case of *Tennessee v. Garner*. [1] This landmark decision addressed the use of deadly force against fleeing felony offenders, and the court considered giving warning, but didn't make it mandatory. Specifically: "Thus, if the suspect threatens the officer with a weapon or there's probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible,[2] some warning has been given."

Feasibility must be based on the considerations of the officer on scene. There's no legal requirement that an officer allow a violent offender to gain a deadly advantage, whereby a verbal

warning exposes the officer to greater dangers by allowing the offender to target the officer or others on scene.

Example: An officer arrives on scene at a bank robbery in progress. The offender, armed with a long-barreled revolver pressed to the neck of a teller, attempts to use her as a shield to escape. The kidnaper drags his hostage along an outer wall, not seeing the police officer hidden around the 90° corner who immediately fires on the offender as he breaks the corner line. No words of warning or surrender were issued. Why? In the language of the court, it wasn't feasible. To do so puts the life of the hostage and officer at high risk. The untrained and unknowing may argue that words must come first. They, of course, are the observers and backseat drivers who don't have to live with or suffer the consequences of failure and death.

This isn't television where the good guy always wins. Fail to act at the moment where death or great harm is immediate and all may be lost. As police officers, we're sworn to protect the life and safety of our citizens—first and foremost. We must not elevate the safety concerns for the criminal/terrorist offender above those of our citizens and ourselves. This isn't about a fair fight; this is about winning against violent dangerous offenders. Only law enforcement is empowered to do so, and we'll stand or fall based on not only what we can do but most importantly on what we believe is accepted and needed conduct.

What happens when law enforcement officers are faced with the elevated threats of terrorist actions? I review with my officers a video of a homicide bomber in Israel who's wounded by the blast of an accomplice bomber. He's on the ground attempting to press the detonator of his bomb vest when a border patrol commander bravely moves in close with his pistol and shoots him in the head, ending the threat. Words had no place in that moment and scene.

When weapons of mass destruction are threatened or used by terrorists, part of their strategy has been to use negotiation to gain time to either reinforce their stronghold or carry out the attack.

In Sum

What can be done to better train and prepare our officers for what may be a once-in-a-career event? First, we must make clear that the law is understood. To do so, department trainers must incorpo-

Continued on the next page

MPTC Firearms Training News (continued from Page 2)

You can spend all day or conduct it during roll call. Many of the complaints and questions that MLEFIAA has received relate to this. If you only have funding to support one range session a year, you will be able to meet these new requirements.

For many years we (firearms instructors) have decried the lack of any standard here in Massachusetts for working officers. There was a qualification and training program for recruits and instructors but the working police officer was held to no standard. There were recommendations but they were just that - recommendations and had no force of law behind them. Our justification to have a firearms training program came strictly from case law. This can be compared to closing the barn door after the horse has run off.

If you take a close look at the new standard you will see that it really is no different from what the MPTC has been preaching for the past 10 years. Existing case law was the foundation which these standards were built on.

The new requirements give us something to take to the Chief, Finance Committee and Board of Select-

man or City Council to improve the training we provide for our officers.

It should be noted that these new standards only apply to handgun qualification and training. The MPTC currently does not teach the patrol rifle or shotgun at the academy level and that may be the reason why no regulations were written for the long guns. While nothing is currently on the table to change this, it is hoped that the MPTC will look closely at something similar for the patrol rifle and shotgun in the future. Instructors and administrators should not misread this. If an agency issues these weapons, failing to train their officers with them can lead to a finding of negligence should an unfortunate incident occur. As in the past, case law and the court will dictate what the department should have done.

There is no civil or criminal penalty for non-compliance with the new standards. While this may seem to pull the teeth from the standards, it is not the case. In the event an officer is involved in a shooting where training was called into question, not complying with the standards in place could

take a case from simple negligence to gross negligence. In the past we had case law, mostly from other parts of the country to justify how we trained. With mandatory qualification and training standards in place, a department will be hard pressed to claim they did not know what was expected of them.

Lack of training funds will not be a legitimate excuse for no training. If you find yourself in a situation where you are not able to deliver these minimums, it is strongly suggested you document all your recommendations to comply with the standards. Give your department head and Chief the numbers and documentation they need to justify the allocation of funding. It's their job to convince City or Town Hall that spending a few dollars on training now will be more economical than paying off an expensive law suit later on.

More information will be available at the instructor recertifications and the complete document is available at www.mlefiaa.org/MPTC-MIN-STANDARDS.html.

Verbal Warning (continued from previous page)

rate the "book learning" issues in an understandable block of instruction. Add to the classroom time the videos of these events so that there's a focus on reality.

Follow the classroom with hands-on training. Produce realistic training scenarios. Demonstrate the use of verbal warnings in situations where it's feasible and where it isn't. I've shot many officers in training who truly believed that because they had a firearm pointed at me, they controlled me. I shot them in the head from close range even though I had my muzzle depressed. They had to experience this to truly understand the action-vs.-reaction cycle.

We must ensure that there's consistency with the law and the department policy. I haven't seen a policy that mandates a verbal warning in all matters of police use of force. Yet, such may exist and, if so, the chief or sheriff needs to be informed and educated on the matter. Officers must understand clearly that there will be a time for talk but also a time for direct action. When shots are

fired and life is at risk is not the time for confusion or unreasonable high-risk conduct.

References

1. *Tennessee v. Garner* 471 U.S. 1 (1985)
2. 471 U.S. 1, 12

About the Author

Jeff Chudwin is the Chief of Police for Olympia Fields, Ill. He is a founding member and current president of the Illinois Tactical Officers Association and co-chair of the Illinois Law Enforcement Alarm System Region 4. Chudwin has been a firearms, use-of-force and emergency response trainer for more than 25 years.

MLEFIAA / MPTC FIREARMS INSTRUCTOR RECERTIFICATION

In cooperation with the MPTC, MLEFIAA will once again offer MPTC approved Firearms Instructor Re-Qualification classes in 2010. Scheduled dates and locations are:

May 25th at Lancaster PD Range
June 22nd at Riverside Gun Club n Hudson

Contact MLEFIAA Secretary Joe Picariello at secretary@mlefiaa.org if you are interested in attending.

LEOSA Update - S. 1132 Proposes Needed Changes

In early March, the Federal Law Enforcement Officers Assn. announced it was pleased to learn from Chairman Patrick Leahy's Judiciary staff that he reported the LEOSA Improvement Act of 2009 from Committee this morning, with only Chairman Leahy's substitute amendment. This important legislation will now be placed on the Senate schedule for full consideration and voting by the Senate.

In response to the favorable unanimous voice vote in the Senate Judiciary Committee, FLEOA National President Jon Adler stated, "We would like to recognize and commend Chairman Leahy for his perseverance and commitment to the movement of this important legislation. He has once again proven himself to be a champion of law enforcement issues, and not a sideline bystander."

FLEOA also recognized and applauded the sustained support of the bill's cosponsors, Ranking Member Jeff Sessions, Senator Jon Kyl and Senator Kent Conrad. FLEOA is optimistic that the House related bill, H.R. 3752, introduced by Representative Randy Forbes, will soon gain momentum.

As most of you are aware, the version of the LEOSA that we saw passed by Congress and signed into law by President Bush was a far cry from what was originally proposed by its sponsors.

After the Law Enforcement Officers Safety Act of 2004 (LEOSA) passed into law in July 2004, retired federal officers in particular have been frustrated by certain states which have failed to establish and implement standards. Most federal agencies created regulations which prevented retired officers and agents from meeting the annual qualification requirement with their former agency. Several states had no "qualification standard" for their officers which created a roadblock for retired federal officers.

S. 1132 provides a solution to this. In Section 2, paragraph 4, the bill states, "...if the State has not established such standards, a law enforcement agency within the State in which the individual resides" can qualify the retired applicant.

The bill also broadens the definition of those covered to include "a law enforcement officer of the Amtrak Police Department or a law enforcement or police officer of the executive branch of the Federal Government..."

Additionally, S. 1132 will reduce the total number of employment years from fifteen to ten for law enforcement officers who have "separated" from service.

LEOSA has been a thorn in the side of many Chiefs and administrators who chose to restrict the ability of their officers to carry concealed off duty. It is interesting to note who supported this legislation (rank and file unions and organizations) and who opposed it (IACP and Police Executive Research Forum).

While the law specifically permits owners of private property and federal or state installations to restrict the possession of concealed firearms on the premises, it is generally felt

In enacting the LEOSA, Congress overrode the authority of any state or local government to deny LEOSA-qualified individuals, from any jurisdiction, the right to carry concealed firearms. However, there has been some debate over whether the heads of individual law enforcement agencies—for example, a local police chief or county sheriff -- may order his own agency's employees not to exercise a right conferred by Congress.

It appears that most authorities believe that federal law now trumps the local chief's authority in this regard. The heads of state and local law enforcement agencies derive their authority from state and local law, and the LEOSA explicitly overrides "*any other provision of the law of any State or any political subdivision.* . . ." That said, it is important to note that it would certainly be within an agency's authority to forbid an employee from carrying a specific weapon that is the property of the agency.

A memo posted by the California Attorney General's office notes that the federal law overrides any local or agency internal policy regarding off-duty carry. The memo posed this question: "Does this Act trump state law, local ordinances, and local policy restricting carrying off-duty?," and gave this answer: "Yes, as it relates to an officer's ability to carry a concealed weapon off-duty... Off-duty restrictions appear to be superseded by this Act." [1]

Moreover, during the congressional debates over the bill, both the authors of the bill and the opponents agreed that the legislation was intended precisely to confer on qualified officers the right to carry concealed in every state, regardless of any local laws or agency policies to the contrary. The most complete debate on the bill, including consideration of various amendments, occurred in the U.S. House of Representatives Judiciary Committee on June 16, 2004. The committee's report includes a transcript of the complete debate. A leading opponent of the LEOSA,

Rep. Bobby Scott (D-Va.), complained that the bill "supersedes the ability of the chief of police to control his own officers. . . . If he should want to decide to prohibit his own officers from carrying concealed weapons when they are off duty, this bill will override his power over his own police officers. . . ." Scott then offered an amendment to add to the bill a restriction that it "shall not be construed to supersede or limit the rules regulations, policies, or practices of any State or local law enforcement agency." Scott explained that his amendment was necessary "so that the police chief can say no firearms in bars, no firearms when you are off duty, and that would be a decision that the police chief could make about his force. The bill overrides that. . . . The bill clearly prohibits the chief of police from prohibiting his officer going on vacation with a firearm. And . . . this is not just police and sheriff, that is anybody with arresting powers, game and fisheries, probation and parole officers, and everybody else."

Scott concluded by arguing that unless his amendment was adopted, "they [the chiefs, et al.] will have no say over what officers do off duty with their own guns." Several other Democratic members of the committee spoke up in support of Scott's Amendment. But the authors, sponsors, and supporters of the LEOSA uniformly opposed the Scott amendment. The bill supporters did not dispute Scott's interpretation of what the bill did - rather, they argued that adoption of the Scott amendment would amount to a "back door opt-out" of the basic requirements of the legislation, defeating its purpose—and they voted down the Scott amendment, 21 to 11.

While not a total solution to another poorly crafted regulation, this will clear up some inconsistencies and move forward to make this the law it was intended to be.

Footnotes

1. Memorandum by California AG's Office regarding LEOSA implementation



Holster Retention Levels Need To Be Standardized

There is a vast discrepancy in how holster manufacturers rate their products with regards to retention security. Because there is no industry standard, the inexperienced buyer can be left confused and often misled in thinking their holster is very secure. Adding to the confusion is the inexperienced clerk at the police supply store who has never used a security holster - never mind an understanding of how it works. This is a situation which must change.

What exactly constitutes a retention level of security? Is it a mechanical device or a physical manipulation that must be accomplished before the weapon can be withdrawn? To date, only a handful of manufacturers have realistic and well defined retention levels. A good example is Safariland's system. While not perfect, it is the closest thing we have to establishing a uniform and realistic rating system which the end user can effectively use. It is prudent to consider the retention levels as a physical barrier a threat must overcome to take possession of your weapon. The user must also bear in mind that holster retention devices will merely delay a gun grab. Prison yard video has shown convicts practicing how to disarm a law enforcement officer. The prudent officer will always use sound tactics to shield their weapon and maintain distance to preclude the takeaway attempt.

In the opinion of this author, a retention level must be a physical or mechanical device which must be unlocked, opened or otherwise disengaged in order to draw the weapon. Screws which increase the friction fit between the weapon and holster do not count. A system where the user pushes one button to release two or more retention devices unlock is not a double or triple retention system. It is a single level system. This may not be a popular statement with some holster makers but this is an officer safety issue.

Some holsters use a system where

the trigger guard or other part of the weapon fits into a groove and is held there by way of spring tension. This should not count as a retention device. Holsters such as the Fobus and other Kydex open top holsters are examples of this. The reason for this is that while this system can keep the weapon from accidentally falling out, it does nothing to prevent a gun grab.

Several models have a protrusion or lug which fits into the ejection port securing the weapon from a straight up draw. Because this requires a rocking motion to disengage the lug, it could be considered a retention device. Personally I would feel more comfortable if this was used in conjunction with one or more other retention methods.

If a holster incorporates a system where two or more retention devices are released with one action such as pressing a button or lever, this should only count as a single retention level. While there may be several devices holding the weapon in the holster, an assailant only has to defeat one which in turn trips others. This is the crux of holster retention. The design must make it difficult for an unauthorized person to access the weapon yet easy for the person wearing the holster.

Certain types of holsters should not receive a retention rating. Open top leather holsters are one such example. While these were very popular in the 50's and 60's as a fast draw option for plain clothes officers and FBI agents, they offer no retention and very little security. Any physical activity at all can lead to a lost weapon.

Another design which is useless is the soft sided Cordura® holster. Popular among sportsman and recreational shooters, this holster has no place on the hip of a law enforcement officer. This holster normally has a thumb break retention strap but the soft side and oval top opening mean an assailant could grab the weapon while in the holster and slide their index finger in to access the trigger. Because the holster has very little ri-

gidity, an assailant can bend it towards the officer's leg and press the trigger sending a round into the officer's leg.

Features which law enforcement duty holsters should have include:

1. The body of the holster should be rigid to minimize lateral movement of the weapon when holstered. This may necessitate a laminate or polymer construction. It should not allow a finger to be inserted between the weapon and side of holster.
2. The trigger guard area should be covered preventing access to the trigger.
3. The user should be able to access the magazine release button to administratively remove a magazine without drawing the weapon.
4. Level I requires unlocking one retention device. Level II requires unlocking two retention devices and so on.
5. Mechanical retention devices must be user friendly to operate and difficult to access from the front, side or rear.
6. If a lever or button unlocks more than one retention device, it only counts for one retention level.
7. A duty holster (i.e. one for exposed duty carry) must meet a minimum of Level I and is preferably Level II or III.
8. Law enforcement holsters must be impervious to blood borne pathogens and easily decontaminated.
9. A holster sold for law enforcement use must have at least one retention mechanism other than a friction fit.

Unfortunately there is no group of manufacturers which is willing to step up to the plate and assume this role. We can not rely on equipment retailers because by and large, their sole priority is maximizing their profit margin. Some take a sincere interest in selling only top quality products but most are just looking for the best margins. In the end it must be the end user who sets the standard and enforces it with their buying power.

FBI Releases New Findings On Violent Encounters

The following article was passed along during a recent MPTC Firearms Instructor class.

New findings on how offenders train with, carry and deploy the weapons they use to attack police officers have emerged in a just published, 5-year study by the FBI. Among other things, the data reveal that most would-be cop killers:

- Show signs of being armed that officers miss;
- Have more experience using deadly force in "street combat" than their intended victims;
- Practice with firearms more often and shoot more accurately;
- Have no hesitation whatsoever about pulling the trigger.

"If you hesitate," one told the study's researchers, "you're dead. You have the instinct or you don't. If you don't, you're in trouble on the street."

These and other weapons-related findings comprise one chapter in a 180-page research summary called *"Violent Encounters: A Study of Felonious Assaults on Our Nation's Law Enforcement Officers."*

The study is the third in a series of long investigations into fatal and nonfatal attacks on POs by the FBI team of Dr. Anthony Pinizzotto, clinical forensic psychologist, and Ed Davis, criminal investigative instructor, both with the Bureau's Behavioral Science Unit, and Charles Miller III, coordinator of the LEOs Killed and Assaulted program. "Violent Encounters" also reports in detail on the personal characteristics of attacked officers and their assaulters, the role of perception in life-threatening confrontations, the myths of memory that can hamper OIS investigations, the suicide-by-cop phenomenon, current training issues, and other matters relevant to officer survival. (Force Science News and our strategic partner PoliceOne.com will be reporting on more findings from this landmark study in future transmissions.) Commenting on the broad-based study, Dr. Bill Lewinski, executive director of the Force Science Research Center at Minnesota State University - Mankato, called it "very challenging and insightful important work that only a handful of gifted and experienced researchers could accomplish." From a pool of more than 800 incidents, the researchers selected 40, involving 43 offenders (13 of them admitted gangbangers-drug traffickers) and 50 officers, for in-depth exploration. They visited crime scenes and extensively interviewed surviving officers and attackers alike, most of the

latter in prison. Here are highlights of what they learned about weapon selection, familiarity, transport and use by criminals attempting to murder cops, a small portion of the overall research:

Weapon Choice

Predominately handguns were used in the assaults on officers and all but one were obtained illegally, usually in street transactions or in thefts. In contrast to media myth, none of the firearms in the study was obtained from gun shows. What was available "was the overriding factor in weapon choice," the report says. Only 1 offender hand-picked a particular gun because he "felt it would do the most damage to a human being." Researcher Davis, in a presentation and discussion for the International Assn. of Chiefs of Police, noted that none of the attackers interviewed was "hindered by any law, federal, state or local, that has ever been established to prevent gun ownership. They just laughed at gun laws."

Familiarity

Several of the offenders began regularly to carry weapons when they were 9 to 12 years old, although the average age was 17 when they first started packing "most of the time." Gang members especially started young. Nearly 40% of the offenders had some type of formal firearms training, primarily from the military. More than 80% "regularly practiced with handguns, averaging 23 practice sessions a year," the study reports, usually in informal settings like trash dumps, rural woods, back yards and "street corners in known drug-trafficking areas." One spoke of being motivated to improve his gun skills by his belief that officers "go to the range two, three times a week [and] practice arms so they can hit anything."

In reality, victim officers in the study averaged just 14 hours of sidearm training and 2.5 qualifications per year. Only 6 of the 50 officers reported practicing regularly with handguns apart from what their department required, and that was mostly in competitive shooting. Overall, the offenders practiced more often than the officers they assaulted, and this "may have helped increase [their] marksmanship skills," the study says. The offender quoted above about his practice motivation, for example, fired 12 rounds at an officer, striking him 3 times. The officer fired 7 rounds, all misses.

More than 40% of the offenders had been involved in actual shooting confrontations before they feloniously assaulted an

officer. Ten of these "street combat veterans," all from "inner-city, drug trafficking environments," had taken part in 5 or more "criminal firefight experiences" in their lifetime. One reported that he was 14 when he was first shot on the street, "about 18 before a cop shot me." Another said getting shot was a pivotal experience "because I made up my mind no one was gonna shoot me again." Again in contrast, only 8 of the 50 LEO victims had participated in a prior shooting; 1 had been involved in 2 previously, another in 3. Seven of the 8 had killed offenders.

Concealment

The offenders said they most often hid guns on their person in the front waistband, with the groin area and the small of the back nearly tied for second place. Some occasionally gave their weapons to another person to carry, "most often a female companion." None regularly used a holster, and about 40% at least sometimes carried a backup weapon. In motor vehicles, they most often kept their firearm readily available on their person, or, less often, under the seat. In residences, most stashed their weapon under a pillow, on a nightstand, under the mattress--somewhere within immediate reach while in bed. Almost all carried when on the move and strong majorities did so when socializing, committing crimes or being at home. About 1/3 brought weapons with them to work. Interestingly, the offenders in this study more commonly admitted having guns under all these circumstances than did offenders interviewed in the researchers' earlier 2 surveys, conducted in the 1980s and '90s.

According to Davis, "Male offenders said time and time again that female officers tend to search them more thoroughly than male officers. In prison, most of the offenders were more afraid to carry contraband or weapons when a female CO was on duty."

On the street, however, both male and female officers too often regard female subjects "as less of a threat, assuming that they not going to have a gun," Davis said. In truth, the researchers concluded that more female offenders are armed today than 20 years ago --"not just female gang associates, but female offenders generally."

Shooting Style

Twenty-six of the offenders [about 60%], including all of the street combat

Continued on next page

veterans, "claimed to be instinctive shooters, pointing and firing the weapon without consciously aligning the sights," the study says. "They practice getting the gun out and using it," Davis explained. "They shoot for effect." Or as one of the offenders put it: "[W]e're not working with no marksmanship...we just putting it in your direction, you know..It don't matter as long as it's gonna hit you. If it's up at your head or your chest, down at your legs, whatever... Once I squeeze and you fall, then, if I want to execute you, then I could go from there."

Hit Rate

More often than the officers they attacked, offenders delivered at least some rounds on target in their encounters. Nearly 70% of assailants were successful in that regard with handguns, compared to about 40% of the victim officers, the study found. (Efforts of offenders and officers to get on target were considered successful if any rounds struck, regardless of the number fired.) Davis speculated that the offenders might have had an advantage because in all but 3 cases they fired first, usually catching the officer by surprise. Indeed, the report points out, "10 of the total victim officers had been wounded [and thus impaired] before they returned gunfire at their attackers."

Missed Cues

Officers would less likely be caught off guard by attackers if they were more ob-

servant of indicators of concealed weapons, the study concludes. These particularly include manners of dress, ways of moving and unconscious gestures often related to carrying.

"Officers should look for unnatural protrusions or bulges in the waist, back and crotch areas," the study says, and watch for "shirts that appear rippled or wavy on one side of the body while the fabric on the other side appears smooth." In warm weather, multilayered clothing inappropriate to the temperature may be a giveaway. On cold or rainy days, a subject's jacket hood may not be covering his head because it is being used to conceal a handgun.

Because they eschew holsters, offenders reported frequently touching a concealed gun with hands or arms "to assure themselves that it is still hidden, secure and accessible" and had not shifted. Such gestures are especially noticeable "whenever individuals change body positions, such as standing, sitting or exiting a vehicle." If they run, they may need to keep a constant grip on a hidden gun to control it.

Just as cops generally blade their body to make their sidearm less accessible, armed criminals "do the same in encounters with LEOs to ensure concealment and easy access." An irony, Davis noted, is that officers who are assigned to look for concealed weapons, while working off-duty security at night clubs for instance, are often highly proficient at detecting them. "But then when they go back to the street without that specific assignment,

they seem to 'turn off' that skill," and thus are startled--sometimes fatally--when a suspect suddenly produces a weapon and attacks.

Mind-set

Thirty-six of the 50 officers in the study had "experienced hazardous situations where they had the legal authority" to use deadly force "but chose not to shoot." They averaged 4 such prior incidents before the encounters that the researchers investigated. "It appeared clear that none of these officers were willing to use deadly force against an offender if other options were available," the researchers concluded.

The offenders were of a different mind-set entirely. In fact, Davis said the study team "did not realize how cold blooded the younger generation of offender is. They have been exposed to killing after killing, they fully expect to get killed and they don't hesitate to shoot anybody, including a police officer. They can go from riding down the street saying what a beautiful day it is to killing in the next instant."

"Offenders typically displayed no moral or ethical restraints in using firearms," the report states. "In fact, the street combat veterans survived by developing a shoot-first mentality. "Officers never can assume that a criminal is unarmed until they thoroughly searched the person and the surroundings themselves." Nor, in the interest of personal safety, can officers "let their guards down in any type of law enforcement situation."



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